

CS FOR HOUSE BILL NO. 191(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/6/03

Offered: 5/5/03

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program and to policies and**
2 **procedures for consistency reviews and the rendering of consistency determinations**
3 **under that program; eliminating the Alaska Coastal Policy Council; annulling certain**
4 **regulations relating to the Alaska coastal management program; and providing for an**
5 **effective date."**

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS. The legislature finds that

10 (1) the Alaska coastal management program (ACMP) is intended to function
11 with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty
12 regarding the feasibility of new investment;

13 (2) there is a need to update and reform the existing statewide standards of the

1 ACMP so that they are clear and concise and provide needed predictability as to the
2 applicability, scope, and timing of the consistency review process under the program;

3 (3) there is a need to update and reform the district coastal management plans
4 under the ACMP so that the local enforceable policies within those plans are clear and
5 concise, provide greater uniformity in coastal management throughout the state, relate to
6 matters of local concern, and do not duplicate state and federal requirements;

7 (4) the state has chosen not to enact legislation similar to 42 U.S.C. 4321 -
8 4370f (National Environmental Policy Act of 1969, as amended) and, in furtherance of the
9 legislative findings expressed in sec. 1(7), ch. 38, SLA 1994, the ACMP is not intended to
10 take the place of such a program;

11 (5) to achieve these goals, statutory reform is needed; and

12 (6) to implement these needed reforms at the administrative level, it is in the
13 best interest of the state for the development and implementation of the ACMP to be
14 transferred from the Alaska Coastal Policy Council to the Department of Natural Resources.

15 * **Sec. 2.** AS 38.05.825(a) is amended to read:

16 (a) Unless the commissioner finds that the public interest in retaining state
17 ownership of the land clearly outweighs the municipality's interest in obtaining the
18 land, the commissioner shall convey to a municipality tide or submerged land
19 requested by the municipality that is occupied or suitable for occupation and
20 development if the

21 (1) land is within or contiguous to the boundaries of the municipality;

22 (2) use of the land would not unreasonably interfere with navigation or
23 public access;

24 (3) municipality has applied to the commissioner for conveyance of the
25 land under this section;

26 (4) land is not subject to a shore fisheries lease under AS 38.05.082,
27 or, if the land is subject to a shore fisheries lease, the commissioner determines it is in
28 the best interests of the state to convey the land;

29 (5) land is classified for waterfront development or for another use that
30 is consistent or compatible with the use proposed by the municipality, or the proposed
31 use of the land is consistent or compatible with a land use plan adopted by the

1 municipality or [,] the department [, OR THE ALASKA COASTAL POLICY
2 COUNCIL]; and

3 (6) land

4 (A) is required for the accomplishment of a public or private
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;

7 or

8 (C) has been approved for lease to the municipality.

9 * **Sec. 3.** AS 44.33.781 is amended to read:

10 **Sec. 44.33.781. Planning assistance for development and maintenance of**
11 **district coastal management plans [PROGRAMS].** The department shall conduct a
12 program of research, training, and technical assistance to coastal resource districts
13 necessary for the development, [AND] implementation, and maintenance of district
14 coastal management plans [PROGRAMS] under AS 46.40. The technical assistance
15 shall include the direct granting to the coastal resource districts of a portion of any
16 funds received by the state from the federal coastal zone management program, in
17 amounts to be individually determined for each coastal resource district by the
18 commissioner of community and economic development. State agencies shall assist
19 the department in carrying out the purposes of this section.

20 * **Sec. 4.** AS 44.62.800(1) is amended to read:

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

24 (A) a board, [,] a commission, [,] a council, [EXCEPT THE
25 ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN
26 AS 46.39.020;] an authority, [,] or a public corporation of the executive branch
27 of state government authorized or required by law to make regulations; or

28 (B) the Department of Corrections;

29 * **Sec. 5.** AS 46.39.010 is amended by adding a new subsection to read:

30 (c) The department may adopt regulations necessary to implement this
31 chapter.

1 * **Sec. 6.** AS 46.39.030 is amended to read:

2 **Sec. 46.39.030. Powers of the department [COUNCIL].** The **department**
3 [COUNCIL] may

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

7 (2) contract for necessary services;

8 (3) consult and cooperate with

9 (A) persons, organizations, and groups, public or private,
10 interested in, affected by, or concerned with coastal area planning and
11 management;

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

15 (4) take any reasonable action necessary to carry out the provisions of
16 **this chapter or AS 46.40** [AS 46.39.020 - 46.39.050].

17 * **Sec. 7.** AS 46.39.040 is amended to read:

18 **Sec. 46.39.040. Duties of the department [COUNCIL].** In conformity with
19 16 U.S.C. 1451-1464 (Coastal Zone Management Act of 1972), as amended, the
20 **department** [COUNCIL] shall

21 (1) [THROUGH THE PUBLIC HEARING PROCESS AND THE
22 RECORDING OF THE MINUTES OF THE HEARINGS,] develop **statewide**
23 [GUIDELINES AND] standards **for the Alaska coastal management program, and**
24 **criteria** for the preparation [OF,] and **approval of district coastal management**
25 **plans** [APPROVE,] in accordance with AS 46.40 [, THE ALASKA COASTAL
26 MANAGEMENT PROGRAM];

27 (2) establish continuing coordination among state agencies to facilitate
28 the development and implementation of the Alaska coastal management program; in
29 carrying out its duties under this paragraph, the **department** [COUNCIL] shall initiate
30 an interagency program of comprehensive coastal resource planning for each
31 geographic region **of the state** [DESCRIBED IN AS 46.39.020(a)(1)];

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

4 * **Sec. 8.** AS 46.40.010 is amended to read:

5 **Sec. 46.40.010. Development of Alaska coastal management program.** (a)
 6 The **department** [ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN
 7 AS 46.39.020] shall approve, in accordance with this chapter, the Alaska coastal
 8 management program.

9 (b) The **department** [COUNCIL] may approve the Alaska coastal
 10 management program for a portion or portions of the coastal area before approving the
 11 complete program under (a) of this section. Portions of the program approved under
 12 this subsection shall be incorporated into the Alaska coastal management program.

13 (c) The Alaska coastal management program shall be reviewed by the
 14 **department** [COUNCIL] and, when appropriate, revised to

15 (1) add newly approved district coastal management **plans**
 16 [PROGRAMS], or revisions and amendments to the Alaska coastal management
 17 program;

18 (2) integrate newly approved district coastal management **plans**
 19 [PROGRAMS], or revisions and amendments of district coastal management **plans**
 20 [PROGRAMS], with existing approved **plans** [PROGRAMS] and with plans
 21 developed by state agencies;

22 (3) add new or revised state statutes, policies, regulations, or other
 23 appropriate material;

24 (4) review the effectiveness of implementation of district coastal
 25 management **plans** [PROGRAMS]; and

26 (5) consider new information acquired by the state and coastal resource
 27 districts.

28 (d) All reviews and revisions shall be in accordance with the **statewide**
 29 [GUIDELINES AND] standards **and district plan criteria** adopted [BY THE
 30 COUNCIL] under AS 46.40.040.

31 * **Sec. 9.** AS 46.40.030 is amended to read:

1 **Sec. 46.40.030. Development of district coastal management plans**
 2 **[PROGRAMS].** (a) Coastal resource districts shall develop and adopt district coastal
 3 management **plans** [PROGRAMS] in accordance with the provisions of this chapter.
 4 The **plan** [PROGRAM] adopted by a coastal resource district shall be based upon a
 5 municipality's existing comprehensive plan or a new comprehensive resource use plan
 6 or comprehensive statement of needs, policies, objectives, and standards governing the
 7 use of resources within the coastal area of the district. The **plan** [PROGRAM] must
 8 **meet** [BE CONSISTENT WITH] the **statewide** [GUIDELINES AND] standards **and**
 9 **district plan criteria** adopted [BY THE COUNCIL] under AS 46.40.040 and must
 10 include

11 (1) a delineation within the district of the boundaries of the coastal area
 12 subject to the district coastal management **plan** [PROGRAM];

13 (2) a statement, list, or definition of the land and water uses and
 14 activities subject to the district coastal management **plan** [PROGRAM];

15 (3) a statement of policies to be applied to the land and water uses
 16 subject to the district coastal management **plan** [PROGRAM];

17 (4) [REGULATIONS, AS APPROPRIATE, TO BE APPLIED TO
 18 THE LAND AND WATER USES SUBJECT TO THE DISTRICT COASTAL
 19 MANAGEMENT PROGRAM;

20 (5)] a description of the uses and activities which will be considered
 21 proper and the uses and activities which will be considered improper with respect to
 22 the land and water within the coastal area;

23 [(6) A SUMMARY OR STATEMENT OF THE POLICIES WHICH
 24 WILL BE APPLIED AND THE PROCEDURES WHICH WILL BE USED TO
 25 DETERMINE WHETHER SPECIFIC PROPOSALS FOR LAND OR WATER USES
 26 OR ACTIVITIES SHALL BE ALLOWED;] and

27 ~~(5)~~ [(7)] a designation of, and the policies which will be applied to the
 28 use of, areas within the coastal resource district which merit special attention.

29 (b) In developing **enforceable policies in its coastal management plan**
 30 [STATEMENTS OF POLICIES AND REGULATIONS] under (a) of this section, a
 31 coastal resource district **shall meet the requirements of AS 46.40.070, and** may not

1 **duplicate, restate, or** incorporate by reference statutes and administrative regulations
 2 adopted by state **or federal** agencies.

3 * **Sec. 10.** AS 46.40.040 is amended to read:

4 **Sec. 46.40.040. Statewide standards and district plan criteria [DUTIES**
 5 **OF THE ALASKA COASTAL POLICY COUNCIL]. Except as provided in (b)**
 6 **of this section and AS 41.17, the department [THROUGH THE PUBLIC**
 7 HEARING PROCESS AND THE RECORDING OF THE MINUTES OF THE
 8 HEARINGS, THE ALASKA COASTAL POLICY COUNCIL] shall

9 (1) by regulation, adopt under the provisions of AS 44.62
 10 (Administrative Procedure Act) for the use of and application by coastal resource
 11 districts and state agencies for carrying out their responsibilities under this chapter,
 12 **statewide [GUIDELINES AND] standards and district coastal management plan**
 13 **criteria** for

14 (A) identifying the boundaries of the coastal area subject to the
 15 **Alaska [DISTRICT] coastal management program;**

16 (B) determining the land and water uses and activities subject
 17 to the **Alaska [DISTRICT] coastal management program;**

18 (C) developing policies applicable to the land and water uses
 19 subject to the **Alaska [DISTRICT] coastal management program;**

20 (D) developing regulations applicable to the land and water
 21 uses subject to the **Alaska [DISTRICT] coastal management program;**

22 (E) developing policies and procedures to determine whether
 23 specific proposals for the land and water uses or activities subject to the
 24 **Alaska [DISTRICT] coastal management program shall be allowed;**

25 (F) designating and developing policies for the use of areas of
 26 the coast which merit special attention; and

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

29 (2) develop and maintain a program of technical and financial
 30 assistance to aid coastal resource districts in the development and implementation of
 31 district coastal management **plans** [PROGRAMS];

1 (3) undertake review and approval of district coastal management
2 **plans** [PROGRAMS] in accordance with this chapter;

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

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

8 (6) by regulation, establish a consistency review and determination or
9 certification process that conforms to the requirements of AS 46.40.096.

10 * **Sec. 11.** AS 46.40.040 is amended by adding new subsections to read:

11 (b) AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted
12 under those statutes constitute the exclusive enforceable policies of the Alaska coastal
13 management program for those purposes. For those purposes only,

14 (1) the issuance of permits, certifications, approvals, and
15 authorizations by the Department of Environmental Conservation establishes
16 consistency with the Alaska coastal management program for those activities of a
17 proposed project subject to those permits, certifications, approvals, and authorizations;

18 (2) for a consistency review of an activity that does not require a
19 Department of Environmental Conservation permit, certification, approval, or
20 authorization because the activity is a federal activity or the activity is located on
21 federal lands or the federal outer continental shelf, consistency with AS 46.03,
22 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
23 shall be established on the basis of whether the Department of Environmental
24 Conservation finds that the activity satisfies the requirements of those statutes and
25 regulations.

26 (c) For a consistency review described in (b)(2) of this section, the
27 department, in addition to its review under AS 46.40.096 of all other enforceable
28 policies applicable to the project, shall coordinate with the Department of
29 Environmental Conservation and issue the Department of Environmental
30 Conservation's finding of whether the activity satisfies the requirements of the statutes
31 and regulations described in (b)(2) of this section.

1 * **Sec. 12.** AS 46.40.050 is repealed and reenacted to read:

2 **Sec. 46.40.050. Submission of district plans by coastal resource districts.**

3 (a) A coastal resource district must review and resubmit its coastal management plan
4 for reapproval every 10 years after its approval by the department under
5 AS 46.40.060.

6 (b) Within 30 months after certification of the organization of a new coastal
7 resource district, the coastal resource district shall complete and submit to the
8 department a proposed district coastal management plan. If, after receipt of a written
9 request for extension from the coastal resource district, the department considers an
10 extension proper, the department may grant an extension to a date that is within 54
11 months after certification of the results of the coastal resource district's organization.
12 A request under this subsection must include the reasons for the extension.

13 * **Sec. 13.** AS 46.40.060 is amended to read:

14 **Sec. 46.40.060. Review and approval by the department [COUNCIL].** (a)

15 If, upon submission of a district coastal management plan [PROGRAM] for approval,
16 the department [COUNCIL] finds that the plan meets [PROGRAM IS
17 SUBSTANTIALLY CONSISTENT WITH] the provisions of this chapter and the
18 statewide [GUIDELINES AND] standards and district plan criteria adopted by the
19 department [COUNCIL] and does not arbitrarily or unreasonably restrict or exclude
20 uses of state concern, the department [COUNCIL] may approve [GRANT
21 SUMMARY APPROVAL OF] the district coastal management plan [PROGRAM], or
22 may approve portions of the district plan that meet those requirements [PROGRAM
23 WHICH ARE CONSISTENT].

24 (b) If the department [COUNCIL] finds that a district coastal management
25 plan [PROGRAM] is not approvable or is approvable only in part under (a) of this
26 section, it shall direct that deficiencies in the plan [PROGRAM] submitted by the
27 coastal resource district be mediated. In mediating the deficiencies, the department
28 [COUNCIL] may call for one or more public hearings in the district. The department
29 [COUNCIL] shall meet with officials of the coastal resource district in order to resolve
30 differences.

31 (c) If, after mediation, the differences have not been resolved [TO THE

1 MUTUAL AGREEMENT OF THE COASTAL RESOURCE DISTRICT AND THE
 2 COUNCIL, THE COUNCIL SHALL CALL FOR A PUBLIC HEARING AND
 3 SHALL RESOLVE THE DIFFERENCES IN ACCORDANCE WITH AS 44.62
 4 (ADMINISTRATIVE PROCEDURE ACT). AFTER A PUBLIC HEARING HELD
 5 UNDER THIS SUBSECTION], the department [COUNCIL] shall enter findings
 6 and, by order, may require

7 (1) that the district coastal management plan [PROGRAM] be
 8 amended to satisfy [MAKE IT CONSISTENT WITH] the provisions of this chapter
 9 or meet the statewide [GUIDELINES AND] standards and district plan criteria
 10 adopted by the department [COUNCIL];

11 (2) that the district coastal management plan [PROGRAM] be revised
 12 to accommodate a use of state concern; or

13 (3) any other action be taken by the coastal resource district as
 14 appropriate.

15 (d) The superior courts of the state have jurisdiction to enforce orders of the
 16 department [COUNCIL] entered under (c) of this section.

17 * **Sec. 14.** AS 46.40.070 is repealed and reenacted to read:

18 **Sec. 46.40.070. Requirements for department review and approval.** (a)

19 The department shall approve a district coastal management plan submitted for review
 20 and approval if

21 (1) the district coastal management plan meets the requirements of this
 22 chapter and the statewide standards and district plan criteria adopted by the
 23 department; and

24 (2) the enforceable policies of the district coastal management plan

25 (A) are clear and concise as to the activities and persons
 26 affected by the policies, and the requirements of the policies;

27 (B) use precise, prescriptive, and enforceable language; and

28 (C) do not address a matter regulated or authorized by state or
 29 federal law unless the enforceable policies relate specifically to a matter of
 30 local concern; for purposes of this subparagraph, "matter of local concern"
 31 means a specific coastal use or resource within a defined portion of the

1 district's coastal zone, that is

2 (i) demonstrated as sensitive to development;

3 (ii) not adequately addressed by state or federal law;

4 and

5 (iii) of unique concern to the coastal resource district as

6 demonstrated by local usage or scientific evidence.

7 (b) A decision by the department under this section shall be given within 90
8 days after submission of the district coastal management plan to the department.

9 * **Sec. 15.** AS 46.40.090 is amended to read:

10 **Sec. 46.40.090. Implementation of district coastal management plans**
11 **[PROGRAMS].** (a) A district coastal management plan [PROGRAM] approved
12 under this chapter [BY THE COUNCIL AND THE LEGISLATURE] for a coastal
13 resource district that [WHICH] does not have and exercise zoning or other controls on
14 the use of resources within the coastal area shall be implemented by appropriate state
15 agencies as provided in AS 46.40.096. Implementation shall be in accordance with
16 the comprehensive use plan or the statement of needs, policies, objectives, and
17 standards adopted by the district.

18 (b) A coastal resource district that [WHICH] has and exercises zoning or
19 other controls on the use of resources within the coastal area shall implement its
20 district coastal management plan [PROGRAM]. Implementation shall be in
21 accordance with the comprehensive use plan or the statement of needs, policies,
22 objectives, and standards adopted by the district.

23 * **Sec. 16.** AS 46.40.094(a) is amended to read:

24 (a) The provisions of this section apply to a use or activity for which a
25 consistency determination is required if

26 (1) at the time the proposed use or activity is initiated, there is
27 insufficient information to evaluate and render a consistency determination for the
28 entirety of the proposed use or activity;

29 (2) the proposed use or activity is capable of proceeding in discrete
30 phases based upon developing information that was not available to the project
31 applicant at the time of the previous [OBTAINED IN THE COURSE OF A] phase;

1 and

2 (3) each subsequent phase of the proposed use or activity is subject to
3 discretion to implement alternative decisions based upon the developing information.

4 * **Sec. 17.** AS 46.40.096(a) is amended to read:

5 (a) The **department** [COUNCIL] shall, by regulation, establish a consistency
6 review and determination process that conforms to the requirements of this section.

7 * **Sec. 18.** AS 46.40.096(b) is amended to read:

8 (b) If a consistency review is not subject to AS 46.39.010 because the project
9 for which a consistency review is made requires a permit, lease, or authorization from
10 only one state **resource** agency, that state **resource** agency shall coordinate the
11 consistency review of the project. The state **resource** agency shall coordinate the
12 consistency review according to the requirements of the regulations adopted by the
13 **department** [COUNCIL] under this section.

14 * **Sec. 19.** AS 46.40.096(c) is amended to read:

15 (c) The regulations adopted by the **department** [COUNCIL] under this
16 section must include provisions for public notice and provide the opportunity for
17 public comment. The regulations adopted under this subsection may make
18 distinctions relating to notice based upon differences in project type, anticipated effect
19 of the project on coastal resources and uses, other state or federal notice requirements,
20 and time constraints. However, a notice given under this subsection must contain
21 sufficient information, expressed in commonly understood terms, to inform the public
22 of the nature of the proposed project for which a consistency determination is sought,
23 and must explain how the public may comment on the proposed project.

24 * **Sec. 20.** AS 46.40.096(d) is amended to read:

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

27 (1) request consistency review comments for the proposed project
28 from state resource agencies, affected coastal resource districts, and other interested
29 parties as determined by regulation adopted by the **department** [COUNCIL];

30 (2) prepare proposed consistency determinations;

31 (3) coordinate subsequent reviews of proposed consistency

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

3 (A) is limited to a review by the **department** [STATE
4 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; **and**

9 **(C) shall be completed by the department within 45 days**
10 **after the initial request for subsequent review under this paragraph;**

11 (4) render the final consistency determination and certification.

12 * **Sec. 21.** AS 46.40.096(g) is amended to read:

13 (g) The reviewing entity **shall** [MAY] exclude from the consistency review
14 and determination process for a project

15 (1) an activity that

16 **(A)** is authorized under a general or nationwide permit that has
17 previously been determined to be consistent with the **Alaska** [APPLICABLE]
18 coastal management **program** [PROGRAMS]; **or**

19 **(B) is subject to authorization by the Department of**
20 **Environmental Conservation under the requirements described in**
21 **AS 46.40.040(b);**

22 (2) **activities excluded from a consistency review under AS 41.17;**

23 **and**

24 **(3)** the issuance of an authorization or permit issued by the Alaska Oil
25 and Gas Conservation Commission.

26 * **Sec. 22.** AS 46.40.096 is amended by adding new subsections to read:

27 (i) For purposes of those activities of a proposed project that are subject to
28 (g)(1)(B) of this section, the consistency of those activities is determined by the
29 issuance of the applicable permits, certifications, approvals, and authorizations by the
30 Department of Environmental Conservation.

31 (j) Except as provided in AS 41.17, 16 U.S.C. 1456, and 15 C.F.R. Part 930, a

1 consistency review of a project under this section is triggered by an activity within the
2 areas described in (l) of this section that is subject to a state resource agency permit,
3 lease, authorization, approval, or certification.

4 (k) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b), and
5 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
6 of this section, is limited to activities that are located within the areas described in (l)
7 of this section and that either are subject to a state resource agency permit, lease,
8 authorization, approval, or certification or are the subject of a coastal resource district
9 enforceable policy approved by the department under this chapter. The scope of a
10 consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and
11 15 C.F.R. Part 930.

12 (l) The regulations adopted under (a) of this section apply, as authorized by 16
13 U.S.C. 1456(c), to

14 (1) activities within the coastal zone; and

15 (2) activities on federal lands, including the federal outer continental
16 shelf, that would affect any land or water use or natural resource of the state's coastal
17 zone; for purposes of this paragraph those activities consist of any activity on the
18 federal outer continental shelf and any activity on federal lands that are within the
19 geographic boundaries of the state's coastal zone notwithstanding the exclusion of
20 federal lands in 16 U.S.C. 1453(l).

21 (m) As part of the regulations adopted under (a) of this section, the department
22 shall establish a list of permits, certifications, leases, approvals, and authorizations
23 issued by a state resource or federal agency that will trigger a consistency review
24 under (j) of this section. In addition, the department shall establish in regulation
25 categories and descriptions of uses and activities that, for purposes of evaluating
26 consistency with the Alaska coastal management program, are determined to be
27 categorically consistent or generally consistent after the inclusion of standard
28 alternative measures. These categories of uses and activities must be as broad as
29 possible so as to minimize the number of projects that must undergo an individualized
30 consistency review under this section.

31 (n) Except as provided in (o) of this section, a consistency review under this

1 section shall be completed within 90 days after the receipt of a complete application
 2 by the state. If a consistency review is not completed by the time specified in this
 3 subsection, the activity subject to review is conclusively presumed consistent.

4 (o) The time limitations in (n) of this section

5 (1) do not apply to a consistency review involving the disposal of an
 6 interest in state land or resources;

7 (2) are suspended

8 (A) from the time the reviewing entity determines that the
 9 applicant has not adequately responded in writing within 14 days after the
 10 receipt of a written request from the reviewing entity for additional
 11 information, until the time the reviewing entity determines that the applicant
 12 has provided an adequate written response;

13 (B) during a period of time requested by the applicant;

14 (C) during the period of time a consistency review is
 15 undergoing a subsequent review under (d)(3) of this section.

16 (p) A consistency review and determination for those activities of a project not
 17 excluded under (g) of this section may not be delayed or withheld pending issuance of
 18 the permits, certifications, approvals, and authorizations referred to in (g) of this
 19 section but shall proceed regardless of the status of those permits, certifications,
 20 approvals, and authorizations.

21 * **Sec. 23.** AS 46.40.100(a) is amended to read:

22 (a) **As provided in AS 46.40.090 and 46.40.096, municipalities**
 23 [MUNICIPALITIES] and state resource agencies shall administer land and water use
 24 regulations or controls in conformity with district coastal management **plans**
 25 [PROGRAMS] approved **under this chapter** [BY THE COUNCIL] and in effect.

26 * **Sec. 24.** AS 46.40.100(b) is amended to read:

27 (b) A party that is authorized under (g) of this section may file a petition
 28 showing that a district coastal management **plan** [PROGRAM] is not being
 29 implemented. A petition filed under this subsection may not seek review of a
 30 proposed or final consistency determination regarding a specific project. On receipt of
 31 a petition, the **department** [COUNCIL], after giving public notice in the manner

1 required by (f) of this section, shall convene a hearing to consider the matter. A
 2 hearing called under this subsection shall be held in accordance with regulations
 3 adopted **under this chapter** [BY THE COUNCIL]. After hearing, the **department**
 4 [COUNCIL] may order that the coastal resource district or a state resource agency
 5 take any action with respect to future implementation of the district coastal
 6 management **plan** [PROGRAM] that the **department** [COUNCIL] considers
 7 necessary, except that the **department** [COUNCIL] may not order that the coastal
 8 resource district or a state agency take any action with respect to a proposed or final
 9 consistency determination that has been issued.

10 * **Sec. 25.** AS 46.40.100(c) is amended to read:

11 (c) In determining whether an approved district coastal management **plan**
 12 [PROGRAM] is being implemented by a coastal resource district that exercises zoning
 13 authority or controls on the use of resources within the coastal area or by a state
 14 resource agency, the **department** [COUNCIL] shall find in favor of the district or the
 15 state resource agency, unless the **department** [COUNCIL] finds a pattern of
 16 nonimplementation.

17 * **Sec. 26.** AS 46.40.100(e) is amended to read:

18 (e) The superior courts of the state have jurisdiction to enforce lawful orders
 19 of the **department under this chapter** [COUNCIL].

20 * **Sec. 27.** AS 46.40.100(f) is amended to read:

21 (f) Upon receipt of a petition under (b) of this section, the **department**
 22 [COUNCIL] shall give notice of the hearing at least 10 days before the scheduled date
 23 of the hearing. The notice must

24 (1) contain sufficient information in commonly understood terms to
 25 inform the public of the nature of the petition; and

26 (2) indicate the manner in which the public may comment on the
 27 petition.

28 * **Sec. 28.** AS 46.40.100(h) is amended to read:

29 (h) If the **department** [COUNCIL] finds a pattern of nonimplementation
 30 under (c) of this section, the **department** [COUNCIL] may order a coastal resource
 31 district or a state resource agency to take action with respect to future implementation

1 of the district coastal management plan [PROGRAM] that the department
 2 [COUNCIL] considers necessary to implement the district coastal management plan
 3 [PROGRAM]. The department's [COUNCIL'S] determination under (c) of this
 4 section and any order issued under this subsection shall be considered a final
 5 administrative order for purposes of judicial review under AS 44.62.560.

6 * **Sec. 29.** AS 46.40.110 is repealed and reenacted to read:

7 **Sec. 46.40.110. Authority in the unorganized borough.** A coastal resource
 8 service area in the unorganized borough organized under AS 29.03.020 and
 9 AS 46.40.110 - 46.40.180 before the effective date of this bill section shall exercise
 10 those authorities and perform those duties required under this chapter.

11 * **Sec. 30.** AS 46.40.140(a) is amended to read:

12 (a) Each coastal resource service area [, UPON ORGANIZATION,] shall have
 13 an elected board representing the population of the service area. The board shall have
 14 the powers and duties and perform the functions prescribed for or required of coastal
 15 resource districts.

16 * **Sec. 31.** AS 46.40.140(d) is amended to read:

17 (d) The term of office of a member of a coastal resource service area board is
 18 three years [, EXCEPT THAT THE TERMS OF THE MEMBERS OF THE FIRST
 19 BOARD ELECTED AFTER ORGANIZATION OF A COASTAL RESOURCE
 20 SERVICE AREA SHALL BE DETERMINED BY LOT, WITH TWO MEMBERS
 21 SERVING ONE-YEAR TERMS, TWO MEMBERS SERVING TWO-YEAR
 22 TERMS, AND THREE MEMBERS SERVING THREE-YEAR TERMS.] Members
 23 serve until their successors are elected and have qualified. This section does not
 24 prohibit the reelection of a board member.

25 * **Sec. 32.** AS 46.40.140(e) is amended to read:

26 (e) The lieutenant governor shall provide for the election of the members of
 27 coastal resource service area boards. [THE FIRST ELECTION OF BOARD
 28 MEMBERS SHALL OCCUR AT THE SAME TIME AS THE ORGANIZATION
 29 ELECTION UNDER AS 46.40.130(b)].

30 * **Sec. 33.** AS 46.40.140(f) is amended to read:

31 (f) **Election** [EXCEPT FOR THE FIRST ELECTION] of members of coastal

1 resource service area boards [, ELECTIONS] shall be held annually on the date of
 2 election of members of regional educational attendance area boards under
 3 AS 14.08.071(b). [FOR AN ELECTION UNDER THIS SUBSECTION OR UNDER
 4 (e) OF THIS SECTION, A NEWLY ELECTED BOARD MEMBER TAKES
 5 OFFICE AT THE FIRST COASTAL RESOURCE SERVICE AREA BOARD
 6 MEETING AFTER CERTIFICATION OF THE ELECTION.] If no candidate files for
 7 election to a seat on the coastal resource service area board, the seat is considered
 8 vacant at the time a newly elected member would have taken office.

9 * **Sec. 34.** AS 46.40.150 is amended to read:

10 **Sec. 46.40.150. Elections in coastal resource service areas. Elections**
 11 [ORGANIZATION ELECTIONS] under **AS 46.40.110 - 46.40.180** [AS 46.40.130
 12 AND OTHER ELECTIONS, INCLUDING RECALL ELECTIONS CONDUCTED
 13 UNDER AS 46.40.140,] shall be administered by the lieutenant governor in the
 14 general manner provided in AS 15 (Election Code). In addition, the lieutenant
 15 governor may adopt regulations necessary to the conduct of coastal resource service
 16 area board elections. The state shall pay all election costs.

17 * **Sec. 35.** AS 46.40.180(a) is amended to read:

18 (a) Before adoption by a coastal resource service area board, [OR BY THE
 19 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER
 20 AS 46.40.170,] a district coastal management **plan** [PROGRAM] shall be submitted
 21 for review to each city or village within the coastal resource service area. The council
 22 of a city or traditional village council shall consider the **plan** [PROGRAM] submitted
 23 for review. Within 60 days of submission, the council of a city or traditional village
 24 council shall either approve the **plan** [PROGRAM] or enter objections to all or any
 25 portion of the **plan** [PROGRAM].

26 * **Sec. 36.** AS 46.40.180(b) is amended to read:

27 (b) If a city or village within a coastal resource service area fails to approve a
 28 portion of the district coastal management **plan** [PROGRAM] prepared and submitted
 29 for approval under (a) of this section, the governing body shall advise the coastal
 30 resource service area board [OR THE DEPARTMENT, AS APPLICABLE,] of its
 31 objections to the proposed **plan** [PROGRAM] and suggest alternative elements or

1 components for inclusion in the district coastal management **plan** [PROGRAM]. New
 2 matter submitted by a city or village which **meets** [IS SUBSTANTIALLY
 3 CONSISTENT WITH] the **statewide** [GUIDELINES AND] standards **and district**
 4 **plan criteria** adopted **under this chapter** [BY THE COUNCIL] shall be accepted
 5 and the district coastal management **plan** [PROGRAM] modified accordingly. If a
 6 city or village fails to provide objections and suggested alternatives within the time
 7 limits established in this section, the coastal resource service area board [OR THE
 8 DEPARTMENT, AS APPLICABLE,] may adopt the district coastal management
 9 **plan** [PROGRAM] as initially offered.

10 * **Sec. 37.** AS 46.40.180(c) is amended to read:

11 (c) Objection by a city council under (b) of this section is limited to objection
 12 to elements of the **plan** [PROGRAM] affecting resources or the use of resources
 13 within the corporate limits of the city. Objection by a traditional village council under
 14 (b) of this section is limited to objection to elements of the **plan** [PROGRAM]
 15 affecting resources or the use of resources within the village or within two miles of the
 16 village.

17 * **Sec. 38.** AS 46.40 is amended by adding a new section to read:

18 **Sec. 46.40.195. Construction with other laws.** Nothing in this chapter shall
 19 be construed to

20 (1) diminish state jurisdiction, responsibility, or rights in the field of
 21 planning, development, or control of land or water resources, submerged lands, or
 22 navigable waters;

23 (2) affect in any way any state requirement imposed under a federal
 24 authorization or federal waiver of sovereign immunity; or

25 (3) diminish the zoning or planning authority of municipalities under
 26 AS 29.

27 * **Sec. 39.** AS 46.40.210(2) is amended to read:

28 (2) "coastal resource district" means each of the following that
 29 contains a portion of the coastal area of the state:

30 (A) unified municipalities;

31 (B) organized boroughs of any class that exercise planning and

1 zoning authority;

2 (C) home rule and first class cities of the unorganized borough
3 or within boroughs that do not exercise planning and zoning authority;

4 (D) second class cities of the unorganized borough, or within
5 boroughs that do not exercise planning and zoning authority, that have
6 established a planning commission, and that, in the opinion of the
7 commissioner of community and economic development, have the capability
8 of preparing and implementing a comprehensive district coastal management
9 **plan** [PROGRAM] under AS 46.40.030;

10 (E) coastal resource service areas established and organized
11 under AS 29.03.020 and AS 46.40.110 - 46.40.180;

12 * **Sec. 40.** AS 46.40.210(3) is amended to read:

13 (3) "consistency review" means the evaluation of a proposed project,
14 **the scope of which is determined under AS 46.40.094 and 46.40.096,** against the
15 **statewide** standards adopted [BY THE COUNCIL] under AS 46.40.040 **for those**
16 **evaluations** and **the enforceable policies in an applicable** [A] district coastal
17 management **plan** [PROGRAM] approved [BY THE COUNCIL] under
18 AS 46.40.060;

19 * **Sec. 41.** AS 46.40.210(5) is amended to read:

20 (5) "department" means the Department of **Natural Resources**
21 [COMMUNITY AND ECONOMIC DEVELOPMENT];

22 * **Sec. 42.** AS 46.40.210(8) is amended to read:

23 (8) "uses of state concern" means those land and water uses **that**
24 [WHICH] would significantly affect the long-term public interest; **"uses of state**
25 **concern"** [THESE USES, SUBJECT TO COUNCIL DEFINITION OF THEIR
26 EXTENT,] include

27 (A) uses of national interest, including the use of resources for
28 the siting of ports and major facilities **that** [WHICH] contribute to meeting
29 national energy needs, construction and maintenance of navigational facilities
30 and systems, resource development of federal land, and national defense and
31 related security facilities that are dependent upon coastal locations;

1 (B) uses of more than local concern, including those land and
 2 water uses which confer significant environmental, social, cultural, or
 3 economic benefits or burdens beyond a single coastal resource district;

4 (C) the siting of major energy facilities, activities pursuant to a
 5 state **or federal** oil and gas lease, or large-scale industrial or commercial
 6 development activities **that** [WHICH] are dependent on a coastal location and
 7 **that** [WHICH], because of their magnitude or the magnitude of their effect on
 8 the economy of the state or the surrounding area, are reasonably likely to
 9 present issues of more than local significance;

10 (D) facilities serving statewide or interregional transportation
 11 and communication needs; and

12 (E) uses in areas established as state parks or recreational areas
 13 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat
 14 areas under AS 16.20;

15 * **Sec. 43.** AS 46.40.210 is amended by adding new paragraphs to read:

16 (10) "coastal use or resource" means a land or water use or natural
 17 resource of the coastal zone; "coastal use or resource" includes subsistence, recreation,
 18 public access, fishing, historic or archaeological resources, geophysical resources, and
 19 biological or physical resources found in the coastal zone on a regular or cyclical
 20 basis;

21 (11) "coastal zone" means the coastal waters including lands within
 22 and under those waters, and adjacent shorelands, including the waters within and
 23 under those shorelands, within the boundaries approved by the former Alaska Coastal
 24 Policy Council and by the United States Secretary of Commerce under 16 U.S.C. 1451
 25 - 1465 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes
 26 areas added as a result of any boundary changes approved by the department and by
 27 the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465; "coastal zone"
 28 does not include

29 (A) those lands excluded under 16 U.S.C. 1453(1); or

30 (B) areas deleted as a result of any boundary changes by the
 31 department in conformance with 16 U.S.C. 1451 - 1465;

1 (12) "district coastal management plan" means a plan developed by a
 2 coastal resource district, including enforceable policies of that plan, setting out
 3 policies and standards to guide public and private uses of land and waters within that
 4 district and approved by the department as meeting the requirements of this chapter
 5 and the regulations adopted under this chapter;

6 (13) "enforceable policy" means a policy established by this chapter or
 7 approved by the department as a legally binding policy of the Alaska coastal
 8 management program applicable to public and private activities;

9 (14) "project" means all activities that will be part of a proposed
 10 development.

11 * **Sec. 44.** AS 38.05.037(b)(2); AS 39.50.200(b)(38); AS 44.62.800(2)(B); AS 46.39.020,
 12 46.39.050; AS 46.40.080, 46.40.120, 46.40.130, 46.40.140(c), 46.40.160, 46.40.170,
 13 46.40.200, and 46.40.210(4) are repealed.

14 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 ANNULMENT OF CERTAIN REGULATIONS. The following regulations are
 17 annulled:

18 (1) 6 AAC 80.010 - 6 AAC 80.900;

19 (2) 6 AAC 85.020 - 6 AAC 85.900.

20 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding new sections to
 21 read:

22 TRANSITION: GENERAL PROVISIONS. (a) The Department of Natural
 23 Resources shall adopt regulations under AS 44.62 (Administrative Procedure Act)
 24 implementing this Act in order that the regulations are effective no later than July 1, 2004.

25 (b) Until sec. 45 of this Act takes effect or the regulations attorney removes the
 26 regulations under sec. 48(c) of this Act, whichever occurs first, regulations adopted to
 27 implement the Alaska Coastal Management Program at 6 AAC 80 and 6 AAC 85 remain in
 28 effect and, notwithstanding any contrary provision of this Act, the Department of Natural
 29 Resources may implement and enforce the regulations.

30 (c) Notwithstanding any contrary provision of this Act, the repeal of the Alaska
 31 Coastal Policy Council enacted by sec. 44 of this Act, and the repeal of the Alaska Coastal

1 Policy Council's duties in AS 46.40.040, enacted in sec. 10 of this Act, a district coastal
 2 management program, including its enforceable policies, approved by the former Alaska
 3 Coastal Policy Council remains in effect for purposes of AS 46.39 and AS 46.40 until July 1,
 4 2006, unless the Department of Natural Resources disapproves or modifies all or part of the
 5 program before July 1, 2006.

6 (d) Consistency reviews pending on the day before the effective date of secs. 17 - 22
 7 of this Act and initiated under the provisions of AS 46.40.096, as that section existed before
 8 the changes made by secs. 17 - 22 of this Act, may, at the applicant's option exercised no
 9 more than 60 days after the effective date of secs. 17 - 22 of this Act, be continued and
 10 completed under the procedures and enforceable policies under the provisions of AS 46.39
 11 and AS 46.40 as they existed before the changes made by this Act.

12 (e) Except as provided in (d) of this section, contracts, rights, liabilities, and
 13 obligations created by or under a law repealed by this Act remain in effect notwithstanding
 14 this Act's taking effect.

15 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 TRANSITION AND APPLICABILITY OF CERTAIN PROVISIONS:
 18 SUBMISSION OF DISTRICT PLANS BY COASTAL RESOURCE DISTRICTS FOR
 19 INITIAL IMPLEMENTATION OF THIS ACT. (a) Within one year after the effective date
 20 of regulations adopted by the Department of Natural Resources implementing changes to
 21 AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 of this Act, or by July 1, 2005, whichever is
 22 later, coastal resource districts shall review their existing district coastal management program
 23 and submit to the Department of Natural Resources for review and approval a revised district
 24 coastal management plan meeting the requirements of AS 46.40, as amended by this Act, and
 25 the implementing regulations.

26 (b) Upon request, the Department of Natural Resources shall consult with coastal
 27 resource districts to identify plan amendments that will meet the standards and guidelines
 28 established under this Act.

29 (c) AS 46.40.070(b), enacted by sec. 14 of this Act, does not apply to a revised
 30 district coastal management plan submitted under (a) of this section.

31 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to

3 (1) change the heading of

4 (A) AS 46.39 from "Coastal Management Administration; Alaska
5 Coastal Policy Council" to "Coastal Management Administration";

6 (B) article 2 of AS 46.40 from "Coastal Management Programs in the
7 Unorganized Borough" to "Coastal Management Plans in the Unorganized Borough";

8 (C) AS 46.40.180 from "Approval of programs in coastal resource
9 service areas" to "Approval of plans in coastal resource service areas";

10 (2) delete the heading of article 2 of AS 46.39 and renumber article 3 of
11 AS 46.39 as article 2.

12 (b) Wherever in the Alaska Administrative Code the terms "Alaska Coastal Policy
13 Council" or "Coastal Policy Council" are used, or the term "council" is used to refer to the
14 Alaska Coastal Policy Council, the regulations attorney is instructed to change those terms to
15 read as "Department of Natural Resources," "DNR," "department" or "commissioner of
16 natural resources" when to do so would be consistent with AS 44.62.125(b)(6) and the
17 changes made by this Act.

18 (c) If regulations adopted by the Department of Natural Resources under sec. 46 of
19 this Act take effect before the effective date of sec. 45 of this Act, the regulations attorney is
20 instructed to remove from the Alaska Administrative Code the regulations listed in sec. 45 of
21 this Act, as being obsolete. The lieutenant governor shall notify the regulations attorney of
22 the effective date of the regulations adopted by the Department of Natural Resources under
23 sec. 46 of this Act.

24 * **Sec. 49.** Section 45 of this Act takes effect July 1, 2005.

25 * **Sec. 50.** Except as provided in sec. 49 of this Act, this Act takes effect immediately under
26 AS 01.10.070(c).