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Referred: Finance

6-0965H

Original sponsor(s): REP. DAVIDSON, Goll, Jacko, Ellis, Brown

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 210 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the reservation of instream flows
7 in water important for fish; and providing for an
8 effective date."

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

10 * Section 1. AS 46.15 is amended by adding a new section to read:

11 Sec. 46.15.146. RESERVATION OF INSTREAM FLOWS FOR FISH. (a)
12 Except as provided in (d), (e), (h), and (i) of this section and
13 AS 46.15.090, upon receipt by the commissioner of an application to
14 appropriate water from a river or stream that is important for the
15 spawning, incubation, rearing, or migration of fish, the commissioner
16 shall reserve under (b) or (c) of this section an instream flow in the
17 river or stream for the instream use of fish and to maintain existing
18 habitat for fish. The commissioner shall base instream flow reserva-
19 tions on an instream flow analysis using the best hydrological data or
20 estimate of hydrological conditions existing at the time of the appli-
21 cation for appropriation.

22 (b) Unless the commissioner has adopted regulations under (c) of
23 this section, the commissioner shall reserve for the months of April
24 through October, an instream flow of at least 60 percent of the mean
25 annual flow of the river or stream and for the months of November
26 through March, an instream flow of at least 30 percent of the mean
27 annual flow of the river or stream.

28 (c) The commissioner shall adopt regulations to reserve instream
29 flows in rivers and streams for instream use of fish and to maintain

1 existing habitat for fish. The commissioner shall consult the Depart-
2 ment of Fish and Game during the development of regulations adopted
3 under this subsection. The regulations adopted under this subsection
4 shall establish hydrologic regions within the state, and specify for
5 each hydrologic region the proportion of mean annual or monthly in-
6 stream flows in rivers and streams that are reserved from further
7 appropriation. The commissioner shall amend the regulations adopted
8 under this subsection on the basis of additional hydrological and
9 biological information, as the commissioner determines is necessary.

10 (d) Notwithstanding (a) of this section, if the commissioner is
11 prevented from reserving the percentage of the mean annual flow re-
12 quired under (a) of this section because of the existence of an appli-
13 cation on record or a right to appropriate acquired before the effec-
14 tive date of this section, the commissioner shall reserve all of the
15 instream flow that is available for reservation.

16 (e) Notwithstanding (a) and (d) of this section, the commission-
17 er may under AS 46.15.145, on the basis of an analysis of data ob-
18 tained from an instream flow study, adjust the quantity of water of a
19 river or stream required to be reserved under (a) or (d) of this
20 section following a written finding by the commissioner that the
21 interests of the state will be best served. The commissioner shall
22 coordinate adjustments under this section with the decisions of the
23 commissioner of fish and game under AS 16.05.020, 16.05.050, 16.05.-
24 840, and 16.05.870, regarding the protection of habitat for fish and
25 passage of fish.

26 (f) The priority date of a reservation of water from a river or
27 stream identified under AS 16.05.870 or identified in a Department of
28 Fish and Game regional guide on or before the effective date of this
29 section is the effective date of this section. The priority date of a

1 reservation of water from a river or stream identified under AS 16.-
2 05.870 or identified in a Department of Fish and Game regional guide
3 after the effective date of this section is the date on which the
4 identification takes effect.

5 (g) An instream flow reserved under this section is withdrawn
6 from appropriation.

7 (h) A reservation of water under this section does not affect
8 rights and applications on record before the effective date of this
9 section.

10 (i) This section does not apply to nonconsumptive appropriations
11 of water under AS 46.15.040.

12 * Sec. 2. The commissioner of natural resources shall adopt the regula-
13 tions required under AS 46.15.146(c), enacted by sec. 1 of this Act, within
14 18 months of the effective date of this Act.

15 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).