

HOUSE BILL NO. 439

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Introduced: 2/15/02
Referred: State Affairs, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act removing provisions providing an opportunity to petition for review of**
2 **proposed consistency determinations under the Alaska coastal zone management**
3 **program."**

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

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

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

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

11 (2) prepare proposed consistency determinations;

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

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

2 (B) may occur only if requested by

3 (i) the project applicant;

4 (ii) a state resource agency; or

5 (iii) an affected coastal resource district;

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

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

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

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

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

30 (B) A REMAND OF THE CONSISTENCY
31 DETERMINATION IS NOT REQUIRED UNDER (A) OF THIS

1 PARAGRAPH, THE COUNCIL SHALL DISMISS THE PETITION;

2 (2) IF THE PETITION WAS NOT FILED UNDER AS 46.40.096(e),]
3 the council may order that the coastal resource district or a state agency take any
4 action the council considers necessary to implement, enforce, or comply with the
5 district coastal management program.

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

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

12 (1) zoning or other regulations have been adopted and are being
13 enforced;

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

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

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

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

25 (1) the use or activity for which the permit, license, or approval is
26 granted is consistent with the district coastal management program and regulations
27 adopted under it; and

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

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

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

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

5 (A) by publication in

6 (i) a newspaper of statewide circulation; or

7 (ii) a newspaper of general circulation in the vicinity of
8 the district coastal management program that is the subject of the
9 petition; and

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

11 (i) publication through public service announcements
12 on the electronic media serving the area affected by the district coastal
13 management program;

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

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

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

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

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

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

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

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

28 (1) a coastal resource district;

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

30 (3) a state agency.

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