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114

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

STEVE COWPER, GOVERNOR

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May 1, 1987

Mr. Bruce Geraghty
Legislative Aide
Senator Jack Coghill's Office
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Mr. Geraghty:

Enclosed, as you requested, is a copy of the Division of Governmental Coordination's (DGC) comments on Senate Bill (SB) 114, relating to legislative disapproval of district coastal management programs prepared under the Alaska Coastal Management Program. The DGC appreciates the opportunity to testify at the hearing scheduled before the Senate Resources Committee on May 4, 1987, regarding the bill. Please call at me 465-3562 if you have any questions about this material.

Sincerely,


Jan Mills
Coastal Program Coordinator

Enclosures

bs87043001jmi

Division of Governmental Coordination
Comments on Senate Bill 114
Senate Resources Committee Hearing
May 4, 1987

Senate Bill (SB) 114, "An Act relating to legislative disapproval of the Alaska Coastal Management Program," would provide the Legislature a role in the approval of local coastal district programs prepared under the Alaska Coastal Management Program (ACMP) and all amendments to those programs. The bill would give the Legislature 60 days to act to disapprove any proposed addition or amendment to the ACMP. Absent disapproval by act of the Legislature, the proposed program or program changes would take effect.

The Division of Governmental Coordination's (DGC) comments regarding SB 114 focus on both practical and legal considerations with the bill's implementation. These comments are outlined below.

The ACMP allows local coastal communities and rural regions of the state (called "coastal districts") to author coastal management programs that guide the management and development of coastal resources in their areas. Coastal district programs are developed according to guidelines and standards established in the Alaska Coastal Management Act by the Legislature in 1977, with oversight and approval by the Alaska Coastal Policy Council (CPC). The CPC includes the commissioners of seven state agencies and nine locally-elected officials representing coastal regions of the state. Coastal district programs and any subsequent program changes are reviewed for compliance with ACMP guidelines and standards prior to CPC approval, and address comments received from the public and agencies during an extensive public review process.

Thirty-four coastal districts participate in the ACMP. To date, 27 programs have been reviewed and approved by the CPC through the process outlined above. The last of the large regional programs, a plan for the Bering Straits region, is expected to be approved by the CPC in June 1987.

The state has considerable experience with the implementation of these approved district programs. All projects which occur within the coastal area of the state and which require a state or federal permit are reviewed for "consistency" with the respective local district program. The consistency review involves the project applicant, the coastal district, the state resource agencies, and DGC.

Implementation of district programs has been successful. Since January 1984, DGC has coordinated the review of 1541 projects for consistency with the ACMP and approved local district coastal management programs. Of these 1541 projects, 1525 have been

found to be consistent with the ACMP and have received the necessary state approvals to proceed. The average timeframe for completing a project consistency review has been only 47 days, even for major projects such as causeway developments which will service oil and gas activity on Alaska's North Slope.

The success that has been experienced in the implementation of approved district programs indicates that few major amendments to these approved programs are anticipated in the future. Future program changes would likely be limited to fine-tuning of the programs, such as a recent request from the Municipality of Anchorage to prepare a new program document that more clearly outlines the components of the approved Anchorage Coastal Management Program for project applicants, or a request from the City of Pelican to allow a community recreation facility in an area formerly designated in their plan for only water-dependent uses.

At the request of DGC, the Attorney General's Office prepared a review of SB 114 that is also pertinent. The Department of Law notes that establishing a role for the Legislature in reviewing and approving individual district programs raises separation-of-power issues and creates uncertainty regarding the constitutionality of this bill. The Department of Law's concerns are sufficient for them to suggest that the administration consider vetoing this legislation in light of its constitutional infirmity and the practical problems associated with its implementation. A copy of the Attorney General's analysis of the bill is attached.

Legislative involvement in the ACMP may be accomplished without special legislation approving or disapproving adoption of a particular district program or program amendment. The Legislature sets the standards of the ACMP through the enabling statute. Further, the Legislature may comment on proposed district programs and program changes that are of specific interest during the review and approval process outlined in regulation.

The history of acceptance of adopted plans by the coastal districts, agencies, and public; the demonstrated success in implementation of approved programs; and the constitutional questions surrounding SB 114 do not support the need for the statutory change contained in the bill. Also, given that most of the local coastal district programs have been completed and substantive program changes are not anticipated, through adoption of SB 114 the Legislature will burden itself with the task of monitoring only minor program changes.

As the implementation of SB 114 would cause no fiscal impact to DGC, a zero fiscal note is attached.

Attachments

bs07042901jmi

MEMORANDUM

State of Alaska

TO: Boo Grogan, Associate Director DATE: April 1, 1987
Division of Governmental Coordination
Office of the Governor FILE NO.: 663-87-0392

THRU: TELEPHONE NO.: 465-3600

FROM: Grace Berg Schaible SUBJECT: Review of SB 114,
Attorney General legislative approv-
al of Alaska Coastal
Management Program

By: Joseph W. Geldhof
Assistant Attorney General
Department of Law

You have requested our counsel with respect to Senate Bill 114. This bill would amend the Alaska Statutes at 46.40 and afford the Alaska Legislature an opportunity to disapprove of proposed additions or revisions to the Alaska Coastal Management Program (ACMP). The proposed bill would give the legislature 60 days to disapprove of a proposed addition or revision by act of the legislature. Absent disapproval by act of the legislature, the proposed program or proposed changes would take effect.

Previous measures enacted by the legislature that required the legislature to approve individual programs or program changes presented significant constitutional difficulties. See 1980 Inf. Op. Att'y Gen. (Apr. 29; J66-506-80). Other legislative proposals to cure the constitutional infirmities of legislative oversight of the ACMP have raised serious legal problems. See 1985 Inf. Op. Att'y Gen. (Mar. 1; 366-378-85).

The particular form of legislative oversight contained in SB 114 pertaining to adoption of coastal management programs also raises constitutional, separation-of-power issues. This bill, if enacted, would not alleviate uncertainty regarding the constitutionality of legislative oversight of the ACMP. Although this specific oversight issue has not been presented to the Alaska Supreme Court, a strong case could be maintained that the legislative oversight function contemplated by SB 114 violates the separation-of-powers doctrine under the Alaska Constitution. Certainly, arguments against legislative veto as a decision-making tool were recognized by the Alaska Supreme Court in State v. A.L.I.V.E. Voluntary, 666 P.2d 769, 779 (Alaska 1980). Accord 1985 Inf. Op. Att'y Gen. (Mar. 1; 366-378-85).

United States Supreme Court Justice White has observed that the legislative veto is a useful "political invention." I.N.S. v. Chadha, 462 U.S. 919, 972 (1983) (dissenting opinion). But, as the majority of the United States Supreme Court pointed out in the Chadha case:

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APR 02 1987

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Bob Grogan, Associate Director
Div. of Governmental Coordination
Office of the Governor
Our File No. 663-87-0392

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[P]olicy arguments supporting even useful "political inventions" are subject to the demands of the Constitution which defines powers and ... sets out just how those powers are to be exercised.

I.N.S. v. Chadha at 945. Whether the legislative veto as a useful "political invention" actually advances the program and policy objectives contained in AS 46.40.010--46.40.210 is a topic for additional thought. Arguments have been made that the legislative veto has been unimpressive in practice. See Truff and Galhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev. 1369 (1977). The legislative oversight measure contained in SB 114 may also constitute special legislation prohibited by article II, section 19, of the Alaska Constitution. Accord 1985 Inf. Op. Att'y Gen. (Mar. 1,; 366-378-85). The separation-of-powers doctrine under the Alaska Constitution suggests that legislative power should be exercised through general legislation and appropriation of funds and may not be exercised by special legislative action vetoing specific administrative acts made pursuant to lawfully delegated authority. Legislative oversight of the Alaska Coastal Management Program may be accomplished without special legislation approving or disapproving adoption of a particular program or program amendments.

The legislature receives proposed Alaska Coastal Management Program amendments prior to their adoption by the Alaska Coastal Policy Council. The legislature may comment on a proposed program or program amendments prior to adoption. If the legislature objects to the policies contained in a particular district program, the guidelines and standards governing review and approval of district coastal management programs may be amended in conformity with the specific desires and wishes of the legislature. See generally AS 46.40.070.

In conclusion, this bill raises constitutional legal issues which warrant your critical scrutiny. Because of constitutional infirmities and possible practical problems with the administration of this bill, you should consider recommending that the governor veto this legislation if the measure is passed by the legislature.

Bob Grogan, Associate Director
Div. of Governmental Coordination
Office of the Governor
Our File No. 663-87-0392

April 1, 1987
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Please contact me if I can answer additional questions
about this piece of legislation or this topic in general.

JWG:jf

cc: Jan Mills, OMB/DGC

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version:
Publish Date:

Revision Date: SB 114
Title: An Act relative to legislative dis-
approval of the Alaska Coastal Mgt. Program
Sponsor: Coghill, Fahrenkamp, Bennett, Faiks
Requestor: _____

Agency Affected: Office of the Govern
BRU: Div. Gov. Coord.
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert L. Grogan Phone: 465-3562
Division: Division of Governmental Coordination Date: April 30, 1987

Approved by Commissioner: [Signature] Date: 5/1/87
Agency: [Signature]

Distribution (by preparer): Office of the Governor

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Inspect Agency mtl
- State Secretary



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347 April 24, 1987

Senator Jack Coghill
P.O. Box V (MS 3100)
Juneau, Alaska 99811

APR 27 1987

RE: SB 114

Dear Senator Coghill:

The Alaska Miners Association strongly supports SB 114.

The Resource Development Council recommended this legislation in their "New Strategies for Advancing Alaska's Economy, 1986-1990".

The Alaska Minerals Commission endorsed the concept of legislative oversight of district management programs in their "Initial Report of the Alaska Minerals Commission, January, 1987".

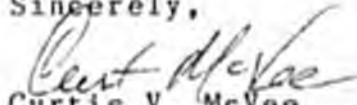
All three of these groups have as their primary concern, the liberal and unwarranted extension of district coastal zone boundaries beyond the coastal areas. Clearly, lands 250 miles from the active coast should not be considered as within the coastal zone.

The AMA feels that the incorporation of the vast areas incorporated into coastal zone management plans such as the North Slope plan, Nana, Bristol Bay, and the proposed Bering Straits plan, clearly violate the intent and purpose of state and federal law. The policies promulgated by these districts are strongly weighted toward subsistence uses to the point that all other uses, including uses of State and National concern, are subordinated. In essence, the coastal zone management plans are being used to establish a non-elected body as a zoning and management authority to oversee and control development in vast areas of Alaska.

State agencies have been ineffective in mitigating the concerns identified by the resource industries during plan development. The plans that have been approved at the State level are seriously flawed and will deter responsible resource development. The history of failure of the State's plans at the federal level substantiates our concern.

The Alaska Miners Association feels that legislative oversight of the district coastal plans is necessary to protect State concerns and we recommend passage of SB 114 as a vehicle to accomplish this.

Sincerely,


Curtis V. McVee
Executive Director



Resource Development Council

for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
 Box 100510, Anchorage, Alaska 99510-0516 - 907/276-0700

April 22, 1987

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Senator Jack Coghill
 Senate Resources Committee
 Pouch V
 Juneau, AK 99811

APR 27 1987

re: SB 114, an act relating to legislative disapproval of the Alaska Coastal Management Program

Dear Jack:

The Resource Development Council strongly supports SB 114, legislation allowing legislative review of Coastal Zone Management Plans. We believe the potential for legislative disapproval will bring about the development of better coastal resource planning and management.

The Alaska Coastal Management Program (ACMP) was designed to allow coastal residents to have a direct role in the evolution of coastal land use policy. For a variety of reasons the ACMP has developed into a program with substantial statewide impacts without appropriate statewide review of its contents or impacts.

When the ACMP was devised several years ago the program contained an adequate legislative review process. The Supreme Court has since struck down the review process employed in the ACMP. We believe that the modified procedure spelled out in SB 114 will provide the legislature with the appropriate review authority.

At present, in the absence of legislative review steps, the ACMP plans are ratified without any opportunity for substantive action by anyone except the Coastal Policy Council, an organization made up of delegates of coastal areas and appointed state officials.

The re-creation of the legislative review procedure that was originally built into the ACMP would vastly improve the credibility of the program. It would also allow for meaningful review by the ultimate arbiters of sound state land use policy, coastal or otherwise, the legislature.

Thank you for your support on this important issue.

RESOURCE DEVELOPMENT COUNCIL
 for Alaska, Inc.

Michael K. Abbott
 Projects Coordinator

ALEUTIANS EAST COASTAL RESOURCE SERVICE AREA
P.O. BOX 90
SAND POINT, ALASKA 99661
(907) 383-2699

May 4, 1987

Senator Jack Coghill
Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill,

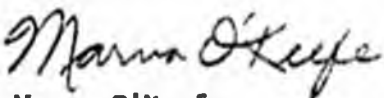
I am writing on behalf of the Aleutians East Coastal Resource Service Area (CRSA) Board in regards to SB 114, an act relating to legislative disapproval of the Alaska Coastal Management Program. I understand that you will include our comments in the committee packet to be distributed today prior to the 4:30 p.m. hearing.

The Board is strongly opposed to SB 114. We believe the current structure and process for approval of coastal management programs, including local and Coastal Policy Council review achieves the goal of public and agency involvement in the programs. The Coastal Policy Council is comprised of 7 state agency representatives and 9 locally elected officials appointed by the Governor from nominations submitted by municipalities. This body has the necessary expertise and experience to approve local district programs.

SB 114 would build a 2-month delay into the approval process for all coastal management programs and any additions, revisions or amendments to those programs. In light of the Legislature's expressed desire to save the state time and money, it seems highly inefficient to consider implementing such a process.

We urge you to vote against SB 114. Thank you for considering our comments.

Sincerely,



Marva O'Keefe
Chairperson
Aleutians East CRSA Board



Coastal Resource Service Area

P.O. Box 3110, Dillingham, Alaska 99578

(907) 842-2688-842-2667

May 1, 1987

Senator John B. Coghill
Senate Resources Committee
P.O. Box V, MS 3100
Juneau, AK 99811

Re: Senate Bill 114

Dear Senator Coghill:

The Bristol Bay Coastal Resource Service Area (CRSA) Board would like to provide the resources committee with comments on the above referenced legislation. This is very important to the Board given its responsibility for the development and implementation of a coastal management program for the Bristol Bay region.

The Alaska Coastal Management Program (ACMP) is a mechanism, and the only one in the unorganized borough, that allows for local input into decisions affecting land and water use in the coastal areas of Alaska. Existing regulations allow for all public agencies and private interests to have numerous opportunities to comment on both the implementation of, and amendments to, the ACMP. This includes the placement of local programs into it.

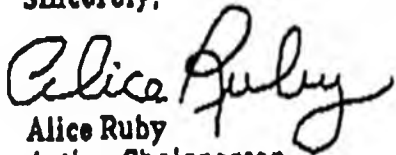
The Coastal Policy Council (CPC), which is made of agency commissioners and locally-elected officials, reviews all of the many different opinions presented on amendments to the ACMP. It is at this time that they can be analyzed in order to determine they are consistent with the ACMP regulations; required at this time are that uses of state concern are not unreasonably restricted (AS 46.40.060 (g)(4)). Thus, the argument that the coastal management program is too restrictive on actions of importance to the state as a whole is not valid.

An opinion from the attorney general in 1980 directly addressed the major point of this legislation, and is referenced under AS 46.40.080. Although the language has a minor change (from "resolution" to an "act" of the legislature), it appears that the same intent is implied. Thus, prior to any action on this piece, the Department of Law should provide the committee with an opinion on whether it is permissible under the constitution.

Another concern that the Board has with the proposed legislation is in regard to the extra burden that a legislative review of district program would place upon the legislature. This is particularly relevant given the 120-day limit which the legislature must work under. Coupled with this reference to timing is a logistical question: what happens if the CPC gives approval to a program/amendment in June or September, after the legislature has recessed? Will the program be held in abeyance until the legislature reconvenes? If so, is this fair to local districts, state agencies and the public, who many times have spent a number of years reaching this point?

The Bristol Bay CRSA Board objects to this piece of legislation and feels that it should not be passed out of committee.

Sincerely,

A handwritten signature in cursive script that reads "Alice Ruby". The signature is written in dark ink and is positioned above the typed name and title.

Alice Ruby
Acting Chairperson
Bristol Bay CRSA Board

AR/com