

HOUSE FINANCE COMMITTEE
April 11, 2011
1:34 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:34 p.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 Mike Hawker; Representative Kyle Johanson; Representative Charisse Millet; Thomas Obermeyer, Staff, Senator Bettye Davis, Sponsor; Les Morse, Deputy Commissioner, Department of Education and Early Childhood Development; Dana Owen, Staff, Senate Labor and Commerce Committee; Representative Eric Feige, Co-Chair, House Resources Committee; Representative Bob Herron; Joseph Balash, Deputy Commissioner, Department of Natural Resources.

PRESENT VIA TELECONFERENCE

Lindsay Wolter, Department of Law, 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

CSSB 1(EDC) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal note: FN1, EED.

SB 90 BOARD OF PUBLIC ACCOUNTANCY SECRETARY

SB 90 was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal note: FN1, CED.

#sb1

CS FOR SENATE BILL NO. 1(EDC)

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

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THOMAS OBERMEYER, STAFF, SENATOR BETTYE DAVIS, SPONSOR, summarized the legislation. The bill stipulated that the Alaska State Board of Education present an annual report to the legislature no later than the 30th day of each regular session. The report was typically presented to the legislature towards the later part of session.

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LES MORSE, DEPUTY COMMISSIONER, DEPARTMENT OF EDUCATION AND EARLY CHILDHOOD DEVELOPMENT, offered that upon passage of SB 1 the department would work with the board to ensure that the report was delivered to the legislature.

Co-Chair Stoltze OPENED and CLOSED public testimony.

Vice-chair Fairclough MOVED to report CSSB 1(EDC) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 1(EDC) was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal note: FN1, EED.

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AT EASE

[1:38:59 PM](#)

RECONVENED

#sb90

SENATE BILL NO. 90

"An Act classifying and setting a monthly salary for the executive secretary of the Board of Public Accountancy."

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DANA OWEN, STAFF, SENATE LABOR AND COMMERCE COMMITTEE, explained the legislation. He reported that the Alaska Board of Public Accountancy was authorized to hire an Executive Secretary position at a range 23 salary established in HB 315 ("An Act relating to public accounting; and providing for an effective date") during the 26th legislative session. Subsequently, the Department of Administration (DOA) classified the position at a lower range based upon a position classification study. The board was unable to hire the position at a range 23. He offered that the Senate Labor and Commerce Committee introduced the legislation to re-establish the range 23 salary in statute, according to the intent of HB 315.

Co-Chair Stoltze OPENED and CLOSED public testimony.

Vice-chair Fairclough MOVED to report SB 90 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 90 was REPORTED out of Committee with a "do pass" recommendation and with attached previously published fiscal note: FN1, CED.

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AT EASE

[1:49:23 PM](#)

RECONVENED

#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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REPRESENTATIVE ERIC FEIGE, CO-CHAIR, HOUSE RESOURCES COMMITTEE, provided a sectional analysis.

Section 1. Extends the date that the Alaska coastal management program "is subject to termination" to the first regular legislative session convening in January 2017.

Section 2. Establishes the Alaska Coastal Policy Board (board).

Representative Feige explained the composition of the Alaska Coastal Policy Board. He delineated that the board consisted of nine members: five public members; four commissioners from the Department of Natural Resources (DNR), Department of Fish and Game (DFG), Department of Environmental Conservation (DEC), and the Department of Transportation and Public Facilities (DOT). A deputy commissioner may act in place of the commissioner. He furthered that the governor would choose four public members from different coastal regions from a list provided by the region. The fifth member, chosen by the governor must reside in the coastal zone.

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Representative Feige continued with the sectional analysis.

Section 3. Requires the Department of Natural Resources (department) to prepare an annual report

summarizing the department's efforts to draft and adopt regulations under AS 46.39 and AS 46.40. The report must be posted on the department's website.

Section 4. Provides that the department may consult and cooperate with the board.

Section 5. Provides how, and to whom, the department must provide certain information. Requires the department to annually solicit issues for discussion by the board, summarize the board's discussion of these issues, and, based on the discussions, make recommendations to the commissioner of the department.

Representative Feige clarified that DNR's "duty was to provide planning and consistency review data and information of the governing body of the coastal resource district or service area." He reported that the flow of information from the department to the coastal districts was lacking. The coastal districts were left out of the information stream.

Section 6. Mandates that, if the department provides funds to a coastal resource district or service area (district) and the department provides a restriction on how the funds may be used by the district, the department must specify the law that authorizes the restriction.

Representative Feige explained that Alaska Coastal Management Program (ACMP) funding originated through the federal government to DNR as pass through grants. The department was responsible for monitoring that the money was spent according to the federal guidelines. The restrictions included lobbying and authoring legislation. The coastal districts received the money as pass through grants via DCCED. Some of the money had been inappropriately used for consultants. The Department of Commerce, Community and Economic Development (DCCED) reacted by disallowing use of the funds for any type of consultant. The Resources Committee determined that a blanket restriction for consulting was excessive and was not the intent of the funding restrictions.

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Representative Feige continued with the sectional analysis.

Section 7. Provides that changes to a district coastal management plan (plan) may not conflict with statewide standards adopted by the department.

Section 8. Provides that a plan may not conflict with statewide standards adopted by the department. Changes what a plan must include and changes the requirements for enforceable policies contained in a plan.

Section 9. Changes "the use of areas of the coast that merit special attention" to "special management areas," in a statutory section that directs the department to adopt regulations establishing statewide standards and district plan criteria for the Alaska Coastal Management Program. (The bill repeals the definition of "area which merits special attention" (bill sec. 20) and provides a definition of "special management area" (bill sec. 18)).

Representative Feige detailed that Section 9 retained the DEC "carve-out." The section "was a sticking point for the governor." The governor strongly favored the "carve out." The exemption of DEC permitting from the ACMP consistency review process allowed the review to stay on schedule. He informed the committee that a consistency determination was a pre-requisite for a DEC permit.

Section 10. Changes the process by which a plan is reviewed and approved. Removes language that requires, for the department to approve a plan, the plan to meet statewide standards and district plan criteria and not arbitrarily or unreasonably restrict or exclude uses of state concern. The plan must still meet the provisions of AS 46.40 (note that AS 46.40.030 requires a plan to meet district plan criteria and not conflict with statewide standards adopted by the department). Provides that if the department finds that a plan is not approvable, or is approvable only in part, the department shall submit the plan to the board for review and recommendations. After the board has reviewed the plan and submitted recommendations to the department, the department shall enter findings, and may, by order, require that a plan be amended or that a district take other appropriate action.

Representative Feige underscored that DNR made the final decision to approve a plan in total or in part.

Section 11. Establishes a process by which a person affected by a decision of the department relating to the review and approval of a plan may request the commissioner of the department to reconsider the decision.

Section 12. Changes the criteria by which the department will evaluate a plan submitted by a district for approval.

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Representative Feige read Page 10, lines 5-14 and lines 18-21 (Section 12) from the legislation:

the department shall approve a district coastal management plan submitted for review and approval if the

- (1) district coastal management plan
 - (A) meets the requirements of this chapter and the district plan criteria adopted by the department; and
 - (B) does not conflict with the statewide standards adopted by the department; and
- (2) enforceable policies of the district coastal management plan
 - (A) do not duplicate, restate, incorporate by reference, rephrase, or otherwise modify or adopt state or federal statutes or regulations;

- (b) The enforceable policies in a district coastal management plan submitted for review under this section may establish new standards or requirements that are within the authority of a state or federal agency unless the state or federal agency specifically objects.

He summarized that an enforceable policy cannot duplicate an existing statute. The legislation removed the requirement that the enforceable policy only applied within a designated area. He noted that a contentious issue for coastal districts was to define a "designated area" specifically in regards to subsistence.

Section 13. Requires that the department must, in regulations adopted by the department, (1) permit certain persons to participate in a consistency review, (2) provide certain persons materials relating to the consistency review, (3) make notices relating to proposed projects for which a consistency determination is sought available through the department's internet website.

Representative Feige added that Section 13 ensured that information was thoroughly disseminated.

Section 14. Relabels "subsequent reviews" as "elevations." Provides that elevations may only be conducted by the commissioners of the departments of environmental conservation, natural resources, and fish and game, or certain deputies of these commissioners. Provides how an elevation is completed.

Representative Feige explained that a contested consistency review was termed an "elevation." Previously, the commissioner of DNR was responsible for adjudicating the dispute; coastal districts felt that process was unfair.

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Representative Feige continued his sectional presentation.

Section 15. Changes "subsequent review" to "elevation" to conform the section with changes in terminology made in sec. 14 of the bill.

Representative Feige remarked that Section 14 suspended the 90 day limit while the consistency review was under elevation. The elevation period was limited to 45 days.

Section 16. Adds the commissioners of the departments of environmental conservation, natural resources, and fish and game, or certain deputies of these commissioners, to the list of entities that are "reviewing entit[ies]" for the purposes of the consistency review and determination process for certain projects.

Section 17. Changes language in a statutory section relating to the approval of plans in a coastal resource service area, requires that a new material submitted by a city or village may not conflict with

statewide standards adopted by the department. Under current law, new material submitted by a village or city must "meet[] the statewide standards."

Section 18. Establishes definitions for "elevation" and "special management area."

Section 19. Repeals the statutory section creating the board. (The repeal is contingent on the repeal of the entire coastal management program (see bill sec. 25)).

Representative Feige commented that Section 19 provided a sunset for the board.

Section 20. Repeals the definition of "area which merits special attention."

Representative Feige remarked that the repealed definition was replaced with "special management areas."

Section 21. Provides, in uncodified law, how and when the initial members of the board shall be appointed. Provides that board reviews of coastal resource management plans (see bill sec. 10) will be delayed until all members have been appointed.

Section 22. Provides, if the bill does not become law before July 1, 2011, that when the bill becomes law, the bill's provisions will be retroactive in effect to July 1, 2011, and the provisions that constitute the Alaska Coastal Management Program that have been repealed will be revived.

Section 23. Provides that the provision establishing the board (see bill sec. 2) will be repealed (see bill sec. 19) if the provisions that constitute the Alaska Coastal Management Program are repealed through the operation of secs. 1 - 13 and 18, ch. 31, SLA 2005)

Section 24. Changes the date (from July 1, 2011 to July 1, 2017) in uncodified law that the provisions that constitute the Alaska Coastal Management Program will be repealed under secs. 1 - 13 and 18, ch. 31, SLA 2005.

Section 25. Provides an effective date for sec. 19 of the bill.

Section 26. Provides, except as provided in sec. 25, an immediate effective date for the bill.

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Co-Chair Thomas wondered whether the administration's concerns with the Resources Committee version of the legislation were under discussion. Representative Feige reported that the governor's staff and the coastal districts were engaged in an "active" conversation. He believed that the differences in the program's organization were not substantial. The administration and industry had followed the Resources Committee process.

Representative Neuman cited Section 18 page 14, which defined a "special management area." He wondered if a special management area could require a subsistence priority. Representative Feige commented that the definition of a special management area in the bill was broad. He thought that the governor wanted the definition narrowed.

REPRESENTATIVE BOB HERRON, referred to the comments made by the attorney general about the label "special management area." He relayed that the attorney general sought to avoid any unintended consequences and wanted assurances that the label would change and conform to language under the Department of Law (DOL). He opined that the attorney general was not worried about subsistence by itself. He answered that if the definition of special management area "fit within the policy it could cover subsistence." He believed the section that dealt with "designated areas" was extremely important. The coastal district had to designate a subsistence area even if subsistence use in the area was not established at the time. The situation precluded the district from commenting on subsistence use in areas not designated as subsistence on any ACMP project in the future.

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Representative Herron argued that removal of "designated areas" from ACMP was the most important piece of the legislation.

Representative Feige interjected that at the same time the standards defining an enforceable policy were tightened up.

Representative Neuman restated concerns about opening up the ability to designate areas for a subsistence priority. He referred to the language in the bill that defined special management areas as "areas of unique historical significance, cultural value, essential habitat, or recreational value or opportunity." He asked if the intent of the legislation was to open up subsistence areas. Representative Feige stated that the legislation was not intended to set aside specific priority subsistence areas. The removal of the designated areas allowed the enforceable policy to apply to the entire coastal district. He reminded the committee that enforceable policies cannot supersede state or federal government authority. The removal of designated areas was a compromise to allow enforceable policies pertaining to subsistence to apply across the entire district. Otherwise, it was difficult for the districts to define subsistence areas.

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Representative Neuman announced that he had asked for an opinion from the attorney general on the subsistence issue and how it related to access.

Representative Guttenberg pointed out three places in the bill with the language "not in conflict" or "not inconsistent" with statewide standards. He queried how that conflicted with developing local enforceable policies that must conform to statewide criteria. Representative Herron was not sure. He thought that the bill accomplished that by the deletion on section 7, Page 6, line 6 of "statewide standards" and including "changes to." Recent discussions with the attorney general suggested different changes were necessary. He suggested that new language could be crafted into a new CS.

Vice-chair Fairclough pointed to Section 2 related to composition of the board. She asked whether the drafter's intent was to include industry on the statewide seat for public board members. Representative Feige answered that it was not the specific intent but the language left open the possibility for an industry seat on the board.

Vice-chair Fairclough queried compromises made to coastal communities and the interaction of decisions of a board with limited representation in juxtaposition with access by leaseholders to coastal resources. She thought that all Native Corporations benefited from coastal resources and had rights under ANCSA [Alaska Native Claims Settlement Act] to access them. She wondered how to achieve meaningful evaluation to ensure the resources benefited all state interests and not just coastal communities.

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Representative Feige repeated that the board was appointed by the governor and was also comprised of commissioners that worked in the interest of the governor. Representative Herron asked for clarification of the question. Vice-chair Fairclough stated that she was speaking to the underlying interests of all Alaskans and all Native Corporations interests outside of coastal communities. She wanted to mitigate negative environment actions inside of coastal communities, but the rest of the state also had a vested interest in resources located there. She asserted that the public sector could outvote the administration on the board, which she had not seen on other boards.

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Representative Feige reminded her that the board made recommendations and was not involved in the consistency review process. He discussed the ACMP process. He likened the ACMP process to having a "front side" and a "back side." The "front side" characterized the role of the coastal districts and the board. The coastal districts created plans and established rules for resource development. The "back side" represented the role of the state. The state's interests were represented during the consistency and elevated review processes. Disputes were adjudicated by the commissioners who represented the state's interest.

Representative Herron reiterated that all nine members were the governor's appointees. He reported that after the Resources Committee version was completed discussion continued with the administration about the composition of the fifth board member; industry was chosen by consensus. He claimed that the board's role was to "help" develop a coastal plan without involvement in the review process. He

noted that his constituents wanted an additional role, such as reviewing the regulations. He identified that the goal of CS HB 106 (RES) was to strengthen the role of the policy board which was balanced by not having veto power. He viewed the board as a team player. He supported the board's involvement in the regulatory review process.

Representative Edgmon understood that the policy board acted in an advisory capacity. The binding authority was held by DNR. He believed DNR held the significant authoritative role and that the policy board was purely advisory.

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Representative Feige agreed. He reiterated his two sided analogy: one side that represented the coastal communities establishing plans and rules and, the other side that embodied the state's role in the review process. He referred to past frustrations by the coastal communities due to lack of participation. He believed the ACMP structure kept the process "predictable."

Representative Edgmon asked what the coastal district boundaries were. Representative Herron answered that the boundaries were related to the tides. He exemplified that Bethel was in its own coastal district. The districts formed a "ribbon" along the coast. He emphasized that the districts did not reach inland.

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Representative Costello directed attention to Page 10, lines 18 - 21. She read the language:

- (b) The enforceable policies in a district coastal management plan submitted for review under this section may establish new standards or requirements that are within the authority of a state or federal agency unless the state or federal agency specifically objects.

Representative Costello interpreted that the language granted enforceable policies the weight of law unless the state or federal government objected. She asked what would happen if the enforceable policy became law and a future legislature wanted to change the law. She discerned that legislative authority was being granted to the ACMP to

write laws. Representative Herron believed that creating enforceable policies was the reason for the ACMP. He reasoned that an enforceable policy could be revised if any future objection arose.

Representative Costello commented that the state was granted powers by the federal government under the program. She wondered whether it was in the state's authority to consequently grant coastal districts the ability to create laws. Representative Herron believed that the federal government did grant the state the authority to empower the ACMP. He noted that federal authority could override the state at any time. He restated that coastal community input was the reason the ACMP existed.

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Representative Costello questioned the original purpose of the program. Representative Herron provided an analogy for the ACMP. He believed the essence of the program was to allow the coastal district to identify what was most important. The local districts concerns were limited by lacking veto power in matters of statewide importance. He felt it struck a balance between local and statewide interests. He divulged that no one wanted the federal government to run coastal zone management.

Representative Feige explained that enforceable policies would apply only to the boundaries of the coastal district. The purpose of lines 18 - 21 was to provide the state and federal agencies the authority to manage that area by granting them the final authority, while enabling the coastal district to present a desired enforceable policy.

Vice-chair Fairclough referenced the attorney general's discussion of the retroactivity issue in regards to the bill. She asked the sponsors whether they had comments on the issue.

Representative Edgmon relayed that the coastal zone management program was created by congress in 1972. He discussed the program's development. The legislation was enacted in recognition of the sensitive balance of protection and development in managing the coastal zones. The assumption was that it was necessary to grant higher authority to local entities to achieve balanced management. Alaska chose to implement the program in the late 1970s. He

concurred with Representative Herron in the belief that if enforceable provisions were not inherent in the program, what was the reason for it. He added that the federal government recognized that the state should have enforcement authority granted under them.

Vice-chair Fairclough surmised that an urban example was characterized by service areas. She exemplified the Eagle River/Chugiak park service area where the community, exercising local control decided to pay for all park projects up front. The community rejected the practice of carrying debt inside of the service area. The community chose to manage its service area differently than Anchorage. She qualified that service areas worked within the confines of state and municipal law.

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Representative Neuman wondered how much discussion regarding the DEC "carve out" ensued in the House Resource Committee. Representative Feige responded that modest discussions had occurred related to the DEC "carve out." The governor strongly advocated retention of the "carve out." The committee ascertained that the DEC permitting timeline took much longer (up to one year) than the ACMP consistency review process (35-50 days) and that DEC permitting should remain separate.

Representative Neuman asked for an explanation of the DEC "carve out." Representative Herron wanted the administration to answer the question. He characterized the "carve out" debate as very "vigorous." He relayed that Mr. Balash and the Commissioner of DEC were both very emphatic that the "carve out" would remain in statute. He did not anticipate that the DEC "carve out" would change in a House Finance Committee version of the bill. He appreciated the administration's huge effort in the process.

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Vice-chair Fairclough pointed to Page 3, line 17 of the legislation. She wondered about the transition of board members between new governors provided in Alaska Statute 39.05.080.

LINDSAY WOLTER, DEPARTMENT OF LAW, ANCHORAGE (via teleconference), stated that she would respond after examination of the statute.

Vice-chair Fairclough referenced concerns related to the 45 day timeline for a consistency review elevation.

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JOSEPH BALASH, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, addressed Section 14 that defined the process of a consistency determination elevation. He summarized the process. The applicant or coastal district may contest a consistency determination through an elevation carried out by the resource commissioners. He noted that presently the Division of Coastal and Ocean Management (DCOM) was the reviewing entity and the commissioner of DNR conducted elevation determinations. In the current version the three resource commissioners would issue a written order completed within 45 days and signed by at least two commissioners. The department wanted clarification on the repercussions in the case of an impasse between all of the commissioners after 45 days. He noted considerable discussion on the issue during the committee process. The administration believed that the proposed elevation process lacked consistency. Representative Herron related that the administration wanted to eliminate the 45 day limit. He believed an uncertain time limit lacked predictability. He proposed more dialogue on the issue.

Vice-chair Fairclough queried what would happen if an elevation process ended in an impasse. She asked whether he had a compromise solution. Representative Herron relayed that the attorney general would offer compromise language. He hoped that the language would provide consistency.

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Representative Edgmon asked whether the present consistency review process dictated timelines. Mr. Balash explained that presently a 30-day or 50-day consistency review process was utilized depending on the type of review. The applicant or coastal district may elevate a consistency review determination by DCOM to the DNR commissioner. The commissioner had 45 days to review the determination. He added that once an elevation was requested the clock stopped on the original consistency review and began again

after the elevation was completed. He felt that elevating a determination to three commissioners was problematic.

Representative Doogan asked what would happen if HB 106 was not adopted. Mr. Balash informed the committee that the program was voluntary. The Coastal Zone Management Act, the federal authorizing statute, would be repealed and Alaska's participation would come to an end. A federal agency would become the reviewing entity, and take the place of DCOM. The state would be left out of certain permitting decisions affecting the coastal zone.

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Representative Doogan wondered who would control the coastal zones. Mr. Balash remarked that "the permitting processes would go on without the consistency review process at the front end of the permitting regime."

Representative Herron added that the federal government would take over. He recommended reading a letter to the Resources Committee by the mayor of Anchorage, which he thought was remarkable. Representative Doogan noted that any action or inaction would have impacts. He wanted to know what they were in case an agreement on ACMP was not reached.

Co-Chair Thomas believed that if the bill was not passed the coastal zone management staff would be laid off. He commented that \$3.6 million in savings would occur.

Vice-chair Fairclough pointed out that outcome could cost the state much more if the federal government gained control.

Vice-chair Fairclough asked for clarification of the DEC carve-out.

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Mr. Balash cited that the DEC "carve out" was found in the Alaska Statute 4640.040b. He detailed that the subsection listed the statutory authority of DEC. Subsection 040b stated that DEC authorities were the exclusive regulations for the ACMP. The issuance of a permit by DEC automatically constituted consistency. He added that certain DEC permits had complicated and drawn-out timelines. The ACMP

consistency review timelines do not match up with DEC in most cases. He continued that some requirement for air and water standards were under federal clean water and air regulations. The "carve out" ensured local standards were kept in compliance with federal regulations.

Vice-chair Fairclough CLOSED public testimony.

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Representative Joule offered that the discussion on ACMP was lacking for five years. He felt confident that an agreement was within reach. He advocated maintaining the ACMP.

Representative Edgmon opined that if the program was crafted right the ACMP would enable and not disable resource development. He thought the ACMP could unite local districts to form a buffer against "interventionists" that held up progress in courts. He believed the ACMP process supported statewide interests.

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Representative Feige agreed. He opined that a well-defined, organized, and enforceable coastal management plan for all coastal districts added certainty to go forward with coastal projects. The certainty increased the potential for more coastal resource projects in the future.

Representative Herron acknowledged that the bill was not perfect. He relayed what the attorney general wanted to accomplish in a new CS. The attorney general wanted protection against entities that endeavored to "take down responsible resource development" through litigation. He agreed the legislation provided an opportunity to forge a responsible coastal policy.

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

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ADJOURNMENT

The meeting was adjourned at 3:10 PM.