

HB

185

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 185
 (H) Publish Date: 3/14/01
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water
 Component: Water Development
 Component Number: 916

Revision Date/Time (Note if correction): _____
 Title: Water Fees-Temporary Water Use
 Sponsor: Rules
 Requester: Governor

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	275.0	275.0	275.0	275.0	275.0	275.0
Travel	7.0	7.0	7.0	7.0	7.0	7.0
Contractual	10.0	15.0	15.0	15.0	15.0	15.0
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	5.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	300.0	300.0	300.0	300.0	300.0	300.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (Wtr Res Inc)	0.0	200.0	400.0	400.0	400.0	400.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	300.0	100.0				
1005 GF/Program Receipts	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)
1037 GF/Mental Health						
Water Resources Income Acct	100.0	300.0	400.0	400.0	400.0	400.0
TOTAL	300.0	300.0	300.0	300.0	300.0	300.0

Estimate of any current year (FY2001) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The fundamental issue facing the Water Development component is the fact that there is no longer enough staff to conduct the program required by statute. The problem is exacerbated by a court ruling that requires procedures for temporary water use permits that have historically not been conducted and that significantly increase staff time required to process these permits. The consequence of this problem is that the Department of Natural Resources has a backlog of over 600 applications for water rights and over 3,000 total actions (including permit extensions, transfers, etc.). Thus, many industries and citizens are frustrated by their inability to receive authorization to proceed with their projects, or to gain the security of a water right. [cont.]

Prepared by: Bob Loeffler, Director Phone (907) 269-8625
 Division: Mining, Land and Water Date/Time 09-Mar-01
 Approved by: Pat Pourchot Date 09-Mar-01
 Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

Water Use Fee

This bill would provide for a sliding-scale water use fee — that is, an annual fee that escalates depending on the amount of water permitted or used. The bill would also establish a water income account to separately account for water receipts and to allow the legislature to use this source to fund the program.

The fee and income account would create a secure funding source that is large enough to run the water management program. DNR expects that the water use fee would generate approximately \$400,000 more than is currently generated through its administrative fees program when it is fully implemented. (In FY2002 we have \$100,000 existing program receipt authorization that switches to the Water Resources Income Account. In FY2003, an estimated additional \$200,000 can be generated, and in FY2004, the full amount of the program can be funded from the Water Resources Income Account).

The actual fee structure would be set forth in regulations. DNR expects to propose a fee structure that exempts water use below 500 gallons per day (and residential use below 1500 gallons per day), and that includes a sliding scale fee structure. Those who use more than a million gallons of water per day would pay the highest fee of \$400 or \$500 per year. DNR also expects to discount fees for non-consumptive use of water (water that is returned to its source in undiminished quantity and quality and therefore does not diminish the amount available for appropriation to others). At this fee structure, no industry would cumulatively pay more than \$100,000 and most would pay considerably less.

Industries that are most affected by this fee include the mining industry, although most placer water use is non-consumptive use or recycled. The next largest use group is for public water supply. These two industries would likely pay between \$50,000 and \$100,000. Other industries, such as for agricultural, commercial, fish hatcheries, logging, hydroelectric, etc., would each pay less than \$50,000 per year under this new use fee structure.

DNR also expects to set annual fees on a graduated-scale basis for temporary water use permits. DNR expects to generate approximately \$150,000 in revenue from this source. The temporary water use permits with the largest volume of water (and hence with the largest annual fee) are issued to the oil and gas industry for development of the North Slope.

The generation of water use revenue is consistent with the philosophy that, "Those who benefit from the service should pay for it."

The effect of the fees would not be immediate. The establishment of a water use fee system will require a year to promulgate regulations, set up a revenue and billing system, and update the water right files to be included in the water use fee billing system. Within one year of the revised regulations, updated water rights and revenue and billing systems should be in place. At that time, it would be possible for the legislature to allow DNR to receive a portion of these funds as Water Resources Income Account receipts and decrease our general fund appropriation revenues by the amount anticipated to be received that year.

To complement the water use fee, DNR is currently writing regulations that will allow it to more efficiently process water right applications.

Lastly, DNR's FY 02 budget proposes a \$300,000 increment to adequately fund the program as outlined above. The general fund budget increment is necessary because the income from the fees will not be available to fully fund the program in the first couple of years. (NOTE: the \$100.0 fund change from program receipts to the new Water Resources Income Account was not included in the Governor's FY2002 budget proposal).

Statutory changes, regulatory changes, and \$300,000 increment: all three of these solutions are necessary to make the program function reasonably.

Personal Services New Position Detail

DRAFT

Department of Natural Resources

Scenario: FY2002 Governor Amended (1743)
 Component: Water Development (916)
 BRU Name: Minerals, Land, and Water Development (330)

PCN	Job Class Title	Time Status	Retir. Code	Barg Unit	Location	Salary Sched	Range Steps	Budgeted Months	Split Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
10-#032	Administrative Clerk II	FT	A	GG	Anchorage	2A	8A / B	12.0		23,075	280	0	11,951	35,310
Justification:						Funding Detail:								
Water use Rights Adjudication.						1004 General Fund Receipts 100.00% 35,310								
						Total Funding 100.00% 35,310								
10-#033	Natural Resource Off I	FT	A	GG	Anchorage	2A	14C	12.0		35,145	427	0	14,532	50,107
Justification:						Funding Detail:								
Water Use Rights Adjudication						1004 General Fund Receipts 100.00% 50,107								
						Total Funding 100.00% 50,107								
10-#034	Natural Resource Off I	FT	A	GG	Juneau	2A	14C	12.0		35,145	427	0	14,532	50,107
Justification:						Funding Detail:								
Water Use Rights Adjudication						1004 General Fund Receipts 100.00% 50,107								
						Total Funding 100.00% 50,107								
10-#037	Natural Resource Off II	FT	A	GG	Anchorage	2A	16D	12.0		41,925	509	0	15,982	58,419
Justification:						Funding Detail:								
Water Use Rights Adjudication						1004 General Fund Receipts 100.00% 58,419								
						Total Funding 100.00% 58,419								
10-#038	Natural Resource Off II	FT	A	GG	Fairbanks	2B	16D	12.0		43,605	529	0	16,342	60,479
Justification:						Funding Detail:								
Water Use Rights Adjudication						1004 General Fund Receipts 100.00% 60,479								
						Total Funding 100.00% 60,479								

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two as

Personal Services New Position Detail

DRAFT

Department of Natural Resources

Scenario: FY2002 Governor Amended (1743)
Component: Water Development (916)
BRU Name: Minerals, Land, and Water Development (330)

Component Summary:

Total New Positions: 5

<u>Fund Description</u>	<u>Fund Percent</u>	<u>Fund Amount</u>
1004 General Fund Receipts	100.00%	254,422
Total Funding	100.00%	254,422

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two as

22-GH1087C
Luckhaupt
4/18/01

HOUSE BILL NO. 185()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water and to the accounting and**
2 **appropriation of those fees; relating to authorizations for the temporary use of state**
3 **water; making other amendments to the Alaska Water Use Act; and providing for an**
4 **effective date."**

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

6 *** Section 1.** The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 **FINDINGS AND POLICY REGARDING STATE WATER USE FEES.** (a) The
9 legislature finds that

10 (1) the implementation of a state water rights system by the Department of
11 Natural Resources cannot be accomplished without adequate financing;

12 (2) financing to implement the state water rights system has been insufficient,
13 which has resulted in

14 (A) delays in the processing of applications for grants of rights and

1 permits for use of state water and amendment of those rights and permits; and

2 (B) failure to complete other administrative duties relating to the state
3 water rights system;

4 (3) a long-term financing mechanism must be established to provide for
5 adequate financing and provide for a more predictable appropriation and staffing level at the
6 Department of Natural Resources from year to year; and

7 (4) the establishment of an appropriate system of application fees that reflect
8 the reasonable direct cost of providing the water management services would provide an
9 adequate method of financing Alaska's water management system.

10 (b) It is the policy of the state to authorize the Department of Natural Resources to
11 assess a reasonable fee for the services it provides in facilitating the use of state water; the fee
12 should reflect the reasonable direct cost of providing the service, but it is the policy of the
13 state that the fee not include

14 (1) the costs and salaries of administrative, support, or supervisory personnel
15 who are not directly engaged in providing the service;

16 (2) other budgeted overhead expenses, including rent and utilities;

17 (3) interagency charges that would not meet the requirements of AS 37.10.052
18 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
19 designated regulatory service;

20 (4) public consultation costs when the consultation is not required by law;

21 (5) costs related to an appeal of permit issuance by a person other than the
22 applicant for that permit;

23 (6) expenses that are not reasonably necessary to comply with the law under
24 which the service is provided; or

25 (7) travel expenses for inspecting businesses having not more than 20
26 employees.

27 (c) It is the policy of the state that the Department of Natural Resources not apply a
28 charge to the holder of a certificate of appropriation that is not specifically related to services
29 provided by the department, except that the department may continue to charge the annual
30 \$50 administrative service fee currently in use by the department in order to maintain the
31 water rights program for the benefit of Alaskans and current water rights holders.

1 (d) It is the policy of the state that the Department of Natural Resources minimize the
2 required costs, including application fees, on individuals and businesses withdrawing less than
3 a significant amount of water.

4 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 FINDINGS, POLICY, AND PURPOSE RELATING TO AUTHORIZATIONS FOR
7 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

8 (1) many construction, development, commercial, and private activities
9 require an authorization for the temporary use of the state's water without the need to acquire
10 a permanent right to appropriate water;

11 (2) for many years, in appropriate circumstances, the Department of Natural
12 Resources has issued revocable permits for the temporary use of state water under its
13 authority implied under AS 46.15 but not expressly provided in AS 46.15; and

14 (3) the legislature validates and affirms that temporary permits authorizing the
15 temporary use of state water continue to be appropriate under AS 46.15.

16 (b) It is the policy of the state to expressly confirm in the Department of Natural
17 Resources the authority to issue authorizations for temporary use of water subject to
18 appropriate conditions and limitations set by the Department of Natural Resources.

19 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

20 (1) confirm the authority of the Department of Natural Resources to issue
21 authorizations for temporary use of water; and

22 (2) affirm the validity of existing temporary permits for the use of state water
23 issued before the effective date of this Act that may have been called into question by the
24 rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-
25 00-3415 Civil.

26 * **Sec. 3.** AS 37.10.058(2) is amended to read:

27 (2) "designated regulatory service" means a regulatory service
28 provided under the following regulatory programs:

29 (A) regulation of the disposal of waste into waters of the state
30 under AS 46.03.100;

31 (B) certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

2 (C) a coastal management consistency determination relating to
3 a permit or authorization issued under a program listed in (A) or (B) of this
4 paragraph, if the determination is made by the agency issuing the permit or
5 authorization; and

6 (D) any authorization for the use or appropriation of water
7 under AS 46.15.

8 * Sec. 4. AS 46.15.020(b)(4) is amended to read:

9 (4) prescribe fees or service charges for any public service rendered
10 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
11 under regulations adopted by the department an annual \$50 administrative
12 service fee to maintain the water management program;

13 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

14 (2) "hydrologic unit" means a hydrologic subregion established by the
15 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
16 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that
17 is adjacent to a hydrologic subregion of the state. [""]

18 * Sec. 6. AS 46.15 is amended by adding a new section to read:

19 **Sec. 46.15.155. Authorization for temporary use of water.** (a)
20 Notwithstanding any contrary provision of this chapter, the commissioner may
21 authorize the temporary use of a significant amount of water, as determined by the
22 department by regulation, for a period of time not to exceed five consecutive years, if
23 the water applied for has not been appropriated in accordance with this chapter. The
24 commissioner may extend an authorization under this section for one additional term
25 of five consecutive years.

26 (b) Notwithstanding any contrary provision of this chapter, an authorization
27 for a temporary use of less than a significant amount of water is not required under
28 this section unless the commissioner has determined by regulation that the use may
29 have an adverse effect on other water uses and that an authorization must be obtained
30 from the department.

31 (c) The issuance of an authorization for temporary use of water under this

1 section does not establish a right to appropriate water. The temporary use of water
2 under an authorization remains subject to appropriation under this chapter.

3 (d) Notwithstanding any contrary provision of this chapter, the commissioner
4 is not required to provide public notice under AS 46.15.133 of a proposed
5 authorization for temporary use of water; however, the commissioner shall request
6 comment on an application for temporary use of water from the Department of Fish
7 and Game and the Department of Environmental Conservation..

8 (e) The provisions of AS 46.15.080 do not apply to the issuance or extension
9 under this section of an authorization for temporary use of water.

10 (f) The commissioner may impose reasonable conditions or limitations on an
11 authorization for temporary use of water to protect the water rights of other persons or
12 to protect fish and wildlife habitat, public health, or other public interests.

13 (g) Upon approval by the department, an authorization under this section may
14 be transferred to another person under the same conditions and limitations under
15 which the authorization was issued.

16 (h) A person to whom an authorization for temporary use of water was issued
17 under this section may allow another person to use the authorization, consistent with
18 the conditions and limitations of the authorization.

19 (i) The commissioner may modify, suspend, or revoke an authorization issued
20 under this section if the commissioner determines it necessary to protect the water
21 rights of other persons or the public interest.

22 * Sec. 7. AS 46.15.180(a) is amended to read:

23 (a) A person may not

24 (1) construct works for an appropriation, or divert, impound, withdraw,
25 or use a significant amount of water from any source without a permit, [OR] certificate
26 of appropriation, or authorization issued under this chapter;

27 (2) violate an order of the commissioner to cease and desist from
28 preventing any water from moving to a person having a prior right to use it;

29 (3) disobey an order of the commissioner requiring the person to take
30 steps to cause the water to move to a person having a prior right to use it;

31 (4) fail or refuse to install meters, gauges, or other measuring devices

1 or control works;

2 (5) violate an order establishing corrective controls for an area or for a
3 source of water;

4 (6) knowingly make a false or misleading statement in a declaration of
5 existing right.

6 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE**
9 **EFFECTIVE DATE OF THIS ACT.** (a) A temporary permit issued before the effective date
10 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
11 use of water is valid and remains in effect, notwithstanding that public notice was not
12 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
13 the temporary permit was issued.

14 (b) A temporary permit described in (a) of this section shall be considered to be an
15 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
16 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
17 permit described in this subsection is subject to the terms and conditions set out in the
18 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
19 Act.

20 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **TRANSITION: REGULATIONS.** (a) Under AS 44.62.125(b)(6), the regulations
23 attorney may change the term "temporary water use permit" in regulations of the Department
24 of Natural Resources concerning water use to "authorization for temporary use of water" as
25 consistent with this Act.

26 (b) To the extent that the regulations are not inconsistent with this Act, regulations
27 relating to water management adopted by the Department of Natural Resources under
28 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
29 repealed and may be administered and enforced by the Department of Natural Resources.

30 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
31 AS 01.10.070(c).

1

* Sec. 11. Section 4 of this Act takes effect July 1, 2002.

CSSB 185 (RES)
**An Act relating to fees for certain uses of state
water**
Sectional Analysis

Sections one and two are the findings, policy and purpose statements relating to water fees and temporary water use authorizations

Section three: Amends AS 37.10.058 to add water fees to the receipt supported services category of fees as a designated regulatory service.

Section four: allows the department to continue charging an annual \$50 administrative service fee to maintain the water management program in addition to those fees authorized under the designated regulatory service structure.

Section five: This is a house keeping amendment to the existing law that would amend the definition of a "hydrologic unit" to include as part of the hydrologic unit the waters of an ocean that are adjacent to a hydrologic subregion of the state. This applies when water taken from the mainland is moved to an island offshore or used to construct ice roads across a portion of a bay, inlet or sea. The amendment makes it clear that the ocean waters off shore of a hydrologic subregion are in fact part of the hydrologic unit.

Section six: expressly confirms the authority of DNR to issue temporary water use authorizations, under appropriate circumstances, as has been DNR's practice for over 20 years. Temporary water use authorizations do not confer any rights to use water. Temporary water use authorizations have been issued for construction and development of specific commercial, industrial, and private activities or projects where water was required, for a temporary period of time, and a permanent water right was not needed. The bill lays out under what circumstances a temporary water use authorization can be issued the procedures to be followed. Because a temporary water use authorization is conveys no property right and is not a disposal of an interest in land, the bill makes clear that these authorizations are exempt from public notice required prior to issuance of a permanent property right to water (a water

right). The bill allows for the transfer of a temporary water use authorizations between parties with DNR approval and for the sharing of an authorization between parties if they so intend. Because of its temporary nature, without any rights or priority attached, an authorization can be modified, suspended, or revoked by DNR if its necessary to protect water right holders or the public interest.

Section seven: is amended to include a temporary water use authorization under the crime section so that, if necessary, DNR can enforce against the unlawful use of water.

Section eight: validates the existing temporary water use permits that have been issued prior to the effective date of the Act. The temporary water use permits issued prior to the Act are to be considered an authorization issued under AS 46.15.155 and are subject to the terms and conditions set out in the permit and subject to the requirements of AS 46.15.155. This section affirms the validity of existing temporary permits that may have been called into question by the rationale used by the court in *Greenpeace, Inc. v. DNR*, 3AN-00-345 Civil.

Section nine: allows the regulations attorney to change the term "temporary water use permit" to "authorizations for temporary use of water" as consistent with the Act, and keeps the current statute in effect.

Sections ten and eleven: sets effective date of the bill. The effective date of Section 3 of the bill is delayed a year, until July 2001, to allow the department to establish fee regulations consistent with the requirements of the law.

Please add the attached items to your packets for HB-232.
This bill will be heard Friday April 20th