

**SB**

**2022**

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

DATE: 4/21/93

FURTHER: RESOURCES  
FINANCE

Date of 5-Day Notice: 1/5/94  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 1/20/94

CRA Committee considered SB 202

"An Act relating to the removal, appropriation, and purchase of state water by municipalities; and providing for an effective date."

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )

same title  
 new title  
 technical  
title change  
(HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**FISCAL NOTE INFORMATION**

Department	Date	Zero	Fiscal
Dept of Revenue	11/8/94	0	
Dept of NR	11/2/94		(0.5)
Dept of EC	11/3/94	0	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

**DO PASS:**

Roll E. Crilly D. Pass  
Adin L. Taylor  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER RECOMMENDATIONS:**

Roll E. Crilly NR  
Lee Adams - no Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Roll E. Crilly

Chair: Signature and Recommendation

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 202

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: removal, appropriation, and purchase of state water by BRU: Department-wide  
municipalities Component: \_\_\_\_\_  
 Sponsor: Sen. Miller  
 Requestor: Senate CRA COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0.0 \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Rod R. Mourant, Assistant Commissioner Phone: 465-2302  
 Division: Commissioner's Office Date: January 18, 1994  
 Approved by Commissioner: Darrel J. Rexwinkel Date: January 18, 1994  
 Agency: Revenue

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB202

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: "An Act relating to the removal, appropriation, BRU: Resource Development  
and purchase of state water by municipalities:..." Component: Water Development  
 Sponsor: Senator Miller  
 Requestor: Senator Miller Component Serial No. 916

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	(0.5)	(0.8)	(1.5)	(5.0)	(10.0)	(15.0)

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

The bill would release municipalities from paying the fee and from the responsibilities of metering water exported, record keeping, and reporting to DNR.

Prepared by: Gary Prokosh Phone: 762-2575  
 Division: Water Date: 12-Jan-94  
 Approved by Commissioner: [Signature] Date: 12-Jan-94  
 Agency: Natural Resources

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB202

Revision Date: \_\_\_\_\_  
Title: Act relating to the removal, appropriation ... water  
Sponsor: Senator Miller  
Requestor: Governor's Office

Department Affected: Environmental Conservation  
BRU: Commissioner's Office  
Component: \_\_\_\_\_

COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	.0	.0	.0	.0	.0	.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY94) cost: \$ 0.0

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe RGP  
Division: Information & Administrative Services

Phone: 465-5010  
Date: 1/12/94

Approved by Commissioner:   
Agency: Department of Environmental Conservation

Date: 1/13/94

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**DRAFT  
MUNICIPALITY OF ANCHORAGE  
POSITION PAPER**

**SB 202**

**EXISTING STATUTE**

The existing statute is premised on the hydrological cycle such that any amount of water, taken from a hydrologic unit, is used in the same general area and therefore returned to the same unit from whence it came.

The statute says that if a quantity of water, greater than five thousand gallons, is removed from one hydrologic unit to another, then the Commissioner must make a finding that the water may be removed, in which case a water conservation fee must be paid.

**SB 202'S CHANGES**

SB 202 will change the statute by exempting municipalities from these provisions. Currently, there are several uses of water that involve transfer from one hydrologic unit to another. Tour ships in Southeast Alaska and the Kenai Peninsula, general cargo vessels like Tote and Sealand in Anchorage, take on water at one location and discharge at another. Also, the bottled water industry, which is just beginning in Alaska, exports to lower 48 and foreign markets. Any added fees for these operations would stifle the commerce we are trying to stimulate.

The MOA currently has production capacity for finished water that is double its demand. We receive a steady stream of inquiries from domestic and international contacts about the potential of bulk water exports from our treatment plant. Residents of each municipality pay for the collection, treatment and distribution of water through their monthly bills. Income from surplus production will allow water utilities to hold rates down, in the case of Anchorage, or to provide alternate income to the municipality.

According to the Department of Natural Resources, Division of Water, the statute was enacted to provide a framework for the state's effort to sell raw water in bulk. They did not intend to collect money from local governments, nor to present any obstacle to local governments' selling their water.

**The Municipality of Anchorage supports SB 202.**

(D) a description of state revenue and expenses related to activities under AS 46.15.035 and 46.15.037. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 50 ch 71 SLA 1972; am § 56 ch 106 SLA 1986; am § 30 ch 2 FSSLA 1992)

**Effect of amendments.** — The 1992 amendment, effective July 1, 1992, added paragraph (b)(5) and made a related stylistic change.

**Article 2. Appropriation and Use of Water.**

**Section**

35. Appropriation or removal of water out of hydrologic units to other hydrologic units; water conservation fee; reservation of water for fish

**Section**

37. Sale of water by the state  
133. Notices; objections

**Sec. 46.15.030. Water reserved to the people.**

**NOTES TO DECISIONS**

**Ownership of ground and surface waters, etc.**

Groundwater is not the "owned property" of an insured and as such does not fall within the "owned property" exclusion of a policy. *Mapco Alaska Petro., Inc. v. Central Nat'l Ins. Co.*, 784 F. Supp. 1454 (D. Alaska 1991).

Groundwater was not the "owned property" of the oil refinery contaminating it through spills and leaks and as such did not fall within the "owned property" exclusion of insurance policies issued to the refinery. *Mapco Alaska Petro., Inc. v. Central Nat'l Ins. Co.*, 795 F. Supp. 941 (D. Alaska 1991).

**Sec. 46.15.035. Appropriation or removal of water out of hydrologic units to other hydrologic units; water conservation fee; reservation of water for fish.** (a) Water may not be removed from the hydrologic unit from which it was appropriated to another hydrologic unit, inside or outside the state, without being returned to the hydrologic unit from which it was appropriated nor may water be appropriated for removal from the hydrologic unit from which the appropriation is sought to another hydrologic unit, inside or outside the state, without the water being returned to the hydrologic unit from which it is to be appropriated, unless the commissioner

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

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

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

(b) The commissioner shall establish, by regulation, a water conservation fee for a use of water in which the water is removed from the hydrologic unit from which it was appropriated to another hydrologic

unit inside or outside the state, without the water being returned to the hydrologic unit from which it was appropriated. The fee established under this subsection shall be graduated to encourage the conservation of water.

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

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

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

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

(4) is not subject to AS 46.15.145;

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

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

(e) In this section,

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

(2) "hydrologic unit" means a hydrologic subregion established by the United States Department of the Interior, Geological Survey, on the "Hydrologic Unit Map-1987, State of Alaska." (§ 31 ch 2 FSSLA 1992)

**Sec. 46.15.037. Sale of water by the state.** (a) The commissioner may provide for the sale of water by the state if

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

(2) the commissioner determines that

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

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

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

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

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

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

# Alaska State Legislature

SENATOR  
MIKE MILLER

P.O. Box 55094  
North Pole, Alaska 99705  
(907) 488-0862

White in Incaan  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976

Senate District Q

## Senate

To: Senate Community & Regional Affairs Committee

From: Senator Mike Miller

Re: Senate Bill 202 - "An Act relating to the removal, appropriation and purpose of state water by municipalities"

Date: January 12, 1994

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### Sponsor Statement

Senate Bill 202 would allow the state to issue permits to municipalities to sell water.

Under current statute municipalities are required to pay a water conservation fee as well as the fair market value cost of the water itself before selling/exporting the resource to another entity. This legislation would eliminate those requirements.

I would appreciate your support for this measure.