

HB

128

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182
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COMMITTEES

CO-CHAIR
Resources Committee

MEMBER
Transportation Committee
Labor & Commerce Committee

SSHB 128 SPONSOR STATEMENT

"An Act relating to water quality; directing the Department of Environmental Conservation to conduct water quality research; establishing the Water Science Oversight Board; and providing for an effective date."

HB 128 provides a mechanism for DEC to form partnerships with interested parties to seek funding for water quality research for the state of Alaska leading to improved water quality regulations. The bill establishes a temporary Water Science Oversight Board to oversee the research.

The goal of this bill is, to the greatest extent possible, to substitute science for the emotion and political debate that characterizes consideration of water quality regulations. The Alaska Science and Technology Foundation has expressed interest in funding such research, but will only accept applications from a public agency if it is in partnership with private organizations.

Another potential source of funding would be federal dollars. Without such research to provide scientific backing, the Environmental Protection Agency will not accept changes to Alaska's water quality regulations to reflect Alaska specific conditions.

The Water Science Oversight Board which will oversee this research is to be composed of the department commissioner or a commissioner's designee and four additional members, each of whom has academic credentials and Alaska-based expertise in the field of water quality. The board will expire at the end of the five-year research program.

HB 128 will lead to continued protection of Alaska's clean waters while encouraging responsible economic development in the state. I urge the support of the committee on this bill.



FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSS HB128 (FIN) am

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to water quality; directing the BRU: Civil Division
Department of Environmental Conservation to conduct . . . research . . . Component: Environmental Law
 Sponsor: Representative Hudson
 Requester: Senate Resources Committee COMPONENT SERIAL NO. 2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES					28.3	
TRAVEL					0.1	
CONTRACTUAL					4.5	
SUPPLIES					0.5	
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	33.4	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
1007 Interagency Receipts					33.4	
TOTAL	0.0	0.0	0.0	0.0	33.4	0.0

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 128 directs the Department of Environmental Conservation (DEC) to conduct research and adopt new regulations based on that research in order "to reconcile the sometimes conflicting demands of protecting water quality and encouraging the economic use of the state's water." Research results must be submitted to the Water Science Oversight Board for review and recommendation by June 30, 2002. After the Board's recommendations are received, the regulations development process would begin. Under the bill, the regulations proposed and adopted would be part of one process, with the same effective date for all.

The Department of Law anticipates no fiscal impact from this bill until FY 03. With the promulgation of a presumably large package of new regulations all at once, some additional legal resources would be necessary. While it is somewhat speculative to project what might be necessary in the fall of 2002, the department anticipates needing approximately 1/4 of an attorney's time, 360 hours, at a cost of \$33,400. Funding would be interagency receipts from a reimbursable services agreement with DEC.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Attorney General's Office
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 2/13/98
 Date: 2/13/98

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ANALYSIS CONTINUATION:

The cost estimate is based on the department's FY 98/99 standard attorney cost schedule (\$92.72/hour) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses.

Key Provisions of House Bill 128 – Water Research

- I. Sets forth the intent of the legislature to provide for scientific research to serve as the basis for future decisions on water quality regulations.
- II. Requires and provides funding mechanisms for the scientific research to achieve this goal. The Department of Environmental Conservation and the Producer's Council are currently co-applicants for an ASTF grant to fund priority studies.
- III. Temporarily creates the Water Science Oversight Board to oversee the quality of research performed under this bill, to make recommendations to the department regarding research plans and regulations based on the research, and to make annual reports to the governor and the legislature.

Sponsor's Sectional Analysis – HB 128

“An Act relating to water quality; directing the Department of Environmental Conservation to conduct water quality research; establishing the Water Science Oversight Board; and providing for an effective date.”

The history of water quality standards in Alaska has at times been a painful one, marked by emotional and political battles. The goal of House Bill 128 is, to the greatest extent possible, to provide for scientific research to serve as the basis for future discussions and decisions on water quality standards and criteria. **Section 1** of the bill, Findings and Intent, sets forth this goal.

Section 2, AS 46.083.082 of the bill instructs the Department of Environmental Conservation to work cooperatively with interested parties affected by water quality regulations to seek funds to perform water quality research. The Council of Alaska Producers has proposed a joint application with the Department to the Alaska Science and Technology Foundation to fund water quality research.

ASTF has expressed keen interest in funding such research, but will not provide funding to a public agency without a private partner. ASTF is willing to accept multiple applications for different aspects of water quality research.

AS 46.03.083 directs the department, after receiving the results of the research and consulting with the Water Science Oversight Board, to propose water quality regulations.

AS 46.03.085 (a) temporarily establishes a Water Science Oversight Board composed of the Commissioner or her designee and four additional members, each of whom has academic credentials and Alaska based expertise in the field of water quality. One member is appointed by the chancellor of the University of Alaska and three members by the governor, one from a list of three candidates proposed by the senate president and one from a list of three candidates proposed by the speaker of the house.

(b) establishes compensation for those board members who are not public employees at \$300 per day, plus per diem and travel expenses.

(c) sets forth the board's duties. The board shall:

- (1) review and comment on research plans prepared by the department
- (2) meet at least once every three months to review the work of the department and its contractors under the research plans
- (3) report annually to the governor and house and senate resource committees on the department's progress
- (4) review the department's research results and make recommendations to the department for changes in water quality regulations
- (5) review the regulations proposed by the department
- (6) make a final report to the governor and the resource committees after reviewing final research results and proposed regulations

- (7) during the course of the research, offer advice as necessary to the department and the legislature regarding appropriate water quality regulations and standards for the state

Section 3 - Timelines for Actions

- (a) The department must submit to the Water Science Oversight Board at least on research plan by October 1, 1997.
- (b) The department shall submit its research results to the board by June 30, 2002.

Section 4 provides that AS 46.03.082 (research plans), 46.03.083 (water quality standards), and 46.03.085 (Water Science Oversight Board) are repealed on the effective date of regulations adopted as a result of the research process.



ANCHORAGE WATERWAYS COUNCIL

P.O. Box 241774 • Anchorage, Alaska 99524-1774 • 277-9287

May 2, 1997

The Honorable Rick Halford, Chair
Senate Resources Committee
State Capitol
Juneau, AK 99801-1182

RE: HB 128

Dear Senator Halford:

Anchorage Waterways Council is a non-profit organization composed of concerned citizens who consider Anchorage's waterways to be a valuable community resource. We work to prevent further water quality and habitat degradation and to protect, restore and enhance Anchorage's streams, lakes and wetlands.

We do not support HB 128. It fails to propose satisfactory remedies for any of the problems which may exist in Alaska's water quality regulatory programs and is thus contrary to the public interest in several respects.

The intended remedies proposed in HB 128 are unsatisfactory because they would reduce the effectiveness of the professional staff of the Alaska Department of Environmental Conservation (ADEC) in its regulatory duties:

1. Despite the fact that ADEC has a staff of scientists with Alaska expertise, the bill would interpose an oversight body composed overwhelmingly (80%) of political appointees between the Department and the resources it is charged with protecting. The scientific value of the Boards' academic credentials would be rendered nearly irrelevant by the political nature of their positions. In short, the "Water Sciences Oversight Board" could serve no useful purpose in developing water quality standards, but would add another layer of bureaucracy when the state is trying to simplify its government.
2. The bill would remove important ADEC regulatory options and replace them with legislatively imposed "interim" regulations. Since none of the current reviews of standards within ADEC will require much longer than a year to complete, the five year effective period of these "interim" standards appears obviously intended to be permanent.

HB 128 is also directly contrary to the public interest in several respects:

1. It would introduce micromanagement standards, regulations and precedents which represent preferential treatment for extractive industry at the expense of other sectors of the public. We view the mixing zone requirements as especially egregious since they would not only reduce ADEC's regulatory flexibility but would require ADEC to assume additional burdens of proof which should be borne by industry.
2. When the legislature imposes standards and regulations, instead of allowing their development by professionals in agency staffs, ordinary citizens lose an important opportunity for direct participation. The formal public process associated with ADEC's reviews helps assure that our whole community is heard, rather than just the mining industry.
3. By forcing a general "lowering of the bar" for industry, the bill promotes the idea that the public must accept degraded waters as the price of selected resource development. If money is available to fund an additional board, AWC would prefer to see a "Mining Sciences Oversight Board", charged with ensuring that only the most environmentally sound reclamation techniques are used within the State of Alaska. As well as protecting Alaska's aquatic resources, this board would help keep the state in compliance with the Clean Water Act and send out the clear message that Alaskans are responsible resource managers.

We appreciate the opportunity to comment.

Sincerely,



Julius Rockwell, Jr. PhD
Vice President

cc: Senate Resources Committee members
Office of the Governor
Michelle Brown, ADEC
Scott Feierabend, NWF
Cliff Eames, ACE

Calista Corporation

APR 30 1998

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2226 • (907) 279-5516 Facsimile (907) 272-5060
April 23, 1998

Senator Rick Halford
Alaska State Senate
State Capitol
Juneau, Alaska 99801

Dear Chairman Halford:

I am writing this letter in support of HB 128, which directs the Department of Environmental Conservation to conduct research on Alaska's water quality in conjunction with the Alaska Department of Fish and Game with funding from the Alaska Science and Technology Foundation.

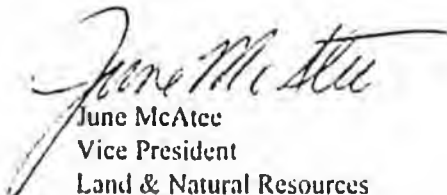
It is important that water quality regulations be founded on scientific data relevant to the conditions of the region where regulated activities occur. Water quality regulations need to be based on appropriate criteria relevant to Alaska. Indigenous aquatic species should be used to establish toxicity, and actual limnologic conditions, such as temperature, dissolved gases and pH levels of streams in Alaska affect the chemical activity and transport of metals.

I am particularly gratified to see that a Water Science Oversight Board proposed for creation by this proposed legislation would be based on scientific considerations of the water quality issue. We support the establishment of a Water Science Oversight Board because candidacy for membership on the board would be based on academic training and Alaska-based expertise in water quality or related fields. This is certainly an improvement on previous situations, in which the state found itself forced to comply with the National Toxics Rule. This Rule was imposed on Alaskans based on criteria developed elsewhere in the nation, and disregarded the actual levels of naturally-occurring elements and physical and chemical conditions found in Alaskan waters.

This issue has relevance for Calista Corporation, whose lands encompass the Kuskokwim Mineral Belt, where there are local areas of naturally occurring, anomalous levels of mercury and arsenic in bedrock and sediments. These areas have and continue to support healthy populations of wildlife, fish, and people who depend on these resources. Development in these areas would have been severely hampered under the Toxics Rule, yet development of a diversified economy and its related jobs are critical needs of the people who live in our region.

The Donlin Creek gold exploration project, now being conducted by Placer Dome Inc. on Calista/Kuskokwim Corporation land near Crooked Creek, is a notable example of a development project which will be directly impacted by water quality issues. Water quality will be a critical factor in determining the feasibility of additional development at Donlin Creek. Such determinations must be based on the best scientific data available about local water quality conditions at the project site.

Sincerely,



June McAtee
Vice President
Land & Natural Resources

cc: Mike Miller, President of the Senate
Gail Phillips, Speaker of the House of Representatives
Resource Committee Members
Representative Ivan M. Ivan
Representative Richard Foster
Senator Lyman Hoffman
Senator Albert P. Adams

APR 02 1998

RAVEN ENVIRONMENTAL SERVICES

NATURAL RESOURCES CONSULTING PERMITTING TECHNICAL SUPPORT
628 BASIN ROAD, JUNEAU, ALASKA 99801
907-586-2459

April 2, 1998

Senator Rick Halford
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Re: HB 128

Dear Senator Halford:

As I mentioned to you yesterday, I have reservations regarding passage of HB 128 which is presently in the Senate Resources Committee. My concerns are focused on the composition and selection of members of the Scientific committee and the cost of this program to the State. In speaking to these concerns let me digress to some anecdotal background material.

I was involved with trying to establish a scientific review committee for water quality within the Hickel Administration. This was to be a nine member board of experts drawn from academia, government, and industry within North America. Members were recognized researchers in the field with extremely strong academic and research credentials. All of the proposed board members were from out of State with no strong political or special interest group affiliations. The board was to advise DEC on the credibility of science underpinning current regulations and proposed changes to them, status of current science on water quality issues, and the relative risks associated with proposed State positions. This board would have required between \$200K and \$500K to operate each year.

While the concept was readily accepted by DEC and the Governors office, I was unable to get either DEC or the Governors office to rearrange priorities to fund the Scientific Advisory Board. Nor were they willing to sponsor legislation to establish such a board. Given this disposition at a time when the State budget was higher, I question the willingness of DEC to prioritize and commit funding to make a scientific advisory board work when budgets are more constrained now than they were in the early 1990's. I suggest that if you consider moving this legislation forward that the adequacy of funding and commitment of DEC to make it work be examined very closely.

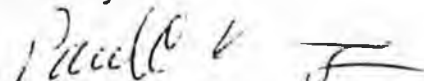
My second major concern involves the board composition and number of members. In my previous attempt to establish a scientific advisory board, as many as 18 members were considered. This number was ultimately pared down to nine due to cost considerations. However, water quality is a specialized art nowadays. Only a few positions on a board can be occupied by generalists, the rest must be highly specialized scientists well versed in their disciplines. These disciplines are surprisingly narrow. For example an organic chemist may be an expert on volatile organic compounds but not be able to deal with non-volatile organics. There are researchers who have specialized careers dealing only with dissolved gases in water! Given the complexity of issues, and the high costs associated with treatment, a scientific advisory board needs many members to adequately provide credible advice. HB 128 provides only for 5 members, with no guarantee that these 5 will be nationally or internationally renowned experts on water quality issues and the science supporting regulations.

I would strongly recommend that if you move HB 128 forward that the number of members on the board be increased, specific areas of expertise be defined for each board position, minimum credentials be established in order to consider a candidate for a board position, and that the board appointments be as apolitical as possible.

One way of depoliticizing the scientific advisory board would be to establish a 3-5 member selection committee, perhaps similar to that in the present Bill, that will review applications and make final appointments to the scientific advisory board. Appointment of a candidate would require either a majority or unanimous vote of the selection committee. Such an arrangement might strike a good balance for membership on the scientific advisory board so that their recommendations would subsequently be used by DEC in their dealings with the EPA and adoption of future regulations.

Thank you for taking the time to listen to me on my concerns with HB 128. I hope that you will either not move the Bill; or if you do, that you will consider my recommendations to make it a meaningful piece of environmental legislation that will help foster good water resources stewardship consistent with the mandates of the State constitution.

Sincerely,


Paul C. Rusanowski, Ph.D.
Principal