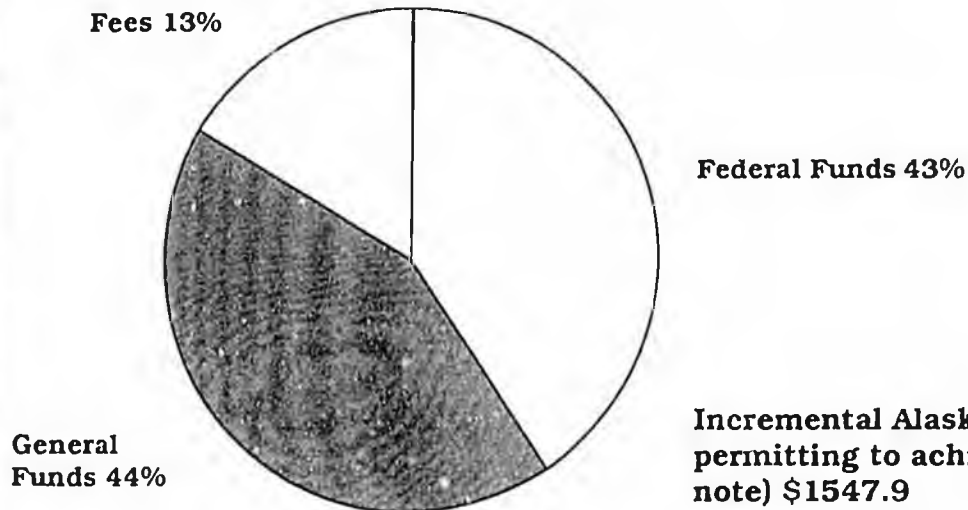


ALASKA LEGISLATURE

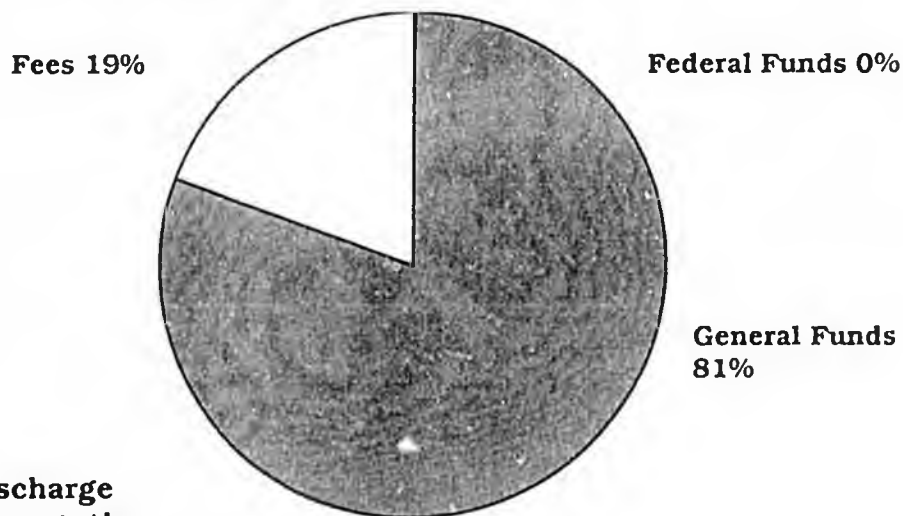
HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3002

**Department of Environmental Conservation
NPDES Primacy
Distribution of Program Costs**

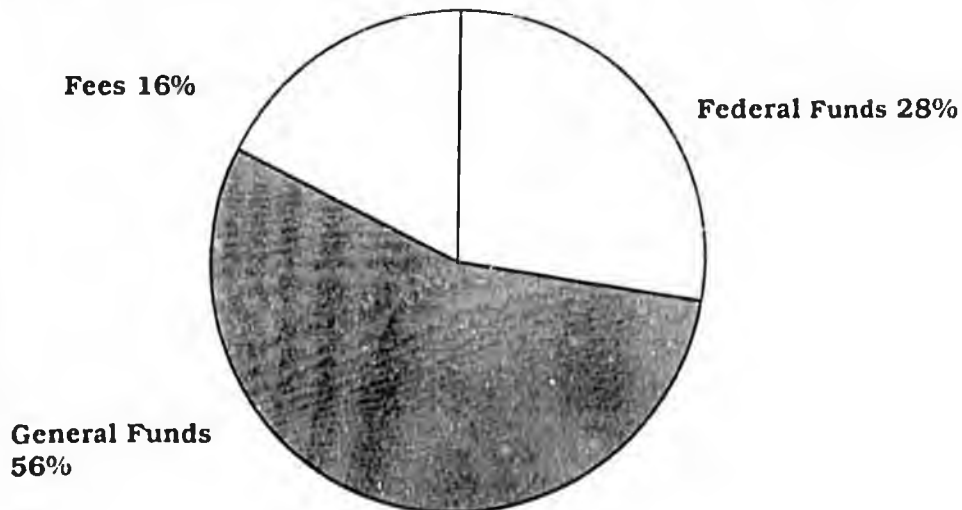
FY04 Alaska investment in wastewater discharge permitting \$3145.7 (132.5 added in FY05 for timber primacy)



Incremental Alaska investment in wastewater discharge permitting to achieve NPDES primacy (legislation fiscal note) \$1547.9



Full Alaska investment in wastewater discharge permitting at full NPDES primacy implementation \$4826.1



STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
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<http://www.state.ak.us/dec/>

OFFICE OF THE COMMISSIONER

March 9, 2005

RECEIVED

MAR 09 2005

The Honorable Lyda Green, Senator
Co-Chair, Senate Finance Committee
State Capitol, Room 516
Juneau, AK 99811

Dear Senator Green:

I respectfully request a hearing for Senate Bill 110, legislation directing that the State of Alaska assume active management over the wastewater permitting process from the U.S. Environmental Protection Agency. As you know, the federal Clean Water Act requires that the discharge of wastewater to surface water be permitted under the National Pollutant Discharge Elimination System (NPDES). When Congress enacted this federal law, it was with the intention that the states would assume authority over the NPDES process, which is known as "primacy."

Senate Bill 110 (and its companion legislation House Bill 153) is a response to the recommendations of a workgroup of Alaskans directly affected by the permitting process. Many of those regulated under the current EPA-run program see substantial benefit in the State assuming primacy for the program. Benefits stem from eliminating undue process and delay and focusing on results, with the expectation that a state program will result in a better environmental outcome. This is consistent with Governor Murkowski's commitment to permit reform as a necessary part of strengthening Alaska's resource-based economy.

I have attached several documents for your information as you consider this important piece of legislation, including Governor Murkowski's transmittal letter and a sectional analysis. I request that you please schedule SB 110 for a hearing before the Senate Finance Committee as soon as possible. If you require further information, please contact Benjamin Brown, DEC's Legislative Liaison, at 465 5290.

Sincerely,



Kurt Fredriksson,
Acting Commissioner

cc: Benjamin Brown, Legislative Liaison, DEC

The Honorable Lyda Green

2

March 9, 2005

Enclosures: Governor's Transmittal Letter
Sectional Analysis
Overview
Who is regulated?
Workgroup Process
Workgroup Findings
Program Costs

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

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February 15, 2005

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

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in the interest of reducing duplication in and otherwise improving regulatory processes, I am transmitting a bill relating to regulation of the discharge of pollutants that would authorize state assumption of primacy over the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) program.

Under existing state law, the Department of Environmental Conservation (DEC) regulates a broad universe of waste and wastewater disposal activities. These include the same activities (the discharge of pollutants to surface waters) that the United States Environmental Protection Agency (EPA) regulates under the NPDES program. This results in duplication of effort by the state and EPA, and in important decisions about the control of wastewater disposal being made by federal regulators with limited knowledge of Alaska-specific issues.

Through ch. 143, SLA 2004, DEC was authorized to take the actions necessary to assume primacy for the Clean Water Act NPDES program for the timber-industry sector. It was recognized through enactment of ch. 143, SLA 2004 that a timber-industry sector program would be a good first step on the road to broader assumption of primacy for the NPDES program. That step, however, brings home to Alaska only a relatively small portion of important wastewater permitting decisions. This limits our ability as a state to design a comprehensive, rational environmental protection program. Such a program would balance prevention of threats to state waters from industrial discharges and the more common wastewater discharges such as from municipal sewage treatment plants and stormwater against our constitutional charge to develop state land and resources, consistent with the public interest.

The Honorable Ben Stevens
February 15, 2005
Page 2

This bill would remove the timber-sector limitation on the authority provided by ch. 143, SLA 2004, thereby allowing the DEC to take the actions necessary to assume primacy for all of the NPDES program delegable to the state. This would enable DEC to pursue the full benefit of the federal Clean Water Act for Alaska, by bringing home to the state this important permitting program in full, all at once or through phased implementation. This would not affect adoption or implementation of state water quality standards.

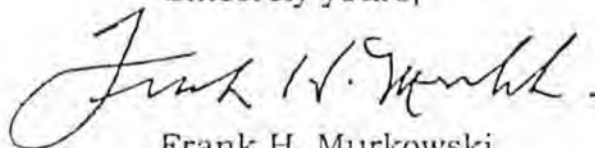
The bill also would amend existing fee provisions to allow for financing of a portion of the full state NPDES program through user fees. Specifically, sec. 2 of the bill would give the DEC the general authority to adopt user fee regulations covering the entire state-assumed NPDES primacy program, thereby removing the existing limitation of this authority to only the timber-industry sector. Under existing AS 37.10.050 - 37.10.058, state NPDES permits would be included in the designated regulatory services category for which flat fees are set, just as state-issued wastewater disposal permits and the state's certification of federal NPDES permits already are.

Section 4 of the bill contains several conditions to include in a state NPDES program. These conditions are the result of extensive consultation between the DEC, the EPA, and permittees who will be affected by the state's assumption of the NPDES program.

The enforcement and penalty provisions would apply to the full NPDES program in the same manner as approved by the Legislature last year for the timber-industry sector program authorized by ch. 143, SLA 2004.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frank H. Murkowski". The signature is fluid and cursive, with a long horizontal stroke at the end.

Frank H. Murkowski
Governor

Enclosure

MEMORANDUM

State of Alaska
Department of Law

TO: Kurt Fredriksson
Acting Commissioner
Alaska Dept. of Environmental Conservation

DATE: February 28, 2005

FILE NO: 773-05-0009

TEL. NO.: 451-2811

FROM: Cameron Leonard
Fairbanks AGO

SUBJECT: Sectional Analysis for SB110/HB153

Sectional Analysis for SB 110/ HB 153

Section 1 sets out legislative findings and intent for this bill. Note that the finding is modeled on a similar finding contained in CSHB 546, found at § 1, ch. 143 SLA 2004. The two statements of intent are to direct ADEC to: (1) file an application for NPDES primacy with EPA by June 30, 2006; and (2) to maintain and consult with the workgroup of affected permittees during the development and approval of ADEC's permitting program. These two items are among those to emerge from the deliberations of the workgroup over the last several months. See also the discussion of section 4 of the bill, below.

Sections 2 and 3 are similar: they both broaden ADEC's authority to assume NPDES permitting primacy from the timber industry sector only (as provided under current law) to all discharges subject to the NPDES program. The sections accomplish this by removing limiting language that accompanied the legislature's prior grant of authority to ADEC. Section 2 allows ADEC to adopt regulations prescribing fees for the permits that it will issue under the program, while section 3 gives ADEC authority to take any actions necessary to receive NPDES primacy from EPA.

Section 4 prescribes five elements that ADEC's NPDES program must contain. All five elements came out of the discussions of the workgroup, and represent a consensus view of affected permittees on what a state program should look like. The proposed new section 100(h)(1) reflects the concern that in the past, NPDES permits issued by EPA have sometimes contained monitoring and reporting requirements that went beyond what the law required, and exposed the permittees to EPA enforcement

and to citizen suits if they did not comply. The proposed new section 100(h)(2) and (3) reflect permittees' desire to review the permit terms early in the drafting process and before final issuance. Proposed section 100(h)(4) reflects the permittees' belief that ADEC's use of contractors could make the permitting process quicker and more efficient. Finally, the proposed section 100(h)(5) seeks to avoid the automatic stay of a permit by virtue of a request for a hearing on the permit, which currently occurs under the federal rules. See 40 CFR 124.16.

Section 5 of the bill is really a house-keeping measure, in that it clarifies some confusion introduced into AS 46.03.120 by the convergence of two bills last year. Both CSHB 546 and SCSHB 524 made changes to AS 46.03.120(b), and unfortunately the combined effect was to leave a few words out of the section 120(b)(3). This section of the current bill simply restores those words and makes the statute coherent again.

Finally, section 6 of the bill provides for an immediate effective date.

Department of Environmental Conservation NPDES Primacy Overview

Background

Section 402 of the Clean Water Act (CWA) requires that all discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

The CWA intends for states to implement (to have "primacy" for) the NPDES program with the Environmental Protection Agency (EPA) acting in an oversight role.

Forty-five states have primacy for the NPDES program. The four other states, aside from Alaska, that do not have NPDES primacy are Idaho, New Mexico, New Hampshire and Massachusetts.

EPA is the NPDES authority in Alaska. DEC plays a secondary role "certifying" that EPA permits meet state water quality standards and issuing state permits for very small discharges that EPA cannot get to.

If Alaska had NPDES primacy, DEC would take over discharge permitting authority including responsibility for issuing and monitoring compliance with the permits.

NPDES Program Components

There are six components to the NPDES permit program. It is proposed that the State assume responsibility for the first five.

1. *NPDES Permitting* which amounts to developing, issuing, modifying and renewing the permits.
2. *Stormwater Program* which consists of permitting stormwater discharges from construction and industrial activities as well as permitting the stormwater collected and discharged by large municipal storm sewer systems.
3. *Compliance and Enforcement* which includes monitoring compliance with permit terms and conditions and taking enforcement action when necessary.
4. *Federal Facilities* which involves permitting of discharges from federally-owned facilities, such as Department of Defense installations.
5. *Pre-treatment Program* which consists of regulating highly toxic discharges into sewerage systems.
6. *Biosolids Management Program* which regulates the disposal of sewage treatment byproducts, or "sludge."

Department of Environmental Conservation
NPDES Primacy
Overview

The Biosolids component is a small component of the NPDES program in Alaska. States have the option whether to assume primacy for this part of the program.

NPDES Primacy Application

Alaska must submit an application to EPA to assume NPDES primacy. That application includes:

1. A *letter from the Governor* requesting approval of the state's application;
2. A *program narrative* that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
3. An *Attorney General statement* of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
4. A signed *Memorandum of Agreement (MOA)* between the state and EPA that establishes timeframes for the state to assume authority for the program components over a five-year period; and
5. A *compliance assurance agreement* developed between the State and EPA that describes the methods the State will employ to assure that permittees comply with the terms and conditions of their permits.

**Department of Environmental Conservation
NPDES Primacy
Who is regulated by the NPDES program?**

Background

The Clean Water Act (CWA) requires that all point source discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

A point source is defined as any confined and discrete conveyance including but not limited to a pipe, ditch, channel, tunnel, or conduit that discharges pollutants.

Number of NPDES Permits

NPDES Permit Statistics for Alaska

	Major Facilities [^]	Minor Facilities	Total Number of Facilities
Authorizations under 13 General Permits*	27	2,105	2,132
Individual Permits	44	111	155
Total	71	2,216	2,287
Unpermitted Facilities**	0	64	64

*A general permit covers a category of similar discharges within a geographical area. Applicants are granted authorization to discharge under the general permit.

**Mostly rural small domestic sewage discharges.

[^]A municipal system that discharges more than 1 million gallons per day, a discharge from an industry on the EPA Industry Ranking Sheet, or a facility that has a pretreatment program.

Examples of Major Facilities with NPDES Wastewater Permits

- Pogo Mine
- Trident Seafoods Corp.
- Healy Power Plant
- Conoco Philips Kuparuk Seawater Treatment Plant
- Alyeska Pipeline Valdez Marine Terminal ballast water treatment plant
- Anchorage Asplund Wastewater Treatment Facility (Pt. Woronzof)
- Unisca Inc.

**Department of Environmental Conservation
NPDES Primacy
Who is regulated by the NPDES program?**

Examples of Minor Facilities with NPDES Wastewater Permits

- small suction dredge miners
- stormwater runoff from general construction activities
- Ketchikan Pulp Company landfill leachate
- East Port Frederick log transfer facility
- North Pole Wastewater Treatment Plant
- BP North Slope Oil & Gas Exploration (Liberty 1, Deadhorse)
- Snettisham Salmon Hatchery
- Port of Anchorage Marine Terminal Facility

Department of Environmental Conservation
NPDES Primacy
Workgroup Process

Background

Senate Bill 326 enacted by the 22nd Alaska Legislature directed the Alaska Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of the state assuming primacy of the NPDES program. The Department released "*State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A Report to the Alaska Legislature*" in January 2004.

Subsequent to release of the report, an advisory workgroup was formed to examine further the concerns, costs and benefits of state primacy from the permittee perspective and to recommend whether to proceed toward primacy.

Six meetings were held during the period November 2004 through January 2005 with representatives from NPDES permittee groups as well as the EPA. The meetings were held in Anchorage and were open to the public. Public notice of the schedule of meetings was provided. Meetings were informal and attendees who were not official members of the workgroup freely participated. Information, handouts, attendance lists and agendas were posted on an NPDES Primacy web site at http://www.state.ak.us/dec/water/npdes/work_group.htm.

Representation

The workgroup included one representative from each of the following major categories of NPDES-regulated dischargers:

- Oil and gas industry sector
- Mining industry sector
- Seafood industry sector
- Timber industry sector
- Construction industry sector
- Large community wastewater permitting
- Small community/tribal wastewater permitting

The EPA, as the current NPDES authority, had a special role and attended meetings to provide perspective and guidance on federal requirements and constraints.

Department of Environmental Conservation
NPDES Primacy
Workgroup Process

Workgroup Report

Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report (2005)*. That report is available on the Department's web site.

Workgroup Recommendations

The majority of the workgroup recommended or did not object to Alaska's assuming primacy for the NPDES permit program. The workgroup's findings included the following recommendations for a state-run NPDES program.

1. Opportunity for permittee review of the draft and proposed final permits prior to issuance.
2. Only legally required monitoring and reporting requirements included in a permit.
3. Continued use of the fee structure established in HB 361; fees based on direct permitting and compliance costs only.
4. Continued use of contractors for technical expertise and during workload surges.
5. Sufficient and consistent funding to ensure a financially stable NPDES program.
6. Use of the existing state appeals process where permit terms and conditions are not automatically stayed upon appeal.
7. Submit a primacy application to EPA by June 2006.
8. Continued permittee participation to help develop the program and the primacy application.
9. Ensure permit consistency where facilities fall under both state and federal jurisdiction.
10. Senior DEC management review of permits conditions that could set precedents.
11. Develop formal training plans for DEC permit and compliance staff.

**Department of Environmental Conservation
NPDES Primacy
Workgroup Findings**

Background

A workgroup including representatives from each of the major categories of NPDES-regulated dischargers in Alaska met in a series of six day-long meetings between November 2004 and January 2005. Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report* (2005). That report is available on the DEC web site.

A key part of the group's work was to identify the benefits, costs and concerns associated with the State of Alaska assuming primacy for the NPDES permitting program.

Identified Benefits

The workgroup identified potential benefits of a state NPDES Program:

1. Time and cost savings to permit major new facilities due to working with one, instead of two regulatory agencies and predictable compliance and enforcement programs.
2. Permit requirements tailored to Alaskan conditions by permit writers familiar with Alaska's environment.
3. An appeals process where filing of an appeal on a new permit does not automatically stay the entire permit.
4. Replacing time-consuming, formal consultation processes with faster, less formal processes.
5. Alaska-specific guidance documents.
6. The use of on-line permit applications, electronic data submittal and other efficiency measures.

Identified Concerns

The workgroup identified potential concerns of a state NPDES Program:

1. Permit fees are expected to increase on average by a factor of 1.8.
2. The state might not direct appropriate resources and funding to adequately implement the Program.

Department of Environmental Conservation
NPDES Primacy
Workgroup Findings

3. NPDES primacy could be temporary if future administrations or legislatures do not support a state program.
4. The state may not be able to hire and retain staff with the expertise to permit complex projects.
5. Responsibility to implement the NPDES program may come at the cost of other programs and priorities.
6. A state program may not provide the degree of certainty currently in place at EPA.

**Department of Environmental Conservation
NPDES Primacy
Program Costs**

Cost of a Primacy Program

As directed by Senate Bill 326 enacted by the 22nd Alaska Legislature, DEC looked closely at what a state NPDES program would cost. Based on workload models and comparisons with other states, the report, *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature* (January 2004), concludes that a program would require an annual budget of \$4.8 million and a staff of 43.

Current Resources

The Department of Environmental Conservation budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to the state NPDES permitting program. These positions currently are certifying the NPDES permits issued by EPA as required by the Clean Water Act and issuing state permits for very small discharges that EPA cannot get to.

New Resources

Bridging the gap between current resources (\$3.3 million and 30 positions) and what would be required to operate a state program (\$4.8 million and 43 positions) will require an additional \$1.5 million and 13 new positions.

The additional \$1.5 million will pay the salaries of the 13 new staff along with associated costs such as travel, office supplies, and equipment. These new funds will also cover the cost of legal assistance, professional service contracts, laboratory analyses, and data management.

Sources of Funding

Once the program is fully operating, costs will be divided between state general funds, federal grant funds and permitting fee receipts in these proportions.

- 41% State general funds
- 43% Federal funds
- 16% Permit fee receipts

Since no additional federal grant funds are available under primacy, the incremental \$1.5 million will need to largely come from state general funds. Once the program is operating, DEC expects to collect an additional \$300 thousand each year in permitting fees offsetting some of the general fund demand.

**Department of Environmental Conservation
NPDES Primacy
Program Costs**

Fee Policy

House Bill 361 was passed by the legislature in 2000. It establishes the state policy for fees charged by resource agencies. In essence, the law provides for charging permitting fees based on direct agency costs. Indirect costs are not included in permitting fees. DEC projects the following distribution of direct and indirect costs associated with the primary functions involved in running the NPDES program at primacy.

Program Administration (10%)

(such as management, policy development, budgeting, work plans, agreements)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 10%

Program Development (13%)

(such as developing procedures, revising water quality standards, training)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 13%

Program Implementation (5%)

(such as public education, data quality control, developing guidance)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 5%

Permitting (30%)

(includes direct costs such as permit development, modification and renewal as well as indirect costs such as providing technical assistance to permittees, responding to third-party appeals, responding to public inquiries)

- Direct Costs (fees) 11%
- Indirect Costs (GF/Federal) 19%

Compliance/Enforcement (25%)

(includes direct costs such as inspections and review of discharge monitoring reports as well as indirect costs such as responding to citizen complaints and compliance assistance)

- Direct Costs (fees) 5%
- Indirect Costs (GF/Federal) 20%

Information Management (17%)

(such as maintaining the permit data system, EPA reporting, developing on-line permit application and reporting systems)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 17%

Total (100%)

- Direct Costs (fees) 16%
- Indirect Costs (GF/Federal) 84%

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: crockett@aoga.org
Marilyn Crockett, Deputy Director

March 4, 2005

Position of the Alaska Oil and Gas Association
On
State Assumption of the NPDES Program from EPA

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

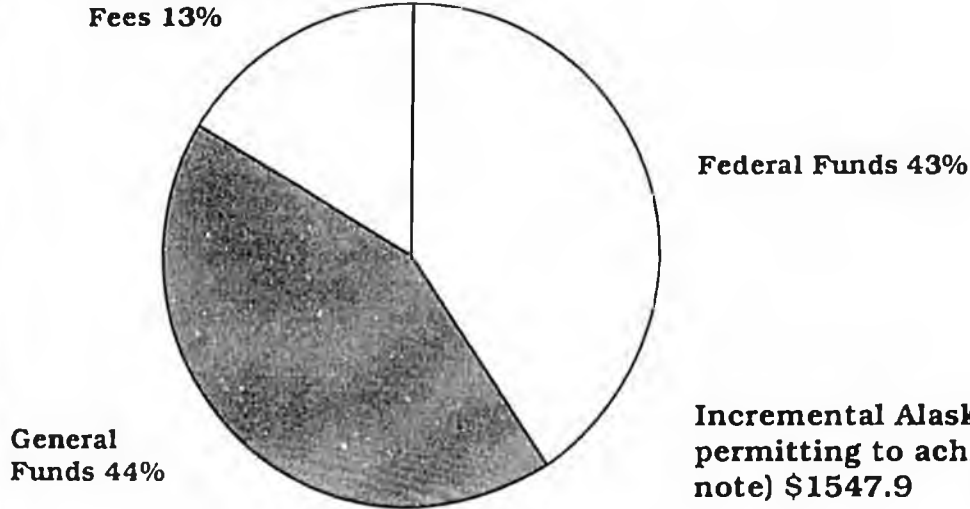
As one of the major industries regulated under the NPDES permit program, AOGA participated in the DEC work group established to examine the concerns, costs and benefits of state primacy and to develop a recommendation on whether to proceed with primacy. After careful consideration of all factors, AOGA does not object to state assumption of this program if the following 11 elements are incorporated into the program. These elements are contained within the Executive Summary of the final Work Group report dated February 24, 2005.

1. Permit fees based on the structure established in House Bill 361.
2. Continued permittee participation during primacy application and program development.
3. Sufficient funding to develop and assume the program and consistent sufficient state general funds in the long-term.
4. Opportunity for permittee review of both draft and proposed final permits.
5. Permits contain only legally required monitoring and reporting necessary to comply with effluent limits and water quality standards.
6. Formal training plan and implementation of the plan for DEC permit and compliance staff.
7. Ensure permit consistency between areas under state and federal jurisdiction.
8. The ability for the department to use contractors to assist with peak workloads and technical permitting issues.
9. Use of the current state permit appeals process where permit provisions are not automatically stayed upon appeal.
10. Senior DEC management review of permits and conditions that set precedents or are controversial.
11. Primacy application submitted to EPA by June 2006.

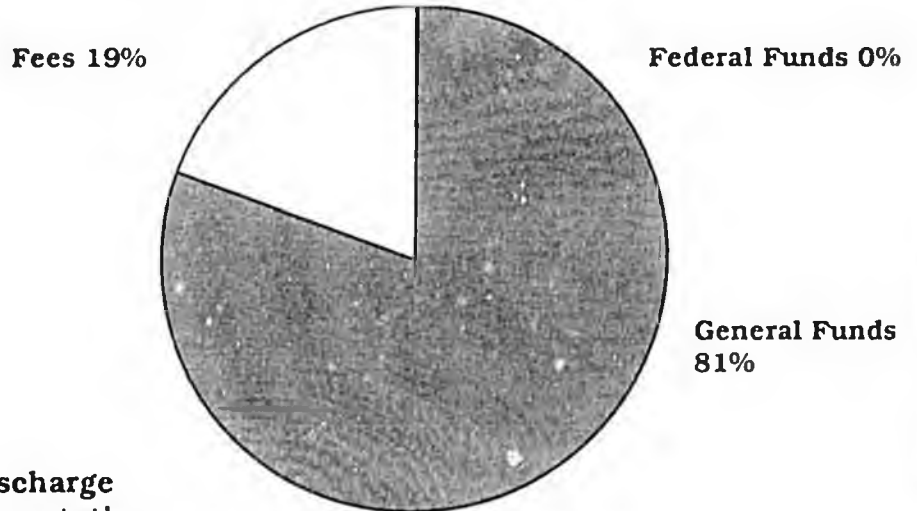
As currently drafted, SB110 incorporates these elements. The accompanying fiscal note accurately reflects the additional commitment of GF funding required to develop the program in the short-term and to manage the program in the long term. It also recognizes the additional commitment of private sector funding for permit fees for direct services to be collected, once program assumption is complete, under the policy and structure unanimously adopted by the Legislature in 2000.

**Department of Environmental Conservation
NPDES Primacy
Distribution of Program Costs**

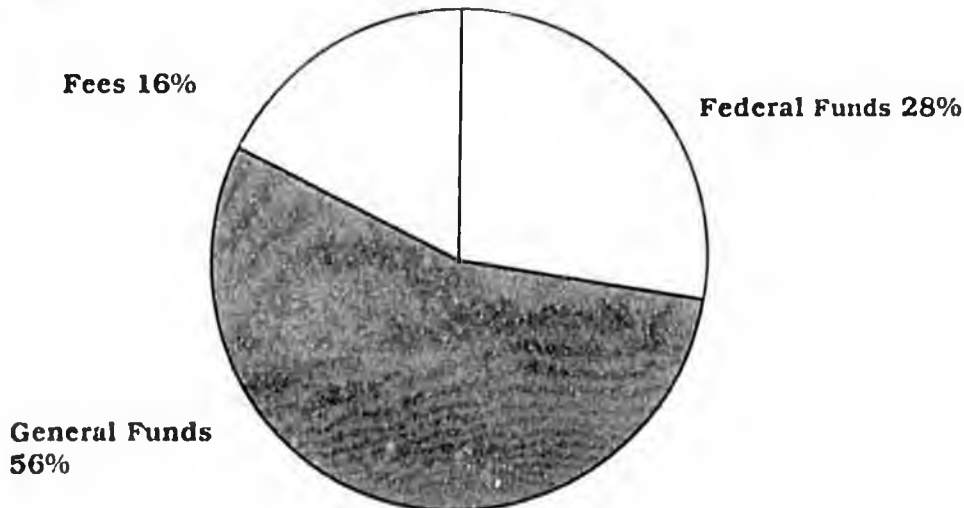
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Incremental Alaska investment in wastewater discharge permitting to achieve NPDES primacy (legislation fiscal note) \$1547.9



Full Alaska investment in wastewater discharge permitting at full NPDES primacy implementation \$4826.1



Alaska Forest Association, Inc.

111 STEDMAN STREET, SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920
Web Site www.akforest.org

April 6, 2005

Senator Lyda Green
Alaska State Senate
State Capitol, Room 516
Juneau, AK 99801

Via Fax 907-465-3805

RE: Alaska Forest Association NPDES Primacy Testimony

Dear Senator Green:

Please support the NPDES Primacy legislation. The anti-development groups increasingly use the permitting process to harass and delay responsible development projects. Currently our permits to operate log storage and transfer permits in Ward Cove, Lewis Reef and Leask Cove are being challenged. State Primacy will help insure that these and other challenges are decided on the merits rather than by policy or politics.

Also, please do not add any harmful amendments as the House Resource Committee did in their attempt to pacify those who oppose Primacy.

A copy of our March 1, 2005 letter regarding this issue is attached. Thank you for your attention to this matter.

Sincerely,

Owen J. Graham
Executive Director

ALASKA FOREST ASSOCIATION
111 STEDMAN #200
KETCHIKAN, AK 99901
907-225-6114

March 1, 2005

Senator Lyda Green, Co-Chair
Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

RE: Alaska Forest Association NPDES Primacy Testimony for 3-2-05 Hearing

Dear Senator Green:

The Alaska Forest Association supports the DEC proposal to manage the NPDES permitting program for Alaska. State Primacy for this permitting program will be beneficial in many ways, for instance:

1. Simplify the permitting process for our timber industry. We will be able to go to a single agency for both State and Federal permits. Further, we have much easier access to State DEC permitting staff than the EPA staff in Seattle or Alaska. For instance, it often takes several days to get a response to a phone call to the EPA, whereas the DEC normally responds immediately.
 2. Replacing proscriptive time-consuming formal consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service with a faster less formal process will decrease the time it takes to issue permits.
 3. The DEC staff is more familiar with Alaska sites and conditions. This greatly reduces the amount of time needed to describe a project and the need for that project.
 4. Applicants will be able to review draft permits and proposed final permits before they are issued. This will reduce the incidence of errors in permits.
 5. The EPA makes some decisions based upon national policy, rather than local needs and conditions. For example, the use of Ward Cove for temporary storage of log rafts and the use of the Ward Cove ship mooring buoys was permitted by the State DEC two years ago, but the EPA, by policy, will not permit that activity until after a TMDL limit has been established for the cove. The EPA proposed limits are too severe to allow any reasonable activity; hence the TMDL is stalled as is the use of the cove.
-

6. The appeals process for permits is expected to be more efficient under State Primacy. For instance, under State Primacy there would be no automatic stay of a permit that is appealed; whereas, the EPA does allow an automatic stay. The automatic stay provision encourages antidevelopment groups to file appeals simply as a delaying tactic.

There is a cost to both the State and the industry for permits under State Primacy, but the added cost is not unreasonable because in return we get a more reliable and efficient permitting process.

Thank you for the opportunity to comment.

Sincerely,

/s/

Owen J. Graham
Executive Director



"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."

Members March 28, 2005

Alaska State Chamber of Commerce Senator Lyda Green
State Capitol, Room 516
Juneau, AK 99801-1182

Alaska Native Groups RE: National Pollutant Discharge Elimination System Program:
State of Alaska Primacy

Dear Senator Green:

Environmental Groups The Cook Inlet Regional Citizens Advisory Council (CIRCAC) submits the following comments on Senate Bill 110 (SB 110) and House Bill 153 (HB 153), which are in reference to the State of Alaska requesting primacy of the National Pollutant Discharge Elimination System program (NPDES).

Recreational Groups The Cook Inlet Regional Citizens Advisory Council (CIRCAC) is a nonprofit corporation organized exclusively for the oversight, monitoring, assessing and evaluation of oil spill prevention, safety and response plans, terminal and oil tanker operations, and environmental impacts of oil tanker and oil terminal operations in Cook Inlet under the provisions of Section 5002 of the Oil Pollution Act of 1990, (OPA 90). Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. CIRCAC consists of 13 members representing boroughs, cities and municipalities in the Cook Inlet region, as well as Alaska Native groups, commercial fishing, and aquaculture, tourism, recreational and environmental interest groups.

Aquaculture Associations

Fishing Organizations

City of Kodiak We have reviewed HB 153, SB110, and associated documentation regarding the legislation. As a result of this review, CIRCAC offers the following recommendations.

- **Consultation**

City of Kenai The legislation as currently drafted eliminates CIRCAC's guaranteed consultation as an established entity during the NPDES permitting review process, a status currently provided to us in OPA 90.

City of Seldovia

City of Homer SB 110 and HB 153 currently do not reflect the Congressional intent found in OPA 90 that details the role of the two citizen advisory councils in Cook Inlet and Prince William Sound. The pending legislation does not require consultation with either Council.

Kodiak Island Borough We have contacted the Alaska Department of Environmental Conservation (ADEC) and they have agreed to continue to work with CIRCAC as the Environmental Protection Agency (EPA) has done in the past when reviewing NPDES permits in the Cook Inlet region. While we appreciate the commitment to work with CIRCAC, a formal agreement either memorialized in the legislation or ADEC regulations will ensure citizen oversight in the permitting process.

Kenai Peninsula Borough

Municipality of Anchorage

CIRCAC recommends amending this legislation to continue the mandatory consultation with Cook Inlet RCAC

- **Public Comment**

There should be no change in the general public's ability to review, comment and participate in the state-led NPDES permitting process. All organizations that are currently required to be consulted in the permitting process under the federal program should have this consultation continued under the State NPDES program.

CIRCAC recommends amending this legislation to ensure continued full public participation and commenting ability.

- **Inspection**

The ADEC has proposed a risk-based inspection program in which ADEC proposes to increase the number of inspections at higher risk minor sources, while decreasing the frequency of inspections at major sources that show to be in compliance with their respective NPDES permit. This could possibly have an effect of a decrease in facility inspections and/or general compliance visits.

CIRCAC recommends amending this legislation to ensure inspections and site visits are not decreased under State primacy.

- **Best Available Technology**

If the state assumes primacy and promulgates regulations associated with the NPDES permitting process, language should be incorporated requiring best available technology for the monitoring of oil industry discharges into Cook Inlet, as well as requiring environmental monitoring in the vicinity of the discharges. Required monitoring by the permittees would enhance the efforts of other groups such as Cook Inlet RCAC to assess environmental impacts associated with these major discharges into the Cook Inlet environment.

CIRCAC recommends amending this legislation to include best available technology use in monitoring discharges

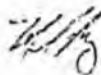
- **Funding**

Careful scrutiny of all of the financial implications of a State NPDES permitting process needs to be considered prior to passing this legislation. Failure to provide for the entire funding requirements could have the undesired effect of diminishing funding resources from other existing State programs. CIRCAC strongly recommends that a legislative audit on the proposed budget be conducted that ensures full funding and adequate staffing of the NPDES program without any reduction from other ADEC programs.

CIRCAC recommends careful analysis of all financial implications regarding the State NPDES permitting process to ensure the program is adequately funded and staffed without reduction of funding from current ADEC programs.

Thank you for your consideration of CIRCAC's recommendations. Our comments reflect our commitment to representing the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet.

Sincerely,



Michael L. Munger
Executive Director

SOUTHEAST CONFERENCE 2005

A RESOLUTION SUPPORTING
HOUSE BILL 153 AND SENATE BILL 110 DIRECTING STATE PRIMACY FOR
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMITTING PROGRAM

(Resolution 05-26)

WHEREAS The National Pollutant Discharge Elimination System (NPDES) program is the wastewater discharge permitting program established by Section 402 of the Clean Water Act; and

WHEREAS The U.S. Environmental Protection Agency (EPA) is currently the NPDES authority in Alaska unlike forty-five other states where the state is the NPDES authority (referred to as the state having "primacy" for the program); and

WHEREAS The NPDES program is important to the communities of Southeast Alaska because the discharge of treated municipal sewage requires an NPDES permit, and because many of our local businesses are regulated under the NPDES program; and

WHEREAS State primacy for the NPDES program promises a faster, less duplicative, and ultimately more effective program for protecting our water resources; and

WHEREAS State primacy for the NPDES program would mean our businesses, industries and communities working with Alaskan permittees on permits that truly reflect local priorities and unique conditions; and

WHEREAS State primacy for the NPDES program would mean a permitting program that is accountable to our elected officials and our residents; and

WHEREAS State primacy for the NPDES program will require adding about \$1.5 million to the Department of Environmental Conservation's budget so that they can run an effective program that all Alaskans can have confidence in.

NOW, THEREFORE, BE IT RESOLVED THAT The Southeast Conference supports state primacy for the NPDES permitting program; and

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT The Southeast Conference urges the first session of the 24th Alaska Legislature to pass, and the Governor to enact, SB 110 and HB 153 along with the fiscal note provided by the Department of Environmental Conservation; and

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT Copies of this resolution be provided to the Governor, the Co-Chairs of the House and Senate Finance Committees, the Senate President, and the Speaker of the House.

Approved by the Southeast Conference Board on April 5, 2005.

Witness:


Murray Walsh - President Southeast Conference

Attest:


Rollo Pool, Executive Director



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3089 / 339 Hazelet Avenue / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

AP
Feb 21
SB 110

March 30, 2005

MEMBERS

Alaska State Chamber of Commerce

The Honorable Lyda Green
State Senate
Alaska State Capitol, Room 516
Juneau, AK 99801-1182

Alaska Wilderness Recreation & Tourism Association

SUBJECT: SB 110/HB 153 – State of Alaska Primacy of the National Pollutant Discharge Elimination System (NPDES) Program

Chugach Alaska Corporation

Dear Senator Green:

City of Cordova

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990, and our contract with Alyeska Pipeline Service Company. PWSRCAC's 18 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental groups.

City of Homer

City of Kodiak

City of Seldovia

City of Seward

PWSRCAC has been reviewing information provided on the Alaska Department of Environmental Conservation (ADEC) website regarding the State of Alaska's proposal to obtain state primacy of the federal National Pollutant Discharge Elimination System (NPDES) program. We have also reviewed SB 110 and HB 153 to implement state primacy of the NPDES program. The PWSRCAC recommends that SB 110/HB153 be amended to address the following issues and requests:

City of Valdez

City of Whittier

Community of Chenega Bay

1. Under the Oil Pollution Act of 1990 (OPA90), federal regulators are required to consult with the Regional Citizens' Advisory Councils on all permits, site-specific regulations and other matters governing the activities of the Valdez Marine Terminal facilities. OPA90 states: "This consultation shall be carried out with a view to enabling the appropriate ... Council to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions". Because OPA90 is silent with respect to such consultation between the appropriate Council and the State of Alaska, PWSRCAC requests that SB 110/HB 153 be amended to include language providing for consultation with the appropriate Council to be carried out by the State of Alaska under a state-led NPDES program. Similarly, there should be no reduction in the general public's ability to review, comment and participate in a state-led NPDES process.

Community of Tatitlek

Caribou District Fisheries Unit

Kodiak Peninsula Borough

Kodiak Island Borough

Kodiak Village Mayors Association

Oil Spill Region Environmental Coalition

2. SB 110/HB 153 should include language to ensure that there will be no reduction in facility inspections or general compliance visits and no degradation of existing state water quality standards under a state-led NPDES program. ADEC's report to the State Legislature proposes to

Prince William Sound Aquaculture Corporation

conduct inspections using a risk-based inspection system¹. Under ADEC's proposed risk-based inspection system, ADEC proposes to increase the number of inspections at higher risk minor sources, while decreasing the frequency of inspections at major sources that appear to be in compliance with their NPDES permit. This may result in a reduced NPDES inspection frequency at Alyeska's Valdez Marine Terminal under a state-run program. PWSRCAC would oppose any such reduction.

3. State NPDES program regulations should require the use of best available control technology to limit hydrocarbon discharges in the water and to limit the cross-media transfer of hydrocarbon emissions to the air. State NPDES program regulations should also require the use of best available monitoring technology to properly assess the extent to which hydrocarbon contamination is present in the effluent, the mixing zone, and waters adjacent to the mixing zone.

In addition to the issues listed above, the PWSRCAC requests the Senate and House Finance Committees consider the following impacts that state primacy could have on state finances. ADEC's NPDES primacy proposal states that only the direct costs of the NPDES permitting process will be charged to permittees. By the State's own reckoning, this amounts to only 16% of the total costs to ADEC. The Legislature should fully consider the following questions: How will the remaining 84% of total costs be funded? Will they come from the State revenues perhaps accompanied by a tax increase? Will they come from a perhaps decreasing series of federal grants? Will some of it come from ADEC's existing funding, thereby reducing their resources for other programs?

It appears that the remaining 84% will likely come from general funds combined with a one-time federal grant. According to ADEC figures², under state primacy there will be an increased demand from the general fund of \$1,524,960 (this assumes \$1,332,000 will be available in federal funds). It also appears that any shortfalls including underestimates of needed funding and any decrease in federal funding will be borne by the general fund. PWSRCAC notes that the currently proposed national budget seeks large cuts in the US EPA's water program that will likely adversely affect the availability of federal funds to support state-led NPDES programs.

PWSRCAC is concerned that the proposed state-run NPDES program will be inadequately funded thereby requiring ADEC to pull resources from other existing programs such as the vital spill prevention and response program. PWSRCAC would vigorously oppose any such underfunding of the NPDES program or reduction of funding for the state's existing prevention and response efforts.

It is reasonable to expect that the benefits to the State accruing from NPDES primacy would be commensurate with the costs. PWSRCAC recommends that the bills be amended to include provisions for reverting primacy back to the EPA if the hoped-

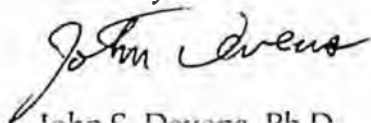
¹ State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A report for the Alaska Legislature, Alaska Department of Environmental Conservation, January 2004 (p. 58).

² State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A report for the Alaska Legislature, Alaska Department of Environmental Conservation, January 2004 (p. 29).

for benefits are not achieved. Note, however, that once NPDES primacy is accorded to the state, there is a similarly long and complicated process for the return of primacy. Typically, the reversion process takes one year or more.

Thank you for considering our views. Please contact me at (907) 835-5957 if you have questions or need additional information on our concerns with state assumption of NPDES primacy.

Sincerely,



John S. Devens, Ph.D.
Executive Director

Cc: Governor Frank Murkowski
Senator Lisa Murkowski
Senator Ted Stevens
Representative Don Young
Rep. William Thomas, Jr.
Rep. John Harris
Rep. Kurt Olson
Rep. Paul Seaton
Rep. Gabrielle LeDoux
Senator Gene Therriault
Senator Al Kookesh
Senator Thomas Wagoner
Senator Gary Stevens
Mike Lidgard, US EPA
Carl Lautenberger, US EPA
Kurt Fredriksson, ADEC

Note: This letter has been sent to all members of the House and Senate Finance Committees. For distribution purposes only, one copy of the letter is being forwarded to the Cc list.



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #106, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

April 4, 2005

Honorable Lyda Green
Honorable Gary Wilken
Co-Chairs, Senate Finance Committee
Capitol Building
Juneau, AK 99801

RE: Senate Bill 110, State Assumption of NPDES Program

Dear Senators Green and Wilken,

Thank you for the opportunity to comment on Senate Bill 110. This bill would give the Department of Environmental Conservation the authority to assume primacy for the National Pollution Discharge Elimination System (NPDES) program currently managed by the Environmental Protection Agency (EPA). Alaska is one of only five states that has not taken primacy for NPDES.

The mining industry has considered this option of the State taking primacy for the NPDES program for many years but until recently had not concluded that State primacy was best for Alaska. We also had concerns that DEC may not have personnel with the expertise and ability to take over the program and to manage it effectively. Over the past year, and more specifically over the past few months, we have become convinced that State Primacy for NPDES is in the State's best interest and that the DEC staff is definitely up to the task.

From late last fall through January 2005 we participated in a work group composed of regulated industries and municipalities. This work group evaluated what an NPDES program run by the State would include and the pros and cons for State assumption. We concluded that there are many reasons that justify State primacy. Alaska Attorney Larry Hartig wrote an article for the December 2004 edition of *the Alaska Miner*, our monthly publication, in which he discussed many reasons why it would be better if the State took primacy. Mr. Hartig has worked on water quality permitting issues in Alaska for more than two decades. That article is enclosed.

Thank you for the opportunity to comment on this important issue. We encourage you to move the bill as soon as possible so DEC can begin the process of applying to EPA to obtain primacy.

Sincerely,

Steven C. Borell, P.E.
Executive Director

enclosure

cc: Finance Committee Members



ALASKA MINERS ASSOCIATION, INC.

Should the State of Alaska Assume the NPDES Permit Program?

By Larry Hartig

The Alaska Department of Environmental Conservation (ADEC) convened a work group to review and provide a recommendation on whether the state of Alaska should assume primacy of EPA's NPDES program. That program regulates the discharge of pollutants to surface waters. If the state assumes primacy, then ADEC rather than EPA would issue NPDES permits. Several AMA members have been participating in the work group. This article provides a perspective on this important issue.

A key question is "What will it cost?" ADEC anticipates the program will be supported in large part by fees collected from regulated facilities. ADEC plans to provide estimates, at a work group meeting later this month, of what it might cost to permit a smaller placer mine and to permit a large mine that has acid rock drainage or other complex issues. EPA does not charge fees for NPDES permits. Thus, the burden of new state fees will have to be weighed against the benefits of primacy. The remainder of this article discusses potential benefits of state primacy.

Pre-Application Access to Permitting Staff - It is important to have discussions with the agency permitting staff in developing the application for a permit. For larger mining projects, it is usually necessary to collect data on baseline conditions. Data are expensive to collect and it is important to limit the collection of data to the data that will actually be used. Usually there is a limited time frame within which to collect the data. Having easy access to agency staff and the ability to get them into the field to help identify the needed baseline information can greatly reduce the risk of unnecessary costs and delays. EPA only has one permit writer in Alaska. Although she is helpful, she cannot handle all of the permit applications in the state. EPA also has more limitations on travel than does ADEC.

Coordination Among Permitting Agencies - The construction and operation of large mines requires permits from numerous agencies. The State has made great strides in the use of large mine permit teams to coordinate the application and permit drafting processes. With State primacy, the State would be in a better position to continue this effort. It has been the mining industry's experience that federal agencies are sometimes less inclined to be involved with such a team approach, particularly with state agencies.

Staff/Funding Agreements - The availability of an EPA permit writer for a particular project is always uncertain. ADEC could provide more certainty to applicants because ADEC and the applicant could enter into a funding agreement that commits ADEC to provide a permit writer's time in exchange for the applicant's payment of agreed-to costs.

Understanding of Local Conditions - Again, EPA only has one permit writer located in Alaska. The remaining permit writers rarely, if ever, visit the state and have no first hand knowledge of conditions that are unique to the northern environment. Permit writers fall back on interpretations of EPA guidance that don't contemplate or adequately address the Alaska

situation, rather than come up with more appropriate Alaska-specific permit provisions. Having permit writers who are Alaska-based would better assure permit provisions match project-specific conditions.

More Accountability for Setting Permit Requirements - EPA permit writers must make a number of technical and legal decisions in crafting permit requirements. It is the mining industry's experience that EPA permit writers tend to err more on the side of caution, perhaps attempting to avoid controversy and minimize the risk of an appeal. When overly cautious, the permit writer may include requirements that are unnecessary and not legally mandated. By having a permit writer who is more familiar with local industry, traditions and state water quality standards, and who is more accessible to the regulated community, there is less risk of unwarranted requirements in permits.

Matching State Water Quality Criteria to the Appropriate Analytical Method - Most effluent limits are based on state water quality standards. Unfortunately, permits sometimes require the use of analytical methods that are not able to reliably measure the concentration of a substance at the low level called for in the permit. EPA has been unsympathetic to complaints that the analytical methods they put in permits are not reliable. (Although EPA will insert a "compliance evaluation level" in a permit, stating that compliance with the quantification level of the method as set in the permit will be deemed compliance with the permit, this reading of the permit has been challenged in citizens suits.) ADEC would be able to set the water quality standards and put monitoring requirements in permits to resolve these situations.

Timely Issuance of Permits - Most projects are time-sensitive. Any unnecessary delays in permitting can be expensive. State permit writers are more likely to be sensitive to this and in a better position to keep the process moving forward. The decision-making process at EPA is far more cumbersome and takes longer to resolve questions than with state agencies. This may be due to a number of factors, including EPA's unfamiliarity with conditions in Alaska, the difficulty of communicating between Seattle and Alaska, a shortage of permit writers, competing priorities, and a need for multiple in-house consultations and consultations with other federal agencies. Although some consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service should be built into the state process to identify potential Endangered Species Act concerns, the process could be greatly shortened and simplified. State primacy may also mean that simpler projects that do not involve "federal actions" would not have to go through the NEPA process.

More Flexibility in the Modification of Permits - NPDES permits are issued for five year terms. EPA is reluctant, primarily because of a shortage of staff, to modify permits on an "as needed" basis. It is not uncommon for EPA to administratively extend expired permits, sometimes for a number of years, rather than reissue the permit at the end of its initial five year term. EPA does not modify administratively-extended permits. As a consequence, the permittee may be stuck with the same permit conditions for five or more years. ADEC could remedy this problem by writing more flexibility into its permits and by having a simple process for modifying permits.

Review of Permit Provisions by Permittee - EPA does not let the permittee see the draft permit until it goes out for public comment, nor does EPA show the final permit to the permittee until it

is issued. As a result, it is not uncommon to find mistakes in permits that could have easily been corrected had the permittee been allowed to review the draft or final permit in advance. ADEC could allow more access to the draft and final permit before they are issued.

Automatic Stays of Permits - Under EPA regulations, the appeal of any permit for a new facility is automatically stayed in its entirety until the resolution of the appeal and the permit is "finalized", e.g. Pogo Mine. Thus, with the cost of a postage stamp, anyone can hold up an entire project by appealing a small piece of the permit. ADEC can remedy this situation by having the ADEC Commissioner decide which permit conditions are stayed by an appeal.

Information in Discharge Monitoring Reports (DMRs) - EPA requires permittees to report the analytical results from compliance monitoring in monthly Discharge Monitoring Reports (DMRs) filed with EPA. EPA transports the analytical data into its Permit Compliance System (PCS). This database is accessible by the public and used by them to track compliance of a facility with its NPDES permits. This system does not work very well. There are occasions when a permittee reports an analytical result to EPA that, although it appears to be above a permit limit, is suspect because of analytical problems in the laboratory, deficiencies in the analytical method itself, or other reasons that have nothing to do with the permittee's compliance. EPA takes the qualified or suspect result from the DMR and automatically puts it without explanation into the PCS database. To the public reviewing the PCS database, it appears that the permittee is not in compliance and this invites citizen concern and possibly citizen suits. The State could develop a better system.

Penalty Policies - EPA has very prescriptive policies and procedures for imposing penalties on facilities which EPA has found are not in compliance. These policies favor large penalties over spending money to improve the facility's environmental performance. ADEC could develop penalty policies that are better aimed at improving environmental performance.

Compliance and Consent Orders - Often compliance issues can best be resolved by an agreement between the permittee and EPA that identifies steps to be taken for the permittee to come into compliance and deadlines for these tasks. Unfortunately under the citizen suit provision of the Clean Water Act, as interpreted by appellate courts, these Consent Orders do not protect permittees from citizens suits. Although this is by no means certain, ADEC may be able to work with the Attorney General's office to develop procedures that would avoid the risk of citizen suits in this situation.

Appeal Process - The current EPA appeal process usually involves an administrative appeal to the Environmental Appeals Board in Washington, D.C., and from there to the 9th Circuit Court of Appeals. This process could be shortened and simplified. To do this will take careful thought. Regardless of what appeals process ADEC comes up with, some believe it would be advantageous not to have Alaska issues resolved by the Ninth Circuit.

Larry Hartig is a shareholder in the law firm of Hartig Rhodes Hoge & Lekisch. He has represented mining clients in Alaska for 21 years in a variety of legal matters, including on many NPDES and other permitting issues.



SB 110/HB 153 - NPDES Primacy

Background: SB 110/HB 153 authorizes the state to apply to U.S. Environmental Protection Agency (EPA) for the right to issue federal wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). Currently, EPA issues these discharge permits in Alaska for free. The legislation is the outcome of a Department of Environmental Conservation (DEC) permittee-only workgroup process to determine the circumstances under which the industry would accept state primacy over NPDES permitting. As a result of its limited membership the workgroup did not adequately address several problems with state NPDES Primacy.

Problems with SB 110/HB 153

Inadequate Staffing Levels: The fiscal note estimates NPDES primacy will cost Alaska over \$1.5 million annually. Unfortunately, the proposed DEC staffing levels are inadequate- reducing the current permitting staff by 28% and compliance and enforcement staff by 16%. Given the size and scale of many Alaskan industrial operations – oil and gas-related, mining, timber, and seafood processing – the proposed staffing levels are far too low. As the January 2004 DEC report on NPDES Primacy shows, Alaska expects to spend only 52% of the resources that Washington state spends per permit. **Needed: Increase staff estimates.**

Harm from Inadequate Funding: If the legislature fails to appropriate the funds needed *each year*, the state's salmon streams and overall water quality will suffer, permits will be delayed, there may be technical deficiencies in permits, etc. Additionally, necessary annual appropriations for the NPDES program will increase as personnel costs and Alaska's economy expand. **Needed: Legislative intent to fund the NPDES program adequately over the long-term.**

Inappropriate Influence: Permitted industries will have excessive influence on the permitting process, reducing governmental accountability. Industry workgroup members wish to review draft and final permits before public issuance, again giving industry permittees excessive and unfair influence over permits. EPA may not approve such an unbalanced permit process. **Eliminate Sec. 4(h)(2) and 4(h)(3).**

Lack of Outside Consultations: Under state primacy there no longer will be Tribal government-to-government consultations with regulators who issue wastewater discharge permits. NPDES primacy also will eliminate various expert reviews and public input opportunities required in federal statutes which protect, among other things, essential fish habitat.

Conflicts of Interest: The presumed lack of sufficient technical and other experts at DEC means that the legislation anticipates the use of consultants to develop permits. Problems with using consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. **Needed: Amend Sec. 4(h)(4) so it addresses potential conflicts of interest and increase DEC staff estimates.**

The legislation extends the mandate of the undemocratic and unrepresentative NPDES primacy workgroup. **Needed: Amend Sec. 1(b)(2) so the workgroup is representative of all stakeholders.**

Conclusion: SB 110/HB 153 need to be amended to ensure that the state has the resources, the expertise, and the necessary Tribal and public involvement process in place to implement NPDES Primacy without harming Alaska's natural resources, communities, and businesses.

Large Alaska treatment plant operators currently oppose state NPDES Primacy
<http://www.state.ak.us/dec/water/npdes/pdfs/AWWU.pdf>.



CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4519
FAX (907) 772-3759

April 5, 2005

Senate Finance Committee
Alaska State Legislature
Sen. Lyda Green, Gary Wilken
Juneau, Alaska

Testimony: Support for SB110

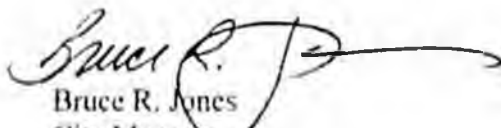
Dear Co-Chairs Green and Wilken,

I am writing today in support of Senate Bill 110 which would authorize the Department of Environmental Conservation to make application to obtain state primacy of the National Pollutant Discharge Elimination System.

In my twenty-five years as an employee of the City of Petersburg a majority of my time has been spent obtaining permits from Federal and State agencies, including numerous NPDES municipal discharge permits. It is my opinion that having the NPDES program under the authority of the State of Alaska would make the program more effective and efficient. I could cite more than a few instances where, during NPDES permit renewals, we have had to call representatives of the department in intercede on our behalf in an attempt to explain our unique challenges to federal regulators.

State primacy makes a lot of sense. My only request is for the legislature to give the department the resources they need to do the job correctly. I recognize the need to raise fees to cover costs of obtaining primacy. Unfortunately, the limited number of permits could not possibly fund the program.

Thank you for your consideration.


Bruce R. Jones
City Manager



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3009 / 339 Hazelot Avenue / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

March 30, 2005

MEMBERS

Alaska State
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Alaska Wilderness
Recreation & Tourism
Association

Chugach Alaska
Corporation

City of Cordova

City of Homer

City of Kodiak

City of Seward

City of Valdez

City of Whittier

Community of
Chukchi Bay

Community of
Tatish

Cordova District
Fishermen United

Kodiak Peninsula
 Borough

Kodiak Island
 Borough

Kodiak Village Mayo &
 Association

Oil Spill Region
 Environmental
 Coalition

Prince William Sound
 Aquaculture
 Corporation

The Honorable Mike Chenault
House of Representatives
Alaska State Capitol, Room 505
Juneau, AK 99801-1182

SUBJECT: SB 110/HB 153 – State of Alaska Primacy of the National Pollutant Discharge Elimination System (NPDES) Program

Dear Representative Chenault:

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990, and our contract with Alyeska Pipeline Service Company. PWSRCAC's 18 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental groups.

PWSRCAC has been reviewing information provided on the Alaska Department of Environmental Conservation (ADEC) website regarding the State of Alaska's proposal to obtain state primacy of the federal National Pollutant Discharge Elimination System (NPDES) program. We have also reviewed SB 110 and HB 153 to implement state primacy of the NPDES program. The PWSRCAC recommends that SB 110/HB153 be amended to address the following issues and requests:

1. Under the Oil Pollution Act of 1990 (OPA90), federal regulators are required to consult with the Regional Citizens' Advisory Councils on all permits, site-specific regulations and other matters governing the activities of the Valdez Marine Terminal facilities. OPA90 states: "This consultation shall be carried out with a view to enabling the appropriate ... Council to review the permit, site-specific regulation, or other matters and make appropriate recommendations regarding operations, policy or agency actions". Because OPA90 is silent with respect to such consultation between the appropriate Council and the State of Alaska, PWSRCAC requests that SB 110/HB 153 be amended to include language providing for consultation with the appropriate Council to be carried out by the State of Alaska under a state-led NPDES program. Similarly, there should be no reduction in the general public's ability to review, comment and participate in a state-led NPDES process.

2. SB 110/HB 153 should include language to ensure that there will be no reduction in facility inspections or general compliance visits and no degradation of existing state water quality standards under a state-led NPDES program. ADEC's report to the State Legislature proposes to

conduct inspections using a risk-based inspection system¹. Under ADEC's proposed risk-based inspection system, ADEC proposes to increase the number of inspections at higher risk minor sources, while decreasing the frequency of inspections at major sources that appear to be in compliance with their NPDES permit. This may result in a reduced NPDES inspection frequency at Alyeska's Valdez Marine Terminal under a state-run program. PWSRCAC would oppose any such reduction.

3. State NPDES program regulations should require the use of best available control technology to limit hydrocarbon discharges in the water and to limit the cross-media transfer of hydrocarbon emissions to the air. State NPDES program regulations should also require the use of best available monitoring technology to properly assess the extent to which hydrocarbon contamination is present in the effluent, the mixing zone, and waters adjacent to the mixing zone.

In addition to the issues listed above, the PWSRCAC requests the Senate and House Finance Committees consider the following impacts that state primacy could have on state finances. ADEC's NPDES primacy proposal states that only the direct costs of the NPDES permitting process will be charged to permittees. By the State's own reckoning, this amounts to only 16% of the total costs to ADEC. The Legislature should fully consider the following questions: How will the remaining 84% of total costs be funded? Will they come from the State revenues perhaps accompanied by a tax increase? Will they come from a perhaps decreasing series of federal grants? Will some of it come from ADEC's existing funding, thereby reducing their resources for other programs?

It appears that the remaining 84% will likely come from general funds combined with a one-time federal grant. According to ADEC figures², under state primacy there will be an increased demand from the general fund of \$1,524,960 (this assumes \$1,332,000 will be available in federal funds). It also appears that any shortfalls including underestimates of needed funding and any decrease in federal funding will be borne by the general fund. PWSRCAC notes that the currently proposed national budget seeks large cuts in the US EPA's water program that will likely adversely affect the availability of federal funds to support state-led NPDES programs.

PWSRCAC is concerned that the proposed state-run NPDES program will be inadequately funded thereby requiring ADEC to pull resources from other existing programs such as the vital spill prevention and response program. PWSRCAC would vigorously oppose any such underfunding of the NPDES program or reduction of funding for the state's existing prevention and response efforts.

It is reasonable to expect that the benefits to the State accruing from NPDES primacy would be commensurate with the costs. PWSRCAC recommends that the bills be amended to include provisions for reverting primacy back to the EPA if the hoped-

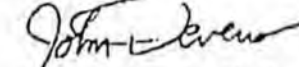
¹ State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A report for the Alaska Legislature, Alaska Department of Environmental Conservation, January 2004 (p. 56).

² State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A report for the Alaska Legislature, Alaska Department of Environmental Conservation, January 2004 (p. 29).

for benefits are not achieved. Note, however, that once NPDES primacy is accorded to the state, there is a similarly long and complicated process for the return of primacy. Typically, the reversion process takes one year or more.

Thank you for considering our views. Please contact me at (907) 835-5957 if you have questions or need additional information on our concerns with state assumption of NPDES primacy.

Sincerely,


John S. Devens, Ph.D.
Executive Director

Cc: Governor Frank Murkowski
Senator Lisa Murkowski
Senator Ted Stevens
Representative Don Young
Rep. William Thomas, Jr.
Rep. John Harris
Rep. Kurt Olson
Rep. Paul Seaton
Rep. Gabrielle LeDoux
Senator Gene Therriault
Senator Al Kookesh
Senator Thomas Wagoner
Senator Gary Stevens
Mike Lidgard, US EPA
Carl Lautenberger, US EPA
Kurt Fredriksson, ADEC

Note: This letter has been sent to all members of the House and Senate Finance Committees. For distribution purposes only, one copy of the letter is being forwarded to the Cc list.

FAX COVER SHEET
ANCHORAGE LEGISLATIVE INFORMATION OFFICE
Office 907-269-0111 Fax 907-269-0229

To: Senate Finance

Attn: MEMBERS

Fax: 465-2187 Phone: _____

From: ANC LIO Phone: 269-0114

Instructions: PUBLIC TESTIMONY FROM 4/8/05
MEETING ON # SB110

Sent: Date 4/8/05 Time 10:45 AM

Disposal of Original: Discard: _____ Pouch Hold for Pickup _____

Number of Pages: 4 (counting cover sheet)

Transmitted by: JENNA



NTL ALASKA, INC.
3330 INDUSTRIAL AVENUE, SUITE 200, FAIRBANKS, AK 99701
(907) 452-6852 fax (907) 452-6853
www.ntlalaska.com

March 15, 2005

The Honorable Gary Wilken, Co-Chair
Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Re: Senate Bill No. 110

Dear Senator Wilken:

I am writing to express my support for the passage of SB 110. My interest in SB 110 derives from over 33 years as a professional environmental science consultant and commercial laboratory owner in the water and wastewater field in Alaska. Throughout my career, I have had a history of interaction with the EPA NPDES permit program for both public and private utilities. I strongly believe that it is time for the State of Alaska to adopt primacy for NPDES and assume full responsibility for its implementation. Following are some specific examples of why I support passage of SB 110:

1. In the early 1980's our testing laboratory in Fairbanks provided monitoring services for a number of placer mines operating in Interior Alaska. I was dismayed that EPA failed to implement a general NPDES permit for this industry in a timely manner, causing many of these businesses to either risk continuing their operations without a permit, or close down. Many miners opted to cease operations, creating a significant economic impact.
2. Throughout the 1980's and early 1990's, a number of our clients at Prudhoe Bay for whom we provided water and wastewater monitoring and consulting services applied for NPDES permits. EPA simply failed to respond to over a dozen NPDES permit applications from these oil field support service companies. When I contacted the EPA Region 10 office in Seattle, they complained that due to a backlog of hundreds of NPDES permits they didn't have the resources to deal with them. Although each of those companies obtained permits through the Alaska Department of Environmental Conservation (ADEC), they remained at risk without an NPDES permit until EPA finally issued a general permit for wastewater discharges in the North Slope Development area in 2003. The potential economic impact that could have resulted from disrupting the operation of those vital support service companies in Prudhoe Bay far exceeds the cost of an Alaskan-administered NPDES program.
3. The time that EPA takes to complete a major NPDES facility permit is an impediment to economic development in Alaska. The remoteness of their oversight can lead to improper decisions on permit issues that can have negative economic impacts. One example of this

"Understanding Water"

was the NPDES permit for the Pogo gold mine this past year. The NPDES permit was the last permit to be issued for that project, and it did not adequately address arsenic-related water quality issues. As you are well aware, the Northern Alaska Environmental Center (NAEC) called attention to that oversight and mine construction activity was subsequently disrupted until the Governor and a number of Fairbanks area legislators including yourself directly intervened to resolve the problem. Unfortunately, public attention was directed at the NAEC as being a disruptive force in this incident. It is my opinion that the EPA permit writers were at fault for a significant oversight that NAEC simply called to public attention.

In summary, I believe that Alaskans should take responsibility for this critical environmental permitting program. It makes economic sense and it brings sound science to the permitting program by having local expertise involved in all aspects of permit review, issuance, and compliance. Furthermore, by decreasing the geographical distance between the regulatory agency and the dischargers, environmental protection will be enhanced.

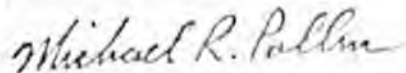
I believe that ADEC provides effective oversight of Alaska's State wastewater disposal permit program. Furthermore, ADEC currently performs most of the administrative functions for the new statewide NPDES General Permit (AKG-57-0000) for small discharges that EPA issued in 2004, such as plan review, mixing zone certifications, and monitoring criteria. ADEC will have to add some staff and develop additional skills to fully administer this program, but in my experience, ADEC already does a better job of this than their EPA counterparts.

Taking responsibility for primacy means that we will have to pay our own way for the added costs of running the NPDES program in Alaska. I believe that an efficient local administration of the NPDES program will yield economic benefits that will translate to a stronger economy, offsetting the additional cost to the State of Alaska many times over.

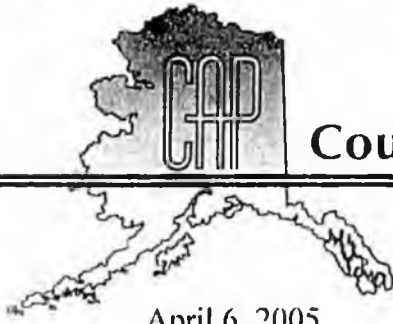
I encourage you to support this important piece of legislation. Thank you for your consideration of my comments.

Sincerely,

NTE Alaska, Inc.



Michael R. Pollen, President



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

April 6, 2005

Honorable Lyda Green
Honorable Gary Wilken
Co-Chairs Senate Finance Committee
Capitol Building
Juneau, AK 99801

Re: Senate Bill 110, State NPDES Primacy

Dear Senators Green and Wilken,

The Council of Alaska Producers (CAP) supports State assumption of the NPDES program.

The CAP is a consortium of mining organizations involved in the responsible development of natural resources in the State of Alaska. We represent a group of companies that are either currently operating mines, exploring for minerals, or associated with the development of mining operations that utilize or intend to utilize chemical extraction of ores as their primary mineral processing method.

State control over the complex NPDES permitting process will provide the benefits of effective environmental protection while recognizing site-specific Alaskan conditions, shortened permitting timelines, greater certainty of permitting outcomes, and reduced risk of permit appeals.

NPDES permits regulate collection, treatment, and disposal of site precipitation and process water. State assumption of this program would allow administrators to shape permit conditions around regional geologic and climatic conditions. Of all 50 states, Alaska certainly has the greatest divergence in regional conditions from the rest of the nation, including the challenges of permafrost, naturally mineralized streams and limited summer seasons. State assumption of the NPDES program will allow for an informed evaluation of site-specific conditions and determine how to best, and most reasonably, achieve protection of Alaska's waters.

Shortened permitting timelines will result from closer cooperation among state agencies during permit review. Closer cooperation among the agencies, the permittees, and the general public will also result from improved accessibility to the regulators. State agencies are more flexible in their ability to travel and they are not burdened by some federal procedural requirements. Thus state regulators are able to more quickly respond to issues during permit review and to keep the process on a timeline.

Improved certainty in the permitting process will result from having a more integrated approach to permitting. Since the State of Alaska currently develops the water quality criteria that are implemented through the existing NPDES program, State control of the permit process will ensure consistent interpretation and application of these standards within NPDES permits.

Under EPA regulations, any appeal of an NPDES permit for a new facility automatically puts the entire permit on hold until resolution of the appeal, e.g. Pogo Mine. Thus, with the cost of a postage stamp, anyone can hold up an entire project by appealing any provision of the permit. State control over the NPDES program can remedy this situation by having the Alaska Department of Environmental Conservation (ADEC) Commissioner establish guidelines that limit which permit conditions are stayed by an appeal.

When taken together, these and other benefits of State assumption will provide an improved permitting process and a much improved business climate in Alaska.

These benefits will come at a cash cost, but the long-term opportunity cost of not assuming this program will be much greater. The State must be able to permit major mining projects in a timely manner in order to continue to attract the capital that will provide private sector jobs and economic activity throughout Alaska. Forty-six of fifty states have assumed the NPDES program. How long will Alaska remain a ward of the federal government with respect to responsible permitting and development of its resources?

The benefits of State assumption will extend to specific permittees, both industrial and municipal, and to the overall economy of Alaska. Thus this program should be funded by both permittees and general funds. A proper balance must be struck between an appropriate cost to the permittee and an onerous burden that will discourage investment. Over the past few years, many leaders, both Republican and Democrat, have worked hard to develop consensus on how the water permitting programs should be funded. The funding proposal before you now is based on working group discussion, represents a continuation of this hard work, and should be approved with the program.

Assumption of the NPDES program will send a powerful message that Alaska intends to provide a reasonable investment climate in Alaska.

The Council of Alaska Producers recommends passage of SB110.

Respectfully,



Karl Hanneman
President
Council of Alaska Producers

April 6, 2005

Honorable Lyda Green
Honorable Gary Wilken
Co-Chairs Senate Finance Committee
Capitol Building
Juneau, AK 99801

Re: Senate Bill 110, State NPDES Primacy

Dear Senators Green and Wilken,

Thank you for the opportunity to comment on SB 110 which would allow the Alaska Department of Environmental Conservation (ADEC) to assume primacy of the National Pollution Discharge Elimination System (NPDES) program that is currently managed by the Environmental Protection Agency (EPA). Teck Cominco Alaska Incorporated (TCAK) strongly supports ADEC's assumption of this program.

TCAK is the operator of the Red Dog Mine which is located in Northwest Alaska. Red Dog currently holds two NPDES permits which were issued by EPA. Our experience with these permits has shown certain advantages to a state program. These advantages include:

- A better access to the permitting authority. Red Dog's permits were written by permit writers based in Seattle, WA. The permit writer for our important mine NPDES permit has never been to the site.
- Having a permitting authority that better understands Alaskan conditions. Permit writers based in the Lower 48 do not understand such important considerations as arctic weather limitations.
- The ability to coordinate permitting actions with other supporting state agencies. The interaction of state agencies such as the Alaska Department of Natural Resources with EPA can be problematic.
- Development of a program that would provide for the review of permit conditions prior to their issuance. Currently permits are written in isolation with little involvement with the permittee.

TCAK feels that these issues would be better served by an Alaskan based program. ADEC primacy will benefit future development of Alaska's rich natural resources.

Thank you again for the opportunity to comment on this important issue.

Sincerely,



RG Scott
General Manager

Cc: Finance Committee Members



CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4519
FAX (907) 772-3759

April 5, 2005

Senate Finance Committee
Alaska State Legislature
Sen. Lyda Green, Gary Wilken
Juneau, Alaska

Testimony: Support for SB110

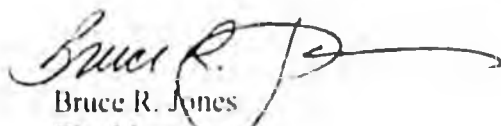
Dear Co-Chairs Green and Wilken,

I am writing today in support of Senate Bill 110 which would authorize the Department of Environmental Conservation to make application to obtain state primacy of the National Pollutant Discharge Elimination System.

In my twenty-five years as an employee of the City of Petersburg a majority of my time has been spent obtaining permits from Federal and State agencies, including numerous NPDES municipal discharge permits. It is my opinion that having the NPDES program under the authority of the State of Alaska would make the program more effective and efficient. I could cite more than a few instances where, during NPDES permit renewals, we have had to call representatives of the department in intercede on our behalf in an attempt to explain our unique challenges to federal regulators.

State primacy makes a lot of sense. My only request is for the legislature to give the department the resources they need to do the job correctly. I recognize the need to raise fees to cover costs of obtaining primacy. Unfortunately, the limited number of permits could not possibly fund the program.

Thank you for your consideration.


Bruce R. Jones
City Manager



SB 110/HB 153 - NPDES Primacy

Background: SB 110/HB 153 authorizes the state to apply to U.S. Environmental Protection Agency (EPA) for the right to issue federal wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). Currently, EPA issues these discharge permits in Alaska for free. The legislation is the outcome of a Department of Environmental Conservation (DEC) permittee-only workgroup process to determine the circumstances under which the industry would accept state primacy over NPDES permitting. As a result of its limited membership the workgroup did not adequately address several problems with state NPDES Primacy.

Problems with SB 110/HB 153

Inadequate Staffing Levels: The fiscal note estimates NPDES primacy will cost Alaska over \$1.5 million annually. Unfortunately, the proposed DEC staffing levels are inadequate- reducing the current permitting staff by 28% and compliance and enforcement staff by 16%. Given the size and scale of many Alaskan industrial operations – oil and gas-related, mining, timber, and seafood processing – the proposed staffing levels are far too low. As the January 2004 DEC report on NPDES Primacy shows, Alaska expects to spend only 52% of the resources that Washington state spends per permit. **Needed:** Increase staff estimates.

Harm from Inadequate Funding: If the legislature fails to appropriate the funds needed *each year*, the state's salmon streams and overall water quality will suffer, permits will be delayed, there may be technical deficiencies in permits, etc. Additionally, necessary annual appropriations for the NPDES program will increase as personnel costs and Alaska's economy expand. **Needed:** Legislative intent to fund the NPDES program adequately over the long-term.

Inappropriate Influence: Permitted industries will have excessive influence on the permitting process, reducing governmental accountability. Industry workgroup members wish to review draft and final permits before public issuance, again giving industry permittees excessive and unfair influence over permits. EPA may not approve such an unbalanced permit process. **Eliminate Sec. 4(h)(2) and 4(h)(3).**

Lack of Outside Consultations: Under state primacy there no longer will be Tribal government-to-government consultations with regulators who issue wastewater discharge permits. NPDES primacy also will eliminate various expert reviews and public input opportunities required in federal statutes which protect, among other things, essential fish habitat.

Conflicts of Interest: The presumed lack of sufficient technical and other experts at DEC means that the legislation anticipates the use of consultants to develop permits. Problems with using consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. **Needed:** Amend Sec. 4(h)(4) so it addresses potential conflicts of interest and increase DEC staff estimates.

The legislation extends the mandate of the undemocratic and unrepresentative NPDES primacy workgroup. **Needed:** Amend Sec. 1(b)(2) so the workgroup is representative of all stakeholders.

Conclusion: SB 110/HB 153 need to be amended to ensure that the state has the resources, the expertise, and the necessary Tribal and public involvement process in place to implement NPDES Primacy without harming Alaska's natural resources, communities, and businesses.

Large Alaska treatment plant operators currently oppose state NPDES Primacy
<http://www.state.ak.us/dec/water/npdes/pdfs/AWWU.pdf>

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB110
P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

February 15, 2005

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

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in the interest of reducing duplication in and otherwise improving regulatory processes, I am transmitting a bill relating to regulation of the discharge of pollutants that would authorize state assumption of primacy over the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) program.

Under existing state law, the Department of Environmental Conservation (DEC) regulates a broad universe of waste and wastewater disposal activities. These include the same activities (the discharge of pollutants to surface waters) that the United States Environmental Protection Agency (EPA) regulates under the NPDES program. This results in duplication of effort by the state and EPA, and in important decisions about the control of wastewater disposal being made by federal regulators with limited knowledge of Alaska-specific issues.

Through ch. 143, SLA 2004, DEC was authorized to take the actions necessary to assume primacy for the Clean Water Act NPDES program for the timber-industry sector. It was recognized through enactment of ch. 143, SLA 2004 that a timber-industry sector program would be a good first step on the road to broader assumption of primacy for the NPDES program. That step, however, brings home to Alaska only a relatively small portion of important wastewater permitting decisions. This limits our ability as a state to design a comprehensive, rational environmental protection program. Such a program would balance prevention of threats to state waters from industrial discharges and the more common wastewater discharges such as from municipal sewage treatment plants and stormwater against our constitutional charge to develop state land and resources, consistent with the public interest.

COMMITTEE COPY

The Honorable Ben Stevens
February 15, 2005
Page 2

This bill would remove the timber-sector limitation on the authority provided by ch. 143, SLA 2004, thereby allowing the DEC to take the actions necessary to assume primacy for all of the NPDES program delegable to the state. This would enable DEC to pursue the full benefit of the federal Clean Water Act for Alaska, by bringing home to the state this important permitting program in full, all at once or through phased implementation. This would not affect adoption or implementation of state water quality standards.

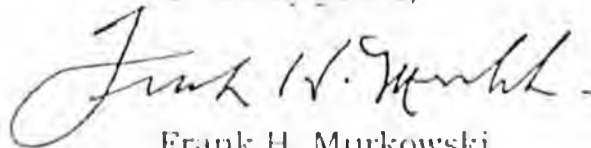
The bill also would amend existing fee provisions to allow for financing of a portion of the full state NPDES program through user fees. Specifically, sec. 2 of the bill would give the DEC the general authority to adopt user fee regulations covering the entire state-assumed NPDES primacy program, thereby removing the existing limitation of this authority to only the timber-industry sector. Under existing AS 37.10.050 - 37.10.058, state NPDES permits would be included in the designated regulatory services category for which flat fees are set, just as state-issued wastewater disposal permits and the state's certification of federal NPDES permits already are.

Section 4 of the bill contains several conditions to include in a state NPDES program. These conditions are the result of extensive consultation between the DEC, the EFA, and permittees who will be affected by the state's assumption of the NPDES program.

The enforcement and penalty provisions would apply to the full NPDES program in the same manner as approved by the Legislature last year for the timber-industry sector program authorized by ch. 143, SLA 2004.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/16/05

FURTHER: Finance

Date of 5-Day Notice: 2/24/05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/7/05

Resources Committee considered SENATE BILL NO. 110

SB 110 POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

"An Act relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
_____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
FE G	2/16			✓	1
DNR	2/16			-	2
DEC	2/16	✓			3
DOT & PF	2/16			✓	4

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Ellon	<i>[Signature]</i>		✓		
Guess	<i>[Signature]</i>				✓
Dyson	<i>[Signature]</i>			✓	
Seekins	<i>[Signature]</i>	✓			
Stedman	<i>[Signature]</i>			✓	
B. Stevens	<i>[Signature]</i>	✓			
Wagner	CHAIR: <i>[Signature]</i>			✓	

For the record, my name is Kathie Wasserman, with the Alaska Municipal League.

AML supports SB 110. We believe Dec should have authority from EPA to implement the NPDES permitting program.

Dec has successfully taken actions to assume primacy for the timber industry and, we feel, now should be able to pursue program development for full primacy.

Our reasons for support are simple:

Dec is better able to respond in a more timely manner to Alaskan discharge and waste water issues. They are more familiar with Alaska's communities and businesses

and thus know first hand
the on-the-ground impacts,
limitations, geography and
economics related to the
decisions they might make
we are (as is Senator Dismu)
~~concerned~~ concerned about fees.

Permitting is worthwhile if
communities cannot afford to
pay permitting fees. We
would suggest a sliding
scale for municipalities
based on population, and
would be happy to work with
DCC to arrive at a fair and
equitable fee structure.

**TESTIMONY OF DAN EASTON, DIRECTOR, DIVISION OF WATER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SENATE FINANCE COMMITTEE
SENATE BILL 110 (NPDES ASSUMPTION)
APRIL 8, 2005**

Senate Bill 110 is a result of years of effort starting with Senate Bill 326.

Senate Bill 326 was enacted in 2002 and effective January 1, 2003. It directed DEC to evaluate the potential benefits and consequences of the state assuming primacy for the NPDES program. The Department released its report in January 2004 recommending that the State seek program primacy.

Last year, the Legislature passed House Bill 546 directing the State to apply for partial NPDES primacy just for the timber sector. The fiscal note with the bill provided a full-time position and a combination of state and one-time federal grant funds for the effort. As it turns out, DEC has assumed a more prominent role in permitting timber operations, but we have been notified by EPA that the "partial primacy" rules won't allow us to pursue primacy just for the timber sector.

In November 2004, DEC formed the NPDES Primacy Work Group, an advisory workgroup tasked with examining the concerns, costs and benefits of state primacy specifically from the permittee perspective.

The work group included members from each major NPDES permittee groups: the Alaska Oil and Gas Association, the Alaska Forest Association, the Alaska Miners Association, the Associated General Contractors of Alaska, the Pacific Seafood Processors Association, the Alaska Water and Wastewater Management Association, and the Alaska Native Tribal Health Consortium.

Public notice was provided and the meetings were open to the public. Workgroup proceedings, findings and recommendations were captured in a report completed in January of this year.

In the end, support for state assumption of the NPDES program varied between permittee sectors. Certain sectors saw substantial benefit and strongly supported moving ahead. Others saw less benefit, but would not object to state primacy. All sectors agreed that certain elements should be incorporated into a state program.

Senate Bill 110 is the product of the hard work of our staff and many other Alaskans all focused on the effort that started with Senate Bill 326 over two years ago. The bill reflects the recommendation of the NPDES work group that the State pursue primacy. It also reflects the recommendations of the work

group as to specific characteristics that should be incorporated into the program design.

I'd like to conclude with a few notes on the fiscal note . . . The fiscal impact of primacy raises the two basic fiscal questions of: "How much?" and "Who pays?"

Starting with the question of "How much?" . . . The department's budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to, and would be considered a part of, a state NPDES permitting program. (Those figures include the resources provided last year for the timber primacy effort.)

The Senate Bill 326 report took a hard look at what additional resources the state would need to operate an NPDES program. Resource requirements were estimated using EPA "workload models" as well as information from other state programs. This analysis arrived at a final figure for total program resources, including the \$3.3 million and 30 positions already devoted to NPDES work, of \$4.8 million and 43 positions.

EPA includes whether a State has devoted sufficient resources to the program as one consideration in whether to approve an application for state primacy. Preliminary indications from EPA are that the proposed budget is sufficient.

Bridging the gap between current resources (\$3.3 million and 30 positions) and what is required to operate a state program (\$4.8 million and 43 positions) will require an additional \$1.5 million and 13 new positions. Those are the new resources included in the fiscal note.

As for the question of "Who pays?" . . . The fiscal note reflects the current resource agency fee policy of charging permittees for "direct costs." This policy was established in statute by House Bill 361 in the year 2000. Permittees already pay substantial fees for the state portion of the shared EPA/DEC program. With primacy, our direct costs increase and the fees paid by permittees will increase on average by a factor of 1.8.

The distribution of funding sources reflected in the fiscal note also reflects the fact that the State will not receive any additional federal grant dollars with primacy. We get as much federal funding now as we would get with primacy.

The result of adding the new resources provided by the fiscal note to the current state program will be a primacy program that is funded roughly half (44%) through a combination of permitting fees and federal grant funds, and half (56%) through general funds.

We have come a long ways over the last two years. The promise of State primacy is great. We would welcome the opportunity to create a truly all-Alaskan water permitting program as envisioned by Senate Bill 110. Thank you.

TESTIMONY OF COMMISSIONER KURT FREDRIKSSON
SENATE FINANCE COMMITTEE
SENATE BILL 110 (NPDES ASSUMPTION)
APRIL 8, 2005

Mr. Chairman, members of the Committee, I am pleased to testify today in support of Senate Bill 110, National Pollutant Discharge Elimination System (NPDES) Assumption. My testimony will focus on why Governor Murkowski and I believe passage of SB 110 will strengthen the ability of Alaskans to protect the State's water resources and build a strong economy. With me today is Dan Easton, Director of the Department's Division of Water to provide you with the details of how this bill was developed.

The federal Clean Water Act requires that all discharges to surface waters must be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program to ensure water quality protection. Community sewage treatment facilities, construction of storm water drains on more than one acre, seafood processors, log transfer facilities, ballast water discharge facilities, mining operations, oil and gas operations, and fish hatcheries all must have NPDES permits to operate. There are currently over 2300 regulated permit holders in Alaska under the NPDES permit program.

The federal Clean Water Act is founded on the principle that the rights of states to manage water quality within their borders should be protected. The federal law is designed to accomplish uniform environmental quality goals nationwide using pollution controls tailored to each state's unique circumstances. The Clean Water Act includes provisions for a state to assume primacy from the federal Environmental Protection Agency (EPA) for issuing NPDES permits for discharges to surface waters within the state's borders. In states that do not assume primacy, EPA runs the NPDES program.

The mission and duties of the Department of Environmental Conservation to adopt and enforce standards for the control of water pollution is clearly spelled out in Alaska law (AS 44.46.020). However, like four other states, Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit our state's unique circumstances. SB 110 would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state, where Alaskans can shape solutions to fit Alaska's challenges.

Without primacy, the federal Environmental Protection Agency (EPA) is the water authority in Alaska. EPA makes the wastewater permitting rules in Alaska. EPA decides what's important and what's not. EPA decides the permit review timeframes. EPA decides what goes into the permits and who gets inspected. EPA decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities.

As you know, Governor Murkowski has an ambitious agenda for the responsible development of Alaska's natural resources. The Governor has pledged to improve permit efficiency without a rollback of environmental protection. However, as long as EPA runs the NPDES permit program in Alaska, DEC simply cannot fix what we don't control. We can't establish appropriate performance measures with the legislature for timely permit actions, we can't establish the state's annual permit and environmental protection priorities, and we can't offer a timely appeal process that allows conflicts to be judged by Alaskans in Alaska.

A state run NPDES permit program won't be free. When EPA issues permits in Alaska the costs are borne by the U.S. taxpayer. A state permit program will shift authority and responsibility to the state, but it will also shift some of the costs to permit holders and the State.

SB 110 is an important investment in the stewardship of Alaska's environment and development of our natural resources. It provides DEC with the human and fiscal resources to reform the NPDES permit program to better align regulatory requirements with real Alaskan conditions and the real risks to Alaska's water quality. A state permit program will be based on Alaska's priorities – not national "one-size-fits-all" priorities. DEC's permit priorities, level of effort and performance measures would be subject to annual review and approval by Alaskans through their elected officials in the state Legislature.

Federal programs do not adapt easily to Alaska. National goals do not always address our greatest needs. A state run program will place permit decision makers closer to the Alaskan public and regulated permit holders. Alaska's elected representatives have made clear our commitment to environmental protection and our responsibility to develop our resources for the wellbeing of all Alaskans. If we are to realize the promise of resource development, we must accept responsibility for managing our water resources. That means assuming primacy for the NPDES program.

NPDES primacy means:

- A faster, more effective program for protecting our water resources.
- Alaskan industries and communities working with Alaskan permittees on permits that reflect our priorities and unique conditions – permits that make sense for Alaska.
- Less emphasis on cumbersome process and more emphasis on results.
- Less emphasis on one-size-fits-all permits and more emphasis on specific risks to Alaska's environment.
- Permitting accountability – accountability to Alaska's elected officials and the public.

It's time to invest in the development of Alaska's resources by taking responsibility for protecting Alaska's environment from the federal government. I respectfully ask that you vote to pass SB 110.

SB

112

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 20 2005

SENATE FINANCE
COMMITTEE

DATE: 3/18/05

FURTHER:

DATE TURNED IN TO OFFICE: 20 April 2005

Finance Committee considered

SENATE BILL NO. 112

SB 112 TAX ON REAA RESIDENTS

"An Act imposing a tax on residents of regional educational attendance areas; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 112 (FIN)
- adopt previous _____ CS CS forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
Revenue	3/18/05	REAA			per Traci forthcoming

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

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: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

APR 20 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 112 (L)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Tax on REAA Residents RDU Treasury and Tax
Component Tax Division
Sponsor Senators Bunde and Wilken
Requester Senate FIN Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	377.8	725.6	782.4	782.4	782.4	782.4
Travel	6.0	8.0	8.0	8.0	8.0	8.0
Contractual	80.9	129.8	126.1	126.1	126.1	126.1
Supplies	7.0	11.0	11.0	11.0	11.0	11.0
Equipment	56.0	32.0				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	527.7	906.4	927.5	927.5	927.5	927.5
CAPITAL EXPENDITURES	167.0	75.0				
CHANGE IN REVENUES ()	9,215.7	10,187.4	10,187.4	10,187.4	10,187.4	10,187.4

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	527.7	906.4	927.5	927.5	927.5	927.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	527.7	906.4	927.5	927.5	927.5	927.5

Estimate of any current year (FY2005) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	7	11	11	11	11	11
Part-time						
Temporary		5	5	5	5	5

ANALYSIS: (Attach a separate page if necessary)
(see attached)

Prepared by: Chuck Harlamert & Brett Fried Phone 465-2320
Division Tax Division Date/Time 4/18/05 8:11 AM
Approved by: Tom Boutin Date 4/18/2005
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 112 (L)

Cost Discussion

We project filing volumes under the bill at approximately 16,000 returns, reports, and refund claims annually. This volume represents more than a 50% increase over our current levels although, on average, REAA tax returns would be less complex than the average return we process at this time. The administrative challenges of this tax are the need to enforce a tax based on place of residence and subject to exclusions, and the need to validate refund claims against withholding and issue the refunds timely. Fully implemented program staffing represents:

Permanent Positions	Range	Function
Revenue Audit Supervisor	22	Program Manager
Revenue Auditor IV	20	Audit & Compliance
Revenue Auditor III	18	Audit & Compliance
Tax Technician IV	16	Examination & Customer Service
Tax Technician III	14	Examination & Customer Service
Tax Technician III	14	Examination & Customer Service
Tax Technician II	12	Examination & Customer Service
Tax Technician II	12	Examination & Customer Service
Accounting Technician II	14	Accounting & Collections
Accounting Clerk	12	Cash Processing & Billing
Admin Clerk II	8	Mail/File Maintenance/Data Entry

In addition we will require five temporary Admin Clerk positions for mail processing and data entry during January – April.

Capital costs represent the cost of incorporating the program into existing systems and facilitation of electronic filing. These estimates assume completion of planned system enhancements supporting this type of return. We would require an additional \$92,000 of capital expenditure if this assumption is not correct.

Revenue

For the revenue estimate we used the total local required contribution for boroughs in FY 2005 of \$161,743,619 divided by the 2004 organized-borough population for ages 21-64 of 345,612 for CY 2004. The result is an estimated per-organized-borough-adult contribution of \$467.99. This bill imposes a tax "on each individual who is 21 years of age but not more than 64 years of age [...] who resides in a regional educational attendance area." However, eighteen first-class and home-rule cities fall within the regional educational attendance areas and are subject to the same school contribution requirement as the organized boroughs (AS 14.17.410(b)(2)). Excluding residents of first-class and home-rule cities, the total REAA population for ages 21-64 is 27,070. The figure for the total local required contribution comes from the Alaska Department of Education and Early Development, and the population estimates comes from the Department of Labor and Workforce Development.

In addition to the exemption for seniors age 65 and over, the bill includes three other exemptions: (1) individuals who are members of families at or below federal poverty guidelines, (2) veterans with 50% or greater service-related disability, and (3) individuals who own property and pay property tax in a municipality. We estimate that 5,213 individuals will qualify for the poverty exemption, and that an additional 88 individuals will qualify for the disabled veteran exemption. Due to the lack of data and the small number of disabled veterans, we made no adjustment for disabled veterans who are also in poverty. Also, due to the lack of data, we did not adjust for the exemption for REAA residents who own property in other municipalities. After adjusting for exemptions, we estimate there will be 21,768 taxpayers who will be required to pay the tax. Our poverty exemption estimate is based on 2000 poverty estimates by place from the U.S. Census Bureau for ages 18-64. We first adjusted the poverty data to ages 21-64 using the ratio of 18-64 population to 21-64 population for each locale based on 2000 estimates from the Department of Labor. We then adjusted this to a 2004 estimate using 2000 and 2004 estimates for the 21-64 population from each locale from the Department of Labor.

The bill has an effective date of January 1, 2006. Taxpayers have until "January 15 of the calendar year following the year for which it is imposed" to file their taxes. In the first fiscal year (FY 2006) we assume we will receive the employer withholding. Here we are assuming that all employers withhold the entire required amount for all employees that reside within the unorganized borough but outside of first-class or home-rule cities and remit this amount to the Department within the first five months of 2006. We used a 2003 Alaska Department of Labor estimate of workers over 21 years of age (19,692) that reside within the unorganized borough but outside of first-class or home-rule cities to derive the FY 2006 revenue estimate of \$9.2 million. Our FY 2006 estimate includes revenue from all workers including those who qualify for exemptions because although we will refund withholding for these workers in FY 2007, we will again receive withholding from them in FY 2007 and coming years. Also, our FY 2007 of \$10.2 million assumes that we will receive returns from all adults who are subject to the tax as calculated above but have not had their taxes paid by an employer. We have not adjusted our estimates for potential noncompliance with the tax or changes in behavior due to the tax. We also have not included any potential fees, penalties, interest or unclaimed refunds in our estimates.

Because "resides" is not defined in the Bill, it is difficult to address the issue of how many nonresidents would be subject to the tax. Consequently we did not include them in our estimates on the front of this fiscal note. In addition, there may be Alaska residents who reside in organized boroughs but do not pay property taxes (renters) who "reside" for some of the year in REAAs as defined in this bill. The Alaska Department of Labor does not break out nonresident workers by place, identify them by age, income or military status. However, using the ratio of estimated resident taxpayers to 21-64 year-old-unorganized-borough residents multiplied by the total nonresident workers within the unorganized borough, we obtained a rough estimate that about 4,000 nonresidents could be subject to the tax. This would raise about \$1.9 million in revenue currently not reflected in the fiscal note.

SENATE FINANCE
COMMITTEE
Amendment Number: #1
Bill Number: SB 112
Sponsor: Bunde Date: 4/19/05
Logged In By: Robin

Adopted
4/20/05

24-LS0505\X.2
Kurtz
4/19/05

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR BUNDE

TO: CSSB 112(), Draft Version "X"

1 Page 2, lines 17 - 18:

2 Delete "at any time"

3

4 Page 2, line 18, following "tax year":

5 Insert "for 10 consecutive working days or a normal pay period, whichever is less, or

6 for more than 20 cumulative working days"

Con -

So, a conceptual amendment...

Put amendment in definitions...
for purposes of "employed" in
the body of the bill.

SENATE FINANCE COMMITTEE
4 Feb 2005 COMMITTEE ACTION

Bill Number	SB 112		
Amendment	#1		
Motion	Jobpt		
<u>Motion by</u>	Bunde		
<u>Objection by</u> Removed	Green ✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	Adopted		

SENATE FINANCE COMMITTEE
4 / 19 / 2005 COMMITTEE ACTION

Bill Number	58 112		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Bunde		
<u>Objection by</u>	Hoffman		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	H E L D		

CS FOR SENATE BILL NO. 112(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS BUNDE, Wilken, Wagoner

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a tax on residents of and individuals employed in regional
2 educational attendance areas and to permanent fund dividend applications; and
3 providing for an effective date."

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

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

7 LEGISLATIVE INTENT. It is the intent of the legislature that the proceeds of the tax
8 imposed in sec. 4 of this Act provide an additional source of revenue that can be used by the
9 legislature to provide additional funding for regional educational attendance areas beyond
10 existing state and federal contributions.

11 * Sec. 2. AS 43.05.240 is amended by adding a new subsection to read:

12 (c) An individual requesting an informal conference under (a) of this section
13 regarding the regional educational attendance area tax under AS 43.45 shall pay a \$50
14 fee. The department shall refund the fee to the individual if the individual prevails

1 upon a final determination of the case.

2 * Sec. 3. AS 43.23.015(b) is amended to read:

3 (b) The department shall prescribe and furnish an application form for
4 claiming a permanent fund dividend. The application must include notice of the
5 penalties provided for under AS 43.23.035 and contain a statement of eligibility and a
6 certification of residency. The department shall require applicants to supply a
7 physical address as well as a mailing address.

8 * Sec. 4. AS 43 is amended by adding a new chapter to read:

9 Chapter 45. Regional Educational Attendance Area Tax.

10 Sec. 43.45.011. Tax imposed. (a) There is imposed a tax each year on each
11 individual

12 (1) who is at least 21 years of age but not more than 64 years of age on
13 January 1 of the tax year; and

14 (2) who

15 (A) resides in a regional educational attendance area on
16 January 1 of the tax year; or

17 (B) is employed during the tax year in a regional educational
18 attendance area for 10 consecutive working days or a normal pay period,
19 whichever is less, or for more than 20 cumulative working days.

20 (b) The commissioner shall determine the amount of tax due each year from
21 each individual subject to the tax imposed under (a) of this section by dividing the
22 amount of the total local contributions to schools required of organized boroughs
23 under AS 14.17.410(b)(2) by the estimated population of individuals 21 years of age
24 and older but not more than 64 years of age in the organized boroughs.

25 (c) The following are exempt from the tax imposed under (a) of this section:

26 (1) an individual who is a member of a family with an income during
27 the tax year equal to or less than the federal poverty guidelines for the tax year for
28 Alaska set by the United States Department of Health and Human Services;

29 (2) a disabled veteran, as the term is defined in AS 29.45.030(i);

30 (3) the owner of real property located in a municipality that levies a
31 property tax, if the taxes on the property were not delinquent at any time during the tax

Amend.
=#1

1 year.

2 **Sec. 43.45.021. Collection of tax.** (a) The tax imposed under AS 43.45.011
3 shall be paid before April 1 of the calendar year following the year for which it is
4 imposed. An individual who is subject to the tax and has not had the tax withheld
5 during the tax year by an employer from the individual's salary or other compensation
6 shall file a return and pay the tax on a form and in a manner prescribed by the
7 department.

8 (b) Each employer of an individual subject to tax under this chapter shall
9 deduct and withhold the lesser of one-half of the tax for the year or 10 percent of the
10 employee's gross compensation from the employee's first regular payroll during the
11 tax year and each subsequent regular payroll until the full tax due has been collected.
12 The employer shall hold the tax withheld in trust and remit it to the department with a
13 return prescribed by the department not later than the 15th day of the month following
14 the end of each calendar quarter or any month during which the cumulative unpaid
15 withholding by the employer exceeds \$500, whichever is earlier. These withheld
16 taxes are not subject to garnishment or attachment and, in the event of lien, judgment,
17 or bankruptcy proceedings, are not considered assets of the employer. An employer
18 who fails to make the deductions from the compensation of employees or to remit the
19 tax to the department by the date required under this section is liable to the department
20 for the tax.

21 (c) An employer is not required to withhold the tax from the salary or other
22 compensation of an individual if the employer reasonably believes, based on the
23 attestation of the individual, that the individual

24 (1) owns real property located in a municipality that levies a property
25 tax;

26 (2) was 20 years of age or younger or 65 years of age or older on
27 January 1 of the tax year; or

28 (3) has had the full tax due under AS 43.45.011 for that tax year
29 withheld by another employer.

30 (d) If the tax is not deducted under (b) of this section from the salary or other
31 compensation of an individual subject to the tax, and the individual has not filed a

1 return and paid the tax under (a) of this section, notwithstanding AS 09.35, the
2 department may make a return under AS 43.05.050.

3 (e) An employer required to withhold tax under (b) of this section shall file a
4 report not later than January 31 following each tax year showing the total withholding
5 for each employee during the tax year. The report shall be filed in a form and manner
6 prescribed by the department. An employer who fails to file a report under this
7 section is subject to a penalty of \$50 a day not to exceed \$2,500.

8 (f) If the full amount required under (b) of this section has been deducted and
9 withheld from each payroll of an employee employed in a regional educational
10 attendance area but not residing in a regional educational attendance area on January 1
11 of the tax year, the department shall consider the employee's tax obligation satisfied,
12 and the employee is not required to file a return under (a) of this section, even if the
13 total amount deducted and withheld was less than the full amount of the tax calculated
14 under AS 43.45.011(b).

15 **Sec. 43.45.031. Record of withholding.** An employer who withholds tax
16 under AS 43.45.021 shall furnish to the employee upon request a record of the amount
17 of tax withheld from the employee. The department shall provide a form for that
18 purpose.

19 **Sec. 43.45.041. Refunds.** An individual who has paid more than the amount
20 of tax due under this chapter for a calendar year may claim a refund under
21 AS 43.05.275. A claim for a refund under this section may only be filed during the
22 calendar year following the tax year for which the refund is claimed and on a form and
23 in the manner prescribed by the department. The department is not required to issue a
24 refund to an employer.

25 **Sec. 43.45.051. Disposition of tax proceeds.** (a) The tax collected under
26 AS 43.45.021 shall be deposited into the general fund and accounted for separately.

27 (b) The legislature may appropriate the estimated amounts to be collected and
28 separately accounted for under (a) of this section for education.

29 (c) The deposit required and appropriation authorized by this section are not
30 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
31 of Alaska.

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Sec. 43.45.099. Definitions. In this chapter,

(1) "family" means persons who are related by blood, marriage, or adoption and who live in the same household on a permanent basis;

(2) "regional educational attendance area" means those portions of a regional educational attendance area, as that term is defined in AS 14.60.010, that are outside of a home rule or first class city;

(3) "tax year" means the calendar year for which the tax levied in AS 43.45.011 is imposed.

* Sec. 5. This Act takes effect January 1, 2006.

upon a final determination of the case.

* Sec. 3. AS 43.23.015(b) is amended to read:

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must include notice of the penalties provided for under AS 43.23.035 and contain a statement of eligibility and a certification of residency. The department shall require applicants to supply a physical address as well as a mailing address.

* Sec. 4. AS 43 is amended by adding a new chapter to read:

Chapter 45. Regional Educational Attendance Area Tax.

Sec. 43.45.011. Tax imposed. (a) There is imposed a tax each year on each individual

(1) who is at least 21 years of age but not more than 64 years of age on January 1 of the tax year; and

(2) who

(A) resides in a regional educational attendance area on January 1 of the tax year; or

(B) is an employee during the tax year in a regional educational attendance area for 10 consecutive working days or a normal pay period, whichever is less, or for more than 20 cumulative working days.

(b) The commissioner shall determine the amount of tax due each year from each individual subject to the tax imposed under (a) of this section by dividing the amount of the total local contributions to schools required of organized boroughs under AS 14.17.410(b)(2) by the estimated population of individuals 21 years of age and older but not more than 64 years of age in the organized boroughs.

(c) The following are exempt from the tax imposed under (a) of this section:

(1) an individual who is a member of a family with an income during the tax year equal to or less than the federal poverty guidelines for the tax year for Alaska set by the United States Department of Health and Human Services;

(2) a disabled veteran, as the term is defined in AS 29.45.030(i);

(3) the owner of real property located in a municipality that levies a property tax, if the taxes on the property were not delinquent at any time during the tax

Requested
by Larin
(Sen. Bunde)
Amendment
#1

not a technical change - not Committee's action
denied per Traci



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 20 April 2005 TIME: 9:50 am

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 112 (FIN) 24-LS0505 \ X

Kurtz 4/14/05

plus 1 amendment: X.2

Thanks!

Mindy

SENATE FINANCE COMMITTEE
4/20/2005 COMMITTEE ACTION

Bill Number	SB 112		
Amendment	CS "X" as amended		
Motion	report from Committee		
<u>Motion by</u>	Bunde		
<u>Objection by</u>	Hoffman		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson	✓		
Senator Hoffman			✓
Senator Olson			✓
Senator Stedman	✓		
Senator Bunde	✓		
Co-Chair Wilken	✓		
Co-Chair Green	✓		
<u>Tally</u>			
Yea	5		
Nay	2		
Absent	-		
<u>MOTION</u>	Pass		

ADOPTED 4/21/05
20

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS0505X
Kurtz
4/14/05

CS FOR SENATE BILL NO. 112()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS BUNDE, Wilken, Wagoner

A BILL

FOR AN ACT ENTITLED

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9 legislature to provide additional funding for regional educational attendance areas beyond
10 existing state and federal contributions.

11 * Sec. 2. AS 43.05.240 is amended by adding a new subsection to read:

12 (c) An individual requesting an informal conference under (a) of this section
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15 (A) resides in a regional educational attendance area on
16 January 1 of the tax year; or

17 (B) is employed in a regional educational attendance area at
18 any time during the tax year.

19 (b) The commissioner shall determine the amount of tax due each year from
20 each individual subject to the tax imposed under (a) of this section by dividing the
21 amount of the total local contributions to schools required of organized boroughs
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24 (c) The following are exempt from the tax imposed under (a) of this section:

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27 Alaska set by the United States Department of Health and Human Services;

28 (2) a disabled veteran, as the term is defined in AS 29.45.030(i);

29 (3) the owner of real property located in a municipality that levies a
30 property tax, if the taxes on the property were not delinquent at any time during the tax
31 year.

1 **Sec. 43.45.021. Collection of tax.** (a) The tax imposed under AS 43.45.011
2 shall be paid before April 1 of the calendar year following the year for which it is
3 imposed. An individual who is subject to the tax and has not had the tax withheld
4 during the tax year by an employer from the individual's salary or other compensation
5 shall file a return and pay the tax on a form and in a manner prescribed by the
6 department.

7 (b) Each employer of an individual subject to tax under this chapter shall
8 deduct and withhold the lesser of one-half of the tax for the year or 10 percent of the
9 employee's gross compensation from the employee's first regular payroll during the
10 tax year and each subsequent regular payroll until the full tax due has been collected.
11 The employer shall hold the tax withheld in trust and remit it to the department with a
12 return prescribed by the department not later than the 15th day of the month following
13 the end of each calendar quarter or any month during which the cumulative unpaid
14 withholding by the employer exceeds \$500, whichever is earlier. These withheld
15 taxes are not subject to garnishment or attachment and, in the event of lien, judgment,
16 or bankruptcy proceedings, are not considered assets of the employer. An employer
17 who fails to make the deductions from the compensation of employees or to remit the
18 tax to the department by the date required under this section is liable to the department
19 for the tax.

20 (c) An employer is not required to withhold the tax from the salary or other
21 compensation of an individual if the employer reasonably believes, based on the
22 attestation of the individual, that the individual

23 (1) owns real property located in a municipality that levies a property
24 tax;

25 (2) was 20 years of age or younger or 65 years of age or older on
26 January 1 of the tax year; or

27 (3) has had the full tax due under AS 43.45.011 for that tax year
28 withheld by another employer.

29 (d) If the tax is not deducted under (b) of this section from the salary or other
30 compensation of an individual subject to the tax, and the individual has not filed a
31 return and paid the tax under (a) of this section, notwithstanding AS 09.35, the

1 department may make a return under AS 43.05.050.

2 (e) An employer required to withhold tax under (b) of this section shall file a
3 report not later than January 31 following each tax year showing the total withholding
4 for each employee during the tax year. The report shall be filed in a form and manner
5 prescribed by the department. An employer who fails to file a report under this
6 section is subject to a penalty of \$50 a day not to exceed \$2,500.

7 (f) If the full amount required under (b) of this section has been deducted and
8 withheld from each payroll of an employee employed in a regional educational
9 attendance area but not residing in a regional educational attendance area on January 1
10 of the tax year, the department shall consider the employee's tax obligation satisfied,
11 and the employee is not required to file a return under (a) of this section, even if the
12 total amount deducted and withheld was less than the full amount of the tax calculated
13 under AS 43.45.011(b).

14 **Sec. 43.45.031. Record of withholding.** An employer who withholds tax
15 under AS 43.45.021 shall furnish to the employee upon request a record of the amount
16 of tax withheld from the employee. The department shall provide a form for that
17 purpose.

18 **Sec. 43.45.041. Refunds.** An individual who has paid more than the amount
19 of tax due under this chapter for a calendar year may claim a refund under
20 AS 43.05.275. A claim for a refund under this section may only be filed during the
21 calendar year following the tax year for which the refund is claimed and on a form and
22 in the manner prescribed by the department. The department is not required to issue a
23 refund to an employer.

← Appeals Section Removed →
24 **Sec. 43.45.051. Disposition of tax proceeds.** (a) The tax collected under
25 AS 43.45.021 shall be deposited into the general fund and accounted for separately.

26 (b) The legislature may appropriate the estimated amounts to be collected and
27 separately accounted for under (a) of this section for education.

28 (c) The deposit required and appropriation authorized by this section are not
29 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
30 of Alaska.

31 **Sec. 43.45.099. Definitions.** In this chapter,

1 (1) "family" means persons who are related by blood, marriage, or
2 adoption and who live in the same household on a permanent basis;

3 (2) "regional educational attendance area" means those portions of a
4 regional educational attendance area, as that term is defined in AS 14.60.010, that are
5 outside of a home rule or first class city;

6 (3) "tax year" means the calendar year for which the tax levied in
7 AS 43.45.011 is imposed.

8 * Sec. 5. This Act takes effect January 1, 2006.

SENATE FINANCE COMMITTEE
 / / 2005 COMMITTEE ACTION

Bill Number	SB 112		
Amendment			
Motion	to adopt C.S. "X"		
<u>Motion by</u>	Bunde		
<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 Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	Adopted		

SENATE FINANCE
COMMITTEE
Amendment Number: #2
Bill Number: SB 112
Sponsor: Olson Date: 4/19/05
Logged In By: Robin

failed

24-LS0505V.2
Kurtz
4/6/05

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR OLSON

TO: CSSB 112(), Draft Version "L"



1 Page 1, lines 1 - 2:

2 Delete all material.

3 Insert ""An Act imposing ^{an education} tax on employees; and providing for an effective
4 date.""

5
6 Page 1, line 4, through page 7, line 19:

7 Delete all material.

8 Insert new bill sections to read:

9 "* Section 1. AS 43 is amended by adding a new chapter to read:

10 **Chapter 45. Education Tax.**

11 **Sec. 43.45.011. Tax imposed.** There is imposed a tax of \$100 a year on each
12 individual 19 years of age or older who does not own real property in the state subject
13 to tax by a municipality and who, during the entire tax year, receives compensation
14 greater than \$5,000 in the state.

15 (b) For purposes of this section, "compensation" includes wages, salaries,
16 commissions, tips, and any other form of remuneration paid for personal services.

17 (c) The tax imposed under this section does not apply to compensation exempt
18 from the tax under federal law.

19 **Sec. 43.45.021. Collection of tax.** (a) An employer shall deduct and
20 withhold \$50 of the tax from the employee's salary or other compensation on each of
21 the first two regular payrolls after the employee's total compensation paid by the
22 employer during the tax year has exceeded \$5,000. An employer shall file a return on
23 a form prescribed by the department and send the tax withheld to the department on or

1 before the fifteenth day of the month following the month in which the tax was
2 withheld from the employee.

3 (b) A deduction of the tax may not be made in the salary or other
4 compensation of an individual who provides proof to the employer that

5 (1) the tax imposed under AS 43.45.011 for that tax year has already
6 been withheld by another employer;

7 (2) the individual was not 19 years of age or older for the entire tax
8 year; or

9 (3) the individual owns real property in the state subject to tax by a
10 municipality.

11 (c) An individual who has not had the full tax withheld by an employer must
12 file a return on a form prescribed by the department and remit the tax due under this
13 section, if any, by June 30 of the tax year.

14 **Sec. 43.45.031. Liability of employer.** An employer who pays compensation
15 is liable for the tax required to be withheld from an employee under this section unless
16 the employer can demonstrate that the employer relied on proof provided by the
17 employee that

18 (1) the tax imposed under AS 43.45.011 had already been withheld by
19 another employer;

20 (2) the individual was not 19 years of age or older for the entire tax
21 year; or

22 (3) the individual owns real property in the state subject to tax by a
23 municipality.

24 **Sec. 43.45.041. Disposition of tax proceeds.** (a) The tax collected by the
25 department under AS 43.45.021 shall be deposited into the general fund and accounted
26 for separately.

27 (b) The legislature may appropriate the estimated amounts to be collected and
28 separately accounted for under (a) of this section for education.

29 (c) The deposit required and appropriation authorized by this section are not
30 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
31 of Alaska.

1 **Sec. 43.45.051. Definition.** In this chapter, "tax year" means the period
2 beginning on July 1 and ending on June 30 of the following calendar year.
3 * **Sec. 2.** This Act takes effect July 1, 2005."

SENATE FINANCE COMMITTEE
4 Ro/2005 COMMITTEE ACTION

Bill Number	BB 112.		
Amendment	#2		
Motion	Subpt		
<u>Motion by</u>	Olson		
<u>Objection by</u>	Bunde		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Stedman			✓
Senator Bunde			✓
Senator Dyson			✓
Senator Hoffman	✓		
Senator Olson	✓		
Co-Chair Wilken			✓
Co-Chair Green			✓
<u>Tally</u>			
Yea	2		
Nay	5		
Absent	-		
MOTION	fail		

Adopted 4/4/05

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS0505VL
Kurtz
4/1/05

CS FOR SENATE BILL NO. 112()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS BUNDE, Wilken, Wagoner

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a tax on residents of regional educational attendance areas and to
2 permanent fund dividend applications; and providing for an effective date."

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

4 * Section 1. AS 43.23.015(b) is amended to read:

5 (b) The department shall prescribe and furnish an application form for
6 claiming a permanent fund dividend. The application must include notice of the
7 penalties provided for under AS 43.23.035 and contain a statement of eligibility and a
8 certification of residency. The department shall require applicants to supply a
9 physical address as well as a mailing address.

10 * Sec. 2. AS 43 is amended by adding a new chapter to read:

11 Chapter 45. Regional Educational Attendance Area Tax.

12 Sec. 43.45.011. Tax imposed. (a) There is imposed a tax each year on each
13 individual who is 21 years of age but not more than 64 years of age on January 1 of
14 the tax year and who resides in a regional educational attendance area at any time