

CS FOR SENATE BILL NO. 163(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/4/16

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the nomination and designation of state water as outstanding state**
2 **resource water; defining outstanding state resource water; providing for the**
3 **management of outstanding state resource water; and providing for an effective date."**

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

5 * **Section 1.** AS 46.03 is amended by adding new sections to read:

6 **Article 3A. Outstanding State Resource Water**

7 **Sec. 46.03.135. Outstanding state resource water; nominations.** (a) A water
8 of the state may not be designated as an outstanding state resource water except by an
9 act of the legislature. An outstanding state resource water designation may not be
10 removed except by an act of the legislature.

11 (b) The department shall accept from a resident of the state a nomination of
12 water for designation as outstanding state resource water. A nomination must include

13 (1) the name, the geographic identification, and specific distinguishing
14 features of a water body or portion of the water body nominated for designation;

- 1 (2) a detailed map identifying
- 2 (A) the location of the nominated water;
- 3 (B) the boundaries of the nominated water, including any
- 4 upstream or downstream boundaries;
- 5 (C) adjacent, proximate, or overlapping boundaries of the
- 6 nominated water, and a national or state park, a river designated a wild and
- 7 scenic river under 16 U.S.C. 1271 - 1287 (Wild and Scenic Rivers Act), critical
- 8 habitat designated under 16 U.S.C. 1531 - 1544 (Endangered Species Act of
- 9 1973), and other similar protected areas;
- 10 (3) evidence demonstrating that the nominated water is
- 11 (A) in relatively pristine condition, largely absent of human
- 12 sources of degradation, and of exceptional value to the state in its current
- 13 condition;
- 14 (B) of exceptional ecological, economic, or recreational
- 15 significance; or
- 16 (C) an exceptional and rare example of its type, regardless of
- 17 its water quality;
- 18 (4) a statement concluding that the designation is necessary to protect
- 19 the nominated water; the statement must, at a minimum, reference supporting
- 20 scientific data and principles;
- 21 (5) a discussion of alternative means that could be used to protect the
- 22 nominated water under state or federal law;
- 23 (6) available water quality data for the water, including chemical,
- 24 physical, or biological water quality information relevant to establishing a baseline
- 25 water quality of the nominated water;
- 26 (7) a description of current or future activities that result or could result
- 27 in a discharge in waters adjacent to or a tributary of the nominated water, or in the
- 28 nominated water itself that may need to be limited or managed to comply with the
- 29 standards under AS 46.03.185, if the nominated water is designated as outstanding
- 30 state resource water;
- 31 (8) a discussion of the economic effect the designation would have on

1 the local and regional economies of the state;

2 (9) evidence that the nominated water constitutes waters of the United
3 States;

4 (10) any additional information that the person submitting the
5 nomination believes may be necessary to aid the department in conducting the analysis
6 necessary to forward the nomination to the legislature; and

7 (11) a fee of \$1,000.

8 **Sec. 46.03.145. Department determinations on nomination; agreement.** (a)

9 Within six months after receiving a nomination, the department shall determine
10 whether the nomination meets the requirements of AS 46.03.135. If the department
11 determines that a nomination meets the requirements of AS 46.03.135, the department
12 may enter into an agreement with the resident of the state that nominated the water.
13 The agreement under this section may provide that the resident shall reimburse the
14 department for the costs or a portion of the costs incurred by the department or another
15 state agency related to the nomination process. The agreement may specify that costs
16 incurred by the department include costs for

17 (1) necessary public notice and public hearings; and

18 (2) preparation of the findings, analyses, or determinations related to
19 the nomination.

20 (b) For a nomination meeting the requirements of AS 46.03.135 for which a
21 cost agreement has not been established or for which a partial cost agreement has been
22 established, the department shall prepare an estimate of the cost to the department and
23 other state agencies to prepare and process the nomination. The cost estimate under
24 this subsection may be transmitted to the legislature for consideration as a capital
25 appropriation.

26 **Sec. 46.03.155. Regulations.** (a) The department shall adopt regulations that
27 establish a process for

28 (1) submitting a nomination and additional information related to a
29 nomination;

30 (2) prioritizing nominations;

31 (3) providing public notice and a public hearing for all nominations;

1 (4) providing individual notice to known owners of land adjacent to
2 the nominated water;

3 (5) providing, upon the request of an individual, a copy of the
4 nomination and additional material related to the nomination, including public
5 comments related to the nomination; and

6 (6) an individual to request an additional public hearing on a
7 nomination.

8 (b) The department may adopt regulations that establish additional nomination
9 or information requirements not provided in this section.

10 **Sec. 46.03.165. Requirements for submission to the legislature; nomination**
11 **attachments.** (a) The department may forward a nomination for outstanding state
12 resource water to the legislature only if the

13 (1) entirety of the water nominated is a water of the United States;

14 (2) department has determined that the nomination meets the
15 requirements of AS 46.03.135;

16 (3) department, in consultation with the Department of Fish and Game
17 and the Department of Natural Resources, determines that the nominated water has
18 exceptional characteristics when compared to other state water and the water

19 (A) is in relatively pristine condition, largely absent of human
20 sources of degradation, and of exceptional value to the state in its current
21 condition;

22 (B) is of exceptional ecological, economic, or recreational
23 significance; or

24 (C) is an exceptional and rare example of its type, regardless of
25 its water quality;

26 (4) resident of the state who nominated the water has paid in full the
27 fee due under AS 46.03.135(b)(11) and amounts owed under an agreement under
28 AS 46.03.145.

29 (b) The department shall, in consultation with the Department of Fish and
30 Game and the Department of Natural Resources, create a report analyzing the
31 nomination using the factors described in this subsection. At a minimum, the report

1 must analyze

2 (1) whether there is a risk that the quality of the nominated water will,
3 without the designation, be degraded, causing permanent and substantial adverse
4 effects to the exceptional characteristics of the water;

5 (2) the advantages and disadvantages of other means the state may
6 have to protect the nominated water to preserve its exceptional characteristics.

7 (c) The department may, to assist with the requirements of this section, request
8 that the resident of the state that nominated the water provide additional information.

9 (d) Upon completion of the requirements in this section and AS 46.03.135 -
10 46.03.155, and the regulations adopted thereunder, and after attaching to the
11 nomination the report required under (b) of this section, a summary of the public
12 comments related to the nomination, and any other required or pertinent material
13 compiled under this section or AS 46.03.135 - 46.03.155, or regulations adopted
14 thereunder, the department shall certify the nomination complete. The department
15 shall note on the nomination the date the department certifies the nomination
16 complete.

17 **Sec. 46.03.175. Submissions to the legislature.** (a) Within 10 days after the
18 convening of each first regular legislative session, the commissioner shall transmit to
19 the legislature for consideration a list of nominations certified complete under
20 AS 46.03.165(d) in the preceding four calendar years. For a nomination certified
21 complete under AS 46.03.165(d) in the preceding two calendar years, the
22 commissioner shall submit to the legislature the entire nomination, as certified
23 complete under AS 46.03.165(d).

24 (b) Every 10 years, beginning in 2020, the Department of Environmental
25 Conservation and the Department of Natural Resources shall each deliver a report to
26 the senate secretary and the chief clerk of the house of representatives and notify the
27 legislature that the report is available. The reports must describe each body of water
28 designated as outstanding state resource water and provide a recommendation
29 regarding the continuation of the designation.

30 **Sec. 46.03.185. Regulation of outstanding state resource water.** (a) The
31 department shall regulate water designated as outstanding state resource water under

1 AS 46.03.135 to maintain and protect the water so that no new or increased discharge
 2 and no new or increased discharge to a tributary to the water would result in lower
 3 water quality in the water, unless the discharge is temporary and does not result in
 4 long-term lower quality of water.

5 (b) The department may not manage water of the state as specified in (a) of
 6 this section unless the water has been designated an outstanding state resource water
 7 under AS 46.03.135.

8 (c) A nomination under AS 46.03.135 - 46.03.195 does not create rights or
 9 considerations under state law.

10 **Sec. 46.03.195. Definitions.** In AS 46.03.135 - 46.03.195,

11 (1) "resident of the state" means an individual who establishes
 12 residency under AS 01.10.055;

13 (2) "waters of the United States" has the meaning given in 40 C.F.R.
 14 122.2, as that section read on the effective date of this Act.

15 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 APPLICABILITY. The submission required under AS 46.03.175(a), enacted by sec. 1
 18 of this Act, applies to the first regular session of the legislature beginning after January 1,
 19 2018.

20 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 TRANSITION: REGULATIONS. Within one year after the effective date of this Act,
 23 the Department of Environmental Conservation shall adopt regulations necessary to
 24 implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure
 25 Act), but not before the effective date the law implemented by the regulation.

26 * **Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).