

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10406 HOUSE RESOURCES

SB

115

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 44(O&G)
 (H) Publish Date: 3/6/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Alaska Natural Gas Pipeline Route BRU _____
 Component _____
 Sponsor House Special Comm on O & G
 Requester House Special Comm on O & G Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Linda Hay Phone 465-2283
 Division: H. O&G Date/Time 3/5/02 4:08 PM
 Approved by: Representative Ogan, Chairman Date 3/5/02
 Agency: _____

Alaska State Legislature

SENATOR
GENE THERRIAULT
Chair

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Legislative Budget and Audit Committee

Request for Hearing

To: Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
House Resources Committee

Subject: SB 115

Sponsor: Rules by Request of the Legislative Budget and Audit Committee

Date: February 14, 2002

On behalf of the Board of Storage Tank Assistance the Legislative Budget and Audit Committee respectfully requests a hearing on Senate Bill 115 "An Act extending the termination date of the Board of Storage Tank Assistance."

The Board is currently in its wind down year under AS 44.66.010(18), Termination of State Boards and Commissions. Senate Bill 115 will extend the Board of Storage Tank Assistance for one more year to June 30, 2003. If the Legislature does not act to extend the Board, it will cease to exist on June 30, 2002.

INTERIM ADDRESS

119 N. Cushman Suite 101, Fairbanks, Alaska 99701 • (907) 488-0857 • Fax: (907) 488-4271

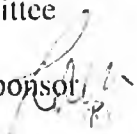
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465-3810 FAX

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Lemman

MEMORANDUM

TO: Representative Beverly Masek, Co-Chairman
House Resources Committee

FROM: Senator Loren Lemman, sponsor 

DATE: February 13, 2002

RE: Senate Bill 153: Underground Storage Tank Loan Fund

Please schedule SB 153 Underground Storage Tank Loan Fund for a Resources Committee hearing at your earliest convenience. The bill passed the Senate February 11 on a vote of 18-2.

SB 153 further streamlines the Underground Storage Tank grant and loan programs - eliminating grant programs from statute that have no further applicants; it sets a self-insurance test for companies desiring state loans; and it restructures the UST tank cleanup loan program to a revolving loan program.

I have attached a sponsor statement and sectional analysis of the bill. If you have any questions about the legislation, or when you are ready for the backup materials, contact my aide Annette Kreitzer at X 5149.

cc: Representative Drew Scalzi, Co-Chairman
House Resources Committee

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Senator Loren Leman

Sponsor Statement CS SB 153(FIN): Underground Storage Tank Loan Fund

Owners of underground storage tanks had until December 22, 1998 to either upgrade or close their underground storage tanks in response to nationwide concern over possible contamination of drinking water from leaking underground storage tanks.

The Alaska Legislature responded to this federal mandate by offering grants and loans to owners of underground storage tanks to help offset the costs of the new requirements. To date, \$38.9 million has been appropriated for upgrade, closure and cleanup grants and loans for underground storage tanks.

All applications for grant assistance under the Upgrade, Closure and Cleanup programs are in. There can be no new applicants. The Department and the Board of Storage Tank Assistance have ranked the applicants according to the changes made by SB 128 (ch 70 SLA 99).

CS SB 153 (FIN) ends the upgrade and closure grant program by June 30, 2002 and the tank cleanup grant program by June 30, 2004 after almost \$49.0 million in assistance to underground storage tank owners. It retains the cleanup loan program and changes it to a revolving loan program. The revolving loan program retains the current means test of self-insurance which guarantees assistance to the "Mom & Pop" companies the grants and loans were intended to assist, rather than larger companies.

The balance in the storage tank assistance fund on the effective date of SB 153 is transferred to the revolving loan fund. This capitalization with all repayments of principal and interest on loans, income earned on money in the fund and money appropriated to the fund will support the revolving loan fund.

FACT SHEET ON UNDERGROUND STORAGE TANK (UST) PROGRAM
(applicable statutes: AS 46.03.360-450)

- Owners of underground storage tanks had until 12/22/98 to either upgrade or close their underground storage tanks.
- Prior to SB 128 (ch 70 SLA 1999) there were four UST grant and loan programs:
 - *Tank Tightness (AS 46.03.415)
 - *Reimbursement program (sec. 7, ch 96 SLA 90)
 - Upgrade & Closure Grants
 - Tank Clean Up Loans & Grants
 - * repealed by SB 128
- All applications for grant assistance under the Upgrade and Closure program (AS 46.03.430) are in. **THERE CAN BE NO NEW APPLICANTS.** Under the law prior to SB 128, DEC estimated it would use \$3.5 million of the \$5.0 million in the UST fund to give all of the qualified applicants grants. Under SB 128's provisions, the Upgrade and Closure grant list was last year valued at around \$32,200 to satisfy the qualified applicants. **CS SB 153 (FIN) will now phase this program out effective June 30, 2002, rather than June 30, 2004 because all eligible costs have been paid. It was the Senate's desire during the debate on SB 128 that the Storage Tank Assistance Fund be fully capitalized so that the Upgrade & Closure program could be finished in 2000. Clean up assistance was to end shortly after.**
- The Tank Clean Up Grant program (AS 46.03.420) under SB 128 now requires a one million dollar tangible net worth limitation, which reduces the number of qualified applicants on the Clean-up list which in FY 00 totaled \$23.3 million. This change moved off the list, applicants such as Unocal, Tesoro, Chevron Mapco and Providence Hospital, and retains the smaller "mom and pop" requests. Applying the \$1.0 million limitation to the Tank Clean Up grants has left about \$9.0 million of eligible costs. **Under CS SB 153 (FIN) this program will be phased out June 30, 2004, as all eligible costs are expected to have been paid by then. There can be no new applications (July 1, 1994 was the deadline).**
- The Tank Clean Up Loan Program (created by SB 128) (AS 46.03.422) requires that to receive a loan, the applicant must have submitted an application before July 1, 1994 (see: AS 46.03.422 (a) reference to AS 46.03.420). There can be no new applications for the tank clean up loan program.
- DEC RSA's money to the Division of Investments to handle the loans for these programs.

Sectional Analysis
CS SB 153(FIN): Underground Storage Tank Loan Fund

Section 1: Amends the responsibilities of the Board of Storage Tank Assistance and the Department to comport with the intent of SB 153, which is to repeal the UST grant programs by 2004 and to have the Department and the Board adjudicate disputes involving the revolving loan fund. (EFD 7/01/04)

Sections 2 and 3: Amends the Board of Storage Tank Assistance section to comport with the intent of SB 153. The Board will continue to hear disputes and adopt regulations related to loans under AS 46.03.422. (EFD 7/1/02)

Section 4: Amends the regulations governing UST systems to delete reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 5: Tank Registration Fees: Sets up automatic deposit of storage tank registration fees to the renamed "revolving loan" fund.(EFD 7/1/02)

Section 6: Deletes reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 7: Changes the Underground Storage Tank Assistance Fund to a revolving loan fund incorporating money appropriated to it by law, storage tank registration fees, repayments of principal and interest on loans and income earned on the money in the fund. Gives commissioner permission to use money in the fund to pay the costs of administering the fund, costs of the Board of Storage Tank Assistance, and the tank cleanup loan program (EFD 7/1/02)

Section 8: Becomes law in 2004, deletes references to tank cleanup grants. (EFD 7/01/04)

Section 9: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 10: Amends tank cleanup grant program to cover any overlap of grant/loan combinations after the grant program is repealed, so no unintentional harm comes to a loan recipient. (EFD 7/1/02)

Section 11: Program receipts received under the tank cleanup program will be deposited into the revolving loan fund. (EFD 7/1/02)

Section 12: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Sections 13, 14 and 16: Effective 2004 amends tank cleanup loan program statutes to clarify that this section only applies to loans available under this program (not loans and grants). (EFD 7/01/04)

Section 15: Acknowledges Tank upgrade and closure grants are repealed 7/1/02. (EFD 7/1/02)

Section 17: Allows department to deposit loan repayments and interest into the revolving loan fund. (EFD 7/1/02)

Section 18: New "means" test provision for the revolving loan fund - if the owner/operator is eligible for self-insurance under U. S. EPA regulations (\$10 million), the owner/operator is ineligible for a loan under this program. Municipalities are excluded from the means test. (EFD 7/1/02)

Section 19: Amends the Oil and Hazardous Substance Prevention and Response Account statute to reflect the UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 20: Repeals the UST upgrade and closure grant program. (EFD 7/1/02)

Section 21: Repeals the UST cleanup grant program (EFD 7/01/04)

Section 22: (a) Transfers the funds the Legislature has appropriated to the Underground Storage Tank Assistance Fund into the UST Revolving Loan Fund.

(b) Makes plain that the upgrade and closure grant program will not be funded past June 30, 2002; and the tank cleanup grant program will not be funded past June 30, 2004. (EFD immediate)

Section 23: Effective Dates for establishing Revolving Loan fund and means test; and repeal of the UST upgrade and closure grant program.

Section 24: Effective Dates for continuation of Revolving Loan Fund and repeal of UST cleanup grant program.

Section 25: Immediate effective date for transitional provisions.

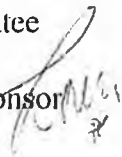
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Senator Loren Leman

MEMORANDUM

TO: Representative Beverly Masek, Co-Chairman
House Resources Committee

FROM: Senator Loren Leman, sponsor 

DATE: February 13, 2002

RE: Senate Bill 153: Underground Storage Tank Loan Fund

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SB 153 further streamlines the Underground Storage Tank grant and loan programs – eliminating grant programs from statute that have no further applicants; it sets a self-insurance test for companies desiring state loans; and it restructures the UST tank cleanup loan program to a revolving loan program.

I have attached a sponsor statement and sectional analysis of the bill. If you have any questions about the legislation, or when you are ready for the backup materials, contact my aide Annette Kreitzer at X 5149.

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House Resources Committee

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Senator Loren Leman

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Section 23: Effective Dates for establishing Revolving Loan fund and means test; and repeal of the UST upgrade and closure grant program.

Section 24: Effective Dates for continuation of Revolving Loan Fund and repeal of UST cleanup grant program.

Section 25: Immediate effective date for transitional provisions.

SB

121

WITNESS LIST
SB 121: Right-of-Way Leases

Annette Kreitzer for Senator Loren Leman, Sponsor

James Eason for Foothills Pipeline Co.

Bill Britt, Pipeline Coordinator, DNR (via teleconference: (907) 271-4304)

Carol Carroll, Director, Division of Support Services/DNR

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Senator Loren Leman

Sectional Analysis CS SB 121(RES): Right-of-Way Leases

Section 1. Amends AS 38.35.050 to clarify that a person filing an amendment to an application under the Alaska Right-of-Way Leasing Act is subject to all of the chapter's provisions when the amendment:

- Proposes a net increase in the amount of state acreage leased for the right-of-way that is 10% greater than the original application
- Proposes changes to the design of the pipeline that would use less effective environmental or safety mitigation measures or less advanced technology than in the original application
- Proposes a fundamental change from the route set out in the original application

When calculating whether or not additional state acreage must be part of the 10% calculation, the following must be excluded:

1. Acreage attributed to an amendment to an existing right-of-way lease across federal lands originally issued by the federal government, whether or not the state or the federal government administers the land. This land could be state-selected land that when conveyed to the state carries the encumbrances placed upon it by the lessor. The applicant may wish to change the width of the right-of-way to be consistent with its pipeline corridor. Typically, this would entail an amendment to change the width of the federal ROW grant from 30' for instance to 100', which would be consistent with the width of a state right-of-way lease. This acreage would not be considered part of the 10% increase.
2. Land under federal right-of-way grant which is then transferred to the state for its administration.

Section 2. Amends AS 38.35.080(b) to state clearly that if an application or an amendment to an application constitutes a substantial change in the application the commissioner follows the public notification process in AS 38.35.070.

Section 3. Immediate Effective Date



Senator Loren Leman

Sponsor Statement CS SB 121(RES): Right-of-Way Leases

Commercialization of North Slope gas is one of our legislative priorities. This technical amendment to Alaska's Right-of-Way Leasing Act will ensure less ambiguity for processing right-of-way applications.

SB 121 provides a statutory definition of "substantial change" as that term is used in AS 38.35.050(c). This section provides that "*any amendment to an application filed under this section which constitutes a substantial change in the application is subject to all provisions of this chapter applying to an original application.*" The statutes provide no guidance to applicants, the Department of Natural Resources or other interested parties as to what is or is not a substantial change.

The difficulty with the language as it exists is that any or all changes to an original pipeline right-of-way lease application could be argued to be *substantial*.

This legislation establishes that

- a 10 percent net increase in state acreage beyond what was in the original application (It is my understanding that this is consistent with existing department policy.);
- using less effective environmental or safety mitigation measures than proposed in the original application; or
- proposing a fundamental change in the route as proposed in the original application

would be substantial enough to require restarting the entire administrative process for obtaining a right-of-way lease across state lands.

This legislation will not foreclose on opportunities for the public and affected agencies to review and comment on subsequent amendments to initial lease applications. It will, however, provide an increased measure of certainty and will minimize unnecessary challenges and delays in processing, approving and issuing right-of-way leases.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 121
 (S) Publish Date: 4/3/01
 Dept. Affected: Natural Resources
 BRU: Oil & Gas Development
 Component: Pipeline Coordinator
 Component Number: 1191

Revision Date/Time (Note if correction): _____
 Title: Right-of-Way Leasing Act
 Sponsor: Senator Leman
 Requester: S (RES)

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
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Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The definition of 'substantial change' included in SB 121 may eliminate some required public notices under AS 38.35.050. The number of public notices eliminated is expected to be negligible. The cost to the state of all such public notices are reimbursed by the applicant pursuant to AS 38.35.140(b).
 The definition of 'substantial change' may eliminate appeals and litigation related to the undefined term, and associated costs of such appeals and litigation. It is not possible to predict the magnitude of any such savings.

Prepared by: Bill Britt Phone 271-4304
 Division: State Pipeline Coordinator's Office Date/Time 15-Mar-01
 Approved by: Pat Pourchot Date 15-Mar 01
 Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

CS FOR SENATE BILL NO. 121(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/3/01
Referred: Finance

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act adding, for purposes of the Alaska Right-of-Way Leasing Act, a definition of
2 'substantial change' as applied to an amended right-of-way lease application; and
3 providing for an effective date."

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

5 * Section 1. AS 38.35.050(c) is amended to read:

6 (c) Any amendment to an application filed under this section that [WHICH]
7 constitutes a substantial change in the application is subject to all provisions of this
8 chapter applying to an original application. For purposes of this subsection,

9 (1) an amendment constitutes a substantial change in the
10 application only if the amendment proposes

11 (A) a net increase in the amount of state acreage to be
12 leased for the right-of-way that exceeds by at least 10 percent the amount
13 of the acreage in the applicant's original application;

14 (B) a change in the design of the pipeline that would use less

1 effective environmental or safety mitigation measures or less advanced
 2 technology than proposed in the original application; or

3 (C) a fundamental change in the general route as set out in
 4 the original application;

5 (2) in calculating the percentage increase in acreage under (1)(A)
 6 of this subsection, each of the following must be excluded:

7 (A) the acreage attributable to an amendment of a right-of-
 8 way originally issued by the federal government, whether administered by
 9 the state or the federal government; and

10 (B) land subject to an existing federal right-of-way grant
 11 held by the applicant that is transferred to the state for its administration.

12 * Sec. 2. AS 38.35.080(b) is amended to read:

13 (b) Upon completion of the analysis but not less than 30 days before the date
 14 set for hearing an application or an amendment to an application that, under
 15 AS 38.35.050(c), constitutes a substantial change in the [AMENDMENT TO AN]
 16 application, the commissioner shall publish notice, and make copies available as
 17 provided in AS 38.35.070.

18 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

SB

140



750 West Second Ave., Suite 109, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

SB 140 ~ Small Water-Power Development Projects

TO: House Resources Committee Members

DATE: April 26, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters, including residents of rural communities where the cost of power generation, both in monetary terms and environmental terms, is very high. While we support the development of clean, economical and renewable sources for the generation of electricity, particularly for small communities currently dependent upon diesel, we oppose SB 140 because it unnecessarily increases state spending.

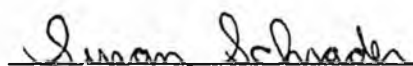
Senate Bill 140 begins the process, authorized in federal legislation, for the state to take over authority from the Federal Energy Regulatory Commission (FERC) to license and regulate small hydropower projects of 5 megawatts or less. It requires the state to establish a licensing program equivalent to FERC's, and to annually appropriate substantial sums to operate it.

- **Expense of the program** - Assumption of small hydro licensing and oversight will place a significant financial burden on DNR, ADF&G and DEC. Without sufficient financial and staff resources to implement the program, processing of license applications and license renewals could be significantly delayed or alternatively, processing would be at the expense of careful consideration of environmental impacts, thereby inviting public opposition.
- **The Regulatory Commission of Alaska (RCA) as the lead entity** - The RCA is charged with ensuring just and reasonable utility rates and high quality, reliable service. However, the RCA has no experience with FERC licensing, and it is not the appropriate entity to coordinate DNR, ADF&G, and DEC participation in licensing proceedings. Nor does the RCA have the trained staff to fulfill requirements of the federal law and SB 140, such as protecting the public interest and the environment
- **Protection of special public lands:** SB 140 provides no protection for state special areas such as state parks, game refuges or critical habitat areas. Attempts by a new state regulatory agency to license hydropower projects in state protected areas would surely result in significant controversy and the associated delay.

OVER

Although the concept of the state having jurisdiction over small hydro power projects may appear appealing to some, *FERC has never before delegated this authority to any state.* In this time of state fiscal difficulties, the state's acceptance of this unfunded federal mandate is not in the best interests of Alaskans.

ACV urges you to oppose this unnecessary and costly legislation.



Susan Schrader, Conservation Advocate

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 140
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 140
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Gordy Williams Phone 465-6143
Division: Commissioner's Office Date/Time 2/21/02 9:07 AM
Approved by: Commissioner Frank Rue Date 2/21/2002
Agency: Fish and Game

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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 140

ANALYSIS CONTINUATION

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

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 140
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: SMALL WATER-POWER DEVELOPMENT BRU: Minerals, Land & Water Dev
PROJECTS Component: Water Development
Sponsor: Sen. Torgerson
Requester: (S) FIN Component Number: 916

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

Estimate of any current year (FY2002) cost: none

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Bob Loeffler Phone 269-8600
Division: Mining, Land and Water Date/Time 20-Feb-02
Approved by: Pat Pourchot Date 21-Feb-02
Agency: Natural Resources

ANALYSIS: (continued)

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

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

ALASKA STATE LEGISLATURE

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



Official Business

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

SENATE RESOURCES COMMITTEE

SPONSOR STATEMENT

SB 140

“Small Water-Power Development Projects”

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

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

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

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

PUBLIC LAW 106-469—NOV. 9, 2000

114 STAT. 2037

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

TITLE III—MARGINAL WELL PURCHASES

SEC. 301. PURCHASE OF OIL FROM MARGINAL WELLS.

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

“PURCHASE OF OIL FROM MARGINAL WELLS

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

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

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

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

TITLE IV—FEDERAL ENERGY MANAGEMENT

SEC. 401. FEMP.

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

TITLE V—ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS

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

Part I of the Federal Power Act (16 U.S.C. 1792 et seq.) is amended by adding at the end the following:

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

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

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

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

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

“(A) energy conservation;

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

“(C) the protection of recreational opportunities;

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

“(E) the interests of Alaska Natives; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(i) DETERMINATION BY THE COMMISSION.—(1) Upon application by the Governor of the State of Alaska, the Commission shall within 90 days commence a review of the State of Alaska’s regulatory program for water-power development to determine whether it complies with the requirements of subsection (a). Deadline.

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

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

Date OCT 26 2000

Petersburg Pilot

Client No. 420A

House approves hydroelectric regulatory bill that may help City

^{210A 420A 310 330 420 430}
Petersburg has been working for nearly five years and spent almost \$500,000 to have the Blind Slough Hydroelectric Facility re-licensed by the Federal Energy Regulatory Commission. It is expected to take several more years to com-

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

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

of similarly sized projects in the hands of the state.

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

The bills now head to the President for his signature.

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

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

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

While saying the five- to 10-

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

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

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

Continued on page 5

FERC

Continued from page 3

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

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

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

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

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

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

resources, or cultural resource protection laws.

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

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

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

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



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

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

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

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

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

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

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

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

Gunnuk Creek in Kake
Sunrise Lake near Wrangell

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

Crystal Lake in Petersburg
Dewey Lakes in Skagway

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

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



ARECA

Alaska's Electric Association
"Electric Service for 556,000 Alaskans"

April 4, 2002

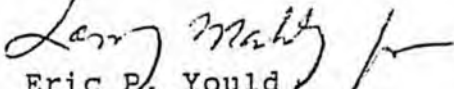
Honorable John Torgerson
Chair, Senate Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Torgerson:

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

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

Sincerely,


Eric P. Yould
Executive Director



750 West Second Ave., Suite 109, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

SB 140 ~ Small Water-Power Development Projects

TO: House Resources Committee Members

DATE: April 26, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters, including residents of rural communities where the cost of power generation, both in monetary terms and environmental terms, is very high. While we support the development of clean, economical and renewable sources for the generation of electricity, particularly for small communities currently dependent upon diesel, we oppose SB 140 because it unnecessarily increases state spending.

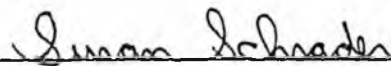
Senate Bill 140 begins the process, authorized in federal legislation, for the state to take over authority from the Federal Energy Regulatory Commission (FERC) to license and regulate small hydropower projects of 5 megawatts or less. It requires the state to establish a licensing program equivalent to FERC's, and to annually appropriate substantial sums to operate it.

- **Expense of the program** - Assumption of small hydro licensing and oversight will place a significant financial burden on DNR, ADF&G and DEC. Without sufficient financial and staff resources to implement the program, processing of license applications and license renewals could be significantly delayed or alternatively, processing would be at the expense of careful consideration of environmental impacts, thereby inviting public opposition.
- **The Regulatory Commission of Alaska (RCA) as the lead entity** - The RCA is charged with ensuring just and reasonable utility rates and high quality, reliable service. However, the RCA has no experience with FERC licensing, and it is not the appropriate entity to coordinate DNR, ADF&G, and DEC participation in licensing proceedings. Nor does the RCA have the trained staff to fulfill requirements of the federal law and SB 140, such as protecting the public interest and the environment
- **Protection of special public lands:** SB 140 provides no protection for state special areas such as state parks, game refuges or critical habitat areas. Attempts by a new state regulatory agency to license hydropower projects in state protected areas would surely result in significant controversy and the associated delay.

OVER

Although the concept of the state having jurisdiction over small hydropower projects may appear appealing to some, *FERC has never before delegated this authority to any state.* In this time of state fiscal difficulties, the state's acceptance of this unfunded federal mandate is not in the best interests of Alaskans.

ACV urges you to oppose this unnecessary and costly legislation.



Susan Schrader, Conservation Advocate

CSSB140 FIN

Amend # _____

Offered in (H)RES 4-26-2002

Add to existing language:

The Regulatory Commission of Alaska, in consultation with the Commissioners of DNR, DCED and DF&G, will report to the legislature by February 15th 2003 with their assessment of how the licensing of small hydro projects by the State of Alaska would be accomplished. This report will include the impact on the operating budget, funding mechanism, staff requirements, potential statutory changes, timelines and public participation for developing regulations and any other items deemed important by the administration.

CSSB140 FIN

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TONY KNOWLES
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

Chairman Joe Barton
Energy and Power Subcommittee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: S. 422 Hearing on March 30, 2000

Mr. Chairman:

The State of Alaska supports legislation that would offer the State the opportunity to assume jurisdiction over licensing of hydroelectric projects of five megawatts or less. Development of small hydroelectric projects is critical to the economic development of our state. Of the 29 hydropower projects supplying power to public utilities in Alaska, 17 are five megawatts or less in size.

Small hydro is especially important in rural Alaska where the cost of other energy sources is high and the resulting availability of power can be limited. The only practical alternative in many rural villages is small-scale diesel generation, which can also create undesirable environmental impacts. Where hydropower generation is feasible, it offers reliability unmatched by other, currently available, alternatives. Unfortunately, the financial feasibility of many small hydroelectric projects is impeded by the relatively high cost and lengthy process it takes to license these plants under the existing Federal Energy Regulatory Commission (FERC) regulatory regime.

Alaska's rural electrical production is unique. Over 150 villages in Alaska are isolated from any larger electrical grid, and each village is supplied with power almost exclusively from its own diesel generators. The cost of power in these communities is very high. Median residential rates are between 40 and 45 cents per kilowatt-hour, which is four to five times the average elsewhere in the United States.

Small hydro projects can help reduce these rates if the projects can be built economically. For example, at King Cove, Alaska, which is a remote community of 900 people in the Aleutian Islands, an 800 kilowatt hydro project completed in 1995 not only reduced costs but provides cost stability over the long-term by displacing most of the utility's diesel

generation. Similar long-term benefits are expected from the new 825-kilowatt Tazimina hydro project, which serves a remote population of 450 people who live about 200 miles from Anchorage.

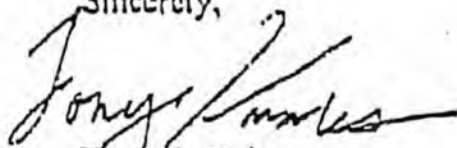
One of the important themes of my administration is that development must be done right. We apply this theme equally to hydroelectric development. For example, this includes ensuring that every hydroelectric project protects fish and wildlife. In the past, we have worked closely - and successfully - with the FERC to protect fish and wildlife populations and to consider the cumulative impacts of development. It is critical that this cooperation continues under this legislation as well.

The State of Alaska is not presently able to assume exclusive authority to authorize small hydroelectric projects, because state law does not provide a regulatory regime for project review, monitoring, or licensing of these projects. We feel such a framework must be in place at the state level before the State of Alaska could apply to the Secretary of Energy to take jurisdiction. The regulatory framework needs to include regulations to ensure proper project design and construction, and to protect fish and wildlife populations at least as well as under existing federal law. Present FERC authority is broader than that held by the State, in that FERC may assert jurisdiction over watersheds, while the regulatory authority of the Alaska Department of Fish and Game is confined to the area between stream banks.

In addition to the lack of a State regulatory regime, the State has established no appropriate funding mechanism to support small hydro licensing and monitoring. Such a funding mechanism could be either a direct appropriation or be based on a user fee system.

Again, the State appreciates the opportunity to express its support of S. 422. Although we desire the benefits that this legislation offers, it is important to state clearly we are not currently in a position to implement the option that this legislation would present to Alaska.

Sincerely,



Tony Knowles
Governor

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H.R.2884

Energy Act of 2000 (Enrolled Bill (Sent to President))

TITLE V--ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS

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

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

'SEC. 32. ALASKA STATE JURISDICTION OVER SMALL HYDROELECTRIC PROJECTS.

'(a) DISCONTINUANCE OF REGULATION BY THE COMMISSION- Notwithstanding sections 4(e) and 23(b), the Commission shall discontinue exercising licensing and regulatory authority under this part over qualifying project works in the State of Alaska, effective on the date on which the Commission certifies that the State of Alaska has in place a regulatory program for water-power development that--

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

'(2) gives equal consideration to the purposes of--

'(A) energy conservation;

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

'(C) the protection of recreational opportunities;

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

'(E) the interests of Alaska Natives; and

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

`(3) requires, as a condition of a license for any project works--

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

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

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

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

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

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

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

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

`(5) that are not located in whole or in part on any Indian reservation, a conservation system unit (as defined in section 102(4) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(4))), or segment of a river designated for study for addition to the Wild and Scenic Rivers System.

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

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

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

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

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

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

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

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

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

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

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

TITLE VI--WEATHERIZATION, SUMMER FILL, HYDROELECTRIC LICENSING PROCEDURES, AND INVENTORY OF OIL AND GAS RESERVES

SEC. 601. CHANGES IN WEATHERIZATION PROGRAM TO PROTECT LOW-INCOME PERSONS.

(a) The matter under the heading, 'Energy Conservation (including transfer of funds)' in title II of the Department of the Interior and Related Agencies Appropriations Act, 2000 (113 Stat. 1535, 1501A-180), is amended by striking 'grants:' and all that follows and inserting 'grants.'

(b) Section 415 of the Energy Conservation and Production Act (42 U.S.C. 6865) is amended--

(1) in subsection (a)(1) by striking the first sentence;

(2) in subsection (a)(2) by--

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 140
 () Publish Date: _____
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev
 Component: Water Development
 Component Number: 916

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2002) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Bob Loeffler Phone 269-8600
 Division: Mining, Land and Water Date/Time 20-Feb-02
 Approved by: Pat Pourchot Date 21-Feb-02
 Agency: Natural Resources

ANALYSIS: (continued)

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

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

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 140
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2002) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Gordy Williams Phone 465-6143
Division Commissioner's Office Date/Time 2/21/02 9:07 AM
Approved by: Commissioner Frank Rue Date 2/21/2002
Agency Fish and Game

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 140

ANALYSIS CONTINUATION

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

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 140
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

CSSB140 FIN

Amend # _____

Offered in (H)RES 4-26-2002

Add to existing language:

The Regulatory Commission of Alaska, in consultation with the Commissioners of DNR, DCED and DF&G, will report to the legislature by February 15th 2003 with their assessment of how the licensing of small hydro projects by the State of Alaska would be accomplished. This report will include the impact on the operating budget, funding mechanism, staff requirements, potential statutory changes, timelines and public participation for developing regulations and any other items deemed important by the administration.



750 West Second Ave., Suite 109, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.aevoters.org

SB 140 ~ Small Water-Power Development Projects

TO: House Resources Committee Members

DATE: April 26, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters, including residents of rural communities where the cost of power generation, both in monetary terms and environmental terms, is very high. While we support the development of clean, economical and renewable sources for the generation of electricity, particularly for small communities currently dependent upon diesel, we oppose SB 140 because it unnecessarily increases state spending.

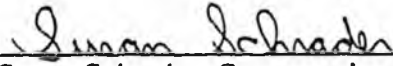
Senate Bill 140 begins the process, authorized in federal legislation, for the state to take over authority from the Federal Energy Regulatory Commission (FERC) to license and regulate small hydropower projects of 5 megawatts or less. It requires the state to establish a licensing program equivalent to FERC's, and to annually appropriate substantial sums to operate it.

- **Expense of the program** - Assumption of small hydro licensing and oversight will place a significant financial burden on DNR, ADF&G and DEC. Without sufficient financial and staff resources to implement the program, processing of license applications and license renewals could be significantly delayed or alternatively, processing would be at the expense of careful consideration of environmental impacts, thereby inviting public opposition.
- **The Regulatory Commission of Alaska (RCA) as the lead entity** - The RCA is charged with ensuring just and reasonable utility rates and high quality, reliable service. However, the RCA has no experience with FERC licensing, and it is not the appropriate entity to coordinate DNR, ADF&G, and DEC participation in licensing proceedings. Nor does the RCA have the trained staff to fulfill requirements of the federal law and SB 140, such as protecting the public interest and the environment
- **Protection of special public lands:** SB 140 provides no protection for state special areas such as state parks, game refuges or critical habitat areas. Attempts by a new state regulatory agency to license hydropower projects in state protected areas would surely result in significant controversy and the associated delay.

OVER

Although the concept of the state having jurisdiction over small hydropower projects may appear appealing to some, *FERC has never before delegated this authority to any state.* In this time of state fiscal difficulties, the state's acceptance of this unfunded federal mandate is not in the best interests of Alaskans.

ACV urges you to oppose this unnecessary and costly legislation.



Susan Schrader, Conservation Advocate

Jennifer

House Resources Comm

From Will Abbott

263-2110

Will_Abbott@RCFF.State.AK.US

From our conversation this morning.

Thanks

Will

The licensing of small hydro projects in Alaska by Alaskans could be an important step in building economical renewable energy sources in many parts of state. SB 140 can give us the vehicle to improve the regulatory process for licensing such projects. With this bill and the Federal legislation in hand we must scope the regulatory process and insure the State can perform the responsibilities delegated to us in a responsible, efficient manner that is more responsive to the needs of Alaskans and achieves the goals set for us by the Governor and SB 140.

Therefor the Regulatory Commission of Alaska in consultation with the Commissioners of DNR, DCED and DF&G will report to the legislature in 2003 with their assessment of how the licensing of small hydro projects by the State of Alaska would be accomplished. This report will include the impact on the operating budget, funding mechanism, staff requirements, potential statutory changes, timelines and public participation for developing regulations and any other items deemed important by the administration.

Alaska Public Waters Coalition Testimony on SB 140
Before House Resources Committee
April 26, 2002

I am Jan Konigsberg with Trout Unlimited testifying on SB 140 on behalf of Alaska Public Waters Coalition. The Coalition includes sportsfishing groups, conservation organizations, former members of the Alaska Water Board and other individuals, all of whom are concerned about executive actions and legislative and regulatory initiatives affecting Alaska's water resources

SB 140 would implement the federal legislation authorizing the transfer of FERC licensing authority to the State of Alaska for hydroelectric projects of 5MW or less. The Alaska Public Waters Coalition believes that all proposed hydroelectric projects must be thoroughly scrutinized through a rigorous licensing process to ensure that the project, once constructed and in operation, will have the least environmental impact possible. If the State of Alaska can accomplish this licensing in a manner at least as stringent as FERC, then APWC would not oppose this legislation. But we do not believe that this will be the case.

Frankly, the Coalition is puzzled by the legislature's seeming eagerness to mandate that the State assume a federal program for which there is no accompanying appropriation--especially given the magnitude of the State's current fiscal problems (we believe the fiscal note of \$300,000 annually is too conservative an estimate): We, therefore, are left to divine the legislature's rationale for embracing an unfunded federal mandate: We know that proponents of this legislation are convinced that a state licensing program will provide "regulatory relief" from what they believe to be an onerous federal process, but these same proponents acknowledge that the state process must be at least as rigorous as that of the federal government. How can both be true??? We'd really like to know!

And we'd like to know, too, how the legislature plans to explain to the broader public why it is willing to take at least \$300,000 from the Division of Family Services (or from some other necessary and under-funded human service agency) to help some of-state hydropower developer?

Moreover, not only will the State be incurring significant administrative costs pursuant to hydropower licensing, it will assume significant liability particularly in the area of dam safety. Currently, the State has no liability for FERC licensed projects. Once the State undertakes licensing, the State of Alaska will also be responsible for dam inspection. Therefore, in the case of a dam failure that results in damage to life and private property or results in natural resource damage, it may not be the dam owner alone that is responsible. Under certain circumstances, the State of Alaska may be sued and the cost of litigation (let alone paying for actual damages, if that were the outcome) could dwarf the annual cost of the licensing program.

Further, we think it's merely wishful thinking to presume that a state regulatory program will be any speedier than the current federal program. First, this will be new terrain for the Regulatory Commission of Alaska, so start-up missteps and delays can be expected. Second, DNR has not been able to keep up with a relatively simple and straightforward water-rights program. So, realistically, how would DNR deal with an increase in workload in its water and dam safety programs as required by a state hydropower program?

Finally, I can assure this committee that if the real intent of this legislation is to achieve hydropower licensing efficiency at the expense of stringent environmental enforcement by skimping on environmental review and permitting, these projects will face lengthy delays due to legal challenges.

In sum, the FERC process works, but needs improvement. It would behoove the State of Alaska to join with others to improve the federal program rather than take on a new program in this period of fiscal uncertainty.

Jan Konigsberg
907-646-0675
jkonigsberg@tu.org

1399 W 34th #205

Anchorage, AK 99503

COVER SHEET

Anchorage Legislative Information Office
Office - (907) 269-0111 Fax - (907) 269-0229

To: (H) Resources

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Instructions: Written testimony 4-26-02 (H)RES
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**Alaska Public Waters Coalition Testimony on SB 140
Before House Resources Committee
April 26, 2002**

I am Jan Konigsberg with Trout Unlimited testifying on SB 140 on behalf of Alaska Public Waters Coalition. The Coalition includes sportsfishing groups, conservation organizations, former members of the Alaska Water Board and other individuals, all of whom are concerned about executive actions and legislative and regulatory initiatives affecting Alaska's water resources

SB 140 would implement the federal legislation authorizing the transfer of FERC licensing authority to the State of Alaska for hydroelectric projects of 5MW or less. The Alaska Public Waters Coalition believes that all proposed hydroelectric projects must be thoroughly scrutinized through a rigorous licensing process to ensure that the project, once constructed and in operation, will have the least environmental impact possible. If the State of Alaska can accomplish this licensing in a manner at least as stringent as FERC, then APWC would not oppose this legislation. But we do not believe that this will be the case.

Frankly, the Coalition is puzzled by the legislature's seeming eagerness to mandate that the State assume a federal program for which there is no accompanying appropriation--especially given the magnitude of the State's current fiscal problems (we believe the fiscal note of \$300,000 annually is too conservative an estimate): We, therefore, are left to divine the legislature's rationale for embracing an unfunded federal mandate: We know that proponents of this legislation are convinced that a state licensing program will provide "regulatory relief" from what they believe to be an onerous federal process, but these same proponents acknowledge that the state process must be at least as rigorous as that of the federal government. How can both be true??? We'd really like to know!

And we'd like to know, too, how the legislature plans to explain to the broader public why it is willing to take at least \$300,000 from the Division of Family Services (or from some other necessary and under-funded human service agency) to help some of-state hydropower developer?

Moreover, not only will the State be incurring significant administrative costs pursuant to hydropower licensing, it will assume significant liability particularly in the area of dam safety. Currently, the State has no liability for FERC licensed projects. Once the State undertakes licensing, the State of Alaska will also be responsible for dam inspection. Therefore, in the case of a dam failure that results in damage to life and private property or results in natural resource damage, it may not be the dam owner alone that is responsible. Under certain circumstances, the State of Alaska may be sued and the cost of litigation (let alone paying for actual damages, if that were the outcome) could dwarf the annual cost of the licensing program.

Further, we think it's merely wishful thinking to presume that a state regulatory program will be any speedier than the current federal program. First, this will be new terrain for the Regulatory Commission of Alaska, so start-up missteps and delays can be expected. Second, DNR has not been able to keep up with a relatively simple and straightforward water-rights program. So, realistically, how would DNR deal with an increase in workload in its water and dam safety programs as required by a state hydropower program?

Finally, I can assure this committee that if the real intent of this legislation is to achieve hydropower licensing efficiency at the expense of stringent environmental enforcement by skimping on environmental review and permitting, these projects will face lengthy delays due to legal challenges.

In sum, the FERC process works, but needs improvement. It would behoove the State of Alaska to join with others to improve the federal program rather than take on a new program in this period of fiscal uncertainty.

Jan Konigsberg
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SB

143

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 143
 (S) Publish Date: 3/20/01
 Dept. Affected: Natural Resources
 BRU: Oil & Gas Development
 Component: Pipeline Coordinator
 Component Number: 1191

Revision Date/Time (Note if correction): _____
 Title: Right-of-Way Leasing Act: Application Cost
 Sponsor: Senate Resources
 Requester: Senate Resources

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The fiscal note estimates that \$3,957,900 will be needed through the first half of FY02 to prepare to receive a gas pipeline application. Those costs include work to establish a Gas Pipeline Office and to provide technical assistance to proponents. It also includes efforts related to permit process streamlining, such as consultation with the state's federal and Canadian counterparts. DNR estimates that least 50 percent of the total may be reimbursable through agreements with project proponents.

(continued on attached page)

Prepared by: Bill Britt Phone 271-4304
 Division: State Pipeline Coordinator's Office Date/Time 16-Mar-01
 Approved by: Pat Pourchot Date 16-Mar-01
 Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

An asterisk is included in FY02 because the exact number will not be known until negotiations with

An asterisk is included in FY02 because the exact number will not be known until negotiations with proponents are complete.

An asterisk is included in the columns for FY03-FY07 due to Section 2 of SB 143 (the proposed AS 38.35.145(c)). During the last several years, the number of preapplication efforts ongoing with the SPCO has varied from zero to three. DNR estimates that SPCO cost associated with these efforts have averaged approximately \$10K per month. These costs have been funded by GF/PR secured through memoranda of agreements with the project proponents, as envisioned by SB 143.

However, the proposed AS 38.35.145(c) appears to make such agreements impossible after December 31, 2003. Any preapplication expenses after that date not covered by an existing agreement would need to be funded by GF, or could not occur. It is possible that pipelines associated with Point Thompson, NPRA, and ANWR could occur after that date.

Finally, it is important to note that SB 143 presents the opportunity, not obligation, for project proponents to enter into preapplication reimbursable agreements with the SPCO. Although it is expected that they will do so, there are no guarantees.

SPONSOR STATEMENT

SB 143

“Right-Of-Way Leasing Act: Application Cost”

One of the legislature's priorities is commercialization of North Slope gas. Any sponsor of a pipeline project will have to obtain a right-of-way across state lands. This bill would authorize the state to be reimbursed for work performed by the State Pipeline Coordinator's Office (SPCO) in preparing to receive and process an application for a right-of-way lease. It also clarifies that an applicant must reimburse the SPCO for costs incurred in processing an application whether or not the application is granted.

AS 38.35.140 provides that a lessee shall reimburse the state for all reasonable costs incurred in processing an application filed for a right-of-way lease. The SPCO has entered into an agreement with a lessee seeking to renew a lease. The lessee has agreed to reimburse the state for costs incurred before receipt of the renewal application. However, legislative legal services has questioned whether existing law authorizes the state to be reimbursed for costs incurred before the receipt of an application. The SPCO anticipates that it will be asked to perform substantial work by prospective gas pipeline lessees this year in anticipation of filing applications later this year or early next year. Much of the cost of this work would clearly be reimbursable to the state if the prospective lessee actually had a pending application. It is important to ensure that the state is reimbursed for the significant cost that it will incur in performing work in anticipation and furtherance of the application process.

Additionally, the SPCO, in the past, has required a prospective lessee to reimburse the state for costs incurred in processing an application even if the application has not been granted. This bill would conform the law to existing practice between the SPCO and prospective lessees to make clear that the state must be reimbursed for the costs of processing an application whether or not the lease is ultimately granted. Prospective lessees cannot expect the state to pay for services requested by them on routes that ultimately are not selected or on applications that may ultimately be withdrawn, suspended, or otherwise not granted.

SB

153

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX



During Interim, June - December:
716 W 4th Ave, Suite 520
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Senator Loren Leman

Sponsor Statement CS SB 153(FIN): Underground Storage Tank Loan Fund

Owners of underground storage tanks had until December 22, 1998 to either upgrade or close their underground storage tanks in response to nationwide concern over possible contamination of drinking water from leaking underground storage tanks.

The Alaska Legislature responded to this federal mandate by offering grants and loans to owners of underground storage tanks to help offset the costs of the new requirements. To date, \$38.9 million has been appropriated for upgrade, closure and cleanup grants and loans for underground storage tanks.

All applications for grant assistance under the Upgrade, Closure and Cleanup programs are in. There can be no new applicants. The Department and the Board of Storage Tank Assistance have ranked the applicants according to the changes made by SB 128 (ch 70 SLA 99).

CS SB 153 (FIN) ends the upgrade and closure grant program by June 30, 2002 and the tank cleanup grant program by June 30, 2004 after almost \$49.0 million in assistance to underground storage tank owners. It retains the cleanup loan program and changes it to a revolving loan program. The revolving loan program retains the current means test of self-insurance which guarantees assistance to the "Mom & Pop" companies the grants and loans were intended to assist, rather than larger companies.

The balance in the storage tank assistance fund on the effective date of SB 153 is transferred to the revolving loan fund. This capitalization with all repayments of principal and interest on loans, income earned on money in the fund and money appropriated to the fund will support the revolving loan fund.

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Senator Loren Leman

Sectional Analysis CS SB 153(FIN): Underground Storage Tank Loan Fund

Section 1: Amends the responsibilities of the Board of Storage Tank Assistance and the Department to comport with the intent of SB 153, which is to repeal the UST grant programs by 2004 and to have the Department and the Board adjudicate disputes involving the revolving loan fund. (EFD 7/01/04)

Sections 2 and 3: Amends the Board of Storage Tank Assistance section to comport with the intent of SB 153. The Board will continue to hear disputes and adopt regulations related to loans under AS 46.03.422. (EFD 7/1/02)

Section 4: Amends the regulations governing UST systems to delete reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 5: Tank Registration Fees: Sets up automatic deposit of storage tank registration fees to the renamed "revolving loan" fund.(EFD 7/1/02)

Section 6: Deletes reference to grants under the tank cleanup program. (EFD 7/01/04)

Section 7: Changes the Underground Storage Tank Assistance Fund to a revolving loan fund incorporating money appropriated to it by law, storage tank registration fees, repayments of principal and interest on loans and income earned on the money in the fund. Gives commissioner permission to use money in the fund to pay the costs of administering the fund, costs of the Board of Storage Tank Assistance, and the tank cleanup loan program (EFD 7/1/02)

Section 8: Becomes law in 2004, deletes references to tank cleanup grants. (EFD 7/01/04)

Section 9: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 10: Amends tank cleanup grant program to cover any overlap of grant/loan combinations after the grant program is repealed, so no unintentional harm comes to a loan recipient. (EFD 7/1/02)

Section 11: Program receipts received under the tank cleanup program will be deposited into the revolving loan fund. (EFD 7/1/02)

Section 12: Amends tank cleanup loan program statutes to reflect UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Sections 13, 14 and 16: Effective 2004 amends tank cleanup loan program statutes to clarify that this section only applies to loans available under this program (not loans and grants). (EFD 7/01/04)

Section 15: Acknowledges Tank upgrade and closure grants are repealed 7/1/02. (EFD 7/1/02)

Section 17: Allows department to deposit loan repayments and interest into the revolving loan fund. (EFD 7/1/02)

Section 18: New "means" test provision for the revolving loan fund - if the owner/operator is eligible for self-insurance under U. S. EPA regulations (\$10 million), the owner/operator is ineligible for a loan under this program. Municipalities are excluded from the means test. (EFD 7/1/02)

Section 19: Amends the Oil and Hazardous Substance Prevention and Response Account statute to reflect the UST Assistance Fund as a revolving loan fund. (EFD 7/1/02)

Section 20: Repeals the UST upgrade and closure grant program. (EFD 7/1/02)

Section 21: Repeals the UST cleanup grant program (EFD 7/01/04)

Section 22: (a) Transfers the funds the Legislature has appropriated to the Underground Storage Tank Assistance Fund into the UST Revolving Loan Fund.

(b) Makes plain that the upgrade and closure grant program will not be funded past June 30, 2002; and the tank cleanup grant program will not be funded past June 30, 2004. (EFD immediate)

Section 23: Effective Dates for establishing Revolving Loan fund and means test; and repeal of the UST upgrade and closure grant program.

Section 24: Effective Dates for continuation of Revolving Loan Fund and repeal of UST cleanup grant program.

Section 25: Immediate effective date for transitional provisions.

Cheat sheet for statute citations
CS SB 153(): UST Loan Fund

AS 46.03.360: Board of Storage Tank Assistance

.420: Underground Storage Tank (UST) cleanup grant program

.422: Underground Storage Tank (UST) cleanup **loan** program

.430: Underground Storage Tank (UST) upgrade and closure grant program

FACT SHEET ON UNDERGROUND STORAGE TANK (UST) PROGRAM
(applicable statutes: AS 46.03.360-450)

- Owners of underground storage tanks had until 12/22/98 to either upgrade or close their underground storage tanks.
- Prior to SB 128 (ch 70 SLA 1999) there were four UST grant and loan programs:
 - *Tank Tightness (AS 46.03.415)
 - *Reimbursement program (sec. 7, ch 96 SLA 90)
 - Upgrade & Closure Loans and Grants
 - Clean Up Loans & Grants
 - * repealed by SB 128
- All applications for grant assistance under the Upgrade and Closure program are in. THERE CAN BE NO NEW APPLICANTS. Under the law prior to SB 128, DEC estimated it would use \$3.5 million of the \$5.0 million in the UST fund to give all of the qualified applicants grants. Under SB 128's provisions, the Upgrade and Closure list is valued at around \$32, 200 to satisfy the qualified applicants.
- The Clean Up Grant program under SB 128 now requires a one million dollar tangible net worth limitation, which reduces the number of qualified applicants on the Clean-up list which in FY 00 totaled \$23.3 million. This change moves off the list, applicants such as Unocal, Tesoro, Chevron Mapco and Providence Hospital, and retains the smaller "mom and pop" requests.
- The Clean Up Loan Program (created by SB 128) requires that to receive a loan, the applicant must have submitted an application before July 1, 1994 (see: AS 46.03.422 (a) reference to AS 46.03.420. All applications are in for the Clean up grant & loan programs. It's now a matter of finishing off the lists.
- Applying the \$1.0 million limitation to the Clean up grants has resulted in about \$9.0 million of eligible costs.
- It was the Senate's desire during the debate on SB 128 that the Storage Tank Assistance Fund be fully capitalized so that the Upgrade & Closure program could be finished in 2000. Clean up assistance was to end shortly after.
- DEC RSA's money to the Division of Investments to handle the loans for these programs.

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Terms and conditions of 10% loans:

- Duration or length of loan? schedule agreed upon by the parties - Not to exceed five (5) years.
- Do they start right after loan is awarded? yes
- Terms and conditions of loans No interest, secured by a lien or collateral if Department requires it. Up to 10% of total costs, not to exceed a maximum of \$25,000
- Repayment schedule (i.e. how much per month?) Based on amount and agreed loan duration.

•Status of loans:

- How many loans are still out? 4 (brooks, korovin, sunny chevron, greatland auto) All are current.
- Have there ever been any defaults? no

•Late Fees:

- Are late fees consistently charged? yes
- If a late fee is charged, is it 5% of payment in default which is defined in statute? yes of the outstanding payment amount

Upgrades and Closure

Combination "Upgrade and Closure" Grant

Valley Country Store

- Owner/operator, small businessman, Dennis Illies of Alaska Country Stores, Inc.
- Total eligible project costs \$108,584.43
- **Total Combined Upgrade / Closure Grant Issued = \$60,000**
- Breakout of eligible Upgrade/Closure Costs:
 - Closure = \$ 18,000.00
 - Upgrade = 90,584.43
 - \$108,584.43
- For the upgrade of one regulated underground storage tank and the removal of three underground storage tank
- Grant issued February, 1996 to reimburse the following:
 - Installation of one 18,000 gallon double-walled tank with three compartments (one 12,000 gallon and two 3,000 gallon compartments)
 - Removal of two 10,000 gallon gasoline tanks and one 5,000 gallon diesel tank

Upgrade Grant

Old Super Suds Car Wash

- Grantees, Tom and Sharon Snelling, small business owners
- Grant was issued December, 1998
- **Total grant award \$60,000**
 - Reimbursed 60% (not to exceed \$60,000), of the actual eligible project costs
- For installation of new underground storage tank (UST) system at the former Super Suds Car Wash, located at 180 Muldoon Road, Anchorage
- Upgrade grant funded only a portion of the following materials and labor
 - **Installation of a new UST system since the total cost was estimated to be \$212,750**
 - One double wall tank with three compartments with a total capacity of 28,000 gallons with double-walled piping
 - Concrete protective pad with manways and monitor stations
 - Veeder Root TIS 350 Monitor leak detection system with printer, three tank level probes and 12 sump sensors
 - Spill containment and overflow devices to be installed in each tank compartment fill section

Closure (only) Grant

Great Land Auto

- Isaiah Lewis (owner/operator) small business owner unable to perform work until he received assistance
- Closure grant issued in January, 1995 for \$16,779
 - Reimbursed 60% of the actual eligible project cost of \$27,965.22 required to:
 - Remove of two 5,000 gallon gasoline tanks, one 2,000 gallon gasoline tank, one 1,000 gallon diesel tank, and one 1,000 gallon waste oil tank
 - Perform closure site assessment and site restoration
- Contamination discovered during tank removal
- Owner currently receiving cleanup grant to address contamination

Cleanup Sites

Goldpanner Chevron:

Timeframe: June, 1994 - December, 2002 (8 years) to closure

Site Information:

- Owned and operated by a small businessman, Vern Stoner

Site History and Phases:

- Initial grant issued 6-28-94
- Total of 8 cleanup grants issued for this since since 6-94
- Purpose: Closure of existing UST system and removal of five tanks
 - Site assessment
 - Characterization of excavated soil
 - Transport and thermal treatment of excavated soil
 - Additional Cleanup activities:
 - On going groundwater (GW) monitoring, quarterly and semi-annual
 - Site Characterization – installation ground water monitoring wells
 - Installation of a remediation system
 - On-going monitoring, maintenance and operation of remediation system since 1996

Site Status:

- Closure estimated to be no later than December, 2002.
- Total grant costs \$274,189.65.

Denali Fuel

Timeframe: December 1992 – on-going.

Site History and Phases

- 9-91, extensive petroleum hydrocarbon contamination was discovered during the removal of a 12,000 gallon underground storage tank system used to store diesel fuel at this site
- Cleanup grant issued in the amount of \$224,959.90 in November, 2000
 - To reimburse release investigation efforts already performed and
 - Continue corrective action activities to address remaining fuel contamination
 - Excavation to remove approximately 1000 yards of remaining petroleum contaminated soil
 - Transport/treatment of this excavated petroleum contaminated soil
- On going release investigation to include:
 - Installation of five to eight additional groundwater monitoring wells
 - Replace two groundwater monitor wells destroyed during excavation activities for further plume delineation
 - Quarterly groundwater sampling of monitoring wells for two years.

Site Status:

- Site not closed
- Total grant costs \$274,189.65
- Grantee has nearly reached the maximum amount allowed under the grant program, so no additional grant funds will be available. Loans will be needed to finish this cleanup.

Cleanup Project with No Future Action Letter

This project was issued an NFA in March 1998 for the LUST cleanup.

Total time: March, 1993 - March, 1998 (Approximately 5 years)

Total estimated cost to bring site to closure \$274,189.65.

Courtney's Service Station

Site Information

- 2715 E. Tudor Rd., Anchorage, AK 99507
- Owner did not proceed with ADEC required site assessment due to financial hardship
- Filed for bankruptcy in 1988
- No site assessment or soil remediation documented in project file as of December 1990
- Formerly known as Courtney's Tudor Service. Name changed to Kim's and then back to Courtney's
- Owner/Grantee: The facility is currently owned by the Estate of Courtney C/O Carol Humbyrd of Homer.

Historical Site Summary:

- Soil/groundwater contamination from a leaking unleaded gasoline UST discovered in 11/8
- Undetermined amount of product released from the 12,000 gallon unleaded gasoline tank at Kim's Service Station owned by Dick Kim
- Consists of a gasoline filling station and an auto repair
- Spill amount and duration unknown
- Initial cleanup activities:
 - Leaking tank removed along with about 1000 tons of soil
 - Clean Alaska was contracted to pump out contaminated water
 - New tank installed and the pit backfilled with clean soil..

Site History and Phases:

- Initial grant issued March, 1993 to
 - Fund removal of the existing UST system
 - Perform area wide release investigation
 - Stockpile petroleum contaminated soil
 - Treat and dispose of contaminated soil
 - Additional cleanup activities funded by the FAP grants included the following:
 - Area-wide release investigation;
 - Drinking water well search;
 - On going groundwater (GW) monitoring on and off-site;
 - Site Characterization and drilling investigations – installation of ground water monitoring wells (MWs) to delineate plume on-site and off-site;
 - Installation and maintenance of an Oxygen Releasing Compound (ORC) groundwater treatment program;
 - Additional excavation of the source area;
 - Soil treatment and disposal;
- Decommissioning of monitoring wells in conjunction with site closure