

Offered: 3/7/90
Referred: Rules

6-0965G

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 210 (Finance)

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 AS 46.15.090, upon receipt by the commissioner
13 of an application to appropriate (1) water from a river or stream that
14 is important for the spawning, incubation, rearing, or migration of
15 fish; or (2) ground water that significantly influences the volume of
16 water in a river or stream that is important for spawning, incubation,
17 rearing, or migration of fish, the commissioner shall reserve under
18 (b) or (c) of this section an instream flow in the river or stream for
19 the instream use of fish and to maintain existing habitat for fish.
20 The commissioner shall base instream flow reservations on an instream
21 flow analysis using the best hydrological data or estimate of hydro-
22 logical conditions existing at the time of the application for appro-
23 priation.

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

1 (c) The commissioner shall adopt regulations to reserve instream
2 flows in rivers and streams for instream use of fish and to maintain
3 existing habitat for fish. The commissioner shall consult the Depart-
4 ment of Fish and Game during the development of regulations adopted
5 under this subsection. The regulations adopted under this subsection
6 must establish hydrologic regions within the state, and specify for
7 each hydrologic region the proportion of mean annual or monthly in-
8 stream flows in rivers and streams that are reserved from further
9 consumptive appropriation. The commissioner shall amend the regu-
10 lations adopted under this subsection on the basis of additional
11 hydrological and biological information, as the commissioner deter-
12 mines is necessary.

13 (d) If the commissioner is prevented from reserving the percent-
14 age of the mean annual flow required under (a) of this section because
15 of the existence of an application on record before the effective date
16 of this Act or a right to appropriate acquired before the effective
17 date of this Act, the commissioner shall reserve all of the instream
18 flow that is available for reservation.

19 (e) The commissioner may under AS 46.15.145, on the basis of an
20 analysis of data obtained from an instream flow study, adjust the
21 quantity of water of a river or stream required to be reserved under
22 (a) or (d) of this section following a written finding by the commis-
23 sioner that the interests of the state will be best served. The
24 commissioner shall coordinate adjustments under this section with the
25 decisions of the commissioner of fish and game under AS 16.05.020,
26 16.05.050, 16.05.840, and 16.05.870, regarding the protection of
27 habitat for fish and passage of fish.

28 (f) The priority date of a reservation of water from a river or
29 stream identified under AS 16.05.870 or identified in a Department of

1 Fish and Game regional guide on or before the effective date of this
2 Act is the effective date of this Act. The priority date of a reser-
3 vation of water from a river or stream identified under AS 16.05.870
4 or identified in a Department of Fish and Game regional guide after
5 the effective date of this Act is the date on which the identification
6 takes effect.

7 (g) An instream flow reserved under this section is withdrawn
8 from consumptive appropriation.

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

12 (i) This section does not apply to appropriations under AS 46.-
13 15.040 for nonconsumptive uses of water or for single family domestic
14 use.

15 (j) This section does not apply to appropriations of ground
16 water of 5,000 gallons or less a day unless the commissioner, in
17 consultation with the Department of Fish and Game, determines that the
18 appropriation may adversely affect fish habitat in a river or stream.
19 The commissioner shall consider multiple appropriations of water for a
20 single related use as a single appropriation for the purposes of this
21 subsection.

22 * Sec. 2. The commissioner of natural resources shall adopt the regula-
23 tions required under AS 46.15.146(c), enacted by sec. 1 of this Act, within
24 18 months of the effective date of this Act.

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