

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 16, 2009

3:40 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Co-Chair  
Senator Bill Wielechowski, Co-Chair  
Senator Charlie Huggins, Vice Chair  
Senator Hollis French  
Senator Bert Stedman  
Senator Gary Stevens  
Senator Thomas Wagoner

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senator Gene Therriault  
Representative Jay Ramras

**COMMITTEE CALENDAR**

SENATE BILL NO. 4

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

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 4

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(s): SENATOR(s) OLSON

|          |     |                                    |
|----------|-----|------------------------------------|
| 01/21/09 | (S) | PREFILE RELEASED 1/9/09            |
| 01/21/09 | (S) | READ THE FIRST TIME - REFERRALS    |
| 01/21/09 | (S) | CRA, RES, FIN                      |
| 02/05/09 | (S) | CRA AT 3:30 PM BELTZ 211           |
| 02/05/09 | (S) | Moved CSSB 4(CRA) Out of Committee |
| 02/05/09 | (S) | MINUTE(CRA)                        |
| 02/06/09 | (S) | CRA RPT CS 3DP 2NR SAME TITLE      |
| 02/06/09 | (S) | DP: OLSON, THOMAS, KOOKESH         |
| 02/06/09 | (S) | NR: FRENCH, MENARD                 |
| 03/16/09 | (S) | RES AT 3:30 PM BUTROVICH 205       |

**WITNESS REGISTER**

SENATOR DONNY OLSON  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 4.

TIM BENINTENDI, Staff  
to Senator Olson  
Alaska Capitol Building  
Juneau, AK

**POSITION STATEMENT:** Provided introduction to SB 4.

JOHNNY AIKEN, Planning Director  
North Slope Borough  
Barrow, AK

**POSITION STATEMENT:** Testified in support of SB 4.

MARILYN CROCKETT, Executive Director  
Alaska Oil and Gas Association  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to SB 4

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

**POSITION STATEMENT:** Testified that DNR does not support SB 4.

TERRY CAMERY, Planner  
City and Borough of Juneau  
Juneau, AK

**POSITION STATEMENT:** Testified in support of SB 4.

TIM JONES, Mayor  
City of Cordova  
Cordova, AK

**POSITION STATEMENT:** Testified in support of SB 4.

JENNIFER GIBBINS, Executive Director  
Prince Williams Sound Keeper  
Cordova, AK

**POSITION STATEMENT:** Testified in support of SB 4.

GARY WILLIAMS, Coastal District Coordinator  
Kenai Peninsula Borough

Soldotna, AK

**POSITION STATEMENT:** Testified in support of SB 4.

LINDSAY WOLTER, Attorney

Civil Division

Environmental Section

Department of Law,

**POSITION STATEMENT:**

PAUL LAIRD, General Manager

Alaska Support Industry Alliance

Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to SB 4.

BUD CASSIDY, Director

Community Development Department

Kodiak, AK

**POSITION STATEMENT:** Testified in support of SB 4.

MARLENE CAMPBELL, Coastal Management Coordinator

City and Borough of Sitka

Sitka, AK

**POSITION STATEMENT:** Testified in support of SB 4.

BARRETT RISTROF, Attorney

North Slope Borough

Barrow, AK

**POSITION STATEMENT:** Testified in support of SB 4.

JACK OMALACK

Kawerak Incorporated

Nome, AK

**POSITION STATEMENT:** Testified in support of SB 4.

STEVE TOBISH, Senior Planner

Municipality of Anchorage

Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 4.

MAUREEN MCCRAIG

**POSITION STATEMENT:** Testified in support of SB 4.

#### **ACTION NARRATIVE**

3:40:29 PM

**CO-CHAIR LESIL MCGUIRE** called the Senate Resources Standing Committee meeting to order at 3:40 p.m. Present at the call to

order were Senators Huggins, Stevens, Wagoner, French, Wielechowski and McGuire.

**SB 4-COASTAL MANAGEMENT PROGRAM**

[3:41:01 PM](#)

CO-CHAIR MCGUIRE announced SB 4 to be up for consideration

SENATOR DONNY OLSON, Alaska State Legislature, sponsor, said SB 4 establishes the Alaska Coastal Policy Board to exercise authority over development projects in the coastal zones of Alaska. He introduced the legislation because of an apparent lack of compromise in this area. One side wants the authority and power concentrated in an agency of the Department of Natural Resources (DNR) and the other wants authority shared with local district residents and four state commissioners.

SB 4 would establish a nine-member Alaska Coastal Policy Board, comprised of five public members from the 28 coastal management districts and the commissioners of natural resources, environmental conservation, fish and game, and commerce. The public members will be appointed by the governor, which allows the state to maintain a steady hand on the activities of the Coastal Policy Board. Prior to the dramatic program change in 2003, the former Coastal Policy Council was composed of commissioners and local district residents. They performed their duties satisfactorily; no projects were delayed or canceled due to actions by the council.

Since the program change in 2003, DNR has not been successful in dealing with the issue of genuine participation by district residents in decision-making about development in their areas. Nor has it dealt with the persistent negative moral issues in this arena. A months-long process last summer and fall was unsuccessful in addressing needed changes to the Alaska Coastal Management Plan (ACMP).

Coastal district residents throughout the state are disenfranchised by the process that governs development activity in their home regions, Senator Olson stated.

[3:44:22 PM](#)

TIM BENINTENDI, staff to Senator Donny Olson, said that SB 4 would establish the Alaska Coastal Policy Board. Changes in 2003 to the ACMP program eliminated the Coastal Policy Council and shifted authority for permit review, compliance, and consistency matters to the Department of Natural Resources. Among other

things, the new Coastal Policy Board would have the authority to approve district management plans; approve regulations developed by DNR; approve program changes; apply for and accept grants and other monies; evaluate the effectiveness of district management plans; and settle disputes.

Concentrating decision-making in too few hands within DNR left many to view the court system as the only source of remedy for development project reviews that are seen as abbreviated and non-inclusive. It would be unfortunate if these actions diverted financial resources unnecessarily, he said. Moreover, it's likely that such issues would be addressed by a California court rather than in Alaska.

MR. BENINTENDI said the administration has cautioned against making changes to the current ACMP program that might make it more cumbersome and costly for project developers. To date, he has not seen a list of specific development projects that have been halted, delayed, or made more costly because of the old Coastal Policy Council. Such a roster would advance discussion, deliberation, and understanding.

After 2003, regulations adopted by the Department of Natural Resources severely limited the ability of coastal districts to establish enforceable policies regarding the eventual effects of development on coastal resources and uses. Under SB 4, the authority for local policy determination would be restored. What is more, subsistence usage is specifically identified as a value within the ACMP objectives.

The so-called DEC Carve-Out would be eliminated under SB 4. This basically says that a project permit issued by DEC is automatically considered "consistent" within the ACMP requirements.

The legislation provides for authority over development inland from the coastal area should there be significant impact to the coastal zone. This includes activities in federal lands and waters and the Outer Continental Shelf (OCS). SB 4 would also address "seismic survey activity," and would make each lease sale subject to an individual consistency review.

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MR. BENINTENDI said that despite a well-publicized ACMP outreach process last summer and fall, there has been no progress in bringing district interests into the fold. Furthermore,

anticipated improvements from the administration will not now be forthcoming.

The calendar that ACMP released last fall said, "We intend to strengthen the ACMP as a state program that will benefit applicants and the public in the coordination of projects that will enhance coastal district participation when reviewing activities occurring in the coastal area and on the Outer Continental Shelf." Despite the very best intentions of program personnel, those objectives have not been met. The program continues to be unpopular and divisive. In the absence of moderating legislation from the administration, SB 4 and the House companion bill, HB 74, offer an inclusive and viable alternative that has a history of success based on the former program.

[3:48:05 PM](#)

SENATOR STEDMAN joined the committee.

CO-CHAIR MCGUIRE asked for an example of a policy or objective that a coastal district has been unable to get through under the current process.

MR. BENINTENDI replied the principle issue is probably the lack of ability for local districts to generate locally enforceable policies that have support from the Coastal Policy Board.

SENATOR FRENCH noted that the sponsor statement states, "So dramatic were the changes, that the federal Office of Oceans and Coastal Resource Management formally reviewed state actions for compliance and took two years to determine acceptance." He asked how that would have differed under the original program or under this bill.

MR. BENINTENDI surmised that the two-year federal review is on the upper edge of what would be considered a normal time limit.

SENATOR FRENCH said other than the size of the board, what are the major differences between the pre-2003 program and the one that would be established under this bill.

MR. BENINTENDI replied what comes to mind is the provision for reviewing projects inland from the immediate coastal area. For example, the Red Dog Mine is upland from the coast, but eventually has direct impacts on the coastal zone.

[3:51:30 PM](#)

SENATOR FRENCH asked for specific examples of things that have gone wrong in the last six years that would have been fixed had an ACMP plan been in effect.

MR. BENINTENDI replied the people who will testify today could articulate specific occurrences better than he, but there are a host.

SENATOR OLSON added that the seismic activity in the Chukchi and Beaufort Sea comes to mind. Local whalers have voiced their concerns but it's fallen on deaf ears. There's been a real lack of attentiveness, he said.

CO-CHAIR WIELECHOWSKI asked if perhaps there might not be more development if local communities were to have the opportunity to be involved and give input versus locking in and opposing something simply because their voices aren't heard.

SENATOR OLSON replied the frustration really comes from not being at the table. Under the old program quite a bit of development took place on the North Slope from the 1970s until 2003. The 2003 legislation eliminated local input and that has caused frustration. More important, DNR seems to have a lack of ambition. The department is so busy it doesn't have time to address issues that are very important to people living in these coastal areas. That's the source of both the frustration and the call for modifying legislation, he said.

[3:54:34 PM](#)

CO-CHAIR MCGUIRE asked for an explanation of the thought process for having five public members and four commissioners on the Coastal Policy Board. She worries that votes might always be five to four.

SENATOR OLSON said the commissioners likely won't come from coastal districts and the public members will provide a very unique and important perspective.

CO-CHAIR MCGUIRE said her concern is that rather than making decisions based on data and facts and science, the tendency would be for the five public members to support whatever initiative is impacting a particular board member. The votes of the four commissioners may be minimized in the process.

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MR. BENINTENDI observed that the governor would have appointed all the members so from that perspective the board could be less

contentious than the present circumstance. He added that he doesn't want it to be a "we and they" circumstance and believes that the board that is suggested in the legislation would go a long way in reducing that contention.

SENATOR HUGGINS asked if he looked at any ways other than establishing a board to address the issue.

SENATOR OLSON answered they took a historical look to see if both the development and subsistence points of view had been satisfied when the Coastal Policy Council was in place. They found that it had been open and fair to all sides. What's going on now isn't really controversial, it's just that everyone isn't involved and represented.

SENATOR STEVENS asked how this bill affects subsistence.

MR. BENINTENDI replied the bill makes it formal that subsistence activities in the coastal districts are a value that will be given consideration in the process.

[4:00:56 PM](#)

JOHNNY AIKEN, Planning Director, North Slope Borough, said he has 11 years experience with the ACMP. He said SB 4 would restore the ability of coastal districts to establish enforceable polices; improve district and agency participation; bring air and water quality back into the program; and restore the state's rights. Furthermore, he said, this bill will restore our faith in the state governmental process.

MR. AIKEN said that district enforceable policies provide the foundation for the ACMP. They address local concerns by allowing development. DNR in 2003 assured the Legislature that districts would retain the ability to have enforceable policies. However, when approving district plans the rules changed and most policies were denied. For example, proposed policies for subsistence, habitat, mining, and oil and gas were disapproved. Last year DNR testified its regulations were more stringent than the Legislature intended, but it has no plans to fix the problem.

The 2003 legislation eliminated checks and balances when all decision-making power was shifted to DNR. SB 4 would restore the partnership originally envisioned for the Coastal Management Program by establishing a Coastal Policy Board that represents districts and state agencies. District participation fulfills the goal of Article 10 of the state constitution for maximum

local self government. The bill would bring air and water quality back into the program. Removing DEC permits from the consistency review process was a bold experiment that didn't work. Even DNR proposed to eliminate the DEC Carve-Out in draft legislation. SB 4 would restore rights given the state under the federal Coastal Zone Management Act.

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MR. AIKEN clarified three issues. 1) The ACMP does not stop development. It gives state agencies and coastal districts an opportunity to promote development while minimizing associated impacts. 2) The ACMP provides an excellent way to resolve issues early in the process thereby helping to prevent permit delays and lawsuits. 3) Prior to 2003 less than 1 percent of all projects in the state were appealed. Because citizen appeals are no longer allowed, that figure would be even lower under SB 4.

MR. AIKEN referenced a map showing oil and gas activities on the North Slope and noted that most of the projects were approved prior to 2003. The North Slope Borough depends on development for revenue and does not stand in its way, he said.

[4:07:47 PM](#)

MARILYN CROCKETT, Executive Director, Alaska Oil and Gas Association (AOGA), said that since 1977 AOGA has been very actively involved with the ACMP. In the late 1990s it became clear that the scope and process of the ACMP led to confusion, misinterpretations and delays without any additional environmental protection or benefit. Legislation in 2003 resolved these challenges by instituting a program that provides certainty to the state, local districts, and the regulated community. Unfortunately, SB 4 eliminates that certainty.

MS. CROCKETT said elimination of the DEC Carve-Out is a most problematic provision in this legislation. The provision in existing law implements the original intent of the ACMP, which is that the state administered standards and permits are inherently consistent with the program. Therefore, the additional requirement of securing a consistency determination is not necessary or required and falls outside of the ACMP review schedule. The DEC Carve-Out in no way diminishes a coastal district's opportunity to comment and provide input on a particular DEC permit application.

MS. CROCKETT expressed concern about establishing the Coastal Policy Board and the powers vested in it. She highlighted that DNR would be able to adopt regulations, but only with the

approval of the board. AOGA believes this will result in endless back-and-forths between the agency and local entities. AOGA further believes that insertion of a board into this process would lengthen processing times given the infrequency of meetings.

MS. CROCKETT pointed out that a permit timeline is absolutely critical to any permitting entity. She said that SB 4 eliminates timelines for federally permitted activities or actions. This will certainly impact oil and gas activity, but it could impact something as simple as putting in a pad in a coastal community where the developer needs a 404 permit from the Army Corps of Engineers. AOGA believes that the elimination of the deadline for action for a consistency determination on a federal permit is very serious.

4:12:20 PM

RANDY BATES, Director, Division of Coastal and Ocean Management, Department of Natural Resources, stated that the department does not support SB 4. DNR has two substantive concerns with this legislation. First, it creates a new oversight body and vests it with the ability to approve coastal district enforceable policies. This would override agency authority and effectively render moot the legislative establishment of laws relative to resource management and protection. Second, SB 4 does not balance or represent the interests of all ACMP participants and stakeholders. It addresses the issues of just one group of ACMP participants. He added that DNR has additional and specific concerns with SB 4 that he will not address at this point.

MR. BATES said that the program that was implemented in 2003 respects existing state and federal agency authority. It solicits coastal district input and perspective and balances a development economy with protections to the coastal uses and resources. However, DNR recognizes that there is a significant difference of opinion as to the success of the program since 2003; the influence coastal districts have regarding state permitting decisions; and the improvements that could be made to strengthen the coastal program. At this point DNR does believe that some change to the coastal program is necessary, but it has not concluded that statutory change is warranted.

DNR believes that the voice, perspective, and influence of rural Alaska and the coastal communities are critical to the function of the department and the state. DNR values that input, but does not believe it should supplant the state's decision-making

process on issues that are important to the state and the residents.

MR. BATES said a fundamental concern is that SB 4 allows coastal districts to modify the standards and authority of the resource agencies thereby making enforceable policies more restrictive, stringent, and prescriptive. Furthermore, it allows the districts to write policies without required science and without enforcement capability. These substantive changes are largely the reason that DNR has not been able to reach a consensus or conclusion as to the changes that could be made to the ACMP statutes

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CO-CHAIR WIELECHOWSKI asked if he brought some examples of development projects that were slowed by the consistency review process.

MR. BATES replied he did not bring examples because there are always reasons to rationalize why a project was delayed or costs were increased, which is not to say it has or has not happened. He suggested that it is more appropriate to pose the question to industry. He offered to continue to work on some examples, but cautioned that each one would have at least a page of caveats.

[4:18:00 PM](#)

SENATOR WAGONER asked if all the district plans had been rewritten and accepted. Last year they hadn't been.

MR. BATES replied 25 of the 28 coastal districts that actively worked on plan revisions have had their district plans approved and they are now in effect. The 3 outstanding plans include the North Slope Borough, the Northwest Arctic Borough, and the Bering Straits Coastal Resource Service Area.

CO-CHAIR MCGUIRE recognized that Senator Therriault had joined the committee.

[4:18:45 PM](#)

SENATOR FRENCH noted that sections 3 and 9 provide evidence for DNR's argument that the bill allows the coastal board to override DNR. He asked if any other sections do that.

MR. BATES replied DNR focused on sections 9 and 14. Their reading is that those sections substantially change the authority and purview of coastal district enforceable policies.

SENATOR HUGGINS asked how the coastal communities provide input to DNR under the present system.

MR. BATES replied the structure of the coastal program has not changed since 1979. The networked coastal program relies on implementation through the sister agencies of mining, land and water, oil and gas, habitat, fish and game, and environmental conservation. There is also a local implementation technique, which is the coastal district role. During the consistency review process, which is akin to a permitting process, coastal districts have the opportunity to review and comment on a project. Based on those comments, the project is modified as appropriate. Coastal districts continue to have the opportunity to comment. At issue is whether they have district enforceable policies that they can apply. It's a matter of who has control to determine compliance of the project.

SENATOR HUGGINS asked if holding public hearings is part of the process.

MR. BARES explained that the public process is a cornerstone of the federal Coastal Zone Management Act. Alaska complies with that federal law. Every consistency review that DNR conducts has a public process that allows coastal districts, state agencies, and other residents of the state the opportunity to comment.

[4:22:20 PM](#)

TERRY CAMERY, Planner, City and Borough of Juneau (CBJ), stated that CBJ supports SB 4. The bill would allow districts to establish meaningful and enforceable polices; it would bring back basic checks and balances through the Coastal Policy Board, and it would bring DEC back into the review process.

MS. CAMERY said she respectfully disagrees with DNR on several points. First, the bill does not override state authority. The Coastal Policy Board does not conduct project reviews. The board would approve local district coastal management programs, approve regulations, and approve the grant program. Furthermore, districts cannot write policies that are preempted by state or federal law or that interfere with an issue of state concern. Second, it's a gross exaggeration to say that the provisions in SB 4 push local control because every policy that a district pushes has to be thoroughly and scientifically documented.

Among other purposes, coastal management is used to establish areas that are set aside for development as well as for protection. For example, Juneau has special waterfront areas

that have lower habitat standards. These were pushed through the ACMP specifically to develop waterfront areas for cruise ships, seafood processing, and marine cargo. Also, the Juneau Wetland Management Plan categorizes low-value wetlands and gives them less restrictive policies to actively promote development in those areas.

In 2003 the district role was drastically reduced. After lengthy mediation, the Juneau Coastal Management Program Plan was reduced from 93 policies to 16. The Anchorage plan was reduced from 100 policies to 5.

MS. CAMERY said it is a shame that nothing resulted from the reevaluation effort this fall because districts and industry put forth a very strong good-faith effort. It speaks volumes that the ACMP reevaluation effort was not even on the agenda in the recent three-day statewide coastal management conference that was held in Juneau, she said.

SB 4 was introduced because there has been no sign that DNR is going forward with changes.

[4:26:39 PM](#)

TIM JONES, Mayor, City of Cordova, stated support for SB 4. The bill, which establishes the Alaska Coastal Policy Board, would allow coastal districts to provide input on policies as long as they are not specifically barred by state or federal law. The state should go in this direction, he said.

[4:27:41 PM](#)

JENNIFER GIBBINS, Executive Director, Prince Williams Sound Keeper, Cordova, said SB 4 restores authority to local government to develop enforceable policies and brings DEC back into the process. However, she said, the bill still falls short of realizing a comprehensive policy.

First, there is no resolution as to how DNR implements the program. She suggested that it might help to write statewide standards into the statutes thereby ensuring that DNR implements the program according to legislative intent. Second, the bill does not restore the citizens' right for judicial review. This is critical, she said. While SB 4 gives local government more control, local government cannot always represent the interests of the public. A third disappointment is that the bill does not elevate subsistence to the level of a stated priority within the program. This is particularly disappointing to Alaska Natives

who depend upon subsistence for their livelihood and their culture.

MS. GIBBINS said that as a participant in the eight-month DNR-led stakeholder process, she was frustrated. Many people invested enormous amounts of time and money in the hope that a positive outcome would result, but this was not the case. She suggested looking at the directives that were given by the staff because this has been a problem before.

MS. GIBBINS expressed doubt that a comprehensive ACMP policy can be realized within DNR, but SB 4 represents tangible progress on the issue.

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GARY WILLIAMS, Coastal District Coordinator, Kenai Peninsula Borough, said SB 4 reinstitutes a coastal policy board to provide modest oversight to the ACMP, which is a positive step. The 2003 legislation provides too little flexibility to accommodate the differing needs of coastal areas. Without an oversight board there is no opportunity for districts to appeal agency decisions. This has been a problem for all districts.

The language on page 7, lines 14-23, provides valuable guidance on the development of coastal management plan enforceable policies. This is an important provision if coastal districts are to have a meaningful role in the implementation of the ACMP. Under the current program, DNR does not allow coastal district policy that touches on activity regulated by federal or state agencies whether or not that agency effectively monitors or enforces the regulated activity. State agencies seem to fear that giving coastal districts enforceable policy in areas the state has regulatory authority, will cede their authority, but that is not the case. Coastal districts seek only to implement the objectives of the ACMP as clearly delineated in state statute. These objectives are described on page 8. Within the objectives is the recognition of the need for energy development, commercial and industrial enterprise development, and orderly balanced use and protection of resources.

The guidance in this bill will provide for meaningful local input. In the more than 20 years of partnership, coastal districts have not used the ACMP to stop projects.

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The proposed language on page 13, lines 9-10 is extremely important to the implementation of a resource management

program. It calls for consideration of the impacts of activities that would cause direct and significant impact to coastal uses or resources. Under current law, a coastal district cannot consider the cumulative impact of activities that would cause damage to a resource if the activity occurs outside the boundaries of coastal resources. For example, an activity in an upland that has a clear potential to damage a nearby wetland may not be considered in a district consistency review. The language proposed in this section must be part of any rational management program.

4:34:20 PM

MR. WILLIAMS said the Kenai Peninsula Borough Coastal Program is part of the Kenai River Center, a multi agency one-stop permitting entity where borough, state, and federal resource managers work together to process permit applications. When they disagree, they talk. Bright lines of authority don't always exist so it's valuable to have some overlap in regulations. It's also important that this legislation seeks to be inclusive in interagency and intergovernmental relationships and seeks to communicate common concerns and understanding. SB 4 is a firm step in the direction of facilitating local entities and state agencies to work as partners to ensure that development and resource protection are in balance.

4:35:41 PM

LINDSAY WOLTER, Attorney, Department of Law, said she is available to answer questions.

PAUL LAIRD, General Manager, Alaska Support Industry Alliance (ASIA), stated opposition to SB 4. The program was reformed in 2003 to address inconsistencies, ambiguities, and redundancies that hampered resource development projects and discouraged investment in Alaska. The reforms work and have not compromised environmental standards.

ASIA membership includes more than 460 organizations that provide goods and services to Alaska's oil, gas, and mining industries. Investments by these industries are the backbone of the state's economy, and these industries are the most susceptible to the regulatory roadblocks embodied in SB 4. Already the industry has reduced investments because of the economic downturn, lower oil and gas prices, and an uncompetitive state tax structure for oil and gas. Recently hundreds of industry workers have been laid off and thousands more are vulnerable. Alaska contractor and supplier margins are being squeezed as oil companies seek to reduce operating and

capital costs. Don't jeopardize more Alaska jobs and businesses by again creating regulatory and permitting obstacles in the ACMP, he said. This would make Alaska even less attractive for investment.

[4:37:55 PM](#)

SENATOR FRENCH asked about provisions of the bill that could arguably allow local override of DNR. He can see the argument in section 9, but he'd like DOL's view about whether section 14 allows for a coastal zone management plan adopted under SB 4 to override DNR.

MS. WOLTER replied sections 14 and 19 go hand in hand. Under section 14 the board would not be able to approve any policies that did not also meet requirements under section 9. While language in section 14 does not speak specifically to what happens if enforceable policies are stricter or more specific than state or federal statutes, that would still need to be addressed because of section 9.

[4:40:03 PM](#)

SENATOR FRENCH said essentially that is a borough or city overriding the state to adopt a 35 mile per hour speed limit when the state allowed a 45 mph speed limit.

MS. WOLTER agreed; although the Coastal Management Program tries to maintain consistency from district to district, a local district that wants to be more stringent might do so through their municipal code.

[4:41:44 PM](#)

BUD CASSIDY, Director, Community Development Department, Kodiak, said that as one of the largest and most diversified commercial fishing ports in the nation, coastal resources are critically important to Kodiak's economic wellbeing as well as its physical and social wellbeing through subsistence uses. Equally important to the economy are the processing and transportation industries, both of which are built along the coast.

Past experience with the ACMP shows that commercial fishing, subsistence, and development support one another when there is meaningful dialog. The old ACMP worked well because it encouraged local input and sought coordination between local entities and state agencies. Kodiak residents and fishermen feel that the collaboration between agencies with expertise and entities with local knowledge results in reduced conflict and makes for better decisions that are more generally accepted by

all parties. Mr. Cassidy said the key word is "coordinate" and he doesn't see in the current program. Many citizens have become disengaged from the coastal management process, because the community has a very limited role.

MR. CASSIDY said that as residents they may not have the expertise to determine water and air quality or to know the science behind managing fish and game resources, but their local expertise and experience should be considered and included when decisions are made. The Kodiak Borough Assembly supports SB 4 and has passed a resolution to that effect.

[4:44:48 PM](#)

MARLENE CAMPBELL, Coastal Management Coordinator, City and Borough of Sitka, said the Assembly adopted a resolution supporting SB 4. Prior to the 2003 revisions to the ACMP, the model Sitka plan enabled the community to protect local resources and activities while also permitting responsible development. As a result of the 2003 revisions, Sitka lost more than half of its enforceable policies as well as its seat at the table for permit and management decision-making affecting coastal communities. SB 4 would restore that seat by establishing the Coastal Policy Board, which will have high level representation from agencies and coastal districts. All interests will be represented and a more coordinated review will result as opposed to the current unilateral decision-making by only DNR. This legislation will also streamline project reviews by including DEC in the review process rather than separately through the dysfunctional DEC Carve-Out.

MS. CAMPBELL restated that the 2003 revisions to the ACMP damaged the formerly strong and effective Sitka program. SB 4 is a step forward to reinstate the best features of the ACMP.

[4:47:35 PM](#)

BARRETT RISTROF, Attorney, North Slope Borough, said she participated in the mediation and ACMP reevaluation. She disagrees with the DNR testimony that SB 4 would override agency authority to address natural resource issues. The bill doesn't do that because the Legislature has the power to delegate its authority and determine which actions each agency will take regarding state coastal management. Contrary to DNR testimony, SB 4 requires policies to be supported by scientific evidence or by contemporary or traditional local knowledge that would justify the policies.

The state constitution empowers municipalities to enact laws on management concerns provided they do not conflict with state and federal law. SB 4 does not change this. DNR has said that if municipalities want stricter laws this would need to be done through municipal codes and they cannot regulate the OCS. However, she said, with the exception of AS 29.35.020, which deals with extraterritorial jurisdiction, municipalities generally cannot use their municipal code to regulate outside their bounds. The ACMP is a unique chance for local entities to work in partnership with the state and federal government to do things they wouldn't ordinarily deal with when they work with municipal codes. When the state says it cannot make policies that deal with marine mammals because the federal government would preempt it through the Marine Mammal Protection Act, the state is ceding its power to do something the Coastal Zone Management Act would allow, she said.

MS. RISTROF said that in April 2007 DNR announced it would reevaluate the ACMP yet it took more than a year to initiate the process. Participants worked hard to craft a bill that everyone could agree on, but DNR chose not to continue the reevaluation stating that it was unable to obtain a consensus. At the conference in December DNR indicated it wouldn't necessarily submit modifying legislation even with 99 percent consensus. SB 4 may not have 99 percent consensus, but it does strike a balance. It would not stop development or jeopardize jobs. It would streamline development of oil and gas resources and allow Alaskans to preserve renewable resources.

CO-CHAIR WIELECHOWSKI assumed the gavel.

[4:51:01 PM](#)

JACK OMALACK, Kawerak Incorporated, said the 20 regional villages that Kawerak represents all support SB 4. It would reestablish local participation in the management policies of the ACMP. Recent efforts to impart crucial and knowledgeable local information regarding coastal management strategies often have been lost within the DNR coastal management plan process. Local communities became disenfranchised by inefficient policies and procedures. They believe that establishing a Coastal Policy Board would alleviate some of the problems inherent in having a single agency oversee this large and intricate program. They further believe that local communities have the right to have a meaningful influence in the decision-making processes concerning resources within their local management districts. SB 4 would address such concerns.

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STEVE TOBISH, Senior Planner, Municipality of Anchorage, said the municipality supports SB 4. The 2003 changes to the ACMP reduced the role of the municipality in coastal activities particularly in environmental permit reviews. The municipality lost its ability to craft enforceable policies that could be used to shape local projects and guide federal and state reviews. Initially their plan had 82 primary enforceable policies and now it has 5 rather generic policies that are little used. The old plan also incorporated the Anchorage Coastal Management Plan, which meant that their enforceable policies could be carried as conditions on state consistency findings, particularly for Corps permits. The state's review was a vehicle for their policies and it's safe to say that Anchorage would not have developed the way it did in the booming '80s and '90s without the policies that in some cases nearly superceded federal regulations.

MR. TOBISH said the Knik Arm ferry is an example of how the current changes have negatively affected the municipality. The original plan had 5 or 6 policies that would have helped guide MatSu in locating their ferry terminal at the Port of Anchorage. Without that guidance MatSu has languished for more than a year trying to identify a landing site, and is currently looking at a site that the municipality does not support.

SB 4 addresses and resolves problematic sections of the current legislation. The suggested changes would allow coastal districts and communities to customize enforceable policies in ways that maximize local control. Districts would be guaranteed an active seat at the table during state and federal permit reviews. Right now this is missing. The Coastal Policy Board will bring back a well represented nearly adjudicatory body that balances program administration and decision-making.

MR. TOBISH said that SB 4 better represents what Alaska wanted in the original program. It's what enabled communities to initially accept the ACMP.

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MAUREEN MCCRAIG, said three significant problems in the current coastal program that are addressed by SB 4 include: the ability of coastal districts to have enforceable policies that address specific district needs; the return of DEC permits to the consolidated ACMP consistency review; and the formation of a Coastal Policy Board.

In 2003 the Legislature restructured the coastal program and district policies are now missing. Coastal districts only received deference in the interpretation of their own policies. By denying coastal districts their policies, DNR was able to effectively diminish the deference it was supposed to give.

MS. MCCRAIG opined that removing DEC permits from the coordinated review has led to delay and dysfunction. For example, federal permits from the Corps of Engineers wetland program cannot be issued without both the DEC water quality certificate and the ACMP consistency decision. Prior to 2003 both decisions came together and that is no longer the case.

MS. MCCRAIG said she supports creation of the Coastal Policy Board. Participants would reflect diversity and decisions would only focus on policies.

SB 4 would provide an effective district voice to diverse coastal areas. It would restore DEC to the integrated review process and establish a policy board to ensure balanced decisions.

CO-CHAIR WIELECHOWSKI announced he would hold SB 4 in committee to provide additional opportunity to testify.

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There being no further business to come before the committee, Co-Chair Wielechowski adjourned the Senate Resources Standing Committee at 5:01 p.m.