

CS FOR SENATE BILL NO. 442 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/11/92
Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the commissioner of natural resources to establish a water
2 conservation fee only for the use or sale of water in which the water is removed from
3 the hydrologic unit from which it was appropriated and is not returned to that hydrologic
4 unit; providing for the sale by the state of water appropriated to the state; relating to
5 the removal or appropriation for removal of water from one hydrologic unit to another;
6 relating to the reservation of water for fish; relating to notice of a proposed sale or an
7 application for appropriation or removal; and providing for an effective date."

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

9 * Section 1. AS 46.15 is amended by adding new sections to read:

10 Sec. 46.15.035. APPROPRIATION OR REMOVAL OF WATER OUT OF
11 HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE;
12 RESERVATION OF WATER FOR FISH. (a) Water may not be removed from the hydrologic
13 unit from which it was appropriated to another hydrologic unit, inside or outside the state,

1 without being returned to the hydrologic unit from which it was appropriated nor may water be
2 appropriated for removal from the hydrologic unit from which the appropriation is sought to
3 another hydrologic unit, inside or outside the state, without the water being returned to the
4 hydrologic unit from which it is to be appropriated, unless the commissioner

5 (1) finds that the water to be removed or appropriated for removal is surplus to
6 needs within the hydrologic unit from which the water is to be removed or appropriated for
7 removal;

8 (2) finds that the application for removal or appropriation for removal meets the
9 requirements of AS 46.15.080; and

10 (3) assesses a water conservation fee under (b) of this section.

11 (b) The commissioner shall establish, by regulation, a water conservation fee for a use
12 of water in which the water is removed from the hydrologic unit from which it was appropriated
13 to another hydrologic unit inside or outside the state, without the water being returned to the
14 hydrologic unit from which it was appropriated. The fee established under this subsection shall
15 be graduated to encourage the conservation of water.

16 (c) Except as provided in AS 46.15.090, and in addition to the requirements of (a) of this
17 section, the commissioner may approve an application for removal or permit an appropriation for
18 removal under (a) of this section of water from a lake, river, or stream that is used by fish for
19 spawning, incubation, rearing, or migration, or ground water that significantly influences the
20 volume of water in a lake, river, or stream that is used by fish for spawning, incubation, rearing,
21 or migration, only if the commissioner reserves a volume of water in the lake or an instream flow
22 in the river or stream for the use of fish and to maintain habitat for fish. The commissioner may
23 adjust the volume of water reserved under this subsection if the commissioner, after public notice
24 and opportunity to comment and with the concurrence of the commissioner of fish and game,
25 finds that the best interests of the state are served by the adjustment. A reservation under this
26 subsection

27 (1) of a volume of water or an instream flow for the use of fish and to maintain
28 habitat for fish that is reserved under this section is withdrawn from appropriation;

29 (2) for fish from a lake, river, or stream, identified under AS 16.05.870 or
30 identified in a Department of Fish and Game regional guide as being used by fish for spawning,
31 incubation, rearing, or migration on or before the effective date of this section, has a priority date

1 as of the effective date of this section;

2 (3) of water does not apply to an application for removal or appropriation for
3 removal under AS 46.15.040 for nonconsumptive uses of water or for single family domestic use;

4 (4) is not subject to AS 46.15.145;

5 (5) of water does not apply to appropriations of ground water of 5,000 gallons
6 or less a day unless the commissioner, in consultation with the Department of Fish and Game,
7 determines that the appropriation may adversely affect fish habitat in a lake, river, or stream; the
8 commissioner shall consider multiple appropriations of water for a single related use as a single
9 appropriation for the purposes of this subsection.

10 (d) In this section,

11 (1) "fish" means a species of anadromous or freshwater fish that may be taken
12 under regulations of the Board of Fisheries;

13 (2) "hydrologic unit" means either a hydrologic unit or subunit established by the
14 United States Geologic Survey on current hydrologic unit maps of the state.

15 Sec. 46.15.037. SALE OF WATER BY THE STATE. (a) The commissioner may
16 provide for the sale of water by the state if

17 (1) the water has first been appropriated to the state in accordance with the
18 requirements of this chapter; and

19 (2) the commissioner determines that

20 (A) the water is surplus to needs within the hydrologic unit from which
21 it was appropriated;

22 (B) the proposed sale of the water meets the requirements of
23 AS 46.15.080; and

24 (C) the sale price of the water is based upon the fair market value of the
25 water.

26 (b) A purchaser of water from the state under this section shall acquire only those
27 contractual rights to the water set out in sale documents prepared by the commissioner except
28 that a sale of water by the state does not constitute an appropriation of water under this chapter
29 to the purchaser.

30 (c) If water to be sold by the state under (a) of this section, is to be removed from the
31 hydrologic unit from which it was appropriated to another hydrologic unit, inside or outside the

1 state, without being returned to the hydrologic unit from which it was appropriated, the
2 commissioner may not sell the water unless the sale meets the requirements of (a)(2) of this
3 section, a water conservation fee is assessed under AS 46.15.035, and, if the water to be sold is
4 from a lake, river, or stream that is used by fish for spawning, incubation, rearing, or migration
5 ground water that significantly influences the volume of water in a lake, river, or stream that is
6 used by fish for spawning, incubation, rearing, or migration, the commissioner reserves a volume
7 of water in the lake or an instream flow in the river or stream for the use of fish and to maintain
8 habitat for fish. The commissioner may adjust the volume of water reserved under this
9 subsection if the commissioner, after public notice and opportunity to comment and with the
10 concurrence of the commissioner of fish and game, finds that the best interests of the state are
11 served by the adjustment. A reservation under this subsection

12 (1) of a volume of water or an instream flow for the use of fish and to maintain
13 habitat for fish that is reserved under this section is withdrawn from appropriation;

14 (2) for fish from a lake, river, or stream, identified under AS 16.05.870 or
15 identified in a Department of Fish and Game regional guide as being used by fish for spawning,
16 incubation, rearing, or migration on or before the effective date of this section, has a priority date
17 as of the effective date of this section;

18 (3) is not subject to AS 46.15.145;

19 (4) of water does not apply to appropriations of ground water of 5,000 gallons
20 or less a day unless the commissioner, in consultation with the Department of Fish and Game,
21 determines that the appropriation may adversely affect fish habitat in a lake, river, or stream; the
22 commissioner shall consider multiple appropriations of water for a single related use as a single
23 appropriation for the purposes of this subsection.

24 (d) In this section,

25 (1) "fish" means a species of anadromous or freshwater fish that may be taken
26 under regulations of the Board of Fisheries;

27 (2) "hydrologic unit" has the meaning given in AS 46.15.035(d).

28 (e) The commissioner may not provide for the sale of salt water under this section.

29 * Sec. 2. AS 46.15.133 is amended to read:

30 Sec. 46.15.133. NOTICES; OBJECTIONS. (a) If the commissioner proposes a sale
31 of water or receives [UPON RECEIPT OF] an application for appropriation or removal, the

1 commissioner shall prepare a notice containing the location and extent of the proposed sale,
2 appropriation, or removal, the name and address of the applicant, if applicable, and other
3 information the commissioner considers pertinent. The notice shall state that within 15 days of
4 publication or service of notice, persons may file with the director written objections, stating the
5 name and address of the objector, and any facts tending to show that rights of the objector or the
6 public interest would be adversely affected by the proposed sale, appropriation, or removal.

7 (b) The commissioner shall publish the notice [AT THE APPLICANT'S EXPENSE] in
8 one issue of a newspaper of general distribution in the area of the state in which the water is to
9 be appropriated. The commissioner shall also have notice served personally or by certified mail
10 upon an appropriator of water or applicant for or holder of a permit who, according to the records
11 of the division of lands, may be affected by the proposed sale, appropriation, or removal and
12 may serve notice upon any governmental agency, political subdivision, or person; notice shall
13 also be served upon the Department of Fish and Game and the Department of Environmental
14 Conservation. An applicant for an appropriation or removal shall pay the commissioner's
15 costs in providing publication and notice under this subsection. The commissioner may
16 require as a condition of a sale of water under AS 46.15.037, that a purchaser of water
17 reimburse the department for the costs associated with providing notice of the proposed
18 sale.

19 (c) Within 15 days of publication or service of notice, an interested person may file an
20 objection. The commissioner may hold hearings upon giving due notice and shall grant, deny,
21 or condition the proposed sale or application for appropriation or removal in whole or in part
22 within 30 days of receipt of the last objection or, if the commissioner elects to hold hearings,
23 within 180 days of receipt of the last objection. Notice of the order or decision shall be served
24 personally or mailed to any person who has filed an objection.

25 (d) If no objection is filed, the commissioner may proceed to make a determination upon
26 the application for appropriation or removal or the proposal for sale.

27 (e) A person aggrieved by the action of the commissioner or by the failure of the
28 commissioner to grant, deny, or condition a proposed sale or an application for appropriation
29 or removal in accordance with (c) of this section may appeal to the superior court.

30 (f) The commissioner may, by regulation, designate types of appropriations that are
31 exempt from this section and provide simplified procedures for ruling on the applications. The

1 commissioner may not exempt under this subsection appropriations for removal under
2 AS 46.15.035. appropriations by the state for sale or sales by the state under AS 46.15.037.
3 or removals of water under AS 46.15.035 and 46.15.037.

4 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).