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MEMORANDUM

February 23, 2012

SUBJECT: Differences between HB 325 and the initiative establishing an Alaska coastal management program
(Work Order No. 27-LS1050I)

TO: Representative Alan Austerman
Majority Leader
Attn: Erin Harrington

FROM: Alpheus Bullard *ALB*
Legislative Counsel

This memorandum describes the differences between the ballot initiative that would reestablish an Alaska coastal management program and House Bill 325. The memo uses the formatting and sections of the bill as a starting point. The memo is organized by AS section in HB 325, with the corresponding initiative section in parentheses; my comments relating to changes made and changes you may wish to consider making are in italics following each section.

Generally

Throughout the bill there are significant changes relating to spelling, grammar, word usage, and organization. Citations to state and federal law¹ were added and amended, and the bill sections reorganized to conform with the Manual of Legislative Drafting.

Because some sections were moved into uncodified law, the remaining codified sections are numbered differently than they are in the initiative. Also, the bill uses available

¹ Throughout the bill, the citation "16 U.S.C. 1451 - 1464 (Coastal Management Act of 1972)" is changed to "16 U.S.C. 1451 - 1466 (Coastal Management Act of 1972), as amended[.]" This change includes all the provisions of the current federal chapter on coastal zone management in the citation, and should help ensure that the state's program would remain consistent with the applicable federal law.

Citations have been added to clarify how the statutes are intended to work together, for example, providing a citation at sec. 46.40.330(2), a section that directs the proposed Division of Ocean and Coastal Management to adopt certain regulations after those regulations have been approved by the Alaska Coastal Policy Board ("board") to the applicable section under which the board approves regulations (sec. 46.40.320(a)(1)).

numbers in AS 46.40 rather than creating a new chapter. Some of the section titles (catchlines) have been altered to more accurately describe the provisions' effects.

Sec. 46.40.310 (46.41.010). **Alaska Coastal Policy Board.** Establishes an Alaska Coastal Policy Board ("board") in the Department of Commerce, Community, and Economic Development ("department"). The board consists of nine public members, and their alternates, appointed by the governor from the coastal regions of the state, as well as the commissioners of the Department of Environmental Conservation, the Department of Fish and Game, the Department of Natural Resources, and the Department of Commerce, Community and Economic Development. It specifies membership terms, quorum and meeting requirements, board structure and governance details, and that the department will provide administrative support for the board.

The city of Dillingham is added to the bill's sec. 46.40.310(a)(1)(C).

The initiative provides that the governor would appoint "nine public members and alternates." It also provides that the "[p]ublic members of the board or their alternates are entitled to per diem and travel expenses authorized by law. . ." The initiative is otherwise silent as to the role of alternate members. The bill provides how public alternates must be selected and appointed (one from each region described in sec. 46.40.310(a)(1)), when an alternate for a designated member may attend a meeting in the place of that member (I assume that was the intended function of the alternatives, since a different means is provided for filling vacancies), and when a public member may receive per diem and travel expenses.

While both the bill and the initiative provide that five public members and two designated members of the board constitute a quorum, the bill additionally provides that the board may not take action without the affirmative votes of at least six members.

You may want to consider making board members subject to legislative confirmation.

Sec. 46.40.320 (46.41.020). **Powers and duties of the board.** Establishes the duties and powers of the board.

Sec. 46.40.330 (46.41.030). **Division of ocean and coastal management.** Establishes a division of ocean and coastal management within the department. Provides the duties of the division.

Sec. 46.40.340 (46.41.040). **Alaska coastal management program regulations.** Provides what regulations must be adopted under the Alaska Coastal Management Program ("program"). Directs that regulations be adopted relating to (1) program standards, (2) criteria for the preparation and approval of district coastal management plans ("plans"), and (3) consistency review procedures for coastal activities and projects.

Move the initiative's sec. 46.41.040(b), which provides that coastal management districts, coastal district boundaries, and approved coastal management plans that were in effect

on June 30, 2011 are restored and incorporated into the program, to a "transition" section at the end of the bill.

Sec. 46.40.350 (46.41.050). **Objectives.** Requires that the program be consistent with certain objectives.

Sec. 46.40.360 (46.41.060). **Development of district coastal management plans.** Requires districts to develop and adopt plans. Provides plan requirements. Provides criteria for board approval of plans.

Section 46.41.060 of the initiative included a subsection (c) that defined when an enforceable policy is preempted; the bill does not. The subsection did no more than describe the legal principle of preemption, which will apply whether or not the principle is described.

Sec. (46.41.070).

This initiative provision was moved to an uncodified section that appears at the end of the bill.

Sec. 46.40.370 (46.41.080). **Implementation of district coastal management plans.** Requires districts to implement plans. Provides how a plan must be implemented. Provides that a plan for a district that does not exercise zoning or other controls "on the use of resources" within its coastal area will be implemented by "appropriate state agencies."

Sec. 46.40.380 (46.41.090). **Compliance and enforcement.** Requires municipalities and state resource agencies to regulate land and water controls in conformity with district plans. Provides that the superior court has jurisdiction to enforce orders of the board and the department.

Sec. 46.40.390 (46.41.100). **Coastal management plans in the unorganized borough.** States that coastal resource service areas ("service areas") established in the unorganized borough may exercise all authority and perform those duties required by the program.

Sec. 46.40.400 (46.41.110). **Coastal resource service areas.** Provides how service area boundaries will be determined.

This section contains a drafting error. AS 46.40.400(c) should read: "A determination by the commissioner under (b) of this section may be made only before a coastal resource area is established under AS 46.40.410." (Emphasis added). This subsection should be corrected.

Sec. 46.40.410 (46.41.120). **Establishment of coastal resource service areas.** Permits a service area to be established by a vote at an election after either the submission to the board of (1) a petition from a certain percentage of the voters within the proposed service

area or (2) a resolution from a certain percentage of the city and village councils in the proposed service area.

The initiative text contains a reference to a subsection "(c)" that does not exist. This is removed from the bill.

Sec. 46.40.420 (46.41.130). Coastal resource service area boards. Requires each service area to have an elected service area board. Provides for board duties and powers, board composition and membership, election of board members, terms of office, vacancies, and the recall of board members.

Sec. 46.40.430 (46.41.140). Elections in coastal resource service areas. Directs the lieutenant governor to administer the elections for service area board members and the organization of service areas.

Sec. 46.40.440 (46.41.150). Preparation of district coastal management plan by the Department of Commerce, Community and Economic Development. Permits the board to submit a district plan to the legislature for consideration if (1) the residents of a service area reject the establishment of that service area at an election and (2) the board finds that major economic activity has occurred, or will occur, in the proposed service area. Such plans are prepared by the department upon request of the board. Further permits the department, in consultation with the service area, to prepare a plan for a service area that has been established under sec. 46.40.410, but that has not been able to make substantial progress in the preparation of an approvable plan.

For clarity, on page 11, line 8, "organization" should be replaced with "establishment." Similarly, at page 11, line 17, "organized" should be replaced with "established," and at page 11, lines 19 and 21, "organization" with "establishment."

In the initiative, this section is titled "Preparation of district coastal management program by the Department of Commerce, Community and Economic Development." In the bill, "program" has been changed to "plans."

Under the initiative's sec. 46.41.150(a), the board may direct the department to "prepare and recommend for consideration by the council and for submission to the legislature a district coastal management plan for the service area." In the bill, "council" has been changed to "board" (this provision is modeled on a provision from the period in which the state's program had a "council") and the requirement that the plan be submitted to the legislature, has been removed because the initiative does not authorize the legislature to approve, disapprove, or make any recommendations relating to a district coastal management plan for a service area.

Sec. 46.40.450 (46.41.160). Approval of plans in coastal resource service areas. Establishes a process for a plan to be reviewed by cities and villages within a service

area, prior to (1) adoption by the service area board and (2) approval by the (Coastal Policy) board. Establishes parameters for plan review by cities and villages.

In the initiative, this section contains a definition for "village." That definition has been moved into the chapter's definitions at sec. 46.40.500.

Sec. 46.40.460 (46.41.170). Cooperative administration. Provides that a city that is within the coastal area, but that is not part of a coastal service area, will be included within an adjacent service area, unless the city's governing body opts out. Provides that a municipality and a service area are not restricted from engaging in cooperative or joint administration of functions.

Sec. 46.40.470 (46.41.180). Construction with other laws. States that the bill's provisions may not be construed to diminish various state and municipal powers and duties.

Sec. 46.40.500 (46.41.900). Definitions. Provides definitions for the bill's provisions.

There are a number of changes here. The definition of "consistency review" is amended to conform with the duties of the board and the department as those duties are provided in the initiative, a definition of "elevation" is provided, the definition of "project" has been changed, and a definition of "village" is added.

On page 16, line 17, following "and," the word "includes" is missing. This should be remedied.

If you have further questions, please do not hesitate to contact me.

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