

**CS FOR HOUSE BILL NO. 439(RES)(title am)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY THE HOUSE RESOURCES COMMITTEE**

**Amended: 3/6/02**

**Offered: 3/6/02**

**Sponsor(s): HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act removing provisions providing an opportunity to petition for review of**  
2 **proposed or final consistency determinations under the Alaska coastal zone**  
3 **management program; and limiting the authority of the Alaska Coastal Policy Council**  
4 **to order a coastal resource district or a state agency to take action with respect to a**  
5 **proposed or final consistency determination."**

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

7 **\* Section 1.** AS 46.40.096(d) is amended to read:

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

10 (1) request consistency review comments for the proposed project  
11 from state resource agencies, affected coastal resource districts, and other interested  
12 parties as determined by regulation adopted by the council;

13 (2) prepare proposed consistency determinations;

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

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

5 (B) may occur only if requested by

6 (i) the project applicant;

7 (ii) a state resource agency; or

8 (iii) an affected coastal resource district;

9 (4) [AFTER PROVIDING AN OPPORTUNITY TO FILE A  
 10 PETITION FOR REVIEW UNDER (e) OF THIS SECTION,] render the final  
 11 consistency determination and certification.

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

13 (b) A party that is authorized under [AS 46.40.096(e)(1) OR] (g) of this  
 14 section may file a petition showing that a district coastal management program is not  
 15 being implemented, enforced, or complied with; **a petition filed under this section**  
 16 **may not seek review of a proposed or final consistency determination regarding a**  
 17 **specific project.** On receipt of a petition, the council, after giving public notice in the  
 18 manner required by (f) of this section, shall convene a hearing to consider the matter.  
 19 A hearing called under this subsection shall be held in accordance with regulations  
 20 adopted by the council. After hearing,

21 [(1) IF THE PETITION WAS FILED UNDER AS 46.40.096(e) AND  
 22 THE COUNCIL FINDS THAT

23 (A) THE OFFICE OR THE STATE AGENCY  
 24 RESPONSIBLE FOR COORDINATING THE CONSISTENCY REVIEW  
 25 HAS NOT FAIRLY CONSIDERED THE PETITIONER'S COMMENTS IN  
 26 THE DEVELOPMENT OF A PROPOSED CONSISTENCY  
 27 DETERMINATION, THE COUNCIL SHALL REMAND THE PROPOSED  
 28 CONSISTENCY DETERMINATION TO THE OFFICE, OR TO THE  
 29 STATE AGENCY RESPONSIBLE FOR COORDINATING THE  
 30 CONSISTENCY REVIEW, FOR PREPARATION OF A REVISED  
 31 PROPOSED CONSISTENCY DETERMINATION THAT GIVES FAIR

1 CONSIDERATION TO THE PETITIONER'S COMMENTS;

2 (B) A REMAND OF THE CONSISTENCY  
3 DETERMINATION IS NOT REQUIRED UNDER (A) OF THIS  
4 PARAGRAPH, THE COUNCIL SHALL DISMISS THE PETITION;

5 (2) IF THE PETITION WAS NOT FILED UNDER AS 46.40.096(e),]  
6 the council may order that the coastal resource district or a state agency take any  
7 action the council considers necessary to implement, enforce, or comply with the  
8 district coastal management program, **except that the council may not order that the**  
9 **coastal resource district or a state agency take any action with respect to a**  
10 **proposed or final consistency determination.**

11 \* **Sec. 3.** AS 46.40.100(c) is amended to read:

12 (c) **In** [EXCEPT WHEN A PETITION HAS BEEN FILED UNDER  
13 AS 46.40.096(e), IN] determining whether an approved district coastal management  
14 program is being implemented, enforced, or complied with by a coastal resource  
15 district that exercises zoning authority or controls on the use of resources within the  
16 coastal area, the council shall find in favor of the district if

17 (1) zoning or other regulations have been adopted and are being  
18 enforced;

19 (2) variances are being granted according to procedures and criteria  
20 that are elements of the district coastal management program, or the variance is  
21 otherwise approved by the council; and

22 (3) procedures and standards adopted by the coastal resource district as  
23 required by this chapter or by the guidelines and standards adopted by the council and  
24 subsequently approved by the legislature have been followed and considered.

25 \* **Sec. 4.** AS 46.40.100(d) is amended to read:

26 (d) **In** [EXCEPT WHEN A PETITION HAS BEEN FILED UNDER  
27 AS 46.40.096(e), IN] determining whether a state agency is complying with a district  
28 coastal management program with respect to its exercise of regulation or control of the  
29 resources within the coastal area, the council shall find in favor of the agency if

30 (1) the use or activity for which the permit, license, or approval is  
31 granted is consistent with the district coastal management program and regulations

1 adopted under it; and

2 (2) the use or activity for which the permit, license, or approval is  
3 granted is consistent with requirements imposed by state statute, regulation, or local  
4 ordinance applicable to the use or activity.

5 \* **Sec. 5.** AS 46.40.100(f) is amended to read:

6 (f) Upon receipt of a petition under (b) of this section, the council shall give  
7 notice of the hearing convened to consider the petition as follows:

8 (1) notice of the hearing shall be given at least 10 days before the  
9 scheduled date of the hearing

10 (A) by publication in

11 (i) a newspaper of statewide circulation; or

12 (ii) a newspaper of general circulation in the vicinity of  
13 the district coastal management program that is the subject of the  
14 petition; and

15 (B) by at least one of the following methods:

16 (i) publication through public service announcements  
17 on the electronic media serving the area affected by the district coastal  
18 management program;

19 (ii) posting in a conspicuous location in the vicinity of  
20 the proposed project or action;

21 (iii) notifying parties known or likely to be affected by  
22 the proposed project or action; or

23 (iv) another method calculated to effectively notify  
24 affected interested parties; [.]

25 (2) a notice provided under (1) of this subsection must

26 (A) contain sufficient information in commonly understood  
27 terms to inform the public of the nature of the petition; and

28 (B) indicate the manner in which the public may comment on  
29 the petition [IF THE PETITION IS FILED UNDER (b)(2) OF THIS  
30 SECTION].

31 \* **Sec. 6.** AS 46.40.100(g) is amended to read:

1 (g) The opportunity to petition under **(b)** [(b)(2)] of this section is limited to

2 (1) a coastal resource district;

3 (2) a citizen of the coastal resource district; or

4 (3) a state agency.

5 \* **Sec. 7.** AS 46.40.096(e) and 46.40.096(f) are repealed.