

SB

27

<TARGET><BILL>SB 27</BILL><SUBJECT>SB
27</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 2/11/3

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 27

SB 27-REGULATION OF DREDGE AND FILL ACTIVITIES

"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."

and recommends:

- be replaced with CS _____ (_____) Same Title New Title
- adopt previous CS _____ (_____) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

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

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DEC	X			1
DNR	X			2
LAW			X	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
<i>Anna J. Fairclough</i>	FAIRCLOUGH	✓			
<i>Cliff Bishop</i>	Bishop	✓			
<i>Mike Dunleavy</i>	Dunleavy	✓			
<i>John Hoffman</i>	Hoffman			✓	
<i>David C. Ober</i>	Ober			✓	
CO-CHAIR: <i>Kenn Meyer</i>	Meyer	✓			
CO-CHAIR: <i>Peter Kelly</i>	Kelly	✓			

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 27
Fiscal Note Number 1
(S) 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)						
		FY14	FY15	FY16	FY17	FY18	FY19	
1002	Federal Receipts	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	
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	1,831.4	1,828.8	

POSITIONS							
	FY14	FY15	FY16	FY17	FY18	FY19	
Full-time	5	0	8	8	8	8	
Part-time							
Temporary							

CHANGE IN REVENUES	FY14	FY15	FY16	FY17	FY18	FY19
	0.0	0.0	0.0	0.0	0.0	0.0

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. SB 27

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. SB 27

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).

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 27
Fiscal Note Number 2
(S) 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				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES							
Personal Services	231.4		425.6	425.6	425.6	425.6	425.6
Travel	9.4		14.1	14.1	14.1	14.1	14.1
Services	111.0		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

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
TOTAL		361.8	0.0	566.7	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. SB 27

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 SB 27
 Fiscal Note Number 3
 (S) 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	FY15	FY16	FY17	FY18	FY19
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
 Division Administrative Services
 Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
 Date/Time 1/11/13 12:00 AM
 Date 1/11/2013

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 27

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 SB 27
Fiscal Note Number 3
(S) 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				
			FY15	FY16	FY17	FY18	FY19
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

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

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
Division Administrative Services
Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
Date/Time 1/11/13 12:00 AM
Date 1/11/2013

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 27

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 SB 27
Fiscal Note Number 2
(S) 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				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES							
Personal Services	231.4		425.6	425.6	425.6	425.6	425.6
Travel	9.4		14.1	14.1	14.1	14.1	14.1
Services	111.0		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

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

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. SB 27

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 SB 27
Fiscal Note Number 1
(S) 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				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES							
Personal Services	495.4		883.5	883.5	883.5	883.5	883.5
Travel	22.3		37.6	35.2	35.2	35.2	35.2
Services	879.5		908.2	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
1003	GF Match	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
--------------------	-----	-----	-----	-----	-----	-----	-----

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. SB 27

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. SB 27

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).

Doniece Gott

From: Marlene Wagner <leafnose@hotmail.com>
Sent: Tuesday, February 26, 2013 3:13 PM
To: Senate Finance Committee
Subject: NO TO SB27!

To whom it may concern,

It is appalling that the words "enhance," "conserve," and "future generations" from were struck from DNR's mission statement. Now, they want to take over 404 Permitting from the Army Corps of Engineers--permitting associated with wetlands? That is a horrible and inappropriate idea.

NO TO SB27!

**Marlene A. Wagner
Box 1346
Petersburg, AK 99833**

SB 27 – 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.

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: moriarty@aoga.org
Kara Moriarty, Executive Director

ALASKA OIL AND GAS ASSOCIATION STATEMENT ON SENATE BILL NO. 27, AUTHORIZING STATE REGULATION OF DREDGE & FILL ACTIVITIES

February 4, 2013

Good Evening. For the record, my name is Kara Moriarty and I am the Executive Director of the Alaska Oil and Gas Association, commonly referred to as "AOGA". On behalf of the 16 members of AOGA, who account for the majority of oil and gas exploration, development, production, transportation and refining of oil and gas onshore and offshore in Alaska, I appreciate the opportunity to testify on Senate Bill No. 27 which authorizes the State to evaluate and seek primacy for the permitting of dredge and fill activities under Section 404 of the Clean Water Act.

AOGA applauds the Governor's efforts to streamline permitting processes this session with the introduction of bills like this and SB 26, authorizing general permitting and reforming procedures relating to the disposal and exchange of state land. We appreciate the Administration's intent to encourage responsible development of Alaska's resources by simplifying the process. As we go through this process of assuming primacy, we will want to be careful to ensure that the assumption of Section 404 primacy tangibly streamlines the permitting process in Alaska and does not instead result in a duplicative or more cumbersome process, which we know is not the Administration's intent.

To date, only two states, Michigan and New Jersey, have assumed Section 404 primacy. This is in contrast to the forty-five states that have assumed primacy of the point source discharge program under Section 402, including Alaska which finished its phased implementation of the Alaska Pollutant Discharge Elimination System this past year. AOGA was proud to participate in that process which has resulted in a more efficient permitting process under Section 402. State primacy of dredge and fill permitting, however, may pose administrative and financial barriers unique to Section 404 assumption.

Some of the initial differences may include a lack of federal funding and the uncertainty surrounding development and projects near waters and wetlands that may or may not be subject to state assumption, which we will not know until the State is allowed to start this process.

The requirement that states assume the entire dredge and fill program all at once can result in a complex, lengthy and expensive process with no certainty that EPA will approve the request. And while a majority of the nation's wetlands are in Alaska, many of these may be non-assumable by the State under the Clean Water Act's geographical limitations and would remain subject to federal jurisdiction and duplicative Corps permitting. For this reason, we applaud the administration's spoken objective to also pursue shared general permitting responsibility with the Corps in these non-assumable waters by development of a State Programmatic General Permit.

AOGA is cognizant that many of these concerns will be examined more thoroughly by the administration after passage of this bill. If the bill is passed, we look forward to working in tandem with the administration and other stakeholders to ensure that Section 404 assumption will be effective both for the state and industry, and is achievable in Alaska without unduly burdening state resources.

**Senate Finance Committee
Testimony of
Alaska Department of Environmental Conservation
Senate Bill 27
“404 Primacy”
February 26, 2013**

What is a 404 program?

Section 404 of the Clean Water Act requires that all dredge and fill activities in surface waters (the ocean, lakes, rivers, streams) and wetlands be permitted. This permitting is done by the U.S. Army Corps of Engineers under what is known as the “404 program.” Per the Clean Water Act, EPA retains oversight over the Corps’ 404 program.

Wetlands provide valuable functions that include habitat for plants and animals, wildlife corridors, improvements to water quality, and flood and storm attenuation. Wetlands in Alaska range from North Slope tundra to forested wetlands in the mountains of Southeast. With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska’s stake in administering the 404 program is unlike that of any other state.

Examples of activities requiring 404 permits include filling in wetlands for any purpose such as roads, or residential or commercial building pads; and construction of breakwaters, dams, and levees. The 404 permitting process itself involves an evaluation of the dredge and/or fill activity to identify the “least environmentally damaging practicable alternative” (LEDPA) for a project. An authorization for a dredge or fill activity must be accompanied by what is known as 404(b)(1) findings on potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment. This also includes an evaluation of cumulative impacts.

The goal of 404 permitting is to avoid or minimize impacts to aquatic resources, including wetlands. Where impacts are unavoidable, actions are taken or required to mitigate those impacts.

The Clean Water Act intends for states to implement (to assume primacy for) the 404 program with the Corps of Engineers and the Environmental Protection Agency (EPA) acting in an oversight role. States seeking primacy for the 404 program require EPA’s approval.

SB 27 gives the authority to DEC and DNR to evaluate the costs and benefits of a state run program; begin the application development process and to seek approval to implement the program if it makes sense to do so.

How do states assume the 404 program, and what can states gain authority over?

The Clean Water Act spells out the requirements for a state's application for 404 primacy. These include a formal request by the governor; a description of the program as the state will run it; the state Attorney General's declaration that the state program is consistent with the federal program; memoranda of agreement with EPA and the Corps; a description of staffing and funding; and copies of all applicable state statutes, regulations, and administrative procedures. EPA will not approve a program that is less stringent than the federal program.

States may assume primacy for the permitting and compliance program for all waters and wetlands except tidally influenced waters and waters that are or could be used for interstate and foreign commerce and wetlands adjacent to those waters. The Corps will retain authority for permitting dredge and fill activities in these waters in Alaska even after Alaska formally assumes the 404 program.

Two other states already have primacy for the program, New Jersey and Michigan, while other states are considering it. The Department of Environmental Conservation (DEC) currently plays a secondary role in the 404 program in Alaska, reviewing permit applications, in some cases applying Alaska-specific conditions, and "certifying" that the Corps' permits meet State water quality standards.

While I have described the formal process for 404 assumption from the Corps, there is a second mechanism where states can administer Section 404 dredge and fill permits. This is done by partnering with the Corps in the issuance and administration of what are known as State programmatic general permits, or State PGPs. These permits are general permits for dredge and fill actions that are similar in nature and have minimal individual or cumulative effects. The Department likely already has statutory authority to administer State PGPs, but the proposed legislation and fiscal note provide for the state to explore and pursue both this option and the formal primacy option.

Multiple Alaska administrations over many years have considered primacy for the 404 program with the most serious consideration about 10 years ago. The decision at that time was to first pursue State primacy from EPA to implement the federal Clean Water Act (Section 402), National Pollutant Discharge Elimination System Program – the wastewater discharge permitting program. DEC has completed that process with EPA approval of the program in 2008 and the State's final step to have full authority in 2012, when we accepted responsibility for the final industrial sector's permits.

With that recent experience, now is a good time for the Alaska to expand control over its waters, recognizing state priorities for prompt permitting for economic development while protecting water quality. The application process for 404 primacy will be similar, as will program development and implementation. The lessons learned from that experience will apply directly to 404 assumption.

One lesson, however, is that we know that it will take time. There are multiple opportunities along the way for the public to weigh in on program development as well as opportunities for the legislature to have a say in whether the state proceeds with primacy – when we may seek additional statutory changes to ensure the program will be consistent with the federal program and when we seek the budget necessary to implement the program.

Why is assumption of the 404 program important?

Almost half of Alaska is considered wetlands – 65 % of the nation's wetlands are in Alaska. With wetlands so omnipresent in Alaska, most major projects – and a very large number of minor projects, like housing pads – require 404 permitting. Yet the Corps is experiencing budget cuts and staff reductions. In a state like Alaska with a very narrow window for construction, such delays can and do result in project delays of a year or more. A state-run program that is accountable to Alaskans and the legislature will assure that it is the State that decides the level of resources to devote to a program that is so essential to the state's economy. The state will have control of its permitting priorities.

Both DEC and DNR have placed significant emphasis in recent years on permit reform. From automated permit application to improved business processes, the State is well-poised to apply these streamlining improvements to the 404 program. These faster, streamlined practices place more emphasis on results – protection of wetlands and water resources – and less on cumbersome processes.

With a state-run program, two agencies – DEC and DNR – that have a long history of successful interaction – will run the program, rather than the four currently involved: The Corps, EPA, DEC, and DNR. Two vs. four simply means less bureaucracy. ADF&G will, of course, retain its Title 16 permitting authorities and DEC and DNR will coordinate and consult with ADF&G as part of the 404 process.

Other benefits of a State-administered program:

- Cost savings for applicants in permitting major new projects.
- Greater certainty of adequate funding and staffing for the program.
- Permits and mitigation solutions that truly reflect Alaska's priorities and unique conditions with Alaska specific program guidance.
- An improved appeals process that is timelier and less apt to stall projects needlessly and indefinitely.
- Judicial proceedings generally decided by Alaska courts instead of outside federal courts.
- A stable, risk-based, and predictable enforcement regime.
- Replacement of formal federal ESA and EFH consultation processes with less formal, faster processes while still achieving the objectives of those programs.

What does the legislation do?

The legislation before you provides two parallel tracks: Study 404 primacy and prepare an application for the program, and begin capacity building from the start. First, it directs DEC and DNR to evaluate costs, benefits, and consequences of the state assuming primacy for the 404 program, providing resources to the departments to do so. At the same time as the agencies are performing this evaluation, State staff can partner with Corps staff in the issuance of state Programmatic General Permits and authorizations under these general permits, assist the Corps with priority permit issuance, and work alongside the Corps in implementing mitigation projects associated with permitted projects in a way that works for Alaska's unique situation. This capacity building provides tremendous benefit to the state agencies when the state does gain primacy for the program, providing trained staff and tested processes for running the actual program. Additionally, it provides benefits to Alaska's permit applicants who will gain from the state staffing addition: shorter turnaround times for 404 permits, while continuing to protect water quality.

In addition, this legislation provides the authority for DNR and DEC to administer the program and provides the authority for DEC to apply to EPA for authorization for the state-run program, as well as providing both agencies the authority to issue regulations needed for the program.

Because the state is still early in the process of fully understanding the ramifications of 404 assumption, this bill will likely not be the last 404 legislation that comes before you. As we research statutory requirements, it is likely that we will back with needed changes: Statutory change has been required of other states seeking authority for the program. In addition, DEC and DNR will be evaluating the resources necessary to implement and run a state 404 program. The estimates in the fiscal notes that accompany this bill are for the application process and to begin the initial capacity building I've mentioned. By the FY16 budget cycle, however, we expect a decision point regarding whether to advance the primacy effort. At that point, DEC and DNR will have a much better understanding of the resources that will be required for the full program. We expect that additional resources, likely significant because it is a significant program, will be required at that time.

Fiscal Impacts

There are three fiscal notes for SB 27. The dollar amounts from the DNR and Law fiscal notes are included in the services line of the DEC fiscal note – DEC's fiscal note represents the full funding request for the early stages of evaluating and beginning preparation for a potential primacy application; and to increase the State's understanding of the program through capacity development. The fiscal note does not include the full costs to implement a State 404 program.

During the Senate Resources committee meeting, Senator Fairclough asked for a comparison between the steps the State took to evaluate and assume primacy for the Clean Water Act Section 402 National Pollutant Discharge Elimination System wastewater discharge permitting program and

the steps we would take relating to the CWA Section 404 program if SB 27 passes. The federal procedures and the requirements for a state's application for primacy are very similar for the two programs.

One difference in the two paths to primacy is that DEC was already operating a robust wastewater permitting program and the existing 29 positions transitioned to the 402 program. While DEC and DNR have significant experience on large projects with the 404 program, the current DEC investment is about 3-4 FTE spread over approximately 7 employees.

The fiscal note for SB 27 represents a faster pace than DEC's pace with the similar effort for Section 402 primacy. The first several years of Alaska's 402 primacy effort were spent learning about the application process for primacy; working with EPA to help them understand that the State was serious in its desire and plan to seek primacy; and helping Alaskan stakeholders understand costs, benefits, and consequences of primacy. This effort and preparation of the primacy application was accomplished with 2-4 full-time positions and existing staff over a period of about 6 years.

The State has learned from this process, as has EPA, and much of the early work done for 402 primacy can be compressed during the 404 primacy application process. The fiscal note for SB 27 represents the most efficient way to timely analyze the costs, benefits, and consequences of 404 primacy; to work with the EPA and the Army Corps of Engineers to resolve the complex questions that 404 assumption raises; begin to increase program capacity; and to apply for the program.

Once we have evaluated the overall costs for operating a state 404 program, the legislature will have one or more opportunities to weigh in on whether to proceed with primacy when it considers any additional statutory authority needs, and when it evaluates whether and how fast the state adds sufficient resources to implement the 404 program.

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

Primacy Benefits – Why Should Alaska Invest in 404 Program Primacy?

February 22, 2013

Fifty years ago the delegates for statehood promised that the State of Alaska would act like a state and not continue to expect federal assistance to run programs that the state can and should run. The State has recently completed taking over primacy for the wastewater discharge permitting program (Clean Water Act Section 402) from the Environmental Protection Agency (EPA), and assuming primacy for the Clean Water Act (CWA) Section 404 dredge and fill permitting and compliance program (the “404 program”) will further advance the State in upholding that promise.

The 404 program requires a permit from the U.S. Army Corps of Engineers (the Corps) for all dredge or fill activities that affect “waters of the United States.” Because of Alaska’s vast wetlands, most construction projects for facilities and infrastructure require a 404 permit. This permitting program has far-reaching effects on development in Alaska.

BENEFITS of a State-managed 404 Program

- **Accountability.** State primacy means that the 404 program is accountable to Alaskans and to the Alaska legislature for implementation of the permit and compliance program (EPA and the Corps are not directly accountable to Alaskans).
- **State, instead of federal, management of water and land use priorities.** A State-run 404 program would help to insulate 404 permitting in Alaska from the uncertainties resulting from shifting national priorities and policies which necessarily must be nationwide in scope, but which are often difficult to apply in Alaska.
- **Reduced bureaucracy.** Currently the Corps is the permitting agency with input from the EPA and certification by DEC that the Corps’ permits meet Alaska’s water quality standards. DNR is involved in coordinating permitting for large projects. Under primacy, 404 permitting activities will be administered by DEC and DNR. Two state agencies, rather than four state and federal agencies, will result in a faster permitting process and a more streamlined program.
- **Time and cost savings in permitting major new facilities and infrastructure.** While permit fees will likely increase under primacy, the cost to the permit applicant to permit some major new facilities may decrease substantially. This decrease in costs will result from increased communication throughout the permitting and public notice phases of a project, the efficiencies of working with two State agencies rather than four federal and state agencies, reduced travel costs for meetings with multiple agencies, and working with permit writers familiar with Alaska conditions.
- **Greater state role in project planning.** A State-issued 404 permit would not trigger the NEPA review process, as does the Corps’ issuance of the permit. However, some projects with other federal actions or federal funding would trigger the NEPA process (for example, a Federal Energy

Regulatory Commission (FERC) license for a hydroelectric dam). Even within a NEPA process, there is benefit in the state playing a greater role as the 404 permitting authority. There is also potential benefit in replacing the formal ESA and EFH consultation processes required of the Corps and EPA with the less formal and faster processes under state primacy while still achieving the objectives of those programs.

- A program tailored to Alaskan needs, to the greatest extent allowed by federal law. Permit requirements tailored to Alaska conditions, resulting in a more flexible approach to wetlands permitting and compensatory mitigation.
- Less emphasis on cumbersome process and more emphasis on results. More timely permitting. The Corps and EPA are both experiencing significant budget reductions. A State-run 404 program will result in more certain funding and staffing, and more timely permitting of projects important to the State. The State will be setting the priorities.
- More predictable enforcement. The state can build specific, timely, and predictable steps into a risk-based enforcement program while maintaining a commitment to compliance assistance.
- Robust public notification and participation opportunities.
- State judicial review. Judicial review of state permitting decisions under primacy would generally be handled in the Alaska courts instead of the federal courts. State judicial review of permitting decisions means better consideration of local issues and the potential for more timely resolution to permit challenges.
- Alaska-specific guidance documents. The state can develop guidance documents that are prepared for the specific needs of Alaska's waters and projects, replacing and/or enhancing Corps and EPA developed guidance which is based on those agencies' national perspectives.
- Availability of efficiency tools. Streamlining the administrative permitting process is a potential advantage of a state 404 permitting program. The State already has tools such as on-line permit applications, on-line permit fee payments, and electronic permit tracking that can be amended to accommodate 404 permitting.
- Predictability and stability in funding. The Army Corps in Alaska has recently taken about a 20% reduction in staff and is facing additional cuts and reductions, at the same time it is facing the need to prepare very large Environmental Impact Statements under NEPA and permit many state projects from large capital budgets in the last few years, which will draw a lot of Corps' staff time. Not taking primacy has consequences that need to be considered as the State tries to build up its infrastructure and put citizens to work.

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

404 Program Assumption Methods

January 31, 2013

404 Program Assumption Methods

There are two basic ways the state could administer Section 404 dredge and fill permits. They are not mutually exclusive; that is, they can be pursued and implemented simultaneously or separately.

- (1) **State Primacy.** Under CWA Section 404, a state may administer a program to issue and enforce Section 404 permits, subject to certain geographic exceptions. A state program would require federal approval, be subject to the oversight by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, and permits that the state may issue will be subject to EPA's veto authority. Proposed legislation (HB 78 and SB 27) expressly authorizes the state to pursue and administer the program if it is reasonable to do so.
- (2) **State Programmatic General Permits (State PGPs).** The Corps of Engineers has authority to issue general permits for dredge and fill actions that are similar in nature with minimal cumulative effects. These permits can be implemented by the state under agreement with the Corps of Engineers and are not subject to the geographic limitations associated with state primacy. The State of Alaska likely already has statutory authority to administer State PGPs, but the proposed legislation (HB 78 and SB 27) provides funding for the state to explore and pursue both this option and the primacy option.

State Primacy

Under Option 1, to assume state primacy, Alaska must submit an application to EPA. That application includes:

- A *letter from the Governor* requesting approval of the State's application;
- An *Attorney General statement* of legal authority that confirms that the State's laws and regulations are sufficient to implement the 404 program and that will ensure consistency with the federal program;
- The State's applicable *statutes and regulations*;
- A detailed *program narrative* that describes how the state will issue permits, ensure permit compliance and perform enforcement, track issued permits and enforcement actions, and submit an annual report to EPA;
- A description of the State's *resources* (staff, job classes, duties, stable funding sources) sufficient to implement and enforce the program;

- *Memoranda of Agreement* with EPA and the Secretary of the Army that describe the relationships and duties between the agencies under 404 program assumption.

EPA is the approval authority for State 404 programs and must consult with the Secretary of the Army and the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service. The Clean Water Act sets specific timeframes for the federal agencies to review a State's application for 404 program primacy.

- Program Assumption should be expected to take a minimum of 4-5 years.

State PGPs

Option 2 provides states the ability to cooperatively issue and administer programmatic general permits with the Corps.

- State PGPs are general permits issued by the Corps of Engineers and managed by the state that authorize and identify the terms, limitations, and conditions under which classes of projects and activities may be authorized under Section 404, with a much more efficient and abbreviated review by the Corps of Engineers; the Corps retains oversight of the state's administration of the PGPs.
- State PGPs may be issued on a local, regional, or statewide basis. The state could pursue administration of Corps-issued PGPs under an MOU regardless of whether it seeks primacy of Section 404 permitting.
- Authorizations to conduct dredge or fill activities under State PGPs are issued to applicants with small projects and minimal adverse environmental impacts, individually or cumulatively.
- A PGP is designed to: simplify the evaluation process; provide equivalent environmental protection; reduce unnecessary duplicative project evaluation; and promote more efficient use of resources.
- PGPs offer more flexibility and can apply to areas subject to the federal navigational servitude.

Department of Environmental Conservation
SB 27 and HB 78: "Regulation of Dredge and Fill Activities"
Primacy for the Clean Water Act Section 404 Permitting ("404 Program")
January 24, 2013

Background

Section 404 of the Clean Water Act (CWA) established the "404 Program" requiring that all dredge or fill activities in waters of the U.S., including wetlands, be permitted by the Corps of Engineers. Examples of regulated activities include filling in wetlands for any purpose such as roads or residential and commercial building pads, and construction of breakwaters, dams, and levees. The CWA directs states to manage and implement the permitting program.

With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska's stake in administering the 404 program is unlike that of any other state.

Proposed Legislation

- Gives DEC and DNR, working together, authority to evaluate, seek approval, and implement a State-managed 404 permitting program from the EPA and the Corps of Engineers.
- Primacy does not apply to tidally influenced areas and navigable waters that are or could be used to transport interstate or foreign commerce and wetlands adjacent to those areas.
- Under primacy, the state gains authority to exercise discretion whenever possible while EPA and the Corps retain oversight authority.

Benefits of State Primacy

- Reduced bureaucracy. Two State permitting agencies involved, rather than four.
- State, instead of federal management of water, land use, and permitting priorities.
- A faster permitting process and a stable, risk-based, and predictable enforcement regime.
- Cost savings in permitting major new projects.
- Permits that reflect Alaska's unique conditions with Alaska-specific program guidance.
- Less emphasis on cumbersome process and more emphasis on results.
- A vastly improved appeals process that is timelier, conducted by Alaskans, and less apt to stall projects needlessly and indefinitely.
- Judicial proceedings generally decided by Alaska courts instead of outside federal courts.
- Accountability to Alaska's elected officials and the Alaskan public.
- Use of 404 permitting guidelines for environmental review, eliminating lengthy NEPA process for many projects, while still protecting the environment.
- Robust public notification and participation.
- Federal laws, such as the Endangered Species Act, would be addressed through EPA's oversight of the state program.

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

Public Process

February 22, 2013

The public process will be informed by and similar to the process followed leading up to and after delegation of the Alaska Pollutant Discharge Elimination System (APDES) program from EPA to DEC.

As DEC and DNR study assumption of the program, the agencies will seek input on issues, and costs and benefits from affected industries, agencies, tribal and local governments, and the public.

Public Notice Processes

Public notice processes provide transparency of DEC and DNR actions to the public, provide an opportunity for the public to comment upon and inform agency actions, and provide the agencies input to views and ideas to incorporate into agency action.

- Statutory changes that may be required will go through legislative process, including hearings
- Public notice and comment on regulation changes, including public meetings/hearings
- The application submitted to the Environmental Protection Agency (EPA) will go through EPA's public notice and comment process
- The State will provide notice of EPA's public notice of the state's application as part of their program approval process

Public Process after Program Assumption

- After assumption, the State will have a robust public notification and participation similar to that used by the APDES program
- The State will have a public, and tribal and local government notification and communication process similar to that developed and used by the APDES program



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

Post Office Box 111800
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99811-1800
Main: 907.465.5066
Fax: 907.465.5070

February 26, 2013

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
State Capitol Room 532
Juneau, AK 99801

The Honorable Kevin Meyer, Co-Chair
Senate Finance Committee
State Capitol Room 532
Juneau, AK 99801

Dear Senator Meyer and Senator Kelly:

Thank you for the opportunity to provide testimony to the Senate Finance Committee today regarding SB 27. This letter provides additional information to address questions asked by committee members at the hearing.

Senator Hoffman asked about the federal budget for the current program run by the U.S. Army Corps of Engineers (the Corps), and how many positions are in the federal program. In providing these numbers, it is important to note that the uncertainties of the actual balance between State and federal responsibility at primacy make an attempt to estimate State costs at primacy rough.

Currently, the Corps' regulatory program in Alaska has 49 full-time positions and an annual budget of \$7.9 million. However until the State performs the detailed evaluation of assumption of the program as provided for in SB 27, it is impossible to forecast the cost or size of a State program.

Senator Meyer asked if the federal funding for dredging at the Port of Anchorage would be affected by the State assuming primacy for the 404 program. The answer is no. The federal funding for dredging is through the Corps' Civil Works Program while the 404 program is managed through the Corps' Regulatory Program. In addition, because the Port of Anchorage is located in, tidally influenced by, and adjacent to a navigable water used for commerce, the Corps would retain permitting jurisdiction for this area if the State assumes primacy.

Sincerely,


Larry Hartig
Commissioner