

HB

77

<TARGET><BILL>HB 77</BILL><SUBJECT>HB
77</SUBJECT><COMM>HRES28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 18, 2013

FURTHER REFERRALS:

Date of Committee Action: 2-8-13

The RESOURCES Committee considered:

HB 77

HOUSE BILL NO. 77

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

HB 77-LAND DISPOSALS/EXCHANGES; WATER RIGHTS

Recommends it be replaced with HCS or CS for HB 77 (RES)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- DHS
- LWF
- LAW
- LEG
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero
✓	F+G			✓
✓	DNR			✓

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Hawk	*			
	Tuck				X
	SEATON				X
	TARR				X
	OLSON	X			
Chair:	FEIGE	X			
Chair:	SANDLER	X			

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

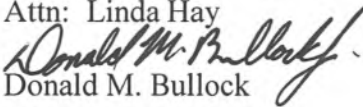
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 11, 2013

SUBJECT: Editorial changes to CSHB 77(RES)
(Work Order No. 28-GH1524\U)

TO: Representative Eric Feige
Chair of the House Resources Committee
Attn: Linda Hay

FROM: 
Donald M. Bullock
Legislative Counsel

Enclosed is the CSHB 77(RES) that includes the amendments adopted by the House Resources Committee as well as editorial changes to conform to the *Manual of Legislative Drafting* (2013) and to make the bill internally consistent.

We have tried to resolve inconsistencies within the bill relating to decisions and determinations by the Department of Natural Resources, the commissioner, and the director of the division of lands. For example, AS 38.05.070(f)(3), in sec. 10 of the bill, "requires a new finding and decision under AS 38.05.035(e)"; however, AS 38.05.035(e) only includes findings and determinations, except for AS 38.05.035(e)(1)(C)(iv). Accordingly, the "finding and decision" language in sec. 10 has been corrected to "finding and determination" to conform with AS 38.05.035(e). The "finding and decision" language in AS 38.05.083(h)(2) in sec. 16 of the bill is changed for the same reason, as well the change from "decision and review procedures" to "determination and review procedures" in AS 38.50.010 in sec. 22 of the bill.

The last sentence in AS 38.05.082(b) in sec. 14 of the bill has been reorganized so that it is clear the applicant is substantially and adversely affected by the director's determination.

The new language in the last sentence in AS 38.05.185(a) in sec. 17 of the bill has been changed to the active voice.

The first two sentences in AS 38.05.300(a) in sec. 18 of the bill address classifications, reclassifications, and multiple purpose use of land. The language added in the governor's bill only addresses a written classification decision. You may ask the administration to clarify what is intended by the language change in the next committee or by amendment on the floor. I am not sure whether it is only the classification decision. It may be that

Representative Eric Feige

February 11, 2013

Page 2

the administration treats a decision on reclassification or a multiple purpose use as merely different types of a classification decision.

The administration should also consider the whether the decisions and findings addressed in AS 38.05.945(a) in sec. 19 should be written. Within the subsection, some findings are written, but decisions are not described as written decisions. Presumably the decisions will be in writing, but there is an inconsistency in the chapter if some are described as written decisions and others as simply decisions.

If I may be of further assistance, please advise.

DMB:ljw
13-076.ljw

Enclosure

To: Leg Legal
From: Linda Hay – House Resources Committee Aide
Rep. Eric Feige, Co-Chair
Date: February 8, 2013
RE: House Resources CS for HB 77

Please prepare a House Resources Committee CS for HB 77 Land Disposals/Exchanges; Water Rights with the following amendments:

pg 7+8
Amendment #1 (Hawker) 28-GH1524\A.1
Amendment passed with the following amendment:
Line 4 – delete new text “the” and replace with “a”

Amendment #10New (Seaton) 28-GH1524\A.16
Amendment passed with the following 2 amendments:

pg 22
Line 4 – After RESERVED WATER. Insert “Within one year” at the request of the applicant.....

Line 19 – 21 delete the following text: (The Department of Natural Resources may not bar an entity to which the department transfers an application under this section from pursuing the reservation of water that is described in the application.)

Bill and amendments as amended are attached. I will be in the office tomorrow after 10 a.m. if there are any questions. If possible, we would like to have the bill read across on Monday’s Floor Session. Thank you for your help as always!!!!

passed as amended

28-GH1524A.1
Bullock
1/31/13

AMENDMENT

#1

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE HAWKER

- 1 Page 7, line 28:
2 Delete "The"
3 Insert "Unless the remainder of the purchase price is paid in full at the time of the
4 sale. ~~the~~ [THE]"
5 *a*
6 Page 8, line 4:
7 Delete "contracts"
8 Insert "a contract that provides for installment payments [CONTRACTS]"
9
10 Page 8, line 5:
11 Delete "for each sale"
12 Insert "[FOR EACH SALE]"
13
14 Page 8, line 7:
15 Delete "contracts"
16 Insert "a contract [CONTRACTS]"

replaces
Amend #10
A.10

Passed
as amended

28-GH1524A.16
Bullock
2/7/13

AMENDMENT
new # 10

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE SEATON

1 Page 22, lines 13 - 19:

2 Delete all material and insert:

3 "TRANSITION: TRANSFER OF CERTAIN PENDING APPLICATIONS FOR
4 RESERVED WATER. ^{within 1 year -} At the request of an applicant whose application is pending on the
5 effective date of this Act and who is no longer authorized to reserve water under
6 AS 46.15.145(a), as amended by sec. 40 of this Act, the Department of Natural Resources
7 shall transfer the pending application to an entity identified by the applicant that is authorized
8 to reserve water under AS 46.15.145(a), as amended by sec. 40 of this Act. The entity
9 receiving the application shall notify the Department of Natural Resources within two years
10 after receiving the application as to whether the entity intends to pursue the reservation of
11 water as requested in the application. If, within two years, the Department of Natural
12 Resources does not receive notice that the entity intends to pursue the same or a smaller
13 reservation or if the entity notifies the Department of Natural Resources that the entity will
14 not pursue the reservation in the application, the Department of Natural Resources shall
15 consider the application void and refund the application fee to the original applicant. If the
16 entity receiving the application continues to pursue the reservation of water as requested in
17 the application, the Department of Natural Resources shall consider the application, and, if a
18 certificate of reservation is issued, the certificate will carry the priority date of the original
19 application. [The Department of Natural Resources may not bar an entity to which the
20 department transfers an application under this section from pursuing the reservation of water
21 that is described in the application.]

U.C.

28-GH1524A.1
Bullock
1/31/13

AMENDMENT

#1 as amended

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE HAWKER

1 Page 7, line 28:

2 Delete "The"

3 Insert "Unless the remainder of the purchase price is paid in full at the time of the

4 sale. the [THE]"

5

6 Page 8, line 4:

7 Delete "contracts"

8 Insert "a contract that provides for installment payments [CONTRACTS]"

9

10 Page 8, line 5:

11 Delete "for each sale"

12 Insert "[FOR EACH SALE]"

13

14 Page 8, line 7:

15 Delete "contracts"

16 Insert "a contract [CONTRACTS]"

Tarr

28-GH1524\A.3
Bullock
2/7/13

AMENDMENT

#2

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TARR

- 1 Page 21, lines 14 - 23:
- 2 Delete all material.
- 3
- 4 Renumber the following bill sections accordingly.
- 5
- 6 Page 22, lines 11 - 19:
- 7 Delete all material.
- 8
- 9 Renumber the following bill sections accordingly.
- 10
- 11 Page 23, line 2:
- 12 Delete "Section 45"
- 13 Insert "Section 43"
- 14
- 15 Page 23, line 3:
- 16 Delete "sec. 47"
- 17 Insert "sec. 45"

fauls

AMENDMENT

#3

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TARR

1 Page 22, lines 13 - 14:

2 Delete "The Department of Natural Resources shall return any applications and fees
3 for applications"

4 Insert "Notwithstanding the amendment to AS 46.15.145(a) by sec. 40 of this Act, an
5 application"

6

7 Page 22, line 15:

8 Delete "to persons"

9 Insert "by a person"

10

11 Page 22, lines 16 - 19:

12 Delete ". The commissioner of the Department of Natural Resources may refer
13 applications that are no longer authorized to other state agencies for an independent
14 evaluation and consideration of submission of a similar application to request a reservation to
15 that agency"

16 Insert "shall be considered and acted on by the Department of Natural Resources
17 under AS 46.15.145 until withdrawn by the applicant or a final determination is made"

Zails

28-GH1524A.2
Bullock
2/7/13

AMENDMENT

#4

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

- 1 Page 21, line 15:
- 2 Delete "or"
- 3
- 4 Page 21, line 16:
- 5 Delete "[OR A PERSON]"
- 6 Insert ", or a person"
- 7
- 8 Page 21, line 19:
- 9 Delete "or"
- 10 Insert ", [OR]"
- 11
- 12 Page 21, line 19, following "times,":
- 13 Insert "or indefinitely."
- 14
- 15 Page 22, lines 11 - 19:
- 16 Delete all material.
- 17
- 18 Renumber the following bill sections accordingly.
- 19
- 20 Page 23, line 2:
- 21 Delete "Section 45"
- 22 Insert "Section 44"
- 23

- 1 Page 23, line 3:
- 2 Delete "sec. 47"
- 3 Insert "sec. 46"

Fails

28-GH1524A.5
Bullock
2/7/13

AMENDMENT

#5

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TARR

- 1 Page 6, line 24:
- 2 Delete "**substantially and**"
- 3
- 4 Page 9, line 31:
- 5 Delete "**A substantially and**"
- 6 Insert "**An**"
- 7
- 8 Page 11, line 5:
- 9 Delete "**substantially and**"
- 10
- 11 Page 11, line 25:
- 12 Delete "**A substantially and**"
- 13 Insert "**An**"
- 14
- 15 Page 18, line 6:
- 16 Delete "**, or substantially and**"
- 17 Insert "**or is**"
- 18
- 19 Page 18, line 15:
- 20 Delete "**substantially and**"
- 21
- 22 Page 19, line 3:
- 23 Delete "substantially and"

1 Page 19, line 5:

2 Delete "substantial and"

3

4 Page 19, line 7:

5 Delete "substantial and"

Zails

28-GH1524A.6
Bullock
2/7/13

AMENDMENT

#6

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

- 1 Page 9, lines 7 - 19:
- 2 Delete all material.
- 3
- 4 Renumber the following bill sections accordingly.
- 5
- 6 Page 22, line 16:
- 7 Delete "sec. 40"
- 8 Insert "sec. 39"
- 9
- 10 Page 23, line 2:
- 11 Delete "Section 45"
- 12 Insert "Section 44"
- 13
- 14 Page 23, line 3:
- 15 Delete "sec. 47"
- 16 Insert "sec. 46"

Tarr

28-GH1524\A.7
Bullock
2/7/13

AMENDMENT

7

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TARR

1 Page 11, lines 9 - 11:

2 Delete "[THE DECISION OF THE COMMISSIONER UNDER THIS SUBSECTION
3 MAY BE APPEALED TO THE SUPERIOR COURT.]"

4 Insert "The decision of the commissioner under this subsection may be appealed to the
5 superior court."

Seaton

28-GH1524\A.8
Bullock
2/7/13

AMENDMENT

8

OFFERED IN THE HOUSE

TO: HB 77

BY REPRESENTATIVE SEATON

- 1 Page 1, line 11:
- 2 Delete "and irreparable"

W. H. Bullock

28-GH1524\A.9
Bullock
2/7/13

AMENDMENT

9

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE SEATON

- 1 Page 6, line 24:
 - 2 Delete "substantially and"
 - 3
- 4 Page 9, line 31:
 - 5 Delete "A substantially and"
 - 6 Insert "An"
 - 7
- 8 Page 11, line 5:
 - 9 Delete "substantially and"
 - 10
- 11 Page 11, line 25:
 - 12 Delete "A substantially and"
 - 13 Insert "An"
 - 14
- 15 Page 18, line 6:
 - 16 Delete ", or substantially and"
 - 17 Insert "or is"
 - 18
- 19 Page 18, line 15:
 - 20 Delete "substantially and"
 - 21
- 22 Page 19, line 3:
 - 23 Delete "substantially and"

not offered

- 1 Page 19, line 5:
- 2 Delete "substantial and"
- 3
- 4 Page 19, line 7:
- 5 Delete "substantial and"

Will be replaced with new #10 - A-14

28-GH1524\A.10
Bullock
2/7/13

AMENDMENT

#10

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 77

1 Page 22, lines 13 - 19:

2 Delete all material and insert:

3 "TRANSITION: TRANSFER OF CERTAIN PENDING APPLICATIONS FOR
4 RESERVED WATER. At the request of an applicant whose application is pending on the
5 effective date of this Act and who is no longer authorized to reserve water under
6 AS 46.15.145(a), as amended by sec. 40 of this Act, the Department of Natural Resources
7 shall transfer the pending application to an entity authorized to reserve water under the
8 amendment to AS 46.15.145(a) in sec. 40 of this Act. If the entity receiving the application
9 continues to pursue the reservation of water as requested in the application, the Department of
10 Natural Resources shall consider the application in the same order as if the amendment to
11 AS 46.15.145(a) by sec. 40 of this Act had not taken effect. The Department of Natural
12 Resources may not bar an entity to which the department transfers an application under this
13 section from pursuing the reservation of water that is described in the application."

replaces
Amend #10
A-10

Passes
as amended
u.c.

28-GH1524\A.16
Bullock
2/7/13

AMENDMENT

new # 10

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE SEATON

1 Page 22, lines 13 - 19:

2 Delete all material and insert:

3 "TRANSITION: TRANSFER OF CERTAIN PENDING APPLICATIONS FOR
 4 RESERVED WATER. At the request of an applicant whose application is pending on the
 5 effective date of this Act and who is no longer authorized to reserve water under
 6 AS 46.15.145(a), as amended by sec. 40 of this Act, the Department of Natural Resources
 7 shall transfer the pending application to an entity identified by the applicant that is authorized
 8 to reserve water under AS 46.15.145(a), as amended by sec. 40 of this Act. The entity
 9 receiving the application shall notify the Department of Natural Resources within two years
 10 after receiving the application as to whether the entity intends to pursue the reservation of
 11 water as requested in the application. If, within two years, the Department of Natural
 12 Resources does not receive notice that the entity intends to pursue the same or a smaller
 13 reservation or if the entity notifies the Department of Natural Resources that the entity will
 14 not pursue the reservation in the application, the Department of Natural Resources shall
 15 consider the application void and refund the application fee to the original applicant. If the
 16 entity receiving the application continues to pursue the reservation of water as requested in
 17 the application, the Department of Natural Resources shall consider the application, and, if a
 18 certificate of reservation is issued, the certificate will carry the priority date of the original
 19 application. [The Department of Natural Resources may not bar an entity to which the
 20 department transfers an application under this section from pursuing the reservation of water
 21 that is described in the application.]

Concept
Amend #1
to new
Amend #10

-1- Passes
u.c.

*Withdrawal
after discussion*

28-GH1524\A.11
Bullock
2/7/13

AMENDMENT

11

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

1 Page 1, line 8:

2 Delete "a new subsection"

3 Insert "new subsections"

4

5 Page 1, following line 13:

6 Insert a new subsection to read:

7 "(d) The commissioner may reject an application for a permit for a project the
8 commissioner determines is not technically feasible, or is not economically feasible."

Fails

28-GH1524A.12
Bullock
2/7/13

AMENDMENT

#12

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

- 1 Page 1, line 11:
- 2 Delete "and"
- 3 Insert "or"

Tails

28-GH1524\A.13
Bullock
2/7/13

AMENDMENT

13

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

1 Page 1, line 6, following "Act;":

2 Insert "requiring the commissioner of fish and game to apply for the reservation
3 of sufficient water to maintain a specified instream flow or level of water in certain
4 rivers, lakes, and streams;"

5

6 Page 1, following line 7:

7 Insert a new bill section to read:

8 **** Section 1.** AS 16.05.871 is amended by adding a new subsection to read:

9 (e) The commissioner shall apply for the reservation of sufficient water under
10 AS 46.15.145 to maintain a specified instream flow or level of water in the rivers,
11 lakes, and streams that are specified by the commissioner under (a) of this section."

12

13 Page 1, line 8:

14 Delete "Section 1"

15 Insert "Sec. 2"

16

17 Renumber the following bill sections accordingly.

18

19 Page 22, line 16:

20 Delete "sec. 40"

21 Insert "sec. 41"

22

23 Page 23, line 2:

1 Delete "Section 45"

2 Insert "Section 46"

3

4 Page 23, line 3:

5 Delete "sec. 47"

6 Insert "sec. 48"

Fails

28-GH1524A.14
Bullock
2/7/13

AMENDMENT

#14

OFFERED IN THE HOUSE
TO: HB 77

BY REPRESENTATIVE TUCK

1 Page 21, line 15:

2 Delete "or"

3

4 Page 21, line 16, following "States":

5 Insert ", or a Native entity in the state that is on the list of Indian entities that are
6 recognized and eligible to receive services from the United States Bureau of Indian
7 Affairs, Department of the Interior, published in 67 Federal Register 46328-01 on
8 July 12, 2002"



THE STATE
of **ALASKA**

GOVERNOR SEAN PARNELL

Department of Natural Resources

Office of the Commissioner

550 West 7th Avenue, Suite 1400
Anchorage, Alaska, 99501-3650
Phone: 907.269.8431
Fax: 907.269.8918

January 22, 2013

The Honorable Eric Feige, Co-Chair
The Honorable Dan Saddler, Co-Chair
House Resources Committee
State Capitol Room 124
Juneau, AK 99801

Dear Representative Feige and Representative Saddler:

The Department of Natural Resources (DNR) respectfully requests a hearing in the House Resources Committee on HB 77, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

The purpose of this legislation is to make minor, clarifying statutory changes that will help the Division of Mining, Land and Water (DMLW) do its business more efficiently and should enable the public to be better served by making the permit process more timely and certain.

HB 77 also authorizes the Commissioner of the Department of Natural Resources to allow an activity on State land through the issuance of a general permit. This bill also reforms and streamlines procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other authorizations issued by the DNR, particularly concerning land and water. Another more notable change would greatly simplify the state's land exchange process.

A copy of Governor Parnell's transmittal letter, the bill, a briefing paper, sectional analysis, and fiscal notes accompany this request.

Your favorable consideration of this request is appreciated. If you need any additional information, please contact Esther Tempel, Legislative Liaison for the Department of Natural Resources at 907-465-4730 or Wyn Menefee, Chief Operations Officer for the Division of Mining, Land and Water at 907-269-8501.

Sincerely,

Handwritten signature of Daniel S. Sullivan in cursive.

Daniel S. Sullivan
Commissioner

Cc: Heather Brakes, Legislative Director, Office of the Governor

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



Governor Sean Parnell
STATE OF ALASKA

550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

January 17, 2013

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Alaskans deserve more timely, consistent permitting decisions, and the bill I transmit today is designed to better accomplish those ends. Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of State land, resources, property, or interests; relating to authorization for the use of State land by general permit; relating to exchange of State land; relating to procedures for certain administrative appeals and requests for reconsideration to the Commissioner of Department of Natural Resources; and relating to the Alaska Water Use Act.

The permitting functions of State government necessarily balance protecting the environment with utilization to provide the economic means for Alaskans to sustain themselves. This legislation encourages responsible development of our State land and water resources. An efficient permitting process with clear rules contributes to Alaskan economic growth and creates more Alaskan business opportunities.

The bill reforms and streamlines procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other authorizations issued by the Department of Natural Resources (DNR), particularly concerning land and water. Below is a list of key provisions of the bill.

Except for the surface coal program, in order to retain primacy, the bill explicitly authorizes the Commissioner of the Department of Natural Resources to allow an activity on State land through the issuance of a general permit if the commissioner finds that the activity is unlikely to cause significant and irreparable harm to State land or resources. Providing explicit authority for the issuance of a general permit streamlines the permitting process for activities on State land by clearly making it unnecessary for each individual to receive a separate permit for the allowed activity.

The bill reforms the current land exchange statutes to simplify the procedure for DNR to authorize land exchanges.

The Honorable Mike Chenault
January 17, 2013
Page 2

It modifies the procedures for appeals from DNR decisions, clarifying who has standing to appeal and providing for a more streamlined appeals process. The bill would modify the Alaska Water Use Act to improve administration of the act.

In addition to these changes, the bill modifies and clarifies public notice and comment procedures for certain best interest finding decisions and small changes that otherwise streamline existing procedures of DNR.

The bill is consistent with the State's ongoing efforts to streamline permitting requirements for the public to use and enjoy Alaska's land and resources.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell". The signature is written in a cursive style with a large, sweeping initial "S".

Sean Parnell
Governor

Enclosure

HB 77: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

BRIEFING PAPER

FOR THE HOUSE RESOURCES COMMITTEE • JANUARY 30, 2013

In 2010, the Governor of Alaska and the Department of Natural Resources (DNR) embarked on an initiative to improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications. The Division of Mining, Land and Water (DMLW) in DNR has identified additional statutory changes that would help streamline permitting requirements for the public to use and enjoy Alaska's land and resources.

The bill would accomplish the following primary objectives:

- 1) Gives the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant or irreparable harm to state land or resources. (Section 1)
 - Standardizes the permitting of certain types of activities on state land so that the agency may issue individual permits for that activity without being required to adjudicate each permit separately.
 - Although there is arguably the authority in statute to do general permits, it is not explicitly called out.
 - As part of the Governor's Permitting Efficiency Initiative, the department will be doing general permits for certain activities that can have standardized authorizations.
- 2) Give the Division more flexibility in its authority to exchange land or interests in land when it is in the best interest of the State. (Sections 22, 23, 24, 25, 27 and 43)
 - Enables DNR to resolve land management issues with other entities, such as a government agency, a native corporation or other organization, on a timelier basis.
 - Currently, the process for a land exchange takes years to occur and is rarely successful due to the complexity of the current process, the long lead times to complete some of the current statutory requirements, and unique timing requirements involving public noticing, survey, and appraisal. Continuation of the current approach will result in unresolved land ownership patterns and the inability to make state land patterns more efficient.

- Existing statutes (AS 29.65.090) include a land exchange provision between DNR and boroughs and municipalities, which takes only months and have always been successful. This change in statute is patterned after this approach.
- 3) Amend statutes to allow all land and property sales to be purchased by contract instead of payment in full up-front. (Sections 7, 8 and 9)
- Currently, DMLW issues contracts for any customer requesting financing for any purchase of state land; however, this practice could be subject to a legal challenge because the law only mentions sales at auction. If successful, a challenge would force DMLW to require all land purchases, except for those by auction, to be paid in full at the time of purchase, which would significantly lower land sales as most people would be unable to fully finance the cost up-front. An estimated one-third of all land sold is by auction. This puts two-thirds of the state's sales at risk if the state cannot finance the purchase. The monetary loss is estimated at over \$2 million a year.
 - This revision clarifies DMLW's ability to issue installment contracts to a majority of land sales sold through preference right cases; Public and Charitable cases; Initial Over-the-Counter Sales; Over-the Counter sales; and Remote Recreation Cabin Sites.
- 4) Allow the director of the Division of Mining, Land and Water to extend, one-time, for a period of up to two years in duration, an existing land or tidelands lease if it is determined to be in the best interest of the state. (Sections 10 and 16)
- Allows leases to remain active for two years while DMLW adjudicates a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).
 - Preserves the lessee's rights from being extinguished while the state is actively working to issue a new lease or move to a purchase contract.
 - This statute change covers both regular leasing (e.g. shoreland, tideland, or submerged land) and aquatic farm and hatchery site leases.
- 5) Allow the director of the Division of Mining, Land and Water to renew, one-time, for a period of up to ten years in duration, an existing aquatic farm lease if it is determined to be in the best interest of the state. (Sections 15 and 16)
- Allows leases to be renewed for up to another ten years if the lease operations remain the same and the lessee is in good standing with the state.
 - Preserves the lessee's rights from being extinguished at the end of the lease and provides the department with the flexibility to maintain a productive aquatic farm in place rather than having to offer a new lease through a competitive process.

- 6) Clarify that the commissioner may issue one or more new temporary water use permits for the same project. (Section 42)
- Under current statutes, a Temporary Water Use Authorization (TWUP) permit may be authorized “...for a period of time not to exceed five consecutive years...”
 - The proposed change would clarify that successive Temporary Water Use Authorizations may be applied for, adjudicated and issued for the same project beyond the initial five year period of the project.
 - TWUPs are not permanent water rights. The division may change or revoke TWUP as necessary to protect water right holders or the public interest, and TWUPs are mainly used by exploration projects and construction projects that are not conducive to permanent water rights because the water use is of a temporary nature and because water sources, water uses, water use quantities and water use locations frequently change.
- 7) Amend water reservation statutes to limit the application for reservations of water related to maintaining instream flow to federal, state public agencies or political subdivisions of the state and reduces the mandate to re-evaluate water reservations (Section 40 and 41)
- This revision would prevent non-agency entities from being able to apply for the reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water removals
 - A “person” was added to the statute to allow miners to apply for and receive a water reservation for sanitary and water quality purposes; usually associated with mixing zones. However, no applications for these reservations have ever been filed. Mining interests can still receive TWUPs or water rights for sanitary and water quality purposes from the department;
 - No other state allows private persons to reserve and hold reservations to public water;
 - The removal of the word “person” does not preclude an organization or individual from working with a municipal government, state or federal agency, so that the agency can apply for a reservation. In this manner, the appropriate policy level review and criteria for each agency or governmental entity are used. In addition, these agencies will be able to identify the funding and technical expertise needed to perfect these applications;
 - There are 438 applications pending for instream water reservations. Out of those, 37 are applications that have been applied for by a person (non-agency). Those applications would be closed, but Department of Fish and Game would have the capability of submitting applications for the same requested reservations if warranted.
 - Of the (61) issued certificates for Water Reservations, all are issued to government entities (DNR, ADF&G, and BLM). No certificates for Water Reservations have ever been issued to “persons” in the state of Alaska.

- The commissioner is currently required to review all reservations of water every ten years to determine whether the statutory purpose for which the reservation was issued still apply to the reservations. Due to the number of existing and future reservations, and the limited resources available to the department, this is beyond the capacity of the department.
- 8) Allow people to carry small quantities of water from one hydrologic unit to another without violating the law. (Section 34)
- Currently there is no de minimis amount of water that is exempt from the provisions of AS 46.15.035 and thus any person that transports water out of a hydrologic unit without returning the water back to that same hydrologic unit would be in violation of statute.
 - Amends the statute to prevent a technical violation of the statute governing water removal from a hydrologic unit for even small amounts of water while still maintaining a requirement for an application for water rights or temporary water use for a significant amount of water. The phrase “significant amount of water” is already defined in Alaska Administrative Code section 11 AAC 93.035.
- 9) Amends various statutes related to appeals, requests for reconsideration and best interest findings to clarify administrative review process and rights to allow only a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of a decision, and establishes a requirement that an appellant must demonstrate their standing to appeal or request reconsideration. (Sections 4, 5, 11, 13, 14, 29, 30, 31, 32, 33, 38 and 39)
- Aims to allow only appellants who have a vested interest or who will be harmed by a decision to appeal and prevent the public from using appeals as a method to block permitting of projects on what is later found to be groundless claims or casual objection.
 - Allows the department to require a person’s participation in the public review process in order to be eligible to appeal or request reconsideration.
 - Amends the statute so that failure of the commissioner to act on the request for reconsideration for a decision not made under AS 38.05.035(e) within 30 days is a denial of the request and would stand as a final administrative decision for purpose of appeal to the superior court.
 - Clarifies that review procedures under the coal regulatory program (Alaska Surface Mining Control and Reclamation Act – ASMACRA) are not subject to AS 44.37.011.
- 10) This bill clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945 not just mineral closing orders. (Section 19)
- Amends the statute to reflect the need for the public to be aware of actions that limit the use of the mineral estate on state lands. This is inclusive of both closing and opening of areas and limitations placed through leasehold location orders.

11) This bill revises statutes to eliminate public notice for alterations of platted boundaries if owners approve and no public easements or rights-of-way are affected. (Section 28)

- For example, if a person owns two lots and wishes to remove the boundary line or change the configuration of the two lots, the re-platting process with public notice is required, which adds months to the subdivision process without any added benefit or effect on the public.
- This will save at least 30 days of review and speed up adjudication of plat reviews in the unorganized borough.

12) Clarify the definition of “public auction” to include public oral outcry auction and public on-line auctions. (Section 21)

- Addition of this definition of “public auction” in statute would verify that outcry auctions and online competitive auctions are “public auctions” under the state’s land sale statutes;
- Allow DMLW to use a web auction process that would accelerate and simplify the process for over the counter land sales;
- DMLW anticipates creating an “eBay-style” process for selling land, making it easier for the public to bid on land thus enhancing land sales and creating more income for the Land Disposal Income Fund (LDIF).

13) Amend AS 38.05.035(e) (Best Interest Finding) and AS 38.05.945(a) (Public Notice) to clarify that the director of the Division of Mining, Land and Water has the authority and discretion to issue preliminary decisions and public notice for non-oil and gas related decisions. (Sections 3, 17, 18 and 19)

- Clarifies how preliminary decisions can be used for non-oil and gas related decisions in order to have consistency between several portions of the bill.

14) Miscellaneous minor statutory revisions (Sections 2, 3, 6, 12, 20, 35, 36, and 37)

- Provides minor wording revisions to make statutes more readable and understandable.
- Provides clarification of statutory intent.

HB77 BRIEFING POINTS REGARDING WATER

FOR THE HOUSE RESOURCES COMMITTEE • JANUARY 30, 2013

Hydrologic Units

Hydrologic Units are essentially large watershed boundaries. The USGS established and depicted the 6 Hydrologic Units of Alaska on the Hydrologic Unit Map created and published in 1987.

Significant Amount of Water

11 AAC 93.035. Requirement to apply for the use of a significant amount of water

(a) A significant amount of water is that amount of water for which an application for a water right or an application for a temporary water use authorization is required, as described in (b) of this section.

(b) A person shall file an application for a water right under 11 AAC 93.040 or for a temporary water use authorization under 11 AAC 93.220 before

(1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;

(2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;

(3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or

(4) any water use that may adversely affect the water rights of other appropriators or the public interest.

(c) A person using less than the amount of water described in (b) of this section acquires no water right or priority unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 - 11 AAC 93.140. The use of water 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 or to protect the public interest.

Water Reservation

Water reservations spoken of AS 46.15.145(a) does not prevent individuals from obtaining water rights or temporary water use authorizations.

Water Reservations reserve a portion of water from a flowing water or a lake that is necessary for:

- the protection of fish and wildlife habitat, migration, and propagation;
- recreation and park purposes;
- navigation and transportation purposes; or
- sanitary and water quality purposes.

The division can still authorize water rights or temporary water use authorizations if there is a surplus quantity of water in addition to the reservation. No water rights or temporary water use authorizations can be issued for quantities greater than the cumulative use of the surplus above the water reservation. An issued water reservation would not have priority over an existing or later issued water right that has an earlier priority date than the priority date of the water reservation.

Water Right versus Temporary Water Use Authorizations

Water Rights are a right to the beneficial use of the state owned water determined by priority appropriation based on time of application. Requires site control or land ownership before issuing a water right. The right attaches to the land and transfers with the ownership of the land. In essence it is permanent except where the water right is issued for a large project that at some point in time ends and site control is no longer in place and thus does not require the water right. Water right requires the development and use of the water.

Temporary Water Use Authorization is an approval for use of water. It is not a permanent right and does not attach to the land. It is revocable or can be modified and gives no priority of appropriation. The authorization is not issued for longer than 5 years.

Have Instream Flow Reservations ever been issued to a “person”?

Of the (61) issued certificates for Instream Flow Reservations all (61) are issued to government entities (DNR, ADF&G, and BLM). No certificates for Instream Flow Reservations have ever been issued to “persons” in the state of Alaska.

HB 77: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SECTIONAL ANALYSIS

FOR THE HOUSE RESOURCES COMMITTEE • JANUARY 30, 2013

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant or irreparable harm to state land or resources except for land covered in: fish and game habitats (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), forest resources (AS 41.17) and parks and recreational facilities (AS 41.21).

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 43 of the bill. This provision is re-inserted in Section 22 with reference to decision and review procedures established in AS 38.05.035(e).

Section 3 allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000). This section also clarifies that the director of DMLW may provide a preliminary written best interest finding and public notice for non-oil and gas related land disposals.

Section 4 clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that it is considered a denial if the Commissioner does not act on a request for reconsideration 30 days after issuance of the final written finding.

Section 6 states in an administrative appeal to court, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Sections 7 through 9 amend statutes to allow all land and property sales to be purchased by contract instead of payment in full up-front. Sections 8 and 9 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 43 as the newly created Section 7 now includes all land sales.

Section 10 adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state. This section allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 11 amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination.

Section 12 amends language related to prequalification of bidders for a lease to make the time constraints more easily understood.

Section 13 amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration no later than 5 days after the decision is released.

Section 14 clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration no later than 20 days after the decision is issued.

Section 15 and 16 relate to aquatic farming leases. Section 15 removes the reference to lease renewals as Section 16 adds a new subsection related specifically to renewal of aquatic farm leases. Section 16 allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state. Section 16 also provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 17 amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.

Section 18 amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.

Section 19 amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

Section 20 clarifies the definition of "state land" includes shoreland and tideland in AS 38.05.965(21). Previous definition included "shore" and "tide."

Section 21 adds a definition to include that "public auction" includes a public oral outcry auction and a public online auction.

Sections 22 through 27 give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State. Section 22 is modeled after AS 29.65.090 which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.

Section 28 revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.

Sections 29 through 33 amend statutes to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions. Section 29 clarifies when the requirements of AS 44.37.011 is applicable. Section 32 clarifies that a person has 20 calendar days after the issuance date of a final department decision in which to file an appeal or request for reconsideration. Section 33 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 34 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Sections 35 through 37 make minor wording revisions related to water statutes that preserve the original intent of the statute.

Sections 38 and 39 continue the changes made to statutes related to appeals including a requirement that a person be “adversely affected” as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water.

Sections 40 and 41 amend water reservation statutes to limit the application for reservations of water to federal, state public agencies, or political subdivision of the state. Section 41 removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.

Section 42 amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.

Section 43 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 44 revokes pending applications for reserved water if they do not meet the new qualifications established in Section 40, and provides that the commissioner of DNR may refer pending applications no longer authorized under Section 40 to other state agencies so that the agency may consider submitting a similar application to request a reservation to that agency.

Section 45 allows the Department to adopt regulations necessary to implement changes to take effect after July 1, 2013.

Section 46 instructs the Revisor to change the heading of AS 44.37.011.

Section 47 establishes an immediate effective date for Section 45.

Section 48 establishes an effective date of July 1, 2013 for the remainder of the act.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 77
Fiscal Note Number 1
(H) Publish Date 1/18/13

Identifier (file name) LL0524-DNR-MLW-1-14-13 Dept. Affected Natural Resources
Title Relating to MLW Permitting and Lease Reform, and Appropriation Land & Water Resources
General Permitting Allocation Mining, Land and Water
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 3002

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended, or repealed? 6/30/2015 Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Brent Goodrum, Director
Division Division of Mining, Land and Water
Approved by Daniel S. Sullivan, Commissioner
Department of Natural Resources

Phone 269-8400
Date/Time 1/14/13 5:00 PM
Date 1/14/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 77

Analysis

This bill proposes to make changes to statutes that are intended to continue progress made to the State of Alaska's permitting processes to ensure projects are permitted in a more timely, predictable and efficient manner while safeguarding the environment.

These proposed changes are not anticipated to have a fiscal impact on the department or the State. The bill will either create efficiencies or prevent inefficiencies, which will allow the Division of Mining, Land, and Water to re-allocate staff time to other permits and authorizations thus helping to reduce the backlog.

Regulations will be amended to help implement certain new or substantially modified sections of the bill. The Department of Natural Resources will also amend regulations in order to conform to language changes. The Department would first focus on the regulations needed to implement the new or substantially modified sections. The department anticipates that it would take two years until all regulatory changes that might result from passage of this bill are adopted.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 77
Fiscal Note Number 2
(H) Publish Date 1/18/13

Identifier (file name) LL0524-DFG-CO-01-14-13 Dept. Affected ADFG
Title Relating to MLW permitting and lease reform, and Appropriation Administration and Support
general permitting Allocation Commissioner's Office
Sponsor Governor
Requester Rules by Request of the Governor OMB Component Number 2175

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Ben Mulligan, Legislative Liaison Phone 907-267-2311
Division Commissioner's Office Date/Time 01/07/13 10:30AM
Approved by Cora Campbell, Commissioner Date 1/7/2013
Department of Fish & Game

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 77

Analysis

After consulting with the Sport Fish Division and Habitat Division the proposed legislation will have no fiscal impact upon ADF&G.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Division of Mining, Land and Water

550 W. 7th, Suite 1260
Anchorage, Alaska 99501
Main: 907-269-8400

February 7, 2013

The Honorable Eric Feige, Co-Chair
The Honorable Dan Saddler, Co-Chair
House Resources Committee
State Capitol
Juneau, AK 99801

Dear Representatives Feige and Saddler and members of the House Resources Committee:

During the January 30 and February 1 House Resources hearings on HB 77, the following questions were raised. Please find below the responses from the Division of Mining, Land and Water (DMLW) along with the original questions were asked in bold. All references to the bill are based upon version 28-GH1524A.

Q: With regard to Section 7, do the proposed changes affect the ability of DNR to accept cash payments in full?

When selling land, every purchaser must sign a declaration of intent to purchase at point of auction or lottery. This declaration states that they will follow through with a few steps so DNR can complete the sale; however, this is not an enforceable contract. If a person pays off their parcel, they technically do not enter into a contract. Therefore, this statute does not prevent someone from paying in full. It also does not prevent a partial payment because the statute refers to the "remainder of the purchase price". The statute obviously envisions that one can pay a portion up front. What becomes less clear in the current statutes is that people can at any time during the life of the contract pay off the remainder. The language in existing contracts state that there is no penalty for early or extra payments or full pay off at any time.

Q: What is a preference right?

A preference right regarding leasing in AS 38.05.102 is a non-competitive opportunity to purchase or issue a long-term lease for land if the state determines it is in its best interest. There are other non-competitive preference rights for other purposes under AS 38.05.35. All preference rights come with qualifications that must be met in order to be granted the preference.

Q: Is a water right revocable after certification because the entity is not using it?

Normally a water right cannot be revoked once DMLW has certificated the water right. In certain circumstances, DMLW can revoke a water right in certain cases where the entity holding the

water right no longer has site control. For example, there may be a case where someone holds a long term lease and has obtained a water right. When the lease expires and no other authorization (such as a lease renewal or purchase) continues for the site, the water right can be revoked. Also, under AS 46.15.140, if an appropriator does not use all or part of the appropriated water for a period of five years, the department may declare a partial or total abandonment of the water right and revoke or amend the certificate of appropriation. For reservations of water, under AS 46.15.145(e) a certificate of reservation may be revoked or modified if the purpose for which the certificate was issued or the findings made no longer apply.

Q: Does a water reservation have a higher priority right than a water right, especially in the situation where the water levels drop due to drought or other factors?

To clarify, a water reservation is a type of water right that protects specific instream water uses that are outlined in AS 46.16.145(a) [Section 40 of the bill]. The priority of either an instream or out-of-stream water right is determined by the date the application was filed. Once either type of water right is perfected, either by completing the appropriation for an out-of-stream use or by receiving a certificate of reservation for the instream use, the priority date relates back to the date the application was filed. If an instream reservation application is filed prior to an out-of-stream application and then perfected, it would have priority over the later filed application. Conversely, if the out-of-stream application is filed first and then perfected, it will have priority over the instream reservation.

Scenario 1 - A water reservation is established, and subsequently other water rights are granted for the remaining water.

If there is a drop in water levels, the instream reservation would have priority and the other water right holder would have to reduce water use if there was insufficient water for both.

Scenario 2 - A water right exists and a water reservation is later requested for more than the remaining water in the water body.

The instream reservation would only be issued for the remaining water available beyond that water already granted to the original water right, even if the instream reservation application supports the need to reserve more water than that granted initially. In a shortage, the initial water right would have priority because it was filed first and subsequently perfected.

Q: Has a TWUA (Temporary Water Use Authorization) been trumped by a later water right, i.e., we had to cancel the TWUA because a water right was filed that pre-empted the TWUA use?

DMLW can't think of a specific example where a temporary water use authorization has been revoked due to a later-issued permit to appropriate water or a water right (certificate of appropriation or certificate of reservation). However, DMLW has denied a TWUA for issuance for a source because the source was fully allocated by a Water Right Certificate issued on the North Slope.

Because a temporary water use authorization does not have a priority date, a temporary water use authorization will be trumped by a later issued permit to appropriate water or water right (certificate of appropriation or certificate of reservation). Furthermore, the mere filing of a water

right application does not establish a water right and it would only be necessary to revoke the previously issued temporary water use authorization if there was insufficient water for both the newly issued permit or certificate for the water right and the existing temporary water use authorization.

Q: Can DMLW later reduce a water right if conditions change?

DMLW generally can't reduce a certificate of appropriation once it has been issued, but there is a provision that a person cannot use more than the available water. A reservation of water may be revoked or modified if the purpose of the reservation or the findings made no longer applies. See AS 46.15.145(f). An appropriation may also be declared wholly or partially abandoned for non-use under AS 46.15.140, if it is shown that the appropriator intended to abandon the right. An exception to this would be if the certificate of appropriation holder voluntarily relinquishes a portion of the certificated water right. This would be known as a partial relinquishment. Also see AS 46.15.040(d), which basically states that issuance of a permit to appropriate water or a certificate of appropriation does not represent a guarantee by the state that water will be available for appropriation at a certain volume, quality, artesian pressure, or cost.

Q: Isn't there some sort of authority for the state to require the placement of easements along water bodies while DNR is approving subdivision plats under the Unorganized Borough platting authority or some other law?

AS 38.05.128 provides for "to and along" easements along water bodies; however, this provision only applies in areas where the state owns the land. We have not found any other provision that addresses the statement that there is some sort of provision for the state to place easements along waters when we take any action on privately owned lands.

Q: May individuals petition other agencies to create an instream flow reservation, and does the agency have an obligation to consider such a petition?

The bill does not create the right for a person to petition an agency. The bill also does not create any affirmative duty for any agency to consider an individual petition requesting that they apply for a water reservation. However, in Section 44, the commissioner of the Department of Natural Resources may refer applications to other state agencies for an independent evaluation and consideration of submission of a similar application.

Sincerely,



Wyn Menefee

Chief Operations Officer, Division of Mining, Land and Water

Division of Mining, Land and Water Current Water Authorization Process

Temporary Water Use Authorization

- Someone applies for a Temporary Water Use Authorization for a specific significant amount of water and location of draw.
- No public notice is required.
- DMLW requests comments from DEC and ADFG as required, and frequently from other government agencies that may have jurisdictional involvement in the proposed project.
- DMLW insures that the TWUA will not impact prior appropriators.
- DMLW will place reasonable conditions or limitations to protect other water rights, fish and wildlife habitat, human health, or other public interests.
- The TWUA does not establish a right to appropriate water and the water under a TWUA remains subject to appropriation.
- TWUA issued for period of time required not to exceed 5 years. *Section 42 of SB 26/HB 77 seeks to clarify this provision to allow DMLW to issue a new TWUA for a period of 5 years for the same project.*
- DMLW may modify, suspend, or revoke a TWUA at any point.

Water Right

- Someone applies for a water right with specific quantity and location specified.
- DMLW evaluates and makes a finding on the four main criteria under AS 46.15.080 before issuing a permit to begin using the water.
 1. Rights of a prior appropriator will not be unduly affected;
 2. The proposed means of diversion or construction are adequate;
 3. The proposed use of water is beneficial; and
 4. The proposed use is in the public interest (considering the following points).
 - The benefit to the applicant resulting from the appropriation
 - The effect of the economic activity resulting from the appropriation
 - The effect on fish and game resources and on public recreational opportunities
 - The effect on public health
 - The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation
 - Harm to other persons resulting from the proposed appropriation
 - The intent and ability of the applicant to complete the appropriation
 - The effect on access to navigable or public water
- The permit holder then has from two years to ten years (not including extensions) to complete the construction of the works and commencement of use of water in accordance with the permit and notify the department of the use.

- Once beneficial use has commenced, the DMLW then issues a water right certificate that perfects the water right. This can include conditions prescribed by regulation or to protect prior rights of other persons and the public interest.
- Public notice of this process is governed by AS 46.15.133.

Water Reservation

- An application is received under AS 46.15.145 for the reservation of water to maintain a specified instream flow or level of water at a specified point or specified part of a stream or body of water throughout the year or for a specific time of year.
- Proceed with public notice in accordance with AS 46.15.133
- Decide to issue reservation if
 1. The rights of prior appropriators will not be affected
 2. The applicant has demonstrated the need exists for the reservation
 3. There is unappropriated water in the body of water sufficient for the reservation
 4. The proposed reservation is in the public interest
- There usually is at least three to five years of water data collection required to evaluate the application
- There is a need to demonstrate the existence of the resource that the reservation is seeking to protect and the amount of water required to support that resource.
- DMLW is required to review each reservation once each 10 years to determine whether the purpose described in the reservation still apply to the reservation. The reservation can be modified or revoked if part or all of the purpose no longer apply to the reservation. *Section 41 of SB26/HB77 and removes that the commissioner shall review water reservations every 10 years and instead that he may review the reservation at any point.*

Non-Governmental Water Reservation Applications by Year Application Received

Year	Applicant	Potential Project Impacted	Requested stream reach or lake	
1	1992	ARCTIC UNIT, AK CHPT, AMERICAN FISH ERIES SOCIETY	none known	Tanana River
2	1993	TROUT UNLIMITED,	none known	Duck Creek near Juneau
3	2000	THE NATURE CONSERVANCY,	KAS and/or Kaskanak claim blocks - located southwest and west, respectively, of Pebble project	Lower Talarik Creek
4	2003	EKLUTNA VILLAGE OF,	none known	Thunderbird Creek
5	2003	EKLUTNA VILLAGE OF,	AWWU public water supply, & the hydroelectric plant. Depends on relative priority dates.	Eklutna River
6	2003	EKLUTNA VILLAGE OF,	AWWU public water supply, & the hydroelectric plant. Depends on relative priority dates.	Eklutna River
7	2007	CHEESH-NA TRIBAL COUNCIL,	none known	Sinona Creek
8	2007	CURYONG TRIBAL COUNCIL,	Pebble	Koktuli River, upper
9	2007	CURYONG TRIBAL COUNCIL,	Pebble	Koktuli River
10	2008	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 6
11	2008	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 5
12	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, reach 2
13	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, reach 1
14	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, Reach 3
15	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 1
16	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 2
17	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 3
18	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 4
19	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 7
20	2009	TROUT UNLIMITED,	Chakachamna Lake Hydroelectric project	Chakachatna River
21	2009	CHICKALOON NATIVE VILLAGE,	Wishbone Hill?	Moose Creek
22	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 1
23	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 2
24	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 3
25	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 4
26	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 5
27	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 1
28	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 2
29	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 3
30	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 4
31	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
32	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
33	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
34	2011	DIXSON, WILLIAM	Watana/Susitna Dam	Susitna River (below the proposed Watana Dam site)
35	2012	COPPER RIVER WATERSHED PROJECT,	none known	Eyak Lake (lake water level proposed reservation)

*** Note: There are approximately 438 Water Reservation applications within the state of Alaska.**

27 Pebble
304 Coal
4 Hydras

STATEWIDE PERMITTING REFORM

HB 77: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

House Resources Committee

January 30, 2013

Department of Natural Resources

- Dan Sullivan, Commissioner
- Brent Goodrum, Director, DMLW
- Wyn Menefee, Chief of Field Operations, DMLW



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform has bipartisan, national and local recognition and support

- Permitting reform is a bipartisan effort as policymakers realize the economic benefits of allowing large-scale development projects to proceed in a responsible, timely manner
- States as politically diverse as California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their permitting processes
- The Federal government also recognizes the issues and has undertaken initiatives to reduce costs, simplify the system, and eliminate redundancy and inconsistency
- Last year (February 2012), *The Economist* ran a cover story called “Over-regulated America” in which it concluded that “America needs a smarter approach to regulation” that will “mitigate a real danger: that regulation may crush the life out of America’s economy”
- In *Newsweek* (June 2011), President Bill Clinton lamented that it can take three years or more to permit major economic development projects. One of his top recommendations to put Americans back to work was to speed up the regulatory approval process and grant state waivers on environmental rules to hasten start times on construction projects



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform is a national issue affecting U.S. competitiveness

- Potential investors sometimes express reluctance to pursue projects in the U.S. and Alaska because of the ever-present risk of permitting delays and litigation
- In 2012, the investment firm Behre Dolbear Group, which undertakes an annual global survey of mineral sector investment, ranked the United States last (tied with Papua New Guinea) out of 25 countries in the category of “permitting delays”
 - “Permitting delays are the most significant risk to mining projects in the United States”
 - States are negatively impacted by federal rules that they are bound to enforce resulting in a 7- to 10-year waiting period before mine development can begin
 - Australia is one of the countries with the fewest permitting delays
- Contrast Alcan Highway construction



*“Permitting delays
are a global issue.”*

– Behre Dolbear, 2012 Ranking of
Countries for Mining Investment:
Where “Not to Invest”

IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Jobs and the Environment are Undermined by Permitting Delays and Overregulation

- While an overly burdensome regulatory system can discourage investments and job creation, it can also undermine, not enhance, environmental protection
- When companies forgo investing in places like Alaska and the U.S.—places with very high environmental standards—because of regulatory delays, it can result in passing energy and mineral investment to nations with substandard environmental regulations and little capacity or desire to protect the environment
 - Last year the Associated Press estimated that 5 to 20 million tons of oil leaked a year in Russia. At even the lower end, that would be the equivalent of a Deepwater Horizon blowout about every two months
 - Russia experienced approximately 18,000 oil pipeline ruptures in 2010 – the figure in the U.S. for the same year was 341
- The global environment would be much better off if hydrocarbons and other natural resources were produced in countries with the highest environmental standards rather than some of the lowest



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Timely, predictable, and efficient permitting is critical to other statewide strategies

Secure Alaska's Future: Oil

- I. Increase production by making Alaska more competitive
- II. Ensure the permitting process is structured and efficient
- III. Facilitate and incentivize the next phase of North Slope development
- IV. Promote Alaska's resources and positive investment climate to world markets

Secure Alaska's Future: Strategic & Critical Minerals

- I. Undertake a statewide assessment of Alaska's strategic mineral potential—millions budgeted for this project
- II. Provide support for the development of known or highly prospective strategic mineral occurrences throughout Alaska through infrastructure partnerships and incentives
- III. Improve the structure and efficiency of permitting processes in order to expedite mineral development, including strategic minerals
- IV. Deepen partnership and cooperation with the federal government, local governments, Native corporations, and other potential new entrants to encourage domestic exploration, development, and processing of REEs and other strategic minerals
- V. Attract new investment and markets for Alaska's abundant mineral resources

STATEWIDE PERMITTING REFORM

- STRATEGY -

Objective:

Improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

DNR has been working with a team from DEC, ADF&G, and LAW to develop and advance strategies that aim to:

- I. Improve agencies' internal permitting structure to create a more efficient, timely, and certain process
- II. Enhance coordination within different state departments and with different entities and stakeholders throughout the state
- III. Seek input from the public about the permitting process including input from municipalities, industry and non-governmental organizations
- IV. Improve coordination between the state and the federal government—federal permitting issues have a strong influence on state projects
- V. Anticipate and plan for permitting the next phases of resource development, e.g. the Shale Oil Task Force



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

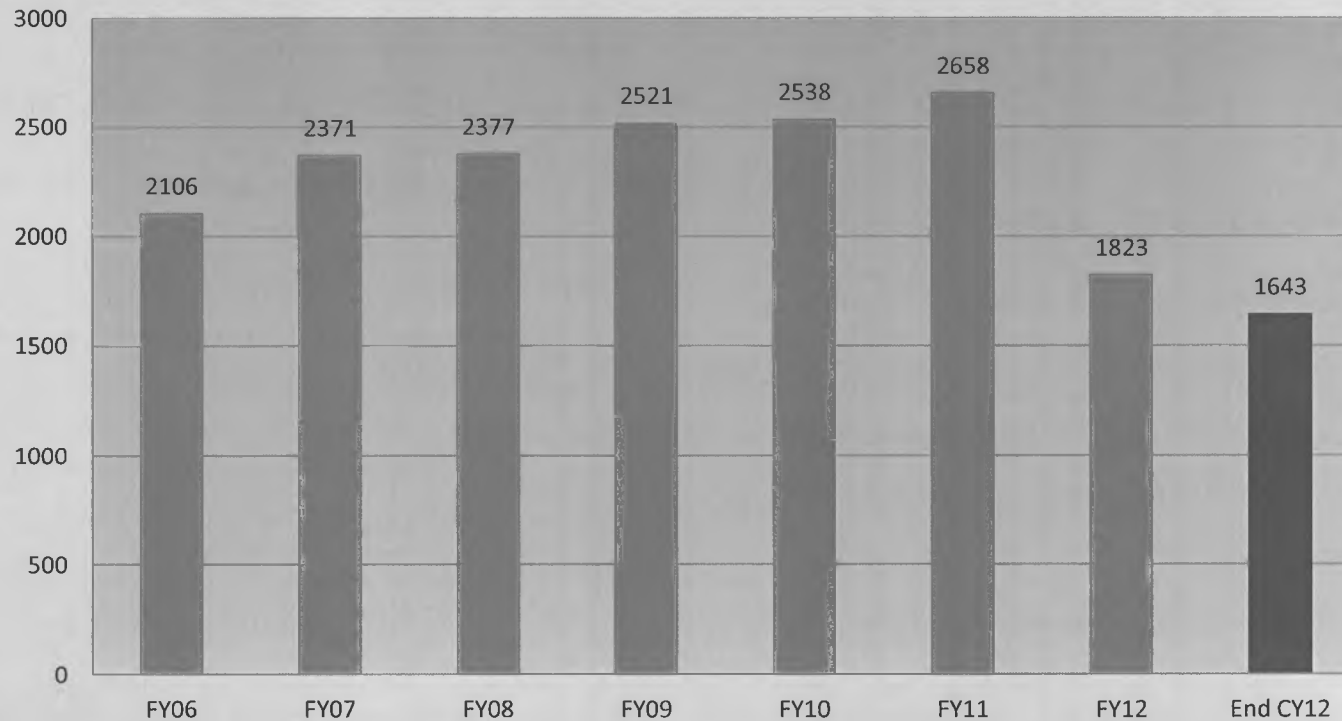
- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process
- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management) to focus on business management software and services
- In FY13, the Legislature approved the continuation of FY12 operating funds as part of the ongoing base for permitting and an additional \$950.0 to cover increased personnel costs and fill vacant positions focused on permitting
 - FY13 capital budget included \$3.3M to continue work on the Unified Permit Project, including the continuation of IT strategies and Business Process Management
- We reclassified and updated over 50 position descriptions
- Since the beginning of FY12, the backlog has been reduced by 38.2% (1,015 authorizations)
- We have conducted public meetings statewide for input on state permitting processes
- We are evaluating internal processes to identify and fix inefficiencies



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

DMLW Backlog Authorizations

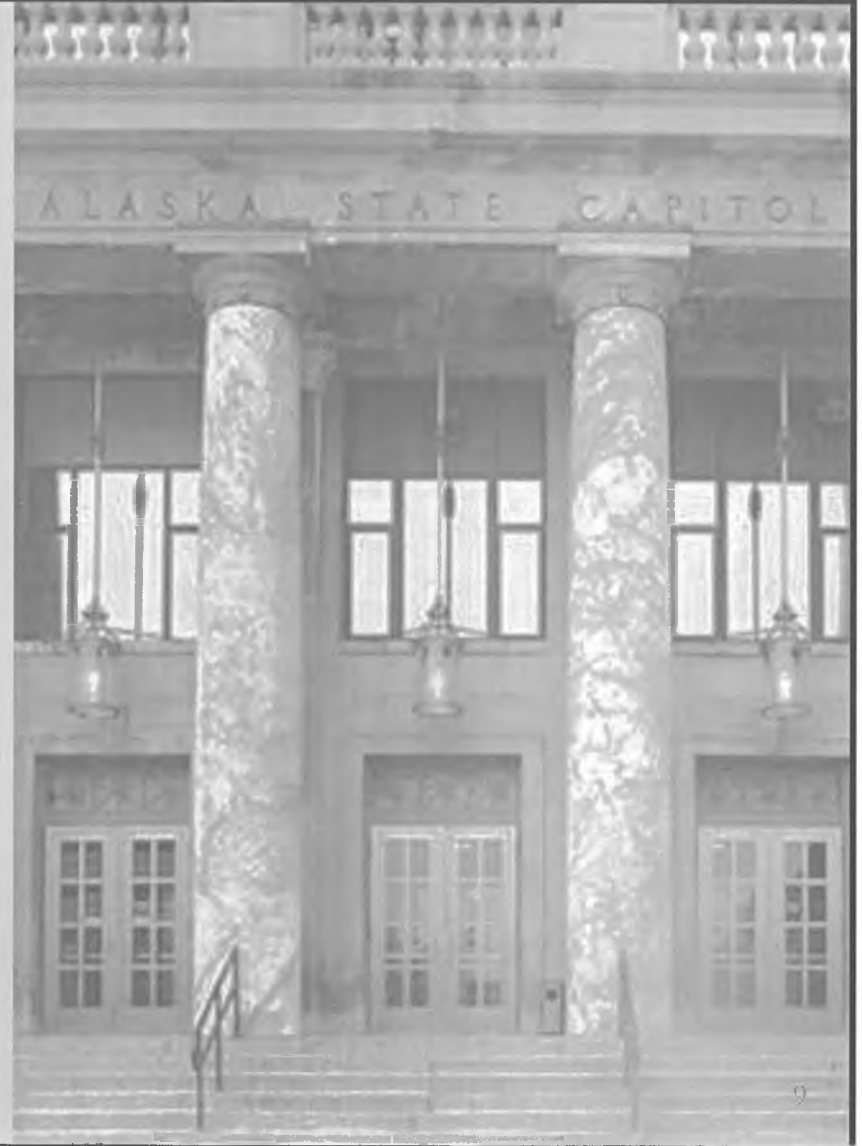


STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

2012 Statutory Changes – HB361

- The Division of Mining, Land and Water identified over 30 statutory changes that would help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges
- During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications
- The Legislature passed HB 361 and it has been signed by the Governor



STATEWIDE PERMITTING REFORM

- 2013 LEGISLATURE -

2013 Statutory Changes – HB77 & SB26

- Building on the success of 2012, the Division of Mining, Land and Water has identified additional statutory changes that would help streamline permitting requirements for the public to use and enjoy Alaska's land and resources
- Governor Parnell has introduced HB 77, which would reform and streamline procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other DNR authorizations. It would also allow DNR to establish a general permit for an activity on state land unlikely to cause irreparable harm to the State

"The permitting functions of State government necessarily balance protecting the environment with utilization to provide the economic means for Alaskans to sustain themselves. This legislation encourages responsible development of our State land and water resources. An efficient permitting process with clear rules contributes to Alaskan economic growth and creates more Alaskan business opportunities."

- Governor Parnell, HB77 Transmittal Letter



Linda Hay

From: Darrell & Cindy Birkhimer <oakfronts@yahoo.com>
Date: Wednesday, January 30, 2013 12:51 AM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson
Subject: HB77 Comments
Categories: Linda

Dear House Resources Committee:

Who was it that said "Every time a new law or regulation is passed, citizens have a little less freedom"? No truer is that than the present. Governor Parnell has introduced Bill HB 77, which cuts the citizen right to appeal a number of agency decisions on development issues. By prohibiting a comment period, this bill would restrict Alaskans' right to participate in the public process. Governor Parnell has appointed sycophants who implement his dogmas and now he is preventing citizens from expressing objections to his policies. Whether you are for or against an issue, public participation in these decisions is a right that we must preserve! Please do not allow him to silence the voice of the voters.

Thank you,
Cindy Birkhimer

Patricia Cue
11903 Town Park Circle
Eagle River, AK 99577

January 28, 2013

I am writing in opposition to Governor Parnell's bill that would limit my access to the public process. Specifically HB 77 which cuts my right to appeal governmental decisions.

The people of the State of Alaska must have the freedom to question the decisions being made by government and the tools hold government accountable for their decisions. Limiting access to this process is likened to communism! I cannot fathom why the Governor would introduce such a bill except that he and those who support it don't care about the people of the state.

Development is not bad. But it must occur in a thoughtful manner that is inclusive, NOT EXCLUSIVE! That is what HB 77 does. It excludes the public from voicing our concern about decisions that directly affect us.

I urge you to oppose HB 77.

Patricia Cue

Dear House Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following comments on HB 77 for consideration by the House Resources Committee:

- **General Permits. Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit “if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.”
 - According to DNR, decisions about what constitutes a significant and irreparable harm will be made on a case-by-case basis, creating the potential for inconsistency and uncertainty in decisions made by this commissioner and future commissioners.
 - Laws should help establish consistency and predictability in agency decisions. If general permits are to be allowed, DNR should identify in law the activities that qualify for a general permit and the process for establishing the permits.
 - DNR currently has a regulation that specifically identifies uses and activities that do not require a permit (11 AAC 96.020). It’s not unreasonable to ask that DNR provide the same level of clarity here.
- **Appeal Rights.** Currently, a person “aggrieved” by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be “substantially and adversely affected” in order to appeal a department decision.
 - Whether a person is substantially and adversely affected in a way that is sufficient to grant an appeal right will be determined on a case-by-case basis, possibly by different people – whether it’s the commissioner, a director or an appeals officer who makes the decision is not clear. This creates the potential for an inequitable or inconsistent application of the appeal right.
 - Most people are not well versed in the state’s resource laws and already struggle to make their appeals effective. Now DNR is asking that people describe how they are substantially affected without any definition of what that means, even DNR does not know what it means. This is an undue and unnecessary burden on the Alaska public.
- **Instream Flow Reservations. Page 21, Section 40.** This section removes the ability of organizations and individuals (“persons”) to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.

HB 77 – Public Testimony – Lisa Weissler
2/7/2013

- With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution's requirement that water is reserved to the people for common use (Article 8, Section 3).
- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.
- This provision has been in place since 1980. Is there really a problem that warrants making this change?
- Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. Rather than changing the law, the legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Temporary Water Uses. Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.
 - While it is possible to make adjustments whenever a new permit for the same project is issued, under the temporary use permit statute, applying conditions to the permit is discretionary on the part of the commissioner. In addition, there is no public notice requirement where the public could identify issues the department may not know about. The temporary water use statute is so minimal because the use is meant to be temporary.
 - If DNR wants to authorize a more than temporary use, a use that goes past five or ten years, but is something less than a right to appropriate water, they should develop a permit that includes public notice and sufficient criteria to protect the public interest.

I urge the committee to ensure that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

Lisa Weissler
340 Highland Drive
Juneau, AK 99801
lisaweissler@gmail.com
Business website: <http://changingtides.com>



Council of
Alaska Producers

HB77: Land Disposals/Exchanges; Water Rights
February 7, 2013

Representative Eric Feige
Representative Dan Saddler
Co-Chairs, House Resources Committee
Capitol Building
Juneau, AK 99811

Co-Chairs Feige and Saddler,

The Council of Alaska Producers (CAP) appreciates the opportunity to comment on HB77: Land Disposals/Exchanges; Water Rights. CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large producing metal mines and major metal developmental projects in the state.

Recently the State of Alaska has begun implementation of a strategy of statewide permitting reform in order to accomplish their stated objective of *"Improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely predictable and efficient manner while safeguarding the environment."*

One method of accomplishing this reform was to have the Division of Mining, Land and Water identify statutory changes that help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges in order to ensure the public can use and enjoy Alaska's lands and resources.

HB77 accomplishes this through a variety of mechanisms including allowing general permits, clarifying the appeals process, and simplifying leases and water permits. While the resource development industry is certain to be affected by this legislation, it is important to keep in mind that these provisions benefit everyone in Alaska including cabin owners, aquatic farmers, home developers and any individual who seeks to do business on state land or water.

From a CAP perspective, the State's permitting reform efforts and this legislation fits our position that permitting in Alaska must be rigorous, science based, transparent and predictable. We urge the committee members to support this bill and move it out of committee in an expeditious fashion.

Thank you for your consideration in this matter,

Michael Satre, Executive Director
Council of Alaska Producers
PO Box 33499
Juneau, Alaska 99803
907-957-2149

Linda Hay

From: Nina Faust <aknina51@gmail.com>
Sent: Wednesday, February 06, 2013 8:01 AM
To: Rep. Geran Tarr; Rep. Kurt Olson; Rep. Craig Johnson; Rep. Eric Feige; Rep. Peggy Wilson; Rep. Dan Saddler; Rep. Mike Hawker; Rep. Chris Tuck; Rep. Paul Seaton
Subject: HB 77

February 6, 2013

P.O. Box 2994
Homer, AK 99603

Dear Committee Members:

I do not support HB 77 or SB 77, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

I do not want to see the Commissioner vested with so much power that unilateral decisions on development projects and other important resource decisions will be made by the Commissioner, leaving the citizens of Alaska out of the permitting process unless he decides there might be a need for public input.

What I am seeing in the bills that Governor Parnell is putting forth is an effort to take away public participation in resource issues under the guise of streamlining permitting. However, he is going too far and is removing the checks and balances that keep government honest.

Alaskans want the State to protect salmon and clean water. This bill will allow DNR to give water rights to copious amounts of water for mega-development project without protecting our salmon. Under current law, "instream flow rights" for fisheries can be applied for by Alaskans. I doubt anyone will be looking out for the instream flow for salmon in the wake of the serious push for giant corporate development projects like mines, shale oil and gas, and other projects. I particularly worry about water rights for average citizens.

With climate change and proven increases in water temperatures, instream flow for salmon is going to become very important. Volume helps moderate temperature increases, pollution, and other problems our fisheries will face. We need to keep these instream flow rights under current law in place.

The State has claimed that we have a fair permitting system. This bill makes it too difficult for the average Alaskan to be allowed to officially comment by setting too high a standard to prove financial harm. All Alaskans should have the right to comment on any project because this is an "owner state," the resources belong to the people and we are all affected by projects that affect our resources. But now Governor Parnell wants to strip away citizen rights that allows Alaskans a way to make sure things are done right. Please do not pass these misguided bills that will make DNR oversight of our fisheries and clean water less protective.

Respectfully,

Nina Faust

Linda Hay

From: alan munro <armunro@gci.net>
Sent: Tuesday, February 05, 2013 4:55 PM
To: Rep. Eric Feige
Subject: HB77/SB26

Dear Representative Feige:

HB77 should not and cannot be passed out of your committee due to a fundamental lack of understanding of how such action might adversely affect the natural resources of Alaska.

Alan R. Munro
Juneau, Alaska
586-3694

Linda Hay

From: Sockeye Cycle Co. <sockeye@cyclealaska.com>
Sent: Tuesday, February 05, 2013 7:31 PM
To: Rep. Eric Feige
Subject: Public Testimony - HB77

Dear Representative Feige,

Please accept this as testimony for HB77. I do not support HB77. Alaska Constitution, Article 8 Section 3: Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use. Alaskans have a right to healthy salmon and an obligation to protect them. Don't strip away our rights to keep water in our streams for healthy fish. DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow application needed to keep water for fish.

I ask that you reject any legislation that strips away the rights of the majority of Alaskans to protect water quality and instream uses of water. When allocation decisions are made for streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over out-of-stream uses. One needs to only look to the lower 48 to see what has happened to the natural fish stocks when water rights are given over to industry.

Sincerely

Thom Ely
POB 1014
Haines, AK 99827

Linda Hay

From: John Hudson <jhudson@gci.net>
Sent: Tuesday, February 05, 2013 7:57 PM
To: Rep. Eric Feige
Subject: Instream Water Reservations Bill (HB77/SB26)

Dear Representative Feige,

Eliminating the rights of Alaskans to reserve water resources in our state seems like a bad idea. Given the critical role that surface water plays in our economy (sustaining fish populations for recreation and commercial fishing), Alaskans should definitely retain the right to ensure that our rivers, lakes, and streams have the water necessary to sustain fish populations and the people that depend on them.

John Hudson
Juneau

Linda Hay

From: Milli <millimom@xyz.net>
Sent: Wednesday, February 06, 2013 10:51 AM
To: Milli
Subject: HB77

Dear Representative Feige, Saddler and Members of the Resources Committee,

I appeal to you today to please seriously consider the impacts HB77 could have on individuals in Alaska. I am especially concerned that this bill could significantly reduce the opportunity for public participation in the permitting process by setting such a high burden of proof on the individual that they are financially affected by a proposed development in order to appeal a permit.

This state has always prided itself on public process, and when it was missing the public was quite unhappy. I am concerned about public process constraints in the proposed termination of existing water reservation applications. Water is our liveblood.

Please do not allow this to occur.

Thank you.

Milli Martin
PO Box 2652
Homer, AK 99603

Linda Hay

From: Nelli Williams <nelli_robin@hotmail.com>
Sent: Wednesday, January 30, 2013 12:50 PM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French
Cc: Rep. Mia Costello
Subject: oppose HB 77 and SB 26

Dear House and Senate Resources Committee Members,

Thank you for your service to our state. I am writing to urge you to oppose HB 77 and SB 26 which would limit Alaskan's ability to obtain instream flow rights. This bill would put Alaska's valuable fisheries at risk -- along with the sportsmen, commercial fishermen, tourism operators and subsistence users who's jobs and industries depend on cool clean plentiful water. I urge you to think about Alaska's long term future and oppose Governor Parnell's shortsightedness on these bills.

Thank you

Nelli Williams
7770 Jaguar
Anchorage AK 99502

Linda Hay

From: OLIVIA & ED FLANNERY <flannery@ak.net>
Sent: Wednesday, January 30, 2013 1:06 PM
To: Linda Hay
Subject: HB77

We are Alaska residence and commercial fishing holders in Bristol Bay and are adamantly opposed to house bill 77. Taking water out of the rivers for any reason is a bad idea, one just has to look at the U.S west coast and the loss of their salmon runs for an example.

Thank You

Ed and Olivia Flannery

Linda Hay

From: Grammy Beluga <grammybeluga@gmail.com>
Sent: Wednesday, January 30, 2013 11:35 AM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson
Subject: Protect our SLAMON

PLEASE

Don't strip away our rights to keep water in our salmon streams. FISH FIRST!!

Stop DNR from processing water rights for mining, oil and gas productions before the water rights of salmon in the stream

We need to think of Alaskan salmon streams as the a forever resource, clean abundant water keeps our salmon healthy.

Judy Heilman
P.O Box B.L.G.
Beluga, Ak
99695-0100

Linda Hay

From: everett thompson <salmonandsoul@gmail.com>
Sent: Wednesday, January 30, 2013 11:05 PM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French
Subject: HB 77

If you try to streamline the permitting process nothing that has been said about sustainable development is credible.

Resident and Lifelong Fisher of Bristol Bay. Everett Thompson
P.O. Box 151
Naknek, Alaska 99633
907-246-6059

"eat wild Alaska salmon"

www.naknefish.com

Linda Hay

From: Tom Greer <fishaknow@yahoo.com>
Sent: Wednesday, January 30, 2013 7:11 PM
To: Rep. Eric Feige

Please vote against this house bill, HB 77 & SB 26, that could take water away from salmon streams.

Thank you

Thomas Greer

Box 1366

Petersburg, AK 99833

Linda Hay

From: Maureen Knutsen <maureen.knutsen@gmail.com>
Sent: Thursday, January 31, 2013 8:47 AM
To: Rep. Eric Feige
Cc: Rep. Dan Saddler
Subject: HB 77 & HB 78

I am a commercial and subsistence fisher residing in Naknek.

I am writing to express my opposition to HB 77 & HB 78. Both of these bills undermine protection of our clean water and our renewable fishery resources. The bills also limit public participation in the process.

This state was founded on principles of controlling and protecting our fisheries. We need to keep those principles in mind and always keep fish first when making water allocation decisions. Alaska citizens and local residents need to be able to participate in these decisions. DNR needs to give the same priority to instream flow applications for salmon as other water use applications.

Thank you for considering my comments.

Maureen Knutsen
PO Box 134
Naknek, AK 99633
907-246-6675
maureen.knutsen@gmail.com

Linda Hay

From: Nels Anderson, Jr. <ndor@gci.net>
Sent: Thursday, January 31, 2013 3:24 PM
To: representative_eric_feige@legis.state.ak.us; representative_mike_hawker@legis.state.ak.us; representative_craig_johnson@legis.state.ak.us; representative_kurt_olson@legis.state.ak.us; representative_paul_seaton@legis.state.ak.us; representative_geran_tarr@akleg.gov; representative_chris_tuck@legis.state.ak.us; Rep. Peggy Wilson; Governor Parnell; lt.governor@alaska.gov; Senator_Cathy_Giessel@legis.state.ak.us; Senator_Peter_Micciche@legis.state.ak.us; Senator_Click_Bishop@legis.state.ak.us; Sen. Lesil McGuire; Senator_Anna_Fairclough@legis.state.ak.us; Sen. Sen. Hollis French; Sen. Lyman Hoffman; Sen. Kevin Meyer; Rep. Rep. Les Gara; _@gci.net; Rep. Beth Kerttula; Rep. Bryce Edgmon
Cc: Adelheid Ad; Greta greta; Kullah Kullah; Everette EV; Shannon Anderson; Julie Julie Kitka; RuralCap/D RuralCap/D Hardenbergh; Kathie Wasserman, Kathie; Varner Andy; Robin Samuelsen; Robert Robert C; Cur Larson; metrokin jason; Joe Joe Chythlook; Kim Williams; ANPA
Subject: Protest HB 77 and SB 77

January 31 2013

Dear Senators and Representatives of Alaska:

Please KEEP OUR WATERS CLEAN. Keep water in our streams healthy for the salmon.

We do not support HB77 and SB77.

Best regards,

Former State Senator Nels Anderson, Jr and
Dorothy Anderson of
726 O Place #204
Anchorage, Alaska 99501
907-229-9031
ndor@gci.net

HB77

BACKGROUND: Governor Parnell has introduced bills (HB 77 & SB 77) designed to expand government power and strip Alaskans of their rights to clean water and healthy fisheries. One proposal is especially damaging – it would deny Alaskans the right to keep water in streams for salmon. Under current law, Alaskans can file for “instream flow rights,” to secure enough water in salmon streams for healthy fisheries. Large corporations, however, want unfettered access to Alaskan waters – regardless whether they support wild salmon. So Governor Parnell is cutting everyday Alaskans and fishermen or fishing groups from the loop. Read Inletkeeper’s [post](#) to get a better idea about instream flows.

Linda Hay

From: Nina Faust <aknina51@gmail.com>
Sent: Tuesday, January 29, 2013 5:07 PM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson
Cc: Sen. Gary Stevens
Subject: HB 77 and SB 77

January 29, 2013

P.O. Box 2994
Homer, AK 99603

Dear Committee Members:

I do not support HB 77 or SB 77, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

I do not want to see the Commissioner vested with so much power that unilateral decisions on development projects and other important resource decisions will be made by the Commissioner, leaving the citizens of Alaska out of the permitting process unless he decides there might be a need for public input.

What I am seeing in the bills that Governor Parnell is putting forth is an effort to take away public participation in resource issues under the guise of streamlining permitting. However, he is going too far and is removing the checks and balances that keep government honest.

Alaskans want the State to protect salmon and clean water. This bill will allow DNR to give water rights to copious amounts of water for mega-development project without protecting our salmon. Under current law, "instream flow rights" for fisheries can be applied for by Alaskans. I doubt anyone will be looking out for the instream flow for salmon in the wake of the serious push for giant corporate development projects like mines, shale oil and gas, and other projects. I particularly worry about water rights for average citizens.

With climate change and proven increases in water temperatures, instream flow for salmon is going to become very important. Volume helps moderate temperature increases, pollution, and other problems our fisheries will face. We need to keep these instream flow rights under current law in place.

The State has claimed that we have a fair permitting system. But now Governor Parnell wants to strip away citizen rights that allows Alaskans a way to make sure things are done right. Please do not pass these misguided bills that will make DNR oversight of our fisheries and clean water less protective.

Respectfully,

Nina Faust

Linda Hay

From: Mark Luttrell <prufrock@arctic.net>
Sent: Tuesday, January 29, 2013 5:22 PM
To: Rep. Eric Feige; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French
Subject: please oppose HB 77 & SB 77

Legislators:

Do not sell out to corporate interests the ability of Alaskan citizens to protect salmon streams. Parnell's bills are exactly what one would expect of a corporate wrench.

Mark Luttrell
Seward

Linda Hay

From: Daven Hafey <daven@seacc.org>
Sent: Thursday, February 07, 2013 1:50 PM
To: Rep. Eric Feige; Rep. Dan Saddler
Cc: Rep. Peggy Wilson; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck
Subject: Fraser Institute findings on mining environments of 93 regions
Attachments: Summary of the Results of the Fraser Institute Annual Survey of Mining Companies 2011 2012.pdf

Dear Honorable Members of the House Resources Committee:

My name is Daven Hafey, and I work for the Southeast Alaska Conservation Council in Juneau. This email is in response to the recent committee hearing on HB77, the In-Stream Water Reservations Bill. Attached to this email is a document summarizing Alaska's results from the Fraser Institute's 2011/2012 Summary of Mining Companies. The full report is a very large document that takes time to download via email. If you would like a full copy, I would be happy to provide it.

Also, I would like to quote Glenn Haight, Development Manager for the Alaska Department of Commerce, Community, and Economic Development from his January 31, 2013 presentation to the House Committee on Economic Development, Trade, and Tourism:

"Alaska has a very favorable environment for the mining industry."

Regards,
Daven Hafey

--
Daven Hafey
Southeast Alaska Conservation Council
907 586-6942

Sustaining people, sustaining nature -- it is one cause, inseparable. -Gus Speth

SEACC FRASER INST Summary

DAVEN HAFEY 2-7-13

Summary of the Results of the Fraser Institute Annual Survey of Mining Companies, 2011/2012

These factors are ranked from least to most deterring to investment. A lower number indicates positive outlook for investment outlook in Alaska.

Factor	Alaska's Ranking (out of 93 regions surveyed)
Current Mineral Potential assuming current regulations and land use restrictions	6
Policy/Mineral Potential assuming no land use restrictions in place and assuming industry "best practices"	1
Room for improvement	40
Uncertainty concerning the administration, interpretation, and enforcement of existing regulations	35
Uncertainty concerning environmental regulations	49
Regulatory duplication and inconsistencies	56
Legal processes that are fair, transparent, non-corrupt, timely, and efficiently administered	32
Taxation regime	8
Uncertainty concerning disputed land claims	20
Uncertainty concerning which areas will be protected as wilderness areas, parks, or archeological sites	66
Infrastructure (includes access to roads, power availability, etc)	70
Socioeconomic agreements/ community development conditions	34
Trade barriers- tariff and non-tariff barriers, restrictions of profit repatriation, currency restrictions, etc.	11
Political stability	8
Labor regulations, employment agreements, and labor militancy or work disruptions	13
Geological Database (includes quality and scale of maps, ease of access to information, etc.)	20
Security (includes physical security due to the threat of attack by terrorists, criminals, guerilla groups, etc.)	29
Supply of labor/ skills	32
Corruption	20
Growing (or lessening) uncertainty on mining policy and implementation	38

These are the rankings where all of the above factors are taken into consideration.

Composite policy and mineral potential	4
Policy Potential Index	25

Linda Hay

From: Rick Rogers <rrogers@akrdc.org>
Sent: Wednesday, February 06, 2013 4:10 PM
To: trever.fulton@akleg.gov
Cc: Linda Hay
Subject: Fwd: Message from "RNP0026734608E2"
Attachments: 201302061551.pdf; ATT00001.htm

Trevor,

For the HRES committee record. Will forward the permitting ranking reference soon.

Cheers,

Rick

Begin forwarded message:

From: resources@akrdc.org
Subject: Message from "RNP0026734608E2"
Date: February 6, 2013 3:51:54 PM AKST
To: Rick Rogers <rrogers@akrdc.org>

This E-mail was sent from "RNP0026734608E2" (Aficio MP C4502).

Scan Date: 02.06.2013 15:51:54 (-0900)
Queries to: resources@akrdc.org

House Resources Committee on HB 77, Feb. 6, 2013
Testimony of Rick Rogers, Executive Director,
Resource Development Council

Good afternoon co-chairs Feige, Saddler and members of the committee. My name is Rick Rogers, Executive Director of the Resource Development Council. RDC is a statewide business association representing forestry, oil and gas, mining, tourism, and fishing industries. Our mission is to grow Alaska through responsible resource development.

A top legislative priority of RDC is to encourage the state to promote and defend the integrity of Alaska's permitting process and advocate for predictable, timely, and efficient state and federal permitting processes based on sound science and economic feasibility.

RDC is in support of HB77. The Alaska Legislature, to its credit, provided DNR with additional resources to address what had become an untenable backlog of permits and authorizations. Such backlogs negatively affect our resource industries as well as individual Alaskans seeking required state authorizations. We understand that while a backlog still exists, DNR has made real progress in catching up on that work.

Ramping up staff to adjudicate the backlog is addressing the symptom, however systemic improvements to what has become a very complex set of statutes authorizing DNR's work is also needed to help prevent future backlog and delays.

The Governor, with support from DNR Commissioner Sullivan and his staff, has identified specific means of improving the efficiency of our complex permitting system. The administration should be applauded for proposing numerous changes to the DNR enabling statutes in order to make their processes more timely and efficient. Adapting our key DNR statutes to ensure we are adjudicating our land and resource authorizations in a more timely and efficient manner is overdue.

We encourage this committee to support the administration's efforts to more efficiently manage DNR's tremendous workload as the reach of the department affects a broad cross section of Alaska businesses, resource industries and individuals.

Thank you for the opportunity to comment.

Linda Hay

From: Rachael Petro <rpetro@alaskachamber.com>
Sent: Wednesday, February 06, 2013 3:35 PM
To: Linda Hay; Trevor Fulton
Cc: Andy Rogers
Subject: HB 77 Testimony
Attachments: HB 77 SB 26 Testimony February 6, 2012.docx

Linda & Trevor,

Here is my testimony - as close as I could get it into writing. I will send Fraser Institute study link directly to Rep. Tuck.

Rachael

--

Rachael Petro
President/CEO

Join the Alaska Chamber - The Voice of Alaska Business

907-278-2739

www.alaskachamber.com

rpetro@alaskachamber.com

Alaska State Chamber of Commerce
Testimony
HB 77- Land Disposals/Exchanges: Water Rights
Wednesday, February 6, 2013

Good afternoon co-chairmen Feige and Saddler and members of the committee. For the record, my name is Rachael Petro and I am the president and CEO of the Alaska State Chamber of Commerce. The Alaska Chamber is a statewide membership organization made up of all sizes and types of businesses from across Alaska.

The Alaska Chamber's primary mission is to advocate for policies that improve Alaska's business climate. Efficient, predictable and common sense regulations and permitting processes are integral to creating an environment in which businesses, new and old, can succeed. Each Fall Alaska Chamber members gather to set its legislative agenda for the following year.

For the past several years in a row, including this year, Alaska Chamber members have expressed strong support for Alaska's policies and regulations that guide development of Alaska's natural resources while protecting Alaska's environment. At the same time, we have also advocated for streamlining those same regulations and policies where bureaucratic and business efficiencies can be gained.

In regard to the Fraser Institute's study, referenced earlier today in testimony, internationally, Alaska ranks just below Kazakhstan and just above Columbia in regard to uncertainty concerning environmental regulations. In regard to regulatory duplication and inconsistencies Alaska ranks below Honduras and just above Niger. Alaska Chamber members believe Alaska can do better!

The Alaska Chamber supports the provisions within HB 77/SB26 because they provide clarity, eliminate unnecessary processes, and modernize statutes based on the experience gained over many years from the professional staff within the Department of Natural Resources.

It is our belief that HB 77 is a common sense piece of legislation that should receive broad bipartisan support. Thank you for the opportunity to testify this afternoon.

✓

Laura Stats
418 Seventh St.
Juneau, Alaska 99801
laurastatsdaugherty@gmail.com

Mr. Chairman, thank you for this opportunity to speak with you.

~~I come to you with an open heart, a strong mind and hopefully a persuasive voice.~~ I am here to speak against the passage of HB77.

I come to you on behalf of my family and all the people who hunt, fish and gather food from this great land we call Alaska. Most importantly, I come on behalf of my grandson, Huck Daugherty, who is 4 years old and who at his tender age has already gone out with his parents and uncles to harvest salmon taller than he is and prawns bigger than his own hands, for him there is a magic in that; and in that magic lies an honest reality which must be protected in perpetuity. And **you** have the responsibility to protect our lands, streams and oceans.

Please look to our Alaska Constitution when making your decision on voting for HB 77. It states in Article 8 section 3

Titled: Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

*It explains in the Citizen Guide of the Alaska Constitution and I quote:
This section enshrines in the Alaska Constitution the common law doctrine that natural resources must be managed by the state as a **public trust** for the benefit of the people as a whole, rather than for the benefit of the government, corporations, or private persons.*

Who will HB 77 be protecting and representing, will it be protecting the common use clause of our constitution and the rights of the citizens of Alaska or does it protect a corporation which has it's own special interest not consistent with that of preserving the tender balance of the streams and waterways where our food arises from?

Please vote against the passage of this bill.

Thank you for hearing me with your open hearts and strong minds.

JAMES SUWAN, SEACC



Mr. Chairman and members of the committee,

Thank you for the opportunity to testify.

There has been much discussion, within this committee and with our organization and with our friends, about the issue of water reservations and revoking personal use reservations. We find this issue problematic and want to make sure that our environment is being protected and that anadromous streams have the highest priority when permits are being issued.

We would like to propose that amend this bill so that when any entity applies for a water right on any anadromous body of water that DNR issue a water reservation on behalf of the fish. DNR can simply refer to the Anadromous Waters Catalog to see if the waterway is on there, then put in an appropriate reservation.

This would align DNR with our state constitution and its public trust responsibility. It would ensure the protection of our salmon
It would enhance sustainable economic development across our state.

Salmon is our greatest renewable resource, it is in our legislature's best interest to put in a mechanism, in statute, that protects that resource as other entities apply for water rights.

Alaska Constitution Article 8 § 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Guy ARCHIBALD

Seace ✓

HB 77 is a solution in search of a problem.

HB 77 seeks to streamline the permitting process in Alaska in order to make projects such as mines receive permits quicker. Currently, Alaska is the number one producer of toxic waste in the nation and metal mining is responsible for 99.9% of that waste.

Doug Haight Department of Commerce Development Manager stated on January 31, 2013 that "Alaska has a very favorable environment for the mining industry."

But Alaska DNR Commissioner Dan Sullivan's statement to the legislature was that Alaska is next to last in the world for permitting? Who is right? Answer: Doug Haight.

The evidence?

The Fraser Institute Annual Survey of Mining Companies was sent to approximately 5,000 exploration, development, and other mining-related companies around the world. Over 800 mining companies responded. They evaluated over 90 separate mining areas in the world. These companies reported exploration spending of \$6.3 billion in 2011.

Here is the result of the survey:

Overall, Alaska ranked number 4 in the entire world in combined policy and mineral potential.

Additional results from the Survey:

- Alaska ranks 24th in the world with a 73% positive rating. In the U.S. only Nevada and Wyoming ranked higher.
- 64% of the respondents rated the certainty of developing a mine in Alaska as either encouraging investment or not discouraging investment. #1 in the U.S.
- Only 1% of the respondents thought the tax regime (all taxes plus the complexity of the tax system) was a deterrent.
- Only 12% of the respondents thought that the regulatory duplication and inconsistencies (includes federal, state, inter-departmental overlap, etc.) in Alaska was a mild or strong deterrent.
- Only 1% cited environmental regulations as being a mild or strong deterrent in Alaska

<http://www.fraserinstitute.org/publicationdisplay.aspx?id=18045&terms=mining+survey+2011+2012>

The issue of the time involved in getting a permit is easily solved without HB77

The problem with the backlog of permit applications is because all applications are considered regardless of the actual potential for the result to be a productive mine. A large majority of the mine applications are filed by junior mining companies who have no intention of actually mining. They are speculators. They buy the rights to claims, do some exploration, and then apply for permits for the sole purpose of increasing the value of the claims. Most of these projects have not even done enough exploration to certify if there is an economical ore body to exploit. Very few of these mines will reach production, not because of the length of the

permitting process, but because they were not viable projects to start with. This burns state resources padding the speculation.

A simple solution would be to require the ore body be certified as a proven reserve prior to submitting an application. This would weed out projects that would never produce anyway and free up DNR's resources to focus on legitimate projects decreasing the wait.

Alaska has tried a streamlined permitting process. The story of the Rock Creek Mine.

The Rock Creek Gold mine near Nome was permitted in less than two years through an "expedited" permitting process and only operated for six months in 2008. No EIS was produced despite concerns about acid mine drainage, cyanide, arsenic, dust, and effects on bird and fish populations in the area. During construction, multiple failures of the water management system resulted in over \$800,000 in fines to the owner for violations of the Clean Water Act.

In 2007 the mine posted a \$6.8 million reclamation bond, which would be used to finance closure costs at the Rock Creek site if operations do not restart.

After numerous problems the company decided to end operations in 2011. The tailings pond almost immediately began to fill with rain water and threatened to overflow. ADEC had to take emergency actions to prevent an environmental catastrophe. The total cost to close down and reclaim the site is expected to be just under \$30 million, The \$22 million difference between the reclamation bond and the actual clean up costs will, most likely be paid for by taxpayers..

<http://groundtruthtrekking.org/Issues/MetalsMining/RockCreekMine.html#ixzz2JWg0qdnb>

HB77 should be rejected.

Linda Hay

From: Kachemak Bay Conservation Society <kbayconservation@gmail.com>
Sent: Monday, February 04, 2013 1:50 PM
To: Sen. Cathy Giessel; Rep. Eric Feige; Sen. Fred Dyson; Rep. Mike Hawker; Sen. Peter Micciche; Rep. Craig Johnson; Sen. Click Bishop; Rep. Kurt Olson; Sen. Lesil McGuire; Rep. Paul Seaton; Sen. Anna Fairclough; Rep. Geran Tarr; Sen. Hollis French; Rep. Chris Tuck; Rep. Peggy Wilson
Subject: HB77 & SB26 Comments
Attachments: HB77 & SB26 KBCS Comments.docx
Categories: Linda

Please consider the following comments from KBCS on HB77 & SB26

Thank you,

Kachemak Bay Conservation Society
Homer, Alaska
kbayconservation@gmail.com



Kachemak Bay Conservation Society

3734 Ben Walters Ln, Homer, AK 99603

907 235.8214

kbayconservation@gmail.com

February 4, 2013

Dear House & Senate Resources Committees,

RE: HB77 & SB26

Kachemak Bay Conservation Society (KBCS) opposes HB77 & SB26 for the following reasons:

1. **Alaskans' Constitution**-In order to comply with the Alaska Constitution, DNR must conduct a "best interest finding" (BIF) before it leases lands or gives other interests in state resources. Under the current law, Alaskans have an opportunity to comment on the possible impacts a proposal may have on water, fish, and human health. Governor Parnell's proposed changes would remove the requirement for public review and comment on BIFs, letting agencies and corporations dictate the scope and impacts of development throughout the state
2. **Water Rights**-Governor Parnell's proposal will give big corporations (not Alaskans) unlimited access to significant quantities of water through "temporary" water use permits, and severely limit Alaskans' right to challenge such permits.
3. **Salmon Habitat**: Fish need water to survive and the existing law allows Alaskans to secure "instream flow" rights to ensure there is enough water in streams for fish. Governor Parnell's proposal would strip Alaskans of the right to protect water quantity in salmon streams.
4. **Cruise Ship Pollution**-In 2006, Alaskans passed an initiative requiring cruise ships to meet water quality standards when they discharge pollutants to Alaskan waters. Governor Parnell's proposal would reverse the 2006 statewide vote, and allow cruise ships to dump sewage and other wastes in Alaska's marine waters.
5. **Undefined Terms**-Governor Parnell's proposal would allow a number of development projects to hide behind so-called "general permits," which do not require public notice and/or comments for specific projects. These permits will be issued to projects "unlikely to result in significant and irreparable harm to state land or resources," but the meaning of the terms "significant and irreparable harm" remains unclear and undefined.
6. **Wetlands**-Despite the fact almost all wetlands dredge and fill permits are currently granted by the U.S. Army Corps of Engineers, Governor Parnell's bill authorizes DNR and DEC to apply for delegation of this extremely costly regulatory program for which only Michigan and New Jersey have oversight-and Michigan is trying to give the program



Kachemak Bay Conservation Society

3734 Ben Walters Ln, Homer, AK 99603

907 235.8214

kbayconservation@gmail.com

back. Despite the fact that Alaska is dealing with a permit backlog, Governor Parnell is proposing that the state take over the issuing of wetlands permits.

KBCS is dismayed that the legislature is also considering failed legislation (reintroduced by Representative Eric Feige from last session) that would require Alaskans to post a significant bond prior to challenging a decision in court. This bill would effectively *prevent* all but the wealthiest corporations and individuals from being able to challenge resource permitting decisions within the state. Feige's bill was introduced last session, but mercifully failed to pass in the Senate. KBCS considers this one more example of Governor Parnell opening new accesses for outside corporations to exploit Alaskan resources, while trampling on the rights of Alaskans to protect their fish and water resources.

KBCS believes HB77 & HB26 restrict citizen access to the judicial branch. This bill creates several significant barriers for Alaskans to participate in resource development decisions by eliminating a mandatory notice and comment period and makes it more difficult to use our right to appeal decisions.

Sincerely,

Roberta Highland, President
Kachemak Bay Conservation Society
3734 Ben Walters Lane
Homer, AK 99603
907-235-8214
kbayconservation@gmail.com
www.kbayconservation.org

CC:

Sen.Cathy.Giessel@akleg.gov
Sen.Fred.Dyson@akleg.gov
Sen.Peter.Micciche@akleg.gov
Sen.Click.Bishop@akleg.gov
Sen.Lesil.McGuire@akleg.gov
Sen.Anna.Fairclough@akleg.gov
Sen.Hollis.French@akleg.gov

representative.eric.feige@legis.state.ak.us
representative.mike.hawker@legis.state.ak.us
representative.craig.johnson@legis.state.ak.us
representative.kurt.olson@legis.state.ak.us
representative.paul.seaton@legis.state.ak.us
representative.geran.tarr@akleg.gov
representative.chris.tuck@legis.state.ak.us
representative.peggy.wilson@legis.state.ak.us