ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1259 SCRA COASTAL MANAGEMENT PLAN - SB 44 1259

FULL STAFF -

Original sponsor: Community and Regional Affairs Committee

Offered:
Referred:

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

SENATE CONCURRENT RESOLUTION NO. (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

Approving regulations adopted by the Alaska Coastal Policy Council.

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

WHEREAS Chapter 84, Session Laws of Alaska 1977, established the Alaska Coastal Policy Council and charged the council with the responsibility, among others, of adopting guidelines and standards for the development of the district and the statewide coastal management programs; and

WHEREAS the Alaska Coastal Policy Council has adopted guidelines and standards in 6 AAC 80 and 6 AAC 85 for use by state agencies and by municipalities and service areas in the preparation and development of the district and statewide coastal management programs; and

WHEREAS the guidelines and standards adopted by the council on March 31, 1978 have been approved by the legislature by means of House Concurrent Resolution No. 125 which was adopted during the second session of the tenth legislature with selective deletions and letters of intent calling for further attention to certain matters in the guidelines and standards; and

WHEREAS the council has adopted amendments to the guidelines and standards on December 15, 1978 in response to the request of the legislature and other parties; and

WHEREAS the amendments to the guidelines and standards approved and adopted by the Alaska Coastal Policy Council are generally consistent with the objectives for the state coastal management program identified in AS 46.40.020 and additional parts of the coastal management program; and

WHEREAS AS 46.40.080 requires approval of the state coastal management program either by adoption of a concurrent resolution or by majority vote of the members of both houses at a joint legislative session as a prerequisite to the taking effect of the program; and

WHEREAS, in accordance with the statute, the Alaska Coastal Policy Council has submitted its amendments to the guidelines and standards for legislative approval.

BE IT RESOLVED that the Alaska State Legislature approves the regulations adopted by the Alaska Coastal Policy Council on December 15, 1978, as approved by the Department of Law and submitted to the legislature on January 26, 1979.

Senator Sturgulewski

January 25, 1979

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Junaau, Alaska 99811

Dear Senator Tillion:

On behalf of the Alaska Coastal Policy Council, and as required by law, we respectfully submit that portion of the Alaska Coastal Management Program adopted during 1978. We also request that you initiate legislative review and approval of this portion of the program.

Section 44.19.893(4) of the Alaska Coastal Management Act requires the Council to "...submit annually to the legislature, not later than the 10th day of each regular session, the portion of the coastal management program approved or amended by the council during the preceding year..."

As you also know, Section 46.40.080. of the Act provides that:

> The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor.

In a legal opinion issued last spring, the Attorney General defined the "coastal management program" as that phrase is used in the foregoing citations, to include all regulations adopted by the Council, and all local government coastal programs mandated by Section 46.40.030. of the Act.

The attached portion of the program consists of a set of amendments to the ACMP Guidelines and Standards adopted by the Council in December of 1978.

The original Guidelines and Standards were prepared during late 1977 and early 1978 and submitted to the Legislature in April of 1978. (This late submittal was authorized by SB 388 which amended the Act to allow a one-time special submittal date for the original Guidelines and Standards.) In June of 1978 the original Guidelines and Standards were approved by the Legislature and went into effect.

Since the last session, however, a number of requests were made to amend the Guidelines and Standards including some requests by the Legislature itself through letters of intent. In Section 80.010(c) of the original Guidelines and Standards, the Council bound itself to review these regulations periodically, and so, in the fall of 1978, the Council re-examined the regulations in light of various requests and suggestions and adopted the attached amendments.

We have followed the requirements of the Administrative Procedures Act in adopting these regulations and the Attorney General has reviewed and approved these amendments.

In a few days you will also receive the Council's Annual Report which describes the activities of the Council and ACMP as a whole. That report will repeat this submission and request for approval of these amendments. Further, the Annual Report will contain a number of reference items, such as the Alaska Coastal Management Act of 1977, and the original Guidelines and Standards, and will be a convenient reference source for the Legislature as it considers the requests of the Council.

We thank you for your consideration of these requests. We are at your disposal for presentations and discussions on these amendments to the Guidelines and Standards and any other matters related to ACMP. Please call Murray Walsh at the Office of Coastal Management (465-3540) to arrange for our participation if you or other members of the Legislature would so desire.

Sincerely,

Frances A. Ulmer
Co-Chairman

Roger Allington
Co-Chairman

Enclosures

6 AAC 80.040(b), COASTAL DEVELOPMENT, is amended to read:

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations, (Vol. 42 of the Federal Register, pp. 37133--47 (July 19, 1977)).
(Eff. 7/18/78, Reg. 67; am. / /, Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.060, RECREATION, is amended by adding a new subsection to read:

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.070, ENERGY FACILITIES, is amended to read:

(a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to

reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that the design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.080(a), TRANSPORTATION AND UTILITIES, is amended to read:

(a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.100, TIMBER HARVEST AND PROCESSING, is amended to read:

(a) Commercial timber harvest activities in the coastal area must be conducted so as to meet the following standards:

(1) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(2) free passage and movement of fish in coastal water must be assured; and

(3) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, prevent adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

(b) Commercial timber transport, storage, and processing in the coastal area must be conducted so as to meet the following standards:

(1) onshore storage of logs must be encouraged where compatible with the objectives of the Alaska Coastal Management Program;

(2) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects

on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(3) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage patters (put-to-bed); and

(4) stream crossings, including bridges and culverts, must be kept to a minimum number, designed to withstand seasonal high water and flooding, and must provide for free passage and movement of fish.
(Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.110(a), MINING AND MINERAL PROCESSING, is amendend to read:

(a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.160(a), AREAS WHICH MERIT SPECIAL ATTENTION, is amended to read:

(a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information:

(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;

(2) a map showing the geographical location, surface area and, where appropriate, bathymetry of the area;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management scheme, consisting of the following:

(A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area;

(B) a summary or statement of the policies which will be applied in managing the area; and

(C) an identification of the authority which will be used to implement the proposed management scheme. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.900, DEFINITIONS, is amended by adding new paragraphs to read:

6 AAC 80.900, DEFINITIONS. Unless the context indicates otherwise, in this chapter

(20) "feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent;

(21) "including" means including but not limited to;

(22) "major energy facility" includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(1) a facility required to support energy operations for exploration or production purposes;

(2) a facility used to produce, convert, process, or store energy resources or marketable products;

(3) a facility used to transfer, transport, import, or export energy resources or marketable products;

(4) a facility used for in state energy use; or

(5) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (1) - (4) of this paragraph;

6 AAC 80.900(9), is amended to read:

(9) "geophysical hazard areas" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process; (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.040(a), BOUNDARIES, is amended to read:

(a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area subject to the district program if they were not subject to the exclusive jurisdiction of the federal government. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.130(b), PUBLIC INVOLVEMENT, is amended to read:

(b) At least 60 days before giving conceptual approval to the district program or significant amendment to the district program, the district shall give written notice to the council and any person who has requested notice in writing, as well as public notice of the proposed action by conspicuous advertisement in a newspaper of general circulation within the district. In addition, notice must be given by radio and by posting in villages and municipalities within the district. The notice must specify the time and place of a public hearing on the proposed action and the availability for review of the proposed district program document or significant amendment to the district program. The public hearing under this subsection may be held not sooner than 30 days after notice is given. At the public hearing, each person must be given

the opportunity to present statements, arguments, or contentions, orally or in writing. Districts shall insure that, where appropriate, translation into the appropriate Native language(s) is provided. The district shall consider all relevant matter presented to it. A written transcript or electronic recording of the public hearing must be submitted to the council. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.150, COUNCIL REVIEW, is amended to read:

(a) (((No changes.)))

(b) Within 30 days after submission of the district program or amendment under (a) of this section, the Office of Coastal Management shall issue its recommendation. The recommendation may be based, in whole or in part, on matters not submitted by the district under (a) of this section. Any matters so used must be identified in the recommendation and placed in the record file under (c) of this section. The recommendation must contain findings and conclusions based on this chapter, the standards contained in ch. 80 of this title, AS 46.40.060, and AS 46.40.070. The recommendation must be served on the district, the council, all persons who testified or submitted timely written statements at the public hearing held under sec. 130(b) of this chapter, and all persons who have requested the recommendation in writing. Broad public notice of the recommendation must be given.

(c) (((No changes.)))

(d) Within 30 days after service of the recommendation, any person served with the recommendation may serve on the council comments on the recommendation. Within 30 days after public notice of the recommendation, any other person may serve on the council comments on the recommendation. Within 10 days after the deadline for serving comments on the council under this subsection, the Office of Coastal Management may submit additional matter to the council in response to the comments. All comments served and all additional matter submitted under this subsection will be placed in the record file. The Office of Coastal Management shall respond to all comments within 30 days of receipt.

(e) (((No changes.)))

(f) If the council's decision under (e) of this section disapproves, in whole or in part, the district program, the decision will specify the date and location for the initial mediation session under AS 46.40.-060(b). Mediation sessions will be held with due regard for the convenience of the participants. Any person may attend mediation sessions. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.900, DEFINITIONS, is amended by adding new subsections to read:

6 AAC 85.900, DEFINITIONS. Unless the context indicates otherwise, in this chapter

(9) "feasible and prudent" has the same meaning as in 6 AAC 80.900;

(10) "including" has the same meaning as in 6 AAC 80.900.

(Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

EXXON COMPANY, U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502 (907) 276-4552

ALASKA OPERATIONS
WESTERN DIVISION

W. MONTE TAYLOR
OPERATIONS MANAGER

August 31, 1979

The Honorable Eben Hopson, Mayor
The North Slope Borough
P. O. Box 69
Barrow, AK 99723

Dear Mayor Hopson:

Exxon Company, U.S.A., in response to your public notice of July 4, 1979, has reviewed the Framework Plan and Zoning Maps proposed for the North Slope Borough Coastal Management Program. We take this opportunity to voice serious concern, both with the overall thrust and with the detailed provisions of these documents. In our opinion, they do not properly reflect the call for an objective and balanced approach to coastal management. The cause for our concern is detailed in the enclosed comments.

In 1976, Congress recognized the urgent need to implement ways to gain energy self-sufficiency and reduce our dependence upon foreign petroleum imports. It also projected that the largest potential for increased domestic oil production was situated on the Outer Continental Shelf. With this thinking, Congress amended the federal Coastal Zone Management Act in an attempt to assure state and local management programs adequately provided for placement of energy facilities so vital to our nation's interests. Congress recognized that such facility placement might come only with net adverse impacts. It even provided for financial aid to offset such impacts.

The Borough's Coastal Management Program fulfills neither the intent nor specific requirements of these 1976 amendments. It should be redirected to lend support to the state and national goals. Such realignment could be provided by:

- Inclusion of balance in the Objectives and Policies to allow energy development whenever the net benefits outweigh adverse impacts.

- Adoption of ordinances which will accommodate the concept of balance; which will allow petroleum exploration and development without protracted delays; and which will allow enforcement with a minimum of expense and personnel.

- Delineation of special areas of environmental, historic, or cultural concern where extraordinary precautions are essential; retraction from special treatment of those broad geographic areas where the specific need for excluding development has not been demonstrated.

Exxon supports reasonable and necessary management of a coastal zone to achieve the purposes of the federal and State laws. But we sincerely believe the Borough's draft program does not aim toward achievement of these goals. We urge the Borough to substantially restructure this draft, including the Objectives and Policies already adopted, in order that the Borough may have a balanced approvable program--a program which will serve the mutual benefit of the Borough, the State, and the Nation.

We share your commitment to preserve the historical, cultural, and physical environment of your coast. But we also have a mandate to search for, find, and develop energy resources so badly needed by our country today. Except in very small, highly sensitive areas, these two objectives are not, in our opinion, mutually exclusive. We want to work with you in whatever way we can to achieve both of them.

Very truly yours,

W. Monte Taylor

W. M. Taylor
Alaska Operations Manager

WMT:paw
Enclosure
52-A
cc: Herb Bartel
Murray Walsh

I.

THE OBJECTIVES AND POLICIES APPROVED ON AUGUST 7, 1979 AS A PART OF THE PROPOSED PROGRAM CONTRAVENE THE INTENT OF STATE AND FEDERAL COASTAL MANAGEMENT LAW.

This section is the heart of the Borough's local program and sets the tone for the remainder of the program. Unfortunately, it is based on the incorrect premmise that there 's an irreconcilable conflict between maintenance of the Inupiat lifestyle and development of potential petroleum resources. Moreover, the Objectives and Policies adopted by the Borough arbitrarily resolve such potential conflict in favor of subsistence activity. The preordained resolution of any such conflict without proper balancing of the relative v rtues of each individual activity seriously jeopardizes the legal validity of the Borough's Coastal Management Program.

We understand and appreciate the desire to protect the long established culture and traditions of the residents. We also appreciate and understand the NSB's concern over potential upsets resulting from petroleum related activity which might cause environmental harm. We sincerely believe, however, that petroleum exploration and development can be conducted in a manner compatible with the subsistence activities of the Borough's residents. Furthermore, the current national need for essential domestic energy resource development dictates that this area of high potential receive concentrated attention. To be responsive to this need, it is crucial that the NSB's Coastal Management Program be flexible to (1) recognize advancing technologies designed to eliminate or mitigate conflicts, and (2) permit trade-offs which would acknowledge some adverse impacts on local subsistence activity in exchange for significant potential benefits in increasing domestic energy production. Attainment of energy goals essential to the maintenance of the national economy and national security will require some sacrifice. No province is exempt from potential impacts. By passing the 1976 amendments to the Coastal Zone Management Act of 1972, Congress recognized there would often be net adverse impacts caused by energy development in the coastal zone. Two example are included in the definition of "adverse impact":

> First, additional or expanded public services or public facilities which are required because of coastal energy activity-induced rapid and significant population change or economic development would be the "costs" in the net adverse impact calculation. The generation of taxes through the state and local government's usual and reasonable revenue raising structure--taxes which will accrue from the population changes or economic development--would be the "benefits." The availability of other Federal funds which could be used to offset the costs, including the OCS payments authorized in subsection 308 (a), would also be considered benefits. The extent to which the "costs" exceeded the "benefits" would constitute a net adverse impact.
>
> Second, another cost would be the unavoidable loss of unique or unusually valuable ecological or recreational resources as a result of coastal energy activity. This is intended to include not only existing resources of this nature but also those ecological or recreational areas of potentially unique value which could be endangered by the location and operation of energy facilities.

(Legislative History of the Coastal Zone Management Act of 1972, As Amended In 1974 and 1976, P. 928)

Congress also recognized the need to aid affected areas with financial resources provided under Section 308.

The need to plan for and accommodate coastal energy facilities was specifically addressed:

> In subsection 305(b)(8), the Committee has added the requirement that an energy facility planning process be included in state management programs. This reflects the Committee's finding that increasing involvement of coastal areas in providing energy for the nation is likely, as can be seen in the need to expand Outer Continental Shelf petroleum development. State coastal zone programs should, therefore, specifically address how major energy facilities are to be located in the coastal zone if such siting is necessary. Second, the program shall include methods of handling the anticipated impacts of such facilities. The Committee in no way wishes to accelerate the location of energy facilities in the coasts; on the contrary, it feels a disproportionate share are there now. For those facilities which necessarily will be in the coasts, however, a specific planning process for siting such facilities and dealing with their socio-economic and environmental impacts is desired. (Legislative History Of The Coastal Zone Management Act of 1972, As Amended in 1974 and 1976, p. 931)

Alaska has recognized and accommodated the intent of these amendments through adoption of its own law and regulations. One of the objectives of the Alaska Coastal Management Act is:

> "the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs;"
> (AS 46.40.020(7))

The importance of energy resources also is emphasized through references in the definition of "uses of state concern." Such uses include:

> "uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs. . ."
> (AS 46.40.210(6)(A))
>
> and,
>
> "the siting of major energy facilities. . . which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance."
> (AS 46.40.210(6)(C))

As required by federal law for an approved state program, the Alaska Coastal Management Program includes an Energy Facilities Planning Process. It is an objective of the construction of this process ". . . to build a unified State position which recognized both the national interest and the State's desire to manage onshore and nearshore activities associated with energy development."

The State has incorporated national objectives for energy self-sufficiency into an extensive plan for leasing State owned lands. It includes the sale of leases in the Beaufort Sea (State-Federal tracts) in December 1979, Prudhoe Bay Uplands in mid-1981, and a second Beaufort Sea sale (submerged lands) in early 1982. Thus, the North Slope Borough's Coastal Management Program will play an important and widely recognized role in the desire for increased energy self-sufficiency. It is imperative that all levels of government and industry work together in a spirit of cooperation to assure that unrealistic or unreasonable controls do not seriously retard expeditious access to the full potential of these resources.

The State Coastal Management Program fully recognizes the necessity of energy development. That program also stresses the importance of environmental protection (page 429). The program establishes standards and criteria for energy facility siting, but it does not establish any areas where energy facilities are prohibited. To be valid under the State program, local programs must retain this open concept of multiple compatible use for energy facility siting.

It is in the light of the federal Coastal Zone Management Act with its 1976 amendments, the State of Alaska Coastal Management Program, and the national interest in increased energy development that we comment on the Objectives and Policies section of the proposed Framework Plan.

Objectives

(1) "To preserve the traditional Inupiat lifestyle and culture."

(2) "To give priority and protection to subsistence activities and areas."

(3) "To allow competing uses only where they do not threaten subsistence resources and their habitat."

(7) "To ensure maximum control by the Inupiat over their own destiny while recognizing state and national interests, including but not limited to the state and national interest in petroleum exploration and development."

These four Objectives are closely related and shall be addressed as a group. The clear theme of these Objectives is the preservation of the current lifestyle of the Inupiat, especially subsistence activity, as the preeminent use of the entire coastal zone - to the exclusion, where necessary, of all other uses. This theme contradicts the intent of State and federal law as outlined in the introductory remarks. These Objectives are not responsive to the clear directive of Congress to plan for energy facility siting. To be consistent with State and national statutes, these Objectives must provide for balance between the national need for energy facilities and the local needs associated with Inupiat traditional activities.

It has been demonstrated, through years of petroleum related activity at Prudhoe Bay, that such activity is not incompatible with regional subsistence activity. Substantial planning and resources have been expended to successfully minimize negative impacts on wildlife and its habitat. The birds and animals are still there. While permanent residents have been able to benefit through increased employment and social services, they also have been able to continue normal subsistence activities with only minor interference from petroleum operations. These minimal impacts have been offset by the benefits to the Borough residents and the other residents of the State and nation.

To accommodate the spirit of balance set forth in coastal management legislation, it is suggested that Objectives (1), (2), (3) and (7) be combined and restated as follows:

Objective (1) To preserve traditional Inupiat lifestyle, subsistence activity, and culture, while providing for continued natural resource exploration and development vital to the social and economic well-being of the North Slope Borough, the State, and the nation.

The remaining Objectives are:

(4) "To protect all fish and wildlife resources and habitat on the basis of total ecosystems and consistent with subsistence use."

(5) "To require the protection of endangered and threatened species and their habitat."

(6) "To protect and preserve natural and ecological values."

These Objectives are crucial to the realization of restated Objective (1) above. We would recommend only that the phrase "on the basis of total ecosystems and ..." be deleted from objective (4). Such broad concepts as "total ecosystems" cannot practically be applied, measured or understood. When stated as policy, the concept of "total ecosystems" often results in confusion, both of the regulator and of the regulated.

As a final note on the Objectives, the petroleum industry is committed to protection of the historical, cultural, social, and physical environmental values inherent in any area where petroleum may be found. We have demonstrated an ability to uphold this commitment while exploring for and developing resources in all types of geographic and geologic provinces. We endorse the Borough's basic objective of preserving traditional cultures. We trust the Borough recognizes the need to find and produce those petroleum reserves which are so vital to the long term security of our nation.

Policies

(2) "Conservation Areas. Areas which are critical to the maintenance of significant fish and wildlife populations must be exempted from incompatible surface use. A buffer area must be maintained to protect these areas from disturbance."

We believe that oil and gas exploration and development activities can be conducted in a manner compatible with subsistence activities. In those few rare instances when a particular petroleum-related facility or activity may be incompatible with the maintenance of significant fish and wildlife populations, the activity should be allowed if there are no reasonable and prudent alternatives and if, on balance, the net worth of the activity to the nation exceeds the value to the nation of the lost or damaged habitat. The requirement that a "buffer area" be established as a matter of policy, fails to allow for creative design and flexible management of surface facilities and activities. We recommend that Policy (2) be rewritten as follows:

> Areas which are critical to the maintenance of significant fish and wildlife populations should be protected from incompatible surface use.

(5) "Rehabilitation. Upon termination of petroleum exploration or production, all land must be restored to its previous state as closely as possible, except where this would cause greater environmental damage."

This Policy fails to recognize that social benefits inherent in not restoring a facility site may exceed those of restoration. We recommend that the Policy be rewritten as follows:

> Upon termination of petroleum exploration or production or other industrial activity, all land must be restored to its previous state as closely as possible, except where it is more beneficial to leave part or all of the facility in place.

(6) "Scale of Development. Areas should be opened to petroleum exploration and development only in a sequence and on a scale which allows effective management and enforcement of lease stipulations and local, state, and federal regulations."

This Policy is ambiguous and implies a basic distrust of petroleum operations and federal and State regulation thereof. The orderly and timely development of energy supplies in the national interest can only be accomplished through the cooperative efforts of all parties. Both the Policy and the distrust are unjustified. The "sequence" and "scale" of petroleum exploration and development should be governed by national and State needs for energy development, not by the limitations of governmental capability. Policy (6) should be deleted.

(7) "Areas Beyond The Barrier Islands. Areas beyond the barrier islands should not be leased at this time, except for areas that will be reached through slant drilling from a barrier island."

This Policy has no technical justification. Industry currently has the technology to safely explore and develop essentially all of the acreage within the proposed Beaufort Sea Joint Lease Sale area without significant risk of loss of human life, injury to wildlife and its habitat, or substantial property damage. Policy (4) affords more than adequate protection for wildlife and wildlife habitat and Policy (15) assures that the social, economic, and environmental effects will be considered by the federal and State governments before leasing is permitted.

Policy (7) moreover, is in direct conflict with local, State, and national interests in the discovery and development of essential domestic energy supplies. Adherence could eliminate some of the most promising areas from lease sale offerings at a time when proven domestic petroleum reserves are declining and foreign oil imports are increasing. The Borough must recognize and acknowledge that the long term security of the nation is directly related to national self-sufficiency of energy resources. Policy (7) should be deleted.

(8) "Drilling Sites. Exploration, development, and production drilling must be located on a site specific basis only where escape of oil can be prevented, the first priority being onshore."

It is incorrect to assume that the escape of oil can be prevented absolutely at any drilling site whether onshore or offshore. Drilling site locations should and must be determined on the basis of projected bottom hole locations. It is, therefore, impractical to establish as a matter of policy that the first priority for drilling site locations shall be onshore. Adherence to this Policy would restrict operations and escalate drilling costs unnecessarily. The Policy should address minimizing the risk of oil spills rather than articulating a preference for one location over another. Policy (8) should be rewritten as follows:

> Drilling Sites. Exploration and development drilling, whether onshore or offshore, must be conducted in such a manner that the risk of oil spills will be minimized.

(10) "Petroleum Production and Transportation. Areas should not be opened for exploration until adequate methods for producing and transporting the petroleum in an environmentally safe way have been demonstrated."

Currently available technology can be applied to safely produce and transport any petroleum which may be discovered within the proposed Beaufort Sea lease sale area. Gravel islands and buried pipelines are examples of proven methods by which the production and transportation of petroleum can be accomplished in an environmentally safe manner. In the more general context, this Policy fails to recognize that only the discovery of a large reserve can provide the incentives and the site-specific technical data necessary to develop innovative production and transportation technology. The large investments and long lead times required for the development of such technology make demonstration of technical capability prior to a lease sale impractical. The requirement of such demonstrations will further delay exploration for a critically needed natural resource. Policy (10) should be deleted.

(12) "Resource Compensation. Damage to fish and wildlife resources by petroleum related activities must be compensated for by payment directly to the subsistence users and by replacement/restoration of the damaged resource."

The meanings of the terms "damage," "resources," and "compensated" as used in this Policy are unclear. The ambiguity of these words offer a source of endless hagglings and litigation over claims for money due. Moreover, determination of which individuals must be directly paid as "the subsistence users" is a seemingly impossible task. The resources described are already adequately

protected under other policies. Policy (12) offers no additional protection of habitat while assuring an inroad for unbridled confusion and contention. Policy (12) should be deleted.

(13) "Regulation Costs. Persons conducting petroleum-related activities must bear the cost of Borough regulatory programs necessitated by such activities."

The cost to the Borough of regulation of petroleum-related activities will be compensated by federal coastal management funds and by taxes paid by the petroleum industry. This open-ended Policy, placing the total monetary administrative burden on an industry which is regulated but not benefited by the program, is unfair. Policy (13) should be deleted.

(14) "Lease Stipulations. Oil and gas leases must contain adequate stipulations to control water and noise pollution, erosion, silting, gravel extraction, water usage, waste disposal, aircraft, maritime and other transportation related disturbance, and other environmental impacts."

The considerations listed in this policy relate to matters covered by State and federal permitting and regulatory programs that need not and should not be duplicated in a lease document. Policy (14) should be deleted.

(17) "Oil Depletion. Oil fields should not be depleted at a rate which would threaten the long-term economic interests of the Borough."

Depletion rates on leases are recommended by the operator and thereafter approved by State or federal regulatory agencies. The operator and the regulatory agencies bear the dual responsibilities of conserving oil and gas and preventing waste. Fulfillment of these responsibilities protects the interests of all of the people of Alaska and the nation, not just the interests of any particular group of citizens. Even though the policy arguably is not mandatory, any attempt by the Borough to implement Policy (17) would result in a conflict between Borough policy and State or federal law. Policy (17) should be deleted.

(18) "Facilities Confined. All major long-term private and public facilities must be confined to the Prudhoe Bay/Deadhorse area, except for those absolutely necessary to the operation of petroleum fields. No permanent residential settlement will be permitted."

In the interest of reason and clarity, the Policy should be rewritten to state that:

> Where feasible and prudent, major long-term private and public petroleum related support facilities shall be confined to the Prudhoe Bay/Deadhorse area, except those necessary for the exploration and operation of petroleum fields.

The prohibition of permanent residential housing without provision for an adequate alternative is beyond the scope of the Borough's authority. If it is the Borough's intention to discourage permanent residential development, it should

be stated in the Policy that such development will be discouraged rather than prohibited.

(26) "Geophysical Hazards. Facilities must be sited and designed so as to be protected against all potential geophysical hazards."

This Policy is stated too broadly. It is imprudent and illogical to design each facility to protect against "all potential geophysical hazards." The protection should be designed to accommodate geophysical hazards which may reasonably be expected to affect the facility at its specific location during the life of the facility. Designing to withstand a holocaust would not be practical or economic. Policy (26) should be rewritten as follows:

> Facilities must be sited and designed so as to afford reasonable protection against all anticipated geophysical hazards.

(32) "Implementation. The Borough will adopt ordinances or other legal authority necessary to implement these Objectives and Policies. These Ordinances or authorities will establish standards for where, when, and how petroleum-related and other industrial activities will be permitted. These standards should address, but not be limited to, the following: siting criteria, habitat protection, geophysical hazards, water, noise, and air pollution, barrier islands, seasonal restrictions, drilling safeguards, and enforcement."

The North Slope Borough should not attempt to specify in ordinances "where, when, and how" an industry will conduct its activities. Regulation by the dictation of specific operational procedures eliminates innovation and creative alternatives. The Borough, through regulation, should establish performance standards without technical details, and assign penalties for noncompliance with those standards. This process would establish a regulatory framework within which methods of compliance would be left to the regulated entity. Therefore, Policy (32) would be more succinctly and correctly stated to meet its underlying objective if only the first sentence were retained.

II.

THE BOROUGH'S IMPLEMENTATION PROCESS DESCRIBED IN THE FRAMEWORK PLAN AND IN THE PROPOSED ORDINANCES UNREASONABLY INHIBIT PETROLEUM RELATED ACTIVITY.

The proposed Ordinances if enacted, will have a serious negative impact on petroleum activity within the North Slope Borough. It appears, in fact, that the Ordinances are designed to prevent future oil and gas development rather than to address valid environmental concerns, in that they:

- o Dictate prohibitive and unreasonable requirements.
- o Duplicate State and federal permitting activities;
- o Dictate methods of performance rather than establishing performance standards; and

Prohibitive and Unreasonable Requirements

The following methods of performance specified in the Ordinances are examples of prohibitive requirements. This is by no means an exhaustive list of the prohibitive or unreasonable provisions contained in the proposed Ordinances.

Page 23/94, 19.17.130(b)

> "A special use permit shall be issued for a specified term...in the case of petroleum production, 5 years."

No operator would be willing to make the extensive capital investments required to develop a commercial discovery in the Beaufort Sea without assurance of continued operations for the life of the lease.

Page 36/94, 19.17.140(C)(5)(e)

> "Any drilling structure...must be completely surrounded by a containment barrier...of design and construction sufficient to withstand sea and ice forces..."

This requirement would effectively prohibit offshore drilling in all but the shallowest water. In most cases, it would require construction of a barrier of greater size and strength than the drilling structure.

Page 37/94, 19.17.140(C)(5)(G)(i)

> "Commencement of relief well drilling... .
> (B) ...in time to control the blowout prior to spring breakup; and
> (C) Not later than fifteen days following a blowout... .

It would be impossible to comply with (B) unless the operator initiated essentially simultaneous drilling of a twin well from a separate location in conjunction with the spudding of the original well. Even if (B) is eliminated, the fifteen day rule (C) may require advanced construction of a second gravel island for the sole purpose of siting a relief well. While the Ordinance has provisions for this requirement to be modified, the Administrator will most likely be able to logically determine that the modification is not justified.

Page 69/94, 19.17.200(A)(2)

> "Any person providing information...may...specify those portions he claims to be proprietary. Information specified (as proprietary) which the Administrator...determined to be proprietary shall be kept confidential."

It is unreasonable to require the submission of all valuable proprietary data.

Permits

As the representative local government, the Borough is obligated to protect the interests of its citizenry from the unnecessary proliferation of administrative government. We recognize and appreciate the Borough's interest in retaining some local control over developmental activities. Moreover, we accept as valid the Borough's interest in effectively managing the coastal area. We believe both of these objectives can be realized without the expense of establishing and maintaining the hugh bureaucracy which would be necessary to effectively review and issue permits for facilities and activities. The permitting procedures described in the Framework Plan and the proposed Ordinances would place an unnecessary burden on the Borough to acquire and retain a large staff of knowledgeable individuals to effectively derive, interpret, revise, and enforce the permitting process. It is unlikely that this staff could be acquired within any reasonable period of time and any attempt to implement a permitting program without competent staff would not only fail to serve the Borough's needs but also create an unmanageable bottleneck and an unreasonable impediment to expeditious development of the coastal zone.

The Framework Plan anticipates a second means, consistency review, of implementing the program. This additional means, if utilized instead of separate Borough permits, would allow the Borough to manage effectively the utilization of coastal resources and minimize the size of the bureaucracy required to accomplish this end. Moreover, individuals conducting activities within the Borough would not be forced to bear the delays and heavy burdens inherent in the implementation of a duplicative permitting procedure. Even under this process of consistency review of State and federal permits, it would be essential for the Borough to hire an Administrator with sufficient support staff to process the substantial paperwork involved. For the foregoing reasons, we recommend that all of the requirements for permits from the Borough for activities regulated or governed by State or federal agencies be deleted from the program in favor of active participation by the Borough in existing State or federal regulations either as an interested participant in permitting procedures or through CZM consistency review.

Performance Standards

As a general rule, governmental regulation is most effective and least oppressive when it achieves the basic purposes for which it was created by articulating performance standards for regulated entities to follow rather than specifying acceptable methods of performance. When performance standards are established and penalties for noncompliance are known, the regulated entities are then free to seek an optimum and efficient means of compliance. When this happens, the virtues of the free enterprise system will work to enhance the realization of the policy objectives underlying the regulations by rewarding or

penalizing those companies or individuals who are regulated. When regulations, on the other hand, dictate the method and means of compliance, innovation and improvement are stifled and realization of the underlying policy objectives is frustrated.

When viewed from the perspective of the regulator, specific detailed operational regulations are burdensome to the NSB in that without a large, qualified staff of experts to derive, interpret, revise, and enforce the regulations, the regulator cannot possibly cope with the avalanche of data, reports, and information which he must accumulate, assimilate, retain, comprehend, and interpret. By comparison, under the performance standard approach, NSB staffing and record keeping requirements are minimized; innovative and responsible compliance is maximized; and, most importantly, policy objectives are more frequently realized. Attached are draft ordinances designed to implement the above performance standard concept.

In summary, the Borough should establish performance standards, eliminate the specification of technical procedures, and assign penalties for noncompliance with those standards. This process would be supplemental to the Borough's active participation in permitting procedures before other agencies. This approach would establish a regulatory framework within which methods of compliance would be left to the regulated entity. The Administrator would be free to publish guidelines for methods of compliance, but those guidelines would be instructive and not legally binding so long as the regulated individual complies with the performance standards.

III.

THE ZONING DISTRICTS DESIGNATED TO BE A PART OF THE PROGRAM ARE UNJUSTIFIED AND UNREASONABLY PROHIBIT DEVELOPMENT.

Conservation District (CD)

The establishment of conservation districts has the effect of imposing restrictions on petroleum development similar to those of the Arctic National Wildlife Range. The assertion is made in the Framework Plan that in certain areas of the coast conflicts between subsistence or environmental values and industrial use will be irreconcilable and that in the conservation district, most industrial activities will be prohibited because they are incompatible with subsistence use. We take strong exception to these assertions, and maintain that industrial development and subsistence activities are not mutually exclusive.

Our current activities at Prudhoe Bay, including the existing bridge across the Sagavanirktok River stand as proof of our ability to traverse a proposed conservation district without undue disruption of wildlife or wildlife habitat. Additionally, geophysical petroleum activities should be a permitted use in the conservation districts. These are transient scientific activities that do not significantly disturb wildlife or wildlife habitat. Under the proposed zoning, a currently scheduled seismic program to correlate wells south of the Prudhoe Bay Unit with wells in the unit would be prohibited. Such a program is necessary for the interpretation of regional geology which is vital to the search for additional oil and gas reserves. The purpose of the conservation districts should be to identify significant sensitive areas so that proper care can be taken to minimize disturbance. Designation of conservation districts should not be employed to absolutely prohibit responsible petroleum exploration and development activity, but rather to allow such activity generally while protecting specific areas of sensitivity.

Conservation districts on the Borough's current Zoning Maps would preclude some of the planned Prudhoe Bay Unit development. For example, ultimate Prudhoe Bay Unit development of the west end of the field will require facilities in a proposed conservation district. The same potential conflict exists for portions of the Prudhoe Bay Unit waterflood, for development of the Lisburne Reservoir, and for various drill sites on both the east and west sides of the field. If the conservation areas as currently identified qualify as "Areas Which Merit Special Attention" then either currently planned or contemplated future Prudhoe Bay activities must be allowed as provided for in the State Coastal Management Program (FEIS, Appendix 7, pages 421-449) or the ultimate oil recovery from the Prudhoe Bay oil field will be substantially reduced.

The conservation districts as presently contemplated will unnecessarily restrict access to the petroleum service base and production district, and thereby impair further exploration and production activities outside of the petroleum service base and production district. The maps fail to show adequate transportation and utility corridors across the conservation districts for activities that are undertaken outside the confines of the service base and production district. The Prudhoe Bay petroleum service base and production district is almost entirely encircled by designated conservation districts. In order to explore

and develop not only the proposed sale acreage, but also currently held leased acreage, we must have reasonable rights of surface and subsurface ingress and egress through the conservation districts. Transportation and utility routes as defined in 6 AAC 80.900 should be allowed across the conservation district and buffer zones for the purpose of moving people and supplies from the Prudhoe Bay area to facilities and operations on leased acreage in the Mid-Beaufort coastal zone and for the purpose of transporting petroleum products from these areas into the service base. It would not be good conservation of wildlife and wildlife habitat to utilize the land necessary to follow a lengthy circuitous route around a conservation district when the alternative would be a shorter, direct route across the conservation district. We believe, therefore, that the required access can be provided without significant resultant risk to wildlife and wildlife habitat.

The expanse of conservation district designations forecloses, in abrogation of existing property rights, important exploration and development activities in an extremely large area which is currently leased for oil and gas development. For example, the proposed conservation districts would effectively preclude an area of about 50,000 acres of State approved or pending units from evaluation and development. This total consists of approximately one quarter of the West Mikkelsen Bay Unit, one half of the Duck Island Unit and its proposed expansion and two thirds of the Gwyder Bay Unit. Although we agree with the provision in the text which provides that directional drilling for oil and gas under a conservation district should be allowed, we also believe that drilling from within the conservation district should be permitted for reasons stated previously. We proposed that both the Ordinances and the Framework Plan be revised to permit responsible drilling activities from anywhere within a conservation district.

The conservation districts, described in the Framework Plan and designated on the Base Map and Zoning Maps, have not been established in accordance with the requirements of State guidelines, in that the areas designated have not been determined, on the basis of demonstrable evidence, to be essential to protect particularly sensitive wildlife habitats or historically or culturally significant areas.

Evidence relied upon to establish a conservation district must be open to public comment and reviewed in a public forum. Until such review has been concluded, conservation districts cannot validly be established.

Buffer Zones

The establishment of buffer zones around the conservation districts and along the coastline is unnecessary. The natural habitat and wildlife protection goals established for conservation districts should apply to and cover the entire area to be preserved or protected. Buffer zones unnecessarily and arbitrarily add to these areas. As the buffer zones are proposed on the Zoning Maps, operations on over 60,000 acres of existing State leases would be "discouraged". This includes approximately five eighths of the West Mikkelsen Bay Unit, one eighth of the Duck Island Unit, three fourths of the Point Thompson Unit, one third of the Gwyder Bay Unit, and two thirds of the Milne Point Unit. The entire 24,000 acres of the shallow bay portion of the existing Prudhoe Bay Unit would likewise be affected.

Geophysical Hazard District (GHD)

The Alaska Coastal Management Program requires that an opportunity be provided for industry to demonstrate technologically that it can operate (beyond 12 meters) in any area where there may be geophysical hazards. So long as evidence is provided that proper siting, design, and construction measures have been utilized on a site specific basis to minimize property damage and to protect against the loss of life, operations should be allowed. A demonstration of this nature must be allowed without requiring an amendment of the Ordinances and Zoning Maps. An amendment of the Ordinances would be required under the Borough's scheme. This approach would also support advances in technology and remove any necessity for establishing a deferred development district.

Deferred Development District (DDD)

The deferred development district established by the NSB is not technically justified. Evidence can presently be provided to show that facilities can be sited and operated safely beyond the 8 meter contour. Such facilities should be allowed to be constructed. The concern expressed in the Framework Plan for the safety of whales, other sea mammals, and the environment is understandable. Adequate protection of these interests, however, is already afforded by existing federal and State law. While a systematic approach to development from onshore to nearshore to offshore areas may be preferable, this proposal conflicts with the federal objective of energy independence for the nation. Realization of the federal objective requires the development of the most promising reservoirs first, regardless of their location. Moreover, our position is supported by comments made in a public meeting on July 26, 1979 in Fairbanks sponsored by the Arctic Project Office of the Outer Continental Shelf Environmental Assessment Program. In this meeting, it was the consensus of experts in the field that the technical capability presently exists to safely construct an offshore facility at least out to the 13 meter contour and that technical capabilities will be demonstrated within the next ten years to allow development beyond 13 meters. In certain areas, Exxon believes operations can now be safely conducted beyond 13 meters.

Petroleum Service Base and Production District (PSB)

To avoid unnecessary delay and confiscatory restrictions on ongoing operations, as well as, to satisfy the stated purposes of the PSB, we recommend that the boundary of the proposed Prudhoe Bay petroleum service base be drawn to coincide with the boundary of the Prudhoe Bay Unit and the designated TAPS corridor.

From the Zoning Maps it is evident that some of the existing drillsites, gas injection sites and flow lines are not included in the PSB, particularly in the vicinity of the Sagavanirktok River. Further, additional future facilities are contemplated for production maintenance and additional oil recovery in the Unit. These include additional drillsites, process facilities, the proposed waterflood facilities and gas sales facilities. Many of the sites for these future activities will probably be beyond the currently proposed PSB boundary.

In keeping with the requirements of the energy facility siting provisions of the Alaska Coastal Management Program, the Framework Plan must provide for the establishment of additional petroleum service bases as justified by future petroleum development.

The proposed Ordinances require conditional use permits for petroleum pipelines to carry petroleum from the Prudhoe Bay petroleum service base to a point outside the coastal zone. Neither the construction nor the operation of such a pipeline will have any significant impact on any of the coastal zone outside the Prudhoe Bay petroleum service base. Under federal law, such pipelines should be and are exempt from the permitting requirements of the North Slope Borough.

The proposed Framework Plan prohibits subsistence activities within the petroleum service base and production district. Petroleum operations and subsistence activities can be compatible and we believe that, so long as industry safety regulations are observed, subsistence activities should be permitted in a petroleum service base.

IV.

INAPPROPRIATE CONSIDERATION OF STATE CONCERNS AND NATIONAL INTERESTS JEOPARDIZES THE APPROVABILITY OF THE BOROUGH'S PROGRAM

In the Conference Report on the 1976 Amendments to the Coastal Zone Management Act, Congress noted that the purpose of the amentments is "...to improve and strenghten coastal zone management in the United States and to coordinate and further the objectives of national energy policy..." The Report continues:

> "The 1972 Act was enacted before the advent of the current and continuing energy crisis; i.e., before attainment of a greater degree of energy self-sufficiency became a recognized national objective of the highest importance and priority. The conference substitute follows both the Senate bill and the House amendment in amending the 1972 Act to encourage new or expanded oil and natural gas production in an orderly manner from the Nation's Outer Continental Shelf (OCS) by providing for financial assistance to meet state and local needs resulting from specified new or expanded energy activity in or affecting the coastal zone." (Emphasis added. Legislative History, P 1073).

The Framework Plan designates subsistence as a "use of state concern." We do not challenge this assertion, however, we do contend that a proper balance between petroleum interests and subsistence must be established and maintained. The Framework Plan suggests that where competing uses are irreconcilable, priority would always be given to subsistence interests. The Framework Plan fails to point out why subsistence interests should always prevail over petroleum development. It remains our contention that the objective of petroleum developers and subsistence interests are, in fact, compatible and that a resolution of how these objectives should be fulfilled can be achieved. The Alaska Coastal Management Act requires "the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the State's resources to meet national energy needs."

We view the North Slope Borough's Program as being of such scope and substance as to constitute an amendment to Alaska's Program. As described in the preface to NOAA/OCZM Developments and Approval Regulations:

> "Incorporation of State approved local management programs should be held to the same standards as any other major program changes (defined in paragraph 923.80(c)). Accordingly, when incorporation of a State approved local program will result in any of the changes defined in paragraph 923.80(c), these will be treated as amendments to States' approved management program. Thus, for example, the process for local program development in Alaska may result in substantial changes in the approved State coastal zone management boundary or in uses of State concern. Where this occurs, such changes will constitute amendments and be processed as such." (44 Federal Register 61, P 18594)

In order for the State Coastal Management Program or any amendment thereto to be federally approved, it must meet certain threshold requirements of the Federal Coastal Zone Management Act. Among these are:

a. The program must provide "adequate consideration of the national interest involved in planning for, and in siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature." (Section 306(c)(8)); and,

b. The program must include "a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." (Section 306(e)(2)).

c. The program must contain "a planning process for energy facilities likely to be located in or which may significantly affect the coastal zone ..." (Section 305 (b)(8)).

We submit that because of problems previously discussed herein, the Borough's Program will not meet any of these cited requirements. The Program should be carefully restructured with the intent of presenting an approvable document.

V.

THE INCOMPLETENESS AND FRAGMENTED RELEASE OF THE SECTIONS OF THE FRAMEWORK PLAN FRUSTRATES UNDERSTANDING OF THE PROGRAM.

One of our objections to the Framework Plan draft document dated August 6, 1979 is the omission of significant portions of the text which are essential for effective public participation in the development of North Slope Borough's Coastal Program. For example, the listing of Opportunities for Public Participation (page 3) and the Ordinances (page 3) are not provided. The missing sections must be included in this draft document to comply with the procedural requirements of the Guidelines for District Coastal Management Programs Public Involvement (6 AAC 85.130) and Coordination and Review (6 AAC 85.140) and the approval process described in the State of Alaska Coastal Management Program (FEIS, Chapter 3(e): District Program Review Procedure, pp. 95-99;102). We strongly object to the manner in which the Borough has stifled public participation by offering only incomplete drafts of different parts of the proposed program at different times. We urge that a single, complete, final draft of all parts of the Borough's program be made available for public inspection and comment at least 30 days prior to "concept approval" by the Borougn Assembly.

VI.

SUMMARY AND RECOMMENDATIONS

Exxon Company, USA finds serious problems with this draft Coastal Management Program for the North Slope Borough. The problems are procedural and substantive and serve to raise a real question as to the approvability of the program at the State and federal levels. Procedural questions include the segmented nature of program development, notice and review practices, and publication of the program in a fragmented form with important elements omitted.

The substantive flaws in the program are rooted in the Objectives and Policies adopted by the Borough. They ignore the call for balance clearly enunciated by the 1976 amendments to the federal Coastal Zone Management Act which recognizes that some adverse social and environmental impacts must be accepted to provide necessary energy independence for the nation. This imbalance is perpetuated in the proposed Ordinances to such an extent that vitally needed petroleum exploration and development is seriously jeopardized.

Exxon supports reasonable and necessary management of the coastal zone to achieve the purposes of the federal and State acts. We sincerely believe, however, that the draft Borough Program does not aim toward achievement of these goals. We urge the Borough to substantially restructure this draft, including the Objectives and Policies already adopted and the proposed Ordinances, in order that the Borough may have a balanced approvable program of mutual benefit to Borough, State, and national interests.

SB
30

COMMITTEE REPORT

SENATE

1/13/81

FURTHER: Finance

Date: _____

Mr. President:

The Committee on COMMUNITY & REGIONAL AFFAIRS has had SB 30

relating to the municipal assistance fund; suspending the municipal sales and use tax

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

February 3, 1981

The Honorable Don Gilman
Chairman
Senate Community and Regional
Affairs Committee
Room 203 - Behrends Building
Juneau, Alaska

Re: Senate Bill No. 30

Dear Senator Gilman:

Senate Bill No. 30, an Act relating to the municipal assistance fund and suspending the municipal sales and use tax, was introduced in the Senate on January 13, 1981 and was referred to the Senate Community and Regional Affairs and Finance Committees.

For the consideration of the Senate Community and Regional Affairs Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Robert Johnson, Director, Petroleum Revenue Division, Anchorage and Mr. Phil Wall, Director, Administrative Services Division of the Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairman
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Robert Johnson, Director
Petroleum Revenue Division
Department of Revenue

Phil Wall, Director
Administrative Services Division
Department of Revenue

04-02LH

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 30
Title Act relating to Municipal Service Fund
Requested by Senate Comm & Reg Aff Date 1/28/81

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

FINCAL IMPACT ON FUNDS	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Millions of Dollars)

GENERAL FUND	0	<77.0>	<88.3>	<101.4>	<116.5>	<113.3>
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The reduction in funds represents 10% of estimated receipts under AS 43.21 for the year prior to payment (per sec. 85(a) of bill). It is presumed in this estimate that AS 43.21 will remain unchanged.

IV. DATE 1/28/81 PREPARED BY [signature]
AGENCY Department of Revenue Director, Par Rev
PHONE (907) 276-1363

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 30
Title Act relating to Municipal Service Fund
Requested by Senate Comm & Reg Aff Date 1/28/81

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

ADMINISTRATIVE COSTS	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Millions of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
There would be no administrative-cost impact on Petroleum Revenue.

IV. DATE 1/28/81 PREPARED BY [signature]
AGENCY Department of Revenue Director, Pet Rev
PHONE (907) 276-1363

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 30
Title Municipal Assistance Fund: Suspending the Municipal Sales & Use Tax
Requested by Senate Community & Regional Affairs, & Finance Date 1/28/81

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Administration & Support, Management Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		2.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		2.0				

FUNDING (Thousands of Dollars)

GENERAL FUND		2.0				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Bill changes the funding and sharing of the Municipal Assistance Fund. The basis for determining the amount to be appropriated to the fund is changed to be based only upon the tax received for AS 43.21. The sharing base established by business license sharing in FY 78 is maintained. Fund excess above the base requirement is then shared to municipalities on the basis of their FY 81 sales and use tax collections. Fund excess above the sales and use tax sharing is then shared on the basis of population. A ten percent increase in di tributed amounts per year is included.

A one-time additional cost is anticipated in establishing the sales and use tax base for FY 81 as required in the Bill. It is assumed that sales and use tax and population data will be available through the Department of Community and Regional Affairs and direct contact of municipalities.

IV. DATE 1-28-81 PREPARED BY Philip A. Wall
AGENCY Revenue
PHONE 465-2313

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

ALASKA STATE LEGISLATURE

TWELFTH Legislature FIRST Session

SENATE BILL..... NO. 30.....

By FAHRENKAMP.....

"An Act relating to the municipal assistance fund, suspending the municipal sales and use tax and providing for an effective date."

Introduced in the Senate 1/13 1961

HISTORY IN THE SENATE

19	
1	13

Read first time and referred to Committee on Community & Regional Affairs and

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed

Signed by President

Returned to House

HISTORY IN THE HOUSE

19	

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed

Signed by Speaker

Returned to Senate

HISTORY IN THE SENATE

19	

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

by Governor

Filed with Lt. Governor

SB

38

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

January 27, 1981

The Honorable Don Gilman
Chairman
Senate Community and Regional
Affairs Committee
Room 203 - Behrends Building
Juneau, Alaska

Re: Senate Bill No. 38

Dear Senator Gilman:

Senate Bill No. 38, an Act providing for the assumption of municipal bonded indebtedness by the state and establishing the municipal debt redemption fund, was introduced in the Senate on January 13, 1981 and was referred to the Senate Community and Regional Affairs and Finance Committees.

For the consideration of the Senate Community and Regional Affairs Committee, I am enclosing a copy of a Fiscal Note prepared by Anselm C. Staack, Treasury Comptroller, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairman
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm C. Staack
Treasury Comptroller
Department of Revenue

04-02LH

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

SB 38

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL NO. 38

Title "An Act providing for the assumption of municipal bonded indebtedness by the state; establishing a municipal debt redemption fund." Date 1/13/81

Requested by Senate Community and Regional Affairs Committee

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected Treasury Management

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	-0-	526.0	76.0	82.0	88.0	96.0
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	526.0	76.0	82.0	88.0	96.0

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	526.0	76.0	82.0	88.0	96.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

This Fiscal Note includes Dept. of Revenue/Treasury administrative costs only and does not include amounts to assume the debt.

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The bill attempts to approximate a defeasance (pay off) of municipal debt. The ap-

BILL ANALYSIS
Senate Bill No. 38(1/13/81)

Program Effects:

1. Establishes a municipal debt redemption fund (MBRF) in Department of Administration.

2. When appropriated, general obligation bonded indebtedness of municipalities is assumed.

3. If appropriation deemed inadequate, Department of Administration to request additional amounts. If additional appropriation not granted in 60 days, original appropriation lapses.

4. Department of Administration is to make all debt service payments on assumed municipal debt; provides for storage and destruction of bonds/coupons paid; prepares an annual report of activities for legislature.

5. Department of Revenue is to manage and invest money in the fund in accordance with general fund investment authority.

6. Municipality must furnish various data to Department of Administration.

7. If municipality does not send data within 60 days, municipality pays debt service and can later be reimbursed.

8. Municipality may elect to receive an entitlement from the fund for debt service payments which would normally be made by the fund. The bonded indebtedness in that case is not considered assumed.

9. When the municipal debt is assumed it is not to be considered an obligation of the municipality and the municipality is not authorized to levy taxes to pay the debt assumed. However, if a municipality does not receive notice of debt assumed by May 1 of the year, the municipality may levy taxes for the debt service.

10. Effective July 1, 1981.

1/26/81

BILL ANALYSIS, SB 38, Cont'd

Comments:

1. In the form presented, the bill appears to have constitutional problems which should be researched. Article IX, Section 8 requires voter approval of State contracted debt. In this bill the State would be assuming ("contracting") the debt without a vote of the public. Some restructuring as to who receives the appropriation to pay off the debt may be necessary. (See also 1959 Opinion of the Attorney General).

2. The bill should perhaps include language, especially in the entitlements section, which limits the amount of draw to only what is necessary to accomplish the effect of the debt having been removed and limits the use of the entitlement draw.

3. Total issued and outstanding general obligation municipal debt at June 30, 1980 is as follows: (Anchorage includes 7/1/80 issue)

School related	$355,794,100
Other projects	555,675,500
Total	$911,469,600

If the attempt is to remove or make "the indebtedness is not an obligation of the municipality" the actual appropriated future amounts could be less than the above to accomplish an actual defeasance.

4. Normally such transactions are accomplished by setting aside the funds with a third party trustee who invests the funds and makes the payments.

5. It appears that the question of future municipal debt issuance will have to be addressed. The municipalities may be locked out of future markets for a period of time due to IRS rulings. This must be researched by bond counsel.

6. This fiscal note includes only those costs applicable to Department of Revenue investment of funds necessary for payoff.

Anselm C. Staack, Treasury Comptroller
Department of Revenue/Treasury
465-2351
1/26/81

1/26/81

SB
42

COMMITTEE REPORT

SENATE

1/13/81

FURTHER: Finance

Date: Jan 29, 1981

Mr. President:

The Committee on COMMUNITY & REGIONAL AFFAIRS has had SB 42 relating to the Village Safe Water Program

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 42 [X] sa title [ ] new title

and recommends do pass the committee substitute

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Ken Lehman

Cecil Steininger

Caouette

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Ken Lehman
CHAIRMAN

S 60 (Rev. 12/78)

3727

Klos – Kliana from Senate Finance called re: SB 42 – Finance waived further referral. She wants to know if you want your letter addressed to Duckworth + Bennett to accompany the bill when it goes back to the Senate Secty and on to Rules. Told her would call her back. —

Senator said yes. Called Lee back

2/3/81

Persons to notify

SB 42

DEC (Keith Kelton Greg Capito)

Chapter 97

SLA 1980

AN ACT

Providing for the issuance of general obligation bonds in the amount of $33,000,000 for the purpose of paying the cost of capital improvements for water and sewer systems, solid waste facilities, and village safe water facilities; and providing for an effective date.

---

* Section 1. For the purpose of paying the cost of capital improvements for water and sewer systems, solid waste facilities, and village safe water facilities, general obligation bonds of the state in the principal amount of not more than $33,000,000 shall be issued and sold. The full faith, credit and resources of the state are pledged to the payment of the principal of and interest and redemption premium, if any, on these bonds. These bonds shall be issued under the provisions of AS 37.15 as those provisions read at the time of issuance.

* Sec. 2. If the issuance of these bonds is authorized by the qualified voters of the state, a special fund of the state to be known as the "1980 Water Supply and Sewer Systems, Solid Waste Facilities, and Village Safe Water Construction Fund" shall be established, to which shall be credited the proceeds of the sale of the bonds described in sec. 1 of this Act except for accrued interest and premiums.

* Sec. 3. (a) The sum of $33,000,000 is appropriated from the "1980 Water Supply and Sewer Systems, Solid Waste Facilities, and Village Safe Water Construction Fund" to the Department of Environmental Conservation for

the projects listed in this section:

Project	Amount
(1) Village safe water and solid waste construction projects under the Village Safe Water Act (AS 46.07) in each of the following communities:	
(A) Chefornak	$10,000,000
(B) Circle	
(C) Copper Center	
(D) Eagle Village	
(E) False Pass	
(F) Kokhanok	
(G) Nelson Lagoon	
(H) Newtok	
(I) Pedro Bay	
(J) Portage Creek	
(K) Ruby	
(L) St. Michael	
(M) Stony River	
(N) White Mountain	
(O) Central	
(P) Huslia	
(Q) Ambler	
(R) Kasigluk	
(S) Aniak	
(T) Klukwan	
(2) Urban water and sewer and solid waste facility construc-	

tion grants

(b) The appropriation

appropriated among the proj

• Sec. 4. If the issuanc

waters of the state, the am

found necessary is appropri

state bond committee to

expenses incident to the sal

Act. The amounts expended f

shall be reimbursed to the g

bonds authorized by this Act

• Sec. 5. The amount wit

the purpose of advance plann

shall be reimbursed to the fu

rized by this Act.

• Sec. 6. The question w

issued shall be submitted to

general election and shall re

State General

Systems, Solid

Water Construc

Shall the State of

in the principal am

purpose of paying t

and sewer systems,

water facilities?

Bond

Bond

	Amount
tion grants - statewide	23,000,000

(b) The appropriations for projects made in this section may be re-appropriated among the projects by law.

* Sec. 4. If the issuance of these bonds is authorized by the qualified voters of the state, the amount of $115,000 or as much of that amount as is found necessary is appropriated from the general fund of the state to the state bond committee to carry out the provisions of this Act and to pay expenses incident to the sale and issuance of the bonds authorized in this Act. The amounts expended from the appropriation authorized by this section shall be reimbursed to the general fund from the proceeds of the sale of the bonds authorized by this Act.

$10,000,000

* Sec. 5. The amount withdrawn from the public facility planning fund for the purpose of advance planning for the improvements financed under this act shall be reimbursed to the fund from the proceeds of the sale of bonds authorized by this Act.

* Sec. 6. The question whether the bonds authorized in this Act are to be issued shall be submitted to the qualified voters of the state at the next general election and shall read substantially as follows:

Proposition

State General Obligation Water Supply and Sewer Systems, Solid Waste Facilities, and Village Safe Water Construction Bonds $33,000,000

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $33,000,000 for the purpose of paying the cost of capital improvements for water and sewer systems, solid waste facilities, and village safe water facilities?

Bonds Yes [ ]

Bonds No [ ]

689

Chapter 97

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

L

Source

FCCSHB 560

Providing for the i
amount of $18,787,9
energy conservation
removal for state i
date.

BE IT ENACTED BY THE LE

THE ACT FU

Approved by the Gove
Actual Effective Dat

Position Paper

On Senate Bill Number 42

by

Ernst W. Mueller

Commissioner of Environmental Conservation

before the

Senate Community and Regional Affairs Committee

The Department of Environmental Conservation wishes to go on record as supporting Senate Bill Number 42 which amends the Village Safe Water (VSW) Act (AS 46.07). This bill would make it clear that solid waste facilities may be constructed under provisions of the (VSW) Act. In ch. 97 SLA 1980, which authorized the issuance of bonds for projects under the Act, solid waste facilities were expressly included as items for which bond money could be spent. In an informal attorney general's opinion, the Department of Law concluded that this amended the Village Safe Water Act by implication to authorize those facilities. This bill would make that amendment explicit in the statutes.

In addition, the bill would make washeterias and bathing facilities optional in projects constructed under the Act. Under existing law, every project constructed under the Act must include a washeteria and bathing facilities. In many villages, such facilities are not needed or desired. However, the statutes require that they be constructed anyway. This results in unnecessary and unwanted facilities. This bill will make provision of washeterias and bathing facilities optional instead of mandatory and will enable our Department to work more closely with village authorities in providing the facilities actually desired by village residents.

Thank you for this opportunity to comment on SB 42. I would be glad to answer questions or provide any additional information you may need.

HB 689 SOLID WASTE IMPROVEMENTS

Village	Work Items	Estimated Cost
Chefornak	Trash haul vehicle Trailer Fencing	$ 31,000
Kokhanok	1,400 foot chain link fence	$ 14,000
Newtok	2,400 foot chain link fence and 200 foot boardwalk	$ 26,000
Nelson Lagoon	Dozer to bury solid waste	$ 35,000
False Pass	Solid waste haul vehicle	$ 18,000
St. Michael	Fence solid waste site	$ 10,000
Portage Creek	Haul vehicle Fencing Trash cans	$ 32,000
	TOTAL	$166,000

Alaska State Legislature

Senate

Committee on

Community & Regional Affairs

465-4934
465-4935

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

January 30, 1981

The Honorable Don Bennett
The Honorable M.E. Dankworth
Co-Chairmen
Senate Finance Committee

Dear Senators Bennett and Dankworth:

The Senate Community and Regional Affairs Committee has recommended a committee substitute for SB 42 which will now be referred to your committee. The committee substitute preserves sections 3 and 6 of the original bill and deletes sections 1, 2, 4, and 5. The deleted sections would authorize the construction of solid waste disposal facilities under the Village Safe Water Act.

This committee is not necessarily opposed to the inclusion of a solid waste program under the Village Safe Water Act ever, it is the consensus of the committee that the Department virornmental Conservation should assess the statewide need for su olid waste facilities and the potential costs which would be incurred by the State (including any projected operating and maintenance costs) before a change in the law is passed.

The zero fiscal note attached to SB 42 is applicable only to projects which have already been approved for bonding by Chapter 97 SLA 1980 (FCCSHB 689). The fiscal impact of any additional projects have not been analyzed.

The Department of Environmental Conservation is aware of this committee's concerns and in response has proposed a study of statewide solid waste needs. Such a study would require the appropriation of additional funds for that purpose.

The deletion of sections 1, 2, 4, and 5 from SB 42 will not delay or otherwise affect solid waste projects authorized by Chapter 97 SLA 1980.

Sincerely,

Don Gilman

Don Gilman
Chairman

Supplementary documents

Fiscal note

Governor's letter

Attorney General's Opinion

Ch 97 SLA 1980 (Bonding Bill)

DEC position paper

HB 689 project list

Committee Substitute

Village Safe Water

talk to Ellen Greenberg

(had funding for a solid waste state plan but haven't done it)

Issue

① Has the Act been ammended by implication?

1. Attorney General: yes.

2. Billy Berrier, Leg. Counsel: ~~the Act may be amended but only so far as~~ Ch. 97 SLA 1980 may have ammended the Village Safe Water Act but only so far as the funds ~~authorized. It is not an ammendment which would allow~~ and projects authorized ~~by that~~ in ~~that~~ bill the bonding bill.

② ~~Has~~ Is solid waste disposal a desireable addition to the Act?

1. what is the need for solid waste disposal relative to the need for safe water and hygeanic waste disposal?

2. what proportion of the funds available to the program will be shifted to solid waste disposal?

SB 42

Summary

Ammends the Village Safe Water Act to:

1. specifically include construction of solid waste disposal facilities

2. make the provision of washeterias and bathing facilities optional rather than manditory

Analysis

~~Impacts~~

Analysis

The Village Safe Water Act authorizes the construction of safe water and hygienic sewage facilities in villages. Chapter 97 SLA 1980 authorized the issuance of bonds for projects under the Act. Solid waste facilities were expressly included as items for which money could be spent even though this type of facility is not mentioned in the Act. The Attorney General has issued an informal opinion stating that the bonding bill amounts to an ammendment by implication to the Village Safe Water Act to authorize solid waste facilites under the provisions of the Act. This bill would make that ammendment explicit in the statutes.

The manditory provision of washeteria and bathing facilities requires construction of these facilities without regard to whether they are needed or desired by the village.

Alaska State Legislature

Senate

Committee on

Community & Regional Affairs

465-4934
465-4935

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Donald Gilman, Chairman
Robert H. Ziegler, Sr., Vice-Chairman
Mike Colletta
Arliss Sturgulewski
Frank Ferguson

January 30, 1981

The Honorable Don Bennett
The Honorable M.E. Dankworth
Co-Chairmen
Senate Finance Committee

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This committee is not necessarily opposed to the inclusion of a solid waste program under the Village Safe Water Act. However, it is the consensus of the committee that the Department of Environmental Conservation should assess the statewide need for such solid waste facilities and the potential costs which would be incurred by the State (including any projected operating and maintenance costs) before a change in the law is passed.

The zero fiscal note attached to SB 42 is applicable only to projects which have already been approved for bonding by Chapter 97 SLA 1980 (HCS SB 689). The fiscal impact of any additional projects have not been analyzed.

The Department of Environmental Conservation is aware of this committee's concerns and in response has proposed a study of statewide solid waste needs. Such a study would require the appropriation of additional funds for that purpose.

The deletion of sections 1, 2, 4, and 5 from SB 42 will not delay or otherwise affect solid waste projects authorized by Chapter 97 SLA 1980.

Sincerely,

Don Gilman

Don Gilman
Chairman

VOTING RECORD

BILL [redacted] CS for SB 48

DATE Jan 29, 1981

	YES	NO	ABSTAIN	ABSENT
GILMAN	✓			
ZIEGLER	✓			
FERGUSON	✓			
COLLETTA	✓			
STURGULEWSKI	✓			

recorded by

David Dye

SB
44

CITY OF KETCHIKAN

334 FRONT STREET P. O. BOX 7900 TELEPHONE 907 228-5111

February 20, 1981

SB 44

Senator Don Gilman, Chairman
Senate Community & Regional
Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 44, Local Government Assumption of Public Defender Costs

Dear Senator Gilman:

Enclosed is a copy of Resolution No. 1206 adopted by the Council of the City of Ketchikan at its regular meeting on February 19, 1981. This resolution states the opposition of the City to Senate Bill 44.

The City feels quite strongly that being required to bear the expense of public defense of indigents charged with municipal violations will be a financial burden and also conflict with municipal law enforcement. Alaska municipalities already pay for the expense of the prosecution of municipal violations as well as the cost the basic law enforcement services provided by municipal police departments. In addition, it is the responsibility of the City Council to adopt penalties for the violation of municipal criminal ordinances. Shifting the cost of public defense to municipalities in this context will not only add to burden on the already over taxed resources of local government but will also create conflicting interests in fair and effective municipal law enforcement. Of course, our criminal laws cannot and should not differentiate between indigent and non-indigent violators. However, even the inclination towards such discrimination should be avoided. Further, municipalities like this City may be tempted to exercise their criminal authority by reducing the penalties for all municipal offenses to

fines of less than $300 which would effectively avoid all public defense costs. That, of course, may not be appropriate depending on the seriousness of the violation.

For the reasons noted above, the City of Ketchikan would request that you seriously consider the serious negative consequenses that a piece of legislation such as Senate Bill 44 would have. We urge you to oppose this bill. Thank you for your attention to this matter.

Sincerely,

James A. Van Altvorst
City Manager

JAVA:gw

Enclosure

cc: Ginny Chitwood, w/enclosure
Alaska Municipal League

Lee Sharp, City Attorney, w/enclosure
City & Borough of Juneau

Representative Oral Freeman, w/enclosure
Representative Terry Gardiner, w/enclosure
Senator Robert Ziegler, Sr., w/enclosure

CITY OF KETCHIKAN, ALASKA

RESOLUTION NO. 1206

A RESOLUTION OF THE CITY OF KETCHIKAN, ALASKA DECLARING ITS OPPOSITION TO AND REQUESTING DEFEAT OF SENATE BILL 44 WHICH WOULD SHIFT THE COST OF PUBLIC DEFENSE OF MUNICIPAL PROSECUTIONS OF INDIGENTS TO THE MUNICIPALITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS Senate Bill 44 now pending before the Alaska Legislature would require municipalities to pay all expenses of public defense indigents charged with municipal violations; and

WHEREAS the State of Alaska currently and historically has paid for these expenses; and

WHEREAS in excess of 80 municipal cases each year are assigned to the Ketchikan Public Defender's Office; and

WHEREAS the report of the Public Defender Agency for the fiscal year 1980 indicated that the average cost per case handled by the Public Defender Agency was $342.00 for that year; and

WHEREAS this would indicate that a conservative estimate (assuming a $300 per case cost) of the annual fiscal impact upon the City of Ketchikan of such a bill would be at least $24,000; and

WHEREAS the number of municipal criminal cases opened each year and the number of such cases represented by the Public Defender's Office is steadily increasing; and

WHEREAS the limited financial resources of Alaskan municipalities, including the City of Ketchikan, already bear the burden of providing the greatest portion of vital public service such as fire and police protection, health services, education, parks and recreational services, garbage and sanitation services, streets and public works, water and sewage services and other vital services; and,

WHEREAS programs are being discussed and legislation is being proposed that would reduce the financial burden of the municipal services by shifting costs to the State or by providing State subsidies; and

WHEREAS the imposition upon municipalities of the additional cost of public defense of municipal criminal cases would create a conflict between the financial interest of the municipality to reduce public defense costs, while at the same time maintaining the interest of the municipality in fair, effective and just enforcement of municipal criminal laws.

NOW, THEREFORE BE IT RESOLVED that by the Council of the City of Ketchikan, Alaska, as follows:

Section 1. The City of Ketchikan is strongly opposed to and urges the defeat of Senate Bill 44 and any other measure which would attempt to shift the cost of public defense of indigents charged with violations of municipal ordinances from the State to municipalities.

Section 2. This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 19th day of February 1981.

John W. Shay, Jr. Mayor

ATTEST:

Karen Miles, City Clerk

SB 44

Persons to notify

Judy Crandahl, Dept Admin 2277

Public Defender Brian Shortell 279-7541

Lee Sharp 586-3300

AML

Arthur Snowden 274-8611
court System

~~National Right to Work Committee~~

Brian Shortell - Public Defender

879-7541

SB 44

Jan. 27th Hearing ?

Public Defender #3

~~11~~

Oct 3rd + 4th - Can Arthur call

Snowden

Schedule

Call No: Now 274-8611

municipal appointment of conflict atty

45 yr in Anch
20-25 " " ~~rest~~ of State

$3,50 apiece 250 non-trial
500 trial

$25,000 - SB 14 ~~bill~~ would save the State this amt.

Rick Barrier, 7 21

(907) 274-8611

Alaska Court System

State of Alaska

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

municipal appointment of conflict atty

45 yr in Anch
20-25 " " rest of State

$350 apiece 250 non-trial
500 trial

$25,000 - SB444 would save the State this amt.

Rick Barrier 21

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

January 21, 1981

[redacted]

File: Associations-AMAA

Subject: SB 44, Local Government Assumption of Public Defender Costs

Dear [redacted]

Enclosed is a copy of Senate Bill 44 which was introduced at the request of the governor's office. It is another attempt by the state public defender to shift the cost of public defense of municipal prosecution of indigents to the municipality. A similar bill was introduced during the 11th Legislature but did not make much headway.

The Senate Community & Regional Affairs Committee to which the bill has been referred scheduled the bill for hearing but later cancelled the hearing. It will probably be placed on a future Senate CRA hearing calendar. If your feelings on this bill are the same as mine, I suggest you let the committee and the Alaska Municipal League know of your opposition. If you have any idea of the fiscal impact such a bill would have on your municipality, please get such figures to Ginny Chitwood, Executive Director of the Alaska Municipal League. You should also let Ginny know what other effects the bill would have on your community. From my standpoint, I can say that we would undoubtedly attempt to minimize the impact of the Bill by having our police department bring more of their charges under a state statute, thus increasing the burden of the district attorney. Also, there would certainly be a greater tendency on our part to dismiss cases where the public defender is representing the defendant because the public defender will have little or no restraint on filing frivolous and other delaying and time consuming actions. After all, he will merely send us a bill for his time. We, on the other hand, will be evaluating not only whether it is worth our time to pursue a case but whether it is worth the use of the public funds which will be necessary to pay the public defender for his dilatory activities.

Senator Don Gilman is Chairman of the Senate Community & Regional Affairs Committee. The address for Senator Gilman and his committee is:

Senator Don Gilman, Chairman
Senate Community & Regional Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

You should send your correspondence to the Municipal League at the following address:

Ginny Chitwood, Executive Director
Alaska Municipal League
204 North Franklin Street
Juneau, Alaska 99801

Please at least get something in to Ginny so she can represent the views of your municipality before the committee when this bill comes up again. Correspondence with the committee would also be helpful.

Sincerely,

Gerald L. Sharp
City-Borough Attorney

GLS:jr
Enclosure
cc: Ginny Chitwood

SB 44

MEMORANDUM State of Alaska

TO William R. Hudson
Commissioner
Department of Administration

DATE September 18, 1980

FILE NO

TELEPHONE NO

FROM Brian Shortell
Public Defender

SUBJECT New Legislation

Attached is a 1981 Legislative Proposal Request Form which is submitted in response to Judy Crondahl's September 15, 1980 regarding new legislation. It addresses a need for further action on House Bill No. 375 which was introduced in March of 1979 and is now languishing in the House Judiciary Committee. Alaska municipalities have not been paying for indigent defense services since 1976. Before that time, the municipalities were required by court decision to pay for these defense services, since the constitution requires indigents in criminal cases to be provided with counsel. The state has been picking up the cost of the defense of cases prosecuted by municipalities for four years now.

Some years ago I suggested that House Bill No. 375 be introduced, because it seemed to me that the municipalities should be required to pay for their own defense services rather than passing these costs on to the state. Last year, as you can see from the copy of the bill which I have attached to this memo, the Governor's Office agreed to pursue passage of this legislation "vigorously". Unfortunately, the Judiciary Committee did not take action on the bill last year.

I am hoping this year some positive action can be taken by the legislature. If you require further information, please let me know.

Attachment

cc: Judy Crondahl

SB 44

HB 375

HOUSE BILL NO. 375 by the Rules Committee by request of the Governor, entitled:

"An Act relating to costs of attorney services provided to indigents charged with violations of municipal ordinances."

was read the first time and referred to the Community and Regional Affairs and Judiciary Committees.

A fiscal note on HB 375 appears in House Journal Supplement No. 25.

The Governor's transmittal letter follows:

March 12, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill transferring to municipalities the cost of providing defense counsel to indigents charged with violation of municipal ordinances.

In the past, the cost of judicial services, including the cost of defending indigent defendants, was borne by the municipality which filed the charge against the person under municipal ordinance. Because it was difficult, if not impossible, for the court system to precisely apportion the cost of judicial services, legislation was passed in 1976 amending AS 22.15.270 to have the state bear those costs. However, the transfer of responsibility for providing defense counsel for indigents charged with violations of municipal ordinances has imposed a substantial burden on the Public Defender Agency. These defense costs, unlike normal court operating costs, are easily identifiable. This bill would transfer back to the municipality bringing the charge against the indigent the responsibility for paying those costs, and thus more fairly allocate the costs to the user of the services.

Sincerely,

Jay S. Hammond
Governor

Ted Burns - public Defender costs

ANCH HAS 5 public defenders on municipal con-
tract full time load

indigents
all pd costs $100,000 produces Suppt -
$40,00 salary

4 - $500,000

anchorage carries much of states load -
don't have - (drunk driver) would call
DA and write up under