

**SB**

**139**

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 139  
 (S) Publish Date: 3/13/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Water Fees-Temporary Water Use BRU: Minerals, Land & Water  
 Component: Water Development  
 Sponsor: Rules  
 Requester: Governor Component Number: 916

**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						
<b>TOTAL OPERATING</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (Wtr Res Inc)</b>	<b>0.0</b>	<b>200.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>
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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
<b>TOTAL</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>

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	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
10-#032	Administrative Clerk II	FT	A	GG	Anchorage	2A	8 A / B	12.0		23,079	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	14 C	12.0		35,148	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	14 C	12.0		35,148	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	16 D	12.0		41,928	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	16 D	12.0		43,608	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 asterisks (\*\*) will appear in this column.

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

Fund Description	Fund Percent	Fund Amount
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 asterisks (\*\*) will appear in this column.

Amendment #1  
By Senator Elton

~~SB 139. Water Bill~~

Add to Sec <sup>6</sup> 8. As 46.155(d): P. 5, delete lines 3-5 & insert.

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

Add to Sec <sup>6</sup> 8. As 46.155(f): P. 5, delete lines 8-10 & insert

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

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To	Amber Lee	From	Bob
Co.		Co.	
Dept.		Phone #	465-2400
Fax #		Fax #	

**ALASKA STATE SENATE**  
Senate Resources Committee

From: The Office of Senator John Torgerson  
Chair, Senate Resources Committee

Telephone: (907) 465-2828

Fax: (907) 465-4779

TO:	Jerry Luckhaupt, Leg. Legal
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Fax:	2029
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Jerry,  
Senate Resources reported out SB 139 today. The attached amendment was adopted. Please send over a final Resources Committee Substitute. Thank you,  
Darwin

SENT on 4-11-01 by Darwin (phone 465-4907)  
Page 1 of 2

## Proposed Substantive Amendments to SB 139

### Change in Section 1 (Findings).

**DELETE** Page 2, lines 7-10 altogether and replace with the following:

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

**DELETE** Page 2, lines 11-13 altogether and replace with the following:

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

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

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

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

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

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

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

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

(c) It is the policy of the state that the department not apply a charge to the holder of a certificate of appropriation that is not specifically related to services provided by the department such as an application for transfer or amendment, except that the department may continue to charge the annual \$50 administrative service fee currently in use by the department in order to maintain the water rights program for the benefit of Alaskans and current water rights holders.

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

**Delete Secs. 3-5** altogether and replace with the following, which builds on last year's HB 361 (fixed fees for standard designated regulatory services):

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

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

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

(B) certification of federal permits or authorizations under 33 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

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

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

### **New Section of the bill (New Section 3)**

Sec. 3. AS 46.15.020(b)(4) is amended to read:

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

**Change in Effective Date.** Page 7, Line 14. Add the following to the beginning of the sentence as indicated: "Sec. 10. Except for Section 3 of this bill, this Act takes effect immediately under AS 01.10.070(c)." [*Note that the Section is renumbered.*]

**New Effective Date Section.** "Sec. 11. Section 3 of this act takes effect on July 1, 2002."

## Summary of Changes

<b>Proposed Changes to SB 139</b>	
<b>Existing SB 139</b>	<b>Proposed Amendment</b>
Section 1	Change paragraph (4)
	Delete subsection (b) and replace with new subsections (b) through (d).
Section 2	No change
Section 3 (New Section)	Delete. Replace with New Section 3 concerning AS 46.15.020(b)(4).
Section 4	Delete
Section 5	Delete
Section 6	Re-number to Section 4
Section 7	Re-number to Section 5
Section 8	Re-number to Section 6
Section 9	Re-number to Section 7
Section 10	Re-number to Section 8
Section 11	Re-number to Section 9
Section 12	Re-number to Section 10, Amend language
New Section	Section 11. New Effective Date Section

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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## Sectional analysis of SB 139

Title 46.15 is the "Water Use Act" which establishes procedures for maintaining existing rights and obtaining new rights to ground and surface waters of the state. In order for the Department of Natural Resources to implement the water right system under the Water Use Act it must have adequate staff and financing. This bill sets up a long-term financing mechanism through the establishment of water use fees to provide for a more predictable appropriation and staffing level from year to year.

SB139 would also validate and affirms that DNR should continue to issue under the authority of the Water Use Act temporary water use authorizations as it has for over 20 years.

Sec. 1 and 2 are the finding policy and purpose relating to water use fees and temporary water use authorizations.

Sec. 3 adds the state water resources income account to the accounts identified under AS 35.05.146 as program receipt accounts.

Sec. 4 establishes the authority to charge a fee for the use of state water that is issued under a certificate of appropriation (water right), permit to appropriate water, temporary water use authorization, based on the quantity certificated, permitted, authorized or used. This is one of the two primary bill purposes.

Sec. 5 establishes the state water resource income account. The fees upon receipt shall be accounted for separately in this account. The appropriations from the account are not made from the unrestricted general fund. The legislature may appropriate funds from the account to DNR for its water resources program or other public purposes.

Sec. 6 this is a house keeping amendment to the existing law that would limit the process now required by AS 46.15.035 for DNR to make a finding, reserve water for fish, assess a conservation fee for the removal of water from one hydrologic unit to another or out of state. Currently a person who fills a canteen up with water in Anchorage and brings it to Denali State Park would technically need to comply with the requirements of this statute. Under the bill amendment these processes would only take place when the removal of water involves a significant amount of water, an amount to be set by regulation.

Sec. 7 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.

**Sec. 8** 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. It exempts a temporary water use authorization from public notice and public interest criteria that is normally required prior to issuance of a permanent 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.

**Sec. 9** 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.

**Sec. 10** 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.

**Sec. 11** 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.

**Sec. 12** sets effective date of the Act.

**TONY KNOWLES**  
GOVERNOR



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**STATE OF ALASKA**  
OFFICE OF THE GOVERNOR  
JUNEAU

March 9, 2001

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear President Halford:

This bill I transmit today creates a logical source of funding for Alaska's water use program, bringing much needed efficiency to the program for commercial and residential users. The program has suffered continued underfunding for several years, causing a serious backlog in permits. This inability to issue permits in a timely manner stalls development and frustrates water users. This bill also clearly authorizes the Department of Natural Resources (DNR) to allow a streamlined approval process for temporary water uses as another way to optimize program efficiency.

Funding for implementation of the Alaska Water Use Act, commonly known as the water rights program, has seen a more than 50% reduction in funding over the past 10 years, leading to two-thirds reduction in staff. The remaining four staff positions can no longer carry out the requirements of the Act.

This legislation is part of a three-part solution to provide adequate funding and staffing for the water rights program. First, DNR is promulgating regulations that make implementation of the program less costly. Second, the FY 2002 budget includes a \$300,000 budget increment to fund the program adequately. This proposed legislation provides the third part of the solution: a water use fee.

Under this bill, the natural resources commissioner would establish a sliding fee for water use based on the quantity intended for use. That money would be separately accounted for within the general fund and available for appropriation to program operation.

The Honorable Rick Halford  
March 9, 2001  
Page 2

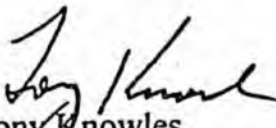
The bill affirms DNR's authority to allow temporary water uses for construction, development, commercial and private activities in cases where a long-term water right is not appropriate or necessary. The department has been authorizing these temporary uses for several years and many industries, such as oil development and road construction, find them crucial to their ability to proceed with their projects in a timely manner. Losing this program option would needlessly exacerbate the current backlog in water permits.

The bill confirms that the temporary water use authorizations are revocable and do not create a property right. Because of the revocable nature and finite duration of these authorizations, DNR would not be required to provide prior public notice or conduct an administrative review under the criteria applicable to permits for water rights. However, the commissioner will continue to provide notice to the Alaska Departments of Fish and Game and Environmental Conservation and be authorized to impose reasonable conditions or limitations on these temporary uses.

Finally, a transitional provision of the bill would provide that temporary water use permits issued before the effective date of the bill may not be invalidated on the grounds that DNR did not provide public notice under AS 46.15.133 or review a permit application under the criteria set out in AS 46.15.080. A recent decision by the superior court in Greenpeace, Inc. v. Alaska Department of Natural Resources, concluded that DNR should have provided public notice of a temporary water use permit application and conducted a detailed review of the application before issuing the permit. This decision could cause serious delays in development projects and DNR's water use processing.

In the interest of promoting efficiency for project development across the state, I urge your prompt and favorable consideration of this measure.

Sincerely,

  
Tony Knowles  
Governor

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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## Sectional analysis of SB 139

Title 46.15 is the "Water Use Act" which establishes procedures for maintaining existing rights and obtaining new rights to ground and surface waters of the state. In order for the Department of Natural Resources to implement the water right system under the Water Use Act it must have adequate staff and financing. This bill sets up a long-term financing mechanism through the establishment of water use fees to provide for a more predictable appropriation and staffing level from year to year.

SB139 would also validate and affirms that DNR should continue to issue under the authority of the Water Use Act temporary water use authorizations as it has for over 20 years.

Sec. 1 and 2 are the finding policy and purpose relating to water use fees and temporary water use authorizations.

Sec. 3 adds the state water resources income account to the accounts identified under AS 35.05.146 as program receipt accounts.

Sec. 4 establishes the authority to charge a fee for the use of state water that is issued under a certificate of appropriation (water right), permit to appropriate water, temporary water use authorization, based on the quantity certificated, permitted, authorized or used. This is one of the two primary bill purposes.

Sec. 5 establishes the state water resource income account. The fees upon receipt shall be accounted for separately in this account. The appropriations from the account are not made from the unrestricted general fund. The legislature may appropriate funds from the account to DNR for its water resources program or other public purposes.

Sec. 6 this is a house keeping amendment to the existing law that would limit the process now required by AS 46.15.035 for DNR to make a finding, reserve water for fish, assess a conservation fee for the removal of water from one hydrologic unit to another or out of state. Currently a person who fills a canteen up with water in Anchorage and brings it to Denali State Park would technically need to comply with the requirements of this statute. Under the bill amendment these processes would only take place when the removal of water involves a significant amount of water, an amount to be set by regulation.

Sec. 7 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.

**Sec. 8** 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. It exempts a temporary water use authorization from public notice and public interest criteria that is normally required prior to issuance of a permanent 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.

**Sec. 9** 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.

**Sec. 10** 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.

**Sec. 11** 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.

**Sec. 12** sets effective date of the Act.