

HOUSE BILL NO. 78

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing authority for the state to evaluate and seek primacy for**
2 **administering the regulatory program for dredge and fill activities allowed to individual**
3 **states under federal law and relating to the authority; and providing for an effective**
4 **date."**

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

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

8 FINDINGS. The legislature finds that

9 (1) there are millions of waterbodies and tens of millions of acres of wetlands
10 within the state's boundaries;

11 (2) under 33 U.S.C. 1344 (sec. 404, Clean Water Act), individual states are
12 allowed to assume regulatory primacy over certain dredge and fill activities in the state, which
13 is consistent with congressional intent under 33 U.S.C. 1251 (sec. 101, Clean Water Act) that
14 states have the primary responsibilities and right to prevent, reduce, and eliminate pollution

1 and to plan the development and use, including restoration, preservation, and enhancement of
2 land and water resources within their respective states;

3 (3) other states have already assumed or continue to examine primacy for
4 dredge and fill activities under 33 U.S.C. 1344 (sec. 404, Clean Water Act);

5 (4) the Department of Environmental Conservation and the Department of
6 Natural Resources possess substantial expertise to administer the dredge and fill permitting
7 system allowed to individual states under 33 U.S.C. 1344 (sec. 404, Clean Water Act); and

8 (5) there are benefits to the state for the Department of Environmental
9 Conservation and Department of Natural Resources to assume the dredge and fill permitting
10 responsibilities.

11 * **Sec. 2.** AS 44.37.020 is amended by adding a new subsection to read:

12 (c) The Department of Natural Resources in coordination with the Department
13 of Environmental Conservation may take actions necessary to administer and enforce
14 any dredge and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean
15 Water Act), including the adoption of regulations under AS 44.62 (Administrative
16 Procedure Act).

17 * **Sec. 3.** AS 46.03.020 is amended to read:

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

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

21 (2) review and appraise programs and activities of state departments
22 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
23 determining the extent to which the programs and activities are contributing to the
24 achievement of that policy and to make recommendations to the departments and
25 agencies, including environmental guidelines;

26 (3) consult with and cooperate with

27 (A) officials and representatives of any nonprofit corporation or
28 organization in the state;

29 (B) persons, organizations, and groups, public and private,
30 using, served by, interested in, or concerned with the environment of the state;

31 (4) appear and participate in proceedings before any state or federal

1 regulatory agency involving or affecting the purposes of the department;

2 (5) undertake studies, inquiries, surveys, or analyses it may consider
3 essential to the accomplishment of the purposes of the department; these activities
4 may be carried out by the personnel of the department or in cooperation with public or
5 private agencies, including educational, civic, and research organizations, colleges,
6 universities, institutes, and foundations;

7 (6) at reasonable times, enter and inspect with the consent of the owner
8 or occupier any property or premises to investigate either actual or suspected sources
9 of pollution or contamination or to ascertain compliance or noncompliance with a
10 regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating
11 to secret processes or methods of manufacture discovered during investigation is
12 confidential;

13 (7) conduct investigations and hold hearings and compel the
14 attendance of witnesses and the production of accounts, books, and documents by the
15 issuance of a subpoena;

16 (8) advise and cooperate with municipal, regional, and other local
17 agencies and officials in the state, to carry out the purposes of this chapter;

18 (9) act as the official agency of the state in all matters affecting the
19 purposes of the department under federal laws now or hereafter enacted;

20 (10) adopt regulations necessary to carry out the purposes of this
21 chapter, including, by way of example and not limitation, regulations providing for

22 (A) control, prevention, and abatement of air, water, or land or
23 subsurface land pollution;

24 (B) safeguard standards for petroleum and natural gas pipeline
25 construction, operation, modification, or alteration;

26 (C) protection of public water supplies by establishing
27 minimum drinking water standards, and standards for the construction,
28 improvement, and maintenance of public water supply systems;

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

30 (E) collection and disposal of garbage, refuse, and other
31 discarded solid materials from industrial, commercial, agricultural, and

1 community activities or operations;

2 (F) control of pesticides;

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

5 (H) handling, transportation, treatment, storage, and disposal of
6 hazardous wastes;

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

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

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

19 **(14) notwithstanding any other provision of law, take all actions**
20 **necessary to receive federal authorization of a state program for the department**
21 **and the Department of Natural Resources to administer and enforce a dredge**
22 **and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean Water**
23 **Act) and to implement the program, if authorized.**

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

26 STATE EVALUATION AND ASSUMPTION OF PRIMACY OF THE DREDGE
27 AND FILL PERMITTING PROGRAM ALLOWED UNDER 33 U.S.C. 1344 (SEC. 404,
28 CLEAN WATER ACT). (a) The Department of Environmental Conservation, in coordination
29 with the Department of Natural Resources, shall continue to evaluate the potential benefits,
30 costs, and consequences of assuming primacy of the dredge and fill permitting program
31 allowed under 33 U.S.C. 1344 (sec. 404, Clean Water Act) and take reasonable steps to

1 assume primacy of the program.

2 (b) The Department of Environmental Conservation may file an application seeking
3 primacy for the Department of Environmental Conservation and the Department of Natural
4 Resources to regulate dredge and fill activities under 33 U.S.C. 1344 (Sec. 404, Clean Water
5 Act).

6 (c) The Department of Environmental Conservation and the Department of Natural
7 Resources may adopt regulations under AS 44.62 (Administrative Procedure Act) that are
8 necessary to obtain federal approval of the regulation of dredge and fill activities under
9 33 U.S.C. 1344 (sec. 404, Clean Water Act).

10 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).