

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 4, 2011

1:07 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Bob Herron
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S):

BIG GAME COMMERCIAL SERVICES BOARD

Karen Polley - Juneau

- CONFIRMATION(S) ADVANCED

BOARD OF GAME

Stanley (Stosh) L. Hoffman, Jr. - Bethel

Ted H. Spraker - Soldotna

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 186

"An Act relating to the authority of the commissioner of fish and game with regard to the importation or relocation of wood bison in the state."

- HEARD & HELD

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."

- MOVED CSHB 106(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 186

SHORT TITLE: WOOD BISON

SPONSOR(S): REPRESENTATIVE(S) DICK

03/10/11	(H)	READ THE FIRST TIME - REFERRALS
03/10/11	(H)	RES
04/04/11	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 106

SHORT TITLE: COASTAL MANAGEMENT PROGRAM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	RES, FIN
03/07/11	(H)	RES AT 1:00 PM BARNES 124
03/07/11	(H)	Heard & Held
03/07/11	(H)	MINUTE(RES)
03/11/11	(H)	RES AT 1:00 PM BARNES 124
03/11/11	(H)	Heard & Held
03/11/11	(H)	MINUTE(RES)
03/16/11	(H)	RES AT 1:00 PM BARNES 124
03/16/11	(H)	Heard & Held
03/16/11	(H)	MINUTE(RES)
03/18/11	(H)	RES AT 1:00 PM BARNES 124
03/18/11	(H)	Heard & Held
03/18/11	(H)	MINUTE(RES)
03/23/11	(H)	RES AT 1:00 PM BARNES 124
03/23/11	(H)	Heard & Held
03/23/11	(H)	MINUTE(RES)
03/25/11	(H)	RES AT 1:00 PM BARNES 124
03/25/11	(H)	Heard & Held
03/25/11	(H)	MINUTE(RES)
03/28/11	(H)	RES AT 1:00 PM BARNES 124
03/28/11	(H)	Heard & Held
03/28/11	(H)	MINUTE(RES)
03/30/11	(H)	RES AT 1:00 PM BARNES 124
03/30/11	(H)	Heard & Held
03/30/11	(H)	MINUTE(RES)

04/04/11

(H)

RES AT 1:00 PM BARNES 124

WITNESS REGISTER

KAREN POLLEY, Appointee

Big Game Commercial Services Board

Juneau, Alaska

POSITION STATEMENT: Spoke as an appointee to the Big Game Commercial Services Board.

STANLEY (STOSH) L. HOFFMAN, JR., Appointee

Board of Game

Bethel, Alaska

POSITION STATEMENT: Spoke as an appointee to the Board of Game.

TED H. SPRAKER, Appointee

Board of Game

Soldotna, Alaska

POSITION STATEMENT: Spoke as an appointee to the Board of Game.

MIKE CRAWFORD, Chair

Kenai Soldotna Fish & Game Advisory Committee;

President, Safari Club International - Kenai Chapter

Soldotna, Alaska

POSITION STATEMENT: Supported the re-appointment of Mr. Ted Spraker to the Board of Game.

JOE BALASH, Deputy Commissioner

Department of Natural Resources

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 106, provided comments.

ACTION NARRATIVE

[1:07:17 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Feige, Seaton, Kawasaki, Dick, Foster, and Herron were present at the call to order. Representatives Wilson, Munoz, and Gardner arrived as the meeting was in progress.

CONFIRMATION HEARING(S): Big Game Commercial Services Board

[1:08:13 PM](#)

CO-CHAIR FEIGE announced that the first order of business is the confirmation hearing of Karen Polley, appointee to the Big Game Commercial Services Board.

CO-CHAIR FEIGE passed the gavel to Co-Chair Seaton.

[1:08:48 PM](#)

KAREN POLLEY, Appointee, Big Game Commercial Services Board, specified that she is interested in being on the Big Game Commercial Services Board as a public member. She said her 40-plus years as a resident of Alaska, during which she has hunted and fished, qualify her. Furthermore, her travels throughout the state have familiarized her with the geography of the state. She informed the committee that she has served on the Professional Teaching Practices Commission. Ms. Polley opined that the Big Game Commercial Services Board attempts to ensure that the behavior in the state is professional and ethical, while managing the taking of big game with a wise resource management focus. Ms. Polley reiterated that she would be serving as a public member on the board.

[1:10:11 PM](#)

REPRESENTATIVE KAWASAKI inquired as to Ms. Polley's opinion of the special use guide areas, which has been controversial in the past.

MS. POLLEY related that the guide use areas have been determined and the [Big Game Commercial Services Board] is working on some of the boundaries of these areas to include more state lands and to make them match up with natural resource use areas. She opined that the professional guides themselves are working to manage those special guide use areas through some of the regulations they are supporting with the Big Game Commercial Services Board.

[1:11:14 PM](#)

MS. POLLEY, in response to Representative Herron, specified that at this time she does not have an opinion as to whether she likes or dislikes exclusive guide areas. However, she viewed them as existing and needing proper management through a fair and equitable process.

[1:11:59 PM](#)

REPRESENTATIVE HERRON, regarding big sheep, opined that the current system allows outfitters to go to any drainage and "vacuum up" all of the sheep and then move on to the next drainage. Therefore, they have no reason to take care of the target species or the region. He then asked if Ms. Polley would rather have an exclusive system so that so many people aren't preying on a small population, such as is the case with the big sheep.

MS. POLLEY informed the committee that through the transporter system, reporting of the game taken in these drainage areas goes to the Alaska Department of Fish & Game (ADF&G) and the Big Game Commercial Services Board. The management of the sheep is then the responsibility of several agencies, including ADF&G, [the Bureau of] Land Management, and the Big Game Commercial Services Board. She opined that the game resource taken from the drainage areas must be managed as it's a public resource. To make it exclusive to one group is inappropriate, she further opined.

[1:13:55 PM](#)

CO-CHAIR SEATON, upon determining there was no one interested in testifying, closed public testimony.

[1:14:06 PM](#)

REPRESENTATIVE FOSTER moved to advance the confirmation of Ms. Polley to the Big Game Commercial Services Board to the joint session for consideration. There being no objection, the confirmation was advanced.

[1:14:35 PM](#)

CO-CHAIR SEATON reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

CONFIRMATION HEARING(S): Board of Game

[1:14:57 PM](#)

CO-CHAIR SEATON announced that the next order of business is the confirmation hearings of Stanley (Stosh) L. Hoffman, Jr. and Ted H. Spraker, appointees to the Board of Game.

[1:15:26 PM](#)

STANLEY (STOSH) L. HOFFMAN, JR., Appointee, Board of Game, informed the committee that he is a life-long Alaskan who was born in Bethel, obtained his education in the state, and has worked in the state. Currently, Mr. Hoffman, Jr., is working with the Yukon Kuskokwim Health Corporation, with which he has worked for about the last five years. While living in Bethel, Mr. Hoffman, Jr., has worked as a guide in Unit 19B and has been a commercial fisherman on the Lower Kuskokwim River for about 30 years. Mr. Hoffman, Jr., explained that he is interested in serving on the Board of Game because he has been involved in some complex issues during the past few years [on the board] and he would like to offer that knowledge. He opined that he would be letting Alaskans down if he did not put his name back into the hat.

[1:17:20 PM](#)

REPRESENTATIVE HERRON requested Mr. Hoffman share his biggest surprise and disappointment since being appointed to the Board of Game two years ago.

MR. HOFFMAN, JR., said that there were lots of surprises from the Bethel and McGrath areas. There were also lots of learning, listening, and research during the process, he related. With regard to disappointments, he said there were none. Although he mentioned that being from rural Alaska he is often on the short end of the stick as far as voting purposes.

[1:19:00 PM](#)

REPRESENTATIVE DICK inquired as to the opinion of Mr. Hoffman, Jr., regarding predator control. He also inquired as to whether he had any creative ideas for increasing moose populations.

MR. HOFFMAN, JR., noted that Representative Dick was his teacher 30 years ago or so. He said that he supports predator control when there is a need for it and the biology and studies show that it is needed.

[1:20:04 PM](#)

CO-CHAIR SEATON, upon determining there were no further questions or testimony, closed public testimony.

[1:20:24 PM](#)

REPRESENTATIVE FOSTER moved to advance the confirmation of Mr. Hoffman, Jr., to the Board of Game to the joint session for consideration. There being no objection, the confirmation was advanced.

[1:21:06 PM](#)

CO-CHAIR SEATON then turned the committee's attention to the appointment of Ted Spraker to the Board of Game.

[1:21:29 PM](#)

TED H. SPRAKER, Appointee, Board of Game, began by informing the committee that he and his wife have three children, all of which were born in Soldotna. In fact, one of the three children continues to live and work in the state. He then told the committee that he was raised in Wyoming where he also attended college and graduate school, which he completed in 1973 and then moved to Alaska shortly thereafter. Mr. Spraker related that he has a bachelor's degree in Wildlife Management and a master's degree in Range Management. He then related his work history in Alaska, which began with the U.S. Fish and Wildlife Service in Southeast Alaska. He was then hired as an assistant wildlife biologist by the Alaska Department of Fish & Game (ADF&G) in February 1974 and ultimately, was promoted to the position of biologist for the Kenai Peninsula. Mr. Spraker related that after 28 years of service he retired from ADF&G in 2002 and was appointed to the Board of Game in 2003. He further related that he has served as the Board of Game representative on the Big Game Commercial Services Board since it began in 2004. Since retirement, Mr. Spraker has served three terms on the Board of Game under three different administrations. He said he looked forward to another term to address the challenging issues of the state. He noted that he is a long-time member of the Alaska Trappers Association, a charter member of Safari Club International, a 4-H Shooting Sport Instructor, and a lifetime member of the National Rifle Association. Mr. Spraker told the committee that he and his wife dedicate much of their spare time to youth firearm safety and educational hunting programs. In conclusion, Mr. Spraker stated that working with wildlife management issues and the public has been a long career and he continues to enjoy it. He expressed his hope to be confirmed for another term in order to continue to work with the public and the resources of the state.

[1:25:17 PM](#)

CO-CHAIR SEATON, upon determining there were no questions from the committee, opened public testimony.

[1:25:41 PM](#)

MIKE CRAWFORD, Chair, Kenai Soldotna Fish & Game Advisory Committee; President, Safari Club International - Kenai Chapter, opined that the re-appointment of Mr. Spraker to the Board of Game would be beneficial as his experience is undeniable. Furthermore, Mr. Spraker is always well prepared and listens to the various viewpoints expressed at the Board of Game meetings. Moreover, Mr. Spraker explains his viewpoint well as well as that of the Board of Game. Mr. Spraker's knowledge with regard to the predator management in the state is valuable. As a biologist Mr. Spraker understands the science of matters as well as the need to build a record on important issues such as predator management. Furthermore, Mr. Spraker has received a lifetime conservation award from Safari Club International and the Alaska Outdoor Council (AOC). Mr. Crawford informed the committee that Mr. Spraker regularly attends the Kenai Soldotna Fish & Game Advisory Committee meetings, which he believes Mr. Spraker does throughout the Kenai Peninsula. Mr. Spraker also attends the Alaska Trappers Association meetings regularly. He reviewed the various other organization meetings that Mr. Spraker attended. Mr. Crawford concluded by relating that Mr. Spraker is a valued member of the committee that has much support from the Kenai Peninsula.

[1:27:43 PM](#)

CO-CHAIR SEATON, upon determining no one else wished to testify, closed public testimony. However, he noted that the committee packet should include letters from the Alaska Federation of Natives and Ahtna, Inc., in support of Mr. Spraker's re-appointment.

[1:28:32 PM](#)

REPRESENTATIVE FOSTER moved to advance the confirmation of Mr. Spraker to the Board of Game to the joint session for consideration. There being no objection, the confirmation was advanced.

HB 186-WOOD BISON

[1:29:10 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 186, "An Act relating to the authority of the commissioner of fish and game with regard to the importation or relocation of wood bison in the state."

[1:29:20 PM](#)

The committee took an at-ease from 1:29 p.m. to 1:30 p.m.

[1:30:54 PM](#)

REPRESENTATIVE DICK, speaking as the sponsor of HB 186, paraphrased from the following sponsor statement [original punctuation provided]:

Wood bison are an endangered species. The only herd of Wood bison in the whole United States resides in the Wildlife Conservation Center in Portage, AK awaiting release. They have been promised a 10-J exemption to the Endangered Species Act.

Alaska Department of Fish and Game has planned for years to introduce those bison into the Innoko River drainage, close to the villages of Shageluk, Anvik, Holy Cross and Grayling.

The people of that area have cooperated with ADF&G, unaware of the potential long-term, irreversible impact of introducing an endangered species.

The Federal Government has never passed up on an opportunity to lock up Alaskan lands. Environmental groups are not likely to wait long before filing litigation against the 10-J exemption.

The history of Federal and State governments, combined with the unwavering assault against development in Alaska by environmental groups makes the introduction of an endangered species an extremely risky venture that should not be undertaken without serious deliberation. This is not a scientific issue, nor a food issue. It is a totally political issue with grave long-term consequences for any region of the state.

This bill does not prohibit the introduction of the

Wood Bison. It simply requires that the introduction occur with permission of the Alaska State Legislature. This safeguards people of any area of Alaska from the introduction of Trojan Bison without fully informed counsel.

In 40 years of conflict in the Delta Junction area the State of Alaska has done very little to resolve the unintended consequences that occurred from the introduction of Plains bison into the region in the 1920's. The unintended consequences that will result from the introduction of Wood bison into the Innoko area will be much more significant than those in the Delta area. Those who think they will be eating Wood bison in ten years will more likely become embroiled in a lawsuit within two.

[1:32:35 PM](#)

REPRESENTATIVE DICK then presented an 8-minute video on wood bison; the written transcript from which he paraphrased follows [original punctuation provided]:

My main concern with the introduction of Wood Bison into our area is that the people of Holy Cross, Anvik, Shageluk and Grayling are going to end up a sad "Whereas..." in a sad petition to Washington DC where the government is no longer of by and for the people. Once you know the facts, I don't think you will consider it for a nanosecond.

The wood bison that ADF&G plans to introduce into our district is the ONLY Wood Bison herd in the US. Should we think for one minute that the Federal Government will uphold their 10-J exemption to the Endangered Species Act? Should we think that the 10-j exemption will last one weekend before Environmental groups file a law suit against it? We won't be hunters. We will become litigators in lawsuits!

I wanted the bison in the headwaters of the Stony River until I learned the story. They are *Trojan Bison*. Once we allow them through the gates, they will destroy our country from within.

Look at Delta. They have Plains bison to hunt. Over 16,000 people apply for a permit each year and only 130 people get one. What will our chances be ten years from now when bison hunts are opened? (If our lawyers perform a miracle and protect us from the Federal and environmental nonsense.)

Do we want all those outsiders hunting in our backyard? Do we really think we will get a permit? Our chances are better at the local bingo hall.

Have you read the 10-J exemption to the Endangered Species Act. Here it is. There's nothing there that makes me feel safe.

The Feds have never rescinded a 10-J exemption yet... yet! When did the Feds pass up a chance to lie to Alaskans and take our land? When did the Feds not lie to Indians?

This is an endangered species we are talking about bringing into our country. These are the ONLY Wood Bison in the whole United States.

Look at the polar bears. Reliable sources say there are five times more polar bears now than there were in the 70's, but the Feds recently have taken charge of 120 million acres, from the Canadian border to below Kotzebue. And the polar bears aren't even endangered. I think the Feds are using the bears to lock up the country.

Doyon folks didn't want the bison in the Minto Flats and made sure they stayed in Portage.

Should we trust the Federal government?

Look at the Statehood Act

The Feds knew we didn't have many people to tax in order to run the State government, so the Feds agreed to develop the resources of Alaska. The state was to get 90% of the revenue to run the state. That was the Statehood Agreement act.

[1:35:05 PM](#)

With ANILCA, President Carter violated the Statehood Act! The statehood act gave the State of Alaska 104 M acres of land. ANILCA locked up an equal amount, 104 M acres. The Feds promised they would NEVER do that again.

Recently, President Obama, in violation of ANILCA, set in motion the process to take another huge chunk of Federal land in Alaska and lock that up too in the name of "wild lands."

They lie. Not once, but always. They lied with the statehood act, they lied with ANILCA, and now they are doing it again. Who in the Federal Government could sign a paper that you would believe?

I passed through Oregon when one Federal Judge shut down most of the logging industry in that state because of the spotted owl. Environmental groups said the Endangered spotted owl only nested in old growth trees, so they needed to be protected. Thousands of people were put out of work because of the owl.

But the truth is the spotted owl loves to nest in old pickup trucks and other such places. The environmentalists used the owl to lock up the state and put people out of work.

[1:36:37 PM](#)

Recently on the House floor we passed HJR 17 urging the Federal Government to reconsider the situation in Unalaska.

Unalaska had an exemption but the EPA revoked the exemption that Unalaska had regarding their water and secondary treatment plants. The EPA requirement is now an unfunded mandate of \$9.5 million for treatment for cryptosporidium and there is NO cryptosporidium in Unalaska! The secondary treatment mandate is between \$20-50 million. That totals over \$6,500 for every man, woman and child in the town of 4,370 folks.

When Unalaska appealed, the EPA said "Too bad." The deadline for filling for an exemption had passed. They don't care about the people of Unalaska.

The reason I mention this is that we will be trusting in an exemption the same way Unalaska did.

Look how the Feds locked up the Tongass Forest. Remember, the Statehood Agreement said that Alaskans could develop resources on the Federal lands and the state would get 90% of the revenue. Thousands of people were put out of their jobs by the Federal lockup of the Tongass. South East villages are dying now because there is no economy. Do we think the Feds care any more for us?

1:37:56 PM

Should we trust the environmental groups? Do we think they will not immediately file a law suit against the 10-J exemption?

Do you remember how the environmental groups lied to the people of Alaska during the predator control issue? This is why we have a few moose in many parts of the state. Environmental groups made big bucks on the wolf issue, bleeding money out of the uninformed people of the lower 48 to "save the wolves" that wiped out our moose population.

They would love to take your case to court... the ONLY wood bison herd in the United States.

This will be a big fund-raiser for them. They will make millions of dollars by challenging the 10-J exemption. We Alaskans have no way to fight back.

Should we trust our own State government? A herd of Plains Bison have been in Delta since the 20's. They are not an endangered species, but the Delta hunt is so popular, the State has ignored the cries of the Delta farmers for decades. The bison trampled \$150,000 worth of barley just last year, but ADF&G hasn't done a thing about it. If the State won't do something for the Delta farmers, what makes us think they will do something for us against the Federal Government when the Trojan Bison have our land locked up?

1:38:55 PM

Concern

The bill I have submitted to the House only requires the Department of Fish & Game to get permission from the Legislature before introducing the Endangered Bison into a location in Alaska. It doesn't prohibit the introduction of bison; it just helps keep folks from being buffalo-ed by the buffalo.

If the land gets locked up, does the State government lose? No. Biologists still get to have their pet project to study bison.

Do professional hunting groups lose? Well they will lose the money they put into the project, but their country won't be locked up.

Who is the loser? The people who will be hurt the most are the people of Holy Cross, Anvik, Shageluk and

Grayling, but the whole state will be negatively affected as well.

[1:39:34 PM](#)

What is the best-case scenario?

In ten years we get a one-in-a-hundred chance to hunt a bison, while competing with scores of outsiders in our country.

What is the worst-case scenario? Your corporation land, and all surrounding Federal and State land, will be locked up while the bison roam free. We will spend our lives in court, and some Federal judge no one every voted for, who could care less whether we live or die, will decide whether we can tiptoe on the tundra.

The effect of the release of the Trojan Bison will be irreversible. Once they are loose, the problems they bring will never go away.

People of Holy Cross, Grayling, Anvik and Shageluk I think introducing the bison into your backyard is a HUGE mistake.

Some of your young guys will go out on a snowy winter night to taste bison meat and will end up in Federal prison for killing an endangered species. The bison will be free roaming and the people will be locked up.

Let me make a suggestion. Tell Fish & Game you want Plains bison like Delta, Fairwell and Copper River. I bet Plains Bison taste just as good as Trojan Bison. You will get all the benefits with none of the risk. Tell Fish and Game to find another place for the Endangered Bison.

The real solution is effective predator control to get our moose back.

I fear that we will become a very sad "Whereas" in a very sad petition to Washington DC that doesn't listen to our Governor or any other entity in this state.

Consider the facts and get back to me. Thanks.

[1:41:01 PM](#)

REPRESENTATIVE DICK concluded:

Do you remember the Charlie Brown cartoon? Every year Lucy promised not to pull the football away, every year Charlie trusted her, and every year she found another excuse to break her word and leave Charlie Brown flat on his back. It's like that, the federal government will find some excuse to break a promise, they always do.

[1:41:28 PM](#)

[Co-Chair Seaton returned the gavel to Co-Chair Feige.]

[1:41:46 PM](#)

REPRESENTATIVE DICK, in response to Representative Herron, said that he is still trying to understand the definition of the term nonessential experimental population, which he opined is being redefined. In fact, the 10(j) exemption of the Endangered Species Act (ESA) is being re-worded so the people of Alaska will have greater assurances. In further response to Representative Herron, Representative Dick said that he hasn't submitted comments to the U.S. Fish & Wildlife Service regarding the reclassification of the wood bison from endangered to threatened. He related his opinion that there isn't any wording of the 10(j) exemption that would make any difference, particularly due to his mistrust of the federal government.

[1:43:48 PM](#)

REPRESENTATIVE FOSTER asked if Representative Dick had received any film credits for the earlier presented film.

REPRESENTATIVE DICK replied no.

[1:44:31 PM](#)

REPRESENTATIVE KAWASAKI inquired as to how [HB 186] will impact the current bison in Portage and whether the legislation will delay the existing proposal.

REPRESENTATIVE DICK said that he has had conversations with ADF&G staff and learned that there is the possibility that this might delay the moving of the bison one more year. He clarified that

he doesn't intend to cause delay, but rather to be sure those in the area where the bison would be located are fully informed.

[1:45:55 PM](#)

CO-CHAIR FEIGE surmised from Representative Dick's video that it's not so much of an issue of trust of the federal government. Rather, it's that if bison are introduced, the state is subject to any nongovernmental unit bringing a lawsuit.

REPRESENTATIVE DICK indicated that to be the case. He then related that he trusts the current governor and commissioner of ADF&G. However, he recalled times when past governors had no concern for rural Alaskans. Therefore, he expressed concern that in the future ADF&G won't be able to move these bison into a place in Alaska without the consent of the legislature. In this case, Representative Dick opined that residents of Anvik, Shageluk, and Grayling have been given the positive side of introducing wood bison, but don't understand the irrevocable consequences.

[1:47:52 PM](#)

CO-CHAIR FEIGE then announced that HB 186 would be held over, noting that public testimony will be taken on 4/6/11.

[1:48:03 PM](#)

The committee took an at-ease from 1:48 p.m. to 2:06 p.m.

HB 106-COASTAL MANAGEMENT PROGRAM

[2:06:14 PM](#)

CO-CHAIR FEIGE announced that the final order of business is 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."

[2:06:21 PM](#)

CO-CHAIR FEIGE related that he, Co-Chair Seaton, Representatives Herron and Joule, and Deputy Commissioner Balash have spent a great deal of time trying to address all of the issues with the

Alaska Coastal Management Program (ACMP). The group has tried to take into consideration all the wants, needs, and concerns of the coastal districts while accommodating the governor's four requirements. The group, he said, believes it has achieved success through the forthcoming packet of amendments that adjust the program while still maintaining its focus. He then directed attention to the summary sheet of amendments, saying they will be addressed in the order listed on the summary sheet.

[2:08:38 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 7, labeled 27-GH1965\A.27, Bullard, 4/3/11, which read:

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY AND REVIVAL. (a) The amendment to AS 44.66.020(a)(5) made by sec. 3 of this Act is retroactive to January 1, 2011.

(b) If, under AS 01.10.070(c), sec. 3 of this Act takes effect on or after July 1, 2011, sec. 3 of this Act is retroactive to July 1, 2011, and sections repealed by sec. 18, ch. 31, SLA 2005, are revived. If a revived section is amended by this Act, it is revived as amended by this Act. The revived sections are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended by sec. 3 of this Act."

Renumber the following bill sections accordingly.

REPRESENTATIVE P. WILSON objected for discussion purposes.

[2:08:56 PM](#)

CO-CHAIR SEATON pointed out that there is a legal memorandum attached to Amendment 7. Amendment 7 provides for a drop dead date of June 30 in the case of an unforeseen delay. Therefore, retroactively reviving the statute wouldn't be a violation of state law.

[2:09:58 PM](#)

REPRESENTATIVE P. WILSON surmised that the amendments the committee will consider today are to HB 106 as it has already been amended.

CO-CHAIR FEIGE replied yes.

[2:10:19 PM](#)

CO-CHAIR SEATON reminded the committee of its desire to review each item rather than considering a large committee substitute (CS). These amendments are offered to the original bill and all amendments will be wrapped into a CS that can be reviewed prior to moving the legislation out of committee.

REPRESENTATIVE P. WILSON removed her objection.

[2:11:11 PM](#)

There being no further objection, Amendment 7 was adopted.

[2:11:30 PM](#)

CO-CHAIR FEIGE informed the committee that Amendment 8 requires an annual report on the progress the Department of Natural Resources (DNR) has made in drafting and adopting ACMP regulations.

[2:11:43 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 8, labeled 27-GH1965\A.28, Bullard, 4/2/11, which read:

Page 2, following line 53:

Insert a new bill section to read:

"* Sec. 2. AS 46.39.010 is amended by adding a new subsection to read:

(d) Not later than January 20 each year, the department shall prepare an annual report summarizing the department's efforts to draft and adopt regulations under this chapter and AS 46.40 during the prior calendar year. The department shall notify the legislature that the report is available and shall also post the report on the department's Internet website."

Renumber the following bill sections accordingly.

There being no objection, Amendment 8 was adopted.

[2:12:11 PM](#)

CO-CHAIR FEIGE moved on to Amendment 9, which:

Provides that the Department shall provide planning and consistency review data and information to members of the governing body of a coastal resource district or coastal resource service area. States that if the department provides funds to implement or amend a coastal district plan along with a restriction on the use of the funds, they will specify the state statute or federal regulation or statute that authorizes the restriction.

[2:12:49 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 9, labeled 27-GH1965\A.30, Bullard, 4/4/11, which read:

Page 1, line 3, following "**program;**":

Insert "**relating to the duty of the Department of Natural Resources to provide data and information to a coastal resource district or area; relating to funds provided to coastal resource districts; relating to regulations adopted by the department regarding persons authorized to participate in and to receive materials relating to a consistency review;**"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** AS 46.39.040 is amended to read:

Sec. 46.39.040. Duties of the department. In conformity with 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

(1) develop statewide standards for the Alaska coastal management program, and criteria for the preparation and approval of district coastal management plans in accordance with AS 46.40;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the department shall initiate an interagency program of comprehensive coastal resource planning for each geographic region of the state;

(3) assure continued provision of data and information to coastal resource districts and coastal

resource service areas to carry out their planning and management functions under the program; in providing data and information to a coastal resource district or area under this paragraph, the department shall provide the data and information to each member of the governing body of the coastal resource district or the board of the coastal resource service area and to other persons as may be designated by the district or area.

* **Sec. 3.** AS 46.39.040 is amended by adding a new subsection to read:

(b) If the department provides funds to a coastal resource district or area to implement or amend a coastal resource district's or area's coastal management plan and the department provides a restriction on how the funds may be used by the district or area, the department shall specify the state statute or federal statute or regulation that authorizes the restriction.

* **Sec. 4.** AS 46.40.096(c) is amended to read:

(c) The regulations adopted by the department under this section must, in an affected coastal resource district, permit the members of the governing body of the coastal resource district, the district's coastal management plan coordinator, and the district's community planner to participate in the consistency review, and the regulations must require the department or reviewing entity to provide the persons described in AS 46.39.030(3) materials relating to the consistency review. The regulations must also include provisions for public notice and provide the opportunity for public comment. Regulations relating to public notice and public comment [THE REGULATIONS] adopted under this subsection may make distinctions relating to notice based upon differences in project type, anticipated effect of the project on coastal resources and uses, other state or federal notice requirements, and time constraints. However, a notice given under this subsection must contain sufficient information, expressed in commonly understood terms, to inform the public of the nature of the proposed project for which a consistency determination is sought, and must explain how the public may comment on the proposed project. Notices described in this subsection shall be published on the department's Internet website. In this subsection,

(1) "coastal management plan coordinator" means the person designated, by a coastal resource district, with development, maintenance, and implementation of the district's coastal management plan;

(2) "community planner" means the person designated, by a coastal resource district, with helping to formulate plans and making decisions relating to the development of the district's natural resources and community assets and the protection of the district's water, land, and air."

Renumber the following bill sections accordingly.

[2:13:08 PM](#)

JOE BALASH, Deputy Commissioner, Department of Natural Resources, directed attention to page 1, line 23, of Amendment 9. He expressed the need to be sure the "continued provision of data and information to coastal resource districts and coastal resource service areas" is available electronically. In some of the reviews a C-plan will be submitted by the Department of Environmental Conservation (DEC) as part of the information supporting the project. It's not unusual for a C-plan to fill four three-inch binders, which is costly in terms of copying and mailing. Therefore, providing this information electronically would go a long way.

[2:14:34 PM](#)

CO-CHAIR SEATON said providing the information electronically would be totally appropriate. In fact, he said it's his intent to allow the department or agencies to provide this information by electronic means. He questioned whether the department is comfortable with the discussion on the record or whether an amendment to Amendment 9 would be necessary.

MR. BALASH responded that so long as there is a public record, the department will be comfortable providing the information by electronic means and won't reflect a higher cost [for the distribution of the information] in the fiscal note.

[2:15:36 PM](#)

REPRESENTATIVE P. WILSON questioned whether the districts involved are comfortable with receiving the data by electronic means.

MR. BALASH clarified that the issue for the department is whether it can send a thumb drive or CD; the information does not have to be delivered in an e-mail.

CO-CHAIR SEATON opined that allowing the data to be provided via a CD and thumb drive is going to be adequate if that is considered an electronic means and would satisfy everyone's goals.

[2:17:16 PM](#)

MR. BALASH then directed the committee's attention to the following language on page 2, lines 26-28, of Amendment 9: **"Notices described in this subsection shall be published on the department's Internet website"**. The state maintains a public notice website where all public notices from all state agencies are noticed. Therefore, the requirement in Amendment 9 would be new and reflected in a fiscal note. In practice, the state avoids duplicate notices. Therefore, he suggested that the department could provide a link on its website to the state public notice website.

[2:18:29 PM](#)

REPRESENTATIVE P. WILSON surmised, though, that the department will still contact a district personally, rather than expect the district to keep checking the website.

MR. BALASH replied yes, adding that during the pre-review process the department provides the coastal district notification prior to the completion of the application. Once the application is deemed complete, all the information is noticed and constitutes day one of the review.

[2:19:19 PM](#)

REPRESENTATIVE GARDNER questioned whether it would make sense to substitute "**state's**" for "**department's**" on page 2, line 27, of Amendment 9.

[2:19:37 PM](#)

CO-CHAIR SEATON opined that unless the information is categorized by subject matter, it would be less available to those following the coastal management issues. However, he opined that a link on DCOM's website to the notice of the

[coastal zone management information] would adequately meet [the requirement].

[2:21:24 PM](#)

MR. BALASH said that this discussion helps, but pointed out that the language on page 2, lines 26-28, of Amendment 9 would mean the entirety of the notice would be placed on the department's website. Therefore, the department wants to be sure it understands what is to be accomplished in order that's it's done correctly and the committee understands exactly what it's requesting of the department. If a link would satisfy the desire, then changing the term "published" to "posted" or some other comparable word would be appropriate.

[2:22:28 PM](#)

CO-CHAIR FEIGE surmised then that Mr. Balash is suggesting changing the language of Amendment 9 so that the department can place a link on its website to the already existing published notice.

MR. BALASH confirmed that is his suggestion.

CO-CHAIR FEIGE moved that the committee adopt Amendment 1 to Amendment 9, such that on page 2, line 27, of Amendment 9 the term "published" would be replaced with "posted".

[2:23:09 PM](#)

CO-CHAIR SEATON referenced Representative Gardner's earlier suggestion of replacing the term "published" with "available through".

[2:23:34 PM](#)

CO-CHAIR FEIGE withdrew Amendment 1 to Amendment 9. He then moved that the committee adopt Amendment 2 to Amendment 9, which would on page 2, line 27, of Amendment 9 replace the term "published" with "made available".

[2:24:19 PM](#)

CO-CHAIR FEIGE withdrew Amendment 2 to Amendment 9. He then moved that the committee adopt Amendment 3 to Amendment 9, which would on page 2, line 27, of Amendment 9 delete "published on".

and insert "made available through". There being no objection, Amendment 3 to Amendment 9 was adopted.

[2:25:12 PM](#)

REPRESENTATIVE MUNOZ moved that the committee adopt Amendment 4 to Amendment 9, which would on page 2, line 2, of Amendment 9, as amended, following the term "information" insert "electronically or by mail if electronic means do not exist".

[2:25:50 PM](#)

CO-CHAIR SEATON objected for discussion. He then asked if the department believes Amendment 4 to Amendment 9 will allow the mailing of a digital copy rather than a paper copy.

MR. BALASH replied yes.

CO-CHAIR SEATON withdrew his objection.

[2:26:16 PM](#)

There being no further objection, Amendment 4 to Amendment 9 was adopted.

[2:26:28 PM](#)

MR. BALASH directed attention to Section 4 on page 2 of Amendment 9, as amended. Section 4 makes a distinction between who is involved and to what degree in a review versus who may receive information. Although it's not a big deal, it's important to reference because in the review process the department wants to maintain that link between the locality, the communities, and the participation in the review of projects.

[2:27:28 PM](#)

CO-CHAIR FEIGE explained that the intent of Amendment 9, as amended, is to include the management of the coastal district and the coastal resource service area board in the process. The goal is to avoid a situation in which a consultant designated by a district is doing all the interaction with the department and not keeping the folks in the coastal district aware of what is happening. Requiring the information is provided to those folks in the coastal district and members of the coastal resource service area board attempts to keep as many people in the loop as possible without infringing on the freedom of the board or

the district to designate the people they want to represent them.

[2:28:55 PM](#)

REPRESENTATIVE P. WILSON asked if the department would prefer in Section 4(c) of Amendment 9, as amended, to have a numerical listing of the following: members of the governing body of the coastal district, coastal management plan coordinator, and community planner.

MR. BALASH deferred to the lawyers.

[2:29:46 PM](#)

There being no further objection, Amendment 9, as amended, was adopted.

[2:30:01 PM](#)

CO-CHAIR FEIGE moved on to Amendment 10, which addresses elevations of consistency determinations. Basically, if there is an elevation during the consistency review process, the disputes would be resolved by the commissioners from the following departments: Department of Natural Resources, Alaska Department of Fish & Game (ADF&G), and DEC. The commissioners will issue a written order that was signed by at least two of the commissioners that renders the final determination.

[2:30:57 PM](#)

CO-CHAIR SEATON moved that committee adopt Amendment 10, labeled 27-GH1965\A.31, Bullard, 4/4/11, which read:

Page 1, line 3, following "**program;**":

Insert "**relating to the review of certain consistency determinations for a project in an Alaska coastal resource district;**"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** AS 46.40.096(d) is amended to read:

(d) In preparing a consistency review and determination for a proposed project, the reviewing entity shall

(1) request consistency review comments for the proposed project from state resource agencies,

affected coastal resource districts, and other interested parties as determined by regulation adopted by the department;

(2) prepare proposed consistency determinations;

(3) conduct elevations [COORDINATE SUBSEQUENT REVIEWS] of proposed consistency determinations prepared under (2) of this subsection; an elevation [A SUBSEQUENT REVIEW] of a proposed consistency determination under this paragraph

(A) may only be conducted [IS LIMITED TO A REVIEW] by the commissioners of the resource agencies [DEPARTMENT];

(B) may occur only if requested by
(i) the project applicant;
(ii) a state resource agency; or
(iii) an affected coastal resource district; and

(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;

(4) render the final consistency determination and certification.

* **Sec. 3.** AS 46.40.096(o) is amended to read:

(o) The time limitations in (n) of this section
(1) do not apply to a consistency review involving the disposal of an interest in state land or resources;

(2) are suspended

(A) from the time the reviewing entity determines that the applicant has not adequately responded in writing within 14 days after the receipt of a written request from the reviewing entity for additional information, until the time the reviewing entity determines that the applicant has provided an adequate written response;

(B) during a period of time requested by the applicant;

(C) during the period of time a consistency review is undergoing an elevation [A SUBSEQUENT REVIEW] under (d)(3) of this section.

* **Sec. 4.** AS 46.40.096(q)(2) is amended to read:

(2) "reviewing entity" means the

(A) Department of Natural Resources, for a consistency review subject to AS 46.39.010;

(B) the commissioners of the resource agencies, for the elevation of a proposed consistency determination under (d) of this section;

(C) state agency identified in (b) of this section, for a consistency review not subject to AS 46.39.010.

* **Sec. 5.** AS 46.40.210 is amended by adding a new paragraph to read:

(13) "elevation" means a review of a proposed consistency determination by the commissioners of the resource agencies."

Renumber the following bill sections accordingly.

REPRESENTATIVE P. WILSON objected for discussion purposes.

[2:31:08 PM](#)

CO-CHAIR SEATON explained that Amendment 10 makes sure all of the resource agencies are involved in the process. The commissioners would have a 45-day time limit by which they must act and issue a written order. The aforementioned ensures the public is aware of the written order and its recommendations.

[2:32:18 PM](#)

REPRESENTATIVE MUNOZ asked if current elevations are directed only to the commissioner of DNR.

MR. BALASH replied yes. In further response to Representative Munoz, Mr. Balash, confirmed that the current law requires action and a written order within 45 days. However, if there is a single agency review conducted by an agency other than a division within DNR, it would be a different commissioner dealing with the elevation. Most reviews are conducted by DCOM or some other DNR agency. Therefore, more often than not, particularly since the 2003 changes, the elevations have been handled by the DNR commissioner.

[2:33:33 PM](#)

MR. BALASH then directed attention to the language on page 2, line 1, of Amendment 10, which read: "shall be completed with the issuance of a written order signed by at least two of the commissioners of the resource agencies". He noted that it's not unusual to have four opinions among the three commissioners, which calls into question what happens on day 46. In the

department's estimation, no action is the same as a denial, he related. The aforementioned is how such would be treated in an administrative appeal, to which an elevation is similar. Since the statute doesn't say that, it would be better stated explicitly. In response to Co-Chair Feige, Mr. Balash suggested inserting on page 2, line 4, a new subparagraph (D) that read: "if a written order is not issued within the 45 days, the proposed consistency determination under (d)(2) is final". He did acknowledge that the drafters would likely have their own way of structuring the language.

[2:37:35 PM](#)

REPRESENTATIVE HERRON related his understanding that if the commissioners disagree with the determination and there has to be a written order issued, then two of the commissioners would sign the order. However, in the case in which the three commissioners agree with the determination, he said he didn't see a need for a written order.

[2:38:26 PM](#)

REPRESENTATIVE P. WILSON posed a scenario in which there were four items that were elevated to this level, and asked if each item would be addressed separately with a written determination for each. If there wasn't a written determination for one item with 45 days, then she questioned whether the assumption would be that the original determination would stand.

MR. BALASH clarified that the order signed by at least two commissioners would need to specify which parts of that original determination were being changed. In the case presented by Representative P. Wilson, Mr. Balash said the proposed determination finds the project inconsistent unless four alternative measures are adopted by the applicant. If the commissioners agreed with two of the alternative measures and disagreed with the other two, the written order would need to state as much, which is that the two items for which there is disagreement aren't applicable to the final determination.

[2:40:03 PM](#)

REPRESENTATIVE P. WILSON opined, "If it's put in there, then no one has any questions." She suggested that if the original written determination is not issued within the 45 days, it might be better to specify in writing that the original determination stands. Therefore, there is no question either way.

CO-CHAIR SEATON concurred with Representative P. Wilson. While elevations are rare, the issue was strong enough to not be resolved during the regular process. If there is no requirement for a written decision, there is no way to know whether there wasn't a meeting to consider the elevation or there was no agreement. He opined that overall there would be much more comfort and participation if it remains a written decision, signed by at least two of the commissioners. Therefore, he expressed his desire for the language [on page 2, lines 1-2, of Amendment 10 to remain] as written.

REPRESENTATIVE P. WILSON stated that the committee is placing on the record that it expects that no matter the decision, there needs to be a written record that's issued.

[2:43:43 PM](#)

CO-CHAIR FEIGE remarked, "I don't think we disagree that there's a requirement to have a written order." However, Mr. Balash brought up an interesting scenario.

REPRESENTATIVE P. WILSON opined that this entire process is a process of coming together and making compromises.

[2:44:37 PM](#)

REPRESENTATIVE MUNOZ stated that she would like to incorporate language to avoid the situation described by Mr. Balash. Perhaps, there needs to be a fifth paragraph added that states: "in the absence of a determination within the 45-day time period, the proposed consistency determination stands". The aforementioned language would at least avoid the problem highlighted by Mr. Balash.

[2:45:38 PM](#)

The committee took an at-ease from 2:45 p.m. to 2:51 p.m.

[2:51:15 PM](#)

CO-CHAIR FEIGE said that there are three different situations that could arise when an elevation occurs during the review process. One of which is addressed in subparagraph (C) on page 2, lines 1-4, of Amendment 10, whereby two of three commissioners agree and issue a written order that is signed by at least two of the commissioners. The other situation is one

in which all the commissioners agree. The third situation, as posed by Mr. Balash, is one in which there is no agreement between any of the commissioners and the question is how to address that.

[2:52:46 PM](#)

CO-CHAIR SEATON interjected that if no written order is required, there is a fourth situation in which the commissioners never meet. In such a situation the project sponsor proposing an elevation never knows whether the commissioners met and agreed with the proposed consistency determination or whether they never met and reviewed the proposal because there is a way for the commissioners to act without ever meeting or acting. He opined that the only way to ensure that an elevation takes place is to require a written determination. He further opined that it's unfair to whoever is making the elevation to not know whether the elevation was taken up or ignored in which case the preliminary review standards are mandated.

[2:54:22 PM](#)

CO-CHAIR FEIGE suggested that on page 1, line 20, subparagraph (B), of Amendment 10 replacing "may" with "shall" would have the effect of ensuring the commissioners of the resource agencies meet.

[2:55:15 PM](#)

REPRESENTATIVE GARDNER pointed out that changing the language of Amendment 10 on page 1, line 20, subparagraph (B) to read: "shall occur only if requested by" would mean no one else can request it. She asked if it's necessary to maintain the term "only" as without it the language would mean the same thing.

[2:55:49 PM](#)

REPRESENTATIVE MUNOZ asked if the commissioners are acting on whether a project is consistent or not.

CO-CHAIR FEIGE explained that there has been an elevation, which means there is a dispute raised by the applicant, the resource agency, or the coastal district. That dispute is elevated to the commissioners to decide.

[2:56:40 PM](#)

REPRESENTATIVE P. WILSON related that the term "only" on page 1, line 20 of Amendment 10 needs to remain otherwise a paragraph (5) should be added.

[2:57:13 PM](#)

MR. BALASH, referring to Amendment 10, suggested that on page 2, line 1, following "completed", inserting the following language: ", if granted,". The aforementioned change would require, as with any administrative appeal for which there is a request for reconsideration, two of the three commissioners to accept the elevation and two of the three commissioners to grant and decide the elevation.

[2:58:15 PM](#)

CO-CHAIR SEATON opined that he believes the desire is to have the right of the resource agencies, a project sponsor, or coastal district to elevate if there was disagreement in the construction of the consistency review. If it's not able to be worked out within the consistency review, it must be major disagreement, he said. He said he wasn't sure having the decision predicated on reviewing the information reaches the desired goal.

[2:59:34 PM](#)

REPRESENTATIVE GARDNER suggested that on page 1, line 18, of Amendment 10 the language should be changed to read as follows: "**shall be conducted** by the **commissioners of the resource agencies** if requested by". Therefore, an elevation has to be conducted if requested by someone who has standing to request it.

CO-CHAIR FEIGE asked if the change proposed by Mr. Balash to Amendment 10 on page 2, line 1, following "completed" inserting the following language: ", if granted," and Representative Gardner's suggested change from "**may**" to "**shall**" would address the concern.

REPRESENTATIVE GARDNER responded yes, because the applicant, resource agency, or coastal resource district knows they had to have the review.

REPRESENTATIVE P. WILSON opined that they still should have a written finalization; whatever the outcome, it needs to be written.

[3:00:55 PM](#)

REPRESENTATIVE MUNOZ inquired as to what happens if [the elevation] isn't granted.

REPRESENTATIVE P. WILSON answered that then the commissioners say no and the earlier determination remains. However, if it's related in a written report, then there won't be any doubt regardless of the outcome.

[3:01:50 PM](#)

CO-CHAIR SEATON related his understanding that Representative Gardner's proposal to change the language on page 1, line 18, of Amendment 10 from "may" to "shall" means that the commissioners will conduct elevations. However, the suggested "if granted" language is problematic because it means the commissioners will have decided the determination prior to the review and thus he didn't favor inserting the "if granted" language.

[3:02:39 PM](#)

CO-CHAIR FEIGE announced that the committee would recess until 6:00 p.m.

[6:14:25 PM](#)

CO-CHAIR FEIGE reconvened the meeting at 6:14 p.m. Representatives P. Wilson, Herron, Munoz, Foster, Dick, Gardner, Kawasaki, Seaton, and Feige were present at the call back to order.

[6:15:09 PM](#)

CO-CHAIR SEATON moved that the committee adopt Conceptual Amendment 1 to Amendment 10, as follows [original punctuation provided]:

At AS 46.40.096(q)(2)(B) after "resource agencies"
Insert "or a deputy commissioner in the same
department"

There being no objection, Conceptual Amendment 1 to Amendment 10 was adopted.

[6:15:46 PM](#)

CO-CHAIR FEIGE announced that Amendment 10, as amended, was before the committee.

REPRESENTATIVE P. WILSON removed her objection to Amendment 10, as amended. There being no further objection, Amendment 10, as amended was adopted.

[6:16:26 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 11, labeled 27-GH1965\A.32, Bullard, 4/4/11, which read:

Page 1, line 3, following "**program;**":

Delete "**relating to the approval of district coastal management plans by the Department of Natural Resources;**"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 46.40.070 is repealed and reenacted to read:

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

(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) are not preempted by state or federal law; and

(C) do not arbitrarily or unreasonably restrict uses of state concern.

(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.

(c) In reviewing and approving a district coastal management plan under (a) of this section, the department may not require a district to designate areas for the purpose of developing an enforceable policy.

(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."

Renumber the following bill sections accordingly.

REPRESENTATIVE KAWASAKI objected.

[6:17:10 PM](#)

CO-CHAIR SEATON explained that Amendment 11 addresses the AS 46.40.070 requirements for departmental review and approval, such that it specifies the adequately addressed standards of what can be approved for enforceable policies. He characterized Amendment 11 as cleanup language.

[6:18:08 PM](#)

MR. BALASH recalled that Representative Munoz had concerns when the language in [AS 46.40].030, which would [require that [enforceable policies] don't duplicate or adopt by reference state or federal regulations, was removed. The language was reinstated on page 1, lines 16-18, of Amendment 11. Amendment 11 repeals and reenacts AS 46.40.070, which addresses the requirements for departmental review and approval of local plans. He reviewed the requirements of the district coastal management plan and the enforceable policies of it, as specified in Amendment 11. Section 2(b) in Amendment 11 addresses the concern expressed by a number of districts with regard to whether state and/or federal statutes and regulations adequately address an issue of concern by the coastal districts. Section 2(b) specifies that so long as there is not a regulation on the matter and the state or federal agency that has authority for the matter doesn't object, a coastal district can develop a

policy on that matter, bring it forward as part of the local plan and development, and adopt that enforceable policy. He pointed out that Section 2(d) identifies who can object. In the case of a state agency, the objection would come from the commissioner while within the federal government the objection would come from the head of or legal counsel for that agency in Alaska. Mr. Balash expressed hope that Amendment 11 strikes the appropriate balance by eliminating the subjectivity in the statute and allows the process to move forward in a clear fashion whereby everyone knows the rules.

[6:22:05 PM](#)

The committee took a brief at-ease.

[6:23:32 PM](#)

CO-CHAIR SEATON pointed out that attached to Amendment 11 is a legal opinion. He then pointed out that due to the following new language in Amendment 11: "does not conflict with statewide standards adopted by the department", there need to be language changes throughout the legislation. Therefore, Co-Chair Seaton moved that the committee adopt Conceptual Amendment 1 to Amendment 11, as follows [original punctuation provided]:

In the following sections:

AS 46.40.010(d) Development of Alaska coastal management program

AS 46.40.030(a) Development of district coastal management plans

AS 46.40.040(a) Statewide standards and district plan criteria

AS 46.40.070 Requirements for department review and approval

AS 46.40.180(b) Approval of plans in coastal resource service areas

Delete "meet the Statewide Standards"

Insert "does not conflict with Statewide Standards adopted by the department"

CO-CHAIR SEATON, in response to Co-Chair Feige, confirmed that Conceptual Amendment 1 to Amendment 11 would standardize the language throughout HB 106 in terms of statewide standards for plans.

[6:25:42 PM](#)

There being no objection, Conceptual Amendment 1 to Amendment 11 was adopted.

[6:25:54 PM](#)

REPRESENTATIVE KAWASAKI withdrew his objection to Amendment 11, as amended.

[6:26:16 PM](#)

REPRESENTATIVE HERRON then objected to Amendment 11, as amended. He highlighted that although a lot of work went into Amendment 11, it doesn't include criteria for objecting. He then removed his objection.

[6:27:08 PM](#)

There being no further objection, Amendment 11, as amended was adopted.

[6:27:28 PM](#)

CO-CHAIR SEATON moved that the committee adopt Amendment 12, labeled 27-GH1965\A.33, Bullard, 4/4/11, which read:

Page 1, line 3, following "**program;**":

Insert "**establishing the Alaska Coastal Policy Board;**"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** AS 46.39 is amended by adding new sections to article 1 to read:

Sec. 46.39.005. Alaska Coastal Policy Board. (a) The Alaska Coastal Policy Board is created in the Department of Natural Resources. The board consists of the following:

(1) five public members appointed by the governor subject to confirmation by the legislature in joint session, the public members shall include, one at-large member from any coastal resource district and four members from a list composed of at least three names from each region, nominated and submitted by the coastal resource districts of each region; one public

member shall be appointed from each of the following regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic Borough; and the Bering Strait area, including, generally, the area of the Bering Strait regional educational attendance area;

(B) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, and Southwest regional educational attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and the Kodiak-Aleutians area, including the Kodiak Island and area of the Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof regional educational attendance areas;

(C) Upper Cook Inlet area, including the Municipality of Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area, including, generally, the Kenai Peninsula Borough; and the Prince William Sound area, including, generally, the area east of the Kenai Peninsula Borough to 141 West longitude; and

(D) Southeast Alaska, generally the area east of 141 West longitude;

(2) each of the following designated members:

(A) the commissioner of environmental conservation;

(B) the commissioner of fish and game;

(C) the commissioner of natural resources;

(D) the commissioner of transportation and public facilities.

(b) Public members serve staggered terms of three years. Except as provided in AS 39.05.080(4), each member serves until a successor is appointed and qualified. A public member may be reappointed. A public member may be removed for cause.

(c) The board shall designate cochairs, one of whom shall be selected from among the public members appointed under (a)(1) of this section and one from among the members designated in (a)(2) of this section.

(d) If a member serving under (a)(2) of this section is unable to attend, a deputy commissioner in the same department may attend and act in place of the member. The names of alternates serving under (a)(2) of this section shall be filed with the board.

(e) Three public members and three designated members of the board constitute a quorum. However, action may be taken only upon the affirmative vote of a majority of the full membership of the board.

(f) The board shall meet at least four times a year and as often as necessary to fulfill its duties under this chapter and AS 46.40. Meetings may be held and members may vote telephonically, except one board meeting a year shall be held in person.

(g) Public members of the board are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

(h) Administrative support for the board shall be provided by the division in the department responsible for coastal and ocean management. The director of the division in the department responsible for coastal and ocean management, under direction of the cochair designated by the board from the individuals listed in (a)(2) of this section, may contract with or employ persons as necessary to assist the board in carrying out the board's duties and responsibilities.

(i) The board shall make recommendations to the department relating to the approval or modification of a district coastal management plan under AS 46.40.060(b).

* **Sec. 3.** AS 46.39.030 is amended to read:

Sec. 46.39.030. Powers of the department. The department may

(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds that may become available for coastal planning and management;

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in, affected by, or concerned with coastal area planning and management;

(B) agents and officials of the coastal resource districts of the state, the Alaska Coastal Policy Board established in AS 46.39.005, and federal and state agencies concerned with or having jurisdiction over coastal planning and management;

(4) take any reasonable action necessary to carry out the provisions of this chapter or AS 46.40.

* **Sec. 4.** AS 46.40.060 is amended to read:

Sec. 46.40.060. Review and approval by the department. (a) If, upon submission of a district coastal management plan for approval, the department finds that the plan meets the provisions of this chapter [AND THE STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY THE DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may approve the district coastal management plan, or may approve portions of the district plan that meet those requirements.

(b) If the department finds that a district coastal management plan is not approvable or is approvable only in part under (a) of this section, it shall submit the plan to the board for review. The board shall review the plan and make recommendations relating to whether the department shall approve or modify the district coastal management plan in whole or in part [DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO RESOLVE DIFFERENCES].

(c) After the board has reviewed the district coastal management plan and submitted recommendations under (b) of this section [IF, AFTER MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the department shall enter findings and, by order, may require

(1) that the district coastal management plan be amended to satisfy the provisions of this chapter [OR MEET THE STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY THE DEPARTMENT];

(2) that the district coastal management plan be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(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.

* **Sec. 5.** AS 46.40.060 is amended by adding a new subsection to read:

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

reconsideration of the decision within 15 days of the issuance of a decision made by the department under (c) of this section. The request must be in writing and must include a statement of the specific changes desired. The commissioner of natural resources may review the department's decision on the basis of the request and determine whether the decision should be changed. The commissioner may issue a determination in writing within 20 days of the issuance of the decision. If the commissioner takes no action, the request for reconsideration shall be considered as denied. Denial of a request for reconsideration shall be considered a final administrative order and decision of the department.

* **Sec. 6.** AS 46.39.005 is repealed.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD; STAGGERED TERMS. (a) Notwithstanding AS 44.39.005(a), added by sec. 2 of this Act, within 30 days after the effective date of this section, the municipalities of each region identified in AS 44.39.005(a)(1) shall submit to the governor the names of three persons from the region qualified under AS 44.39.005(a), added by sec. 2 of this Act. Notwithstanding AS 44.39.005, added by sec. 2 of this Act, within 60 days after the effective date of this section, the governor shall appoint, from the lists of names submitted under AS 46.39.005(a)(1), one member from each region and one at-large member to serve on the Alaska Coastal Policy Board established by AS 46.39.005, added by sec. 2 of this Act. The governor shall appoint the public members to three-year staggered terms. The governor shall specify the term of each member appointed subject to this section.

(b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 4 of this Act, a review by the Alaska Coastal Policy Board relating to a district coastal management plan, or a portion of a district coastal management plan, shall be delayed until all the public members of the board are appointed under (a) of this section.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 6 of this Act takes effect only if secs. 1 - 8 and 18, ch. 31, SLA 2005, take effect."

Renumber the following bill sections accordingly.

Page 2, following line 18:

Insert a new bill section to read:

"* **Sec. 10.** If sec. 6 of this Act takes effect, it takes effect on the date that secs. 1 - 8 and 18, ch. 31, SLA 2005, take effect."

Renumber the following bill section accordingly.

Page 3, line 19:

Delete "This"

Insert "Except as provided in sec. 10 of this Act, this"

CO-CHAIR FEIGE objected for discussion.

[6:27:45 PM](#)

CO-CHAIR SEATON explained that Amendment 12 would establish an Alaska Coastal Policy Board that will consist of five public members appointed by the governor as well as the commissioners of DEC, ADF&G, DNR, and the Department of Transportation & Public Facilities. Of the five public members, one will serve at-large and the remaining four members will be nominated from the regions representing the coastal districts within the region. There won't be any alternates for the public members, but deputy commissioners can serve as alternates for the commissioners of their respective departments. Co-Chair Seaton clarified that although a quorum can be established with three public members and three designated members or their alternate, a majority of the entire board, five votes, will be required to take action. The board will meet four times per year, one of which will be an in-person meeting. Members can meet and vote telephonically. Co-Chair Seaton related that the purpose of this is to keep the board involved in policy review and making and ensuring that the program does not suffer from failing to get together and addressing problems face-to-face.

[6:29:59 PM](#)

CO-CHAIR SEATON, referring to page 3 of Amendment 12, provides the authority for the department to contract or employ a person, as necessary, to provide administrative support. However, it is not a requirement for the department to do so. He then reviewed Section 4 of Amendment 12, which proposes new language to AS

46.40.060, which he hoped would result in a cohesive and expedited review process. Amendment 12 includes a provision that allows an individual to submit a request for reconsideration within 15 days [of the issuance of a decision] and provides 20 days for the commissioner to respond in writing. The remaining language of Amendment 12 is transition language.

[6:32:01 PM](#)

CO-CHAIR FEIGE interjected that Amendment 12 represents a considerable amount of work and respects the desires of the coastal districts to have more of a voice in the process while also respecting the desires of the governor and industry to have fixed timelines with regard to the consistency review.

[6:32:42 PM](#)

CO-CHAIR FEIGE removed his objection.

[6:32:59 PM](#)

The committee took an at-ease from 6:33 p.m. to 6:45 p.m.

[6:45:14 PM](#)

CO-CHAIR SEATON moved that the committee adopt Conceptual Amendment 1 to Amendment 12, which would insert a new subsection (j) on page 3 after line 10, as follows: "Duties of the board shall provide a forum for representatives of affected interests to discuss and attempt to resolve issues relevant to this chapter, AS 46.40, and to the coastal uses and resources of the state; the division shall annually solicit issues and make recommendations to address the issues to the department commissioner."

There being no objection, Conceptual Amendment 1 to Amendment 12 was adopted.

[6:46:45 PM](#)

There being no further objection, Amendment 12, as amended, was adopted.

[6:47:13 PM](#)

CO-CHAIR SEATON moved that the committee adopt the following letter of intent [original punctuation provided]:

It is the intent of the Legislature that the changes made to the Alaska Coastal Management Program under HB 106 will increase the ability of Alaska Coastal Districts and Coastal Resource Service Areas to draft strong Coastal District Plans and increase the number of enforceable policies that will be approvable by the State of Alaska Department of Natural Resources. It is the intent of the Legislature that these changes will allow the Alaska Coastal Management Program to meet the concerns of coastal residents while developing Alaska's diverse coastal resources.

[6:48:20 PM](#)

REPRESENTATIVE MUNOZ opined that not all districts will need to increase the number of enforceable policies, and therefore it might be better to delete the language "and increase the number of" and replace it with "with", such that the letter of intent would read as follows:

It is the intent of the Legislature that the changes made to the Alaska Coastal Management Program under HB 106 will increase the ability of Alaska Coastal Districts and Coastal Resource Service Areas to draft strong Coastal District Plans with enforceable policies that will be approvable by the State of Alaska Department of Natural Resources. It is the intent of the Legislature that these changes will allow the Alaska Coastal Management Program to meet the concerns of coastal residents while developing Alaska's diverse coastal resources.

CO-CHAIR FEIGE asked if there is any objection to the aforementioned change to the letter of intent.

[6:49:32 PM](#)

CO-CHAIR SEATON objected for discussion purposes. He clarified that the letter of intent doesn't mandate that every district increase the number of enforceable policies, but the intent of the "rewrite" is to allow an increase in the number of enforceable policies in the coastal districts throughout the state. Therefore, removal of the language "and increase the number of" from the letter of intent invites the question of whether [the intent] is have the same number of enforceable policies that exist now.

[6:51:16 PM](#)

REPRESENTATIVE GARDNER related her support for the proposed amendment to the letter of intent because it's not necessarily the intent to create more enforceable policies, but rather that the coastal districts are able to do what they need to do.

REPRESENTATIVE P. WILSON concurred.

[6:51:43 PM](#)

REPRESENTATIVE DICK suggested that if the concern isn't in regard to the quantity, perhaps the language "and increase the number of" could be replaced with the language "more specific and accurate" enforceable policies.

CO-CHAIR FEIGE stated that before the committee could address Representative Dick's suggestion, it needed to dispense with the proposed change already before it.

[6:52:34 PM](#)

CO-CHAIR FEIGE concurred with Representative Munoz. If the coastal districts and service areas are allowed to draft stronger district plans, one could expect that there might be more enforceable policies. However, it is not necessarily the committee's intent to increase the number of enforceable policies.

[6:53:21 PM](#)

CO-CHAIR SEATON opined that the goal of this "rewrite" is to address the problems the coastal districts have experienced and the constraint with regard to the number of issues that could be addressed in enforceable policies. He emphasized that the letter of intent was written to acknowledge the problem of the number of enforceable policies that were approvable by the department, while recognizing that there will be more enforceable policies.

[6:54:49 PM](#)

CO-CHAIR FEIGE remarked that although there may be more enforceable policies, it isn't the intent to increase the number of enforceable policies. He opined that the enforceable policies need to be based on a solid foundation. The desire, he

further opined, is to make the plans and the standards for those enforceable policies stronger and more clearly defined.

[6:55:33 PM](#)

REPRESENTATIVE P. WILSON opined that the language "and increase the number of" shouldn't remain in the letter of intent because many of those enforceable policies included designated areas that are no longer included.

[6:56:06 PM](#)

CO-CHAIR FEIGE asked if the language "better defined enforceable policies" would be more appropriate.

[6:56:16 PM](#)

CO-CHAIR SEATON expressed concern with not recognizing that more than half of the enforceable policies of coastal districts have been rejected. He then reminded the committee that the letter intent is [not a mandate/requirement].

[6:57:12 PM](#)

CO-CHAIR SEATON maintained his objection.

[6:57:57 PM](#)

The committee took a brief at-ease.

[6:58:01 PM](#)

A roll call vote was taken. Representatives Gardner, Kawasaki, P. Wilson, Herron, Munoz, Foster, Dick, and Feige voted in favor of the amendment to the letter of intent. Representative Seaton voted against it. Therefore, the amendment to the letter of intent was adopted by a vote of 8-1.

[6:59:28 PM](#)

REPRESENTATIVE P. WILSON moved that the committee adopt the HB 106 letter of intent, as amended. There being no objection, the HB 106 letter of intent, as amended, was adopted.

[6:59:59 PM](#)

The committee took a brief at-ease.

[7:01:13 PM](#)

CO-CHAIR FEIGE announced that the committee is now being provided with a proposed committee substitute (CS) that incorporates all the amendments made to date, except the conceptual amendments made this evening.

[7:01:44 PM](#)

CO-CHAIR SEATON moved to adopt the proposed committee substitute (CS), Version 27-GH1965\I, Bullard, 4/4/11, as the work draft.

REPRESENTATIVE P. WILSON objected for discussion purposes.

[7:02:21 PM](#)

The committee took an at-ease from 7:02 p.m. to 7:09 p.m.

[7:09:18 PM](#)

CO-CHAIR FEIGE called the committee back to order.

[7:09:46 PM](#)

The committee took a brief at-ease.

[7:10:13 PM](#)

REPRESENTATIVE P. WILSON removed her objection Version I.

There being no further objection, Version I was before the committee.

[7:10:24 PM](#)

CO-CHAIR SEATON moved that the committee adopt Conceptual Amendment 1 to Version I, as follows:

Page 2, line 21;

Delete "subject to confirmation by the legislation in joint session, the public members"

[7:10:55 PM](#)

CO-CHAIR FEIGE objected for discussion purposes.

[7:10:59 PM](#)

CO-CHAIR SEATON explained that the purpose of Conceptual Amendment 1 to Version I is to conform the work draft to the Legislative Legal Services opinion that the board members wouldn't be confirmable by the legislature.

CO-CHAIR FEIGE removed his objection.

There being no further objection, Conceptual Amendment 1 to Version I was adopted.

[7:12:05 PM](#)

REPRESENTATIVE MUNOZ asked if Version I includes all the amendments the committee adopted today.

CO-CHAIR FEIGE replied yes, save the conceptual amendments.

[7:13:54 PM](#)

REPRESENTATIVE HERRON moved that the committee adopt the conceptual amendments to Amendments 9, 10, 11, and 12 [which were previously adopted during this hearing] to Version I. There being no objection, those conceptual amendments were adopted.

[7:14:56 PM](#)

MR. BALASH noted that the department will have to develop a fiscal note that will reflect the projected fiscal year (FY) 2012 operating budget requirements for DCOM. The fiscal note will also include the increments associated with the changes to the substance of the law made by this committee, particularly in terms of the funds necessary to support the activity of the board.

[7:15:43 PM](#)

CO-CHAIR FEIGE reminded everyone that a considerable amount of effort and diplomacy went into putting the CS together. He opined that this CS represents an excellent compromise between all parties and much of the credit for that compromise goes to Representative Herron.

[7:16:41 PM](#)

REPRESENTATIVE HERRON thanked the co-chairs, Mr. Balash, and the members of the committee for their work.

REPRESENTATIVE HERRON moved to report CSHB 106, Version 27-GH1965\I, Bullard, 4/4/11, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[7:17:21 PM](#)

CO-CHAIR SEATON objected for discussion purposes and clarified that the fiscal notes will be pending. He then removed his objection.

[7:17:32 PM](#)

CO-CHAIR FEIGE announced then that there being no further objection, CSHB 106(RES) was reported from the House Resources Standing Committee.

[7:17:44 PM](#)

The committee took an at-ease from 7:17 p.m. to 7:19 p.m.

[7:19:02 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 7:19 p.m.