

SENATE BILL NO. 481

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 5/13/92
Referred: L&C, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to charging for certain regulatory services provided by the state, and
2 authorizing the sale of water by the state; and providing for an effective date."

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

4 * Section 1. AS 08.01.065(c) is repealed and reenacted to read:

5 (c) The department shall establish fee levels under (a) of this section so that the total
6 amount of fees collected for an occupation approximately equals the actual regulatory costs for
7 the occupation. The department shall annually review each fee level to determine whether the
8 regulatory costs of each occupation are approximately equal to fee collections related to that
9 occupation. If the review indicates that an occupation's fee collections and regulatory costs are
10 not approximately equal, the department shall calculate fee adjustments and adopt regulations
11 under (a) of this section to implement the adjustments. In January of each year, the department
12 shall report on all fee levels and revisions for the previous year under this subsection to the office
13 of management and budget. If a board regulates an occupation covered by this chapter, the
14 department shall consider the board's recommendations concerning the occupation's fee levels

1 and regulatory costs before revising fee schedules to comply with this subsection. In this
2 subsection, "regulatory costs" means costs of the department that are attributable to regulation
3 of an occupation plus

4 (1) all expenses of the board that regulates the occupation if the board regulates
5 only one occupation;

6 (2) the expenses of a board that are attributable to the occupation if the board
7 regulates more than one occupation.

8 * Sec. 2. AS 42.05 is amended by adding a new section to read:

9 Sec. 42.05.253. PUBLIC UTILITY REGULATORY COST CHARGE. (a) A regulated
10 public utility operating in the state shall pay to the commission an annual regulatory cost charge
11 in an amount not to exceed .61 percent of gross revenue derived from operations in the state, as
12 modified under (c) of this section if appropriate. An exempt utility shall pay the actual cost of
13 services provided to it by the commission.

14 (b) The commission shall by regulation establish a method to determine annually the
15 amount of the regulatory cost charge for a public utility. If the amount the commission expects
16 to collect under (a) of this section and under AS 42.06.285(a) exceeds the authorized budget of
17 the commission, the commission shall, by order, reduce the percentages set out in (a) of this
18 section so that the total amount of the fees collected approximately equals the authorized budget
19 of the commission for the fiscal year.

20 (c) In determining the amount of the regulatory cost charge imposed under (a) of this
21 section,

22 (1) a utility selling utility services at wholesale shall modify its gross revenue by
23 deducting payments it receives for wholesale sales;

24 (2) a local exchange telephone utility shall modify its gross revenue by deducting
25 payments received from other carriers for settlements or access charges.

26 (d) The commission shall calculate the total regulatory cost charges to be levied against
27 all regulated electric utilities under this section. The commission shall allocate the total amount
28 among the regulated electric utilities by using an equal charge per kilowatt hour sold at retail.

29 (e) The commission shall administer, collect, and enforce the charge imposed under this
30 section.

31 (f) The commission shall allow a public utility to recover all payments made to the

1 commission under this section. The commission may not require a public utility to file a rate
2 case in order to be eligible to recover the regulatory cost charge.

3 (g) The commission may adopt regulations under AS 44.62 (Administrative Procedure
4 Act) necessary to administer this section, including requirements and procedures for reporting
5 information and making quarterly payments, for investigating the accuracy of filed information,
6 and for collecting required payments.

7 (h) In this section,

8 (1) "exempt utility" means a public utility that is certificated by the commission
9 under AS 42.05.221 - 42.05.281 but, in accordance with AS 42.05.711, is exempt from other
10 regulatory requirements of this chapter;

11 (2) "gross revenue" means the total operating revenue from intrastate services, as
12 shown in a utility's annual report required by the commission by regulation;

13 (3) "regulated utility" means a public utility that is certificated by the commission
14 under AS 42.05.221 - 42.05.281 and that is subject to the other regulatory requirements of this
15 chapter;

16 (4) "wholesale sales" means sales to another utility for resale under circumstances
17 that make revenue from the resale subject to the regulatory cost charge imposed under this
18 section.

19 * Sec. 3. AS 42.05.651(a) is amended to read:

20 (a) During [AFTER COMPLETION OF] a hearing or investigation held under this
21 chapter, the commission may [SHALL] allocate the costs of the hearing or investigation among
22 the parties, including the commission, as is just under the circumstances. In allocating costs, the
23 commission shall consider the regulatory cost charge paid by a utility under AS 42.05.253
24 and may consider the results, ability to pay, evidence of good faith, other relevant factors, and
25 mitigating circumstances. The costs allocated may include the costs of any time devoted to the
26 investigation or hearing by hired consultants, whether or not the consultants appear as witnesses
27 or participants. The costs allocated may also include any out-of-pocket expenses incurred by the
28 commission in the particular proceeding. The commission shall provide an opportunity for any
29 person objecting to an allocation to be heard before the allocation becomes final.

30 * Sec. 4. AS 42.05.661 is amended to read:

31 Sec. 42.05.661. APPLICATION FEES. With each application relating to a certificate

1 the applicant shall pay the commission a fee set by the commission by regulation that [OF \$50
2 WHICH] shall be deposited in the general fund of the state.

3 * Sec. 5. AS 42.06 is amended by adding a new section to read:

4 Sec. 42.06.285. PIPELINE CARRIER REGULATORY COST CHARGE. (a) A pipeline
5 carrier operating in the state shall pay to the commission an annual regulatory cost charge in an
6 amount not to exceed .61 percent of gross revenue derived from operations in the state.

7 (b) The commission shall by regulation establish a method to determine annually the
8 amount of the regulatory cost charge. If the amount the commission expects to collect under (a)
9 of this section and under AS 42.05.253(a) exceeds the authorized budget of the commission, the
10 commission shall, by order, reduce the percentage set out in (a) of this section so that the total
11 amount of the fees collected approximately equals the authorized budget of the commission for
12 the fiscal year.

13 (c) The commission shall administer, collect, and enforce the charge imposed under this
14 section.

15 (d) The commission may adopt regulations under AS 44.62 (Administrative Procedure
16 Act) necessary to administer this section, including requirements and procedures for reporting
17 information and making quarterly payments, for investigating the accuracy of filed information,
18 and for collecting required payments.

19 (e) In this section, "gross revenue" means the total intrastate operating revenue as shown
20 in a pipeline carrier's annual report required by the commission by regulation.

21 * Sec. 6. AS 42.06.610(a) is amended to read:

22 (a) During a proceeding held under this chapter, the commission may [SHALL] allocate
23 the cost of the proceeding among the parties, including the commission, as is just under the
24 circumstances. In allocating costs, the commission shall consider the regulatory cost charge
25 paid directly or indirectly under AS 42.06.285. The costs allocated may include the costs of
26 any time devoted to investigations or hearings by hired consultants, whether or not the
27 consultants appear as witnesses or participants. The commission shall provide an opportunity for
28 any person objecting to an allocation to be heard before the allocation becomes final.

29 * Sec. 7. AS 46.15 is amended by adding new sections to read:

30 Sec. 46.15.035. APPROPRIATION OR REMOVAL OF WATER OUT OF
31 HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE;

1 **RESERVATION OF WATER FOR FISH. (a)** Water may not be removed from the hydrologic
2 unit from which it was appropriated to another hydrologic unit, inside or outside the state,
3 without being returned to the hydrologic unit from which it was appropriated nor may water be
4 appropriated for removal from the hydrologic unit from which the appropriation is sought to
5 another hydrologic unit, inside or outside the state, without the water being returned to the
6 hydrologic unit from which it is to be appropriated, unless the commissioner

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

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

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

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

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

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

31 (2) for fish from a lake, river, or stream, identified under AS 16.05.870 or

1 identified in a Department of Fish and Game regional guide as being used by fish for spawning,
2 incubation, rearing, or migration on or before the effective date of this section, has a priority date
3 as of the effective date of this section;

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

6 (4) is not subject to AS 46.15.145;

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

12 (d) In this section,

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

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

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

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

21 (2) the commissioner determines that

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

24 (B) the proposed sale of the water meets the requirements of
25 AS 46.15.080; and

26 (C) the sale price of the water is based upon the fair market value of the
27 water.

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

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

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

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

20 (3) is not subject to AS 46.15.145;

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

26 (d) In this section,

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

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

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

31 * Sec. 8. AS 46.15.133 is amended to read:

1 Sec. 46.15.133. NOTICES; OBJECTIONS. (a) If the commissioner proposes a sale
2 of water or receives [UPON RECEIPT OF] an application for appropriation or removal, the
3 commissioner shall prepare a notice containing the location and extent of the proposed sale,
4 appropriation, or removal, the name and address of the applicant, if applicable, and other
5 information the commissioner considers pertinent. The notice shall state that within 15 days of
6 publication or service of notice, persons may file with the director written objections, stating the
7 name and address of the objector, and any facts tending to show that rights of the objector or the
8 public interest would be adversely affected by the proposed sale, appropriation, or removal.

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

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

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

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

1 (f) The commissioner may, by regulation, designate types of appropriations that are
2 exempt from this section and provide simplified procedures for ruling on the applications. The
3 commissioner may not exempt under this subsection appropriations for removal under
4 AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037,
5 or removals of water under AS 46.15.035 and 46.15.037.

6 * Sec. 9. This Act takes effect July 1, 1992.