

**CS FOR SENATE BILL NO. 481 (FINANCE)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SPECIAL SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered: 5/14/92**  
**Referred: Rules**

**Sponsor(s): SENATE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to material sites; relating to the removal of water from one hydrologic  
2 unit to another hydrologic unit; authorizing the commissioner of natural resources to  
3 establish a water conservation fee for removal of water from one hydrologic unit to  
4 another hydrologic unit; providing for the sale of water by the state of water appropriated  
5 to the state; requiring a reservation of water for fish only if water is removed from one  
6 hydrologic unit to another hydrologic unit or if water is sold by the state; defining  
7 hydrologic unit to mean a hydrologic subregion of the state; and providing for an effective  
8 date."

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

10 \* Section 1. AS 46.15.020(b) is amended to read:

11 (b) The commissioner shall

12 (1) adopt procedural and substantive regulations to carry out the provisions of this

1 chapter, taking into consideration the responsibilities of the Department of Environmental  
2 Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

3 (2) keep a public record of all applications for permits and certificates and other  
4 documents filed in the commissioner's office; and shall record all permits and certificates and  
5 amendments and orders affecting them and shall index them in accordance with the source of the  
6 water and the name of the applicant or appropriator;

7 (3) cooperate with, assist, advise, and coordinate plans with the federal, state, and  
8 local agencies in matters relating to the appropriation, use, conservation, quality, disposal, or  
9 control of waters and activities related thereto;

10 (4) prescribe fees or service charges for any public service rendered;

11 (5) before February 1 of each year, submit a report to the legislature  
12 describing the activities of the commissioner under AS 46.15.035 and 46.15.037; the report  
13 must include

14 (A) information on the number of applications and appropriations for  
15 the removal of water from one hydrological unit to another that were requested and  
16 that were granted and on the amounts of water involved;

17 (B) information on the number and location of sales of water  
18 conducted by the commissioner and on the volume of water sold;

19 (C) recommendations of the commissioner for changes in state water  
20 law; and

21 (D) a description of state revenue and expenses related to activities  
22 under AS 46.15.035 and 46.15.037.

23 \* Sec. 2. AS 46.15 is amended by adding new sections to read:

24 Sec. 46.15.035. APPROPRIATION OR REMOVAL OF WATER OUT OF  
25 HYDROLOGIC UNITS TO OTHER HYDROLOGIC UNITS; WATER CONSERVATION FEE;  
26 RESERVATION OF WATER FOR FISH. (a) Water may not be removed from the hydrologic  
27 unit from which it was appropriated to another hydrologic unit, inside or outside the state,  
28 without being returned to the hydrologic unit from which it was appropriated nor may water be  
29 appropriated for removal from the hydrologic unit from which the appropriation is sought to  
30 another hydrologic unit, inside or outside the state, without the water being returned to the  
31 hydrologic unit from which it is to be appropriated, unless the commissioner

1 (1) finds that the water to be removed or appropriated for removal is surplus to  
2 needs within the hydrologic unit from which the water is to be removed or appropriated for  
3 removal, including fishing, mining, timber, oil and gas, agriculture, domestic water supply, and  
4 other needs as determined by the commissioner;

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

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

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

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

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

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

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

1 (4) is not subject to AS 46.15.145;

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

7 (d) With respect to rivers and streams described in (c) of this section, the instream flow  
8 reservation shall be limited to the portion of the stream, including tributaries to the stream, at and  
9 downstream of the point of diversion or withdrawal. With respect to lakes described in (c) of  
10 this section, the reservation shall be limited to the lake from which the diversion or withdrawal  
11 is made, and the outlet and tributaries to the outlet flowing downstream.

12 (e) 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 a hydrologic subregion established by the United  
16 States Department of the Interior, Geological Survey, on the "Hydrologic Unit Map-1987, State  
17 of Alaska."

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

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

22 (2) the commissioner determines that

23 (A) the water is surplus to needs within the hydrologic unit from which  
24 it was appropriated, including fishing, mining, timber, oil and gas, agriculture, domestic  
25 water supply, and other needs as determined by the commissioner;

26 (B) the proposed sale of the water meets the requirements of  
27 AS 46.15.080; and

28 (C) the sale price of the water is based upon the fair market value of the  
29 water.

30 (b) A purchaser of water from the state under this section shall acquire only those  
31 contractual rights to the water set out in sale documents prepared by the commissioner except

1 that a sale of water by the state does not constitute an appropriation of water under this chapter  
2 to the purchaser.

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

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

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

22 (3) is not subject to AS 46.15.145;

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

28 (d) With respect to rivers and streams described in (c) of this section, the instream flow  
29 reservation shall be limited to the portion of the stream, including tributaries to the stream, at and  
30 downstream of the point of diversion or withdrawal. With respect to lakes described in (c) of  
31 this section, the reservation shall be limited to the lake from which the diversion or withdrawal

1 is made, and the outlet and tributaries to the outlet flowing downstream.

2 (e) In this section,

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

5 (2) "hydrologic unit" has the meaning given in AS 46.15.035(e).

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

7 \* Sec. 3. AS 46.15.133 is amended to read:

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

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

28 (c) Within 15 days of publication or service of notice, an interested person may file an  
29 objection. The commissioner may hold hearings upon giving due notice and shall grant, deny,  
30 or condition the proposed sale or application for appropriation or removal in whole or in part  
31 within 30 days of receipt of the last objection or, if the commissioner elects to hold hearings,

1 within 180 days of receipt of the last objection. Notice of the order or decision shall be served  
2 personally or mailed to any person who has filed an objection.

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

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

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

13 \* Sec. 4. MATERIAL SITES USED FOR TIMBER OPERATIONS. Material sites used for timber  
14 operations are subject to regulation under AS 41.17. AS 27.19 does not apply to material sites used for  
15 timber operations.

16 \* Sec. 5. Section 4 of this Act is repealed July 1, 1994.

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