

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 24, 2009

8:04 a.m.

MEMBERS PRESENT

Representative Bob Herron, Co-Chair
Representative Cathy Engstrom Munoz, Co-Chair
Representative John Harris
Representative Wes Keller
Representative Charisse Millett
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 74

"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 74

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): REPRESENTATIVE(S) JOULE, EDGMON, BUCH

01/20/09	(H)	PREFILE RELEASED 1/16/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	CRA, RES, FIN
02/10/09	(H)	CRA AT 8:00 AM BARNES 124
02/10/09	(H)	Heard & Held
02/10/09	(H)	MINUTE(CRA)
02/24/09	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as one of the prime sponsors of HB 74.

TERI CAMERY, Planner
Planning Division
Office of Community Development
Department of Community Development
City & Borough of Juneau
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 74.

DAVID CASE, Attorney
Northwest Arctic Borough
Kotzebue, Alaska

POSITION STATEMENT: During hearing of HB 74, expressed the need for resource development decisions to be decentralized through the local coastal districts.

ELIZABETH HENSLEY, Intern
Representative Reggie Joule
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 74, explained amendments offered by Representative Joule.

RANDY BATES, Director
Division of Coastal & Ocean Management
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 74, answered questions.

ACTION NARRATIVE

[8:04:54 AM](#)

CO-CHAIR BOB HERRON called the House Community and Regional Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Herron, Munoz, Harris, Keller, and Gardner were present at the call to order. Representatives Millet and Cissna arrived as the meeting was in progress.

HB 74-COASTAL MANAGEMENT PROGRAM

[8:05:12 AM](#)

CO-CHAIR HERRON announced that the only order of business would be HOUSE BILL NO. 74, "An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board."

8:06:02 AM

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, speaking as one of the joint prime sponsors, pointed out that HB 74 has garnered interest across the state. Since the 2003 changes to the Alaska Coastal Management Program (ACMP) those in coastal districts have tried to work with the existing program. Furthermore, when similar legislation was introduced last year, the Department of Natural Resources (DNR) indicated it would introduce legislation to address the concerns, but it has not. He emphasized that no one has been forthcoming with developing a system that will work, including DNR. Therefore, HB 74 was introduced, and he said he will continue to press forward on this issue because something that brings those in impacted areas to the table, the permitting process, in a meaningful way is necessary.

8:10:27 AM

TERI CAMERY, Planner, Planning Division, Office of Community Development, Department of Community Development, City & Borough of Juneau, related support for HB 74. She pointed out that coastal districts have been working to be involved with the existing coastal management program, although the acceptance of local policies has been reduced since 2003. Therefore, the most critical thing that HB 74 does is to return local involvement to the ACMP. She reminded the committee that coastal management is the way in which local concerns are carried forward in the process. This fall the state did go through a substantial re-evaluation process of ACMP, but unfortunately no legislation has been introduced. In the absence of [departmental] legislation, HB 74 addresses the concerns of the local coastal districts, state agencies, and industry. The aforementioned entities work closely together as it's not a matter of separate interests. Local governments, she related, have a very strong interest in promoting healthy economies. Ideally, the ACMP, when run well, is a good way to [promote healthy economies]. In closing, Ms. Camery reiterated support for HB 74.

8:12:45 AM

REPRESENTATIVE MILLETT inquired as to an example of a project or development for which the City & Borough of Juneau didn't have input and that project or development was a detriment to the local management plan.

MS. CAMERY said she couldn't identify a specific project. The issue is that the City & Borough of Juneau lost a significant number of very important policies with the 2003 change to the coastal management program, but the City & Borough of Juneau decided to keep those policies in the local land use code. An example of one such policy maintained in the land use code is the basic stream-side setback. Therefore, such a policy is reviewed separately at the local level rather than through a coordinated review with the state. The aforementioned adds time and expense for the developer. Ms. Camery explained that the issue with the districts is one of due deference. Although DNR says that districts can always comment on projects and that the department will always listen to the districts, the districts are placed in a very different position when commenting on state standards versus local policies. The districts are placed in a much weaker position to carry forth local concerns, she opined.

[8:15:50 AM](#)

CO-CHAIR MUNOZ requested explanation of the carve out.

MS. CAMERY explained that the carve out refers to the removal of the Department of Environmental Conservation (DEC) from the process. Therefore, removing the carve out would restore DEC's role in the process.

[8:16:54 AM](#)

DAVID CASE, Attorney, Northwest Arctic Borough, informed the committee that he has been the borough attorney for in excess of 15 years. The borough has worked under the old ACMP and is in mediation with DNR under the new ACMP. Under the old ACMP, he recalled only two projects that were denied in the Northwest Arctic Borough. Those denials were with the full participation and concurrence of the state. Of the two denied projects, one project was to dredge the entire coast of the borough for minerals and the other project was the proposed development of an archaeological historic site. The ACMP [prior to 2003] worked well for the borough and was viewed as ensuring development and participation at the local level. Mr. Case opined that the question is whether development and decisions about development will be made in a bureaucratically centralized manner within DNR

or will that decision making be decentralized throughout the state and take into account the geographic, historical, and cultural diversity of the residents of the state. He noted that it has been frustrating to mediate the borough's participation in the new program. When the borough has attempted to develop local policies that address its unique resource, and cultural and subsistence practices, the borough has essentially been stonewalled by the department. Furthermore, the borough has never been able to engage the department regarding the real issue, regarding whether it's better for the state's resource development to be centralized bureaucratically in state government or to develop resources in conjunction with the concerns of local jurisdictions. In a state as vast as Alaska and with a constitution that affords local control, he recommended, that these resource development decisions should be decentralized through the local districts. The aforementioned, he opined, is a public policy matter that the legislature is qualified to address.

[8:20:55 AM](#)

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

[8:21:18 AM](#)

REPRESENTATIVE JOULE turned the committee's attention to the amendments he has offered for the committee's consideration.

[8:21:38 AM](#)

REPRESENTATIVE HARRIS moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Delete at pg 7 (b)(2), lines 20-23.

Add at pg. 7 line 20 the following:

(b)(2)(a) are necessary given local conditions, and

(b)(2)(b) are supported by evidence, including contemporary or traditional local knowledge, if the policies are more specific than state or federal statutes or regulations.

REPRESENTATIVE MILLETT objected for discussion purposes.

[8:22:03 AM](#)

ELIZABETH HENSLEY, Intern, Representative Reggie Joule, Alaska State Legislature, explained that Amendment 1 would clarify Section 9 as the former language was unclear.

[8:23:38 AM](#)

REPRESENTATIVE GARDNER inquired as to how one would dispute contemporary or local knowledge if it's not documented in a formal manner.

MS. HENSLEY explained that the enforceable policies must be supported by provable evidence, including contemporary or local knowledge. She opined that through the approval process of the enforceable policy there would likely be a discussion as to whether the local knowledge justifies the need for the enforceable policy.

[8:25:29 AM](#)

CO-CHAIR HERRON inquired as to why the term "stricter" has been deleted with Amendment 1.

MS. HENSLEY related that the term "stricter" was of concern because some felt it allowed coastal districts to write enforceable policies that would reach beyond state or federal law. The aforementioned isn't the intent of HB 74, and therefore the omission of "stricter" would lessen the concerns.

[8:26:28 AM](#)

REPRESENTATIVE MILLETT maintained her objection.

[8:26:41 AM](#)

REPRESENTATIVE HARRIS surmised that HB 74 is addressing that those closest to the resource or impacted areas feel their voice isn't being heard when it comes to development in the area. Therefore, HB 74 intends to develop a coastal policy board that would provide local areas more input in the decision making of the development of the coastal areas. Representative Harris further surmised then that the Amendment 1 describes the parameters of the local jurisdictions.

MS. HENSLEY noted her agreement with Representative Harris' understanding.

[8:28:58 AM](#)

REPRESENTATIVE MILLETT expressed concern with the terms "contemporary and traditional," which she opined seem to be conflicting terms and rather subjective.

[8:30:07 AM](#)

REPRESENTATIVE JOULE explained that traditional knowledge is referred to as anecdotal information. He then related that he has observed much local knowledge parallel scientific data. Amendment 1 acknowledges the two systems working parallel.

[8:31:19 AM](#)

REPRESENTATIVE CISSNA posed a scenario in which a building is constructed in an inappropriate area and the locals complain they weren't listened to on the matter. She asked if Amendment 1 would address the aforementioned.

MS. HENSLEY said it could, depending upon whether the coastal district had addressed such in its enforceable policies. With regard to science and local knowledge, Ms. Hensley recalled that in the 1980s scientists decided there were too few bowhead whales in the Arctic Ocean to allow the whale hunt. However, the whalers disputed that claim and charged that the bowhead whale population was thriving. Eventually the whalers worked with the scientists to prove that a healthy bowhead whale population existed.

REPRESENTATIVE JOULE pointed out that the term "or" is used in the language being inserted by Amendment 1: "contemporary or traditional local knowledge".

[8:35:09 AM](#)

REPRESENTATIVE HARRIS acknowledged the Department of Natural Resources' (DNR) opposition to HB 74, but asked if DNR supports Amendment 1 over the legislation.

[8:35:41 AM](#)

RANDY BATES, Director, Division of Coastal & Ocean Management, Department of Natural Resources (DNR), related his understanding that Amendment 1 would expand the ability of coastal districts to write enforceable policies beyond the original HB 74.

[8:36:18 AM](#)

REPRESENTATIVE HARRIS surmised then that DNR opposes Amendment 1 because it's stricter than HB 74.

MR. BATES opined that Amendment 1 uses subjective terms such as "necessary", "local conditions", and "evidence" all of which aren't defined. The aforementioned terms are much less stringent and restrictive on what local coastal districts can do. Therefore, Amendment 1 would expand the ability of local coastal districts to write enforcement policies more broadly than what was allowed in the original legislation. In further response to Representative Harris, Mr. Bates confirmed that DNR opposes Amendment 1.

[8:37:31 AM](#)

REPRESENTATIVE HARRIS related his belief that HB 74 is the result of much frustration. He asked if DNR is prepared to address that frustration and do something about it.

MR. BATES answered that DNR conducted a re-evaluation and continues to work through what should and could be done. However, at this point the department isn't prepared to introduce any legislation or changes proposed in HB 74 or any other changes. Mr. Bates relayed that although DNR doesn't believe a statutory revision is necessary to accomplish change with the ACMP, DNR recognizes it could, if appropriate, make regulatory changes that would resolve some of the issues mentioned. He emphasized that he isn't suggesting nor committing that the department will make regulatory changes.

[8:39:33 AM](#)

REPRESENTATIVE MILLETT inquired as to whether DNR could define the terms "contemporary and local knowledge", as specified in Amendment 1.

MR. BATES responded that "contemporary" is a new term that isn't in the current ACMP, and thus would require definition. The language "traditional local knowledge" is in the ACMP and refers to knowledge that is handed down from generations of users and supported by a local body of some sort.

[8:41:28 AM](#)

REPRESENTATIVE CISSNA opined that there appear to be serious climate changes resulting in a lack of food and those who experience it the most live in the community. She asked if it's possible to expand the thinking with the use of the term "contemporary."

MR. BATES confirmed that if HB 74, including the term "contemporary," passes, DNR would implement it according to the law. However, the matter is one of local input, which has always existed, versus local control, which HB 74 proposes. Fundamentally, DNR believes the ACMP, as it's currently statutorily structured affords relevant input from the coastal districts. However, the ACMP is a state program, and thus the state should remain in control of the decision making while taking into account input from the coastal districts, including information relating to contemporary and/or traditional local knowledge.

[8:44:02 AM](#)

CO-CHAIR MUNOZ related her understanding that Mr. Bates' has said that local control would be a result of HB 74. She inquired as to whether Mr. Bates believes the coastal districts had local control or input prior to 2003.

MR. BATES explained that when the ACMP was originally setup in 1977, it established a state coastal program with a local implementation technique, which meant that the coastal districts were a partner in the program and they had enforceable policies. The coastal districts could apply those enforceable policies and determine whether a project would be consistent or compliant with the laws. Although the coastal districts never had veto authority, the state always offered due deference and given greater weight when the local coastal district had expertise or responsibility in the area in which the district made comments. Therefore, from DNR's perspective, prior to 2003 it was a situation of local input.

[8:45:28 AM](#)

REPRESENTATIVE HARRIS reminded the committee of the litigation over the Shell offshore drilling in which local people felt they weren't given due consideration. He opined that the lack of due consideration was for issues that would've likely been addressed under the conditions being discussed today. The locals felt their only remedy was litigation and now the entire operation is stopped. The 9th Circuit Court of Appeals, he noted, is no

friend to Alaska. He then questioned, "If you don't have a local remedy done by local people, are we not just setting ourselves up for a continuous trek down to San Francisco and maybe back to Washington, D.C., to have this stuff litigated and litigated." He stressed his desire for the administration to understand that local people have concerns rather than turn a blind eye to local issues that could get worse.

[8:49:02 AM](#)

A roll call vote was taken. Representatives Cissna, Gardner, Harris, Herron, and Munoz voted in favor of Amendment 1. Representatives Keller and Millet voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

[8:49:41 AM](#)

REPRESENTATIVE HARRIS moved that the committee adopt Amendment 2, which read [original punctuation provided]:

At pg. 11, line 13 delete the following from sec. 46.40.070:

(B) are not preempted by federal statutes or regulations; and

Add the following at pg. 11, line 13:

(B) are not preempted by federal or state law.

At pg. 11, line 20 add:

(c) In (a)(2)(B) of this section, an enforceable policy of the district coastal management plan is preempted by state statutes or regulations if it is prohibited, either by express legislative direction, or direct conflict with a state statute, or where a local law or regulation substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose.

REPRESENTATIVE MILLETT objected.

[8:49:54 AM](#)

MS. HENSLEY explained that Amendment 2 clarifies that local policies can't override state law or render a state law moot by

articulating when a district policy oversteps its bounds. Ms. Hensley highlighted that much of the discontent with the ACMP is related to the lack of consensus as to what enforceable policies are approvable. Amendment 2 clarifies that enforceable policies aren't approvable when they are preempted by state or federal law.

[8:52:13 AM](#)

REPRESENTATIVE MILLETT inquired as to the remedy when an enforceable policy runs afoul of a regulation.

REPRESENTATIVE JOULE pointed out that departments write regulations for any law passed.

[8:52:55 AM](#)

CO-CHAIR HERRON characterized Amendment 2 as guidance.

MS. HENSLEY noted her agreement because Amendment 2 guides the [proposed] board regarding what plans it can and can't approve. The concept of preemption is included because it's well known. The desire is for the public and all interested parties to understand the ceiling of enforceable policies, and the concept of preemption is understood by many, she opined.

[8:54:27 AM](#)

MS. HENSLEY, in response to Representative Harris, specified that on page 11, line 16, subsection (b) refers to federal statutes and regulations and [proposed subsection] (c) refers to state statutes and regulations.

[8:54:56 AM](#)

REPRESENTATIVE MILLETT withdrew her objection. There being no further objection, Amendment 2 was adopted.

[8:55:13 AM](#)

REPRESENTATIVE HARRIS moved that the committee adopt Amendment 3, which read [original punctuation provided]:

Delete pg. 16, lines 21-28.

Add at pg. 16, line 21 the following:

(a) A city within the coastal area that is not part of a coastal resource service area shall be included for purposes of this chapter within in adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of commerce, community, and economic development.

REPRESENTATIVE MILLETT objected.

[8:55:34 AM](#)

MS. HENSLEY explained that Amendment 3 restores the existing law's language.

[8:56:29 AM](#)

REPRESENTATIVE MILLETT related her understanding that Amendment 3 specifies that inaction by a bordering city would be included unless they exclude themselves from the coastal plan.

MS. HENSLEY replied yes, adding that's the existing law.

[8:56:52 AM](#)

REPRESENTATIVE MILLETT removed her objection, and there being no further objection Amendment 3 was adopted.

[8:57:05 AM](#)

REPRESENTATIVE HARRIS moved that the committee adopt Amendment 4, which read [original punctuation provided]:

Delete at pg. 17, lines 8-23.

Add at pg. 17 line 8 the following:

"coastal resource district" means each of the following that contains a portion of the coastal area of the state:

- (A) unified municipalities;
- (B) organized boroughs of any class that exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs that do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs that do not exercise planning and zoning authority, that have established a planning commission, and that, in the opinion of the commissioner of commerce, community, and economic development, have the capability of preparing and implementing a comprehensive district management plan under AS 46.40.030;

(E) coastal resource service areas established and organized under AS 29.03.020 and AS 46.60.0110-46.40.180;

REPRESENTATIVE MILLETT objected.

[8:57:13 AM](#)

MS. HENSLEY explained that Amendment 4 accomplishes the same thing as Amendment 3 as it restores language in the existing law.

[8:57:39 AM](#)

REPRESENTATIVE GARDNER inquired as to why the sponsors initially offered the language in HB 74 that [Amendments 3 and 4] delete.

MS. HENSLEY explained that when writing HB 74, the sponsor reviewed DNR's proposed November legislation. Where the sponsors felt they could make a concession by adopting DNR's language, the sponsors did so. She noted that there are those who otherwise support HB 74 who have expressed concern with this [proposed] section, and the sponsors felt it should be removed.

[8:58:59 AM](#)

REPRESENTATIVE MILLETT withdrew her objection. There being no further objection, Amendment 4 was adopted.

[8:59:14 AM](#)

CO-CHAIR HERRON announced that HB 74 would be held until March 3, 2008, and a committee substitute would be prepared for that meeting.

[9:00:07 AM](#)

REPRESENTATIVE HARRIS reiterated that HB 74 is illustrative of a larger problem of which the governor is aware. He opined that the people of the impacted areas of the state need to be heard. He then said that he will vote in favor of moving this legislation out of committee and he hopes Mr. Bates takes the aforementioned sentiments back to his boss.

[9:01:48 AM](#)

CO-CHAIR HERRON related that after the last hearing he approached Representative Joule and members of the industry and was pleased that the sponsor brought forward amendments to work toward the middle. However, he expressed disappointment that industry reported it could do nothing.

[9:02:29 AM](#)

REPRESENTATIVE JOULE related that DNR, admittedly, has overreached its authority, through regulation, per the original charter of the ACMP. Therefore, he questioned why one would leave the authority with DNR. The aforementioned is one of the reasons for the introduction of HB 74. Representative Joule then recalled that the Alaska State Constitution says the resources of the state will be developed for all the people of the state. Representative Joule then related his belief that there are three kinds of resources: renewable, nonrenewable, and human resources. He opined that DNR is leaving out human and renewable resources when they reject the policies by the local communities.

[HB 74 was held over.]

[9:04:42 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:04 a.m.