

**SENATE BILL NO. 140**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 4/12/99

Referred: Resources, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the powers and duties of the Department of Natural  
2 Resources and to the Alaska coastal management program."

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

4 \* **Section 1.** AS 39.50.200(b)(38) is amended to read:

5 (38) Alaska Coastal Policy Council members and their alternates  
6 (AS 44.37.060) [(AS 44.19.155)];

7 \* **Sec. 2.** AS 41.21.492(b) is amended to read:

8 (b) Nothing in AS 41.21.491 - 41.21.495 affects the responsibilities of

9 (1) the Department of Fish and Game, the Board of Fisheries, or the  
10 Board of Game under AS 16 and AS 41.99.010;

11 (2) the Department of Environmental Conservation under AS 46.03; or

12 (3) state agencies and municipalities under AS 44.37.080(2)  
13 [AS 44.19.145(a)(11)] and AS 46.40.100.

14 \* **Sec. 3.** AS 41.21.504(b) is amended to read:

- 1 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of  
 2 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the  
 3 Department of Fish and Game or the Board of Fisheries or the Board of Game;  
 4 (2) AS 46.03 regarding the responsibilities of the Department of  
 5 Environmental Conservation; or  
 6 (3) AS 44.37.080(2) [AS 44.19.145(a)(11)] and AS 46.40.100 regarding  
 7 the responsibilities of state agencies and municipalities.

8 \* **Sec. 4.** AS 41.23.420(d) is amended to read:

- 9 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of  
 10 (1) the Department of Fish and Game, the Board of Fisheries, the  
 11 Board of Game, or the Department of Commerce and Economic Development under  
 12 AS 08.54, AS 16, or AS 41.99.010;  
 13 (2) the Department of Environmental Conservation under AS 46.03; or  
 14 (3) state agencies and municipalities under AS 44.37.080(2)  
 15 [AS 44.19.145(a)(11)] and AS 46.40.100.

16 \* **Sec. 5.** AS 44.37 is amended by adding new sections to read:

17 **Sec. 44.37.060. Alaska Coastal Policy Council.** (a) There is created in the  
 18 Department of Natural Resources the Alaska Coastal Policy Council. The council  
 19 consists of the following:

20 (1) nine public members appointed by the governor from a list  
 21 composed of at least three names from each region nominated by the municipalities  
 22 of each region; the nominees shall be the mayor or member of the assembly or council  
 23 of a municipality; one public member shall be appointed from each of the following  
 24 general regions:

25 (A) northwest Alaska, including, generally, the area of the North  
 26 Slope Borough and the Northwest Arctic Borough;

27 (B) Bering Strait, including, generally, the area of the Bering  
 28 Strait regional educational attendance area;

29 (C) southwest Alaska, including, generally, the area within the  
 30 Lower Yukon, Lower Kuskokwim, and Southwest regional educational  
 31 attendance areas and the Bristol Bay and Lake and Peninsula Boroughs;

1 (D) Kodiak-Aleutians, including the area of the Kodiak Island  
 2 and Aleutians East Boroughs and the Aleutian, Adak, and Pribilof regional  
 3 educational attendance areas;

4 (E) Upper Cook Inlet, including the Municipality of Anchorage  
 5 and the Matanuska-Susitna Borough;

6 (F) Lower Cook Inlet, including, generally, the area within the  
 7 Kenai Peninsula Borough;

8 (G) Prince William Sound, including, generally, the area east  
 9 of the Kenai Peninsula Borough to 141 West longitude;

10 (H) northern Southeast Alaska, including the area southeast of  
 11 141 West longitude and north of 57 North latitude, including the entirety of the  
 12 City and Borough of Sitka; and

13 (I) southern Southeast Alaska, including that portion of  
 14 southeastern Alaska not contained within the area described in (H) of this  
 15 paragraph;

16 (2) each of the following:

17 (A) the director of the office of management and budget;

18 (B) the commissioner of commerce and economic development;

19 (C) the commissioner of community and regional affairs;

20 (D) the commissioner of environmental conservation;

21 (E) the commissioner of fish and game;

22 (F) the commissioner of natural resources; and

23 (G) the commissioner of transportation and public facilities.

24 (b) Each public member appointed by the governor under (a)(1) of this section  
 25 serves a term of two years and until a successor is appointed and qualified. A public  
 26 member may be reappointed.

27 (c) The council shall designate co-chairs, one of whom shall be selected from  
 28 among the public members appointed under (a)(1) of this section and one of whom  
 29 shall be selected from among the members designated in (a)(2) of this section.

30 (d) Each member of the council shall select one person to serve as a  
 31 permanent alternate at meetings of the council. If a member of the council is unable

1 to attend, the member shall advise the alternate, who may attend and act in the place  
 2 of the member. The alternate for a public member appointed under (a)(1) of this  
 3 section shall, at the time of the alternate's designation and throughout the period of  
 4 service as a permanent alternate, be the mayor or member of the assembly or council  
 5 of a municipality within the region from which the permanent member is appointed.  
 6 The alternate for the director of the office of management and budget, serving under  
 7 (a)(2)(A) of this section, shall be the director's designee within that office. The  
 8 alternate for a designated member serving under (a)(2)(B) - (G) of this section shall  
 9 be a deputy commissioner of the department or the director of a division in the  
 10 department. The names of alternates shall be filed with the council.

11 (e) Four public members and three designated members of the council  
 12 constitute a quorum, but one or more of the members designated by the council may  
 13 hold hearings. All decisions of the council shall be by a majority vote of the members  
 14 present and voting.

15 (f) Members of the council or their alternates are entitled to per diem and  
 16 travel expenses authorized by law for members of boards and commissions.

17 (g) If an incumbent public member ceases to meet the qualifications prescribed  
 18 in (a)(1) of this section for nomination to the council or if a vacancy exists among the  
 19 public members for any other reason except for a vacancy due to the expiration of the  
 20 term of a public member, the governor shall, within 30 days of the establishment of  
 21 the vacancy by lack of qualification or other reason, make an appointment, to be  
 22 immediately effective, for the unexpired portion of the term. An appointment by the  
 23 governor made under this subsection to fill an unexpired term of a public member shall  
 24 comply with the requirements of (a)(1) of this section; however, the governor may  
 25 appoint from qualified persons without soliciting from municipalities nominations of  
 26 persons to fill the unexpired portion of the term.

27 **Sec. 44.37.065. Powers of the council.** The council may

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

31 (2) contract for necessary services;

1 (3) consult and cooperate with

2 (A) persons, organizations, and groups, public or private,  
3 interested in, affected by, or concerned with coastal area planning and  
4 management;

5 (B) agents and officials of the coastal resource districts of the  
6 state, and federal and state agencies concerned with or having jurisdiction over  
7 coastal planning and management;

8 (4) take any reasonable action necessary to carry out the provisions of  
9 AS 44.37.060 - 44.37.080.

10 **Sec. 44.37.070. Duties of the council.** In conformity with 16 U.S.C. 1451-  
11 1464 (Coastal Zone Management Act of 1972), as amended, the council shall

12 (1) through the public hearing process and the recording of the minutes  
13 of the hearings, develop guidelines and standards for the preparation of, and approve,  
14 in accordance with AS 46.40, the Alaska coastal management program;

15 (2) establish continuing coordination among state agencies to facilitate  
16 the development and implementation of the Alaska coastal management program; in  
17 carrying out its duties under this paragraph, the council shall initiate an interagency  
18 program of comprehensive coastal resource planning for each geographic region  
19 described in AS 44.37.060(a)(1);

20 (3) assure continued provision of data and information to coastal  
21 resource districts to carry out their planning and management functions under the  
22 program.

23 **Sec. 44.37.075. Council staff.** The council shall use the staff of the office of  
24 coastal management within the Department of Natural Resources in discharging its  
25 powers and duties. The coordinator of the office of coastal management, under the  
26 direction of the council co-chair who is selected from among the members designated  
27 in AS 44.37.060(a)(2), may contract with or employ personnel or consultants the  
28 coordinator considers necessary to carry out the powers and duties of the council.

29 **Sec. 44.37.080. Comprehensive plan and consistency determinations.** The  
30 Department of Natural Resources shall

31 (1) prepare and maintain a state comprehensive development plan; and

1 (2) render, on behalf of the state, all federal consistency determinations  
 2 and certifications authorized by 16 U.S.C. 1456 (sec. 307, Coastal Zone Management  
 3 Act of 1972), and each conclusive state consistency determination when a project  
 4 requires a permit, lease, or authorization from two or more state resource agencies.

5 **Sec. 44.37.085. Planning assistance for development and maintenance of**  
 6 **district coastal management programs.** The Department of Natural Resources shall  
 7 conduct a program of research, training, and technical assistance to coastal resource  
 8 districts necessary for the development and implementation of district coastal  
 9 management programs under AS 46.40. The technical assistance must include the  
 10 direct granting to the coastal resource districts of a portion of any funds received by  
 11 the state from the federal coastal zone management program, in amounts to be  
 12 individually determined for each coastal resource district by the commissioner of  
 13 natural resources. State agencies shall assist the department in carrying out the  
 14 purposes of this section.

15 \* **Sec. 6.** AS 44.62.800(1) is amended to read:

16 (1) "agency" means a department, an institution, or a division or other  
 17 administrative unit of the executive branch of state government authorized or required  
 18 by law to make regulations, except that "agency" does not include

19 (A) a board; a commission; a council, except the Alaska Coastal  
 20 Policy Council established in AS 44.37.060 [AS 44.19.155]; an authority; or  
 21 a public corporation of the executive branch of state government authorized or  
 22 required by law to make regulations; or

23 (B) the Department of Corrections;

24 \* **Sec. 7.** AS 44.62.800(2) is amended to read:

25 (2) "agency head" means

26 (A) the commissioner or other head of an agency who has the  
 27 authority to adopt regulations for the agency; or

28 (B) for the Alaska Coastal Policy Council established in  
 29 AS 44.37.060 [AS 44.19.155], the co-chair of the council designated under  
 30 AS 44.37.060(a) [AS 44.19.155(c)] from the members listed in  
 31 AS 44.37.060(a)(2) [AS 44.19.155(a)(2)];

1 \* **Sec. 8.** AS 46.40.010(a) is amended to read:

2 (a) The Alaska Coastal Policy Council established in **AS 44.37.060**  
3 [AS 44.19.155] shall approve, in accordance with this chapter, the Alaska coastal  
4 management program.

5 \* **Sec. 9.** AS 46.40.094(c)(1) is amended to read:

6 (1) "agency responsible for the consistency determination" means

7 (A) the **Department of Natural Resources** [OFFICE OF  
8 MANAGEMENT AND BUDGET], for a consistency determination required  
9 to be made under **AS 44.37.080(2)** [AS 44.19.145(a)(11)]; and

10 (B) the commissioner of the resource agency that coordinates  
11 a consistency review for a proposed use or activity, or for a proposed phase of  
12 a use or activity, when required by this chapter for which a permit, lease, or  
13 authorization is required to be approved or issued only by that resource agency;

14 \* **Sec. 10.** AS 46.40.096(b) is amended to read:

15 (b) If a consistency review is not subject to **AS 44.37.080(2)**  
16 [AS 44.19.145(a)(11)] because the project for which a consistency review is made  
17 requires a permit, lease, or authorization from only one state agency, that state agency  
18 shall coordinate the consistency review of the project. The state agency shall  
19 coordinate the consistency review according to the requirements of the regulations  
20 adopted by the council under this section.

21 \* **Sec. 11.** AS 46.40.096(f) is amended to read:

22 (f) For a consistency review subject to **AS 44.37.080(2)** [AS 44.19.145(a)(11)],  
23 the council may, by regulation, limit consideration of a petition under (e) of this  
24 section seeking review of a proposed consistency determination to the extent necessary  
25 to meet the deadlines set by federal law for timely submission of a federal consistency  
26 determination as allowed by 16 U.S.C. 1456.

27 \* **Sec. 12.** AS 46.40.096(g)(2) is amended to read:

28 (2) "reviewing entity" means the

29 (A) **Department of Natural Resources** [OFFICE], for a  
30 consistency review subject to **AS 44.37.080(2)** [AS 44.19.145(a)(11)];

31 (B) state agency identified in (b) of this section, for a

1 consistency review not subject to AS 44.37.080(2) [AS 44.19.145(a)(11)].

2 \* **Sec. 13.** AS 46.40.100(b) is amended to read:

3 (b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this section  
4 may file a petition showing that a district coastal management program is not being  
5 implemented, enforced, or complied with. On receipt of a petition, the council, after  
6 giving public notice in the manner required by (f) of this section, shall convene a  
7 hearing to consider the matter. A hearing called under this subsection shall be held  
8 in accordance with regulations adopted by the council. After hearing,

9 (1) if the petition was filed under AS 46.40.096(e) and the council finds  
10 that

11 (A) the Department of Natural Resources [OFFICE] or the  
12 state agency responsible for coordinating the consistency review has not fairly  
13 considered the petitioner's comments in the development of a proposed  
14 consistency determination, the council shall remand the proposed consistency  
15 determination to the Department of Natural Resources [OFFICE], or to the  
16 state agency responsible for coordinating the consistency review, for  
17 preparation of a revised proposed consistency determination that gives fair  
18 consideration to the petitioner's comments;

19 (B) a remand of the consistency determination is not required  
20 under (A) of this paragraph, the council shall dismiss the petition;

21 (2) if the petition was not filed under AS 46.40.096(e), the council may  
22 order that the coastal resource district or a state agency take any action the council  
23 considers necessary to implement, enforce, or comply with the district coastal  
24 management program.

25 \* **Sec. 14.** AS 46.40.120(b) is amended to read:

26 (b) The commissioner of natural resources [COMMUNITY AND  
27 REGIONAL AFFAIRS] may, after public hearings held in the area affected,  
28 consolidate two or more regional educational attendance areas as a single coastal  
29 resource service area

30 (1) if a substantial portion of the coastal area contains land and water  
31 area owned by the federal government over which it exercises exclusive jurisdiction

1 or land held in trust by the federal government for Alaska Natives over which the state  
2 would not exercise control as to use; or

3 (2) if, after giving due consideration to the standards applicable to  
4 incorporation of borough governments and the likelihood that a borough will be  
5 incorporated within the area, the commissioner determines that the functions to be  
6 performed under this chapter could be undertaken more efficiently through the  
7 combination of two or more regional educational attendance areas as a single coastal  
8 resource service area.

9 \* **Sec. 15.** AS 46.40.120(d) is amended to read:

10 (d) For purposes of coastal zone management only, the commissioner of  
11 **natural resources** [COMMUNITY AND REGIONAL AFFAIRS] may, after public  
12 hearings held in the regional educational attendance area affected, divide an existing  
13 regional educational attendance area into no more than three coastal resource service  
14 areas according to geographic, cultural, economic, environmental, or other features  
15 relevant to coastal management planning. However,

16 (1) each coastal resource service area formed by dividing an existing  
17 regional educational attendance area must contain at least one first class city or home  
18 rule city;

19 (2) a city within a coastal resource service area formed by dividing an  
20 existing regional educational attendance area may not elect to exclude itself from the  
21 coastal resource service area; and

22 (3) a coastal resource service area formed before June 1, 1980, may not  
23 be divided for coastal management planning purposes.

24 \* **Sec. 16.** AS 46.40.140(c) is amended to read:

25 (c) The commissioner of **natural resources** [COMMUNITY AND  
26 REGIONAL AFFAIRS], after consultation with residents of a coastal resource service  
27 area, may divide a service area into sections only for the purpose of nominating and  
28 electing board members. Division of a service area into sections for the purpose of  
29 nomination and election shall be in accordance with the provisions of AS 14.08.051(a).  
30 Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the  
31 resolution submitted under AS 46.40.130(a)(2), at the direction of the council under

1 AS 46.40.130(a)(3), or may be proposed at any time by the members of the coastal  
 2 resource service area board. If proposed by the board, the division of the service area  
 3 into sections is subject to approval of a majority of the qualified voters voting on the  
 4 question in the coastal resource service area at the next regular election or at a special  
 5 election called for that purpose and, if approved, takes effect at the next regular  
 6 election of members of the coastal resource service area board.

7 \* **Sec. 17.** AS 46.40.170(a) is amended to read:

8 (a) If residents of a coastal resource service area reject organization of the  
 9 service area at an election called for the purpose and the council finds, after public  
 10 hearing, that major economic development activity has occurred or will occur within  
 11 the service area, the council may direct the **department** [DEPARTMENT OF  
 12 COMMUNITY AND REGIONAL AFFAIRS] to prepare and recommend for  
 13 consideration by the council and for submission to the legislature a district coastal  
 14 management program for the service area.

15 \* **Sec. 18.** AS 46.40.170(b) is amended to read:

16 (b) At the request of the council, the **department** [DEPARTMENT OF  
 17 COMMUNITY AND REGIONAL AFFAIRS] shall complete the district coastal  
 18 management program in accordance with this chapter and the guidelines and standards  
 19 adopted by the council for a coastal resource service area **that** [WHICH] has been  
 20 organized but [WHICH] has failed to make substantial progress in the preparation of  
 21 an approvable district coastal management program within 18 months of certification  
 22 of the results of an organization election or [WHICH] has not submitted for approval  
 23 to the council a program within 30 months of certification of the results of its  
 24 organization election. Preparation of the program shall be conducted in consultation  
 25 with the coastal resource service area and shall, to the maximum extent consistent with  
 26 this chapter, reflect the expressed concerns of the residents of the service area.

27 \* **Sec. 19.** AS 46.40.180(a) is amended to read:

28 (a) Before adoption by a coastal resource service area board, or by the  
 29 **department** [DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS] under  
 30 AS 46.40.170, a district coastal management program shall be submitted for review to  
 31 each city or village within the coastal resource service area. The council of a city or

1 traditional village council shall consider the program submitted for review. Within 60  
 2 days of submission, the council of a city or traditional village council shall either  
 3 approve the program or enter objections to all or any portion of the program.

4 \* **Sec. 20.** AS 46.40.180(d) is amended to read:

5 (d) For purposes of this section, "village" means an unincorporated community  
 6 where at least 25 persons reside as a social unit [AS DETERMINED BY THE  
 7 DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS].

8 \* **Sec. 21.** AS 46.40.190(a) is amended to read:

9 (a) A city within the coastal area that [WHICH] is not part of a coastal  
 10 resource service area shall be included for purposes of this chapter within an adjacent  
 11 coastal resource service area unless its governing body, by resolution adopted by a  
 12 majority of its membership, chooses to exclude the city from an adjacent coastal  
 13 resource service area and a copy of the resolution is filed with the commissioner of  
 14 natural resources [COMMUNITY AND REGIONAL AFFAIRS].

15 \* **Sec. 22.** AS 46.40.210(5) is amended to read:

16 (5) "department" means the Department of Natural Resources  
 17 [COMMUNITY AND REGIONAL AFFAIRS];

18 \* **Sec. 23.** AS 44.19.145(a)(2), 44.19.145(a)(11), 44.19.155, 44.19.160, 44.19.161,  
 19 44.19.162; AS 44.47.095; and AS 46.40.210(6) are repealed.

20 \* **Sec. 24.** TRANSITIONAL PROVISIONS. (a) This Act does not terminate the existing  
 21 Alaska Coastal Policy Council or affect the terms of its current members; this Act moves the  
 22 existing Alaska Coastal Policy Council from the Office of the Governor to the Department of  
 23 Natural Resources.

24 (b) Litigation, hearings, investigations, and other proceedings pending under a law  
 25 amended or repealed by this Act, or in connection with functions transferred by this Act,  
 26 continue in effect and may be continued and completed notwithstanding a transfer or  
 27 amendment or repeal provided for in this Act. Certificates, orders, guidelines, approvals, and  
 28 regulations issued or adopted under authority of a law amended or repealed by this Act remain  
 29 in effect for the term issued, or until revoked, vacated, or otherwise modified under the  
 30 provisions of this Act. Contracts, rights, liabilities, and obligations created by or under a law  
 31 amended or repealed by this Act, and in effect on the effective date of this Act, remain in

1 effect notwithstanding this Act's taking effect. Records, equipment, appropriations, and other  
2 property of agencies of the state whose functions are transferred under this Act shall be  
3 transferred to implement the provisions of this Act.