

CS FOR HOUSE BILL NO. 189(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 5/3/05

Referred: Resources, Finance

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act repealing the Alaska Coastal Management Program; relating to an extension**
2 **for review and approval of revisions to the Alaska coastal management program;**
3 **providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA**
4 **2003; and providing for an effective date."**

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

6 * **Section 1.** AS 09.45.230(b) is amended to read:

7 (b) A person may not maintain an action under this section based upon an air
8 emission or water or solid waste discharge, other than the placement of nuclear waste,
9 where the emission or discharge was expressly authorized by and is not in violation of
10 a term or condition of

11 (1) a statute or regulation;

12 (2) a license, permit, or order that is

13 (A) issued after public hearing by the state or federal
14 government; and

1 (B) subject to

2 (i) continuing compliance monitoring;

3 (ii) periodic review by the issuing agency; **or**

4 (iii) renewal on a periodic basis; or

5 [(iv) AS 46.40; OR]

6 (3) a court order or judgment.

7 * **Sec. 2.** AS 16.43.160(e) is amended to read:

8 (e) For an entry permit or an interim-use permit issued for calendar year 2002
9 and following years, the annual base fee may not be less than \$10 or more than \$300.
10 The annual base fee must reasonably reflect the different rates of economic return for
11 different fisheries. The fee for a nonresident entry permit or a nonresident interim-use
12 permit shall be higher than the annual base fee by an amount, established by the
13 commission by regulation, that is as close as is practicable to the maximum allowed by
14 law. The amount of the fee for a nonresident entry permit or a nonresident interim-use
15 permit may reflect

16 (1) the costs incurred by the state that are directly attributable to
17 participation of nonresidents in the commercial fisheries of the state;

18 (2) the costs incurred by the state for

19 (A) direct operating expenditures for ongoing management,
20 support, and regulation of the commercial fishing industry, including relevant
21 expenditures of the

22 (i) Department of Environmental Conservation - air and
23 water quality permitting activities and seafood inspection activities;

24 (ii) Department of Commerce, Community, and
25 Economic Development - commercial fishing loan program, Alaska
26 Seafood Marketing Institute, regional seafood development program,
27 and community development quota program;

28 (iii) Department of Fish and Game - division of
29 commercial fisheries, board support section, division of administrative
30 services, division of sport fish, commissioner's office, and Alaska
31 Commercial Fisheries Entry Commission;

1 (iv) Department of Labor and Workforce Development
 2 - wage and hour enforcement, mechanical inspections, occupational
 3 safety and health activities, and fishermen's fund;

4 (v) Department of Law;

5 (vi) Department of Natural Resources, including [THE
 6 ALASKA COASTAL MANAGEMENT PROGRAM AND] habitat
 7 programs;

8 (vii) Department of Public Safety - commercial
 9 fisheries enforcement;

10 (viii) Department of Revenue - fisheries business tax
 11 program, fishery resource landing tax program, seafood development
 12 tax program, salmon fishery assessment program, permit buy-back
 13 assessment program, and dive fishery management assessment
 14 program;

15 (ix) University of Alaska - Fisheries Industrial
 16 Technology Center, Institute of Marine Science, Marine Advisory
 17 Program, Sea Grant College Program, and School of Fisheries and
 18 Ocean Sciences;

19 (x) Legislature;

20 (xi) Alaska Court System;

21 (B) indirect operating expenditures for general overhead
 22 attributable to supporting the commercial fishing industry, including
 23 expenditures for general overhead attributable to components of agencies that
 24 have direct operating expenditures identified under (A) of this paragraph and to
 25 components of agencies for which direct operating expenditures related to the
 26 ongoing management, support, and regulation of the commercial fishing
 27 industry cannot be readily determined;

28 (C) capital costs directly supporting the commercial fishing
 29 industry; and

30 (D) expenditures to subsidize the construction and operation of
 31 salmon hatcheries.

1 * **Sec. 3.** AS 37.10.058(2) is amended to read:

2 (2) "designated regulatory service" means a regulatory service
3 provided under the following regulatory programs:

4 (A) control of solid waste facilities under AS 46.03.020(10)(D)
5 and (E);

6 (B) regulation of the disposal of waste into waters of the state
7 under AS 46.03.100;

8 (C) certification of federal permits or authorizations under 33
9 U.S.C. 1341 (sec. 401, Clean Water Act);

10 (D) [A COASTAL MANAGEMENT CONSISTENCY
11 DETERMINATION RELATING TO A PERMIT OR AUTHORIZATION
12 ISSUED UNDER A PROGRAM LISTED IN (A) - (C) OF THIS
13 PARAGRAPH, IF THE DETERMINATION IS MADE BY THE AGENCY
14 ISSUING THE PERMIT OR AUTHORIZATION];

15 (E)] any authorization for the use or appropriation of water
16 under AS 46.15; and

17 **(E)** [(F)] administration of emission control permits for the air
18 quality control program under AS 46.14.

19 * **Sec. 4.** AS 37.10.058(7) is amended to read:

20 (7) "permit" means a permit, license, certificate, **or** approval [, OR
21 COASTAL MANAGEMENT CONSISTENCY DETERMINATION];

22 * **Sec. 5.** AS 38.05.035(e) is amended to read:

23 (e) Upon a written finding that the interests of the state will be best served, the
24 director may, with the consent of the commissioner, approve contracts for the sale,
25 lease, or other disposal of available land, resources, property, or interests in them. In
26 approving a contract under this subsection, the director need only prepare a single
27 written finding. In addition to the conditions and limitations imposed by law, the
28 director may impose additional conditions or limitations in the contracts as the director
29 determines, with the consent of the commissioner, will best serve the interests of the
30 state. The preparation and issuance of the written finding by the director are subject to
31 the following:

1 (1) with the consent of the commissioner and subject to the director's
2 discretion, for a specific proposed disposal of available land, resources, or property, or
3 of an interest in them, the director, in the written finding,

4 (A) shall establish the scope of the administrative review on
5 which the director's determination is based, and the scope of the written
6 finding supporting that determination; the scope of the administrative review
7 and finding may address only reasonably foreseeable, significant effects of the
8 uses proposed to be authorized by the disposal;

9 (B) may limit the scope of an administrative review and finding
10 for a proposed disposal to

11 (i) applicable statutes and regulations;

12 (ii) the facts pertaining to the land, resources, or
13 property, or interest in them, that the director finds are material to the
14 determination and that are known to the director or knowledge of which
15 is made available to the director during the administrative review; and

16 (iii) issues that, based on the statutes and regulations
17 referred to in (i) of this subparagraph, on the facts as described in (ii) of
18 this subparagraph, and on the nature of the uses sought to be authorized
19 by the disposal, the director finds are material to the determination of
20 whether the proposed disposal will best serve the interests of the state;
21 and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit the scope of an administrative
24 review and finding for the proposed disposal to the applicable statutes and
25 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
26 pertain solely to the disposal phase of the project when

27 (i) the only uses to be authorized by the proposed
28 disposal are part of that phase;

29 (ii) the disposal is a disposal of oil and gas, or of gas
30 only, and, before the next phase of the project may proceed, public
31 notice and the opportunity to comment are provided under regulations

1 adopted by the department [UNLESS THE PROJECT IS SUBJECT
2 TO A CONSISTENCY REVIEW UNDER AS 46.40 AND PUBLIC
3 NOTICE AND THE OPPORTUNITY TO COMMENT ARE
4 PROVIDED UNDER AS 46.40.096(c)];

5 (iii) the department's approval is required before the
6 next phase of the project may proceed; and

7 (iv) the department describes its reasons for a decision
8 to phase;

9 (2) the director shall discuss in the written finding prepared and issued
10 under this subsection the reasons that each of the following was not material to the
11 director's determination that the interests of the state will be best served:

12 (A) facts pertaining to the land, resources, or property, or an
13 interest in them other than those that the director finds material under (1)(B)(ii)
14 of this subsection; and

15 (B) issues based on the statutes and regulations referred to in
16 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
17 subsection;

18 (3) a written finding for an oil and gas lease sale or gas only lease sale
19 under AS 38.05.180 is subject to (g) of this section;

20 (4) a contract for the sale, lease, or other disposal of available land or
21 an interest in land is not legally binding on the state until the commissioner approves
22 the contract, but if the appraised value is not greater than \$50,000 in the case of the
23 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or
24 interest in land, the director may execute the contract without the approval of the
25 commissioner;

26 (5) public notice requirements relating to the sale, lease, or other
27 disposal of available land or an interest in land for oil and gas, or for gas only,
28 proposed to be scheduled in the five-year oil and gas leasing program under
29 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

30 (A) before a public hearing, if held, or in any case not less than
31 180 days before the sale, lease, or other disposal of available land or an interest

1 in land, the director shall make available to the public a preliminary written
2 finding that states the scope of the review established under (1)(A) of this
3 subsection and includes the applicable statutes and regulations, the material
4 facts and issues in accordance with (1)(B) of this subsection, and information
5 required by (g) of this section, upon which the determination that the sale,
6 lease, or other disposal will serve the best interests of the state will be based;
7 the director shall provide opportunity for public comment on the preliminary
8 written finding for a period of not less than 60 days;

9 (B) after the public comment period for the preliminary written
10 finding and not less than 90 days before the sale, lease, or other disposal of
11 available land or an interest in land for oil and gas or for gas only, the director
12 shall make available to the public a final written finding that states the scope of
13 the review established under (1)(A) of this subsection and includes the
14 applicable statutes and regulations, the material facts and issues in accordance
15 with (1) of this subsection, and information required by (g) of this section,
16 upon which the determination that the sale, lease, or other disposal will serve
17 the best interests of the state is based;

18 (6) before a public hearing, if held, or in any case not less than 21 days
19 before the sale, lease, or other disposal of available land, property, resources, or
20 interests in them other than a sale, lease, or other disposal of available land or an
21 interest in land for oil and gas or for gas only under (5) of this subsection, the director
22 shall make available to the public a written finding that, in accordance with (1) of this
23 subsection, sets out the material facts and applicable statutes and regulations and any
24 other information required by statute or regulation to be considered upon which the
25 determination that the sale, lease, or other disposal will best serve the interests of the
26 state was based; however, a written finding is not required before the approval of

27 (A) a contract for a negotiated sale authorized under
28 AS 38.05.115;

29 (B) a lease of land for a shore fishery site under AS 38.05.082;

30 (C) a permit or other authorization revocable by the
31 commissioner;

1 (D) a mineral claim located under AS 38.05.195;

2 (E) a mineral lease issued under AS 38.05.205;

3 (F) an exempt oil and gas lease sale or gas only lease sale under
 4 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
 5 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
 6 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
 7 previous 10 years, unless the commissioner determines that substantial new
 8 information has become available that justifies a supplement to the most recent
 9 best interest finding for the exempt oil and gas lease sale or gas only lease sale
 10 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
 11 however, for each oil and gas lease sale or gas only lease sale described in this
 12 subparagraph, the director shall call for comments from the public; the
 13 director's call for public comments must provide opportunity for public
 14 comment for a period of not less than 30 days; if the director determines that a
 15 supplement to the most recent best interest finding for the acreage is required
 16 under this subparagraph,

17 (i) the director shall issue the supplement to the best
 18 interest finding not later than 90 days before the sale;

19 (ii) not later than 45 days before the sale, the director
 20 shall issue a notice describing the interests to be offered, the location
 21 and time of the sale, and the terms and conditions of the sale; and

22 (iii) the supplement has the status of a final written best
 23 interest finding for purposes of (i) and (l) of this section;

24 (G) a surface use lease under AS 38.05.255;

25 (H) a permit, right-of-way, or easement under AS 38.05.850;

26 (7) the director shall include in

27 (A) a preliminary written finding, if required, a summary of
 28 agency and public comments, if any, obtained as a result of contacts with other
 29 agencies concerning a proposed disposal or as a result of informal efforts
 30 undertaken by the department to solicit public response to a proposed disposal,
 31 and the department's preliminary responses to those comments; and

1 (B) the final written finding a summary of agency and public
2 comments received and the department's responses to those comments.

3 * **Sec. 6.** AS 38.05.945(d) is amended to read:

4 (d) Notice at least 30 days before action under (a)(5) of this section shall be
5 given to appropriate

6 [(1)] regional fish and game councils established under AS 16.05.260
7 [; AND

8 (2) COASTAL RESOURCE SERVICE AREAS ORGANIZED
9 UNDER AS 46.40.110 - 46.40.210].

10 * **Sec. 7.** AS 41.17.900(d) is amended to read:

11 (d) Notwithstanding any other provision of this chapter, the state forester and
12 the commissioner may not employ the authority vested by this chapter so as to
13 duplicate or preempt the statutory authority of other state agencies to adopt regulations
14 or undertake other administrative actions governing resources, values, or activities on
15 forest land except for

16 [(1) REGULATIONS UNDER THE COASTAL MANAGEMENT
17 ACT; AND

18 (2)] regulations, if authorized by the commissioner of environmental
19 conservation, relating to control of nonpoint source pollution.

20 * **Sec. 8.** AS 41.21.492(b) is amended to read:

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

22 (1) the Department of Fish and Game, the Board of Fisheries, or the
23 Board of Game under AS 16 and AS 41.99.010; **or**

24 (2) the Department of Environmental Conservation under AS 46.03 [;
25 OR

26 (3) STATE AGENCIES AND MUNICIPALITIES UNDER
27 AS 46.39.010 AND AS 46.40.100].

28 * **Sec. 9.** AS 41.21.504(b) is amended to read:

29 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of

30 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the
31 Department of Fish and Game or the Board of Fisheries or the Board of Game; **or**

1 (2) AS 46.03 regarding the responsibilities of the Department of
2 Environmental Conservation [; OR

3 (3) AS 46.39.010 AND AS 46.40.100 REGARDING THE
4 RESPONSIBILITIES OF STATE AGENCIES AND MUNICIPALITIES].

5 * **Sec. 10.** AS 41.23.420(d) is amended to read:

6 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

7 (1) the Department of Fish and Game, the Board of Fisheries, the
8 Board of Game, or the Department of Commerce, Community, and Economic
9 Development under AS 08.54, AS 16, or AS 41.99.010; **or**

10 (2) the Department of Environmental Conservation under AS 46.03 [;
11 OR

12 (3) STATE AGENCIES AND MUNICIPALITIES UNDER
13 AS 46.39.010 AND AS 46.40.100].

14 * **Sec. 11.** AS 44.33.788 is amended to read:

15 **Sec. 44.33.788. Other planning powers.** The department may accept and
16 expend grants from the federal government and other public or private sources, may
17 contract with reference to them, and may enter into contracts and exercise all other
18 powers necessary to carry out 44.33.782 - 44.33.788 [AS 44.33.781 - 44.33.788].

19 * **Sec. 12.** AS 44.33.790 is amended to read:

20 **Sec. 44.33.790. Definition.** In AS 44.33.782 - 44.33.790 [AS 44.33.781 -
21 44.33.790], "department" means the Department of Commerce, Community, and
22 Economic Development.

23 * **Sec. 13.** AS 44.33.844 is amended to read:

24 **Sec. 44.33.844. Boundaries.** The boundaries of an area studied shall conform
25 to the boundaries indicated in the request for the study under AS 44.33.842 unless the
26 commissioner, after a public hearing held in the area of the proposed study, determines
27 that the boundaries should be altered. In determining the boundaries of an area to be
28 studied, the commissioner shall consider

29 (1) the standards applicable to the incorporation of boroughs under
30 AS 29.05.031;

31 (2) boundaries of regional corporations established under 43 U.S.C.

1 1606;

2 (3) census divisions of the state used for the 1980 census; **and**

3 (4) boundaries of the regional educational attendance areas established
4 under AS 14.08.031 [; AND

5 (5) BOUNDARIES OF COASTAL RESOURCE SERVICE AREAS
6 ORGANIZED UNDER AS 46.40.110 - 46.40.210].

7 * **Sec. 14.** The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA
8 2003, is amended to read:

9 (c) Notwithstanding any contrary provision of **ch. 24, SLA 2003** [THIS ACT],
10 the repeal of the Alaska Coastal Policy Council enacted by sec. 44, **ch. 24, SLA 2003**
11 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in
12 AS 46.40.040, as amended by sec. 10, **ch. 24, SLA 2003** [OF THIS ACT], a district
13 coastal management program, including its enforceable policies, approved by the
14 former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and
15 AS 46.40 until **January 1, 2007** [JULY 1, 2006], unless the Department of Natural
16 Resources disapproves or modifies all or part of the program before **January 1, 2007**
17 [JULY 1, 2006].

18 * **Sec. 15.** The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA
19 2003, is amended to read:

20 (a) Within **six months** [ONE YEAR] after **review and approval of the**
21 **state's revised coastal management program by the National Oceanic and**
22 **Atmospheric Administration, Office of Ocean and Coastal Resource**
23 **Management, United States Department of Commerce, under 16 U.S.C. 1455 and**
24 **1457 (Coastal Zone Management Act of 1972)** [THE EFFECTIVE DATE OF
25 REGULATIONS ADOPTED BY THE DEPARTMENT OF NATURAL
26 RESOURCES IMPLEMENTING CHANGES TO AS 46.40.010 - 46.40.090,
27 ENACTED BY SECS. 8 - 15 AND 44 OF THIS ACT, OR BY JULY 1, 2005,
28 WHICHEVER IS LATER], coastal resource districts shall review their existing
29 district coastal management program and submit to the Department of Natural
30 Resources for review and approval a revised district coastal management plan meeting
31 the requirements of AS 46.40 [, AS AMENDED BY THIS ACT,] and the

1 implementing regulations.

2 * **Sec. 16.** AS 41.17.900(e); AS 44.33.781; AS 46.39.010, 46.39.030, 46.39.040, 46.39.900;
3 AS 46.40.010, 46.40.020, 46.40.030, 46.40.040, 46.40.050, 46.40.060, 46.40.070, 46.40.090,
4 46.40.094, 46.40.096, 46.40.100, 46.40.110, 46.40.140, 46.40.150, 46.40.180, 46.40.190,
5 46.40.195, 46.40.205, and 46.40.210 are repealed.

6 * **Sec. 17.** The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003,
7 is amended to read:

8 Sec. 49. Section 45, ch. 24, SLA 2003, [OF THIS ACT] takes effect March 1,
9 2006 [JULY 1, 2005].

10 * **Sec. 18.** Sections 1 - 13 and 16 of this Act take effect July 1, 2011.

11 * **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect immediately under
12 AS 01.10.070(c).