

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SRES 12658

The Honorable Lyda Green  
February 20, 2007  
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The second exclusion would be for discharges that are incidental to certain drilling and trenching activities. Current state law exempts those discharges from the permit requirement if they don't result in a discharge "directly into any surface water." To align state law with the federal permit program, that phrase would be changed by deleting the word "directly" and changing "surface water" to "waters of the United States," a term defined identically in state and federal regulations.

The third and final exclusion is for the discharge of munitions on active ranges. The federal definition of "pollutant" at 40 C.F.R. 122.2 includes munitions, so a permit is required for their discharge to waters of the United States. Yet state law exempts the discharge of munitions from the permit requirement. This bill would limit the state's munitions exemption to discharges that do not enter waters of the United States, again to bring state law into line with federal law.

The bill includes three other provisions. One would give the department the authority to require site sampling and reporting of results analogous to what the EPA exercises under sec. 308 of the Clean Water Act. Another clarifies that the department's permitting authority extends to all "pollutants" listed under federal law. The third provision also follows federal law (33 U.S.C. 1319(c)) by allowing the department to pursue criminal enforcement for negligent violations of any aspect of the state permit program.

This bill is an essential component of the state's effort to receive primacy from the EPA in the permitting of discharges in our state. I support continuing forward with efforts to receive primacy, and I urge your prompt and favorable action on this measure.

Sincerely,

Sarah Palin  
Governor

**Department of Environmental Conservation  
NPDES Primacy  
Overview and Status - February 2007**

**Background**

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

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

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

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

In 2005, the Alaska legislature (SB 110) directed DEC to take all actions necessary to assume the NPDES discharge permitting authority including responsibility for issuing and monitoring compliance with the permits.

**NPDES Program Components**

There are six components to the NPDES permit program. The State intends to assume responsibility for the first five.

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

**Department of Environmental Conservation**  
**NPDES Primacy**  
**Overview and Status - February 2007**

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

**NPDES Primacy Application**

The application to assume NPDES primacy includes:

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

**Application Status**

DEC submitted the NPDES primacy application to EPA by July 1, 2006, as directed by the legislature.

EPA provided an extensive list of comments on the application on October 31, 2006. It was not until EPA reviewed the Department's full application submission that they identified several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments is being pursued during the current legislative session (HB 149 and SB 91).

DEC is also making revisions to the program description, Attorney General's statement, MOA, and regulations in response to EPA comments.

DEC intends to submit a revised application to EPA this summer, and anticipates EPA program approval by the end of the calendar year.

## **Sectional Analysis of SB 91/HB 149**

### **Sec. 1.**

Gives ADEC authority equivalent to that of EPA under sec. 308 of the Clean Water Act (CWA), to require monitoring, sampling and reporting.

### **Sec. 2.**

Broadens the scope of ADEC's permitting authority to cover discharges of waste material as well as disposal. Also deletes an exemption for domestic sewage, which is dealt with elsewhere (see sec. 4 of bill, amending AS 46.03.100(e)(1)).

### **Sec. 3.**

Clarifies that it is up to ADEC what form of authorization to require for any given discharge or activity.

### **Sec. 4.**

This section changes three current exemptions from the permit requirement, in all cases to comply with the scope of the federal NPDES program. The exemptions are for domestic sewage, discharges incidental to drilling and trenching, and munitions.

### **Sec. 5.**

Expands ADEC's authority to include monitoring and reporting requirements in APDES permits to be equivalent to EPA's authority under the CWA.

### **Secs. 6 & 7.**

Clarify that the state term "waste material" covers "pollutants" as defined under federal law.

### **Sec. 8.**

This follows the CWA in making negligent violations of the NPDES permit program enforceable through criminal misdemeanor charges.

### **Sec. 9.**

Provides for an immediate effective date, to facilitate timely program approval by EPA.

## **NPDES Program Approval Criteria**

Federal law sets out the criteria that EPA uses in reviewing and approving state permit programs for discharges of pollutants into surface waters. The criteria are listed broadly in section 402(b) of the federal Clean Water Act (codified at 33 U.S.C. § 1342(b)). More detailed approval criteria are found in EPA's regulations, at 40 CFR Part 123. A brief summary of both the statutory and regulatory approval criteria follows.

Under the Clean Water Act (CWA), a state seeking approval of its NPDES program must have authority to do the following<sup>1</sup>:

- issue permits that comply with the CWA, are limited to five years duration, can be terminated or modified for cause, and control disposal into wells;
- enter onto the premises of regulated facilities to inspect and monitor, and require reports as provided in CWA § 308;
- provide public notice and opportunity to comment on permit applications;
- ensure that the EPA Administrator also gets notice of each application;
- ensure that it won't issue a permit that would impair anchorage or navigation in navigable waters;
- enforce permits and the program through civil and criminal penalties;
- regulate publicly owned treatment works (POTWs, for treatment of domestic wastewater) in compliance with the CWA; and
- ensure that industrial users of POTWs also comply with CWA requirements.

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<sup>1</sup> Note: this list is a simplified summary of the detailed provisions found in Clean Water Act section 402(b)(1)-(9).

EPA has promulgated regulations, and also issued guidance, that together establish very detailed requirements for a state permit program. The regulations are at 40 CFR Part 123. Alaska's on-going efforts to obtain NPDES primacy have been largely guided by the regulatory criteria set out there, and the discussions between ADEC and EPA over the details of the state's proposed program routinely return to the issue of what federal law requires.

While a comprehensive summary of those requirements is not practical, given their complexity, one over-riding requirement is that the state program must be as stringent as the federal program. A state cannot cut corners on any matter subject to a regulatory requirement. In effect this limits the flexibility a state has when it chooses to implement its own permit program.

All of the provisions of HB 149/SB 91 are designed to satisfy EPA's stated concerns that current state law is not as stringent as federal law on certain specific topics. ADEC and the Department of Law will be available to answer questions that legislators may have about any of the provisions of this bill.

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION  
OFFICE OF THE COMMISSIONER**

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January 24, 2007

The Honorable Lyda Green  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 516  
Juneau, Alaska 99801

The Honorable John Harris  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, Alaska 99801

Dear President Green and Speaker Harris:

The 24<sup>th</sup> Alaska Legislature passed Senate Bill 110 during its 1<sup>st</sup> regular session in 2005 directing the Department of Environmental Conservation (DEC) to seek primacy from the Environmental Protection Agency (EPA) for the National Pollutant Discharge Elimination System (NPDES) wastewater discharge program. Governor Murkowski signed this legislation into law on August 27, 2005 with an effective date of November 25, 2005. Section 6 of the bill reads as follows:

**REPORT TO THE LEGISLATURE.** Until full authority for administering the National Pollutant Discharge Elimination System has been transferred to the Department of Environmental Conservation, the Department of Environmental Conservation shall submit, within 10 days after the date the Legislature convenes in regular session, a report to both houses of the Legislature and the governor that includes the following information:

- (1) the department's progress in preparing and submitting its application to the United States Environmental Protection Agency by June 30, 2006;
- (2) a description of the progress by the United States Environmental Protection Agency in reviewing the state's application and the expected or actual date and contents of the agency's approval; and
- (3) the progress made by the Department of Environmental Conservation and the United States Environmental Protection Agency during the five-year National Pollutant Discharge Elimination System program transition period, the identification of the program responsibilities that have been transferred to the Department of Environmental Conservation and the program

responsibilities retained by the United States Environmental Protection Agency, whether the transition is proceeding on schedule, and identification of relevant statutory, regulatory, or financial impediments to obtaining National Pollutant Discharge Elimination System primacy as intended by the Legislature.

This letter is the Department's second progress report to the Legislature. The first progress report was transmitted on January 9, 2006.

As required by Section 5 of SB 110, the Department has continued to confer with the NPDES Primacy Work Group, which includes representatives of affected permittees. The Work Group met three times and participated in one teleconference during the last calendar year, providing key assistance in the design of the APDES program, regulations, and primacy application development.

The Work Group's members are listed at the DEC website at: [http://www.dec.state.ak.us/water/npdes/work\\_group.htm](http://www.dec.state.ak.us/water/npdes/work_group.htm), along with agendas, meeting summaries, and other documents germane to the Work Group process. All Work Group meetings have been publicly noticed and open to the public with a specific allocation of time on the agenda for public comment. In addition to the Work Group, DEC met with staff from other State agencies to provide updates on our progress toward NPDES assumption. Staff also presented status reports at conferences attended by affected permittees.

Section 5 of SB 110 provided legislative direction to the Department to submit the NPDES primacy application to the U.S. Environmental Protection Agency (EPA) before July 1, 2006. The Department completed a major element of the primacy application by adopting program regulations on June 28, 2006. The complete primacy application was submitted to EPA on time, on June 29, 2006.

EPA provided an extensive list of comments on our application on October 31, 2006 and met with Department staff in mid November 2006 to discuss and clarify those comments. The Department and EPA have developed a work plan and process to address all EPA comments and to make any necessary revisions to the NPDES application components. The Department's goal is to resubmit the NPDES application to EPA by June 15, 2007.

Despite EPA opportunity to review SB 110 language and prior legislative direction regarding NPDES primacy (HB 546 in 2004), it was not until EPA reviewed the Department's full June 29, 2006 application submission that they identified what EPA believes are several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments will be pursued during the current legislative session.

Dear President Green and  
Speaker Harris

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January 24, 2007

Notwithstanding EPA's opportunities to review and provide comment on the pre-public and public comment versions of the Department's draft regulations for the NPDES program, EPA responded to the state's application with several comments that will also require revisions to the program regulations that were adopted on June 28, 2006. The Department intends to propose these regulatory changes for public comment this spring. The revised regulations must be adopted prior to re-submitting the primacy application to EPA.

There are currently no financial impediments to obtaining NPDES primacy.

Once EPA determines that the application is complete and meets all federal requirements for a state-run NPDES program, they will initiate a public review and consultation process. The Department expects that EPA can complete this process and issue program approval by the end of December 2007.

Concurrent with developing the NPDES primacy application, the Department has successfully implemented several components of its capacity development plan to ensure the Department has the staffing and training to implement the NPDES program when authority is transferred from EPA. For example, ten of the fourteen new positions allocated to the Department as part of SB 110 have been filled, and over 35 staff have attended two EPA courses - the NPDES Permit Writers' course and EPA's Basic Inspector course. A third course, the Water Quality Standards Academy, is scheduled in February 2007.

As noted in the January 9, 2006 Report to the Legislature, the case proceedings in *Defenders of Wildlife v. EPA*, 420 F.3d 946 (9<sup>th</sup> Cir. 2005), in which the United States Ninth Circuit Court of Appeals reversed EPA's decision to grant NPDES primacy to the State of Arizona, is still ongoing. In this case, the plaintiffs alleged that EPA had failed to consider, pursuant to the endangered Species Act (ESA), the possible harm that could be caused to habitat and wildlife by Arizona's assumption of primacy. The Ninth Circuit Court reversed and remanded the primacy-granting decision to EPA with instructions to weigh Arizona's application under the ESA. In the fall of 2006, through the Department of Justice, EPA petitioned for Supreme Court review of the Ninth Circuit's decision. The State of Alaska filed an *amicus* brief (i.e., "friend of the court") in support of EPA's petition. In January 2007, the Supreme Court decided to hear the case. While awaiting a Supreme Court decision, we continue to prepare the NPDES application as if EPA consultation under the ESA will not be required to approve our application. If, however, the Supreme Court decides that EPA must conduct an ESA consultation when considering approval of Alaska's NPDES program, it could cause considerable delays in EPA's approval action. EPA would have to conduct ESA consultation in a unique arena - one where they will have to consider potential impacts to endangered species of future state permits not yet issued or even applied for.

Dear President Green and  
Speaker Harris

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January 24, 2007

The Department looks forward to working with you on legislation to ensure full authority to implement the NPDES program and is prepared to answer any questions you may have about our progress toward primacy.

Sincerely,



Mike Maher  
Acting Commissioner

cc: John Bitney, Legislative Director, Office of the Governor  
Kirsten Waid, Senate Secretary, Alaska State Legislature  
Suzi Lowell, House Chief Clerk, Alaska State Legislature

**CS FOR SENATE BILL NO. 91(RES)**

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

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:**

**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the authority of the Department of Environmental Conservation to**  
2 **require certain monitoring, sampling, and reporting and to require permits for certain**  
3 **discharges of pollutants; relating to criminal penalties for violations of the permit**  
4 **program; and providing for an effective date."**

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

6 **\* Section 1. AS 46.03.020 is amended to read:**

7 **Sec. 46.03.020. Powers of the department. The department may**

8 (1) **enter into contracts and compliance agreements necessary or**  
9 **convenient to carry out the functions, powers, and duties of the department;**

10 (2) **review and appraise programs and activities of state departments**  
11 **and agencies in light of the policy set out in AS 46.03.010 for the purpose of**  
12 **determining the extent to which the programs and activities are contributing to the**  
13 **achievement of that policy and to make recommendations to the departments and**  
14 **agencies, including environmental guidelines;**

- 1 (3) consult with and cooperate with  
2 (A) officials and representatives of any nonprofit corporation or  
3 organization in the state;  
4 (B) persons, organizations, and groups, public and private,  
5 using, served by, interested in, or concerned with the environment of the state;
- 6 (4) appear and participate in proceedings before any state or federal  
7 regulatory agency involving or affecting the purposes of the department;
- 8 (5) undertake studies, inquiries, surveys, or analyses it may consider  
9 essential to the accomplishment of the purposes of the department; these activities  
10 may be carried out by the personnel of the department or in cooperation with public or  
11 private agencies, including educational, civic, and research organizations, colleges,  
12 universities, institutes, and foundations;
- 13 (6) at reasonable times, enter and inspect with the consent of the owner  
14 or occupier any property or premises to investigate either actual or suspected sources  
15 of pollution or contamination or to ascertain compliance or noncompliance with a  
16 regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating  
17 to secret processes or methods of manufacture discovered during investigation is  
18 confidential;
- 19 (7) conduct investigations and hold hearings and compel the  
20 attendance of witnesses and the production of accounts, books, and documents by the  
21 issuance of a subpoena;
- 22 (8) advise and cooperate with municipal, regional, and other local  
23 agencies and officials in the state, to carry out the purposes of this chapter;
- 24 (9) act as the official agency of the state in all matters affecting the  
25 purposes of the department under federal laws now or hereafter enacted;
- 26 (10) adopt regulations necessary to carry out the purposes of this  
27 chapter, including, by way of example and not limitation, regulations providing for  
28 (A) control, prevention, and abatement of air, water, or land or  
29 subsurface land pollution;  
30 (B) safeguard standards for petroleum and natural gas pipeline  
31 construction, operation, modification, or alteration;

1 (C) protection of public water supplies by establishing  
2 minimum drinking water standards, and standards for the construction,  
3 improvement, and maintenance of public water supply systems;

4 (D) collection and disposal of sewage and industrial waste;

5 (E) collection and disposal of garbage, refuse, and other  
6 discarded solid materials from industrial, commercial, agricultural, and  
7 community activities or operations;

8 (F) control of pesticides;

9 (G) other purposes as may be required for the implementation  
10 of the policy declared in AS 46.03.010;

11 (H) handling, transportation, treatment, storage, and disposal of  
12 hazardous wastes;

13 (11) inspect the premises of sellers and suppliers of paint, vessels, and  
14 marine and boating supplies, and take other actions necessary to enforce  
15 AS 46.03.715;

16 (12) notwithstanding any other provision of law, take all actions  
17 necessary to receive authorization from the administrator of the United States  
18 Environmental Protection Agency to administer and enforce a National Pollutant  
19 Discharge Elimination System program in accordance with 33 U.S.C. 1342 (sec. 402,  
20 Clean Water Act), 33 U.S.C. 1345 (sec. 405, Clean Water Act), 40 C.F.R. Part 123,  
21 and 40 C.F.R. Part 403, as amended;

22 (13) require the owner or operator of a facility to undertake  
23 monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec.  
24 308, Clean Water Act).

25 \* Sec. 2. AS 46.03.100(a) is amended to read:

26 (a) A person may not construct, modify, or operate a sewerage system or  
27 treatment works or take any action [DISPOSE OF OR CONDUCT AN  
28 OPERATION] that results in the disposal or discharge of solid or liquid waste  
29 material or heated process or cooling water into the waters or onto the land of the state  
30 without prior authorization from the department. [DEPARTMENT  
31 AUTHORIZATION SHALL BE OBTAINED FOR DIRECT DISPOSAL AND FOR

1 DISPOSAL, OTHER THAN OF DOMESTIC SEWAGE, INTO PUBLICLY  
2 OWNED OR OPERATED SEWERAGE SYSTEMS.]

3 \* Sec. 3. AS 46.03.100(b) is amended to read:

4 (b) Prior authorization may be provided by the department, in its discretion.  
5 [IS PROVIDED] through one or a combination of the following:

6 (1) an individual permit issued for a specific facility or disposal  
7 activity;

8 (2) a general permit issued on a statewide, regional, or other  
9 geographical basis for a category of disposal activities that the commissioner, using  
10 information available when the permit is developed, determines are similar in nature  
11 and will comply with applicable environmental quality standards established under  
12 this title;

13 (3) regulations adopted by the department authorizing a category of  
14 disposal without requiring a permit and establishing specific siting or operational  
15 requirements, discharge limits, or best management practices for the disposal  
16 category;

17 (4) designation and approval of a plan as described under (c) of this  
18 section;

19 (5) an integrated waste management and disposal authorization as  
20 described in (d) of this section.

21 \* Sec. 4. AS 46.03.100(e) is amended to read:

22 (e) This section does not apply to

23 (1) a person discharging only domestic sewage into a publicly owned  
24 treatment works [SEWERAGE SYSTEM];

25 (2) disposals subject to regulation under AS 31.05.030(e)(2);

26 (3) injection projects permitted under AS 31.05.030(h);

27 (4) discharges of solid or liquid waste material or water discharges  
28 from the following activities if the discharge is incidental to the activity and the  
29 activity does not produce a discharge from a point source, as that term is defined in  
30 regulations adopted under this chapter, [DIRECTLY] into any waters [SURFACE  
31 WATER] of the United States [STATE]:

1 (A) mineral drilling, trenching, ditching, and similar activities;

2 (B) landscaping;

3 (C) water well drilling and geophysical drilling; or

4 (D) drilling, ditching, trenching, and similar activities  
 5 associated with facility construction and maintenance or with road or other  
 6 transportation facility construction and maintenance; however, the exemption  
 7 provided by this subparagraph does not relieve a person from obtaining a prior  
 8 authorization under this section if the drilling, ditching, trenching, or similar  
 9 activity will involve the removal of the groundwater, stormwater, or  
 10 wastewater runoff that has accumulated and is present at an excavation site for  
 11 facility, road, or other transportation construction or maintenance and a prior  
 12 authorization is otherwise required by this section;

13 (5) bilge pumping, unless the bilge product pumped may be expected  
 14 to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

15 (6) cooling water discharges from a boat or vessel into any surface  
 16 water of the state; or

17 (7) the firing or other use of munitions in training activities conducted  
 18 on active ranges, including active ranges operated by the United States Department of  
 19 Defense or a United States military agency, unless it results in a discharge into  
 20 waters of the United States.

21 \* Sec. 5. AS 46.03.100(h) is amended to read:

22 (h) The program developed to issue permits by the department to authorize  
 23 discharge of pollutants into surface waters and submitted to the United States  
 24 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean  
 25 Water Act) shall include the monitoring and reporting requirements included in the  
 26 permits, limited to those requirements authorized [MANDATED] by law, including  
 27 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those  
 28 necessary to ascertain compliance with the effluent limitations contained in the permit  
 29 and with state water quality standards.

30 \* Sec. 6. AS 46.03.100 is amended by adding a new subsection to read:

31 (m) For purposes of the permit program authorized by the United States

1 Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402, Clean Water Act),  
2 "waste material" includes pollutants as defined in 33 U.S.C. 1362(6) (sec. 502(6),  
3 Clean Water Act).

4 \* Sec. 7. AS 46.03.110 is amended by adding a new subsection to read:

5 (f) The standards for determining waste material in AS 46.03.100(m) apply to  
6 this section.

7 \* Sec. 8. AS 46.03.790 is amended by adding a new subsection to read:

8 (i) Notwithstanding (a) and (d) of this section, a person is guilty of a class A  
9 misdemeanor if the person negligently

10 (1) violates a regulation adopted by the department under  
11 AS 46.03.020(12);

12 (2) violates a permit issued under the program authorized by  
13 AS 46.03.020(12);

14 (3) fails to provide information or provides false information required  
15 by a regulation adopted under AS 46.03.020(12);

16 (4) makes a false statement, representation, or certification in an  
17 application, notice, record, report, permit, or other document filed, maintained, or used  
18 for purposes of compliance with a permit issued under or a regulation adopted under  
19 AS 46.03.020(12); or

20 (5) renders inaccurate a monitoring device or method required to be  
21 maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

22 \* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

moved by Sen. Green

4-11-07  
SGL ordered  
5:30 PM

passed

**AMENDMENT**

**OFFERED IN SENATE RESOURCES**

**BY**

**TO: SB 91**

*Amendment #1*

**Page 4, line 4:**

**Following "pollutants":**

**Delete "listed"**

**Insert "as defined"**

*Amendment #2*

**Page 4, line 10:**

**Following "(a)"**

**Insert "and (d)"**

**SENATE BILL NO. 91**

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

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 2/21/07**

**Referred: Resources, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the authority of the Department of Environmental Conservation to**  
2 **require certain monitoring, sampling, and reporting and to require permits for certain**  
3 **discharges of pollutants; relating to criminal penalties for violations of the permit**  
4 **program; and providing for an effective date."**

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

6 **\* Section 1. AS 46.03.020 is amended by adding a new paragraph to read:**

7 (13) require the owner or operator of a facility to undertake  
8 monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec. 308,  
9 Clean Water Act).

10 **\* Sec 2. AS 46.03.100(a) is amended to read:**

11 (a) A person may not construct, modify, or operate a sewerage system or  
12 treatment works or take any action [DISPOSE OF OR CONDUCT AN  
13 OPERATION] that results in the disposal or discharge of solid or liquid waste  
14 material or heated process or cooling water into the waters or onto the land of the state

1 without prior authorization from the department. [DEPARTMENT  
2 AUTHORIZATION SHALL BE OBTAINED FOR DIRECT DISPOSAL AND FOR  
3 DISPOSAL, OTHER THAN OF DOMESTIC SEWAGE, INTO PUBLICLY  
4 OWNED OR OPERATED SEWERAGE SYSTEMS.]

5 \* Sec. 3. AS 46.03.100(b) is amended to read:

6 (b) Prior authorization may be provided by the department, In its discretion,  
7 [IS PROVIDED] through one or a combination of the following:

8 (1) an individual permit issued for a specific facility or disposal  
9 activity,

10 (2) a general permit issued on a statewide, regional, or other  
11 geographical basis for a category of disposal activities that the commissioner, using  
12 information available when the permit is developed, determines are similar in nature  
13 and will comply with applicable environmental quality standards established under  
14 this title;

15 (3) regulations adopted by the department authorizing a category of  
16 disposal without requiring a permit and establishing specific siting or operational  
17 requirements, discharge limits, or best management practices for the disposal  
18 category;

19 (4) designation and approval of a plan as described under (c) of this  
20 section;

21 (5) an integrated waste management and disposal authorization as  
22 described in (d) of this section.

23 \* Sec. 4. AS 46.03.100(e) is amended to read:

24 (e) This section does not apply to

25 (1) a person discharging only domestic sewage into a publicly owned  
26 treatment works [SEWERAGE SYSTEM];

27 (2) disposals subject to regulation under AS 31.05.030(e)(2);

28 (3) injection projects permitted under AS 31.05.030(h);

29 (4) discharges of solid or liquid waste material or water discharges  
30 from the following activities if the discharge is incidental to the activity and the  
31 activity does not produce a discharge from a point source, as that term is defined in

1 regulations adopted under this chapter, [DIRECTLY] into any waters [SURFACE  
2 WATER] of the United States [STATE]:

3 (A) mineral drilling, trenching, ditching, and similar activities;

4 (B) landscaping;

5 (C) water well drilling and geophysical drilling; or

6 (D) drilling, ditching, trenching, and similar activities  
7 associated with facility construction and maintenance or with road or other  
8 transportation facility construction and maintenance; however, the exemption  
9 provided by this subparagraph does not relieve a person from obtaining a prior  
10 authorization under this section if the drilling, ditching, trenching, or similar  
11 activity will involve the removal of the groundwater, stormwater, or  
12 wastewater runoff that has accumulated and is present at an excavation site for  
13 facility, road, or other transportation construction or maintenance and a prior  
14 authorization is otherwise required by this section;

15 (5) bilge pumping, unless the bilge product pumped may be expected  
16 to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

17 (6) cooling water discharges from a boat or vessel into any surface  
18 water of the state; or

19 (7) the firing or other use of munitions in training activities conducted  
20 on active ranges, including active ranges operated by the United States Department of  
21 Defense or a United States military agency, unless it results in a discharge into  
22 waters of the United States.

23 \* Sec. 5. AS 46.03.100(h) is amended to read:

24 (h) The program developed to issue permits by the department to authorize  
25 discharge of pollutants into surface waters and submitted to the United States  
26 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean  
27 Water Act) shall include the monitoring and reporting requirements included in the  
28 permits, limited to those requirements authorized [MANDATED] by law, including  
29 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those  
30 necessary to ascertain compliance with the effluent limitations contained in the permit  
31 and with state water quality standards.

1 \* **Sec. 6.** AS 46.03.100 is amended by adding a new subsection to read:

2 (m) For purposes of the permit program authorized by the United States  
3 Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402, Clean Water Act),  
4 "waste material" includes pollutants listed in 33 U.S.C. 1362(6) (sec. 502(6), Clean  
5 Water Act).

6 \* **Sec. 7.** AS 46.03.110 is amended by adding a new subsection to read:

7 (f) The standards for determining waste material in AS 46.03.100(m) apply to  
8 this section.

9 \* **Sec. 8.** AS 46.03.790 is amended by adding a new subsection to read:

10 (i) Notwithstanding (a) of this section, a person is guilty of a class A  
11 misdemeanor if the person negligently

12 (1) violates a regulation adopted by the department under  
13 AS 46.03.020(12);

14 (2) violates a permit issued under the program authorized by  
15 AS 46.03.020(12);

16 (3) fails to provide information or provides false information required  
17 by a regulation adopted under AS 46.03.020(12);

18 (4) makes a false statement, representation, or certification in an  
19 application, notice, record, report, permit, or other document filed, maintained, or used  
20 for purposes of compliance with a permit issued under or a regulation adopted under  
21 AS 46.03.020(12); or

22 (5) renders inaccurate a monitoring device or method required to be  
23 maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

24 \* **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: SB 91  
(S) Publish Date: 2/21/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Dept of Environmental Conservation  
Title: "An Act relating to the authority of the Dept. of Env. Cons. to require certain monitoring, sampling." RDU: Division of Water  
Sponsor: Rules Committee Component: Water Quality  
Requester: Governor Component No.: 2062

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

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<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>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	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 (FY2007) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

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

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

This bill would align the state's wastewater permitting and compliance requirements with the Environmental Protection Agency's (EPA) in order to make Alaska's program approvable by EPA. This bill will have no fiscal impact.

Prepared by: Lynn J. Tomich Kent, Director Phone: (907) 269-6281  
Division: Water Date/Time: 1/10/07 9:00 AM  
Approved by: Mike Maher - Acting Commissioner Date: \_\_\_\_\_  
Agency: Department of Environmental Conservation

**SB**

**96**

# ALASKA STATE LEGISLATURE

Senate Labor and Commerce  
Committee, Chair

•  
Legislative Budget and Audit  
Committee

•  
Senate Rules Committee

•  
Committee on Committees



*While in Session*  
State Capitol, Rm. 9  
Juneau, AK 99801  
(907) 465-3704  
Fax: (907) 465-2529

*While in Anchorage*  
716 W. 4<sup>th</sup> Ave, Ste. 440  
Anchorage, AK 99501  
(907) 269-0169  
Fax: (907) 269-0172

SENATOR JOHNNY ELLIS

## MEMORANDUM

**DATE:** April 3, 2007

**TO:** Senator Charlie Huggins  
Chair, Senate Resources Committee

**FROM:** Senator Johnny Ellis

**RE:** Request for hearing on SB 96

---

I have introduced Senate Bill 96, Establishing a Renewable Energy Fund, to encourage the development of renewable and ultimately lower cost sources of energy for Alaskan communities. Alaska has been blessed with abundant natural resources, most especially oil and natural gas. As those sources of energy become scarce and expensive, and as the negative consequences of burning fossil fuels become clearer, it is time for Alaska to turn to its equally abundant non-renewable energy sources. Wind, geothermal, hydroelectric, biogas and tidal sources all promise great benefits for Alaska, including more vigorous local economies and new business and job opportunities.

As we heard from Senator Ted Stevens yesterday, developing renewable energy sources has risen into the top tier of national concerns. Already more than thirty states have programs in place to promote these new industries, many with funds similar to the one I am proposing. Given the high level of technical and scientific expertise among Alaskans and the resources of our University system, Alaska stands to become a leader in the development and application of these technologies.

Identical legislation sponsored by House Speaker John Harris is currently making its way through committees in that body. In order to expedite consideration of this important legislative initiative, I urge you to schedule a hearing on Senate Bill 96 at your earliest convenience.

If you have any questions regarding this bill, please contact my aide, Dana Owen, 465-2906.

# ALASKA STATE LEGISLATURE

Senate Labor and Commerce  
Committee, Chair

•  
Legislative Budget and Audit  
Committee

•  
Senate Rules Committee

•  
Committee on Committees



*While in Session*  
State Capitol, Rm. 9  
Juneau, AK 99801  
(907) 465-3704  
Fax: (907) 465-2529

*While in Anchorage*  
716 W. 4<sup>th</sup> Ave, Ste. 440  
Anchorage, AK 99501  
(907) 269-0169  
Fax: (907) 269-0172

SENATOR JOHNNY ELLIS

## MEMORANDUM

**DATE:** April 19, 2007

**TO:** Senator Charlie Huggins  
Chair, Senate Resources Committee

**CC:** Speaker John Harris  
Rep. Bill Thomas

**FROM:** Senator Johnny Ellis

**RE:** Renewable Energy Bills

---

As House Bill 152 has passed that body in a form that I fully support, I would respectfully request that your committee take that legislation up in place of my own SB 96. Please let me know if I can be of assistance to you as your committee considers this important legislation. My aide, Dana Owen, is also available to help and can be reached at 465-2906.

# ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair  
Sen. Bert Stedman, Vice Chair  
Sen. Lyda Green  
Sen. Gary Stevens  
Sen. Lesil McGuire  
Sen. Bill Wielechowski  
Sen. Thomas Wagoner



State Capitol, Room 119  
Juneau AK 99801-1182  
907-465-3878  
Fax: 907-465-3265  
800-862-3878

## Senate Resources Committee

### MEMORANDUM

**Date:** April 19, 2007  
**To:** Kirsten Waid, Senate Secretary  
**From:** Senator Charlie Huggins, Chair  
**Re:** Senate Resources Committee Schedule

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### Committee Schedule

#### Senate Resources

For the week of April 23 – April 27

*Unless otherwise noted, meetings are held in the*

*Butrovich Room 205*

*3:30 p.m. – 5:30 p.m.*

#### Monday, April 23

- ✦ **HB 186 SPORT FISHING GUIDE RECORDS**  
Testimony: Time Limit May be Set
- ✦ **HB 26 GEODUCK AQUATIC FARMING EXEMPTION**  
Testimony: Time Limit May be Set
- ✦ **BPH/S**

#### Wednesday, April 25

- ✦ **SJR 4 NATURAL GAS FOR STATE RESIDENTS**  
Testimony: Time Limit May be Set
- ✦ **SB 96 & HB 152 ESTABLISHING A RENEWABLE ENERGY FUND**  
Testimony: Time Limit May be Set
- ✦ **BPH/S**

#### Friday, April 27

- ✦ **SB 57 MARINE PARKS ADDITIONS/HUNTING ALLOWED**  
Testimony: Time Limit May be Set
- ✦ **SB 71 PUBLIC ACCESS TO FISHING STREAMS**  
Testimony: Time Limit May be Set
- ✦ **BPH/S**

# ALASKA STATE LEGISLATURE

Sen. Charlie Huggins, Chair  
Sen. Bert Stedman, Vice Chair  
Sen. Lyda Green  
Sen. Gary Stevens  
Sen. Lesil McGuire  
Sen. Bill Wielechowski  
Sen. Thomas Wagoner



State Capitol, Room 119  
Juneau AK 99801-1182  
907-465-3878  
Fax: 907-465-3265  
800-862-3878

## Senate Resources Committee

Friday April 13, 2007  
3:30 p.m. – 5:30 p.m.

### AGENDA

- **SB 109 Oil & Gas Conservation Commission**

**John Norman, Alaska Oil and Gas Conservation Commission**  
**Cheryl Sutton, LB&A Committee Aide to Representative Samuels**

- **SB 96 Establishing A Renewable Energy Fund**

**Senator Johnny Ellis, Sponsor**  
**Dana Owen, Legislative Aide to Senator Ellis**

**Testimony: Time Limit May Be Set**

**1. Gavel In & Call to order: Note time - Note members present**

**Senator McGuire is excused**

**2. SB 109 Oil & Gas Conservation Commission**

**John Norman, Alaska Oil and Gas Conservation Comm**

**Cheryl Sutton, LB&A Committee Aide to Rep. Samuels**

**Kara Moriarty, AOGA Will be calling in from Anchorage**

**a. Ask presenters to place themselves on the the record**

**b. Sponsor is hoping cs will be considered & moved today**

**c. Public Testimony**

*(see tab # 4 in your bk)*

*Alan*

**3. SB 96 Establishing a Renewable Energy Fund**

**Senator Johnny Ellis, Sponsor**

**Dana Owen, Legislative Aide to Senator Ellis**

**a. Sponsor will ask the discussion move to the CS being considered in HOUSE (SHARON will hand out)**

**b. Discuss today but wait for House bill to come over for us to approve**

**c. Public Testimony**

**Meeting Adjourned @ \_\_\_\_\_**

**Witness List**  
**SB 96 Establishing a Renewable Energy Fund**

**Peter Crimp, Alaska Energy Authority [Sen. Ellis requests to lead with this witness]**

**Gwen Holdmann, VP of New Development, Chena Hot Springs Resort**

**Kate Lamal, VP of Power Supply, Golden Valley Electric Association**

**Meera Kohler, President/CEO, Alaska Village Electric Coop**

**Mio Johnson, Head Engineer, Municipal Light and Power**

**Sarah Fisher-Goad, Alaska Industrial Development and Export Authority**

---

**April 12, 2007**  
**Senate Resources Bill Packet**

**SB 96, "An Act establishing a renewable energy fund and describing its uses and purposes."**

Enclosures:

Inside front cover: Fiscal Notes (3 pages)

1. SB 96A .....6 pages
2. Sponsor Statement .....1 page
3. Renewable Energy Fund Sectional Analysis .....3 pages
4. Renewable Energy Fund Witness List.....1 page
5. Letters and Resolutions of Support .....13 pages
  - A. Matanuska-Susitna Borough
  - B. Southwest Alaska Municipal Conference
  - C. Alaska Municipal League
  - D. Chugach Electric Association
  - E. Golden Valley Electric Association
  - F. Alaska State Chamber of Commerce
  - G. Alaska Federation of Natives, Inc.
  - H. Anchorage Municipal Light and Power
6. Berkley Case Study .....9 pages
7. KTUU Report .....1 page

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: SB98-COM-AIDEA-03-20-07  
 Bill Version: SB 98  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Renewable Energy Fund RDU: AIDEA (125)  
 Component: AIDEA Operations  
 Sponsor: Ellis et al  
 Requester: Senate Resources Component No.: 1234

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

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	100.0	100.0	100.0	100.0	100.0	100.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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						
1007 Interagency Receipts	100.0	100.0	100.0	100.0	100.0	100.0
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Estimate of any current year (FY2007) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

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

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

This legislation creates a renewable energy fund to be administered by the Alaska Energy Authority (AEA) and establishes a seven member advisory committee. AIDEA provides staff support for AEA programs.

Prepared by: Sara Fisher-Goad, Deputy Director - Operations Phone 907.269.4623  
 Division: Alaska Industrial Development and Export Authority Date/Time 3/20/07 3:05 PM  
 Approved by: Emil Notti, Commissioner Date 3/20/2007  
 Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: SB006-COM-AEA-03-20-07  
 Bill Version: SB 96  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Renewable Energy Fund RDU: Alaska Energy Authority (453)  
 Component: AEA Rural Energy Operations  
 Sponsor: Ellis et al  
 Requester: Senate Resources Component No.: 2600

**Expenditures/Revenues** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel	20.0	5.0	5.0	5.0	5.0	5.0
Contractual	100.0	100.0	100.0	100.0	100.0	100.0
Supplies	6.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>126.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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						
New Renewable Energy Fund	126.0	105.0	105.0	105.0	105.0	105.0
<b>TOTAL</b>	<b>126.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>

Estimate of any current year (FY2007) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation creates a renewable energy fund to be administered by the Alaska Energy Authority (AEA) and establishes a seven member advisory committee. This legislation requires AEA, in consultation with the advisory committee, to establish regulations to 1) develop a methodology for determining the order of projects that receive assistance; 2) determine grant and loan eligibility; 3) identify criteria to evaluate the benefit and feasibility of potential projects; 4) develop a methodology for distributing funds to finance various studies and construction projects; and 5) provide for power production incentives to reduce principal balances of loans.

Prepared by: Sara Fisher-Goad, Deputy Director - Operations Phone 907.269.4623  
 Division: Alaska Energy Authority Date/Time 3/20/07 3:03 PM  
 Approved by: Emil Notti, Commissioner Date 3/20/2007  
 Agency: Commerce, Community, and Economic Development

**FISCAL NOTE**

**STATE OF ALASKA  
2007 LEGISLATIVE SESSION**

**BILL NO. SB 96**

**ANALYSIS CONTINUATION**

In consultation with the advisory committee, AEA shall make grants and loans to eligible applicants to finance feasibility studies, reconnaissance studies, energy resource monitoring, and construction of renewable energy projects, natural gas projects, or transmission or distribution infrastructure located in Alaska. AEA shall annually solicit funding recommendations from the advisory committee for all grants and loans.

This legislation establishes project eligibility criteria for a renewable energy project, a natural gas project and a transmission or distribution infrastructure project.

This fiscal note represents costs associated with a new project manager who will be responsible for developing the regulations in consultation with the advisory committee: \$100.0 in contractual costs for AIDEA and one-time \$6.0 supply costs associated with the position. The fiscal note also provides estimated travel costs for the seven member committee to meet four times in FY 2008 for the initial development phase of regulations and annually to solicit funding recommendations.

The funding source is assumed to be the newly established Renewable Energy Fund, assuming this legislation becomes law and an appropriation to the newly established fund is provided.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: SB96-COM-AIDEA-03-20-07  
 Bill Version: SB 96  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Renewable Energy Fund RDU AIDEA (125)  
 Component AIDEA Operations  
 Sponsor Ellis et al  
 Requester Senate Resources Component No. 1234

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

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	100.0	100.0	100.0	100.0	100.0	100.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<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						
1007 Interagency Receipts	100.0	100.0	100.0	100.0	100.0	100.0
<b>TOTAL</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

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

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

This legislation creates a renewable energy fund to be administered by the Alaska Energy Authority (AEA) and establishes a seven member advisory committee. AIDEA provides staff support for AEA programs.

Prepared by: Sara Fisher-Goad, Deputy Director - Operations  
 Division: Alaska Industrial Development and Export Authority  
 Approved by: Emil Notti, Commissioner  
 Agency: Commerce, Community, and Economic Development

Phone 907.269.4623  
 Date/Time 3/20/07 3:05 PM  
 Date 3/20/2007

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: SB096-COM-AEA-03-20-07  
 Bill Version: SB 96  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Renewable Energy Fund RDU Alaska Energy Authority (453)  
 Component AEA Rural Energy Operations  
 Sponsor Ellis et al  
 Requester Senate Resources Component No. 2600

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

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel	20.0	5.0	5.0	5.0	5.0	5.0
Contractual	100.0	100.0	100.0	100.0	100.0	100.0
Supplies	6.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>126.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
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New Renewable Energy Fund	126.0	105.0	105.0	105.0	105.0	105.0
<b>TOTAL</b>	<b>126.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>	<b>105.0</b>

Estimate of any current year (FY2007) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation creates a renewable energy fund to be administered by the Alaska Energy Authority (AEA) and establishes a seven member advisory committee. This legislation requires AEA, in consultation with the advisory committee, to establish regulations to 1) develop a methodology for determining the order of projects that receive assistance; 2) determine grant and loan eligibility; 3) identify criteria to evaluate the benefit and feasibility of potential projects; 4) develop a methodology for distributing funds to finance various studies and construction projects; and 5) provide for power production incentives to reduce principal balances of loans.

Prepared by: Sara Fisher-Goad, Deputy Director - Operations Phone 907.269.4823  
 Division Alaska Energy Authority Date/Time 3/20/07 3:03 PM  
 Approved by: Emil Notti, Commissioner Date 3/20/2007  
 Agency Commerce, Community, and Economic Development

## FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. SB 96

### ANALYSIS CONTINUATION

In consultation with the advisory committee, AEA shall make grants and loans to eligible applicants to finance feasibility studies, reconnaissance studies, energy resource monitoring, and construction of renewable energy projects, natural gas projects, or transmission or distribution infrastructure located in Alaska. AEA shall annually solicit funding recommendations from the advisory committee for all grants and loans.

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The funding source is assumed to be the newly established Renewable Energy Fund, assuming this legislation becomes law and an appropriation to the newly established fund is provided.

**TAB 1**

**SENATE BILL NO. 96**

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

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY SENATORS ELLIS, Stevens, Thomas, French, Wielechowski, Davis, Elton**

**Introduced: 2/26/07**

**Referred: Resources, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act establishing a renewable energy fund and describing its uses and purposes."**

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

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

5 **LEGISLATIVE FINDINGS.** The legislature finds that

6 (1) an adequate, reliable, reasonably priced, and safe supply of electrical  
7 energy is necessary for Alaska's basic infrastructure, and economic and technological  
8 development;

9 (2) Alaska possesses vast amounts of renewable energy resources in the form  
10 of wind, solar, geothermal, wave and tidal, biomass, and hydropower;

11 (3) the legislature established the Alaska Energy Policy Task Force in 2003 to  
12 review and analyze the state's current and long-term energy needs;

13 (4) the task force found that one of Alaska's long-term energy needs is to  
14 identify and evaluate long-term fuel resources, and recommended that the state should  
15 increase the proportion of renewables in long term-fuel sources;

1           (5) the cost of fuels such as natural gas and diesel that Alaskans rely on in  
2 large part to generate electric power is steadily rising;

3           (6) residents of rural Alaska pay far more for electricity than residents who  
4 live on the Railbelt energy grid;

5           (7) there is virtually no fuel cost associated with renewable energy resources;

6           (8) other states and nations are working successfully to develop their  
7 renewable energy resources;

8           (9) the continued competitiveness and stability of the state's economy requires  
9 that the legislature consider national trends toward renewable energy development;

10          (10) renewable energy technology development promotes industry and creates  
11 jobs;

12          (11) clean renewable energy has many environmental and health benefits;

13          (12) locally produced renewable energy has many security benefits;

14          (13) modern, affordable, and efficient renewable energy technologies now  
15 exist;

16          (14) it is in the interest of the public for Alaska to develop its zero fuel cost  
17 renewable energy resources; and

18          (15) natural gas should be considered as a last alternative for communities  
19 with no other reasonable renewable resources.

20       \* **Sec. 2.** AS 42.45 is amended by adding a new section to read:

21               **Sec. 42.45.045. Renewable energy fund.** (a) A renewable energy fund is  
22 established as a separate fund to finance certain energy projects in Alaska. The fund  
23 consists of money appropriated to it, including appropriations of interest earned by the  
24 fund and appropriations of repayments of loans.

25               (b) The fund shall be administered by the Alaska Energy Authority, with  
26 advice of an advisory committee as provided for in (d) and (e) of this section. The  
27 advisory committee consists of seven members, with one representative appointed by  
28 the governor to staggered three-year terms from each of the following groups:

29                       (1) small Alaska rural utilities serving not more than 10,000 people;

30                       (2) large Alaska urban utilities;

31                       (3) nonprofit environmental groups;

- 1 (4) nonprofit consumer groups;  
2 (5) Alaska Native organizations;  
3 (6) businesses engaged in the renewable energy sector; and  
4 (7) state government.

5 (c) A member of the advisory committee appointed under (b) of this section  
6 serves without compensation but is entitled to travel and per diem expenses as  
7 provided in AS 39.20.180.

8 (d) The authority shall

9 (1) in consultation with the advisory committee, establish regulations  
10 that develop a methodology for determining the order of projects that receive  
11 assistance, including separate requirements for grant and loan eligibility, and adopt  
12 regulations identifying criteria to evaluate the benefit and feasibility of projects  
13 applying for support from the fund, with significant weight being given to the amount  
14 of matching funds a project is able to make available;

15 (2) in consultation with the advisory committee, establish regulations  
16 that develop a methodology for distributing a proportionate share of funds under this  
17 section to finance feasibility studies, reconnaissance studies, renewable energy  
18 resource monitoring, and construction of renewable energy projects, natural gas  
19 projects, and transmission or distribution infrastructure in Alaska using the following  
20 guidelines:

21 (A) not more than 10 percent of the annual average amount of  
22 the fund may be used for feasibility studies, reconnaissance studies, and energy  
23 resource monitoring; and

24 (B) at least 90 percent of the annual average amount of the fund  
25 shall be used for design and construction of renewable energy resource projects  
26 that qualify under (f) of this section, natural gas projects that qualify under (g)  
27 of this section, and distribution and transmission infrastructure that qualifies  
28 under (h) of this section;

29 (3) in consultation with the advisory committee, establish regulations  
30 that provide for power production incentives to help reduce the principal balances on  
31 loans made from the fund.

1           (e) The authority shall, in consultation with the advisory committee, make  
2 grants and loans to eligible applicants to finance feasibility studies, reconnaissance  
3 studies, energy resource monitoring, and construction of renewable energy projects,  
4 natural gas projects, or transmission or distribution infrastructure located in Alaska  
5 that meet the requirements of (f), (g), or (h) of this section, as applicable, and, at least  
6 once each year, solicit from the advisory committee funding recommendations for all  
7 loans and grants.

8           (f) For a renewable energy project to qualify for a grant or loan under (e) of  
9 this section, the project must

10                   (1) be a new project not in operation on the effective date of this Act or  
11 an addition to an existing project made after the effective date of this Act;

12                   (2) generate more than 50 kilowatts of electricity and distribute the  
13 electricity to more than 20 end users; and

14                   (3) be

15                                   (A) a hydroelectric facility;

16                                   (B) a direct use of renewable energy resources;

17                                   (C) a facility that generates energy from fuel cells that run on  
18 renewable energy resources or natural gas;

19                                   (D) a facility that generates energy from in-stream kinetic  
20 turbines; or

21                                   (E) a facility that generates energy from renewable energy  
22 resources.

23           (g) To qualify for a grant or loan under (e) of this section, a natural gas project  
24 must benefit a community that

25                                   (1) has a population of 10,000 or less;

26                                   (2) does not have viable renewable energy resources it can develop;

27 and

28                                   (3) can demonstrate that the development of the natural gas project  
29 will not have local adverse environmental effects.

30           (h) To be eligible for a grant or loan under (e) of this section, transmission or  
31 distribution infrastructure must link a renewable energy project or natural gas project

1 to the electric grid. A grant or loan may be made under this subsection even if the  
 2 grant or loan applicant is not itself financing the construction of the renewable energy  
 3 project or natural gas project.

4 (i) The authority may not loan or grant more than five percent of the annual  
 5 average amount of the fund for natural gas projects under (g) of this section.

6 (j) The authority may not loan more than 20 percent of the annual average  
 7 amount of the fund without interest.

8 (k) The authority may not give more than 50 percent of the annual average  
 9 amount of the fund in the form of grants.

10 (l) In this section,

11 (1) "eligible applicant" means an electric utility holding a certificate of  
 12 public convenience and necessity under AS 42.05, independent power producer, local  
 13 government, or other governmental utility, including a tribal council and housing  
 14 authority;

15 (2) "fund" means the renewable energy fund;

16 (3) "hydroelectric facilities" has the meaning given to the term  
 17 "project" under AS 42.45.350(g) as applicable to licensing water-power development  
 18 projects, unless the authority adopts a different definition based on a determination  
 19 made by a nationally recognized independent nonprofit corporation that considers the  
 20 environmental effects of hydropower practices;

21 (4) "natural gas project" means use or access of natural gas other than  
 22 landfill or digester gas;

23 (5) "renewable energy resources" means

24 (A) wind, solar, geothermal, wave, or tidal power;

25 (B) low-emission nontoxic biomass based on solid or liquid  
 26 organic fuels from wood, forest and field residues, or animal products;

27 (C) dedicated energy crops available on a renewable basis; or

28 (D) landfill gas and digester gas.

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

31 **TRANSITION.** AS 39.05.055(5) applies to the initial appointments by the governor to

1 the advisory committee under AS 42.45.045(b), added by sec. 2 of this Act.

**TAB 2**

# ALASKA STATE LEGISLATURE

Senate Labor and Commerce  
Committee, Chair

Legislative Budget and Audit  
Committee

Senate Rules Committee

Committee on Committees



*While in Session*  
State Capitol, Rm. 9  
Juneau, AK 99801  
(907) 465-3704  
Fax: (907) 465-2529

*While in Anchorage*  
716 W. 4<sup>th</sup> Ave, Ste. 440  
Anchorage, AK 99501  
(907) 269-0169  
Fax: (907) 269-0172

SENATOR JOHNNY ELLIS

## Sponsor Statement

### Senate Bill 96

#### **An Act Establishing a Renewable Energy Fund and Describing its Uses and Purposes**

The high cost of fuel in Alaska has made it increasingly difficult for Alaskan residents to prosper. Home heating fuel and gasoline prices have skyrocketed in recent years leaving some Alaska families, who already struggle to make ends meet, left to prioritize between basic necessities of life: heat, food, or health care. This has a direct impact on Alaska's economy and Alaskans' way of life.

This problem promises to worsen as the supplies of Alaska's most precious nonrenewable resources dwindle. With the decline in production in Alaska's oil fields and the prospect for a gas line years away, other sources of energy are imperative. The time has come to seriously explore renewable sources of energy. Alaska is widely known for its nonrenewable resources; however, Alaska also has excellent sources of renewable energy such as wind, geothermal, solar, biomass and hydropower.

Senate Bill 96 would give Alaskan communities the tools to harness these cleaner, more secure, cost effective sources of energy. The bill establishes a renewable energy fund to be administered by the Alaska Energy Authority (AEA). AEA will take advice from an advisory committee with members appointed by the Governor from various utilities, environmental, business, state, and Native stakeholder groups. The Fund will offer both loan and grant options for Alaskans to develop alternative energy projects throughout our State.

These renewable energy projects will not only move Alaska's communities into the future, but they will also assist those crippled by the rising costs of fuel. By reducing the cost of power, Alaskans can become more self-sufficient.

Alaska has been an energy state for decades. Senate Bill 96 is a logical progression toward developing our inexhaustible energy resources. Alaska's communities have waited long enough and are poised to take control of their future energy needs. We urge your support for this crucial piece of legislation.

**TAB 3**



## **LEGISLATIVE BUDGET & AUDIT COMMITTEE**

Representative Ralph Samuels, Chairman

### **SECTIONAL ANALYSIS**

#### **Senate Bill 109**

##### **Section 1. Statement of intent**

(a) Confirms that AS 22.1 0.020(d), or court rules, have superseded inconsistent appeal provisions of AS 31.05.080; and

(b) Confirms that civil penalties may be administratively assessed by the Commission.

**Section 2.** Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well in (d)(2) and substitutes the word commission for an outdated reference to the Department of Natural Resources in (d) (7).

**Section 3.** Clarifies that the commission may regulate drilling and other oil and gas operations not only for conservation purposes but, as in the case of preventing blowouts or explosions, for public health and safety purposes under (e) (l).

(e)(l)(B) substitutes more precise terminology for the term "shooting"

(e)(l)(G) clarifies the commission's authority to regulate underground natural gas storage.

**Section 4.** Updates the various classifications of wells regulated by the commission.

**Section 5.** Slightly narrows a requirement enacted in 2004 relating to coal bed methane operations. The 2004 enactment requires a water well testing program whenever a well is drilled for production *or production testing* of coal bed methane. Production testing is a short-term operation that may occur during the exploration phase and is very low risk to the environment. Requiring a water well testing program in such circumstances may discourage exploration with no significant offsetting benefit to the public. The bill therefore would modify the requirement to apply only where a well will be used for regular production of coal bed methane.

**Section 6.** Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well.

**Section 7.** Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

**Section 8.** Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

**Section 9.** The current statute uses the term "rehearing" and in accordance with more modern usage, the bill substitutes the term "reconsideration" for "rehearing."

**Section 10.** Clarifies that a person who has applied for reconsideration and who is dissatisfied with the disposition of the application for reconsideration may appeal to the Superior Court. The questions reviewed on appeal are limited to the questions presented to the Commission by the application for reconsideration. This section and section 19 update the appeal provisions of the existing statute by eliminating outmoded procedures that were enacted before statehood and clarifying that appeals from the Commission decisions are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure.

**Section 11.** Allows the commission to allocate costs incurred by Commission staff for investigation or hearings.

**Section 12.** Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. The Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year.

**Section 13.** Deletes the reference to the \$100 fee for the permit to drill from the regulatory cost charge formula.

**Section 14.** Updates the penalty section by increasing the penalty amounts available to the Commission. This section would change the penalty from \$5,000 a day for each day of violation to ***no more than a \$1 00,000 for a single violation, or in the commission's discretion, no more than \$25,000 a day for each day of violation.***

**Section 15.** Makes clear that civil penalties may be administratively assessed by the Commission and if not paid are recoverable by a lawsuit filed by the attorney general on behalf of the Commission.

**Section 16.** Increases the civil penalties for gas that is flared, vented, or otherwise determined to be waste from the fair market value to two times the fair market value. This amendment essentially shifts the penalty previously imposed by the Department of Revenue for flared gas to the Commission.

**Section 17.** Adds a new subsection setting out the factors to be used in determining the amount of a penalty.

**Section 18.** AS 31.05.080(c), and AS 31.05.080(d) are repealed to eliminate outmoded procedures that were enacted before statehood.

**Section 19.** Adds a revisors' instruction to change the heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

**Section 20.** Provides for an immediate effective date under AS 01 .01.070(c).

**TAB 4**

# ALASKA STATE LEGISLATURE

Senate Labor and Commerce  
Committee, Chair

•  
Legislative Budget and Audit  
Committee

•  
Senate Rules Committee

•  
Committee on Committees



*While in Session*  
State Capitol, Rm. 9  
Juneau, AK 99801  
(907) 465-3704  
Fax: (907) 465-2529

*While in Anchorage*  
716 W. 4<sup>th</sup> Ave, Ste. 440  
Anchorage, AK 99501  
(907) 269-0169  
Fax: (907) 269-0172

## SENATOR JOHNNY ELLIS

### **SB 96 Renewable Energy Fund Witness List**

Phil Steyer, Vice President, Intergovernmental Affairs, Chugach Electric Association (CEA)

Kate Lamal, Vice President, Golden Valley Electric Association (GVEA)

Meera Kohler, President/CEO, Alaska Village Electric Cooperative (AVEC)

Kate Troll, Executive Director, Alaska Conservation Alliance (ACA)

Gwen Holdmann, Vice President of New Development, Chena Hot Springs Resort

Brad Reeve, General Manager, Kotzebue Electric Association (KEA)

Connie Fredenberg, Natural Resources Coordinator, Aleutian/Pribilof Islands Association (APIA)

Cris Rose, Executive Director, Renewable Energy Alaska Project (REAP)

**TAB 5**

By: Assemblymember Woods  
Adopted: 03/06/07

**MATANUSKA-SUSITNA BOROUGH  
RESOLUTION SERIAL NO. 07-028**

**A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY SUPPORTING  
THE ESTABLISHMENT OF A RENEWABLE ENERGY FUND FOR THE STATE OF  
ALASKA.**

---

WHEREAS, an adequate, reliable, reasonably priced, and safe supply of electrical energy is necessary for Alaska's basic infrastructure, economic, and technological development; and

WHEREAS, Alaska possesses vast amounts of renewable energy resources in the form of wind, geothermal, biomass, solar, tidal, wave, and hydropower; and

WHEREAS, the Alaska State Legislature established the Alaska Energy Policy Task Force in 2003 to review and analyze the State's current and long term energy needs; and

WHEREAS, the task force found that one of Alaska's long term energy needs is to "identify and evaluate long term fuel resources," and recommended that the State should "increase the proportion of renewable in long term fuel sources;" and

WHEREAS, the cost of fuels such as natural gas and diesel that Alaskans rely on in large part to generate electric power and heat is steadily rising; and

WHEREAS, residents of rural Alaska pay far more electricity than residents who live on the Rail Belt energy grid; and

WHEREAS, there is virtually no fuel cost associated with renewable energy resources; and

WHEREAS, other states and nations are working successfully to develop their renewable energy resources; and

WHEREAS, the continued competitiveness and stability of the State's economy requires that the Legislature consider national and international trends toward renewable energy development; and

WHEREAS, renewable energy technology development promotes both industry investment and job creation; and

WHEREAS, clean renewable energy has many environmental and health benefits; and

WHEREAS, locally produced renewable energy has many security benefits; and

WHEREAS, modern, affordable, and efficient renewable energy technologies now exist; and

WHEREAS, it is in the public's interest for Alaska to develop its zero fuel cost renewable energy resources.

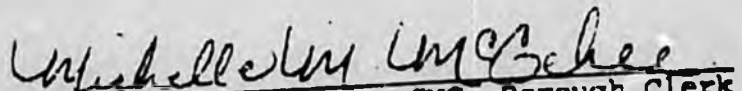
NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly finds that a Renewable Energy Fund for Alaska should be established as a separate fund to finance new utility scale renewable energy projects in Alaska with grants and loans.

BE IT FURTHER RESOLVED, that the Fund should be funded by general appropriations so that Alaska can leverage a portion of today's oil and gas wealth into a renewable energy industry that can and will provide perpetual benefits to Alaskans.

ADOPTED by the Matanuska-Susitna Borough Assembly this 6 day  
of March, 2007.

  
CURTIS D. LEONARD, Borough Mayor

ATTEST:

  
MICHELLE M. MCGEHEE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Woods, Allen, Church, Kvalheim, Bettine, and  
Kluberton