

SB

26

<TARGET><BILL>SB 26</BILL><SUBJECT>SB
26</SUBJECT><COMM>SRES28</COMM></TARGET>



THE STATE
of **ALASKA**

GOVERNOR SEAN PARNELL

Department of Natural Resources

Office of the Commissioner

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

January 22, 2013

The Honorable Cathy Giessel, Chair
Senate Resources Committee
State Capitol Room 427
Juneau, AK 99801

Dear Senator Giessel:

The Department of Natural Resources (DNR) respectfully requests a hearing in the House Resources Committee on SB 26, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

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

SB 26 also authorizes the Commissioner of the Department of Natural Resources to allow an activity on State land through the issuance of a general permit. This bill also reforms and streamlines procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other authorizations issued by the DNR, particularly concerning land and water. Another more notable change would greatly simplify the state's land exchange process.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel S. Sullivan".

Daniel S. Sullivan
Commissioner

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

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



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

Governor Sean Parnell
STATE OF ALASKA

January 17, 2013

The Honorable Charlie Huggins
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Huggins,

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

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

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

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

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

The Honorable Charlie Huggins

January 17, 2013

Page 2

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

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

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

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell". The signature is written in a cursive, flowing style.

Sean Parnell
Governor

Enclosure

STATEWIDE PERMITTING REFORM

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

Senate Resources Committee

February 2, 2013

Department of Natural Resources

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



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

Permitting reform has bipartisan, national and local recognition and support

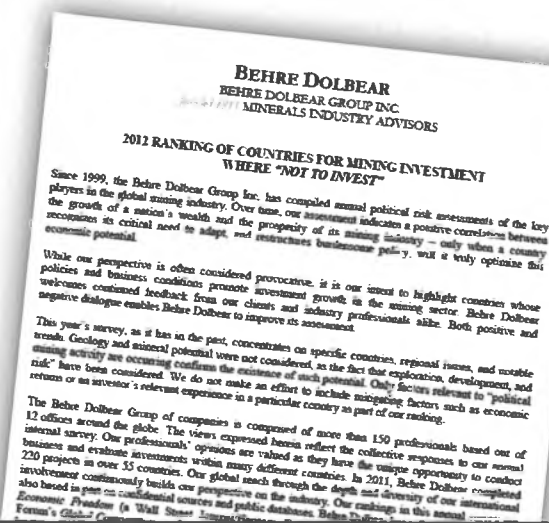
- Permitting reform is a bipartisan effort as policymakers realize the economic benefits of allowing large-scale development projects to proceed in a responsible, timely manner
- States as politically diverse as California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their permitting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



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

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

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



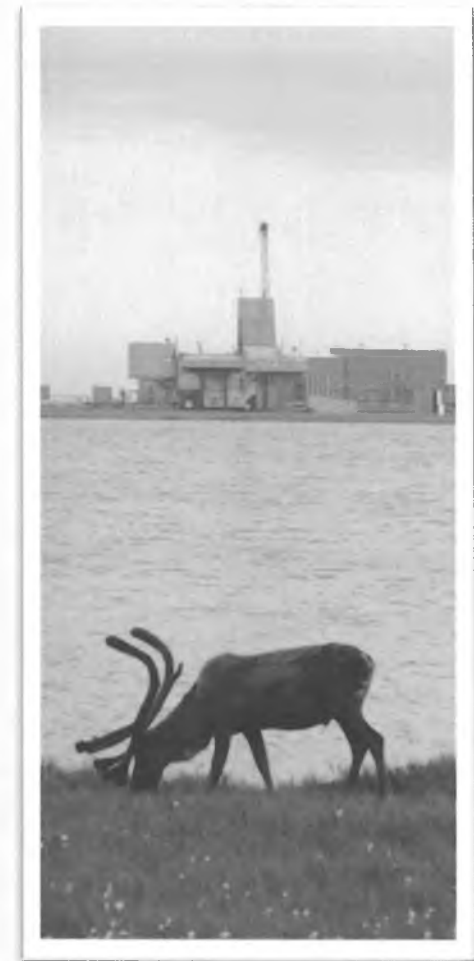
*“Permitting delays
are a global issue.”*

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

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

Jobs and the Environment are Undermined by Permitting Delays and Overregulation

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



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

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

Secure Alaska's Future: Oil

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

Secure Alaska's Future: Strategic & Critical Minerals

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

STATEWIDE PERMITTING REFORM

- STRATEGY -

Objective:

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

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

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



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

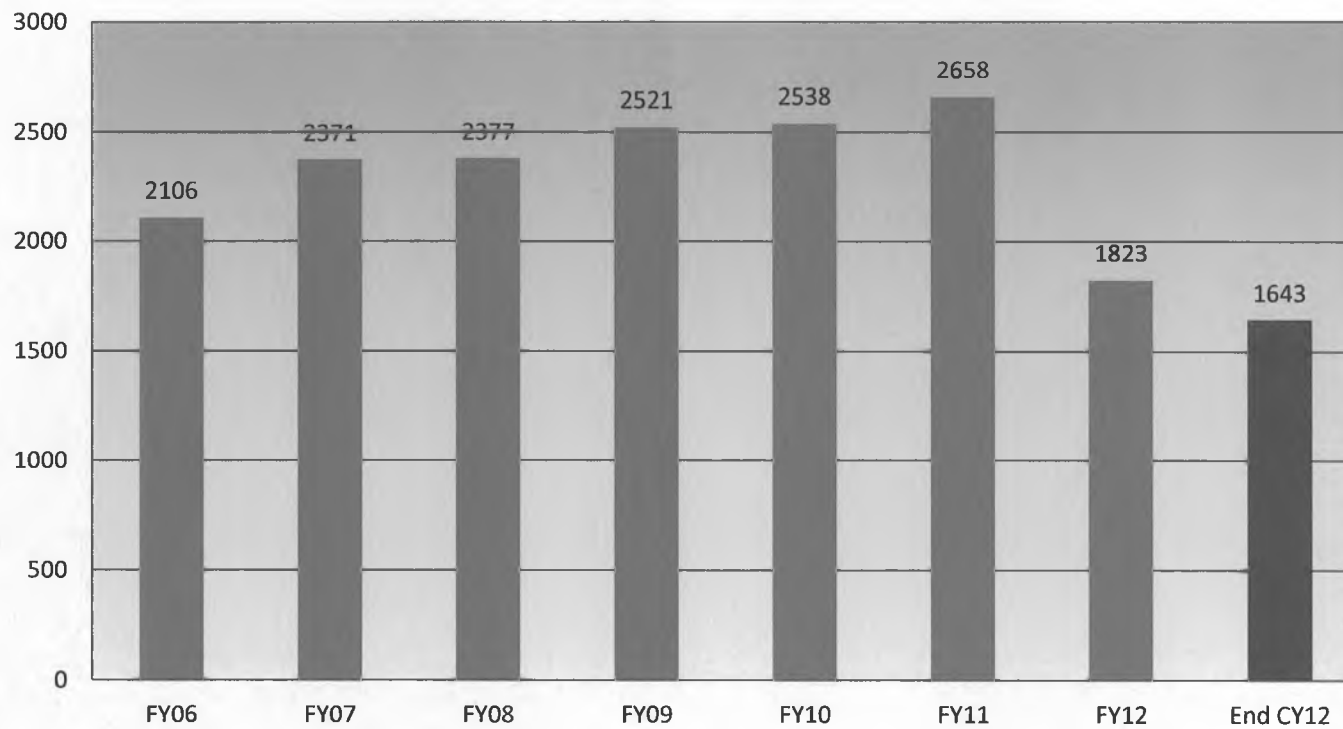
- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process
- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management)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



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

DMLW Backlog Authorizations



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

2012 Statutory Changes – HB361

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



STATEWIDE PERMITTING REFORM

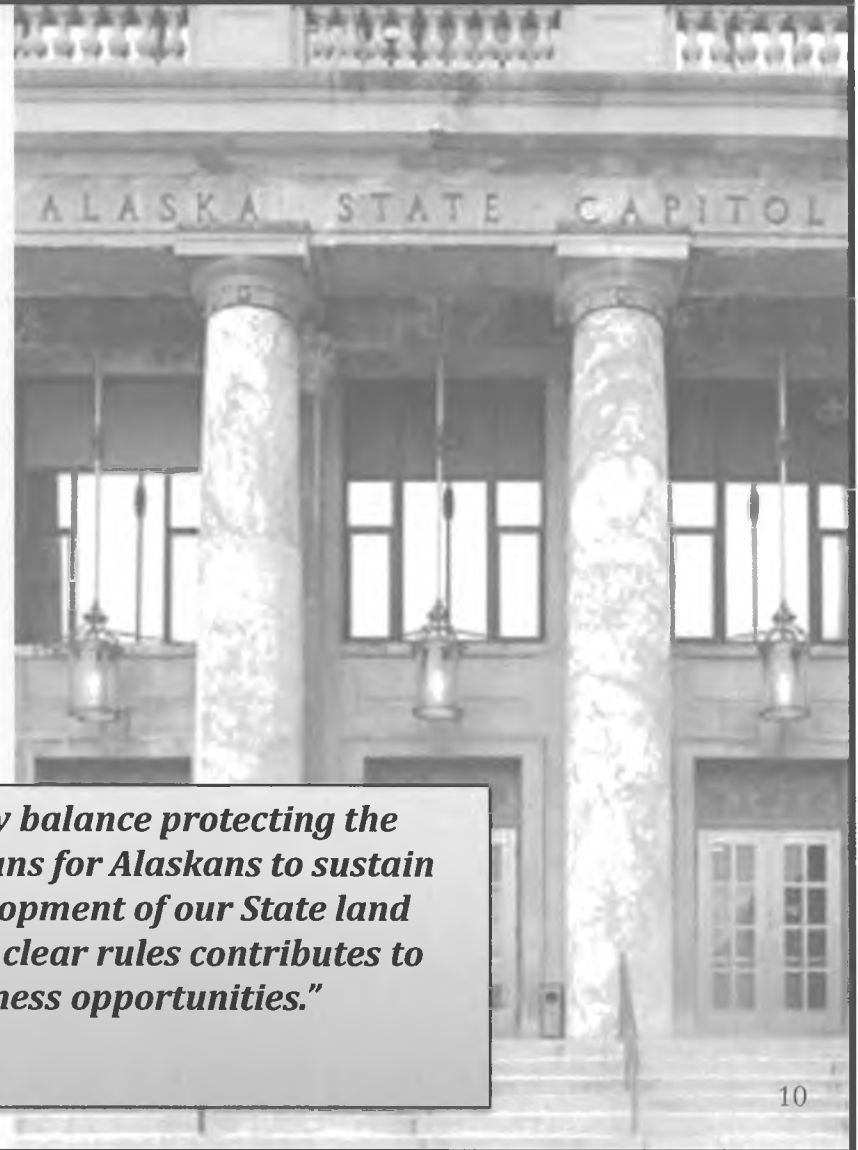
- 2013 LEGISLATURE -

2013 Statutory Changes – HB77 & SB26

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

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

- Governor Parnell, HB77 Transmittal Letter



SB 26 BRIEFING POINTS REGARDING WATER

FOR THE SENATE RESOURCES COMMITTEE • FEBRUARY 2, 2013

Hydrologic Units

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

Significant Amount of Water

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

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

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

- (1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;
- (2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;
- (3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or
- (4) any water use that may adversely affect the water rights of other appropriators or the public interest.

(c) A person using less than the amount of water described in (b) of this section acquires no water right or priority unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 - 11 AAC 93.140. The use of water without a permit or certificate is subject to appropriation by others, and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record or to protect the public interest.

Water Reservation

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

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

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

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

Water Right versus Temporary Water Use Authorizations

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

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

Have Instream Flow Reservations ever been issued to a "person"?

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

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SECTIONAL ANALYSIS

FOR THE SENATE RESOURCES COMMITTEE • FEBRUARY 2, 2013

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 47 establishes an immediate effective date for Section 45.

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 26
Fiscal Note Number 1
(S) Publish Date 1/18/13

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

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

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

ASSOCIATED REGULATIONS

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

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

Initial version.

Prepared by Brent Goodrum, Director Phone 269-8400
Division Division of Mining, Land and Water Date/Time 1/14/13 5:00 PM
Approved by Daniel S. Sullivan, Commissioner Date 1/14/2013
Department of Natural Resources

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 26

Analysis

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

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

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 26
Fiscal Note Number 2
(S) Publish Date 1/18/13

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

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

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

ASSOCIATED REGULATIONS

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

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

Initial version.

Prepared by Ben Mulligan, Legislative Liaison
Division Commissioner's Office
Approved by Cora Campbell, Commissioner
Department of Fish & Game

Phone 907-267-2311
Date/Time 01/07/13 10:30AM
Date 1/7/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 26

Analysis

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

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

BRIEFING PAPER

FOR THE SENATE RESOURCES COMMITTEE • JANUARY 22, 2013

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

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

The bill would accomplish the following primary objectives:

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

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

- 6) Clarify that the commissioner may issue one or more new temporary water use permits for the same project. (Section 42)
- Under current statutes, a Temporary Water Use Authorization (TWUP) permit may be authorized “...for a period of time not to exceed five consecutive years...”
 - The proposed change would clarify that successive Temporary Water Use Authorizations may be applied for, adjudicated and issued for the same project beyond the initial five year period of the project.
 - TWUPs are not permanent water rights. The division may change or revoke TWUP as necessary to protect water right holders or the public interest, and TWUPs are mainly used by exploration projects and construction projects that are not conducive to permanent water rights because the water use is of a temporary nature and because water sources, water uses, water use quantities and water use locations frequently change.
- 7) Amend water reservation statutes to limit the application for reservations of water related to maintaining instream flow to federal, state public agencies or political subdivisions of the state and reduces the mandate to re-evaluate water reservations (Section 40 and 41)
- This revision would prevent non-agency entities from being able to apply for the reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water removals
 - A “person” was added to the statute to allow miners to apply for and receive a water reservation for sanitary and water quality purposes; usually associated with mixing zones. However, no applications for these reservations have ever been filed. Mining interests can still receive TWUPs or water rights for sanitary and water quality purposes from the department;
 - In recent years, the Reservation of Water program has gained more attention and has come to the forefront of water management. Individuals and non-governmental groups are applying for reservations, usually in controversial areas in an attempt to influence the decision making process. In addition to potentially adding years to a project’s permitting process, the practice of allowing private entities to hold reservation of significant amounts of public waters in Alaska further complicates some water management issues;
 - No other state allows private persons to reserve and hold reservations to public water;
 - The removal of the word “person” does not preclude an organization or individual from working with a municipal government, state or federal agency, so that the agency can apply for a reservation. In this manner, the appropriate policy level review and criteria for each agency or governmental entity are used. In addition, these agencies will be able to identify the funding and technical expertise needed to perfect these applications;

- The commissioner is currently required to review all reservations of water every ten years to determine whether the statutory purpose for which the reservation was issued still apply to the reservations. Due to the number of existing and future reservations, and the limited resources available to the department, this is beyond the capacity of the department.
 - There are 438 applications pending for instream water reservations. Out of those, 37 are applications that have been applied for by a person (non-agency). Those applications would be closed, but Department of Fish and Game would have the capability of submitting applications for the same requested reservations if warranted.
- 8) Allow people to carry small quantities of water from one hydrologic unit to another without violating the law. (Section 34)
- Currently there is no de minimis amount of water that is exempt from the provisions of AS 46.15.035 and thus any person that transports water out of a hydrologic unit without returning the water back to that same hydrologic unit would be in violation of statute.
 - Amends the statute to prevent a technical violation of the statute governing water removal from a hydrologic unit for even small amounts of water while still maintaining a requirement for an application for water rights or temporary water use for a significant amount of water. The phrase “significant amount of water” is already defined in Alaska Administrative Code section 11 AAC 93.035.
- 9) Amends various statutes related to appeals, requests for reconsideration and best interest findings to clarify administrative review process and rights to allow only a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of a decision, and establishes a requirement that an appellant must demonstrate their standing to appeal or request reconsideration. (Sections 4, 5, 11, 13, 14, 29, 30, 31, 32, 33, 38 and 39)
- Aims to allow only appellants who have a vested interest or who will be harmed by a decision to appeal and prevent the public from using appeals as a method to block permitting of projects on what is later found to be groundless claims or casual objection.
 - Allows the department to require a person’s participation in the public review process in order to be eligible to appeal or request reconsideration.
 - Amends the statute so that failure of the commissioner to act on the request for reconsideration for a decision not made under AS 38.05.035(e) within 30 days is a denial of the request and would stand as a final administrative decision for purpose of appeal to the superior court.
 - Clarifies that review procedures under the coal regulatory program (Alaska Surface Mining Control and Reclamation Act – ASMACRA) are not subject to AS 44.37.011.

10) This bill clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945 not just mineral closing orders. (Section 19)

- Amends the statute to reflect the need for the public to be aware of actions that limit the use of the mineral estate on state lands. This is inclusive of both closing and opening of areas and limitations placed through leasehold location orders.

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

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

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

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

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

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

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

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



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Division of Mining, Land and Water

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

February 8, 2013

The Honorable Cathy Giessel, Chair
Senate Resources Committee
State Capitol
Juneau, AK 99801

Dear Senator Giessel and members of the Senate Resources Committee:

During the February 2, 2013, Senate Resources hearings on SB 26, the following questions were raised. Please find below the responses from the Division of Mining, Land and Water (DMLW) along with the original questions were asked in bold. All references to the bill are based upon version 28-GS1524\A.

Q: Are Shorefish Leases included in this renewal provision or was it covered last year in HB 361?

Shorefish leases are governed by AS 38.05.082, and the renewal of shorefish leases is governed by (d) of that section. These provisions are not changed in SB 26, nor were they changed in last year's bill HB 361. With regard to the concern whether a shorefish lease holder will have some sort of preferential right, they would only have a competitive right. However, when the state has more than one qualified applicant, DNR must determine who is most qualified as defined under subsection AS 38.05.082(b).

Q: Is the location or physical proximity to a proposed activity considered in order to meet "physically affected" criteria?

It should be noted that there was some mixing of definitions during the hearing. There are two definitions.

First in section 33, the section that governs general appeals, to be adversely affected is defined such that the decision made by the department must create or impose an adverse and direct effect or detriment to the person or person's interest.

Second in section 39, the section that governs sales of water or applications for appropriation or removal, adversely affected is defined such that the decision made by the department must directly affect a person either by physical or financial detriment to the person's interests. Therefore the question about the definition of "physical" that was discussed in Committee is only applicable for water appropriation decisions.

Living in close proximity does not obviate the need for the appellant to explain how they are adversely affected. As a general rule, water removed from a water source tends to be replaced

(equalized over time and distance) by surrounding groundwater. Therefore, the more geographically distant one is from a water withdrawal site, the less likely that they will be physically affected by the water withdrawal.

Q: More clarity on the “substantially and adversely affected” definition/application.

“Adversely affected” is defined in bill Sections 33 (DNR appeals generally) and 39 (water appropriations). Additionally, the Black’s Law Revised Fourth Edition (1968 Edition) definition of “substantial” is: *of real worth and importance; belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable.* Webster’s New World Dictionary Second College Edition (c) 1984 defines “substantial” as: *of having substance; real; actual; true; not imaginary; strong; solid.* “Adverse” is defined in Webster’s Dictionary (1979) as: *acting against or opposed to one’s interests.*

Q: Would nonprofits/NGOs be able to appeal under the new standard?

Yes, as long as the organization met the requirements of the relevant statutory standard (e.g., either Section 33 or 39 of the bill).

It could be noted that in the Alaska Court system, generally organizations have standing to bring suit on behalf of its members where: “(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Friends of Willow Lake, Inc. v. State, Dept. of Transp. & Pub. Facilities, Div. of Aviation & Airports*, 280 P.3d 542, 546 (Alaska 2012) (internal quotations and citations omitted).

Q: Requested a list of non-governmental agencies with submitted water reservation applications and the potential projects impacted.

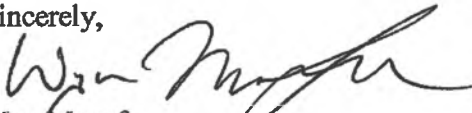
This is supplied in the attached spreadsheet.

Q: At what point does either private interference or federal interference/delay on a development project constitute a “takings”?

Senator Dyson was referencing property takings (under either the Alaska State Constitution, or the Fifth Amendment of the federal Constitution). In order for there to be a taking of property, there needs to be governmental, not private, action. Generally speaking, the Fifth Amendment is violated when “land-use regulation does not substantially advance legitimate state interests or **denies an owner economically viable use of his land.**” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016 (1992) (internal quotations and citations omitted, emphasis added).

- Article I, section 18 of the Alaska Constitution provides broader protection than the Fifth Amendment.
- A case by case analysis by the Department of Law would be necessary to answer this question in more detail.

Sincerely,



Wyn Menefee

Chief Operations Officer, Division of Mining, Land and Water

Non-Governmental Water Reservation Applications by Year Application Received

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

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

Norton Bay Inter-Tribal Watershed Council

Resolution # 2013-01

A Resolution of the Norton Bay Inter-Tribal Watershed Council,

WHEREAS, the Norton Bay watershed and nearby areas are primary sources of subsistence foods for the people of Norton Bay and it neighboring native communities, and

WHEREAS, the Norton Bay and nearby areas include traditional living places, birthplaces and burial grounds and other areas of cultural significance, and

WHEREAS, the Norton Bay watershed is home to a rich and diverse fishery including King Salmon, Pink Salmon, Chum Salmon, Silver Salmon, Dolly Varden as well as whitefish and other valuable subsistence species, and

WHEREAS, uranium exploration and development activities in the Norton Bay watershed permitted by the State of Alaska have been allowed to occur during the summer season that is critical importance to the subsistence harvesting of fish and wildlife, berries, roots, plant leaves, and a wide range of mammal and birds, and

WHEREAS, Governor Parnell has introduced bills (HB 77 & SB 26) designed to expand government power and strip Alaskans of their rights to clean water and healthy fisheries. One proposal is especially damaging – it would deny Alaskans the right to keep water in streams for salmon. Under current law, Alaskans can file for “instream flow rights,” to secure enough water in salmon streams for healthy fisheries. Large corporations, however, want unfettered access to Alaskan waters – regardless whether they support wild salmon. So Governor Parnell is cutting everyday Alaskans from the loop,

WHEREAS, DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow applications needed to keep water for fish,

WHEREAS, Alaska salmon streams are warming, and salmon are becoming more vulnerable to pollution, predation and disease; that’s why it’s more important than ever to keep water in streams to ensure healthy fish,

THEREFORE, be it resolved that, the State of Alaska’s proposed Road to Ambler for the purpose of furthering mining activity in this area, the Norton Bay Inter-Tribal Watershed Council (IRA), hereby:

- 1. Strongly objects to the consideration or approval of SB 26 and HB 77 in there present form;**

2. Any legislation related to state water rights should recognize that Native Villages and other Alaskans have a right to healthy salmon and an obligation to protect them and should not strip away the rights of Alaskans to keep water instreams for healthy fish.
3. Any legislation related to state water rights should put the human right to water first. When allocation decisions are made in streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over other out of stream uses.

CERTIFICATION

We the undersigned officers and members of the Board of Directors for the Norton Bay Inter-Tribal Watershed Council hereby certify that the Board which is made up of 9 members, of whom (3) constitutes a quorum, were present at the meeting held January 30, 2013, that this Resolution has passed by the affirmative vote of 5 members and that this Resolution has not been rescinded or amended in any way.

, President

Emil Auning - Secretary

, Secretary, Treasurer

Sybil S. Lewis Treasurer

Dear Senate Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following questions and comments on SB 26 for consideration by the Senate Resources Committee:

- **Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit, “if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.”
 - How will the commissioner determine what is or is not a “significant and irreparable harm?” The terms are highly subjective and open to multiple interpretations. If general permits are to be allowed, the commissioner’s authority should be limited to activities specifically identified in legislation as being suitable for a standardized authorization.
 - What opportunities will be provided for the public to be involved in the establishment of a general permit?
 - What appeal rights will be provided for a decision to issue a general permit?
- **Appeal Rights.** Currently, a person “aggrieved” by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be “substantially and adversely affected” in order to appeal a department decision.
 - How will the commissioner determine whether a person is “substantially and adversely affected?” Again, these terms are subjective and open to interpretation.
 - Because the standard is so subjective, it could result in an inequitable or inconsistent application of the appeal right.
- **Page 21, Section 40.** This section removes the ability of organizations and individuals (“persons”) to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.
 - Alaska may be unique in allowing persons to apply for reservations, but we are also unique in our vast size. With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution’s requirement that water is reserved to the people for common use (Article 8, Section 3).

SB 26 – Public Testimony – Lisa Weissler
2/4/2013

- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.
- This provision has been in place since 1980. Is there really a problem that warrants making this change?
- Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. The legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.
 - Public notice is not required for a temporary water use authorization. With unlimited authority to issue new authorizations for the same project, the use of a significant amount of water may be permitted for decades without the public ever having an opportunity to comment on the use.
 - For a temporary water use, it is within the commissioner's discretion whether to impose conditions to protect other water rights or resources. Shouldn't there be some statutory criteria that must be met for a person to use state water for more than five or ten years?
 - At what point does temporary water use stop being "temporary?" Who makes that determination and when?

I urge the committee to request that DNR provide a response to these questions and comments, and that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

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

On Feb 3, 2013, at 7:29 PM, "H Shepherd CWA"

Governor Parnell has introduced a Bill into the legislature (HB 77 & SB 26) which threatens fishery resources in Alaska upon which Native Villages and other communities depend for subsistence uses and strips such communities and tribal governments of their rights to participate in state government decision making. Specifically, the Bill would deny tribes and individuals the right to file for "instream flow rights," to secure enough water in rivers and streams for healthy fisheries; limit the time period for public comment on issuance of water right permits; reduce restrictions on transferring water rights, increase the amount of water that can be obtained without applying for a permit; eliminate the right to appeal the state's granting of water right permits for the majority of individuals and entities that would be impacted by the water taken out of stream and other acts, which raise substantial constitutional and other legal concerns.

Already. DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow applications needed to keep water for fish. The "No Human Right to Water Bill", therefore, represents nothing more than an attempt to limit, even further, the rights of Native Alaskan Tribal Governments and the public to challenge the Governor's, current, policy of unlimited corporate access to Alaska's water, regardless of the impacts to human health and fishery and subsistence resources. Among other laws, therefore, the Bill is contrary to the Alaska Constitution which expressly states that water appropriations shall not have precedence over "general uses for fish and wildlife."

Alaskans have a right to healthy salmon and an obligation to protect them. The Center for Water Advocacy, therefore, urges the Committee not to strip away the rights of citizens to keep water in our streams for healthy fish. Please reject any legislation that strips away Constitutional and other rights of the majority of Alaskans who are impacted by the use of water by corporate and municipal users to protect water quality and instream uses of water. Any legislation related to state water rights should put the human right to water first. Finally, when allocation decisions are made in streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over other out of stream uses.

I request that these comments be read during the February 4 Resources Committee Hearing on SB-26. Please contact me if you have any questions regarding these comments or this request.

Thank you.
Hal Shepherd, Director
Center for Water Advocacy
P.O. Box 2903
Seward, AK 99664
(907)299-8821

From: Darrell & Cindy Birkhimer

Sent: Monday, February 04, 2013 11:49 AM

To: Darrell & Cindy Birkhimer; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French

Subject: Re: SB26 Comments

Dear Senate Resource Committee,

RE:Alaska Senate (SB 26)

Please consider the following comments and vote against SB26:

Who was it that said "Every time a new law or regulation is passed, citizens have a little less freedom"? No truer is that than the present. Governor Parnell has introduced Bill SB26, which cuts the citizen right to appeal a number of agency decisions on development issues. By prohibiting a comment period, this bill would restrict Alaskans' right to participate in the public process. Governor Parnell has appointed sycophants who implement his dogmas and now he is preventing citizens from expressing objections to his policies. Whether you are for or against an issue, public participation in these decisions is a right that we must preserve!

Respectfully

Cindy Birkhimer

City of Elim

Resolution #13-03

A Resolution of the City of Elim,

WHEREAS, the City of Elim and nearby areas are primary sources of subsistence food for the people of Norton Bay and its neighboring native communities, and

WHEREAS, the City of Elim and nearby areas include traditional living places, birthplaces and burial grounds and other areas of cultural significance, and

WHEREAS, the City of Elim is home to a rich and diverse fishery including King Salmon, Pink Salmon, Chum Salmon, Silver Salmon, and Dolly Varden as well as white fish and other valuable subsistence species, and

WHEREAS, uranium exploration and development activities in areas surrounding the City of Elim permitted by the State of Alaska have been allowed to occur during the summer season that is critical importance to the subsistence harvesting of fish and wildlife, berries, roots, plant leaves, and a wide range of mammals and birds, and

WHEREAS, Governor Parnell has introduced bills (HB 77 & SB 26) designed to expand government power and strip Alaskans of their rights to clean water and healthy fisheries. One proposal is especially damaging – it would deny Alaskans the right to keep water in streams for salmon. Under current law, Alaskans can file for “in-stream flow rights”, to secure enough water in salmon streams for healthy fisheries. Large corporations, however, want unfettered access to Alaskan waters – regardless whether they support wild salmon. So Governor Parnell is cutting everyday Alaskans from the loop,

WHEREAS, DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the in-stream flow application needed to keep water for fish,

WHEREAS, Alaska salmon streams are warming, and salmon are becoming more vulnerable to pollution, predation and disease; that’s why it’s more important than ever to keep water in streams to ensure healthy fish,

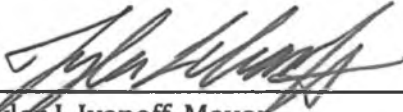
THEREFORE BE IT RESOLVED, that the State of Alaska proposed Road to Ambler for the purpose of furthering mining activity in this area, the City of Elim, hereby:

- 1. Strongly objects to the consideration or approval of SB 26 and HB 77 in their present form;**

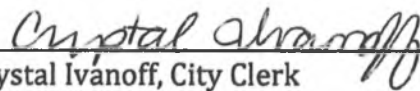
2. Any legislation related to state water rights should recognize that Native Villages, local governments, and other Alaskans have a right to healthy salmon, and an obligation to protect them and should not strip away the rights of Alaskans to keep water in-stream rights for healthy fish.
3. Any legislation related to state water rights should put the human right to water first. When allocation decisions are made in streams, subsistence uses, aquatic habitat and constitutional rights of all Alaskans should take priority over other out of stream uses.

CERTIFICATION

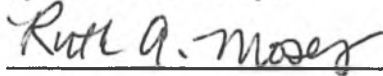
We the undersigned officers and members of the City Council for the City of Elim hereby certify that the council, which is made up of 7 members, of whom (4) constitutes a quorum, were present at the meeting held February 4, 2013, that this Resolution has passed by the affirmative vote of 7 members and that this Resolution has not been rescinded or amended in any way.



Tyler L Ivanoff, Mayor



Crystal Ivanoff, City Clerk



Ruth Moses, Secretary/Treasurer



Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservation@gmail.com

February 4, 2013

Dear House & Senate Resources Committees,

RE: HB77 & SB26

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

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



Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservation@gmail.com

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

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

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

Sincerely,

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

CC:

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

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

From: H Shepherd CWA

Sent: Wednesday, February 06, 2013 8:34 AM

To: Sharon Long

Cc: Cindy Smith; murray.emily57@vahoo.com; waterlaw@uci.net; nikospastos@hotmail.com; Carl Wassilie; Delice Alexander; Jessica Wenstaffer; Jennifer Harris

Subject: Re: !FW: Senate Bill 26 testimony

Governor Parnell has introduced a Bill into the legislature (HB 77 & SB 26) which threatens fishery resources in Alaska upon which Native Villages and other communities depend for subsistence uses and strips such communities and tribal governments of their rights to participate in state government decision making. Specifically, the Bill would deny tribes and individuals the right to file for "instream flow rights," to secure enough water in rivers and streams for healthy fisheries; limit the time period for public comment on issuance of water right permits; reduce restrictions on transferring water rights, increase the amount of water that can be obtained without applying for a permit; eliminate the right to appeal the state's granting of water right permits for the majority of individuals and entities that would be impacted by the water taken out of stream and other acts, which raise substantial constitutional and other legal concerns.

Already. DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow applications needed to keep water for fish. The "No Human Right to Water Bill", therefore, represents nothing more than an attempt to limit, even further, the rights of Native Alaskan Tribal Governments and the public to challenge the Governor's, current, policy of unlimited corporate access to Alaska's water, regardless of the impacts to human health and fishery and subsistence resources. Among other laws, therefore, the Bill is contrary to the Alaska Constitution which expressly states that water appropriations shall not have precedence over "general uses for fish and wildlife."

Alaskans have a right to healthy salmon and an obligation to protect them. The Center for Water Advocacy, therefore, urges the Committee not to strip away the rights of citizens to keep water in our streams for healthy fish. Please reject any legislation that strips away Constitutional and other rights of the majority of Alaskans who are impacted by the use of water by corporate and municipal users to protect water quality and instream uses of water. Any legislation related to state water rights should put the human right to water first. Finally, when allocation decisions are made in streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over other out of stream uses.

I request that these comments be read during the February 4 Resources Committee Hearing on SB-26. Please contact me if you have any questions regarding these comments or this request.

Thank you.

Hal Shepherd, Director

Center for Water Advocacy

P.O. Box 2903

Seward, AK 99664

(907)299-8821



Council of
Alaska Producers

SB26: Land Disposals/Exchanges; Water Rights

February 7, 2013

Senator Giessel
Chair - Senate Resources Committee
Capitol Building
Juneau, AK 99811

Chair Giessel,

The Council of Alaska Producers (CAP) appreciates the opportunity to comment on SB26: Land Disposals/Exchanges; Water Rights. CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large producing metal mines and major metal developmental projects in the state.

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

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

SB26 accomplishes this through a variety of mechanisms including allowing general permits, clarifying the appeals process, and simplifying leases and water permits. While the resource development industry is certain to be affected by this legislation, it is important to keep in mind that these provisions benefit everyone in Alaska including cabin owners, aquatic farmers, home developers and any individual who seeks to do business on state land or water.

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

Thank you for your consideration in this matter,

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

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

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

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

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

Composite policy and mineral potential	4
Policy Potential Index	25

Senate Resources Committee on SB 26, Feb. 6, 2013
Testimony of Rick Rogers, Executive Director,
Resource Development Council

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

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

RDC is in support of SB26. The Alaska Legislature, to its credit, provided DNR with additional resources to address what had become an untenable backlog of permits and authorizations. Such backlogs negatively affect our resource industries as well as individual Alaskans seeking required state authorizations. We understand that while a backlog still exists, DNR has made real progress in catching up on that work.

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

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

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

Thank you for the opportunity to comment.