

SENATE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATORS TORGERSON, Taylor, Austerman, Cowdery

Introduced: 3/13/01

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation and licensing of certain water-power development
2 projects."

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

4 * **Section 1.** AS 42.45 is amended by adding a new section to read:

5 **Article 6A. Water-Power Development Projects.**

6 **Sec. 42.45.350. Licensing of water-power development projects.** (a) The
7 commission shall adopt regulations to establish a regulatory program for water-power
8 development projects that qualify under this section.

9 (b) The regulatory program established under this section must

10 (1) protect the public interest, the purposes listed in (2) of this
11 subsection, and the environment to the same extent provided by the requirements for
12 licensing and regulation by the Federal Energy Regulatory Commission under 16
13 U.S.C. 792 - 823c and other applicable federal laws, including 16 U.S.C. 1531 et seq.
14 (Endangered Species Act) and 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination

1 Act);

2 (2) give equal consideration to

3 (A) energy conservation;

4 (B) the protection of, mitigation of damage to, and
5 enhancement of, fish and wildlife, including related spawning grounds and
6 habitat;

7 (C) the protection of recreational opportunities;

8 (D) the preservation of other aspects of environmental quality;

9 (E) the interests of Alaska Natives; and

10 (F) other beneficial public uses, including irrigation, flood
11 control, water supply, navigation; and

12 (3) require, as a condition of a license for any qualifying project work,

13 (A) the construction, maintenance, and operation by a licensee
14 at the licensee's own expense of the lights and signals that may be directed by
15 the secretary of the department of the United States government in which the
16 United States Coast Guard is operating and the fishways that are prescribed by
17 the Secretary of the Interior or the Secretary of Commerce, as appropriate;

18 (B) the operation of any navigation facilities that may be
19 constructed as part of any project to be controlled at all times by the reasonable
20 rules and regulations that are adopted by the Secretary of the Army; and

21 (C) conditions for the protection of, mitigation of damage to,
22 and enhancement of fish and wildlife based on recommendations received
23 under 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination Act) from the
24 National Marine Fisheries Service, the United States Fish and Wildlife Service,
25 and the state Department of Fish and Game.

26 (c) For purposes of this section, the term "qualifying project work" means a
27 project work

28 (1) that is not part of a project licensed under 16 U.S.C. 792 - 823c or
29 exempted from licensing under 16 U.S.C. 792 - 823c or under 16 U.S.C. 2705 (section
30 405 of the Public Utility Regulatory Policies Act of 1978) before November 9, 2000;

31 (2) for which a preliminary permit, a license application, or an

1 application for an exemption from licensing has not been accepted for filing by the
2 Federal Energy Regulatory Commission before November 9, 2000, unless the
3 application is withdrawn at the election of the applicant;

4 (3) that is part of a project that has a power production capacity of
5 5,000 kilowatts or less;

6 (4) that is located entirely within the boundaries of the state; and

7 (5) that is not located in whole or in part on an Indian reservation, a
8 conservation system unit as defined in 16 U.S.C. 3102 (sec. 102, Alaska National
9 Interest Lands Conservation Act), or on a segment of a river designated for study for
10 addition to the National Wild and Scenic Rivers System.

11 (d) In the case of nonqualifying project work that would be qualifying project
12 work but for the fact that the project has been licensed or exempted from licensing by
13 the Federal Energy Regulatory Commission before November 9, 2000, the licensee of
14 the project may elect to make the project subject to licensing and regulation by the
15 state under this section.

16 (e) With respect to projects located in whole or in part on a reservation, a
17 conservation system unit, or federal public land, a state license or exemption from
18 licensing is subject to

19 (1) the approval of the secretary of the federal department having
20 jurisdiction over those lands; and

21 (2) the conditions that the secretary may prescribe.

22 (f) The Regulatory Commission of Alaska shall notify the Federal Energy
23 Regulatory Commission not later than 30 days after making any significant
24 modification to its regulatory program under this section.

25 (g) In this section,

26 (1) "federal public land" means the land and interest in land owned by
27 the United States that is subject to private appropriation and disposal under public land
28 laws, but does not include a reservation;

29 (2) "licensee" means any person, state, or municipality licensed under
30 the provisions of 16 U.S.C. 797 and any assignee or successor in interest of the
31 licensee thereof;

1 (3) "project" means, notwithstanding the definition in AS 42.45.990, a
2 complete unit of improvement or development, consisting of a power house, all water
3 conduits, all dams and appurtenant works and structures, including navigation
4 structures, that are a part of the unit, and all storage, diverting, or forebay reservoirs
5 directly connected with the unit, the primary line or lines transmitting power from the
6 unit to the point of junction with the distribution system or with the interconnected
7 primary transmission system, all miscellaneous structures used and useful in
8 connection with the unit or any part of the unit, and all water rights, rights-of-way,
9 ditches, dams, reservoirs, land, or interests in land the use and occupancy of which are
10 necessary or appropriate in the maintenance and operation of the unit;

11 (4) "project work" means the physical structure of a project;

12 (5) "reservation"

13 (A) means a national forest; tribal land embraced within an
14 Indian reservation; a military reservation; other land and an interest in land
15 owned by the United States and withdrawn, reserved, or withheld from private
16 appropriation and disposal under the public land laws; and land and an interest
17 in land acquired and held for any public purposes;

18 (B) does not include a national monument or national park.