

1 IN THE HOUSE

BY MILLER

2 HOUSE BILL NO. 32

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Land Use Board."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 46 is amended by adding a new chapter to read:

9 CHAPTER 28. LAND USE BOARD.

10 Sec. 46.28.010. FINDINGS. (a) The state finds that there is a
11 state interest in a more efficient system of land use planning and
12 decision making and that the rapid and continued growth of the state's
13 population, proliferating urban development, expanding transportation
14 systems, large-scale industrial and economic growth, conflicts in
15 patterns of land use, fragmentation of governmental entities exercising
16 land use planning powers, and the increased size, scope, and impact of
17 private actions, have created a situation in which land use management
18 decisions of wide public concern often are being made on the basis of
19 expediency, tradition, short-term economic considerations, and other
20 factors which too frequently are unrelated or contradictory to sound
21 environmental, economic, and social land use considerations.

22 (b) The state finds that a failure to conduct comprehensive land
23 use planning has, on occasion, resulted in delay, litigation, and
24 cancellation of proposed significant development, including, but not
25 limited to, facilities for the development, generation, and trans-
26 mission of energy, thereby too often wasting human and economic resources,
27 creating a threat to public services, or vastly increasing the cost of
28 such services to the public, and invoking decisions to locate activities
29 in areas of least public and political resistance, but without regard

1 to sound environmental, economic, and social land use considerations.

2 (c) The state further finds and declares that there is an increas-
3 ing mutuality of interest and responsibility between the various levels
4 of government in the state which call for coordinated and unified
5 policies in planning for growth and development in the interests of
6 order and economic viability for present and future generations, and
7 that the most effective means of attaining the objectives set out in
8 this chapter is through the adoption of a statewide system of land use.

9 Sec. 46.28.020. CREATION OF THE BOARD. There is created within
10 the Department of Environmental Conservation the Land Use Board.

11 Sec. 46.28.030. COMPOSITION AND APPOINTMENT. The board consists
12 of the commissioner of environmental conservation or his designee, the
13 director of planning and research or his designee within the Office of
14 the Governor, and five members appointed by the governor and confirmed
15 by the legislature in joint session. The five appointed members shall
16 be representative of the following: two from the public at large, one
17 active in conservation activities, one from industry, and one repre-
18 senting general landowner interests. Members shall serve staggered
19 four-year terms but initial appointments are as follows: one initial
20 appointee representing the public shall serve for one year and one
21 for four years, the initial appointee representing industry shall serve
22 for two years, the initial appointee representing conservation shall
23 serve for three years, and the initial appointee representing general
24 landowner interests shall serve for four years. The commissioner of
25 environmental conservation is designated as chairman.

26 Sec. 46.28.040. VACANCY. (a) A vacancy on the board shall be
27 filled by appointment by the governor and the appointment shall be con-
28 firmed by the legislature in joint session. A member selected to fill
29 a vacancy shall hold office for the balance of the full term for which

1 his predecessor on the board was appointed.

2 (b) A vacancy on the board does not impair the authority of a
3 quorum of its members to exercise all the powers and perform all the
4 duties of the board.

5 Sec. 46.28.050. QUORUM. Four members of the board constitute
6 a quorum for the transaction of business, for the performance of a duty,
7 or for the exercise of a power.

8 Sec. 46.28.060. COMPENSATION. Members of the board are in the
9 exempt service and shall receive an initial annual salary at range 28,
10 step B of the state pay plan, subject to merit raises as approved by
11 the governor. This section does not apply to the commissioner of
12 environmental conservation or the director of planning and research.

13 Sec. 46.28.070. LEGAL COUNSEL. The attorney general is the legal
14 counsel for the board. He shall advise the board in legal matters
15 arising in the discharge of its duties and represent the board in suits
16 to which it is a party. The board may retain additional legal counsel
17 as appropriate.

18 Sec. 46.28.080. EMPLOYMENT AND COMPENSATION OF PERSONNEL. (a)
19 The board may employ those persons necessary to carry out the purposes
20 of this chapter. Employees of the board are in the exempt service
21 under AS 39.25.110.

22 (b) In addition to its staff of regular employees, the board may
23 contract for and engage the services of consultants, experts and hearing
24 officers as necessary.

25 Sec. 46.28.090. DUTIES. (a) The board shall develop a compre-
26 hensive state land use classification plan, to include but not be
27 limited to the following:

28 (1) the preparation and continuing revision of a statewide
29 inventory of the land, water, and other natural resources of the state;

1 however, the board may utilize, where appropriate, the land resource
2 inventory, Regional Profiles, developed by the state and the Joint
3 Federal-State Land Use Planning Commission (AS 41.40).

4 (2) the compilation and continuing revision of data, on a
5 statewide basis, related to population densities and trends, economic
6 characteristics and projections, environmental conditions and trends,
7 and directions and extent of urban and rural growth;

8 (3) projections of the nature and quantity of land needed
9 and suitable for the following:

10 (A) recreation and esthetic appreciation;

11 (B) conservation and preservation of natural resources;

12 (C) agriculture;

13 (D) mineral development;

14 (E) forestry;

15 (F) industry and commerce, including the development,
16 generation, and transmission of energy;

17 (G) transportation;

18 (H) urban development, including the revitalization of
19 existing communities, and the economic diversification of existing
20 communities which possess a narrow economic base;

21 (I) rural development, taking into consideration future
22 demands for and limitations upon products of the land, and health,
23 educational, and other state and local governmental services;

24 (4) the preparation and continuing revision of an inventory
25 of environmental, geological, and physical conditions, including soil
26 types, which influence the desirability of various uses of land;

27 (5) the preparation and continuing revision of an inventory
28 of state, local, and private needs and priorities concerning the use of
29 federal lands within the state;

1 (6) the preparation and continuing revision of an inventory
2 of public and private institutional and financial resources available
3 for land use planning and management within the state and of state and
4 local programs and activities which have a land use impact of more than
5 local concern;

6 (7) the establishment of a method for inventorying and desig-
7 nating areas of critical environmental concern and areas which are, or
8 may be, impacted by significant development;

9 (8) the provision, where appropriate, of technical assistance
10 and training programs for state and local agency personnel concerned
11 with the development and implementation of state and local land use
12 programs;

13 (9) the establishment of arrangements for the exchange of
14 land use planning information and data among governmental agencies of
15 all levels, Alaska native and regional corporations, and members of the
16 general public;

17 (10) the establishment of a method for coordinating all state
18 and local governmental programs and services which significantly affect
19 land use;

20 (11) the conducting of public hearings, the preparation of
21 reports, and the soliciting of comments on reports concerning the state-
22 wide land use planning process or aspects of it;

23 (12) the consideration of, and consultation with other
24 appropriate states on the interstate aspects of land use issues of more
25 than local concern;

26 (13) the establishment of specific categories for the classi-
27 fication of state land and the actual classification of it;

28 (14) an assessment of the extent to which existing land
29 classification under AS 38.05 may be appropriate and conform to the

1 purposes of this chapter;

2 (15) the relationship and impact of existing land selections
3 by Alaska native village and regional corporations on state and federal
4 land in the state.

5 (b) In developing its land use plan, the board shall recognize
6 that the decision-making authority as to the character and use of land
7 is, in many cases, most appropriately at the lowest level of government
8 possible. In this regard, the board shall establish criteria by which
9 land use management problems will be classified as matters of state
10 concern, matters of regional concern, matters of local concern, and
11 other classifications or subclassifications that the board considers
12 necessary.

13 (c) Land use plans of a general law or home rule municipality
14 existing as of the effective date of this Act or adopted thereafter,
15 shall be reviewed by the board for the purpose of determining whether
16 they conform to the purposes and requirements of this chapter. A non-
17 conforming or unsuitable classification by a municipality may be super-
18 ceded by a classification under this chapter. In addition, upon receipt
19 of a petition by the governing body of a municipality for a moratorium
20 on development, when no such moratorium power exists within the munic-
21 ipality, the board, after considering and approving the request,
22 is authorized to impose a moratorium on the specific development as
23 requested within the municipality.

24 (d) No classification or restriction established under this
25 chapter may bind or commit federally-owned lands. However, nothing in
26 this chapter shall be construed as an agreement by the state to surrender,
27 waive, or condition a right granted to it under the Alaska Statehood
28 Act (P.L. 85, 508, 72 Stat. 339).

29 (e) Except for land in excess of 640 acres closed to multiple

1 purpose use under sec. 125 of this chapter, a land classification made
2 under this chapter that conflicts with a classification made under AS 38
3 shall, unless development of the land has occurred or a property right
4 will be impaired, be superceded by a classification under this chapter.

5 (f) In carrying out its duties under this section, the board,
6 where appropriate, shall obtain the advice and consultation of the
7 commissioner of fish and game, the commissioner of natural resources,
8 and other department heads within state government, as appropriate.

9 Sec. 46.28.100. AREAS OF CRITICAL ENVIRONMENTAL CONCERN. (a)
10 The board shall, after a thorough review and evaluation of the land use
11 planning data available to it and after consultation with the Department
12 of Fish and Game and the Department of Natural Resources, undertake a
13 specific identification of areas of critical environmental concern.
14 In general, an area is considered of critical environmental concern
15 if development there can result in significant irreversible damage to
16 important historic, cultural, or esthetic values, or natural systems,
17 or where uncontrolled development can unreasonably endanger life,
18 health, safety and property. Critical environmental areas subject to
19 specific boundary delineation by the board shall include, but not be
20 limited to, the following:

- 21 (1) coastal wetlands, marshes, and other lands inundated by
22 the tides;
- 23 (2) beaches and dunes;
- 24 (3) significant estuaries, shorelands, rivers, lakes, streams
25 and their flood plains;
- 26 (4) precipitous slopes, areas of unstable soils, and areas
27 subject to high seismicity influences;
- 28 (5) rare or valuable ecosystems;
- 29 (6) significant undeveloped agricultural, grazing, and

1 watershed lands;

2 (7) forests and related land which require long stability
3 for continuing renewal;

4 (8) scenic or historic areas;

5 (9) significant wildlife habitat areas; however, a critical
6 habitat area established under AS 16.20.220 - 16.20.270 is not subject
7 to reduction or limitation under this chapter.

8 (b) At least 60 days before the identification of an area under
9 (a) of this section, the board shall issue reasonable notice of the
10 proposed classification in the general area to be classified and in
11 any other area or population center which the board reasonably feels
12 may be affected by the classification. At least 30 days before the
13 identification of an area under (a) of this section, no less than one
14 public hearing shall be held within or near the area to be affected.

15 (c) Uses within a critical environmental area identified under
16 this section shall be restricted to uses that are compatible with the
17 purposes for which the area was established.

18 (d) The restriction of an area to certain uses under this section
19 may be appealed by any affected person, under procedures to be estab-
20 lished by the board that are not inconsistent with due process of law.

21 Sec. 46.28.110. SPECIFIC LAND USE RESTRICTION. (a) In addition
22 to restrictions imposed by the comprehensive overall classification of
23 land under this chapter or related to areas of critical environmental
24 concern under sec. 100 of this chapter, a plan for each action, activity,
25 or project undertaken by a person which may significantly affect the
26 quality of the land or water shall be submitted to the board for review
27 and approval. The plan shall include the following:

28 (1) an environmental evaluation of the proposed action;

29 (2) any adverse environmental effects which cannot be

1 avoided should the proposal be implemented;

2 (3) alternatives to the proposed action;

3 (4) any irreversible and irretrievable commitments of
4 resources which would be involved in the proposed action should it be
5 implemented;

6 (5) an economic evaluation of the proposed action.

7 (b) The board shall consider the specific plan required under (a)
8 of this section within 60 days from the date of its receipt by the
9 board.

10 (c) For purposes of this section, "significantly affecting the
11 quality of land" means changing its nature or makeup, either by natural
12 or artificial means, so that the land or water is adversely environmen-
13 tally affected in a substantial or irreversible way.

14 Sec. 46.28.120. REGULATIONS. The board may establish regulations
15 necessary to carry out its duties and responsibilities under this
16 chapter.

17 Sec. 46.28.125. LEGISLATIVE CLASSIFICATION. No state land, water,
18 or land and water area shall, except by act of the state legislature,
19 be closed to multiple purpose use, if the area involved contains more
20 than 640 acres.

21 Sec. 46.28.130. COORDINATION WITH JOINT FEDERAL-STATE LAND USE
22 PLANNING COMMISSION. The board shall confer and coordinate its compre-
23 hensive land use plan with the Joint Federal-State Land Use Planning
24 Commission or any other group acting under the authority of or succeeding
25 the commission. When appropriate, both agencies shall work together in
26 an effort to assure the orderly planning for lands within the state.

27 Sec. 46.28.135. COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE
28 ACT. When not in conflict with the provisions of this chapter, the
29 Administrative Procedure Act (AS 44.62) applies to proceedings under

1 this chapter.

2 Sec. 46.28.140. SUBMISSION OF REPORT AND CLASSIFICATION PLAN TO
3 THE LEGISLATURE. (a) The board shall submit a report of its activity
4 to the legislature before January 30 of each odd-numbered year.

5 (b) The board shall submit its specific land classification plan
6 under sec. 090(a)(13) of this chapter to the legislature. Unless
7 rejected by concurrent resolution of the legislature within 45 days
8 from date of receipt by the legislature, the classification plan takes
9 effect. If rejected, the resolution, with accompanying documents if
10 appropriate, shall specify the portions of the plan rejected and the
11 reasons for the rejection. If rejected, the plan may be resubmitted
12 within 30 days from the date of rejection. The revised plan shall be
13 approved by concurrent resolution. If no action is taken, the revised
14 plan may be resubmitted for approval by concurrent resolution at the
15 next legislative session.

16 Sec. 46.28.150. DEFINITIONS. In this chapter "board" means the
17 Land Use Board.

18 * Sec. 2. AS 38.05.300 is repealed.
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