

HB

325

<TARGET><BILL>HB 325</BILL><SUBJECT>HB
325</SUBJECT><COMM>HRES27</COMM></TARGET>

LEGAL SERVICES

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MEMORANDUM

February 23, 2012

SUBJECT: Differences between HB 325 and the initiative establishing an Alaska coastal management program
(Work Order No. 27-LS1050\I)

TO: Representative Alan Austerman
Majority Leader
Attn: Erin Harrington

FROM: Alpheus Bullard *ALB*
Legislative Counsel

This memorandum describes the differences between the ballot initiative that would reestablish an Alaska coastal management program and House Bill 325. The memo uses the formatting and sections of the bill as a starting point. The memo is organized by AS section in HB 325, with the corresponding initiative section in parentheses; my comments relating to changes made and changes you may wish to consider making are in italics following each section.

Generally

Throughout the bill there are significant changes relating to spelling, grammar, word usage, and organization. Citations to state and federal law¹ were added and amended, and the bill sections reorganized to conform with the Manual of Legislative Drafting.

Because some sections were moved into uncodified law, the remaining codified sections are numbered differently than they are in the initiative. Also, the bill uses available

¹ Throughout the bill, the citation "16 U.S.C. 1451 - 1464 (Coastal Management Act of 1972)" is changed to "16 U.S.C. 1451 - 1466 (Coastal Management Act of 1972), as amended[.]" This change includes all the provisions of the current federal chapter on coastal zone management in the citation, and should help ensure that the state's program would remain consistent with the applicable federal law.

Citations have been added to clarify how the statutes are intended to work together, for example, providing a citation at sec. 46.40.330(2), a section that directs the proposed Division of Ocean and Coastal Management to adopt certain regulations after those regulations have been approved by the Alaska Coastal Policy Board ("board") to the applicable section under which the board approves regulations (sec. 46.40.320(a)(1)).

numbers in AS 46.40 rather than creating a new chapter. Some of the section titles (catchlines) have been altered to more accurately describe the provisions' effects.

Sec. 46.40.310 (46.41.010). Alaska 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.

The city of Dillingham is added to the bill's sec. 46.40.310(a)(1)(C).

The initiative provides that the governor would appoint "nine public members and alternates." It also provides that the "[p]ublic members of the board or their alternates are entitled to per diem and travel expenses authorized by law. . ." The initiative is otherwise silent as to the role of alternate members. The bill provides how public alternates must be selected and appointed (one from each region described in sec. 46.40.310(a)(1)), when an alternate for a designated member may attend a meeting in the place of that member (I assume that was the intended function of the alternatives, since a different means is provided for filling vacancies), and when a public member may receive per diem and travel expenses.

While both the bill and the initiative provide that five public members and two designated members of the board constitute a quorum, the bill additionally provides that the board may not take action without the affirmative votes of at least six members.

You may want to consider making board members subject to legislative confirmation.

Sec. 46.40.320 (46.41.020). Powers and duties of the board. Establishes the duties and powers of the board.

Sec. 46.40.330 (46.41.030). Division of ocean and coastal management. Establishes a division of ocean and coastal management within the department. Provides the duties of the division.

Sec. 46.40.340 (46.41.040). Alaska coastal management program regulations. Provides what regulations must be adopted under the Alaska Coastal Management Program ("program"). Directs that regulations be adopted relating to (1) program standards, (2) criteria for the preparation and approval of district coastal management plans ("plans"), and (3) consistency review procedures for coastal activities and projects.

Move the initiative's sec. 46.41.040(b), which provides that coastal management districts, coastal district boundaries, and approved coastal management plans that were in effect

on June 30, 2011 are restored and incorporated into the program, to a "transition" section at the end of the bill.

Sec. 46.40.350 (46.41.050). **Objectives.** Requires that the program be consistent with certain objectives.

Sec. 46.40.360 (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.

Section 46.41.060 of the initiative included a subsection (c) that defined when an enforceable policy is preempted; the bill does not. The subsection did no more than describe the legal principle of preemption, which will apply whether or not the principle is described.

no change in legal doctrine

Sec. (46.41.070).

This initiative provision was moved to an uncodified section that appears at the end of the bill.

Sec. 46.40.370 (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. 46.40.380 (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. 46.40.390 (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. 46.40.400 (46.41.110). **Coastal resource service areas.** Provides how service area boundaries will be determined.

This section contains a drafting error. AS 46.40.400(c) should read: "A determination by the commissioner under (b) of this section may be made only before a coastal resource area is established under AS 46.40.410." (Emphasis added). This subsection should be corrected.

Sec. 46.40.410 (46.41.120). **Establishment of coastal resource service areas.** Permits a service area 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.

The initiative text contains a reference to a subsection "(c)" that does not exist. This is removed from the bill.

Sec. 46.40.420 (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. 46.40.430 (46.41.140). Elections in coastal resource service areas. Directs the lieutenant governor to administer the elections for service area board members and the organization of service areas.

Sec. 46.40.440 (46.41.150). Preparation of district coastal management plan 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 establishment of that service area at an election 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 established under sec. 46.40.410, but that has not been able to make substantial progress in the preparation of an approvable plan.

For clarity, on page 11, line 8, "organization" should be replaced with "establishment." Similarly, at page 11, line 17, "organized" should be replaced with "established," and at page 11, lines 19 and 21, "organization" with "establishment."

In the initiative, this section is titled "Preparation of district coastal management program by the Department of Commerce, Community and Economic Development." In the bill, "program" has been changed to "plans."

Under the initiative's sec. 46.41.150(a), the board may direct the department to "prepare and recommend for consideration by the council and for submission to the legislature a district coastal management plan for the service area." In the bill, "council" has been changed to "board" (this provision is modeled on a provision from the period in which the state's program had a "council") and the requirement that the plan be submitted to the legislature, has been removed because the initiative does not authorize the legislature to approve, disapprove, or make any recommendations relating to a district coastal management plan for a service area.

Sec. 46.40.450 (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.

In the initiative, this section contains a definition for "village." That definition has been moved into the chapter's definitions at sec. 46.40.500.

Sec. 46.40.460 (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. 46.40.470 (46.41.180). Construction with other laws. States that the bill's provisions may not be construed to diminish various state and municipal powers and duties.

Sec. 46.40.500 (46.41.900). Definitions. Provides definitions for the bill's provisions.

There are a number of changes here. The definition of "consistency review" is amended to conform with the duties of the board and the department as those duties are provided in the initiative, a definition of "elevation" is provided, the definition of "project" has been changed, and a definition of "village" is added.

On page 16, line 17, following "and," the word "includes" is missing. This should be remedied.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw:plm
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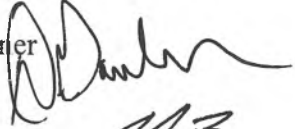
MEMORANDUM

March 5, 2012

SUBJECT: Article XI, section 4's "substantially the same" and the initiative establishing an Alaska Coastal Management Program (Work Order No. 27-LS1430)

TO: Representative Alan Austerman
Attn: Erin Harrington

FROM: Doug Gardner
Director
and
Alpheus Bullard
Legislative Counsel



You asked whether 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 CCSHB 106 (27-GH1965N) (HB 106),¹ would be interpreted as "substantially the same" as the initiative entitled "An Act establishing the Alaska Coastal Management Program."

Discussion

While both HB 106 and the initiative have the same general purpose -- establishing a state coastal management program -- the means by which that purpose is 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 entirely clear to what degree this difference might result in HB 106 and the initiative being interpreted as not substantially the same.²

¹ For the purposes of this memorandum, "HB 106" means the prior program as it would have been modified by that bill.

² When there is little case law, often it is helpful to turn to the minutes of Alaska's constitutional convention. While the article on direct legislation was the subject of extensive debate and discussion at the convention, in this case the minutes do not, as our court has observed, contain any "helpful discussion of what was the intended scope of the words 'substantially the same measure.'" *Warren v. Boucher*, 543 P.2d 731, 735 (Alaska 1975).

Under art. XI, sec. 4 of the Constitution of the State of Alaska³ a proposed initiative is void if a law is enacted that is "substantially the same measure" as the proposed initiative.⁴ 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.⁵

The question of whether an initiative and a legislatively enacted bill are "substantially the same" has been taken up only twice by our courts. In *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975), the court was tasked with examining an initiative and a legislative bill relating to campaign finance reform. In *Warren*, the legislation "was broad and complicated, touching upon a great range of topics, including campaign spending limits, reporting of contributions and expenses, restrictions on anonymous contributions, penalties for non-compliance, the creation of an elections oversight committee to monitor elections, and several other topics." *State of Alaska v. Trust the People Initiative Committee*, 113 P.3d 613, 621 (Alaska 2005). In the second case, *Trust the People*, the court examined legislation that was "simple and straightforward, essentially dealing with only one substantive topic: filling of a U.S. Senate vacancy." *Id.* In both cases, the court employed the same test in deciding whether a bill and an initiative were substantially the same.

³ 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.

⁴ This constitutional provision is unusual. Of the 21 state constitutions that permit citizens to propose laws through a petition process, we are aware of only one other state with a constitutional provision that permits its legislature to void an initiative through the passage of a measure that is "substantially the same." Article III, section 52(d) of the Wyoming constitution provides, in part, "If before the election, substantially the same measure has been enacted, the [initiative] petition is void." This clause in the Wyoming constitution has not yet been interpreted by a court.

⁵ 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.

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 articulated in *Warren v. Boucher*:

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.

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 *Trust the People*, 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.

Trust the People, 113 P.3d at 621.

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*). As the court described its

treatment of the legislatively enacted campaign finance bill in the *Warren v. Boucher* case:

The legislature had made numerous changes to the initiative that implicated the scope of the law, its enforcement mechanisms, and other structural issues concerning the regulation of campaign finance reform. But because these changes were seen as promoting the shared goals of both the bill and the initiative, we were willing to accept the legislature's bill as "substantially the same" as its initiative counterpart, even though there were in fact differences in the texts.

Trust the People at 621 (footnote omitted).

HB 106 would most likely be interpreted to satisfy this element of the test. While direct comparison between the campaign finance legislation at issue in *Warren v. Boucher* and the legislation here is difficult, arguably a program that seeks to coordinate and unify permitting activities for all projects and activities in the state's coastal area between federal, state, and local governments, their respective agencies, and local inhabitants is more complex than legislation governing election contributions and expenditures in state election campaigns. So, in this instance, the court is likely to permit the legislature at least as much latitude to vary from the specific terms of the initiative as it allowed in *Warren v. Boucher*.⁶

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 (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, 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. § 1452.⁷ Both HB 106 and the initiative are likely to be found to meet these federal

⁶ The dissent in *Warren v. Boucher* pointed out: "of the 19 separate sections of the initiative, only six are the same as the statute," and "seven sections have been eliminated entirely by the statute." *Id.* at 741 (Erwin, J., dissenting). *Trust the People* at 621 n.30.

⁷ See 16 U.S.C. § 1455(d)(2) for a list of the program elements.

requirements. Similarly, the program's scope and organization are much the same in HB 106 and the initiative, the prior program's sec. 45.40.020 (objectives) and the initiative's sec. 45.41.050 (objectives) are in large part the same, and the initiative even goes so far as to provide that coastal districts, district boundaries, and coastal district management plans approved under the prior program are incorporated into the initiative's program (see initiative sec. 46.41.040(b)). Consequently, the general purpose of HB 106 and the initiative would likely be interpreted as the same satisfying the second element of the *Trust the People* test.⁸

3. "Means" and the issue of local control

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.⁹ Instead of direct state agency control of the program, the

⁸ In *Warren v. Boucher*, the court examined the difference between two sets of campaign finance rules and the respective difference in their probable operation. In the present case, the most salient differences between the initiative and HB 106 cannot be characterized as those differences that might exist between two disparate sets of rules, but in how decision making power is allocated between the executive branch of state government and the coastal regions of the state. While this balance of power is an important component of the initiative, a court is not likely to find that the initiative's allocation of greater power to the local governments and the residents of the coastal regions of the state and their representatives on the initiative's Coastal Policy Board is a "purpose" of the initiative, but a means of effectuating "a balanced approach to development and protection of coastal resources." (This language is from the initiative sponsor's "Short-form Description of Initiative," which provides "This initiative would establish a coastal management program for Alaska. Alaska is the only state without an approved coastal management program. The initiative seeks a balanced approach to development and protection of coastal resources." Available on March 2, 2012, at http://www.elections.alaska.gov/petitions/11ACMP/11ACMP_Proposed_Language.pdf.)

⁹ 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).

initiative vests control of the program in an Alaska Coastal Policy Board (Board),¹⁰ the majority of whose members are residents of the coastal regions of the state.¹¹ Similarly, the former program prevented coastal resource districts or areas from adopting enforceable policies relating to air, land, and water quality issues that are under the Department of Environmental Conservation's authority ("DEC carve-out"),¹² whereas the initiative does not.

An argument could be made that the initiative's (1) establishment of a Board with regulatory authority over the program, made up of residents from the coastal regions of the state, (2) elimination of the "DEC carve-out," and (3) greater emphasis on program elements relating to local control and participation, are not fairly comparable to the program that would be reestablished under HB 106.¹³

Alaska Coastal Policy Board. The greatest single factor which a court may consider as not substantially the same comparing the initiative and HB 106, is the role and responsibilities of the initiative's Alaska Coastal Policy Board. Note that in the *Warren v. Boucher* case, the court indicated, in the context of legislation governing election contributions and expenditures, that moving a compliance mechanism from the lieutenant governor to an "election campaign commission" did not vitiate the "aims of the initiative." *Boucher* at 739. If the legislature did the same here, and restored the program to one supervised by the executive branch, would a court be so likely to find that such a change renders the program not "substantially the same"? It may be, in contrast to *Warren v. Boucher* -- where the location of the enforcement mechanism was seen as complimentary to the purposes of the initiative -- that here a court could interpret the legislature's action as "vitiating" the local control and local participation aspects contained in the initiative. In eliminating the Board, with its power to adopt regulations and otherwise make law by interpreting them, HB 106 could be interpreted by a court as not substantially the same as the initiative, despite the broader discretion afforded the legislature based on the complexity of the coastal zone program.

¹⁰ While CCSHB 106 established a board, the board was advisory in nature. See secs. 3 and 12 of 27-GH1965\N.

¹¹ The initiative's Board would be located in the Department of Commerce, Community, and Economic Development.

¹² See former AS 46.40.040(b), AS 46.40.040(c), and AS 46.40.096(i). For a discussion of the "DEC carve-out," see the Alaska Coastal Management Program Audit Part I, pages 25 - 27, available March 2, 2012, at: <http://www.legaudit.state.ak.us/pages/digests/2011/30060adig.htm>.

¹³ In *Warren v. Boucher*, the court found that the means for accomplishing the purpose were "fairly comparable," even though they did not "correspond . . . as to all major features." 543 P.2d at 736.

"DEC Carve- Out." The second significant difference, the absence of the "DEC carve-out" from the initiative, on its own, is not likely to be interpreted as creating enough of a variance between the initiative and HB 106, given the latitude accorded the legislature in a complex matter that requires comprehensive treatment, for a court to find HB 106 not substantially the same. While incorporating the "DEC carve out" would limit the scope of regulations the Board could adopt and what enforceable policies a coastal district could adopt, given the existing range of limitations placed on what sort of enforceable policies could be adopted under the initiative's sec. 46.41.060(b)(2), this is a less likely outcome.

Local Control and Participation. The initiative's greater emphasis on local participation and local control, and the values of local participation and control, is found in the initiative's sec. 46.41.050(1) and (9) - (11), which amend the prior program's objectives to add new language and new paragraphs relating to local participation and control. It's difficult to state what substantive effects these additional objectives might be interpreted to have. The initiative's added objectives can be summarized as (1) "coordination of planning and decision-making . . . among levels of government," (2) "participation of the public, local governments, and agencies of the state and federal governments," and (3) requiring state resource agencies to carry out their duties, powers and responsibilities in the manner provided by the initiative. What it might mean in practice for the program to "be consistent with [these] objectives" (see initiative's sec. 46.41.050) is impossible to predict.¹⁴

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

¹⁴ While the addition of these objectives might not affect the subject matter, scope, or purpose of the program, because policy considerations relating to "coordination and participation" between "levels of government" (namely the balance of power between state agencies and local governments) animated the debate that surrounded the former program during the First Session of the 27th Legislature and the two subsequent special sessions, it may be important to note that in the context of a "substantially the same" evaluation of an initiative and a competing legislatively enacted bill by a court, these policy considerations, taken in isolation, are unlikely to exercise the same gravity. In *Trust the People*, the court noted that

[w]hile the state raises serious policy arguments in favor of [the legislatively enacted bill], they relate to the wisdom of the legislation -- and thus are more properly directed to the voters considering the proposed initiative -- and not to the question whether the proposed initiative and the [legislatively enacted bill] are substantially the same.

Representative Alan Austerman

March 5, 2012

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initiative. While it may be useful for discussion to consider each component of HB 106 and the initiative separately and apply the substantially similar test from *Warren v. Boucher*, consideration of the entire program utilizing this test is difficult. Perhaps the best conclusion to a macro application of the test in *Warren v. Boucher* to HB 106 and the initiative is to observe that if each of the features discussed above individually raised "substantially the same concerns," then it would be likely that when all key differences were combined, that a court would find it a very close question as to whether HB 106 is substantially the same as the initiative.

You asked if this "substantially the same" analysis would be different if the initiative was compared with CSSB 45(CRA) (27-GS1965\B.A). It would not. The differences between CCSHB 106 (27-GH1965\N) and CSSB 45(CRA) are not significant for the purposes of the analysis. A comparison document is enclosed.

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Enclosure



Representative Alan Austerman
House Majority Leader
Alaska State Legislature

Sectional Analysis for Version I

“An Act establishing an Alaska Coastal Management Program”

Section 1. Development of Alaska Coastal Management Program. Section 1 establishes and outlines the responsibilities of the Alaska Coastal Policy Board and the method by which the board members are appointed; establishes the requirements of the Department of Commerce, Community and Economic Development (DCCED) under this chapter, including the establishment of the Division of Ocean and Coastal Management; provides for the development of program regulations; provides the objectives with which the program must be consistent; provides the method for the development of district coastal management plans and their implementation; as well as the method for developing and implementing plans in unorganized borough, including the means for establishing coastal resource services areas and electing their boards; and the means for the DCCED to prepare and approve plans when a local board is unable or unavailable to do so.

Section 1 contains three Articles.

Article 1. Development of Alaska Coastal Management Program (ACMP). This article establishes the Coastal Policy Board; establishes the powers and duties of the board; creates a Division of Ocean and Coastal Management within the (DCCED); directs DCCED to make regulations related to the program; provides the objectives with which the program must be consistent; provides for the development of district coastal management plans; provides for the implementation of district coastal management plans; and provides for municipal and state agency enforcement of regulations or controls in conformity with district coastal management plans.

Sec. 46.40.310 creates (a) the **Alaska Coastal Policy Board** in DCCED. The board consists of (1) 9 public members and 9 alternate public members appointed by the Governor from a list of at least three nominees submitted by the coastal districts of each region, and must be appointed from one of each of 9 (A-I) geographic regions. The board also has four designated members who are

(2) the commissioners of Department of Environmental Conservation (DEC), Alaska Department of Fish and Game (ADF&G), Department of Natural Resources (DNR), and DCCED.

Sec. 46.40.320 establishes the **Powers and Duties of the Board**, which include review and approval of regulations necessary to implement the Alaska Coastal Management Program in conformity with the federal Coastal Zone Management Act of 1972. The board will also initiate planning work, approve coastal district management plans, establish coordination among state agencies in the development and implementation of the ACMP, evaluate effectiveness of district coastal management plans and direct the department to apply for grants and other funding that become available for coastal planning and management. The board also has the power to contract for necessary services.

Sec. 46.40.330 establishes the **Division of Ocean and Coastal Management** in the DCCED. The division's responsibilities include rendering all federal consistency determinations authorized by Sec. 307 of the Coastal Zone Management Act of 1972, as well as state consistency determinations for project requiring multiple state permits. The division can also develop and adopt regulations that have been approved by the board, under AS 44.62 (Administrative Procedures Act). The division also ensures that coastal districts have the data and information they need to carry out their responsibilities under this legislation, and develops and maintains a financial assistance program to aid the districts in developing their plans.

Sec. 46.40.340 directs DCCED to develop **Alaska Coastal Management Program Regulations**. These are to include (1) statewide standards for the ACMP and for developing and approving district plans and (2) consistency review procedures, including the circumstances under which projects will be excluded from the requirement of a consistency review.

Sec. 46.40.350 establishes the **Objectives** with which the ACMP must be consistent.

Sec. 46.40.360 provides the requirements of coastal districts in the **Development of District Coastal Management Plans** and requires that districts base plans on existing comprehensive plans or new comprehensive resource plans or resources statements of needs. It also requires that the plan (1) delineate the area subject to the plan, (2) include a statement, list or definition of the land and water uses subject to the plan, (3) state the enforceable policies to be applied to the uses subject to the plan, (4) designate any special management areas and (5) state the enforceable policies relevant to the special management areas. This section also outlines the requirements and limitations of plans that can be approved by the board.

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Sec. 46.40.370 describes the process for the **Implementation of District Coastal Management Plans**, with either the state or municipalities implementing the plans depending on whether the municipalities have zoning or other controls on the use of resources within the coastal area.

Sec. 46.40.380, Compliance and Enforcement, establishes (a) the requirement that municipalities and state agencies administer regulations and control in conformity of district coastal management plans, and that (b) the superior courts of the state have jurisdiction to enforce lawful orders of the board and the department under this chapter.

pp 8-9

Article 2. Coastal Management Plans in the Unorganized Borough

Article 2 outlines the procedure that allows areas of the coastal regions of the state to organize into Coastal Resource Service Areas for the purposes of developing and implementing Coastal Management Plans.

Sec. 46.40.390 establishes that **Coastal Resource Service Areas (CRSA)** can exercise the duties outlined in this chapter, while **Sec. 46.40.400** outlines the process for establishing these areas. Regional attendance areas (REAs) are to be used as the basis for establishing CRSAs, while the DCCED commissioner has the ability to combine two or more REAs into a single CRSA if the combination meets certain criteria.

Sec. 46.40.410 provides the procedure for the **Establishment of Coastal Resource Service Areas** and includes methods of (1) petition by residents of the proposed CRSA or (2) submission of resolutions by city or tribal councils. Elections on the question of the establishment of the proposed CRSA are to be administered by the lieutenant governor within the time bnfame of 60 to 90 days after receiving a request from the board.

Sec. 46.40.420 provides for the election of **Coastal Resource Service Area Boards**, with provisions for number of members, term length, the role of the lieutenant governor in administering elections, dates of elections (to coincide with elections of members of REA boards under AS 14.08.071, Elections and Advisory Votes); vacancy, recall of members, and per diem and honoraria.

Sec. 46.40.430 establishes that elections will be administered by the lieutenant governor in keeping with AS 15 (Alaska Election Code) and that the state will pay the costs of the election.

Sec. 46.40.440 provides for the DCCED to prepare district coastal management plans in areas where the people have (a) rejected, in an election under AS 46.40.410, the creation of a service

area. This ability is limited to areas where the Alaska Coastal Policy Board finds that a major economic development activity has or will occur in the service area that was proposed in the vote. In addition, the DCCED will prepare plans at the request of the board (b) in areas where CRSAs have failed to make substantial progress in preparation of their program within certain timeframes. This section provides for consultation with residents of the affected area, and (c) requires that the board meet with CRSAs board members before a plan is prepared under (b) of this section to determine whether the plan can be completed within the time limits outlined in (b).

Sec. 46.40.450 provides for a review process before the **Approval of Plans in Coastal Resource Service Areas**, and includes a process for review by city and traditional village councils. City councils are limited to objection to elements of the plan pertaining to areas within their corporate boundaries, and traditional councils are limited to those resources within two miles of the village.

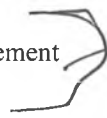
Article 3. General Provisions

Sec. 46.40.460 provides that cities within the coastal area can be included in an adjacent service area unless it formally rejects such an inclusion. It also allows for joint administration of functions between a municipality and a CRSA.

Sec. 46.40.470 provides limitations on this chapter and how it is construed with regard to other state laws and state and municipal functions.

Sec. 46.40.500 provides **Definitions** for the purposes of this chapter.

Sec. 2: Transition

Section 2 provides that coastal districts, CRSAs, coastal district boundaries, and coastal management plans that were in effect on June 30, 2011, are revived and incorporated into the ACMP. 

It also provides for review of the district's coastal management plans within one year of the effective date of this legislation.



Representative Alan Austerman

House Majority Leader

Alaska State Legislature

Sponsor Statement for House Bill 325: Alaska Coastal Management Program

House Bill 325, an Act Establishing an Alaska Coastal Management Program (ACMP), closely adheres to the intent of the citizens' initiative of the same purpose, though the legislation has been drafted per the requirements of the Alaska Legislature's *Manual on Legislative Drafting*.

The initiative's sponsors appear to have been successful in collecting adequate signatures for the certification of the initiative petition, and it is therefore nearly certain that a vote on the issue will be scheduled for a statewide election in coming months. The initiative, per Article XI of the Constitution, is to be "placed on the ballot for the first statewide election held more than one hundred twenty days after the adjournment of the legislative session following the filing." The statewide primary on August 28, 2012 is the election that meets this description (assuming an April 22nd adjournment, August 20th would be the 120th day following the adjournment of the legislature).

The constitution also says that "if, before the election, substantially the same measure has been enacted, the petition is void."

Through the success of the signature collection process, Alaskans have sent a strong signal to the legislature that the reestablishment of an Alaska Coastal Management Program is an important policy question. Barring action by the Legislature, however, there will not be an opportunity for members of the public to engage in public debate on the merits of the finer points of the measure. Instead, August's vote will be a simple up/down vote on the existing initiative.

The Alaska Legislature has the opportunity to consider HB 325, and to engage in a public dialogue to determine if there are elements of the initiative that should be corrected or clarified in order that the program, as enacted, best meets the needs and intent of Alaskans. Furthermore, by working HB 325 through the legislative process, the Legislature will bring greater attention to the details of the ballot initiative than has yet been seen with respect to this initiative.

Any questions on HB 325 should be directed to my staff, Erin Harrington, at (907) 465-2487.

~ Representing Alaska State House District 36 ~

Akhiok | Igiugig | Iliamna | Karluk | Kodiak | Kokhanok | Larsen Bay | Levelock
Newhalen | Nondalton | Old Harbor | Ouzinkie | Pedro Bay | Port Alsworth | Port Lions

Louie Flora

From: Rep. Paul Seaton
Subject: FW: My testimony for HB325 the Coastal Zone Management Program

From: D. Robbins [<mailto:drobbins.r@gmail.com>]
Sent: Sunday, March 11, 2012 2:12 PM
To: Rep. Eric Feige; Rep. Peggy Wilson; Rep. Paul Seaton
Cc: Rep. Scott Kawasaki; Rep. Berta Gardner; Rep. Bob Herron; Rep. Cathy Munoz; Rep. Neal Foster; Rep. Alan Dick; Rep. Beth Kerttula
Subject: My testimony for HB325 the Coastal Zone Management Program

Co-Chairs Feige and Seaton,
Vice-Chair Wilson,

Please pass HB325 *Coastal Zone Management Program*. Especially for Alaska with our huge coastline, this is critical legislation. Alaska needs to have a say on what is happening to our coasts whether South, North, East of West.

So much is about to take place in the North that we could be sitting back with our hands tied unless Alaska has a say in it.

We have ongoing issues along all our coasts that may not catch the attention of Alaskans miles away at the moment, but the locals will see the actual facts in light of how they experience it affecting them and us at a later date. We need to have people on top of this.

I'm sure the appointed board as a whole will get the correct picture of the issue and act properly for the whole of Alaska.

Thank you for giving this your consideration!

Doris Robbins

--
Doris Robbins

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Fairbanks AK 99709-6753
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Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

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In Valdez: P.O. Box 3089 / 130 South Meals / Suite 202 / Valdez, Alaska 99686 / (907) 834-5000 / FAX (907) 835-5926

MEMBERS March 28, 2012

Alaska State Chamber of Commerce
Alaska Wilderness Recreation & Tourism Association
Chugach Alaska Corporation
City of Cordova
City of Homer
City of Kodiak
City of Seldovia
City of Seward
City of Valdez
City of Whittier
Community of Chenega Bay
Community of Tatitlek
Cordova District Fishermen United
Kenai Peninsula Borough
Kodiak Island Borough
Kodiak Village Mayors Association
Oil Spill Region Environmental Coalition
Port Graham Corporation
Prince William Sound Aquaculture Corporation

Representative Paul Seaton
Alaska State Legislature
State Capitol Room 102
Juneau AK, 99801

Subject: Support for HB 325 Alaska's Coastal Management Program

Dear Representative Seaton:

The Prince William Sound Regional Citizens Advisory Council (PWSRCAC) is a non-profit organization formed to protect communities in Prince William Sound, and in nearby waters extending to Kodiak Island and Cook Inlet, from crude oil spills. Our members include coastal communities that suffered from the Exxon Valdez oil spill. Before the Alaska Coastal Management program (ACMP) was amended in 2003, the PWSRCAC was an official reviewing agency for projects reviewed for consistency with the program.

The PWSRCAC urges that the role of local communities be preserved and protected in HB 325: Alaska Coastal Management Program (ACMP). PWSRCAC also recommends a minor amendment to the bill that would re-establish the regional citizens' advisory councils as review participants during project consistency reviews when a project requires an oil discharge prevention and contingency plan.

The old ACMP was allowed to expire last year. Soon after, a ballot initiative was proposed to recreate the program as it originally existed, rather than in the weakened form it had when it expired. The principal difference is that the original program provided, as the ballot initiative would do, local communities with a meaningful role in the process, including the ability to protect their own local resources with enforceable standards such as those related to air and water pollution as long as those standards do not conflict with state or federal law.

In 2009 PWSRCAC urged the legislature to retain the participation and authority of local communities in issues of air and water pollution. In its final years, the weakened ACMP had reduced local participation and local authority to a minimal level in general and had specifically eliminated all

local authority to impose standards related to air and water pollution through a provision known as the "DEC carve-out" because the Alaska Department of Environmental Conservation (ADEC) handles those issues at the state level. PWSRCAC stresses the importance of ensuring that ADEC remain included as a designated agency member in HB 325.

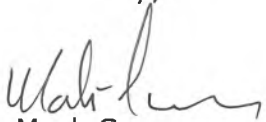
We still believe that meaningful local participation to prevent pollution of important local resources is the key component of any new ACMP program. We firmly believe, as we urged years ago, that this authority is critical.

For the many coastal communities in the state, which include 75 percent of Alaska's population, the heart of the ballot initiative is the reestablishment of the authority of local communities to promulgate their own standards, including those over air and water pollution. These communities will likely strongly oppose any measure that weakens their role in the ACMP. Any bill cutting the local role back to what existed in the weakened version of the program before it expired will not be viewed as substantially similar to the initiative and so cannot reasonably replace it. Communities interested in preserving their local voice and activities under ACMP will need to campaign vigorously for the ballot initiative if there is no bill that preserves their strong role.

Alaska is the only coastal state without a coastal management program, a valuable tool for the state as well as local communities in reviewing federal development. Alaska's coastal communities deserve genuine authority to protect their own resources, including fishing, hunting, and subsistence. We urge that the role of local communities be preserved and protected in HB 325.

Thank you for considering our recommendations. Please feel free to contact Stan Jones, PWSRCAC's Director of Administration and External Affairs, if you have any questions or would like to discuss this issue further. Stan can be reached at 907-273-6230.

Sincerely,



Mark Swanson
Executive Director

cc: Commissioner Larry Hartig, ADEC
PWSRCAC Board of Directors