

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 22, 2010

1:08 p.m.

**MEMBERS PRESENT**

Representative Craig Johnson, Co-Chair  
Representative Mark Neuman, Co-Chair  
Representative Bryce Edgmon  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Chris Tuck

**MEMBERS ABSENT**

All members present

**OTHERS LEGISLATORS PRESENT**

Representative Mike Chenault

**COMMITTEE CALENDAR**

HOUSE BILL NO. 414

"An Act relating to the tax on oil and gas production; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 74

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 414

SHORT TITLE: SEPARATE OIL & GAS PRODUCTION TAX

SPONSOR(s): RESOURCES

03/10/10	(H)	READ THE FIRST TIME - REFERRALS
03/10/10	(H)	RES, FIN

03/22/10 (H) RES AT 1:00 PM BARNES 124

BILL: HB 74

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(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  
02/24/09 (H) Heard & Held  
02/24/09 (H) MINUTE(CRA)  
03/03/09 (H) CRA AT 8:00 AM BARNES 124  
03/03/09 (H) Moved CSHB 74(CRA) Out of Committee  
03/03/09 (H) MINUTE(CRA)  
03/05/09 (H) CRA RPT CS(CRA) 4NR  
03/05/09 (H) NR: KELLER, CISSNA, HERRON, MUNOZ  
04/15/09 (H) RES AT 1:00 PM BARNES 124  
04/15/09 (H) Heard & Held  
04/15/09 (H) MINUTE(RES)  
03/19/10 (H) RES AT 1:00 PM BARNES 124  
03/19/10 (H) -- MEETING CANCELED --  
03/22/10 (H) RES AT 1:00 PM BARNES 124

#### **WITNESS REGISTER**

REX SHATTUCK, Staff  
Representative Mark Neuman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 414 on behalf of the House Resources Standing Committee, sponsor.

REPRESENTATIVE REGGIE JOULE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Spoke as a joint prime sponsor of HB 74.

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

**POSITION STATEMENT:** Introduced HB 74 on behalf of joint prime sponsor, Representative Joule.

EDWARD ITTA, Mayor  
North Slope Borough  
Barrow, Alaska

**POSITION STATEMENT:** Supported HB 74.

BERT COTTLE, Mayor  
City of Valdez  
Valdez, Alaska

**POSITION STATEMENT:** Supported HB 74.

TOM OKLEASIK, Planning Director  
Northwest Arctic Borough  
Kotzebue, Alaska

**POSITION STATEMENT:** Supported HB 74.

MARLENE CAMPBELL, Coastal Management Coordinator  
Sitka District Coastal Management Program  
City and Borough of Sitka  
Sitka, Alaska

**POSITION STATEMENT:** Supported HB 74.

RANDY BATES, Director  
Division of Coastal and Ocean Management  
Department of Natural Resources  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 74, answered questions.

LINDSAY WOLTER, Assistant Attorney General  
Environmental Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 74, answered questions.

THOMAS LOHMAN, Attorney at Law  
Environmental Resource Specialist  
Department of Wildlife Management  
North Slope Borough  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 74, answered questions.

#### **ACTION NARRATIVE**

[1:08:11 PM](#)

**CO-CHAIR MARK NEUMAN** called the House Resources Standing Committee meeting to order at 1:08 p.m. Representatives Seaton, Edgmon, Tuck, Wilson, Olson, and Neuman were present at the call to order. Representatives Kawasaki, Johnson, and Guttenberg arrived as the meeting was in progress. Also present was Representative Chenault.

**HB 414-SEPARATE OIL & GAS PRODUCTION TAX**

[1:08:51 PM](#)

CO-CHAIR NEUMAN announced that the first order of business is HOUSE BILL NO. 414, "An Act relating to the tax on oil and gas production; and providing for an effective date."

CO-CHAIR NEUMAN requested members to hold questions until the next hearing because today is only an introduction of the bill.

[1:09:34 PM](#)

REX SHATTUCK, Staff, Representative Mark Neuman, Alaska State Legislature, noted that the sectional analysis included in the committee packet is for SB 305, Version A, which is essentially the same bill as HB 414. He spoke from the following sponsor statement [original punctuation provided]:

Currently there are companies doing business in Alaska that have both oil sales (from the North Slope) and gas sales (from Cook Inlet or elsewhere). The gas produced receives the same progressivity surcharge as the oil.

[HB] 414 by the House Resources Committee separates oil and natural gas for purposes of calculating the progressivity portion of the production tax under AS 43.55. Under this bill, the progressivity surcharge is calculated on oil only instead of on oil and gas combined. The progressivity surcharge remains unchanged at 0.4% per \$1 of production tax value over \$30 per barrel, then 0.1% per \$1 of production tax value over \$92.50. Under [HB] 414, natural gas will be taxed at 25% of production tax value with no progressivity surcharge.

[1:11:20 PM](#)

MR. SHATTUCK reviewed the sectional analysis. He said Section 1 of HB 414 addresses AS 43.55.011(e)(2) and would add language that specifically identifies the production of oil for progressivity rate purposes. Section 2 addresses AS 43.55.011(g) and would remove the language referring to gas and its per British Thermal Unit (BTU) equivalent to isolate the progressive rate tax calculation for oil. In AS 43.55.011(g)(1), the language referring to gas and its per BTU equivalent would be removed to apply the progressive rate calculation only to oil with a progressive rate of an additional 0.4 percent for each dollar per barrel above \$30 up to \$92.50 per barrel. The same changes would be made in AS 43.55.011(g)(2) as in AS 43.55.011(g)(1), eliminating references to gas and per BTU equivalent to calculate the progressive rate for net production values greater than \$92.50 at the rate of an additional 0.1 percent. Section 3 applies to AS 43.55.011(j) and would provide that in comparing the lower tax of subsection (e) and economic limit factor (ELF) tax for Cook Inlet production, progressivity would not apply for gas. Section 4 applies to AS 43.011(o) and would be the same as Section 3 for non-Cook Inlet gas used in-state. Section 5 applies to AS 43.55.020(a)(1) and would provide that the monthly installment payment for gas does not include a progressivity component. Section 6 applies to AS 43.55.160(a)(2) and would provide that the monthly production tax values for deriving progressivity apply only to oil. Subparagraph (A) would apply only to North Slope oil and subparagraph (B) would apply only to outside Cook Inlet and not North Slope oil. Section 7 applies to AS 43.55.160(c) and would provide that calculation of the monthly share of a producer's transportation costs for the calendar year for deriving production tax value for progressivity is for oil only. Section 8 would provide for an immediate effective date.

CO-CHAIR NEUMAN urged committee members to bring any questions to the co-chairs or Senator Stedman.

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CO-CHAIR JOHNSON said HB 414 is being introduced now so that if the issue becomes urgent the bill can be brought up quickly under bills previously heard. He added that the co-chairs intend to be up front and want to be able to take the Senate version and move it into the House Finance Committee, if that is deemed important.

CO-CHAIR NEUMAN added that making HB 414 available to the public is another reason for bringing the bill before the committee now. He explained that TransCanada's open season under the Alaska Gasline Inducement Act (AGIA) is coming and one of the inducements for that is a lock-in in taxes for up to 10 years; it is pertinent that the people of Alaska and the legislature know the effects of that. The differential between oil and gas right now is close to 20:1.

[1:16:41 PM](#)

REPRESENTATIVE EDGMON inquired if there will be a definitive answer as to whether HB 414 will be needed.

CO-CHAIR NEUMAN responded the co-chairs are currently working with the Department of Law and the Department of Revenue to get that answer.

CO-CHAIR JOHNSON said he hopes there is a definitive answer because he does not want to spend a lot of time on something that does not need to be done. However, if something does need to be done, it will need to be done quickly. He said he is unconvinced at this point that the bill is actually needed.

CO-CHAIR NEUMAN commented that it is also the legislature's authority to decide whether the bill is needed.

[1:17:32 PM](#)

REPRESENTATIVE SEATON asked whether the provision under Section 2 for AS 43.55.011(g)(1) would keep the current tax the way it is or would incorporate the progressivity change that was previously brought before the committee.

CO-CHAIR NEUMAN replied that this is a mobile document and things are changing fast, so when that information is received it will be given to committee members.

CO-CHAIR JOHNSON added that to his knowledge no one on this committee has had any input into this bill because it was drafted in the other body. He reiterated that HB 414 is being introduced as a placeholder.

CO-CHAIR NEUMAN said he and his staff are working to understand the bill and to get further information. He held over HB 414.

**HB 74-COASTAL MANAGEMENT PROGRAM**

1:19:43 PM

CO-CHAIR NEUMAN announced that the next order of business is HOUSE BILL NO. 74, "An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board." [Before the committee was CSHB 74(CRA).]

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, joint prime sponsor of HB 74, said his staff member, Elizabeth Hensley, will present the bill and other people on line will provide additional information.

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ELIZABETH HENSLEY, Staff, Representative Reggie Joule, Alaska State Legislature, stated [CSHB 74(CRA)] would amend the Alaska Coastal Management Program (ACMP), which was created pursuant to the 1972 federal Coastal Zone Management Act. She said that, among other things, the intent of the 1972 Act was:

to preserve, protect, develop, and where possible to restore or enhance the resources of the nation's coastal zone for this and succeeding generations; to encourage the participation and cooperation of the public, state and local governments, as well as of the federal agencies; to provide for the coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources; and to give opportunities for public and local government participation in coastal management decision making.

MS. HENSLEY explained that the Alaska Coastal Management Program was created in 1977 when the Alaska State Legislature enacted the Alaska Coastal Management Act. The program was federally approved in 1979. Originally, a 17-member board oversaw the program, but in 2003, under House Bill 191, the Murkowski Administration concentrated all decision making authority in the Department of Natural Resources (DNR).

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MS. HENSLEY said CSHB 74(CRA) has three primary objectives. The first is to establish the Alaska Coastal Policy Board. The nine-member board would consist of five public members appointed by the governor and the other four members would be the

commissioners of the Department of Natural Resources, the Department of Environmental Conservation, the Alaska Department of Fish & Game, and the Department of Commerce, Community, & Economic Development. The board would be responsible for approving district coastal plans, grant programs, and regulations; DNR would retain day-to-day management of all ACMP matters and would retain responsibility for project consistency reviews. The second objective is to streamline the ACMP consistency determination process and to promote inter-agency cooperation and issue resolution. To that end, it would bring the Department of Environmental Conservation (DEC) back into the review process, as this department was carved out of the review process in 2003. The third objective is to restore the role of coastal districts by allowing them to establish local enforceable policies that are meaningful. Local districts would be empowered, but have no veto power. The bill recognizes that local people have local knowledge that is of importance when dealing with coastal resource uses.

CO-CHAIR NEUMAN opened public testimony.

[1:25:27 PM](#)

EDWARD ITTA, Mayor, North Slope Borough, supported HB 74, saying this subject means a lot to coastal communities throughout Alaska and is of importance to all Alaskans who want to see orderly and efficient development in the state's coastal areas. He noted that there are some misconceptions about what HB 74 would do. First, the ACMP is a coordinating program, not a permitting program. Second, HB 74 would not create new obstacles to slow down development projects; rather, it would establish a process for resolving conflicts between project applicants, agencies, and local districts. The bill would streamline the participation of all stakeholders by having them work together early in the process.

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MAYOR ITTA said HB 74 would not simply reinstate the way things were before 2003 when the program was essentially gutted. It would restore a local voice in the process through local enforceable policies and a coastal policy [board] that would decide disputes instead of one individual. The bill would not allow citizen or third-party lawsuits, which was a sore point in the old process. Additionally, the bill would not allow local concerns to trump legislative or agency authority and would

strike a middle ground between the pre-2003 arrangement and the current approach of shutting out meaningful local input.

MAYOR ITTA pointed out that HB 74 relates to the debate in his borough over offshore development in the Arctic Ocean. He allowed he is not a fan of Outer Continental Shelf (OCS) drilling, but added that he recognizes this is a development borough and OCS development is probably going to happen. So, rather than fight it, he would prefer to work with industry, agencies, and the executive and legislative branches of the State of Alaska to ensure this project is done with world-class care. He said he has recently had some success in convincing his fellow whalers that lawsuits do not need to be filed to get some accommodation and recognition of whaler's concerns. Progress has been made with Shell on a variety of concerns, as well as with the U.S. Minerals Management Service (MMS), which wrote some of the whaler's concerns into Shell's exploration permit for this summer's Beaufort Sea activity.

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MAYOR ITTA specified, however, that he cannot point to any progress in regaining a meaningful local voice in the coastal management process. North Slope residents remember how coastal zone management used to work at the local level and know that that has been taken away. He said what frustrates him the most is that by watering down the ACMP so there is virtually no local voice, the State of Alaska has effectively abandoned its opportunity to exercise influence in coastal waters. All the cards have been handed over to the federal government and in the absence of a credible state program local people will look there for a substitute chance for recognition of local concerns.

MAYOR ITTA cautioned that national environmental groups will likely be jumping all over this vacuum that he believes has been caused by the state's inaction. A credible state plan could help to dampen the resistance that environmental groups are encouraging. It is a tool the state can use to the benefit of all parties, yet there has been no movement by the state toward a solution. He said he believes very strongly in local control and that the State of Alaska must control its own destiny and not allow another federal program to overtake and override the good things that have been done in the state.

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MAYOR ITTA said he has been thinking about options that might be available should the state do nothing. One option is for the borough to rewrite Title 19 of its municipal code and create new permitting hoops for project applicants to go through. Another option is to work with federal agencies and legislators on the concept of an Arctic regional citizen advisory council. A third option is marine spatial planning through President Obama's Whitehouse Council [on Environmental Quality]. He clarified he does not believe a federal solution is a good alternative because he believes everyone is better off with a state program that recognizes local people as stakeholders and that takes local concerns seriously. However, he must support something because, as North Slope Borough mayor, doing nothing is not an option. Doing nothing would simply fan the flames of resistance at a time when he believes he has convinced a significant number of whalers and other North Slope Inupiaq Eskimos that they can work with the State of Alaska just as headway has been made with federal agencies and the oil companies.

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MAYOR ITTA pointed out that people on the frontlines of proposed developments, like the people in his community, have unique concerns and insights. He said he believes that HB 74 reestablishes and refines a mechanism that can give local people a voice without stalling the process. He directed attention to page 11 of his PowerPoint presentation that depicts a map of development in Prudhoe Bay in 1977 and a map of all permitted development in Prudhoe Bay as of 2001. He said he is aware of no project being stopped, and emphasized that the ACMP was a program that gave the North Slope Borough a local voice and development still happened. He maintained that striking a balance that mitigates the concerns of the North Slope Inupiaqs who have lived along the coast for thousands of years is a small consideration in light of the billions of dollars that are being talked about.

CO-CHAIR NEUMAN said he appreciates Mayor Itta's offer to work with the legislature and DNR.

[1:40:50 PM](#)

REPRESENTATIVE TUCK referred to page 10 of Mayor Itta's PowerPoint presentation and asked whether the Coastal Impact Assistance Program (CIAP) would bring additional funds [\$79.8 million] to the state for a properly managed coastal program.

MAYOR ITTA responded correct.

MS. HENSLEY explained that according to a document prepared by DNR's Division of Coastal and Ocean Management about \$14.5 million was allocated directly for 2010 to Alaska coastal districts, also called coastal political subdivisions, through the Coastal Impact Assistance Program. About \$27 million was allocated directly to the state. She understood that some of this money goes directly to the coastal political subdivisions, some directly to the state, and some to individual entities that apply for funding through the CIAP grant program. In response to Co-Chair Neuman, she agreed to provide members with a copy of the document.

CO-CHAIR NEUMAN noted there is also a program dealing with soil and water conservation districts whose funding has been cut, but the program brings in \$8-\$9 in matching funds for every \$1 it receives. He asked whether this program could apply for CIAP funding.

REPRESENTATIVE JOULE deferred to Mr. Randy Bates for an answer.

[1:44:57 PM](#)

BERT COTTLE, Mayor, City of Valdez, testified that the City of Valdez supports HB 74 because it would correct part of the damage that was done in the 2003 changes and would put coastal communities back at the table as policy makers. Before the 2003 changes, the City of Valdez had 41 enforceable policies under which input could be made, but today that number is 14; HB 74 would change that. The City of Valdez supports Section 37 [of the bill as originally introduced] which would eliminate the carve out of the Department of Environmental Conservation. This department needs to be back at the table and not be a stand-alone policy maker. Also, Section 37 [of the bill as originally introduced] would eliminate the requirement for coastal districts to update their plan every 10 years. There is no reason to update a plan that is current because updating is costly and time consuming. Section 1 of HB 74 would establish a small coastal policy board, which the City of Valdez feels would be good. The previous 17-member board was too large to be effective. This smaller board would only address Alaska coastal management policy issues and would be unable to override any agency's authority.

REPRESENTATIVE SEATON noted that the bill version before the committee, CSHB 74(CRA), only goes as high as Section 36.

MAYOR COTTLE said Section 37 is the section number he was given. In further response, he said he would contact Representative Seaton after the hearing in this regard.

[1:47:52 PM](#)

TOM OKLEASIK, Planning Director, Northwest Arctic Borough, stated the Northwest Arctic Borough supports adoption of HB 74, as does the borough's planning commission jointly with the North Slope Borough Planning Commission via Resolution JBPC0901. He said the Northwest Arctic Borough supports HB 74 for three reasons. First, the bill would update the ACMP to a modern coastal management program where good governance is valued through public involvement. One of the borough's key objectives under its strategic plan is to increase public participation for an interactive and engaging borough democracy. The borough's mayor, assembly, and planning commission value hearing from the area's lifelong Alaska residents, communities, and businesses in order to make the best governing decisions, policies, and good public relations. However, under the current ACMP, participation of stakeholders was identified as a key weakness in the October 2002-August 2007 evaluation that was conducted by the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management. The evaluation report states on page 6, paragraph 4, that elimination of the Coastal Policy Council was controversial, particularly with transferring its authority solely to state staff. Checks and balances are a fundamental premise of the U.S. democracy, he said, and reinstatement of the Alaska Coastal Policy Board under HB 74 would promote modern governance and checks and balances so that bureaucrats in Juneau are not disconnected from Alaskan communities and forcing decisions upon Alaskans.

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MR. OKLEASIK said the second reason for the borough's support of HB 74 is that it would bring balance to the bureaucratic decision-making process for coastal management issues. The Northwest Arctic Borough has been attempting to revise its coastal management plan since 2005, but has yet to receive approval due to state staff interpretations of the laws and regulations. The borough has met all the deadlines and made many special efforts to meet bureaucratic demands. It has attempted mediation with the state, which ended in impasse despite the financial expense and many hours and days invested in that process. As of today, the borough has been waiting for

over a year for the DNR commissioner to make a decision. The statutes and regulations have no timeline for making a decision, so communities are left hanging in a "Catch 22 bureaucracy". This has been a terrible and expensive experience for any community to be forced through and the legislature needs to make changes so that Alaskan communities can successfully work with their own state government. The bill would bring more balance to these important decisions and promote responsible resource and community developments, especially by the Alaska residents most impacted. The ACMP needs to be valued and given the legislative tools to work and to respect all Alaskans.

[1:52:14 PM](#)

MR. OKLEASIK explained that the borough's third reason for supporting HB 74 is because it would assist in advancing communication between DNR and local communities. Creation of the Alaska Coastal Policy Board would help ensure that coastal districts and the state agencies work together on resource and community development. Right now the project developers and coastal districts are in reactive roles with state agencies overruling any decision throughout the process. This was illustrated recently with the Kodiak Kenai Cable Company project to bring broadband access to the Arctic region, including Kotzebue. Due to the Northwest Arctic Borough's coastal management plan not being approved, the borough as a coastal district had to make any request for information during the public review process for the applicant. Additionally, the company was not made aware of areas in the borough's coastal district that are important to ongoing subsistence activities. This caused many frustrations because DNR had to review all communication and decide what action to take, which slowed down the project development. Information from the district coastal management plan was not made available by DNR for review by the parties until the public notice step. Had the borough's coastal management plan been approved, that company would have known the district's designated areas and policies and built them into its plans at the start of its planning process instead of being caught in the current "Catch 22" bureaucracy with no foreseeable timelines for resolution. The coastal district could have worked proactively and coordinated more closely with the company. The bill would assist in advancing communication in a closely coordinated fashion and would bring good public practices into the Alaska Coastal Management Program.

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CO-CHAIR NEUMAN asked Mr. Okleasik why the district's coastal management plan may or may not be approved.

MR. OKLEASIK replied he has been trying to get a good handle on that since his first day on the job. The district has been sent in 20 different directions, and even when the district follows the directions it comes back as unapprovable. It does not make sense to have the district do what it was directed to do and then be told that [DNR] changed its mind. There is no effective appeals process before a third party; state staff has sole discretion over all appeals, which has been the extremely frustrating part of the program.

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CO-CHAIR NEUMAN asked Mr. Okleasik to describe one issue that has been the most controversial.

MR. OKLEASIK answered there has been so much resistance that he cannot describe one single thing. However, one example is that the district has its subsistence policies in designated areas and out of these policies only one area has been approved. In Kotzebue, fish- and meat-drying racks are right in front of people's homes and antlers are all over the place. Therefore, it is crazy that only one small subsistence area has been approved in the whole borough.

[1:57:43 PM](#)

MARLENE CAMPBELL, Coastal Management Coordinator, Sitka District Coastal Management Program, City and Borough of Sitka, stated that the assembly of the City and Borough of Sitka approved Resolution 2009-32 supporting HB 74 to enable Alaska's coastal communities to more effectively participate in the Alaska Coastal Management Program. The resolution reaffirms the position of the City and Borough of Sitka and the community of Sitka ever since House Bill 191 was initiated. Prior to the ACMP revision, the Sitka Coastal Management Program was a model of effective coastal management. It allowed the Sitka community to have due deference and protected local resources and activities while at the same time permitting responsible development. The revision process forced complete revision of Sitka's coastal plan, and Sitka lost more than half of its enforceable policies. The policies remaining are so restricted that they are virtually unusable in coastal comments.

MS. CAMPBELL noted that HB 74 would restore the Sitka district's opportunity for a seat at the table in management decision making by establishing the Alaska Coastal Policy Board to participate in district management plan approvals, which is desperately needed. The board would not be involved in the consistency review process. She said this greatly improved and streamlined board is necessary for checks and balances. The bill would streamline project reviews through the inclusion of air and water quality issues and the Department of Environmental Conservation (DEC) [Section 37 of the bill as originally introduced]. She said it is her view that the carve out of DEC has been totally dysfunctional and removal of air and water quality from the purview of the ACMP was a grave error. Additionally, HB 74 would maintain legislative authority over the Alaska Coastal Management Program and maintain the ability to pass future ACMP legislation.

[2:00:30 PM](#)

MS. CAMPBELL said House Bill 191 was sold as a means of streamlining the ACMP; instead, these regulatory changes crippled the program and disabled local participation. Due deference to coastal communities with approved programs would be restored by HB 74. It would not slow down permitting because all the parties would have a seat at the table at the same time to resolve conflicts and expedite permitting. She said she has been the coastal management coordinator for the City and Borough of Sitka since 1987, and HB 74 would be a great step forward to reinstate some of the best features of the Alaska Coastal Management Program.

MS. CAMPBELL pointed out that designations did not make it into HB 74, and these are a problem for Sitka. Designations are extremely problematic to coastal districts because the districts are no longer permitted to have enforceable policies that relate to resources without designated specific areas. In many cases, the resources that the policies relate to may move from area to area, so she hopes that the designations can be made more flexible and promulgate policies as long as a thorough analysis and justification for the specific policy is provided and have no conflicts with state or federal law.

CO-CHAIR NEUMAN noted that on April 15, 2009, the committee closed testimony on HB 74 and held the bill over, but that public testimony has been re-opened today.

[2:02:53 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether Sitka believes the Department of Environmental Conservation is an appropriate agency to be returned to involvement in the ACMP process.

MS. CAMPBELL responded yes, the city assembly's resolution specifically supported the re-involvement of DEC in the consistency review process rather than having the department's participation carved out and totally separate from the ACMP. At the local level, to not be able to even consider air and water quality issues when making coastal management decisions that so directly relate to the air and water quality issues of coastal decisions is counterintuitive and unproductive. From a practical standpoint, there is no real capability of communicating with DEC because of it being carved out of the program and not a participant. The City of Sitka once had a productive relationship with DEC and this communication and interaction is missed.

CO-CHAIR NEUMAN closed public testimony for the time being after ascertaining that no one else wished to testify.

[2:05:22 PM](#)

CO-CHAIR NEUMAN requested Mr. Randy Bates to highlight the administration's concerns with HB 74.

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources, said the department continues to have significant concerns with the drafting and provisions of this bill because the issues the department raised last year have not yet been addressed. These issues relate specifically to the authority and purview of coastal district enforceable policies and the relationship that is expected to exist between coastal management and the laws that state and federal legislators have established.

[2:06:51 PM](#)

CO-CHAIR NEUMAN inquired whether there is some legal question regarding establishment of an Alaska Coastal Policy Board.

MR. BATES responded that, in his opinion, the basic question of whether it is DNR making the decisions on enforceable policies or a coastal policy board is irrelevant. The questions that DNR is concerned with are specific to the authority of coastal district enforceable policies. The North Slope Borough, the

Northwest Arctic Borough, and DNR have engaged for quite awhile regarding the authority of coastal district policies. For example, one of the districts wanted the ability to manage or write an enforceable policy related to noise-producing operations so it could have a policy that maybe limited noise producing operations to less than 125 decibels to address the impact on marine mammals. However, the Marine Mammal Protection Act specifically preempts states from developing laws like that; it is a duplication of authority and the Act precludes that. Additionally, the state's own granting agency, the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration (NOAA), has said that while that may be an approvable policy generally if it relates to just noise, it would be illegal to implement the policy at the project review level. From the department's perspective, there are significant legal concerns with the structure of these enforceable policies, what is proposed within HB 74, and the relationship of those policies with the state authorities. That must be addressed before moving on with any meaningful crafting of statutes that would affect coastal management.

[2:09:28 PM](#)

REPRESENTATIVE P. WILSON requested Mr. Bates to specify which parts of the bill need to be changed to meet the department's concerns.

MR. BATES replied the department's first substantive concern is that HB 74 would create a new oversight body, the Alaska Coastal Policy Board, and would vest that body with the ability to approve enforceable policies that would override agency authority, effectively rendering the legislative establishment of laws relative to resource management and protection moot. The second concern is that the bill is specific to the issues of a group of ACMP participants and does not balance or represent the interests of all ACMP participants and stakeholders. While there may be specific sections of the bill that relate to this, the fundamental issue that must be resolved is the relationship between enforceable policies and existing state and federal laws. It is DNR's opinion that establishment of a coastal policy board is irrelevant, as is providing additional purview in the statutes for district enforceable policies, until the relationship between these laws is addressed and it is determined whether a district enforceable policy can be more stringent than a law established by the state legislature.

[2:12:13 PM](#)

REPRESENTATIVE EDGMON said he is hearing a sense of conciliation from representatives of the coastal areas, but he is hearing zero conciliation from DNR and that the bill is a non-starter. He asked whether there is any middle ground or attempt by the state to work with its constituent base in the coastal areas, or is DNR flatly refusing to work on this issue.

MR. BATES answered that HB 74 will not work the way it is structured and DNR has significant concerns with the way it would work. The department is very troubled with the ongoing concerns that continue to be raised related to coastal management and absolutely wants to resolve those issues. The department is working on regulatory fixes that will resolve certain issues, some of which are partially addressed within this bill. The department will continue to look at the relationship between those state and federal laws and what they mean to coastal district laws. It is not that DNR has a hard line against any changes to coastal management; it is the fundamental issue that must be resolved before any other discussion on changes to coastal management can move forward.

[2:14:35 PM](#)

REPRESENTATIVE KAWASAKI pointed out that an answer still has not been heard to Representative P. Wilson's question regarding the changes that need to be made in HB 74 for the department to say that it is a good bill.

CO-CHAIR NEUMAN agreed. He suggested that a sectional analysis would help members know what the bill does and would assist with questions of Mr. Bates.

[2:15:19 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether district enforceable policies can supersede state or federal law.

LINDSAY WOLTER, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, responded that that is the fundamental question that must be answered and she is not prepared to answer it today. She said this question has been ongoing for several years and the state has been seeking advice from the Office of Ocean and Coastal Resource Management, which is the federal oversight authority for the coastal management program; however, no specific answer has been received. She has been trying to answer the question

within her office, but she has not received an okay to move forward and use client money to answer the question. While it is a simple question, it is a very complicated issue and complicated to answer. In some scenarios the specific examples of enforceable policies really do intrude upon state or federal authorities that have been specifically granted by either the state legislature or Congress. She said she thinks the department's position is that it does not want to be in the position of trying to approve enforceable policies that might not comply with current state or federal authority.

[2:18:25 PM](#)

REPRESENTATIVE P. WILSON asked how the bill would, as currently written, supersede state and federal law.

MS. WOLTER began searching her papers and said she looked at....

CO-CHAIR NEUMAN interjected that Section 14 discusses preemption and he believes the bill says no to Representative Guttenberg's question.

[2:19:48 PM](#)

REPRESENTATIVE P. WILSON inquired how many meetings have been held to work these things out.

MR. BATES replied these changes were brought about in 2003 by House Bill 191, which mandated that each coastal district revise its district plan according to the statutes and the regulations that DNR had to rewrite. So, DNR has been working with the coastal districts since that point to help them develop their plan revisions. Of the 33 coastal districts with plans, 5 voluntarily dropped out because they felt existing state laws and local ordinances would take care of their concerns. Of the remaining 28 districts, 25 revised their plans in 2007 and 2008. One district does not have a plan, but is working towards it. The North Slope and Northwest districts pursued mediation and voluntarily declared impasse with the state after exhausting mediation opportunities, so their plans currently remain unapproved. In the department's opinion, significant movement on plan revisions was achieved during that time of mediation. In terms of enforceable policies, many pieces were agreed to. However, there were still some outstanding issues that were critical to those districts such that they felt impasse was the only recourse. Several meetings occurred weekly, if not daily, for those two districts.

MR. BATES said monthly meetings have been reinstated with the working group, which is composed of representatives from the coastal regions and all of the state's agencies, and the department has monthly meetings specifically with the coastal districts. The department is trying to reconstitute some of the communication that was lost over the last few years, and the meetings, telephone calls, and conferences are in the hundreds. There is still some frustration on the districts' parts because the statutes are not being changed to accommodate a broader opportunity for district policies and that remains a substantial sticking point.

[2:22:56 PM](#)

REPRESENTATIVE P. WILSON asked Mr. Bates to state what the specific sticking points are so that members can see how those are addressed by HB 74.

MR. BATES directed attention to an April 18 [2009] letter to Representative Neuman in the committee packet which articulates the top issues with the coastal districts that remain outstanding. He offered to put together a list should this letter be insufficient. He reiterated, however, that the piece that must first be resolved before engaging in discussion on policies is the relationship between coastal district enforceable policies and existing state and federal laws.

[2:25:42 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether Mr. Bates has given Representative Joule an analysis of why HB 74 would not work and recommended alternatives to make it work. He noted that he was on the House Resources Standing Committee in 2003 when the enforceable policies were removed and DEC was carved out.

MR. BATES answered that Representative Joule has attended one of the conferences and his staff has attended conferences when both statutory and regulatory revisions were discussed. While he has not had specific discussions directly with Representative Joule or Senator Olson, the sponsor of the Senate companion bill, he has had discussions with their staff and representatives from the different districts about district enforceable policies and the relationship between state and federal laws. The department has not engaged in revising HB 74 because of its substantive and significant concerns with the bill. The department wants to resolve the issues, but the legal aspects of those policies must

be looked at before a board is re-created or the authority of policies expanded. Whether it is a coastal policy board or the DNR commissioner presiding over these policies, the fundamental legal basis must be understood for whether policies can infringe upon state or federal laws. Neither a board nor the commissioner can violate the law and approve a policy that is preempted by federal law, and it is this piece that must be solved before there can be discussion on who is deciding ultimately on district plans.

[2:28:56 PM](#)

CO-CHAIR NEUMAN surmised DNR and the other state departments are trying to figure out the federal implications because federal funds are being received. He understood that DNR is also dependent upon answers from federal attorneys which may be what is taking time.

MR. BATES responded yes, that is part of it.

[2:29:45 PM](#)

REPRESENTATIVE GUTTENBERG observed that Section 14 on page 11 of CSHB 74 (CRA) states in several places that the board cannot do things that are preempted by state or federal [law]. Therefore, he is trying to determine why this is still a sticking point given that Section 14 seems to delineates that.

MR. BATES replied that, to him, the difference is preemption versus either duplicative or overriding authority. There is a difference between specific federal preemption and that which simply is not allowed by law, either overriding law or duplicating or being more stringent. While Section 14 deals specifically with preemption, the department's legal question is much broader than that: Can a district enforceable policy, which is ultimately adopted by the state as a state policy and federally approved, overwrite statutory authority. For example, can a district overwrite or be more stringent than what is established in state law for habitat authority under Title 16? Therefore, the department is struggling with a bigger question than just preemption.

[2:32:10 PM](#)

CO-CHAIR JOHNSON observed that there is language throughout the bill that states may or must adopt regulations approved by the board, such as on page 3, line 24, and page 7, line 29, and page

11, line 27. He asked whether there are other statutes that provide for a board to approve regulations. He said it seems to him that regulations are up to the department and this may be dealing with the separation of powers. He added that it gets to the issue that there is a board that cannot preempt regulations that it must approve.

MR. BATES answered he is unsure whether other boards, such as the Board of Game or Board of Fisheries, establish regulations. He said this bill would vest powers within the Alaska Coastal Policy Board that would give it the authority to establish regulations and he believes that was how the Coastal Policy Council was set up during the years prior to 2003.

[2:33:52 PM](#)

CO-CHAIR NEUMAN repeated that he would like to have Representative Joule review the provisions of the bill.

REPRESENTATIVE EDGMON argued that it makes no sense to have this in-depth discussion if DNR is unwilling to compromise or come forward with solutions. He said the department left the committee meeting of April 9, 2009, with a mission to foster a solution. However, rather than offering solutions today, the department is saying "no", not until this issue of enforceable policies is established, even though the Alaska Coastal Zone Management Program has been around for 25 years.

[2:34:58 PM](#)

CO-CHAIR NEUMAN pointed out that Mayor Itta expressed a desire to work with the state. He reiterated that he would like to have Representative Joule review the bill's contents because that might answer many of these questions.

MR. BATES said that while DNR has significant concerns with the bill, it does not mean that the department does not want to work with folks. The department is continuing its ongoing outreach to the North Slope and Northwestern districts as well as to the other districts. The money from the Coastal Impact Assistance Program (CIAP) is flowing and is not contingent upon a rewritten coastal management program. About \$79 million will come to Alaska over the next couple of years because the state has a coastal management program. A wide variety of coastal districts, including the North Slope and Northwest districts, are receiving a significant portion of this money. Receipt of the money has no bearing on whether the North Slope and

Northwest coastal districts have plans; the money is based on proximity to producing wells for leases. It is a great opportunity for the state to engage in mitigation and additional work related to Outer Continental Shelf activities.

[2:37:29 PM](#)

MS. HENSLEY explained that Section 1 would establish the Alaska Coastal Policy Board, comprised of five public members representing coastal districts and the commissioners of the departments of natural resources, fish and game, environmental conservation, and commerce, community and economic development.

REPRESENTATIVE JOULE, in response to Co-Chair Neuman, said the five public members would be appointed by the governor and the governor would use the criteria laid out in the bill to select the appointees. People from around the state would forward their names to the governor and the governor would make the appointments from that pool of names.

[2:40:04 PM](#)

CO-CHAIR JOHNSON estimated that 60-70 percent of the state's population lives in the Upper Cook Inlet area, yet that area would have only one representative on the coastal policy board as provided on page 2, lines 9-13.

REPRESENTATIVE JOULE surmised Co-Chair Johnson is thinking that that part of the coastal district is unrepresented. However, he countered with the question, "Where is the resource development going to occur?" He said there are many ways to look at this, but agreed there are numerous people in that district and Co-Chair Johnson's point is well made.

CO-CHAIR NEUMAN said all Alaskans are in this together and he knows from his discussions with Representative Joule that that issue is being looked at.

[2:41:51 PM](#)

REPRESENTATIVE P. WILSON understood that the pre-2003 coastal policy program worked well. She therefore requested that when reviewing the sectional analysis, Ms. Hensley note how each section is different than what existed prior to 2003.

MS. HENSLEY responded that this is a complex program and she will do this as well as she can. She pointed out that there are

people in the audience with 20-plus years of experience who could clarify or answer what she does not know in this regard.

[2:43:58 PM](#)

REPRESENTATIVE P. WILSON requested Mr. Tom Lohman to also note how each section is different than what existed prior to 2003.

THOMAS LOHMAN, Attorney at Law, Environmental Resource Specialist, Department of Wildlife Management, North Slope Borough, noted he has been with the borough's coastal program since 1987 and the North Slope plan was first adopted in May 1988. He said the Alaska Coastal Management Plan did not work well pre-2003, depending upon where a person wants to focus. The problems with the program that existed in 2003 were solved before House Bill 191 and largely had to do with third-party involvement in consistency reviews, which did delay projects and that was solved by the legislature. House Bill 191 was essentially enacted because there was a certain momentum, a sense that there was a problem with the program even though that problem no longer existed at that point. He said this bill does not roll all the way back to pre-House Bill 191; some things are different. He acknowledged there were problems with the previous Coastal Policy Council, including its unwieldy size of 17 members that made it difficult to get a quorum. The requirement was that the public members be elected officials from regions around the state. This was a problem because elected officials did not necessarily have knowledge of the program. The wording of HB 74 would put people with knowledge on the board because they would be nominated by the regions.

[2:45:26 PM](#)

MR. LOHMAN said he believes this overriding legal question is a red herring, given the coastal management program has been around for a very long time. The North Slope Borough has met with the Office of Ocean and Coastal Resource Management and that agency has had no problem in either Alaska pre-2003 or any other programs the agency administers around country where local programs are stricter than applicable federal laws. With the board in place, a district would still have to supply scientific evidence, local knowledge, and other data bases to show scientifically why a district wants to do something stricter. Regarding the noise example brought up by Mr. Bates, he said the North Slope district would yield to DNR because the 125 decibels is a highly scientific question that has to do with impacts on marine mammals. The example that comes up at every meeting the

North Slope district has had with the state is the issue of tank farm regulation where there are statewide one-size-fits-all requirements for the lining and diking of tanks. If local knowledge indicates that rainfall and snowfall conditions require that something more be done, the district would need to go to the board or DNR, whichever is the case, to show that its special conditions necessitate stricter requirements. That is not in conflict with, he argued; it is stricter for reasons that must be proven to this third-party board. He said that is what is being asked for and that is what this bill accomplishes, which is why he believes this issue of usurping state or federal authority is a red herring.

MR. LOHMAN maintained that local districts having the ability to craft local policies that reflect local concerns is in keeping with what every Alaska governor has said since statehood about being opposed to federal intrusion into what goes on in the state. Given Alaska's large size and diversity, the same holds true for around the state - there are reasons at a local level to express views through local enforceable policies. In the case of the oil industry on the North Slope such policies solve problems rather than cause them. A signal is sent to the developer/applicant about what is expected and discussions can then occur before permits are submitted. He said this bill does not roll it back completely to pre-2003 because there were problems then; it rolls it back at the district enforceable level giving districts some influence. The bill also corrects some of the problems that existed with the program pre-2003.

[2:48:54 PM](#)

REPRESENTATIVE TUCK asked what the changes are in CSHB 74(CRA) that would make the new board a legal problem when the pre-2003 Coastal Policy Council was not a legal problem.

MR. LOHMAN responded he does not see any legal problem with the board. He said a letter was written months ago by Mr. Bates through the DNR commissioner to the attorney general's office looking for an opinion on this, but no answer has yet been received. He pointed out that no question was ever heard about the ability of an independent coastal policy board to approve regulations or to approve local adopted policies under the old program; this question was not heard until December 2008. The North Slope Borough had 30-plus local policies pre-2003; it applied for 41 under this program, received 5, and none went through unamended. The pre-2003 Coastal Policy Council had an involvement through a petition process and individual reviews.

That was messy because a lot of the council members were unfamiliar with the program and unfamiliar with broader regions of the state, but there was no legal problem with it. The proposed board would not at all be involved with individual consistency reviews. He said he thinks any perceived problem with the old board has been solved and he does not believe there was a legal problem in either case.

MR. LOHMAN, in response to Co-Chair Neuman, said he lived on the North Slope for nine years, but now lives in Anchorage. He reiterated he has been with the North Slope Borough since 1987.

[2:51:37 PM](#)

REPRESENTATIVE SEATON inquired whether the Department of Law is saying that the legislature by statute does not have the authority to give a district the ability to write regulations.

MS. WOLTER provided an answer by using the tank farm issue. She said the state legislature has given specific authority to the Department of Environmental Conservation (DEC) to regulate this particular thing; so, DEC has gone through a public process to create regulations that address tank lining, tank capacity, and so forth. However, this normal public process would not occur if districts can add something different than what DEC has already regulated. Without a public process, project applicants would not have any say in why they might not agree with those more stringent enforceable policies, which are enforced as state law. Another concern is that between districts there could be very different standards. A project overlapping two districts with different standards would have to comply with two different standards rather than the one DEC standard. She said she thinks this is something that is important for the legislature to figure out. If authority has been given to a state agency to regulate something specifically, how far does the legislature want to go with enforceable policies on a district-by-district basis and how far can they go on a state level.

MS. WOLTER noted that on a federal level, any changes to statutes and regulations resulting from program changes must go through the federal oversight body and be approved by that body. In regard to Mr. Lohman's statement that the borough would be willing to yield on the issue of noise levels, she said the Marine Mammal Protection Act preempts the state and is a clear example of something that would not be allowed on the enforceable policy level. The state has brought specific issues to the federal government asking whether they would be

approvable and in many examples the federal government has said no. Even when something has gone through on a state level, there have been problems getting it approved as part of the state program by the federal program.

[2:55:51 PM](#)

MS. HENSLEY said Ms. Wolter's point about duplication is addressed in Section 14 [page 11, lines 10-12], and the law is not new, it was simply moved from AS 46.40.030. The only thing that has been added in this section is the preemption standard because it is a term understand the world over.

MS. WOLTER clarified she is not talking about the duplicating language; rather, she is talking about when enforceable policies are more stringent or more specific than state or federal law.

[2:57:04 PM](#)

MS. HENSLEY returned to her sectional analysis review, noting Section 2 clarifies that the Department of Natural Resources will render all federal consistency determinations as well as state consistency determinations when a project requires a permit from the department or from two or more state resource agencies. This provision is significant because [pre-2003] the Coastal Policy Council that made the consistency determinations.

REPRESENTATIVE EDGMON interjected that one year later the legal issue has still not been resolved for whatever unknown reason, and going through the bill is academic unless the legal issue is resolved. He therefore requested that the attorney general address the committee so there can be some clarity on this issue before moving forward.

CO-CHAIR NEUMAN agreed the attorney general can be asked to come to the next hearing, but maintained it is still important to know what the bill would do.

[2:58:54 PM](#)

MS. HENSLEY explained that Section 3 would establish authority for DNR to adopt regulations after approval by the board. She added that she would research other instances in which a board makes regulations and get that information to members. She said Section 4 would establish the powers of the board, including the ability to accept grants and take reasonable action to carry out the intent of the program. Section 5 would establish the duties

of the board to approve the ACMP standards and the criteria for district plan approval. Section 6 defines the board. Section 7 provides for approval of ACMP program changes by the board; this provision essentially changes the word department to the word board.

[3:00:12 PM](#)

MS. HENSLEY related that Section 8 looks at objectives. The second objective remains the same regarding the development of industrial or commercial enterprises, given that the ACMP is intended to promote development. She pointed out that subsistence is added to paragraph (5) on page 6, line 9.

CO-CHAIR NEUMAN inquired whether [adding subsistence] would give the proposed coastal policy board the ability to manage game.

MS. HENSLEY replied she does not believe it would because this change is just stating what is already there; the federal law includes subsistence as one of the resources that can be managed. Coastal districts already have authority to create enforceable policies that address subsistence, so it is a technical change to clearly reflect what is covered.

[3:01:21 PM](#)

MS. HENSLEY said Section 9 is more substantial in that it removes the requirement for district enforceable policies to meet statewide standards. The statewide standards criteria was somewhat confusing, so this section provides that the district plan criteria must be met.

CO-CHAIR NEUMAN announced that the meeting time had expired and asked which sections of the bill should be looked at by the committee in regard to substantial changes.

MS. HENSLEY responded the most substantial changes are the creation of the Alaska Coastal Policy Board and the re-uniting of the Department of Environmental Conservation with the program. She emphasized that the board would not conduct the review process of projects as that would remain with DNR.

[3:02:43 PM](#)

REPRESENTATIVE JOULE reminded members that the North Slope and Northwest Arctic districts still have not had their plans approved and maybe that is where the focus of the bill should

be. He pointed out that this is the fourth year for this bill in one form or another, along with DNR's opposition to the bill. He related that at one time DNR said it would introduce its own bill and he wishes DNR would provide that guidance or join him in his office to hammer this out. He said he has met with the commissioner on several occasions and attended DNR's symposiums, yet nothing materializes. In reference to Mayor Itta's statement that he must support something, and given the state not taking any action, Representative Joule said he is unsure what options that leaves the mayor.

[HB 74 was held over.]

[3:05:52 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:06 p.m.