

ALASKA LEGISLATURE

2365

HOUSE and SENATE FINANCE COMMITTEE FILES,

2001 - 2002

CS FOR SENATE BILL NO. 139(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water and to the accounting and**
2 **appropriation of those fees; relating to authorizations for the temporary use of state**
3 **water; making other amendments to the Alaska Water Use Act; and providing for an**
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 **POLICY REGARDING STATE WATER USE FEES.** (a) It is the policy of the
9 legislature to authorize the Department of Natural Resources to assess a reasonable fee for the
10 services it provides in facilitating the use of state water; the fee should reflect the reasonable
11 direct cost of providing the service, but it is the policy of the state that the fee not include

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

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

1 (3) interagency charges that would not meet the requirements of AS 37.10.052
 2 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
 3 designated regulatory service;

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

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

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

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

11 (b) It is the policy of the legislature that the Department of Natural Resources not
 12 apply a charge to the holder of a certificate of appropriation that is not specifically related to
 13 services provided by the department, except that the department may continue to charge the
 14 annual \$50 administrative service fee currently in use by the department in order to maintain
 15 the water rights program for the benefit of Alaskans and current water rights holders.

16 (c) It is the policy of the legislature that the Department of Natural Resources

17 (1) minimize the required costs, including application fees, on individuals and
 18 businesses withdrawing less than a significant amount of water; #2

19 (2) consider providing a partial fee reduction for water rights holders and
 20 applicants who have approved irrigation management plans.

21 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 FINDINGS, POLICY, AND PURPOSE RELATED TO AUTHORIZATIONS FOR
 24 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

25 (1) many construction, development, commercial, and private activities
 26 require an authorization for the temporary use of the state's water without the need to acquire
 27 a permanent right to appropriate water;

28 (2) for many years, in appropriate circumstances, the Department of Natural
 29 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
 30 and

31 (3) the legislature validates and affirms that temporary permits authorizing the

1 temporary use of state water continue to be appropriate under AS 46.15.

2 (b) It is the policy of the legislature to expressly confirm in the Department of Natural
3 Resources the authority to issue authorizations for temporary use of water subject to
4 appropriate conditions and limitations set by the Department of Natural Resources.

5 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

6 (1) confirm the authority of the Department of Natural Resources to issue
7 authorizations for temporary use of water; and

8 (2) affirm the validity of existing temporary permits for the use of state water
9 issued before the effective date of this Act that may have been called into question by the
10 rationale used by the court in Greenpeace v. Alaska Department of Natural Resources, 3AN-
11 00-3415 Civil.

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

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

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

17 (B) certification of federal permits or authorizations under 35
18 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

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

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

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

26 (b) The commissioner shall

27 (1) adopt procedural and substantive regulations to carry out the #1
28 provisions of this chapter, taking into consideration the responsibilities of the
29 Department of Environmental Conservation under AS 46.03 and the Department of
30 Fish and Game under AS 16;

31 (2) keep a public record of all applications for permits and certificates

1 and other documents filed in the commissioner's office; and shall record all permits
 2 and certificates and amendments and orders affecting them and shall index them in
 3 accordance with the source of the water and the name of the applicant or appropriator;

4 (3) cooperate with, assist, advise, and coordinate plans with the
 5 federal, state, and local agencies, including local soil and water conservation
 6 districts, in matters relating to the appropriation, use, conservation, quality, disposal,
 7 or control of waters and activities related thereto;

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

12 (5) before February 1 of each year, prepare a report describing the
 13 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
 14 shall notify the legislature that the report is available; the report must include

15 (A) information on the number of applications and
 16 appropriations for the removal of water from one hydrological unit to another
 17 that were requested and that were granted and on the amount of water
 18 involved;

19 (B) information on the number and location of sales of water
 20 conducted by the commissioner and on the volume of water sold;

21 (C) recommendations of the commissioner for changes in state
 22 water law; and

23 (D) a description of state revenue and expenses related to
 24 activities under AS 46.15.035 and 46.15.037.

25 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

26 (2) "hydrologic unit" means a hydrologic subregion established by the
 27 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
 28 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that
 29 is adjacent to a hydrologic subregion of the state. [""]

30 * Sec. 6. AS 46.15 is amended by adding a new section to read:

31 **Sec. 46.15.155. Authorization for temporary use of water. (a)**

1 Notwithstanding any contrary provision of this chapter, the commissioner may
2 authorize the temporary use of a significant amount of water, as determined by the
3 department by regulation, for a period of time not to exceed five consecutive years, if
4 the water applied for has not been appropriated in accordance with this chapter.

5 (b) Notwithstanding any contrary provision of this chapter, an authorization
6 for a temporary use of less than a significant amount of water is not required under
7 this section unless the commissioner has determined by regulation that the use may
8 have an adverse effect on other water uses and that an authorization must be obtained
9 from the department.

10 (c) The issuance of an authorization for temporary use of water under this
11 section does not establish a right to appropriate water. The temporary use of water
12 under an authorization remains subject to appropriation under this chapter.

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

18 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
19 section of an authorization for temporary use of water.

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

23 (g) Upon approval by the department, an authorization under this section may
24 be transferred to another person under the same conditions and limitations under
25 which the authorization was issued.

26 (h) A person to whom an authorization for temporary use of water was issued
27 under this section may allow another person to use the authorization, consistent with
28 the conditions and limitations of the authorization.

29 (i) The commissioner may modify, suspend, or revoke an authorization issued
30 under this section if the commissioner determines it necessary to protect the water
31 rights of other persons or the public interest.

1 * Sec. 7. AS 46.15.180(a) is amended to read:

2 (a) A person may not

3 (1) construct works for an appropriation, or divert, impound, withdraw,
4 or use a significant amount of water from any source without a permit, [OR] certificate
5 of appropriation, or authorization issued under this chapter;

6 (2) violate an order of the commissioner to cease and desist from
7 preventing any water from moving to a person having a prior right to use it;

8 (3) disobey an order of the commissioner requiring the person to take
9 steps to cause the water to move to a person having a prior right to use it;

10 (4) fail or refuse to install meters, gauges, or other measuring devices
11 or control works;

12 (5) violate an order establishing corrective controls for an area or for a
13 source of water;

14 (6) knowingly make a false or misleading statement in a declaration of
15 existing right.

16 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE
19 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
20 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
21 use of water is valid and remains in effect, notwithstanding that public notice was not
22 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
23 the temporary permit was issued.

24 (b) A temporary permit described in (a) of this section shall be considered to be an
25 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
26 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
27 permit described in this subsection is subject to the terms and conditions set out in the
28 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
29 Act.

30 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
2 attorney may change the term "temporary water use permit" in regulations of the Department
3 of Natural Resources concerning water use to "authorization for temporary use of water" as
4 consistent with this Act.

5 (b) To the extent that the regulations are not inconsistent with this Act, regulations
6 related to water management adopted by the Department of Natural Resources under
7 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
8 repealed and may be administered and enforced by the Department of Natural Resources.

9 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
10 AS 01.10.070(c).

11 * **Sec. 11.** Section 4 of this Act takes effect July 1, 2002.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 5/3/01 TIME: 7:25 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
CS SB 139 22-GS1087 \ P
5/2/01

PLUS 2 amendments: K
22-GS1087 \ J.1 5/3/01
22-GS1087 \ J.2 5/3/01

note both P & J versions

Thanks
Mindy

CS FOR SENATE BILL NO. 139()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

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9 legislature to authorize the Department of Natural Resources to assess a reasonable fee for the
10 services it provides in facilitating the use of state water; the fee should reflect the reasonable
11 direct cost of providing the service, but it is the policy of the ^{legis. body} (state) that the fee not include

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

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

1 (3) interagency charges that would not meet the requirements of AS 37.10.052
2 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
3 designated regulatory service;

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

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

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

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

11 (b) It is the policy of the legislature that the Department of Natural Resources not
12 apply a charge to the holder of a certificate of appropriation that is not specifically related to
13 services provided by the department, except that the department may continue to charge the
14 annual \$50 administrative service fee currently in use by the department in order to maintain
15 the water rights program for the benefit of Alaskans and current water rights holders.

16 (c) It is the policy of the legislature that the Department of Natural Resources
17 minimize the required costs, including application fees, on individuals and businesses
18 withdrawing less than a significant amount of water.

19 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **FINDINGS, POLICY, AND PURPOSE RELATING TO AUTHORIZATIONS FOR**
22 **CERTAIN TEMPORARY USES OF STATE WATER.** (a) The legislature finds that

23 (1) many construction, development, commercial, and private activities
24 require an authorization for the temporary use of the state's water without the need to acquire
25 a permanent right to appropriate water;

26 (2) for many years, in appropriate circumstances, the Department of Natural
27 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
28 and

29 (3) the legislature validates and affirms that temporary permits authorizing the
30 temporary use of state water continue to be appropriate under AS 46.15.

31 (b) It is the policy of the legislature to expressly confirm in the Department of Natural

1 Resources the authority to issue authorizations for temporary use of water subject to
2 appropriate conditions and limitations set by the Department of Natural Resources.

3 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

4 (1) confirm the authority of the Department of Natural Resources to issue
5 authorizations for temporary use of water; and

6 (2) affirm the validity of existing temporary permits for the use of state water
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8 rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-
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14 under AS 46.03.100;

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16 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

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

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

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

24 (4) prescribe fees or service charges for any public service rendered
25 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
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27 service fee to maintain the water management program;

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5 authorize the temporary use of a significant amount of water, as determined by the
6 department by regulation, for a period of time not to exceed five consecutive years, if
7 the water applied for has not been appropriated in accordance with this chapter. The
8 commissioner may extend an authorization under this section for one additional term
9 of five consecutive years.

10 (b) Notwithstanding any contrary provision of this chapter, an authorization
11 for a temporary use of less than a significant amount of water is not required under
12 this section unless the commissioner has determined by regulation that the use may
13 have an adverse effect on other water uses and that an authorization must be obtained
14 from the department.

15 (c) The issuance of an authorization for temporary use of water under this
16 section does not establish a right to appropriate water. The temporary use of water
17 under an authorization remains subject to appropriation under this chapter.

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

23 (e) The provisions of AS 46.15.080 do not apply to the issuance or extension
24 under this section of an authorization for temporary use of water.

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

28 (g) Upon approval by the department, an authorization under this section may
29 be transferred to another person under the same conditions and limitations under
30 which the authorization was issued.

31 (h) A person to whom an authorization for temporary use of water was issued

1 under this section may allow another person to use the authorization, consistent with
2 the conditions and limitations of the authorization.

3 (i) The commissioner may modify, suspend, or revoke an authorization issued
4 under this section if the commissioner determines it necessary to protect the water
5 rights of other persons or the public interest.

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7 (a) A person may not

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9 or use a significant amount of water from any source without a permit, [OR] certificate
10 of appropriation, or authorization issued under this chapter;

11 (2) violate an order of the commissioner to cease and desist from
12 preventing any water from moving to a person having a prior right to use it;

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14 steps to cause the water to move to a person having a prior right to use it;

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18 source of water;

19 (6) knowingly make a false or misleading statement in a declaration of
20 existing right.

21 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

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24 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
25 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
26 use of water is valid and remains in effect, notwithstanding that public notice was not
27 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
28 the temporary permit was issued.

29 (b) A temporary permit described in (a) of this section shall be considered to be an
30 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
31 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary

1 permit described in this subsection is subject to the terms and conditions set out in the
2 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
3 Act.

4 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
7 attorney may change the term "temporary water use permit" in regulations of the Department
8 of Natural Resources concerning water use to "authorization for temporary use of water" as
9 consistent with this Act.

10 (b) To the extent that the regulations are not inconsistent with this Act, regulations
11 related to water management adopted by the Department of Natural Resources under
12 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
13 repealed and may be administered and enforced by the Department of Natural Resources.

14 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

16 * **Sec. 11.** Section 4 of this Act takes effect July 1, 2002.

CHANGES BETWEEN RESOURCES & FINANCE
COMMITTEE SUBSTITUTES FOR SB 139
STATE WATER RIGHTS

Using Resources CS as basis for Page & Line #s.

- 1) Removes Findings language on Page 1, Lines 10-14 and Page 2 Lines 1-9. This language is not necessary to accomplish the goals of this bill.
- 2) Makes clear that this is Legislative policy replacing the word "state" with the word "legislature" (Page 2, Lines 10, 13 & 27, Page 3, Lines 1 & 16). Drafter missed one of these: need to change on Fin CS Page 1, Line 11.
- 3) Page 3, Lines 12- 13: Removed vague language
Insert
"Resources has issued revocable permits for the temporary use of state water under AS 46.15; and"
- 4) Page 6, Line 27:
DELETE [RELATING]
Insert
related

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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April 19, 2001

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, AK 99811

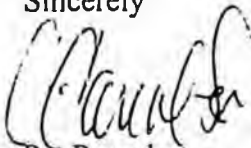
Dear Senator Kelly:

The Department of Natural Resources respectfully requests a hearing on CSSB 139(RES) "An Act relating to fees for certain uses of state water and to the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

The bill will solve a long-standing, significant problem that has plagued implementation of the Alaska Water Use Act. Additionally, if passed, the bill will validate with express, statutory authority, the department's practice of providing temporary water use permits.

I look forward to working with you on this bill. If you require further information, please contact Carol Carroll at 465-4730.

Sincerely



Pat Pourchot
Commissioner

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

- 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
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CSSB 139 (RES)

An Act relating to fees for certain uses of state water Sectional Analysis

Sections one and two are the findings, policy and purpose statements relating to water fees and temporary water use authorizations

Section three: Amends AS 37.10.058 to add water fees to the receipt supported services category of fees as a designated regulatory service.

Section four: allows the department to continue charging an annual \$50 administrative service fee to maintain the water management program in addition to those fees authorized under the designated regulatory service structure

Section five: This is a house keeping amendment to the existing law that would amend the definition of a "hydrologic unit" to include as part of the hydrologic unit the waters of an ocean that are adjacent to a hydrologic subregion of the state. This applies when water taken from the mainland is moved to an island offshore or used to construct ice roads across a portion of a bay, inlet or sea. The amendment makes it clear that the ocean waters off shore of a hydrologic subregion are in fact part of the hydrologic unit.

Section six: expressly confirms the authority of DNR to issue temporary water use authorizations, under appropriate circumstances, as has been DNR's practice for over 20 years. Temporary water use authorizations do not confer any rights to use water. Temporary water use authorizations have been issued for construction and development of specific commercial, industrial, and private activities or projects where water was required, for a temporary period of time, and a permanent water right was not needed. The bill lays out under what circumstances a temporary water use authorization can be issued the procedures to be followed. Because a temporary water use authorization is conveys no property right and is not a disposal of an interest in land, the bill makes clear that these authorizations are exempt from public notice required prior to issuance of a permanent property right to water (a water right). The bill allows for the transfer of a temporary water use authorizations between parties with DNR approval and for the sharing of an authorization between parties if they so intend. Because of its temporary nature, without any rights or priority attached, an authorization can be modified, suspended, or revoked by DNR if its necessary to protect water right holders or the public interest.

Section seven: is amended to include a temporary water use authorization under the crime section so that, if necessary, DNR can enforce against the unlawful use of water.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Section eight: validates the existing temporary water use permits that have been issued prior to the effective date of the Act. The temporary water use permits issued prior to the Act are to be considered an authorization issued under AS 46.15.155 and are subject to the terms and conditions set out in the permit and subject to the requirements of AS 46.15.155. This section affirms the validity of existing temporary permits that may have been called into question by the rationale used by the court in *Greenpeace, Inc. v. DNR*, 3AN-00-345 Civil.

Section nine: allows the regulations attorney to change the term "temporary water use permit" to "authorizations for temporary use of water" as consistent with the Act, and keeps the current statute in effect.

Sections ten and eleven: sets effective date of the bill. The effective date of Section 3 of the bill is delayed a year, until July 2001, to allow the department to establish fee regulations consistent with the requirements of the law.

TONY KNOWLES
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 2001

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

Dear President Halford:

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

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

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

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

The Honorable Rick Halford

March 9, 2001

Page 2

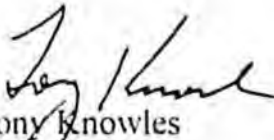
The bill affirms DNR's authority to allow temporary water uses for construction, development, commercial and private activities in cases where a long-term water right is not appropriate or necessary. The department has been authorizing these temporary uses for several years and many industries, such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

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

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

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

Sincerely,


Tony Knowles
Governor

INUPIAT COMMUNITY of the ARCTIC SLOPE
an IRA Regional Tribal Government

P.O. Box 934 • Barrow, Alaska 99723
Ph: (907)852-4227 1-888-788-4227 Fax: (907) 852-4246



May 04, 2001

TO: STATE OF ALASKA
House Finance Committee Members

FR: Bill Tegoseak, Interim Executive Director *BT*

RE: Comments on Committee Substitute for House Bill No 185 (RES).

MY NAME IS BILL TEGOSEAK. I AM THE INTERIM EXECUTIVE DIRECTOR FOR THE INUPIAT COMMUNITY OF THE ARCTIC SLOPE, A FEDERALLY RECOGNIZED REGIONAL TRIBAL GOVERNMENT INCLUSIVE OF ALL EIGHT VILLAGE TRIBAL GOVERNMENTS IN THE NORTH SLOPE. I AM A 57 YEAR RESIDENT OF THE NORTH SLOPE AND A VIETNAM WAR VETERAN.

LAST WEEK I TELEFAXED MY COMMENTS TO THE HOUSE RESOURCE COMMITTEE AND THE SENATE FINANCE COMMITTEE EXPRESSING OPPOSITION TO THIS PROPOSED BILL. ALL MEMBERS OF THIS COMMITTEE WILL BE RECEIVING A COPY OF THOSE COMMENTS IN ITS ENTIRETY THIS EVENING.

TWO DAYS AGO, DURING A SENATE FINANCE COMMITTEE HEARING ON THE COMPANION BILL TO THE HOUSE VERSION, BOB LOEFFLER FROM DNR CALLED MY CALCULATION THAT DNR HAD AUTHORIZED WATER USE IN THE NORTH SLOPE FOR INDUSTRIAL DEVELOPMENT IN THE BILLIONS OF GALLONS. HE MADE IT VERY PLAIN TO THE SENATE FINANCE COMMITTEE THAT MY CALCULATIONS AND PROJECTIONS OF BILLIONS OF GALLONS OF TEMPORARY WATER USE AUTHORIZED BY DNR WERE INCORRECT AND OVER-EXAGGERATED. IN REBUTTAL TO THAT, ALL COMMITTEE MEMBERS ARE PROVIDED A COPY OF TEMPORARY WATER USE PERMIT (TWUP A2001-11), SIGNED BY BOB LOEFFLER ON JANUARY 04, 2001, AUTHORIZING OIL INDUSTRY THE USE OF AN EQUIVALENT OF 27,701,500,000 GALLONS OF WATER IN THE NORTH SLOPE WITHOUT A PUBLIC COMMENT PROCESS. IF THE PUBLIC COMMENT PROCESS IN LOCATIONS SUCH AS ANCHORAGE AND FAIRBANKS WERE CIRCUMVENTED, SOME, OR ALL OF YOU, PLUS YOUR COLLEAGUES IN JUNEAU WOULD PROBABLY BE LOOKING FOR A DIFFERENT LINE OF WORK.

BOB LOEFFLER STATED TWO DAYS AGO, AS WELL, THAT THERE IS NO NEED FOR TRIBAL CONSULTATION ON THIS BILL. THIS IS AN EXAMPLE OF EXTREME CULTURAL INCOMPETENCE ON HIS PART AND COMPLETELY ATTEMPTS TO, AGAIN, CIRCUMVENT RHW MOST RECENTLY SIGNED

MILLENIUM AGREEMENT BETWEEN THE GREAT STATE OF ALASKA AND THE PROUD INDIGENOUS TRIBES OF THIS GREAT LAND.

LASTLY, BOB LOEFFLER STATED THAT THE NORTH SLOPE WATER POLICY SIGNED BY COMMISSIONER ROBERT E. LERESCHE ON MAY 23, 1979 HAD BEEN REVOKED. IN A LETTER ADDRESSED TO ME BY DNR CHIEF OF WATER RESOURCES, GARY PROKOSCH, DATED DECEMBER 22, 2000 HE STATES THAT THE POLICY IS VERY MUCH OUTDATED AND UNDER REVIEW BY DNR FOR REVISION. THERE IS NO EVIDENCE OF REVOCATION...REVOCATION SHOULD HAVE INCLUDED A PUBLIC COMMENT PROCESS. I URGE THIS COMMITTEE TO HOLD THIS BILL INDEFINITELY UNTIL SUCH TIME AS A PROPER REVIEW IS CONDUCTED TO ENSURE THAT A DEMOCRATIC PROCESS IS ALIVE AND WELL IN OUR GREAT STATE. THANK YOU.

Encl: Copy, State of Alaska (DNR) TWUP a2001-11
Copy Tegoseak comments to Senate Finance Committee (same sent to House Resource Committee)

Alaska Department of Natural Resources
Division of Mining, Land and Water

(NPLA BP
Trailblazer)

AS 46.15.080 Finding and Determination

Temporary Water Use Authorizations
TWUP A2001-11

143,420,000 gallons of water per year (440 acre feet per year) from 90 Lakes
for ice road and ice pad construction

Water Rights of Record; There are no water rights of record to any of the 90 lakes covered by this application for temporary water use.

AS 46.15.080. Criteria for issuance of permit.

(a) The Commissioner shall issue a permit if the commissioner finds that

(1) rights of a prior appropriator will not be unduly affected;

There are no prior appropriators of record. We find that the rights of a prior appropriator will not be unduly affected.

(2) the proposed means of diversion or construction are adequate;

The applicant proposes to withdraw water from ninety-two lake. The water intake structure is an approved design by ADF&G. Water has been taken from lakes such as these for over 20 years by similar methods and design and has proven to be adequate.

We find the proposed means of diversion and construction to be adequate.

(3) the proposed use of water is beneficial;

The proposed use of water is for oil field related activities, including ice road/pad construction/maintenance, camp supply, and drilling. This type of water use is consistent with the definition of a beneficial use as defined in the Water Use Act under AS 46.15.260(3). Water use for these purposes has been authorized since the 1970s.

We find the proposed use of water beneficial.

(4) the proposed appropriation is in the public interest. The water used under a temporary water use authorization is not considered to be appropriated.

(b) In determining the public interest, the commissioner shall consider

(1) the benefit to the applicant resulting from the proposed appropriation;

We find the temporary water withdrawal will be a positive benefit to the applicant.

(2) the effect of the economic activity resulting from the proposed appropriation;

The Trailblazer project contributes to the regional economy through taxes and jobs, to the overall state economy as a primary revenue source, and to the United States by reducing the nation's dependency on imported oil. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be a positive economic benefit resulting from the proposed temporary water withdrawal, and will not hinder other economic activity that may be proposed.

(3) the effect on fish and game resources and on public recreational opportunities;

The following materials were considered as supporting evidence:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G habitat permits for the 92 lakes
- ADF&G report on Fish Utilization of Lakes in Eastern NPR-A - 1999 Final Data Report January 2000
- ADF&G report Lake Sampled for Fish In and Near the Colville River Delta, Alaska 1979-1998, Final Report December 1998
- ACMP Final consistency determination AK 0010-02OG
- Hydrologist report dated December 15, 2000 in casefile.

The project area does not provide significant recreation opportunities. The taking of water from the lakes in no way hinders the hunting, fishing or recreation opportunities of those areas. The water is mainly taken during the winter month when little or no recreation activity takes place, and water in the lakes is replenished during spring breakup. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find that there will be no significant effect on fish and game resources and on public recreational opportunities.

(4) the effect on public health;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources on the public health.

The following materials were also considered:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G reports
- ADF&G comments
- ADEC 401 Certification
- ACMP Final Consistency Determination AK 0010-02OG

We find there will be no effects on public health.

(5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources and its effect of loss for alternate uses. The file contains no evidence of a direct predicted, planned or projected use of water in this area that would be precluded by this proposed temporary withdrawal of water. Water issued under a temporary water use authorization is not appropriated and does not preclude the use of water by others for their use. The file demonstrates that the proposed lake sources of water can supply water for these proposed uses, and more if the need arises.

We find that there will be no effect on or loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.

(6) harm to other persons resulting from the proposed appropriation;

After public and agency notice there has been no evidence of a likelihood of harm to other persons resulting from the proposed temporary water withdrawals.

We find there will be no undue harm to other persons resulting from the proposed temporary water withdrawal.

(7) the intent and ability of the applicant to complete the appropriation;

The applicant has the intent and ability to complete the temporary water withdrawal as demonstrated in the time and effort in their design and construction of the project to date. The ability of the applicant is not a question; BP has shown the ability to bring projects on-line in the development of its oil and gas projects.

We find the applicant has the intent and ability to complete the temporary water withdrawal.

(8) the effect upon access to navigable or public water.

After public and agency notice, the file contains no evidence of adverse effect on access to public or navigable water. The withdrawal of water from the proposed sources will not hinder access to navigable or public water. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be no effect on access to navigable or public water.

Conclusion and Decision

ADNR and ADF&G personnel (along with EPA, DEC, JPCO, etc.) are constantly in the field monitoring, inspecting, and enforcing industry activities. They are present before, during, and after ice road construction.

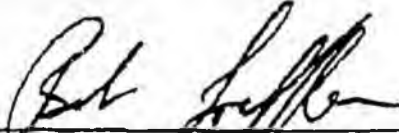
Ice road and ice pad construction has been a standard practice on the North Slope and in other areas of the state for more than 20 years. In this time period no evidence has been presented that ice road and ice pad construction and the withdrawal of water for ice road and ice pad construction has had an undue effect on the public interest. No evidence has been presented to show the rights of a prior appropriator or the public interest will be harmed by the withdrawal of water from the 92 lakes.

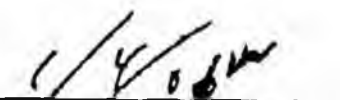
The total water use proposed for North Slope oil exploration and development from all authorized or proposed water sources (actual water use is less) is approximately 85,000 AF/Y. This represents 0.27% of the total water available on the North Slope in any given year. This leaves 99.73% of the water on the North Slope untouched. Also noteworthy is the fact that the majority of the water (0.27%) is used for ice road and ice pad construction, which eventually distributes the water on the tundra near the water sources and is once again available to the hydrologic unit during spring breakup. Accordingly, the most significant impact on the water resources is the effect on the water levels within the lakes, where only 15% of the water under the ice can be used. We conclude that this impact is at most, de minimis as the water is replenished each spring during break-up. The total quantity of water in these lakes, not counting the 30 lakes to be used for ice aggregate, is about 3.12 billion gallons of water. The available water, 15% of the water under 7 feet of ice, in these lakes proposed for use is 468,550,000 gallons. The total quantity authorized to be withdrawn under the temporary water use permit is 143,420,000 gallons per year or .046% of the total water and only 31% of the available water.

The subject files have been reviewed. A final ACMP Consistency Determination has been issued. We find that the rights of prior appropriators will not be unduly affected by the proposed temporary water withdrawal, the proposed means of diversion and construction are adequate, the proposed use of water is beneficial, and the proposed temporary water withdrawal is in the public interest. It is our decision that Temporary Water Use Permits TWUP A2001-11 shall be issued, effective the date of this decision to allow for the immediate use of water for the purposes intended.

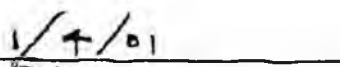
This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.37.011 and 11 AAC 02.020, to Pat Pourchot, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. Any such request for reconsideration must be received at that address, or received by being faxed to 1-907-268-8918, within 20 calendar days after the date of "delivery" of this decision, as defined by 11 AAC

02.040(c) and (d). Failure of the commissioner to act on a request for reconsideration within 30 days after delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.


Bob Loeffler, Director, DMLW


Date


Pat Pourchot, Commissioner, ADNR


Date

note
conversion
acre feet to
gallons
— acre feet x
325900 =
— gallons

85,000 acre feet/
year =
27,701,500,000
gallons

INUPIAT COMMUNITY of the ARCTIC SLOPE

an IRA Regional Tribal Government



P.O. Box 934 • Barrow, Alaska 99723
Ph: (907)852-4227 1-888-788-4227 Fax: (907) 852-4246

Senator Dave Donley, Co-chair of Senate Finance
Fax: (907) 465-6595

Senator Pete Kelley, Co-chair of Senate Finance
Fax: (907) 465-5241

Senator Lyman Hoffman, District T
Fax: (907) 465-4523

Senator Donald Olson, District S
Fax: (907) 465-4821

Senator Gary Wilkin, District O
Fax: (907) 465-4714

Senator Jerry Ward, District E
Fax: (907) 465-3766

Senator Alan Austerman, District C
Fax: (907) 465-4956

Senator Lyda Green, District N
Fax: (907) 465-3805

Senator Loren Leman, District G
Fax (907) 465-3810

Honorable Senators:

The Inupiat community of the Arctic Slope (ICAS) is a federally recognized Indian Tribe of the Inupiat established under the Indian Reorganization Act of 1934, as amended in 1936. ICAS has significant concerns about SB 139 (and its companion HB 185), particularly as it relates to the issuance of "temporary water use permits." This bill represents the continuation of the current Department of Natural Resources (DNR) illegal practice of giving billions of gallons of North Slope water resources away, with no public notice, not tribal consultation, no scientific analysis and no access to traditional knowledge about the water bodies from which the water is being taken.

A major concern about this bill is that the criteria in AS 46.15.080 (for assessing water use impacts to fish, wildlife, public health and other values) are specifically not applied to temporary water use permits. In addition, we are concerned that SB 139 will exempt all such permits from public notice.

DNR's current practice, and this bill, are contrary to the Water Management Policy for State Lands Between the Colville and Canning Rivers, ("North Slope Water Management Policy") initially drafted by DNR in 1976 (revised 1979) and agreed upon by the North Slope Borough representatives. This policy was the result of extensive work by DNR, the oil industry, the North Slope Borough, DEC and ADF&G.

In the North Slope Water Management Policy DNR committed to "extend to the North Slope Borough an opportunity to review all permit applications for water use within the North Slope Borough." DNR also committed that the temporary water use permits would be limited to "less than a three-year duration." Finally, DNR committed that "The State will discourage the taking of water between the period of November 1 to spring breakup from areas known to overwinter fish.

Over the years, DNR has unilaterally abrogated these commitments, and now seeks to ratify its breach of those commitments, through SB 139. This legislation would continue DNR's current practice of issuing temporary water use permits for periods which are frequently extended to ten years, and beyond. Contrary to the North Slope Water Management Policy, DNR currently allows water withdrawal in winter from anadromous streams and lakes. Most of the 27 billion gallons of North Slope fresh water permitted by DNR to be used each year for ice road construction and offshore oil development is withdrawn in winter without adequate information regarding in-stream flow needs for subsistence species. DNR does not consult the North Slope Borough or tribal governments to its issuance of these permits. The result of this practice is the non-public, unregulated use of our limited natural resources that threatens tribal sovereignty and the subsistence rights of the Inupiat people.

In an effort to gain support for this legislation, DNR has stated that the Department of Fish and Game and Environmental Conservation will be allowed to comment on temporary water permits. However, neither DNR, ADF&G nor DEC have staff or resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources for the significant number of "temporary" permits that DNR currently issues. Given the recent changes in climate, affecting all parts of the North Slope, reliance on outdated data is not sufficient to protect our subsistence resources. We need an assessment by the state of the water body from which water is to be withdrawn, each year, prior to the allowance of these "temporary permits." Nor is the DNR assurance that such permits are "revocable" sufficient to protect the subsistence resources. In order to revoke the permit, there will have to be analysis of the adverse impacts to the stream or lake after-the-fact, when the damage to subsistence resources is already done. No State agency has any ongoing monitoring program to assess the impacts of the temporary permits on these water sources or subsistence resources.

We urge you to defeat SB 139, and to encourage DNR to keep its commitments in the North slope Water Management Policy. If there are to be changes to that policy, they are best accomplished by having the stakeholders who are impacted by the policy at the table. Thank you for your consideration of these views.

Sincerely,

Bill Tego

BILL TEGOSEAK
Interim Executive Director

Cc: North Slope borough

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/13/01

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-11-01

Resources Committee considered SENATE BILL NO. 139
STATE WATER USE

"An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 139 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:**
 same title
 new title
- House Bill:**
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	4/12/01	✓	✗	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	4/12/01	✓	✗	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>George</i>			✓	
<i>K-8-50</i>			✓	
<i>Donna...</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SB

140

HFIN

FILE

Failed

CSSB140 (FIN)

Amendment 1

Croft

Add to existing language:

The Regulatory Commission of Alaska, in consultation with DNR, DCED and DF&G, will report to the legislature by February 15th 2003 with their assessment of how the licensing and oversight of hydroelectric projects of 5 megawatts or less by the State of Alaska may be accomplished. This report will include budgetary impacts, funding mechanisms, staff requirements, potential statutory changes, timelines, the public process for developing regulations, and other items deemed important by the administration.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 140
(S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Small Water-Power Development. Projects BRU Regulatory Commission of Alaska (399)
Component Regulatory Commission of Alaska
Sponsor Senator Torgerson
Requester Senate Finance Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	31.1	31.1	130.0	130.0	130.0	130.0
Travel	5.0	5.0				
Contractual			50.0	50.0	50.0	50.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	36.1	36.1	180.0	180.0	180.0	180.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (RCA Receipts)	36.1	36.1	180.0	180.0	180.0	180.0
TOTAL	36.1	36.1	180.0	180.0	180.0	180.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time			2	2	2	2
Part-time	1	1				
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB140 will require the equivalent of one-half of a Utility Engineering Analyst III position (estimated cost: \$31,142) in FY03 and FY04 to assist in developing technical regulations and to coordinate the transfer of duties from FERC. Some travel will be necessary for public comment and coordination with FERC. FERC has up to one year to approve the plan. Once underway (FY05), a full-time UEA III and an Environmental Engineer will be needed to analyze water-power applications under the proposed program \$50,000 in Contractual monies will be needed for additional technical support and a contractual Administrative Law Judge to adjudicate technical/regulatory disputes. The RCA's budget is funded through the Regulatory Cost Charge (RCC) and direct charge mechanisms. No general funds are allocated for support of the agency. The agency may consider funding the program by license fees paid by the applicants, similar to the current federal program.

Prepared by: Dawn Bishop-Kleweno, Special Assistant
Division: Regulatory Commission of Alaska
Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development

Phone (907) 276-6222
Date/Time 2/21/02 9:04 AM
Date 2/21/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 140
 (S) Publish Date: 3/1/02
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev
 Component: Water Development
 Component Number: 916

Revision Date/Time (Note if correction): _____
 Title: SMALL WATER-POWER DEVELOPMENT
PROJECTS
 Sponsor: Sen. Torgerson
 Requester: (S) FIN

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	22.5	22.5	70.0	70.0	70.0	70.0
Travel	0.0	0.0	10.0	10.0	10.0	10.0
Contractual	1.0	1.0	5.0	5.0	5.0	5.0
Supplies	0.5	0.5	1.0	1.0	1.0	1.0
Equipment	0.0	0.0	2.0	2.0	2.0	2.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	24.0	24.0	88.0	88.0	88.0	88.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	24.0	24.0	88.0	88.0	88.0	88.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	24.0	24.0	88.0	88.0	88.0	88.0

Estimate of any current year (FY2002) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time	0	0	1	1	1	1
Part-time						
Temporary	1	1				

ANALYSIS: (Attach a separate page if necessary)

The Regulatory Commission of Alaska estimates that, in cooperation with the resource agencies, the Commission will require two years to write regulations that establish an efficient processing system that can be approved by FERC. DNR will be required to play a major role in the development of these regulations as its responsibilities in permitting such projects are substantial. A non-perm Natural Resource Mgr I will be required for at least 3 months each year for full participation. These costs are reflected in FY 2003 and 2004. [cont.]

Prepared by: Bob Loeffler
 Division: Mining, Land and Water
 Approved by: Pat Pourchot
 Agency: Natural Resources

Phone 269-8600
 Date/Time 20-Feb-02
 Date 21-Feb-02

Beginning in 2005, this fiscal note assumes that an approved program will begin operation in Alaska and DNR will play a major role in the new licensing process, including the water right and temporary water use permitting, environmental consultation and review, and coordination with federal agencies. With one exception, this fiscal note assumes no new costs to deal with an "Alaskanized" licensing process rather than the current, federal FERC process. If the regulations assign new responsibilities to DNR, this assumption may change.

The exception is that currently, FERC has jurisdiction over all dams licensed by FERC. If an Alaskan program replaces the FERC program, DNR's dam safety program will be required to accept jurisdiction for permitting, review, and inspection of these dams. DNR's current Dam Safety program is staffed by a single engineer. The fiscal note would fund a subordinate (a Technical Engineer I) to handle the additional workload to the Dam Safety Program.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 140
 (S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____
 Title: Regulation and licensing of certain
 water-power development
 Sponsor: Senator Torgerson
 Requester: Senate Finance
 Dept. Affected: Fish and Game
 BRU: Habitat and Restoration
 Component: Habitat Special Projects
 Component No.: 487

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	17.0	17.0				
Travel	1.0	1.0				
Contractual	1.0	1.0				
Supplies	0.5	0.5				
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	19.5	19.5	***	***	***	***

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.5	19.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	19.5	19.5	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

FY 03 and FY 04 expenditures represent one quarter-time position for ADF&G participation in the development of a regulatory package implementing SB 140. Regulations must clearly detail all processes and requirements to result in timely and cost effective licensing of good projects that are both in the best economic interests of the state and environmentally sound.

Department expenditures in a potential 5 MW or smaller state licensing and regulatory program are difficult to quantify at this time. The licensing and regulation of hydro projects can be very complex. SB 140 provides the basic structure for establishing regulations for the state to take over jurisdiction, but does not provide specificity on how such a program will work within current authorities and responsibilities. Uncertainties include how duties currently funded and performed by the Federal (cont)

Prepared by: Gordy Williams
 Division: Commissioner's Office
 Approved by: Commissioner Frank Rue
 Agency: Fish and Game

Phone 465-6143
 Date/Time 2/21/02 9:07 AM
 Date 2/21/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 140 #3

ANALYSIS CONTINUATION

Energy Regulatory Commission (FERC) for small hydro projects will be handled in a state system, what information regarding fish and wildlife issues will be required to be provided by applicants or need to be developed by agencies, and what fees or other funding mechanisms will be developed. Depending upon the answers to these and other questions as a regulatory system is established, there may be significant fiscal impacts on the department to ensure that fish and game resources are protected to the same extent provided by the FERC process as is specified in SB 140.

ALASKA STATE LEGISLATURE

Chairman: Senator John Torgerson
Vice Chair: Senator Gary Wilken
Senator Rick Halford
Senator Ben Stevens
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln



Official Business

State Capitol, Room 427
Juneau, AK 99801
Phone: (907) 465-4907
Fax: (907) 465-4779

SENATE RESOURCES COMMITTEE

SPONSOR STATEMENT

SB 140

"Small Water-Power Development Projects"

On November 9, 2000, Congress approved legislation extending programs under the federal Energy Policy and Conservation Act. Title V of this Act, placed in federal statute as Public Law 106-469, was proposed by Senator Murkowski who is chair of the Senate Energy and Natural Resources Committee.

Senator Murkowski's language amends the Federal Power Act to allow licensing and regulatory authority over small hydroelectric projects in Alaska to transfer from the federal government to the State of Alaska. Small hydroelectric projects are defined as those of 5,000 kilowatts (5 megawatts) or less. The federal enabling legislation applies to new projects and to existing projects if the owner so elects. A number of our small utilities as well as the State supported this legislation.

Before Alaska can acquire jurisdiction from the Federal Energy Regulatory Commission (FERC), which currently oversees hydroelectric projects, the Legislature must adopt legislation and the Governor must submit a program to FERC to satisfy the requirements in Title V of PL 106-469. All current environmental and other protections required under federal law must be contained in the State program. Small hydroelectric projects located on Indian reservations, conservation units of ANILCA, or rivers designated for the Wild and Scenic Rivers System would not be eligible for State jurisdiction.

SB 140 will begin implementation of Title V of PL 106-469 in an effort to bring regulations closer to home and to reduce the great time and expense currently associated with federal licensing and regulation of small hydro projects in Alaska. The time and money required for federal licensing is virtually prohibitive for some small projects. Now the Legislature has an opportunity to remove this hindrance and encourage development of renewable electric infrastructure.

PUBLIC LAW 106-469—NOV. 9, 2000

114 STAT. 2037

Resources of the Senate not later than 180 days after the enactment of this section. The report shall contain a review of prior studies conducted on the subjects described in subsection (a). Deadline.

TITLE III—MARGINAL WELL PURCHASES

SEC. 301. PURCHASE OF OIL FROM MARGINAL WELLS.

(a) **PURCHASE OF OIL FROM MARGINAL WELLS.**—Part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6232 et seq.) is amended by adding the following new section after section 168:

“PURCHASE OF OIL FROM MARGINAL WELLS

“SEC. 169. (a) **IN GENERAL.**—From amounts authorized under section 166, in any case in which the price of oil decreases to an amount less than \$15.00 per barrel (an amount equal to the annual average well head price per barrel for all domestic crude oil), adjusted for inflation, the Secretary may purchase oil from a marginal well at \$15.00 per barrel, adjusted for inflation. 42 USC 6247b.

“(b) **DEFINITION OF MARGINAL WELL.**—The term ‘marginal well’ has the same meaning as the definition of ‘stripper well property’ in section 613A(c)(6)(E) of the Internal Revenue Code (26 U.S.C. 613A(c)(6)(E)).”

(b) **CONFORMING AMENDMENT.**—The table of contents for the Energy Policy and Conservation Act is amended by inserting after the item relating to section 168 the following:

“Sec. 169. Purchase of oil from marginal wells.”

TITLE IV—FEDERAL ENERGY MANAGEMENT

SEC. 401. FEMP.

Section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(D)(iii)), is amended by striking “\$750,000” and inserting “\$10,000,000”.

TITLE V—ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS

SEC. 501. ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 32. **ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS.** 16 USC 823c.

“(a) **DISCONTINUANCE OF REGULATION BY THE COMMISSION.**—Notwithstanding sections 4(e) and 23(b), the Commission shall discontinue exercising licensing and regulatory authority under this

part over qualifying project works in the State of Alaska, effective on the date on which the Commission certifies that the State of Alaska has in place a regulatory program for water-power development that—

“(1) protects the public interest, the purposes listed in paragraph (2), and the environment to the same extent provided by licensing and regulation by the Commission under this part and other applicable Federal laws, including the Endangered Species Act (16 U.S.C. 1531 et seq.) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

“(2) gives equal consideration to the purposes of—

“(A) energy conservation;

“(B) the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat);

“(C) the protection of recreational opportunities;

“(D) the preservation of other aspects of environmental quality;

“(E) the interests of Alaska Natives; and

“(F) other beneficial public uses, including irrigation, flood control, water supply, and navigation; and

“(3) requires, as a condition of a license for any project works—

“(A) the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate;

“(B) the operation of any navigation facilities which may be constructed as part of any project to be controlled at all times by such reasonable rules and regulations as may be made by the Secretary of the Army; and

“(C) conditions for the protection, mitigation, and enhancement of fish and wildlife based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

“(b) DEFINITION OF ‘QUALIFYING PROJECT WORKS’.—For purposes of this section, the term ‘qualifying project works’ means project works—

“(1) that are not part of a project licensed under this part or exempted from licensing under this part or section 405 of the Public Utility Regulatory Policies Act of 1978 prior to the date of the enactment of this section;

“(2) for which a preliminary permit, a license application, or an application for an exemption from licensing has not been accepted for filing by the Commission prior to the date of the enactment of subsection (c) (unless such application is withdrawn at the election of the applicant);

“(3) that are part of a project that has a power production capacity of 5,000 kilowatts or less;

“(4) that are located entirely within the boundaries of the State of Alaska; and

“(5) that are not located in whole or in part on any Indian reservation, a conservation system unit (as defined in section

102(4) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(4)), or segment of a river designated for study for addition to the Wild and Scenic Rivers System.

"(c) ELECTION OF STATE LICENSING.—In the case of nonqualifying project works that would be a qualifying project works but for the fact that the project has been licensed (or exempted from licensing) by the Commission prior to the enactment of this section, the licensee of such project may in its discretion elect to make the project subject to licensing and regulation by the State of Alaska under this section.

"(d) PROJECT WORKS ON FEDERAL LANDS.—With respect to projects located in whole or in part on a reservation, a conservation system unit, or the public lands, a State license or exemption from licensing shall be subject to—

"(1) the approval of the Secretary having jurisdiction over such lands; and

"(2) such conditions as the Secretary may prescribe.

"(e) CONSULTATION WITH AFFECTED AGENCIES.—The Commission shall consult with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce before certifying the State of Alaska's regulatory program.

"(f) APPLICATION OF FEDERAL LAWS.—Nothing in this section shall preempt the application of Federal environmental, natural resources, or cultural resources protection laws according to their terms.

"(g) OVERSIGHT BY THE COMMISSION.—The State of Alaska shall notify the Commission not later than 30 days after making any significant modification to its regulatory program. The Commission shall periodically review the State's program to ensure compliance with the provisions of this section.

Notification.
Deadline.

"(h) RESUMPTION OF COMMISSION AUTHORITY.—Notwithstanding subsection (a), the Commission shall reassert its licensing and regulatory authority under this part if the Commission finds that the State of Alaska has not complied with one or more of the requirements of this section.

"(i) DETERMINATION BY THE COMMISSION.—(1) Upon application by the Governor of the State of Alaska, the Commission shall within 30 days commence a review of the State of Alaska's regulatory program for water-power development to determine whether it complies with the requirements of subsection (a).

Deadline.

"(2) The Commission's review required by paragraph (1) shall be completed within 1 year of initiation, and the Commission shall within 30 days thereafter issue a final order determining whether or not the State of Alaska's regulatory program for water-power development complies with the requirements of subsection (a).

Deadline.

"(3) If the Commission fails to issue a final order in accordance with paragraph (2) the State of Alaska's regulatory program for water-power development shall be deemed to be in compliance with subsection (a)."

Date OCT 26 2000

Petersburg Pilot

Client No. 420A

House approves hydroelectric regulatory bill that may help City

210A 420A 310 330 420 630
Petersburg has been working for nearly five years and spent almost \$500,000 to have the Blind Slough Hydroelectric Facility re-licensed by the Federal Energy Regulatory Commission. It is expected to take several more years to com-

plete and cost upwards of \$1 million when all is said and done.

But, legislation passed this week might be able to offset the need to have the 2.5 megawatt project controlled by the federal government and put the control

of similarly sized projects in the hands of the state.

The House of Representatives on Tuesday, approved a bill, which previously had passed the Senate, allowing the State of Alaska to regulate small scale hydroelectric projects in Alaska, rather than having them regulated by the Federal Energy Regulatory Commission.

The bills now head to the President for his signature.

This summer Petersburg Power and Light Superintendent Dennis Lewis testified before Congress on the current re-licensing process saying "the current federal hydropower licensing process of small rural facilities is dysfunctional."

This week, after hearing the news, he said that Petersburg would be very interested in having the federal license process vacated and dealing with a state regulatory process.

"Alaska has great potential for small-scale hydroelectric projects that would help reduce the price of electricity to consumers in Alaska and help the environment by reducing air pollution," said Sen. Frank Murkowski. "But under existing law, a project, no matter how small or remote, must obtain a federal license and the licensing process itself is a major impediment and cost for these small projects," said Murkowski.

While saying the five- to 10-

year FERC licensing process may not defeat a giant project, it represents a significant cost increase for smaller projects.

Murkowski said the Black Bear Lake project on Prince of Wales Island, a proposed 4.5-megawatt generator, took seven years and \$1.2 million to complete the licensing process — adding significantly to the \$10 million cost of the project. The nearby Goat Lake project required five years and \$1 million in spending to win FERC approval, adding to its \$10 million construction cost.

"For a small project located in a remote region of Alaska,

Continued on page 5

FERC

Continued from page 3

FERC's licensing process is a major expense. And for too many small projects, this alone dooms an otherwise economically viable and environmentally beneficial project," said Murkowski.

He noted that most of these projects are not on salmon spawning streams, but small creeks or at the outflow of lakes and that the projects have no effect on the environment or wildlife.

"Small hydro projects in Alaska are environmentally sound, renewable power sources since they replace fossil-fuel burning diesel generators as power sources. It is important to

Instead, it allows the state to regulate (them) in lieu of FERC. I ask, who is more interested in the environment of Alaska — Alaskans or distant FERC regulators?" asked Murkowski.

Murkowski noted that Alaskans on average pay 36 percent more for electricity and that some in rural Alaska pay up to 43 cents per kilowatt hour — five times the national average. These high costs result from the fact that power is generated from diesel generators whose fuel must be shipped to remote areas at great cost.

The FERC exemption will only be triggered if Alaska's Governor notifies the Secretary of Energy that the State has in place a comprehensive process

resources, or cultural resource protection laws.

The bill has been endorsed by Alaska Legislature's Utilities Restructuring Committee, by the Alaska Village Electric Cooperative and by Alaska State government.

The small hydro bill (S. 422) passed the Senate on March 26, 1999 and again last week when it was added to the re-authorization of the Energy Policy and Conservation Act (EPCA) (H.R. 2884). EPCA also authorizes the nation's Strategic Petroleum Reserve and the new Northeast Home Heating Oil Reserve.

The 2.5 megawatt Blind Slough Hydroelectric Facility, which supplies the city with about one-quarter of its peak

Statement of Robert S. Grimm, President
of Alaska Power & Telephone Company.
Dated 3-15-2001



I would like to voice my strong support of Senate Bill No. 140.

Alaska Power & Telephone Company is an employee-owned corporation that has been providing public utility service to Alaska since 1957. We currently provide service to the residents of 25 different rural communities from above the Arctic Circle to the very southern portions of Alaska. Our experience in developing small hydropower projects is extensive and current.

I have attached a copy of my testimony on this issue when it was heard by the US Congress, House of Representatives, Committee on Commerce, and Subcommittee on Energy and Power on March 30, 2000. These comments remain relevant to Senate Bill No. 140.

Secondly, I have attached a paper titled "Alaska Small Hydroelectric and the Question of Sustainable Development" dated March 1999.

Both of these documents point out the difficulty and high cost associated with the development of small hydroelectric projects. I am testifying in the hope that this legislation will result in cost and time savings when permitting small hydroelectric projects.

Finally, I would like to make a few other points:

1. In Southeast Alaska the number of small hydropower projects (500 to 5000 kw) is finite. I have prepared a list of the hydropower projects that may likely developed in the next ten years. While I am sure there are others, I thought it would be useful to point out that the numbers of projects are limited and thus the work load and associated costs of the agency given responsibility should be commensurate with the number of projects.

Otter Creek in Skagway
Thayer Lake in Angoon
Reynolds Creek in Hydaburg
South Fork on Prince of Wales Island
Wolf Lake near Hollis
Cartina Creek in Hoonah

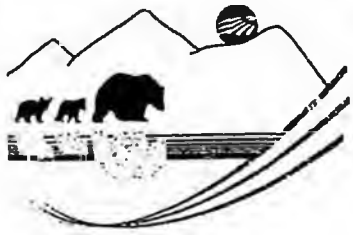
Gunnuk Creek in Kake
Sunrise Lake near Wrangell

A few relicense efforts are under way or will occur soon at:

Crystal Lake in Petersburg
Dewey Lakes in Skagway

2. With the new legislation, Alaska would be unique. For projects under FERC, there is no minimum size. For example, if an Alaskan resident had a site that could generate 2 KW for their personal use, it could be jurisdictional by FERC, requiring a license that could make the project uneconomic because of the licensing process. If the state develops a well thought out and cost effective program, it will make micro-hydro (under 500KW) very attractive. Another plus of the legislation is that it would likely remove any temptation by micro-hydro developers to merely build their projects without licensing because of the costs and time associated with the current federal process.
3. Currently the State permits small domestic water systems for villages and towns. I believe small hydropower projects are very similar. I do not think we need or intend to create a State FERC with its high cost and untimely decisions. We need to develop a process that is Alaskan in scope, well thought out and cost effective while meeting the requirements of the this legislation. We need some agency to take the lead. This agency must balance any of adverse impacts with the beneficial impacts of any proposed hydro development. I believe agencies with general charges such as the RCA, DGC or DNR are appropriate and have statutory responsibility to balance impacts (adverse and beneficial) so that hydro development occurs in a cost effective and timely manner consistent with the public interest. I have attached a paper written in 1999. It is critical of resource agencies that take the narrow view of their responsibilities. This problem needs to be corrected whether or not the state wishes to assume the responsibility of permitting small hydropower projects.

In this regard, the Alaska Rural Electric Cooperative Association (ARECA) membership passed a Resolution 01-9, supporting the recognition of hydroelectric power as a renewable energy resource, and requiring federal and state agencies to take a balanced approach to existing and new hydroelectric projects. I have attached a full copy of this resolution for your consideration.



ARECA

Alaska's Electric Association

"Electric Service for 556,000 Alaskans"

April 4, 2002

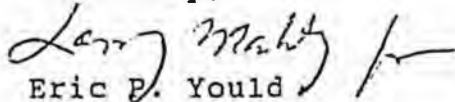
Honorable John Torgerson
Chair, Senate Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Torgerson:

This is to reiterate ARECA's continued strong support for Senate Bill No. 140, which would establish a much needed program for state regulation of small hydroelectric projects in Alaska. Your legislation will implement companion federal legislation supported by Senator Murkowski and also strongly supported by ARECA and its member electric utilities throughout the state.

Bringing regulation of small hydro projects closer to home should reduce both the time and cost of developing clean, renewable hydropower for Alaska consumers. ARECA thanks you for your efforts on Senate Bill No. 140, and we hope your legislation becomes law this law.

Sincerely,


Eric P. Yould
Executive Director

SB

140

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/11/02

APR 04 2002
SENATE FINANCE
COMMITTEE

FURTHER:

DATE TURNED IN TO OFFICE: 4/4/02

Finance Committee considered **SENATE BILL NO. 140**
SB 140 SMALL WATER-POWER DEVELOPMENT PROJECTS

"An Act relating to regulation and licensing of certain water-power development projects."

and recommends:

- be replaced with CS SB 140 (FIN)
- adopt previous CS CS Forthcoming
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DFG	2/21/01	19.5		3
DNR	2/21/02	24.0		2
DCED	2/21/02	36.1		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✗	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR:				
COCHAIR: <i>[Signature]</i>			✓	

REPORTED OUT
FISCAL NOTE

APR 04 2002

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: SB 140
(S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Regulation and licensing of certain BRU Habitat and Restoration
water-power development Component Habitat Special Projects
Sponsor Senator Torgerson
Requester Senate Finance Component No. 487

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	17.0	17.0				
Travel	1.0	1.0				
Contractual	1.0	1.0				
Supplies	0.5	0.5				
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	19.5	19.5	***	***	***	***

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.5	19.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	19.5	19.5	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

FY 03 and FY 04 expenditures represent one quarter-time position for ADF&G participation in the development of a regulatory package implementing SB 140. Regulations must clearly detail all processes and requirements to result in timely and cost effective licensing of good projects that are both in the best economic interests of the state and environmentally sound.

Department expenditures in a potential 5 MW or smaller state licensing and regulatory program are difficult to quantify at this time. The licensing and regulation of hydro projects can be very complex. SB 140 provides the basic structure for establishing regulations for the state to take over jurisdiction, but does not provide specificity on how such a program will work within current authorities and responsibilities. Uncertainties include how duties currently funded and performed by the Federal (cont)

Prepared by: Gordy Williams
Division: Commissioner's Office
Approved by: Commissioner Frank Rue
Agency: Fish and Game

Phone 465-6143
Date/Time 2/21/02 9:07 AM
Date 2/21/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 140 #3

ANALYSIS CONTINUATION

Energy Regulatory Commission (FERC) for small hydro projects will be handled in a state system. what information regarding fish and wildlife issues will be required to be provided by applicants or need to be developed by agencies, and what fees or other funding mechanisms will be developed. Depending upon the answers to these and other questions as a regulatory system is established, there may be significant fiscal impacts on the department to ensure that fish and game resources are protected to the same extent provided by the FERC process as is specified in SB 140.

FISCAL NOTE

APR 14 2002

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

COMMITTEE ON
FINANCE

Fiscal Note Number: 2
 Bill Version: SB 140
 (S) Publish Date: 3/1/02
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev
 Component: Water Development
 Component Number: 916

Revision Date/Time (Note if correction): _____
 Title: SMALL WATER-POWER DEVELOPMENT
PROJECTS
 Sponsor: Sen. Torgerson
 Requester: (S) FIN

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	22.5	22.5	70.0	70.0	70.0	70.0
Travel	0.0	0.0	10.0	10.0	10.0	10.0
Contractual	1.0	1.0	5.0	5.0	5.0	5.0
Supplies	0.5	0.5	1.0	1.0	1.0	1.0
Equipment	0.0	0.0	2.0	2.0	2.0	2.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	24.0	24.0	88.0	88.0	88.0	88.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	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	24.0	24.0	88.0	88.0	88.0	88.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	24.0	24.0	88.0	88.0	88.0	88.0

Estimate of any current year (FY2002) cost: none

Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time	0	0	1	1	1	1
Part-time						
Temporary	1	1				

ANALYSIS: (Attach a separate page if necessary)

The Regulatory Commission of Alaska estimates that, in cooperation with the resource agencies, the Commission will require two years to write regulations that establish an efficient processing system that can be approved by FERC. DNR will be required to play a major role in the development of these regulations as its responsibilities in permitting such projects are substantial. A non-perm Natural Resource Mgr I will be required for at least 3 months each year for full participation. These costs are reflected in FY 2003 and 2004. [cont.]

Prepared by: Bob Loeffler
 Division: Mining, Land and Water
 Approved by: Pat Pourchot
 Agency: Natural Resources

Phone 269-8600
 Date/Time 20-Feb-02
 Date 21-Feb-02

Beginning in 2005, this fiscal note assumes that an approved program will begin operation in Alaska and DNR will play a major role in the new licensing process, including the water right and temporary water use permitting, environmental consultation and review, and coordination with federal agencies. With one exception, this fiscal note assumes no new costs to deal with an "Alaskanized" licensing process rather than the current federal FERC process. If the regulations assign new responsibilities to DNR, this assumption may change.

The exception is that currently, FERC has jurisdiction over all dams licensed by FERC. If an Alaskan program replaces the FERC program, DNR's dam safety program will be required to accept jurisdiction for permitting, review, and inspection of these dams. DNR's current Dam Safety program is staffed by a single engineer. The fiscal note would fund a subordinate (a Technical Engineer I) to handle the additional workload to the Dam Safety Program.

REPORTED OUT
FISCAL NOTE
 APR 04 2002
 SENATE FINANCE

**STATE OF ALASKA
 2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: SB 140
 (S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Small Water-Power Development. Projects BRU Regulatory Commission of Alaska (399)
 Component Regulatory Commission of Alaska
 Sponsor Senator Torgerson
 Requester Senate Finance Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	31.1	31.1	130.0	130.0	130.0	130.0
Travel	5.0	5.0				
Contractual			50.0	50.0	50.0	50.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	36.1	36.1	180.0	180.0	180.0	180.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (RCA Receipts)	36.1	36.1	180.0	180.0	180.0	180.0
TOTAL	36.1	36.1	180.0	180.0	180.0	180.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time			2	2	2	2
Part-time	1	1				
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 SB140 will require the equivalent of one-half of a Utility Engineering Analyst III position (estimated cost: \$31,142) in FY03 and FY04 to assist in developing technical regulations and to coordinate the transfer of duties from FERC. Some travel will be necessary for public comment and coordination with FERC. FERC has up to one year to approve the plan. Once underway (FY05), a full-time UEA III and an Environmental Engineer will be needed to analyze water-power applications under the proposed program. \$50,000 in contractual monies will be needed for additional technical support and a contractual Administrative Law Judge to adjudicate technical/regulatory disputes. The RCA's budget is funded through the Regulatory Cost Charge (RCC) and direct charge mechanisms. No general funds are allocated for support of the agency. The agency may consider funding the program by license fees paid by the applicants, similar to the current federal program.

Prepared by: Dawn Bishop-Kleweno, Special Assistant Phone (907) 276-6222
 Division Regulatory Commission of Alaska Date/Time 2/21/02 9:04 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 2/21/2002
 Agency Department of Community & Economic Development

SENATE FINANCE COMMITTEE
4/3/2002 COMMITTEE ACTION

Bill Number	SB 140		
Amendment	made from Committee		
Motion			
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
Removed	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Senator Green			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>			

Bill HELD

adopted

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: SB 140
Sponsor: Wilken Date: 4/2/02
Logged In By: Robin

SENATE FINANCE COMMITTEE

AMENDMENT No. 1

BY SEN WILKEN

TO: Pg 2 LINE 12 SENATE BILL No. SB 140

TO: _____ SENATE BILL No. _____

Pg. 2 LINE 12

INSERT G) THE INTERESTS OF ALASKA
RESIDENTS AND LAND
OWNERS.

Gulley
2/21/02

SENATE FINANCE COMMITTEE
4/3/2002 COMMITTEE ACTION

Bill Number	SB 140		
Amendment	#1		
Motion	Supt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Senator Green			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

adopted

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: SB 140
Sponsor: Wilken Date: 4/2/02
Logged In By: Robin

SENATE FINANCE COMMITTEE

AMENDMENT No. 2

By SEN. WILKEN

To: Pg 2 Line 9 SENATE BILL NO. SB 140

To: _____ SENATE BILL NO. _____

INSERT "RESIDENT" AFTER OF
BEFORE "ALASKA"

G. Wilken
2/21/02

SENATE FINANCE COMMITTEE
4/3/ 2002 COMMITTEE ACTION

Bill Number	SB 140		
Amendment	#2		
Motion	scpt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Green		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Leman			
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Senator Green			
Senator Hoffman			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Conceptual Amend #3

ADDED

add effective date 22-LS0059A
of Jan. 1, 2003

SENATE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATORS TORGERSON, Taylor, Austerman, Cowdery

Introduced: 3/13/01

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation and licensing of certain water-power development
2 projects."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 42.45 is amended by adding a new section to read:

5 Article 6A. Water-Power Development Projects.

6 Sec. 42.45.350. Licensing of water-power development projects. (a) The
7 commission shall adopt regulations to establish a regulatory program for water-power
8 development projects that qualify under this section.

9 (b) The regulatory program established under this section must

10 (1) protect the public interest, the purposes listed in (2) of this
11 subsection, and the environment to the same extent provided by the requirements for
12 licensing and regulation by the Federal Energy Regulatory Commission under 16
13 U.S.C. 792 - 823c and other applicable federal laws, including 16 U.S.C. 1531 et seq.
14 (Endangered Species Act) and 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination

1 Act):

2 (2) give equal consideration to

3 (A) energy conservation;

4 (B) the protection of, mitigation of damage to, and
5 enhancement of, fish and wildlife, including related spawning grounds and
6 habitat;

7 (C) the protection of recreational opportunities;

8 (D) the preservation of other aspects of environmental quality;

9 (E) the interests of Alaska Natives; and

10 (F) other beneficial public uses, including irrigation, flood
11 control, water supply, navigation; and

12 (3) require, as a condition of a license for any qualifying project work,

13 (A) the construction, maintenance, and operation by a licensee
14 at the licensee's own expense of the lights and signals that may be directed by
15 the secretary of the department of the United States government in which the
16 United States Coast Guard is operating and the fishways that are prescribed by
17 the Secretary of the Interior or the Secretary of Commerce, as appropriate;

18 (B) the operation of any navigation facilities that may be
19 constructed as part of any project to be controlled at all times by the reasonable
20 rules and regulations that are adopted by the Secretary of the Army; and

21 (C) conditions for the protection of, mitigation of damage to,
22 and enhancement of fish and wildlife based on recommendations received
23 under 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination Act) from the
24 National Marine Fisheries Service, the United States Fish and Wildlife Service,
25 and the state Department of Fish and Game.

26 (c) For purposes of this section, the term "qualifying project work" means a
27 project work

28 (1) that is not part of a project licensed under 16 U.S.C. 792 - 823c or
29 exempted from licensing under 16 U.S.C. 792 - 823c or under 16 U.S.C. 2705 (section
30 405 of the Public Utility Regulatory Policies Act of 1978) before November 9, 2000;

31 (2) for which a preliminary permit, a license application, or an

Proof of Final

4/4/02

22-LS0659\C 2:45pm

CS FOR SENATE BILL NO. 140(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS TORGERSON, Taylor, Austerman, Cowdery

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation and licensing of certain water-power development
2 projects; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 42.45 is amended by adding a new section to read:

5 Article 6A. Water-Power Development Projects.

6 Sec. 42.45.350. Licensing of water-power development projects. (a) The
7 commission shall adopt regulations to establish a regulatory program for water-power
8 development projects that qualify under this section.

9 (b) The regulatory program established under this section must

10 (1) protect the public interest, the purposes listed in (2) of this
11 subsection, and the environment to the same extent provided by the requirements for
12 licensing and regulation by the Federal Energy Regulatory Commission under 16
13 U.S.C. 792 - 823c and other applicable federal laws, including 16 U.S.C. 1531 et seq.
14 (Endangered Species Act) and 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination

1 Act);

2 (2) give equal consideration to

3 (A) energy conservation;

4 (B) the protection of, mitigation of damage to, and
5 enhancement of, fish and wildlife, including related spawning grounds and
6 habitat;

7 (C) the protection of recreational opportunities;

8 (D) the preservation of other aspects of environmental quality;

9 (E) the interests of resident Alaska Natives; #2

10 (F) other beneficial public uses, including irrigation, flood
11 control, water supply, navigation; and

12 (G) the interest of Alaska residents and landowners; and #1

13 (3) require, as a condition of a license for any qualifying project work,

14 (A) the construction, maintenance, and operation by a licensee
15 at the licensee's own expense of the lights and signals that may be directed by
16 the secretary of the department of the United States government in which the
17 United States Coast Guard is operating and the fishways that are prescribed by
18 the Secretary of the Interior or the Secretary of Commerce, as appropriate;

19 (B) the operation of any navigation facilities that may be
20 constructed as part of any project to be controlled at all times by the reasonable
21 rules and regulations that are adopted by the Secretary of the Army; and

22 (C) conditions for the protection of, mitigation of damage to,
23 and enhancement of fish and wildlife based on recommendations received
24 under 16 U.S.C. 661 et seq. (Fish and Wildlife Coordination Act) from the
25 National Marine Fisheries Service, the United States Fish and Wildlife Service,
26 and the state Department of Fish and Game.

27 (c) For purposes of this section, the term "qualifying project work" means a
28 project work

29 (1) that is not part of a project licensed under 16 U.S.C. 792 - 823c or
30 exempted from licensing under 16 U.S.C. 792 - 823c or under 16 U.S.C. 2705 (section
31 405 of the Public Utility Regulatory Policies Act of 1978) before November 9, 2000;

1 (2) for which a preliminary permit, a license application, or an
 2 application for an exemption from licensing has not been accepted for filing by the
 3 Federal Energy Regulatory Commission before November 9, 2000, unless the
 4 application is withdrawn at the election of the applicant;

5 (3) that is part of a project that has a power production capacity of
 6 5,000 kilowatts or less;

7 (4) that is located entirely within the boundaries of the state; and

8 (5) that is not located in whole or in part on an Indian reservation, a
 9 conservation system unit as defined in 16 U.S.C. 3102 (sec. 102, Alaska National
 10 Interest Lands Conservation Act), or on a segment of a river designated for study for
 11 addition to the National Wild and Scenic Rivers System.

12 (d) In the case of nonqualifying project work that would be qualifying project
 13 work but for the fact that the project has been licensed or exempted from licensing by
 14 the Federal Energy Regulatory Commission before November 9, 2000, the licensee of
 15 the project may elect to make the project subject to licensing and regulation by the
 16 state under this section.

17 (e) With respect to projects located in whole or in part on a reservation, a
 18 conservation system unit, or federal public land, a state license or exemption from
 19 licensing is subject to

20 (1) the approval of the secretary of the federal department having
 21 jurisdiction over those lands; and

22 (2) the conditions that the secretary may prescribe.

23 (f) The Regulatory Commission of Alaska shall notify the Federal Energy
 24 Regulatory Commission not later than 30 days after making any significant
 25 modification to its regulatory program under this section.

26 (g) In this section,

27 (1) "federal public land" means the land and interest in land owned by
 28 the United States that is subject to private appropriation and disposal under public land
 29 laws, but does not include a reservation;

30 (2) "licensee" means any person, state, or municipality licensed under
 31 the provisions of 16 U.S.C. 797 and any assignee or successor in interest of the

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licensee thereof;

(3) "project" means, notwithstanding the definition in AS 42.45.990, a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures, including navigation structures, that are a part of the unit, and all storage, diverting, or forebay reservoirs directly connected with the unit, the primary line or lines transmitting power from the unit to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with the unit or any part of the unit, and all water rights, rights-of-way, ditches, dams, reservoirs, land, or interests in land the use and occupancy of which are necessary or appropriate in the maintenance and operation of the unit;

(4) "project work" means the physical structure of a project;

(5) "reservation"

(A) means a national forest; tribal land embraced within an Indian reservation; a military reservation; other land and an interest in land owned by the United States and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; and land and an interest in land acquired and held for any public purposes;

(B) does not include a national monument or national park.

* Sec. 2. This Act takes effect January 1, 2003.

Conceptual
Amended
3



Official Business

Alaska State Senate

Senate Finance Committee

Faxed 11:50 AM 4/4/02

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 4/4/02 TIME: 11:50 AM

TO: Legal

NUMBER OF PAGES, INCLUDING COVER SHEET: 4

FROM: ROBIN PAUL
SENATE FINANCE CMTE. ASST. SECRETARY
PHONE: 465-2618
FAX: 465-2187

NOTES: Need a FINAL of 22-LS0659/A
CS SB 140 (FIN)

to include 3 amendments attached.

*Note that Amendment #3 is a
conceptual Amendment to add an
effective date of January 1, 2003

*Thank You!
Robin*



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:


State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

MEMORANDUM

To: Senator Pete Kelly, Co-Chair
Senate Finance Committee

From: Senator John Torgerson 

Date: February 11, 2002

Re: Hearing request for SB 140
"Small Water Power Development Projects"

Please accept this memorandum as a request to schedule SB 140 for a hearing in the Senate Finance Committee at your earliest convenience. This bill will transfer regulatory powers over small hydroelectric projects in Alaska from the Federal Energy Regulatory Commission to the Regulatory Commission of Alaska. State regulatory authority will result in less money and time spent on licensing small hydro projects for utilities and personal use.

I have enclosed the following back-up information for your review and inclusion in the bill packets:

- SB 140
- RCA fiscal note
- Sponsor Statement
- Senator Murkowski's enabling legislation from the 106th Congress
- 10/26/00 Petersburg Pilot article
- Letter from Robert S. Grimm, President of Alaska Power & Telephone Company

Thank you for your consideration of this request.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kaslof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka*

ALASKA STATE LEGISLATURE

Chairman: Senator John Torgerson
Vice Chair: Senator Gary Wilken
Senator Rick Halford
Senator Ben Stevens
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln



State Capitol, Room 427
Juneau, AK 99801
Phone: (907) 465-4907
Fax: (907) 465-4779

Office

SENATE RESOURCES COMMITTEE

SPONSOR STATEMENT

SB 140

"Small Water-Power Development Projects"

On November 9, 2000, Congress approved legislation extending programs under the federal Energy Policy and Conservation Act. Title V of this Act, placed in federal statute as Public Law 106-469, was proposed by Senator Murkowski who is chair of the Senate Energy and Natural Resources Committee.

Senator Murkowski's language amends the Federal Power Act to allow licensing and regulatory authority over small hydroelectric projects in Alaska to transfer from the federal government to the State of Alaska. Small hydroelectric projects are defined as those of 5,000 kilowatts (5 megawatts) or less. The federal enabling legislation applies to new projects and to existing projects if the owner so elects. A number of our small utilities as well as the State supported this legislation.

Before Alaska can acquire jurisdiction from the Federal Energy Regulatory Commission (FERC), which currently oversees hydroelectric projects, the Legislature must adopt legislation and the Governor must submit a program to FERC to satisfy the requirements in Title V of PL 106-469. All current environmental and other protections required under federal law must be contained in the State program. Small hydroelectric projects located on Indian reservations, conservation units of ANILCA, or rivers designated for the Wild and Scenic Rivers System would not be eligible for State jurisdiction.

SB 140 will begin implementation of Title V of PL 106-469 in an effort to bring regulations closer to home and to reduce the great time and expense currently associated with federal licensing and regulation of small hydro projects in Alaska. The time and money required for federal licensing is virtually prohibitive for some small projects. Now the Legislature has an opportunity to remove this hindrance and encourage development of renewable electric infrastructure.

provided by:
 Senator John Targerson

PUBLIC LAW 106-469—NOV. 9, 2000

114 STAT. 2037

Resources of the Senate not later than 180 days after the enactment of this section. The report shall contain a review of prior studies conducted on the subjects described in subsection (a). Deadline.

TITLE III—MARGINAL WELL PURCHASES

SEC. 301. PURCHASE OF OIL FROM MARGINAL WELLS.

(a) PURCHASE OF OIL FROM MARGINAL WELLS.—Part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6232 et seq.) is amended by adding the following new section after section 168:

“PURCHASE OF OIL FROM MARGINAL WELLS

“SEC. 169. (a) IN GENERAL.—From amounts authorized under section 166, in any case in which the price of oil decreases to an amount less than \$15.00 per barrel (an amount equal to the annual average well head price per barrel for all domestic crude oil), adjusted for inflation, the Secretary may purchase oil from a marginal well at \$15.00 per barrel, adjusted for inflation. 42 USC 6247b.

“(b) DEFINITION OF MARGINAL WELL.—The term ‘marginal well’ has the same meaning as the definition of ‘stripper well property’ in section 613A(c)(6)(E) of the Internal Revenue Code (26 U.S.C. 613A(c)(6)(F)).”

(b) CONFORMING AMENDMENT.—The table of contents for the Energy Policy and Conservation Act is amended by inserting after the item relating to section 168 the following:

“Sec. 169. Purchase of oil from marginal wells.”

TITLE IV—FEDERAL ENERGY MANAGEMENT

SEC. 401. FEMP.

Section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(D)(iii)), is amended by striking “\$750,000” and inserting “\$10,000,000”.

TITLE V—ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS

SEC. 501. ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS. 16 USC 823c.

“(a) DISCONTINUANCE OF REGULATION BY THE COMMISSION.—Notwithstanding sections 4(c) and 23(b), the Commission shall discontinue exercising licensing and regulatory authority under this

part over qualifying project works in the State of Alaska, effective on the date on which the Commission certifies that the State of Alaska has in place a regulatory program for water-power development that—

"(1) protects the public interest, the purposes listed in paragraph (2), and the environment to the same extent provided by licensing and regulation by the Commission under this part and other applicable Federal laws, including the Endangered Species Act (16 U.S.C. 1531 et seq.) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

"(2) gives equal consideration to the purposes of—

"(A) energy conservation;

"(B) the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat);

"(C) the protection of recreational opportunities;

"(D) the preservation of other aspects of environmental quality;

"(E) the interests of Alaska Natives; and

"(F) other beneficial public uses, including irrigation, flood control, water supply, and navigation; and

"(3) requires, as a condition of a license for any project works—

"(A) the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate;

"(B) the operation of any navigation facilities which may be constructed as part of any project to be controlled at all times by such reasonable rules and regulations as may be made by the Secretary of the Army; and

"(C) conditions for the protection, mitigation, and enhancement of fish and wildlife based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

"(b) DEFINITION OF 'QUALIFYING PROJECT WORKS'.—For purposes of this section, the term 'qualifying project works' means project works—

"(1) that are not part of a project licensed under this part or exempted from licensing under this part or section 405 of the Public Utility Regulatory Policies Act of 1978 prior to the date of the enactment of this section;

"(2) for which a preliminary permit, a license application, or an application for an exemption from licensing has not been accepted for filing by the Commission prior to the date of the enactment of subsection (c) (unless such application is withdrawn at the election of the applicant);

"(3) that are part of a project that has a power production capacity of 5,000 kilowatts or less;

"(4) that are located entirely within the boundaries of the State of Alaska; and

"(5) that are not located in whole or in part on any Indian reservation, a conservation system unit (as defined in section

PUBLIC LAW 106-469—NOV. 9, 2000

114 STAT. 2039

102(4) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(4))), or segment of a river designated for study for addition to the Wild and Scenic Rivers System.

"(c) ELECTION OF STATE LICENSING.—In the case of nonqualifying project works that would be a qualifying project works but for the fact that the project has been licensed (or exempted from licensing) by the Commission prior to the enactment of this section, the licensee of such project may in its discretion elect to make the project subject to licensing and regulation by the State of Alaska under this section.

"(d) PROJECT WORKS ON FEDERAL LANDS.—With respect to projects located in whole or in part on a reservation, a conservation system unit, or the public lands, a State license or exemption from licensing shall be subject to—

"(1) the approval of the Secretary having jurisdiction over such lands; and

"(2) such conditions as the Secretary may prescribe.

"(e) CONSULTATION WITH AFFECTED AGENCIES.—The Commission shall consult with the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce before certifying the State of Alaska's regulatory program.

"(f) APPLICATION OF FEDERAL LAWS.—Nothing in this section shall preempt the application of Federal environmental, natural resources, or cultural resources protection laws according to their terms.

"(g) OVERSIGHT BY THE COMMISSION.—The State of Alaska shall notify the Commission not later than 30 days after making any significant modification to its regulatory program. The Commission shall periodically review the State's program to ensure compliance with the provisions of this section.

Notification
Deadline.

"(h) RESUMPTION OF COMMISSION AUTHORITY.—Notwithstanding subsection (a), the Commission shall reassert its licensing and regulatory authority under this part if the Commission finds that the State of Alaska has not complied with one or more of the requirements of this section.

"(i) DETERMINATION BY THE COMMISSION.—(1) Upon application by the Governor of the State of Alaska, the Commission shall within 30 days commence a review of the State of Alaska's regulatory program for water-power development to determine whether it complies with the requirements of subsection (a).

Deadline.

"(2) The Commission's review required by paragraph (1) shall be completed within 1 year of initiation, and the Commission shall within 30 days thereafter issue a final order determining whether or not the State of Alaska's regulatory program for water-power development complies with the requirements of subsection (a).

Deadline.

"(3) If the Commission fails to issue a final order in accordance with paragraph (2) the State of Alaska's regulatory program for water-power development shall be deemed to be in compliance with subsection (a)."

Date OCT 26 2000

Petersburg Pilot

Client No. 420A

provided by:
Senator John Torgerson

House approves hydroelectric regulatory bill that may help City

^{2107 420A 310 330 620 650}
Petersburg has been working for nearly five years and spent almost \$500,000 to have the Blind Slough Hydroelectric Facility re-licensed by the Federal Energy Regulatory Commission. It is expected to take several more years to com-

plete and cost upwards of \$1 million when all is said and done.

But, legislation passed this week might be able to offset the need to have the 2.5 megawatt project controlled by the federal government and put the control

of similarly sized projects in the hands of the state.

The House of Representatives on Tuesday, approved a bill, which previously had passed the Senate, allowing the State of Alaska to regulate small scale hydroelectric projects in Alaska, rather than having them regulated by the Federal Energy Regulatory Commission.

The bills now head to the President for his signature.

This summer Petersburg Power and Light Superintendent Dennis Lewis testified before Congress on the current re-licensing process saying "the current federal hydropower licensing process of small rural facilities is dysfunctional."

This week, after hearing the news, he said that Petersburg would be very interested in having the federal license process vacated and dealing with a state regulatory process.

"Alaska has great potential for small-scale hydroelectric projects that would help reduce the price of electricity to consumers in Alaska and help the environment by reducing air pollution," said Sen. Frank Murkowski. "But under existing law, a project, no matter how small or remote, must obtain a federal license and the licensing process itself is a major impediment and cost for these small projects," said Murkowski.

While saying the five- to 10-

year FERC licensing process may not defeat a giant project, it represents a significant cost increase for smaller projects.

Murkowski said the Black Bear Lake project on Prince of Wales Island, a proposed 4.5-megawatt generator, took seven years and \$1.2 million to complete the licensing process — adding significantly to the \$10 million cost of the project. The nearby Goat Lake project required five years and \$1 million in spending to win FERC approval, adding to its \$10 million construction cost.

"For a small project located in a remote region of Alaska,

Continued on page 5

FERC

Continued from page 3

FERC's licensing process is a major expense. And for too many small projects, this alone dooms an otherwise economically viable and environmentally beneficial project," said Murkowski.

He noted that most of these projects are not on salmon spawning streams, but small creeks or at the outflow of lakes and that the projects have no effect on the environment or wildlife.

"Small hydro projects in Alaska are environmentally sound, renewable power sources since they replace fossil-fuel burning diesel generators as power sources. It is important to

Instead, it allows the state to regulate (them) in lieu of FERC. I ask, who is more interested in the environment of Alaska — Alaskans or distant FERC regulators?" asked Murkowski.

Murkowski noted that Alaskans on average pay 36 percent more for electricity and that some in rural Alaska pay up to 43 cents per kilowatt hour — five times the national average. These high costs result from the fact that power is generated from diesel generators whose fuel must be shipped to remote areas at great cost.

The FERC exemption will only be triggered if Alaska's Governor notifies the Secretary of Energy that the State has in place a comprehensive process

resources, or cultural resource protection laws.

The bill has been endorsed by Alaska Legislature's Utilities Restructuring Committee, by the Alaska Village Electric Cooperative and by Alaska State government.

The small hydro bill (S. 422) passed the Senate on March 26, 1999 and again last week when it was added to the re-authorization of the Energy Policy and Conservation Act (EPCA) (H.R. 2884). EPCA also authorizes the nation's Strategic Petroleum Reserve and the new Northeast Home Heating Oil Reserve.

The 2.5 megawatt Blind Slough Hydroelectric Facility, which supplies the city with about one-quarter of its peak

provided by:

Senator John Toogerson



Statement of Robert S. Grimm, President
of Alaska Power & Telephone Company.
Dated 3-15-2001

I would like to voice my strong support of Senate Bill No. 140.

Alaska Power & Telephone Company is an employee-owned corporation that has been providing public utility service to Alaska since 1957. We currently provide service to the residents of 25 different rural communities from above the Arctic Circle to the very southern portions of Alaska. Our experience in developing small hydropower projects is extensive and current.

I have attached a copy of my testimony on this issue when it was heard by the US Congress, House of Representatives, Committee on Commerce, and Subcommittee on Energy and Power on March 30, 2000. These comments remain relevant to Senate Bill No. 140.

Secondly, I have attached a paper titled "Alaska Small Hydroelectric and the Question of Sustainable Development" dated March 1999.

Both of these documents point out the difficulty and high cost associated with the development of small hydroelectric projects. I am testifying in the hope that this legislation will result in cost and time savings when permitting small hydroelectric projects.

Finally, I would like to make a few other points:

1. In Southeast Alaska the number of small hydropower projects (500 to 5000 kw) is finite. I have prepared a list of the hydropower projects that may likely developed in the next ten years. While I am sure there are others, I thought it would be useful to point out that the numbers of projects are limited and thus the work load and associated costs of the agency given responsibility should be commensurate with the number of projects.

Otter Creek in Skagway
 Thayer Lake in Angoon
 Reynolds Creek in Hydaburg
 South Fork on Prince of Wales Island
 Wolf Lake near Hollis
 Martina Crook in Hoonah