

CS FOR HOUSE BILL NO. 28(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/1/98
Referred: Rules

Sponsor(s): REPRESENTATIVES THERRIAULT, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska coastal management program and the
2 responsibilities of the Alaska Coastal Policy Council."

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

4 * **Section 1.** AS 44.19.145(a) is amended to read:

5 (a) The office shall

6 (1) provide technical assistance to the governor and the legislature in
7 identifying long range goals and objectives for the state and its political subdivisions;

8 (2) prepare and maintain a state comprehensive development plan;

9 (3) provide information and assistance to state agencies to aid in
10 governmental coordination and unity in the preparation of agency plans and programs;

11 (4) review planning within state government as may be necessary for
12 receipt of federal, state, or other funds;

13 (5) participate with other countries, provinces, states, or subdivisions
14 of them in international or interstate planning, and assist the state's local governments,

1 governmental conferences, and councils in planning and coordinating their activities;

2 (6) encourage educational and research programs that further state
3 planning and development, and provide administrative and technical services for them;

4 (7) publish such statistical information or other documentary material
5 as will further the provisions and intent of AS 44.19.141 - 44.19.152;

6 (8) assist the governor and the Department of Community and Regional
7 Affairs in coordinating state agency activities that have an effect on the solution of
8 local and regional development problems;

9 (9) serve as a clearinghouse for information, data, and other materials
10 that may be helpful or necessary to federal, state, or local governmental agencies in
11 discharging their respective responsibilities or in obtaining federal or state financial or
12 technical assistance;

13 (10) review all proposals for the location of capital improvements by
14 any state agency and advise and make recommendations concerning location of these
15 capital improvements;

16 (11) render, on behalf of the state, all federal consistency
17 determinations and certifications authorized by 16 U.S.C. 1456 (sec. 307, Coastal Zone
18 Management Act of 1972), and each conclusive state consistency determination when
19 a project requires a permit, lease, or authorization from two or more state resource
20 agencies; **a consistency determination rendered under this paragraph is subject**
21 **to AS 46.40.045.**

22 * **Sec. 2.** AS 46.40.030 is amended by adding a new subsection to read:

23 (b) In developing statements of policies and regulations under (a) of this
24 section, a coastal resource district may not incorporate by reference statutes and
25 administrative regulations adopted by state agencies.

26 * **Sec. 3.** AS 46.40.040 is amended to read:

27 **Sec. 46.40.040. Duties of the Alaska Coastal Policy Council.** Through the
28 public hearing process and the recording of the minutes of the hearings, the Alaska
29 Coastal Policy Council shall

30 (1) by regulation **and subject to AS 46.40.045**, adopt under the
31 provisions of AS 44.62 (Administrative Procedure Act) for the use of and application

1 by coastal resource districts and state agencies for carrying out their responsibilities
2 under this chapter, guidelines and standards for

3 (A) identifying the boundaries of the coastal area subject to the
4 district coastal management program;

5 (B) determining the land and water uses and activities subject
6 to the district coastal management program;

7 (C) developing policies applicable to the land and water uses
8 subject to the district coastal management program;

9 (D) developing regulations applicable to the land and water uses
10 subject to the district coastal management program;

11 (E) developing policies and procedures to determine whether
12 specific proposals for the land and water uses or activities subject to the district
13 coastal management program shall be allowed;

14 (F) designating and developing policies for the use of areas of
15 the coast **that** [WHICH] merit special attention; and

16 (G) measuring the progress of a coastal resource district in
17 meeting its responsibilities under this chapter;

18 (2) develop and maintain a program of technical and financial
19 assistance to aid coastal resource districts in the development and implementation of
20 district coastal management programs;

21 (3) undertake review and approval of district coastal management
22 programs in accordance with this chapter;

23 (4) initiate a process for identifying and managing uses of state concern
24 within specific areas of the coast;

25 (5) develop procedures or guidelines for consultation and coordination
26 with federal agencies managing land or conducting activities potentially affecting the
27 coastal area of the state;

28 (6) by regulation, establish a consistency review and determination or
29 certification process that conforms to the requirements of AS 46.40.096;

30 **(7) adopt regulations under the provisions of AS 44.62**
31 **(Administrative Procedure Act) that establish procedures for periodic review of**

1 an approved district coastal management program to ensure that the program is
 2 substantially consistent with the provisions of this chapter and the guidelines and
 3 standards adopted by the council, to ensure that the approved program is
 4 implemented and enforced, and to ensure that the program does not arbitrarily
 5 or unreasonably restrict or exclude uses of state concern;

6 (8) adopt regulations under the provisions of AS 44.62
 7 (Administrative Procedure Act) that establish procedures for revocation of
 8 approval of a district coastal management program, after notice to the district
 9 and a reasonable opportunity to cure the deficiencies in the program, upon a
 10 finding that the program is not substantially consistent with the provisions of this
 11 chapter or the guidelines and standards adopted by the council, that the program
 12 has not been implemented or is not enforced, or that the program arbitrarily or
 13 unreasonably restricts or excludes uses of state concern.

14 * **Sec. 4.** AS 46.40 is amended by adding a new section to read:

15 **Sec. 46.40.045. Prohibited actions by the Alaska Coastal Policy Council.**

16 Notwithstanding AS 46.40.040, the Alaska Coastal Policy Council may not adopt a
 17 regulation or procedure that

18 (1) requires a consistency determination of a use or activity in an area

19 (A) outside and inland of the area of the state identified as
 20 subject to the Alaska coastal management program; or

21 (B) within the area of the state identified as subject to the
 22 Alaska coastal management program but beyond the interim coastal zone
 23 boundary adopted by the council in 1979 unless the use or activity has a direct
 24 and significant effect on coastal waters;

25 (2) permits the council to render or review a consistency determination
 26 prepared under this chapter.

27 * **Sec. 5.** AS 46.40.096(d) is amended to read:

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

30 (1) request consistency review comments for the proposed project from
 31 state resource agencies, affected coastal resource districts, and other interested parties

1 as determined by regulation adopted by the council;

2 (2) prepare proposed consistency determinations;

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

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

7 (B) may occur only if requested by

8 (i) the project applicant;

9 (ii) a state resource agency; or

10 (iii) an affected coastal resource district;

11 (4) after providing an opportunity [TO FILE A PETITION] for
12 **subsequent** review under [(e) OF] this **subsection** [SECTION], render **a** [THE] final
13 consistency determination and certification.

14 * **Sec. 6.** AS 46.40.210 is amended by adding a new paragraph to read:

15 (9) "coastal water" means water that is adjacent to tidal shorelines and
16 that contains a measurable quantity or percentage of sea water.

17 * **Sec. 7.** AS 46.40.096(e), 46.40.096(f), 46.40.100(b), 46.40.100(c), 46.40.100(d),
18 46.40.100(e), 46.40.100(f), and 46.40.100(g) are repealed.

19 * **Sec. 8.** MODIFICATION OF APPROVED COASTAL MANAGEMENT PROGRAM
20 PLANS. (a) In a municipality or coastal resource service area for which the Alaska Coastal
21 Policy Council has approved a district coastal management program that is not consistent with
22 the prohibition of AS 46.40.030(b), added by sec. 2 of this Act, the municipality or coastal
23 resource service area shall submit to the Alaska Coastal Policy Council, within one year after
24 the effective date of this Act, program modifications to conform the program to the
25 requirements of AS 46.40.030(b), added by sec. 2 of this Act.

26 (b) If a municipality or coastal resource service area does not comply with (a) of this
27 section, the Alaska Coastal Policy Council may enter an order deleting the incorporation by
28 reference of statutes and administrative regulations in violation of AS 46.40.030(b), added by
29 sec. 2 of this Act.