

HB

627

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:

SIGNING OTHER RECOMMENDATIONS:

Shultz *Dink Shultz*

Cato *Bette Cato*

Jenkins *Roger Jenkins*

Pearce *Walter Pearce*

Sund *John Sund*

Thompson *David W. Thompson*

*DON'T THROW
COLD WATER ON
THIS BILL!*

Miller(N) *M.W. Miller*

Wallis *F. Key Wallis*

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

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.

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

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

4 (1) "appropriate" means

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

7 (B) to reserve water ~~under~~ [IN ACCORDANCE WITH
8 AS 46.15.145;

9 (2) "appropriation" means

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

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

14 (3) "beneficial use" means a use of water for the benefit
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
22 capable of being put to beneficial use;

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;

1 (8) "person" includes an individual, partnership, asso-
2 ciation, public or private corporation, state agency, ~~municipality~~
3 [POLITICAL SUBDIVISION] of the state, and the United States. [.]

4 (9) "mineral and medicinal water" means

5 (A) water of a hot spring or spring with curative
6 properties ~~that~~ [WHICH] has been reserved by the federal govern-
7 ment under Public ~~Law~~ and Order No. 399; and

8 (B) geothermal fluid, as [THE TERM IS] defined in
9 AS 41.06.060;

10 (10) "significant amount of water" means

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

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

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

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 Fairbank 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)

Alaska State Legislature

REPRESENTATIVE
MIKE W. MILLER
PO Box 55094
North Pole, Alaska 99705
(907) 488-2687

District 18
North Pole
Badger Road
Eielson
Moose Creek
Salcha



White Mountain
Pouch V
Juneau, Alaska 99811
(907) 465-4976

House of Representatives

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff *Myer*

DATE: 3/18/86

RE: Analysis of House Bill 627

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.