

SB 27 – Regulation of Dredge and Fill Activities

Sectional Analysis

January 22, 2013

“An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date.”

The purpose of this legislation is to provide authority for the state to evaluate and seek to develop a program for the regulation of dredge and fill activities in waters and wetlands located within the state, in accordance with the regulating program allowed states under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

Section 1: provides legislative findings for the bill, including recognition that there are thousands of waterbodies and millions of acres of wetlands within the state. The findings further state that individual states are allowed to assume primacy to regulate dredge and fill activities under 33 U.S.C. 1344 and that this is consistent with congressional intent in 33 U.S.C. 1251 that the states to have the primary responsibilities and rights in regulating activities involving lands and waters within their respective states. The findings note that other states have assumed or continue to evaluate obtaining primacy for regulating dredge and fill activities under 33 U.S.C. 1344 and that the Department of Environmental Conservation and the Department of Natural Resources have substantial expertise such that they could ably regulate these types of activities. The findings also recognize that there are benefits to the state for the Department of Environmental Conservation and the Department of Natural Resources to assume the dredge and fill permitting responsibilities.

Section 2: amends AS 44.37.020 to provide that the Department of Natural Resources, in coordination with the Department of Environmental Conservation, may take action necessary to administer and enforce any authorized dredge and fill permitting program allowed under 33 U.S.C. 1344, including the adoption of regulations under AS 44.62 (Administrative Procedure Act).

Section 3: amends AS 46.03.020 to provide that, notwithstanding any other provision of law, the Department of Environmental Conservation may take all actions necessary to receive federal authorization of a state program for the Department of Environmental Conservation and the Department of Natural Resources to administer and enforce a dredge and fill permitting program allowed under 33 U.S.C. 1344.

Section 4: directs the Department of Environmental Conservation, in coordination with the Department of Natural Resources, to continue to evaluate the potential benefits, costs, and consequences to the state of assuming primacy of regulating dredge and fill activities under 33 U.S.C. 1344, and to take reasonable steps to assume primacy. The Department of Environmental Conservation would also have the authority under Section 4 of the bill to file an application seeking federal approval of a state program administered by the Department of Environmental Conservation and the Department of Natural Resources that regulates dredge and fill activities under 33 U.S.C. 1344. Section 4 of the bill also provides that the Department of Environmental Conservation and the Department of Natural Resources may adopt regulations under AS 44.62 that are necessary to obtain federal approval of and to implement a state program for the regulations of dredge and fill activities under 33 U.S.C. 1344.

Section 5: provides for an immediate effective date.