

HB

78

<TARGET><BILL>HB 78</BILL><SUBJECT>HB
78</SUBJECT><COMM>HRES28</COMM></TARGET>



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Environmental
Conservation**

OFFICE OF THE COMMISSIONER

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January 23, 2013

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

The Honorable Dan Saddler, Co-Chair
House Resources Committee
State Capitol Room 104
Juneau, AK 99801

Dear Representative Feige and Representative Saddler:

The Departments of Environmental Conservation and Natural Resources respectfully request a hearing in the House Resources Committee on HB 78, "An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date."

The purpose of this legislation is to provide authority for the state to evaluate and seek to develop a program for the regulation of dredge and fill activities in waters and wetlands located within the state, in accordance with the regulating program allowed states under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

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

Your favorable consideration of this request is appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Hartig".

Larry Hartig
Commissioner

Enclosures

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

HB 78 – Regulation of Dredge and Fill Activities
Sectional Analysis
January 22, 2013

“An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date.”

The purpose of this legislation is to provide authority for the state to evaluate and seek to develop a program for the regulation of dredge and fill activities in waters and wetlands located within the state, in accordance with the regulating program allowed states under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

Section 1: provides legislative findings for the bill, including recognition that there are thousands of waterbodies and millions of acres of wetlands within the state. The findings further state that individual states are allowed to assume primacy to regulate dredge and fill activities under 33 U.S.C. 1344 and that this is consistent with congressional intent in 33 U.S.C. 1251 that the states to have the primary responsibilities and rights in regulating activities involving lands and waters within their respective states. The findings note that other states have assumed or continue to evaluate obtaining primacy for regulating dredge and fill activities under 33 U.S.C. 1344 and that the Department of Environmental Conservation and the Department of Natural Resources have substantial expertise such that they could ably regulate these types of activities. The findings also recognize that there are benefits to the state for the Department of Environmental Conservation and the Department of Natural Resources to assume the dredge and fill permitting responsibilities.

Section 2: amends AS 44.37.020 to provide that the Department of Natural Resources, in coordination with the Department of Environmental Conservation, may take action necessary to administer and enforce any authorized dredge and fill permitting program allowed under 33 U.S.C. 1344, including the adoption of regulations under AS 44.62 (Administrative Procedure Act).

Section 3: amends AS 46.03.020 to provide that, notwithstanding any other provision of law, the Department of Environmental Conservation may take all actions necessary to receive federal authorization of a state program for the Department of Environmental Conservation and the Department of Natural Resources to administer and enforce a dredge and fill permitting program allowed under 33 U.S.C. 1344.

Section 4: directs the Department of Environmental Conservation, in coordination with the Department of Natural Resources, to continue to evaluate the potential benefits, costs, and consequences to the state of assuming primacy of regulating dredge and fill activities under 33 U.S.C. 1344, and to take reasonable steps to assume primacy. The Department of Environmental Conservation would also have the authority under Section 4 of the bill to file an application seeking federal approval of a state program administered by the Department of Environmental Conservation and the Department of Natural Resources that regulates dredge and fill activities under 33 U.S.C. 1344. Section 4 of the bill also provides that the Department of Environmental Conservation and the Department of Natural Resources may adopt regulations under AS 44.62 that are necessary to obtain federal approval of and to implement a state program for the regulations of dredge and fill activities under 33 U.S.C. 1344.

Section 5: provides for an immediate effective date.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 78
Fiscal Note Number 3
(H) Publish Date 1/18/13

Identifier (file name) 0750-LAW-CIV-01-14-13 Dept. Affected Law
Title Section 404 Wetlands Program Appropriation Civil
Allocation Environmental
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 2092

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					
			FY14	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
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	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
	#N/A							
TOTAL		0.0	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 _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (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)

Not applicable, initial version

Prepared by Loretta Withington, Division Operations Manager Phone 465-5427
Division Administrative Services Date/Time 1/11/13 12:00 AM
Approved by Michael C. Geraghty, Attorney General Date 1/11/2013
Department of Law

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 78

Analysis

RSA with Department of Environmental Conservation (DEC) to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps of Engineers; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.

Funding for the RSA is included in the DEC fiscal note. The Department of Law has sufficient interagency receipt authority for the proposed \$187.5 agreement. See DEC's fiscal note for more detailed information.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 78
 Fiscal Note Number 2
 (H) Publish Date 1/18/13

Identifier (file name) LL0750-DNR-OPMP-1-14-13 Dept. Affected Natural Resources
 Title State Assumption of 404 Wetlands Permitting Appropriation Administration & Support
 Allocation Office of Project Management & Permitting
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 2733

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					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services	231.4		425.6	425.6	425.6	425.6	425.6	425.6
Travel	9.4		14.1	14.1	14.1	14.1	14.1	14.1
Services	111.0		122.0	122.0	122.0	122.0	122.0	122.0
Commodities	10.0		5.0					
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	361.8	0.0	566.7	561.7	561.7	561.7	561.7	561.7

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1007	I/A Rcpts (Other)	361.8		566.7	561.7	561.7	561.7	561.7
TOTAL		361.8	0.0	566.7	561.7	561.7	561.7	561.7

POSITIONS								
Full-time		2		4	4	4	4	4
Part-time								
Temporary								

CHANGE IN REVENUES								

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

Estimated **CAPITAL (FY14) costs** _____ (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? N/A Discuss details in analysis section.

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

Initial version, not applicable

Prepared by Ed Fogels, Deputy Commissioner
 Division Commissioner's Office
 Approved by Daniel S. Sullivan, Commissioner
Department of Natural Resources

Phone 269-8423
 Date/Time 1/5/13 10:30 AM
 Date 1/14/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 78

Analysis

This bill provides the Department of Natural Resources (DNR), in coordination with the Department of Environmental Conservation (DEC), the authority to take actions necessary to administer and enforce any dredge and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

FY 14

Personal Services - DNR will receive interagency receipts from DEC to fund positions needed to assist DEC in its analysis of state assumption of the CWA Section 404 ("404 program"). The Office of Project Management and Permitting will require 2 new positions: one project coordinator to participate with DEC in the program development tasks, including the analysis of the division of duties between agencies under primacy and development of a mitigation program required of State programs; and one position for State program capacity development in wetlands jurisdictional determinations and permitting procedures. Capacity development will allow DNR to pursue development and administration of regional general permits for some classes of activities, resulting in more state control over 404 permitting during the interim period before the state obtains 404 primacy.

One Project Coordinator (Anchorage, XE, Range 23C) \$134,298

One Natural Resource Specialist III (Anchorage, GG, Range 18C) \$97,108

Travel - Travel costs will be incurred for attending DEC work group and stakeholder meetings, meetings with EPA Region 10 and US Army Corps of Engineers Headquarters staff, and for staff training opportunities.

Services - Contractual costs will be incurred for hiring consultants to assist the state in designing regional general permits and other capacity building. The intent of this capacity building will be to improve the efficiency of 404 permitting in Alaska even prior to the state obtaining 404 primacy.

Commodities - Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

FY 15

Personal Services - DNR will receive interagency receipts from DEC to fund positions needed to assist DEC in state assumption of the CWA Section 404 ("404 program"). The Office of Project Management and Permitting will require two additional positions to assist in State program capacity development in permitting procedures. The Project Coordinator will continue to help in the program development tasks, including development of a mitigation program required of State programs.

Two positions established in FY2014

Two Natural Resource Specialist III (Anchorage, GG, Range 18C) \$97,108 each

Travel - Travel costs will be incurred for attending DEC work group and stakeholder meetings, meetings with EPA Region 10 and US Army Corps of Engineers Headquarters staff, and for staff training opportunities.

Services - Contractual costs will be incurred for hiring consultants to assist the state in designing regional general permits and other capacity building.

Commodities - Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

Associated Regulations: DNR does not anticipate any regulation changes to our department's regulations at this time. However, as the evaluation of the 404 primacy program develops, we may identify changes to DNR regulations in future years.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 78
Fiscal Note Number 1
(H) Publish Date 1/18/13

Identifier (file name) LL0750-DEC-WQ-01-17-13 Dept. Affected Environmental Conservation
Title Section 404 Wetlands Program Appropriation Water
Allocation Water Quality
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 2062

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					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services	495.4		883.5	883.5	883.5	883.5	883.5	883.5
Travel	22.3		37.6	35.2	35.2	35.2	35.2	35.2
Services	879.5		908.2	902.2	902.2	902.2	902.2	902.2
Commodities	37.5		25.0	4.0	4.0	10.5	7.9	
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	1,434.7	0.0	1,854.3	1,824.9	1,824.9	1,831.4	1,828.8	

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003	GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004	GF	1,434.7	1,854.3	1,824.9	1,824.9	1,831.4	1,828.8	
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		1,434.7	0.0	1,854.3	1,824.9	1,824.9	1,831.4	1,828.8

POSITIONS							
Full-time	5	0	8	8	8	8	8
Part-time							
Temporary							

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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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)

Not applicable, initial version.

Prepared by Michelle Bonnet Hale, Director
Division Water
Approved by Lynn Kent
Deputy Commissioner, Dept. of Environmental Conservation

Phone 907-269-7599
Date/Time 1/11/13 1:00 PM
Date 1/11/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 78

Analysis

Analysis/Assumptions:

Assumption of the Federal Clean Water Act Section 404 dredge and fill permitting program would allow the state to create streamlined processes for more efficient permit issuance, and to reduce redundancy between federal and state programs. Amended and new regulations will be required to comport with federal regulations to implement the 404 program. By the FY 16 budget cycle, there will be a decision point regarding whether to advance with the primacy effort and, if so, the pace of that effort. FY16 and beyond costs assume continued progress leading to a successful application approved by the Environmental Protection Agency, followed by full implementation of the program; these costs may change depending upon progress in FY14 and FY15 and a full analysis of the costs to implement the program. After FY16 and program approval some costs will be offset by program receipts.

FY14

Personal Services:

Three permanent positions for "program development" and to manage a workgroup of permittees that will assist in the analysis of 404 primacy and provide the state with recommendations about primacy; evaluate benefits and consequences of state primacy; conduct a fiscal analysis of the resource needs for state primacy; establish agreements with the EPA and the Corps that include a workplan, timeline, responsibilities, and requirements for the process to obtain state primacy; establish and manage contractor assistance to conduct a gap analysis and draft initial statutes and regulations for program implementation; develop work plan; begin development of program description; apply for wetlands program development grant from EPA; and develop a communications plan. Two permanent positions for "capacity development" to build the State's knowledge and capability in the 404 permit program; to negotiate with the Corps one or more statewide programmatic general permits that allow the State to implement small, targeted portions of the 404 program; and to establish a workshare agreement with the Corps for sharing staff resources. New positions: Project Coordinator (Anchorage, XE, 23C); Environmental Program Specialist IV (Anchorage, GG, Range 20C); Two Environmental Program Specialists III (Anchorage, GG, Range 18C); One Engineer I (Anchorage, GG, Range 22C). Three positions for 10 months to ramp-up of program.

Travel:

Travel is for workgroup and stakeholder meetings; meetings with EPA Region 10 and Headquarters and the Corps Alaska District and Headquarters; and staff training.

Services:

Position support costs, indirect, and public notices for workgroup meetings.

-- \$300.0 professional services contractor assistance for statutory gap analysis, draft regulations, assistance with primacy analysis; workgroup report; and assistance with drafting primacy application.

-- \$187.50 RSA to Department of Law to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.

-- \$361.8 RSA to Department of Natural Resources for positions to participate with DEC in the program development tasks, including the analysis of the division of duties between agencies under primacy and development of a mitigation program required of State programs; and two positions for State program capacity development in wetlands jurisdictional determinations and permitting procedures.

Commodities:

Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 78

Analysis Continued

FY2015

Personal Services:

Five positions established in FY2014 will continue with program development tasks including adopting regulations; negotiating primacy MOUs with the EPA, the Corps and the U.S. Fish and Wildlife Service; developing program forms and guidance; continuing to manage a workgroup of permittees that will assist in designing a State program; ongoing negotiations with the EPA and the Corps; managing contractor assistance with development of the program description; applying for wetlands program development grant from EPA; and revising and implementing the communications plan. Three new positions in FY2015 will continue to develop the State's program capacity to issue and manage permits and to ensure compliance with permit conditions; implement statewide programmatic general permits that allow the state to implement targeted portions of the 404 program; implement data systems that provide automation of permits; and participate in a workshare agreement with the Corps for sharing staff resources. Three new positions will be established in FY15: Analyst Programmer IV (Juneau, GG, Range 20C); Engineer Associate II (Anchorage, GG, Range 21C); EPS III (Anchorage, GG, Range 18C). All positions for 12 months.

Travel:

Travel for workgroup/stakeholder meetings; meetings with EPA Region 10 and Headquarters and the Corps Alaska District and Headquarters; staff training; and field work for wetlands jurisdictional determinations and permittee inspections.

Services:

Position support costs for existing new positions, indirect, and public notice for workgroup meetings and draft regulations.

- \$100.0 professional services contractor assistance for statutory gap analysis, draft regulations, assistance with primacy analysis; workgroup report; and assistance with drafting primacy application. New and amended regulations may be adopted by the end of FY2015. New regulations are required to be adopted to implement the federal program. Amended regulations may be necessary to align existing state regulations with program requirements.
- \$187.50 RSA to Department of Law to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.
- \$566.7 RSA to Department of Natural Resources (DNR) for positions to participate with DEC in the program development tasks, including development of a mitigation program required of State programs and four positions for State program capacity development in permitting procedures.

Commodities:

Position support costs, including furniture and computers for three new positions (one-time costs for new positions); deletion of FY2014 one-time costs for furniture and computers; ongoing standard office supplies.

FY2016 and Beyond

By the FY16 budget cycle, there will be a decision point regarding whether to advance with the primacy effort and, if so, the pace of that effort. The fiscal note assumes a baseline budget to continue with primacy application efforts and some capacity development work; however, there will be a future determination about the pace of "ramping up" to the full program resources to implement the 404 program under primacy. Once the state assumes primacy, all but 2-3 of the program development positions will transition to program implementation (permitting, inspections, compliance, mitigation, recordkeeping, federal reporting).

Services:

RSA with DOL continues. Once primacy is approved, estimated to be in year 4 or 5, efforts by the DOL will shift to counseling the agencies on implementation of the primacy program, and the nature of Law's work will likely vary based upon the specific projects and dredge and fill permit applications that need state approval. RSA with DNR continues.

Commodities:

Reflects the reduction of FY15 one-time costs for furniture and computers for three positions, computer replacements in FY18 (five positions) and FY19 (three positions).