

HOUSE FINANCE COMMITTEE

April 11, 2011

9:48 a.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:48 a.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Eric Feige, Co-Chair, House Resources Committee; Representative Bob Herron, Co-Chair, House Resources Committee; Representative Mike Hawker; Representative Kyle Johansen; Joseph Balash, Deputy Commissioner, Department of Natural Resources; John J. Burns, Attorney General, Department of Law; Michael Satre, Executive Director, Council of Alaska Producers.

PRESENT VIA TELECONFERENCE

Frank Kelty, Aleutians West Coast Resource Service Area, Unalaska; Steve Borell, Executive Director, Alaska Miners Association; Jason Brune, Executive Director, Resource Development Council; Kara Moriarty, Deputy Director, Alaska Oil and Gas Association, Anchorage.

SUMMARY

HB 106 COASTAL MANAGEMENT PROGRAM

HB 106 was HEARD and HELD in committee for further consideration.

SB 1 BD OF ED./EARLY DEVELOPMENT ANNUAL REPORT

CS SB 1 (EDC) was SCHEDULED but not HEARD.

#hb106

HOUSE BILL NO. 106

"An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities of the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 22, ch. 31, SLA 2005; and providing for an effective date."

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JOSEPH BALASH, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, reviewed the Alaska Coastal Management Program (ACMP) and the motivation for HB 106. He explained that the bill was designed to extend the ACMP for six years. The program will terminate on July 1, 2011 without legislative action. He communicated that the governor recognized the value that the ACMP brings to extend the state's authority to federal lands and federal activities in the coastal zone, and incorporate local participation in the permitting process.

Mr. Balash instructed that the ACMP was a federally authorized voluntary state program. Participation allows the state to oversee the responsible development of coastal resources and federal activities within the coastal zone and outer continental shelf. Proposed development activities are subject to review for compliance through a consistency review process. The consistency review process invited state and federal agencies, coastal districts, and the public to evaluate a project and help determine compliance with ACMP statewide standards and district enforceable policies.

Mr. Balash addressed the size of Alaska's coastal zone. He noted that the coastal zone was the most expansive in the country. The zone reaches from anadromous water bodies several hundred miles inland to the offshore three mile limit of state jurisdiction.

Mr. Balash pointed out that Alaska was unique in its structure of the ACMP. Local participation was involved in both the planning and consistency review process. He identified 35 coastal districts: 33 districts with approved plans, 28 districts with revised plans and 25 districts with plans in effect.

Mr. Balash discussed recommendations by the Division of Legislative Audit. The division conducted an audit (copy on file), of the ACMP as part of the sunset provision. The department believed that the audit represented a comprehensive and objective review of the program. The audit concluded that the legislature should reauthorize the program; the program was operating consistent with statutes, regulations, and legislative intent. Substantial revisions were made to the ACMP in 2003. The review determined that the program changes did not diminish the states' rights under the Coastal Zone Management Act; the federal authorizing statute. The audit maintained that the Department of Natural Resources (DNR) was the appropriate administrative agency for the ACMP. He reported that the audit recommended improvements to the program. Certain aspects of the program could take measures to improve transparency. Some of the ACMP changes in 2003 resulted in lessened consensus building among review participants.

Mr. Balash furthered that the administration was satisfied with the current structure of the program. Coastal districts had expressed dissatisfaction with elements of the program. The administration requested that sunset provision legislation travel separately from any proposed substantive changes to the program.

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Mr. Balash continued to discuss HB 106. He pointed out that the House Resources Committee version included amendments to the legislation. The department had engaged with members of the committee to keep the amendments acceptable to the administration; maintain program operations in a predictable manner with objective standards and clear lines

of authority. He announced that Attorney General Burns would speak to the department's concerns regarding CS HB 106 (RES). Mr. Balash concluded that the department supported extension of the program.

JOHN J. BURNS, ATTORNEY GENERAL, DEPARTMENT OF LAW, spoke to the administration's concerns with the legal impacts of CS HB 106 (RES). He recognized the need for coastal communities to have greater input in the ACMP process. He discovered a number of issues that required modification or clarification in the legislation. He highlighted the significant issues beginning with Section 2, Page 4, Lines 12-14:

(2) in accordance with AS 46.39.040(4), provide a forum for representatives of affected interests to discuss and attempt to resolve issues related to this chapter, AS 46.40, and the coastal uses and resources of the state.

Mr. Burns assessed that the intent was to create a board that would provide a forum to resolve issues. He warned that the phrase, "to discuss and attempt to resolve issues" would invite litigation if a resolution was not reached.

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Mr. Burns moved to, Section 7, Page 6, Lines 6-8:

(d) All reviews and revisions shall be in accordance with [THE STATEWIDE STANDARDS AND] district plan criteria adopted under AS 46.40.040. Changes to a district coastal management plan may not conflict with statewide standards.

Mr. Burns explained that the passage was particularly problematic. There was a significant difference between "conflict with" and adding to statute. It allowed for adoption of more stringent standards. He exemplified the Endangered Species Act (ESA), and critical habitat designations. The state did not possess current standards. He directed attention to Section 9, Page 8, Lines 4-5:

(F) designating and developing policies for special management areas [THE USE OF AREAS OF THE COAST THAT MERIT SPECIAL ATTENTION]; and

Mr. Burns questioned the definition of a "special management area". He advised that the designation could entail developing a whole new set of standards or processes for management. He moved to, Section 10, Page 9, Lines 20-22:

(d) The superior courts of the state have jurisdiction to enforce orders of the department or commissioner of natural resources entered under (c) or (e) of this section.

Mr. Burns sought to define the groups or individuals that would gain the right to bring a case to the superior court. He cautioned that the authority for the superior court to "enforce orders" could invite increased litigation. He emphasized that if the intent of the legislation was to enable coastal districts to have greater input the legislation should limit the opportunity for "other" parties to bring forward disputes and litigation. He related that the problem was repeated in line 24:

(e) A person affected by a decision of the department under this section may

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Mr. Burns stressed that "a person" could be anybody and warned that could open Pandora's Box to additional resource development litigation.

He addressed Section 12, which related to requirements for department review and approval. He cited Page 10, Lines 4-6:

Sec. 46.40.070. Requirements for department review and approval. (a) The department shall approve a district coastal management plan submitted for review and approval if the

The section continued to list the criteria for approval. He argued that the provision mandates approval of a plan if it meets the limited criteria. The mandatory provision was a significant concern because it could add additional layers of restrictions such as ESA or critical habitat provided it does not "conflict with" existing standards. He asserted that a plan submitted for review must be approved if it does not conflict with the limited criteria in Section 12. He cited Page 10, Line 10(B):

(B) does not conflict with the statewide standards adopted by the department; and

Mr. Burns pointed out that the department referred to was DNR. The Department of Environmental Conservation (DEC) was statutorily mandated to review ACMP plans and would no longer have review authority under the provision. He discussed the intent of Line 18, on Page 10:

(b) The enforceable policies in a district coastal management plan submitted

Mr. Burns deemed that the intent was if the state or federal agency objected to a plan that new standards adopted under Section 12 may not apply. However, Section 12 (a) mandates approval; the plan should not be objected to by the state. Subsections (a) and (b), in Section 12 required alignment. He added that it was impossible for the State to mandate that the federal government must object to a plan within a certain time or they would lose the right in the future. He explained that that the federal government retained the right to object at any time.

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Mr. Burns directed attention to Section 14 related to the review process. He referenced Page 12, Lines 15-18:

(C) "shall be completed with the issuance of a written order signed by at least two of the commissioners of the resource agencies [DEPARTMENT] within 45 days after the initial request for an elevation [SUBSEQUENT REVIEW] under this paragraph

Mr. Burns considered the repercussion if a consistency determination was not rendered within 45 days.

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REPRESENTATIVE ERIC FEIGE, CO-CHAIR, HOUSE RESOURCES COMMITTEE, delineated the Resources Committee process that lead to CS HB 106 (RES). He communicated that the committee held nine meetings over several weeks. The committee had worked with the administration, DNR, coastal districts, and industry representatives. The committee reviewed documents including the legislative audit. He explained that the committee attempted to work within the parameters that the

governor outlined for the ACMP: maintain predictability, maintain existing authorities and structure, and value participant input. They maintained the current standards and ensured that coastal districts had a meaningful role in the process but were not granted veto rights. He assured that the coastal districts were not seeking veto powers. The process had been long and difficult at times but he believed the committee had developed a workable compromise. He emphasized the considerable discussions with the committee, representatives from coastal districts, and DNR.

REPRESENTATIVE BOB HERRON, CO-CHAIR, HOUSE RESOURCES COMMITTEE, concurred with Representative Feige. He believed that the legislation was still a work in progress. The process would yield a good product in the end. He added that not all parties approved of the Resource Committee's version. He agreed with many of the attorney general's opinions.

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Representative Herron referred to Page 12, Line 17:

[Department] within 45 days after the initial request for an elevation

Representative Herron voiced support for the 45 day limit to ensure predictability in the process. He stressed the Resources Committee collaboration with the administration. He embraced the evolving process and would continue to help his constituents. He advocated for a process that protected the state from "outsiders." He believed that the House Finance Committee would need to develop a CS and offered his support.

Co-Chair Stoltze interjected that due to the sharp differences of opinion the process was potentially divisive but not unsolvable. Representative Herron believed that the legislature and involved parties were very close to resolving the issues and wanted the program to continue.

Representative Feige explained two sections of the bill. He reported that Section 1 would extend the ACMP for six years. Section 2 established the Alaska Coastal Policy Board. The board would be comprised of nine members: five public members from coastal districts appointed by the governor, and the commissioners of DEC, DNR, Department of Fish and

Game (DFG), and Department of Transportation and Public Facilities (DOT).

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Co-Chair Stoltze opened public testimony.

MICHAEL SATRE, EXECUTIVE DIRECTOR, COUNCIL OF ALASKA PRODUCERS, shared that the council represented large metal mines and developmental projects in the state. He stated that the council supported a simple sunset extension of the ACMP but understood the coastal districts desire to contribute meaningful local input. The council supported the elimination of Section 12 from the bill. The council surmised that the consequences of Section 12 would establish more restrictive and unpredictable standards and requirements. The council worried that the provisions could potentially allow coastal districts to mandate restrictive requirements "through the back door." He hypothesized that a coastal district could create new habitat regulations via the Endangered Species Act. The council believed enforcement policies should be uniform and based on science. Section 12 provides for ad hoc enforceable policies. In addition, the council proposed that if an order was not signed within 45 days the commissioner of DNR would decide the outcome and ensure that industry members have a seat on the Alaska Coastal Policy Board.

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FRANK KELTY, ALEUTIANS WEST COAST RESOURCE SERVICE AREA, UNALASKA (via teleconference), related that his district was in support of the legislation. They did not have an opinion on the CS. The district supported the provision to eliminate designated areas. He referred to the DEC "carve out" and expressed concerns. The Aleutians West district went from 60 enforceable policies down to 10. He felt that the coastal districts should have a voice in air, water and land issues. The district supported the re-formation of the Alaska Coastal Policy Board; although it was considerably weakened in the CS.

STEVE BORELL, EXECUTIVE DIRECTOR, ALASKA MINERS ASSOCIATION (via teleconference), expressed concerns that the bill was forced through at the end of session. He relayed that the association was not familiar with all of the various items that needed to be addressed in the legislation. He

commented on the Alaska Coastal Policy Board. He recommended that representatives from regulated industry should be included on the board as the at large member.

JASON BRUNE, EXECUTIVE DIRECTOR, RESOURCE DEVELOPMENT COUNCIL (via teleconference), voiced support for the original legislation. He explained that his organization did support changes to ACMP to enhance local input and increase coastal district participation. He did not believe there was enough time to deal with the issue in the remaining days of session. He referred to provisions in the CS as ambiguous. He cited Page 13, Line 20:

district plan criteria, and is not inconsistent with the statewide standards, adopted

Mr. Brune queried why the words "is consistent" were not used. He underscored concerns related to Sections 12, 14, and 18 of the legislation. The council recommended the deletion of lines 20-21, subsections (b) on Page 10:

within the authority of a state or federal agency unless the state or federal agency specifically objects.

Mr. Brune added that the council also recommended the deletion of lines 25-31, subsections (d) on Page 10:

(d) In this section, "specifically objects" means that a written objection to the enforceable policy that establishes the new standards or requirements is filed with the department by

- (1) the commissioner of a state agency;
- (2) the head of a federal agency operating in the state;
- (3) the official responsible for a federal agency's operations in the state; or
- (4) legal counsel for a federal agency operating in the state.

Mr. Brune recommended specific language changes to Section 14, page 12, subsection (C) as follows: "shall be considered by the commissioners of the resource agencies within 45 days after the initial request for an elevation under this paragraph. If the decision is not rendered within 45 days the commissioner of the department will have 10 days to render the final consistency determination and certification"

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Mr. Brune furthered that the designation "special management areas" (Section 18) needed a precise definition. He concluded that the Alaska Coastal Policy Board members should include members from industry and structured similar to the Board of Forestry.

KARA MORIARTY, DEPUTY DIRECTOR, ALASKA OIL AND GAS ASSOCIATION, ANCHORAGE (via teleconference), stated that the association did not support the current CS. She shared that the association had been actively engaged in the ACMP program since its inception. She indicated that several of the association's concerns had been mentioned in prior testimony including the attorney general's comments. The association believed that the concerns related to the composition of the board could be easily addressed. She reiterated concerns expressed with Section 12.

HB 106 was HEARD and HELD in committee for further consideration.

#sb1

CS FOR SENATE BILL NO. 1(EDC)

"An Act requiring the state Board of Education and Early Development to provide an annual report to the legislature."

CS SB 1 (EDC) was SCHEDULED but not HEARD.

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ADJOURNMENT

The meeting was adjourned at 10:36 AM.

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