

HOUSE BILL NO. 71

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/15/97

Referred: Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative penalties for violation of public water supply
2 system requirements; amending Alaska Rule of Civil Procedure 82 regarding
3 attorney's fees; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1. FINDINGS.** The legislature finds that

6 (1) the federal government has required, in the federal Safe Drinking Water
7 Act amendments of 1996 (P.L. 104-182), that states have minimum administrative penalty
8 authority in order to maintain primary enforcement authority for the federal drinking water
9 program (42 U.S.C. 300f - 300j-26);

10 (2) the state cannot receive federal money for construction of public drinking
11 water systems unless it maintains primacy under the federal program (sec. 130, P.L. 104-182);

12 (3) maintaining state primary enforcement authority for the federal program
13 is in the best interests of the state so as to provide maximum flexibility and local control of
14 this program and to ensure continued federal money for Alaska public water supply system

1 construction projects;

2 (4) ensuring public health through protection of public water supplies is of
3 fundamental importance to the people of the state;

4 (5) this Act is in the public interest by enacting administrative penalty authority
5 in order to meet the minimum federal requirements for maintaining state primary enforcement
6 authority for the federal drinking water program.

7 * **Sec. 2.** AS 46.03 is amended by adding a new section to read:

8 **Sec. 46.03.761. Administrative penalties.** (a) The department may assess
9 an administrative penalty against a person who violates or causes or permits to be
10 violated a provision of AS 46.03.720(b) or a term or condition of a regulation, order,
11 permit, approval, or certificate of the department issued or adopted under
12 AS 46.03.720(b).

13 (b) An administrative penalty assessed under this section may not exceed
14 \$1,000 per day per violation if the affected public water supply system serves a
15 population of more than 10,000 persons. An administrative penalty assessed under this
16 section may not exceed \$750 per day per violation if the affected public water supply
17 system serves a population of 10,000 or fewer persons. Each provision, term, or
18 condition violated is a separate and distinct violation. If a violation of a provision,
19 term, or condition continues from day to day, each day is a separate violation.

20 (c) In determining the amount of a penalty assessed under this section, the
21 department shall consider

22 (1) the effect of the violation on the public health or the environment;

23 (2) reasonable costs incurred by the state in the detection, investigation,
24 and attempted correction of the violation;

25 (3) the economic savings realized by the person by not complying with
26 the requirement for which a violation is charged;

27 (4) any previous history of compliance or noncompliance with this
28 chapter, AS 46.04, AS 46.09, and AS 46.14;

29 (5) the need to deter future violations;

30 (6) the extent and seriousness of the violation, including the potential
31 for the violation to threaten public health or the environment;

1 (7) whether the person achieved compliance with the requirement
2 violated within the shortest feasible time; and

3 (8) other factors considered relevant to the assessment that are adopted
4 by the department in regulation.

5 (d) If a penalty is assessed under this section, the department shall provide the
6 assessment notice to the person assessed by personal service or by certified mail,
7 return receipt requested. The notice must inform the person of the amount of the
8 proposed penalty and that the person has 30 days within which to file a notice with the
9 department contesting the proposed penalty. If, within 30 days after the receipt of the
10 notification issued by the department, the person fails to file a notice contesting the
11 proposed penalty, the proposed penalty is considered a final order. The department
12 may extend the time periods specified in this subsection for good cause.

13 (e) If a person files notice contesting a proposed penalty under (d) of this
14 section, the department shall afford an opportunity for a hearing in accordance with
15 its adjudicatory hearing procedures. After an opportunity for a hearing, the department
16 shall issue an order, based upon findings of fact, affirming, modifying, or rescinding
17 the administrative penalty. The order is the final agency action on the penalty.

18 (f) A person against whom an administrative penalty is assessed may obtain
19 judicial review of the administrative penalty by filing a notice of appeal in the superior
20 court as provided by the Alaska Rules of Appellate Procedure. An order of the
21 department under (e) of this section becomes final and is not subject to review by any
22 court if a notice of appeal is not filed with the superior court within the period
23 provided for by the Alaska Rules of Appellate Procedure.

24 (g) Action under this section by the department does not limit or otherwise
25 affect the authority of the department to otherwise enforce this chapter, AS 46.04,
26 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
27 recover damages, restoration expenses, investigation costs, court costs, attorneys fees,
28 or other necessary expenses. The court shall set off against a judicial civil assessment
29 subsequently awarded under AS 46.03.760 any amount ordered to be paid under this
30 section by the same person for the same violation.

31 (h) If a person fails to pay an administrative penalty assessed under this

1 section after the penalty becomes final, the department may bring an action to collect
2 the penalty. The amount of the penalty is not subject to review by the court in such
3 an action.

4 (i) If the department prevails in a collection action brought under (h) of this
5 section, the court shall order the person to pay full reasonable attorney's fees and costs
6 incurred by the department in the collection action.

7 * **Sec. 3.** TRANSITION: REGULATIONS. The Department of Environmental
8 Conservation may immediately proceed to adopt regulations to implement changes made by
9 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
10 before the effective date of secs. 1 and 2 of this Act.

11 * **Sec. 4.** The provisions of AS 46.03.761(i), added by sec. 2 of this Act, have the effect
12 of amending Alaska Rule of Civil Procedure 82 by allowing the recovery of full reasonable
13 attorney's fees and costs in certain actions.

14 * **Sec. 5.** AS 46.03.761(i), added by sec. 2 of this Act, takes effect only if sec. 4 of this
15 Act receives the two-thirds majority vote of each house of the legislature required by art. IV,
16 sec. 15, Constitution of the State of Alaska.

17 * **Sec. 6.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect on the effective date
19 of regulations adopted by the United States Environmental Protection Agency (EPA)
20 implementing the state administrative penalty requirement for state primary enforcement
21 authority under 42 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if EPA
22 determines that regulations are not necessary, on the date EPA requires under the authority
23 of that statute that the state must have administrative penalty authority to maintain its state
24 primacy over the federal drinking water program, whichever event occurs first in time. The
25 commissioner of environmental conservation shall notify the lieutenant governor and the
26 revisor of statutes of the effective date of the state administrative penalty authority
27 requirement.