

Original sponsor: Rules/Governor

Offered: 4/18/80
Referred: Rules

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 118

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rivers, lakes, streams and other
7 bodies of water in the state; and providing for an
8 effective date."

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

10 * Section 1. AS 16.05.870(a) is amended to read:

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

27 * Sec. 2. AS 16.05.870(c) is amended to read:

28 (c) The commissioner shall acknowledge receipt of the notice by
29 return first class [AIR] mail. If the commissioner determines to do so,

1 he shall, in the letter of acknowledgement, require the person or
2 governmental agency to submit to him full plans and specifications of
3 the proposed construction or work, complete plans and specifications for
4 the proper protection of fish and game in connection with the construc-
5 tion or work, or in connection with the use, and the approximate date
6 the construction, work or use will begin. The commissioner shall ap-
7 prove the proposed construction, work or use in writing unless he finds
8 the plans and specifications insufficient for the proper protection of
9 fish and game. If the commissioner finds the plans and specifications
10 insufficient for the proper protection of fish and game, he shall notify
11 the person or governmental agency which submitted the plans and specifi-
12 cations of his finding by first class mail. The person or governmental
13 agency may, within 90 days of receipt of the notice, initiate a hearing
14 under AS 44.62.370. The hearing is subject to AS 44.62.330 - 44.62.630
15 [, AND SHALL REQUIRE THE PERSON OR GOVERNMENTAL AGENCY TO OBTAIN WRITTEN
16 APPROVAL FROM HIM AS TO THE SUFFICIENCY OF THE PLANS OR SPECIFICATIONS
17 BEFORE THE PROPOSED CONSTRUCTION OR USE IS BEGUN].

18 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

19 (47) the Department of Fish and Game as to functions relating
20 to the protection of fish and game under AS 16.05.870.

21 * Sec. 4. AS 46.15.030 is amended to read:

22 Sec. 46.15.030. WATERS RESERVED TO THE PEOPLE. Wherever occurring
23 in a natural state, the waters are reserved to the people for common use
24 and are subject to appropriation and beneficial use and to reservation
25 of instream flows and levels of water, as provided in this chapter.

26 * Sec. 5. AS 46.15.070(c) is amended to read:

27 (c) Within 15 days of publication or service of notice, an in-
28 terested person may file an objection. The commissioner may hold
29 hearings upon giving due notice and shall grant, deny, or condition the

1 application in whole or in part within 30 days of receipt of the last
2 objection or, if the commissioner elects to hold hearings, within 180
3 days of receipt of the last objection [AT THE CONCLUSION OF THE HEARING].
4 Notice of the order or decision shall be served personally or mailed to
5 any person who has filed an objection.

6 * Sec. 6. AS 46.15.070(e) is amended to read:

7 (e) A person aggrieved by the action of the commissioner or by the
8 failure of the commissioner to grant, deny, or condition an application
9 in accordance with (c) of this section may appeal to the superior court.

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

11 Sec. 46.15.145. RESERVATION OF WATER. (a) The state, an agency
12 or a political subdivision of the state, an agency of the United States
13 or a person may apply to the commissioner to reserve sufficient water to
14 maintain a specified instream flow or level of water at a specified
15 point on a stream or body of water, or in a specified part of a stream,
16 throughout a year or for specified times, for

17 (1) protection of fish and wildlife habitat, migration, and
18 propagation;

19 (2) recreation and park purposes;

20 (3) navigation and transportation purposes; and

21 (4) sanitary and water quality purposes.

22 (b) Upon receiving an application for a reservation under this
23 section, the commissioner shall proceed in accordance with AS 46.15.070.

24 (c) The commissioner shall issue a certificate reserving the water
25 applied for under this section if he finds that

26 (1) the rights of prior appropriators will not be affected by
27 the reservation;

28 (2) the applicant has demonstrated that a need exists for the
29 reservation;

1 (3) there is unappropriated water in the stream or body of
2 water sufficient for the reservation; and

3 (4) the proposed reservation is in the public interest.

4 (d) After the issuance of a certificate reserving water, the water
5 specified in the certificate shall be withdrawn from appropriation and
6 the commissioner shall reject an application for a permit to appropriate
7 the reserved water.

8 (e) A reservation under this section does not affect rights in
9 existence on the date the certificate reserving water is issued.

10 (f) At least once each 10 years the commissioner shall review each
11 reservation under this section to determine whether the purpose de-
12 scribed in (a) of this section for which the certificate reserving water
13 was issued and the findings described in (c) of this section still apply
14 to the reservation. If the commissioner determines that the purpose or
15 part or all of the findings no longer apply to the reservation, he may
16 revoke or modify the certificate reserving the water in accordance with
17 AS 46.15.140(b).

18 * Sec. 8. AS 46.15.260(1) is amended to read:

19 (1) "appropriate" means to divert, impound, or withdraw a
20 quantity of water from a source of water, or to reserve water in accord-
21 ance with AS 46.15.145, for a beneficial use;

22 * Sec. 9. AS 46.15.260(2) is amended to read:

23 (2) "appropriation" means the diversion, impounding or with-
24 drawal of a quantity of water from a source of water, or the reserva-
25 tion of water in accordance with AS 46.15.145, for a beneficial use;

26 * Sec. 10. AS 46.15.260(3) is amended to read:

27 (3) "beneficial use" means a use of water for the benefit of
28 the appropriator, other persons or the public, that is reasonable and
29 consistent with the public interest, including, but not limited to,

1 domestic, agricultural, irrigation, industrial, manufacturing, fish and
2 shellfish processing, navigation and transportation, mining, power,
3 public, sanitary, fish and wildlife, [AND] recreational uses, and main-
4 tenance of water quality;

5 * Sec. 11. A specification made under AS 16.05.870(a) before the effec-
6 tive date of this Act expires July 31, 1982, unless the commissioner of fish
7 and game reevaluates the specification and determines that the river, lake,
8 stream or part of a river, lake or stream to which the specification applies
9 is important for the spawning, rearing or migration of anadromous fish.

10 * Sec. 12. This Act takes effect immediately in accordance with AS 01.10.-
11 070(c).

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