

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11293 SENATE RESOURCES

**Alaska State Legislature**  
**Senate Resources Committee**  
Senator Scott Ogan, Chair

Senator Fred Dyson  
Senator Kim Elton  
Senator Georgianna Lincoln  
Senator Ralph Seekins  
Senator Ben Stevens  
Senator Tom Wagoner



State Capitol, Room 103  
Juneau, AK. 99801-1182  
Phone: (907) 465-4907  
Fax: (907) 465-3265

**Memorandum**

DATE: April 5, 2003

TO: All Resources Committee Members

FROM: Senator Scott Ogan  
Chairman, Senate Resources Committee

RE: SB 97

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Attached is a copy of the work draft CS for SB 97 Public Interest Litigants, which moved out of subcommittee on April 3<sup>rd</sup>. This version will be presented to the full Resources Committee for discussion on Monday, April 7<sup>th</sup>. A revised fiscal note has been requested but not yet received.

If you have any questions, please contact my committee aide, Linda Hay at extension 4907.

Senator Scott Ogan

23-GS1064\D  
Luckhaupt  
4/4/03

*NOT  
adopted*

**CS FOR SENATE BILL NO. 97( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act prohibiting certain types of discrimination in the awarding of attorney fees and**  
2 **costs in civil actions or appeals."**

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

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

6 **PURPOSE AND INTENT.** (a) The judicially created doctrine respecting the award  
7 of attorney fees and costs to or against public interest litigants has created an unbalanced set  
8 of incentives for parties litigating issues that fall under the public interest litigant exception.  
9 This imbalance has led to increased litigation, arguments made with little merit, difficulties in  
10 compromising claims, and significant costs to the state and private citizens. More  
11 importantly, application of the public interest litigant exception has resulted in unequal access  
12 to the courts and an unlevel playing field for the parties in litigation.

13 (b) The purpose of secs. 2 and 3 of this Act is to provide for a more equal footing for  
14 parties in civil actions and appeals by abrogating the special status given to public interest

1 litigants with respect to the award of attorney fees and costs. It is the intent of the legislature  
2 to expressly overrule the decisions of the Alaska Supreme Court in *Gilbert v. State*, 526 P.2d  
3 1131 (Alaska 1974), *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977), *Thomas v. Bailey*,  
4 611 P.2d 536 (Alaska 1980), *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d  
5 544 (Alaska 1983), *Danscreau v. Ulmer*, 955 P.2d 916 (Alaska 1998), and their progeny,  
6 insofar as they relate to the award of attorney fees and costs to or against public interest  
7 litigants in future civil actions and appeals. It is also the intent of the legislature to prohibit  
8 the creation or application of judicially created doctrines in the future that have the effect of  
9 treating public interest litigants differently than nonpublic interest litigants regarding the  
10 award of attorney fees and costs.

11 (c) This Act does not preclude the enactment of specific statutes authorizing fee  
12 awards in particular situations, such as AS 45.50.537.

13 \* Sec. 2. AS 09.60.010 is amended to read:

14 **Sec. 09.60.010. Costs and attorney fees allowed prevailing party. Except**  
15 **as provided in (b) of this section, the** [THE] supreme court shall determine by rule or  
16 order the costs, if any, that may be allowed a prevailing party in a civil action. Unless  
17 specifically authorized by statute or by agreement between the parties, attorney fees  
18 may not be awarded to a party in a civil action for personal injury, death, or property  
19 damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil  
20 action is contested without trial, or fully contested as determined by the court.

21 \* Sec. 3. AS 09.60.010 is amended by adding a new subsection to read:

22 (b) Except as otherwise provided by statute, a court in this state may not  
23 discriminate in the award of attorney fees and costs to or against any party in a civil  
24 action or appeal based on the nature of the policy or interest advocated by the party,  
25 the number of persons affected by the outcome of the case, whether a governmental  
26 entity could be expected to bring or participate in the case, the extent of the party's  
27 economic incentive to bring the case, or any combination of those factors.

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

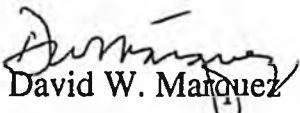
30 **APPLICABILITY.** This Act applies to a civil action or appeal filed on or after the  
31 effective date of this Act.

# MEMORANDUM

State of Alaska  
Department of Law

TO: Senator Scott Ogan  
Room 103

DATE: April 2, 2003

FROM:   
David W. Marquez  
Assistant Attorney General

TELEPHONE: (907) 465-2132

SUBJECT: Senate Bill 97

Attached is a proposed amendment to Senate Bill 97 which the Department of Law respectfully requests be considered by the Senate Resource Committee Subcommittee.

*moved out  
of sub-committee today  
as amended*

*Seekins - yes  
Stewens - yes  
Elton - no*

*CS for Senate Res  
is ordered*

AMENDMENT #2

OFFERED IN THE SENATE RESOURCE  
COMMITTEE  
TO: SB 97

BY \_\_\_\_\_

1 Page 1, lines 1-2:

2 Following "Act":

3 Delete all material and insert:

4 "prohibiting discrimination in the awarding of attorney's fees and costs  
5 in civil actions or appeals to or against public interest litigants."

6

7 Page 1, following line 3:

8 Insert a new bill section to read:

9 "\* Section 1. The uncodified law of the State of Alaska is amended by adding a new  
10 section to read:

11 PURPOSE. (a) The judicially created doctrine respecting the award of attorney's  
12 fees and costs to or against public interest litigants has created an unbalanced set of  
13 incentives for parties litigating issues that fall under the public interest litigant exception.  
14 This imbalance has led to increased litigation, arguments made with little merit,  
15 difficulties in compromising claims, and significant costs to the state and private citizens.  
16 More importantly, application of the public interest litigant exception has resulted in  
17 unequal access to the courts and an unlevel playing field for the parties in litigation.

18 (b) The purpose of sec. 2 of this Act is to provide for a more equal footing for  
19 parties in civil actions and appeals by abrogating the special status given to public interest

1 litigants with respect to the award of attorney's fees and costs. It is the intent of the  
2 legislature to expressly overrule the decisions of the Alaska Supreme Court in Gilbert v.  
3 State, 526 P.2d 1131 (Alaska 1974), Anchorage v. McCabe, 568 P.2d 986 (Alaska 1977),  
4 Thomas v. Bailey, 611 P.2d 536 (Alaska 1980), Southeast Alaska Conservation Council,  
5 Inc. v. State, 665 P.2d 544 (Alaska 1983), Dansereau v. Ulmer, 955 P.2d 916 (Alaska  
6 1998), and their progeny, insofar as they relate to the award of attorney's fees and costs  
7 to or against public interest litigants in future civil actions and appeals. It is also the  
8 intent of the legislature to prohibit the creation or application of judicially-created  
9 doctrines in the future that have the effect of treating public interest litigants differently  
10 than non-public interest litigants regarding the award of attorney's fees and costs.

11 (c) This Act does not preclude the enactment of specific statutes authorizing fee  
12 awards in particular situations, such as in AS 45.50.537."

13

14 Renumber the following bill sections accordingly

15

16 Page 1, line 4 through Page 3, line 2:

17 Delete all material and insert new bill sections to read:

18 "\* Sec. 2. AS 09.60.010 is amended by adding a new subsection to read:

19 (b) Except as otherwise provided by statute, a court in this state may  
20 not discriminate in the award of attorney's fees and costs to or against any  
21 party in a civil action or appeal based upon the nature of the policy or  
22 interest advocated by such party, the number of persons affected by the  
23 outcome of the case, whether a governmental entity could be expected to

1 bring or participate in the case, the extent of the party's economic incentive  
2 to bring the case, or any combination of those factors.

3 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new  
4 section to read:

5 APPLICABILITY. This Act applies to all civil actions and appeals filed on or  
6 after the effective date of this Act."

SENATE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/3/03

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

*must file*

1 ~~"An Act relating to public interest litigants and to attorney fees; and amending Rule 82,~~  
2 ~~Alaska Rules of Civil Procedure."~~

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

4 ~~\* Section 1. AS 09.60.010 is amended to read:~~  
*New Section 1*

5 ~~Sec. 09.60.010. Costs and attorney fees allowed prevailing party. The~~  
6 ~~supreme court shall determine by rule or order the costs, if any, that may be allowed a~~  
7 ~~prevailing party in a civil action. Unless specifically authorized by statute or by~~  
8 ~~agreement between the parties, attorney fees may not be awarded to a party in a civil~~  
9 ~~action for personal injury, death, or property damage related to or arising out of fault,~~  
10 ~~as defined in AS 09.17.900, unless the civil action is contested without trial, or fully~~  
11 ~~contested as determined by the court. In a civil action contesting a decision of the~~  
12 ~~Department of Environmental Conservation, the Department of Fish and Game,~~  
13 ~~or the Department of Natural Resources making a coastal consistency~~  
14 ~~determination, adopting regulations, or for which there was an opportunity for~~

1 the public to comment to the agency before the final agency decision and to seek  
 2 administrative review before the agency following the initial agency decision,  
 3 attorney's fees may only be awarded to or against a public interest litigant as  
 4 provided in Rule 82(g), Alaska Rules of Civil Procedure, on the effective date of  
 5 this Act.

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

8 DIRECT COURT RULE AMENDMENT. Rule 82(b), Alaska Rules of Civil  
 9 Procedure, is amended by adding a new paragraph to read:

10 (5) If the court chooses to vary an award of attorney's fees under (b)(3)  
 11 of this rule by increasing the award beyond the amounts provided in (b)(1) or (2) of  
 12 this rule, then the court shall apportion the attorney's fees by issue and may only award  
 13 the increased fees for an issue the party prevailed upon unless the court finds  
 14 exceptional circumstances to be present that require an increased award of fees  
 15 without apportionment by issue.

16 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
 17 read:

18 DIRECT COURT RULE AMENDMENT. Rule 82, Alaska Rules of Civil Procedure,  
 19 is amended by adding a new subsection to read:

20 (g) **Attorney's Fees for Public Interest Litigants.** In a civil action  
 21 contesting a decision of the Department of Environmental Conservation, the  
 22 Department of Fish and Game, or the Department of Natural Resources making a  
 23 coastal consistency determination, adopting regulations, or for which there was an  
 24 opportunity for the public to comment to the agency before the final agency decision  
 25 and to seek administrative review before the agency following the initial agency  
 26 decision, attorney's fees may only be awarded to or against a public interest litigant in  
 27 the same manner as attorney's fees may be awarded to or against a non-public interest  
 28 litigant under (b) of this rule.

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

31 **CONDITIONAL EFFECT.** Section 1 of this Act takes effect only if secs. 2 and 3 of this Act

- 1 receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of
- 2 the State of Alaska.

Amend #1

mentioned  
but not  
offered

Amendments to SB 97

Page 1, line 2, following "Procedure":

Insert "and Rule 508, Alaska Rules of Appellate Procedure"

Page 2, line 29:

Insert a new section:

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

DIRECT COURT RULE AMENDMENT. Rule 508(e), Alaska Rules of Appellate Procedure, is amended to read:

(e) Attorney's Fees.

(1) Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.

(2) Public Interest Litigants In an appeal from an administrative agency contesting a decision of the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources making a coastal consistency determination or for which there was an opportunity for the public to comment to the agency before the final agency decision and to seek administrative review before the agency following the initial agency decision, attorney's fees may only be awarded to or against a public interest litigant in the same manner as attorney's fees may be awarded to or against a non-public interest litigant under (e)(1) of this rule."

Renumber the following bill sections accordingly.

## Sectional Analysis HB 145 and SB 97

“An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure.”

Section 1 of the bill amends AS 09.60.010 to require that attorney's fee awards to or against a public interest litigant in civil cases contesting decisions by the Departments of Environmental Conservation, Fish and Game, and Natural Resources which make a coastal consistency determination or adopt regulations or decisions by those agencies for which the public had an opportunity to comment to the agency and seek administrative review before the agency, may only be made as provided in the proposed new subsection (g) to Rule 82, found in section 3 of the bill and described below. Section 1 makes it clear that such attorney's fee awards must conform to the language in subsection (g) expressed in this bill and not to later amendments to subsection (g).

Section 2 of the bill would amend Alaska Rule of Civil Procedure 82 by adding a new paragraph to subsection (b) providing that if a court increases the award from the percentages set out in (b)(1) or (b)(2) of the rule, it must apportion the attorney's fee by issue and, absent exceptional circumstances, can only award the increased fee for an issue the party prevailed upon. This would change the current application of Civil Rule 82 which courts construe to allow, but not require, apportionment of attorney's fees by issue.

Section 3 of the bill would add a new subsection (g) to Alaska Rule of Civil Procedure 82 providing that attorney's fees to or against public interest litigants for cases contesting decisions by the Departments of Environmental Conservation, Fish and Game, and Natural Resources making a coastal consistency determinations, adopting regulations, or for which the public had an opportunity to comment to the agency and seek administrative review before the agency, are to be awarded in the same manner as attorney's fees are awarded to or against non-public interest litigants under subsection (b) of Rule 82. This would change current Alaska case law which creates an exception to Rule 82 by which, in most circumstances, public interest litigants who prevail in civil litigation receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

Because sections 2 and 3 of the bill amend the Alaska Civil Rules, they must receive a two-thirds vote in each house in order to become law. Section 1 only requires a majority vote. For section 1 to have its intended effect, it is necessary that sections 2 and 3 also are passed by the legislature. Thus, Section 4 of this bill provides that section 1 takes effect only if sections 2 and 3 receive a two-thirds majority vote in each house.



ALASKA

## **Statement of Support**

### **Senate Bill 97**

### **Public Interest Litigant Fees**

**March 8, 2003**

The Alaska Chapter of the National Federation of Independent Business has over 2,500 members, making it the largest small-business advocacy group in the state. NFIB supports SB 97. This bill allows for equal treatment of litigants under Court Civil Rule 82.

Civil rule 82 provides for a percentage of attorney fees to be reimbursed to the prevailing party. Through Alaska Supreme Court decisions, a policy has been established to exempt public interest litigants from Rule 82 when they do not prevail and give them a higher percentage when they do. This gives public interest litigants an incentive to litigate even weak claims because they will suffer no economic burden if they lose and usually are able to obtain full attorney fees if they prevail.

Groups that litigate "in the public interest" have imposed substantial economic burdens on the State in the development of its resources. Passing SB 97 will take away the incentive to litigate just to delay a project. Such delaying tactics have caused otherwise good projects to become uneconomic and not go forward.

Public interest litigants will not be unfairly treated by SB 97. They will simply be treated like all other Alaskans. They have the right to provide public input before an agency decision is made. They have the right to administratively appeal an agency decision with no cost to them if they lose. This bill will simply treat public interest litigants like every other litigant when they decide to go to court to contest a decision of a resource agency in making a coastal consistency determination, adopting regulations or making other administrative decisions for which there has been an opportunity for public comment.

Passage of SB 97 will benefit the economy in Alaska by reducing project delays.

### **NFIB/Alaska urges support for SB 97**

Submitted by Thyres Shaub on behalf of NFIB/Alaska

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February 28, 2003

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would change the Alaska Rules of Civil Procedure as they apply to the award of attorney's fees. First, the bill provides for specific rules that govern the award of attorney's fees to or against certain public interest litigants. The bill does so by specifically requiring that any award of attorney's fees to or against public interest litigants for cases contesting decisions by the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources making a coastal consistency determination, adopting regulations, or in which the public had an opportunity to comment to the agency and seek administrative review before the agency, be governed by Alaska Rule of Civil Procedure 82 (Rule 82). The bill would then amend Rule 82 to require that attorney's fees be awarded to or against a public interest litigant in those situations in the same manner as attorney's fees are awarded to or against non-public interest litigants under Rule 82(b). Second, the bill provides, for all litigants, that in the absence of exceptional circumstances, courts may award increased fees only for issues upon which a party prevailed.

Under Rule 82, attorney's fees are awarded to the prevailing party. By rule, the attorney's fee awards are limited to a specified percentage of the actual fees, with the precise percentage dependent upon a number of factors, including whether the case is contested or goes to trial, and whether or not a money judgment is received. The complexity of the case and length of trial are among a list of other factors that may be used by the court to vary the size of the award. Upon consideration of a variety of factors, a court may apportion fees based upon the issues and whether a party prevailed. In contrast, current Alaska case law creates an exception to Rule 82 by which, in most circumstances, public interest

The Honorable Gene Therriault  
February 28, 2003  
Page 2

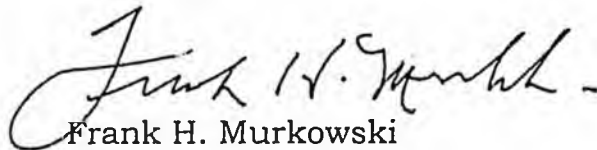
litigants who prevail receive full attorney's fees, with no apportionment by issue, but are not liable for an opposing party's fees if the public interest litigant loses the case.

The attorney's fee exception for public interest litigants creates several undesirable incentives when decisions of the state are called into question. First, those seeking to preserve an action of the state have an incentive to avoid litigation because of the possibility of full attorney's fees being awarded against them. This is compounded by the fact that those seeking to overturn actions of the state have an affirmative incentive to take a chance on doubtful claims because they may win and earn large rewards in the form of full fees, without the counterbalancing risk of even partial fees being awarded against them. This is of particular concern in the area of resource development where well-financed groups have sought to use litigation to impede the state's efforts to proceed with the orderly development of its resources.

This bill would redress this imbalance in the narrow group of cases involving the resource agencies.

I urge your prompt consideration and passage of this bill.

Sincerely,

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

Frank H. Murkowski  
Governor



## Closing the Door on Public Interest Litigants (SB 97)

810 N St. Ste 203, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177  
PO Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / [www.acvoters.org](http://www.acvoters.org)

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**TO:** Senate Resources Committee  
**FROM:** Matt Davidson  
**Date:** March 28, 2003

**SB 97** would severely limit Alaskans' ability to challenge poor government decisions. **SB 97** changes the court rules that allow public interest litigants to recover legal expenses for challenges of decisions made by the Departments of Natural Resources, Environmental Conservation, and Fish and Game. The current Rule 82 exemption is necessary to ensure that poor decisions by state agencies can be challenged the Alaska public. We urge you to reject SB 97.

Public Interest Litigants, by definition, are *not* motivated by an economic incentive, but rather by an interest in the resolution of a significant public policy issue. In 1974, the Alaska Supreme Court removed barriers that allowed only the rich to challenge bad government decisions.

While it has been argued that the bills target suits by environmentalists, SB 97 does not single out these plaintiffs, but rather impact all citizens' ability to challenge decisions by DNR, ADF&G, and DEC. As the Alaska Supreme Court once said "the policy of awarding full attorney's fees to public interest litigants was designed to encourage plaintiffs to raise issues of public interest as private attorneys general."

### All Sides Impacted

Public interest litigants represent all points along the ideological and political spectrum. Some Alaska cases brought by public interest litigants targeted by SB 97 and HB 145 include:

Citizens for the Preservation of the Kenai River, Inc. v. Sheffield, 758 P.2d 624 (Alaska 1988): A group of boat-owners brought suit challenging the validity of a state regulation limiting horsepower of motorized boats on the Kenai River. If not for the public interest rule, the boat owners would have been required to pay tens of thousands of dollars to the State of Alaska in attorney's fees. This would deter other multiple use advocacy groups from going to court to protect their access rights against overzealous regulators in the state agencies.

Evak Traditional Elders Council v. Sherstone, Inc., 904 P.2d 420 (Alaska 1995): A traditional village elders council disputed logging plans regarding historic sites.

Alaska Survival, Inc. v. Dept. of Natural Resources, 723 P.2d 624 (Alaska 1988): An organization of local residents filed suit regarding state land disposal of 32 agricultural homesteads.

Alaskans building a better future.

Unnecessary Changes

Existing law already protect against frivolous litigation. The courts are charged with deciding whether a plaintiff passes the public interest litigant test. Secondly, the courts already allow the courts to reduce a fee award for a variety of reasons in cases where the judge finds the requested award unreasonable. Attorneys are held accountable by the threat of significant fines for bringing frivolous claims.

SB 97 and HB 145 are unnecessary and would severely limit the checks and balances necessary for a sound public process. Limiting public interest litigant status cuts the ability of Alaskans to participate in important decisions affecting us all.

Please oppose SB 97.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Davidson", with a long horizontal flourish extending to the right.

Matt Davidson  
Conservation Advocate

Alaskans building a better future.

## Points Supporting Bill Abrogating the "Public Interest Litigant" Doctrine

- This Bill abrogates the so-called "public interest litigant" doctrine. This doctrine has been created exclusively by the Alaska Supreme Court through judicial decisions. It provides special treatment for certain litigants chosen by the Supreme Court when it comes to the awarding of attorney fees and court costs.
  - In sum, should a "public interest litigant" prevail on any issue in a case, then that so called "public interest litigant" is entitled to an award of its full attorney fees and costs.
  - Conversely, should a "public interest litigant" lose its case, then it is immune from an award of attorney fees and costs against it.
  - This doctrine has been applied against the State and private parties being sued by a "public interest litigant".
- It is time for Legislature to step in and assert its authority over this area. The public interest litigant doctrine represents policy making by the Supreme Court on issues which are the province of the Legislature to decide – not the Supreme Court.
- This Bill "levels the playing field" and prohibits the courts from discriminating amongst litigants appearing in state courts. And it does so without amending existing Court Rules. Importantly, existing Court Rules – in particular Civil Rule 82 on attorney fee awards – provide the courts with the authority and discretion to tailor attorney fee awards, on a case-by-case basis, to protect litigants truly deserving of special consideration by the courts.
- Why should the "public interest litigant" doctrine be abrogated? Because it provides a perverse incentive for environmentalists and other interests opposed to development activities in Alaska to sue the State and potentially private companies doing business in the State to stop projects of great benefit to Alaskans.
  - The "public interest litigant" doctrine is tailor-made for environmentalists and other anti-development litigants, who automatically qualify as "public interest litigants" under this loose judicial doctrine.
  - These litigants face virtually no risk when bringing even the most frivolous challenge to a State-approved project: if they win on any issue, no matter how trivial, they "hit the jackpot" and receive an award of full attorney fees and costs. If they lose, they are immune from an award of fees or costs against them.

- Such decisions by the courts – which occur frequently – not only are costly to the State, they operate as a significant disincentive for responsible companies to do business in Alaska. Take Forest’s Redoubt Shoal development project in Cook Inlet.
  - First, Forest worked with State agencies to make the Redoubt project a model of environmentally responsible oil and gas development.
  - This was not good enough for environmentalists opposed to any oil and gas development in Cook Inlet, and one group – calling itself Cook Inlet Keeper – has been relentlessly attacking the project.
  - Its first challenge, to the exploration phase of the project, was rejected at the trial court but upheld, in part, by the Supreme Court. CIK ultimately received an award of attorney fees and costs exceeding \$100,000
    - I note, the Legislature promptly overruled the Supreme Court’s decision in favor of CIK, but CIK got to keep its money anyway.
    - Further, CIK’s challenge and the Supreme Court’s decision did nothing to increase protection for the environment; the case was a technical challenge to the conduct of the Alaska Coastal Management Program review.
  - Before that case was even over, CIK challenged the current production phase of operations, and “public interest litigant” fees received as a part of CIK’s challenge to the exploration phase are now funding the challenge to the production phase of the project
    - An injunction was entered against the project once already during the exploration phase. It was only temporary but it still cost Forest hundreds of thousands of dollars and caused Forest to lay off contractors and employees during the duration of the injunction.
    - Now, CIK is seeking another injunction to stop the production phase of the project.
- Thus, Forest’s experience is a prime example of why the Legislature should act now to remove this perverse incentive that fuels frivolous, obstructionist litigation against the State and companies seeking to do business in the state.
  - Critical juncture for Alaska -- North Slope production is falling and the State is feeling the pain of budget cuts

- The State should encourage responsible development, not discourage investments in Alaska's future by providing financial incentives for challenges to responsible projects in Alaska.
- Finally, as noted at the beginning of my comments, the existing Court Rules – which are unaffected by the Bill – provide the courts sufficient authority and discretion to protect litigants truly deserving special consideration by the courts.

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## ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) Resources  
 Committee on SB 97 Dated 3-28-03  
Committee Name  
Bill / Subject

The Council of Alaska Producers, a nonprofit organization representing most of the large mines in Alaska, strongly supports SB 97.

Once permitted by the appropriate state agencies, mining & development projects in Alaska rarely proceed without considerable delay due to litigation. Generally these lawsuits are filed with the sole purpose of delaying the project - with no risk to the organization filing the appeal, but with great risk to industry.

This legislation will inhibit frivolous litigation by ensuring there is a consequence to those who file such litigation.

SB 97 is critical to ensure and promote responsible development in the state of Alaska. The Council of Alaska Producers urges your support.

SIGNED:

Lorna Shaw

Testifier

Council of Alaska Producers

Representing

POB. 13726 Fldo AK 99707 490-2218

Address / Phone Number

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217 2nd Street, Suite 201  
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Anchorage, Alaska 99501  
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**SB 97 – Public Interest Litigants**  
Testimony by Pamela La Bolle, President

The Alaska State Chamber of Commerce, representing approximately 700 business members and 35 local chambers of commerce, offers the following comments in support of SB 97 regarding Public Interest Litigants.

The Public Interest Litigant is a special status granted to a certain group of Alaskans over the interests of other Alaskans. This status was not created by the elected representatives of Alaskans through the recognized public process of the legislature, but instead was created by the courts.

Under this special status, litigants are provided exemption from the requirements of Rule 82 (g) of the Alaska Rules of Civil Procedure that provides for the prevailing party in a civil procedure to recover a portion of its attorney fees. Under Rule 82, if the prevailing party is the defendant, they can recover 20-30% of the attorney fees incurred. The rationale, in addition to encouraging settlement, is to provide partial compensation to parties who are forced to go to litigation to defend their rights.

The Alaska State Chamber was among those who worked hard to bring Rule 82 into law, and it is our belief that it is fair to all. We believe that no groups, based on their political characteristics, should be accorded special treatment or immunity from Rule 82.

The public interest litigant doctrine came about in the 1990 case of *The Anchorage Daily News v. Anchorage School District* before the Alaska Supreme Court. Under this special status, the court determined that if the prevailing party is considered a public interest litigant, they are able to recover all of their attorney fees. If the public interest litigant loses, however, they do not have to pay any of the other parties' attorney's fees.

Some groups routinely challenge state resource development decisions and are granted the status of public interest litigant by the courts. These groups are often special interest groups posing as public trusts. Such challenges typically allege as many as 15 to 20 specific deficiencies in the state's administrative finding. When groups challenging resource development decisions prevail, they generally do so on just one or two issues, however they are typically awarded full costs and attorneys fees.

SB 97 will return fairness to the civil proceedings. Under Rule 82, the court is allowed to raise or lower the amount to be awarded in attorney's fees based upon established factors. The rule should be applied equally to all litigants.

We urge the committee to support SB 97.

**Subject: Please oppose SB 97**

**Date:** Sat, 05 Apr 2003 23:14:40 -0900

**From:** Jeff & Susan Sloss <jssloss@gci.net>

**To:** Senator\_Scott\_Ogan@legis.state.ak.us, Senator\_Tom\_Wagoner@legis.state.ak.us,  
Senator\_Fred\_Dyson@legis.state.ak.us, Senator\_Ralph\_Seekins@legis.state.ak.us,  
Senator\_Ben\_Stevens@legis.state.ak.us, Senator\_Gene\_Therriault@legis.state.ak.us

Dear Senators,

CSSB 97 would eliminate public interest litigant status, thereby holding losing plaintiffs liable for the government's attorney's fees and costs. Most public interest groups, and certainly most individuals in Alaska who might wish to bring valid public interest lawsuits, would be deterred from challenging the government in court because the financial risk would be too great.

This bill poses a very grave threat to one's ability to bring litigation in the future to defend Alaskans' constitutional rights against encroachments by State or local governments. The Alaska Constitution is worthless if there is no practical way that one can enforce it in the courts. These bills are obviously a legislative attempt to discourage public interest litigation and ensure that unconstitutional laws go unchallenged in court.

Please do not trample the Alaska Constitution; bury this bill now.

Sincerely, Jeff & Susan Sloss, 740 5th St., Juneau, AK 99801

Jeff and Susan Sloss <jssloss@gci.net> Jeff & Susan Sloss
--

**Subject:** CSSB 97

**Date:** Sun, 6 Apr 2003 10:54:15 -0800

**From:** "Louise Barnes" <lb114@worldnet.att.net>

**To:** <Senator\_Scott\_Ogan@legis.state.ak.us>, <Senator\_Tom\_Wagoner@legis.state.ak.us>, <Senator\_Fred\_Dyson@legis.state.ak.us>, <Senator\_Ralph\_Seekins@legis.state.ak.us>, <Senator\_Ben\_Stevens@legis.state.ak.us>, <Senator\_Gene\_Therriault@legis.state.ak.us>

Please vote to KILL this bill. Do not make it harder for us (the public you represent) to defend ourselves against possible wrong doing.  
Thank you very much.

Jennine Williamson  
2454 Killarney Way  
Fairbanks, AK 99709

**Subject: Opposition to CSSB 97**

**Date: Mon, 7 Apr 2003 10:37:43 -0800**

**From: Janel Wright <jwright@dlcak.org>**

**To: "Senator\_Scott\_Ogan@legis.state.ak.us" <Senator\_Scott\_Ogan@legis.state.ak.us>**

Dear Senator Ogan:

The Disability Law Center of Alaska wishes to express our opposition to CSSB 97, which will effectively eliminate the public interest litigant exception of Alaska Civil Rule 82. The Disability Law Center of Alaska is the Protection and Advocacy System designated to advocate on behalf of Alaskans with disabilities. An important component of our ability to effectively advocate on behalf of Alaskans with disabilities is judicious pursuit of state court remedies.

It is our belief that eliminating the current body of case law regarding allocation of attorney's fees in public interest litigation is both unnecessary and unwise. The rule that public interest litigants are not liable for attorney fees should they lose a lawsuit brought in good faith serves the important interest of ensuring access to the courthouse. If Alaskans faced an automatic penalty of paying 20 per cent of the defense's attorney fees upon losing an action brought in good faith, Alaskans will be chilled from seeking redress for grievances in which their direct financial stake is small in comparison to the cost of attorney fees. In our experience, the "public interest litigant exception" does not foster frivolous lawsuits. The Alaska Supreme Court has clearly stated that any lawsuit brought frivolously or vexatiously exposes both the attorney and the client to payment of the defense's attorney fees, including an award of full fees in egregious cases. As such, there is no real need for this bill.

Finally, we urge you to consider the unintended effect of CSSB 97. Alaskans with disabilities, in addition to public interest groups and most individuals who might be interested in bringing valid public interest lawsuits will be chilled from challenging the government in court because the financial risk will be much too high. Lawsuits involving questions of constitutional rights and rights granted by state and federal laws often do not implicate a direct financial interest of the litigant or litigants. Such lawsuits, when successful, have the impact of protecting the rights of society as a whole.

I urge you to vote against this bill to protect Alaskans with disabilities' access to the courts.

Very truly yours,  
DISABILITY LAW CENTER OF ALASKA

Janel L. Wright, Legal Director

Disability Law Center of Alaska  
3330 Arctic Blvd.  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002 Phone  
(907) 565-1000 Fax

**Subject:** CSSB 97 (SB 97)

**Date:** Fri, 4 Apr 2003 10:58:11 -0900

**From:** Jean Kollantai/CLIMB <climb@pobox.alaska.net>

**To:** Senator\_Scott\_Ogan@legis.state.ak.us

**CC:** Senator\_Tom\_Wagoner@legis.state.ak.us, Senator\_Fred\_Dyson@legis.state.ak.us,  
Senator\_Ralph\_Seekins@legis.state.ak.us, Senator\_Ben\_Stevens@legis.state.ak.us,  
Senator\_Gene\_Therriault@legis.state.ak.us

Our family strongly urges you \*not\* to pass out this bill, which would eliminate public interest litigant status. How many years now has someone(s) been trying to get this through??--at least 4 or 5 that we know of. We all know that valid public interest law suits, and court challenges to laws which may be unconstitutional, have become an integral part of what is supposed to be our democracy. Eliminating them doesn't even serve the long run interests of those who think this would be a convenience, let alone the rest of us. We are looking for some new things from you that truly speak to the challenges of our state, not the same old tired and dangerous ones.

Sincerely,  
Jean Kollantai  
Anchorage

**Subject: SB 97 as amended**

**Date: Sat, 5 Apr 2003 07:37:57 -0900**

**From: "David Allen" <david.allen@alaska.net>**

**To: <Senator\_Scott\_Ogan@legis.state.ak.us>**

Dear Sen. Ogan:

I want to let you know that as an Alaskan, I am more than willing to bear the cost of public-interest lawsuits. They do far more good than harm. Citizens need a way to bring the government to court, without facing fear of financial disaster. Please reject SB 97's elimination of public-interest litigant status.

Thank you.

David Allen  
Fairbanks

# TRUSTEES FOR ALASKA

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment

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1026 W. 4<sup>th</sup> Ave., Suite 201 Anchorage, AK 99501 (907) 276-4244 (907) 276-7110 Fax Email: ecolaw@trustees.org

March 28, 2003

Senate Resources Committee  
Juneau, Alaska 99811

My name is Deborah Greenberg. I am Executive Director of Trustees for Alaska, a non-profit public-interest law firm. I am here to testify in opposition to SB 97, the bill before you today. Please, forward this letter to committee members for their consideration and include this letter as written testimony for the record.

Since 1974, Trustees has represented environmental organizations, conservation groups, Alaska Native villages and nonprofit organizations, community groups, hunters, fishers and others who have concerns about Alaska's natural resources. We provide legal services that our clients cannot otherwise afford.

Public interest litigant fees were established in recognition that the public needed to have access to the courts to resolve matters of important public policy. The courts recognized that without the ability to receive public interest litigant fees, public interest suits would be cost prohibitive.

SB 97 bars all members of the public who seek to challenge a regulation adopted by the Departments of Fish and Game, Natural Resources and Environmental Conservation from collecting public interest litigant fees. At the same time, it allows those who would in the public interest, seek to challenge regulations adopted by other agencies to receive the fees.

Be aware that under the language of the bill, the members of the public who would be barred from their access to the courts, are not just our clients, but constituents in every district who have a public interest in challenging the regulations of these resource agencies.

In effect, any members of the public who care about how the state regulates its natural resources would have severely reduced access to the courts because of the unavailability of these fees.

We urge you not to bar your constituents from access to the courts to challenge bad natural resources regulations. Please, vote against SB 97.

GREATER \* FAIRBANKS  
**CHAMBER**  
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

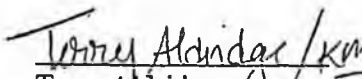
WHEREAS the Greater Fairbanks Chamber of Commerce Board of Directors has identified this legislative change to address public interest litigant and attorney fees as one of their top priorities for 2003.

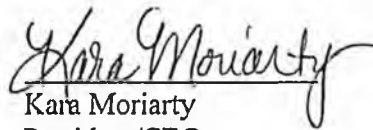
NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce Board of Directors fully supports Governor Frank Murkowski's initiative for modification to existing Alaska state statutes to specifically address public interest litigants and urge the 23<sup>rd</sup> Legislature its swift passage.

BE IT FURTHER RESOLVED that this resolution be distributed to:

Alaska State Legislature  
Governor Frank Murkowski

PASSED in Fairbanks, Alaska this 11<sup>th</sup> day of March, 2003 by the Greater Fairbanks Chamber of Commerce Board of Directors.

  
Terry Aldridge  
Board Chair

  
Kara Moriarty  
President/CEO

**Benefactors**

Alaska Airlines  
Alaska Communications Systems  
Alaska Railroad  
 Alyeska Pipeline Service Company  
AT&T Alascom  
BP Exploration (Alaska) Inc.  
CellularOne  
ConocoPhillips Alaska, Inc.  
CTG Alaska  
Denali State Bank  
Design Alaska  
Fairbanks Building & Construction Trades Council "The Unions"  
Fairbanks Natural Gas, LLC  
Fairbanks Urgent Care Center  
First National Bank Alaska  
Flowline Alaska  
Fort Knox Mine  
GCI  
Golden Heart Utilities  
Golden Valley Electric Association  
Guardian Flight, Inc.  
Key Bank of Alaska  
Mt. McKinley Bank  
North Star Computing  
Northrim Bank  
Santina's Flowers & Gifts  
Tanana Valley Clinic  
Third Sector Technologies, Inc.  
Totem Ocean Trailer Express  
Usibelli Coal Mine  
WebWeavers  
Wells Fargo Bank Alaska  
Wendy's  
Westmark Fairbanks Hotel & Conference Center  
Williams Alaska Petroleum

Introduced By: Governmental Affairs  
Date Introduced: March 11, 2003  
Date Passed: March 11, 2003  
Date Transmitted: March 11, 2003

Resolution 03-0311

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF  
COMMERCE TO SUPPORT THE PASSAGE OF A BILL RELATING TO  
PUBLIC INTEREST LITIGANTS AND ATTORNEY FEES**

WHEREAS a critical component to business development in the State of Alaska is ensuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay; and,

WHEREAS groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development with absolutely no financial downside to them if they lose the litigation; and,

WHEREAS those groups who regularly oppose business development are not simply concerned citizen groups but rather special interest groups supported financially by national and/or international organizations whose stated mission is to prevent development; and,

WHEREAS the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation; and,

WHEREAS legislation, such as Senate Bill 97 introduced by Governor Frank Murkowski, to modify Alaska's existing rules and regulations by eliminating public interest litigant status in appeals of Administrative decisions, in which the party was afforded an opportunity for public input and administrative appeal, and by awarding fees and costs to the prevailing party in such litigation would ensure fairness and a level playing field for all litigants; and,

WHEREAS an additional legislative provision to require disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative appeal would permit those defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support; and,

WHEREAS such legislation would inhibit frivolous litigation by ensuring that there is a consequence to those who file such litigation; and,

WHEREAS such legislation is critical to promoting and achieving responsible business development in the State of Alaska;

**Benefactors**

Alaska Airlines  
Alaska  
Communications  
Systems  
Alaska Railroad  
Alyeska Pipeline  
Service Company  
AT&T Alascom  
BP Exploration  
(Alaska) Inc.  
CellularOne  
ConocoPhillips  
Alaska, Inc.  
CTG Alaska  
Denali State Bank  
Design Alaska  
Fairbanks Building &  
Construction Trades  
Council "The Unions"  
Fairbanks Natural  
Gas, LLC  
Fairbanks Urgent  
Care Center  
First National Bank  
Alaska  
Flowline Alaska  
Fort Knox Mine  
GCI  
Golden Heart Utilities  
Golden Valley  
Electric Association  
Guardian Flight, Inc.  
Key Bank of Alaska  
Mt. McKinley Bank  
North Star Computing  
Northrim Bank  
Santina's Flowers & Gifts  
Tanana Valley Clinic  
Third Sector  
Technologies, Inc.  
Totem Ocean  
Trailer Express  
Usibelli Coal Mine  
WebWeavers  
Wells Fargo Bank Alaska  
Wendy's  
Westmark  
Fairbanks Hotel &  
Conference Center  
Williams Alaska  
Petroleum

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515

Regional Office:  
601 West 5<sup>th</sup> Ave., Suite 600  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643



**SB 97 – Public Interest Litigants**  
Testimony by Pamela La Bolle, President

The Alaska State Chamber of Commerce, representing approximately 700 business members and 35 local chambers of commerce, offers the following comments in support of SB 97 regarding Public Interest Litigants.

The Public Interest Litigant is a special status granted to a certain group of Alaskans over the interests of other Alaskans. This status was not created by the elected representatives of Alaskans through the recognized public process of the legislature, but instead was created by the courts.

Under this special status, litigants are provided exemption from the requirements of Rule 82 (g) of the Alaska Rules of Civil Procedure that provides for the prevailing party in a civil procedure to recover a portion of its attorney fees. Under Rule 82, if the prevailing party is the defendant, they can recover 20-30% of the attorney fees incurred. The rationale, in addition to encouraging settlement, is to provide partial compensation to parties who are forced to go to litigation to defend their rights.

The Alaska State Chamber was among those who worked hard to bring Rule 82 into law, and it is our belief that it is fair to all. We believe that no groups, based on their political characteristics, should be accorded special treatment or immunity from Rule 82.

The public interest litigant doctrine came about in the 1990 case of *The Anchorage Daily News v. Anchorage School District* before the Alaska Supreme Court. Under this special status, the court determined that if the prevailing party is considered a public interest litigant, they are able to recover all of their attorney fees. If the public interest litigant loses, however, they do not have to pay any of the other parties' attorney's fees.

Some groups routinely challenge state resource development decisions and are granted the status of public interest litigant by the courts. These groups are often special interest groups posing as public trusts. Such challenges typically allege as many as 15 to 20 specific deficiencies in the state's administrative finding. When groups challenging resource development decisions prevail, they generally do so on just one or two issues, however they are typically awarded full costs and attorneys fees.

SB 97 will return fairness to the civil proceedings. Under Rule 82, the court is allowed to raise or lower the amount to be awarded in attorney's fees based upon established factors. The rule should be applied equally to all litigants.

We urge the committee to support SB 97.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the (S) Resources  
 Committee on SB 97 Committee Name  
Bill / Subject Dated 3-28-03

The Council of Alaska Producers, a nonprofit organization representing most of the large mines in Alaska, strongly supports SB 97.

Once permitted by the appropriate state agencies, mining & development projects in Alaska rarely proceed without considerable delay due to litigation. Generally these lawsuits are filed with the sole purpose of delaying the project - with no risk to the organization filing the appeal, but with great risk to industry.

This legislation will inhibit frivolous litigation by ensuring there is a consequence to those who file such litigation.

SB 97 is critical to ensure and promote responsible development in the state of Alaska. The Council of Alaska Producers urges your support.

SIGNED: Lorna Shaw  
 Testifier  
Council of Alaska Producers  
 Representing  
POB. 73726 Fols AK 99707 490-2218  
 Address / Phone Number

# TRUSTEES FOR ALASKA

A Nonprofit, Public Interest Law Firm Providing Counsel to Protect Alaska's Environment

1026 W. 4th Ave., Suite #201 Anchorage, Alaska 99501 (907) 276-4244 (907) 276-7110 Fax Email: ucolaw@trustees.org

## FACSIMILE COVER SHEET

Number of Pages Sent (including cover page):

TO: LINDA HAYS (sp?)  
SEN. ORGAN'S OFFICE

Fax #: (907) 465-3285

FROM: DEBORAH L. GREENBERG

DATE: 4/1/03

RE: 2 pages including cover SB 97

Message: Thank you for your call. This is the written testimony I submitted for the record and referred to at the Sen. Resources Committee Hearing on Friday 3/28/03 on SB 97. Thank you for including it in the record and please do not hesitate to contact me with any questions.

*Deborah L. Greenberg*  
*D. Greenberg*

**PRIVILEGED & CONFIDENTIAL**

This message is intended for the addressee only. It may contain privileged and confidential information exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this document is strictly prohibited. If you have received this document in error, please call us immediately. Thank you.



**Wayne  
Anthony  
Ross**

Law Offices of

**ROSS & MINER**

A Professional Corporation

327 East Fireweed Lane, Suite 201

Anchorage, Alaska 99503

(907) 276-5307

(907) 276-6672 - FAX

Curtis W. Patteson, Paralegal

Wayne Anthony Ross  
Edward L. Miner  
Michael Graper  
Timothy Peters  
Vince Curry

8 April 2003

To Members of the 2003 Alaska Legislature:

Re: SB 97 and HB 145

Dear Legislator:

It is my understanding that the Alaska Legislature is considering Senate Bill 97 and House Bill 145 (or variants thereof) which would virtually eliminate the "public interest litigants" rule that shields Alaskans from punitive awards of attorneys fees when they act as private Attorneys General and bring suit to correct abuses of government. **These bills should be defeated in all their forms!**

I have participated, as an attorney and as a plaintiff, in a number of such suits.

In Citizens for the Preservation of the Kenai River, Inc. v. Sheffield, 758 P.2d 624 (Alaska 1988), my office represented a large number of power boating enthusiasts protesting a horse-power restriction on motor boats operating on the Kenai River. The State was trying to eliminate erosion to the banks of the Kenai caused by wakes from passing power boats. Although we pointed out that a faster boat that is able to travel "on the step" makes less wake than a slower boat that cannot "get on its step", we lost that suit. A few years ago, at least one State expert was quoted in the Daily News saying that we had been right about our position.

In McDowell v. State, 785 P.2d 1 (Alaska 1989), my office represented Mr. McDowell and several other plaintiffs in seeking to set aside the State's rural preference for Subsistence. The suit was brought on behalf of all Alaskans seeking to uphold Alaska's Constitution which provides for equal access to fish and wildlife resources in Alaska. We won that suit.

In Alaska Gun Collectors Association v. State of Alaska and Tony Knowles et al, I represented a group of Alaskans who objected to the Governor requiring that State surplus firearms be destroyed rather than sold at public auction. Suit was brought to seek an injunction prohibiting the destruction of such firearms. After some 50 firearms (some of which were highly collectable) were cut up with a welding torch, we amended our complaint to ask for monetary

8 April 2003

Page - 2 -

damages on behalf of the people of Alaska against the Governor, personally, for willful destruction of State property. When that happened, the Governor called a moratorium on the destruction of surplus guns. After the Legislature enacted legislation prohibiting such destruction<sup>1</sup>, the case settled with the Governor agreeing to end the destruction of surplus firearms, and the State paying a portion of my attorneys fees.

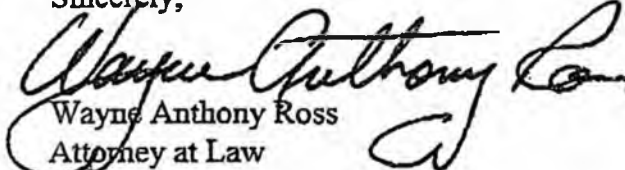
In several other cases I participated as plaintiff, along with other Republicans (and others) to challenge the State's campaign donation regulations. If I recall we won most, if not all, of those suits and all Alaskans (and especially Republican legislators and the Republican Party of Alaska) benefitted from such litigation.

**None of those lawsuits would have been pursued had the specter of substantial attorney fees loomed on the horizon in the event we had lost those cases!**

We ask that our citizens take an active interest in improving State government. Passage of this proposed legislation would have a chilling effect on such participation!

**I urge you, most strongly, to defeat SB 97 and HB145, and all of their substitutes and amendments!**

Sincerely,

  
Wayne Anthony Ross  
Attorney at Law

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<sup>1</sup>The legislation was spurred on by the publicity garnered from our lawsuit against the Governor.

SB

116

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 3/6/03

FURTHER: Finance

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

DATE TURNED  
 IN TO OFFICE: 4-7-03

Resources Committee considered SENATE BILL NO. 116

**SB 116 EMISSION CONTROL PERMIT PROGRAM**

"An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date."

and recommends:

- be replaced with S CS SB 116 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

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

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DEC	3/24/03		✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Joseph Jenkins</i>	✓			
<i>Ben Sturmer</i>	✓			
<i>Tom Wagoner</i>	✓			
<i>Secretary General</i>	✓			
<i>[Signature]</i>	✓			
<i>Fred Perry</i>	✓			
CHAIR: <i>Scott [Signature]</i>	✓			

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 116  
(S) Publish Date: 4/7/03

Revision Date/Time (Note if correction): March 26, 11:30a Dept. Affected: Environmental Conservation  
Title: Emission Control Permit Program BRU: Air & Water Quality  
Component: Air Quality  
Sponsor: Rules Committee  
Requester: Senate Resources Component No. 2061

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1093 Clean Air Protection Fund	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

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

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

This revised fiscal note is zero as the cost of reinvigorating the air permit program is in the Governor's FY 2004 operating budget request.

This legislation removes roadblocks preventing predictable, reliable and rational permitting, while the budget increment provides staff to execute these legislative reforms and issue permits in a timely manner.

The result is a permitting program that is predicable, protective of air quality and flexible enough to take advantage of fast changing business opportunities. This achieves the governor's goal of enhancing resource development while maintaining environmental protection.

Prepared by: John Kuterbach Phone 465-5103  
Division: Air & Water Quality Date/Time 3/26/03 11:42 AM  
Approved by: Ernesta Ballard, Commissioner Date 3/26/2003  
Agency: Department of Environmental Conservation

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 116  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
Title Emission Control Permit Program BRU Air & Water Quality  
Component Air Quality  
Sponsor Rules Committee  
Requester Senate Resources Component No. 2061

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006*	FY 2007*	FY 2008*	FY 2009*
Personal Services	507.3	507.3	507.3	507.3	507.3	507.3
Travel	33.7	33.7	33.7	33.7	33.7	33.7
Contractual	311.0	311.0	311.0	311.0	311.0	311.0
Supplies	4.0	4.0	4.0	4.0	4.0	4.0
Equipment	21.7	21.7	21.7	21.7	21.7	21.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>

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						
1093 Clean Air Protection Fund *	877.7	877.7	877.7	877.7	877.7	877.7
<b>TOTAL</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>	<b>877.7</b>

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	7	7	7	7	7	7
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill achieves protection of air quality while reforming the permit review process to make permitting predictable, reliable and rational. Specifically, the bill will allow:

- DEC's program to reflect national precedents, court case decisions, and permit best practices.
- Differentiate major source from minor source permits.
- Regulate minor sources in a simpler way, with reliance on standardized permit conditions that incorporate best management practices.
- Exempt sources from permitting to the extent allowed under federal law.
- Achieve efficiency through adopting federal rules by reference.
- Change the permit fee structure to make costs predictable and reliable for permittees.

Prepared by: John Kuterbach Phone 465-5103  
Division Air & Water Quality Date/Time 3/11/03 12:23 PM  
Approved by: Kurt Fredriksson Date 3/11/2003  
Agency Department of Environmental Conservation

(Revised 9/2002 OMB)

Enactment of this legislation will enable DEC to undertake a major reform of air permitting in Alaska in order to meet business needs for responsive and timely permitting. These statutory changes will make way for other details of the reform, which will be accomplished through regulatory changes over the next two years.

While reform will streamline the process and create new efficiencies, it alone will not obtain the full result desired. The ability to accomplish on-time permitting in a fast changing resource development climate can only be accomplished through a combination of process reform and staffing increases. Staffing increases for permitting and field functions, and the use of contractors to handle fluxes in permitting demands, are critical components to achieving overall success. Success will be attained when DEC becomes reliable and predictable in delivering the permit services so that business and industry can take full advantage of short windows for key development opportunities. Success will also mean that permits achieve the goal of environmental protection, are based on rational scientific decisions and rely on field verification by inspectors where inspectors work hand-in-hand with operators to solve problems and align the permits with operational realities.

Below is a description of the services and duties to be accomplished by the new positions.

- An environmental conservation manager will lead the design and implementation of a quality management system to reduce the variability in permits in both operating and construction permits.
- Two engineering associate positions will perform fieldwork to identify where projects differ significantly from submitted project plans or from permit provisions. This will improve permitting by using knowledge from field operations to modify the permitting process or permit requirements.
- An environmental specialist will develop new regulations for internal procedures and guidance to improve service delivery.
- An environmental specialist will lead the minor source permit program as well as assist in the development of new fast-track permitting tools.
- An environmental specialist will conduct the internal audits for the quality management system, which will reduce variability and provide useful metrics for judging the progress towards meeting performance measures as well as provide guidance on how to continue to improve the air permits program.
- An analyst programmer will develop and maintain an interactive internet based on-line permit application system so applicants and permittees can accomplish much of their business with DEC at their convenience via the internet.

Other budget line item funding will provide travel to conduct field inspections and provide technical assistance, funding for contractual assistance and funds for basic support costs and equipment.

In FY2006, after the major reform is accomplished, the accounting for the air permits will change to align with requirements of the Alaska Constitution and federal requirements. While the overall authorization to receive and expend user fees will not change, federal law requires that the accounting for operating permits be handled separate from funds for the construction permits and minor sources permits.

## Personal Services New Position Detail

Department of Environmental Conservation  
SB 116 Emission Control Permit Program

Scenario: All Fiscal Notes - DEC FY2004 (3085)

Component: Air Quality (2061)

BRU Name: Air and Water Quality (206)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#006	Analyst/Programmer III	FT	A	GP	Juneau	2A	18B	12.0		47,316	0	0	16,153	63,469

**Justification:**

The analyst programmer will provide the support to develop and maintain the database system for the interactive, electronic internet based on-line permit application system for the air permits section. In addition this position will develop new electronic tools to accomplish air permitting more efficiently and faster.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	63,469
<b>Total Funding:</b>		100.00%	63,469

18-#007	Engineering Associate	FT	A	GP	Anchorage	2A	20B	12.0		54,240	0	0	17,394	71,634
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**Justification:**

The environmental engineer associate position will perform field work to provide technical assistance as well as increase on-site inspections which provide facility operators verification of their compliance. This position will also identify where environmental impacts differ significantly from the original project plans. This will improve permitting by focusing permit conditions on operations which demonstrate problems rather than over-regulating all operations to prevent problems at a few sites.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

18-#008	Environmental Spec IV	FT	A	SS	Juneau	2A	20B	12.0		55,164	0	0	17,583	72,747
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**Justification:**

The environmental specialist will provide additional program development resources to accomplish permit streamlining regulation changes. This position will analyze necessary changes, draft regulation changes and manage the public process of adopting the changes. This position will also develop internal procedures and guidance to improve service delivery.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	72,747
<b>Total Funding:</b>		100.00%	72,747

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

## Personal Services New Position Detail

Department of Environmental Conservation  
SB 116 Emission Control Permit Program

Scenario: All Fiscal Notes - DEC FY2004 (3085)  
Component: Air Quality (2061)  
BRU Name: Air and Water Quality (206)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#009	Environmental Spec IV	FT	A	GP	Anchorage	2A	20B	12.0		54,240	0	0	17,394	71,634

**Justification:**

The environmental specialist will lead the development of a minor source permit program which will allow DEC to address pollution from minor sources in the most cost effective and responsible manner. Currently many minor sources must go through much of the same permitting process as major sources simply because there is no separate mechanism to address them. A minor source permit program will direct DEC's efforts to those minor sources that truly have the potential to harm public health and welfare. This position will also work with the analyst programmer on the development of new permitting tools and on the management of contracting tools.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

18-#010	Engineering Associate	FT	A	GP	Fairbanks	2B	20B	12.0		56,412	0	0	17,783	74,195
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**Justification:**

The environmental engineer associate will perform field work to provide technical assistance as well as increase on-site inspections which provide facility operators verification of their compliance. This position will also identify where environmental impacts differ significantly from the original project plans. This will improve permitting by focusing permit conditions on operations which demonstrate problems rather than over-regulating all operations to prevent problems at a few sites.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	74,195
<b>Total Funding:</b>		100.00%	74,195

18-#011	Environmental Spec IV	FT	A	GP	Anchorage	2A	20B	12.0		54,240	0	0	17,394	71,634
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**Justification:**

The environmental specialist will conduct the internal audits for the air permits quality management system. This will reduce variability and provide useful metrics for judging the progress towards meeting performance measures and provide guidance for continual improvement of the program.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	71,634
<b>Total Funding:</b>		100.00%	71,634

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

**Personal Services New Position Detail**

Department of Environmental Conservation  
SB 116 Emission Control Permit Program

Scenario: All Fiscal Notes - DEC FY2004 (3085)  
Component: Air Quality (2061)  
BRU Name: Air and Water Quality (206)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#012	Environ Conserv Mgr II	FT	A	SS	Anchorage	2A	22 B	12.0		62,988	0	0	18,985	81,973

**Justification:**

The environmental conservation manager will lead the design and implementation of a quality management system to reduce variability in permits. This responsibility will cover both the operating and the construction permits.

**Funding Detail:**

1093	Clean Air Protection Fund	100.00%	81,973
<b>Total Funding:</b>		<b>100.00%</b>	<b>81,973</b>

**Component Summary:**

Total New Positions: 7

Fund Description	Fund Percent	Fund Amount
1093 Clean Air Protection Fund	100.00%	507,286
<b>Total Funding:</b>	<b>100.00%</b>	<b>507,286</b>

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 31, 2003

**SUBJECT:** Emission Control Permit Program (CSSB 116( )); version "D")

**TO:** Senator Scott Ogan  
Attn: Linda

**FROM:** Terri Lauterbach  
Legislative Counsel *Terri Lauterbach*

Enclosed is a blank CS for SB 116, identical to CSHB 160(FIN).

Neither myself nor the revisor of statutes has attempted to do any of the following with respect to CSHB 160(FIN), so these things have also not been done with respect to CSSB 116( ):

- (1) check CFR cites in the bill for accuracy;
- (2) check U.S.C. cites in the bill for accuracy;
- (3) check the Alaska Statutes for any other locations where "facility," "contaminant," and "source" are used and consider whether they should be amended to be consistent with the rest of this bill;
- (4) check provisions within the bill to determine if they are consistent with each other;
- (5) check the Alaska Statutes to determine if there are any references to the statutes that would be repealed by sec. 60 of this bill that are not dealt with appropriately in the bill;
- (6) check the bill and the Alaska Statutes to determine if the renumbering of paragraphs or other provisions would necessitate changes in references to those paragraphs or other provisions that might occur in other statutes not dealt with in the bill; for instance, the sharp editor in our office has noticed that there are references to AS 46.14.140(a)(11) that are now probably wrong because of the renumbering in sec. 15 of this bill, but we have not attempted a correction, pending further instructions on whether and how to do so;
- (7) check the language of the bill for clarity or ambiguity;
- (8) check the statutory citations (AS cites) for accuracy;
- (9) check as to whether the defined terms added by sec. 59 or elsewhere are actually used in the bill or in the Alaska Statutes; or
- (10) other legal or substantive "checks."

Senator Scott Ogan  
March 31, 2003  
Page 2

Given the time of the session and the size and complexity of this bill, which was drafted outside of this office, I won't be able to get a good enough understanding of the subject matter to give you complete advice, but in two or three days, I could probably accomplish the types of legal checks described above in paragraphs (1)-(3), (5), (6), (8), and (9). Please let me know if you would like me to do these kinds of legal checks.

Please note, also, that the extensive use of C.F.R. cites in this bill presents two potential problems: (1) the cites will become meaningless if the office responsible for the Code of Federal Regulations renumbers the regulations in a recodification project or if the Environmental Protection Agency amends the regulations in a manner that makes the cites inaccurate; and (2) the laws may be challenged for excessive delegation of legislative authority to an outside entity because the EPA could change the contents of the cited regulations at any time, thereby changing the meaning of Alaska's laws without the Legislature's prior review. From a legal standpoint, it would be safer to refer, in each place where a C.F.R. cite is used, to the date when the contents match what the legislature intends, e.g. "the April 1, 2003, version of 40 C.F.R. 60.14." Alternatively, the bill could be drafted without C.F.R. cites and just use references to "federal regulations that implement 42 U.S.C. 7401-7671q (Clean Air Act) or "as required by federal regulations."

TML:mdr  
03-052.mdr

Enclosure

*Adopted*

23-GS1059D  
Lauterbach  
3/31/03

CS FOR SENATE BILL NO. 116( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the emission control permit program; relating to fees for that  
2 program and to the accounting of receipts deposited in the emission control permit  
3 receipts account; and providing for an effective date."

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

5 \* Section 1. AS 37.05.146(c) is amended by adding a new paragraph to read:

6 (77) emission control permit receipts account (AS 46.14.265).

7 \* Sec. 2. AS 37.10.058(2) is amended to read:

8 (2) "designated regulatory service" means a regulatory service  
9 provided under the following regulatory programs:

10 (A) control of solid waste facilities under AS 46.03.020(10)(D)

11 and (E);

12 (B) regulation of the disposal of waste into waters of the state  
13 under AS 46.03.100;

14 (C) certification of federal permits or authorizations under 33

1 U.S.C. 1341 (sec. 401, Clean Water Act);

2 (D) a coastal management consistency determination relating to  
3 a permit or authorization issued under a program listed in (A) - (C) of this  
4 paragraph, if the determination is made by the agency issuing the permit or  
5 authorization; [AND]

6 (E) any authorization for the use or appropriation of water  
7 under AS 46.15; and

8 (F) administration of emission control permits for the air  
9 quality control program under AS 46.14;

10 \* Sec. 3. AS 46.14.010(b) is amended to read:

11 (b) Unless the governor has determined that an emergency exists that requires  
12 emergency regulations under AS 44.62.250, the department may adopt the following  
13 types of regulations only after the procedures established in (a), (c), and (d) of this  
14 section and compliance with AS 46.14.015:

15 (1) a regulation that establishes an ambient air quality standard for an  
16 air pollutant [CONTAMINANT] for which there is no corresponding federal  
17 standard;

18 (2) a regulation that establishes an ambient air quality standard or  
19 emission standard that is more stringent than a corresponding federal standard;

20 (3) a regulation that establishes an equivalent emission limitation for a  
21 hazardous air pollutant [CONTAMINANT] for which the federal administrator has  
22 not adopted a corresponding maximum achievable control technology standard; or

23 (4) a regulation that regulates emissions from an emission unit [A  
24 SOURCE] or stationary source [FACILITY] or establishes an emission standard  
25 under the authority of AS 46.14.120(e) or 46.14.130(c)(2) [, 46.14.130(a)(3)(B), OR  
26 46.14.130(b)(4)(B)].

27 \* Sec. 4. AS 46.14.010(c) is amended to read:

28 (c) In preparation for peer review under AS 46.14.015 and before adopting a  
29 regulation described under (b) of this section, the department shall

30 (1) find in writing that exposure profiles and either meteorological  
31 conditions or emission unit [SOURCE] characteristics in the state or in an area of the

1 state reasonably require the ambient air quality standard, or emission standard to  
2 protect human health and welfare or the environment; this paragraph does not apply to  
3 a regulation under (b)(3) of this section;

4 (2) find in writing that the proposed standard or emission limitation is  
5 technologically feasible; and

6 (3) prepare a written analysis of the economic feasibility of the  
7 proposal.

8 \* Sec. 5. AS 46.14.010(d) is amended to read:

9 (d) Before adopting a regulation described in (b)(2) of this section, the  
10 department shall find in writing that exposure profiles and either meteorological  
11 conditions or emission unit [SOURCE] characteristics are significantly different in  
12 the state or in an area of the state from those upon which the corresponding federal  
13 regulation is based.

14 \* Sec. 6. AS 46.14.010(e) is amended to read:

15 (e) When incorporated into more than one permit, emission standards and  
16 limitations, emissions monitoring and reporting requirements, and compliance  
17 verification requirements that are generally applicable statewide or are generally  
18 applicable to individual emission unit [SOURCE] or stationary source [FACILITY]  
19 types shall be adopted in regulation unless they have been requested by the owner and  
20 operator to whom the permit is issued. The department shall, by regulation, adopt a  
21 standard, limitation, or requirement described in this [THE] subsection as soon as its  
22 general applicability is reasonably foreseeable.

23 \* Sec. 7. AS 46.14.010(f) is amended to read:

24 (f) An emission standard adopted by the department may be applicable to  
25 individual emission units [SOURCES] within a stationary source [FACILITY] or to  
26 all emission units [SOURCES] within a stationary source [FACILITY]. For  
27 purposes of determining compliance with applicable regulations and with permit  
28 limitations, the department may allow numerical averaging of the emissions of each  
29 air pollutant [CONTAMINANT] from several emission units [SOURCES] within a  
30 stationary source [FACILITY] if

31 (1) requested by the owner and operator; and

1 (2) allowed under 42 U.S.C. 7401 - 7671q (Clean Air Act), as  
2 amended, and regulations adopted under those sections.

3 \* Sec. 8. AS 46.14.020 is amended to read:

4 **Sec. 46.14.020. Classification of stationary sources [FACILITIES] or**  
5 **emission units [SOURCES]; reporting.** (a) The department, by regulation, may  
6 classify stationary sources [FACILITIES] or emission units [SOURCES] that, in the  
7 department's determination, are likely to cause or contribute to air pollution, according  
8 to the levels and types of emissions and other characteristics that relate to air quality.  
9 The department may make a classification under this subsection applicable to the state  
10 as a whole or to a designated area of the state. The department shall base the  
11 classifications on consideration of health, economic, and social factors, sensitivity of  
12 the receiving environment, and physical effects on property.

13 (b) The department or a local air quality control program authorized under  
14 AS 46.14.400 may require an owner and operator of a stationary source [FACILITY]  
15 or emission unit [SOURCE] classified under this section to report information to the  
16 department or the authorized local program concerning location, size, and height of  
17 stacks [CONTAMINANT OUTLETS] or area emission units [SOURCES], processes  
18 employed, fuels used, the nature and time periods or duration of emissions, and other  
19 information relevant to air quality that is available or reasonably capable of being  
20 calculated and compiled.

21 \* Sec. 9. AS 46.14.120(a) is amended to read:

22 (a) Before constructing, installing, modifying, [RECONSTRUCTING,] or  
23 establishing a stationary source [FACILITY] subject to AS 46.14.130(a), the owner  
24 and operator shall obtain a construction permit under this chapter.

25 \* Sec. 10. AS 46.14.120(b) is amended to read:

26 (b) Except when considered to be in compliance with this chapter under  
27 AS 46.14.275 or under a regulation adopted under AS 46.14.140(a)(11), the owner and  
28 operator shall obtain an operating permit under this chapter before operating a  
29 stationary source [FACILITY] subject to AS 46.14.130(b).

30 \* Sec. 11. AS 46.14.120(e) is amended to read:

31 (e) If the federal administrator exempts a stationary source from the

1 requirements of 42 U.S.C. 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner  
2 shall consider the factors used by the administrator in reaching that determination and,  
3 by regulation, shall issue a similar determination unless public health or air quality  
4 effects provide a reasonable basis to regulate the stationary source.

5 \* Sec. 12. AS 46.14.120 is amended by adding new subsections to read:

6 (f) The department may exempt or defer a stationary source from the  
7 requirement of AS 46.14.130(b) to the extent allowed under 40 C.F.R. 70.3(b).

8 (g) Before constructing, installing, modifying, operating, or establishing a  
9 stationary source subject to AS 46.14.130(c), the owner or operator shall obtain a  
10 minor permit under this chapter.

11 \* Sec. 13. AS 46.14.130 is amended to read:

12 Sec. 46.14.130. Stationary sources [FACILITIES] requiring permits. (a)  
13 The [BEFORE CONSTRUCTING, INSTALLING, MODIFYING,  
14 RECONSTRUCTING, OR ESTABLISHING A FACILITY, THE] owner and  
15 operator shall obtain a construction permit from the department before beginning  
16 actual construction of [IF THE FACILITY IS] any one of the following:

17 (1) a new major stationary source [FACILITY THAT EMITS OR  
18 HAS THE POTENTIAL TO EMIT 250 TONS PER YEAR (TPY) OR MORE OF A  
19 REGULATED AIR CONTAMINANT];

20 (2) a major modification [NEW FACILITY OF A TYPE  
21 CLASSIFIED UNDER AS 46.14.020 THAT EMITS OR HAS THE POTENTIAL TO  
22 EMIT 100 TPY OR MORE OF A REGULATED AIR CONTAMINANT];

23 (3) a project subject to the construction permitting requirements  
24 of 42 U.S.C. 7412(i) (Clean Air Act, sec. 112(i)) [A NEW FACILITY OF A TYPE  
25 CLASSIFIED UNDER AS 46.14.020

26 (A) AS HAVING THE POTENTIAL TO VIOLATE THE  
27 AMBIENT AIR QUALITY STANDARDS; OR

28 (B) UNDER A FINDING BY THE DEPARTMENT THAT  
29 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A  
30 REASONABLE BASIS TO REGULATE THE SOURCE;

31 (4) A NEW FACILITY THAT EMITS OR HAS THE POTENTIAL

1 TO EMIT 10 TPY OR MORE OF A HAZARDOUS AIR CONTAMINANT OR 25  
2 TPY OR MORE, IN THE AGGREGATE, OF TWO OR MORE HAZARDOUS AIR  
3 CONTAMINANTS;

4 (5) AN EXISTING FACILITY FOR WHICH

5 (A) A MODIFICATION IS PROPOSED THAT WOULD  
6 INCREASE ACTUAL EMISSIONS OF AN AIR CONTAMINANT BY AN  
7 AMOUNT EQUAL TO OR GREATER THAN THE EMISSION QUANTITY  
8 SET OUT IN REGULATIONS ADOPTED UNDER AS 46.14.010, 46.14.020,  
9 OR 46.14.140; OR

10 (B) RECONSTRUCTION IS PROPOSED].

11 (b) Except for the owner and operator of a stationary source exempted  
12 under AS 46.14.120(e) or (f), the [THE] owner and operator of a stationary source  
13 [FACILITY] shall obtain an operating permit from the department if the stationary  
14 source [FACILITY IS A FACILITY SUBJECT TO (a) OF THIS SECTION OR A  
15 FACILITY THAT]

16 (1) emits or has the potential to emit 100 TPY or more of a regulated  
17 air pollutant [CONTAMINANT];

18 (2) emits or has the potential to emit 10 TPY or more of a hazardous  
19 air pollutant [CONTAMINANT] or 25 TPY or more, in the aggregate, of two or more  
20 hazardous air pollutants [CONTAMINANTS];

21 (3) contains an emission unit [A SOURCE] subject to federal new  
22 source performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or  
23 national emission standards for hazardous air pollutants issued under 42 U.S.C. 7412  
24 (Clean Air Act, sec. 112); or

25 (4) contains another stationary source designated by

26 [(A)] the federal administrator by regulation [; OR

27 (B) THE DEPARTMENT UNDER A FINDING THAT  
28 PUBLIC HEALTH OR AIR QUALITY EFFECTS PROVIDE A  
29 REASONABLE BASIS TO REGULATE THE SOURCE].

30 \* Sec. 14. AS 46.14.130 is amended by adding a new subsection to read:

31 (c) Unless the owner and operator of a stationary source are required to obtain

1 a construction permit under (a) of this section, before constructing, installing,  
2 modifying, operating, or establishing a stationary source the owner and operator shall  
3 obtain a minor permit from the department if the stationary source is of a type  
4 classified under AS 46.14.020

5 (1) as having the potential to violate the ambient air quality standards;  
6 or

7 (2) under a finding by the department that public health or air quality  
8 effects provide a reasonable basis to regulate the stationary source.

9 \* Sec. 15. AS 46.14.140(a) is amended to read:

10 (a) The department shall adopt regulations to address substantive and  
11 procedural elements of the emission control permit program established under this  
12 chapter that are not addressed in statute, except elements that relate only to the internal  
13 management of the department and do not affect the public or govern the way the  
14 department deals with the public. The regulations must be reasonable and adequate,  
15 and provide flexibility in the operation of a stationary source [FACILITY] consistent  
16 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal  
17 regulations. Except for regulations concerning minor permits required under  
18 AS 46.14.130(c), the [THE] regulations must include

19 (1) a standard permit application form that meets the requirements of  
20 federal regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));

21 (2) monitoring, recordkeeping, and reporting requirements for  
22 facilities that are subject to AS 46.14.130(b), which must comply with the  
23 requirements established for state operating permit programs in 40 C.F.R. 70.6,  
24 but which may be modified to take into account this state's unique conditions;

25 (3) procedures for preparation and submission of a monitoring,  
26 reporting, and quality assurance plan and, if required, a compliance schedule  
27 describing how a permitted stationary source [FACILITY] will comply with the  
28 applicable requirements of this chapter;

29 (4) [(3)] procedures for

30 (A) specifying when permit applications and renewal requests  
31 are to be submitted;

1 (B) specifying the time duration for department review of  
2 permit applications;

3 (C) processing and reviewing an application;

4 (D) providing public notice, including opportunity for public  
5 comment and hearing; and

6 (E) issuing permits, including procedures for issuing permits  
7 for temporary operations or open burn activities;

8 (5) [(4)] reasonable standard permit conditions, including conditions  
9 for

10 (A) emission standards and limitations;

11 (B) monitoring, record keeping, and reporting for facilities  
12 subject to AS 46.14.130;

13 (C) inspection and entry;

14 (D) certification of corporate or other business organization  
15 reports;

16 (E) annual certification of compliance;

17 (F) excess emission or process deviation reporting; and

18 (G) equipment malfunctions and emergencies;

19 (6) [(5)] fees and procedures for collecting fees;

20 (7) [(6)] provisions addressing late payment or nonpayment of fees,  
21 which may include assessment of penalties and interest or refusal to issue, amend,  
22 modify, or renew an air quality control permit;

23 (8) [(7)] the duration of permits;

24 (9) [(8)] procedures for modifying or amending a permit that provide  
25 flexibility in the operation of the stationary source [FACILITY], including  
26 procedures to allow changes to a permitted stationary source [FACILITY] without  
27 requiring a permit modification, consistent with the purposes of this chapter and with  
28 42 U.S.C. 7401 - 7671q (Clean Air Act);

29 (10) [(9)] reasonable provisions for renewing, reopening, revoking and  
30 reissuing, and terminating a permit consistent with the purposes of this chapter and 42  
31 U.S.C. 7401 - 7671q (Clean Air Act);

1                    (11) [(10)] provisions allowing for physical or operational limitations  
2 that will reduce a stationary source's [FACILITY'S] emissions to levels below those  
3 that would make the stationary source [FACILITY] subject to part or all of  
4 AS 46.14.120 and 46.14.130;

5                    (12) [(11)] provisions authorizing stationary source [FACILITY]  
6 operation while a permit application is pending, consistent with 42 U.S.C. 7661b(d)  
7 (Clean Air Act, sec. 503(d));

8                    (13) [(12)] provisions for ensuring that compliance with an operating  
9 permit issued under this chapter will be considered to be compliance with 42 U.S.C.  
10 7661a (Clean Air Act, sec. 502) and other provisions of state or federal law  
11 specifically provided for by the department consistent with 42 U.S.C. 7401 - 7671q  
12 (Clean Air Act) and regulations adopted under state and federal law; and

13                    (14) [(13)] provisions allowing for certification of inspectors who  
14 evaluate compliance with the terms and conditions of a permit, order, regulation, or  
15 other provision of law authorized under this chapter.

16 \* Sec. 16. AS 46.14.140(b) is amended to read:

17                    (b) A permit issued under this chapter may not require a person to use

18                    (1) machinery, devices, or equipment of a particular type, from a  
19 particular supplier, or produced by a particular manufacturer; or

20                    (2) specific methods, processes, procedures, or designs for the  
21 management and operation of a stationary source [FACILITY] regulated under this  
22 chapter except to the extent that the federal administrator has

23                    (A) adopted a design, equipment work practice, or operational  
24 standard under 42 U.S.C. 7412(h), as amended, for the control of a hazardous  
25 air pollutant; or

26                    (B) approved an alternative hazardous air pollutant standard  
27 under 42 U.S.C. 7412(h)(3), as amended.

28 \* Sec. 17. AS 46.14.150(a) is amended to read:

29                    (a) The owner and operator of a stationary source [FACILITY] required to  
30 have an operating permit under this chapter shall submit the required application and  
31 other information required by the department by regulation no later than [(1)] 12

1 months after the date on which the stationary source [FACILITY] becomes subject to  
2 AS 46.14.120(b) [; OR (2) 60 DAYS BEFORE BEGINNING CONSTRUCTION OF  
3 A SOURCE IF THE FACILITY CONTAINING THE SOURCE IS A NEW  
4 FACILITY THAT IS NOT REQUIRED TO OBTAIN A CONSTRUCTION PERMIT  
5 UNDER AS 46.14.130(a), WHICHEVER IS EARLIER].

6 \* Sec. 18. AS 46.14.170(b) is amended to read:

7 (b) Notwithstanding (a) of this section, the department may establish a phased  
8 schedule for acting on operating permit applications submitted within 12 months  
9 following the date on which the federal administrator approves the state program  
10 under 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the  
11 applications submitted during the first 12 months of the state's operation of its permit  
12 program after federal approval will be acted on by the department during each of the  
13 first three 12-month periods following federal approval of the program. The  
14 department shall give priority to the issuance of permits for new stationary sources  
15 [FACILITIES] and modifications of existing stationary sources [FACILITIES].

16 \* Sec. 19. AS 46.14.170(c) is amended to read:

17 (c) Failure by the department to act within the time limits established in or  
18 under (a), [OR] (b), or (d) of this section is considered to be a final agency action, but  
19 only for the purpose of judicial review to determine whether the court will require that  
20 action be taken by the department.

21 \* Sec. 20. AS 46.14.170 is amended by adding a new subsection to read:

22 (d) The department shall issue or deny a minor permit under AS 46.14.130(c)  
23 within 30 days after the close of the public comment period or within 30 days after  
24 receipt of the complete application by the department if a public comment period is  
25 not required under this chapter.

26 \* Sec. 21. AS 46.14.180 is amended to read:

27 **Sec. 46.14.180. Monitoring.** Monitoring by the owner and operator of stack  
28 emissions or ambient air quality shall be required by the department only for purposes  
29 of demonstrating compliance with applicable permit program requirements.  
30 Monitoring requirements must be reasonable and based on test methods, analytical  
31 procedures, and statistical conventions approved by the federal administrator or the

1 department or otherwise generally accepted as scientifically competent. Unless  
2 otherwise agreed to by the owner and operator and the department,

3 (1) the department may not require an owner and operator of an  
4 emission unit [A SOURCE] to monitor emissions or ambient air quality solely for the  
5 purpose of scientific investigation or research; and

6 (2) monitoring activities must be consistent with the applicable  
7 emission standards and other permit or permit application requirements.

8 \* Sec. 22. AS 46.14.190 is amended to read:

9 **Sec. 46.14.190. Single permit.** (a) Except as provided in (b) of this section,  
10 the department shall issue only a single operating permit to a stationary source  
11 [FACILITY], regardless of whether the stationary source [A FACILITY] contains a  
12 single emission unit [SOURCE] or multiple emission units [SOURCES].

13 (b) The department may, upon request of a stationary source [FACILITY]  
14 owner or operator, issue more than one permit for the stationary source [A  
15 FACILITY]. Substantive and procedural requirements otherwise applicable to a  
16 stationary source [FACILITY] remain applicable regardless of whether the  
17 stationary source [FACILITY] owner and operator apply for one or more permits.

18 \* Sec. 23. AS 46.14.200 is amended to read:

19 **Sec. 46.14.200. Review of permit action.** A person who has a private,  
20 substantive, legally protected interest under state law that may be adversely affected  
21 by the permit action, the owner and operator, or, if a public comment process is  
22 required or solicited, a person who participated in the public comment process may  
23 request an adjudicatory hearing under the department's adjudicatory hearing  
24 procedures. After the issuance of an adjudicatory hearing decision, a party to the  
25 hearing may obtain judicial review of that decision as provided in the Alaska Rules of  
26 Appellate Procedure.

27 \* Sec. 24. AS 46.14.210 is amended to read:

28 **Sec. 46.14.210. General operating permits.** After notice and opportunity for  
29 public comment and hearing, the department may, unless the permit is disapproved by  
30 the federal administrator, establish a general operating permit that would be applicable  
31 to more than one stationary source [FACILITY] determined by the department to be

1 similar in emission unit [SOURCE] structure. A general operating permit must  
2 contain provisions that meet the requirements of this chapter that are applicable to  
3 operating permits. A general operating permit issued to a particular person takes  
4 effect when the person's application is determined to be complete unless the  
5 department notifies the applicant that the general permit is not applicable to the  
6 person's stationary source [FACILITY].

7 \* **Sec. 25.** AS 46.14 is amended by adding a new section to read:

8 **Sec. 46.14.211. General minor permits.** After notice and opportunity for  
9 public comment and hearing, the department may establish a general minor permit that  
10 would be applicable to more than one stationary source determined by the department  
11 to be similar in structure. If authorized by the department, a permit issued under this  
12 section may be valid for multiple locations in this state. A general minor permit must  
13 contain provisions that meet the requirements of this chapter that are applicable to a  
14 minor permit. *smaller see last version*

15 \* **Sec. 26.** AS 46.14.215 is amended to read:

16 **Sec. 46.14.215. Temporary operations.** For purposes of AS 46.14.130(b).  
17 the [THE] department may issue a single operating permit under AS 46.14.170,  
18 authorizing a stationary source [FACILITY] to operate at specific multiple locations  
19 in the state for temporary periods of time. A permit described in this section is valid  
20 only for the specific locations identified in the application and authorized by the  
21 department. The department may not issue a permit under this section unless the  
22 permit contains conditions that will ensure compliance with this chapter at each  
23 authorized location, including compliance with ambient air quality standards and  
24 applicable increment or visibility requirements adopted under this chapter. A permit  
25 under this section must require the owner and operator to notify the department at least  
26 10 [30] days before a change in location of a stationary source [FACILITY]  
27 permitted under this section.

28 \* **Sec. 27.** AS 46.14.240(a) is amended to read:

29 (a) The owner or operator of a stationary source [FACILITY] who is  
30 required to apply for a permit under AS 46.14.130 shall pay to the department all  
31 assessed permit administration fees established under (b) of this section except that the

1 person named in a permit issued under AS 46.14.170 shall pay assessed permit  
2 administration fees incurred after the date the permit is issued.

3 \* Sec. 28. AS 46.14.240(b) is repealed and reenacted to read:

4 (b) The department shall establish by regulation permit administration fees in  
5 accordance with AS 37.10.050 - 37.10.058.

6 \* Sec. 29. AS 46.14.240(c) is amended to read:

7 (c) In (a) and (b) of this section, "permit administration fees" are fees assessed  
8 to recover costs incurred by the department and other state or local governmental  
9 agencies, to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal  
10 regulations implementing that provision, for the following services to a specific  
11 stationary source [FACILITY] that are performed in order to implement the permit  
12 program established under this chapter:

13 (1) providing preapplication consultation, assistance, and completeness  
14 review of applications for a permit, permit amendment, permit modification, or  
15 renewal, except as provided in (d) of this section;

16 (2) reviewing or assisting in preparation of stationary source  
17 [FACILITY] specific permit support documents, including on-site evaluations, except  
18 as provided in (d) of this section;

19 (3) receiving, reviewing, preparing, processing, and issuing permits,  
20 permit amendments, modifications, reopenings, renewals and revocations, and  
21 reissuance;

22 (4) preparing general operating permits under AS 46.14.210; however,  
23 costs must be allocated on an equitable basis to each stationary source [FACILITY]  
24 covered by the general operating permit;

25 (5) performing stationary source [FACILITY] inspections and  
26 compliance evaluations;

27 (6) reviewing, compiling, and reporting stationary source  
28 [FACILITY] specific emission, ambient monitoring, or process measurement data;

29 (7) preparing, evaluating, or processing plans or documents to obtain  
30 stationary source [FACILITY] compliance or rectify noncompliance with permit  
31 terms and conditions, but not including any enforcement actions; and

1 (8) assessing and collecting delinquent permit administration fees and  
2 emission fees.

3 \* Sec. 30. AS 46.14.240(d) is amended to read:

4 (d) Costs incurred by the department and other state or local governmental  
5 agencies that are assessed against small business [FOR SERVICES DESCRIBED  
6 IN (c)(1) - (2) OF THIS SECTION TO] facilities that qualify for assistance under  
7 AS 46.14.300 - 46.14.310 shall be recovered from emission fees under  
8 AS 46.14.250(h)(2) for the following services:

9 (1) providing preapplication consultation, assistance, and  
10 completeness review of applications for a permit, an amendment, a permit  
11 modification, or a renewal of a permit;

12 (2) reviewing or assisting in the preparation of specific documents  
13 to support a permit for a stationary source; the documents described in this  
14 paragraph include on-site evaluations.

15 \* Sec. 31. AS 46.14.250 is amended to read:

16 Sec. 46.14.250. Emission fees. (a) A person named as permittee in a permit  
17 issued under this chapter [AS 46.14.170] shall pay to the department all assessed  
18 emission fees established under this section.

19 (b) The department shall establish by regulation an emission fee rate. The rate  
20 shall be set on the basis of dollars per ton of air pollutant [CONTAMINANT]  
21 emitted. The department shall assess emission fees annually on or before July 1 based  
22 on a stationary source's [FACILITY'S] estimated assessable emissions for the  
23 subsequent fiscal year. The department may allow installment payments of assessed  
24 emission fees.

25 (c) For a stationary source [FACILITY] that begins operation during a fiscal  
26 year, the department shall prorate the first year's fee to cover the time period occurring  
27 before the next annual payment date. The owner or operator shall pay the initial  
28 emission fee upon commencement of lawful stationary source [FACILITY]  
29 operation unless authorized to pay by installments under (b) of this section. The first  
30 year's emission fee may not duplicate a fee paid by a permittee under AS 44.46.025  
31 for the same emission units [SOURCES] for the same time period. If the fees would

1 otherwise be duplicative, the department shall provide a credit toward the emission fee  
2 in the amount of the unused balance of the fee collected under AS 44.46.025. The  
3 unused balance to be credited shall be based on prorating the total original fee under  
4 AS 44.46.025 for the time period for which an emission fee applies.

5 (d) The department shall design the emission fee rate to distribute the total  
6 annual incurred costs described under (h) of this section in a manner so that each  
7 permittee is assessed an annual emission fee that reflects an equitable apportionment  
8 of the fees paid by each stationary source [FACILITY] type, size, or category. In  
9 making an apportionment under (f)(6) of this section, the department shall consider  
10 factors such as exemptions or reduced rates for small amounts of emissions, limits  
11 upon assessable emissions, exempting small business facilities from the costs of the  
12 small business assistance program established under AS 46.14.300, air pollution  
13 prevention efforts, and other factors that may ensure fair distribution of the costs  
14 described under (h) of this section.

15 (e) The department shall set the initial fee rate for the first two years following  
16 approval of the permit program under this chapter by the federal administrator on the  
17 basis of dollars per ton of assessable emissions. In calculating assessable emissions for  
18 the purpose of this subsection, the department may not include an amount in excess of  
19 4,000 tons per year of an air pollutant [CONTAMINANT] not defined as a regulated  
20 pollutant under 42 U.S.C. 7661a(b)(3)(B)(ii) (Clean Air Act, sec. 502 (b)(3)(B)(ii)).

21 (f) After the two years described in (e) of this section, the department shall set  
22 the emission fee rate in regulation to implement the policy established in (d) of this  
23 section. The department shall base the regulation on the findings of a report, which  
24 the department shall make available to the public with proper notice before adoption  
25 of the regulation, that examines

- 26 (1) fees assessed;  
27 (2) alternative fee rates or formulas;  
28 (3) types, sizes, or categories of stationary sources [FACILITIES],  
29 their respective emission quantities, and their previous or proposed fee burden;  
30 (4) apparent inequities encountered in the initial fee rate;  
31 (5) total costs incurred or anticipated to be incurred under (h) of this

1 section; and

2 (6) other factors that ensure fair distribution of the costs described in  
3 (h) of this section.

4 (g) The department shall periodically, and at least every four [THREE] years,  
5 evaluate the fee rate set under this section to determine if it is responsive to the policy  
6 established in (d) of this section and shall provide its findings in a report.

7 (h) In this section,

8 (1) "assessable emission" means the quantity of each air pollutant  
9 [CONTAMINANT] for which emission fees are assessed and is the lesser of

10 (A) the stationary source's potential to emit [ANNUAL  
11 RATE OF EMISSIONS], in tons per year, [OF] each air pollutant  
12 [CONTAMINANT AUTHORIZED BY THE FACILITY'S OPERATING  
13 PERMIT]; or

14 (B) the projected annual rate of emissions, in tons per year, of  
15 each air pollutant [CONTAMINANT] by the stationary source [FACILITY]  
16 based upon previous actual annual emissions if the permittee can demonstrate  
17 to the department its previous actual annual rate of emissions through  
18 monitoring, modeling, calculations, or other method acceptable to the  
19 department;

20 (2) "emission fees" mean fees assessed to recover costs incurred by the  
21 department and other state or local governmental agencies, to the extent required  
22 under 42 U.S.C. 7661a(b)(3)(A) and federal regulations implementing that provision,  
23 for execution of the permit program established under this chapter that are generally  
24 not associated with service provided to a specific stationary source [FACILITY],  
25 including the costs incurred by the department or a local air quality program to comply  
26 with AS 46.14.010 - 46.14.015; the costs may include rent, utilities, permit program  
27 management, administrative and accounting services, and other costs as identified by  
28 the department in regulations; the fees shall also be sufficient to recover the cost of the  
29 small business assistance program under AS 46.14.300 - 46.14.310.

30 \* Sec. 32. AS 46.14.250(h)(2) is amended to read:

31 (2) "emission fees" mean fees assessed to recover costs incurred by the

1 department and other state or local governmental agencies for the implementation of  
2 minor permits, for the implementation of construction permits, and for operating  
3 permits [,] to the extent required under 42 U.S.C. 7661a(b)(3)(A) and federal  
4 regulations implementing that provision, for execution of the permit program  
5 established under this chapter that are generally not associated with service provided  
6 to a specific facility, including the costs incurred by the department or a local air  
7 quality program to comply with AS 46.14.010 - 46.14.015; the costs may include rent,  
8 utilities, permit program management, administrative and accounting services, and  
9 other costs as identified by the department in regulations; the fees shall also be  
10 sufficient to recover the cost of the small business assistance program under  
11 AS 46.14.300 - 46.14.310.

12 \* **Sec. 33.** AS 46.14.260(b) is amended to read:

13 (b) The money deposited into the clean air protection fund may only be used  
14 to cover the reasonable direct and indirect costs required to support the permit  
15 program under this chapter and the activities of the small business assistance program  
16 that are directed at stationary sources [FACILITIES] subject to this chapter, not  
17 including court costs or other costs associated with an enforcement action.

18 \* **Sec. 34.** AS 46.14 is amended by adding a new section to read:

19 **Sec. 46.14.265. Emission control permit receipts account.** (a) The  
20 emission control permit receipts account is established in the state treasury. Under  
21 AS 37.05.146(c), money received by the department in payment of fees under  
22 AS 46.14.240 and 46.14.250 and under regulations adopted under AS 46.14.140, other  
23 than fees described in AS 46.14.260(a), shall be deposited in the account.  
24 Appropriations from the account are not made from the unrestricted general fund.

25 (b) Nothing in this section creates a dedicated fund.

26 \* **Sec. 35.** AS 46.14.280(a) is amended to read:

27 (a) After 30 days' written notice to the permittee, the department

28 (1) may terminate, modify, or revoke and reissue a construction or  
29 operating, or minor permit if the department finds that

30 (A) the permit was obtained by misrepresentation of material  
31 fact or by failure of the owner and operator to disclose fully the facts relating

1 to issuance of the permit;

2 (B) the permittee has violated this chapter, a regulation, a  
3 judicial or administrative order, or a material term or condition of a permit,  
4 approval, or acceptance issued under this chapter; or

5 (C) the permittee has failed to construct or modify a stationary  
6 source [FACILITY] within the time period specified in a construction permit,  
7 if any, required under AS 46.14.130(a);

8 (2) may modify, or revoke and reissue a construction, [OR] operating,  
9 or minor permit if the department finds that

10 (A) the permit contains a material mistake; or

11 (B) there has been a material change in the quantity or type of  
12 air pollutant [CONTAMINANT] emitted from the stationary source  
13 [FACILITY]; or

14 (3) shall reopen a permit issued under this chapter

15 (A) based on a determination of the federal administrator or the  
16 department that the permit must be revised to comply with 42 U.S.C. 7401-  
17 7671q (Clean Air Act) and regulations adopted thereunder; or

18 (B) to incorporate changes in law, or to impose equivalent  
19 emission limitations, that become applicable after the permit is issued if the  
20 permit is issued to a major stationary source [FACILITY] and has a  
21 remaining duration of three or more years; the department shall make revisions  
22 allowed under this subparagraph as soon as practicable, but, regarding a  
23 change in law, no later than 18 months after the change in law takes effect; the  
24 department may not reopen the permit of a major stationary source  
25 [FACILITY] under this subparagraph if the change in law is not effective until  
26 after the date that the permit expires.

27 \* Sec. 36. AS 46.14.285(a) is amended to read:

28 (a) A permittee may request

29 (1) a permit amendment that provides for administrative changes to a  
30 permit that do not result in material changes in permit terms or conditions, such as  
31 changes in the name of the owner or operator, mailing address, registered agent, or

1 assessable emissions;

2 (2) an expedited authorization for minor changes in permit terms and  
3 conditions that provide for flexibility in the operation of a stationary source  
4 [FACILITY] consistent with 42 U.S.C. 7661a(b)(10) (Clean Air Act, sec. 502(b)(10)),  
5 and regulations adopted under that paragraph; the department may adopt regulations  
6 that include procedures under which the public may participate when an expedited  
7 authorization is requested under this paragraph; or

8 (3) a modification of a permit to authorize significant changes in  
9 permit terms and conditions consistent with this chapter and regulations adopted under  
10 AS 46.14.140.

11 \* Sec. 37. AS 46.14.290 is amended to read:

12 **Sec. 46.14.290. Permit as shield.** (a) To the extent allowed under 42 U.S.C.  
13 7661c(f) (Clean Air Act, sec. 504(f)), a permittee is considered in compliance with  
14 applicable requirements of this chapter, regulations adopted under this chapter and 42  
15 U.S.C. 7401 - 7671q (Clean Air Act) and regulations adopted under it, if

16 (1) the applicable requirements are included and specifically identified  
17 in the owner or operator's permit; or

18 (2) the requirements are determined in writing not to be applicable to  
19 the permitted stationary source [FACILITY]; a determination made under this  
20 paragraph shall be included in the permit.

21 (b) This section does not alter or affect

22 (1) the owner's and operator's obligation to comply with an emergency  
23 order issued under AS 46.03.820 or 42 U.S.C. 7603 (Clean Air Act, sec. 303);

24 (2) the liability of an owner and operator for a violation of applicable  
25 requirements of law before or at the time of permit issuance; or

26 (3) the ability of the department to obtain information from an owner  
27 or operator of a stationary source [FACILITY] under AS 46.14.020(b).

28 \* Sec. 38. AS 46.14.300(c) is amended to read:

29 (c) Except as provided in AS 46.14.310(b), the department shall provide  
30 assistance as described in (b) of this section to a requesting stationary source  
31 [FACILITY] that is not a small business concern as defined in 15 U.S.C. 631 but that

1 is subject to the requirements of this chapter if the legislature appropriates money from  
2 the general fund for this purpose.

3 \* **Sec. 39.** AS 46.14.400(c) is amended to read:

4 (c) If the department finds that the location, character, or extent of particular  
5 concentrations of population, air pollutant emission units [CONTAMINANT  
6 SOURCES], the geographic, topographic, or meteorological considerations, or a  
7 combination of these factors make impracticable the maintenance of appropriate levels  
8 of air quality without an areawide air pollution control program, the department may  
9 determine the boundaries within which a local air quality control program is necessary  
10 and direct that a local air quality control program spanning those boundaries is the  
11 only acceptable alternative to direct state administration.

12 \* **Sec. 40.** AS 46.14.400(f) is amended to read:

13 (f) A municipality or local air quality district's program may, upon a finding  
14 by the local agency and an affirmative agreement by the department, establish a more  
15 stringent requirement than the stationary emission unit [SOURCE] permit program  
16 authorized under this chapter if public health or air quality effects provide a reasonable  
17 basis to regulate the emission unit [SOURCE] with the additional or more stringent  
18 requirement and the municipality or district has used procedures substantially  
19 equivalent to those required under AS 46.14.010 - 46.14.015 before establishing the  
20 more stringent requirement. This subsection does not prohibit a municipality or local  
21 air quality control district from establishing a mobile source emissions program more  
22 stringent than the state program without making findings of public health or air quality  
23 effects or using procedures substantially equivalent to those required under  
24 AS 46.14.010 - 46.14.015. In this subsection, "mobile source" does not include tank  
25 vessels or other watercraft.

26 \* **Sec. 41.** AS 46.14.410(e) is amended to read:

27 (e) If the department finds that control of a particular class of stationary  
28 source [FACILITY] or emission unit [SOURCE], because of its complexity or  
29 magnitude, is beyond the reasonable capability of the municipality or the local air  
30 quality district or may be more efficiently and economically controlled at the state  
31 level, the department may assume and retain jurisdiction over the class of stationary

1        source [FACILITY] or emission unit [SOURCE]. Classifications under this  
2 subsection may be based on the nature of stationary sources [FACILITIES] or  
3 emission units [SOURCES] involved, their size relative to the size of the  
4 communities in which they are located, or another basis established by the department.

5 \* Sec. 42. AS 46.14.500(b) is amended to read:

6            (b) In adopting regulations under this section, the department shall ensure that  
7 stationary sources [FACILITIES] located within 25 miles of the seaward boundary of  
8 the state are subject to the same air quality control requirements that would be  
9 applicable if the stationary source [FACILITY] were located in the corresponding  
10 onshore area. For purposes of this subsection, stationary sources [FACILITIES]  
11 located within 25 miles of the seaward boundary of the state include a vessel servicing  
12 or associated with the stationary source [FACILITY] while at the stationary source  
13 [FACILITY] or en route to or from the stationary source [FACILITY] and within 25  
14 miles of the stationary source [FACILITY].

15 \* Sec. 43. AS 46.14.500(c) is amended to read:

16            (c) In this section, "corresponding onshore area" means, with respect to a  
17 stationary source [FACILITY] located within 25 miles of the seaward boundary of  
18 the state, the onshore attainment or nonattainment area that is closest to the stationary  
19 source [FACILITY], unless the commissioner determines that another area with more  
20 stringent requirements relating to control and abatement of air pollution may  
21 reasonably be expected to be affected by emissions from the offshore stationary  
22 source [FACILITY]; this determination shall be based on the potential for air  
23 pollutants [CONTAMINANTS] from the stationary source [FACILITY] to reach  
24 the other onshore area and the potential of the air pollutants [CONTAMINANTS] to  
25 affect the efforts of the other onshore area to attain or maintain a federal ambient air  
26 quality standard set under 42 U.S.C. 7470 - 7492 (Title I, Part C, Clean Air Act) or a  
27 state equivalent.

28 \* Sec. 44. AS 46.14.515(a) is amended to read:

29            (a) An officer or employee of the department designated by the commissioner  
30 or an inspector authorized by the commissioner and certified under regulations  
31 adopted under AS 46.14.140(a)(13) may, upon presentation of credentials and at

1 reasonable times with the consent of the owner or operator, enter upon or through any  
2 premises of a stationary source [FACILITY] regulated under this chapter to

3 (1) inspect and copy any records required to be maintained;

4 (2) inspect any emission unit [SOURCE], monitoring equipment, or  
5 method required to be used; or

6 (3) sample any emissions that the owner and operator of the stationary  
7 source [FACILITY] is required to sample.

8 \* Sec. 45. AS 46.14.540(a) is amended to read:

9 (a) When the commissioner finds that an act of God, act of war, act of  
10 terrorism, or similar catastrophe necessitates emergency use of an unpermitted  
11 emission unit [SOURCE] or emergency use of a permitted emission unit [SOURCE]  
12 in a manner not authorized by the permit, the commissioner may waive procedural  
13 requirements of this chapter and issue an order to authorize emergency use of the  
14 emission unit [SOURCE]. When acting under this section, the commissioner shall  
15 impose conditions necessary to protect life, human health, welfare, property, and the  
16 environment and may impose other conditions the commissioner finds necessary and  
17 appropriate.

18 \* Sec. 46. AS 46.14.550 is amended to read:

19 **Sec. 46.14.550. Responsibilities of owner and operator; agent for service.**  
20 Notwithstanding use of the conjunctive or disjunctive in a provision of this chapter,  
21 before issuance of a permit under this chapter [AS 46.14.170] both the owner and  
22 operator of a stationary source [FACILITY] are responsible for compliance with this  
23 chapter and regulations adopted under this chapter. If the owner and operator of the  
24 stationary source [FACILITY] are separate persons, only one person is required to  
25 discharge a specific responsibility. After issuance of a permit under this chapter  
26 [AS 46.14.170], only the permittee is responsible for permitted operations. The  
27 permittee shall have a designated agent for service of process in the state.

28 \* Sec. 47. AS 46.14.560 is amended to read:

29 **Sec. 46.14.560. Unavoidable malfunctions and emergencies.** Excess  
30 emissions caused by an unavoidable emergency, malfunction, or nonroutine repairs of  
31 an emission unit [A SOURCE] including pollution control equipment or process

1 equipment constitute an affirmative defense, when asserted under regulations adopted  
2 under AS 46.14.140, to an action brought for noncompliance with a technology-based  
3 emission standard. This section does not limit the department's power to enjoin the  
4 emission or require corrective action. This provision is in addition to any emergency  
5 or upset provision contained in an applicable requirement.

6 \* **Sec. 48.** AS 46.14.990(2) is amended to read:

7 (2) "ambient air" has the meaning given in 40 C.F.R. 50.1 [MEANS  
8 THAT PORTION OF THE ATMOSPHERE, EXTERNAL TO BUILDINGS, TO  
9 WHICH THE GENERAL PUBLIC HAS ACCESS];

10 \* **Sec. 49.** AS 46.14.990(5) is repealed and reenacted to read:

11 (5) "construction" has the meaning given in 40 C.F.R. 51.166(b);

12 \* **Sec. 50.** AS 46.14.990(9) is amended to read:

13 (9) "emission" means a release of one or more air pollutants  
14 [CONTAMINANTS] to the atmosphere;

15 \* **Sec. 51.** AS 46.14.990(10) is repealed and reenacted to read:

16 (10) "emission limitation" and "emission standard" have the meaning  
17 given in 40 C.F.R. 51.100;

18 \* **Sec. 52.** AS 46.14.990(13) is repealed and reenacted to read:

19 (13) "fugitive emissions" has the meaning given in 40 C.F.R.  
20 51.166(b);

21 \* **Sec. 53.** AS 46.14.990(14) is amended to read:

22 (14) "hazardous air pollutant [CONTAMINANT]" means a pollutant  
23 listed in or under 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b));

24 \* **Sec. 54.** AS 46.14.990(16) is repealed and reenacted to read:

25 (16) "modification" has the meaning given in 42 U.S.C. 7411(a)  
26 (Clean Air Act, sec. 111(a)) and 40 C.F.R. 60.14;

27 \* **Sec. 55.** AS 46.14.990(18) is amended to read:

28 (18) "operator" means a person or persons who direct, control, or  
29 supervise a stationary source or emission unit [FACILITY OR SOURCE] that has  
30 the potential to emit an air pollutant [CONTAMINANT] to the atmosphere;

31 \* **Sec. 56.** AS 46.14.990(19) is amended to read:

1 (19) "owner" means a person or persons with a proprietary or  
2 possessory interest in a stationary source or emission unit [FACILITY OR  
3 SOURCE] that has the potential to emit an air pollutant [CONTAMINANT] to the  
4 atmosphere;

5 \* Sec. 57. AS 46.14.990(21) is repealed and reenacted to read:

6 (21) "potential to emit" has the meaning given in 40 C.F.R. 51.166(b);

7 \* Sec. 58. AS 46.14.990(24) is amended to read:

8 (24) "small business facility" means a stationary source [FACILITY]  
9 that

10 (A) is owned or operated by a person who employs 100 or  
11 fewer individuals;

12 (B) is a small business concern as defined in 15 U.S.C. 631  
13 (Small Business Act); and

14 (C) emits less than 100 TPY of regulated air pollutants  
15 [CONTAMINANTS];

16 \* Sec. 59. AS 46.14.990 is amended by adding new paragraphs to read:

17 (28) "air pollutant" has the meaning given in 42 U.S.C. 7602 (Clean  
18 Air Act, sec. 302);

19 (29) "building, structure, facility, or installation" has the meaning  
20 given in 40 C.F.R. 51.166(b) except that it includes a vessel

21 (A) that is anchored or otherwise permanently or temporarily  
22 stationed within a locale;

23 (B) upon which a stationary source or stationary sources are  
24 located; not including stationary sources engaged in propulsion of the vessel;  
25 and

26 (C) that is used for an industrial process, excluding a tank  
27 vessel in the trade of transporting cargo; in this subparagraph, "industrial  
28 process" means the extraction of raw material or the physical or chemical  
29 transformation of raw material in either composition or character;

30 (30) "emission unit" has the meaning given in 40 C.F.R. 51.166(b);

31 (31) "major modification" means a change that meets the definition of

*Add*

1 "major modification" under either 40 C.F.R. 51.165 or 40 C.F.R. 51.166;

2 (32) "major stationary source" means a stationary source or physical  
3 change that meets the definition of "major stationary source" under either 40 C.F.R.  
4 51.165 or 40 C.F.R. 51.166;

5 (33) "regulated air pollutant" means an air pollutant subject to  
6 regulation under 42 U.S.C. 7401 - 7671q (Clean Air Act);

7 (34) "stack" has the meaning given in 40 C.F.R. 51.100;

8 (35) "stationary source" has the meaning given in 40 C.F.R. 51.166(b);

9 \* Sec. 60. (a) AS 46.14.990(1), 46.14.990(7), 46.14.990(11), 46.14.990(22),  
10 46.14.990(23), and 46.14.990(25) are repealed.

11 (b) AS 46.14.240(c) is repealed.

12 \* Sec. 61. The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 TRANSITION: MINOR PERMITS. (a) If, on the day before the effective date of  
15 sec. 12 of this Act, the owner or operator of a facility has a valid permit issued under  
16 AS 46.14.130(a) or (b), as those provisions existed on the day before the effective date of sec.  
17 13 of this Act, and is required to obtain a minor permit under AS 46.14.130(c), enacted by  
18 sec. 14 of this Act, the previously issued valid permit remains valid until the earliest of the  
19 following occurs:

20 (1) that permit is revoked by the department under AS 46.14;

21 (2) the department issues or denies issuance of the application for a minor  
22 permit.

23 (b) In this section,

24 (1) "department" means the Department of Environmental Conservation;

25 (2) "facility" has the meaning given in AS 46.14.990(11), as that provision  
26 existed on the day before the effective date of sec. 60(a) of this Act.

27 \* Sec. 62. The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 TRANSITION: REGULATIONS. On or before May 31, 2004, the Department of  
30 Environmental Conservation shall amend the department's regulations governing the  
31 construction permit program established under AS 46.14.120(a), as amended by sec. 9 of this

1 Act, to implement the provisions of the federal new source review program amendments  
2 published in the Federal Register for December 31, 2002, and the Department of  
3 Environmental Conservation shall proceed to adopt regulations necessary to implement the  
4 other changes made by this Act. The regulations take effect under AS 44.62 (Administrative  
5 Procedures Act), but not before the effective date of the respective provision of this Act.

6 \* **Sec. 63.** The uncodified law of the State of Alaska is amended by adding a new section to  
7 read:

8 INSTRUCTION TO REGULATIONS ATTORNEY. (a) In regulations adopted by  
9 the Department of Environmental Conservation to implement AS 46.14 and in effect on the  
10 day before the effective date of secs. 59 and 60(a) of this Act, wherever the terms "facility"  
11 and "source" are used, they shall be read as "stationary source" and "emission unit,"  
12 respectively,

13 (1) when to do so would be consistent with the changes made by this Act; and

14 (2) until the Department of Environmental Conservation amends its  
15 regulations consistent with the changes made by this Act.

16 (b) The regulations attorney is instructed to make changes in the Department of  
17 Environmental Conservation regulations as described in (a) of this section.

18 \* **Sec. 64.** Sections 3 - 27, 29, 31, 33, 35 - 59, 60(a), and 61 - 63 of this Act take effect  
19 immediately under AS 01.10.070(c).

20 \* **Sec. 65.** Sections 2, 28, 30, 32, and 60(b) of this Act take effect January 1, 2005.

21 \* **Sec. 66.** Sections 1 and 34 of this Act take effect July 1, 2005.

Section	What it does	Why it does it
1	Adds air permitting to AS 37.05	Authorizes change to flat fees
2	Adds air permitting to AS 37.10	Authorizes change to flat fees
3	Replaces state terminology with federal terminology and updates cross reference to minor source program	
4	Replaces state terminology with federal terminology	
5	Replaces state terminology with federal terminology	
6	Replaces state terminology with federal terminology	
7	Replaces state terminology with federal terminology	
8	Replaces state terminology with federal terminology	
9	Replaces state terminology with federal terminology	
10	Replaces state terminology with federal terminology	
11	Replaces state terminology with federal terminology	
12	Adds the requirement to get a minor permit and adds ability to exempt sources from operating permits to the extent allowed by federal law.	Needed to establish the minor permitting program, and existing law restricts department ability to exempt source if EPA has not explicitly exempted them.
13	Eliminates the requirement to obtain a construction permit or operating permit for minor sources.	Allows a clearer distinction between major and minor source permitting by reserving construction and operating permits for major sources.
14	Uses the categories removed from major source permitting to establish the category of minor permits, and continues the enforceability of existing permits while the minor permits are pending.	Allows a clearer distinction between major and minor source permitting by establishing a separate category of permit for minor sources.
15	Adds phrase to exempt the minor permit program from the itemized list of required regulations.	Allows the department to adopt only those regulations necessary for the minor permit program
16	Replaces state terminology with federal terminology	

Section	What it does	Why it does it
17	Eliminates the operating permit deadline for a facility which needs an operating permit but no construction permit.	Deadline is unnecessary and creates compliance issues without environmental benefit.
18	Replaces state terminology with federal terminology	
19	Adds cross reference for minor source permit program	
20	Add deadline for minor source permit actions	
21	Replaces state terminology with federal terminology	
22	Replaces state terminology with federal terminology	
23	Add phrase which acknowledges that a public comment period may not be required for minor permits.	
24	Replaces state terminology with federal terminology	
25	Establishes the authority and rules for general minor permits.	Current general permit authority is based on Title V requirements and contains restrictions that may not be appropriate for minor sources.
26	Limits the applicability of temporary permits section to operating permits.	Existing section is required for Title V permits. New minor permit program may establish temporary permits which deviate from these title v restrictions.
27	Replaces state terminology with federal terminology	
28	Substitutes permit fees under AS 37.010 for the current hourly fees, while maintaining the small business fee aspect required by Title V	Authorizes change to flat fees
29	Replaces state terminology with federal terminology	
30	Maintains certain permit administration work as free to the individual small business	Required by Title V
31	Makes fee review every four years instead of every three, and changes assessable emissions to be based on potential to emit rather than emissions authorized by permit.	Review schedule change makes this regulation consistent with AS 37.010. Change to assessable emissions is needed for clarity.

Section	What it does	Why it does it
32	Clarifies that sources which have minor or construction permits also must pay emission fees	Existing statute requires emission fees from facilities subject to the operating permits program. The bill proposes to change who needs an operating permit; therefore, this section ensures that regulated source must still pay emission fees.
33	Replaces state terminology with federal terminology	
34	Establishes receipt account for non-Title V fees	Needed to collect non-title V revenue outside of dedicated CAPF
35	Makes the new minor permits subject to the department's termination, modification, and reopening authority.	
36	Replaces state terminology with federal terminology	
37	Replaces state terminology with federal terminology	
38	Replaces state terminology with federal terminology	
39	Replaces state terminology with federal terminology	
40	Replaces state terminology with federal terminology	
41	Replaces state terminology with federal terminology	
42	Replaces state terminology with federal terminology	
43	Replaces state terminology with federal terminology	
44	Replaces state terminology with federal terminology	
45	Replaces state terminology with federal terminology	
46	Replaces state terminology with federal terminology	
47	Replaces state terminology with federal terminology	
48	Changes definitions	Makes terminology consistent with Federal law
49	Changes definitions	Makes terminology consistent with Federal law

Section	What it does	Why it does it
50	Changes definitions	Makes terminology consistent with Federal law
51	Changes definitions	Makes terminology consistent with Federal law
52	Changes definitions	Makes terminology consistent with Federal law
53	Changes definitions	Makes terminology consistent with Federal law
54	Changes definitions	Makes terminology consistent with Federal law
55	Changes definitions	Makes terminology consistent with Federal law
56	Changes definitions	Makes terminology consistent with Federal law
57	Changes definitions	Makes terminology consistent with Federal law
58	Changes definitions	Makes terminology consistent with Federal law
59	Adds new federal definitions	Makes terminology consistent with Federal law
60	Repeals Definitions no longer used	
61	Session law to maintain current permit compliance until new minor permits are issued	Allows time for the department to establish new minor source permit regulations and issue permits while maintaining environmental protection afforded by existing permits.
62	Session law to allow regulations to be adopted but not be effective prior to effective date of statutory sections.	
63	Session law to apply definition changes to currently adopted regulations until those regulations can be changed.	
64	Makes statutory changes, except for those relating to fees, effective immediately.	
65	Makes statutory changes relating to fees effective January 1, 2005	Allows time for the department to determine budgetary requirements, appropriate flat fees, and to adopt necessary regulations to implement.
66	Establishes effective date for new receipts account consistent with the start of fiscal year 2006	Allows time to develop needed budget documents to implement the separation of construction permit fees from the Title V fees.

## **Air Permit Reform Bill - 2003**

Notes by DEC 3/3/03

### **What Does the Bill Accomplish?**

The bill achieves protection of air quality while reforming the permit review process to make permitting predictable, reliable and rational. Specifically, the bill will:

- Allow DEC's program to reflect national precedents, court case decisions, and permit best practices in review.
- Differentiate major source from minor source permits.
- Regulate minor sources in a simpler way, with reliance on standardized permit conditions that incorporate best management practices.
- Exempt sources from permitting to the extent allowed under federal law.
- Achieve efficiency through adopting federal rules by reference.
- Change the permit fee structure to make costs predictable and reliable for permittees

In the end, the reform that this bill initiates will result in more efficient review of permits and more "hard-hat time" for field inspectors working to make sure standards are protective and permits are enforced.

### **Who was Involved in Shaping the Bill?**

DEC and the Department of Law prepared the bill. It was drafted to fulfill the recommendations of the Air Permit Work Group, a stakeholder group convened by DEC in the fall 2002.

Member entities and representatives on the Work Group were:

- Producers Council of Alaska, Charlotte MacCay (works for Teck Cominco)
- Alaska Oil and Gas Association, Jordan Jacobsen (works for Alyeska Pipeline Co.)
- Alaska Rural Electric Cooperative, Carl Harmon (works for Chugach Electric)
- Cook Inlet Regional Citizens Advisory Council, Mike Munger
- Prince William Sound Regional Citizens Advisory Council, Tom Kuckertz
- U.S. Department of Defense, Kate Siftar (works for the U.S. Army)
- DEC, Tom Chapple and John Kuterbach

Pacific Seafood Processors Assoc., Stephanie Madsen – participated in some of the meetings, but did not in the concluding meetings or drafting the final report.

Facilitator: Brian Rogers of Infoinsights facilitated the Work Group meetings

**Subject: Commissioner Ballard's testimony**

**Date:** Fri, 14 Mar 2003 07:57:40 -0900

**From:** "Siroky, Mary" <Mary\_Siroky@dec.state.ak.us>

**To:** "Linda Hay (E-mail)" <linda\_hay@legis.state.ak.us>

<<SB 116 EB Testimony in S RES.doc>>


Linda this is a copy of the commissioner's testimony. Since we had all day yesterday to polish it we added a section at the bottom that tries to capture the commissioner's explanation of our fiscal note. It took me awhile to understand where Sen. Ogan was going with his questioning on that, and then all of a sudden a light went off in my little pea brain. Our fiscal note represents the program rebuild - not just the cost of the bill. We should have explained that up front!.

Based on the questions in Senate Resources, we have developed some additional handouts that we are going to try out in House Resources today, so we will probably have additional info for our next hearing in Sen. Resources.

I'll check in with you next week some time to see when we might be back up in Sen. Res.

mary

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
COMMISSIONER BALLARD SB 116 TESTIMONY  
SENATE RESOURCES COMMITTEE

Mr. Chairmen and members of the committee, thank you for the opportunity to testify today on behalf of the Governor's air permit reform legislation, SB 116.

Over the last 30 years, we have learned much about the environmental and health hazards associated with air pollution. We have also learned much about emission control technologies, air modeling and protective ambient air standards. Through national and state legislation we have recognized our shared value of environmental protection along with the many other core values that form the framework for government regulatory programs. Environmental protection is not incompatible with resource development. Rather, it is as fundamental a component of resource development as are labor and worker safety laws.

Governor Murkowski is committed to enhancing Alaska's economy through resource development. He is equally committed to protecting Alaska's environment. It is not an either/or proposition. A strong economy will generate the revenue base to continue funding our important regulatory programs. Without a strong economy we cannot hope to have a strong government.

Governor Murkowski and members of his Cabinet recognize that Alaska's laws taken together form the framework for a successful resource development strategy. Environmental laws are one of the many equally important pieces of the public policy mosaic. They are no more, and no less important. This bill will improve the process and function of underlying state policy to protect the environment. It does NOT change the protective standards already in place and administered by the Department through existing regulation.

Through DEC's proposed FY 04 budget we intend to sharpen our focus on our core responsibilities. Senate Bill 116 is essential to achieving the results promised in our budget proposal.

Our legislative proposal is based on two important developments of the last several years. One was a benchmarking study conducted by the department. We reviewed the funding and workforce allocation in the air programs of states that we consider comparable in workload and complexity to Alaska. Alaska has an unusual air program. Although we have a small population, we have a high number of air permits: as many operating permits as the State of Colorado, and as many major new permits as the state of New Jersey. We discovered in our benchmarking study that we simply have not funded, staffed or organized our program adequately to do the job applicants expect. Senate Bill 116 and the program increase proposed in the Governor's budget will allow us to remodel our permit program in line with successful programs in other states.

The second development that guided our proposal was the Air Permit Work Group – a stakeholder group convened last year. The Work Group report is in your packets and the work group recommendations are incorporated into SB 116.

The federal Clean Air Act and the EPA rules have been amended several times establishing new programs and control concepts. Our state permitting program has not kept pace with the national regime or the needs of Alaskan communities and industry. We must have a predictable

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
COMMISSIONER BALLARD SB 116 TESTIMONY  
SENATE RESOURCES COMMITTEE

permitting process that is protective of air quality. Currently we are not able to mesh federal air programs with the needs of our remote, isolated and small communities. We also seek to be flexible and timely enough to take advantage of fast changing business opportunities.

Specifically, this bill:

- Creates a predictable, timely and rational permitting program.
- Differentiates major source from minor source permits.
- Regulates minor sources by standardizing permit conditions based on best management practices. Our present "permit by rule" program works for the oil drilling rigs. We want to expand it to include more situations. We have many more mobile and portable plants and machinery than most states. We need the tools to work with this unusual but essential fleet.
- Exempts sources from permitting to the extent allowed under federal law.
- Achieves efficiency through adopting federal rules by reference – this will make it much easier for us to permit rural power plants – we will be able to use the so-called "clean unit test" to avoid a detailed site by site technology analysis.

Currently, Alaska is regulating minor sources the same way it manages major sources. This legislation establishes a permit program for minor air pollution sources when needed to protect ambient air quality and health. This improvement in permitting minor sources will be widely recognized as significant permit streamlining.

The bill makes an important revision to the permit fee structure. It changes hourly air "permit administration fees" to flat fees whenever possible. – We want this change because permittees, both communities and industry will know their permit cost, put it in their budget cycle and plan appropriate financing.

In closing, I want to address the Fiscal note. The bill itself does not warrant a significant increase in staffing. However, without additional staff the important changes achieved through the legislation cannot be delivered. In order to operate an air permitting program that issues timely permits we have requested, through the budget process, additional staff. In the spirit of full disclosure, we put the entire air permit increment in this fiscal note and have checked the box stating that this amount is in the Governor's FY 2004 budget proposal. The fiscal note therefore represents the cost of reinvigorating the air permit program as a whole.

I also want you to know that while we are increasing this very important program, we have looked closely at our mission and have reduced our services so that we are only providing those that are essential to our mission of protecting public health and the environment. With this increment as well as several other small increases in core permitting programs the department still has an overall net reduction of 13 FTE and \$153,000.