

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 4, 2011

SUBJECT: Drafting notes relating to Amendment 27-GH1965\A.33 to HB 106
(Work Order No. 27-GH1965\A.33)

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

FROM: Alpheus Bullard *TEB*
Legislative Counsel

This memorandum accompanies the amendment described above.


Amendment 27-GH1965\A.33 (A.33) is based on amendment 27-GH1965\A.26 (A.26). You requested significant changes to AS 46.40.060 as it was amended in A.26. This required conforming changes elsewhere in A.33. Please note my conforming changes to the amendment's sec. 46.40.005(i), 46.40.060(d), and the uncodified transitional provisions (page 5, lines 21 - 25 of A.33).

Please also note that the order of the subsections in the amendment's sec. 46.40.060 is different than suggested. In accordance with the Manual of Legislative Drafting, the suggested subsection "(d)" is added as "(e)" in an additional bill section (see the amendment's sec. 5).

I've also made changes to the language of this subsection. What is missing is any provision that specifies what will happen if the commissioner determines that a decision of the department under AS 46.40.060(c) should be changed.

Note also that the removal of language in the amendment's AS 46.40.060(a) and (c) relating to the requirement 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 46.40.060. 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.33. See AS 46.40.010(d), 46.40.030(a), 46.40.040(a), 46.40.070, 46.40.180(b), and (for a consistency review) 46.40.210(5).¹

¹ See also AS 46.39.040(1).



Representative Paul Seaton

April 4, 2011

Page 2

Given the time allotted there may be other issues that I have not identified. Please do not hesitate to contact me if you have questions.

TLAB:ljw
11-218.ljw

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 106

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

2 Insert "**establishing the Alaska Coastal Policy Board**;"

3

4 Page 2, following line 5:

5 Insert new bill sections to read:

6 "*** Sec. 2.** AS 46.39 is amended by adding new sections to article 1 to read:

7 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
8 Board is created in the Department of Natural Resources. The board consists of the
9 following:

10 (1) five public members appointed by the governor subject to
11 confirmation by the legislature in joint session, the public members shall include, one
12 at-large member from any coastal resource district and four members from a list
13 composed of at least three names from each region, nominated and submitted by the
14 coastal resource districts of each region; one public member shall be appointed from
15 each of the following regions:

16 (A) northwest Alaska, including, generally, the area of the
17 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait
18 area, including, generally, the area of the Bering Strait regional educational
19 attendance area;

20 (B) southwest Alaska, including, generally, the area within the
21 Lower Yukon, Lower Kuskokwim, and Southwest regional educational
22 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and
23 the Kodiak-Aleutians area, including the Kodiak Island and area of the

1 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof
2 regional educational attendance areas;

3 (C) Upper Cook Inlet area, including the Municipality of
4 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,
5 including, generally, the Kenai Peninsula Borough; and the Prince William
6 Sound area, including, generally, the area east of the Kenai Peninsula Borough
7 to 141 West longitude; and

8 (D) Southeast Alaska, generally the area east of 141 West
9 longitude;

10 (2) each of the following designated members:

11 (A) the commissioner of environmental conservation;

12 (B) the commissioner of fish and game;

13 (C) the commissioner of natural resources;

14 (D) the commissioner of transportation and public facilities.

15 (b) Public members serve staggered terms of three years. Except as provided
16 in AS 39.05.080(4), each member serves until a successor is appointed and qualified.
17 A public member may be reappointed. A public member may be removed for cause.

18 (c) The board shall designate cochair, one of whom shall be selected from
19 among the public members appointed under (a)(1) of this section and one from among
20 the members designated in (a)(2) of this section.

21 (d) If a member serving under (a)(2) of this section is unable to attend, a
22 deputy commissioner in the same department may attend and act in place of the
23 member. The names of alternates serving under (a)(2) of this section shall be filed
24 with the board.

25 (e) Three public members and three designated members of the board
26 constitute a quorum. However, action may be taken only upon the affirmative vote of
27 a majority of the full membership of the board.

28 (f) The board shall meet at least four times a year and as often as necessary to
29 fulfill its duties under this chapter and AS 46.40. Meetings may be held and members
30 may vote telephonically, except one board meeting a year shall be held in person.

31 (g) Public members of the board are entitled to per diem and travel expenses

1 authorized by law for members of boards and commissions.

2 (h) Administrative support for the board shall be provided by the division in
3 the department responsible for coastal and ocean management. The director of the
4 division in the department responsible for coastal and ocean management, under
5 direction of the cochair designated by the board from the individuals listed in (a)(2) of
6 this section, may contract with or employ persons as necessary to assist the board in
7 carrying out the board's duties and responsibilities.

8 (i) The board shall make recommendations to the department relating to the
9 approval or modification of a district coastal management plan under
10 AS 46.40.060(b).

11 * **Sec. 3.** AS 46.39.030 is amended to read:

12 **Sec. 46.39.030. Powers of the department.** The department may

13 (1) apply for and accept grants, contributions, and appropriations,
14 including application for and acceptance of federal funds that may become available
15 for coastal planning and management;

16 (2) contract for necessary services;

17 (3) consult and cooperate with

18 (A) persons, organizations, and groups, public or private,
19 interested in, affected by, or concerned with coastal area planning and
20 management;

21 (B) agents and officials of the coastal resource districts of the
22 state, the Alaska Coastal Policy Board established in AS 46.39.005, and
23 federal and state agencies concerned with or having jurisdiction over coastal
24 planning and management;

25 (4) take any reasonable action necessary to carry out the provisions of
26 this chapter or AS 46.40.

27 * **Sec. 4.** AS 46.40.060 is amended to read:

28 **Sec. 46.40.060. Review and approval by the department.** (a) If, upon
29 submission of a district coastal management plan for approval, the department finds
30 that the plan meets the provisions of this chapter [AND THE STATEWIDE
31 STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY THE

DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may approve the district coastal management plan, or may approve portions of the district plan that meet those requirements.

(b) If the department finds that a district coastal management plan is not approvable or is approvable only in part under (a) of this section, it shall submit the plan to the board for review. The board shall review the plan and make recommendations relating to whether the department shall approve or modify the district coastal management plan in whole or in part [DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO RESOLVE DIFFERENCES].

(c) After the board has reviewed the district coastal management plan and submitted recommendations under (b) of this section [IF, AFTER MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the department shall enter findings and, by order, may require

(1) that the district coastal management plan be amended to satisfy the provisions of this chapter [OR MEET THE STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY THE DEPARTMENT];

(2) that the district coastal management plan be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the department or commissioner of natural resources entered under (c) or (e) of this section.

* **Sec. 5.** AS 46.40.060 is amended by adding a new subsection to read:

(e) A person affected by a decision of the department under this section may request reconsideration of the decision within 15 days of the issuance of a decision

made by the department under (c) of this section. The request must be in writing and must include a statement of the specific changes desired. The commissioner of natural resources may review the department's decision on the basis of the request and determine whether the decision should be changed. The commissioner may issue a determination in writing within 20 days of the issuance of the decision. If the commissioner takes no action, the request for reconsideration shall be considered as denied. Denial of a request for reconsideration shall be considered a final administrative order and decision of the department.

* **Sec. 6.** AS 46.39.005 is repealed.

* **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD; STAGGERED TERMS. (a) Notwithstanding AS 44.39.005(a), added by sec. 2 of this Act, within 30 days after the effective date of this section, the municipalities of each region identified in AS 44.39.005(a)(1) shall submit to the governor the names of three persons from the region qualified under AS 44.39.005(a), added by sec. 2 of this Act. Notwithstanding AS 44.39.005, added by sec. 2 of this Act, within 60 days after the effective date of this section, the governor shall appoint, from the lists of names submitted under AS 46.39.005(a)(1), one member from each region and one at-large member to serve on the Alaska Coastal Policy Board established by AS 46.39.005, added by sec. 2 of this Act. The governor shall appoint the public members to three-year staggered terms. The governor shall specify the term of each member appointed subject to this section.

(b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 4 of this Act, a review by the Alaska Coastal Policy Board relating to a district coastal management plan, or a portion of a district coastal management plan, shall be delayed until all the public members of the board are appointed under (a) of this section.

* **Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 6 of this Act takes effect only if secs. 1 - 8 and 18, ch. 31, SLA 2005, take effect."

1 Renumber the following bill sections accordingly.

2

3 Page 2, following line 18:

4 Insert a new bill section to read:

5 "* **Sec. 10.** If sec. 6 of this Act takes effect, it takes effect on the date that secs. 1 - 8 and 18,
6 ch. 31, SLA 2005, take effect."

7

8 Renumber the following bill section accordingly.

9

10 Page 3, line 19:

11 Delete "This"

12 Insert "Except as provided in sec. 10 of this Act, this"