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REPRESENTATIVE PAUL SEATON DISTRICT 35

Sponsor Statement HB 328

Alaska has a reputation for pure water and vibrant wild fish stocks. HB 328 seeks to maintain the long-standing prohibition on pollution mixing zones in Alaska's freshwater spawning areas. HB 328 transfers into statute a regulation that has governed wastewater discharges for many successful years of industrial and municipal expansion in Alaska.

HB 328 aids municipalities and industry by preventing man-made ditches or holding ponds that are invaded by spawning fish from being reclassified as freshwater spawning areas. This language solves the "Valdez Situation" cited by the Alaska Department of Environmental Conservation (ADEC) as a primary rationale for the regulation change. In that case, the city created a ditch from its wastewater treatment facility to saltwater, and the ditch was subsequently invaded by spawning pink salmon. This ditch was then classified as a spawning area requiring the wastewater discharge parameters to be reduced to a purity that the city's wastewater treatment plant would not be able to feasibly meet. HB 328 also allows other municipal wastewater facilities to have a mixing zone re-authorized if successful spawning occurs in the mixing zone after initial authorization, solving the concerns of many municipalities across the state.

HB 328 designates a spawning area to be a physical place in a river where fish spawning occurs. According to testimony from ADEC staff and the Commissioner of the Department of Fish and Game, the standard practice among regulators has been to determine where and when spawning occurs, and to employ seasonal restrictions on development activities in order to control impacts to the environment. However, in relation to the authorization of mixing zones in freshwater, there has never been explicit statutory or regulatory authorization for this practice. There was no reference to this practice in either of the previous Mixing Zone proposals.

In the summer of 2004 and again in 2005 ADEC released proposals to lift the prohibition on pollution mixing zones in freshwater spawning areas. These proposals were met with intense opposition from coastal municipalities, commercial and sport fishing industry groups, the federal government, state fish and game advisory committees, and hundreds of individuals, families, and businesses who testified that allowing pollution in freshwater spawning areas would have a detrimental effect on the physical environment where the largest freshwater spawning populations on earth occur. Additionally, commercial fishing groups were unified in the concern that their recent successes in salmon marketing would be undermined if this important water quality safeguard was abolished.

Recently, ADEC adopted a version of the proposed regulations that both consolidate and modify the mixing zone regulations found at 18 AAC 70.240 through 18 AAC 70.020. The new regulations specifically exclude resident freshwater sport fish and resident subsistence fish spawning areas from the prohibition on mixing zones. Additionally, the new regulations allow any pollution mixing zone to be permitted year-round in freshwater salmon spawning areas if spawning salmon were not found in the area when the mixing zone was authorized, but were later found successfully spawning in the mixing zone. The new regulations also change the regulatory definition of a "spawning area" to mean a point in time. This allows regulators to authorize mixing zones in all spawning areas when it is determined that

salmon spawning will not be occurring. All of these changes present significant departures from established public policy.

HB 328 does not negate other substantive changes ADEC has made in their attempt to streamline and consolidate the mixing zone regulations. HB 328 does not change regulations that allow for site-specific exemptions from state water quality standards and the granting of short term variances from the standards, both of which can be applied to allow activities such as placer mining. Placer mines may also have a mixing zone in an area determined to not be an area where spawning occurs.

HB 328 protects municipalities and industry while maintaining the high standard of water quality and fisheries protection that has been a centerpiece of Alaska policy for years.