

LEGAL SERVICES

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MEMORANDUM

April 4, 2011

SUBJECT: Drafting issues associated with Amendment 27-GH1965\A.32 to HB 106 (Work Order No. 27-GH1965\A.32)

TO: Representative Paul Seaton
Co-Chair of the House Resources Committee
Attn: Louie Flora

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

This note accompanies the amendment described above. I have several comments.

I reorganized the material you submitted. The language you provided read in part: "*The department shall approve a district coastal management plan submitted for review and approval if the . . . enforceable policies of the district coastal management plan . . . may establish new standards . . .*" This does not work. Consequently, subparagraphs AS 46.40.070(a)(2)("G") and ("I") in your fax of April 3, are now subsection AS 46.40.070(b) in 27-GH1965\A.32. The meaning is still not clear; please review the amendment to ensure that it remains consistent with your intent.

Existing AS 46.40.070(b) provides that a decision of the department relating to the approval of a district coastal management plan must be given within 90 days after the plan is submitted to the department. No deadline is provided in the repealed and reenacted provision. Is this your intent?

Note also that the removal of the requirement in AS 46.40.070 that a district management plan meet statewide standards may be of little substantive effect. The requirement that a district coastal management plan meet statewide standards is not unique to AS 46.40.070 (the statutory section amended by A.32). Other statutory sections in AS 46.40 also require a plan to "meet" statewide standards adopted by the department. These sections are not addressed in amendment A.32. See AS 46.40.010(d), 46.40.030(a), 46.40.040(a), 46.40.060(a), 46.40.060(c), 46.40.180(b), and (for a consistency review) 46.40.210(5).¹

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

TLAB:plm
11-216.plm
Enclosure

¹ See also AS 46.39.040(1).

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 106

BY REPRESENTATIVE SEATON

1 Page 1, line 3, following "**program**";:

2 Delete "**relating to the approval of district coastal management plans by the**
3 **Department of Natural Resources**";

4
5 Page 2, following line 5:

6 Insert a new bill section to read:

7 "*** Sec. 2.** AS 46.40.070 is repealed and reenacted to read:

8 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
9 department shall approve a district coastal management plan submitted for review and
10 approval if the

11 (1) district coastal management plan

12 (A) meets the requirements of this chapter and the district plan
13 criteria adopted by the department; and

14 (B) does not conflict with the statewide standards adopted by
15 the department; and

16 (2) enforceable policies of the district coastal management plan

17 (A) do not duplicate, restate, incorporate by reference,
18 rephrase, or otherwise modify or adopt state or federal statutes or regulations;

19 (B) are not preempted by state or federal law; and

20 (C) do not arbitrarily or unreasonably restrict uses of state
21 concern.

22 (b) The enforceable policies in a district coastal management plan submitted
23 for review under this section may establish new standards or requirements that are

1 within the authority of a state or federal agency unless the state or federal agency
2 specifically objects.

3 (c) In reviewing and approving a district coastal management plan under (a) of
4 this section, the department may not require a district to designate areas for the
5 purpose of developing an enforceable policy.

6 (d) In this section, "specifically objects" means that a written objection to the
7 enforceable policy that establishes the new standards or requirements is filed with the
8 department by

9 (1) the commissioner of a state agency;

10 (2) the head of a federal agency operating in the state;

11 (3) the official responsible for a federal agency's operations in the
12 state; or

13 (4) legal counsel for a federal agency operating in the state."
14

15 Renumber the following bill sections accordingly.