

**2/06/12
OVERVIEW:
BALLOT
INITIATIVE
11ACMP -
ESTABLISHING
THE ALASKA
COASTAL
MANAGEMENT
PROGRAM**

<TARGET><BILL></BILL><SUBJECT>2-06-12 OVERVIEW BALLOT
INITIATIVE 11ACMP - ESTABLISHING THE ALASKA COASTAL
MANAGEMENT PROGRAM</SUBJECT><COMM>HJUD27</COMM></TARGET>

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

received

2/27/2012
PS
SEAN PARNELL, GOVERNOR

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February 22, 2012

The Honorable Hollis French
Chairman, Senate Judiciary
Alaska State Legislature
State Capitol, Room 417
Juneau, AK 99801-1182

The Honorable Carl Gatto
Chairman, House Judiciary
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801-1182

(Sent to Cont.
2/23/12)

Dear Senator French/Representative Gatto,

Thank you for the opportunity to present the cost statement for the ACMP initiative before the Joint Judiciary Committee on February 6, 2012. The following is in response to questions posed by the Committee during the presentation for distribution to the members.

Questions from the Joint Judiciary Committee meeting Feb. 6

1. *Senator Wielechowski asked why a fiscal note for HB106 showed that the former ACMP federal program had shown \$4.0 million in federal funding, while the statement of cost indicated available federal funding was \$2.0 million.*

A fiscal note prepared on 05/13/2011 by the Senate Finance Committee for HB106 shows \$4.0 million in federal funding for ACMP. (See Attachment 1) However, this level of federal funding appears well in excess of any recently available federal funding for coastal management programs.

Federal funding for Coastal Management Program administrative grants are governed by 16 U.S.C. § 1455. Since federal fiscal year 2008 (FFY2008) federal funding has come in three funding streams referred to as Sections 306/306A (tiered federal match up to 1:1); Section 309 (no match required); and the Coastal Non Point (CNP) or Section 310 (requires 1:1 match and not funded in FFY 2010).

Federal funding streams in the three programs are subject to maximum awards based upon the availability of federal funds. Alaska has typically received the maximum allowed for these programs. Below is a table showing federal funding from FFY2008-FFY2010. In these years, no more than \$2.6 million was available for federal funding of state coastal management programs. Copies of the US

Department of Commerce's program allocation letter are provided for your review. (Attachments 2-4.)

Federal Fiscal Year 2008	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$55,542,000	\$10,000,000	\$1,428,000	\$66,970,000
Maximum State Funding	\$1,967,000	\$536,000	\$42,000	\$2,545,000
Alaska Allocation	\$1,967,000	\$536,000	\$42,000	\$2,545,000

Federal Fiscal Year 2009	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$56,079,000	\$10,000,000	\$2,345,000	\$68,424,000
Maximum State Funding	\$1,995,000	\$536,000	\$75,000	\$2,606,000
Alaska Allocation	\$1,995,000	\$536,000	\$75,000	\$2,606,000

Federal Fiscal Year 2010	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$57,085,000	\$10,000,000	\$0	\$67,085,000
Maximum State Funding	\$2,030,000	\$536,000	\$0	\$2,566,000
Alaska Allocation	\$2,030,000	\$536,000	\$0	\$2,566,000

As indicated during testimony, the total cost estimate of \$5.4 million annually could be shared by the federal government provided that the state becomes eligible for federal funding. Uncertainty remains about the timing and availability of the federal funding stream, and all of the funds that would be requested for the budget are subject to legislative appropriation.

2. *Senator French and Representative Holmes asked for more specifics about the costs included in the overall cost estimate. They were specifically interested in information about ongoing versus one-time costs.*

Please see the summary below that itemizes costs by category. Comments about ongoing versus one-time costs are included in the narrative section. The estimates currently allow flexibility for the state to address one-time costs, however should the initiative pass, program implementation costs are likely to be different than those presented. All proposed costs will be subject to appropriation by the legislature.

CATEGORY	Description	
Personal Services	<p>This expenditure would be an ongoing cost to support salaries and benefits for 34 full time positions ranging from a Division Director to an Office Assistant. The majority of the positions are Natural Resource Specialists supporting the envisioned Alaska Coastal Management Program</p> <p>In the first two years, it is likely that personal services costs will be lower than this estimate due to the program beginning from scratch. However, there will be many other activities associated with the initial gear up of the program though, so there is significant uncertainty about what percentage of these resources will be needed in the first two years.</p>	\$3,260,000
Travel	<p>The projected travel expenditure would support employee and board related in-state and out of state travel to coastal districts and includes hotel, per diem, airfare and reimbursement for Alaska Coastal Management Program district assistance, staff training, mediation, public education, conferences and other travel supporting the program.</p> <p>This estimate anticipates increased travel costs in the first two years following the establishment of the board in order to assist coastal districts with their plans and advocate for the federal approval of the plan in Washington DC. Some portion of these travel resources would likely be redeployed to other program activities after the program is approved.</p>	\$267,900
Services	<p>This expenditure is an ongoing cost to support contracts in the form of Reimbursable Services Agreements (RSA) to agencies participating in the Alaska Coastal Management Program. These contracts would support the implementation of the Alaska Coastal Management Program by the participating state agencies, coastal management areas and other contractors.</p> <p>This estimate also supports purchased services from other state agencies including centralized telecommunication, mail and human resource services, legal services, professional services to support monitoring & compliance activities and development and implementation activities for the Alaska Coastal Management Program. In the initial years, additional contractual services will be needed to draft and review implementing program regulations, and other start up activities.</p>	\$1,815,300
Commodities	<p>This is an ongoing expenditure estimate that supports purchases related to office supplies, office furnishings and equipment, software as well as minor repairs to office equipment. In the first two years, actual costs in this category are likely to be significantly</p>	\$56,800

	higher as the office acquires all of the office furnishings, office equipment and other commodities necessary to build an office from scratch.	
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3. *Senator French asked for more specificity about the costs included in the estimate of costs to support implementation of the 13-member Coastal Policy Board governance structure.*

The estimate of additional costs was based largely on cost estimates provided by the Department of Natural Resources (DNR) in their fiscal note for HB106 dated 04/15/2011. (Attachment 5) This fiscal note was chosen as a basis due to its somewhat similar nature to the initiative envisioned program. Comments on whether these are expected to be ongoing or one-time costs are also included.

As indicated during the testimony, these estimates assume a program that is substantially similar to the previous program with a 13-member board meeting in person 4 times annually. Significant uncertainty remains about the program that the board would ultimately implement and the associated costs. It should be noted that not all of the increased costs are directly attributable to the board members.

The costs in the table below are presented as subsets of the estimates presented in the prior table.

CATEGORY	Description	
Personal Services	<p>One additional position was added to the previously configured program to cover the additional work associated with the administration of the Alaska Coastal Policy Board and coordinating district planning functions and information sharing.</p> <p>This is an ongoing cost and would be directly attributable to the Coastal Policy Board.</p>	\$109,800
Travel	<p>This estimate anticipates increased travel costs in the first two years following the establishment of the board in order to assist coastal districts with their plans and advocate for the federal approval of the plan in Washington DC. These travel resources would likely be redeployed to other program related travel or review activities after the program is approved. These costs are not directly attributable to the addition of a board.</p> <p>This expenditure estimate also includes \$60,000 in ongoing travel costs associated with four annual in-person meetings of the 13-member Alaska Coastal Policy Board and two staff members at approximately \$1,000 per trip. This is an ongoing cost directly attributable to addition of a Coastal Policy Board.</p>	\$164,000

Services	<p>This expenditure supports an additional \$300,000 in ongoing services agreements with other state agencies services that DNR indicated would be needed to successfully implement the ACMP program. This would be an ongoing cost. These costs are not directly attributable to the addition of a board.</p> <p>The estimates include \$60,000 estimate for regulations review by the Department of Law that would be of limited duration. Length of need is uncertain and dependent upon the complexity of the regulations and the time it takes to promulgate and implement them, this could be a cost for 2-4 years, however these resources would likely be redeployed to reviews and other program support after that time.</p> <p>Other ongoing services costs included \$20,000 in postage, teleconference services, and other miscellaneous board and coastal district support such as conducting elections in coastal districts. This would be an ongoing cost directly attributable to the addition of the board.</p>	\$380,000
Commodities	<p>This estimate includes some \$5,600 in one-time costs such as the purchase of a recorder and sound equipment for the board. Ongoing costs include \$10,000 in supplies needed to support the presentation of materials at the board meetings. These costs are directly attributable to the addition of a board.</p>	\$15,600

Attachments:

Attachment 1 Sen Finance ACMP Fiscal Note 05.13.2011.pdf

Attachment 2 CZMA Allocation memo FY2008.pdf

Attachment 3 CZMA Allocation memo FY2009.pdf

Attachment 4 CZMA Allocation memo FY2010.pdf

Attachment 5 DNR ACMP Fiscal Note 04.15.2011.pdf



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
Submitted: SENATE FINANCE for SCS CSHB 106(FIN)

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.

Submitted By: Senate Finance for SCS CSHB 106(FIN)

Prepared By: Conference Committee

Date: 05/04/2011

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



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL OCEAN SERVICE
 OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
 Silver Spring, Maryland 20910

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MAR 10 2008

NA08N054190428

MEMORANDUM FOR: Commonwealth, State, and Territorial Coastal Program Managers

THROUGH: Eric Wolfe *EWolfe*
 Acting Chief Financial Officer
 National Ocean Service

FROM: John R. King *John R. King*
 Chief, Coastal Programs Division

SUBJECT: FY 2008 Final Funding Guidance and Allocations
 Coastal Zone Management Act Sections 306/306A, 309 and 310

This final funding guidance is based on the funding levels contained in the Consolidated Appropriations Act, 2008 (P.L. 110-161). This Act contains funding for sections 306/306A; 309; and 310. This memorandum provides guidance on the allocation and uses of these funds. Questions or comments should be directed to me, and I can be reached at (301) 713-3155 extension 188 or via e-mail at john.king@noaa.gov.

Funding Facts

	<u>2007</u>	<u>2008</u>
Section 306/306A/309*	\$ 65,780,000	\$ 64,358,577
CNCP Implementation**	0	1,974,000
Deobligated Funds***	0	1,183,423
Totals	<u>\$ 65,780,000</u>	<u>\$ 67,516,000</u>

* - Figures reflect the FY08 Appropriation less assessments for the Hollings Scholarship program
 ** - Figures reflect the FY08 Appropriation less assessments for the Hollings Scholarship program and administrative costs.
 *** - Total deobligated funds added to section 306 funding.



As you can see from the above table, appropriations for sections 306/309 are down by approximately \$1.4M. This is partially offset by the availability of \$1.2M in prior year deobligations. There is also almost \$2M available for the Coastal Nonpoint Pollution Control Program.

Section 306/306A and Section 309 Allotments

For FY 2007, there is \$65,542,000 in appropriated and deobligated funds available for sections 306/306A and 309. The CZMA requires that between ten and twenty percent of the section 306/309 appropriation be directed toward section 309, up to a maximum of \$10,000,000. We will direct the statutory maximum of \$10,000,000 (15.1%) of the appropriation toward section 309, leaving \$55,542,000 for section 306/306A. The section 306/306A funds require a 1 to 1 match and are available to states with federally-approved coastal zone management programs. State allocations are provided in the attached table (attachment 1).

The states that have successfully completed section 309 assessments and strategies are eligible for section 309 funding. These funds require no match. All of the section 309 funds will be awarded through the weighted formula. The primary focus of this year's section 309 effort will be to implement the third year of the new enhancement strategies.

Implementation of Section 6217 Programs

There is a total of \$1,974,000 available for the Coastal Nonpoint Program. The funds are being allocated as follows: 1. \$42,000 for each state with a conditionally or fully approved 6217 program; 2. an additional \$26,000 for each state with a fully approved program.

As in past years, Congress has provided these funds to support program implementation activities. Any remaining program development activities (i.e., addressing remaining conditions of approval) should be supported with the \$100,000 in section 319 Clean Water Act funding identified initially in EPA's supplemental FY 2001 grants guidance for this purpose. Section 309 funds may also be used to support program development activities and states can utilize section 306 funding to support a variety of CNPCP development and implementation activities.

The CNPCP implementation funds require a 1 to 1 match. The state coastal zone management lead agency is the only entity eligible to receive these awards, and may in turn make sub-awards. For states with conditional approval, these funds must be used to implement the approved portions of the CNPCP.

Application Procedures

The current application schedule is attached. July 1 start date awards are due in OCRM by April 10, 2008; and October 1 start date awards are due in OCRM by May 20, 2008 (attachment 2). This schedule may be revised pending discussions with the Grants Management Division. As with FY 2007, use of the electronic grants application system is required.

Notice Information

According to the Coastal Zone Management Act of 1972, as amended (CZMA), the Secretary of Commerce may make grants to eligible coastal states. Coastal states are defined as states that are in, or bordering on, the Atlantic, Pacific, or Arctic Oceans, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of the CZMA, the term also includes Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. This notice is being distributed to all eligible parties, and substitutes for the Federal Register notice required for Federal grant programs.

cc: EScheffler, NOS
BBlum, GCOS
RLiogys, NFA
JPiercy, NOS

LZuckerberg, OCRM
TMorris, OCRM
KBarba, OCRM
DFlynn, DOC/FALD

OCRM/CPD Staff
DKennedy, OCRM
DWieting, OCRM
ASimpson Porter, GMD
KFletcher, CSO

Parameter	Section 306/306A	Section 309	CNP Standard	CNP Full Approval
Total Funding	55,542,000	10,000,000	1,428,000	546,000
Base Funding	672,000	70,000	42,000	26,000
Maximum Funding	1,967,000	536,000	42,000	26,000

STATE	Section 306	Section 309	CNP Standard	CNP Full Approval	Total
Alabama	1,278,000	104,000	42,000	0	1,424,000
Alaska	1,967,000	536,000	42,000	0	2,545,000
American Samoa	779,000	76,000	42,000	26,000	923,000
California	1,967,000	536,000	42,000	26,000	2,571,000
Connecticut	1,848,000	177,000	42,000	26,000	2,093,000
Delaware	1,211,000	101,000	42,000	26,000	1,380,000
Florida	1,967,000	536,000	42,000	26,000	2,571,000
Georgia	1,967,000	270,000	42,000	0	2,279,000
Guam	803,000	77,000	42,000	26,000	948,000
Hawaii	1,821,000	174,000	42,000	0	2,037,000
Indiana	966,000	86,000	42,000	0	1,094,000
Louisiana	1,967,000	536,000	42,000	0	2,545,000
Maine	1,967,000	409,000	42,000	26,000	2,444,000
Maryland	1,967,000	521,000	42,000	26,000	2,556,000
Massachusetts	1,967,000	413,000	42,000	26,000	2,448,000
Michigan	1,967,000	536,000	42,000	0	2,545,000
Minnesota	885,000	82,000	42,000	26,000	1,035,000
Mississippi	1,046,000	91,000	42,000	0	1,179,000
New Hampshire	900,000	83,000	42,000	26,000	1,051,000
New Jersey	1,967,000	536,000	42,000	0	2,545,000
New York	1,967,000	536,000	42,000	26,000	2,571,000
North Carolina	1,967,000	392,000	42,000	26,000	2,427,000
Northern Mariana Islands	837,000	80,000	42,000	26,000	985,000
Ohio	1,869,000	180,000	42,000	0	2,091,000
Oregon	1,967,000	216,000	42,000	0	2,225,000
Pennsylvania	1,815,000	172,000	42,000	26,000	2,055,000
Puerto Rico	1,967,000	215,000	42,000	26,000	2,250,000
Rhode Island	1,307,000	106,000	42,000	26,000	1,481,000
South Carolina	1,967,000	349,000	42,000	26,000	2,384,000
Texas	1,967,000	536,000	42,000	0	2,545,000
U.S. Virgin Islands	831,000	79,000	42,000	26,000	978,000
Virginia	1,967,000	536,000	42,000	26,000	2,571,000
Washington	1,967,000	532,000	42,000	0	2,541,000
Wisconsin	1,940,000	191,000	42,000	26,000	2,199,000
TOTALS	55,542,000	10,000,000	1,428,000	546,000	67,516,000



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL OCEAN SERVICE
 OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
 Silver Spring, Maryland 20910

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MAR 31 2009

MEMORANDUM FOR: Commonwealth, State, and Territorial Coastal Program Managers

THROUGH: Chris Cartwright, Chief Financial Officer
 National Ocean Service

FROM: John R. King
 Chief, Coastal Programs Division

SUBJECT: FY 2009 Final Funding Guidance and Allocations
 Coastal Zone Management Act Sections 306/306A, 309 and 310

Given the lateness of the appropriation and the need to get the funds out to the recipients, we are forgoing the normal process of issuing draft funding guidance. This final funding guidance is based on the funding levels contained in the Consolidated Appropriations Act, 2008 (P.L. 110-161). This Act contains funding for sections 306/306A; 309; and 310. This memorandum provides guidance on the allocation and uses of these funds. Questions or comments should be directed to me, and I can be reached at (301) 713-3155 extension 188 or via e-mail at john.king@noaa.gov.

In spite of the late appropriation, our goal is to get you your funds in a timely manner. To meet this goal, we must keep an application schedule similar to last year (Attachment 2). We recognize that this is a difficult schedule, however, it is critical that we get applications in as quickly as possible, so that we can get funds out the door in time to meet your start dates. We will work with you to get this done as efficiently as possible.

Funding Facts

	<u>2008</u>	<u>2009</u>
Section 306/306A/309*	\$ 64,358,577	\$ 66,079,000
CNPCP Implementation**	1,974,000	3,362,000
Deobligated Funds***	<u>1,183,423</u>	<u>0</u>
Totals	\$ 67,516,000	\$ 69,441,000

* - Figures reflect the Appropriation less assessments for the Hollings Scholarship program
 ** - Figures reflect the Appropriation less assessments for the Hollings Scholarship program and administrative costs.
 *** - Total deobligated funds added to section 306 funding in 2008



As you can see from the above table, appropriations for sections 306/309 are up by approximately \$1.4M, however, deobligated funds are down by almost \$1.2M. There is also almost \$3.4M available for the Coastal Nonpoint Pollution Control Program.

Section 306/306A and Section 309 Allotments

For FY 2009, there is \$66,079,000 in appropriated funds available for sections 306/306A and 309. The CZMA requires that between ten and twenty percent of the section 306/309 appropriation be directed toward section 309, up to a maximum of \$10,000,000. We will direct the statutory maximum of \$10,000,000 (15.1%) of the appropriation toward section 309, leaving \$56,079,000 for section 306/306A. The section 306/306A funds require a 1 to 1 match and are available to states with federally-approved coastal zone management programs. State allocations are provided in the attached table (attachment 1).

The states that have successfully completed section 309 assessments and strategies are eligible for section 309 funding. These funds require no match. All of the section 309 funds will be awarded through the weighted formula. The primary focus of this year's section 309 effort will be to continue developing program changes outlined in the current strategies and to begin developing revised assessments and strategies.

Implementation of Section 6217 Programs

There is a total of \$3,362,000 available for the Coastal Nonpoint Program. The funds are being allocated as follows: 1. \$2,345,000 allocated by formula to each state with a conditionally or fully approved 6217 program. Each state will see an increase of at least \$19,000 over FY08 in these funds. 2. an additional \$46,200 for each state with a fully approved program.

As in past years, Congress has provided these funds to support program implementation activities. Please consult the CNP Funding Guidance for additional information. (http://coastalmanagement.noaa.gov/nonpoint/docs/6217grantsguidance_FY06Final.pdf)

Any remaining program development activities (i.e., addressing remaining conditions of approval) should be supported with the \$100,000 in section 319 Clean Water Act funding identified initially in EPA's supplemental FY 2001 grants guidance for this purpose. Section 309 funds may also be used to support program development activities and states can utilize section 306 funding to support a variety of CNPCP development and implementation activities.

The CNPCP implementation funds require a 1 to 1 match. The state coastal zone management lead agency is the only entity eligible to receive these awards, and may in turn make sub-awards. For states with conditional approval, these funds must be used to implement the approved portions of the CNPCP.

Application Procedures

The current application schedule is attached. July 1 start date awards are due in OCRM by April 3, 2009; and October 1 start date awards are due in OCRM by May 20, 2009 (attachment 2). As with FY 2008, use of the electronic grants application system is required.

Notice Information

According to the Coastal Zone Management Act of 1972, as amended (CZMA), the Secretary of Commerce may make grants to eligible coastal states. Coastal states are defined as states that are in, or bordering on, the Atlantic, Pacific, or Arctic Oceans, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of the CZMA, the term also includes Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. This notice is being distributed to all eligible parties, and substitutes for the Federal Register notice required for Federal grant programs.

cc:	CCartwright, NOS	LZuckerberg, OCRM	OCRM/CPD Staff
	BBlum, GCOS	TMorris, OCRM	DKennedy, OCRM
	RLiogys, NFA	KBarba, OCRM	DWieting, OCRM
	JPiercy, NOS	DFlynn, DOC/FALD	ASimpson Porter, GMD
			KFletcher, CSO

FINAL FY 2009 Allocations
Sections 306/306A and 309 and
Coastal Nonpoint Implementation

Parameter	Section 306/306A	Section 309	CNP Standard	CNP Full Approval
Total Funding	56,079,000	10,000,000	2,345,000	1,016,400
Base Funding	675,000	70,000	60,000	46,200
Maximum Funding	1,995,000	536,000	75,000	NA

STATE	Section 306	Section 309	CNP Standard	CNP Full Approval	Total
Alabama	1,280,000	104,000	63,000	0	1,447,000
Alaska	1,995,000	536,000	75,000	0	2,606,000
American Samoa	781,000	76,000	61,000	46,200	964,200
California	1,995,000	536,000	75,000	46,200	2,652,200
Connecticut	1,849,000	177,000	67,000	46,200	2,139,200
Delaware	1,213,000	101,000	63,000	46,200	1,423,200
Florida	1,995,000	536,000	75,000	46,200	2,652,200
Georgia	1,995,000	270,000	70,000	0	2,335,000
Guam	804,000	77,000	61,000	46,200	988,200
Hawaii	1,824,000	174,000	67,000	0	2,065,000
Indiana	969,000	86,000	62,000	0	1,117,000
Louisiana	1,995,000	536,000	75,000	0	2,606,000
Maine	1,995,000	409,000	75,000	46,200	2,525,200
Maryland	1,995,000	521,000	75,000	46,200	2,637,200
Massachusetts	1,995,000	413,000	75,000	46,200	2,529,200
Michigan	1,995,000	536,000	75,000	0	2,606,000
Minnesota	889,000	82,000	61,000	46,200	1,078,200
Mississippi	1,050,000	91,000	62,000	0	1,203,000
New Hampshire	903,000	83,000	61,000	46,200	1,093,200
New Jersey	1,995,000	536,000	75,000	46,200	2,652,200
New York	1,995,000	536,000	75,000	46,200	2,652,200
North Carolina	1,995,000	392,000	75,000	46,200	2,508,200
Northern Mariana Islands	840,000	80,000	61,000	46,200	1,027,200
Ohio	1,869,000	180,000	67,000	0	2,116,000
Oregon	1,995,000	216,000	68,000	0	2,279,000
Pennsylvania	1,816,000	172,000	67,000	46,200	2,101,200
Puerto Rico	1,995,000	215,000	68,000	46,200	2,324,200
Rhode Island	1,309,000	106,000	64,000	46,200	1,525,200
South Carolina	1,995,000	349,000	74,000	46,200	2,464,200
Texas	1,995,000	536,000	75,000	0	2,606,000
U.S. Virgin Islands	833,000	79,000	61,000	46,200	1,019,200
Virginia	1,995,000	536,000	75,000	46,200	2,652,200
Washington	1,995,000	532,000	75,000	0	2,602,000
Wisconsin	1,940,000	191,000	67,000	46,200	2,244,200
TOTALS	56,079,000	10,000,000	2,345,000	1,016,400	69,440,400



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL OCEAN SERVICE
 OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
 Silver Spring, Maryland 20910

4

MAR - 3 2010

MEMORANDUM FOR: Commonwealth, State, and Territorial Coastal Program Managers

THROUGH: Chris Cartwright, Chief Financial Officer *Ch Cartwright*
 National Ocean Service

FROM: John R. King *John R King*
 Chief, Coastal Programs Division

SUBJECT: FY 2010 Draft Funding Guidance and Allocations
 Coastal Zone Management Act Sections 306/306A and 309

This draft funding guidance is based on the funding levels contained in the Consolidated Appropriations Act, 2010 (P.L. 111-117). This Act contains funding for sections 306/306A and 309. This memorandum provides guidance on the allocation and uses of these funds. Questions or comments should be directed to me, and I can be reached at (301) 713-3155 extension 188 or via e-mail at john.king@noaa.gov. Comments are due by March 8, 2010.

Our goal is to get you your funds in a timely manner, and to meet this goal, we must keep an application schedule similar to last year (Attachment 2). We recognize that this is a difficult schedule, however, it is critical that we get applications in as quickly as possible, so that we can get funds out the door in time to meet your start dates. We will work with you to get this done as efficiently as possible.

Funding Facts

	<u>2009</u>	<u>2010***</u>
Section 306/306A/309*	\$ 66,079,000	\$ 68,077,854
CNPCP Implementation**	3,362,000	0
Deobligated Funds	<u>0</u>	<u>7,146</u>
Totals	\$ 69,441,000	\$ 68,085,000

* - Figures reflect the Appropriation less assessments for the Hollings Scholarship program
 ** - Figures reflect the Appropriation less assessments for the Hollings Scholarship program and administrative costs.
 *** - Includes report language addressing the increase in 306/309 funding



As you can see from the above table, appropriations for sections 306/309 are up by approximately \$2.0M, however, there is no funding available for the Coastal Nonpoint Pollution Control Program. There is also a small amount of deobligated funds available for re-allocation.

Report Language

Report language accompanying the FY10 Appropriations Act requires that a portion of the increase in the Coastal Zone Management Grants funding be used for a competitive grants program. Specifically, the report states:

The conference agreement provides \$2,000,000 above the request, and NOAA is directed to use a portion of the increase provided for a competitive program for efforts to modernize and improve State information systems to assess, track and manage permitting and land-use tracking procedures. (FY2010 Appropriations Conference Report (p27))

In addition, the Appropriations Act continues to include the following language regarding allocations:

Provided further, That in allocating grants under sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, no coastal State shall receive more than 5 percent or less than 1 percent of increased funds appropriated over the previous fiscal year. (FY2010 Appropriations Act (p17))

Proposed Approach

Our challenge is to meet both existing statutory and regulatory requirements, and Congressional direction contained in the Conference Report. To do this, we are proposing to allocate \$1,000,000 of the funding increase towards section 306 allocations, and \$1,000,000 of the funding increase towards a competitive process for the purposes described in the Conference Report. There will be a separate call for proposals for the competitive funds, as well as separate cooperative agreements. This approach meets the requirements described above, and allows the standard annual CZM cooperative agreement process to move forward in a timely manner.

Section 306/306A and Section 309 Allotments

For FY 2010, there is \$67,085,000 in appropriated and deobligated funds available for sections 306/306A and 309. The CZMA requires that between ten and twenty percent of the section 306/309 appropriation be directed toward section 309, up to a maximum of \$10,000,000. We will direct the statutory maximum of \$10,000,000 (14.9%) of the appropriation toward section 309, leaving \$57,085,000 for section 306/306A. The section 306/306A funds require a 1 to 1 match and are available to states with federally-approved coastal zone management programs. State allocations are provided in the attached table (attachment 1).

The states that have successfully completed section 309 assessments and strategies are eligible for section 309 funding. These funds require no match. All of the section 309 funds will be awarded through the weighted formula. The primary focus of this year's section 309 effort will

be to develop revised assessments and strategies.

Implementation of Section 6217 Programs

No funding was appropriated for this program for FY 2010. We understand that this presents difficulties for some states, and we will provide flexibility in funding CNP implementation projects with 306 or 309 funds.

Application Procedures

The current application schedule is attached. July 1 start date awards are due in OCRM by April 5, 2010; and October 1 start date awards are due in OCRM by May 20, 2010 (attachment 2). As with FY 2009, use of the electronic grants application system is required.

NOAA Strategic Priorities

NOAA is currently in the process of finalizing its "Next Generation Strategic Plan" intended to guide Agency actions through 2017. The draft goals articulated in this plan align nicely with CZMA goals, OCRM office priorities, and the priorities of many of your programs. This provides a good opportunity to demonstrate the connection between the CZM program and funding and NOAA priorities. Towards this end, we thought it worthwhile to provide a brief description of the NOAA strategic priorities, as they will likely provide greater visibility for the CZM program and new opportunities for states to access a broader array of NOAA resources.

NOAA intends to focus its efforts on the following four (4) overarching goals:

1. **Climate Adaptation & Mitigation:** An informed society anticipating and responding to a changing climate and its impacts.
2. **Weather Resilience:** Society prepares for and responds to high-impact events that jeopardize individuals, government, and businesses.
3. **Sustainable Coastal Communities and Economies:** Environmentally and economically sustainable oceans, coasts, and Great Lakes communities and ecosystem services.
4. **Sustainable and Resilient Fisheries, Species, and Habitats:** Biodiversity protected and restored and fisheries sustained within healthy and productive ecosystems

By using the following means, familiar to coastal programs, to improve management of our coasts and oceans:

- Promoting partnerships and collaboration at all levels
- Engaging regional ocean governance bodies
- Enabling data integration and delivery
- Improving tools and technology for decision support
- Using local expertise and ecological knowledge

We anticipate that OCRM's support of coastal program engagement in regional ocean governance, climate change adaptation, and the development and use of coastal and marine spatial planning will support the NOAA strategic priorities. We encourage you to consider these priorities in the development of your annual work programs; 309 Assessments and Strategies; and in reporting your program's success stories (Section C of the Performance Reporting Guidelines). Additional information related to NOAA's Strategic Plan can be found here: <http://www.dpi.noaa.gov/ngsp.html>; and the current OCRM strategic plan can be found here: http://coastalmanagement.noaa.gov/resources/docs/ocrm_strategicplan.pdf.

Notice Information

According to the Coastal Zone Management Act of 1972, as amended (CZMA), the Secretary of Commerce may make grants to eligible coastal states. Coastal states are defined as states that are in, or bordering on, the Atlantic, Pacific, or Arctic Oceans, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of the CZMA, the term also includes Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. This notice is being distributed to all eligible parties, and substitutes for the Federal Register notice required for Federal grant programs.

cc:	CCartwright, NOS	LZuckerberg, OCRM	OCRM/CPD Staff
	BBlum, GCOS	TMorris, OCRM	DWieting, OCRM
	JPiercy, NOS	KBarba, OCRM	ASimpson Porter, GMD
		DFlynn, DOC/FALD	KFletcher, CSO

Draft FY 2010 Allocations
Sections 306/306A and 309

Parameter	Section 306/306A	Section 309
Total Funding	57,085,000	10,000,000
Base Funding	700,000	70,000
Maximum Funding	2,030,000	536,000

STATE	Section 306	Section 309	Total
Alabama	1,305,000	104,000	1,409,000
Alaska	2,030,000	536,000	2,566,000
American Samoa	807,000	76,000	883,000
California	2,030,000	536,000	2,566,000
Connecticut	1,871,000	177,000	2,048,000
Delaware	1,237,000	101,000	1,338,000
Florida	2,030,000	536,000	2,566,000
Georgia	2,030,000	270,000	2,300,000
Guam	830,000	77,000	907,000
Hawaii	1,844,000	174,000	2,018,000
Indiana	993,000	86,000	1,079,000
Louisiana	2,030,000	536,000	2,566,000
Maine	2,030,000	409,000	2,439,000
Maryland	2,030,000	521,000	2,551,000
Massachusetts	2,030,000	413,000	2,443,000
Michigan	2,030,000	536,000	2,566,000
Minnesota	913,000	82,000	995,000
Mississippi	1,073,000	91,000	1,164,000
New Hampshire	927,000	83,000	1,010,000
New Jersey	2,030,000	536,000	2,566,000
New York	2,030,000	536,000	2,566,000
North Carolina	2,030,000	392,000	2,422,000
Northern Mariana Islands	865,000	80,000	945,000
Ohio	1,891,000	180,000	2,071,000
Oregon	2,030,000	216,000	2,246,000
Pennsylvania	1,837,000	172,000	2,009,000
Puerto Rico	2,030,000	215,000	2,245,000
Rhode Island	1,331,000	106,000	1,437,000
South Carolina	2,030,000	349,000	2,379,000
Texas	2,030,000	536,000	2,566,000
U.S. Virgin Islands	858,000	79,000	937,000
Virginia	2,030,000	536,000	2,566,000
Washington	2,030,000	532,000	2,562,000
Wisconsin	1,963,000	191,000	2,154,000
TOTALS	57,085,000	10,000,000	67,085,000

ACTIVITY	States with July 1 Start Dates	States with October 1 Start Dates
1. Initial discussions between state and OCRM - submission of preliminary work plan (optional)	January - February	February
2. State submits draft application package for CZMA cooperative agreement. OCRM provides comments to State as appropriate	March 12, 2010	April 15, 2010
3. State submits final application, budget and narrative to OCRM for review and approval.	April 5, 2010	May 18, 2010
4. OCRM completes review and circulates Cooperative Agreement package within OCRM.	April 9, 2010	May 25, 2010
5. OCRM submits Cooperative agreement package to NOAA Grants office.	April 16, 2010	June 1, 2010

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.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	109.8	3,150.2	3,260.0	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

FISCAL NOTE #9

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 106(FIN)

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).

Questions from the Joint Judiciary Committee meeting Feb. 6

Senator Wielechowski asked why a fiscal note for HB106 showed that the former ACMP federal program had shown \$4.0 million in federal funding, while the statement of cost indicated available federal funding was \$2.0 million.

A fiscal note prepared on 05/13/2011 by the Senate Finance Committee for HB106 shows \$4.0 million in federal funding for ACMP. (See Attachment 1) However, this level of federal funding appears well in excess of any recently available federal funding for coastal management programs.

Federal funding for Coastal Management Program administrative grants are governed by 16 U.S.C. § 1455. Since federal fiscal year 2008 (FFY2008) federal funding has come in three funding streams referred to as Sections 306/306A (tiered federal match up to 1:1); Section 309 (no match required); and the Coastal Non Point (CNP) or Section 310 (requires 1:1 match and not funded in FFY 2010).

Federal funding streams in the three programs are subject to maximum awards based upon the availability of federal funds. Alaska has typically received the maximum allowed for these programs. Below is a table showing federal funding from FFY2008-FFY2010. In these years, no more than \$2.6 million was available for federal funding of state coastal management programs. Copies of the US Department of Commerce's program allocation letter are provided for your review. (Attachments 2-4.)

Federal Fiscal Year 2008	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$55,542,000	\$10,000,000	\$1,428,000	\$66,970,000
Maximum State Funding	\$1,967,000	\$536,000	\$42,000	\$2,545,000
Alaska Allocation	\$1,967,000	\$536,000	\$42,000	\$2,545,000

Federal Fiscal Year 2009	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$56,079,000	\$10,000,000	\$2,345,000	\$68,424,000
Maximum State Funding	\$1,995,000	\$536,000	\$75,000	\$2,606,000
Alaska Allocation	\$1,995,000	\$536,000	\$75,000	\$2,606,000

Federal Fiscal Year 2010	Section 306 Section 306A	Section 309	CNP	TOTAL Funds
Total Funding	\$57,085,000	\$10,000,000	\$0	\$67,085,000
Maximum State Funding	\$2,030,000	\$536,000	\$0	\$2,566,000
Alaska Allocation	\$2,030,000	\$536,000	\$0	\$2,566,000

As indicated during testimony, the total cost estimate of \$5.4 million annually could be shared by the federal government provided that the state becomes eligible for federal funding. Uncertainty remains about the timing and availability of the federal funding stream, and all of the funds that would be requested for the budget are subject to legislative appropriation.

Senator French and Representative Holmes asked for more specifics about the costs included in the overall cost estimate. They were specifically interested in information about ongoing versus one-time costs.

Please see the summary below that itemizes costs by category. Comments about ongoing versus one-time costs are included in the narrative section. The estimates currently allow flexibility for the state to address one-time costs, however should the initiative pass, program implementation costs are likely to be different than those presented. All proposed costs will be subject to appropriation by the legislature.

CATEGORY	Description	
Personal Services	<p>This expenditure would be an ongoing cost to support salaries and benefits for 34 full time positions ranging from a Division Director to an Office Assistant. The majority of the positions are Natural Resource Specialists supporting the envisioned Alaska Coastal Management Program</p> <p>In the first two years, it is likely that personal services costs will be lower than this estimate due to the program beginning from scratch. However, there will be many other activities associated with the initial gear up of the program though, so there is significant uncertainty about what percentage of these resources will be needed in the first two years.</p>	\$3,260,000
Travel	<p>The projected travel expenditure would support employee and board related in-state and out of state travel to coastal districts and includes hotel, per diem, airfare and reimbursement for Alaska Coastal Management Program district assistance, staff training, mediation, public education, conferences and other travel supporting the program.</p> <p>This estimate anticipates increased travel costs in the first two years following the establishment of the board in order to assist coastal districts with their plans and advocate for the federal approval of the plan in Washington DC. Some portion of these travel resources would likely be redeployed to other program activities after the program is approved.</p>	\$267,900

Services	<p>This expenditure is an ongoing cost to support contracts in the form of Reimbursable Services Agreements (RSA) to agencies participating in the Alaska Coastal Management Program. These contracts would support the implementation of the Alaska Coastal Management Program by the participating state agencies, coastal management areas and other contractors.</p> <p>This estimate also supports purchased services from other state agencies including centralized telecommunication, mail and human resource services, legal services, professional services to support monitoring & compliance activities and development and implementation activities for the Alaska Coastal Management Program. In the initial years, additional contractual services will be needed to draft and review implementing program regulations, and other start up activities.</p>	\$1,815,300
Commodities	<p>This is an ongoing expenditure estimate that supports purchases related to office supplies, office furnishings and equipment, software as well as minor repairs to office equipment. In the first two years, actual costs in this category are likely to be significantly higher as the office acquires all of the office furnishings, office equipment and other commodities necessary to build an office from scratch.</p>	\$56,800

Senator French asked for more specificity about the costs included in the estimate of costs to support implementation of the 13-member Coastal Policy Board governance structure.

The estimate of additional costs was based largely on cost estimates provided by the Department of Natural Resources (DNR) in their fiscal note for HB106 dated 04/15/2011. (Attachment 5) This fiscal note was chosen as a basis due to its somewhat similar nature to the initiative envisioned program. Comments on whether these are expected to be ongoing or one-time costs are also included.

As indicated during the testimony, these estimates assume a program that is substantially similar to the previous program with a 13-member board meeting in person 4 times annually. Significant uncertainty remains about the program that the board would ultimately implement and the associated costs. It should be noted that not all of the increased costs are directly attributable to the board members.

The costs in the table below are presented as subsets of the estimates presented in the prior table.

CATEGORY	Description	
Personal Services	<p>One additional position was added to the previously configured program to cover the additional work associated with the administration of the Alaska Coastal Policy Board and coordinating district planning functions and information sharing.</p> <p>This is an ongoing cost and would be directly attributable to the Coastal Policy Board.</p>	\$109,800
Travel	<p>This estimate anticipates increased travel costs in the first two years following the establishment of the board in order to assist coastal districts with their plans and advocate for the federal approval of the plan in Washington DC. These travel resources would likely be redeployed to other program related travel or review activities after the program is approved. These costs are not directly attributable to the addition of a board.</p> <p>This expenditure estimate also includes \$60,000 in ongoing travel costs associated with four annual in-person meetings of the 13-member Alaska Coastal Policy Board and two staff members at approximately \$1,000 per trip. This is an ongoing cost directly attributable to addition of a Coastal Policy Board.</p>	\$164,000
Services	<p>This expenditure supports an additional \$300,000 in ongoing services agreements with other state agencies services that DNR indicated would be needed to successfully implement the ACMP program. This would be an ongoing cost. These costs are not directly attributable to the addition of a board.</p> <p>The estimates include \$60,000 estimate for regulations review by the Department of Law that would be of limited duration. Length of need is uncertain and dependent upon the complexity of the regulations and the time it takes to promulgate and implement, this could be a cost for 2-4 years. However, these resources would likely be redeployed to reviews and other program support after that time.</p> <p>Other ongoing services costs included \$20,000 in postage, teleconference services, and other miscellaneous board and coastal district support. This would be an ongoing cost directly attributable to the addition of the board.</p>	\$380,000
Commodities	<p>This estimate includes some \$5,600 in one-time costs such as the purchase of a recorder and sound equipment for the board. Ongoing costs include \$10,000 in supplies needed to support the presentation of materials at the board meetings. These costs are directly attributable to the addition of a board.</p>	\$15,600



MEMORANDUM

TO: Representative Gatto, Chair
Senator French, Chair
House/Senate Judiciary Committee

DATE: February 22, 2012

FROM: Susan K. Bell, Commissioner
Department of Commerce, Community,
and Economic Development

RE: ACMP

Representative Gatto and Senator French,

We have provided responses to questions raised during the recent hearing on the ACMP initiative. Please contact me if you have any further questions.

1. How long will it take for previously reviewed plans to be adopted at the onset of the new program?
 - The initiative language includes AS 46.41.040(b) which states; "...approved coastal management plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska Coastal Management Program." Upon creation of the program, all existing approved plans would be in effect. Of the existing 28 coastal districts, there were two districts that did not have approved plans: the Northwest Arctic Borough and the North Slope Borough. It appears from the language of the initiative that those two boroughs would not have an approved plan until a new plan was submitted to the board for review and approval.
2. Will previously reviewed plans, or newly adopted plans expire?
 - Under previous versions of the ACMP program, district plans were required to be reviewed and reapproved every 10 years. Additionally, the statutory amendments to the program passed in 2003 and 2005 required all coastal districts to revise and submit their coastal plans for review and approval. The deadline for this submittal was March 1, 2006. The wording in the initiative does not include a mandatory review period where the plan would expire if not reviewed and approved. The initiative language includes AS 46.41.070 which requires coastal districts to review their plans within one year of adoption of regulations to see if they meet the requirement of the regulations and to make any changes and submit revised plans, but it does not state that the plans would expire if not revised or submitted.
3. Will plans need to have a NEPA review?
 - Under the previous program, there was a "State Coastal Management Plan" that was reviewed and approved under NEPA. The individual coastal plans were a part of the State Plan, and thus were not required to undergo individual review. We expect that this same hierarchy would be put in place under a new program.
4. How would formation of Coastal Resource Districts in the Unincorporated Borough take place?
 - The initiative language states in AS 46.41.060(b) that "*Coastal Districts, Coastal District Boundaries ...that were in effect as of June 30, 2011 are in effect and incorporated into the Alaska Coastal Management Program.*" Those municipalities in the unorganized borough that were their own coastal districts (Bethel, Cordova, Craig, Hoonah, Nome, Pelican, Thorne Bay, Valdez, and Whittier) will continue to be coastal districts. In addition, the four Coastal Resource Service Areas (Aleutians West, Bering Straits, Bristol Bay, and Ceñaliulriit) will also be coastal districts. The initiative also provides a method for areas in the unorganized borough (Regional Education Attendance Areas – REAA) that contain part of the coastal area, and that are not already formed into a coastal district, to form a district. This process is outlined starting at AS 46.41.110. Areas that would be affected by this are limited to Prince William Sound REAA (excluding Cordova, Valdez, and Whittier), Chatham REAA (excluding Hoonah and Pelican), and Southeast Island REAA (excluding Craig and Thorne Bay).

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
 Submitted: SENATE FINANCE for SCS CSHB 106(FIN)

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	Information						
	Required		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	3,260.0
Travel	251.6		251.6	141.8	141.8	121.8	121.8	121.8
Services	3,144.4		3,144.4	3,084.4	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	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	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	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	1,672.6
1004 Gen Fund	664.1		658.5	488.7	488.7	468.7	468.7	468.7
1007 I/A Rcpts	95.5		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	244.6
Total	6,715.8	0.0	6,710.2	6,540.4	6,540.4	6,520.4	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	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.

Submitted By: Senate Finance for SCS CSHB 106(FIN)

Prepared By: Conference Committee

Date: 05/04/2011

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

Melanie Lesh

From: Will Vandergriff
Sent: Wednesday, February 08, 2012 8:15 PM
Subject: FW: PR 12-004 ACMP Initiative Petition Meets Signature Requirements 020812
Attachments: PR 12-004 ACMP Initiative Petition Meets Signature Requirements 020812.pdf

FYI – in case some of you don't receive the 3rd floor media.

W

Will Vandergriff | House Majority Press Secretary
Office of the Speaker | Alaska State Legislature
907.465.5284 direct | 907.317.9755 mobile
will.vandergriff@legis.state.ak.us
housemajority.org | mobile.housemajority.org
@houmaj | @willvandergriff

From: Cox, Colleen M (GOV) [<mailto:colleen.cox@alaska.gov>]
Sent: Wednesday, February 08, 2012 5:48 PM
To: Colleen Cox
Subject: PR 12-004 ACMP Initiative Petition Meets Signature Requirements 020812



ACMP Initiative Petition Meets Signature Requirements

February 8, 2012, Anchorage, AK – The citizen initiative to establish an Alaska Coastal Management Program appears to have gathered more than the minimum number of qualified signatures required for a determination of proper filing, Lt. Governor Mead Treadwell announced today. As of today, the Division of Elections has determined that at least 25,875 qualified subscribers, from at least 30 out of 40 legislative districts, signed the initiative petition.

For legal reasons, all signatures that were submitted by petition sponsors on January 17, 2012 are still being reviewed by the Division of Elections. In accordance with AS 15.45.150, the lieutenant governor has 60 days from the date the sponsors filed their petition to make a final determination of proper or improper filing. In addition, all signatures on a petition for a ballot measure must be examined for purposes of voter registration list maintenance pursuant to AS 15.07.130.

Under AS 15.45.190, upon a determination of proper filing, the initiative may appear on the next statewide general, special, or primary election that is held 120 days after a legislative session

has convened and adjourned and a period of 120 days has expired since the adjournment of the legislative session.

“Whether the measure actually appears on the primary or general election ballot depends on the timing of the legislature’s adjournment, and whether they take action on ‘substantially similar’ legislation,” Treadwell said.

#



Coastal Management cost estimates challenged

Election director says initiative close to qualifying for ballot

Posted: February 7, 2012 - 12:02am

By Pat Forgey

JUNEAU EMPIRE

Juneau Mayor Bruce Botelho told a legislative committee Monday the Parnell administration significantly overstated the cost of restoring the Coastal Management program in Alaska.

An initiative to do that looks increasingly likely to make the ballot later this year.

Botelho chairs the Alaska Sea Party, a group of coastal communities trying to resurrect the program the Legislature let die last year. He was invited to testify over the objections of some legislators.

Botelho told a joint meeting of the House and Senate Judiciary committees the state's estimated fiscal impact of restoring the program was too high.

"I believe the fiscal note overstated the cost fairly dramatically, at least in the first few years of the program," Botelho said.

The state's official estimate said the state would have to absorb the full cost of the \$5.4 million program initially, until partial federal funding would be likely to kick in.

Botelho said it would take some time, probably 2-3 years before the program could begin reviewing projects, which would be what much of its staff does. That would limit its initial cost.

An economist with the Office of Management and Budget, part of the Parnell administration, said because the timing and extent of the program are still in flux, cost estimates are difficult.

"Should the initiative pass it is likely that the actual costs will be different," said OMB economist John Boucher.

Sen. Bill Wielechowski, D-Anchorage, asked why the state was only projecting \$2 million a year in federal support for the program, despite the state's previously receiving \$4 million a year.

Boucher said he'd have to look into it and respond to the committee later.

Rep. Carl Gatto, R-Palmer, questioned whether the state was being overly optimistic projecting the federal government would have enough money to fund Coastal Management in the future.

Boucher said he couldn't speculate about the availability of the funds in the future, but they are part of federal law now.

One new aspect of the program is it creates a new board to oversee Coastal Management. Botelho said the state's \$700,000 cost for that board was high, far higher than similar statewide panels, such as the Board of Game.

State Elections Director Gail Fenumiai said the Elections Division was working its way through the process of confirming the initiative had received the required 24,875 valid signatures from registered voters, and was getting close to doing so.

Of the more than 33,000 signatures submitted, 24,350 have already been validated, with more than 8,800 left to check.

She also said the signatures came from enough districts to satisfy a requirement for initiative petitions. Under state law, a minimum number of signatures must come from at least 30 of 40 House districts. Fenumiai said the Alaska Sea Party had actually collected the minimum number of signatures in 37 of the state's 40 districts, the first time the division has confirmed publicly that hurdle was met.

Monday's committee hearing was required by a new state law mandating an initiative proposal be heard in at least one committee of each house of the Legislature before it goes to the ballot. The House and Senate Judiciary committees were designated to conduct the hearings.

Rep. Kyle Johansen, R-Ketchikan, chief sponsor of the initiative requiring the hearings, had urged the committees to only hear from the administration about how they'd implement the program.

At the hearing itself, one committee member, Rep. Lance Pruitt, R-Anchorage, told Botelho he was "uncomfortable with you being here" as they weren't also hearing from initiative opponents.

The chairmen of the two committees, Gatto and Sen. Hollis French, D-Anchorage, said they decided whom to invite.

The Legislature can head off an election restoring Coastal Management by adopting a substantially similar program on its own. No such legislation has been proposed.

Also testifying were legislative attorneys who discussed the "substantially similar" requirement.

Doug Gardner, director of the Legislative Legal Services Division, said lawmakers would have wide latitude in putting together a substantially similar program, given Coastal Management's complexity, the Associated Press reported.

- Contact reporter Pat Forgey at 523-2250 or at patrick.forgey@juneauempire.com.



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**ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
REPRESENTATIVE CARL GATTO, CHAIR**

**COMMITTEE MEMBERS:
REP. STEVE THOMPSON, VICE CHAIR
REP. BOB LYNN
REP. WES KELLER
REP. LANCE PRUITT
REP. LINDSEY HOLMES
REP. MAX GRUENBERG**



**STATE CAPITOL BUILDING, RM 120
JUNEAU, AK 99801-1182
PHONE: 907-465-4990
FAX: 907-465-2381
HOUSE_JUDICIARY@LEGIS.STATE.AK.US**

DATE: February 1, 2012
TO: Suzie Lowell, Chief Clerk
Alaska House of Representatives
FROM: Representative Carl Gatto, Chair
House Judiciary Committee
RE: House Judiciary Committee Hearing Notice

Joint House/Senate Judiciary Committee Agenda

Monday, February 6, 2012 at 1:00 p.m. in Room 205.

Legislative hearing on initiatives certified by the lieutenant governor

11ACMP: "An Act establishing the Alaska Coastal Management Program"

- Doug Gardner, Director, Legislative Legal Services Division, Legislative Affairs Agency
- Susan Bell, Commissioner, Department of Commerce, Community and Economic Development – invited
- John Boucher, Senior Economist, Office of Management and Budget
- Bruce Botelho, Mayor of Juneau, Initiative Sponsor – available for questions
- Gail Fenumiai, Director, Division of Elections, Office of the Lieutenant Governor

Testimony by invitation only



Lieutenant Governor Mead Treadwell
STATE OF ALASKA

January 17, 2012

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, AK 99801

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, AK 99801

Gary + Mike -
Dear President Stevens and Speaker Chenault:

In light of the Alaska Coastal Management Program Initiative (11ACMP) recently filed with the Division of Elections, I am writing the presiding officers of each body of the legislature regarding the legislative hearing requirement of AS 24.05.186.

On January 17, 2012, the sponsors of this initiative timely filed their petition with the Division of Elections (Division) under AS 15.45.140. The Division has determined that the petition, on its face, contains a sufficient number of presumptively valid signatures – over 25,875— to be accepted for filing. The Division is now in the process of verifying those signatures as required under AS 15.45.150 - 15.45.160. The Division has 60 days to complete the signature verification process and to notify the initiative committee of the results of that process.

Under AS 24.05.186, a standing committee of the legislature, selected jointly by the presiding officers of the House and Senate, must hold at least one hearing on an initiative that my office has determined was properly filed. The legislative hearing must occur within 30 days after the convening of the legislative session at which the proposition would appear on the ballot. In this case, if the review finds that the statutory signature requirement is met, the proposition may appear on the August 2012 primary election ballot.

Based on the 60-day signature verification requirement of AS 15.45.150 and the 30-day legislative hearing requirement of AS 24.05.186(b), the required legislative hearing will need presumably to occur before the time for signature verification has elapsed.

Please let me know of any questions or issues regarding this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Mead Treadwell", written over a horizontal line.

Mead Treadwell
Lieutenant Governor

Cc:

The Honorable Sean Parnell, Governor
Mike Nizich, Chief of Staff, Office of Governor Sean Parnell
Cindy Sims, Deputy Chief of Staff, Office of Governor Sean Parnell
The Honorable Susan Bell, Commissioner, Department of Commerce Community and
Economic Development
The Honorable Cora Campbell, Commissioner, Department of Fish and Game
The Honorable Larry Hartig, Commissioner, Department of Environmental Conservation
The Honorable Dan Sullivan, Commissioner, Department of Natural Resources
The Honorable Rick Svobodny, Acting Attorney General, State of Alaska
Heather Brakes, Legislative Director, Office of Governor Sean Parnell

Alaska State Legislature



received
1-24-12
3:05 p.m.

January 24, 2012

Senator Hollis French, Chair Senate Judiciary
Representative Carl Gatto, Chair House Judiciary

Chairmen:

As we understand, your committees have been chosen by the presiding officers to review the initiative regarding Coastal Zone Management.

We write this letter clarifying the intent in adding this provision to the legislation as co-prime sponsors two years ago.

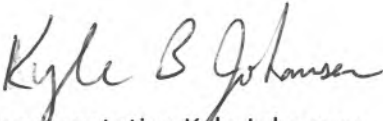
The intent of the Legislative hearing language was to gauge the impact on the agencies charged with duties by an initiative. It has been our experience that, while well intended, language forwarded by initiative sponsors may not fully anticipate implementation challenges faced by regulators.

Therefore, we ask that you consider limiting testimony for this required meeting to the agencies affected by this measure.

While we understand the possible desire for public testimony on the issue, nothing precludes either of you (or other committees) from holding additional hearings.

Our offices can provide you with a copy of the relevant minutes from committee testimony on House Bill 36 regarding the intent of this section of the bill, if necessary.

Respectfully,


Representative Kyle Johansen


Representative Charisse Millett

11ACMP STATEMENT OF COSTS

Summary:

The estimated total cost of this program during the next five years is \$27.0 million. Of that estimated cost, the minimum expenditure by the State of Alaska under this initiative during the next five years, if it becomes law, is \$22.3 million. The program has no expiration date, and the estimate — developed by the Governor's Office of Management and Budget — does not provide for inflation.

Expenses of the proposed program may be shared with the federal government in year three or later if the U.S. Department of Commerce approves the program and provides partial funding, and Congress makes the required appropriation. **Of the annual estimated program cost of \$5.4 million, federal support is estimated to be up to a maximum of \$2.0 million per year after year five.** The program is not required by federal law.

Expenditures for this program are subject to legislative appropriation. The estimate excludes potential litigation expenses and revenue impacts to the State of Alaska.

The overall cost estimate may be high or low, depending on decisions made by the new Board proposed in the initiative. The number of days that Board and Coastal District Boards decide to meet, the number and kind of consistency reviews, elevations and appeals over natural resource permits that the program may authorize, and the potential duplication of permitting reviews at the Department of Environmental Conservation and at the Coastal District level are among the major cost uncertainties.

Costs or savings the program would provide in the management or protection of public trust resources or permit coordination cannot be estimated at this time, nor can the estimate include the costs or savings the program would provide in the process of allowing the State and local districts to comment on or condition federal permits issued in Alaska's coastal regions.

The complete budget estimate prepared by the Office of Management and Budget is below:

**Statement of Costs for Initiative:
Establishment of Alaska Coastal Management Program
Prepared by the Office of Management and Budget**

As required by AS 15.45.090(a)(4), the Office of Management and Budget has prepared the following estimate of costs to the State of implementing the law proposed by this ballot initiative.

This ballot initiative would establish a coastal management program for Alaska. To govern the envisioned program, the initiative creates a new thirteen-member Coastal Policy Board, referred to as the Alaska Coastal Policy Board, which would be responsible for overseeing the proposed coastal management program. Among its principal duties are reviewing and approving regulations for the program and the management plans and enforceable policies prepared by local coastal district boards. The Coastal Policy Board is also to “initiate an interagency program of strategic coastal and ocean planning for each geographic region of the state.”

Administrative support for the program and board would be provided by the Alaska Department of Commerce, Community & Economic Development. The department, under the direction of the board, would contract with or employ personnel or consultants the department considers necessary to assist the board in carrying out its duties and responsibilities. To provide the structure for the administrative support, the initiative creates within the department a Division of Ocean and Coastal Management. Among its other duties, the division would be responsible for rendering determinations whether projects subject to the program would be “consistent” with applicable statewide standards and enforceable policies of an affected coastal district.

The initiative would create a coastal management program with a number of substantive differences from the most recent federally approved Alaska Coastal Management Program that existed up until July 1, 2011. If the initiative is approved by the voters, a new administrative structure for the program would be built from scratch. This would include recruiting and hiring personnel, acquiring office space, equipment and supplies. It would also include tasks such as developing implementing regulations and guidance to administer the program. There is insufficient detail in the initiative to identify all of the costs to implement the program – this represents an estimate of the costs and the actual costs are likely to be different.

As a basis for providing cost estimates, it was assumed that the operation and procedural requirements of the Coastal Management Program envisioned by the initiative would include most if not all of the costs that existed before July 1, 2011. The initiative provides the board with broad power to create a program or procedures that could vary widely from the previous program. Substantive differences in the management or procedural requirements of the program could result in the costs varying substantially from the costs presented. Areas of program implementation difference that increase costs to the state include but are not limited to: Costs of additional board meetings should the board be required to meet more than the estimated four times annually; the level and timing of federal funding for the program; potential costs to state agencies in implementing the coastal management program and administering other state programs due to an increase in the number and/or complexity of local enforceable policies and other plan requirements; an increase in the amount and complexity of coordination and enforcement

of actions taken by the board; and an increase in the level of financial and other support for local coastal districts.

Expenditures for the program would be subject to legislative appropriation. The estimate excludes litigation expenses and potential revenue impacts to the State of Alaska.

In 2011, the budget estimate for renewing the State's previous federally approved coastal management program was approximately \$4,700,000 annually, a portion of the program was funded with federal funds and a portion was funded with state funds.

The cost associated with the administration and implementation of the new Coastal Policy Board was not anticipated in the estimate above. The estimate to provide administrative support to the Coastal Policy Board is approximately \$700,000 annually, and the additional cost is assumed to be state funded.

Until the new coastal management program is federally approved and becomes eligible to receive federal funds, the State would expect to initially absorb the entire cost. This would be followed by a period of gradually increasing federal participation in sharing of the costs until the program met eligibility requirements for full federal funding.

Typically, it takes a coastal management program approximately two years from initial application to federal approval and an additional three years before qualifying for a full program cost share. During the initial two years, the State could expect to support the program at its anticipated annual funding level of \$5,400,000. The amount of federal funds available in the out years is unknown, however given the current federal program; the state would anticipate federal participation to top out at \$2,000,000 in year five.

A year by year estimate of federal and state funding is presented below:

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Total Funds</u>
Year 1	\$ 5,400,000	\$ 0	\$ 5,400,000
Year 2	\$ 5,400,000	\$ 0	\$ 5,400,000
Year 3	\$ 4,320,000	\$ 1,080,000	\$ 5,400,000
Year 4	\$ 3,763,633	\$ 1,636,634	\$ 5,400,000
Year 5	\$ 3,400,000	\$ 2,000,000	\$ 5,400,000
Year 6	\$ 3,400,000	\$ 2,000,000	\$ 5,400,000

Administrative support for the new agency would be provided by a new division in the Alaska Department of Commerce and Community Development. It is assumed that the new agency would be similarly structured to the previous Alaska Coastal and Ocean Management component in the Alaska Department of Natural Resources.

Alaska Coastal Management Program estimate by category

TOTAL	\$5,400,000
Personal Services	\$3,260,000

This expenditure would support salaries and benefits for 34 full time positions ranging from a Division Director to an Office Assistant. The majority of the positions are Natural Resource Specialists supporting the envisioned Alaska Coastal Management Program. One additional position was added to the previously configured program to cover the additional work associated with the administration of the Alaska Coastal Policy Board and coordinating district planning functions and information sharing.

Travel \$267,900

The projected travel expenditure would support employee and board related in-state and out of state travel to coastal districts and includes hotel, per diem, airfare and reimbursement for Alaska Coastal Management Program district assistance, staff training, mediation, public education, conferences and other travel supporting the program. This estimate anticipates increased travel costs in the first two years following the establishment of the board in order to assist coastal districts with their plans and advocate for the federal approval of the plan in Washington DC.

This estimate assumes travel costs associated with four annual in-person meetings of the 13-member Alaska Coastal Policy Board and two support staff members.

Services \$1,815,300

This expenditure supports contracts in the form of Reimbursable Services Agreements (RSA) to agencies participating in the Alaska Coastal Management Program. These contracts would support the implementation of the Alaska Coastal Management Program by the participating state agencies, coastal management areas and other contractors.

It also supports purchased services from other state agencies including centralized telecommunication, mail and human resource services, legal services, professional services to support monitoring & compliance activities and development and implementation activities for the Alaska Coastal Management Program. In the initial years, additional contractual services will be needed to draft and review implementing program regulations, conduct district elections, and other start up activities.

Commodities \$56,800

This expenditure estimate supports purchases related to office supplies, office furnishings and equipment, software as well as minor repairs to office equipment.

Additional one-time costs associated with the initiative

Statement of Costs for Initiative
“An Act establishing the Alaska Coastal Management Program”
Costs to certify the initiative application and review the initiative petition
Prepared by the Office of Lieutenant Governor and the
Division of Elections

Elections cost statement

The minimum cost to the Division of Elections associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition, is estimated to be \$66,821. This statement is required under AS 15.45.090(a) (3).

Total	\$66,821
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Elections estimate by category

Personal Services	\$65,521
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Expenses associated with certification of the initiative application and review of the initiative petition:

Three full-time employees at 522 hours is \$26,067

8 temporary employees at 2520 hours is \$39,454

Services	\$ 1,300
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Printing of booklets is \$1,300

Lt. Governor’s Office Cost statement

The minimum cost to conduct public hearings concerning the initiative in two communities in each of four judicial districts is estimated to be \$4,470. This statement is required under 15.45.195.

Total	\$4,470
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Lt. Governor’s Office Estimate by category

Travel	\$ 4,270
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Average round trip airfare for the Lieutenant Governor and one staff member to travel to seven communities in Alaska: Average airfare: \$310 * 7 locations * 2 staff = \$4,270. It is assumed one of the hearings would be in Anchorage which would not involve travel costs.

Services	\$ 200
----------	--------

Cost breakdowns for teleconferencing services:
\$25.00 X 8 meetings = \$200.00 as a minimum cost estimate

**Alaska Coastal Management Program Initiative
Comparison of Initiative Provisions with Past Programs and Legislation**

Topic	Initiative	June 2011 Program	Pre-2003 Program	CS SB 45 (CRA) am (failed House 6/11)
Location	DCCED	DNR	Governor's Office	DNR
Board	13-member board of 9 public members and 4 commissioners (DNR, DFG, DEC and DCCED).	No board - DNR commissioner responsible for all ACMP decisions with no checks and balances.	15-member board of 9 public members (local elected officials), the director of the Office of Management and Budget, and the commissioners of DCCED, DEC, DFG, DNR, and DOTPF.	9-member board with 5 public members (one representing industry or a Native corporation), a deputy commissioner of DNR, and the commissioners of DEC, DFG, and DOTPF.
	Quorum: 5 public members and 2 agency members.	n/a	Quorum: 4 public members & 3 agency members.	Quorum: 3 public members and 3 agency members.
	Decisions made by a majority of members present and voting.	n/a	Decisions made by majority vote of those present.	Decisions require 2/3 vote of entire board.
	Governor appoints 9 public members from list of nominations from coastal districts.	n/a	Governor appoints 9 public members from a list of nominees from municipalities.	Governor appoints 5 public members; 4 members nominated by districts (may request subsequent lists of nominees).
	Board may recommend the Governor remove a public member for cause.	n/a	Public members removed only if they cease to meet qualifications.	Governor may remove public members for cause.
	Authority to approve regulations, direct DCCED to seek federal approval of program, approve district programs, establish interagency coordination, and evaluate effectiveness of district programs.	n/a	Authority for grants, adopting regulations (guidelines, standards and consistency reviews), interagency coordination, reviewing district plans, and developing procedures for coordination and consultation with federal agencies.	Advisory board makes recommendations, provides a forum for discussion, comments on regulations and directs districts to resubmit its coastal plan if policies duplicate new laws. Board annually solicits changes to state and federal laws.
Boundaries	Incorporates coastal zone boundaries approved by	Coastal zone boundaries were approved by former Coastal	Coastal Policy Council responsible for approving	Coastal zone boundaries were approved by former Coastal

Topic	Initiative	June 2011 Program	Pre-2003 Program	CS SB 45 (CRA) am (failed House 6/11)
	former Coastal Policy Council.	Policy Council.	coastal zone boundaries.	Policy Council.
Regional Planning	Board to initiate a program of strategic regional coastal and ocean planning.	DNR to initiate an interagency program of comprehensive coastal resource planning for each geographic region of state.	Coastal Policy Board to initiate an interagency program of comprehensive coastal resource planning for each geographic region of state.	DNR to initiate an interagency program of comprehensive coastal resource planning for each geographic region of state.
Enforceable policies	Policies cannot unreasonably or arbitrarily restrict a use of state concern.			
	Policies cannot duplicate, restate, or incorporate by reference state or federal statutes or regulations.			Policies cannot duplicate, restate, incorporate by reference, rephrase, or adopt state or federal statutes or regulations.
	Policies must be clear and concise, cannot address matters preempted by state or federal law, may be prescriptive or performance based, and may address a matter of local concern.	Policies must be clear and concise, address a matter of local concern, be prescriptive, and address a matter of local concern (not adequately addressed by state or federal law).	District programs must be consistent with the standards and guidelines adopted by the Coastal Policy Council.	Policies may not address matters preempted or in conflict with federal law and employ the least restrictive means to achieve objective. State agencies have broad authority to object to a policy.
	Designated areas not required.	Designated areas are optional but required by regulation for many subjects of enforceable policies (e.g., subsistence and habitat). DNR denied many of the designated areas proposed by districts.	Designated areas are not required.	Not specifically addressed in statute but DNR testified to the Legislature that it will not require designations in order to establish enforceable policies.
	Districts may establish Areas Meriting Special Attention and establish enforceable policies that are applicable only in those areas.			
Regulations	Board will approve new regulations for project reviews, statewide standards and district plan criteria.	According to DNR testimony to the Legislature, regulations were more stringent than intended by the Legislature.	Regulations were not more stringent than intended by the Legislature.	Amendments to the regulations would be required to implement amendments to the ACMP.
Citizen Appeals	Citizen appeals not addressed in bill.	Citizen appeals prohibited.	Citizen lawsuits allowed and pre-decision project petitions allowed pre-2002.	Citizen appeals prohibited.

Topic	Initiative	June 2011 Program	Pre-2003 Program	CS SB 45 (CRA) am (failed House 6/11)
ACMP Sunset	No sunset provision.	July 1, 2011 sunset date. No sunset prior to 2005.	No sunset provision.	ACMP sunsets July 2017 unless extended.
District Plan Amendments	Plans approved as of June 2011 incorporated into new program. No requirement to resubmit plans.	Districts must resubmit plans every 10 years.	No requirement to resubmit plan every 10 years.	This bill did not change the existing statutory requirement that requires districts to resubmit plans every 10 years. A new provision in the bill requires the board to review all new state and federal laws each year. If a district policy duplicates the new law, the board must direct the district to submit a new plan.
DEC Participation	DEC participates in the program the same as DNR and DFG.	DEC Carveout removed DEC permits from ACMP consistency reviews. Legislative intent was for DEC to participate in reviews, it but seldom did. DNR testimony to Legislature indicated districts could establish policies to fill gaps in DEC laws, but none were approved.	DEC participated in the program the same as DNR and DFG.	DEC permits excluded from ACMP project consistency reviews. Board to prepare a report about the DEC Carveout by 2/1/14 and include recommendations for changes to AS 46.40.
Review Timelines	Not addressed in bill.	Most reviews must be completed within 90-days even if there is not adequate information for decision	No 90-day limit.	Most reviews must be completed within 90-days even if there is not adequate information for decision.
	For reviews with federal permits, federal regulations require notification why there is a delay at 3 months, and review must be completed in 6 months.			
Elevations (pre-decision appeals)	No details about consistency review process. Regulations would be developed for reviews.	DNR commissioner has sole authority to make decision on elevations.	DEC, DFG & DNR made decision by consensus.	DEC, DFG & DNR decide elevations by written order signed by two resource agencies within 60 days.

Topic	Initiative	June 2011 Program	Pre-2003 Program	CS SB 45 (CRA) am (failed House 6/11)
Inland Projects	Review of inland projects not addressed.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.	Projects inland of the coastal zone reviewed only if there are impacts to coastal resources or uses.	Projects inland of the coastal zone cannot be reviewed for consistency with the ACMP.
Federally-initiated activities inland of coastal zone reviewed only if there are coastal effects.				
Outer Continental Shelf (OCS)	Activities in the OCS may be reviewed for consistency with the ACMP.	Activities in the OCS may be reviewed for consistency with the ACMP, but impacts to coastal resources/uses <u>in</u> OCS cannot be considered because of the designated area requirement in the ACMP regulations.	Activities in the OCS may be reviewed for consistency with the ACMP.	Activities in the OCS may be reviewed for consistency with the ACMP. DNR testified to the Legislature that it would remove the designated area requirements.
Activities on federal lands & waters	In addition to activities onshore and in state waters, the federal Coastal Zone Management Act (CZMA) allows states to review activities occurring in federal waters or on federal land (i.e., activities initiated or permitted by a federal agency). As described below, the ACMP regulations limited this ability.			
	The bill does not limit provisions in the CZMA for reviewing activities on federal lands and water.	Due to the designated area requirements in regulation, impacts to coastal resources and lands could only be considered <u>within</u> the designated area. Since the designated areas could not include federal land, the regulation limited powers given to the state in the CZMA.	No limits in bill on provisions in the CZMA for reviewing activities on federal lands and water.	No limits in bill on review of activities on federal lands or waters. Assuming the designated area requirement would be removed from the regulations, this bill would allow consideration of impacts to coastal resources and uses on federal lands and waters.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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Juneau, Alaska 99801-1182
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MEMORANDUM

February 6, 2012

SUBJECT: Sectional Summary of Coastal Management Program Initiative
11 ACMP (Work Order No. 27-LS1329)

TO: Representative Carl Gatto
Chair of the House Judiciary Committee
Attn: Melanie Lesh

FROM: Alpheus Bullard *1143*
Legislative Counsel

You have requested a sectional summary of the above-described initiative.

As a preliminary matter, note that a sectional summary of an initiative should not be considered an authoritative interpretation of the initiative and the initiative itself is the best statement of its contents.

Sec. 46.41.010. Coastal Policy Board. Establishes an Alaska Coastal Policy Board ("board") in the Department of Commerce, Community, and Economic Development ("department"). The board consists of nine public members, and their alternates, appointed by the governor from the coastal regions of the state, as well as the commissioners of the Department of Environmental Conservation, the Department of Fish and Game, the Department of Natural Resources, and the Department of Commerce, Community and Economic Development. It specifies membership terms, quorum and meeting requirements, board structure and governance details, and that the department will provide administrative support for the board.

*4 of the
7 members
can make
decisions*

Sec. 46.41.020. Powers and duties of the board. Establishes the duties and powers of the board.

Sec. 46.41.030. Division of Coastal Management. Establishes a division of ocean and coastal management within the department. Provides the duties of the division.

Sec. 46.41.040. Development of Alaska Coastal Management Program. Provides what regulations must be adopted under the Alaska Coastal Management Program ("program"). Directs that regulations relating to (1) program standards, (2) criteria for the preparation and approval of district coastal management plans, and (3) consistency review procedures for coastal activities and projects, be adopted. Further provides that the coastal management districts ("districts"), coastal district boundaries, and approved

coastal management plans ("plans") that were in effect on June 30, 2011, are restored and incorporated into the program.

Sec. 46.41.050. Objectives. Requires that the program be consistent with certain objectives.

Sec. 46.41.060. Development of district coastal management plans. Requires districts to develop and adopt plans. Provides plan requirements. Provides criteria for board approval of plans.

Sec. 46.41.070. Submission of district plans by coastal districts. Requires restored districts to review their plans within one year after the adoption of program regulations by the board. Provides that if plan changes are necessary, a revised plan must be submitted to the department for review by the board.

Sec. 46.41.080. Implementation of district coastal management plans. Requires districts to implement plans. Provides how a plan must be implemented. Provides that a plan for a district that does not exercise zoning or other controls "on the use of resources" within its coastal area will be implemented by "appropriate state agencies."

Sec. 46.41.090. Compliance and enforcement. Requires municipalities and state resource agencies to regulate land and water controls in conformity with district plans. Provides that the superior court has jurisdiction to enforce orders of the board and the department.

Sec. 46.41.100. Coastal management plans in the unorganized borough. States that coastal resource service areas ("service areas") established in the unorganized borough may exercise all authority and perform those duties required by the program.

Sec. 46.41.110. Coastal resource service areas. Provides for how service area boundaries will be determined.

Sec. 46.41.120. Organization of a coastal resource service area. Permits a service area (created under sec. 46.41.110) to be established by a vote at an election after either the submission to the board of (1) a petition from a certain percentage of the voters within the proposed service area or (2) a resolution from a certain percentage of the city and village councils in the proposed service area.

Sec. 46.41.130. Coastal resource service area boards. Requires each service area to have an elected service area board. Provides for board duties and powers, board composition and membership, election of board members, terms of office, vacancies, and the recall of board members.

Sec. 46.41.140. Elections in coastal resource service areas. Directs the lieutenant governor to administer the elections for service area board members under sec. 46.41.130 and the organization of service areas under sec. 46.41.120.

Sec. 46.41.150. Preparation of district coastal management program (sic.) by the Department of Commerce, Community and Economic Development. Permits the board to submit a district plan to the legislature for consideration if (1) the residents of a service area reject the organization of that service area at an election under sec. 46.41.120 and (2) the board finds that major economic activity has occurred, or will occur, in the proposed service area. Such plans are prepared by the department upon request of the board. Further permits the department, in consultation with the service area, to prepare a plan for a service area that has been organized under sec. 46.41.120, but that has not been able to make substantial progress in the preparation of an approvable plan.

Sec. 46.41.160. Approval of plans in coastal resource service areas. Establishes a process for a plan to be reviewed by cities and villages within a service area, prior to (1) adoption by the service area board and (2) approval by the (Coastal Policy) board. Establishes parameters for plan review by cities and villages.

Sec. 46.41.170. Cooperative administration. Provides that a city that is within the coastal area, but that is not part of a coastal service area, will be included within an adjacent service area, unless the city's governing body opts out. Provides that a municipality and a service area are not restricted from engaging in cooperative or joint administration of functions.

Sec. 46.41.180. Construction with other laws. States that the initiative's provisions (secs. 46.41.010 - 46.41.900) may not be construed to diminish various state and municipal powers and duties.

Sec. 46.41.900. Definitions. Provides definitions for the initiative's provisions (secs. 46.41.010 - 46.41.900).

1 AN ACT ENTITLED

2
3 "An Act establishing the Alaska Coastal Management Program."
4

Board \$700k/yr

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

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

7 Chapter 41. Alaska Coastal Management Program

8 Sec. 46.41.010 Coastal Policy Board

4 Commissioners

9 (a) There is created in the Department of Commerce, Community and Economic
10 Development the Alaska Coastal Policy Board. The board consists of the following:

11 (1) nine public members and alternates appointed by the governor from a list
12 composed of at least three names from each region, nominated and submitted by the coastal
13 districts of each region; one public member shall be appointed from each of the following
14 regions:

15 (A) northwest Alaska, including, generally, the area of the North Slope
16 Borough and the Northwest Arctic Borough;

17 (B) Bering Straits, including, generally, the area of the Bering Straits regional
18 educational attendance area and the City of Nome;

19 (C) southwest Alaska, including, generally, the area within the Lower Yukon,
20 Lower Kuskokwim, and Southwest regional educational attendance areas, the City of
21 Bethel, and the Lake and Peninsula and Bristol Bay Boroughs;

22 (D) Kodiak-Aleutians, including the area of the Kodiak Island and Aleutian
23 East Boroughs and the Aleutian, Adak and Pribilof regional educational attendance
24 areas;

25 (E) Upper Cook Inlet, including the Municipality of Anchorage and the
26 Matanuska-Susitna Borough;

27 (F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula
28 Borough;

29 (G) Prince William Sound, including, generally, the area east of the Kenai
30 Peninsula Borough to 141 W. longitude;

31 (H) northern Southeast Alaska, including the area southeast of 141 W.
32 longitude and north of 57 N. latitude, including the entirety of the City and Borough

1 of Sitka; and

2 (I) southern Southeast Alaska, including that portion of southeastern Alaska
3 not contained within the area described in (H) of this paragraph;

4 (2) each of the following:

5 (A) the commissioner of environmental conservation;

6 (B) the commissioner of fish and game;

7 (C) the commissioner of natural resources; and

8 (D) the commissioner of commerce, community, and economic development.

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

12 (c) The alternate for a commissioner serving under (a)(2) of this section shall be a
13 deputy commissioner or the director of a division in the commissioner's department. The
14 names of alternates shall be filed with the board.

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

18 (e) The board may recommend that the governor remove a public member for cause.

19 (f) Five public members and two designated members of the board constitute a
20 quorum, but the board may delegate to one or more of its members the power to hold
21 hearings. All decisions of the board shall be by a majority vote of the members present and
22 voting.

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

26 (h) Public members of the board or their alternates are entitled to per diem and travel
27 expenses authorized by law for members of boards and commissions.

28 (i) Administrative support for the board shall be provided by staff of the department.
29 The department, under the direction of the board shall contract with or employ personnel or
30 consultants the department considers necessary to assist the board in carrying out the board's
31 duties and responsibilities.

32 **Sec. 46.41.020. Powers and duties of the board.**

1 (a) The board shall

2 (1) review and approve regulations necessary to implement the coastal management
3 program in conformity with this chapter and 16 U.S.C. 1451 - 1464 (Coastal Zone
4 Management Act of 1972);

5 (2) direct the department to seek approval of the Alaska coastal management
6 program by the National Oceanic and Atmospheric Administration, Office of Ocean and
7 Coastal Resource Management in conformity with 16 U.S.C. 1451 – 1464 (Coastal Zone
8 Management Act of 1972);

9 (3) initiate an interagency program of strategic coastal and ocean planning for each
10 geographic region of the state;

11 (4) review and approve coastal district management plans after receiving the
12 department's recommendations, including local enforceable policies, that meet the provisions
13 of this chapter and the district plan criteria.

14 (5) establish continuing coordination among state agencies to facilitate the
15 development and implementation of the Alaska coastal management program;

16 (6) evaluate the effectiveness of district coastal management plans; and

17 (7) direct the department to apply for and accept grants, contributions, and
18 appropriations, including application for and acceptance of federal funds that may become
19 available for coastal planning and management.

20 (b) The board may

21 (1) contract for necessary services;

22 (2) take any reasonable action necessary to carry out the provisions of this chapter.

23 **Sec. 46.41.030. Division of Coastal Management.**

24 (a) There is created in the department the division of ocean and coastal management.

25 (b) The division shall

26 (1) render, on behalf of the state, all federal consistency determinations and
27 certifications authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management Act of
28 1972), and each conclusive state consistency determination when a project requires a permit,
29 lease, or authorization from the department or from two or more state resource agencies.

30 (2) adopt regulations approved by the board necessary to implement this chapter
31 under the provisions of AS 44.62 (Administrative Procedure Act).

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

1 out their planning and management functions under the program.

2 (4) develop and maintain a program of financial assistance to aid coastal districts in
3 the development and implementation of district coastal management plan.

4 **Sec. 46.41.040. Development of Alaska coastal management program.**

5 (a) The regulations developed under this chapter shall include

6 (1) statewide coastal program standards;

7 (2) the criteria and process for the preparation and approval of district coastal
8 management plans; and

9 (3) consistency review procedures in accordance with this chapter, including
10 provisions for

11 (A) review of activities proposed or permitted by a state or federal agency;

12 (B) the types of activities that will trigger a consistency review;

13 (C) review of phased activities and uses;

14 (D) public notice and opportunities for public comment;

15 (E) elevation of proposed consistency determinations to the resource agency
16 commissioners;

17 (F) establishment of review timelines;

18 (G) exclusion from an individual project review aspects of activities that are
19 covered by a general permit previously found consistent with the Alaska coastal
20 management program;

21 (H) exclusion of routine activities with insignificant effects to coastal uses or
22 resources from an individual consistency review.

23 b) The coastal districts, coastal district boundaries and approved coastal management
24 plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska
25 coastal management program.

26 **Sec. 46.41.050. Objectives.**

27 The Alaska coastal management program shall be consistent with the following objectives:

28 (1) the use, management, restoration, and enhancement of the overall quality of the
29 coastal environment for this and succeeding generations;

30 (2) the development of industrial or commercial enterprises that are consistent with
31 the social, cultural, historic, economic, and environmental interests of the people of the state;

32 (3) the orderly, balanced utilization and protection of the resources of the coastal

1 area consistent with sound conservation and sustained yield principles;

2 (4) the management of coastal land and water uses in such a manner that, generally,
3 those uses that are economically or physically dependent on a coastal location are given
4 higher priority when compared to uses that do not economically or physically require a
5 coastal location;

6 (5) the protection and management of significant historic, cultural, natural, and
7 aesthetic values and natural systems or processes within the coastal area;

8 (6) the prevention of damage to or degradation of land and water reserved for their
9 natural values as a result of inconsistent land or water usages adjacent to that land;

10 (7) the recognition of the need for a continuing supply of energy to meet the
11 requirements of the state and the contribution of a share of the state's resources to meet
12 national energy needs; and

13 (8) the full and fair evaluation of all demands on and uses of the land and water in
14 the coastal area.

15 (9) the coordination of planning and decision-making in the coastal area among
16 levels of government and citizens engaging in or affected by activities involving the coastal
17 resources of the state;

18 (10) the participation of the public, local governments, and agencies of the state and
19 federal governments in the development and implementation of a coastal management
20 program; and

21 (11) the requirement that state resource agencies carry out their duties, powers and
22 responsibilities that affect the use of coastal area resources in accordance with the coastal
23 program adopted pursuant to this Act.

24 **Sec. 46.41.060. Development of district coastal management plans.**

25 (a) Coastal districts shall

26 (1) develop and adopt district coastal management plans in accordance with the
27 provisions of this chapter. The plan adopted by a coastal district shall be based upon a
28 municipality's existing comprehensive plan or a new comprehensive resource use plan or
29 comprehensive statement of needs, policies, objectives, and standards governing the use and
30 conservation of resources within the coastal area of the district. The plan must meet the
31 district plan criteria adopted under AS 46.41.040 and must include

32 (A) a delineation within the district of the boundaries of the coastal area subject

1 to the district coastal management plan;

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

4 (C) a designation of any special management areas;

5 (D) enforceable policies to be applied to all the land and water uses subject to
6 the district coastal management plan as well as policies that apply to special
7 management areas.

8 (b) The board shall approve an initial or amended district coastal management plan if
9 the

10 (1) district coastal management plan meets the requirements of this chapter and the
11 district plan criteria in regulation adopted by the department; and

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

13 (A) do not duplicate, restate, or incorporate by reference state or federal
14 statutes or regulations;

15 (B) are not preempted by federal or state law;

16 (C) do not arbitrarily or unreasonably restrict a use of state concern;

17 (D) are clear and concise as to the activities and persons affected by the
18 policies and the requirements of the policies;

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

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

24 (c) In (b)(2)(B) of this section, an enforceable policy of the district coastal
25 management plan is preempted

26 (1) by federal statutes or regulations if the United States Congress expressly
27 declares that local law or regulation is preempted, if the United States Congress demonstrates
28 the intent to occupy the field exclusively, or if there is an actual conflict between federal and
29 local law or regulation;

30 (2) by state law if it is prohibited, either by express legislative direction or direct
31 conflict with a state statute or regulation, or where a local law or regulation substantially
32 interferes with the effective functioning of a state statute or regulation or the underlying

1 purposes of a state statute or regulation.

2 **Sec. 46.41.070. Submission of district plans by coastal districts.**

3 (a) Within one year after the effective date of regulations implementing this chapter,
4 coastal districts shall review their coastal management plans and if changes are necessary to
5 meet the requirements of this chapter and implementing regulations, submit to the
6 department a revised district coastal management plan.

7 **Sec. 46.41.080. Implementation of district coastal management plans.**

8 (a) A district coastal management plan approved under this chapter for a coastal
9 district that does not have and exercise zoning or other controls on the use of resources
10 within the coastal area shall be implemented by appropriate state agencies. Implementation
11 shall be in accordance with the comprehensive use plan or the statement of needs, policies,
12 objectives, and standards adopted by the district.

13 (b) A coastal district that has and exercises zoning or other controls on the use of
14 resources within the coastal area shall implement its district coastal management plan.
15 Implementation shall be in accordance with the comprehensive use plan or the statement of
16 needs, policies, objectives, and standards adopted by the district.

17 **Sec. 46.41.090. Compliance and enforcement.**

18 ✓ (a) Municipalities and state resource agencies shall administer land and water use
19 regulations or controls in conformity with district coastal management plans approved under
20 this chapter and in effect. *see 46.40.100*

21 ✓ (b) The superior courts of the state have jurisdiction to enforce lawful orders of the
22 board and the department under this chapter.

23 **Sec. 46.41.100. Coastal management plans in the unorganized borough.**

24 (a) A coastal resource service area incorporated into the coastal management program
25 under this chapter shall exercise those authorities and perform those duties required under
26 this chapter.

27 **Sec. 46.41.110. Coastal resource service areas.**

28 (a) Except as otherwise provided in this section, each regional educational attendance
29 area established under AS 14.08.031 containing a part of the coastal area may be organized
30 as a coastal resource service area.

31 (b) The commissioner of the department may, after public hearings held in the
32 affected area, consolidate two or more regional educational attendance areas as a single

1 coastal resource service area

2 (1) if a substantial portion of the coastal area contains land and water area owned by
3 the federal government over which it exercises exclusive jurisdiction or land held in trust by
4 the federal government for Alaska Natives over which the state would not exercise control as
5 to use; or

6 (2) if, after giving due consideration to the standards applicable to incorporation of
7 borough governments and the likelihood that a borough will be incorporated within the area,
8 the commissioner determines that the functions to be performed under this chapter could be
9 undertaken more efficiently through the combination of two or more regional education
10 attendance area as a single coastal resource service area.

11 (c) A determination under (b) of this section shall be made before the organization of
12 the coastal resource service area.

13 (d) or purposes of coastal management only, the commissioner of the department
14 may, after public hearings held in the regional education attendance area affected, divide an
15 existing regional education attendance area into no more than three coastal resource service
16 areas according to geographic, cultural, economic, environmental, or other features relevant
17 to coastal management planning. However,

18 (1) each coastal resource service area formed by dividing an existing regional
19 education attendance must contain at least one first class city or home rule city; and

20 (2) a city within a coastal resource service area formed by dividing an existing
21 regional education attendance area may not elect to exclude itself from the coastal resource
22 service area.

23 **Sec. 46.41.120. Organization of a Coastal Resource Service Area.**

24 (a) Organization of a coastal resource service area may be initiated by

25 (1) submission to the coastal policy board of a petition signed by a number of
26 registered voters equal to 15 percent of the number of votes cast within the coastal resource
27 service area at the last state general election; or

28 (2) by submission to the board of a resolution approved by the city council or
29 traditional village council of not less than 25 percent of the number of cities and villages
30 within the coastal resource service area.

31 (b) Acting at the request of the council, the lieutenant governor, not less than 60 nor
32 more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper

1 resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this
2 section, shall conduct an election on the question of organization of a coastal resource service
3 area.

4 **Sec. 46.41.130. Coastal resource service area boards**

5 (a) Each coastal resource service area shall have an elected board representing the
6 population of the service area. The board shall have the powers and duties and perform the
7 functions prescribed for or required of coastal districts.

8 (b) A coastal resource service area board shall contain seven members. Board
9 members shall be elected at large by the qualified voters of the coastal resource service area.

10 (c) The term of office of a member of a coastal resource service area board is three
11 years. Members serve until their successors are elected and have qualified. This section does
12 not prohibit the reelection of a board member.

13 (d) The lieutenant governor shall provide for the election of the members of coastal
14 resource service area boards.

15 (e) Election of members of coastal resource service area boards shall be held annually
16 on the date of election of members of regional educational attendance area boards under AS
17 14.08.071(b). If no candidate files for election to a seat on the coastal resource service area
18 board, the seat is considered vacant at the time a newly elected member would have taken
19 office.

20 (f) A seat on a coastal resource service area board shall be declared vacant by the
21 board if the criteria under AS 14.08.045 (a) apply to the person elected. A vacancy on a
22 coastal resource service area board shall be filled by appointment as provided in AS
23 14.12.070 for vacancies in the membership of regional educational attendance area boards.

24 (g) Members of coastal resource service area boards are subject to recall on the same
25 grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240
26 - 29.26.350. The lieutenant governor functions in place of the assembly or council and
27 municipal clerk for receipt and review of recall petitions and the conduct of recall elections.

28 (h) Members of a coastal resource service area board are entitled to per diem and
29 travel expenses authorized by law for members of boards and commissions and for
30 honorariums for meetings attended in person.

31 **Sec. 46.41.140. Elections in coastal resource service areas.**

32 Elections under AS 46.41.100 - 46.41.160 shall be administered by the lieutenant

1 governor in the general manner provided in AS 15 (Election Code). In addition, the
2 lieutenant governor may adopt regulations necessary to the conduct of coastal resource
3 service area board elections. The state shall pay all election costs.

4 **Sec. 46.41.150. Preparation of district coastal management program by the Department**
5 **of Commerce, Community and Economic Development**

6 (a) If residents of a coastal resource service area reject organization of the service
7 area at an election called for the purpose and the coastal policy board finds, after public
8 hearing, that major economic development activity has occurred or will occur within the
9 service area, the board may direct the department to prepare and recommend for
10 consideration by the ~~council~~ and for submission to the legislature a district coastal
11 management plan for the service area. *board*

12 (b) At the request of the coastal policy board, the department shall complete the
13 district coastal management plan in accordance with this chapter and the guidelines and
14 standards adopted by the board for a coastal resource service area that has been organized but
15 that has failed to make substantial progress in the preparation of an approvable district coastal
16 management program within 18 months of certification of the results of an organization
17 election or that has not submitted for approval to the board a program within 30 months of
18 certification of the results of its organization election. Preparation of the program shall be
19 conducted in consultation with the coastal resource service area and shall, to the maximum
20 extent consistent with this chapter, reflect the expressed concerns of the residents of the
21 service area.

22 (c) Before requesting the department to complete the district coastal management
23 plan under (b) of this section, the board shall meet with members of the coastal resource
24 service area board to determine whether the board is able to complete a district coastal
25 management program within the time limitations established in this section.

26 **Sec. 46.41.160. Approval of plans in coastal resource service areas.**

27 (a) Before adoption by a coastal resource service area board, a district coastal
28 management plan shall be submitted for review to each city or village within the coastal
29 resource service area. The council of a city or traditional village council shall consider the
30 plan submitted for review. Within 60 days of submission, the council of a city or traditional
31 village council shall either approve the plan or enter objections to all or any portion of the
32 plan.

1 (b) If a city or village within a coastal resource service area fails to approve a portion
2 of the district coastal management plan prepared and submitted for approval under (a) of this
3 section, the governing body shall advise the coastal resource service area board of its
4 objections to the proposed plan and suggest alternative elements or components for inclusion
5 in the district coastal management plan. New matter submitted by a city or village that meets
6 the district plan criteria adopted under this chapter may be accepted by the district and the
7 district coastal management plan modified accordingly. If a city or village fails to provide
8 objections and suggested alternatives within the time limits established in this section, the
9 coastal resource service area board may adopt the district coastal management plan as
10 initially offered.

11 (c) Objection by a city council under (b) of this section is limited to objection to
12 elements of the plan affecting resources or the use of resources within the corporate limits of
13 the city. Objection by a traditional village council under (b) of this section is limited to
14 objection to elements of the plan affecting resources or the use of resources within the village
15 or within two miles of the village.

16 (d) For purposes of this section, "village" means an unincorporated community where
17 at least 25 persons reside as a social unit as determined by the Department of Commerce,
18 Community, and Economic Development.

19 **Sec. 46.41.170. Cooperative administration.**

20 (a) A city within the coastal area that is not part of a coastal resource service area
21 shall be included for purposes of this chapter within an adjacent coastal resource service area
22 unless its governing body, by resolution adopted by a majority of its membership, chooses to
23 exclude the city from an adjacent coastal resource service area and a copy of the resolution is
24 filed with the commissioner of commerce, community, and economic development.

25 (b) This chapter does not restrict or prohibit cooperative or joint administration of
26 functions between a municipality and a coastal resource service area organized under the
27 provisions of this chapter upon initiation of a mutual agreement for the purpose.

28 **Sec. 46.41.180. Construction with other laws.**

29 Nothing in this chapter shall be construed to

30 (1) diminish state jurisdiction, responsibility, or rights in the field of planning,
31 development, or control of land or water resources, submerged land, or navigable water;

32 (2) affect in any way any state requirement imposed under a federal authorization or

1 federal waiver of sovereign immunity; or

2 (3) diminish the zoning or planning authority of municipalities under AS 29.

3 **Sec. 46.41.900. Definitions.**

4 In this chapter, unless the context otherwise requires,

5 (1) "affected coastal district" means a coastal district with a publically reviewed draft or
6 approved plan in which a project is proposed to be located or that may experience a direct
7 and significant impact from a proposed project;

8 (2) "board" means the Alaska Coastal Policy Board established in AS 46.41.010;

9 (3) "coastal district" means each of the following that contains a portion of the coastal
10 area of the state:

11 (A) unified municipalities;

12 (B) organized boroughs of any class that exercise planning and zoning authority;

13 (C) home rule and first class cities of the unorganized borough or within boroughs
14 that do not exercise planning and zoning authority;

15 (D) second class cities of the unorganized borough, or within boroughs that do not
16 exercise planning and zoning authority, that have established a planning commission,
17 and that, in the opinion of the commissioner of commerce, community, and economic
18 development, have the capability of preparing and implementing a comprehensive
19 district coastal management plan under AS 46.41.030;

20 (E) coastal resource service areas established and organized under AS 29.03.020 an
21 AS 46.41.100 - 46.41.160;

22 (4) "coastal use or resource" means any land or water use or natural resource of the
23 coastal zone. Land and water uses include, but are not limited to, public access, recreation,
24 fishing, historic or cultural preservation, development, hazards management, marinas and
25 floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration
26 projects. Natural resources include biological or physical resources that are found within a
27 State's coastal zone on a regular or cyclical basis. Biological and physical resources include,
28 but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers,
29 streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish,
30 shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of
31 national significance;

32 (5) "coastal zone" means the coastal water including land within and under that water,

1 and adjacent shoreland, including the water within and under that shoreland, within the
2 boundaries approved by the former Alaska Coastal Policy Council and by the United States
3 Secretary of Commerce under 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act of
4 1972, as amended); "coastal zone" includes areas added as a result of any boundary changes
5 approved by the board and by the United States Secretary of Commerce under 16 U.S.C.
6 1451 - 1465; "coastal zone" does not include

7 (A) those lands excluded under 16 U.S.C. 1453(1); or

8 (B) areas deleted as a result of any boundary changes by the board in conformance
9 with 16 U.S.C. 1451 - 1465;

10 (6) "consistency review" means the evaluation of a proposed project against the
11 statewide standards and the approved enforceable policies of an affected coastal district
12 under the process developed by the board;

13 (7) "department" means the Department of Commerce, Community and Economic
14 Development;

15 (8) "direct and significant impact" means an activity which proximately contributes to a
16 material change or alteration in the natural or social characteristics of a part of the state's
17 coastal area and in which

18 (A) would have a net adverse effect on the quality of the resources of the coastal
19 area;

20 (B) would limit the range of alternative uses of the resources of the coastal area;
21 or

22 (C) would, of itself, constitute a tolerable change or alteration of the resources
23 within the coastal area but which, cumulatively, would have an adverse effect;

24 (9) "district coastal management plan" means a plan developed by a coastal district,
25 including enforceable policies of that plan, setting out policies and standards to guide public
26 and private uses of land and water within that district and approved by the board as meeting
27 the requirements of this chapter and the regulations adopted under this chapter;

28 (10) "enforceable policy" means a policy established by this chapter or approved by the
29 board as a legally binding policy of the Alaska coastal management program applicable to
30 public and private activities;

31 (11) "local knowledge" means a body of knowledge or information about the coastal
32 environment or the human use of that environment, including information passed down

1 through generations, if that information is

2 (A) derived from experience and observations; and

3 (B) generally accepted by the local community;

4 (12) "project" means all activities that will be part of a proposed development and
5 includes all federal agency activities as defined in 15 C.F.R. 930.31, including lease sales and
6 development projects affecting a coastal use or resource;

7 (13) "resource agency" means

8 (A) the Department of Environmental Conservation;

9 (B) the Department of Fish and Game; or

10 (C) the Department of Natural Resources.;

11 (14) "scientific evidence" means facts or data that are

12 (A) premised upon established chemical, physical, biological, or ecosystem
13 management principles as obtained through scientific method and submitted to the
14 department to furnish proof of a matter required under this chapter;

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

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

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

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

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

23 (15) "special management area" includes areas meriting special attention and means a
24 delineated geographic area within the coastal area which is sensitive to change or alteration
25 and which, because of plans or commitments or because a claim on the resources within the
26 area delineated would preclude subsequent use of the resources to a conflicting or
27 incompatible use, warrants special management attention, or which, because of its value to
28 the general public, should be identified for current or future planning, protection, or
29 acquisition;

30 (16) "use of state concern" means a land and water use that would significantly affect the
31 long-term public interest; a "use of state concern" includes

32 (A) uses of national interest, including the use of resources for the siting of ports

1 and major facilities that contribute to meeting national energy needs, construction and
2 maintenance of navigational facilities and systems, resource development of federal
3 land, and national defense and related security facilities that are dependent upon
4 coastal locations;

5 (B) uses of more than local concern, including those land and water uses that
6 confer significant environmental, social, cultural, or economic benefits or burdens
7 beyond a single coastal district;

8 (C) the siting of major energy facilities, activities pursuant to a state oil and gas
9 lease, a state gas only lease, or a federal oil and gas lease, or large-scale industrial or
10 commercial development activities that are dependent on a coastal location and that,
11 because of their magnitude or the magnitude of their effect on the economy of the
12 state or the surrounding area, are reasonably likely to present issues of more than
13 local significance;

14 (D) facilities serving statewide or interregional transportation and
15 communication needs; and

16 (E) uses in areas established as state parks or recreational areas under AS 41.21
17 or as state game refuges, game sanctuaries, or critical habitat areas under AS 16.20.

GPVD090P X3QR
 GVREMS GMC516A

VIEW PETITION TOTALS

02/06/2012 07:59
 GDIRECTR

PETITION ID: 11ACMP TYPE: INITIATIVE
 NAME: AN ACT ESTABLISHING THE COASTAL MANAGEMENT PROGRAM

REQUIRED SIGNATURES:	25,875	(A) ADDRESS NOT PROVIDED:	130
		(B) DOB NOT MATCHED.....:	168
NUMBER OF QUALIFIED:	24,350	(D) DUPLICATE.....:	209
(Q) COMPUTER QUALIFIED:	20,152	(I) INACTIVE.....:	10
(M) MANUALLY QUALIFIED:	4,196	(J) NOT IN JURISDICTION.:	1
(H) INACTIVE QUALIFIED:	2	(K) PETITION SIGNATURE..:	125
		(N) NAME NOT MATCHED....:	5,161
NUMBER OF UNQUALIFIED:	8,833	(R) NOT REGISTERED.....:	1,079
		(S) SSN NOT MATCHED.....:	37
		(T) DUPLICATE SSN.....:	
TOTAL SIGNATURES:	33,183	(U) UNABLE TO IDENTIFY..:	97
		(V) VTR NUM NOT FOUND...:	59
		(X) NOT YET COUNTED.....:	
QUALIFIED SPONSORS:	265	(Z) ADL NOT MATCHED.....:	1,583
UNQUALIFIED SPONSORS:	15	() OTHER.....:	174
		(W) WITHDRAWN.....:	

F1=MENU, F9=QUIT

About The Totals Report

The first qualification phase is a computer qualification of the signatures submitted. The information provided by the signers such as voter number, last name and last four of social security number, Alaska driver's license number, etc. and signature date is entered into the statewide voter registration system. The computer qualification is run each night. If there is an exact match, the system automatically qualifies signers and they appear in the (Q) *Computer Qualified*: column. When the system does not match the information entered for signers, they appear in the *Number of Unqualified* column and the reasons why signatures are not qualified are listed on the right-hand column.

After the division completes the computer qualification phase, the division will manually review each signer that was not qualified during the computer qualification phase. This involves a manual search of the voter registration system for each signer to determine if they are a registered voter. If a successful match is found, the signer will be manually qualified and will appear in the (M) *Manually Qualified* column.

If a voter's registration record is inactivated before the receipt of the petition booklets, such as a voter who may have signed a booklet and then passed away after signing, they will appear in the (H) *Inactive Qualified* column. Since the signer was a qualified registered voter at the time of signing the petition, they are an eligible signature.

Restoring Coastal Management

217 Second Street, Suite 200

Juneau, AK 99801

(907) 957-4540

Me)

February 2, 2012

The Honorable Kyle Johansen
Alaska House of Representatives
Alaska State Capitol
Juneau, AK 99811

Compliments of:
Representative Beth Kerttula

Dear Representative Johansen:

In recent public statements, you have expressed an interest in learning more about the Alaska Sea Party's financial contributors. As you have acknowledged, our group has complied fully with all reporting and other requirements for pursuing a ballot initiative in the State of Alaska. We will continue to do so.

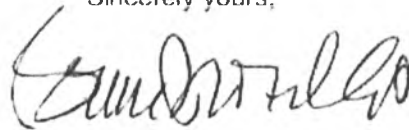
While it is unclear to us why disclosing donors since our last report on January 10 should affect your consideration of the merits of the initiative petition, we set forth below a one-time interim update of donors since the end of the last reporting period (December 31, 2011).

Since January 1, 2012, these entities have donated funds to the Alaska Sea Party in excess of the \$500 threshold which requires their disclosure to the Alaska Public Offices Commission (APOC):

Sealaska Corporation- \$5,000;
Bristol Bay Native Corporation- \$5,000; and
Bering Straits Native Corporation- \$2,500

We will, of course, make a full and detailed accounting of our revenues and expenses in our first quarter APOC filing, which is due April 10, 2012. We trust that this extraordinary disclosure will remove any impediment to your active engagement on coastal zone management.

Sincerely yours,



Bruce Botelho
Steering Committee Chair
Alaska Sea Party

This message is approved by Bruce Botelho, Chair
Paid for by the Alaska Sea Party: Restoring Coastal Management
217 Second St. Ste. 200 Juneau, AK 99801

Top contributors: North Slope Borough Alaska Conference of Mayors Aleutian Pribilof Island Community Development Association

**Joint Judiciary Committee Hearing on 11ACMP:
Coastal Management Program Initiative
– February 2012 –
Relevant Laws**

The Alaska Constitution (Article XI)

§ 1. Initiative and Referendum

The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

§ 2. Application

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

§ 3. Petition

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters who are equal in number to at least ten per cent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of those house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.

§ 4. Initiative Election

An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

§ 6. Enactment

If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

§ 7. Restrictions

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

Alaska Statutes on Initiatives

Article 01. INITIATIVE

Sec. 15.45.010. Provision and scope for use of the initiative.

The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

Sec. 15.45.020. Filing application.

An initiative is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit shall be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

Sec. 15.45.030. Form of application.

The application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

Sec. 15.45.040. Form of proposed bill.

The proposed bill shall be in the following form:

(1) the bill shall be confined to one subject;

(2) the subject of the bill shall be expressed in the title;

(3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska;"

(4) the bill may not include subjects restricted by AS 15.45.010.

Sec. 15.45.050. Manner of notice.

Notice to the initiative committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application.

Sec. 15.45.060. Designation of sponsors.

The qualified voters who subscribe to the application in support of the proposed bill are designated as sponsors. The initiative committee may designate additional sponsors by giving written notice to the lieutenant governor of the names, addresses, and numerical identifiers of those so designated.

Sec. 15.45.070. Review of application for certification.

Within 60 calendar days after the date the application is received, the lieutenant governor shall review the application and shall either certify it or notify the initiative committee of the grounds for denial.

Sec. 15.45.080. Bases of denial of certification.

The lieutenant governor shall deny certification upon determining in writing that

- (1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form;
- (2) the application is not substantially in the required form; or
- (3) there is an insufficient number of qualified sponsors.

Sec. 15.45.090. Preparation of petition.

(a) If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state. Each petition must contain

- (1) a copy of the proposed bill;
 - (2) an impartial summary of the subject matter of the bill;
 - (3) a statement of minimum costs to the state associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition;
 - (4) an estimate of the cost to the state of implementing the proposed law;
 - (5) the statement of warning prescribed in AS 15.45.100;
 - (6) sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition; and
 - (7) other specifications prescribed by the lieutenant governor to ensure proper handling and control.
- (b) Upon request of the initiative committee, the lieutenant governor shall report to the committee the number of persons who voted in the preceding general election.

Sec. 15.45.100. Statement of warning.

Each petition shall include a statement of warning that a person who signs a name other than the person's own on the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter, is guilty of a class B misdemeanor.

Sec. 15.45.105. Qualifications of circulator.

To circulate a petition booklet, a person shall be

- (1) a citizen of the United States;
- (2) 18 years of age or older; and
- (3) a resident of the state as determined under AS 15.05.020.

Sec. 15.45.110. Circulation of petition; prohibitions and penalty.

(a) The petitions may be circulated throughout the state only in person.

(b) *[Repealed, Sec. 92 ch 82 SLA 2000]*.

(c) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.

(d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

(f) In this section,

- (1) "organization" has the meaning given in AS 11.81.900;
- (2) "other valuable thing" has the meaning given in AS 15.56.030(d);
- (3) "person" has the meaning given in AS 11.81.900.

Sec. 15.45.120. Manner of signing and withdrawing name from petition.

Any qualified voter may subscribe to the petition by printing the voter's name, a numerical identifier, and an address, by signing the voter's name, and by dating the signature. A person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed.

Sec. 15.45.130. Certification of circulator.

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on

petitions not properly certified at the time of filing or corrected before the subscriptions are counted. The affidavit must state in substance

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;

(2) that the person is the only circulator of that petition;

(3) that the signatures were made in the circulator's actual presence;

(4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

Sec. 15.45.140. Filing of petition.

(a) The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them. The petition may be filed with the lieutenant governor only if it meets all of the following requirements: it is signed by qualified voters

(1) equal in number to 10 percent of those who voted in the preceding general election;

(2) resident in at least three-fourths of the house districts of the state; and

(3) who, in each of the house districts described in (2) of this subsection, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

(b) If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.

Sec. 15.45.150. Review of petition.

Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

Sec. 15.45.160. Bases for determining the petition was improperly filed.

The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that

- (1) there is an insufficient number of qualified subscribers;
- (2) the subscribers were not resident in at least three-fourths of the house districts of the state; or
- (3) there is an insufficient number of qualified subscribers from each of the house districts described in (2) of this section.

Sec. 15.45.170. Submission of supplementary petition. [Repealed, Sec. 7 ch 80 SLA 1998].

Repealed or Renumbered

Sec. 15.45.180. Preparation of ballot title and proposition.

(a) If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than 25 words, indicate the general subject of the proposition. The proposition shall give a true and impartial summary of the proposed law. The total number of words used in the summary may not exceed the product of the number of sections in the proposed law multiplied by 50. In this subsection, "section" means a provision of the proposed law that is distinct from other provisions in purpose or subject matter.

(b) The proposition prepared under (a) of this section shall comply with AS 15.80.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law.

Sec. 15.45.190. Placing proposition on ballot.

The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after

- (1) the petition has been filed;
- (2) a legislative session has convened and adjourned; and
- (3) a period of 120 days has expired since the adjournment of the legislative session.

Sec. 15.45.195. Public hearings.

(a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the written or oral testimony of one supporter and one opponent of the initiative.

(b) The lieutenant governor shall provide reasonable notice of each public hearing required under this section. The notice must include the date, time, and place of the hearing. The notice may be given using print or broadcast media. The lieutenant governor shall provide notice in a consistent fashion for all hearings required under this section.

(c) Penalties for a violation of this section may not include removal of an initiative from the ballot.

(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website.

Sec. 15.45.200. Display of proposed law.

The director shall provide each election board with at least five copies of the proposed law being initiated, and the election board shall display at least one copy of the proposed law in a conspicuous place in the room where the election is held.

Sec. 15.45.210. Determination of void petition.

If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

Sec. 15.45.220. Adoption and effective date of proposed law.

If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.

Sec. 15.45.230. Insufficiency of application or petition. [Repealed, Sec. 7, ch 80 SLA 1998].

Repealed or Renumbered

Sec. 15.45.240. Judicial review.

Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.

Sec. 15.45.245. Delegation by lieutenant governor.

The lieutenant governor may delegate the duties imposed on the lieutenant governor by AS 15.45.010 - 15.45.240 to the director.

....

Legislative Powers

Sec. 24.05.186. Legislative hearings on initiatives certified by the lieutenant governor.

(a) A standing committee of the legislature, selected jointly by the presiding officers of the house of representatives and senate, shall hold at least one hearing on an initiative that the lieutenant governor has determined was properly filed under AS 15.45.160.

(b) The standing committee selected jointly by the presiding officers of the house of representatives and senate under (a) of this section shall hold at least one hearing under this section within 30 days after the convening of the legislative session preceding the statewide election at which the initiative proposition must appear on the election ballot under AS 15.45.190.

Melanie Lesh

From: Rep. Carl Gatto
Sent: Monday, February 06, 2012 9:40 AM
To: 'Carl Gatto (carljgatto@gmail.com)'; Melanie Lesh
Subject: ACTION: CZ INFO FROM TOM WRIGHT

Importance: High

From: Tom Wright
Sent: Monday, February 06, 2012 8:37 AM
To: Rep. Carl Gatto
Subject:

Carl:

Here is a good line to use for the ACMP hearings.

The public will have its chance to weigh in at the polls this fall. This is the legislature's opportunity to gather the background it needs in order fully understand the initiative implications and to decide whether it may be in the state's best interest to advance legislation this session. If legislation is heard, the public would have every opportunity to comment at that point.

Tom

Tom Wright, Senior Staff
Representative Mike Chenault
Speaker of the Alaska State House
(907) 465-6618

Bradners'
Alaska Legislative Digest
- Commentary on Alaska issues and policy

PUBLISHERS: Mike Bradner, Tim Bradner / Business Office: 522-0195 / 3037 South Circle Anchorage, AK 99507 / Fax: (907) 345-5683

Digest # 4/2012 February 5, 2012

Coastal initiative close to qualifying for ballot

As of Friday, Feb. 3, the Division of Elections had qualified 23,636 of the needed 25,875 voter signatures on the coastal management reinstatement initiative and had 9,513 waiting for manual review. A tally on the requirement that total signatures come from 7 percent of voters in 30 of the 40 House districts was not available. With the coastal zone initiative petition possibly on its way to final approval for the general election ballot there are back channel moves underway to clarifying or eliminate legislative options. Whether or not any bill to reinstate the program will be introduced remains to be seen.

The joint Judiciary Committees are meeting at 1 p.m. Feb. 6 for an informational hearing, required under state law, that will focus on operational impacts to state agencies. The invitation-only witness list is headed by Juneau Mayor Bruce Botelho, one of initiative's three prime sponsors; Susan Bell, commissioner of the Dept. of Commerce, which would house the revived program; and John Boucher, senior economist in the Office of Management and Budget. Elections director Gail Fenumiai and head legislative attorney Doug Gardner are also scheduled to speak. A legal opinion from Gardner seemed to confirm that the version of HB 106 passed by the House last year (which failed ultimately to pass) does not meet the "substantially similar" (to the

- Continued on page 3

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- Fish guide board dead? Pg. 3
- Status of Bills Pages 4-5
- Railroad land bill Pg. 6
- Fish tax revenue sharing Pg. 6
- Senate oil tax bill Pg. 7

HB 298, tax-exemption for construction materials, moves fast

Legislation exempting sand, gravel, quarry rock and "marketable earth" extraction from the state mining license tax is moving quickly through the House. HB 298 was introduced on Jan. 25 and is scheduled for a Feb. 7 Finance Committee hearing. Sponsored by House Resources Committee Cochair Paul Seaton (R-Homer), the bill moved out of that committee after a Feb. 1 hearing where lawmakers, extraction companies and the Dept. of Revenue agreed that the levy is a net loss rather than an income source for the state.

Seaton said the Dept. of Transportation and local governments buy over 80 percent of the products covered by the bill so that the state is effectively paying most of the "nuisance tax." It raised only \$320,360, or seven-tenths of one percent of total mining tax revenues in fiscal 2011, according to the Dept. of Revenue.

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Analysis by Bob Tkacz

On coastal initiative, what does “substantially similar” mean?

“Substantially similar” is the standard – comfortably vague – in Alaska law that describes the requirement for a legislative bill that would replace an initiative petition on the general election ballot. What the phrase means will be debated intensely if lawmakers attempt to pass such a bill to reestablish the Alaska Coastal Management Program, replacing the ballot proposition now pending. A 1975 ruling by the Alaska Supreme Court, reaffirmed in 2005, established a three-part test to determine if a bill is “substantially similar.” The ruling came in the *Warren v. Boucher* case, which addressed the process and conditions by which legislative action could prevent an initiative from appearing on the ballot. The high court reaffirmed the test in *State v. Trust The People*, over the initiative petition, now state law, that allows a governor to make only a temporary appointment of a U.S. senator when the post becomes vacant. That petition was launched after Gov. Frank Murkowski appointed his daughter Lisa to the U.S. Senate seat he vacated when he was elected governor in 2002.

The definition of the constitutional phrase “substantially the same,” in Article 11, Sec. 4 of the Alaska Constitution is “not apparent” and nothing in the legislative history of the founders’ debate on the subject “points to an agreed upon meaning or a consciously adopted definition,” the high court’s opinion in *Warren* declares. The first part of the test requires the court to “first determine the scope of the subject matter, and afford the Legislature greater or lesser latitude depending on whether the subject matter is broad or narrow.” Secondly, the court must consider “whether the general purpose of the legislation is the same as the general purpose of the initiative.” Finally, it must “consider whether the means by which that purpose is effectuated are the same” in the initiative and legislation.

The *Warren* decision also said lawmakers have “reasonably broad” discretion in writing a law to replace an initiative. “It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the Legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same,” the decision declares.

Legislators ponder course on coastal management initiative (Cont.)

- Continued from page 1

petition) requirement. “If you want to draft legislation that will increase the odds of voiding the initiative and being considered ‘substantially the same,’ a bill that provides greater local control and participation than the former program did and HB 106 would have. It could only help the effort,” the Jan. 31 opinion states.

House Speaker Mike Chenault and Senate Pres. Gary Stevens met Jan. 31 to discuss how legislation might proceed but seemed to reach no agreement. “We just have to find a vehicle we can agree to, if we can find one,” Stevens (R-Kodiak) said on the way in to the hour-long session. After the meeting he said, “The important thing right now is to figure out how that petition is going to be finalized.” If the petition is confirmed for the ballot “that will move us on,” he added. Chenault said if the petition qualifies, “the House will have to look at it and see if it is an issue we’re going to address or not.” The House Majority has not had a serious discussion of the issue and Chenault added that he would not lead any initiative. “It’s not me saying ‘yes’ or ‘no.’ Any legislator

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. . . Business/Rural . . .

Railroad's 95-year land leasing bill is derailed, in Senate at least

Senate Transportation Committee Chairman Donny Olson (D-Nome) said the bill to raise the time limit on Alaska Railroad leases to 95 from 55 years won't leave his committee "unless there's clear and convincing evidence we need it." Olson made the comment after the panel's 17-minute first hearing on SB 156, Feb. 2, had recessed. Jon Cook, chairman of railroad board's real estate committee had told the Transportation Committee that developers of three potential projects, including one on Ship Creek in Anchorage, had informed him they would not consider railroad land unless 95-year leases were available.

Cook also noted that land values for all leases are reappraised every five years and rates increased by eight percent for most of the railroad's roughly 400 properties. He said the board unanimously endorsed the bill, that 95-year leases would require exceptional circumstances and that the board would establish standards for the maximum term. At the bill's Senate Labor & Commerce Committee hearing he said \$10 million valuation would be the minimum needed to qualify for 95-year terms. The bill was introduced by the Senate Labor & Commerce Committee at the request of the railroad and was reported out of that committee with four "do pass" recommendations on Jan. 27. Sen. Joe Paskvan (D-Fairbanks) gave it "no recommendation."

Bill clarifying auto price, advertising details moves from House, Senate committees

The Senate version of a multi-part proposal to broaden and clarify terms for new and used car advertising and promotions and consumer protection issues moved through the Senate Transportation Committee after a single hearing, Feb. 2. SB 122 awaits a Senate Labor & Commerce Committee review; parallel to HB 235, its companion bill in the House. Endorsed by Alaskan auto dealers and the Dept. of Law's consumer protection section, the bills require advertised prices show all dealer fees, excluding licensing and other government charges.

The bill breaks new ground by allowing used car dealers to publish comparative discount claims in ads if they are supported by comparisons to nationally recognized sources like the "Blue Book." It voids vehicle sales contracts if dealers or financing institutions change any terms after the buyer has signed. Consumers can be charged a mileage fee if a returned car has been driven more than 100 miles and would be required to pay for any damage, parking tickets, towing or storage fees and similar charges. The House version, HB 235, was reported out of the House Transportation Committee after a Jan. 26 hearing

Legislators ponder course on coastal management initiative (Cont.)

Continued from page 3

can put in a bill dealing with ACMP at any time," he said. "There's people talking about it in different groups, trying to decide do they want to put in something," he said. Rep. Beth Kerttula, House Minority Leader said a successful signature count would encourage lawmakers to pass a substantially similar bill. Rep. Charisse Millett (R-Anch.), who requested the legal opinion, also asked if the Legislature could amend an initiative petition that was approved by the voters but rejected by the National Oceanic and Atmospheric Administration, federal administrator of the coastal zone program. To that, the legal opinion said yes, if changes were actually amendments and not a repeal. Kerttula agreed but was confident the initiative meets federal standards. "This program was built on programs that were approved by NOAA," Kerttula said last Saturday. She added that NOAA allows "great latitude" in states programs. "All the different coastal programs are different," she said.

1 AN ACT ENTITLED

2

3 "An Act establishing the Alaska Coastal Management Program."

4

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

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

7

Chapter 41. Alaska Coastal Management Program

8

Sec. 46.41.010 Coastal Policy Board

9 (a) There is created in the Department of Commerce, Community and Economic
10 Development the Alaska Coastal Policy Board. The board consists of the following:

11 (1) nine public members and alternates appointed by the governor from a list
12 composed of at least three names from each region, nominated and submitted by the coastal
13 districts of each region; one public member shall be appointed from each of the following
14 regions:

15 (A) northwest Alaska, including, generally, the area of the North Slope
16 Borough and the Northwest Arctic Borough;

17 (B) Bering Straits, including, generally, the area of the Bering Straits regional
18 educational attendance area and the City of Nome;

19 (C) southwest Alaska, including, generally, the area within the Lower Yukon,
20 Lower Kuskokwim, and Southwest regional educational attendance areas, the City of
21 Bethel, and the Lake and Peninsula and Bristol Bay Boroughs;

22 (D) Kodiak-Aleutians, including the area of the Kodiak Island and Aleutian
23 East Boroughs and the Aleutian, Adak and Pribilof regional educational attendance
24 areas;

25 (E) Upper Cook Inlet, including the Municipality of Anchorage and the
26 Matanuska-Susitna Borough;

27 (F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula
28 Borough;

29 (G) Prince William Sound, including, generally, the area east of the Kenai
30 Peninsula Borough to 141 W. longitude;

31 (H) northern Southeast Alaska, including the area southeast of 141 W.
32 longitude and north of 57 N. latitude, including the entirety of the City and Borough

1 of Sitka; and

2 (I) southern Southeast Alaska, including that portion of southeastern Alaska
3 not contained within the area described in (H) of this paragraph;

4 (2) each of the following:

5 (A) the commissioner of environmental conservation;

6 (B) the commissioner of fish and game;

7 (C) the commissioner of natural resources; and

8 (D) the commissioner of commerce, community, and economic development.

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

12 (c) The alternate for a commissioner serving under (a)(2) of this section shall be a
13 deputy commissioner or the director of a division in the commissioner's department. The
14 names of alternates shall be filed with the board.

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

18 (e) The board may recommend that the governor remove a public member for cause.

19 (f) Five public members and two designated members of the board constitute a
20 quorum, but the board may delegate to one or more of its members the power to hold
21 hearings. All decisions of the board shall be by a majority vote of the members present and
22 voting.

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

26 (h) Public members of the board or their alternates are entitled to per diem and travel
27 expenses authorized by law for members of boards and commissions.

28 (i) Administrative support for the board shall be provided by staff of the department.
29 The department, under the direction of the board shall contract with or employ personnel or
30 consultants the department considers necessary to assist the board in carrying out the board's
31 duties and responsibilities.

32 **Sec. 46.41.020. Powers and duties of the board.**

1 (a) The board shall

2 (1) review and approve regulations necessary to implement the coastal management
3 program in conformity with this chapter and 16 U.S.C. 1451 - 1464 (Coastal Zone
4 Management Act of 1972);

5 (2) direct the department to seek approval of the Alaska coastal management
6 program by the National Oceanic and Atmospheric Administration, Office of Ocean and
7 Coastal Resource Management in conformity with 16 U.S.C. 1451 - 1464 (Coastal Zone
8 Management Act of 1972);

9 (3) initiate an interagency program of strategic coastal and ocean planning for each
10 geographic region of the state;

11 (4) review and approve coastal district management plans after receiving the
12 department's recommendations, including local enforceable policies, that meet the provisions
13 of this chapter and the district plan criteria.

14 (5) establish continuing coordination among state agencies to facilitate the
15 development and implementation of the Alaska coastal management program;

16 (6) evaluate the effectiveness of district coastal management plans; and

17 (7) direct the department to apply for and accept grants, contributions, and
18 appropriations, including application for and acceptance of federal funds that may become
19 available for coastal planning and management.

20 (b) The board may

21 (1) contract for necessary services;

22 (2) take any reasonable action necessary to carry out the provisions of this chapter.

23 **Sec. 46.41.030. Division of Coastal Management.**

24 (a) There is created in the department the division of ocean and coastal management.

25 (b) The division shall

26 (1) render, on behalf of the state, all federal consistency determinations and
27 certifications authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management Act of
28 1972), and each conclusive state consistency determination when a project requires a permit,
29 lease, or authorization from the department or from two or more state resource agencies.

30 (2) adopt regulations approved by the board necessary to implement this chapter
31 under the provisions of AS 44.62 (Administrative Procedure Act).

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

1 out their planning and management functions under the program.

2 (4) develop and maintain a program of financial assistance to aid coastal districts in
3 the development and implementation of district coastal management plan.

4 **Sec. 46.41.040. Development of Alaska coastal management program.**

5 (a) The regulations developed under this chapter shall include

6 (1) statewide coastal program standards;

7 (2) the criteria and process for the preparation and approval of district coastal
8 management plans; and

9 (3) consistency review procedures in accordance with this chapter, including
10 provisions for

11 (A) review of activities proposed or permitted by a state or federal agency;

12 (B) the types of activities that will trigger a consistency review;

13 (C) review of phased activities and uses;

14 (D) public notice and opportunities for public comment;

15 (E) elevation of proposed consistency determinations to the resource agency
16 commissioners;

17 (F) establishment of review timelines;

18 (G) exclusion from an individual project review aspects of activities that are
19 covered by a general permit previously found consistent with the Alaska coastal
20 management program;

21 (H) exclusion of routine activities with insignificant effects to coastal uses or
22 resources from an individual consistency review.

23 b) The coastal districts, coastal district boundaries and approved coastal management
24 plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska
25 coastal management program.

26 **Sec. 46.41.050. Objectives.**

27 The Alaska coastal management program shall be consistent with the following objectives:

28 (1) the use, management, restoration, and enhancement of the overall quality of the
29 coastal environment for this and succeeding generations;

30 (2) the development of industrial or commercial enterprises that are consistent with
31 the social, cultural, historic, economic, and environmental interests of the people of the state;

32 (3) the orderly, balanced utilization and protection of the resources of the coastal

1 area consistent with sound conservation and sustained yield principles;

2 (4) the management of coastal land and water uses in such a manner that, generally,
3 those uses that are economically or physically dependent on a coastal location are given
4 higher priority when compared to uses that do not economically or physically require a
5 coastal location;

6 (5) the protection and management of significant historic, cultural, natural, and
7 aesthetic values and natural systems or processes within the coastal area;

8 (6) the prevention of damage to or degradation of land and water reserved for their
9 natural values as a result of inconsistent land or water usages adjacent to that land;

10 (7) the recognition of the need for a continuing supply of energy to meet the
11 requirements of the state and the contribution of a share of the state's resources to meet
12 national energy needs; and

13 (8) the full and fair evaluation of all demands on and uses of the land and water in
14 the coastal area.

15 (9) the coordination of planning and decision-making in the coastal area among
16 levels of government and citizens engaging in or affected by activities involving the coastal
17 resources of the state;

18 (10) the participation of the public, local governments, and agencies of the state and
19 federal governments in the development and implementation of a coastal management
20 program; and

21 (11) the requirement that state resource agencies carry out their duties, powers and
22 responsibilities that affect the use of coastal area resources in accordance with the coastal
23 program adopted pursuant to this Act.

24 **Sec. 46.41.060. Development of district coastal management plans.**

25 (a) Coastal districts shall

26 (1) develop and adopt district coastal management plans in accordance with the
27 provisions of this chapter. The plan adopted by a coastal district shall be based upon a
28 municipality's existing comprehensive plan or a new comprehensive resource use plan or
29 comprehensive statement of needs, policies, objectives, and standards governing the use and
30 conservation of resources within the coastal area of the district. The plan must meet the
31 district plan criteria adopted under AS 46.41.040 and must include

32 (A) a delineation within the district of the boundaries of the coastal area subject

1 to the district coastal management plan;

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

4 (C) a designation of any special management areas;

5 (D) enforceable policies to be applied to all the land and water uses subject to
6 the district coastal management plan as well as policies that apply to special
7 management areas.

8 (b) The board shall approve an initial or amended district coastal management plan if
9 the

10 (1) district coastal management plan meets the requirements of this chapter and the
11 district plan criteria in regulation adopted by the department; and

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

13 (A) do not duplicate, restate, or incorporate by reference state or federal
14 statutes or regulations;

15 (B) are not preempted by federal or state law;

16 (C) do not arbitrarily or unreasonably restrict a use of state concern;

17 (D) are clear and concise as to the activities and persons affected by the
18 policies and the requirements of the policies;

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

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

24 (c) In (b)(2)(B) of this section, an enforceable policy of the district coastal
25 management plan is preempted

26 (1) by federal statutes or regulations if the United States Congress expressly
27 declares that local law or regulation is preempted, if the United States Congress demonstrates
28 the intent to occupy the field exclusively, or if there is an actual conflict between federal and
29 local law or regulation;

30 (2) by state law if it is prohibited, either by express legislative direction or direct
31 conflict with a state statute or regulation, or where a local law or regulation substantially
32 interferes with the effective functioning of a state statute or regulation or the underlying

1 purposes of a state statute or regulation.

2 **Sec. 46.41.070. Submission of district plans by coastal districts.**

3 (a) Within one year after the effective date of regulations implementing this chapter,
4 coastal districts shall review their coastal management plans and if changes are necessary to
5 meet the requirements of this chapter and implementing regulations, submit to the
6 department a revised district coastal management plan.

7 **Sec. 46.41.080. Implementation of district coastal management plans.**

8 (a) A district coastal management plan approved under this chapter for a coastal
9 district that does not have and exercise zoning or other controls on the use of resources
10 within the coastal area shall be implemented by appropriate state agencies. Implementation
11 shall be in accordance with the comprehensive use plan or the statement of needs, policies,
12 objectives, and standards adopted by the district.

13 (b) A coastal district that has and exercises zoning or other controls on the use of
14 resources within the coastal area shall implement its district coastal management plan.
15 Implementation shall be in accordance with the comprehensive use plan or the statement of
16 needs, policies, objectives, and standards adopted by the district.

17 **Sec. 46.41.090. Compliance and enforcement.**

18 (a) Municipalities and state resource agencies shall administer land and water use
19 regulations or controls in conformity with district coastal management plans approved under
20 this chapter and in effect.

21 (b) The superior courts of the state have jurisdiction to enforce lawful orders of the
22 board and the department under this chapter.

23 **Sec. 46.41.100. Coastal management plans in the unorganized borough.**

24 (a) A coastal resource service area incorporated into the coastal management program
25 under this chapter shall exercise those authorities and perform those duties required under
26 this chapter.

27 **Sec. 46.41.110. Coastal resource service areas.**

28 (a) Except as otherwise provided in this section, each regional educational attendance
29 area established under AS 14.08.031 containing a part of the coastal area may be organized
30 as a coastal resource service area.

31 (b) The commissioner of the department may, after public hearings held in the
32 affected area, consolidate two or more regional educational attendance areas as a single

1 coastal resource service area

2 (1) if a substantial portion of the coastal area contains land and water area owned by
3 the federal government over which it exercises exclusive jurisdiction or land held in trust by
4 the federal government for Alaska Natives over which the state would not exercise control as
5 to use; or

6 (2) if, after giving due consideration to the standards applicable to incorporation of
7 borough governments and the likelihood that a borough will be incorporated within the area,
8 the commissioner determines that the functions to be performed under this chapter could be
9 undertaken more efficiently through the combination of two or more regional education
10 attendance area as a single coastal resource service area.

11 (c) A determination under (b) of this section shall be made before the organization of
12 the coastal resource service area.

13 (d) or purposes of coastal management only, the commissioner of the department
14 may, after public hearings held in the regional education attendance area affected, divide an
15 existing regional education attendance area into no more than three coastal resource service
16 areas according to geographic, cultural, economic, environmental, or other features relevant
17 to coastal management planning. However,

18 (1) each coastal resource service area formed by dividing an existing regional
19 education attendance must contain at least one first class city or home rule city; and

20 (2) a city within a coastal resource service area formed by dividing an existing
21 regional education attendance area may not elect to exclude itself from the coastal resource
22 service area.

23 **Sec. 46.41.120. Organization of a Coastal Resource Service Area.**

24 (a) Organization of a coastal resource service area may be initiated by

25 (1) submission to the coastal policy board of a petition signed by a number of
26 registered voters equal to 15 percent of the number of votes cast within the coastal resource
27 service area at the last state general election; or

28 (2) by submission to the board of a resolution approved by the city council or
29 traditional village council of not less than 25 percent of the number of cities and villages
30 within the coastal resource service area.

31 (b) Acting at the request of the council, the lieutenant governor, not less than 60 nor
32 more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper

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1 resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this
2 section, shall conduct an election on the question of organization of a coastal resource service
3 area.

4 **Sec. 46.41.130. Coastal resource service area boards**

5 (a) Each coastal resource service area shall have an elected board representing the
6 population of the service area. The board shall have the powers and duties and perform the
7 functions prescribed for or required of coastal districts.

8 (b) A coastal resource service area board shall contain seven members. Board
9 members shall be elected at large by the qualified voters of the coastal resource service area.

10 (c) The term of office of a member of a coastal resource service area board is three
11 years. Members serve until their successors are elected and have qualified. This section does
12 not prohibit the reelection of a board member.

13 (d) The lieutenant governor shall provide for the election of the members of coastal
14 resource service area boards.

15 (e) Election of members of coastal resource service area boards shall be held annually
16 on the date of election of members of regional educational attendance area boards under AS
17 14.08.071(b). If no candidate files for election to a seat on the coastal resource service area
18 board, the seat is considered vacant at the time a newly elected member would have taken
19 office.

20 (f) A seat on a coastal resource service area board shall be declared vacant by the
21 board if the criteria under AS 14.08.045 (a) apply to the person elected. A vacancy on a
22 coastal resource service area board shall be filled by appointment as provided in AS
23 14.12.070 for vacancies in the membership of regional educational attendance area boards.

24 (g) Members of coastal resource service area boards are subject to recall on the same
25 grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240
26 - 29.26.350. The lieutenant governor functions in place of the assembly or council and
27 municipal clerk for receipt and review of recall petitions and the conduct of recall elections.

28 (h) Members of a coastal resource service area board are entitled to per diem and
29 travel expenses authorized by law for members of boards and commissions and for
30 honorariums for meetings attended in person.

31 **Sec. 46.41.140. Elections in coastal resource service areas.**

32 Elections under AS 46.41.100 - 46.41.160 shall be administered by the lieutenant

1 governor in the general manner provided in AS 15 (Election Code). In addition, the
2 lieutenant governor may adopt regulations necessary to the conduct of coastal resource
3 service area board elections. The state shall pay all election costs.

4 **Sec. 46.41.150. Preparation of district coastal management program by the Department**
5 **of Commerce, Community and Economic Development**

6 (a) If residents of a coastal resource service area reject organization of the service
7 area at an election called for the purpose and the coastal policy board finds, after public
8 hearing, that major economic development activity has occurred or will occur within the
9 service area, the board may direct the department to prepare and recommend for
10 consideration by the council and for submission to the legislature a district coastal
11 management plan for the service area.

12 (b) At the request of the coastal policy board, the department shall complete the
13 district coastal management plan in accordance with this chapter and the guidelines and
14 standards adopted by the board for a coastal resource service area that has been organized but
15 that has failed to make substantial progress in the preparation of an approvable district coastal
16 management program within 18 months of certification of the results of an organization
17 election or that has not submitted for approval to the board a program within 30 months of
18 certification of the results of its organization election. Preparation of the program shall be
19 conducted in consultation with the coastal resource service area and shall, to the maximum
20 extent consistent with this chapter, reflect the expressed concerns of the residents of the
21 service area.

22 (c) Before requesting the department to complete the district coastal management
23 plan under (b) of this section, the board shall meet with members of the coastal resource
24 service area board to determine whether the board is able to complete a district coastal
25 management program within the time limitations established in this section.

26 **Sec. 46.41.160. Approval of plans in coastal resource service areas.**

27 (a) Before adoption by a coastal resource service area board, a district coastal
28 management plan shall be submitted for review to each city or village within the coastal
29 resource service area. The council of a city or traditional village council shall consider the
30 plan submitted for review. Within 60 days of submission, the council of a city or traditional
31 village council shall either approve the plan or enter objections to all or any portion of the
32 plan.

1 (b) If a city or village within a coastal resource service area fails to approve a portion
2 of the district coastal management plan prepared and submitted for approval under (a) of this
3 section, the governing body shall advise the coastal resource service area board of its
4 objections to the proposed plan and suggest alternative elements or components for inclusion
5 in the district coastal management plan. New matter submitted by a city or village that meets
6 the district plan criteria adopted under this chapter may be accepted by the district and the
7 district coastal management plan modified accordingly. If a city or village fails to provide
8 objections and suggested alternatives within the time limits established in this section, the
9 coastal resource service area board may adopt the district coastal management plan as
10 initially offered.

11 (c) Objection by a city council under (b) of this section is limited to objection to
12 elements of the plan affecting resources or the use of resources within the corporate limits of
13 the city. Objection by a traditional village council under (b) of this section is limited to
14 objection to elements of the plan affecting resources or the use of resources within the village
15 or within two miles of the village.

16 (d) For purposes of this section, "village" means an unincorporated community where
17 at least 25 persons reside as a social unit as determined by the Department of Commerce,
18 Community, and Economic Development.

19 **Sec. 46.41.170. Cooperative administration.**

20 (a) A city within the coastal area that is not part of a coastal resource service area
21 shall be included for purposes of this chapter within an adjacent coastal resource service area
22 unless its governing body, by resolution adopted by a majority of its membership, chooses to
23 exclude the city from an adjacent coastal resource service area and a copy of the resolution is
24 filed with the commissioner of commerce, community, and economic development.

25 (b) This chapter does not restrict or prohibit cooperative or joint administration of
26 functions between a municipality and a coastal resource service area organized under the
27 provisions of this chapter upon initiation of a mutual agreement for the purpose.

28 **Sec. 46.41.180. Construction with other laws.**

29 Nothing in this chapter shall be construed to

- 30 (1) diminish state jurisdiction, responsibility, or rights in the field of planning,
31 development, or control of land or water resources, submerged land, or navigable water;
32 (2) affect in any way any state requirement imposed under a federal authorization or

1 federal waiver of sovereign immunity; or

2 (3) diminish the zoning or planning authority of municipalities under AS 29.

3 **Sec. 46.41.900. Definitions.**

4 In this chapter, unless the context otherwise requires,

5 (1) "affected coastal district" means a coastal district with a publically reviewed draft or
6 approved plan in which a project is proposed to be located or that may experience a direct
7 and significant impact from a proposed project;

8 (2) "board" means the Alaska Coastal Policy Board established in AS 46.41.010;

9 (3) "coastal district" means each of the following that contains a portion of the coastal
10 area of the state:

11 (A) unified municipalities;

12 (B) organized boroughs of any class that exercise planning and zoning authority;

13 (C) home rule and first class cities of the unorganized borough or within boroughs
14 that do not exercise planning and zoning authority;

15 (D) second class cities of the unorganized borough, or within boroughs that do not
16 exercise planning and zoning authority, that have established a planning commission,
17 and that, in the opinion of the commissioner of commerce, community, and economic
18 development, have the capability of preparing and implementing a comprehensive
19 district coastal management plan under AS 46.41.030;

20 (E) coastal resource service areas established and organized under AS 29.03.020 an
21 AS 46.41.100 - 46.41.160;

22 (4) "coastal use or resource" means any land or water use or natural resource of the
23 coastal zone. Land and water uses include, but are not limited to, public access, recreation,
24 fishing, historic or cultural preservation, development, hazards management, marinas and
25 floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration
26 projects. Natural resources include biological or physical resources that are found within a
27 State's coastal zone on a regular or cyclical basis. Biological and physical resources include,
28 but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers,
29 streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish,
30 shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of
31 national significance;

32 (5) "coastal zone" means the coastal water including land within and under that water.

1 and adjacent shoreland, including the water within and under that shoreland, within the
2 boundaries approved by the former Alaska Coastal Policy Council and by the United States
3 Secretary of Commerce under 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act of
4 1972, as amended); "coastal zone" includes areas added as a result of any boundary changes
5 approved by the board and by the United States Secretary of Commerce under 16 U.S.C.
6 1451 - 1465; "coastal zone" does not include

7 (A) those lands excluded under 16 U.S.C. 1453(1); or

8 (B) areas deleted as a result of any boundary changes by the board in conformance
9 with 16 U.S.C. 1451 - 1465;

10 (6) "consistency review" means the evaluation of a proposed project against the
11 statewide standards and the approved enforceable policies of an affected coastal district
12 under the process developed by the board;

13 (7) "department" means the Department of Commerce, Community and Economic
14 Development;

15 (8) "direct and significant impact" means an activity which proximately contributes to a
16 material change or alteration in the natural or social characteristics of a part of the state's
17 coastal area and in which

18 (A) would have a net adverse effect on the quality of the resources of the coastal
19 area;

20 (B) would limit the range of alternative uses of the resources of the coastal area;

21 or

22 (C) would, of itself, constitute a tolerable change or alteration of the resources
23 within the coastal area but which, cumulatively, would have an adverse effect;

24 (9) "district coastal management plan" means a plan developed by a coastal district,
25 including enforceable policies of that plan, setting out policies and standards to guide public
26 and private uses of land and water within that district and approved by the board as meeting
27 the requirements of this chapter and the regulations adopted under this chapter;

28 (10) "enforceable policy" means a policy established by this chapter or approved by the
29 board as a legally binding policy of the Alaska coastal management program applicable to
30 public and private activities;

31 (11) "local knowledge" means a body of knowledge or information about the coastal
32 environment or the human use of that environment, including information passed down

1 through generations, if that information is

2 (A) derived from experience and observations; and

3 (B) generally accepted by the local community;

4 (12) "project" means all activities that will be part of a proposed development and
5 includes all federal agency activities as defined in 15 C.F.R. 930.31, including lease sales and
6 development projects affecting a coastal use or resource;

7 (13) "resource agency" means

8 (A) the Department of Environmental Conservation;

9 (B) the Department of Fish and Game; or

10 (C) the Department of Natural Resources.;

11 (14) "scientific evidence" means facts or data that are

12 (A) premised upon established chemical, physical, biological, or ecosystem
13 management principles as obtained through scientific method and submitted to the
14 department to furnish proof of a matter required under this chapter;

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

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

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

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

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

23 (15) "special management area" includes areas meriting special attention and means a
24 delineated geographic area within the coastal area which is sensitive to change or alteration
25 and which, because of plans or commitments or because a claim on the resources within the
26 area delineated would preclude subsequent use of the resources to a conflicting or
27 incompatible use, warrants special management attention, or which, because of its value to
28 the general public, should be identified for current or future planning, protection, or
29 acquisition;

30 (16) "use of state concern" means a land and water use that would significantly affect the
31 long-term public interest; a "use of state concern" includes

32 (A) uses of national interest, including the use of resources for the siting of ports

1 and major facilities that contribute to meeting national energy needs, construction and
2 maintenance of navigational facilities and systems, resource development of federal
3 land, and national defense and related security facilities that are dependent upon
4 coastal locations;

5 (B) uses of more than local concern, including those land and water uses that
6 confer significant environmental, social, cultural, or economic benefits or burdens
7 beyond a single coastal district;

8 (C) the siting of major energy facilities, activities pursuant to a state oil and gas
9 lease, a state gas only lease, or a federal oil and gas lease, or large-scale industrial or
10 commercial development activities that are dependent on a coastal location and that,
11 because of their magnitude or the magnitude of their effect on the economy of the
12 state or the surrounding area, are reasonably likely to present issues of more than
13 local significance;

14 (D) facilities serving statewide or interregional transportation and
15 communication needs; and

16 (E) uses in areas established as state parks or recreational areas under AS 41.21
17 or as state game refuges, game sanctuaries, or critical habitat areas under AS 16.20.

PS1

Rep Gattb - expenses

SB — actions concurrently, Legislature
— would have to fund sequencing
— Board

Coghill / NEPA? — Fed agency

all questions about existing CZ
organiz. are time'd out...

SB of follow up response

CG: ingrained in Fed

3rd yr. 4:1 match (fed. match) budget?

5th yr. John Boncher - cap @ 2.0 m.

Wulechowski 4.0 m. 2011 fed. receipts.

(f.n. HB 130)

why is OMB estimating so low?

cost of Board - how estimated 700.0

French

could have been ~~double~~ double counting on f.n
JB SB45 costs.

Lindsay

fiscal notes / amt. of costs. where ramped up?
SB anticipate more than normal mtg level.

OMB 'offsetting cost?' 1st yr. contracting for is regul.

Gattb Reps where would they meet.

Botelho Why does Ark. need a coastal pgm. French

Congress allows States who participate in CZP to
exercise, Fed. govt. has to submit to State
review

**Joint Judiciary Committee Hearing on 11ACMP:
Coastal Management Program Initiative
– February 2012 –
Relevant Laws**

The Alaska Constitution (Article XI)

§ 1. Initiative and Referendum

The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

§ 2. Application

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

§ 3. Petition

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters who are equal in number to at least ten per cent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of those house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.

§ 4. Initiative Election

An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

§ 6. Enactment

If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

§ 7. Restrictions

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

Alaska Statutes on Initiatives

Article 01. INITIATIVE

Sec. 15.45.010. Provision and scope for use of the initiative.

The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

Sec. 15.45.020. Filing application.

An initiative is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit shall be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

Sec. 15.45.030. Form of application.

The application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

Sec. 15.45.040. Form of proposed bill.

The proposed bill shall be in the following form:

(1) the bill shall be confined to one subject;

(2) the subject of the bill shall be expressed in the title;

(3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska;"

(4) the bill may not include subjects restricted by [AS 15.45.010](#).

Sec. 15.45.050. Manner of notice.

Notice to the initiative committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application.

Sec. 15.45.060. Designation of sponsors.

The qualified voters who subscribe to the application in support of the proposed bill are designated as sponsors. The initiative committee may designate additional sponsors by giving written notice to the lieutenant governor of the names, addresses, and numerical identifiers of those so designated.

Sec. 15.45.070. Review of application for certification.

Within 60 calendar days after the date the application is received, the lieutenant governor shall review the application and shall either certify it or notify the initiative committee of the grounds for denial.

Sec. 15.45.080. Bases of denial of certification.

The lieutenant governor shall deny certification upon determining in writing that

- (1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form;
- (2) the application is not substantially in the required form; or
- (3) there is an insufficient number of qualified sponsors.

Sec. 15.45.090. Preparation of petition.

(a) If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state. Each petition must contain

- (1) a copy of the proposed bill;
- (2) an impartial summary of the subject matter of the bill;
- (3) a statement of minimum costs to the state associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition;
- (4) an estimate of the cost to the state of implementing the proposed law;
- (5) the statement of warning prescribed in AS 15.45.100;
- (6) sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition; and
- (7) other specifications prescribed by the lieutenant governor to ensure proper handling and control.

(b) Upon request of the initiative committee, the lieutenant governor shall report to the committee the number of persons who voted in the preceding general election.

Sec. 15.45.100. Statement of warning.

Each petition shall include a statement of warning that a person who signs a name other than the person's own on the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter, is guilty of a class B misdemeanor.

Sec. 15.45.105. Qualifications of circulator.

To circulate a petition booklet, a person shall be

- (1) a citizen of the United States;
- (2) 18 years of age or older; and
- (3) a resident of the state as determined under AS 15.05.020.

Sec. 15.45.110. Circulation of petition; prohibitions and penalty.

(a) The petitions may be circulated throughout the state only in person.

(b) *[Repealed, Sec. 92 ch 82 SLA 2000]*.

(c) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.

(d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

(f) In this section,

- (1) "organization" has the meaning given in AS 11.81.900;
- (2) "other valuable thing" has the meaning given in AS 15.56.030(d);
- (3) "person" has the meaning given in AS 11.81.900.

Sec. 15.45.120. Manner of signing and withdrawing name from petition.

Any qualified voter may subscribe to the petition by printing the voter's name, a numerical identifier, and an address, by signing the voter's name, and by dating the signature. A person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed.

Sec. 15.45.130. Certification of circulator.

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on

petitions not properly certified at the time of filing or corrected before the subscriptions are counted. The affidavit must state in substance

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;

(2) that the person is the only circulator of that petition;

(3) that the signatures were made in the circulator's actual presence;

(4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

Sec. 15.45.140. Filing of petition.

(a) The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them. The petition may be filed with the lieutenant governor only if it meets all of the following requirements: it is signed by qualified voters

(1) equal in number to 10 percent of those who voted in the preceding general election;

(2) resident in at least three-fourths of the house districts of the state; and

(3) who, in each of the house districts described in (2) of this subsection, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

(b) If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.

Sec. 15.45.150. Review of petition.

Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

Sec. 15.45.160. Bases for determining the petition was improperly filed.

The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that

- (1) there is an insufficient number of qualified subscribers;
- (2) the subscribers were not resident in at least three-fourths of the house districts of the state; or
- (3) there is an insufficient number of qualified subscribers from each of the house districts described in (2) of this section.

Sec. 15.45.170. Submission of supplementary petition. [Repealed, Sec. 7 ch 80 SLA 1998].

Repealed or Renumbered

Sec. 15.45.180. Preparation of ballot title and proposition.

(a) If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than 25 words, indicate the general subject of the proposition. The proposition shall give a true and impartial summary of the proposed law. The total number of words used in the summary may not exceed the product of the number of sections in the proposed law multiplied by 50. In this subsection, "section" means a provision of the proposed law that is distinct from other provisions in purpose or subject matter.

(b) The proposition prepared under (a) of this section shall comply with AS 15.80.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law.

Sec. 15.45.190. Placing proposition on ballot.

The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after

- (1) the petition has been filed;
- (2) a legislative session has convened and adjourned; and
- (3) a period of 120 days has expired since the adjournment of the legislative session.

Sec. 15.45.195. Public hearings.

(a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the written or oral testimony of one supporter and one opponent of the initiative.

(b) The lieutenant governor shall provide reasonable notice of each public hearing required under this section. The notice must include the date, time, and place of the hearing. The notice may be given using print or broadcast media. The lieutenant governor shall provide notice in a consistent fashion for all hearings required under this section.

(c) Penalties for a violation of this section may not include removal of an initiative from the ballot.

(d) If the lieutenant governor determines that it is technologically and economically feasible, the division shall provide a live audio and video broadcast of each hearing held under (a) of this section on the division's Internet website.

Sec. 15.45.200. Display of proposed law.

The director shall provide each election board with at least five copies of the proposed law being initiated, and the election board shall display at least one copy of the proposed law in a conspicuous place in the room where the election is held.

Sec. 15.45.210. Determination of void petition.

If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

Sec. 15.45.220. Adoption and effective date of proposed law.

If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.

Sec. 15.45.230. Insufficiency of application or petition. [Repealed, Sec. 7, ch 80 SLA 1998].

Repealed or Renumbered

Sec. 15.45.240. Judicial review.

Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.

Sec. 15.45.245. Delegation by lieutenant governor.

The lieutenant governor may delegate the duties imposed on the lieutenant governor by AS 15.45.010 - 15.45.240 to the director.

....

Legislative Powers

Sec. 24.05.186. Legislative hearings on initiatives certified by the lieutenant governor.

(a) A standing committee of the legislature, selected jointly by the presiding officers of the house of representatives and senate, shall hold at least one hearing on an initiative that the lieutenant governor has determined was properly filed under AS 15.45.160.

(b) The standing committee selected jointly by the presiding officers of the house of representatives and senate under (a) of this section shall hold at least one hearing under this section within 30 days after the convening of the legislative session preceding the statewide election at which the initiative proposition must appear on the election ballot under AS 15.45.190.



LAWS OF ALASKA

2010

Source
SCS CSSHB 36(JUD)

Chapter No.

73

SLA 10

AN ACT

Relating to ballot initiative proposal applications, to ballot initiatives and to those who file or organize for the purpose of filing a ballot initiative proposal, and to election pamphlet information relating to certain propositions.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to ballot initiative proposal applications, to ballot initiatives and to those who file or
2 organize for the purpose of filing a ballot initiative proposal, and to election pamphlet
3 information relating to certain propositions.

4 _____
5 * **Section 1.** AS 15.13.040(k) is amended to read:

6 (k) Every individual, person, nongroup entity, or group contributing a total of
7 \$500 or more to a group organized for the principal purpose of influencing the
8 outcome of a proposition, **and every individual, person, nongroup entity, or group**
9 **contributing a total of \$500 or more to a group organized for the principal**
10 **purpose of filing an initiative proposal application under AS 15.45.020 or that has**
11 **filed an initiative proposal application under AS 15.45.020,** shall report the
12 contribution or contributions on a form prescribed by the commission not later than 30
13 days after the contribution that requires the contributor to report under this subsection
14 is made. The report must include the name, address, principal occupation, and

1 employer of the individual filing the report and the amount of the contribution, as well
2 as the total amount of contributions made to that group by that individual, person,
3 nongroup entity, or group during the calendar year.

4 * **Sec. 2.** AS 15.13.050(a) is amended to read:

5 (a) Before making an expenditure in support of or in opposition to a candidate
6 or before making an expenditure in support of or in opposition to a ballot proposition
7 or question **or to an initiative proposal application filed with the lieutenant**
8 **governor under AS 15.45.020**, each person other than an individual shall register, on
9 forms provided by the commission, with the commission.

10 * **Sec. 3.** AS 15.13.050 is amended by adding a new subsection to read:

11 (c) If a group intends to make more than 50 percent of its contributions or
12 expenditures in support of or in opposition to a single initiative on the ballot, the title
13 or common name of the initiative must be a part of the name of the group. If the group
14 intends to make more than 50 percent of its contributions or expenditures in opposition
15 to a single initiative on the ballot, the group's name must clearly state that the group
16 opposes that initiative by using a word such as "opposes," "opposing," "in opposition
17 to," or "against" in the group's name.

any
for
C2?

18 * **Sec. 4.** AS 15.13.065(c) is amended to read:

19 (c) Except for reports required by AS 15.13.040 and 15.13.110 and except for
20 the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the
21 provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person
22 to make contributions to influence the outcome of a ballot proposition. In this
23 subsection, in addition to its meaning in AS 15.60.010, "proposition" includes

24 **(1)** an issue placed on a ballot to determine whether

25 **(A)** [(1)] a constitutional convention shall be called;

26 **(B)** [(2)] a debt shall be contracted;

27 **(C)** [(3)] an advisory question shall be approved or rejected; or

28 **(D)** [(4)] a municipality shall be incorporated;

29 **(2)** **an initiative proposal application filed with the lieutenant**
30 **governor under AS 15.45.020**.

31 * **Sec. 5.** AS 15.13.110(e) is amended to read:

1 (e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall
2 shall report 30 days after its first filing with the lieutenant governor. Thereafter, each
3 group shall report within 10 days after the end of each calendar quarter on the
4 contributions received and expenditures made during the preceding calendar quarter
5 until reports are due under (a) of this section.

6 * Sec. 6. AS 15.13.110 is amended by adding a new subsection to read:

7 (g) An initiative committee, person, group, or nongroup entity receiving
8 contributions exceeding \$500 or making expenditures exceeding \$500 in a calendar
9 year in support of or in opposition to an initiative on the ballot in a statewide election
10 or an initiative proposal application filed with the lieutenant governor under
11 AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter
12 on the contributions received and expenditures made during the preceding calendar
13 quarter until reports are due under (a) and (b) of this section. If the report is a first
14 report, it must cover the period beginning on the day an initiative proposal application
15 is filed under AS 15.45.020 and ending three days before the due date of the report.

16 * Sec. 7. AS 15.13.400(4) is amended to read:

17 (4) "contribution"

18 (A) means a purchase, payment, promise or obligation to pay,
19 loan or loan guarantee, deposit or gift of money, goods, or services for which
20 charge is ordinarily made, **and includes the payment by a person other than**
21 **a candidate or political party, or compensation for the personal services of**
22 **another person, that is rendered to the candidate or political party,** and
23 that is made for the purpose of

24 (i) influencing the nomination or election of a
25 candidate;

26 (ii) [, AND IN AS 15.13.010(b) FOR THE PURPOSE
27 OF] influencing a ballot proposition or question; **or**

28 (iii) **supporting or opposing an initiative proposal**
29 **application filed with the lieutenant governor under AS 15.45.020** [,
30 INCLUDING THE PAYMENT BY A PERSON OTHER THAN A
31 CANDIDATE OR POLITICAL PARTY, OR COMPENSATION FOR

1 THE PERSONAL SERVICES OF ANOTHER PERSON, THAT ARE
2 RENDERED TO THE CANDIDATE OR POLITICAL PARTY];

3 (B) does not include

4 (i) services provided without compensation by
5 individuals volunteering a portion or all of their time on behalf of a
6 political party, candidate, or ballot proposition or question;

7 (ii) ordinary hospitality in a home;

8 (iii) two or fewer mass mailings before each election by
9 each political party describing the party's slate of candidates for
10 election, which may include photographs, biographies, and information
11 about the party's candidates;

12 (iv) the results of a poll limited to issues and not
13 mentioning any candidate, unless the poll was requested by or designed
14 primarily to benefit the candidate;

15 (v) any communication in the form of a newsletter from
16 a legislator to the legislator's constituents, except a communication
17 expressly advocating the election or defeat of a candidate or a
18 newsletter or material in a newsletter that is clearly only for the private
19 benefit of a legislator or a legislative employee; or

20 (vi) a fundraising list provided without compensation
21 by one candidate or political party to a candidate or political party;

22 * **Sec. 8.** AS 15.13.400(6) is amended to read:

23 (6) "expenditure"

24 (A) means a purchase or a transfer of money or anything of
25 value, or promise or agreement to purchase or transfer money or anything of
26 value, incurred or made for the purpose of

27 (i) influencing the nomination or election of a candidate
28 or of any individual who files for nomination at a later date and
29 becomes a candidate;

30 (ii) use by a political party;

31 (iii) the payment by a person other than a candidate or

1 political party of compensation for the personal services of another
2 person that are rendered to a candidate or political party; [OR]

3 (iv) influencing the outcome of a ballot proposition or
4 question; or

5 **(v) supporting or opposing an initiative proposal**
6 **application filed with the lieutenant governor under AS 15.45.020;**

7 (B) does not include a candidate's filing fee or the cost of
8 preparing reports and statements required by this chapter;

9 (C) includes an express communication and an electioneering
10 communication, but does not include an issues communication;

11 * **Sec. 9.** AS 15.13.400(8) is amended to read:

12 (8) "group" means

13 (A) every state and regional executive committee of a political
14 party; [AND]

15 (B) any combination of two or more individuals acting jointly
16 who organize for the principal purpose of influencing the outcome of one or
17 more elections and who take action the major purpose of which is to influence
18 the outcome of an election; a group that makes expenditures or receives
19 contributions with the authorization or consent, express or implied, or under
20 the control, direct or indirect, of a candidate shall be considered to be
21 controlled by that candidate; a group whose major purpose is to further the
22 nomination, election, or candidacy of only one individual, or intends to expend
23 more than 50 percent of its money on a single candidate, shall be considered to
24 be controlled by that candidate and its actions done with the candidate's
25 knowledge and consent unless, within 10 days from the date the candidate
26 learns of the existence of the group the candidate files with the commission, on
27 a form provided by the commission, an affidavit that the group is operating
28 without the candidate's control; a group organized for more than one year
29 preceding an election and endorsing candidates for more than one office or
30 more than one political party is presumed not to be controlled by a candidate;
31 however, a group that contributes more than 50 percent of its money to or on

1 behalf of one candidate shall be considered to support only one candidate for
2 purposes of AS 15.13.070, whether or not control of the group has been
3 disclaimed by the candidate; **and**

4 **(C) any combination of two or more individuals acting**
5 **jointly who organize for the principal purpose of filing an initiative**
6 **proposal application under AS 15.45.020 or who file an initiative proposal**
7 **application under AS 15.45.020;**

8 * **Sec. 10.** AS 15.45.080 is amended to read:

9 **Sec. 15.45.080. Bases of denial of certification.** The lieutenant governor shall
10 deny certification upon determining in writing that

11 (1) the proposed bill to be initiated is **not confined to one subject or**
12 **is otherwise** not in the required form;

13 (2) the application is not substantially in the required form; or

14 (3) there is an insufficient number of qualified sponsors.

15 * **Sec. 11.** AS 15.45.090(a) is amended to read:

16 (a) If the application is certified, the lieutenant governor shall prepare a
17 sufficient number of sequentially numbered petitions to allow full circulation
18 throughout the state. Each petition must contain

19 (1) a copy of the proposed bill [IF THE NUMBER OF WORDS
20 INCLUDED IN BOTH THE FORMAL AND SUBSTANTIVE PROVISIONS OF
21 THE BILL IS 500 OR LESS];

22 (2) an impartial summary of the subject matter of the bill;

23 (3) a statement of minimum costs to the state associated with
24 certification of the initiative application and review of the initiative petition, excluding
25 legal costs to the state and the costs to the state of any challenge to the validity of the
26 petition;

27 (4) an estimate of the cost to the state of implementing the proposed
28 law;

29 (5) the statement of warning prescribed in AS 15.45.100;

30 (6) sufficient space for the printed name, a numerical identifier, the
31 signature, the date of signature, and the address of each person signing the petition;

1 and

2 (7) other specifications prescribed by the lieutenant governor to ensure
3 proper handling and control.

4 * **Sec. 12.** AS 15.45 is amended by adding a new section to read:

5 **Sec. 15.45.195. Public hearings.** (a) At least 30 days before the election at
6 which an initiative is to appear on the ballot, the lieutenant governor or a designee of
7 the lieutenant governor shall hold two or more public hearings concerning the
8 initiative in each judicial district of the state. Each public hearing under this section
9 shall include the written or oral testimony of one supporter and one opponent of the
10 initiative.

11 (b) The lieutenant governor shall provide reasonable notice of each public
12 hearing required under this section. The notice must include the date, time, and place
13 of the hearing. The notice may be given using print or broadcast media. The lieutenant
14 governor shall provide notice in a consistent fashion for all hearings required under
15 this section.

16 (c) Penalties for a violation of this section may not include removal of an
17 initiative from the ballot.

18 (d) If the lieutenant governor determines that it is technologically and
19 economically feasible, the division shall provide a live audio and video broadcast of
20 each hearing held under (a) of this section on the division's Internet website.

21 * **Sec. 13.** AS 15.58.010 is amended to read:

22 **Sec. 15.58.010. Election pamphlet.** Before each state general election, and
23 before each state primary or special election at which a ballot proposition is scheduled
24 to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least
25 one election pamphlet to each household identified from the official registration list.
26 The pamphlet shall be prepared on a regional basis as determined by the lieutenant
27 governor.

28 * **Sec. 14.** AS 15.58.020(b) is amended to read:

29 (b) Each primary or special election pamphlet shall contain only the
30 information specified in (a)(6) and (a)(9) of this section for each ballot measure
31 scheduled to appear on the primary or special election ballot.

LEGAL SERVICES

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MEMORANDUM

January 28, 2012

SUBJECT: Coastal Management Program Legislation
(Work Order No. 27-LS1217)

TO: Representative Mike Chenault
Attn: Tom Wright

FROM: Doug Gardner
Director *D. Gardner*
Kathryn L. Kurtz *KK*
Assistant Revisor

Alpheus M. Bullard
Legislative Counsel *A. Bullard*

1. Will the coastal management program initiative appear on the primary election ballot, or the general election ballot?¹

A. Summary

Taking certain assumptions into account,² the following bullet points explain when the coastal management program initiative will appear on the ballot this year, depending on when the legislature adjourns.

- If the legislature adjourns on April 15th (the 90th day), or on any day on or before April 29th (the 104th day), the initiative would appear on the primary election ballot.

¹ You also asked whether we could identify any aspect of the ACMP initiative that is unconstitutional; specifically you asked whether the initiative is unconstitutional because if it ultimately appears on the ballot and is approved by the voters, the ACMP program could not, in reality, function without legislative appropriation. I note that the attorney general, in advising Lieutenant Governor Mead Treadwell by letter on November 29, 2011, discussed this issue at pages 7 through 10 of the attorney general's letter. I do not disagree with the analysis on these pages of the memorandum, and attach this discussion to this memorandum as it answers your constitutional inquiry regarding appropriation.

² The following assumptions apply:

- 1) the second regular session of the Twenty-Seventh Alaska State Legislature was the first legislative session to convene after the filing of the initiative;
- 2) there are no special sessions called during the course of the regular session; and
- 3) there are no special elections called prior to the general election.

- If the legislature adjourns on April 30th or May 1st, the initiative should appear on the general election ballot, but there is a possibility that the lieutenant governor would arrive at a different interpretation of the relevant statutes and constitutional provisions, and place the measure on the primary election ballot.
- If the legislature adjourns on or after May 2nd (the 107th day), the initiative would appear on the general election ballot.

The following analysis provides a detailed explanation of the basis for these conclusions.

B. Interpreting the statutory and constitutional provisions relating to timing of the placement of initiatives on the ballot

The key issue is how the lieutenant governor will calculate the 120-day period required under AS 15.45.190(3) and art. XI, sec. 4 of the state's constitution. AS 15.45.190 provides:

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after

- (1) the petition has been filed;
- (2) a legislative session has convened and adjourned; and
- (3) a period of 120 days has expired since the adjournment of the legislative session.

Article XI, sec. 4 of the Constitution of the State of Alaska provides:

Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

The statutory and constitutional provisions would require the lieutenant governor to count 120 days after the session adjourned and before the day of the election. If the legislature adjourned on or before April 29th, the lieutenant governor should place the initiative on the primary election ballot, since 120 days or more will have passed after adjournment and before the day of the primary election.³ If the legislature adjourned on April 30, there would be only 119 days after adjournment and before the primary election (starting

³ The primary election this year will be held on August 28th. If the legislature adjourned on April 29th, and the lieutenant governor began counting the 120-day period on April 30, he would count one day in April, 31 in May, 30 in June, 31 in July, and 27 in August, a total of 120 days.

May 1 and counting through August 27), so an initiative filed before the session convened should appear on the general election ballot.

However, it is possible that the lieutenant governor might interpret the 120-day period to include the day of the primary election, in which case he might still place the initiative on the primary election ballot. This reading is not persuasive, since the constitution says "*more than one hundred-twenty days after adjournment,*" and this suggests that one must begin counting the day after adjournment, and that the election would have to be at least 121 days from that date. Nonetheless, it is a possibility you should consider.

Similarly, if the lieutenant governor reads the statute and constitution as permitting him to count both the last day of the legislative session and the day of the primary election in the 120-day period, he might place the measure on the primary election ballot even if the legislature adjourned on May 1.⁴ Again, this reading is not supported by the language of the statute and the constitution, but the possibility of the lieutenant governor adopting this interpretation cannot be ruled out.

If the legislature adjourned on or after May 2, the measure could not be placed on the primary election ballot. Even counting both the last day of session and the day of the primary election, one only arrives at a period of 119 days,⁵ which clearly does not satisfy the statutory and constitutional requirement.

C. The possibility of a special session

The discussion above assumes that there will not be a special session of the legislature held concurrently with the current regular session. The constitutional language requires placement on the ballot for "the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing." This language ("the") appears to anticipate a single legislative session. The statutory language is slightly different, requiring placement on the ballot after "a legislative session has convened and adjourned." If the legislature were to convene a special session during the current regular session, and adjourn that special session prior to adjournment of the regular session,⁶ the lieutenant governor could arguably start counting the 120-day period after adjournment of the special session, rather than the regular session. However, the Alaska legislature has never, to our knowledge, held a concurrent special session.⁷ Also, a court might insist on counting from the adjournment of the first legislative session convened after the initiative petition was filed rather than the first adjourned.

⁴ Counting 31 days in May, 30 in June, 31 in July, and 28 -- including the day of the primary -- in August, for a total of 120 days.

⁵ Counting 30 days in May, 30 in June, 31 in July, and 28 in August, a total of 119.

⁶ Special sessions are limited to 30 days under art. II, sec. 9 of the Constitution of the State of Alaska.

⁷ Perhaps this is because questions might be raised about the permissibility of such a special session under the state constitution.

D. The possibility of a special election

The above discussion also assumes that there will *not* be a statewide special election held between the 2012 primary election and the 2012 general election. A special election could be called under AS 15.40.140 if there were a vacancy in the office of United States Senator or under AS 15.40.230 if a vacancy occurred in the office of the governor. For example, it is conceivable that if there were a vacancy in the office of United States Senator occurring 59 days or less before the primary election the governor might call a special election to be held after the primary but before the general election (if the general election were more than 90 days after the vacancy). Because the language of the constitution calls for placement of an initiative on the ballot at the first statewide election held more than 120 days after adjournment of the legislative session, if there were a special election held after the primary election but before the general election, an initiative could appear on the special election ballot.

Note that a special session held after the regular session convened and adjourned would not affect the analysis. AS 15.45.190 requires placement of the initiative on the ballot of the first statewide election that is held after "(2) a legislative session has convened and adjourned; and (3) a period of 120 days has expired since the adjournment of the legislative session." (Emphasis added.) Although the use of "a" in paragraph two invites speculation about multiple legislative sessions, the use of "the" in paragraph three clearly relates to the single session referred to in paragraph two. A single session would have to convene and adjourn before the 120-day period would begin. If the current regular session were to last for 90 days, and if it were followed by a 30-day special session, an initiative filed before the convening of the regular session would be placed on the primary election ballot (see the analysis above). The occurrence of a subsequent special session should not affect the calculus, regardless of the date of adjournment of the subsequent special session.

E. The 90-day session limit

Obviously, a 107-day session would extend beyond the statutory 90-day session limit found in AS 24.05.150(b). However, it would fall well within the 121-day limit established in art. II, sec. 8 of the Constitution of the State of Alaska. Despite the statutory session limit, given the court's reluctance to interfere with matters of legislative procedure,⁸ it is unlikely that a court would order the legislature to adjourn if it remained in session longer than 90 days. Also, the statute and the constitution require the lieutenant governor to count 120 days from adjournment of the legislature, not from the date of the 90-day session limit.

The bottom line is, to ensure that an initiative filed before the 2012 regular session appears on the 2012 general election ballot, rather than the primary election ballot, the legislature would need to adjourn May 2nd or later. That amounts to a session length of 107 days or longer.

⁸ See *Malone v. Meekins*, 650 P.2d 351 (Alaska 1980); *Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987).

2. Would a bill modeled on the provisions of the former Alaska Coastal Management Program, as those provisions would have been amended by the substantive portions of SCS CSHB 106(FIN) ("HB 106"), be interpreted as "substantially the same" as the initiative entitled "An Act establishing the Alaska Coastal Management Program"?

While both HB 106 and the initiative have the same general purpose -- establishing a state coastal management program -- the means by which that purpose are effectuated would be different. Given the relative scarcity of prior court cases interpreting the state constitution's art. XI, sec. 4 "substantially the same" language, it's not clear to what degree this difference might result in HB 106 and the initiative being interpreted as not substantially the same.

Discussion

Under art. XI, sec. 4 of the Constitution of the State of Alaska, a proposed initiative is void if a law is enacted that is "substantially the same measure" as the proposed initiative.⁹ Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an Act of the legislature is substantially the same as a proposed initiative.¹⁰

A. "Substantially the same" test in *Warren v. Boucher*

The test of how similar a bill and an initiative must be for the bill to invalidate the initiative was first set out in *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975):

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the

⁹ Article XI, sec. 4, Constitution of the State of Alaska states:

INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

¹⁰ AS 15.45.210 states:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

permitted variance before the legislative act becomes no longer substantially the same.

Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

543 P.2d at 736.

B. "Substantially the same" test revisited in *Trust the People*

In *State of Alaska v. Trust the People Initiative Committee*, 113 P.3d 613, 621 (Alaska 2005) (considering whether an initiative was void under art. XI, sec. 6 of the state constitution), the court cited the *Warren v. Boucher* test:

A court must first determine the scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next, it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally it must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.

1. Scope of subject matter

Turning to the first part of the test, as articulated by the court in *Trust the People*, it should be noted that the subject matter of this initiative, the establishment of an Alaska Coastal Management Program, is relatively complex and its reach is broad. Correspondingly, the legislature's discretion to vary from particular features of the initiative is broader in this instance than it might be in the context of a different initiative (i.e. the filling of a U.S. Senate vacancy in *Trust the People*). HB 106 would most likely be interpreted to satisfy this element of the test.

2. Purpose of legislation and initiative

The next part of the test consists of examining whether the purposes of the legislation and the initiative are the same. The *Warren v. Boucher* test asks whether "the legislative act achieves the same general purpose as the initiative." *Id.* The establishment of a state coastal management program under both HB 106 and the initiative would, if approved by the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management under the Coastal Management Act of 1972 (16 U.S.C. §§ 1451 - 1465), enable the state to formally review and influence federal activities affecting Alaska, allow the state to receive Coastal Zone Management Act grant funds, reestablish

a coordinated permitting process for projects requiring state and federal authorizations, and result in greater local participation in state and federal permitting processes. Additionally, it should be noted that for a state coastal management program to be approved, the Secretary of Commerce must find that the program includes certain program elements that are consistent with Congressional declaration of policy (purpose) found at 16 U.S.C. § 1452.¹¹ Both HB 106 and the initiative are likely to be found to meet these federal requirements. Because of this, the general purpose of HB 106 would likely be interpreted as the same as the general purpose of the initiative, satisfying the second element of the *Trust the People* test.

3. "Means"

The third prong of the test involves considering whether the means by which this general purpose is effectuated is the same in the bill and the initiative. It is here that HB 106 and the initiative could be found to differ, because the initiative provides for greater local participation and control than the state's former coastal management program as it would have been modified by HB 106.

The former program, at the time of its repeal, was housed within the Department of Natural Resources, and that department was responsible for coordinating consistency reviews, reviewing and approving coastal management plans, offering technical assistance to coastal resource districts, and offering statutory and regulatory changes to improve coastal management.¹² The initiative ends direct state agency control of the program, instead vesting control of the program in a Coastal Policy Board (board),¹³ the majority of whose members are residents of the coastal regions of the state.¹⁴ Similarly, the former program prevented coastal resource districts or areas from adopting enforceable policies relating to air, land, and water quality issues that were under the Department of Environmental Conservation's authority (colloquially known as the "DEC carve-out"),¹⁵ whereas the initiative does not.

¹¹ See 16 U.S.C. § 1455(d)(2) for a list of the program elements.

¹² The consistency review process, in which private and public land and water uses and natural resources in the coastal zone are managed in a manner consistent with the policies of a state's coastal management program, is the heart of the 1972 Coastal Management Act (16 U.S.C. §§ 1450 - 1464).

¹³ While SCS CSHB 106(FIN) established a board, the board was advisory in nature. See secs. 3, 12, and 13 of 27-GH1965\H.

¹⁴ The initiative's board would be located in the Department of Commerce, Community, and Economic Development.

¹⁵ See former AS 46.40.040(b), AS 46.40.040(c), and AS 46.40.096(i). For a discussion of the "carve-out," see the Alaska Coastal Management Program Audit Part I, pages 25 - 27, available January 27, 2012 at: <http://www.legaudit.state.ak.us/pages/digests/2011/30060adig.htm>.

Representative Mike Chenault
January 28, 2012
Page 8

C. Conclusion

It is hard to predict how the lieutenant governor, or a court, would interpret the significance of this different balance of power between state agencies and local governments in determining whether the bill would be "substantially the same" as the initiative. However, if you want to draft legislation that will increase the odds of voiding the initiative and being considered "substantially the same," a bill that provides greater local control and participation than the former program did (and HB 106 would have) could only help the effort.

DDG:KLL:TLAB:ljw
12-057.ljw

Attachment

Sean Parnell, Governor

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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November 29, 2011

The Honorable Mead Treadwell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Review of 11ACMP Initiative Application
A.G. File No. JU2011200659

Dear Lieutenant Governor Treadwell:

You have asked us to review an application for an initiative entitled "An Act establishing the Alaska Coastal Management Program." Despite numerous potential constitutional concerns with this initiative bill as discussed herein, and numerous irregularities involving draftsmanship, inconsistencies, and ambiguities in the bill itself, the application complies with the specific constitutional and statutory provisions governing the initiative process and we therefore recommend that you certify the application.

I. SUMMARY OF THE PROPOSED BILL

A. BRIEF SUMMARY AND BACKGROUND

The bill proposed by this initiative would create an Alaska Coastal Management Program (hereafter "ACMP"). In 2005, the legislature repealed the state's prior coastal management program with an effective sunset date of July 1, 2011.¹ On June 28, 2011, the legislature adjourned the second of two special sessions without passing legislation required to extend the prior coastal management program. Because the prior coastal management program was fully repealed, the similarities and differences between this initiative bill and the prior program are irrelevant unless expressly noted otherwise. Therefore we must analyze the initiative bill on its own merits.

¹ See former AS 46.39.010-.040; AS 46.40.010-46.40.210 (repealed ch. 31, SLA 2005); AS 44.66.020- 44.66.030.

B. SECTIONAL SUMMARY

The bill proposed by this initiative is 15 pages long, double-spaced, and consists of one designated section containing 18 new statutory provisions. The bill amends Title 46 of the Alaska Statutes by adding a new chapter entitled "Alaska Coastal Management Program." The 18 new statutory provisions are summarized as follows:

- **AS 46.41.010. Coastal Policy Board.** This provision would create operational criteria for a 13-member Coastal Policy Board in the Department of Commerce, Community and Economic Development (hereafter "the Department of Commerce"). The 13 governor-appointed members would include nine coastal resource district representatives and the four state commissioners from the Alaska Department of Environmental Conservation, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and the Alaska Department of Commerce.
- **AS 46.41.020. Powers and duties of the board.** This provision describes the proposed powers and duties of the Coastal Policy Board. In significant part, this provision would require the Coastal Policy Board to develop an interagency program of strategic coastal and ocean planning for each geographic region of the state. The provision also lists a number of other duties, such as to direct the Department of Commerce to seek required federal approval of the ACMP; to review, approve, and evaluate coastal district management plans; to establish coordination among state agencies to facilitate the ACMP; to contract for necessary services; to apply for and accept grants, contributions, and appropriations; and to review and approve regulations necessary to implement the coastal management program under this chapter and the federal Coastal Zone Management Act.
- **AS 46.41.030. Division of Coastal Management.** This provision would create a division of ocean and coastal management within the Department of Commerce. The division's duties would include issuing state consistency determinations and responding to federal consistency determinations and certifications; adopting regulations approved by the Coastal Policy Board; providing data and information to coastal districts to carry out their planning and management functions; and developing and maintaining a financial assistance program to help coastal districts.

- **AS 46.41.040. Development of Alaska Coastal Management Program.** This provision would direct the promulgation of regulations for statewide coastal standards, and the criteria and procedures for the preparation and approval of district coastal management plans and consistency review procedures for coastal projects. It would also restore the coastal districts, coastal district boundaries, and approved coastal management plans that were in effect as of June 30, 2011.
- **AS 46.41.050. Objectives.** This provision establishes objectives for the ACMP, which are largely the same as those in the prior coastal management program. The provision adds that the coast should be used, managed, restored, and enhanced “for this and succeeding generations.” It also adds three objectives: (1) the coordination of coastal planning among government and citizens; (2) public and government participation in the program; and (3) the requirement that state agencies comply with the program.
- **AS 46.41.060. Development of district coastal management plans.** This provision would require coastal districts to develop and adopt district coastal management plans, and would provide requirements for the plans and for the plans’ policies.
- **AS 46.41.070. Submission of district plans by coastal districts.** This provision would require coastal districts to review their coastal management plans within one year after the effective date of implementing regulations and submit any necessary changes to the plans to the Department of Commerce for review and approval by the Coastal Policy Board.
- **AS 46.41.080. Implementation of district coastal management plans.** This provision would require districts to implement plans when the district has and exercises zoning or other controls on the use of resources within the district. Where a district does not have or exercise zoning or other controls on the use of resources, state agencies would implement the district plan.
- **AS 46.41.090. Compliance and enforcement.** This provision would require municipalities and state resource agencies to administer land and water use regulations or controls in conformity with district plans, and

states that the superior court has jurisdiction to enforce lawful orders of the board and the Department of Commerce.

- **AS 46.41.100. Coastal management plans in the unorganized borough.** This provision would require coastal resource service areas in unorganized boroughs to exercise all authorities and perform duties required by the chapter.
- **AS 46.41.110. Coastal resource service areas.** This provision would provide for the establishment of coastal resource service areas and allow such areas to be geographically linked to pre-existing regional educational attendance areas established under AS 14.08.031.
- **AS 46.41.120. Organization of a coastal resource service area.** This provision would permit the organization of coastal resource service areas by petition of voters within the area or by resolution approved by the relevant city or village council and submitted to the voters at an election at the council's request.
- **AS 46.41.130. Coastal resource service area boards.** This provision would create elected boards consisting of seven members each, representing the population of the coastal resource service areas. The boards would have the powers and duties of coastal districts.
- **AS 46.41.140. Elections in coastal resource service areas.** This provision would establish that the lieutenant governor would administer elections of board members of coastal resource service areas and could adopt regulations for these elections.
- **AS 46.41.150. Preparation of district coastal management program by the Department of Commerce.** This provision would allow the Coastal Policy Board to submit a district plan to the legislature for consideration if a coastal resource service area rejects organization. At the request of the Coastal Policy Board, the Department of Commerce would complete a district plan for a coastal resource service area that has been organized but that has failed on its own to make substantial progress in the plan.
- **AS 46.41.160. Approval of plans in coastal resource service areas.** This provision would create a process through which district coastal

management plans would be submitted for review to each city or village within the applicable coastal resource service area, which would then have 60 days to approve or object to the plan.

- **AS 46.41.170. Cooperative administration.** This provision would include a city within an adjacent coastal resource service area if it is in a coastal area but is not part of the coastal resource service area, unless the city opts out by resolution. The provision further specifies that the chapter as a whole does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area.
- **AS 46.41.180. Construction with other laws.** This provision would set forth the relationship between the new chapter and state jurisdiction, state requirements imposed under federal law, and municipal zoning and planning authority.
- **AS 46.41.900. Definitions.** This provision would set out definitions for the new chapter 41.

II. ANALYSIS

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative and within 60 calendar days of receipt either “certify it or notify the initiative committee of the grounds for denial.” The application for the 11ACMP initiative was filed on October 7, 2011. The 60th calendar day after the filing date is December 6, 2011. Under AS 15.45.080, certification shall only be denied if: (1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.

A. FORM OF THE PROPOSED BILL

In evaluating an initiative application, you must determine whether the application is in its “proper form.”² Specifically, you must inquire whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the

² Alaska Const. art. XI, § 2.

initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”³

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that: (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, “Be it enacted by the People of the State of Alaska”; and (4) the bill not include prohibited subjects. The prohibited subjects, which are identified in AS 15.45.010 and article XI, section 7 of the Alaska Constitution, are: (1) dedication of revenue; (2) the making or repealing of appropriations; (3) the creation of courts, the definition of their jurisdiction, or prescribing rules of court; and (4) the enactment of local or special legislation.

This initiative bill meets the first three requirements. It is confined to one subject, the Alaska Coastal Management Program; the subject is expressed in the title, “An Act establishing the Alaska Coastal Management Program”; and the required enacting clause is present.

Although there are concerns as to whether the initiative bill complies with the requirement that it not contain a prohibited subject, the Alaska Supreme Court has adopted a “deferential attitude toward initiatives,”⁴ and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.⁵ Accordingly, we have analyzed the bill with these principles in mind and conclude that the initiative bill contains no prohibited subject. As such, the fourth requirement relating to the form of the bill is therefore satisfied.

³ *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988) (citing *Boucher v. Engstrom*, 528 P.2d 456, 460-61 (Alaska 1974) (overruled on other grounds)).

⁴ *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

⁵ *McAlpine*, 762 P.2d at 91 (Alaska 1988); *Yute Air*, 698 P.2d at 1181.

1. Does the Bill Make an Appropriation?

Six provisions of this initiative bill appear at first blush to implicate the restriction against making an appropriation by initiative.⁶ When viewed in the context of the entire initiative bill and the case law governing appropriations in such bills, however, none of these six provisions constitutes a prohibited appropriation. In reaching this conclusion, we are mindful of the firmly-held principle that unless an initiative bill is “clearly unconstitutional,” it should reach the ballot and be left to the voters to decide.⁷ “Merely doubtful” legality is not enough.⁸ Because no provision of the bill makes a clearly unconstitutional appropriation, certification should not be denied on that basis.

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, the initiative process may not be used to “make or repeal appropriations.” The Alaska Supreme Court has held that these provisions “prohibit an initiative whose primary object is to require the outflow of state assets” in the form of either land or money.⁹ A key element in determining whether an initiative makes an appropriation is whether the initiative bill would “designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action.”¹⁰ Specifically, the analysis is whether the initiative sets aside specific sums of money for a specific purpose that is “ascertainable” and “definite,” as opposed to being “ancillary,” “incidental,” or “redundant.”¹¹ The Alaska Supreme Court has found that laws that “merely create new government programs or liabilities do not constitute appropriations” in the context of

⁶ Proposed AS 46.41.020(a)(7); Proposed AS 46.41.030; Proposed AS 46.41.030(b)(4); Proposed AS 46.41.010(h); Proposed AS 46.41.130(h); and Proposed AS 46.41.140.

⁷ *Kohlhaas v. State, Office of Lieutenant Governor*, 147 P.3d 714, 717 (Alaska 2006) (emphasis added); see also *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)(same).

⁸ *Yute Air*, 698 P.2d at 1181.

⁹ *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979).

¹⁰ *McAlpine*, 762 P.2d at 91.

¹¹ *Id.* at 89-90.

initiatives.¹² Indeed, the lieutenant governor must include in the petition booklets that circulate after certification “an estimate of the cost to the state of implementing the proposed law.”¹³ Moreover the legislature in fact anticipates that implementing a law appropriately enacted by initiative will have associated costs, and the existence of such costs does not alone constitute an appropriation.

The first provision in question would require the Department of Commerce “to apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds that may become available for coastal planning and management.”¹⁴ This provision does not designate the use of state assets, but merely directs a state agency to seek funding sources for coastal planning and management. This provision therefore does not make an appropriation.

Second, the bill creates a Division of Ocean and Coastal Management.¹⁵ This proposed division would have four tasks: (1) to respond to all federal consistency determinations and certifications authorized by the federal Coastal Zone Management Act and issue state consistency determinations; (2) to adopt regulations; (3) to assure continued provision of data and information to coastal districts to carry out planning and management functions; and (4) to develop and maintain a program of financial assistance.

Although this portion of the bill creates a new division in the Department of Commerce, as noted above the mere creation of a government program or entity does not of itself constitute a prohibited appropriation.¹⁶ The Alaska Supreme Court adopted this principle in *McAlpine v. University of Alaska*, when it cited favorably to case law concluding that an initiative establishing a government program does not violate the prohibition against the use of initiatives for appropriation if the initiative itself commits no assets to the program. The funding level for the program still “rests within the power”

¹² *Id.* at 90.

¹³ AS 15.45.090(4).

¹⁴ Proposed AS 46.41.020(a)(7).

¹⁵ Proposed AS 46.41.030.

¹⁶ *McAlpine*, 762 P.2d at 90.

of the legislature, and that is dispositive.¹⁷ The legislature would have complete discretion to determine what types and levels of funding the new division would receive, and further legislative action would be required to appropriate any funds for that purpose. The creation of this division does not “designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action.”¹⁸ Nor does creation of the division set aside specific sums of money for a specific purpose that is “ascertainable” and “definite.”¹⁹ Indeed, the provision designates the use of no state assets at all. An unfunded mandate is not an appropriation. The fact that a new agency would have costs, potentially including personnel and operating expenses, does not render the creation of the agency an appropriation. Accordingly, the creation of the division and its duties, without more, does not amount to a prohibited appropriation.

The third provision in question would require the Division of Ocean and Coastal Management to “develop and maintain a program of financial assistance to aid coastal districts in the development and implementation of district coastal management plan.” [sic].²⁰ This provision simply directs the Division of Ocean and Coastal Management to develop and maintain a program of financial assistance. It creates a new government program, but says nothing about how, or from what source, such a program would be funded. And it does not designate the use of state assets at all, much less in a manner that is executable, mandatory, and reasonably definite with no further legislative action. This provision therefore does not make an appropriation.

The fourth and fifth such provisions provide that members and alternates of the Coastal Policy Board and members of the Coastal Resource Service Area Boards would be entitled to per diem and travel expenses “authorized by law for members of boards and commissions.”²¹ Although these provisions technically entitle board members to state funds in the form of per diem and travel expenses, these expenses are, by the express

¹⁷ *Id.* (citing *Dist. of Columbia Bd. of Elections and Ethics v. Dist. of Columbia*, 520 A.2d 671, 675 (D.C.App. 1986)).

¹⁸ *Id.* at 91.

¹⁹ *Id.* at 89-90.

²⁰ Proposed AS 46.41.030(b)(4).

²¹ Proposed AS 46.41.010(h) and Proposed AS 46.41.130(h).

terms of the provisions, no different than those already authorized for members of boards and commissions. The per diem expenses and travel expenses do not set aside any specific amount of state assets, but rather are incidental liabilities that flow from the creation of the new government program and its implementing boards, and by the express terms of the bill are no different from the state liability that accrues to any other board or commission. Further, the outflow of state assets is clearly not the primary object of this bill. Thus, this provision is likely not a prohibited appropriation.²²

Finally, the bill provides that “the state shall pay all election costs” to administer and conduct the elections of coastal resource service area board members.²³ Again, the elections system created by this initiative bill and the costs of implementing that system are incidental and ancillary to the creation of the program rather than its primary objective, and no specific amount of state assets is set aside or dedicated to cover the costs of these elections. This is likewise not a prohibited appropriation.

2. Does the Bill Dedicate Revenue?

This initiative bill proposes a new “objectives” statute, providing in part that “[t]he Alaska coastal management program shall be consistent with the following objectives ... the recognition of the need for a ... contribution of a share of the state’s resources to meet national energy needs.”²⁴ Under article XI, section 7 of the Alaska Constitution, the initiative process may not be used to “dedicate revenues.” Likewise, under AS 15.45.010, an initiative “may not be proposed to dedicate revenue.”

The vague “objective” of “recognition” of an ongoing need to utilize an unspecified type or amount of state resources does not amount to the dedication of revenue, so this provision does not violate that prohibition.

²² A similar analysis would apply to proposed AS 46.41.010(i), requiring department staff to provide administrative support for the board and requiring the department, at the board’s direction, to contract with or employ personnel or consultants the department considers necessary to assist the board in carrying out its duties and responsibilities.

²³ Proposed AS 46.41.140.

²⁴ Proposed AS 46.41.050(7) (emphasis added).

3. Does the Bill Define the Jurisdiction of Courts?

This initiative bill contains a provision that would give Alaska's superior courts "jurisdiction to enforce lawful orders of the board and the department under this chapter."²⁵ Accordingly, this provision raises the question whether the initiative bill "defines the jurisdiction of courts" in violation of the constitutional and statutory provisions governing the use of the initiative. Because the provision neither limits nor expands the existing jurisdiction of the superior court, we conclude that it does not define the jurisdiction of courts.

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, the initiative process may not be used to "define the jurisdiction of courts." The Alaska Supreme Court has not interpreted this particular restriction, but minutes from the Alaska Constitutional Convention reveal that the delegates were concerned primarily with the creation of special courts for special purposes by use of the initiative.²⁶

Article IV, section 3 of the Alaska Constitution establishes the superior court as "the trial court of general jurisdiction" in the state. This constitutional provision is implemented by statute at AS 22.10.010-AS 22.10.190. Alaska Statute 22.10.020(a) provides that "[t]he superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters" The Alaska Supreme Court has held that trial courts of general jurisdiction such as the superior court have "traditionally been regarded as having the power to hear all controversies which may be brought before a court within legal bounds of rights or remedies, except insofar as has been expressly and unequivocally denied by the state's constitution or statutes."²⁷

In giving the superior court "jurisdiction to enforce lawful orders of the board and the department under this chapter,"²⁸ the initiative bill does not limit the existing

²⁵ Proposed AS 46.41.090(b).

²⁶ 1987 Inf. Op. Att'y Gen. (Mar. 23; 663-87-0323) at 4; 4 Proceedings of the Alaska Constitutional Convention 2854, 2967-2992 (1955-56).

²⁷ *Matter of C.D.M.*, 627 P.2d 607, 610 (Alaska 1981).

²⁸ Proposed AS 46.41.900 defines "board" as "the Alaska Coastal Policy Board established in AS 46.41.010" and "department" as "the Department of Commerce, Community and Economic Development."

jurisdiction of the superior court or confer upon the court any jurisdiction it does not already have under the Alaska Constitution and statutes.” It is not clear from the bill exactly what “orders” of the board this provision intends to cover, but read in context, the provision seems aimed at ensuring access to judicial process—not at “defining” jurisdiction of the courts.

Although the precise meaning and intent of the proposed AS 46.40.090(b) is somewhat ambiguous, defining the jurisdiction of the court system is manifestly not an aim of this bill. Even a strict construction of the initiative restrictions in this case favors adherence to the long-standing principle that the people should generally have liberal access to the initiative process, and we have previously resolved similar ambiguities in favor of certification.²⁹ So we conclude that the initiative bill does not contain a prohibited subject with respect to defining the jurisdiction of courts.

4. Does the Bill Raise Any Additional Constitutional Concerns?

We note that this initiative bill is long and complex. In places, the bill is not clearly drafted and contains a number of typographical errors, inconsistencies, and ambiguities. Also, some provisions potentially raise specific constitutional issues or give rise to constitutional concerns.

For example, proposed AS 46.41.040(b) may raise potential due process issues with respect to implementation. That provision states that “the coastal districts, coastal district boundaries and approved coastal management plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska Coastal Management Program.” This raises questions concerning the immediate application of these district plans to projects, given that the consistency review provisions will not be in place until adopted as regulations under AS 46.41.040(a)(2) and approved by the U.S. Department of Commerce under the Federal Coastal Zone Management Act as required in AS 46.41.020(a)(2). Similarly, the Division of Coastal Management will not be able to issue state responses on federal consistency determinations and certifications under AS 46.41.030(b) until the program is approved by the U.S. Department of Commerce.

²⁹ 2009 Op. Alaska Att’y Gen. (July 2) at 13 (finding that where provisions of an initiative bill possibly implicated the prohibition on prescribing court rules, that conclusion was “not so clear that we can recommend that [the Lt. Governor] deny certification of [the] initiative application.”).

AS 46.41.040(b) raises potential due process problems under article I, section 7 of the Alaska Constitution and delegation of legislative authority issues under article II, section 1 because of the ambiguity and lack of standards for application of the local district plans in this interim period. However, a court is likely to interpret these provisions to avoid these constitutional infirmities³⁰ by applying these local district plan requirements to project reviews only after the scope of such projects and the consistency review procedures are defined in the regulations required by AS 46.41.040(a)(2) and those regulations are submitted and approved by the U.S. Department of Commerce as called for by proposed AS 46.41.020(a)(2).

Another potential problem involves pre-emption issues under the Alaska Constitution and the supremacy clause of the federal constitution with respect to the application of certain local district standards. Many of these potential pre-emption issues will not arise or become clear until the statewide and district coastal standards are adopted under AS 46.41.040(a)(1) and (2). Depending on how AS 46.41.060(b)(2), (c) and AS 46.41.180 are interpreted and implemented, and on what factual basis, these pre-emption and conflict of law issues may not arise. The same is true for any argument that differing coastal district enforceable policies may invoke equal protection concerns under article I, section 1 of the Alaska Constitution.

At this point, these provisions should be construed in favor of constitutionality.³¹ You have the authority to deny certification if you determine that the measure violates any of the liberally construed restrictions on initiatives—the constitutional and statutory provisions regulating initiatives.³² As discussed above, we do not believe such violations exist. With respect to other constitutional challenges “grounded in general contentions that the provisions of an initiative are unconstitutional,” you may deny certification only

³⁰ Where it is reasonable to do so, the Alaska Supreme Court “will construe statutes to avoid constitutional problems.” *See, e.g., Whitesides v. State, Dep’t of Public Safety, Div. of Motor Vehicles*, 20 P.3d 1130, 1139 (Alaska 2001) (citing *Chenega Corp. v. Exxon Corp.*, 991 P.2d 769, 785 (Alaska 1999)).

³¹ *See, e.g., Whitesides*, 20 P.3d at 1139.

³² *Alaska Action Center, Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004).

if “controlling authority leaves no room for argument about its unconstitutionality.”³³ We find no such authority. In sum, we cannot say that these provisions are clearly unconstitutional on their face, or that the people should be denied access to the initiative process on that basis.

Finally, we should note that a court may sever impermissible portions of a proposed initiative bill during a pre-election review.³⁴

B. FORM OF THE APPLICATION

The form of an initiative application is prescribed in AS 15.45.030, which provides:

The application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

³³ *Id.* (internal citations and quotations omitted).

³⁴ Specifically, severance is appropriate where “(1) standing alone, the remainder of the proposed bill can be given legal effect; (2) deleting the impermissible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than to be invalidated in its entirety.” *McAlpine*, 762 P.2d at 94.

The application meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

C. NUMBER OF QUALIFIED SPONSORS

As noted above, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

III. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a summary and title to assist you in compliance with AS 15.45.090(2) and AS 15.45.180. Under AS 15.45.180, the title of an initiative is limited to 25 words and the body of the summary is limited to the number of sections in the proposed law multiplied by 50. "Section" in AS 15.45.180 is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter."

Technically this initiative bill has only one "section," but this single section creates an entire new chapter of the Alaska Statutes consisting of 18 new statutory provisions governing a complex new program. All of these provisions are distinguishable in purpose, if not subject matter. If the bill were treated as a single section, the summary would be limited to 50 words. Alaska Statute 15.45.180 requires that the ballot proposition "give a true and impartial summary" of an initiative bill, and the Alaska Supreme Court has held that such a summary should provide "an accurate depiction of the scope and substance of the initiative."³⁵

It is not possible to accomplish these mandates by summarizing this initiative bill in 50 or fewer words. So we think the proper approach is to treat these 18 provisions as separate sections for purposes of summary preparation. Therefore the maximum number of words for the summary may not exceed 900. We have used 703 words in the summary and seven words in the title of the following proposed summary, which we submit for your review:

³⁵ *Pebble L.P. v. Parnell*, 215 P.3d 1064, 1084 (Alaska 2009).

Establishment of an Alaska Coastal Management Program

This bill would create the Alaska Coastal Management Program in the Department of Commerce, Community, and Economic Development (“the Department”). The program would develop new state and local standards to review projects in coastal areas of the State. These standards would be in addition to existing state and federal permitting requirements. Both state and federally permitted projects would be reviewed under the program. The program would go into effect upon federal approval of these new state and local standards by the U.S. Department of Commerce under the federal Coastal Zone Management Act.

The bill creates a Coastal Policy Board. The board would have 13 members appointed by the governor. Nine would be members of the public from coastal areas. 4 would be state commissioners. The board would coordinate agencies for coastal and ocean planning. The board would work with agencies to develop and implement the program. The board would also review, approve, and evaluate coastal district management plans (“district plans”). The board would direct the Department to apply for funding. The board would review and approve regulations. Board members could receive per diem and travel expenses.

The bill sets out 9 coastal districts. Each district would adopt a district plan. District plans would need board approval. To be approved, the district plan must comply with the bill’s provisions and regulations approved by the board. Each district plan would set boundaries for the coastal area subject to the district plan. District plans would define the land and water uses subject to the district plan’s requirements. District plans would also set special management areas and enforceable policies. The bill sets standards for district enforceable policies. The bill defines when an enforceable policy is pre-empted by existing state or federal law.

The bill would restore coastal districts, boundaries, and district plans that were in effect on June 30, 2011 under the prior coastal management program. Coastal districts would have to review their prior district plans and submit any needed changes for board approval. Coastal districts with zoning or land use authority would use those powers to apply their district plans. Otherwise, state agencies would put the district plan into effect. Local and state agencies would regulate uses to conform to the district plans. The superior court could enforce board or department orders.

The bill would also create the Division of Ocean and Coastal Management in the Department. This division would issue state consistency determinations and respond to

federal consistency determinations and certifications. It would adopt board-approved regulations. It would also give planning and management information to coastal districts. The division would create a financial aid program to help coastal districts create and effect their district plans.

The bill sets goals for the program. These goals include (1) management goals for coastal uses and resources; (2) the coordination of coastal planning among government and citizens; (3) public and government participation in the program; and (4) require state agencies to comply with the program.

The bill requires that regulations be adopted. The regulations would be approved by the board and then issued by the division. They would set state coastal standards, district plan requirements, and consistency review procedures.

The bill would allow regional education attendance areas ("REAAAs") in the unorganized borough to be used as Coastal Resource Service Areas ("CRSAs"). CRSAs would act through a board and function like coastal districts. The Department could combine or divide REAAAs into CRSAs under set conditions. A coastal city could also be included in a CRSA under set conditions. CRSAs could also be created by voters or by a voter-approved city or village council decision. Service areas would elect boards with seven members. The State would run and fund CRSA board elections. Under some circumstances, board members could be appointed. Board members could be recalled. They could receive per diem and travel expenses. If voters fail to create a needed service area, the Department could create a district plan for the area to submit to the legislature. Under set conditions, the Department could complete a district plan for a CRSA. The bill creates a development, approval and implementation process for district plans in service areas.

The bill sets out rules of construction and defines 16 terms.

Should this initiative become law?

This summary has a Flesch test score of 52.8 and thus approximates the target readability score of 60 set out in AS 15.80.005. We have tried to use simple words to summarize the complex subject matter of this initiative to ensure that the summary meets the statutory readability standards set forth in AS 15.80.005.

Hon. Mead Treadwell
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IV. CONCLUSION

For the foregoing reasons, we find that the proposed bill and application are in the proper form and that the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact me if we can be of further assistance in this matter.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:

Elizabeth M. Bakalar
Assistant Attorney General