

Introduced: 2/11/74
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY M. MILLER

2 HOUSE BILL NO. 613

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring anadromous water impact reports."

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

8 * Section 1. AS 16.05.870 is amended to read:

9 Sec. 16.05.870. ANADROMOUS WATER IMPACT REPORT. [PROTECTION OF
10 FISH AND GAME.] (a) The commissioner shall, in accordance with the
11 Administrative Procedure Act (AS 44.62) specify the various rivers, lakes,
12 and streams or parts of them that are used by [important for the spawning
13 or migration of] anadromous fish for spawning and migration. [BEFORE
14 DECEMBER 31, 1968, THE SPECIFICATION MAY BE MADE BY DESIGNATING AREAS
15 WITHIN WHICH ALL RIVERS, LAKES, AND STREAMS ARE CONSIDERED IMPORTANT FOR
16 THE SPAWNING OR MIGRATION OF ANADROMOUS FISH; PROVIDED, THAT THE AREAS
17 LIE WITHIN 50 MILES OF THE COASTLINE EXTENDING FROM DIXON ENTRANCE
18 THROUGH FALSE PASS TO CAPE MENSHIKOF, INCLUDING ALL ISLANDS EAST OF FALSE
19 PASS. A PERSON GIVING NOTICE UNDER (b) OF THIS SECTION BEFORE DECEMBER
20 31, 1968, MAY, IF THE ACTIVITY IS TO TAKE PLACE WITHIN SUCH A DESIGNATED
21 AREA, REQUEST THE COMMISSIONER TO SPECIFY INDIVIDUALLY BY NAME OR NUMBER,
22 THE PARTICULAR RIVERS, LAKES, AND STREAMS OR PARTS OF THEM WITHIN THE
23 AREA OF OPERATIONS DESCRIBED IN THE NOTICE WHICH ARE IMPORTANT FOR THE
24 SPAWNING AND MIGRATION OF ANADROMOUS FISH. UPON RECEIPT OF THE REQUEST
25 THE COMMISSIONER SHALL PROMPTLY MAKE THE DESIGNATION.]

26 (b) If a person or governmental agency desires to construct a
27 hydraulic project, or use, divert, obstruct, pollute, or change the
28 natural flow or bed of a specified river, lake, or stream, or to use
29 wheeled, tracked, or excavating equipment or log-dragging equipment in

1 the bed of a specified river, lake, or stream, or in any other way con-
2 struct a project or engage in an activity or action which may have a
3 significant effect on a specified river, lake, stream, or part of it,
4 the person or governmental agency shall notify the commissioner of this
5 intention before the beginning of the construction, [OR] use, activity,
6 or action.

7 (c) The commissioner shall acknowledge receipt of the notice by
8 return air mail. The [If the] commissioner or his designee [DETERMINES
9 TO DO SO, HE] shall, in the letter of acknowledgement, require the per-
10 son or governmental agency to submit to him full plans and specifica-
11 tions of the proposed project, activity or action [CONSTRUCTION OR WORK],
12 complete plans and specifications for the proper protection of fish
13 [AND GAME] in connection with the project, activity or action [CONSTRUC-
14 TION OR WORK, OR IN CONNECTION WITH THE USE], and the approximate date
15 the project, activity or action [CONSTRUCTION, WORK, OR USE] will begin,
16 and shall require the person or governmental agency to obtain written
17 approval from him as to the sufficiency of the plans or specifications
18 before the proposed project, activity or action [CONSTRUCTION OR USE]
19 is begun.

20 * Sec. 2. AS 16.05.870 is amended by adding new subsections to read:

21 (d) Before approval by the commissioner of a project, activity or
22 action specified in (b) of this section, the department, with the assis-
23 tance of any other state department it requests, shall prepare a detailed
24 anadromous water impact report to include but not be limited to the
25 following:

26 (1) The physical, biological, and hydrological effect of
27 the proposed project, activity or action;

28 (2) any adverse or irreversible environmental effects which
29 cannot be avoided if the project, activity or action is undertaken;

1 (3) mitigation measures available to minimize the impact
2 of the project, activity, or action;

3 (4) alternatives to the proposed project, activity or action;

4 (5) the specific relationship between the local short-term
5 use of the specified water, and the maintenance and enhancement of its
6 long-term productivity; and

7 (6) the boundaries of the area which may be affected by the
8 proposed activity.

9 (e) If the commissioner, after reviewing the report, determines
10 that the project, activity or action will have a significant adverse
11 impact on the river, lake, or stream and that it is likely to disturb
12 or destroy the spawning or migration of anadromous fish, he shall refuse
13 to approve it. However, he may approve it if all of the following
14 apply:

15 (1) there is no more prudent and feasible alternative to the
16 project, activity or action;

17 (2) the project, activity or action will be undertaken in
18 such a manner as to avoid or minimize its adverse effect; and

19 (3) the public benefit to be derived from the project,
20 activity or action substantially outweighs its adverse effect on the
21 environment or resource involved.

22 (f) If the project, activity or action will have an adverse effect
23 on the environment or resource involved but is approved under (e)(1) -
24 (3) of this section, the commissioner may require the person or agency
25 to take reasonable means to minimize the adverse effect, including but
26 not limited to the construction of facilities to allow the free ingress
27 or egress of anadromous fish into the waters during the spawning or
28 propagation process.

29 * Sec. 3. AS 16.05.880 is amended to read:

1 Sec. 16.05.880. VIOLATION OF SECS. 870 - 895 OF THIS CHAPTER.

2 If a person or governmental agency begins construction on a work or
3 project or use or engages in an activity or action for which notice is
4 required by sec. 870 of this chapter without first providing plans and
5 specifications subject to the approval of the commissioner for the pro-
6 per protection of anadromous fish [AND GAME], and without first having
7 obtained written approval of the commissioner as to the adequacy of
8 the plans and specifications submitted for the protection of anadromous
9 fish [AND GAME], he is guilty of a misdemeanor. If a person or govern-
10 mental agency is convicted of violating secs. 870 - 895 of this chapter
11 or continues a use, activity, action, work or project without fully
12 complying with secs. 870 - 895 of this chapter, the use, activity,
13 action, work, or project is a public nuisance and is subject to abate-
14 ment. The cost of restoring a specified river, lake, or stream to its
15 original condition shall be borne by the violator and shall be in addi-
16 tion to the penalty imposed by the court.

17 * Sec. 4. AS 16. 05.895 is amended to read:

18 Sec. 16.05.895. PENALTY FOR CAUSING MATERIAL DAMAGE. If a person
19 or governmental agency fails to notify the commissioner of any construc-
20 tion, [OR] use, project, activity or action that causes material damage
21 to the spawning beds or prevents or interferes with the migration of
22 anadromous fish, or by neglect or noncompliance with plans and speci-
23 fications required and approved by the commissioner causes material
24 damage to the spawning beds or prevents or interferes with the migration
25 of anadromous fish, the person or governmental agency shall be guilty of
26 a misdemeanor.

27 * Sec. 5. AS 16.05 is amended by adding a new section to read:

28 Sec. 16.05.897. COMMON INTERFERENCE. It is unlawful for a person
29 or governmental agency to obstruct, divert or pollute a river, lake, or

1 stream, or part of it, used by anadromous fish for spawning and
2 migration, by felling trees or timber in those waters, casting, passing,
3 throwing or dumping any tree limbs or foliage, underbrush, stumps,
4 rubbish, earth, stones, rock or other debris, or passing or dumping
5 sawdust, plane shavings, or other waste or refuse of any kind in those
6 waters.

7 * Sec. 6. AS 46.15 is amended by adding a new section to read:

8 Sec. 46.15.020. RESPONSIBILITY FOR ANADROMOUS WATERS. The
9 authority to review and approve projects, activities, and actions affect-
10 ing anadromous fish granted to the commissioner of fish and game under
11 AS 16.05.870 - 16.05.900 is not affected by this chapter. However,
12 rights relating to those waters may be determined under this chapter
13 when not in conflict with AS 16.05.870 - 16.05.900.

14 * Sec. 7. AS 16.10.010 - 16.10.050 are repealed.
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