

**HOUSE CS FOR CS FOR SENATE BILL NO. 102(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 5/7/05

Referred: Finance

Sponsor(s): SENATORS GARY STEVENS, Olson, Wilken, Dyson, Wagoner

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act repealing the Alaska coastal management program; relating to an extension for**  
2 **review and approval of revisions to the Alaska coastal management program; relating to**  
3 **reviews and modifications by the Department of Natural Resources; relating to coastal**  
4 **resource district policies; providing for an effective date by amending the effective date**  
5 **of sec. 45, ch. 24, SLA 2003; and providing for an effective date."**

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

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

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

12 (1) a statute or regulation;

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

1 (A) issued after public hearing by the state or federal  
2 government; and

3 (B) subject to

4 (i) continuing compliance monitoring;

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

6 (iii) renewal on a periodic basis; or

7 [(iv) AS 46.40; OR]

8 (3) a court order or judgment.

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

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

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

20 (2) the costs incurred by the state for

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

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

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

30 (iii) Department of Fish and Game - division of  
31 commercial fisheries, board support section, division of administrative

1 services, division of sport fish, commissioner's office, and Alaska  
2 Commercial Fisheries Entry Commission;

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

6 (v) Department of Law;

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

10 (vii) Department of Public Safety - commercial  
11 fisheries enforcement;

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

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

21 (x) Legislature;

22 (xi) Alaska Court System;

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

30 (C) capital costs directly supporting the commercial fishing  
31 industry; and

1 (D) expenditures to subsidize the construction and operation of  
2 salmon hatcheries.

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

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

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

8 (B) regulation of the disposal of waste into waters of the state  
9 under AS 46.03.100;

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

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

17 (E) any authorization for the use or appropriation of water  
18 under AS 46.15; and

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

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

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

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

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

1 state. The preparation and issuance of the written finding by the director are subject to  
2 the following:

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

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

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

13 (i) applicable statutes and regulations;

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

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

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

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

31 (ii) the disposal is a disposal of oil and gas, or of gas

1 only, and, before the next phase of the project may proceed, public  
 2 notice and the opportunity to comment are provided under regulations  
 3 adopted by the department [UNLESS THE PROJECT IS SUBJECT  
 4 TO A CONSISTENCY REVIEW UNDER AS 46.40 AND PUBLIC  
 5 NOTICE AND THE OPPORTUNITY TO COMMENT ARE  
 6 PROVIDED UNDER AS 46.40.096(c)];

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

9 (iv) the department describes its reasons for a decision  
 10 to phase;

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

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

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

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

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

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

1 (A) before a public hearing, if held, or in any case not less than  
 2 180 days before the sale, lease, or other disposal of available land or an interest  
 3 in land, the director shall make available to the public a preliminary written  
 4 finding that states the scope of the review established under (1)(A) of this  
 5 subsection and includes the applicable statutes and regulations, the material  
 6 facts and issues in accordance with (1)(B) of this subsection, and information  
 7 required by (g) of this section, upon which the determination that the sale,  
 8 lease, or other disposal will serve the best interests of the state will be based;  
 9 the director shall provide opportunity for public comment on the preliminary  
 10 written finding for a period of not less than 60 days;

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

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

29 (A) a contract for a negotiated sale authorized under  
 30 AS 38.05.115;

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

1 (C) a permit or other authorization revocable by the  
2 commissioner;

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

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

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

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

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

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

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

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

28 (7) the director shall include in

29 (A) a preliminary written finding, if required, a summary of  
30 agency and public comments, if any, obtained as a result of contacts with other  
31 agencies concerning a proposed disposal or as a result of informal efforts

1           undertaken by the department to solicit public response to a proposed disposal,  
2           and the department's preliminary responses to those comments; and

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

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

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

8                           [(1)] regional fish and game councils established under AS 16.05.260

9           [; AND

10                          (2) COASTAL RESOURCE SERVICE AREAS ORGANIZED  
11           UNDER AS 46.40.110 - 46.40.210].

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

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

18                           [(1) REGULATIONS UNDER THE COASTAL MANAGEMENT  
19           ACT; AND

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

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

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

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

26                          (2) the Department of Environmental Conservation under AS 46.03 [;  
27           OR

28                          (3) STATE AGENCIES AND MUNICIPALITIES UNDER  
29           AS 46.39.010 AND AS 46.40.100].

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

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

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

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

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

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

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

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

12 (2) the Department of Environmental Conservation under AS 46.03 [;  
13 OR

14 (3) STATE AGENCIES AND MUNICIPALITIES UNDER  
15 AS 46.39.010 AND AS 46.40.100].

16 \* **Sec. 11.** AS 44.33.788 is amended to read:

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

21 \* **Sec. 12.** AS 44.33.790 is amended to read:

22 **Sec. 44.33.790. Definition.** In AS 44.33.782 - 44.33.790 [AS 44.33.781 -  
23 44.33.790], "department" means the Department of Commerce, Community, and  
24 Economic Development.

25 \* **Sec. 13.** AS 44.33.844 is amended to read:

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

31 (1) the standards applicable to the incorporation of boroughs under

1 AS 29.05.031;

2 (2) boundaries of regional corporations established under 43 U.S.C.  
3 1606;

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

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

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

9 \* **Sec. 14.** AS 44.66.020(a) is amended to read:

10 (a) Agency programs and activities listed in this subsection that are  
11 specifically designated as provided in AS 44.66.030 are subject to termination during  
12 the regular legislative session convening in the month and year set out after each:

13 (1) programs in the budget categories of general government, public  
14 protection, and administration of justice - January, 1980;

15 (2) programs in the budget categories of education and the University  
16 of Alaska - January, 1981;

17 (3) programs in the budget categories of health and social services -  
18 January, 1982;

19 (4) programs in the budget categories of natural resources  
20 management, development, and transportation - January, 1983;

21 **(5) the Alaska coastal management program (AS 46.40) - January,**  
22 **2011.**

23 \* **Sec. 15.** AS 46.40.030(b) is amended to read:

24 (b) In developing enforceable policies in its coastal management plan under  
25 (a) of this section, a coastal resource district shall meet the requirements of  
26 AS 46.40.070 and **shall** [MAY] not duplicate, restate, or incorporate by reference  
27 statutes and administrative regulations adopted by state or federal agencies.

28 \* **Sec. 16.** The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA  
29 2003, is amended to read:

30 (c) Notwithstanding any contrary provision of **ch. 24, SLA 2003** [THIS ACT],  
31 the repeal of the Alaska Coastal Policy Council enacted by sec. 44, **ch. 24, SLA 2003**

1 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in  
 2 AS 46.40.040, as amended by sec. 10, **ch. 24, SLA 2003** [OF THIS ACT], a district  
 3 coastal management program, including its enforceable policies, approved by the  
 4 former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and  
 5 AS 46.40 until **March 1, 2007** [JULY 1, 2006], unless the Department of Natural  
 6 Resources disapproves or modifies all or part of the program before **March 1, 2007**  
 7 [JULY 1, 2006].

8 \* **Sec. 17.** The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA  
 9 2003, is amended to read:

10 (a) Within **20 months** [ONE YEAR] after the effective date of regulations  
 11 adopted by the department of natural resources implementing changes to  
 12 AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 and 44, **ch. 24, SLA 2003** [OF  
 13 THIS ACT], or by **March 1, 2006** [JULY 1, 2005], whichever is later, coastal  
 14 resource districts shall review their existing district coastal management program and  
 15 submit to the Department of Natural Resources for review and approval a revised  
 16 district coastal management plan meeting the requirements of AS 46.40 [, AS  
 17 AMENDED BY THIS ACT,] and the implementing regulations.

18 \* **Sec. 18.** AS 41.17.900(e); AS 44.33.781; AS 46.39.010, 46.39.030, 46.39.040, 46.39.900;  
 19 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,  
 20 46.40.094, 46.40.096, 46.40.100, 46.40.110, 46.40.140, 46.40.150, 46.40.180, 46.40.190,  
 21 46.40.195, 46.40.205, and 46.40.210 are repealed.

22 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to  
 23 read:

24 DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES; REPEAL OF  
 25 CERTAIN COASTAL RESOURCE DISTRICT POLICIES. (a) Notwithstanding any  
 26 contrary provision of law, enforceable coastal resource district policies in effect on the  
 27 effective date of this section that conflict with AS 46.40.030(b), as amended in sec. 15 of this  
 28 Act and as that subsection read on the effective date of this section, or address any matter  
 29 regulated by the Department of Environmental Conservation are repealed and are declared  
 30 null and void.

31 (b) Within two years after the approval of the state's revised coastal

1 management program developed under ch. 24, SLA 2003 by the National Oceanic and  
 2 Atmospheric Administration, Office of Ocean and Coastal Resource Management, United  
 3 States Department of Commerce under 16 U.S.C. 1455 and 1457 (Coastal Zone Management  
 4 Act of 1972), the Department of Natural Resources shall complete a review and update of  
 5 categorically and generally consistent determinations. The Department of Natural Resources  
 6 shall complete a review and update of categorically and generally consistent determinations at  
 7 least every four years thereafter and shall conform to the requirements of AS 46.40.096(m) as  
 8 that subsection read on the effective date of this section.

9 \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
 10 read:

11 EMERGENCY REGULATIONS. The need to adopt regulations consistent with this  
 12 Act is declared an emergency, and the Department of Natural Resources shall proceed to  
 13 adopt emergency conforming regulations to implement this Act.

14 \* **Sec. 21.** The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003,  
 15 is amended to read:

16 Sec. 49. Section 45, ch. 24, SLA 2003, [OF THIS ACT] takes effect **March 1,**  
 17 **2007** [JULY 1, 2005].

18 \* **Sec. 22.** Sections 1 - 13 and sec. 18 of this Act take effect July 1, 2011 unless the state's  
 19 revised coastal management program has not been approved by the National Oceanic and  
 20 Atmospheric Administration, Office of Ocean and Coastal Resource Management, United  
 21 States Department of Commerce, under 16 U.S.C. 1455 and 1457 (Coastal Zone Management  
 22 Act of 1972) before January 1, 2006. If the state's revised coastal management program is not  
 23 approved before January 1, 2006, by the National Oceanic and Atmospheric Administration,  
 24 Office of Ocean and Coastal Resource Management, United State's Department of  
 25 Commerce, then secs. 1 - 13 and sec. 18 of this Act take effect May 10, 2006. The  
 26 commissioner of natural resources shall notify the revisor of statutes on February 1, 2006,  
 27 whether the revised coastal management program has been approved as described in this  
 28 section.

29 \* **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect immediately under  
 30 AS 01.10.070(c).