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OF
FILES**

2011-2012

CONFERENCE COMMITTEES/FREE CONFERENCE COMMITTEES

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HB 106 CONFERENCE COMMITTEE

HB

106

**CONFERENCE
COMMITTEE**

<TARGET><BILL>HB 106</BILL><SUBJECT>HB 106 CONFERENCE
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CONFERENCE
COMMITTEE

CONSIDERING:

CSHB 106(FIN)

AND

SCS CSHB 106(FIN)

House Version

CSHB 106(FIN)

CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/15/11

Referred: Today's Supplemental Calendar

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska coastal management program and
2 relating to the extension; relating to the review of activities and regulations of the Alaska
3 coastal management program; establishing the Alaska Coastal Policy Board; relating to
4 the development, review, and approval of district coastal management plans; relating to
5 the duties of the Department of Natural Resources relating to the Alaska coastal
6 management program; relating to the review of certain consistency determinations;
7 providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.
8 31, SLA 2005; and providing for an effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 * **Section 1.** AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

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

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
2 resource districts of each region; the governor may reject a list submitted under
3 this subparagraph and request that subsequent lists with different names be
4 submitted; one public member shall be appointed from each of the following
5 regions:

6 (i) northwest Alaska, including, generally, the area of
7 the North Slope Borough and the Northwest Arctic Borough; and the
8 Bering Strait area, including, generally, the area of the Bering Strait
9 regional educational attendance area;

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

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

21 (iv) Southeast Alaska, generally the area east of 141
22 West longitude;

23 (2) each of the following designated members:

24 (A) the commissioner of environmental conservation;

25 (B) the commissioner of fish and game;

26 (C) a deputy commissioner of natural resources;

27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. Each member serves
29 until a successor is appointed and qualified. A public member may be reappointed. A
30 public member may be removed at the pleasure of the governor, in which event the
31 alternate member shall serve the remainder of the term and a new alternate shall be

1 appointed under (a)(1) of this section.

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

5 (d) If a member serving under (a)(1) of this section is unable to attend, the
6 alternate may attend. The names of alternates serving under (a)(1) of this section shall
7 be filed with the board.

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

12 (f) Three public members and three designated members of the board
13 constitute a quorum. However, action may be taken only upon the affirmative vote of
14 at least two-thirds of the full membership of the board.

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

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

20 (i) Administrative support for the board shall be provided by the division in
21 the department responsible for coastal and ocean management. The director of the
22 division in the department responsible for coastal and ocean management may contract
23 with or employ persons as necessary to assist the board in carrying out the board's
24 duties and responsibilities.

25 (j) The board shall

26 (1) make recommendations to the department relating to the approval
27 or modification of a district coastal management plan under AS 46.40.060(b);

28 (2) provide a forum for the discussion of issues related to this chapter,
29 AS 46.40, and the coastal uses and resources of the state; and

30 (3) annually solicit from state and federal agencies information as to
31 whether they implemented any new statutes or regulations affecting coastal uses or

1 resources to determine if existing enforceable policies duplicate, restate, incorporate
2 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
3 so, direct a coastal resource district with such enforceable policies to resubmit its
4 coastal management plan for review under this chapter and AS 46.40; and

5 (4) review and provide comments to the department on regulations
6 proposed under this chapter and AS 46.40.

7 * **Sec. 4.** AS 46.39.010 is amended by adding a new subsection to read:

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

13 * **Sec. 5.** AS 46.39.030 is amended to read:

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

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

18 (2) contract for necessary services;

19 (3) consult and cooperate with

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

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

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

29 * **Sec. 6.** AS 46.39.040 is amended to read:

30 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451
31 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

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

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

9 (3) assure continued provision of [DATA AND] information to coastal
10 resource districts to carry out their planning and management functions under the
11 program; in providing information to a coastal resource district and coastal
12 resource service area under this paragraph, the department shall provide the
13 information by electronic transmission, or by mail if the addressee does not have
14 an electronic mail address, to the presiding officer of the governing body of the
15 coastal resource district and to other persons as may be designated in writing by
16 the district;

17 (4) summarize the minutes of the board's discussion of issues
18 related to this chapter, AS 46.40, and coastal uses and resources of the state.

19 * Sec. 7. AS 46.40.030 is amended to read:

20 **Sec. 46.40.030. Development of district coastal management plans.** (a)
21 Coastal resource districts shall develop and adopt district coastal management plans in
22 accordance with the provisions of this chapter. The plan adopted by a coastal resource
23 district shall be based upon a municipality's existing comprehensive plan or a new
24 comprehensive resource use plan or comprehensive statement of needs, policies,
25 objectives, and standards governing the use of resources within the coastal area of the
26 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
27 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
28 adopted under AS 46.40.040, and must include

29 (1) a delineation within the district of the boundaries of the coastal area
30 subject to the district coastal management plan;

31 (2) a statement, list, or definition of the land and water uses and

1 activities subject to the district coastal management plan;

2 (3) a statement of enforceable policies to be applied to the land and
3 water uses subject to the district coastal management plan; and

4 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
5 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
6 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
7 WATER WITHIN THE COASTAL AREA; AND

8 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
9 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
10 the district coastal management plan and a designation of the enforceable policies
11 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
12 merit special attention.

13 (b) In developing enforceable policies in its coastal management plan under
14 (a) of this section, a coastal resource district shall meet the requirements of AS
15 46.40.070 and ensure that the enforceable policies

16 (1) are clear and concise as to the activities and persons affected by
17 the policies;

18 (2) use prescriptive or performance-based standards that are
19 written in precise and enforceable language;

20 (3) address a coastal use or resource of concern to the residents of
21 the coastal resource district as demonstrated by local knowledge or supported by
22 scientific evidence; and

23 (4) employ the least restrictive means to achieve the objective of
24 the enforceable policy [MEET THE REQUIREMENTS OF AS 46.40.070 AND
25 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE
26 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
27 OR FEDERAL AGENCIES].

28 * Sec. 8. AS 46.40.030 is amended by adding a new subsection to read:

29 (c) In determining whether an enforceable policy employs the least restrictive
30 means to achieve its objective, the following factors shall be considered:

31 (1) alternative methods of achieving the objective of the policy;

1 (2) local knowledge or scientific evidence supporting each alternative
2 method;

3 (3) how the alternative methods may affect other existing or potential
4 uses;

5 (4) the economic effects of alternative methods;

6 (5) the technological feasibility of the alternative methods; and

7 (6) any other relevant factors.

8 * **Sec. 9.** AS 46.40.040(b) is amended to read:

9 (b) Notwithstanding any other provision of law, AS 46.03, AS 46.04, AS
10 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
11 exclusive enforceable policies of the Alaska coastal management program for those
12 purposes. For those purposes only,

13 (1) the issuance of permits, certifications, approvals, and
14 authorizations by the Department of Environmental Conservation establishes
15 consistency with the Alaska coastal management program for those activities of a
16 proposed project subject to those permits, certifications, approvals, and authorizations;

17 (2) for a consistency review of an activity that does not require a
18 Department of Environmental Conservation permit, certification, approval, or
19 authorization because the activity is a federal activity or the activity is located on
20 federal land or the federal outer continental shelf, consistency with AS 46.03, AS
21 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes shall
22 be established on the basis of whether the Department of Environmental Conservation
23 finds that the activity satisfies the requirements of those statutes and regulations.

24 * **Sec. 10.** AS 46.40.050 is amended by adding a new subsection to read:

25 (c) A coastal resource district shall resubmit its coastal management plan, as
26 may be directed by the board under AS 46.39.005(j)(3).

27 * **Sec. 11.** AS 46.40.060(a) is amended to read:

28 (a) If, upon submission of a district coastal management plan for approval, the
29 department finds that the plan meets the provisions of this chapter [AND THE
30 STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY
31 THE DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY

1 RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may
 2 approve the district coastal management plan, or may approve portions of the district
 3 plan that meet those requirements.

4 * Sec. 12. AS 46.40.060(b) is amended to read:

5 (b) If the department finds that a district coastal management plan is not
 6 approvable or is approvable only in part under (a) of this section, the department
 7 shall explain in writing the basis for its decision. The coastal resource district that
 8 submitted the plan may request that the department submit the plan or portions
 9 of the plan to the board for review. The board shall review the plan or portions of
 10 the plan and make recommendations relating to whether the department should
 11 approve or modify the district coastal management plan in whole or in part [IT
 12 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
 13 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
 14 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
 15 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
 16 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
 17 RESOLVE DIFFERENCES].

18 * Sec. 13. AS 46.40.060(c) is amended to read:

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

23 (1) approve the plan or portions of the plan;

24 (2) require that the district coastal management plan be amended to
 25 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
 26 STANDARDS] and district plan criteria adopted by the department;

27 (3) require [(2)] that the district coastal management plan be revised
 28 to accommodate a use of state concern; or

29 (4) require that [(3)] any other action be taken by the coastal resource
 30 district [AS APPROPRIATE].

31 * Sec. 14. AS 46.40.060 is amended by adding new subsections to read:

1 (e) Only a coastal resource district affected by a decision of the department
 2 under this section may request reconsideration of the decision. The request must be
 3 made within 15 days after the decision, must be in writing, and must include a
 4 statement of the specific issues and material facts that the coastal resource district
 5 contends that the department overlooked, failed to consider, or misconceived. The
 6 commissioner of natural resources may review the department's decision on the basis
 7 of the request and determine whether the decision should be changed. The
 8 commissioner may issue a determination in writing within 20 days after the issuance
 9 of the decision. If the commissioner has not issued a written decision within the 20-
 10 day period, the request for reconsideration shall be considered as denied. Denial of a
 11 request for reconsideration is a final administrative order and decision of the
 12 department.

13 (f) The superior courts of the state have jurisdiction to enforce orders of the
 14 department entered under (c) and (e) of this section.

15 * **Sec. 15.** AS 46.40.070 is repealed and reenacted to read:

16 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
 17 department shall approve a district coastal management plan submitted for review and
 18 approval if, as determined by the department, the

19 (1) district coastal management plan meets the requirements of this
 20 chapter and the district plan criteria adopted by the department; and

21 (2) enforceable policies of the district coastal management plan

22 (A) do not duplicate, restate, incorporate by reference,
 23 rephrase, or adopt state or federal statutes or regulations;

24 (B) are not preempted by or in conflict with state or federal
 25 statutes or regulations;

26 (C) employ the least restrictive means to achieve the objective
 27 of the enforceable policies;

28 (D) do not arbitrarily or unreasonably restrict uses of state
 29 concern; and

30 (E) meet the requirements of (b) and (c) of this section.

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

1 for review under this section must meet the requirements of (a) of this section and may
 2 establish new standards or requirements that are within the authority of a state or
 3 federal agency unless

4 (1) a state agency specifically objects to the proposed new standards or
 5 requirements on the grounds that the proposed standards or requirements

6 (A) are based on scientific evidence or local knowledge relied
 7 upon by the coastal resource district to satisfy the requirements of AS
 8 46.40.030 but that conflicts with the agency's interpretation of the scientific
 9 evidence within the agency's area of expertise;

10 (B) conflict with the agency's allocation of existing or planned
 11 agency resources to meet state policies and objectives; or

12 (C) conflict with agency priorities or objectives, or other state
 13 policies;

14 (2) the proposed new standards or requirements address discharges,
 15 emissions, contaminants, conditions, risks, or other matters that fall within the
 16 authority of the Department of Environmental Conservation under AS 46.03, AS
 17 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.

18 (c) An approval of a district coastal management plan with enforceable
 19 policies may not affect a person's rights or authorizations under an unexpired permit,
 20 lease, or other valid existing right to explore or develop natural resources that predates
 21 the date that the enforceable policy becomes final. An enforceable policy becomes
 22 final when its adoption is no longer subject to further review through either a judicial
 23 or administrative process.

24 (d) In this section, "specifically objects" means that, during a review of a
 25 district coastal management plan under AS 46.40.050 or 46.40.060 and their
 26 implementing regulations, a written objection to the enforceable policy that establishes
 27 the new standards or requirements is filed with the department by

28 (1) the commissioner or the commissioner's designee of a state agency;

29 or

30 (2) the attorney general of the state.

31 (e) Notwithstanding any other provision of this chapter, an enforceable policy

1 that establishes requirements within the authority of a state or federal agency shall be
 2 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
 3 with the enforceable policy.

4 * Sec. 16. AS 46.40.096(d) is amended to read:

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

7 (1) request consistency review comments for the proposed project
 8 from state resource agencies, affected coastal resource districts, and other interested
 9 parties as determined by regulation adopted by the department;

10 (2) prepare proposed consistency determinations;

11 (3) conduct an elevated review [COORDINATE SUBSEQUENT
 12 REVIEWS] of proposed consistency determinations prepared under (2) of this
 13 subsection; an elevated [A SUBSEQUENT] review of a proposed consistency
 14 determination under this paragraph

15 (A) shall be conducted [IS LIMITED TO A REVIEW] by the
 16 commissioners of the resource agencies or their deputies
 17 [DEPARTMENT];

18 (B) may occur only if requested by

19 (i) the project applicant;

20 (ii) a state resource agency; or

21 (iii) an affected coastal resource district; and

22 (C) shall be completed with the issuance of a written order
 23 signed by at least two of the commissioners of the resource agencies or
 24 their deputies [BY THE DEPARTMENT] within 60 [45] days after the initial
 25 request for an elevated [SUBSEQUENT] review under this paragraph; if a
 26 written order is not issued in accordance with this subparagraph, the
 27 proposed consistency determination under (2) of this subsection is the
 28 final consistency determination and certification; and

29 (4) render the final consistency determination and certification
 30 consistent with this subsection.

31 * Sec. 17. AS 46.40.096(o) is amended to read:

1 (o) The time limitations in (n) of this section

2 (1) do not apply to a consistency review involving the disposal of an
3 interest in state land or resources;

4 (2) are suspended

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

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

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

14 * **Sec. 18.** AS 46.40.096(q)(2) is amended to read:

15 (2) "reviewing entity" means the

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

18 (B) commissioners or their deputies for an elevated review;

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

21 * **Sec. 19.** AS 46.40.180(b) is amended to read:

22 (b) If a city or village within a coastal resource service area fails to approve a
23 portion of the district coastal management plan prepared and submitted for approval
24 under (a) of this section, the governing body shall advise the coastal resource service
25 area board of its objections to the proposed plan and suggest alternative elements or
26 components for inclusion in the district coastal management plan. New matter
27 submitted by a city or village that is not inconsistent with the standards adopted
28 under AS 46.40.040 and meets the [STATEWIDE STANDARDS AND] district plan
29 criteria adopted under this chapter shall be accepted and the district coastal
30 management plan modified accordingly. If a city or village fails to provide objections
31 and suggested alternatives within the time limits established in this section, the coastal

1 resource service area board may adopt the district coastal management plan as initially
2 offered.

3 * **Sec. 20.** AS 46.40.210 is amended by adding new paragraphs to read:

4 (13) "board" means the Alaska Coastal Policy Board established in AS
5 46.39.005;

6 (14) "commissioners" means the commissioners of the resource
7 agencies;

8 (15) "elevated review" means a review of a proposed consistency
9 determination by the commissioners, or their deputies, of the resource agencies;

10 (16) "local knowledge" means a body of knowledge or information
11 about the coastal environment or the human use of that environment, including
12 information passed down through generations, if that information is

13 (A) derived from experience and observations;

14 (B) generally accepted by the local community; and

15 (C) not contradicted by scientific evidence;

16 (17) "scientific evidence" means facts or data that are

17 (A) premised upon established chemical, physical, biological,
18 or ecosystem management principles as obtained through scientific method and
19 submitted to the division in the department responsible for ocean and coastal
20 management to furnish proof of a matter required under this chapter;

21 (B) in a form that would allow resource agency review for
22 scientific merit; and

23 (C) supported by one or more of the following:

24 (i) written analysis based on field observation and
25 professional judgment along with photographic documentation;

26 (ii) written analysis from a professional scientist with
27 expertise in the specific discipline; or

28 (iii) site-specific scientific research that may include
29 peer-review level research or literature.

30 * **Sec. 21.** (a) AS 46.39.005 is repealed.

31 (b) AS 46.40.060(d) is repealed.

1 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;**
4 **STAGGERED TERMS.** (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act,
5 within 30 days after the effective date of this section, the municipalities of each region
6 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons
7 from the region qualified under AS 46.39.005(a), added by sec. 3 of this Act. Notwithstanding
8 AS 46.39.005, added by sec. 3 of this Act, within 60 days after the effective date of this
9 section, the governor shall appoint, from the lists of names submitted under AS
10 46.39.005(a)(1)(B), one member and one alternate from each region, or request subsequent
11 lists of names in accordance with AS 46.39.005(a)(1)(B), and shall appoint one at-large
12 member and one alternate to serve on the Alaska Coastal Policy Board established by AS
13 46.39.005, added by sec. 3 of this Act. The governor shall appoint the public members to
14 three-year staggered terms. The alternate for each member shall serve the same term as the
15 member. The governor shall specify the term of each member appointed subject to this
16 section.

17 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 of
18 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
19 management plan, or a portion of a district coastal management plan, shall be delayed until all
20 the public members and alternates of the board are appointed under (a) of this section.

21 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS.** If a
24 plan of a coastal resource district was submitted to the Department of Natural Resources
25 before the effective date of this Act, but is pending approval in its entirety before the effective
26 date of this Act, the coastal resource district shall resubmit the entire plan to the Department
27 of Natural Resources for approval using the standards set out as AS 46.39 and AS 46.40, as
28 modified by this Act.

29 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **REVIEW AND REPORT BY THE ALASKA COASTAL POLICY BOARD.** Before

1 February 1, 2013, the Alaska Coastal Policy Board shall review AS 46.40.040(b), as amended
2 by sec. 9 of this Act, AS 46.40.040(c), and AS 46.40.096(i), their implementing regulations,
3 and related federal and state statutes and regulations, and prepare a report to the governor and
4 the legislature on any proposed changes to the provisions of AS 46.40.

5 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)
8 made by sec. 2 of this Act is retroactive to January 1, 2011.

9 (b) If, under AS 01.10.070(c), sec. 27 of this Act takes effect on or after July 1, 2011,
10 sec. 27 of this Act is retroactive to July 1, 2011, and sections repealed by sec. 18, ch. 31, SLA
11 2005, are revived. If a revived section is amended by this Act, it is revived as amended by this
12 Act. The revived sections are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended
13 by sec. 27 of this Act.

14 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011, AS
15 46.39.005, added by sec. 3 of this Act and repealed by sec. 21(a) of this Act, is revived. AS
16 46.39.005, as revived, is subject to repeal under secs. 21(a) and 28 of this Act and sec. 22, ch.
17 31, SLA 2005, as amended by sec. 27 of this Act.

18 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **CONDITIONAL EFFECT.** Section 21(a) of this Act takes effect only if secs. 1 - 13
21 and 18, ch. 31, SLA 2005, take effect.

22 * **Sec. 27.** The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA 2005, is
23 amended to read:

24 Sec. 22. Sections 1 - 13 and 18, **ch. 31, SLA 2005**, [OF THIS ACT] take effect
25 July 1, 2017 [2011], unless the state's revised coastal management program has not
26 been approved by the National Oceanic and Atmospheric Administration, Office of
27 Ocean and Coastal Resource Management, United States Department of Commerce,
28 under 16 U.S.C. 1455 and 1457 (Coastal Zone Management Act of 1972) before
29 January 1, 2006. If the state's revised coastal management program is not approved
30 before January 1, 2006, by the National Oceanic and Atmospheric Administration,
31 Office of Ocean and Coastal Resource Management, United States Department of

1 Commerce, then secs. 1 - 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect
2 May 10, 2006. The commissioner of natural resources shall notify the revisor of
3 statutes on February 1, 2006, whether the revised coastal management program has
4 been approved as described in this section.

5 * **Sec. 28.** If sec. 21(a) of this Act takes effect, it takes effect on the date that secs. 1 - 13 and
6 18, ch. 31, SLA 2005, take effect.

7 * **Sec. 29.** Except as provided in sec. 28 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

Senate Version

SCS CSHB 106(FIN)

SENATE CS FOR CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/13/11

Referred: Today's Calendar

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska coastal management program and
2 relating to the extension; relating to the review of activities and regulations of the Alaska
3 coastal management program; establishing the Alaska Coastal Policy Board; relating to
4 the development, review, and approval of district coastal management plans; relating to
5 the duties of the Department of Natural Resources relating to the Alaska coastal
6 management program; relating to the review of certain consistency determinations;
7 providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.
8 31, SLA 2005; and providing for an effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 * Section 1. AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

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

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
 2 resource districts of each region; the governor may reject a list submitted under
 3 this subparagraph and request that subsequent lists with different names be
 4 submitted; one public member and one alternate member shall be appointed
 5 from each of the following regions:

6 (i) northwest Alaska, including, generally, the area of
 7 the North Slope Borough and the Northwest Arctic Borough; and the
 8 Bering Strait area, including, generally, the area of the Bering Strait
 9 regional educational attendance area;

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

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

21 (iv) Southeast Alaska, generally the area east of 141
 22 West longitude;

23 (2) each of the following designated members:

24 (A) the commissioner of environmental conservation;

25 (B) the commissioner of fish and game;

26 (C) a deputy commissioner of natural resources;

27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. Except as provided
 29 by (c) of this section, each member serves until a successor is appointed and qualified.
 30 A public member may be reappointed.

31 (c) The board may recommend that the governor remove a public member for

1 cause. With or without a recommendation from the board, the governor may remove a
2 public member for cause after giving the public member written notice of the charges
3 and an opportunity to be heard upon not less than 10 days' notice. If a public member
4 is removed, the alternate member shall serve the remainder of the term, and a new
5 alternate shall be appointed under (a)(1) of this section. In this subsection, "for cause"
6 includes lack of contribution to the board's work, neglect of duty, incompetence,
7 inability to serve, poor attendance, and misconduct in office.

8 (d) The board shall designate co-chairs, one of whom shall be selected from
9 among the public members appointed under (a)(1) of this section and one from among
10 the members designated in (a)(2) of this section.

11 (e) If a member serving under (a)(1) of this section is unable to attend, the
12 alternate may attend. The names of alternates serving under (a)(1) of this section shall
13 be filed with the board.

14 (f) If a member serving under (a)(2) of this section is unable to attend, a
15 deputy commissioner in the same department may attend and act in place of the
16 member. The names of deputy commissioners serving as alternates for members
17 serving under (a)(2) of this section shall be filed with the board.

18 (g) Three public members and three designated members of the board
19 constitute a quorum. However, action may be taken only upon the affirmative vote of
20 at least two-thirds of the full membership of the board.

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

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

26 (j) Administrative support for the board shall be provided by the division in
27 the department responsible for coastal and ocean management. The director of the
28 division in the department responsible for coastal and ocean management may contract
29 with or employ persons as necessary to assist the board in carrying out the board's
30 duties and responsibilities.

31 (k) The board shall

1 (1) make recommendations to the department relating to the approval
2 or modification of a district coastal management plan under AS 46.40.060(b);

3 (2) provide a forum for the discussion of issues related to this chapter,
4 AS 46.40, and the coastal uses and resources of the state; and

5 (3) annually solicit from state and federal agencies information as to
6 whether they implemented any new statutes or regulations affecting coastal uses or
7 resources to determine if existing enforceable policies duplicate, restate, incorporate
8 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
9 so, direct a coastal resource district with such enforceable policies to resubmit its
10 coastal management plan for review under this chapter and AS 46.40; and

11 (4) review and provide comments to the department on regulations
12 proposed under this chapter and AS 46.40.

13 * **Sec. 4.** AS 46.39.010 is amended by adding a new subsection to read:

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

19 * **Sec. 5.** AS 46.39.030 is amended to read:

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

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

24 (2) contract for necessary services;

25 (3) consult and cooperate with

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

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

1 planning and management;

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

4 * **Sec. 6.** AS 46.39.040 is amended to read:

5 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451
6 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

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

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

15 (3) assure continued provision of [DATA AND] information to coastal
16 resource districts to carry out their planning and management functions under the
17 program; in providing information to a coastal resource district and coastal
18 resource service area under this paragraph, the department shall provide the
19 information by electronic transmission, or by mail if the addressee does not have
20 an electronic mail address, to the presiding officer of the governing body of the
21 coastal resource district and to other persons as may be designated in writing by
22 the district;

23 (4) summarize the minutes of the board's discussion of issues
24 related to this chapter, AS 46.40, and coastal uses and resources of the state.

25 * **Sec. 7.** AS 46.40.030 is amended to read:

26 **Sec. 46.40.030. Development of district coastal management plans.** (a)
27 Coastal resource districts shall develop and adopt district coastal management plans in
28 accordance with the provisions of this chapter. The plan adopted by a coastal resource
29 district shall be based upon a municipality's existing comprehensive plan or a new
30 comprehensive resource use plan or comprehensive statement of needs, policies,
31 objectives, and standards governing the use of resources within the coastal area of the

1 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
 2 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
 3 adopted under AS 46.40.040, and must include

4 (1) a delineation within the district of the boundaries of the coastal area
 5 subject to the district coastal management plan;

6 (2) a statement, list, or definition of the land and water uses and
 7 activities subject to the district coastal management plan;

8 (3) a statement of enforceable policies to be applied to the land and
 9 water uses subject to the district coastal management plan; and

10 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
 11 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
 12 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
 13 WATER WITHIN THE COASTAL AREA; AND

14 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
 15 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
 16 the district coastal management plan and a designation of the enforceable policies
 17 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
 18 merit special attention.

19 (b) In developing enforceable policies in its coastal management plan under
 20 (a) of this section, a coastal resource district shall meet the requirements of
 21 AS 46.40.070 and ensure that the enforceable policies

22 (1) are clear and concise as to the activities and persons affected by
 23 the policies;

24 (2) use prescriptive or performance-based standards that are
 25 written in precise and enforceable language;

26 (3) address a coastal use or resource of concern to the residents of
 27 the coastal resource district as demonstrated by local knowledge or supported by
 28 scientific evidence; and

29 (4) employ the least restrictive means to achieve the objective of
 30 the enforceable policy [MEET THE REQUIREMENTS OF AS 46.40.070 AND
 31 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE

1 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
2 OR FEDERAL AGENCIES].

3 * **Sec. 8.** AS 46.40.030 is amended by adding new subsections to read:

4 (c) In determining whether an enforceable policy employs the least restrictive
5 means to achieve its objective, the following factors shall be considered:

- 6 (1) alternative methods of achieving the objective of the policy;
7 (2) local knowledge or scientific evidence supporting each alternative
8 method; and
9 (3) how the alternative methods may affect other existing or potential
10 uses.

11 (d) Additional factors that the department may require be addressed in
12 determining whether an enforceable policy employs the least restrictive means to
13 achieve its objective are as follows:

- 14 (1) the economic effects of alternative methods;
15 (2) the technological feasibility of the alternative methods; and
16 (3) any other relevant factors.

17 * **Sec. 9.** AS 46.40.040(b) is amended to read:

18 (b) Notwithstanding any other provision of law, AS 46.03, AS 46.04,
19 AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
20 exclusive enforceable policies of the Alaska coastal management program for those
21 purposes. For those purposes only,

22 (1) the issuance of permits, certifications, approvals, and
23 authorizations by the Department of Environmental Conservation establishes
24 consistency with the Alaska coastal management program for those activities of a
25 proposed project subject to those permits, certifications, approvals, and authorizations;

26 (2) for a consistency review of an activity that does not require a
27 Department of Environmental Conservation permit, certification, approval, or
28 authorization because the activity is a federal activity or the activity is located on
29 federal land or the federal outer continental shelf, consistency with AS 46.03,
30 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
31 shall be established on the basis of whether the Department of Environmental

1 Conservation finds that the activity satisfies the requirements of those statutes and
2 regulations.

3 * **Sec. 10.** AS 46.40.050 is amended by adding a new subsection to read:

4 (c) A coastal resource district shall resubmit its coastal management plan, as
5 may be directed by the board under AS 46.39.005(k)(3).

6 * **Sec. 11.** AS 46.40.060(a) is amended to read:

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

14 * **Sec. 12.** AS 46.40.060(b) is amended to read:

15 (b) If the department finds that a district coastal management plan is not
16 approvable or is approvable only in part under (a) of this section, **the department**
17 **shall explain in writing the basis for its decision. The coastal resource district that**
18 **submitted the plan may request that the department submit the plan or portions**
19 **of the plan to the board for review. The board shall review the plan or portions of**
20 **the plan and make recommendations relating to whether the department should**
21 **approve or modify the district coastal management plan in whole or in part** [IT
22 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
23 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
24 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
25 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
26 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
27 RESOLVE DIFFERENCES].

28 * **Sec. 13.** AS 46.40.060(c) is amended to read:

29 (c) **After the board has reviewed the district coastal management plan**
30 **and submitted recommendations under (b) of this section** [IF, AFTER
31 MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the

1 department shall enter findings and, by order, may [REQUIRE]

2 (1) approve the plan or portions of the plan;

3 (2) require that the district coastal management plan be amended to
4 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
5 STANDARDS] and district plan criteria adopted by the department;

6 (3) require [(2)] that the district coastal management plan be revised
7 to accommodate a use of state concern; or

8 (4) require the coastal resource district to submit additional
9 information if, in the judgment of the department, additional information is
10 necessary for the department to approve the plan or portions of the plan [(3)
11 ANY OTHER ACTION BE TAKEN BY THE COASTAL RESOURCE DISTRICT
12 AS APPROPRIATE].

13 * **Sec. 14.** AS 46.40.060 is amended by adding new subsections to read:

14 (e) Only a coastal resource district affected by a decision of the department
15 under this section may request reconsideration of the decision. The request must be
16 made within 15 days after the decision, must be in writing, and must include a
17 statement of the specific issues and material facts that the coastal resource district
18 contends that the department overlooked, failed to consider, or misconceived. The
19 commissioner of natural resources may review the department's decision on the basis
20 of the request and determine whether the decision should be changed. The
21 commissioner may issue a determination in writing within 20 days after the issuance
22 of the decision. If the commissioner has not issued a written decision within the 20-
23 day period, the request for reconsideration shall be considered as denied. Denial of a
24 request for reconsideration is a final administrative order and decision of the
25 department.

26 (f) The superior courts of the state have jurisdiction to enforce orders of the
27 department entered under (c) and (e) of this section.

28 * **Sec. 15.** AS 46.40.070 is repealed and reenacted to read:

29 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
30 department shall approve a district coastal management plan submitted for review and
31 approval if, as determined by the department, the

1 (1) district coastal management plan meets the requirements of this
2 chapter and the district plan criteria adopted by the department; and

3 (2) enforceable policies of the district coastal management plan

4 (A) do not duplicate, restate, incorporate by reference,
5 rephrase, or adopt state or federal statutes or regulations;

6 (B) are not preempted by or in conflict with state or federal
7 statutes or regulations;

8 (C) employ the least restrictive means to achieve the objective
9 of the enforceable policies;

10 (D) do not arbitrarily or unreasonably restrict uses of state
11 concern; and

12 (E) meet the requirements of (b) and (c) of this section.

13 (b) The enforceable policies in a district coastal management plan submitted
14 for review under this section must meet the requirements of (a) of this section and may
15 establish new standards or requirements that are within the authority of a state or
16 federal agency unless

17 (1) a state agency specifically objects to the proposed new standards or
18 requirements on the grounds that the proposed standards or requirements

19 (A) are based on scientific evidence or local knowledge relied
20 upon by the coastal resource district to satisfy the requirements of
21 AS 46.40.030 but that conflicts with the agency's interpretation of the scientific
22 evidence within the agency's area of expertise;

23 (B) conflict with the agency's allocation of existing or planned
24 agency resources to meet state policies and objectives; or

25 (C) conflict with agency priorities or objectives, or other state
26 policies;

27 (2) the proposed new standards or requirements address discharges,
28 emissions, contaminants, conditions, risks, or other matters that fall within the
29 authority of the Department of Environmental Conservation under AS 46.03,
30 AS 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.

31 (c) An approval of a district coastal management plan with enforceable

1 policies may not affect a person's rights or authorizations under an unexpired permit,
 2 lease, or other valid existing right to explore or develop natural resources that predates
 3 the date that the enforceable policy becomes final. An enforceable policy becomes
 4 final when its adoption is no longer subject to further review through either a judicial
 5 or administrative process.

6 (d) Notwithstanding AS 46.40.030(a)(4), in reviewing and approving a district
 7 coastal management plan under (a) of this section, the department may not require a
 8 district to designate areas for the purpose of developing an enforceable policy.

9 (e) In this section, "specifically objects" means that, during a review of a
 10 district coastal management plan under AS 46.40.050 or 46.40.060 and their
 11 implementing regulations, a written objection to the enforceable policy that establishes
 12 the new standards or requirements is filed with the department by

- 13 (1) the commissioner or deputy commissioner of a state agency; or
- 14 (2) the attorney general of the state.

15 (f) Notwithstanding any other provision of this chapter, an enforceable policy
 16 that establishes requirements within the authority of a state or federal agency shall be
 17 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
 18 with the enforceable policy.

19 * **Sec. 16.** AS 46.40.096(d) is amended to read:

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

22 (1) request consistency review comments for the proposed project
 23 from state resource agencies, affected coastal resource districts, and other interested
 24 parties as determined by regulation adopted by the department;

25 (2) prepare proposed consistency determinations;

26 (3) conduct an elevated review [COORDINATE SUBSEQUENT
 27 REVIEWS] of proposed consistency determinations prepared under (2) of this
 28 subsection; an elevated [A SUBSEQUENT] review of a proposed consistency
 29 determination under this paragraph

30 (A) shall be conducted [IS LIMITED TO A REVIEW] by the
 31 commissioners or deputy commissioners of the resource agencies

1 [DEPARTMENT];

2 (B) may occur only if requested by

3 (i) the project applicant;

4 (ii) a state resource agency; or

5 (iii) an affected coastal resource district; and

6 (C) shall be completed with the issuance of a written order
 7 signed by at least two of the commissioners or deputy commissioners of
 8 the resource agencies [BY THE DEPARTMENT] within 60 [45] days after
 9 the initial request for an elevated [SUBSEQUENT] review under this
 10 paragraph; if a written order is not issued in accordance with this
 11 subparagraph, the proposed consistency determination under (2) of this
 12 subsection is the final consistency determination and certification; and

13 (4) render the final consistency determination and certification
 14 consistent with this subsection.

15 * Sec. 17. AS 46.40.096(o) is amended to read:

16 (o) The time limitations in (n) of this section

17 (1) do not apply to a consistency review involving the disposal of an
 18 interest in state land or resources;

19 (2) are suspended

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

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

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

29 * Sec. 18. AS 46.40.096(q)(2) is amended to read:

30 (2) "reviewing entity" means the

31 (A) Department of Natural Resources, for a consistency review

1 subject to AS 46.39.010;

2 (B) commissioners or deputy commissioners of the resource
3 agencies for an elevated review;

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

6 * **Sec. 19.** AS 46.40.180(b) is amended to read:

7 (b) If a city or village within a coastal resource service area fails to approve a
8 portion of the district coastal management plan prepared and submitted for approval
9 under (a) of this section, the governing body shall advise the coastal resource service
10 area board of its objections to the proposed plan and suggest alternative elements or
11 components for inclusion in the district coastal management plan. New matter
12 submitted by a city or village that is not inconsistent with the standards adopted
13 under AS 46.40.040 and meets the [STATEWIDE STANDARDS AND] district plan
14 criteria adopted under this chapter shall be accepted and the district coastal
15 management plan modified accordingly. If a city or village fails to provide objections
16 and suggested alternatives within the time limits established in this section, the coastal
17 resource service area board may adopt the district coastal management plan as initially
18 offered.

19 * **Sec. 20.** AS 46.40.210 is amended by adding new paragraphs to read:

20 (13) "board" means the Alaska Coastal Policy Board established in
21 AS 46.39.005;

22 (14) "commissioners" means the commissioners of the resource
23 agencies;

24 (15) "elevated review" means a review of a proposed consistency
25 determination by the commissioners or deputy commissioners of the resource
26 agencies.

27 * **Sec. 21.** AS 46.39.005 is repealed.

28 * **Sec. 22.** AS 46.40.060(d) is repealed.

29 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;

1 STAGGERED TERMS. (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act,
 2 within 30 days after the effective date of this section, the municipalities of each region
 3 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons to
 4 be considered for appointment as public members, and the names of three persons to be
 5 considered as alternate members, from the region qualified under AS 46.39.005(a), added by
 6 sec. 3 of this Act. Notwithstanding AS 46.39.005, added by sec. 3 of this Act, within 60 days
 7 after the effective date of this section, the governor shall appoint, from the lists of names
 8 submitted under AS 46.39.005(a)(1)(B), one member and one alternate member from each
 9 region, or request subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and
 10 shall appoint one at-large member and one alternate member to serve on the Alaska Coastal
 11 Policy Board established by AS 46.39.005, added by sec. 3 of this Act. The governor shall
 12 appoint the public members to three-year staggered terms. The alternate member for each
 13 public member shall serve the same term as the public member. The governor shall specify
 14 the term of each public member appointed subject to this section.

15 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 of
 16 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
 17 management plan, or a portion of a district coastal management plan, shall be delayed until all
 18 the public members and alternate members of the board are appointed under (a) of this
 19 section.

20 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 **TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS.** If a
 23 plan of a coastal resource district was submitted to the Department of Natural Resources
 24 before the effective date of this section, but is pending approval in its entirety before the
 25 effective date of this section, the coastal resource district shall resubmit the entire plan to the
 26 Department of Natural Resources for approval using the standards set out in AS 46.39 and
 27 AS 46.40, as modified by this Act.

28 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 **REVIEW AND REPORTS BY THE ALASKA COASTAL POLICY BOARD.** (a)
 31 Before February 1, 2013, the Alaska Coastal Policy Board shall review AS 46.40.040(b), as

1 amended by sec. 9 of this Act, AS 46.40.040(c), and AS 46.40.096(i), their implementing
 2 regulations, and related federal and state statutes and regulations, and prepare a report to the
 3 governor and the legislature on any proposed changes to the provisions of AS 46.40.

4 (b) On or before January 1, 2015, the Alaska Coastal Policy Board shall report to the
 5 governor and legislature on the effectiveness of AS 46.39 and AS 46.40 and regulations
 6 adopted under those chapters, with its recommendations for any proposed changes to any
 7 provision of AS 46.39 or AS 46.40.

8 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)
 11 made by sec. 2 of this Act is retroactive to January 1, 2011.

12 (b) If, under AS 01.10.070(c), sec. 28 of this Act takes effect on or after July 1, 2011,
 13 sec. 28 of this Act is retroactive to July 1, 2011, and provisions repealed by sec. 18, ch. 31,
 14 SLA 2005, are revived. If a revived provision is amended by secs. 1, 2, 4 - 20, or 22 of this
 15 Act, it is revived as amended by secs. 1, 2, 4 - 20, and 22 of this Act. The revived provisions
 16 are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended by sec. 28 of this Act.

17 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011,
 18 AS 46.39.005, added by sec. 3 of this Act and repealed by sec. 21 of this Act, is revived.
 19 AS 46.39.005, as revived, is subject to repeal under secs. 21 and 29 of this Act and sec. 22,
 20 ch. 31, SLA 2005, as amended by sec. 28 of this Act.

21 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 **CONDITIONAL EFFECT.** Section 21 of this Act takes effect only if secs. 1 - 13 and
 24 18, ch. 31, SLA 2005, take effect.

25 * **Sec. 28.** The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA 2005, is
 26 amended to read:

27 Sec. 22. Sections 1 - 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect
 28 July 1, 2017 [2011, UNLESS THE STATE'S REVISED COASTAL
 29 MANAGEMENT PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL
 30 OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND
 31 COASTAL RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF

1 COMMERCE, UNDER 16 U.S.C. 1455 AND 1457 (COASTAL ZONE
2 MANAGEMENT ACT OF 1972) BEFORE JANUARY 1, 2006. IF THE STATE'S
3 REVISED COASTAL MANAGEMENT PROGRAM IS NOT APPROVED
4 BEFORE JANUARY 1, 2006, BY THE NATIONAL OCEANIC AND
5 ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL
6 RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF
7 COMMERCE, THEN SECS. 1 - 13 AND 18 OF THIS ACT TAKE EFFECT MAY
8 10, 2006. THE COMMISSIONER OF NATURAL RESOURCES SHALL NOTIFY
9 THE REVISOR OF STATUTES ON FEBRUARY 1, 2006, WHETHER THE
10 REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS
11 DESCRIBED IN THIS SECTION].

12 * **Sec. 29.** If sec. 21 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and
13 18, ch. 33, SLA 2005, take effect.

14 * **Sec. 30.** Except as provided in sec. 29 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

House Fiscal Notes

House Adopted:

FN #7 - House

FN #8 - House

FN #9 - House

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 7
Bill Version CSHB 106(FIN)
(H) Publish Date 4/15/11

Identifier (file name): HB106CS(FIN)-DEC-WQ-04-15-11
Title Coastal Management Program
Sponsor House Rules Committee by Request of the Governor
Requester House Finance Committee
Dept. Affected Environmental Conserv
Appropriation Water
Allocation Water Quality
OMB Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	0.0	86.3	86.3	86.3	86.3	86.3	86.3	86.3
Travel	5.0	5.2	10.2	10.2	10.2	10.2	10.2	10.2
Services	15.0	8.5	23.5	23.5	23.5	23.5	23.5	23.5
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	20.0	100.0	120.0	120.0	120.0	120.0	120.0	120.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	20.0	50.0	70.0	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	0.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0
TOTAL	20.0	100.0	120.0	120.0	120.0	120.0	120.0	120.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by Joey Ausel, Budget Manager
Division Administrative Services
Approved by Mary Siroky, Director
Administrative Services

Phone (907) 269-7599
Date/Time 4/15/11 8:57 PM
Date 4/15/2011

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Fiscal impacts are detailed below:

Travel & Contractual

These costs include travel to coastal policy board meetings for staff (when needed). Additionally, DEC will use contractual support for analysis in preparation for report required under Section 24.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 8
Bill Version CSHB 106(FIN)
(H) Publish Date 4/15/11

Identifier (file name): HB106CS(FIN)-DEC-CO-04-15-11
Title Coastal Management Program
Sponsor House Rules Committee by Request of the Governor
Requester House Finance Committee
Dept. Affected Environmental Conserv
Appropriation Administration
Allocation Commissioner's Office
OMB Component Number 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services	5.0	0.0	5.0	5.0	5.0	5.0	5.0
Travel	7.0	0.0	7.0	5.0	5.0	5.0	5.0
Services	3.0	0.0	3.0	0.0	0.0	0.0	0.0
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	15.0	0.0	15.0	10.0	10.0	10.0	10.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	5.0	0.0	5.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	10.0	0.0	10.0	10.0	10.0	10.0	10.0
TOTAL	15.0	0.0	15.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by Joey Ausel, Budget Manager
Division Administrative Services
Approved by Mary Siroky, Director
Administrative Services

Phone (907) 269-7599
Date/Time 4/15/11 8:57 PM
Date 4/15/2011

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Additionally, the bill would require a review of the regulations related to DEC permitting and provide a report back to the Governor and the legislature by February 1, 2013.

Fiscal impacts are detailed below:

Personal Services, Travel and Supplies

DEC anticipates receiving \$10.0 in I/A from the Department of Natural Resources to assist with the Commissioner's travel and staff costs associated with participating on the Alaska Coastal Policy Board and costs associated with the review and report required by February 1, 2013.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 9
Bill Version CSHB 106(FIN)
(H) Publish Date 4/15/11

Identifier (file name) CSHB106(FIN)-DNR-DCOM-4-15-11 Dept. Affected Natural Resources
Title Act extending termination of the Alaska Coastal Mgmt Pgm Appropriation Resource Development
Allocation Coastal and Ocean Management
Sponsor Rules Committee by Request of Governor
Requester House Finance OMB Component Number 2680

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services	109.8	3,150.2	3,260.0	3,260.0	3,260.0	3,260.0	3,260.0
Travel	155.7	95.9	251.6	141.8	141.8	121.8	121.8
Contractual	380.0	1,404.4	1,784.4	1,724.4	1,724.4	1,724.4	1,724.4
Supplies	18.6	41.2	54.2	54.2	54.2	54.2	54.2
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	664.1	4,691.7	5,350.2	5,180.4	5,180.4	5,160.4	5,160.4

CAPITAL EXPENDITURES		1,360.0	1,360.0	1,360.0	1,360.0	1,360.0	1,360.0
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts		2,679.0	2,679.0	2,679.0	2,679.0	2,679.0	2,679.0
1003 GF Match		1,672.6	1,672.6	1,672.6	1,672.6	1,672.6	1,672.6
1004 GF	664.1		658.5	488.7	488.7	468.7	468.7
1005 GF/Program Receipts							
1061 CIP receipts		244.6	244.6	244.6	244.6	244.6	244.6
1007 Interagency Receipts		95.5	95.5	95.5	95.5	95.5	95.5
TOTAL	664.1	4,691.7	5,350.2	5,180.4	5,180.4	5,160.4	5,160.4

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	1	33	34	34	34	34	34
Part-time							
Temporary							

Why this fiscal note differs from previous version

The fiscal note is updated to reflect changes made in the House Finance committee substitute.

(1) Based on language in the CSHB106 (FIN), this fiscal note reflects the removal of one full time Natural Resource Specialist II position and only an additional \$10.0 in supplies for dissemination of projects in review by hard copy.

NOTE: The base budget (\$4,691.7 and 33 positions) was removed from the Senate version of the FY12 operating budget, making it subject to conference committee. This fiscal note also includes the annual capital project request for the federal grant funds that are shared with DCCED for grants to communities and for DCCED's administration of the grants which was removed from the budget making it subject to conference committee.

Prepared by Randy Bates, Director
Division Coastal and Ocean Management
Approved by Dan Sullivan, Commissioner
Natural Resources

Phone 465-8797
Date/Time 4/15/11 12:00 AM
Date 4/15/2011

Analysis

NOTE: The base budget (\$4,691.7 and 33 positions) was removed from the Senate version of the FY12 operating budget, making it subject to conference committee. The annual capital project request for the federal grant funds that are shared with DCCED for grants to communities and for DCCED's administration of the grants was removed from the Senate version of the FY12 Capital Budget making it subject to conference committee.

The Alaska Coastal Management Program (ACMP) will automatically terminate on July 1, 2011 (SLA2005, CH31, Sec 22). CSHB106(FIN) would extend the termination date to July 1, 2017.

This fiscal note reflects the increased fiscal impacts due to the additional Division of Coastal and Ocean Management (DCOM) duties, including the administration and implementation of the Alaska Coastal Policy Board (CPB). Those increased fiscal impacts are detailed below:

Personal Services

One additional position, a Project Coordinator (range 20), will be required to cover the additional work associated with the CPB and the coordination of district planning functions and information sharing.

Travel

The CPB will meet four times in-person in the first two years following establishment of the board, and will meet in-person twice annually after that. The CPB will need to meet more frequently in-person for the first two years in order to establish board protocols, review coastal district plans, and address issues of interest to ACMP participants. CPB travel includes nine members and two DCOM support staff.

In addition, recognizing coastal districts will be amending their district plans based on CSHB106(FIN), two DCOM staff will travel 5-6 different districts per year for four years to assist the districts with their plan amendments.

Five DCOM staff will travel to regional locations for two years to provide ACMP training and education on program changes and the revised ACMP implementing regulations.

The DCOM Director will travel to Washington, DC three times annually for two years to work with NOAA on program change approvals and NEPA requirements.

Contractual

The CPB will meet two times annually by teleconference, with each 2-day teleconference lasting 8 hours each day (including 20 phone lines). CSHB106(FIN) will require a substantial revision to all three chapters of the implementing ACMP regulations (11 AAC 110, 112, and 114). Contractual services will be required to develop and complete those revisions, including the Department of Law final review. The coordination and distribution of district planning and consistency review data and information requires postage and other fees. DCOM will also reimburse state agencies for their participation and implementation of the ACMP program.

Supplies

Supplies will be required for supporting the CPB (dictation/recorder equipment, packet materials and binders) and support staff (office equipment).

Senate Fiscal Notes

Senate Adopted:

FN #7 - previous House FN

FN #8 - previous House FN

FN #10 - New Senate FN

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 7
 Bill Version CSHB 106(FIN)
 (H) Publish Date 4/15/11

Identifier (file name): HB106CS(FIN)-DEC-WQ-04-15-11
 Title Coastal Management Program
 Sponsor House Rules Committee by Request of the Governor
 Requester House Finance Committee
 Dept. Affected Environmental Conserv
 Appropriation Water
 Allocation Water Quality
 OMB Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services	0.0	86.3	86.3	86.3	86.3	86.3	86.3
Travel	5.0	5.2	10.2	10.2	10.2	10.2	10.2
Services	15.0	8.5	23.5	23.5	23.5	23.5	23.5
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	20.0	100.0	120.0	120.0	120.0	120.0	120.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	20.0	50.0	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	0.0	50.0	50.0	50.0	50.0	50.0	50.0
TOTAL	20.0	100.0	120.0	120.0	120.0	120.0	120.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by Joey Ausel, Budget Manager
 Division Administrative Services
 Approved by Mary Siroky, Director
Administrative Services

Phone (907) 269-7599
 Date/Time 4/15/11 8:57 PM
 Date 4/15/2011

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Fiscal impacts are detailed below:

Travel & Contractual

These costs include travel to coastal policy board meetings for staff (when needed). Additionally, DEC will use contractual support for analysis in preparation for report required under Section 24.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 8
 Bill Version CSHB 106(FIN)
 (H) Publish Date 4/15/11

Identifier (file name): HB106CS(FIN)-DEC-CO-04-15-11
 Title Coastal Management Program
 Sponsor House Rules Committee by Request of the Governor
 Requester House Finance Committee
 Dept. Affected Environmental Conserv
 Appropriation Administration
 Allocation Commissioner's Office
 OMB Component Number 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	5.0	0.0	5.0	5.0	5.0	5.0	5.0	
Travel	7.0	0.0	7.0	5.0	5.0	5.0	5.0	
Services	3.0	0.0	3.0	0.0	0.0	0.0	0.0	
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
TOTAL OPERATING	15.0	0.0	15.0	10.0	10.0	10.0	10.0	

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	5.0	0.0	5.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	10.0	0.0	10.0	10.0	10.0	10.0	10.0
TOTAL	15.0	0.0	15.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by Joey Ausel, Budget Manager
 Division Administrative Services
 Approved by Mary Siroky, Director
Administrative Services

Phone (907) 269-7599
 Date/Time 4/15/11 8:57 PM
 Date 4/15/2011

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Additionally, the bill would require a review of the regulations related to DEC permitting and provide a report back to the Governor and the legislature by February 1, 2013.

Fiscal impacts are detailed below:

Personal Services, Travel and Supplies

DEC anticipates receiving \$10.0 in I/A from the Department of Natural Resources to assist with the Commissioner's travel and staff costs associated with participating on the Alaska Coastal Policy Board and costs associated with the review and report required by February 1, 2013.

Fiscal Note

Fiscal Note Number: 10
 Bill Version: SCS CSHB 106(FIN)
 (S) Publish Date: 5/13/11

State of Alaska
 2011 Legislative Session

Identifier: CSHB106(FIN)-DNR-DCOM-4-15-11
 Title: COASTAL MANAGEMENT PROGRAM
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: CONF COMM

Department: Department of Natural Resources
 Appropriation: Land & Water Resources
 Allocation: Alaska Coastal and Ocean Management
 OMB Component Number: 2680

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	Appropriation Required		Information				
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services	3,260.0		3,260.0	3,260.0	3,260.0	3,260.0	3,260.0
Travel	251.6		251.6	141.8	141.8	121.8	121.8
Services	3,144.4		3,144.4	3,084.4	3,084.4	3,084.4	3,084.4
Commodities	59.8		54.2	54.2	54.2	54.2	54.2
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	6,715.8	0.0	6,710.2	6,540.4	6,540.4	6,520.4	6,520.4

Capital Expenditures							
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Change in Revenues ()							
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Fund Source (Operating Only)

1002 Fed Rcpts	4,039.0		4,039.0	4,039.0	4,039.0	4,039.0	4,039.0
1003 G/F Match	1,672.6		1,672.6	1,672.6	1,672.6	1,672.6	1,672.6
1004 Gen Fund	664.1		658.5	488.7	488.7	468.7	468.7
1007 I/A Rcpts	95.5		95.5	95.5	95.5	95.5	95.5
1061 CIP Rcpts	244.6		244.6	244.6	244.6	244.6	244.6
Total	6,715.8	0.0	6,710.2	6,540.4	6,540.4	6,520.4	6,520.4

Estimate of any current year (FY2011) cost: 0.0

Positions

Full-time	34.0		34.0	34.0	34.0	34.0	34.0
Part-time							
Temporary							

Reason For Change:

CC: This fiscal note combines the additional funding requested with FY12 program funding removed by the Senate. Additionally, this fiscal note is updated to reflect changes made in the House Finance committee substitute.

This revised fiscal note includes \$1.36 million capital authorization (federal) for operating grants to communities so they have the funding necessary for local participation.

Analysis:

NOTE: The base budget (\$4,691.7 and 33 positions) was removed from the Senate version of the FY12 operating budget, making it subject to conference committee. The annual capital project request for the federal grant funds that are shared with DCCED for grants to communities and for DCCED's administration of the grants was removed from the Senate version of the FY12 Capital Budget making it subject to conference committee.

The Alaska Coastal Management Program (ACMP) will automatically terminate on July 1, 2011 (SLA2005, CH31, Sec 22). CSHB106(FIN) would extend the termination date to July 1, 2017.

State of Alaska
2011 Legislative Session

This fiscal note reflects the increased fiscal impacts due to the additional Division of Coastal and Ocean Management (DCOM) duties, including the administration and implementation of the Alaska Coastal Policy Board (CPB). Those increased fiscal impacts are detailed below:

Personal Services

One additional position, a Project Coordinator (range 20), will be required to cover the additional work associated with the CPB and the coordination of district planning functions and information sharing.

Travel

The CPB will meet four times in-person in the first two years following establishment of the board, and will meet in-person twice annually after that. The CPB will need to meet more frequently in-person for the first two years in order to establish board protocols, review coastal district plans, and address issues of interest to ACMP participants. CPB travel includes nine members and two DCOM support staff.

In addition, recognizing coastal districts will be amending their district plans based on CSHB106(FIN), two DCOM staff will travel 5-6 different districts per year for four years to assist the districts with their plan amendments.

Five DCOM staff will travel to regional locations for two years to provide ACMP training and education on program changes and the revised ACMP implementing regulations.

The DCOM Director will travel to Washington, DC three times annually for two years to work with NOAA on program change approvals and NEPA requirements.

Contractual

The CPB will meet two times annually by teleconference, with each 2-day teleconference lasting 8 hours each day (including 20 phone lines). CSHB106(FIN) will require a substantial revision to all three chapters of the implementing ACMP regulations (11 AAC 110, 112, and 114). Contractual services will be required to develop and complete those revisions, including the Department of Law final review. The coordination and distribution of district planning and consistency review data and information requires postage and other fees. DCOM will also reimburse state agencies for their participation and implementation of the ACMP program.

Supplies

Supplies will be required for supporting the CPB (dictation/recorder equipment, packet materials and binders) and support staff (office

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Finley/Bullard
4/15/11

SENATE CS FOR CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE ~~HOUSE~~SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act extending the termination date of the Alaska coastal management program and**
2 **relating to the extension; relating to the review of activities and regulations of the Alaska**
3 **coastal management program; establishing the Alaska Coastal Policy Board; relating to**
4 **the development, review, and approval of district coastal management plans; relating to**
5 **the duties of the Department of Natural Resources relating to the Alaska coastal**
6 **management program; relating to the review of certain consistency determinations;**
7 **providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.**
8 **31, SLA 2005; and providing for an effective date."**

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 *** Section 1.** AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

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

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
2 resource districts of each region; the governor may reject a list submitted under
3 this subparagraph and request that subsequent lists with different names be
4 submitted; one public member and one alternate member shall be appointed
5 from each of the following regions:

6 (i) northwest Alaska, including, generally, the area of
7 the North Slope Borough and the Northwest Arctic Borough; and the
8 Bering Strait area, including, generally, the area of the Bering Strait
9 regional educational attendance area;

10 (ii) southwest Alaska, including, generally, the area
11 within the Lower Yukon, Lower Kuskokwim, and Southwest regional
12 educational attendance areas and the Lake and Peninsula and Bristol
13 Bay Boroughs; and the Kodiak-Aleutians area, including the area of the
14 Kodiak Island and ~~area of the~~ Aleutians East Boroughs and ~~the area of~~
15 the Aleutian, Adak, and Pribilof regional educational attendance areas;

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

21 (iv) Southeast Alaska, generally the area east of 141
22 West longitude;

23 (2) each of the following designated members:

24 (A) the commissioner of environmental conservation;

25 (B) the commissioner of fish and game;

26 (C) a deputy commissioner of natural resources;

27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. ~~Each~~Except as
29 provided by (c) of this section, each member serves until a successor is appointed and
30 qualified. A public member may be reappointed. ~~A public member may be removed at~~
31 ~~the pleasure of the governor, in which event the alternate member shall serve the~~

1 remainder of the term and a new alternate shall be appointed under (a)(1) of this
2 section.

3 (e)(c) The board may recommend that the governor remove a public member
4 for cause. With or without a recommendation from the board, the governor may
5 remove a public member for cause after giving the public member written notice of
6 the charges and an opportunity to be heard upon not less than 10 days' notice. If a
7 public member is removed, the alternate member shall serve the remainder of the term,
8 and a new alternate shall be appointed under (a)(1) of this section. In this subsection,
9 "for cause" includes lack of contribution to the board's work, neglect of duty,
10 incompetence, inability to serve, poor attendance, and misconduct in office.

11 (d) The board shall designate co-chairs, one of whom shall be selected from
12 among the public members appointed under (a)(1) of this section and one from among
13 the members designated in (a)(2) of this section.

14 (de) If a member serving under (a)(1) of this section is unable to attend, the
15 alternate may attend. The names of alternates serving under (a)(1) of this section shall
16 be filed with the board.

17 (ef) If a member serving under (a)(2) of this section is unable to attend, a
18 deputy commissioner in the same department may attend and act in place of the
19 member. The names of deputy commissioners serving as alternates for members
20 serving under (a)(2) of this section shall be filed with the board.

21 (fg) Three public members and three designated members of the board
22 constitute a quorum. However, action may be taken only upon the affirmative vote of
23 at least two-thirds of the full membership of the board.

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

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

30 (ij) Administrative support for the board shall be provided by the division in
31 the department responsible for coastal and ocean management. The director of the

1 division in the department responsible for coastal and ocean management may contract
2 with or employ persons as necessary to assist the board in carrying out the board's
3 duties and responsibilities.

4 (j) The board shall

5 (1) make recommendations to the department relating to the approval
6 or modification of a district coastal management plan under AS 46.40.060(b);

7 (2) provide a forum for the discussion of issues related to this chapter,
8 AS 46.40, and the coastal uses and resources of the state; and

9 (3) annually solicit from state and federal agencies information as to
10 whether they implemented any new statutes or regulations affecting coastal uses or
11 resources to determine if existing enforceable policies duplicate, restate, incorporate
12 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
13 so, direct a coastal resource district with such enforceable policies to resubmit its
14 coastal management plan for review under this chapter and AS 46.40; and

15 (4) review and provide comments to the department on regulations
16 proposed under this chapter and AS 46.40.

17 * **Sec. 4.** AS 46.39.010 is amended by adding a new subsection to read:

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

23 * **Sec. 5.** AS 46.39.030 is amended to read:

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

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

28 (2) contract for necessary services;

29 (3) consult and cooperate with

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

1 management;

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

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

8 * Sec. 6. AS 46.39.040 is amended to read:

9 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451
10 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

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

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

19 (3) assure continued provision of [DATA AND] information to coastal
20 resource districts to carry out their planning and management functions under the
21 program; in providing information to a coastal resource district and coastal
22 resource service area under this paragraph, the department shall provide the
23 information by electronic transmission, or by mail if the addressee does not have
24 an electronic mail address, to the presiding officer of the governing body of the
25 coastal resource district and to other persons as may be designated in writing by
26 the district;

27 (4) summarize the minutes of the board's discussion of issues
28 related to this chapter, AS 46.40, and coastal uses and resources of the state.

29 * Sec. 7. AS 46.40.030 is amended to read:

30 **Sec. 46.40.030. Development of district coastal management plans.** (a)
31 Coastal resource districts shall develop and adopt district coastal management plans in

1 accordance with the provisions of this chapter. The plan adopted by a coastal resource
2 district shall be based upon a municipality's existing comprehensive plan or a new
3 comprehensive resource use plan or comprehensive statement of needs, policies,
4 objectives, and standards governing the use of resources within the coastal area of the
5 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
6 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
7 adopted under AS 46.40.040, and must include

8 (1) a delineation within the district of the boundaries of the coastal area
9 subject to the district coastal management plan;

10 (2) a statement, list, or definition of the land and water uses and
11 activities subject to the district coastal management plan;

12 (3) a statement of enforceable policies to be applied to the land and
13 water uses subject to the district coastal management plan; and

14 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
15 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
16 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
17 WATER WITHIN THE COASTAL AREA; AND

18 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
19 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
20 the district coastal management plan and a designation of the enforceable policies
21 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
22 merit special attention.

23 (b) In developing enforceable policies in its coastal management plan under
24 (a) of this section, a coastal resource district shall meet the requirements of
25 AS 46.40.070 and ensure that the enforceable policies

26 (1) are clear and concise as to the activities and persons affected by
27 the policies;

28 (2) use prescriptive or performance-based standards that are
29 written in precise and enforceable language;

30 (3) address a coastal use or resource of concern to the residents of
31 the coastal resource district as demonstrated by local knowledge or supported by

1 **scientific evidence; and**

2 **(4) employ the least restrictive means to achieve the objective of**
3 **the enforceable policy** [MEET THE REQUIREMENTS OF AS 46.40.070 AND
4 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE
5 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
6 OR FEDERAL AGENCIES].

7 * **Sec. 8.** AS 46.40.030 is amended by adding a new ~~subsection~~ subsections to read:

8 (c) In determining whether an enforceable policy employs the least restrictive
9 means to achieve its objective, the following factors shall be considered:

- 10 (1) alternative methods of achieving the objective of the policy;
11 (2) local knowledge or scientific evidence supporting each alternative
12 method; and
13 (3) how the alternative methods may affect other existing or potential
14 uses;

15 (4)(d) Additional factors that the department may require be addressed in
16 determining whether an enforceable policy employs the least restrictive means to
17 achieve its objective are as follows:

- 18 (1) the economic effects of alternative methods;
19 ~~(2)~~ (2) the technological feasibility of the alternative methods; and
20 ~~(3)~~ (3) any other relevant factors.

21 * **Sec. 9.** AS 46.40.040(b) is amended to read:

22 (b) **Notwithstanding any other provision of law,** AS 46.03, AS 46.04,
23 AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
24 exclusive enforceable policies of the Alaska coastal management program for those
25 purposes. For those purposes only,

- 26 (1) the issuance of permits, certifications, approvals, and
27 authorizations by the Department of Environmental Conservation establishes
28 consistency with the Alaska coastal management program for those activities of a
29 proposed project subject to those permits, certifications, approvals, and authorizations;
30 (2) for a consistency review of an activity that does not require a
31 Department of Environmental Conservation permit, certification, approval, or

1 authorization because the activity is a federal activity or the activity is located on
2 federal land or the federal outer continental shelf, consistency with AS 46.03,
3 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
4 shall be established on the basis of whether the Department of Environmental
5 Conservation finds that the activity satisfies the requirements of those statutes and
6 regulations.

7 * **Sec. 10.** AS 46.40.050 is amended by adding a new subsection to read:

8 (c) A coastal resource district shall resubmit its coastal management plan, as
9 may be directed by the board under AS 46.39.005(jk)(3).

10 * **Sec. 11.** AS 46.40.060(a) is amended to read:

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

18 * **Sec. 12.** AS 46.40.060(b) is amended to read:

19 (b) If the department finds that a district coastal management plan is not
20 approvable or is approvable only in part under (a) of this section, **the department**
21 **shall explain in writing the basis for its decision. The coastal resource district that**
22 **submitted the plan may request that the department submit the plan or portions**
23 **of the plan to the board for review. The board shall review the plan or portions of**
24 **the plan and make recommendations relating to whether the department should**
25 **approve or modify the district coastal management plan in whole or in part** [IT
26 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
27 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
28 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
29 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
30 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
31 RESOLVE DIFFERENCES].

1 * **Sec. 13.** AS 46.40.060(c) is amended to read:

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

6 (1) approve the plan or portions of the plan;

7 (2) require that the district coastal management plan be amended to
8 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
9 STANDARDS] and district plan criteria adopted by the department;

10 (3) require [(2)] that the district coastal management plan be revised
11 to accommodate a use of state concern; or

12 (4) require that [~~(3)~~] ~~any other action be taken by~~ the coastal
13 resource district ~~{to submit additional information if, in the judgment of the~~
14 department, additional information is necessary for the department to approve
15 the plan or portions of the plan [(3) ANY OTHER ACTION BE TAKEN BY THE
16 COASTAL RESOURCE DISTRICT AS APPROPRIATE].

17 * **Sec. 14.** AS 46.40.060 is amended by adding new subsections to read:

18 (e) Only a coastal resource district affected by a decision of the department
19 under this section may request reconsideration of the decision. The request must be
20 made within 15 days after the decision, must be in writing, and must include a
21 statement of the specific issues and material facts that the coastal resource district
22 contends that the department overlooked, failed to consider, or misconceived. The
23 commissioner of natural resources may review the department's decision on the basis
24 of the request and determine whether the decision should be changed. The
25 commissioner may issue a determination in writing within 20 days after the issuance
26 of the decision. If the commissioner has not issued a written decision within the 20-
27 day period, the request for reconsideration shall be considered as denied. Denial of a
28 request for reconsideration is a final administrative order and decision of the
29 department.

30 (f) The superior courts of the state have jurisdiction to enforce orders of the
31 department entered under (c) and (e) of this section.

1 * **Sec. 15.** AS 46.40.070 is repealed and reenacted to read:

2 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
3 department shall approve a district coastal management plan submitted for review and
4 approval if, as determined by the department, the

5 (1) district coastal management plan meets the requirements of this
6 chapter and the district plan criteria adopted by the department; and

7 (2) enforceable policies of the district coastal management plan

8 (A) do not duplicate, restate, incorporate by reference,
9 rephrase, or adopt state or federal statutes or regulations;

10 (B) are not preempted by or in conflict with state or federal
11 statutes or regulations;

12 (C) employ the least restrictive means to achieve the objective
13 of the enforceable policies;

14 (D) do not arbitrarily or unreasonably restrict uses of state
15 concern; and

16 (E) meet the requirements of (b) and (c) of this section.

17 (b) The enforceable policies in a district coastal management plan submitted
18 for review under this section must meet the requirements of (a) of this section and may
19 establish new standards or requirements that are within the authority of a state or
20 federal agency unless

21 (1) a state agency specifically objects to the proposed new standards or
22 requirements on the grounds that the proposed standards or requirements

23 (A) are based on scientific evidence or local knowledge relied
24 upon by the coastal resource district to satisfy the requirements of
25 AS 46.40.030 but that conflicts with the agency's interpretation of the scientific
26 evidence within the agency's area of expertise;

27 (B) conflict with the agency's allocation of existing or planned
28 agency resources to meet state policies and objectives; or

29 (C) conflict with agency priorities or objectives, or other state
30 policies;

31 (2) the proposed new standards or requirements address discharges,

1 emissions, contaminants, conditions, risks, or other matters that fall within the
2 authority of the Department of Environmental Conservation under AS 46.03,
3 AS 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.

4 (c) An approval of a district coastal management plan with enforceable
5 policies may not affect a person's rights or authorizations under an unexpired permit,
6 lease, or other valid existing right to explore or develop natural resources that predates
7 the date that the enforceable policy becomes final. An enforceable policy becomes
8 final when its adoption is no longer subject to further review through either a judicial
9 or administrative process.

10 ~~(d)~~ Notwithstanding AS 46.40.030(a)(4), in reviewing and approving a
11 district coastal management plan under (a) of this section, the department may not
12 require a district to designate areas for the purpose of developing an enforceable
13 policy.

14 (e) In this section, "specifically objects" means that, during a review of a
15 district coastal management plan under AS 46.40.050 or 46.40.060 and their
16 implementing regulations, a written objection to the enforceable policy that establishes
17 the new standards or requirements is filed with the department by

18 (1) the commissioner or ~~the commissioner's designee~~deputy
19 commissioner of a state agency; or

20 (2) the attorney general of the state.

21 (ef) Notwithstanding any other provision of this chapter, an enforceable policy
22 that establishes requirements within the authority of a state or federal agency shall be
23 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
24 with the enforceable policy.

25 * **Sec. 16.** AS 46.40.096(d) is amended to read:

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

28 (1) request consistency review comments for the proposed project
29 from state resource agencies, affected coastal resource districts, and other interested
30 parties as determined by regulation adopted by the department;

31 (2) prepare proposed consistency determinations;

1 (3) **conduct an elevated review** [COORDINATE SUBSEQUENT
2 REVIEWS] of proposed consistency determinations prepared under (2) of this
3 subsection; **an elevated** [A SUBSEQUENT] review of a proposed consistency
4 determination under this paragraph

5 (A) **shall be conducted** [IS LIMITED TO A REVIEW] by the
6 **commissioners or deputy commissioners of the resource agencies** ~~or their~~
7 **deputies** [DEPARTMENT];

8 (B) may occur only if requested by

9 (i) the project applicant;

10 (ii) a state resource agency; or

11 (iii) an affected coastal resource district; and

12 (C) shall be completed **with the issuance of a written order**
13 **signed by at least two of the commissioners or deputy commissioners of**
14 **the resource agencies** ~~or their deputies~~ [BY THE DEPARTMENT] within
15 **60** [45] days after the initial request for **an elevated** [SUBSEQUENT] review
16 under this paragraph; **if a written order is not issued in accordance with this**
17 **subparagraph, the proposed consistency determination under (2) of this**
18 **subsection is the final consistency determination and certification; and**

19 (4) render the final consistency determination and certification
20 **consistent with this subsection.**

21 * Sec. 17. AS 46.40.096(o) is amended to read:

22 (o) The time limitations in (n) of this section

23 (1) do not apply to a consistency review involving the disposal of an
24 interest in state land or resources;

25 (2) are suspended

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

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

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

4 * **Sec. 18.** AS 46.40.096(q)(2) is amended to read:

5 (2) "reviewing entity" means the

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

8 (B) **commissioners or their deputies**~~deputy commissioners~~
9 **of the resource agencies for an elevated review;**

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

12 * **Sec. 19.** AS 46.40.180(b) is amended to read:

13 (b) If a city or village within a coastal resource service area fails to approve a
14 portion of the district coastal management plan prepared and submitted for approval
15 under (a) of this section, the governing body shall advise the coastal resource service
16 area board of its objections to the proposed plan and suggest alternative elements or
17 components for inclusion in the district coastal management plan. New matter
18 submitted by a city or village that **is not inconsistent with the standards adopted**
19 **under AS 46.40.040 and** meets the [STATEWIDE STANDARDS AND] district plan
20 criteria adopted under this chapter shall be accepted and the district coastal
21 management plan modified accordingly. If a city or village fails to provide objections
22 and suggested alternatives within the time limits established in this section, the coastal
23 resource service area board may adopt the district coastal management plan as initially
24 offered.

25 * **Sec. 20.** AS 46.40.210 is amended by adding new paragraphs to read:

26 (13) "board" means the Alaska Coastal Policy Board established in
27 AS 46.39.005;

28 (14) "commissioners" means the commissioners of the resource
29 agencies;

30 (15) "elevated review" means a review of a proposed consistency
31 determination by the commissioners, or ~~their deputies,~~deputy commissioners of the

1 resource agencies;

2 (16) ~~"local knowledge" means a body of knowledge or information~~
3 ~~about the coastal environment or the human use of that environment, including~~
4 ~~information passed down through generations, if that information is~~

5 (A) ~~derived from experience and observations;~~

6 (B) ~~generally accepted by the local community; and~~

7 (C) ~~not contradicted by scientific evidence;~~

8 (17) ~~"scientific evidence" means facts or data that are~~

9 (A) ~~premised upon established chemical, physical, biological,~~
10 ~~or ecosystem management principles as obtained through scientific method and~~
11 ~~submitted to the division in the department responsible for ocean and coastal~~
12 ~~management to furnish proof of a matter required under this chapter;~~

13 (B) ~~in a form that would allow resource agency review for~~
14 ~~scientific merit; and~~

15 (C) ~~supported by one or more of the following:~~

16 (i) ~~written analysis based on field observation and~~
17 ~~professional judgment along with photographic documentation;~~

18 (ii) ~~written analysis from a professional scientist with~~
19 ~~expertise in the specific discipline; or~~

20 (iii) ~~site specific scientific research that may include~~
21 ~~peer review level research or literature.~~

22 * **Sec. 21.** ~~(a)~~ AS 46.39.005 is repealed.

23 ~~(b)~~ * **Sec. 22.** AS 46.40.060(d) is repealed.

24 * **Sec. 2223.** The uncodified law of the State of Alaska is amended by adding a new section
25 to read:

26 TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;
27 STAGGERED TERMS. (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act,
28 within 30 days after the effective date of this section, the municipalities of each region
29 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons to
30 be considered for appointment as public members, and the names of three persons to be
31 considered as alternate members. from the region qualified under AS 46.39.005(a), added by

1 sec. 3 of this Act. Notwithstanding AS 46.39.005, added by sec. 3 of this Act, within 60 days
2 after the effective date of this section, the governor shall appoint, from the lists of names
3 submitted under AS 46.39.005(a)(1)(B), one member and one alternate member from each
4 region, or request subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and
5 shall appoint one at-large member and one alternate member to serve on the Alaska Coastal
6 Policy Board established by AS 46.39.005, added by sec. 3 of this Act. The governor shall
7 appoint the public members to three-year staggered terms. The alternate member for each
8 public member shall serve the same term as the public member. The governor shall specify
9 the term of each public member appointed subject to this section.

10 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 of
11 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
12 management plan, or a portion of a district coastal management plan, shall be delayed until all
13 the public members and ~~alternates~~alternate members of the board are appointed under (a) of
14 this section.

15 * ~~Sec. 2324~~. The uncoded law of the State of Alaska is amended by adding a new section
16 to read:

17 TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS. If a
18 plan of a coastal resource district was submitted to the Department of Natural Resources
19 before the effective date of this ~~Act~~section, but is pending approval in its entirety before the
20 effective date of this ~~Act~~section, the coastal resource district shall resubmit the entire plan to
21 the Department of Natural Resources for approval using the standards set out ~~as in~~in AS 46.39
22 and AS 46.40, as modified by this Act.

23 * ~~Sec. 2425~~. The uncoded law of the State of Alaska is amended by adding a new section
24 to read:

25 REVIEW AND ~~REPORT~~REPORTS BY THE ALASKA COASTAL POLICY
26 BOARD. (a) Before February 1, 2013, the Alaska Coastal Policy Board shall review
27 AS 46.40.040(b), as amended by sec. 9 of this Act, AS 46.40.040(c), and AS 46.40.096(i),
28 their implementing regulations, and related federal and state statutes and regulations, and
29 prepare a report to the governor and the legislature on any proposed changes to the provisions
30 of AS 46.40.

31 (b) On or before January 1, 2015, the Alaska Coastal Policy Board shall report to the

1 governor and legislature on the effectiveness of AS 46.39 and AS 46.40 and regulations
2 adopted under those chapters, with its recommendations for any proposed changes to any
3 provision of AS 46.39 or AS 46.40.

4 * ~~Sec. 2526~~. The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 RETROACTIVITY AND REVIVAL. (a) The amendment to AS 44.66.020(a)(5)
7 made by sec. 2 of this Act is retroactive to January 1, 2011.

8 (b) If, under AS 01.10.070(c), sec. ~~2728~~ of this Act takes effect on or after July 1,
9 2011, sec. ~~2728~~ of this Act is retroactive to July 1, 2011, and ~~sections~~provisions repealed by
10 sec. 18, ch. 31, SLA 2005, are revived. If a revived ~~section~~provision is amended by secs. 1, 2,
11 4 - 20, or 22 of this Act, it is revived as amended by secs. 1, 2, 4 - 20, and 22 of this Act. The
12 revived ~~sections~~provisions are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended
13 by sec. ~~2728~~ of this Act.

14 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011,
15 AS 46.39.005, added by sec. 3 of this Act and repealed by sec. 21~~(a)~~ of this Act, is revived.
16 AS 46.39.005, as revived, is subject to repeal under secs. 21~~(a)~~ and ~~2829~~ of this Act and sec.
17 22, ch. 31, SLA 2005, as amended by sec. ~~2728~~ of this Act.

18 * ~~Sec. 2627~~. The uncodified law of the State of Alaska is amended by adding a new section
19 to read:

20 CONDITIONAL EFFECT. Section 21~~(a)~~ of this Act takes effect only if secs. 1 - 13
21 and 18, ch. 31, SLA 2005, take effect.

22 * ~~Sec. 2728~~. The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA
23 2005, is amended to read:

24 Sec. 22. Sections 1 - 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect
25 July 1, 2017 [2011], ~~unless the state's revised coastal management program has not~~
26 ~~been approved by the National Oceanic and Atmospheric Administration, Office of~~
27 ~~Ocean and Coastal Resource Management, United States Department of Commerce,~~
28 ~~under~~ UNLESS THE STATE'S REVISED COASTAL MANAGEMENT
29 PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL OCEANIC AND
30 ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL
31 RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF

1 COMMERCE. UNDER 16 U.S.C. 1455 and AND 1457 (Coastal Zone Management
2 Act of COASTAL ZONE MANAGEMENT ACT OF 1972) before January BEFORE
3 JANUARY 1, 2006. If the state's revised coastal management program is not approved
4 before January IF THE STATE'S REVISED COASTAL MANAGEMENT
5 PROGRAM IS NOT APPROVED BEFORE JANUARY 1, 2006, by the National
6 Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource
7 Management, United States Department of Commerce, then sees BY THE
8 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF
9 OCEAN AND COASTAL RESOURCE MANAGEMENT, UNITED STATES
10 DEPARTMENT OF COMMERCE. THEN SECS. 1 - 13 and AND 18, ch. 31, SLA
11 2005, [OF THIS ACT] take effect May TAKE EFFECT MAY 10, 2006. The
12 commissioner of natural resources shall notify the revisor of statutes on February
13 THE COMMISSIONER OF NATURAL RESOURCES SHALL NOTIFY THE
14 REVISOR OF STATUTES ON FEBRUARY 1, 2006, whether the revised coastal
15 management program has been approved as described in this section. WHETHER THE
16 REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS
17 DESCRIBED IN THIS SECTION].

18 * Sec. 2829. If sec. 21(a) of this Act takes effect, it takes effect on the date that secs. 1 - 13
19 and 18, ch. 31, SLA 2005, take effect.

20 * Sec. 2930. Except as provided in sec. 2829 of this Act, this Act takes effect immediately
21 under AS 01.10.070(c).

Motion Sheet #1

Senate additions are in blue and underlined; Senate deletions are in red.

Page 3, line 4 **In describing the appointment criteria for public members, adds that alternate members will also be appointed one from each of four geographic regions**

(B) four members from a list composed of at least three names from each region, and four alternate members from a list composed of at least three names from each region, nominated and submitted by the coastal resource districts of each region; the governor may reject a list submitted under this subparagraph and request that subsequent lists with different names be submitted; one public member and one alternate member shall be appointed from each of the following regions:

Page 3, lines 13-14 **Clarifies the boundaries of the southwest Alaska region from which a public member and an alternate will be appointed**

(ii) 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 area of the Kodiak Island and ~~area of~~ Aleutians East Boroughs and the ~~area of~~ Aleutian, Adak, and Pribilof regional educational attendance areas;

Page 4, line 19 **Specifies that alternates for designated members are deputy commissioners**

~~(e)~~ (f) 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 deputy commissioner serving as alternates for members serving under (a)(2) of this section shall be filed with the board.

Page 12, lines 18-19 **Changes "commissioner's designee" to "deputy commissioner"**

(1) the commissioner or deputy commissioner the commissioner's designee of a state agency; or

Page 13, lines 6-7

Changes "deputies" to "deputy commissioner" of a resource agency

(A) shall be conducted [IS LIMITED TO A REVIEW] by the commissioners or deputy commissioners of the resource agencies of the resource agencies or their deputies [DEPARTMENT];

Page 13, lines 13-14

Changes "or their deputies" to "deputy commissioners" of a resource agency

(C) shall be completed with the issuance of a written order signed by at least two of the commissioners or deputy commissioners of the resource agencies or their deputies [BY THE DEPARTMENT]

Page 14, lines 8-9

Changes "their deputies" to "deputy commissioners of the resource agencies"

(B) commissioners or deputy commissioners of the resource agencies ~~their deputies~~ for an elevated review;

Page 14, line 31

Changes "their deputies" to "deputy commissioners"

(15) "elevated review" means a review of a proposed consistency determination by the commissioners, ~~or their deputies,~~ or deputy commissioners of the resource agencies.

Page 15, line 24, to Page 16, line 9

More specifically states the composition of the lists the regions will forward to the Governor to serve on the policy board

* ~~Sec. 22.~~ 23. 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

46.39.005(a), added by sec. 3 of this Act, within 30 days after the effective date of this section, the municipalities of each region identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons to be considered for appointment as public members, and the names of three persons to be considered for appointment as alternate members, from the region qualified under AS 46.39.005(a), added by sec. 3 of this Act. Notwithstanding AS 46.39.005, added by sec. 3 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)(B), one member and one alternate member from each region, or request subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and shall appoint one at-large member and one alternate member to serve on the Alaska Coastal Policy Board established by AS 46.39.005, added by sec. 3 of this Act. The governor shall appoint the public members to three-year staggered terms. The alternate member for each public member shall serve the same term as the public member. The governor shall specify the term of each public member appointed subject to this section.

Page 16, line 13

Clarifies that alternates are alternate members

(b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 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 and ~~alternates~~ alternate members of the board are appointed under (a) section.

Page 16, Lines 17-22

Technical difference to change "act" to "section" and "as" to "in"

TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS. If a plan of a coastal resource district was submitted to the Department of Natural Resources before the effective date of this section Act, but is pending approval in its entirety before the

effective date of this section Act, the coastal resource district shall resubmit the entire plan to the Department of Natural Resources for approval using the standards set out ~~(as)~~ in AS 46.39 and AS 46.40, as modified by this Act.

Page 17, lines 8-13

Technical difference to change "sections" to "provisions"

(b) If, under AS 01.10.070(c), sec. ~~27~~ 28 of this Act takes effect on or after July 1, 2011, sec. ~~27~~ 28 of this Act is retroactive to July 2, 2011, and ~~sections~~ provisions repealed by sec. 18, ch.31, SLA 2005, are revived. If a revived ~~section~~ provision is amended by secs. 1, 2, 4 – 20, or 22 of this Act, it is revived as amended by secs. 1, 2, 4 – 20, and 22 of this Act. The revived provisions are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended by sec. ~~27~~ 28 of this Act.

Page 17, line 24, to Page 18, line 17

Technical change to delete a section of the existing statute conditioning the effective date on a 2006 event

Sec. 22. Sections 1 – 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect July 1, 2017 [2011, UNLESS THE STATE'S REVISED COASTAL MANAGEMENT PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF COMMERCE, UNDER 16 U.S.C. 1455 AND 1457 (COASTAL ZONE MANAGEMENT ACT OF 1972) BEFORE JANUARY 1, 2006. IF THE STATE'S REVISED COASTAL MANAGEMENT PROGRAM IS NOT APPROVED BEFORE JANUARY 1, 2006. BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMTNISTRATION, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, DEPARTMENT OF COMMERCE, THEN SECS. 1 – 13 AND 18 OF THIS ACT TAKE EFFECT MAY 10, 2006. THE COMMISSIONER OF

NATURAL RESOURCES SHALL NOTIFY THE REVISOR OF STATUTES ON FEBRUARY 1, 2006, WHETHER THE REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS DESCRIBED IN THIS SECTION]. ~~], unless the state's revised coastal management program has not been approved by the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, United States Department of Commerce, under 16 U.S.C. 1455 and 1457 (Coastal Zone Management Act of 1972) before January 1, 2006. If the state's revised coastal management program is not approved before January 1, 2006, by the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Department of Commerce, then secs. 1—13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect May 10, 2006. The commissioner of natural resources shall notify the revisor of statutes on February 1, 2006, whether the revised coastal management program has been approved as described in this section].~~

Motion #2 – Alaska Coastal Policy Board, Member Removal

Senate additions are in blue and underlined; Senate deletions are in red.

Page 3, line 28 to Page 4, line 10

Section 3

The House version establishes that members of the new Alaska Coastal Policy Board may be removed at the pleasure of the Governor, in which case the alternate member would serve the remainder of the term and a new alternate appointed.

The Senate language deletes that members serve at the pleasure of the Governor, and inserts that members may be removed from cause. The Senate adds (c), allowing the board to recommend that a member be removed; setting out the procedure for removal, including written notice of the charges and an opportunity for a hearing; and defines "for cause."

(b) Public members serve staggered terms of three years. Except as provided by (c) of this section, each ~~Each~~ member serves until a successor is appointed and qualified. A public member may be reappointed. ~~A public member may be removed at the pleasure of the governor, in which event the alternate member shall serve the remainder of the term and a new alternate shall be appointed under (a)(1) of this section~~

(c) The board may recommend that the governor remove a public member for cause. With or without a recommendation from the board, the governor may remove a public member for cause after giving the public member written notice of the charges and an opportunity to be heard upon not less than 10 days' notice. If a public member is removed, the alternate member shall serve the remainder of the term, and a new alternate shall be appointed under (a)(1) of this section. In this subsection, "for cause" includes a lack of contribution to the board's work, neglect of duty, incompetence, inability to serve, poor attendance, and misconduct in office.

Motion #3 – Development of District Coastal Management Plans.

Least Restrictive Means

Senate additions are in blue and underlined; Senate deletions are in red.

Page 8, lines 7-17

Section 8

The House version adds a new subsection to Section 8, development of district management plans, directing that six new factors be considered when determining whether a policy uses the least restrictive means to achieve its objectives. The six factors in the House version are alternate methods; local knowledge or scientific evidence; effects on other uses; economic effects; technological feasibility; and any other relevant factors.

The Senate version breaks the six factors into two subsections of three factors each, and adds that the latter three factors may be required in considering whether an enforceable policy uses the least restrictive means to achieve its purpose.

* **Sec. 8.** AS 46.40.030 is amended by adding ~~a new subsection~~ new subsections to read:

(c) In determining whether an enforceable policy employs the least restrictive means to achieve its objective, the following factors shall be considered:

(1) alternative methods of achieving the objective of the policy;

(2) local knowledge or scientific evidence supporting each alternative method; and

(3) how the alternative methods may affect other existing or potential uses.

(d) Additional factors that the department may require be addressed in determining whether an enforceable policy employs the least restrictive means to achieve its objective are as follows:

~~(4)~~ (1) the economic effects of alternative methods;

~~(5)~~ (2) the technological feasibility of the alternative methods; and

~~(6)~~ (3) any other relevant factors.

Motion #4 – Submission of District Plans by Coastal Resource Districts,
Additional Action by Districts

Senate additions are in blue and underlined; Senate deletions are in red.

Page 10, lines 12-16

Section 13

The House version allows the department to require additional action by the districts related to submitting and reviewing plans. The House version allows the department to require districts to take any other action as appropriate.

The Senate version eliminates the department's ability to require any other action be taken by the districts after plan review. The Senate version instead allows the department to require additional information from the districts if the department believes that information is necessary for approval of all or part of the plan.

(4) require the coastal resource district to submit additional information if, in the judgment of the department, additional information is necessary for the department to approve the plan or portions of the plan
[(3) ANY OTHER ACTION BE TAKEN BY THE COASTAL RESOURCE DISTRICT AS APPROPRIATE] ~~that [(3)] any other action be taken by the coastal resource district [AS APPROPRIATE].~~

Motion #5 – Requirements for Department Review and Approval.

Designated Areas

Senate additions are in blue and underlined; Senate deletions are in red.

Page 12, lines 10-13

Section 15

The Senate version adds a new subsection to the section on requirements for department review and approval of district plans. The subsection prohibits the department from requiring that districts designate areas for the purpose of developing enforceable policies.

(d) Notwithstanding AS 46.40.030(a)(4), 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.

Motion #6 – Definitions

Senate additions are in blue and underlined; Senate deletions are in red.

Page 15, lines 2-21

Section 20

The House version defines "local knowledge" and "scientific evidence."

The Senate CS deletes the definitions of "local knowledge" and "scientific evidence."

~~(16) "local knowledge" means a body of knowledge or information about the coastal environment or the human use of that environment, including information passed down through generations, if that information is~~

~~(A) derived from experience and observations;~~

~~(B) generally accepted by the local community; and~~

~~(C) not contradicted by scientific evidence;~~

~~(17) "scientific evidence" means facts or data that are~~

~~(A) premised upon established chemical, physical, biological, or ecosystem management principles as obtained through scientific method and submitted to the division in the department responsible for ocean and coastal management to furnish proof of a matter required under this chapter;~~

~~(B) in a form that would allow resource agency review for scientific merit; and~~

~~(C) supported by one or more of the following:~~

~~(i) written analysis based on field observation and professional judgment along with photographic documentation;~~

~~(ii) written analysis from a professional scientist with expertise in the specific discipline; or~~

~~(iii) site specific scientific research that may include 29 peer review level research or literature.~~

Motion #7 – Review and Reports

Senate additions are in blue and underlined; Senate deletions are in red.

Page 16, line 31 to page 17, line 3

Section 24 (House)/25 (Senate)

The House version includes one review requirement in Section 15, directing the board to review by Feb. 1, 2013, specific sections of the ACMP statutes, regulations, and related federal and state statutes and regulations. The review is on AS 46.40.040(c), Statewide standards and district plan criteria/DEC consultation in consistency reviews, and AS 46.40.096(i), Consistency reviews and determinations/DEC.

The Senate version adds a new subsection requiring a second level of reporting. The subsection requires the policy board to report by Jan. 1, 2015, on the effectiveness of the ACMP statutes, regulations adopted, and recommendations for changes, if any. The review is on AS 46.39, Coastal Management Administration, and AS 46.40, The Alaska Coastal Management Program.

(b) On or before January 1, 2015, the Alaska Coastal Policy Board shall report to the governor and legislature on the effectiveness of AS 46.39 and AS 46.40 and regulations adopted under those chapters, with its recommendations for any proposed changes to any provision of AS 46.39 or AS 46.40.

- mvd to adopt w/
Version H
- reported out

AMENDMENT

Motion to adopt the Senate version of HB 106: SCS for CS for HB106(FIN), and to insert language of the House version of CS for HB106 (FIN) on page 14, lines 10-14 and lines 16-29, and to add the following new paragraph in Section 6:

(5) in administering AS 46.40, address conflicts between local knowledge and scientific evidence by determining the relative strengths of the scientific evidence and the evidence supporting the local knowledge, and render a written decision; in this paragraph "local knowledge" and "scientific evidence" have the meanings given in AS 46.40.210.

CSHB 106(FIN) Version \T
Relating to the Alaska Coastal Management Program

Sectional Analysis

The following is a sectional analysis of the above referenced bill. Please note that while this summary reflects the bill contents, for authoritative interpretation of the draft you should refer to the bill itself.

Section 1 - Requires the Department of Natural Resources to consider the effects on subsistence users, when administering the Alaska coastal management program under AS 46.39 and AS 46.40;

Section 2 - Extends the sunset date for the Alaska coastal management program to January, 2017 or a period of six years;

Section 3 - Creates the Alaska Coastal Policy Board; establishes the board's membership, terms of office, quorum requirements, and duties; members of the board can be removed at the pleasure of the Governor;

Section 4 - Establishes an annual reporting requirement concerning the drafting and adoption of regulations; requires notice of the report be given to the legislature;

Section 5 - Allows the Department of Natural Resources to consult and cooperate with the Alaska Coastal Policy Board;

Section 6 - Requires the Department of Natural Resources to (1) provide certain information to coastal resource districts by electronic transmission or by mail; and (2) to summarize board minutes relating to the Alaska coastal management program along with recommendations to the commissioner of the Department of Natural Resources based on the board's discussions;

Section 7 - Amends provisions relating to the development of district coastal management plans including provisions relating to a statement of enforceable policies, description of proper and improper uses, designation of areas meriting special attention, and enforceable policy requirements;

Section 8 - Provides that in determining whether an enforceable policy employs the least restrictive means to achieve its objective, factors listed in the subsection shall be considered;

Section 9 - Provides that the provisions of this subsection apply notwithstanding any conflicting provisions in another provision of law;

Section 10 - Requires a coastal resource district to resubmit its coastal management plan as required under AS 46.39.005(k)(3);

Section 11 - Repeals a provision of law requiring that a coastal management plan meet statewide standards and district plan criteria;

Section 12 - Requires that a district coastal management plan that the department finds is not approvable or not approvable in part the department shall explain in writing the basis for the decision; the district submitting the plan may request the plan be submitted to the Alaska Coastal Policy Board for review; requires the board to review the plan and make recommendations regarding approval or modification of the plan;

Section 13 - Repeals references to mediation and requires the department to enter findings as required by this subsection, after the board has reviewed the district coastal management plan and the recommendations of the board;

Section 14 - Provides that only a coastal resource district affected by the decision of the department has the right to request reconsideration of the decision; requires the request be made within 15 day, be in writing, and include a statement of issues and facts; allows the commissioner to review the decision and to issue a determination; provides that failure to issue a determination within 20 days, constitutes denial and that denial is a final administrative order; provides that the superior court has jurisdiction to enforce orders of the commissioner of natural resources entered under AS 46.40.060(c) and (e) and that;

Section 15 - Establishes requirements for review and approval of a district coastal management plan by the Department of Natural Resources, including approval criteria, and limits on enforcement policies;

Section 16 - Amends reviews of proposed projects by requiring the commissioner or deputy commissioner of the resource agency to conduct an elevated review of a proposed consistency determination; also establishes timeframes for elevated reviews;

Section 17 - Provides that time limits imposed under AS 46.40.096(n) do not apply to a consistency review of a project undergoing elevated review;

Section 18 - Amends the definition of “reviewing entity” for purposes of elevated consistency review and determinations to add “commissioners or their designees”;

Section 19 - Provides that new matter submitted by a city or village for a coastal management plan that is not inconsistent with the standards adopted under AS 46.40.040 and that meets district plan criteria shall be accepted and used to modify the District coastal management plan accordingly;

Section 20 - Adds definitions of “board”, “commissioners”, “elevated review”, “local knowledge”, and “scientific evidence” for purposes of AS 46.40 for analysis to determine whether an enforceable policy should be approved as an enforceable policy

Section 21 - Repeals AS 46.39.005, the Alaska coastal policy board; also repeals AS 46.40.060(d), a conflicting reference to Superior Court jurisdiction;

Section 22 - Transition provision for the membership of the Alaska coastal policy board;

Section 23 - Transition provision for pending district coastal management plans;

Section 24 - Requires a review and report of recommendations by the Alaska Coastal Policy Board, due February 1, 2013, on new regulations to be written and implemented as a result of this Act, as well as related federal and state statutes and regulations.

Section 25- Retroactivity and revival provisions intended to make the extension of the coastal management program effective on January 1, 2011;

Section 26 - Conditional effective date for sec. 21;

Section 27 - Technical amendment;

Section 28 - Technical amendment;

Section 29 - Effective date for all sections except for section 29.

SCS CSHB 106(FIN) Version \H
Relating to the Alaska Coastal Management Program

Sectional Analysis

The following is a sectional analysis of the above referenced bill. Please note that while this summary reflects the bill contents, for authoritative interpretation of the draft you should refer to the bill itself.

Section 1 - Requires the Department of Natural Resources to consider the effects on subsistence uses, when administering the Alaska coastal management program under AS 46.39 and AS 46.40;

Section 2 - Extends the sunset date for the Alaska coastal management program to January, 2017 or a period of six years;

Section 3 - Creates the Alaska Coastal Policy Board; establishes the board's membership, terms of office, quorum and voting requirements, and duties; provides that board members can be removed for cause only, strictly prescribing the removal process whereas limiting accountability

Section 4 - Establishes an annual reporting requirement concerning the drafting and adoption of regulations; requires notice of the report be given to the legislature;

Section 5 - Allows the Department of Natural Resources to consult and cooperate with the Alaska Coastal Policy Board;

Section 6 - Requires the Department of Natural Resources to (1) provide certain information to coastal resource districts by electronic transmission or by mail; and (2) to summarize board minutes relating to the Alaska coastal management program along with recommendations to the commissioner of the Department of Natural Resources based on the board's discussions;

Section 7 - Amends provisions relating to the development of district coastal management plans including provisions relating to a statement of enforceable policies, description of proper and improper uses, designation of areas meriting special attention, and enforceable policy requirements;

Section 8 - Provides that in determining whether an enforceable policy employs the least restrictive means to achieve its objective, factors listed in subsection (c) "shall" be considered and factors under subsection (d) "may" be required to be considered;

Section 9 - Provides that the provisions of this subsection apply notwithstanding any conflicting provisions in another provision of law;

Section 10 - Requires a coastal resource district to resubmit its coastal management plan as required under AS 46.39.005(k)(3);

Section 11 - Repeals a provision of law requiring that a coastal management plan meet statewide standards and district plan criteria;

Section 12 - Requires that a district coastal management plan that the department finds is not approvable or not approvable in part the department shall explain in writing the basis for the decision; the district submitting the plan may request the plan be submitted to the Alaska Coastal Policy Board for review; requires the board to review the plan and make recommendations regarding approval or modification of the plan;

Section 13 - Repeals references to mediation and requires the department to enter findings as required by this subsection after the board has reviewed the district coastal management plan and made recommendations; allows the Department to require additional information necessary in review of a plan or portion of a plan.

Section 14 - Provides that only a coastal resource district affected by the decision of the department has the right to request reconsideration of the decision; requires the request be made within 15 day, be in writing, and include a statement of issues and facts; allows the commissioner to review the decision and to issue a determination; provides that failure to issue a determination within 20 days, constitutes denial and that denial is a final administrative order; provides that the superior court has jurisdiction to enforce orders of the commissioner of natural resources entered under AS 46.40.060(c) and (e) and that;

Section 15 - Establishes requirements for review and approval of a district coastal management plan by the Department of Natural Resources, including approval criteria and limits for enforceable policies; removes a tool from the department that can limit potential restrictions on coastal uses and resources by prohibiting the use of designated areas.

Section 16 - Amends reviews of proposed projects by requiring the commissioner or deputy commissioner of the resource agency to conduct an elevated review of a proposed consistency determination; also establishes timeframes for elevated reviews;

Section 17 - Provides that time limits imposed under AS 46.40.096(n) do not apply to a consistency review of a project undergoing elevated review;

Section 18 - Amends the definition of “reviewing entity” for purposes of elevated consistency review and determinations to “commissioners or deputy commissioners of the resource agencies for an elevated review”;

Section 19 - Provides that new matter submitted by a city or village for a coastal management plan that is not inconsistent with the standards adopted under AS 46.40.040 and that meets district plan criteria shall be accepted and used to modify the district coastal management plan accordingly;

Section 20 - Adds definitions of “board”, “commissioners” and “elevated review”, for purposes of AS 46.40; Deletes definitions of “local knowledge” and “scientific evidence”

(from House Version \T) used for analysis to determine whether an enforceable policy should be approved.

Section 21 - Repeals AS 46.39.005, the Alaska coastal policy board;

Section 22 - Repeals AS 46.40.060(d), a conflicting reference to Superior Court jurisdiction;

Section 23 - Transition provision for the membership of the Alaska Coastal Policy Board;

Section 24 - Transition provision for pending district coastal management plans;

Section 25 - Requires a review and report of recommendations by the Alaska Coastal Policy Board, due February 1, 2013, on new regulations to be written and implemented after July 1, 2011, as well as related federal and state statutes and regulations. Requires a review and report of recommended changes to statutes and regulations on or before January 1, 2015.

Section 26 - Retroactivity and revival provisions intended to make the extension of the coastal management program effective on January 1, 2011;

Section 27 - Conditional effective date for sec. 21;

Section 28 - Technical amendment;

Section 29 - Technical amendment;

Section 30 - Effective date for all sections except for section 29.