

**SENATE CS FOR CS FOR HOUSE BILL NO. 439(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/24/02

Referred: Rules

Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to compliance with and implementation of district coastal management**  
2   **programs; removing the opportunity to petition for review of proposed or final**  
3   **consistency determinations under the Alaska coastal zone management program; and**  
4   **limiting the authority of the Alaska Coastal Policy Council to order a coastal resource**  
5   **district or a state agency to take action with respect to a proposed or final consistency**  
6   **determination; and providing for an effective date."**

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

8    \* **Section 1.** AS 46.40.096(d) is amended to read:

9           (d) In preparing a consistency review and determination for a proposed  
10          project, the reviewing entity shall

11                  (1) request consistency review comments for the proposed project  
12          from state resource agencies, affected coastal resource districts, and other interested  
13          parties as determined by regulation adopted by the council;

(2) prepare proposed consistency determinations;

(3) coordinate subsequent reviews of proposed consistency determinations prepared under (2) of this subsection; a subsequent review of a proposed consistency determination under this paragraph

(A) is limited to a review by the state resource agencies; and

(B) may occur only if requested by

(i) the project applicant;

(ii) a state resource agency; or

(iii) an affected coastal resource district;

(4) [AFTER PROVIDING AN OPPORTUNITY TO FILE A PETITION FOR REVIEW UNDER (e) OF THIS SECTION,] render the final consistency determination and certification.

\* **Sec. 2.** AS 46.40.100(a) is amended to read:

(a) Municipalities and state **resource** agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council [AND THE LEGISLATURE] and in effect.

\* **Sec. 3.** AS 46.40.100(b) is amended to read:

(b) A party that is authorized under [AS 46.40.096(e)(1) OR] (g) of this section may file a petition showing that a district coastal management program is not being implemented. **A petition filed under this subsection may not seek review of a proposed or final consistency determination regarding a specific project** [, ENFORCED, OR COMPLIED WITH]. On receipt of a petition, the council, after giving public notice in the manner required by (f) of this section, shall convene a hearing to consider the matter. A hearing called under this subsection shall be held in accordance with regulations adopted by the council. After hearing,

[(1) IF THE PETITION WAS FILED UNDER AS 46.40.096(e) AND THE COUNCIL FINDS THAT

(A) THE OFFICE OR THE STATE AGENCY RESPONSIBLE FOR COORDINATING THE CONSISTENCY REVIEW HAS NOT FAIRLY CONSIDERED THE PETITIONER'S COMMENTS IN THE DEVELOPMENT OF A PROPOSED CONSISTENCY

1 DETERMINATION, THE COUNCIL SHALL REMAND THE PROPOSED  
 2 CONSISTENCY DETERMINATION TO THE OFFICE, OR TO THE  
 3 STATE AGENCY RESPONSIBLE FOR COORDINATING THE  
 4 CONSISTENCY REVIEW, FOR PREPARATION OF A REVISED  
 5 PROPOSED CONSISTENCY DETERMINATION THAT GIVES FAIR  
 6 CONSIDERATION TO THE PETITIONER'S COMMENTS;

7 (B) A REMAND OF THE CONSISTENCY  
 8 DETERMINATION IS NOT REQUIRED UNDER (A) OF THIS  
 9 PARAGRAPH, THE COUNCIL SHALL DISMISS THE PETITION;

10 (2) IF THE PETITION WAS NOT FILED UNDER AS 46.40.096(e),]  
 11 the council may order that the coastal resource district or a state **resource** agency take  
 12 any action **with respect to future implementation of the district coastal**  
 13 **management program that** the council considers necessary, **except that the council**  
 14 **may not order that the coastal resource district or a state agency take any action**  
 15 **with respect to a proposed or final consistency determination that has been issued**  
 16 [TO IMPLEMENT, ENFORCE, OR COMPLY WITH THE DISTRICT COASTAL  
 17 MANAGEMENT PROGRAM].

18 \* **Sec. 4.** AS 46.40.100(c) is amended to read:

19 (c) **In** [EXCEPT WHEN A PETITION HAS BEEN FILED UNDER  
 20 AS 46.40.096(e), IN] determining whether an approved district coastal management  
 21 program is being implemented [, ENFORCED, OR COMPLIED WITH] by a coastal  
 22 resource district that exercises zoning authority or controls on the use of resources  
 23 within the coastal area **or by a state resource agency**, the council shall find in favor  
 24 of the district **or the state resource agency, unless the council finds a pattern of**  
 25 **nonimplementation** [IF

26 (1) ZONING OR OTHER REGULATIONS HAVE BEEN ADOPTED  
 27 AND ARE BEING ENFORCED;

28 (2) VARIANCES ARE BEING GRANTED ACCORDING TO  
 29 PROCEDURES AND CRITERIA THAT ARE ELEMENTS OF THE DISTRICT  
 30 COASTAL MANAGEMENT PROGRAM, OR THE VARIANCE IS OTHERWISE  
 31 APPROVED BY THE COUNCIL; AND

(3) PROCEDURES AND STANDARDS ADOPTED BY THE COASTAL RESOURCE DISTRICT AS REQUIRED BY THIS CHAPTER OR BY THE GUIDELINES AND STANDARDS ADOPTED BY THE COUNCIL AND SUBSEQUENTLY APPROVED BY THE LEGISLATURE HAVE BEEN FOLLOWED AND CONSIDERED].

\* **Sec. 5.** AS 46.40.100(f) is amended to read:

(f) Upon receipt of a petition under (b) of this section, the council shall give notice of the hearing [CONVENED TO CONSIDER THE PETITION AS FOLLOWS:]

(1) [NOTICE OF THE HEARING SHALL BE GIVEN] at least 10 days before the scheduled date of the hearing. The

[(A) BY PUBLICATION IN

(i) A NEWSPAPER OF STATEWIDE CIRCULATION; OR

(ii) A NEWSPAPER OF GENERAL CIRCULATION IN THE VICINITY OF THE DISTRICT COASTAL MANAGEMENT PROGRAM THAT IS THE SUBJECT OF THE PETITION; AND

(B) BY AT LEAST ONE OF THE FOLLOWING METHODS:

(i) PUBLICATION THROUGH PUBLIC SERVICE ANNOUNCEMENTS ON THE ELECTRONIC MEDIA SERVING THE AREA AFFECTED BY THE DISTRICT COASTAL MANAGEMENT PROGRAM;

(ii) POSTING IN A CONSPICUOUS LOCATION IN THE VICINITY OF THE PROPOSED PROJECT OR ACTION;

(iii) NOTIFYING PARTIES KNOWN OR LIKELY TO BE AFFECTED BY THE PROPOSED PROJECT OR ACTION; OR

(iv) ANOTHER METHOD CALCULATED TO EFFECTIVELY NOTIFY AFFECTED INTERESTED PARTIES.

(2) a] notice [PROVIDED UNDER (1) OF THIS SUBSECTION]

must

1                   **(1)** [(A)] contain sufficient information in commonly understood terms  
2 to inform the public of the nature of the petition; and

3                   **(2)** [(B)] indicate the manner in which the public may comment on the  
4 petition [IF THE PETITION IS FILED UNDER (b)(2) OF THIS SECTION].

5       \* **Sec. 6.** AS 46.40.100(g) is amended to read:

6                   (g) The opportunity to petition [UNDER (b)(2) OF THIS SECTION] is  
7 limited to

8                   (1) a coastal resource district;

9                   (2) a citizen of the coastal resource district; or

10                  (3) a state **resource** agency.

11       \* **Sec. 7.** AS 46.40.100 is amended by adding a new subsection to read:

12                  (h) If the council finds a pattern of nonimplementation under (c) of this  
13 section, the council may order a coastal resource district or a state resource agency to  
14 take action with respect to future implementation of the district coastal management  
15 program that the council considers necessary to implement the district coastal  
16 management program. The council's determination under (c) of this section and any  
17 order issued under this subsection shall be considered a final administrative order for  
18 purposes of judicial review under AS 44.62.560.

19       \* **Sec. 8.** AS 46.40.210 is amended by adding a new paragraph to read:

20                  (9) "resource agency" has the meaning given in AS 44.19.152.

21       \* **Sec. 9.** AS 46.40.094(c)(2), 46.40.096(e), 46.40.096(f), and 46.40.100(d) are repealed.

22       \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

24                  TRANSITION PROVISION. Petitions filed under AS 46.40 before the effective date  
25 of this Act shall be heard and acted on according to the law in effect on the date the petition  
26 was filed.

27       \* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).