

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 6, 2005

3:39 p.m.

MEMBERS PRESENT

Senator Thomas Wagoner, Chair
Senator Ralph Seekins, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Kim Elton
Senator Gretchen Guess

MEMBERS ABSENT

Senator Ben Stevens

COMMITTEE CALENDAR

SENATE BILL NO. 102

"An Act relating to district coastal management programs; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 102

SHORT TITLE: COASTAL MANAGEMENT PROGRAMS

SPONSOR(S): SENATOR(S) STEVENS G

02/14/05	(S)	READ THE FIRST TIME - REFERRALS
02/14/05	(S)	CRA, RES
03/14/05	(S)	CRA AT 1:30 PM BELTZ 211
03/14/05	(S)	Heard & Held
03/14/05	(S)	MINUTE(CRA)
03/16/05	(S)	CRA AT 1:30 PM BELTZ 211
03/16/05	(S)	Moved CSSB 102(CRA) Out of Committee
03/16/05	(S)	MINUTE(CRA)
03/18/05	(S)	CRA RPT CS 1DP 3NR
		NEW TITLE
03/18/05	(S)	NR: STEVENS G, WAGONER, STEDMAN
03/18/05	(S)	DP: ELLIS
03/18/05	(S)	FIN REFERRAL ADDED AFTER RES
04/06/05	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

DOUG LETCH
Staff to Senator Gary Stevens
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT:

GABRIELLE LAROCHE
LaRoche and Associates
555 Blue Sky Drive
Port Townsend WA 98638

POSITION STATEMENT: Supported SB 102.

TOM LOHMAN
North Slope Borough
No address provided

POSITION STATEMENT: Supported SB 102.

MARV SMITH, Community Development Coordinator
Lake and Peninsula Borough
No address provided

POSITION STATEMENT: Supported SB 102.

ACTION NARRATIVE

CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at [3:39:01 PM](#). Present were Senators Stedman, Dyson and Chair Wagoner. Senator Guess joined the committee at [3:40:02 PM](#).

SB 102-COASTAL MANAGEMENT PROGRAMS

CHAIR THOMAS WAGONER announced SB 102 to be up for consideration.

DOUG LETCH, staff to Senator Gary Stevens, explained that SB 102 will extend the deadline for Alaska Coastal Management Program (ACMP) revisions. The program is a partnership between federal, state and local governments that provides state and local governments a voice in the federal decision on coastal issues. Alaskans have used it since 1977 and it channels millions of dollars in federal grant money to the state to help guide coastal development.

Without this program, state and local governments will lose their ability to control development on federal land in the Outer Continental Shelf. Additionally, the

state will lose millions in coastal management planning money. Two years ago, the legislature enacted HB 191 that substantially revised the state coastal program. As a result, the federal office of Ocean and Coastal Resource Management (OCRM) must approve this revised program. Since then, OCRM has determined that additional revisions are necessary before it can grant approval. The 2003 legislation also included state deadlines for revisions to local coastal programs. The coastal districts are attempting to follow the statutory directive to revise their programs in order to meet those new requirements. However, OCRM has identified problems with the state's guidance to local districts regarding the scope and contour of their program. Our districts are asking for some more time to cope with these changes and what may come down the line.

Because of OCRM's decisions, the state will have to revise their regulatory guidelines for the local districts before the new program can be approved, if the state chooses to go that way. In turn, local districts will have to rerevise their programs to meet new guidelines. So, it's become kind of a complicated thing for our districts.

What SB 102 will do is extend the deadline for district coastal program revisions and will annul the existing program upon federal approval of the state's program. We believe that the extension will ensure an orderly and efficient transition to whatever the new program may be. When this bill was heard previously by the Community and Regional Affairs Committee, the one thing that we heard overwhelmingly was that coastal district managers needed more time to come up with revised plans.

RANDY BATES, Deputy Director, Office of Project Management and Permitting (OPMP), Department of Natural Resources (DNR), said that this office is the lead agency for the Alaska Coastal Management Program. He said he had a productive meeting last week with officials of the state and the coastal district representatives. They talked about the state's commitment to pursuing the federal approval of the Alaska Coastal Management Program (ACMP) and listened to requests from the districts for additional time. He offered to answer the committee's questions.

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SENATOR GRETCHEN GUESS asked if the administration supports SB 102.

MR. BATES replied it does not support SB 102.

SENATOR GUESS asked why in general he has a problem with giving districts more time to finish their plans.

MR. BATES replied that the districts have been given the necessary information and timeline to get the job done by July 1. Also, there is a fiscal note, which causes concern. The administration is in ongoing negotiations with OCRM, the governing body of the federal coastal zone program, and it doesn't seem appropriate to extend deadlines while still fighting for approval of a federal program. "To give a federal oversight agency like this additional time to push back on the state and mandate a program that does not work for our state doesn't seem prudent."

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GABRIELLE LAROCHE, LaRoche and Associates, said she is currently working with nine coastal districts around the state including the Aleutians West Coastal Resource Service Area to revise their plans. Although she understands the administration is concerned that an extension may compromise its negotiation position with the federal approving agency, she suggested a scaled back extension that is not tied to the OCRM approval of January 1.

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She said all her clients will meet the July 1, 2005 deadline, but more time would significantly improve the public process and allow the state the time it needs to resolve remaining differences with OCRM.

One of the remaining issues of most concern is of federal consistency for the requirement that federal permits and actions be conducted to the maximum extent practicable with the state plan and local plans. How this issue is resolved between OCRM and the state does have bearing on the manner in which the plans are revised.

For example, she is currently working on a revision with Sitka on public use management plan that is a co-management plan for federal lands and adjacent tidelands. That plan has been drafted to comply with the new state laws, but she did not think it

would meet the requirements of the federal Coastal Zone Management Act. How the issue is resolved between OCRM and the state will require additional amendments. She said it would make sense to give them time to resolve this issue before requiring the districts to submit the plans.

The second issue is that the public process is extremely limited and only a 21-day covered review is required by law. This means that many districts are putting forth plans without having had adequate funds to work with cities and villages within their borough and within the coastal resource service area. With more time, this outreach could be conducted and a plan could more accurately reflect issues of local concern. Since HB 191 was very focused on issues of local concern, this was a major shift. With additional time, the plans would much better reflect the legislative intent.

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TOM LOHMAN, North Slope Borough, said he has worked with the coastal program for 18 years and strongly supports SB 102. He was concerned about the two timelines involving a July 1 date imposed by HB 191 a couple of years ago. The first one is the date by which revised programs have to be submitted to DNR and the second is the date by which the state has to resolve issues with OCRM. He doesn't understand why DNR continues to link the deadlines of those two issues. All coastal districts are committed to producing programs by the July 1 deadline. The North Slope Borough has not been part of the negotiations between DNR and OCRM, but if they do not reach resolution of the outstanding concerns and the program goes away, that would dramatically not be in the best interests of the state.

MR. LOHMAN said the reason the districts want more time is because they want to produce decent products and they only want to do it once. The deadline was ambitious to begin with and was premised on the fact that changes were considered to be routine rather than a full amendment. The problem was compounded by DNR's acknowledged significant lack of staff for several months after the program was moved from the Governor's office to DNR.

The problem was further compounded by the way the consultants were hired to draft the initial version of the regulations that are now at issue. The districts have said that there has been a significant lack of clarity and guidance from DNR regarding their allotted district plans - what could be and should be written into those plans - what policies could be approved by

DNR within the constraints of 191. We believe, the districts, that not only has there been a significant lack of clarity, but the trend has been with every subsequent clarification of guidance of interpretation that we've gotten, that we can do less and less without local district plans than was originally testified to when HB 191 was being considered by the legislature. We have had to continually go back to the drawing board to figure out what they have left. That's really the attitude I think the districts have - is with each successive interpretation by DNR, we try to figure out what we have left.

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Districts have had to truncate normal planning procedures. The public outreach process has been severely abbreviated. He said the North Slope Borough's initial plan took five years to develop. If intent of HB 191 was to streamline development and enhance opportunities around the coastal areas of the state, this will likely cause the opposite because his district is going to submit a plan that is not complete.

He emphasized that his borough's plan has had an abbreviated public review and was not preceded by visits to villages or substantive sit-downs with the oil and gas industry. Since it must be reviewed in such a hurry, he must advise the planning commission to err on the side of being more restrictive to protect the resources and subsistence opportunities on the Slope. It is unfair to the public to put out a plan that, "We, ourselves, do not believe in and is incomplete."

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MR. LOHMAN said submitting plans early would force confrontation with oil and gas companies on the Slope. Part of the reason the original plan took five years is because of the give and take with the industry.

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DNR has said the districts can continue to work after the deadline, but the problem with that is every time a district that has already submitted a plan sits down to figure out what regulations mean, it loses enforceable policies at the local level, which is counterproductive.

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MR. LOHMAN said another important question is where the money will come from if the revision time is extended. Federal grants as well as other financial resources have been used up and other

upcoming federal grants will most certainly be insufficient to implement the program and continue to revise it at the same time.

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People will be shocked to see how little of their plans are left. Issues need to be worked out in front of the public with all the cards on the table - with industry and everyone. That is not possible with the July 1 deadline.

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MR. LOHMAN repeated that he did not see why the two deadlines are linked. Existing state standards expire on July 1 and preliminary approval is needed from OCRM or the program is lost. This, to him, seemed independent of the need for districts to have more time to revise their plans and how that resolution is reached will decide, in some ways, what can be included in the plans. He figured if OCRM issues are going to get resolved soon anyhow, why not give the districts the extension they need to do the best job they can.

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CHAIR WAGONER said that districts have had from 2003 until June 2005 to work on the plans.

MR. LOHMAN replied not exactly. He said the regulations are the blueprint the districts are working off of. There was a several month delay before DNR, that was understaffed, could put personnel in place and before contractors were hired (around October or November of 2003) to put regulations in place that communities needed for revising their plans.

There is very little in [HB] 191 that gives us direction in terms of the nuts and bolts of revising our program. We had to wait for the regulations. That process was extremely protracted.

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MARV SMITH, Community Development Coordinator, Lake and Peninsula Borough, supported SB 102. He echoed Mr. Lohman's concerns saying the borough will submit its plan on time, but is not really proud of it. It needs a lot more work provided funding is available.

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He commented that this is a state's right issue, but before that it is a community rights issue.

[4:15:43 PM](#)

SENATOR ELTON joined the committee.

MR. SMITH said his district is in total support of a federal program with state participation, otherwise there wouldn't be an ACMP. The State of Alaska has 52 percent of the nation's coastline and there are about 300 villages along it. It is not fair to the rest of the nation if Alaska is not part of the federal program.

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SENATOR SEEKINS joined the committee.

MR. SMITH concluded by urging the committee to pass SB 102 and give the districts time to work the plans out and get them all approved. Six months would allow his district to get through the subsistence season. He reminded them that in 10 years all 27 of the plans would come due again. If districts have to come back in two years to fix their plans, that would be a planning nightmare.

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CHAIR WAGONER thanked him for his testimony.

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SENATOR GUESS asked Mr. Bates to describe the relationship between the two deadlines.

MR. BATES referenced a timeline chart with a deadline of July 1, 2004 for DNR to rewrite three chapters of regulations that implement the ACMP. Those went in place on July 1, 2004. Then, HB 191 gave the districts one year from the time the regulations went in effect to write their plan revisions, which established July 1, 2005 as their deadline.

Another transition provision in HB 191 sunset the coastal district standards on July 1, 2005. Those are the state standards that are used within a consistency review process for project compliance.

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SENATOR GUESS said it seems as if the administration is in negotiation with OCRM.

MR. BATES replied that is correct.

SENATOR GUESS said she is still missing the connecting relationship between those negotiations and the district plan deadline.

MR. BATES responded that he submitted an amended coastal program, which included the statutes and regulations, in December 2004. OCRM came back on January 28th with a 49-page letter detailing numerous "failures" or "program approvability issues" that needed to be addressed. On February 23, the Governor issued a very strong letter that said:

We believe we've developed a program that works for Alaska and is approvable and OCRM needs to move their position and adhere to the intent of the federal program act and work and assist the state in preparing a program that works for our management needs.

In response to that letter, OCRM came back on March 25 and whittled those 49 pages down to four basic issues - three basic issues, I would say, for the most part. Because the one issue that has been brought up by other testimony here is the scope and content of coastal district plans. In fact, OCRM determined within their March 25th letter that the information included in the December 16 submission was sufficient - did describe in necessary detail the information for coastal districts, their participation and how they can write district policies. So, we have no regulatory revisions to make regarding the scope or content of district policies.

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The department continues to negotiate with OCRM and hopes to detail a response to the outstanding issues within a couple of days.

As part of that, we don't feel it is necessary to extend the coastal district deadlines. We expect OCRM to respond to us following our letter...and we're, quite honestly, hopeful that they will come back and give us the okay or the approval sign to keep moving forward and pursue the changes that we're proposing to address their approvability issues.

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SENATOR GUESS asked what the four issues are.

MR. BATES replied in general they include the application of district policies in the designated areas - "the effects test." OCRM's letter suggested the projects needed some regulatory revisions. The second issue is compliance with local government regulations if the district plan revisions go into effect in 2006 and the state's standards are sunset on July 1, 2005. Third, OCRM wants more concise plans from the districts. The fourth issue is the habitats policy, which state standards address, but OCRM wants them to address impacts to the ecological functions of habitat.

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He emphasized that regulatory changes to accommodate changes are unrelated to how districts craft their policies.

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SENATOR GUESS asked him if he meant the four issues don't impact the plans, but will impact the implementation of them.

MR. BATES replied yes that was his summary.

[4:30:49 PM](#)

SENATOR GUESS asked why the administration opposed extending the deadline. If people have a better public process for a better quality plan, what is the downside on the public policy side in giving communities more time?

MR. BATES responded by pointing out that they are dealing with the CS SB 102.

The language within that committee substitute is geared off of the approval of NOAA and that the year that the districts are asking for is year from the date OCRM approves the Coastal Management Program.

When we get to that fact...we're talking about 2007 when districts are to submit their plans. We don't expect NOAA to complete NEPA before at least this next Christmas, if not several months after that."

MR. BATES said the plans need to be done sooner rather than later and the average age of the coastal district plan is 14 years. The plans are out of date; there was a need for reform. That is part of what HB 191 did. The goal is to streamline the program and bring some objectivity to it.

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SENATOR GUESS asked what he thought about extending the review period for six months and decoupling it from the approval and the deadline.

MR. BATES replied he would look at that.

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SENATOR ELTON asked why a one-year period was wrong.

MR. BATES replied that the state still believes the plan that it put together is approvable with minor regulatory changes.

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SENATOR ELTON said the problem for the coastal districts is that they don't know what will be approved. He and the districts have heard reassurances before from the department before.

MR. BATES said he believes he has an approvable program and will respond to OCRM with it in a few days. He looks forward to a quick response.

SENATOR ELTON noted for the record that he has heard that before and it hasn't happened.

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CHAIR WAGONER asked if coastal districts said they could have their plans in by July 1.

MR. BATES replied that is true and his office has been working very hard on reviewing those plans that have already come in for public review.

CHAIR WAGONER asked if several districts said if they don't have their plans in by July 1, they would not receive the necessary funds to update their plan.

MR. BATES replied that he heard that, too.

CHAIR WAGONER said that confused him.

MR. BATES said that HB 191 mandated all 33 coastal districts to review and revise their coastal plans and submit them for DNR review and approval in compliance with the new statutes and regulations that it promulgated. Twenty-seven of the 33 coastal districts are complying with that. As part of their efforts to revise their plans, they have been provided with \$900,000 in planning monies. If a district fails to get its plan revisions

in on time, by July 1, 2005, it will lose priority processing. He only has enough staff available to review the 27 or fewer plans that come in and he has created a specific regulatory process to accommodate the shortened timeframe.

If a district wants to continue in the coastal management arena, they can certainly continue to make their plan revisions under the other regulations within the Coastal Management Program, which is just a little bit longer and involves more public process, but there is a chance that their plan will sunset July 1, 2006, which is another provision within HB 191.

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SENATOR ELTON said it has been characterized to him that Aleutians West has submitted a plan and DEC has raised significant issues with it. He asked if he was suggesting that the plans that are submitted in haste are approvable under the state's process and if not, that amendments could be added to them.

MR. BATES replied saying that a public review process was created within ACMP regulations that are specific to timeframes in HB 191. Accordingly, the districts develop a plan and put it out for a minimum 21-day public comment period. Once comments are considered, they will revise their enforceable policies as appropriate. The plan then passes through the assembly, council or CRSA board and will be forwarded to his office by June 30, 2005. HB 191 requires those plans to be in accordance with statutes and regulations and they undergo a full state review process.

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SENATOR ELTON asked if everything goes perfectly, when would he expect an approved Aleutians West plan.

MR. BATES replied:

I believe this is an efficient, streamlined, and effective planning process to get program approval or program changes made for the coastal district plans. I would expect with Aleutians, as with a majority of the other 26, 27, coastal districts that we would be forwarding those to the commissioner for signature and then on to OCRM who will again need to review and approve these plans. I imagine that will be April,

May, of 2006. What we figure it to be is about a 10-month process from July when we receive these plans.

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CHAIR WAGONER noted there were no further questions and set SB 102 aside at this time. He adjourned the meeting at [4:44:56 PM](#).