

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 28, 2003

3:33 p.m.

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 143

"An Act relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; relating to the functions of coastal resource service areas; creating an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; relating to actions based on private nuisance; relating to zoning within a third class borough covered by the Alaska coastal management program; and providing for effective dates."

HEARD AND HELD

SENATE BILL NO. 88

"An Act relating to standards for forest resources and practices; and providing for an effective date."

MOVED SB 88 OUT OF COMMITTEE

SENATE BILL NO. 56

"An Act relating to sport fishing license fees and anadromous king salmon tag fees for residents of Yukon, Canada."

SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

SB 143 - See Resources minutes dated 4/23/03 and 4/25/03.

SB 88 - No previous action to record.

SB 56 - No previous action to record.

WITNESS REGISTER

Mr. Marv Smith
Lake and Peninsula Borough
PO Box 495
King Salmon, AK 99613

POSITION STATEMENT: Expressed numerous concerns about SB 143 and urged members to slow its progress down

Ms. Paula Terrell
Alaska Marine Conservation Council
No address provided

POSITION STATEMENT: Urged members to hold SB 143 for the interim for further work

Ms. Marty Rutherford
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Presented SB 143 for the Administration

Mr. Breck Tostevin
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions about SB 143

Mr. Pat Galvin
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Answered questions about tribal councils in relation to SB 143

Mr. Brian Hove
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 88 for the sponsor

Mr. Jeff Jahnke
Division of Forestry

Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Answered questions about SB 88

Mr. Albert Pagh
4 Star Lumber
2849 Parks Highway
Fairbanks, AK 99709

POSITION STATEMENT: Believes SB 88 is unnecessary

Mr. Rick Smeriglio
Board of Forestry member
Seward, AK

POSITION STATEMENT: Supports SB 88

Mr. Eric Pyne
Boreal Forest Products &
International Woodcutters Association
PO Box 82694
Fairbanks, AK

POSITION STATEMENT: Supports SB 88

Ms. Leslie Gustafson
White Spruce Enterprises, Inc.
10293 Old Valdez Trail
Salcha, AK 99714

POSITION STATEMENT: Supports SB 88

Mr. Robert Ott
Tanana Chiefs Conference
122 First Ave.
Fairbanks, AK 99701

POSITION STATEMENT: Supports SB 88

Mr. James V. Drew
4725 Villanova Dr.
Fairbanks, AK 99709

POSITION STATEMENT: Supports SB 88

Ms. Jan Dawe
Alaska Boreal Forest Council
PO Box 84530
Fairbanks, AK 99709

POSITION STATEMENT: Supports SB 88

Mr. Chris Stark

PO Box 80543
Fairbanks, AK 99708
POSITION STATEMENT: Supports SB 88

ACTION NARRATIVE

TAPE 03-34, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:33 p.m. All members were present except Senator Stevens who arrived shortly thereafter.

SB 143-COASTAL MANAGEMENT PROGRAMS

CHAIR OGAN announced that he intended to finish taking public testimony today on SB 143. He said he is comfortable with the legislation as is, but will abide by the wish of the committee regarding moving it from committee.

SENATOR WAGONER informed members that he planned to offer an amendment.

CHAIR OGAN called the first witness.

MR. MARV SMITH, Community Development Coordinator for the Lake and Peninsula Borough, said he is not aware of the change the proposed amendment will make. He thanked all of those involved for making significant changes to the bill. He believes the committee substitute is much better, however, he still has a few concerns about the legislation.

MR. SMITH said Section 14 limits communities too much. It is questionable how many of the Lake and Peninsula Borough's policies can be carried forward or used at all. The Borough's specific concerns are protecting subsistence and commercial recreational use of the area. Another concern is that DEC will have total control over air and water quality, which he believes is too far reaching. The 90-day limit in Section 22 will put the Borough in jeopardy if it requests additional information from the contractor and the contractor elects not to comply. He said holding public hearings in 16 villages within the Lake and Peninsula Borough will be very expensive. He hopes that additional funding will be made available for that purpose. He asked committee members to "slow this bill down."

MS. PAULA TERRELL, representing the Alaska Marine Conservation Council (AMCC), urged the committee to consider the fact that

the Coastal Zone Management Program is very complex. While changes have been made to the legislation, problems still exist, specifically with the broadness and vagueness of the bill and the impacts it will have on the coastal communities. She said she does not doubt there are problems with Alaska's coastal management program, but to pass legislation with such sweeping impact is "throwing the baby out with the bathwater." She asked the committee to bring a group of stakeholders together, including coastal communities, industry, and agencies, to look at some of the problems during the interim. She believes that would create a win-win situation and avoid the controversy surrounding this legislation.

CHAIR OGAN said the last Administration promoted stakeholder groups but he burned out on that approach because when it was used for a lease sale in Cook Inlet, it involved the most extensive public process ever used for a lease sale. He stated:

If somebody didn't like the results on it they had a stakeholders' process that was totally outside of the bounds of statute and regulation and the feel good thing that delayed the project and cost everybody a whole bunch of money and they ended up doing it anyway but I'm not a big fan of stakeholder groups.

MS. TERRELL said there is a difference in that the entire purpose of the coastal management program is to draw in and coordinate with people from diverse groups and interests. She pointed out the coastal communities want development. However, they want to be able to control their destinies in how that development is planned.

CHAIR OGAN announced that with no further participants, public testimony was closed. He asked Ms. Rutherford to address the committee.

MS. MARTY RUTHERFORD, representing the Department of Natural Resources (DNR) and the Administration, told members that Mr. Breck Tostevin of the Department of Law, Mr. Pat Galvin, the past director of the Division of Governmental Coordination (DGC), and Mr. Randy Bates, the newly appointed coastal program coordinator with DNR, were accompanying her and available to answer questions.

MS. RUTHERFORD told members that a clarifying amendment to Section 11 was distributed.

SENATOR BEN STEVENS moved to adopt Amendment 1, which reads as follows.

A M E N D M E N T 1

OFFERED IN THE SENATE RESOURCES COMMITTEE
TO: SB 143

Page 8, line 10:

Delete "a new subsection"
Insert "new subsections"

Page 8, line 13, following "purposes." through line 22:

"For those purposes only,

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

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

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

SENATOR DYSON objected for the purpose of discussion.

MS. RUTHERFORD explained that the Administration received comments from several coastal districts expressing a lot of concern about the third sentence of Section 11. Their concern was that Section 11 prevented any district enforceable policies on the Outer Continental Shelf. That was not the intent, nor the effect of Section 11 in the Administration's opinion. However, in order to clarify that coastal districts can have enforceable policies applicable to federal activities, activities on federal lands, and activities in the Outer Continental Shelf, the Administration prepared Amendment 1 to clarify that DEC's air, land and water quality standards are not the exclusive standards that would apply to those types of consistency reviews.

CHAIR OGAN asked Mr. Tostevin to testify.

MR. BRECK TOSTEVIN, Department of Law (DOL), told members that Amendment 1 amends Section 11 of the bill. Section 11 currently provides that AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the exclusive enforceable policies of the Alaska coastal management program for those purposes. The amendment inserts additional language, which states, "for those purposes only" and is followed by two paragraphs. The first paragraph deals with activities that DEC permits. The issuance of a DEC permit would constitute consistency for those purposes for those activities.

The second paragraph discusses projects that involve a federal activity, an activity on federal lands, or on the Outer Continental Shelf where DEC has no permitting authority. For consistency review purposes, DEC would apply these air, land and water quality statutes and regulations for those activities. It then creates a new section (c) that provides that for those federal consistency reviews, DNR would, in addition to its review under the consistency review statute (AS 46.40.096), coordinate with DEC and DEC would make the finding with respect to the more narrow purposes of the activities subject to the DEC standards. He stated this is a clarifying amendment to make sure that district enforceable policies could be established on Outer Continental Shelf activities.

CHAIR OGAN asked if (b)(2) is the language on lines 11 through 17 of the bill.

MR. TOSTEVIN said the insertion starts on line 13 and ends on line 22.

SENATOR LINCOLN asked Ms. Rutherford if Amendment 1 will address Mr. Smith's concerns about Section 14 in regard to it limiting subsistence and recreational activities too much.

MS. RUTHERFORD said she does not believe it will. She said other districts indicated they want surety that local enforceable policies could be applied to federal lands and the Outer Continental Shelf. She said she would speak to what is within the parameters of Section 14, the test, for local enforceable policies.

CHAIR OGAN interrupted Ms. Rutherford and asked that the discussion be kept to Amendment 1 at this time. He noted that with no further discussion or objection, Amendment 1 was adopted.

MS. RUTHERFORD said Senator Lincoln's question brings her to the next item she wanted to discuss, that being the parameters of the Section 14 test for developing local enforceable policies. She was asked by the House Resources Committee last week to provide six examples of some district enforceable policies that met the requirement of that test. She said she provided Senate Resources Committee members with nine examples. Those examples meet the requirements of Section 14 but where applicable, a district may need to provide some support - an analysis and justification within that district plan on how the policy meets the matter of local concern. As is the current situation, the local policy cannot unreasonably restrict or exclude a use of state concern, for example oil and gas activities. She said it is also important to note that these example policies are based upon existing district enforceable policies. Some of the language in them was changed to meet the test embedded in Section 14. Those policies were also selected based upon the current state and federal regulatory regime, recognizing that they currently fill areas that are not otherwise adequately addressed by state or federal law. Should the state or federal law ever expand to address those issues, those district enforceable policies would have to be repealed. She said those policies were developed by the team who worked on this legislation and they were reviewed by the Department of Law and the Governor's Office.

MS. RUTHERFORD added the Murkowski Administration feels, after looking at these district enforceable policies, that the districts put a great deal of effort into establishing them. The Administration's strategy is to have the resource agencies

review all of the local enforceable policies as they are being rewritten to be more concise and non-duplicative, as well as to see if any should be developed into statewide standards. She said the policies demonstrate that districts have a great deal of room to develop policies that address issues of local concern.

CHAIR OGAN referred to Section 14(2)(A) and (B), which require plans to be clear and concise and to use precise, prescriptive and enforceable language and asked if that is an oxymoron. He noted that is a major departure from current statute.

MS. RUTHERFORD said she understood Chair Ogan's point but that is the goal.

CHAIR OGAN asked what will happen if the plan is not "sensitive to development" [language on page 10, line 24].

MS. RUTHERFORD said the intent is to have the policies focus on areas of specific concern about the negative impact of development on a resource.

CHAIR OGAN referred to language on page 10, lines 27 and 28, which reads, "of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence," and said he interprets that to mean we need to be sensitive to development and sensitive to local concerns and balance the two.

MS. RUTHERFORD agreed and added the district also has to make a case that the concern is specific to that district, for example around an area used for subsistence egg gathering.

SENATOR DYSON said he personally believes it is always good to have the stakeholders involved in the process. He thought the Chair was speaking to an elaborate process, sometimes referred to as a stakeholder process, that adds a great deal of complexity. He asked Ms. Rutherford for assurance that the bill as amended gives all of the relevant parties who live or work in the area a place and time to have a voice in the decision making process.

MS. RUTHERFORD said the simple answer is yes. The CS assures that the current structure of the coastal management program will continue. That means the districts will be able to propose to the commissioner of DNR local enforceable policies that meet this test, with the exception of those activities within the permitting purview of DEC for air, land, and water quality

standards. This bill sets those aside as being deemed consistent once DEC determines those projects have met DEC's standard requirements.

SENATOR DYSON asked Ms. Rutherford to review what the DEC process allows for air and water control. He added that he wants to make sure that everyone is clear that public input is not diminished in any way.

MS. RUTHERFORD said the DEC permitting authorization process has regular intervals for public participation.

SENATOR DYSON asked for a description of the intervals during which relevant stakeholders have an opportunity for input and to challenge or appeal.

MR. BRECK TOSTEVIN said all DEC permits require public notice. When an applicant applies for a permit, DEC publishes a notice and the public has an opportunity to comment. Once the permit is issued, the public can request an administrative adjudicatory hearing concerning the permit. If a party is still aggrieved, that party can appeal to the court.

SENATOR DYSON asked if, in theory, this legislation eliminates duplication in the process. He also asked Ms. Rutherford to describe the remainder of the process.

[CHAIR OGAN interjected to note that Representative Kerttula had joined the committee.]

MS. RUTHERFORD said the intent of the legislation is to eliminate the duplication that currently exists within the program and the often very elongated timeframe associated with the more complex DEC permits, such as air and contingency planning. She then said, regarding the remainder of the process, once a district goes through its own process to determine what it wants to propose to DNR as a local enforceable policy, that triggers DNR's review process. Like DEC, that process is laid out in statute and regulation and contains a very extensive public notice process. That is followed by an administrative appeal process and judicial review.

SENATOR DYSON commented the notification process is worrisome to him. Unless someone is paying attention to the fine print in a newspaper and knows where and when to look, it is easy to overlook. He asked if DNR will use the best media available in

an area, sometimes AM radio, to let the public know that an application is in process.

MS. RUTHERFORD said DNR does not always use public radio, but its notices have a large circulation through newspapers. She said in this case, DNR would be working directly with the districts. In her experience, the districts have been good at assuring that their residents are aware of what is happening and that they have input.

SENATOR DYSON asked if DNR keeps the information updated on a web page or through electronic media. He also asked if stakeholder groups could ask in advance to be notified if they were particularly interested in activities in a particular area.

MS. RUTHERFORD said DNR and DGC use the web extensively; DNR accepts comments through the web and has extensive distribution lists for notification purposes.

CHAIR OGAN acknowledged that DNR does a great job of notification.

SENATOR SEEKINS said he assumes there is always an opportunity for any interested party to comment but not to have a vote or veto power. He said that is where the stakeholder process concerns him. The state has a statutory and regulatory process designed to gather public comment in the best possible way. In addition, he pointed out the stakeholder process sometimes ends up being a non-statutory process where people are invited to the table because:

...they are concerned about Mother Earth in total and think that at that point by being able to not partake in the public process that is statutory, to be able to have a vote in a non-statutory process and what I'm hoping is that we don't have any of that in this legislation, that the statutory public process is all that we have and that we don't come in with these delay tactics called - so called stakeholder groups. Is there any chance that under these regulations and this bill we're going to see the ability for the non-statutory process to come up?

MS. RUTHERFORD said she believes the Senator can rest assured this program will rely upon the statutory and regulatory public process that will allow for an extensive and adequate public

process but it does not embed any kind of a stakeholder process into the decision-making.

CHAIR OGAN commented that a future administration could do that, as has been done in the past.

SENATOR SEEKINS said that is why he was trying to assure that discretion is eliminated as much as possible. He then asked if the other political subdivisions of the state have a responsibility to notify their residents.

MS. RUTHERFORD said every municipality, as well as the coastal resource service areas, has requirements for public notice. She said the process is a "ground-up" process. She added the redundancy is appropriate because it allows the districts the opportunity to have a dialog with their own constituents. As it moves up to the decision-making level in state government, another public process allows for broader participation.

MS. RUTHERFORD then said she would like to clarify some confusion expressed about whether this legislation will require a rewrite of a lot of different standards. The reality is it does not require a rewrite of any standards other than the coastal management statewide standards and local plans. It does not require a rewrite of DEC air, land and water quality standards. It does not require a rewrite of DNR's land management regulations. She noted this bill retains the program's basic structure, including the coordination function when a project is proposed. It allows the districts to coordinate decision-making through the consistency review. It also retains the districts at the table. With the exception of DEC's air, land and water quality standards, it allows local enforceable policies. It does not diminish an incorporated municipality's Title 29 planning and zoning authorities. Section 28 contains a clause to that effect.

CHAIR OGAN thanked Ms. Rutherford for her review.

SENATOR ELTON asked if local communities will have a diminished voice in some areas because, with the removal of DEC from the purview, their voices cannot speak in the same way they have in the past to the DEC component.

MS. RUTHERFORD said that is a good question and acknowledged that a lot of confusion remains on this issue. The elimination of activities under the purview of DEC's air, land and water quality standards are outside of the districts' ability to

develop local enforceable policies that increase the air, land, and water quality standards in some fashion. However, this bill does not in any way restrict incorporated Title 29 municipalities from developing ordinances that address that, much like the CBJ has wetlands ordinances. Title 29 municipalities are completely free to develop ordinances that deal with wetlands policies. The only distinction is that the municipalities cannot then take those ordinances, embed them in local enforceable policies that are part of the coastal management program, and impose those on federal lands.

SENATOR ELTON said the wetlands policy issue is of special concern to the CBJ. He sees this bill as preempting the tortuous process the CBJ went through to establish wetland categories if federal agencies are involved.

MS. RUTHERFORD said the CBJ adopted those policies through its ordinance process so its Title 29 authorities are still retained. The only thing the CBJ could not do under this bill is to embed those air, land, and water quality standards. Many of those might be siting standards, which are somewhat different than those activities within the purview of the DEC standards. The CBJ is not allowed to take those ordinances, if they are pertinent to activities managed by DEC, and make them into local enforceable policies. The only place where there may then be a gap for Juneau would be if, in fact, there were federal lands within its boundaries where the CBJ imposes the standard that does capture an air, land, and water quality managed activity.

SENATOR ELTON asked, "...so, if, in fact, this was happening on Tongass National Forest land, then Corps trumps municipal ordinance?"

MS. RUTHERFORD said DEC trumps. DEC standards will continue to apply to activities on federal lands within state boundaries and the Outer Continental Shelf. A local district could not develop a standard that goes beyond DEC's air, land, and water quality standards.

SENATOR ELTON asked Ms. Rutherford if she has spoken to anyone at the CBJ about that. He said her interpretation seems to be "rosier" than the CBJ's interpretation.

MS. RUTHERFORD said she spoke to the planning director about two hours ago and gave him her interpretation and drew his attention to the section of the bill that she believes is applicable. She

suggested that he review that with the CBJ Department of Law and offered to discuss it further.

SENATOR ELTON asked what Forest Practices Act activities would be excluded from consistency review.

MS. RUTHERFORD said under the current program, the Forest Practices Act standards and permit authorities are stand-alone. Once those best management practices and standards embedded in the act are met, the project is deemed consistent with coastal management. She explained, "So, basically what we've done is we've taken the Forest Practices Act model and simply imposed it on the DEC air, land and water quality standards...."

SENATOR ELTON asked if the regimes for DEC and the Forest Practices Act are essentially the same.

MS. RUTHERFORD said that is correct.

SENATOR ELTON asked Ms. Rutherford if she anticipates any problems in looking at projects in total. He said one of his concerns is that if the state uses a bifurcated DEC process and then a consistency review process, it will only look at a piece of the pie.

MS. RUTHERFORD said if DEC has a single agency review that only regards its standards, it will make the sole determination. However, normally there are multiple permits that include other agencies and, because local enforceable policies will be able to address activities of a project so that even if the DEC permit is the only one, DEC will have to review for consistency with the local enforceable policy. Amendment 1 clarifies that issue. She said most of the time multiple permit agencies are involved.

SENATOR ELTON questioned whether an amendment has been drafted to deal with the 90-day issue that is causing angst among many communities.

MS. RUTHERFORD said she believes Senator Wagoner plans to propose such an amendment. She said the Administration has taken a look at it and is comfortable with it.

SENATOR ELTON asked Ms. Rutherford if she has spoken to anyone from the municipalities who supports this legislation.

MS. RUTHERFORD said she has heard from a lot of the districts that they are pleased with the progression from the original

legislation to the committee substitute but she does not believe it is fair to say any of them are happy about the legislation. They are comfortable with the current program. Conversely, she has heard a lot of criticism from the development community about the complexity and vagueness of the program and because the DEC permitting process is lengthy and within the consistency review. She said it is her opinion that while this bill neither satisfies any of the districts nor satisfies all of the development community, it is in the middle of the spectrum of what is acceptable.

CHAIR OGAN said he believes that municipalities need to be mindful of the fact that revenue sharing is decreasing and the state's revenue stream will be diminished in the future.

MS. RUTHERFORD said that is an excellent point. One of the criticisms by the development community is that new investment has been slow in coming because the state is viewed as having a very uncertain, lengthy and complex permitting system.

TAPE 03-34, SIDE B

MS. RUTHERFORD said the intent of this legislation is to streamline that process to make it clearer and to provide a timeline.

SENATOR ELTON commented that a lot of people listening to this debate believe it involves municipalities against developers. He said he does not believe any coastal communities want to delay development projects. The coastal communities have been especially "hammered" by changes in the fishing and timber industries. He said he believes the bigger concern for municipalities is to decide what kind of development they want. They want to be involved in changes that fit their long-term plans.

CHAIR OGAN suggested that there is already a process in place to get permits through agencies so the CZM process is redundant.

MS. RUTHERFORD said she was not suggesting that the local municipalities or coastal resource areas were opposed to development. She said the development community is saying the coastal management program is overly complex.

4:25 p.m.

SENATOR LINCOLN referred to an e-mail from the Port Graham Village Council in which Chief Patrick Norman questioned whether the language in Section 37 places a limit on villages. Chief Norman wrote:

There is a limit placed on our villages that we could only express our concerns only within 2 miles from our village. Currently our village is within an area meriting special attention under the Kenai Peninsula Coastal Management Plan. The area encompasses all of our subsistence use areas and this language will restrict us way too much.

She asked Ms. Rutherford to speak to that concern.

MS. RUTHERFORD pointed out the only amendment to the existing program in Section 37 changes the term "program" to "plan" so this limitation is already in the existing program. It is only pertinent to coastal resource service areas, not to incorporated districts. Port Graham is located within the Kenai Peninsula Borough.

SENATOR LINCOLN said the Port Graham Village Council reads that to say it is outside of the two-mile limit. She asked if the council will have a voice in the management plan.

MS. RUTHERFORD said she believes it does not affect them because they are within an incorporated area, not a coastal resource service area.

SENATOR LINCOLN referred to a letter from the village of Mekoryuk. That letter expresses concern that this bill threatens traditional subsistence hunting and fishing areas. The village questions whether traditional primary governments are recognized under this legislation.

MS. RUTHERFORD said there are several answers to that question. First, unlike the original SB 143, the CS maintains the current program, including the statewide standards that embody the habitat standard. Therefore, a statewide habitat standard will apply. Second, this bill makes no changes to the role of traditional IRAs or traditional councils. She asked Mr. Galvin to explain their current role.

MR. PATRICK GALVIN, former director of DGC, told members Mekoryuk is located within a coastal resource service area. The section Senator Lincoln referred to in the bill is current

statute, regarding the role the village plays in the planning for that area. When the coastal resource service area is developing a plan for the entire region, the tribal council is specifically allowed to voice its desired enforceable policies within the village. If a village has been incorporated, the state recognizes the municipality - either the borough or the city.

SENATOR LINCOLN asked if a village is not in a municipality or a borough, the short answer is the traditional council will be recognized. She asked if that is addressed in this bill.

MR. GALVIN said that is correct. He noted the language Senator Lincoln read from the letter is the section in current statute that recognizes the traditional council as the decision making body.

CHAIR OGAN noted that he planned to hold the bill in committee for another hearing to accommodate the people who want to testify.

SENATOR BEN STEVENS referred to Section 12 on page 8 and asked if under the new proposals there will be a plan review every ten years, while the existing language has no review process.

MS. RUTHERFORD said that languages that plans be reviewed and resubmitted every ten years. She explained there is no such requirement under the current program.

SENATOR BEN STEVENS asked if there has been any coastal management plan review since 1981.

MS. RUTHERFORD said no review requirement exists but many of the districts updated their plans multiple times at their own request since they were initially implemented.

SENATOR BEN STEVENS said he applauds Ms. Rutherford's attempt to rewrite definitive standards for review and approval.

SENATOR WAGONER moved to adopt Amendment 2, which reads as follows.

A M E N D M E N T 2

On Page 15, line 3
Insert:

(4) if the applicant fails to respond in writing to a written request for additional information within 14 days of receipt of such request;

SENATOR ELTON objected for the purpose of discussion.

MS. RUTHERFORD said the Administration is comfortable with Amendment 2. During the 90-day review, if an applicant fails to respond in writing to a request for information within 14 days, it allows the timeline to be tolled until the applicant responds. In other words, if an applicant chooses to ignore a request for additional information, the permit will not automatically be deemed consistent.

CHAIR OGAN noted that an Alaska Municipal League representative nodded affirmatively in support of Amendment 2.

SENATOR ELTON said the amendment may need to go a step further and say if the applicant fails to respond completely.

MS. RUTHERFORD said, in her opinion, the bill already allows inherent discretion to determine whether a response is adequate to the request. This simply allows the agency to toll it should it choose to.

SENATOR ELTON suggested the Chair speak to the Department of Law about that matter. He then asked if "tolled" means a deadline will be suspended until a response is received.

MS. RUTHERFORD said that is correct.

SENATOR ELTON questioned how that will work since the amendment is placed in the legislation so that the 90-day timeline is removed.

MS. RUTHERFORD said under Section 22(o)(2), an applicant can ask that the clock be held while additional information is being prepared. The project does not have to be terminated and the process restarted. The new section (4) just allows the agency to also stop the clock so that the entire review does not have to be restarted if an applicant has not provided adequate information.

CHAIR OGAN asked if this can be used in a dilatory way if the amendment is adopted.

MS. RUTHERFORD said she supposes it is possible that DNR could choose to use it in some inappropriate fashion but the reality is everyone is trying to get project reviews off of their desks as quickly as possible to prevent a backlog.

CHAIR OGAN asked, using the "evil commissioner theory," whether protections can be put into that bill so that theory does not play out and delay projects.

MS. RUTHERFORD said that same commissioner could determine every project inconsistent and that would be worse than tolling a project so the danger exists anyway.

SENATOR ELTON said it seems clear to him that the amendment does not address tolling. The language in (o) on page 14 says the time limitations in (n) of this section do not apply to a consistency review. It does not say the time limitations are suspended or tolled. The 90-day provision is in (n).

MS. RUTHERFORD said the intent was to have (2) and (3) be a toll but she would look into it.

SENATOR BEN STEVENS said according to the language on page 12, lines 28-31, it says the project applicant, the resource agency or the affected coastal resource district can make the inquiry for the 14-day response. He asked how many times they can do that.

MS. RUTHERFORD said she believes the reference to (d)(3) is the request for an elevation. If someone does not like the decision, that person has the opportunity for a hearing to discuss concerns. It is a process embedded in the program to hopefully prevent litigation.

CHAIR OGAN noted he would leave Amendment 2 on the table to await an answer to Senator Elton's question.

CHAIR OGAN announced a brief at-ease. When he reconvened the meeting, he announced the committee would next hear SB 88 and would not take up SB 56 today due to lack of time.

SB 88-FOREST RESOURCES & PRACTICES STANDARDS

MR. BRIAN HOVE, staff to Senator Seekins, sponsor of SB 88, gave the following sponsor statement.

This bill revises the riparian management standards of the Forest Resources Practices Act (FRPA) for Region III by strengthening protection for fish habitat and water quality in a manner that continues to support both the timber and fishing industries.

The current standards for Region III were adopted as an interim measure in the 1990 revision of the Act. Under these standards, harvesting can occur up to the bank of anadromous waters on both public and private land under some conditions. With the proposed bill, all anadromous and high-value resident fish waters are classified and riparian standards are established for each classification.

The requirements are tailored to the characteristics and fish habitat needs of each stream type. A no-harvest buffer will be required on most anadromous and high-value resident fish waters. However, along glacial rivers where some of the most valuable timber occurs, the standards allow harvest of up to half the large white spruce in the landward half of the buffer. This allows landowners to capture some of the economic value within the riparian areas while keeping enough large trees to provide woody debris.

This bill is not a wholesale revision of the Act. It has substantive changes for riparian management standards applying to Region III only. Other technical revisions include changes to the statewide nomenclature for water body classes to prevent confusion between water body types in different regions. The bill also moves definitions of regional boundaries from the regulations to the Act and makes a minor change to the regional boundary on the Kenai Peninsula to better match the difference between forest types. Most forestland in the affected area is in federal ownership, so there will be minimal impact on other landowners.

SB 88 helps ensure that the FRPA continues to be certified for compliance with federal Clean Water Act and coastal zone management requirements. This means that the Act continues to provide 'one-stop shopping' for the timber industry with respect to state and federal non-point source pollution and coastal management standards.

This bill is founded on the best science available including an extensive review of existing research and recommendations of an interdisciplinary Science & Technical Committee. The committee included experienced field staff from the state resource agencies and private sector as well as the University of Alaska and federal scientists.

MR. HOVE offered to answer questions and noted Mr. Jahnke was present and Marty Freeman was on line to answer questions.

CHAIR OGAN asked Mr. Jahnke to testify.

MR. JEFF JAHNKE, Director of the Division of Forestry, Department of Natural Resources (DNR) and the presiding officer for the Board of Forestry, gave the following background on how this legislation was developed.

This bill is a response to a Board of Forestry request to review the Forest Practices Act in 1996. We began that review in Region 1, which is the coastal region that encompasses most of coastal Alaska. This is the second step. That actually resulted in a change to the Forest Practices Act in 1999.

The second step of that - we moved to the Interior and this review was completed...in 2001. This is the second session that this bill has been...brought forward. We really thank Senator Seekins for sponsoring this bill.

CHAIR OGAN commented this bill is the result of a consensus that was worked out.

MR. JAHNKE noted members of the fishing industry, fish, wildlife and timber scientists, and the environmental community agreed upon this bill. He continued:

This bill was developed the same way the Region 1 was. We started with a science committee basically that put together the science of catching the fisheries management and riparian zone management. Following that, an implementation group was put together to look at the results of a science group to make sure that things could be done on the ground - that it would actually work. In following that, of course the Board

of Forestry reviewed it at length and what's before you is pretty much the result of all three reviews.

A couple of important points - it's a science-based bill. It's a science-based proposal. It has very good scientific background and it has, like I said earlier, [the support] of a broad range of industry, fisheries, environmental groups, the Board of Forestry, etcetera.

This act does three things to help ensure the goal of the Forest Practices Act. First it provides adequate protection for fish habitat in water quality and supports the continuation of healthy timber and the fishing industry. Second it helps to ensure that the Forest Practices Act meets the water quality requirements in the Clean Water Act in the coastal zone management act and that's very important. The third item that's probably worth mentioning is this bill is, as you heard Marty mention earlier, this bill is a one-stop shop for forestry activities. It meets the requirements of the coastal zone, if in fact they meet forest practices, and these changes help to ensure that that continues to be the case.

Having said that, with the Chair's permission, I'd ask Marty to go into the specifics and then we can take questions then or we can do it now.

CHAIR OGAN noted that he does not plan to move SB 88 out of committee today and that he would like to give priority to the people who signed up to testify.

SENATOR ELTON asked if SB 88 is a replica of last session's HB 131.

MR. JAHNKE said it is.

CHAIR OGAN took public testimony.

MR. ALBERT PAGH told members he and his son have owned and operated 4 Star Lumber in Fairbanks for 33 years. His father had portable mills so he spent his childhood days living in the forest. He said he can see no reason for this legislation. If the purpose of SB 88 is to reduce erosion, he has observed that if trees are left up to a stream bank, the soil under them is worse off. The stream undercuts the tree, pulling the back roots and a lot of soil from the bank. When trees are cut the sun

exposure allows new plants to grow, establishing root systems and stabilizing the bank. [Much of Mr. Pagh's testimony was inaudible due to transmission problems.]

MR. RICK SMERIGLIO of Seward stated support for SB 88. He has been a member of the Board of Forestry for over five years and watched this bill develop from an idea. He thanked the agencies, particularly the Division of Forestry and Alaska Department of Fish and Game (ADF&G), for all of the work they did. Local residents of the Interior had an opportunity to provide input. He said HB 131 came close to passing the Senate last year but the Senate ran out of time. He said most of the testimony the committee will hear will be supportive of SB 88. He pointed out the Board of Forestry is on record in support of this legislation. The requirement to have buffer zones has gained acceptance in Southeast Alaska because they protect fish and other riparian values. He believes it is a good idea to apply the buffer zone requirement to northern waters. He said the Board of Forestry has taken tours of the affected area in the Interior. He has seen areas that have been logged to the stream bank and areas with buffer zones. He believes the areas with buffer zones are better served. He stated support for SB 88 and asked members to take action on it as soon as possible.

CHAIR OGAN agreed that buffer zones are good. He said years ago he was concerned about the woody debris in a creek behind his home but was told by ADF&G that it provides good fish habitat.

MR. ERIC PYNE told members he has been involved in the timber industry in Fairbanks since 1979.

CHAIR OGAN called an at-ease to address teleconference transmission problems.

MR. PYNE continued his testimony. He has been involved in the planning process. During that process, ADF&G stated the buffer zones would simply be a starting point and not an end-all. The Division of Forestry assured him that the buffer zones would be in regulation and not just a starting point. As long as that is the fact, he supports the bill as written.

MS. LESLIE GUSTAFSON, Salcha, said she is an owner of a timber harvesting business. Her husband has harvested on the Tanana River and lived there since 1968. They have been watching this bill progress. They support SB 88 as is. She explained her concern is that different segments have come to the table; she does not want to see special interest groups come along and stop

logging. She would like to see regulations in place so that loggers do not have to address each and every harvest or redefine plans. She said she is a board member of the Alaska Forest Association. She believes SB 88 will provide consistency across the state.

MR. ROBERT OTT, Tanana Chiefs Conference (TCC), told members that TCC supports SB 88. This legislation represents a lot of work by many different groups. It protects fish habitat and water quality standards mandated by the Forest Practices Act.

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MR. JAMES V. DREW, testifying from Fairbanks, said he recommends favorable action by the legislature on SB 88. He said he has watched the changes in the forestry issues in Alaska over 20 years as director of the Agriculture and Forestry Experiment Station at the University of Alaska. He has also served as a member and chair of the Alaska Reforestation Council. He explained that riparian areas in Alaska's forests are of interest to foresters, fishermen, and wildlife managers. The lack of reasonable standards for forest management within these riparian areas has led to inefficiencies in managing these areas for wildlife habitat and timber production. SB 88 was developed from input from two different working groups: the interdisciplinary science and technical committee; and the implementation committee, which involved a lot of people and discussion. The Board of Forestry established both of those committees. He said the bottom line is that SB 88 meets habitat requirements for fish and allows limited harvesting of white spruce and buffer strips to capture some of the economic values within riparian zones. Last year, HB 131 underwent considerable review by the natural resources committee of the Fairbanks Chamber of Commerce. That committee recommended the bill. He strongly supports SB 88.

MS. JAN DAWE, Alaska Boreal Forest Council director, stated support for SB 88 because it represents such an exemplary process. It provides industry and the entire community with the confidence that the Forest Practices Act is being competently administered for conditions specific to the region north of the Alaska Range.

MR. CHRIS STARK, a fisheries biologist on the Board of Forestry, told members he is also representing the environmental community on the Tanana Valley State Forest. He said he is also representing and working for the Bering Sea Fisheries

Association, Yukon River Fisheries Development Association, and a few other small non-profit organizations. He said his associations are happy to support this bill primarily because it is scientifically based and establishes a buffer zone. However, the environmental community would like a larger buffer zone requirement. SB 88 was a good compromise.

CHAIR OGAN announced that with no further participants, public testimony was closed. He said that normally he would hold the bill in committee longer but this bill was reviewed by both bodies last year so he would be willing to move SB 88 from committee today.

SENATOR SEEKINS said this bill made it through the House and Senate committees last year, but in the rush to adjourn, it was not scheduled for a floor vote in the Senate. It had almost unanimous support throughout the entire process. The concerns expressed are questions that need to be addressed after more information is gathered, such as harvesting trees close to a stream bank. He said the intent of the bill is to provide for planned, orderly growth and development in concert with the principles of good stewardship. His intent is to build the timber industry in a responsible manner.

SENATOR DYSON moved SB 88 from committee with individual recommendations and attached fiscal note(s).

SENATOR LINCOLN objected for the purpose of discussion.

SENATOR SEEKINS said that rather than hold the bill in committee, he is willing to look at revisions to the legislation farther down the line.

SENATOR WAGONER expressed concern about the word "prudent" on page 2, line 31, and asked who will determine what is or isn't prudent.

MR. JAHNKE informed members that an intense discussion took place about the word "prudent" when Region 1 was reviewed. "Prudent" is determined by the Division of Forestry in consultation with the other agencies.

SENATOR LINCOLN noted the word "prudent" is defined on page 3, line 26. She then noted that members were told that SB 88 is identical to HB 131. She asked if HB 131 was amended when it went through the legislative process last year.

MR. JAHNKE said it was not amended.

SENATOR LINCOLN pointed out the definition of "prudent" in the bill is not helpful because the definition uses terminology that is not firm. She then withdrew her objection to moving SB 88 from committee, therefore the motion carried.

With no further business to come before the committee, CHAIR OGAN adjourned the meeting.