

Introduced: 2/17/65
Referred: Resources,
Judiciary and Finance

1 IN THE HOUSE

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing a system for the appro-
7 priation and use of water; establishing a
8 water resources board; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 46 is amended by adding a new chapter to read:

12 CHAPTER 15. WATER USE ACT

13 ARTICLE 1. ADMINISTRATION

14 Sec. 46.15.010. DETERMINATION OF WATER RIGHTS. The
15 Department of Natural Resources shall determine and adjudi-
16 cate rights in the waters of the state, and in its appro-
17 priation and distribution.

18 Sec. 46.15.020. AUTHORITY AND DUTIES OF THE COMMIS-
19 SIONER. (a) The commissioner shall exercise all those powers
20 and do all those acts necessary to carry out the provisions
21 and objectives of this chapter. The commissioner may:

22 (1) enter into contractual agreements necessary
23 to carry out the provisions of this chapter including agree-
24 ments with federal and state agencies;

25 (2) apply for, accept, administer and expend
26 grants, gifts, and loans from the federal government and any
27 other public or private sources for the purposes of this
28 chapter, and adopt procedures and do acts not otherwise
29 restricted by law which are necessary to qualify the state

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1 to receive grants, gifts and loans;

2 (3) establish a Division of Water within the
3 Department of Natural Resources and assign to that division
4 the responsibility for carrying out the provisions of this
5 chapter.

6 (b) The commissioner shall:

7 (1) adopt procedural and substantive regulations
8 to carry out the provisions of this chapter, taking into
9 consideration the responsibilities of the Department of
10 Health and Welfare under AS 46.05.010 - 240 and the Depart-
11 ment of Fish and Game under AS 16;

12 (2) keep a public record of all applications for
13 permits and certificates and other documents filed in his
14 office; and shall record all permits and certificates and
15 amendments and orders affecting them and shall index them
16 in accordance with the source of the water and the name of
17 the applicant or appropriator;

18 (3) cooperate with, assist, advise and coordinate
19 plans with the federal government and other state agencies
20 in matters relating to the appropriation, use, conservation,
21 quality, disposal or control of waters and activities re-
22 lated thereto;

23 (4) prescribe fees or service charges for any
24 public service rendered.

25 ARTICLE II. APPROPRIATION AND USE OF WATER

26 Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE: BENE-
27 FICIAL USE. Wherever occurring in a natural state, the
28 waters are reserved to the people for common use and are
29 subject to appropriation and beneficial use as provided in

1 this chapter.

2 Sec. 46.15.040. RIGHT TO APPROPRIATE. (a) A right to
3 appropriate water can be acquired only as provided in this
4 chapter. No right to the use of water either appropriated
5 or unappropriated shall be acquired by adverse use or
6 possession.

7 (b) A right to appropriate water shall be obtained
8 by first making application to the commissioner for a permit
9 to appropriate. The commissioner shall by regulation pre-
10 scribe the form and contents of the application and the pro-
11 cedure for filing the application. If a permit is granted
12 and the means of appropriation is constructed a certificate
13 of appropriation may be obtained.

14 Sec. 46.15.050. PRIORITY. Priority of appropriation
15 gives prior right. Priority of appropriation does not in-
16 clude the right to prevent changes in the condition of water
17 occurrence, such as the increase or decrease of stream flow,
18 or the lowering of a water table, artesian pressure, or water
19 level, by later appropriators, if the prior appropriator can
20 reasonably acquire his water under the changed conditions.

21 Sec. 46.15.060. EXISTING RIGHTS. Any water right
22 acquired by law prior to the effective date of this chapter
23 or any beneficial use of water on the effective date of
24 this chapter, or made within five years before the effective
25 date, or made in conjunction with works under construction
26 on the effective date, under a lawful common law or custo-
27 mary appropriation or use, is a lawful appropriation under
28 this chapter. The appropriation is subject to applicable
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1 provisions of this chapter and rules and regulations
2 adopted under this chapter.

3 Sec. 46.15.070. NOTICES, OBJECTIONS. (a) Upon
4 receipt of an application, the commissioner shall prepare
5 a notice containing the location and extent of the pro-
6 posed appropriation, the name and address of the applicant
7 and other information he deems pertinent. The notice shall
8 state that within 15 days of publication or receipt of the
9 notice, persons may file with the director written objec-
10 tions, stating the name and address of the objector, and
11 any facts tending to show that rights of the objector or
12 the public interest would be adversely affected by the pro-
13 posed appropriation.

14 (b) The commissioner shall publish the notice at the
15 applicant's expense in one issue of a newspaper of general
16 distribution in the area of the state in which the water
17 is to be appropriated. The commissioner shall also have
18 notice served personally or by certified mail upon an
19 appropriator of water or applicant for or holder of a per-
20 mit who, according to the records of the division of lands
21 may be affected by the proposed appropriation and may serve
22 notice upon any governmental agency, political subdivision
23 or person, provided, however, that notice shall be served
24 upon the Department of Fish and Game and the Department of
25 Health and Welfare.

26 (c) Within 15 days of publication or service of notice,
27 an interested person may file an objection. The commis-
28 sioner may hold hearings upon giving due notice and shall
29 grant, deny, or condition the application in whole or in

1 part within 30 days of receipt of the last objection or at
2 the conclusion of the hearing. Notice of the order or
3 decision shall be served personally or mailed to any person
4 who has filed an objection.

5 (d) If no objection is filed, the commissioner may
6 proceed to make his determination upon the application.

7 (e) A person aggrieved by the action of the commis-
8 sioner may appeal to the superior court.

9 (f) The commissioner may, by regulation, designate
10 types of appropriations which are exempt from this section
11 and provide simplified procedures for ruling on the applica-
12 tions.

13 Sec. 46.15.080. CRITERIA FOR ISSUANCE OF PERMIT. (a)
14 The commissioner shall issue a permit if he finds that:

15 (1) rights of a prior appropriator will not be
16 unduly affected;

17 (2) the proposed means of diversion or construc-
18 tion are adequate;

19 (3) the proposed use of water is beneficial; and

20 (4) the proposed appropriation is in the public
21 interest.

22 (b) In determining the public interest, the commis-
23 sioner shall consider:

24 (1) the benefit to the applicant resulting from
25 the proposed appropriation;

26 (2) the effect of the economic activity result-
27 ing from the proposed appropriation;

28 (3) the effect on fish and game resources and
29 on public recreational opportunities;

- 1 (4) the effect on public health;
- 2 (5) the effect of loss of alternate uses of
- 3 water that might be made within a reasonable time if not
- 4 precluded or hindered by the proposed appropriation;
- 5 (6) harm to other persons resulting from the
- 6 proposed appropriation;
- 7 (7) the intent and ability of the applicant to
- 8 complete the appropriation; and
- 9 (8) the effect upon access to navigable or public
- 10 waters.

11 Sec. 46.15.090. PREFERENCE IN GRANTING PERMITS. When
12 there are competing applications for water from the same
13 source, and the source is insufficient to supply all appli-
14 cants, the commissioner shall give preference first to
15 public water supply and then to the use which alone or in
16 combination with other foreseeable uses will constitute the
17 most beneficial use.

18 Sec. 46.15.100. TERMS OF PERMIT. The commissioner may
19 issue a permit for less than the amount of water requested,
20 but in no case may he issue a permit for more water than
21 can be beneficially used for the purposes stated in the
22 application. He may modify plans and specifications for
23 the appropriation. He may issue a permit subject to terms,
24 conditions, restrictions, and limitations he considers
25 necessary to protect the rights of others, and the public
26 interest; provided, however, that the permit shall be sub-
27 ject to termination only as provided in this chapter.

28 Sec. 46.15.110. TIME FOR CONSTRUCTION AND COMPLETION.
29 A permit may place a time limit for beginning construction

1 and perfecting appropriation. Reasonable extensions of
2 time shall be permitted for good cause shown.

3 Sec. 46.15.120. CERTIFICATES. Upon completion of
4 construction of the works and commencement of use of water,
5 the permit holder shall notify the commissioner that he
6 has perfected his appropriation. If the commissioner deter-
7 mines that the appropriation has been perfected in substan-
8 tial accordance with the permit, he shall issue the permit
9 holder a certificate of appropriation. The certificate
10 shall set forth such information as the commissioner may
11 prescribe by regulation.

12 Sec. 46.15.130. PRIORITY. Priority of appropriation
13 dates from the filing of an application with the commis-
14 sioner.

15 Sec. 46.15.140. ABANDONMENT, FORFEITURE, AND REVER-
16 SION OF APPROPRIATIONS. (a) The commissioner may declare
17 an appropriation to be wholly or partially abandoned and
18 revoke the certificate of appropriation if an appropriator,
19 with intention to abandon, does not make beneficial use of
20 all or a part of his appropriated water. An appropriation
21 so forfeited and abandoned reverts to the state and the
22 water becomes unappropriated water.

23 (b) The commissioner may declare an appropriation to
24 be wholly or partially forfeited and shall revoke the certi-
25 ficate of appropriation if an appropriator voluntarily fails
26 or neglects, without sufficient cause, to make use of all
27 or a part of his appropriated water for a period of five
28 successive years.

29 Sec. 46.15.150. PREFERRED USE. (a) An applicant who

1 asserts and proves a preferred use shall be granted a per-
2 mit and shall be granted preference over other appropria-
3 tors. A preferred use of water is for a public water
4 supply.

5 (b) To be entitled to a preference an applicant must
6 show that his use will be prevented or substantially inter-
7 ferred with by a prior appropriation; the use is a preferred
8 use; the applicant is willing and able to compensate a
9 permit or certificate holder for the prior appropriation,
10 and such other information as the commissioner requires by
11 regulation.

12 Sec. 46.15.160. TRANSFER AND CHANGE OF APPROPRIATIONS.

13 (a) The right to use water pursuant to an appropriation or
14 permit shall be appurtenant to the land or place where it
15 has been or is to be beneficially used, provided, that
16 water supplied by one person to another person's property
17 shall not be appurtenant to the property unless the parties
18 so intend. An appurtenant water right shall pass with a
19 conveyance of the land, or transfer, or by operation of
20 law unless specifically exempted from the conveyance.

21 (b) With the permission of the commissioner, all or
22 any part of an appropriation may be severed from the land
23 to which it is appurtenant, may be sold, leased or trans-
24 ferred for other purposes or to other lands and be made
25 appurtenant to other lands. Any permit or certificate or
26 any deed, lease, contract, assignment of permit or other
27 instrument transferring an appropriation must be filed for
28 record in the office of the commissioner and a certified
29 copy of the instrument must be recorded in the recorder's

1 office of the recording district in which the appropriation
2 is located.

3 Sec. 46.15.170. EFFECT OF RECORDING. (a) A deed,
4 lease, contract, assignment of permit or other instrument
5 transferring an appropriation is void as against a subse-
6 quent innocent purchaser who in good faith paid a valuable
7 consideration for the appropriation or any portion of it
8 and whose instrument is first filed and recorded under
9 sec. 160(b) of this chapter.

10 (b) A deed, lease, contract, assignment of permit
11 or other instrument transferring an appropriation which is
12 recorded under sec. 150(b) of this chapter is constructive
13 notice of its contents to subsequent purchasers of the
14 appropriation or any portion of it. An unrecorded instru-
15 ment is valid as between the parties to it and as against
16 one who has actual notice of it.

17 Sec. 46.15.180. CRIMES. Any person who shall con-
18 struct works for an appropriation, or divert, impound, with-
19 draw or use a significant amount of water from any source
20 without a permit or certificate of appropriation; or any
21 person who shall violate any order of the commissioner to
22 cease and desist from preventing any water from moving to a
23 person having a prior right to use the same; or who shall
24 disobey an order of the commissioner requiring him to take
25 steps to cause the water to so move; or who shall fail or
26 refuse to install meters, gauges or other measuring devices
27 or control works; or who shall violate any order establish-
28 ing corrective controls for an area or for a source of
29 water, or who shall knowingly make any false or misleading

1 statement in a declaration of existing rights, is guilty
2 of a misdemeanor. Crimes under this section are in addi-
3 tion to any other crimes provided by law.

4 ARTICLE III. WATER RESOURCES BOARD

5 Sec. 46.15.190. THE WATER RESOURCES BOARD. There
6 is created the Water Resources Board composed of seven
7 members having a general knowledge of the use and require-
8 ments for use of the waters of the state and the conserva-
9 tion and protection thereof. The commissioner of Natural
10 Resources shall act as the executive secretary to the board,
11 and shall provide clerical staff for the board. Members of
12 the board are appointed by the governor, subject to con-
13 firmation by a majority of the members of the legislature
14 in joint session.

15 Sec. 46.15.200. TERM OF OFFICE. The term of office
16 for members of the board is four years. The first members
17 appointed serve as follows: two members serve for one year,
18 three for two years and two for three years. If a vacancy
19 occurs, the governor shall fill it by appointment for the
20 unexpired term. The appointment shall be submitted to the
21 legislature for confirmation at the next regular or special
22 session.

23 Sec. 46.15.210. DUTIES OF THE BOARD. The board shall
24 inform and advise the governor on all matters relating to
25 the use and appropriation of water in the state, including,
26 but not limited to: the effect and adequacy of all state
27 laws and regulations governing the establishment of water
28 rights, the multi-purpose uses of water, the prevention of
29 pollution and the protection of fish and game, studies of

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1 the state's water supplies and plans for future require-
2 ments, development of water resources, participation of
3 local governmental units in the management of water re-
4 sources, lands which are or may be needed for dams, reser-
5 voirs, flood dams, flood ways, canals or ditches for the
6 impoundment, storage, flow and control of waters.

7 Sec. 46.15.220. BOARD MEETINGS. The board shall hold
8 one regular meeting annually at the state capitol and one or
9 more additional meetings at the time and place within the
10 state the board selects for the transaction of business.

11 Sec. 46.15.230. PUBLIC MEETINGS. The board may hold
12 and conduct public meetings at any time or any place within
13 the state in order to obtain public opinion on any water
14 use problem or proposal and it may, by majority vote of all
15 members, formally or informally delivered, authorize one or
16 more of its members to hold and conduct a public meeting.

17 Sec. 46.15.240. COMPENSATION OF BOARD MEMBERS. Each
18 member of the board is entitled to travel expenses and per
19 diem as authorized for state boards by AS 39.20.180 while
20 traveling to or from, or in attendance at, regular or spec-
21 ial meetings or conferences authorized by the board.

22 ARTICLE IV. GENERAL PROVISIONS

23 Sec. 46.15.250. ENFORCEMENT AUTHORITY. The following
24 persons are peace officers of the state and they shall
25 enforce this chapter:

26 (1) any state employee authorized by the commis-
27 sioner;

28 (2) a police officer of the state.

29 Sec. 46.15.260. DEFINITIONS. In this chapter, unless

1 the context otherwise requires:

2 (1) "appropriate" means to divert, impound, or
3 withdraw a quantity of water from a source of water for a
4 beneficial use;

5 (2) "appropriation" means the diversion, impound-
6 ing or withdrawal of a quantity of water from a source of
7 water for a beneficial use;

8 (3) "beneficial use" means a use of water for
9 the benefit of the appropriator, other persons or the
10 public, that is reasonable and consistent with the public
11 interest, including, but not limited to, domestic, agri-
12 cultural, irrigation, industrial, manufacturing, mining,
13 power, public, sanitary, fish and wildlife, and recrea-
14 tional uses;

15 (4) "source of water" means any substantial
16 quantity of water capable of being put to beneficial use;

17 (5) "water" means all water of the state, sur-
18 face and subsurface, occurring in a natural state, except
19 mineral and medicinal water;

20 (6) "commissioner" means the Commissioner of
21 Natural Resources;

22 (7) "director" means the Director of the Divi-
23 sion of Lands, Department of Natural Resources;

24 (8) "person" includes an individual, partnership,
25 association, public or private corporation, state agency,
26 political subdivision of the state, and the United States.

27 Sec. 46.15.270. SHORT TITLE. This chapter may be
28 cited as the "Alaska Water Use Act."

29 * Sec. 2. The following laws are repealed: AS 27.10.080

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and AS 38.05.260.

* Sec. 3. This Act takes effect July 1, 1965.