

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 20, 2008

8:09 a.m.

MEMBERS PRESENT

Representative Anna Fairclough, Co-Chair
Representative Nancy Dahlstrom
Representative Mark Neuman
Representative Kurt Olson
Representative Sharon Cissna
Representative Woodie Salmon

MEMBERS ABSENT

Representative Gabrielle LeDoux, Co-Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 243

"An Act relating to the Alaska coastal management program."

- MOVED CSHB 243(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 243

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): REPRESENTATIVE(S) JOULE

04/26/07	(H)	READ THE FIRST TIME - REFERRALS
04/26/07	(H)	CRA, RES
03/20/08	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 243.

TERI CAMERY, Planner
City & Borough of Juneau
Juneau, Alaska

POSITION STATEMENT: Testified in strong support of HB 243.

DAN EASTON, Deputy Commissioner
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Expressed concern with HB 243.

JOHNNY AIKEN, Director
Planning Department
North Slope Borough
Barrow, Alaska

POSITION STATEMENT: Testified in support of HB 243.

TOM OKLEASIK, Planning Director
Northwest Arctic Borough
Kotzebue, Alaska

POSITION STATEMENT: Testified in support of CSHB 243, Version C.

KIM KRUSE, Natural Resource Manager
Deputy Director
Division of Coastal and Ocean Management
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 243.

ACTION NARRATIVE

CO-CHAIR ANNA FAIRCLOUGH called the House Community and Regional Affairs Standing Committee meeting to order at [8:09:27 AM](#). Representatives Fairclough, Dahlstrom, Neuman, Olson, Cissna, and Salmon were present at the call to order.

HB 243-COASTAL MANAGEMENT PROGRAM

[8:09:56 AM](#)

CO-CHAIR FAIRCLOUGH announced that the only order of business would be HOUSE BILL NO. 243, "An Act relating to the Alaska coastal management program."

[8:10:04 AM](#)

REPRESENTATIVE NEUMAN moved to adopt CSHB 243, Version 25-LS0896\C, Bullock, 2/22/08, as the working document. There being no objection, Version C was before the committee.

[8:10:53 AM](#)

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, speaking as the sponsor of HB 243, provided the following testimony:

This is an effort to improve the partnership between the State of Alaska and coastal communities under the [Alaska] Coastal Zone Management Program. This legislation will give coastal districts a seat at the table in the review of proposed state and federal resource development actions. An effective review process that accounts for local concerns will encourage local support for important, responsible development projects in our coastal communities. The bill focuses on three primary areas: clarifications that districts may develop meaningful policies; it creates a policy board made up jointly of resource agencies and coastal districts; and it brings water and air quality concerns of the Department of Environmental Conservation back to the table.

Now, a few years ago [during the Twenty-Third Alaska State Legislature] we passed out House Bill 191, which did away with the coastal zone as it had been run for years where ... local coastal districts felt that they had a seat at the table. ... as I look forward to the development of Alaska's resources, much of this development is going to continue to happen in the rural and coastal areas of Alaska. And if there's buy-in from the local areas in bringing the agencies and the people together as this development is being considered, I actually think it can be expedited. And hopefully we can stay out of the courts because that seems to be the place that people are headed right now.

REPRESENTATIVE JOULE then opined that what was done with the Alaska Coastal Management Program (ACMP) is analogous to Senate Bill 36, regarding education funding. He pointed out that in funding education some communities were left behind with the district cost factors. Arguments about those went on for 10 years. "Now we're looking forward to ... continued development of our coastal resources and we want the communities brought back to the table to have the discussion, to be part of the process," he opined. This issue is very important to the coastal communities of Alaska, he reiterated.

[8:15:19 AM](#)

REPRESENTATIVE NEUMAN inquired as to what DNR hasn't done that seems to make it necessary to have the board.

REPRESENTATIVE JOULE said that there will be testimony forthcoming on that issue. He recalled that of the 40-some proposals the Northwest Arctic Borough brought forward, only 1 was adopted. Therefore, a single agency makes it difficult. The lack of action from DNR in regard to the implementation of proposals resulted in the introduction of HB 243.

[8:17:38 AM](#)

REPRESENTATIVE NEUMAN inquired as to what the sponsor meant by the statement that districts can create meaningful policies.

REPRESENTATIVE JOULE reiterated that the committee will hear from district representatives. However, as an example he highlighted that in rural communities the development of policies around subsistence, which isn't under consideration at this time, is very important. He then mentioned water and air quality issues and the development of mineral resources.

[8:19:01 AM](#)

REPRESENTATIVE OLSON recalled working on earlier versions of HB 243. He mentioned that he didn't recall the term "subsistence" on page 6, lines 2 and 5, was included in prior versions of this legislation.

REPRESENTATIVE JOULE answered that the term "subsistence" was included because it's a real issue that should be acknowledged and addressed. In any coastal zone, [subsistence] has always been an important issue to the local areas. Still, to have those issues acknowledged at this level could expedite the decision-making process, he opined. He pointed out that there was a huge issue with regard to subsistence and the Red Dog Mine, yet the project still moved forward. Therefore, Representative Joule viewed [the inclusion of subsistence] as an opportunity rather than a threat.

[8:20:54 AM](#)

REPRESENTATIVE NEUMAN referred to paragraph (5) on page 5, lines 28-31, and opined that the aforementioned language brings to mind Pebble Mine. He asked if [paragraph (5)] means that the

value of Pebble Mine has to be measured as compared to Bristol Bay fisheries.

REPRESENTATIVE JOULE deferred to others with more knowledge.

[8:22:38 AM](#)

REPRESENTATIVE CISSNA recalled that in 1975 in Kodiak she was part of a community process in which there was a large town meeting that brought together locals. She requested more explanation regarding the different kinds of things the board can do to bring in the far-reaching areas of the state.

REPRESENTATIVE JOULE remarked that one of the advantages of the development of this proposed board is that it would bring much expertise, that is balanced expertise that can be utilized by state agencies. He said that [this proposed board] could be advantageous to the state. In the history of North Slope development, he recalled that "they" didn't really oppose any development, although there may have been concerns that they were able to work through. He recalled that it was after the passage of House Bill 191 that there was opposition, which may have been coincidental.

[8:26:29 AM](#)

CO-CHAIR FAIRCLOUGH clarified that the objectives listed in AS 46.40.020 is existing language and the only change in Version C is from "which" to "that". However, she highlighted that Version C includes new language in Section 1, new subsections in Section 10, and a new subsection in Section 14.

[8:28:02 AM](#)

TERI CAMERY, Planner, City & Borough of Juneau, related that the City & Borough of Juneau strongly supports HB 243. The basic measure outlined in this legislation is a positive step toward restoring the integrity of the coastal management program, which has been under heavy criticism over the last few years. This legislation clarifies much confusion with regard to the allowable district policies and requirements, which she characterized as the most important thing HB 243 does. With regard to Juneau, Juneau's original coastal management plan had 99 policies that is now down to about 12. She estimated that the language in HB 243 would've taken 2-3 years off Juneau's permit process. Ms. Camery opined that it's in everyone's best

interest to make the criteria for district enforceable policies as clear as possible.

MS. CAMERY then turned to the earlier question regarding why the proposed Alaska Coastal Policy Board is necessary. The Alaska Coastal Policy Board is very important for the ACMP because it provides district representation and representation from three different agencies. The most critical reason to reestablish the board, she opined, is that any comprehensive review of coastal management issues will overlap in a number of areas which can't be separated out. To have a fair and balanced review of statewide standards, there must be broader agency participation. She then pointed out that the proposed new board is half the size of the previous council, which she saw as efficient. Ms. Camery emphasized the importance of the inclusion of the Department of Environmental Conservation (DEC) into the process, particularly in Juneau where there are five impaired water bodies that are exclusively regulated by DEC. When DEC comes in after the fact, it causes problems, particularly for the developer. Ms. Camery said that the legislation doesn't go far enough as it isn't a complete restoration of DEC's role.

MS. CAMERY then turned to the question regarding why this legislation is necessary since DNR has launched its own reevaluation program. The issues addressed in HB 243 have been raised by the districts over and over again. She mentioned that the Alaska Coastal District Association has drafted a letter that outlines a list of concerns. Ms. Camery said that she didn't see the need to wait for DNR's reevaluation as the problems addressed by HB 243 are well-documented. Furthermore, she said she is disturbed that DNR is opposed to SB 161 because it seems to indicate that DNR isn't open to these proposed changes, which are critical to achieving a balanced decision-making process. Ms. Camery then informed the committee that the coastal management program isn't an environmental program but rather is a decision-making tool that brings in all the various parties and allows the districts and agencies to have a voice. She characterized the program as a permit coordination process that brings in all parties and benefits the developer overall. She noted that it's extremely rare for a project to be denied.

[8:37:13 AM](#)

DAN EASTON, Deputy Commissioner, Department of Environmental Conservation, said that DEC's interest is in regard to the changes on page 8, lines 1-3, which addresses the instances in which [DEC] would make a consistency finding but not issuing a

permit or other form of authorization. He explained that when DEC issues a permit or other authorization, there is public notice and the opportunity for comment. The new language requires that even when no permit is issued, separate public notice and the opportunity for public comment would be held. The department doesn't have a problem with the aforementioned, although it could add a bit of time to the process. He related his understanding that this new language has been highlighted as a way to bring DEC back into the program, to which DEC is amenable. The legislation also adds a new subsection (e) on page 8, lines 16-20, which is problematic. New subsection (e) requires that the coordinating agency evaluate whether air or water discharges are consistent with ACMP standards in the enforceable district policies. However, subsection (b) of [AS 46.40.040] clearly states that the state's air and water standards are the exclusive enforceable policies of ACMP. Whenever there's an air or water discharge, DEC reviews those, which are only authorized if they comply with state air and water standards. Therefore, the review called for under proposed subsection (e) is something that DEC already does and thus proposed subsection (e) creates confusion. In conclusion, Mr. Easton acknowledged that there is concern that the coastal districts have been adversely impacted by recent changes to ACMP, and thus it must be addressed. He related that DEC believes there is the opportunity for better coordination between the DEC permitting process and the ACMP processes. Mr. Easton related [the department's] commitment to working with the districts to determine what improvements can be made.

[8:41:51 AM](#)

REPRESENTATIVE NEUMAN, referring to the sectional analysis, related that proposed subsection (e) clarifies that aspects of the air and water discharges not covered by DEC's laws or regulations may be reviewed for consistency with statewide standards or district policies. However, DEC retains authority to determine a projects' consistency with its laws. Therefore, Representative Neuman surmised that DEC retains full authority and the language "may" doesn't mean that anyone has to do anything.

MR. EASTON pointed out that the language used in proposed subsection (e) is "shall", which is mandatory language. He mentioned that DEC's attorneys might not agree with the interpretation in the sectional analysis.

[8:43:26 AM](#)

MR. EASTON, in response to Co-Chair Fairclough, said that DEC has no official position on HB 243 as it defers to DNR, the lead agency.

[8:44:22 AM](#)

JOHNNY AIKEN, Director, Planning Department, North Slope Borough, provided the following testimony:

On behalf of the North Slope Borough I would like to speak in support of HB 243, the companion bill to SB 161. This bill goes a long way to fix the problems we face during the required amendment process for our coastal management plan. Because most of the enforceable policies and designated areas we proposed in the process ... were denied by DNR, even after multiple attempts on our part to meet the demands of the agency, the North Slope Borough has requested mediation to resolve our plan revision. One of the biggest problems we had is gaining approval of the relatively few policies we have proposed. Enforceable policies are the backbone of a coastal district program, and without effective policies coastal management has little value. The reasons used by the last administration to deny our old policies are difficult to understand. DNR has recently acknowledged that approval criteria it has utilized are more stringent than what was intended under House Bill 191, the original 2003 legislation that drastically amended the Alaska Coastal Management Program [which] has thrown the program into confusion. The bill before you would create more certainty because it makes the enforceable policy approval criteria more clear. The bill would also fix some of the problems we faced with what has come to be known as the DEC carve out. DEC would still have the final word on all matters it regulates, but it would be at the table with other agencies during the consistency review process. Right now we believe there are no provisions for comment on air and water quality issues during the coastal management program reviews of the Outer Continental Shelf projects. This bill fixes that. Also, this resolves an unanticipated problem resulting from the carve out. Currently, the North Slope Borough cannot comment on possible effects on subsistence from an oil spill. Bringing DEC back into

the process will allow review of air and water quality issues not regulated by DEC. I would also like to express support for the coastal policy board. If this board was in place during the last few years, I don't think we would be in mediation right now because the board would include representatives of coastal districts and the state resources agencies. It is more likely to make sound decisions with widespread support. ... I'd like to conclude testimony today by saying that the North Slope Borough supports responsible development. Before the Coastal Management Program was reformed in 2003, it provided an excellent forum to work on project-related issues. HB 243 creates more incentives for agencies, districts, and applicants to work together; it fixes the problems with the DEC carve out and it clarifies the criteria for approval of coastal district plans. I would just like to thank the Senate Community and Regional Affairs Committee and especially Donny Olson for passing SB 161. I hope this committee will do the same with HB 243 and fix the problems created by House Bill 191. I hope that you will hear our comments and the comments submitted by other districts. I'd like to also thank Representative Joule for introducing this HB 243 ... and urge you to approve HB 243.

[8:50:20 AM](#)

TOM OKLEASIK, Planning Director, Northwest Arctic Borough, testified in support of CSHB 243, Version C. He informed the committee that like the North Slope Borough, the Northwest Arctic Borough has been revising its coastal management plan since 2005 and have met all the deadlines, requirements, and efforts requested by the agency. However, the borough hasn't been able to receive approval of the plan, primarily due to all the changes that have been made. He noted that although the Northwest Arctic Borough has proposed numerous policies, only one has been approved. Furthermore, the borough's designated areas have also been denied. Currently, the Northwest Arctic Borough is in the mediation process with the state, which has taken over a year. He noted that this is the first time in the history of ACMP that it has ever had to use the mediation process. For many years the ACMP helped the borough assist the state in cooperative efforts to promote responsible development, especially by the residents most impacted in the area. The removal of the borough's ability to establish meaningful and enforceable policies has reduced the value of the program as

well as the opportunity to promote balanced development that respects all Alaskans. Mr. Okleasik stated that the Northwest Arctic Borough supports HB 243 because it believes it brings more balance into decision making for coastal management issues and clarifies that coastal districts can establish enforceable policies so long as these policies address matters that aren't adequately covered by state or federal law. The legislation also brings balance back to the program decision making by bringing DEC back into the ACMP consistency review process. Furthermore, creation of the Coastal Policy Board will ensure that the coastal districts and the resource agencies work together on major coastal issues. Mr. Okleasik related his belief that HB 243 will prevent many of the problems the borough has faced over the past few years to effectively implement the area's coastal management program and establish approval of the revised plan. In conclusion, Mr. Okleasik reiterated the borough's support of HB 243 as it clarifies legislative intent, reduces complexity of the ACMP regulation, and brings more predictability to the ACMP, which will be good for the districts as well as the developers.

[8:53:36 AM](#)

REPRESENTATIVE NEUMAN inquired as to why DNR didn't accept any of the Northwest Arctic Borough's recommendations.

MR. OKLEASIK answered that it was simply interpretation, which is why the matter is going to mediation. He noted that the borough performed all of the changes requested by DNR. However, [the department] lacked consistency with regard to the changes it requested because after changes would be made, the department would specify others that lead the borough in a different direction.

[8:54:58 AM](#)

KIM KRUSE, Natural Resource Manager, Deputy Director, Division of Coastal and Ocean Management, Department of Natural Resources, explained that ACMP is a state-managed program that has been in place since the late 1970s. One of the primary purposes of the ACMP is to provide project applicants with a single point of contact when the project is located within a coastal zone or requires certain state permits for other federal authorization. The ACMP also serves as the state's voice on federal agency activities when those activities impact the state's coastal zone. As has been mentioned, ACMP is a network program that attempts to balance competing state resource agency

interests, federal agency interests, local government interests, applicants, industry interests, and other nonprofit and public interests. The key component of ACMP, as has also been mentioned, is the local input provided by the coastal districts on state and federally permitted projects. She then echoed earlier comments that the statutory changes over the past several years have distanced many of the coastal districts. While many of the coastal districts have challenged themselves to meet some exceptionally difficult district planning revision timelines, others remain disenfranchised and are actively challenging some of the statutory changes to the program. Ms. Kruse opined that this legislation illustrates some of the dissatisfaction some of the coastal districts continue to have with the current management program.

MS. KRUSE turned to DNR's proposed program reevaluation. Ms. Kruse related that DNR's commissioner and deputy commissioners have the administration's support for and are committed to reevaluating the ACMP changes. She noted that the committee should have a letter dated February 22, 2008, that outlines the key steps and pertinent issues. Due to the perception of the process that occurred during the past administration, this process is very important. The importance of addressing the DEC carve out has also been recognized. The department would like to revisit the coastal districts' authority and ability to write meaningful and enforceable policies. Ms. Kruse clarified that this isn't necessarily a discretionary DNR action as it requires either a statutory or regulatory change. This reevaluation process will begin in July and go through December. The important part of the evaluation is to bring in all network parties, which is a bit different than HB 243. When coordinating projects, the department has to also consider many other agency and industry interests, and therefore she opined that the reevaluation process would allow legislation that represents the wide range and diverse interests of the entire network to be ready for introduction in January. The department proposes that any necessary regulations would be drafted between May and August. Ms. Kruse reiterated the importance of the program reevaluation and any subsequent legislation to be done in a fashion that allows input from all interested participants.

[9:00:39 AM](#)

MS. KRUSE, turning to the legislation before the committee, related DNR's opposition to HB 243, as currently written. However, she said that the legislation serves to start the dialogue and highlight key elements that DNR believes should be

reevaluated. Mr. Kruse informed the committee that DNR does share the sponsor's goal of developing coastal district policies that are both meaningful and effective as well as the goal of revisiting DEC's participation in the review process. With regard to creation of the board, as currently written the management authority for the state's coastal management program would transfer from the state to a newly created policy board, which consists of four appointed public members and three commissioners. The aforementioned, she opined, seems to create an imbalance and transfer state authority to local decision makers. The legislation appears to transfer many day-to-day operations, including administering the program, setting and approving policies, managing and approving the district planning process, approving regulations, and accepting and managing grant funds, to the board. Some past experience, she related, indicates that the creation of a coastal policy board can result in delayed decision making, duplicate authority, and is perhaps likely not the most efficient way to manage a program. In conclusion, Ms. Kruse requested that the committee not endorse the language and provisions in HB 243, particularly those addressing the coastal policy board and transferring the operations and state management authority to the proposed board. She reiterated that DNR does believe that in order to be effective any proposed legislation should include input from all network partners.

[9:04:09 AM](#)

REPRESENTATIVE CISSNA recalled hearing the frustration that the state government is far away and makes recommendations without hearing from the locals in the impacted area. She pointed out that the earlier-mentioned letter relates the calendar for DNR's reevaluation process. The review process starts in June, which is when many people are performing subsistence or industry work, and therefore they will likely not be available to be involved. Furthermore, although DNR's process is to result in the drafting of legislation, there is legislation that has been drafted with local concerns. She questioned how the [legislative] process can be shaped in order that the impacted area can shape the process. Representative Cissna reminded the members that they were sent by the local communities.

[9:09:24 AM](#)

MS. KRUSE pointed out that the ACMP reviews the beginning of a project slated for development and tries to pull in the local piece while looking to other partners in a project and identify

key issues upfront. Once DNR's portion of the review process is complete, the project then moves to the responsible permitting agency. She noted that local districts have the opportunity to submit comments and notice through those processes. One of the unique things that has made the ACMP successful in the past is it's one of the few programs that is a voluntary outreach. Since the districts have chosen to participate, the districts and local perspective have historically been a very important part of ACMP. She acknowledged that the changes under the Murkowski Administration have made it difficult for districts to develop policies without duplicating state or federal policies. Ms. Kruse expressed hope that the districts will participate in the review process. With regard to the timeline of DNR's reevaluation, Ms. Kruse commented that in Alaska there never seems to be a good time to start or finish anything. She interpreted the districts' support for HB 243 to mean that they care, and she opined that the districts care enough to find a way to have a representative present. Ms. Kruse offered that DNR can assist with the reevaluation to make the program more balanced.

[9:12:14 AM](#)

REPRESENTATIVE CISSNA commented that Ms. Kruse has pointed out why HB 243 is important legislation.

[9:12:45 AM](#)

CO-CHAIR FAIRCLOUGH, upon determining no one else wished to testify, closed public testimony.

[9:13:02 AM](#)

REPRESENTATIVE JOULE informed the committee that the prior board consisted of 14 members, including 9 coastal communities and 5 state agencies. That board had more authority and no mediation. However, since the inception of House Bill 191, there has been at least three instances of mediation. Representative Joule opined that as the state develops its resources, locals should be involved in the process. One of the reasons HB 243 was introduced was due to DNR's overreaching fashion and nonresponsiveness to community issues. Representative Joule said that he wants this legislation to move forward and to have more of a consensus view regarding how to build this state. He reiterated that the best way to do so is to involve those at the local level. He noted that the committee should have the new

sectional analysis, which addresses some of the issues discussed today.

[9:16:59 AM](#)

CO-CHAIR FAIRCLOUGH inquired as to the will of the committee with regard to hearing this legislation next Tuesday. She noted that she and Co-Chair LeDoux won't have a chance to meet and discuss the legislation. She further noted that legislation sponsored by Representative Gatto is on the schedule for Thursday. She then asked if the committee wants to meet on Tuesday.

[9:18:05 AM](#)

REPRESENTATIVE DAHLSTROM related her preference to meet on Thursday in order that the co-chairs may talk and in order that she be able to participate. She related that she won't be present Tuesday morning.

[9:18:55 AM](#)

REPRESENTATIVE CISSNA said that although she's scheduled to attend a series of constituent meetings, she's willing to change her plans to be present on Tuesday morning as there are only three to four weeks left in this session.

CO-CHAIR FAIRCLOUGH clarified that the issue is that she and Co-Chair LeDoux won't have time to discuss the legislation, which Co-Chair LeDoux didn't hear. Furthermore, Co-Chair LeDoux represents a coastal community and thus she may want to weigh in on HB 243. She also noted that Representative Neuman had expressed concerns and although she thought she had addressed those, she hasn't discussed them with him.

[9:20:22 AM](#)

REPRESENTATIVE OLSON announced that he is going to call for a vote on HB 243 because it's very important legislation and waiting means that the legislation won't be heard until next Thursday. "I hate seeing it lose a week for obvious reasons," he said.

[9:21:12 AM](#)

REPRESENTATIVE OLSON moved to report CSHB 243, Version 25-LS0896\C, Bullock, 2/22/08, out of committee with individual recommendations and the accompanying fiscal notes.

CO-CHAIR FAIRCLOUGH objected.

[9:21:29 AM](#)

A roll call vote was taken. Representatives Salmon, Dahlstrom, Olson, and Cissna voted in favor of reporting CSHB 243, Version 25-LS0896\C, Bullock, 2/22/08, from committee. Representative Fairclough voted against it. Therefore, CSHB 243(CRA) was reported out of the House Community and Regional Affairs Standing Committee by a vote of 4-1.

[9:22:09 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at [9:22:15 AM](#).