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G R 7

Alaska State Legislature

REPRESENTATIVE
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House of Representatives

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff

DATE: 3/18/86

RE: Analysis of House Bill 627

*WAIVER
JRM
MGP*

Section 1

amends the Water Use Act (AS 46.15) by stating that a water use permit is not necessary for an individual who wishes to use an insignificant amount of water unless such a use is against the public interest as determined by the Commissioner of DNR. A person using less than a significant amount of water, who decides not to apply for a water use permit for the use, does not acquire a right or priority to the water resource.

Section 2

allows the Commissioner of DNR to promulgate regulations to exempt public notice of applications for water rights in addition to the exemption outlined in Section 3 of this bill.

Section 3

allows the Commissioner of DNR to issue a water use permit for up to 1000 gallons of water per day without providing public notice as outlined in AS 46.15.133. The Commissioner of DNR may disregard this subsection if:

- (1) he or she determines the total amount of water available to an area is limited for the total number of possible users; or,
- (2) the application being filed is for an area that lies within the boundary of a municipality that has requested notification of all water appropriation within its boundaries.

Section 4

(I) rewrites the current statutory language of AS 46.15.260. definitions (1)-(9) to make technical language modifications as requested by the Division of Legal Services. These changes do not alter the affect of the current statutory language.

(II) adds an additional definition number 10 which defines "significant amount of water" as:

- a) a use of more than 5,000 gallons of water in one day from a single source; or,
- b) the recurring daily use of more than 500 gallons of water for 10 or more days, in a year, from a single source; or,
- c) a use that may adversely affect the water rights of others users or the public interest.

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff

DATE: 3/12/86

RE: ~~Current statutory and regulatory references allowing the small scale use of water~~

The current statutory references pertaining to the use of water are found in Title 46 of the Alaska Statutes and Title 11 of the Alaska Administrative Code.

~~AS 46.15.040. Right to appropriate.~~ (a) A right to appropriate water can be acquired only as provided in this chapter. No right to use of water either appropriated or unappropriated shall be acquired by adverse use or possession.

(b) A right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate. The commissioner shall by regulation prescribe the form and contents of the application and the procedure for filing the application. If a permit is granted and the means of appropriation is constructed, a certificate of appropriation may be obtained.

The Alaska Administrative Codes speak to the appropriation of water in 11 AAC 93.

~~11 AAC 93.040. APPLICATION FOR A PERMIT TO APPROPRIATE WATER.~~

(a) Unless exempted by sec. 920 of this chapter, no person may lawfully appropriate water of the state without first obtaining a permit under the provisions of secs. 40-120, 210-220, or 260 of this chapter.

~~11 AAC 93.920. EXEMPTIONS.~~ Any person using less than a significant amount of water as defined in sec. 970 of this chapter is not guilty of a misdemeanor for appropriating water without a permit. However, any person using less than a significant amount of water acquires no water right or priority unless an application is filed and a permit or certificate is issued in accordance with secs. 40-140 of this chapter. Water used without a permit or certificate is subject to appropriation by others and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record.

~~11 AAC 93.970. DEFINITIONS.~~ Unless the context indicates otherwise, in this chapter

(14) "significant amount of water" means any use of 5,000 or more gallons of water in a single day from a single source, or the regular daily or recurring seasonal use of 500 or more gallons of water per day for 10 days or more per year from a single source, or any water

use that may adversely affect the water rights of other appropriators or the public interest.

With regard to the public notice requirements when a person applies for a water use permit, 11 AAC 93.100 allows the following exemption for individuals applying for water rights for domestic use.

~~11 AAC 93.100 EXEMPTIONS TO NOTICE.~~ An application to appropriate no more than 1000 gallons of water per day for single family domestic purposes is exempt from the notice provisions of sec. 80 of this chapter. However, in areas where the total amount of water available appears to the department to be limited with respect to the number of potential users of the same source, or upon the request of a municipality as defined by AS 29, the commissioner will, in his discretion, require public notice as provided by sec, 80 of this chapter.

HOUSE BILL 627 IS THE RESULT OF A REQUEST FROM MY DISTRICT THAT THE INCIDENTAL USE OF THE STATE'S WATER RESOURCES BY INDIVIDUALS BE PROTECTED BY LAW. SINCE I FIRMLY BELIEVE THE STATE'S RESOURCES SHOULD BE MADE AVAILABLE TO THE GENERAL POPULATION WHENEVER POSSIBLE, I AGREED TO SEE THAT THIS REQUEST WAS ADDRESSED BY LEGISLATION,-- THE RESULT BEING HOUSE BILL 627.

SHORTLY AFTER THE INTRODUCTION OF HB 627, I RECEIVED A CALL FROM DIVISION OF LAND AND WATER MANAGEMENT IN ANCHORAGE, ABOUT THE VAGUE WORDING OF THE BILL. I EXPLAINED THAT DUE TO THE PERSONAL BILL DEADLINE, SET OUT IN UNIFORM RULE 44, I DID NOT HAVE TIME TO IDENTIFY THE IDEAL LANGUAGE FOR THIS BILL PRIOR TO ITS INTRODUCTION AND WAS, THEREFORE, WORKING ON A COMMITTEE SUBSTITUTE. I HAVE WORKED CLOSELY WITH THE DEPARTMENT OF NATURAL RESOURCES IN DEVELOPING A COMMITTEE SUBSTITUTE FOR HB 627. IT HAS BEEN PLACED IN EACH OF YOUR BILL PACKETS. THE REMAINDER OF MY COMMENTS WILL ADDRESS THE RESOURCE COMMITTEE SUBSTITUTE FOR HOUSE BILL 627, DATED 3/18/86.

ALL OF THE MAJOR ADDITIONS TO EXISTING STATUTES PROPOSED BY CSHB 627 (RES) ARE DERIVED DIRECTLY FROM EXISTING STATE WATER MANAGEMENT REGULATIONS. THIS LANGUAGE WILL ALLOW THE INCIDENTAL APPROPRIATION OF WATER FOR:

- 1) DOMESTIC USE
- 2) SMALL BUSINESS USE
- 3) RECREATIONAL USE - SUCH AS CAMPING OR USE OF A WILDERNESS CABIN
- 4) REGULAR SEASONAL USE - SUCH AS OPERATING A FISH CAMP ON THE YUKON

IN ADDITION TO ALLOWING THE UNREGULATED USE OF WATER FOR THESE AND OTHER PERSONAL PURPOSES, THE BILL ALSO GIVES THE COMMISSIONER OF NATURAL RESOURCES AUTHORITY TO REGULATE THE USE OF WATER WHEN A PARTICULAR SOURCE IS BEING THREATENED. IT WILL ALSO PROTECT AGAINST THE WANTON WASTE OF WATER BY INDIVIDUALS.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 627
 Title : Use of Water Without Appropriation

Sponsor : M.W. Miller
 Requestor House Resources
 Date of Request : 3-18-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Minerals Management, Land & Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						


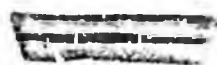

ANALYSIS : Attach a separate page if necessary

Prepared by : Gary Johnson Phone : 762-4346
 Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Ned Fausch Date : 03-18-86
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

 - NEW STATUTES AMENDED
 - EXISTING STATUTES AMENDED
 - TECHNICAL CHANGES TO ENSURE STATUTES

Bradley
3/18/86

Original sponsor: M.W. Miller by request

GEORGE'S COPY

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 627 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of water."

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

8 * Section 1. AS 46.15 is amended by adding a new section to read:

9 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less
 10 than a significant amount of water without a permit unless the commis-
 11 sioner determines that the use of less than a significant amount of
 12 water is not in the public interest. A person using less than a
 13 significant amount of water acquires no water right or priority unless
 14 an application is filed and a permit or certificate is issued under
 15 AS 46.15.030 - 46.15.185.

16 * Sec. 2. AS 46.15.133(f) is amended to read:

17 (f) The commissioner may, by regulation, designate additional
 18 types of appropriations ~~that~~ (WHICH) are exempt from this section and
 19 provide simplified procedures for ruling on the applications.

20 * Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:

21 (g) An application to appropriate not more than 1,000 gallons of
 22 water a day is exempt from the notice provisions of this section.
 23 Notwithstanding this subsection, the commissioner may require public
 24 notice under this section

25 (1) on a determination that the total amount of water
 26 available in an area is limited considering the number of potential
 27 users from the source of the water; or

28 (2) on request of the municipality in which the area is
 29 located.

* Sec. 4. AS 46.15.260 is amended to read:

Sec. 46.15.260. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "appropriate" means

(A) to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use; or

(B) to reserve water under [IN ACCORDANCE WITH] AS 46.15.145;

(2) "appropriation" means

(A) the diversion, impounding, or withdrawal of a quantity of water from a source of water for a beneficial use; or

(B) the reservation of water under [IN ACCORDANCE WITH] AS 46.15.145;

(3) "beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, that is reasonable and consistent with the public interest, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, fish and shellfish processing, navigation and transportation, mining, power, public, sanitary, fish and wildlife, recreational uses, and maintenance of water quality;

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

(5) "water" means all water of the state, surface and subsurface, occurring in a natural state, except mineral and medicinal water;

(6) "commissioner" means the commissioner of natural resources;

(7) "director" means the director of ~~land and water~~ management [THE DIVISION OF LANDS], Department of Natural Resources;

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(8) "person" includes an individual, partnership, association, public or private corporation, state agency, ~~municipality~~ ~~POLITICAL SUBDIVISION~~ of the state, and the United States; [.]

(9) "mineral and medicinal water" means

(A) water of a hot spring or spring with curative properties ~~that~~ ~~[WHICH]~~ has been reserved by the federal government under Public Land Order No. 399; and

(B) geothermal fluid, as ~~THE TERM IS~~ defined in AS 41.06.060;

(10) "significant amount of water" means

(A) a use of more than 5,000 gallons of water in a single day from a single source; CR,

(B) the regular daily or recurring seasonal use of more than 500 gallons of water a day for 10 days or more a year from a single source; CR,

(C) a water use that may adversely affect the water rights of another appropriator or the public interest.

11 AAC 93.970. (14)

ALASKA

STATE LEGISLATURE

MEMORANDUM

Hess

4/1/86

Please return HB 627 to the Chief Clerk. It has been waived to Rules

Offered: 3/21/86
Referred: Health, Education &
Social Services

Original sponsor: M.W.Miller by request

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 627 (Resources)
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11 quantity of water from a source of water for a beneficial use; or

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13 WITH] AS 46.15.145;

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15 of the appropriator, other persons or the public, that is reasonable
16 and consistent with the public interest, including, but not limited
17 to, domestic, agricultural, irrigation, industrial, manufacturing,
18 fish and shellfish processing, navigation and transportation, mining,
19 power, public, sanitary, fish and wildlife, recreational uses, and
20 maintenance of water quality;

21 (4) "source of water" means a substantial quantity of water
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23 (5) "water" means all water of the state, surface and
24 subsurface, occurring in a natural state, except mineral and medicinal
25 water;

26 (6) "commissioner" means the commissioner of natural re-
27 sources;

28 (7) "director" means the director of land and water
29 management [THE DIVISION OF LANDS], Department of Natural Resources;

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17 rights of another appropriator or the public interest.

HOUSE
COMMITTEE REPORT

3/21

(9)

Date referred: 2/17/86

HEALTH, EDUCATION
& SOCIAL SERVICES
FURTHER REFERRALS:

DATE: 3/19/86

The RESOURCES Committee has considered HB 627

"An Act relating to the use of water."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 627 (Resources) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Shultz *Dink Shultz*

Cato *Bette Cato*

Jenkins *Roger Jenkins*

Pearce *W. Pearce*

Sund *Sh. Sund*

Thompson *David W. Thompson* *DON'T THROW COLD WATER ON THIS BILL!*

Miller (N) *M.W. Miller*

Wallis *F. Key Wallis*

SIGNING OTHER RECOMMENDATIONS:

Dink Shultz
Co-Chairman Shultz

- NEW STATUTORY LANGUAGE

- EXISTING STATUTORY LANGUAGE

- TECHNICAL LANGUAGE CHANGE

Bradley
3/18/86

Original sponsor: M.W.Miller by request

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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 627
 Title : Use of Water without Appropriation

 Sponsor : M.W. Miller
 Requestor House Resources
 Date of Request : 3-18-86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Minerals Management, Land & Water Mgmt.

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Garv Johnson Phone : 762-4346
 Division : Land & Water Management Date : 03-18-86

Approved by Commissioner : Ned Fausch Date : 03-18-86
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
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- Office of Management and Budget
- Impacted Agency(ies)

unfinished business

HOUSE ROLL CALL

19

SUBJECT:

HB 627 WAIVER

	Yea	Nay	Abse
ADAMS			
BINKLEY			
BOUCHER			
CATO			
CLOCKSIN			
COLLINS			
COTTEN			
DAVIS			
DUNCAN			
FRANK			
FULLER			
FURNACE			
GOLL			
GRUENBERG	WJ		
HANLEY	CH		
HERRMANN			
HURLEY	Kth		
JENKINS			
KOPONEN	(PK)		
LARSON			
MARROU			
MARTIN			
MILLER (Juneau)			
MILLER (N. Pole)			
NAVARRE			
PEARCE			
PETTYJOHN	AR		
PHILLIPS			
PIGNALBERI			
POURCHOT			
RIEGER			
RINGSTAD			
SHULTZ			
SUND			
SZYMANKSI			
TAYLOR	RT		
THOMPSON	DUT		
UEHLING			
WALLIS			
GRUSSENDORF (Speaker)			