

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

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6229 SENATE COMMUNITY & REGIONAL AFFAIRS

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Title 46

Chapter 40. The Alaska Coastal Management Program.

Article

1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
2. Coastal Management Programs in the Unorganized Borough (§§ 46.40.110 — 46.40.180)
3. General Provisions (§§ 46.40.190 — 46.40.210)

Opinions of attorney general. — The activities of lessees, permittees and other private persons on nonexclusive federal coastal lands remain subject to state regulatory authority — including the coastal management program — unless the particular state regulation is preempted by, irreconcilably conflicts with or frustrates the purpose of another federal law. February 3, 1978, Op. Att'y Gen.

While federal land use decisions will not be governed or controlled by the state's coastal management program, they must, to the degree that they directly affect nonfederal coastal resources, conform to the state program to the maximum extent practicable. February 3, 1978, Op. Att'y Gen.

Article 1. Development of Alaska Coastal Management Program.

Section

10. Development of Alaska coastal management program
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30. Development of district coastal management programs
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Section

60. Review and approval by council
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100. Compliance and enforcement

Collateral references. — 78 Am. Jur. 2d, Waters. §§ 59-116, 375-439.

65 C.J.S. Navigable Waters. §§ 10-18, 20-132; 93 C.J.S. Waters. §§ 71-85.

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040. (§ 4 ch 84 SLA 1977)

Revisor's notes. — AS 44.19.155 was substituted for AS 44.19.891 in subsection (a) to conform to the renumbering of that section by the revisor of statutes pursuant to AS 01.05.031.

Opinions of attorney general. — The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit

local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.000 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

Sec. 46.40.020. Objectives. The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

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

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

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

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

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

(7) 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; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (§ 4 ch 84 SLA 1977)

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

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

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

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

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

(5) 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 the land and water within the coastal area;

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and

(7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations. 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981, Op. Atty Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the

adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981, Op. Atty Gen.

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.040. Duties of the Alaska Coastal Policy Council. Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62) not later than April 15, 1978, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter; guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. (§ 4 ch 84 SLA 1977; am § 1 ch 129 SLA 1978)

Effect of amendments. — The 1978 amendment substituted "not later than April 15, 1978" for "within six months of the effective date of this act" in the introductory language of paragraph (1).

Editor's notes. — The regulations referred to in this section went into effect on July 18, 1978 and may be found at 6 AAC 80 and 6 AAC 85.

Sec. 46.40.050. Action and submission by coastal resource districts. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977; am § 1 ch 66 SLA 1979)

Effect of amendments. — The 1979 amendment added the second sentence.

Sec. 46.40.060. Review and approval by council. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final coun-

cil disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

Sec. 46.40.070. Standards for council review and approval. (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, § 2. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict

or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable, within the meaning of subsection (c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

Sec. 46.40.080. Effective date of Alaska coastal management program. 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. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — Under the decision in *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or proposed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980, Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final council disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

Sec. 46.40.090. Implementation of district coastal management programs. (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation

shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district. (§ 4 ch 84 SLA 1977)

Sec. 46.40.100. Compliance and enforcement. (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being implemented, enforced or complied with, the council shall convene a public hearing to consider the matter. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to implement, enforce or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council and subsequently approved by the legislature have been followed and considered.

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — As to effective date of coastal management programs, see notes under this heading following AS 46.40.080.

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 16, 1989

SUBJECT: Lease Sale 55: Alaska Coastal Policy Council
decision reconsidering petitions for
compliance and enforcement (Work order
6-1579A)

TO: Senator Mike Szymanski

FROM: Jack Chenoweth
Legislative Counsel 

The director has asked me to respond to your request for assistance relative to understanding the legal tangle involving the Alaska Coastal Policy Council and the state's proposed Lease Sale 55.

Let me say at the outset that, in my view, nothing in the review and approval process summarized below is "broken" such that it requires or invites a legislative cure. Part of the problem was apparently generated by conflicting advice offered by the Department of Law; part is attributable to a conscious decision by the Alaska Coastal Policy Council. After reviewing the memo, however, you may disagree with my observation, in which case I would be happy to work with you to prepare a bill in the way of a legislative "fix."

*

Essentially, although this dispute is a procedural matter arising under the Administrative Procedure Act (AS 44.62) and the Alaska Coastal Management Act (AS 46.40), it has substantive undertones. Appreciating the complexity of the various documents and the recent history of the proceeding, let me try to make this explanation as simple as I can --

THE PARTIES:

The issue arises out of a July 20, 1989, petition submitted by legal counsel for four oil companies. The four companies

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have an interest in lease tracts offered during Lease Sale 55, otherwise called the Demarcation Point Sale. The lease sale involved state tracts located within the North Slope Borough.

The companies' petition and a related piece of correspondence were addressed to the director of the division of governmental coordination. That division, part of the Office of Management and Budget, is responsible for staff support for the 16-member Alaska Coastal Policy Council, whose membership involves a mix of state officers and local government officials. The companies' petition asks the Council to reconsider an earlier decision.

The other party interested in the outcome is Trustees for Alaska, an interest group representing the City of Kaktovik and certain residents of that community. Kaktovik is, as you know, a village located near the lease sale site.

THE APPLICABLE STATUTE(S):

The mid-70's saw a growing national interest in the conservation and development of the resources of the nation's coastlines, and incentives were offered in federal legislation for states to take a stronger role in oversight of those resources. Alaska has a longer coastline than all other states, and the prospective demands on coastal resources--ranging from subsistence activities through usual commercial activities (ports and harbors; commercial fishing; aquaculture development) to relatively intensive petroleum exploration and development--suggested that Alaska's approach to oversight would have to take cognizance of a very wide range of actual and probable demands on the state's coastal resources.

Thus, when the Alaska Coastal Management Act, AS 46.40, was being drafted in 1976-77, it was clear that the interests of the State of Alaska would not always be consistent with the interests of residents of various municipalities (and of the sparsely populated areas of the unorganized borough). What was needed was a mechanism that accommodated the state administration's interest in management of coastal resources to the growing interest of Alaskans in regions to proceed with resource management through the municipality's traditional exercise of planning and zoning powers under Title 29. Rather than treat Alaska's long coastline as a unit subject to a single set of regulations imposed by the

state, AS 46.40 incorporated a strategy intended to strike a balance between the interests of the state as a whole (with a probable expected emphasis on resource development) and the interests of present and future local governments that also would be concerned with activities involving coastal resources.

One element of the legislation directed that, while local governments--cities and boroughs--could undertake to regulate land use and development through traditional planning and zoning powers, those decisions, insofar as they related to coastal resources, would be required to secure approval of the statewide Alaska Coastal Policy Council. Coastal Policy Council review and approval was required principally to assure that the coastal policy plans of municipalities take the state's interests and concerns into consideration, while the state's initiative to development of those resources would be sensitive to local perceptions and expectations.

Once a municipality's coastal policy plan had been approved by the Coastal Policy Council, state agencies, the adopting municipality, and other parties could act to implement that plan. Parties anticipating activities in the coastal zone would be required to conduct those activities in conformity to the approved coastal management plan. If that plan had been adopted by a municipality (like the North Slope Borough), the plan would be tagged the "approved district plan."

During the course of an approved district plan's implementation phase, AS 46.40.100 is significant. That statute says, in effect, that either "side"--the state or a municipality--can secure a review by the Council to ascertain whether the party responsible was conducting activities in the coastal zone in a way that followed the previously-approved plan. These are identified as "compliance determinations" or "consistency determinations." Under AS 46.40.100(b), third parties could also seek a review and determination of compliance. If implementation was not in compliance with the approved plan, the section cited spells out the nature of the Council's review and the decision that may be rendered, and confers authority on the superior court to enforce a Council determination.

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One other statute is a factor in the material you submitted. It is a statute that sets time limits on "reconsideration" of an agency decision. Under AS 44.62.540(a), a subsection of the state's Administrative Procedure Act,

. . . [an] agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

In other words, if, after making a decision under the Administrative Procedure Act, an agency receives a reconsideration petition, it then has 30 days to reconsider its earlier decision. If it does nothing within that window period on the reconsideration petition, that petition for reconsideration is deemed denied.

THIS PROCEEDING:

Lease sales in a coastal zone are subject to the Alaska Coastal Management Act (AS 46.40). Insofar as prospective state lease sales would be scheduled for tracts in the coastal zone of the North Slope Borough, the Department of Natural Resources had to assure that its proposed lease sale would be in conformance with the approved district plan of the North Slope Borough.

In this instance, the commissioner of natural resources determined (in late September, 1988) that proposed Lease Sale 55 would be consistent with the district plan of the North Slope Borough. The Lease Sale could go forward on schedule.

At virtually the same time (late September, 1988), Trustees for Alaska sought a "consistency review hearing." That proceeding was for the purpose of having the Alaska Coastal Policy Council determine that, if Lease Sale 55 went forward as scheduled, the North Slope Borough's district plan was not being properly complied with. As the record indicates, two months later, in mid-November, the division of governmental coordination (acting for the Alaska Coastal Policy Council) refused Trustees' petition, citing failure of Trustees under applicable program regulations to make a

necessary showing of evidence of the lease sale's noncompliance with the approved district plan.

In December, 1988, Trustees submitted a petition seeking reconsideration of the director's decision, and presumably submitting additional information of ostensible noncompliance of Lease Sale 55 with the approved district plan. No action was taken by the Alaska Coastal Policy Council until more than six months later (June 28, 1989). Then, at that time, the Coastal Policy Council, in the words of the pertinent legal document,

. . . took up Trustees' 12/22[1988] Petition for Reconsideration and decided to grant Trustees a hearing for the purpose of determining whether DNR failed to implement, enforce, or comply with the [North Slope Borough's approved coastal management plan] as to [Lease] Sale 55.

However, while the Council ordered a consistency determination hearing, apparently the steps necessary to schedule that hearing were not promptly taken.

One month later (July 20, 1989), the oil companies' counsel prepared and submitted to the Alaska Coastal Policy Council its own "petition for reconsideration." In that petition, companies' counsel questions the June 28, 1989, decision of the Alaska Coastal Policy Council to allow Trustees for Alaska to raise a late challenge to Lease Sale 55. I'll skip a discussion of the reasons cited by the companies; they are detailed in the brief.

The director of the governmental coordination division immediately referred the matter to the attorney general. The attorney general's opinion, issued in late July, concluded that the challenge brought by Trustees for Alaska in December, 1988, and allowed by the Council in June, 1989, should not have been granted. It cites two reasons:

(1) AS 44.62.540(a), limiting reconsiderations to a 30 day period, "deprived the [Alaska Coastal Policy] Council of jurisdiction to act on [Trustees'] Petition for Reconsideration [of] December 23, 1988" Citing cases from California construing similar administrative procedure act provisions, the Attorney General's opinion finds that AS 44.62.540(a) is applicable to Council decisions and operates in this

instance as a jurisdictional bar to agency action after expiration of the applicable time period--in this instance, 30 days. In other words, the director and Council waited too long to respond to Trustees' December, 1988, petition for reconsideration.

(2) Alternatively, the attorney general rejected the notion that Trustees' December, 1988, petition for reconsideration was in effect a new petition, and should still be acted upon. Citing a recent Alaska supreme court decision, Sublett v. Commercial Fisheries Entry Commission, 773 P.2d 952, (Alaska 1989), it concluded that "[the legal p]rinciples of res judicata and collateral estoppel preclude collateral attack could not be made on a final agency decision made in an adjudicatory hearing." In this instance, the opinion said, even if the Council gave Trustees' a belated hearing, "its decision after a hearing would be of no effect."

The attorney general's opinion concluded that the consistency determination hearing that had been ordered by the Alaska Coastal Policy Council in December, 1988, should be abandoned. (This office may review the case principally relied upon, Sublett v. CFEC, in the course of its preparation of the annual oversight report later this interim.)

At the time you submitted this material for review by this office, two unresolved items are presented: (1) the Coastal Policy Council decision to schedule Trustees' consistency determination hearing as had been approved back in December and approved in June, and (2) the decision by the Council as to the oil companies' petition to set that promised hearing aside.

The attorney general's opinion (page 8) urged the Council to vacate its order granting Trustees for Alaska a hearing. It also called attention to the fact that, because the oil companies' counsel's petition was also itself a "petition for reconsideration," AS 44.62.540(a) operated to require some decision by the Council within the next following 30 days.

The Council met by teleconference on July 28, the 30th day deadline.

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The concluding paragraph of the attorney general's opinion said, in pertinent part:

. . . The deadline for action on Lessee's Petition is July 28, 1989. Therefore, if the Council is prepared to reconsider, but not yet prepared to vacate the order setting a hearing, it may prefer to grant the [Lessee's] Petition to Reconsider and suspend the order setting a hearing, pending full consideration at its next meeting on whether to vacate the order setting a hearing. In any event, the Council must act on Lessee's Petition on or before July 28, 1989, or Lessees' Petition will, by operation of AS 44.62.540(a), be deemed conclusively denied.

(Emphasis in original.)

From my perspective, it appears that the Coastal Policy Council has only partially responded to the attorney general's advice.

Apparently to try to avoid getting caught under AS 44.62.540(a) as to the oil companies petition to reconsider, the Council acknowledged that petition, but took no other action on it. The motion before the Coastal Policy Council during the recent teleconference was to

. . . acknowledge that we [the Coastal Policy Council] did receive the [oil companies'] petition and do nothing [with it].

Transcript of the July 28, 1989, teleconference meeting, at page 25. Much later in the course of the meeting, the maker of the motion clarified:

Okay, my motion is not to do anything with the [oil companies' reconsideration] petition.

. . .

My motion is just to acknowledge it and not to do anything with it. [Indisc.] My motion was to go ahead with the hearing in Kaktovik.

That motion was adopted by an 8-7 vote. Transcript, pp. 69, 70.

The Council decided during the teleconference that at its next meeting, tentatively scheduled for September 26, the Council would schedule time to reconsider the Trustees for Alaska petition. As recorded in the minutes, this is the motion by Ms. Rutherford, the authorized alternate representing the commissioner of community and regional affairs, a member of the Council:

I move to reconsider the June 28th decision to hold an adjudicatory hearing to review the substance of the coastal consistency determination for Lease Sale 55, and instead, to hold a public hearing to receive testimony of the Kaktovik people to enable the Council, the [Coastal Policy Council], to develop policy for future permitting decisions.

Transcript, at page 67. Later in the proceedings there appeared this exchange relative to clarification of that motion:

MS. CAULFIELD: . . . [M]y understanding of Marty [Rutherford's earlier] motion that's now on the table . . . is just this: to move to reconsider the June 28th decision to hold an adjudicatory hearing to review the substance of the consistency determination for Lease Sale 55. I'm going off my notes, not off a court recording here, but that's what I have. Perhaps Marty [Rutherford] could verify that that's her motion . . .

MS. RUTHERFORD: That was my motion.

. . .

MS. CAULFIELD: Excuse me. [Council member] Norm Cohen has asked me the effect of the motion. My understanding is the effect of this motion is just to leave open the option for the [Coastal Policy] Council to reconsider that decision, not to lean in one direction or another on what happens when they do reconsider. All of that reconsideration occurs at the next meeting, and there will be another vote either, you know, affirming the June 28th decision or changing it.

MS. RUTHERFORD: Call the question.

The motion was adopted by a vote of 8-6. Transcript, pp. 89, 90.

My sense is that, rather than set aside the earlier decision, the Council will carry through with its June 28 hearing order. Kurt Frederiksson of the division indicated that the Council would likely schedule a consistency determination in Kaktovik in October.

Thus, the Council appears to be on a course that may well be at odds with the Department of Law's suggested guidance in this matter: recall the portion of the opinion concluding that "even if the Council held a hearing, its decision after a hearing would be of no effect." Opinion, p. 8.

*

Earlier, I said I saw no need for a legislative fix. Let me amplify.

The first of the two statutes in question, AS 44.62.540(a), applicable to reconsiderations of certain administrative decisions, defines a limit on administrative actions. This notion of a limited period for review is fairly standard in most state administrative procedure acts. It is intended to impart finality to agency actions, so that an agency cannot stall and a disgruntled party is not left to wait indefinitely but rather can use the courts as an avenue of review or appeal. Nothing unusual appears to have occurred with reference to this provision.

The second provision, AS 46.40.100, relating to securing oversight, compliance, and enforcement under district coastal management plans that have received approval of the Coastal Policy Council, is an essential element of the political compromise that underpins the Alaska Coastal Management Act. As you can see, in the present dispute, both sides--Trustees for Alaska and counsel for the lessee oil companies--have cited and relied upon the provision in directing the respective petitions to the Council's attention. Although my exposure to the practical application of this statute is extremely limited, as a legal matter the compliance determination and enforcement provisions of this statute seem to be working as intended. Nothing in the facts of this squabble suggests that the provision is in need of modification.

Two other points bear mention:

First, the Alaska Coastal Policy Council seems to have committed itself (in June, 1989) to convening a consistency determination hearing on the Trustees for Alaska petition. In the course of the July 28 teleconference, one member of the Council persuasively argued that the scheduled hearing should proceed as scheduled:

MR. GOODWIN: . . . [W]hy do we want to reconsider this? We've made a decision to go ahead and have a [consistency determination] hearing. If we reconsider this decision, then in effect we're saying no to Kaktovik. That's why I made the motion that we just acknowledge it and not do nothing to it, which in effect, would deny the petition. And that's what I want. I want to see that happen.

Transcript, page 61. The thread of the proceedings of the Council from that point forward favored, by the narrowest majority, keeping the Coastal Policy Council's commitment to the residents of Kaktovik under the Trustees' petition, irrespective of the Attorney General's advice that any decision based on the belated hearing "would be of no effect." Opinion, p. 8.

Second, in the course of its disposition of the two positions, the Council apparently received inconsistent advice from the Department of Law. Quite early in the course of the recent teleconference, this exchange appears:

MR. GOODWIN: . . . I would like to ask that Council members consider not doing anything on this thing here. Let it go its way like we handled the first one. We are putting oil companies before the people, and it's not right. We see what happened in Prince William Sound, and I am afraid that if something happens up there [at Damarcation Point] it could be worse, because there is a lot of ice up there and oil won't evaporate when there's cold weather around, and there are a lot of things that can happen. I think the Attorney General's Office didn't do its work right the first time, and now we're faced with them trying to correct themselves. I think we ought to just go ahead and let them defend us

in court. I think that they have that obligation. Let's not do anything and let it go on its way. And I really want to see that we have our decision to have a hearing in Kaktovik go through. I want to hear from them people up there first. . . .

MR. GROGAN [Alaska Coastal Policy Council Chair Bob Grogan]: . . . [O]n behalf of the State certainly, I definitely appreciate the responsiveness and willingness of the public members all over the State to, on very short notice, come together to deal with this issue. I think all of us have been frustrated by the dramatic change in the Department of Law's position since our last meeting. I think we've all expressed some of that to this point. But I think what we need to do now is try to focus as best we can on what is before us. . . .

MS. KERTTULA [Assistant Attorney General Beth Kerttula, advising the Council during the teleconferenced meeting]: . . . I'd like to apologize right at the beginning for any confusion or difficulty that has arisen because of prior differing advice from the Attorney General's Office. I take to heart Mr. Goodwin's comments and can understand how difficult it is when you first heard one thing and then only have an opinion that says something differently. I can only say that we are all human, and when you deal with something for the first time and you give off-the-cuff advice, it's often difficult to be correct on the matter.

Transcript, pp. 2 - 4, emphasis added. Later in the proceedings, Mr. Goodwin returned to the subject:

MR. GOODWIN: . . . [I]n the first place, [indisc.] we ought to decide whether or not we want to be defended by the Department of Law. We're give[n] two opinions that are completely apart within one month. And I wouldn't feel comfortable having a lawyer defend me in court over something like that. . . .

Transcript, p. 37, emphasis added. So it appears that a dramatic change in the advice given to the Coastal Policy

Senator Mike Szymanski
Page 12
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Council by the Department of Law has contributed to the confusion and complications that have arisen in conjunction with this matter.

*

I trust this is sufficient for your purposes. If the memorandum or the issue raises questions, please contact me.

JC:mi
wkmi4/066

ALASKA COASTAL CONSISTENCY REVIEW PROCESS
FOR STATE AND FEDERAL PERMITS
OVERVIEW

Coastal projects which require state and/or federal permits, leases, and other approvals are subject to regulations adopted in March 1984, entitled Project Consistency with the Alaska Coastal Management Program (6 AAC 50). The project consistency review regulations direct state resource agencies and the Division of Governmental Coordination (DGC) to review coastal projects according to the procedures and timeframes specified in the regulations. Projects are reviewed to ensure they are consistent with the standards of the Alaska Coastal Management Program (ACMP) and approved district programs.

The consistency review regulations require the state to conduct a review of coastal projects in a manner that is significantly different from the way in which non-coastal projects are reviewed. The regulations enhance the role of coastal communities in state decisionmaking beyond that of individual state agency "public notice" provisions. The following briefly describes these major distinctions:

1. Project Based Review: All state and/or federal permits for a project are processed in a single review of the project. This eliminates duplicative reviews of the same project for different permits.
2. Coordinated Review: When a project requires permits of two or more state agencies or a federal permit, DGC coordinates the project review and renders a conclusive consistency determination on behalf of all the state resource agencies. If permits from only one state agency are required then that state agency coordinates the consistency review. This provides applicants with a single state agency contact to coordinate the project review and, if necessary, resolve any outstanding conflicts.
3. Mandatory Review Deadlines: Specific 30 or 50 day timeframes are established for completing the consistency review and issuing state permits.
4. Due Deference: State resource agencies and affected coastal districts are given the opportunity to comment on a project's consistency with the ACMP. Deference must be given to the comments of coastal districts regarding a project's consistency with the districts approved program. Deference must also be given to the expertise of the state resource agencies relative to their areas of responsibility.

5. Consensus: The conclusive consistency determination reflects a consensus reached by the project applicant, state resource agencies, and affected coastal district. Any one of these parties may elevate a proposed consistency determination to a higher administrative level for further review.

In addition, Table 1 summarizes the number of projects reviewed since January 1984, and the results of those reviews.

Consistency Determination Appeals

There is no provision in the consistency review regulations for appeal of a conclusive consistency determination. However, appeal procedures are available under the individual state agency permit authorities used to enforce the consistency determination.

In 1984, the Department of Environmental Conservation (DEC) questioned its role in adjudicating permit issues directly related to a conclusive consistency determination rendered by the Division of Governmental Coordination (DGC). In response (attachment 1) the Department of Law found that:

"A conclusive consistency determination rendered by DGC is implemented through the existing permitting and other authorities of state and federal agencies. If a project requires certain stipulations or conditions to ensure its consistency with the ACMP, the project consistency determination will state those stipulations or conditions, and identify the state or federal permit in which each stipulation must be included. 6 AAC 50.120(b). The enforcement of a consistency determination and the implementation of the ACMP depends upon the resource agencies. The Alaska Coastal Management Act (ACMA) does not establish any independent permitting or enforcement authority." Furthermore, "A finding that a project is consistent with the ACMP does not by itself authorize any activity. The individual agency permits or approval authorize activities subject to appropriate stipulations as required by the project consistency determination. In the absence of any provision for appeal from a project consistency determination, we believe that the existing statutory authority for the review of individual resource agency decisions should be construed to allow simultaneous review of the aspects of those resource agency decisions which implement the ACMP. In other words, we believe that your authority to adjudicate decisions made by DEC pursuant to 18 AAC 15.200 -- 18 AAC 15.310, includes authority to adjudicate those stipulations and conditions on DEC permits or approvals which are or may be required by a conclusive project consistency determination."

To date, uniform appeal procedures have not been adopted by the Coastal Policy Council for consistency determinations applicable to state permits. However, appeal procedures do exist for determinations associated with federal permits. Procedures also exist for mediation of disputes between the state and federal agencies regarding consistency of direct federal actions with the ACMP.

As provided under section 307(c)(3), of the federal Coastal Zone Management Act (CZMA), federal permit applicants may appeal state conclusive consistency determinations to the U.S. Secretary of Commerce. To date, only one federal permit applicant has appealed a state consistency determination to the Secretary of Commerce.

Under section 307(h) of the CZMA, the secretary may mediate disagreements between federal agencies and the state regarding the consistency of direct federal actions. To date, there has only been one case where the Secretary was requested to mediate a dispute regarding consistency with the ACMP.

tg89110201kfg

TABLE 1

Consistency Reviews Summary

January 1, 1984 - August 31, 1989

Total Number of Projects Reviewed:

Projects found Consistent:	2803
Projects found Inconsistent:	24

Average Number of Days in Review

Reviews concluded at Regional Level (2796):	39
Reviews Elevated to Directors or Commissioners for Decision (31):	56

tg89110201kfg

MEMORANDUM

State of Alaska

TO: Honorable Richard Nevé
Commissioner
Dept. of Environmental Conservation

DATE: August 16, 1984

FILE NO: 366-072-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Review of Auk Nu
Cove project
consistency
determination

By: *Laura L. Davis*
Laura L. Davis
Assistant Attorney General
Department of Law / Juneau

This responds to your notice dated August 1, 1984, raising questions regarding the adjudicatory hearing you have granted regarding this project. You state that the requestor raises matters for adjudication which are beyond your department's jurisdiction. Without identifying those matters in particular, you make reference to the project consistency review process under 6 AAC 50. You also inquire regarding the effect of a recent superior court ruling related to your authority to implement the Alaska Coastal Management Program (ACMP). City of Angoon, et al. v. Alaska Department of Environmental Conservation, et al., 1JU-82-1919 Civil (Super. Ct., First Jud. Dist., Feb. 10, 1983). Second you ask how a stay of your department's decision would affect the project as a whole.

This memorandum responds to your questions related to your authority to implement the ACMP. Tom Jahake, who will represent your regional office in this adjudicatory proceeding, will respond to questions regarding the issues for an adjudicatory hearing, including the effect of a stay if granted.

All state agencies are required to administer their responsibilities in conformance with the ACMP. AS 46.40.200. In order to ensure agreement among state agencies on the application of the ACMP standards to any project which requires approval of more than one agency, and to avoid unnecessary duplication of agency effort in applying those standards, the Office of Management and Budget (OMB) is statutorily designated to "render, on behalf of the state, all federal consistency determinations and certifications authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. sec. 1456, and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations." AS 44.19.145(a)(11). This language was added to the enabling legislation for OMB effective July 15, 1983. Sec. 20, ch. 63, SLA 1983. Regulations implementing this authority through the division of governmental coordination (DGC) of OMB were effective March 11, 1984. See 6 AAC 50. These regulations provide for an

interagency review process to be coordinated by DGC for a multiple permit project, or by a resource agency for a project requiring approval only by that agency.

A conclusive consistency determination rendered by DGC is implemented through the existing permitting and other authorities of state and federal agencies. If a project requires certain stipulations or conditions to ensure its consistency with the ACMP, the project consistency determination will state those stipulations or conditions, and identify the state or federal permit in which each stipulation must be included. 6 AAC 50.-120(b). The enforcement of a consistency determination and the implementation of the ACMP depends upon the resource agencies. The Alaska Coastal Management Act (ACMA) does not establish any independent permitting or enforcement authority. */

This interagency review procedure established under 6 AAC 50 reflects the legislative policy which accompanied adoption of the Alaska Coastal Management Act. Specifically, the legislature declared that it is the policy of the state to:

(1) preserve, protect, develop, use, and where necessary, restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon

*/ The ACMA does authorize the Coastal Policy Council to hear petitions showing that a district coastal management program is not being properly implemented. AS 46.40.100(b). A petition may be filed under this section by a coastal resource district, a citizen of the district, or a state agency. The district program for the City and Borough of Juneau, which includes Auk Nu Cove, has not yet been adopted by the Coastal Policy Council.

the coastal land and water of the state;

(4) assure the participation of the public, local governments, and agencies of the state and federal government in the development and implementation of a coastal management program;

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.35.

Sec. 2, ch. 84, SLA 1977 (emphasis added). In particular, the project consistency review process encourages coordinated decision making in the coastal area among state agencies and utilizes existing governmental structures and authorities to the maximum extent feasible to implement the ACMP.

The project consistency review process does not encroach on the independent statutory authority of the individual resource agencies. Each agency retains sole discretion regarding the issuance of applicable permits or other approvals in accordance with its own statutes and regulations. 6 AAC 50.130. In addition, each agency must include in any permit or other approval those conditions specified by the project consistency determination which are necessary to ensure compliance with the ACMP in the particular activity authorized by that permit or approval. 6 AAC 50.120(b). These stipulations are generated not by DGC but the resource agencies, coastal districts, and other commenters in the review process. 6 AAC 50.070(h); 6 AAC 50.120(a).

The superior court decision which you referenced was decided before the implementation of this coordinated project consistency review process. City of Angoon v. State, supra. That decision does not offer much guidance regarding the review of consistency determinations made under 6 AAC 50. There is no provision in 6 AAC 50 or in the Alaska Coastal Management Act, authorizing appeal from a project consistency determination,

Honorable Richard Nevé
Commissioner, DEC
File no. 366-072-85

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Page 4

although the Coastal Policy Council, as noted, has the authority to hear petitions alleging that an approved district program is not being properly implemented. AS 46.40.100.

A project consistency determination reflects the agency consensus regarding final actions to be taken by the individual agencies to ensure that their permit decisions are consistent with the ACMP. 6 AAC 50.070. A finding that a project is inconsistent with the ACMP may be appealed by the applicant to the federal Department of Commerce under 16 U.S.C. § 1456(c)(3)(A) if the project requires a federal agency permit. A finding that a project is consistent with the ACMP does not by itself authorize any activity. The individual agency permits or approvals authorize activities subject to appropriate stipulations as required by the project consistency determination. In the absence of any provision for appeal from a project consistency determination, we believe that the existing statutory authority for the review of individual resource agency decisions should be construed to allow simultaneous review of the aspects of those resource agency decisions which implement the ACMP. In other words, we believe that your authority to adjudicate decisions made by DEC pursuant to 18 AAC 15.200 -- 18 AAC 15.310, includes authority to adjudicate those stipulations and conditions on DEC permits or approvals which are or may be required by a conclusive project consistency determination. Issues relating to activities authorized by another agency or relating to the ACMP generally may be addressed by appealing the agency permit or other the project consistency determination as provided in the Alaska Rules of Appellate Procedure.

We realize that a single project consistency determination may be potentially challenged in more than one administrative forum if the project requires more than one permit. There is at present no provision for the consolidated adjudicatory or appellate review of the permit decisions and consistency determination required for a single project. However, if a full and fair opportunity for review is provided in a single administrative forum, it may be argued that subsequent challenges are barred by principles of administrative economy, election of remedies, and res judicata.

The consistency determination for the Auk Nu Cove project (Auke Bay 108), included ten stipulations to be attached to your certificate of reasonable assurance. All of those stipulations implement the habitat air, land, and water quality standards of the ACMP. The Auk Nu Cove project does not require a permit from the Alaska Department of Fish and Game. State authority over dredging and filling required for the

Honorable Richard Neve
Commissioner, DEC
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driveway, parking lot and the location of the sewer outfall line is exercised through your department's certificate of reasonable assurance under section 401 of the Clean Water Act, 33 U.S.C. § 1341, which pertains to the permit to be issued by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, 33 U.S.C. § 1344. In this situation, the ACMP habitat standards are appropriate applied through your 401 certificate to the activities authorized by the 404 permit. We believe that you are authorized to adjudicate this aspect of your authority in accordance with the procedure set out in 18 AAC 15.200 -- 18 AAC 15.310.

However, you do not have authority to adjudicate questions related to the application of ACMP standards to activities which are not authorized or certified by your agency (e.g. activities authorized by local building or planning and zoning codes, or authorized by another state agency or federal agency not subject to your certification requirement). Such issues may be reviewed pursuant to appeal procedures applicable to the appropriate local, state or federal agency.

DGC has convened a working group among the resource agencies to consider revisions to the project consistency review regulations. 6 AAC 50. Any recommendations regarding the need for a separate appeal procedure for project consistency determination should be referred to DGC. In the meantime, if issues arise in the context of this or another adjudicatory hearing which require the application of ACMP standards to activities not authorized or regulated by DEC, you may inform interested parties that they may pursue an appeal from the agency which permits those activities, or from DGC project consistency determination in the superior court as provided in the Alaska Rules of Appellate Procedure.

Should you have any further questions regarding this matter, please do not hesitate to contact me.

LLD:djc

cc: Robert Grogan
Dorothy Douglas
Wendy Wolfe
CMB/DGC

Thomas Jahnke
Dept. of Law

6-2236E
Bradley
4/7/90

Original sponsor(s): Resources Committee

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 500 (C&RA)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Coastal Policy Coun-
7 cil."

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

9 * Section 1. AS 46.40.100(b) is repealed and reenacted to read:

10 (b) On petition of an applicant for a project, a coastal re-
11 source district, or a state agency, stating that a district coastal
12 management program is not being implemented by a state agency during a
13 state consistency review process for a particular project, the council
14 may convene a public hearing held to consider the matter. The peti-
15 tion may be filed only within the five days following the notice to
16 the petitioner of the decision by the resource agency commissioners
17 following a project consistency review that has been reevaluated at
18 higher levels within the departments. At a hearing held under this
19 subsection, the council shall determine if the state agency has fol-
20 lowed the project consistency review procedures and has properly
21 considered enforceable policies and standards during the project
22 consistency review and if the use of activity for which the permit,
23 license, or approval is granted is consistent with the district
24 coastal management program and the regulations adopted under it.
25 After the council has reviewed the petition and held the hearing, the
26 council may

27 (1) dismiss the petition for failure to prove that the
28 agency was acting improperly;

29 (2) make an appropriate recommendation to the state agency;

1 and

2 (3) revise the Alaska Coastal Management Program under
3 AS 46.40.010(c).

4 * Sec. 2. AS 46.40.100(c) is repealed and reenacted to read:

5 (c) On the petition of a resident of the district, a coastal
6 resource district, or a state agency stating that an approved district
7 coastal management program is not being properly implemented by a
8 coastal resource district or state agency in its general implementa-
9 tion of law and regulations within the coastal area, the council may
10 convene a public meeting to consider the matter. A petition may be
11 filed at any time and shall demonstrate that the petitioner sought to
12 resolve the matter with the coastal resource district or the state
13 agency before filing the petition and is willing to participate in
14 efforts by the council to resolve the matter informally before a
15 hearing is held by the council. If the council holds the public
16 hearing, it shall determine if

17 (1) a coastal resource district has

18 (A) properly adopted and enforced zoning or other
19 regulations;

20 (B) properly considered enforceable policies and
21 standards of its coastal management program approved by the
22 council during local implementation of variances or local consis-
23 tency reviews; and

24 (C) followed the procedures approved by the council
25 for implementation of the district's coastal management program;
26 and

27 (2) a state agency has

28 (A) generally followed procedures approved by the
29 council for state agency implementation;

1 (B) properly considered enforceable policies and
2 standards of a coastal management program approved by the council
3 during project consistency reviews; and

4 (C) satisfactorily performed coastal management re-
5 sponsibilities required by law, regulations, or a reimbursible
6 agreement.

7 * Sec. 3. AS 46.40.100(d) is repealed and reenacted to read:

8 (d) After a hearing held under (c) of this section, the council
9 may

10 (1) dismiss the petition for a failure to prove that the
11 coastal resource district or the state agency was acting improperly;

12 (2) direct the coastal resource district or the state
13 agency to take action the council considers appropriate; and

14 (3) revise the Alaska Coastal Management Program under
15 AS 46.40.0 (c).

16 * Sec. 46.40.100(e) is amended to read:

17 (e) Notwithstanding the powers conferred on the council under
18 (b) - (d) of this section, the council may not review a case under (b)
19 of this section if action by a state agency has been challenged as
20 inconsistent with the Alaska Coastal Management Program. The superior
21 courts of the state have exclusive appellate jurisdiction over that
22 action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

23 * Sec. 5. AS 46.40.100 is amended by adding a new subsection to read:

24 (f) In this section, the "resource agency commissioners" are

25 (1) the commissioner of natural resources;

26 (2) the commissioner of fish and game; and

27 (3) the commissioner of environmental conservation.

Proposed changes from 4/12 meeting attended by G. Keiser, K. Fredriksson, C. Wilson and F. Neville.



Original sponsor(s): Resources Committee

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7 program."

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

9 * Section 1. AS 46.40.100(b) is repealed and reenacted to read:

10 (b) On petition of an applicant for a project, ^{OR affected} a coastal re-
11 source district, [or a state resource agency,] stating that a district
12 coastal management program is not being implemented by a state coor-
13 dinating agency during a state consistency review for a particular
14 project [as required by regulations], the council may convene a public
15 ^{meeting} [hearing] held to consider the matter. The petition may be filed only
16 within the five days following ^{Receipt} [delivery of the notice to the peti-
17 tioner] of a proposed ^{determination} [decision] by the ^{directors of the state} resource agency's ^{commissioners}
18 ^{during} [hearing] following a project consistency review. A ^{public meeting} [hearing] must be held within

19 30 days after the filing of the petition. The council [may allow a
20 15-day extension ^{MUST} to more] fully consider the matter and render a deci-
21 ^{within 15 days of the public meeting} sion. At a ^{meeting} [hearing] held under this subsection, the council shall
22 ^{consider whether} [determine if] the state coordinating agency has followed the project
23 consistency review procedures and has properly considered enforceable
24 policies and standards during the project consistency review and if
25 the use or activity ^{Authorized by} [for which] the permit, license, or approval [is
26 granted] is consistent with the district coastal management program and
27 the regulations adopted under it. After the council has reviewed the
28 petition and held the hearing, the council may ^{take one or more of.} ^{the following actions}

29 (1) dismiss the petition for failure to prove that the

1 state coordinating agency was acting improperly;

2 (2) make an appropriate recommendation to the resource
3 agency commissioners before the coordinating agency renders a consis-
4 tency determination; and

5 (3) revise the Alaska Coastal Management Program under
6 AS 46.40.010(c).

7 * Sec. 2. AS 46.40.100(c) is repealed and reenacted to read:

8 (c) On the petition of a resident of the district, ^{affected} an coastal
9 resource district, or a state agency stating that an approved district
0 coastal management program is not being properly implemented by a
11 coastal resource district or state agency in its general implementa-
12 tion of law and regulations of the Alaska coastal management program,
13 the council may convene a public meeting to consider the matter. A
14 petition may be filed at any time and shall demonstrate that the
15 petitioner sought to resolve the matter with the coastal resource
16 district or the state agency before filing the petition and is willing
17 to participate in efforts by the council to resolve the matter in-
18 formally before a ^{public meeting} [hearing] is held by the council. . If the council
19 holds the public ^{meeting} [hearing], it shall ^{make a written finding of whether} [determine if]

20 (1) a coastal resource district has

21 (A) properly adopted and enforced zoning or other
22 regulations;

23 (B) properly considered enforceable policies and
24 standards of its coastal management program approved by the
25 council during local implementation of variances or local consis-
26 tency reviews; and

27 (C) followed the procedures approved by the council
28 for implementation of the district's coastal management program;
29 and

(2) a state agency has

(A) generally followed procedures approved by the council for state agency implementation;

(B) properly considered enforceable policies and standards of a coastal management program approved by the council during project consistency reviews; and

(C) satisfactorily performed coastal management responsibilities required by law, regulations, or a reimbursable agreement.

* Sec. 3. AS 46.40.100(d) is repealed and reenacted to read:

(d) After a hearing held under (c) of this section, the council may *file one or more of the following actions*

(1) dismiss the petition for a failure to prove that the coastal resource district or the state agency was acting improperly;

(2) direct the coastal resource district [or the state agency] to

(A) adopt an ordinance or procedure that the district had *described* [recommended] at the time of district program approval;

(B) adhere to existing program procedures;

(C) improve internal Alaska coastal management program procedures and offer regular staff Alaska coastal management program training;

(D) prepare amendments to a district program; and

(E) develop written guidance for the interpretation of the Alaska coastal management program standards or district policies; [and]

(3) direct the state agency to

(A) adhere to existing program procedures;

(B) improve internal Alaska coastal management program procedures and offer regular staff Alaska coastal management program training; and

(C) develop written guidance for the interpretation of the Alaska coastal management program standards or district policies; and

4(3) revise the Alaska coastal management program under AS 46.40.010(c).

* Sec. 4. AS 46.40.100(e) is amended to read:

1 (e) Notwithstanding the powers conferred on the council under
 2 (b) - (d) of this section, the council may not review a case under (b)
 3 of this section if action by a state agency has been challenged in
 4 court as inconsistent with the Alaska coastal management program. The
 5 superior courts of the state have exclusive appellate jurisdiction
 6 over that action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

7 * Sec. 5. AS 46.40.100 is amended by adding a new subsection to read:

8 (f) In this section,

(1) "affected coastal resource district" means a coastal district as defined in AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project or the implementation of a district coastal management program;

9 ²
 10 (2) "coordinating agency" means the agency responsible for
 11 coordination and facilitation of the review and the rendering of the
 12 consistency determination
 13 decision;

14 ³
 15 (3) the "resource agency commissioners" are
 16 (A) the commissioner of natural resources;
 17 (B) the commissioner of fish and game; and
 18 (C) the commissioner of environmental conservation.



Original sponsor(s): Resources Committee

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7 program."

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

9 * Section 1. AS 46.40.100(b) is repealed and reenacted to read:

10 (b) On petition of an applicant for a project, a coastal re-
11 source district, or a state resource agency, stating that a district
12 coastal management program is not being implemented by a state coor-
13 dinating agency during a state consistency review for a particular
14 project as required by regulations, the council may convene a public
15 hearing held to consider the matter. The petition may be filed only
16 within the five days following delivery of the notice to the peti-
17 tioner of a proposed decision by the resource agency commissioners
18 following a project consistency review. A hearing must be held within
19 30 days after the filing of the petition. The council may allow a
20 15-day extension to more fully consider the matter and render a deci-
21 sion. At a hearing held under this subsection, the council shall
22 determine if the state coordinating agency has followed the project
23 consistency review procedures and has properly considered enforceable
24 policies and standards during the project consistency review and if
25 the use or activity for which the permit, license, or approval is
26 granted is consistent with the district coastal management program and
27 the regulations adopted under it. After the council has reviewed the
28 petition and held the hearing, the council may

29 (1) dismiss the petition for failure to prove that the

1 state coordinating agency was acting improperly;

2 (2) make an appropriate recommendation to the resource
3 agency commissioners before the coordinating agency renders a consis-
4 tency determination; and

5 (3) revise the Alaska Coastal Management Program under
6 AS 46.40.010(c).

7 * Sec. 2. AS 46.40.100(c) is repealed and reenacted to read:

8 (c) On the petition of a resident of the district, a coastal
9 resource district, or a state agency stating that an approved district
10 coastal management program is not being properly implemented by a
11 coastal resource district or state agency in its general implementa-
12 tion of law and regulations of the Alaska coastal management program,
13 the council may convene a public meeting to consider the matter. A
14 petition may be filed at any time and shall demonstrate that the
15 petitioner sought to resolve the matter with the coastal resource
16 district or the state agency before filing the petition and is willing
17 to participate in efforts by the council to resolve the matter in-
18 formally before a hearing is held by the council. If the council
19 holds the public hearing, it shall determine if

20 (1) a coastal resource district has

21 (A) properly adopted and enforced zoning or other
22 regulations;

23 (B) properly considered enforceable policies and
24 standards of its coastal management program approved by the
25 council during local implementation of variances or local consis-
26 tency reviews; and

27 (C) followed the procedures approved by the council
28 for implementation of the district's coastal management program;
29 and

1 (2) a state agency has

2 (A) generally followed procedures approved by the
3 council for state agency implementation;

4 (B) properly considered enforceable policies and
5 standards of a coastal management program approved by the council
6 during project consistency reviews; and

7 (C) satisfactorily performed coastal management re-
8 sponsibilities required by law, regulations, or a reimbursable
9 agreement.

10 * Sec. 3. AS 46.40.100(d) is repealed and reenacted to read:

11 (d) After a hearing held under (c) of this section, the council
12 may

13 (1) dismiss the petition for a failure to prove that the
14 coastal resource district or the state agency was acting improperly;

15 (2) direct the coastal resource district or the state
16 agency to

17 (A) adopt an ordinance or procedure that the district
18 had recommended at the time of district program approval;

19 (B) adhere to existing program procedures;

20 (C) improve internal Alaska coastal management program
21 procedures and offer regular staff Alaska coastal management
22 program training;

23 (D) prepare amendments to a district program; and

24 (E) develop written guidance for the interpretation of
25 the Alaska coastal management program standards or district
26 policies; and

27 (3) revise the Alaska coastal management program under
28 AS 46.40.010(c).

29 * Sec. 4. AS 46.40.100(e) is amended to read:

1 (e) Notwithstanding the powers conferred on the council under
 2 (b) - (d) of this section, the council may not review a case under (b)
 3 of this section if action by a state agency has been challenged in
 4 court as inconsistent with the Alaska coastal management program. The
 5 superior courts of the state have exclusive appellate jurisdiction
 6 over that action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

7 * Sec. 5. AS 46.40.100 is amended by adding a new subsection to read:

8 (f) In this section,

9 (1) "coordinating agency" means the agency responsible for
 10 coordination and facilitation of the review and the rendering of the
 11 decision;

12 (2) the "resource agency commissioners" are

13 (A) the commissioner of natural resources;

14 (B) the commissioner of fish and game; and

15 (C) the commissioner of environmental conservation.
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6-2415A
Cook
4/6/90

BY THE C&RA COMMITTEE

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO.
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Suspending Uniform Rules 41(b), 24(c),
6 and 35 of the Alaska State Legislature
7 concerning SSHB 159.

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

9 That under Rule 54 of the Uniform Rules of the Alaska State Legisla-
10 ture the provisions of Rule 41(b), Rule 24(c), and Rule 35 of the Uniform
11 Rules, regarding changes to the title of a bill, are suspended in consid-
12 eration of Sponsor Substitute for House Bill No. 159, relating to an exemp-
13 tion from municipal property taxation for natural resources in place.
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6-2236E
Bradley
4/22/90

Original sponsor(s): Resources Committee

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 500 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska coastal management
7 program."

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

9 * Section 1. AS 46.40.080 is amended to read:

10 Sec. 46.40.080. EFFECTIVE DATE OF ALASKA COASTAL MANAGEMENT
11 PROGRAM. The Alaska coastal management program adopted by the coun-
12 cil, and any additions, revisions, or amendments of the program, take
13 effect upon adoption of an Act [A CONCURRENT RESOLUTION BY A MAJORITY
14 OF THE MEMBERS OF EACH HOUSE] of the legislature [OR BY A VOTE OF THE
15 MAJORITY OF THE MEMBERS OF EACH HOUSE AT THE TIME THE HOUSES ARE
16 CONVENED IN JOINT SESSION TO CONFIRM EXECUTIVE APPOINTMENTS SUBMITTED
17 BY THE GOVERNOR].

*Legislature
to amend
to verify
that
ACMP*

18 * Sec. 2. AS 46.40.100(b) is repealed and reenacted to read:

19 (b) On petition of an applicant for a project or an affected
20 coastal resource district, stating that a district coastal management
21 program is not being implemented by a state coordinating agency during
22 a state consistency review for a particular project, the council may
23 convene a public meeting held to consider the matter. The petition
24 may be filed only within the five days following receipt of a proposed
25 determination by the commissioners of the state resource agencies
26 during a project consistency review. A public meeting must be held
27 within 30 days after the filing of the petition. The council shall
28 fully consider the matter and render a decision within 15 days of the
29 public meeting. At a meeting held under this subsection, the council

Existing language uncon-
stitutional under 141V
decision - can't change
law with resolution,
must be changed by
an Act.

Any proposed changes
to the RCMP must be
notified by the legislature

Prepar - status quo

1 shall make a written finding on whether the state coordinating agency
2 has followed the project consistency review procedures, has properly
3 considered enforceable policies and standards during the project
4 consistency review, or if the use or activity authorized by the per-
5 mit, license, or approval is consistent with the district coastal
6 management program and the regulations adopted under it. After a
7 meeting held under this subsection, the council may

8 (1) dismiss the petition for failure to prove that the
9 state coordinating agency was acting improperly;

10 *still vague* (2) direct the resource agency commissioners or the state
11 coordinating agency to correct the deficiencies identified in the
12 written findings; or

13 (3) revise the Alaska coastal management program under
14 AS 46.40.010(c).

15 * Sec. 3. AS 46.40.100(c) is repealed and reenacted to read:

16 (c) On the petition of a resident of the district, an affected
17 coastal resource district, or a state agency stating that an approved
18 district coastal management program is not being properly implemented
19 by a coastal resource district or state agency in its general imple-
20 mentation of law and regulations of the Alaska coastal management
21 program, the council may convene a public meeting to consider the
22 matter. A petition may be filed at any time and shall demonstrate
23 that the petitioner sought to resolve the matter with the coastal
24 resource district or the state agency before filing the petition. If
25 the council holds the public meeting, it shall make a written finding
26 on whether

27 (1) a coastal resource district or a state agency has

28 (A) properly considered enforceable policies and
29 standards of its coastal management program approved by the

1 council; and

2 (B) followed the procedures approved by the council
3 for implementation of the coastal management program of the
4 district or of the state agency; and

5 (2) a state agency has satisfactorily performed coastal
6 management responsibilities required by law, regulations, or a reim-
7 bursable services agreement.

8 * Sec. 4. AS 46.40.100(d) is repealed and reenacted to read:

9 (d) After a meeting held under (c) of this section, the council
10 may

11 (1) dismiss the petition for a failure to prove that the
12 coastal resource district was acting improperly;

13 (2) direct the coastal resource district or the state
14 agency to correct the deficiencies identified in the written finding
15 prepared under (c) of this section; and

16 (3) revise the Alaska coastal management program under
17 AS 46.40.010(c).

18 * Sec. 5. AS 46.40.100(e) is amended to read:

19 (e) Notwithstanding the powers conferred on the council under
20 (b) - (d) of this section, the council may not review a case under (b)
21 of this section if action by a state agency has been challenged in
22 court as inconsistent with the Alaska coastal management program. The
23 superior courts of the state have exclusive appellate jurisdiction
24 over that action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

25 * Sec. 6. AS 46.40.100 is amended by adding a new subsection to read:

26 (f) In this section,

27 (1) "affected coastal resource district" means a coastal
28 district in which a project is proposed to be located, or that may
29 experience a direct and significant effect from a proposed project or

1 the implementation of a district coastal management program;

2 (2) "coordinating agency" means the agency responsible for
3 coordination and facilitation of the review and the rendering of the
4 consistency determination;

5 (3) the "resource agency commissioners" are

6 (A) the commissioner of natural resources;

7 (B) the commissioner of fish and game; and

8 (C) the commissioner of environmental conservation.
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MAK
6-2236E ✓
Bradley
4/17/90

Original sponsor(s): Resources Committee

1 IN THE SENATE BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 500 (C&RA)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the Alaska coastal management
7 program."

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

9 * Section 1. AS 46.40.100(b) is repealed and reenacted to read:

10 (b) On petition of an applicant for a project or an affected
11 coastal resource district, stating that a district coastal management
12 program is not being implemented by a state coordinating agency during
13 a state consistency review for a particular project, the council may
14 convene a public meeting held to consider the matter. The petition
15 may be filed only within the five days following receipt of a proposed
16 determination by the ^{commissioners} [directors] of the state resource agencies during a
17 project consistency review. A public meeting must be held within 30
18 days after the filing of the petition. The council shall fully con-
19 sider the matter and render a decision within 15 days of the public
20 meeting. At a meeting held under this subsection, the council shall
21 ^{make a written finding} [consider] whether (1) the state coordinating agency has followed the
22 project consistency review procedures ⁽²⁾ and has properly considered
23 enforceable policies and standards during the project consistency
24 review ^{or (3)} [and] if the use or activity authorized by the permit, license,
25 or approval is consistent with the district coastal management program
26 and the regulations adopted under it. After ^{a meeting held under this} [the council has reviewed
27 ^{subsection} the petition and held the hearing,] the council may

28 (1) dismiss the petition for failure to prove that the
29 state coordinating agency was acting improperly;

Give council power to direct consistency, not veto power

1 (2) direct the state ^{name} agency ^{commissioner to report the} ~~to determine~~ ^{identified in the}
2 ^{written findings}

3 (A) adhere to existing program[^] procedures;

4 (B) improve internal Alaska coastal management program
5 procedures and offer regular staff Alaska coastal management
6 program training; and

7 (C) develop written guidance for the interpretation of
8 the Alaska coastal management program standards or district
9 policies; ^{or} [and]

10 (3) revise the Alaska coastal management program under
11 AS 46.40.010(c).

12 * Sec. 2. AS 46.40.100(c) is repealed and reenacted to read:

13 (c) On the petition of a resident of the district, an affected
14 coastal resource district, or a state agency stating that an approved
15 district coastal management program is not being properly implemented
16 by a coastal resource district or state agency in its general imple-
17 mentation of law and regulations of the Alaska coastal management
18 program, the council may convene a public meeting to consider the
19 matter. A petition may be filed at any time and shall demonstrate
20 that the petitioner sought to resolve the matter with the coastal
21 resource district or the state agency before filing the petition, [and
22 is willing to participate in efforts by the council to resolve the
23 matter informally before a public meeting is held by the council.] If
24 the council holds the public meeting, it shall make a written finding
25 on whether .

26 (1) a coastal resource district has ^{or a state agency,}
~~that has adopted, exercised~~

27 (A) properly adopted and enforced zoning or other
28 regulations;] ^{in its administration of this program}

29 (B) properly considered enforceable policies and
standards of its coastal management program approved by the

1 council [during local implementation of variances or local consis-
2 tency reviews; and]

3 (C) followed the procedures approved by the council
4 for implementation of the district's coastal management program;
5 and

6 (2) a state agency has

7 [(A) generally followed procedures approved by the
8 council for state agency implementation;

9 (B) properly considered enforceable policies and
10 standards of a coastal management program approved by the council
11 during project consistency reviews; and]

12 (C) satisfactorily performed coastal management re-
13 sponsibilities required by law, regulations, or a reimbursable
14 services agreement.

15 * Sec. 3. AS 46.40.100(d) is repealed and reenacted to read:

16 (d) After a hearing held under (c) of this section, the council
17 may

18 (1) dismiss the petition for a failure to prove that the
19 coastal resource district was acting improperly;

20 (2) direct the coastal resource district or the state
21 agency to *correct the deficiencies identified in the written findings*

22 [(A) adopt an ordinance or procedure that the district
23 had described at the time of district program approval;

24 (B) adhere to existing program procedures;

25 (C) improve internal Alaska coastal management program
26 procedures and offer regular staff Alaska coastal management
27 program training;

28 (D) prepare amendments to a district program; and

29 (E) develop written guidance for the interpretation of

1 the Alaska coastal management program standards or district
2 policies;

3 (3) direct the state agency to

4 (A) adhere to existing program procedures;

5 (B) improve internal Alaska coastal management program
6 procedures and offer regular staff Alaska coastal management
7 program training; and

8 (C) develop written guidance for the interpretation of
9 the Alaska coastal management program standards or district
10 policies; ^{or} and

11 (4) revise the Alaska coastal management program under
12 AS 46.40.010(c).

13 * Sec. 4. AS 46.40.100(e) is amended to read:

14 (e) Notwithstanding the powers conferred on the council under
15 (b) - (d) of this section, the council may not review a case under (b)
16 of this section if action by a state agency has been challenged in
17 court as inconsistent with the Alaska coastal management program. The
18 superior courts of the state have exclusive appellate jurisdiction
19 over that action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

20 * Sec. 5. AS 46.40.100 is amended by adding a new subsection to read:

21 (f) In this section,

22 (1) "affected coastal resource district" means a coastal
23 district in which a project is proposed to be located, or that may
24 experience a direct and significant effect from a proposed project or
25 the implementation of a district coastal management program;

26 (2) "coordinating agency" means the agency responsible for
27 coordination and facilitation of the review and the rendering of the
28 consistency determination;

29 (3) the "resource agency commissioners" are

- (A) the commissioner of natural resources;
- (B) the commissioner of fish and game; and
- (C) the commissioner of environmental conservation.

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S B

505

SB 505: An Act relating to sales taxes levied by general law municipalities.

Sponsor: Senate C&RA Committee

The next bill to be considered is SB 505, an Act relating to sales taxes levied by general law municipalities, sponsored by the Senate C&RA Committee. This bill would remove the 6% sales tax limit in current statute and allow voters within municipalities the flexibility to tax themselves at a higher rate.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to sales taxes levied by general law municipalities."
 Sponsor: Senate C&RA
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)
 There is no fiscal effect for FY 90.

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/12/90
 Approved by Commissioner: [Signature] Date: 3-12-90
 Agency: Community & Regional Affairs

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

The Alaska Municipal League endorses the repeal of the limits on sales tax rates and taxable items (specifically alcohol) contained in Title 29 and Title 4 to allow local voters to set the limits according to the public need and acceptance of taxation methods.

Because voters must approve a sales tax before it is levied, there should be no statutory limit on the rate of sales tax a municipality may impose. If the voters in a municipality desire to tax themselves at a rate higher than the 6 percent currently authorized by statute (AS 29.45.650(a)) for general law municipalities, they should be permitted to do so. Sales tax represents a significant revenue source for 89 municipalities in Alaska and accounted for \$60,559,971 in municipal revenues in 1988 (compared to \$281,960,341 in property tax revenues collected by only 25 municipalities in Alaska).

MUNICIPALITIES WITH 5% OR GREATER GENERAL SALES OR USE TAX

Municipality	Percentage of Sales Tax	Percentage of Other Tax	Type
City and Borough of Juneau	4	7	Hotel/Motel
City of Anderson		6	Heating fuel, phone, electricity, TV
City of Bethel	5		
City of Craig	4	6	Liquor
City of Dillingham	5		
City of Fairbanks		8	Liquor; Hotel/Motel
City of Galena	3	6	Liquor
City of Haines	5		
City of Kake	5		
City of Kenai	5		
City of Kodiak	5	5	Hotel/Motel
City of Petersburg	6	3	Hotel/Motel
City of Skagway	4	6	Hotel/Motel
City of Tenakee Springs	1	6	Hotel/Motel
City of Wrangell	6		
Haines Borough	5		
Matanuska-Susitna Borough		5	Hotel/Motel
Municipality of Anchorage		8	Hotel/Motel
North Slope Borough	6		

Source: *Alaska Municipal Officials Directory 1990*, Alaska Municipal League, Alaska Department of Community and Regional Affairs, 2/8/90.

K7/salestax

Sec. 29.45.600. Combining property tax with incorporation of a second class city. A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails. (§ 12 ch 74 SLA 1985)

Article 4. Borough Sales and Use Tax.

Section
650. Sales and use tax
660. Notice of sales and use tax

Section
670. Referendum, adoption, and modification

Sec. 29.45.650. Sales and use tax. (a) Except as provided in (f) of this section, a borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.

(f) A borough may not levy and collect a sales tax on a purchase made with food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act). This subsection applies to home rule and general law municipalities. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "Except as provided in (f) of this section, a" for "A" at the

beginning of subsection (a) and added subsection (f).

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under a former, similar provision.

Evolutionary development of present language of subsection (a). — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Subsection (a) of this section permits a selective sales tax. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

This section states no limits on what may be exempted. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

And there is nothing in the statute which expressly requires a general tax. *Liberati v. Bristol Bay Borough*, Sup.

Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The term "sales tax" carries no connotation of generality. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The city of Homer bed tax, based upon the actual rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. *City of Homer v. Gangl*, Sup. Ct. Op. No. 2559 (File Nos. 5702, 5743), 650 P.2d 396 (1982).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 32 (1980).

Collateral references. — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

Sec. 29.45.660. Notice of sales and use tax. (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

WORK ORDER REQUEST FORM

W.O. 16- 2258

Keywords: _____

Assigned To: _____

Request For: Bill Resolution Research Other

Subject _____

Requested For _____ By _____ Phone _____

Deliver To _____ Taken By _____

Instructions, Explanations _____

Obtain

Special Drafting Instructions Attached

Authorized to Confer With _____

Return _____

_____ To Requester

Approved: _____ Director, Legal Services

Special Instructions to Typist/Proofreader

Reviewed _____

In _____ Due _____

Typed: Draft _____ Date _____

Final _____ Date _____

Proofed _____ Delivered _____

Draft

Final

S B

532

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 300 (Judiciary) am

Page 2, line 21:

Delete "a"

Insert "or use a utility"

Page 2, line 22, after "product" through line 28:

Delete all material.

Insert "in the service area of a public utility, but that purchase the product or service from an entity other than the public utility certified for the service area, if the total annual compensation received by the entity from the sale of utility products and services exceeds \$50,000; and"

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 300 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to acquisition and ownership of
7 capital stock of a public utility by a political
8 subdivision; relating to certain property records
9 maintained by public utilities; and including the
10 customers of a public utility that has an annual
11 compensation in excess of \$50,000 in the definition
12 of 'public' for public utility regulation."

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

14 * Section 1. AS 37.10.085(a) is amended to read:

15 (a) Except as provided in (c) of this section, neither [NEITHER]
16 the state nor a political subdivision of the state may

17 (1) make a subscription to the capital stock of a corpora-
18 tion;

19 (2) lend its credit for the use of a corporation; or

20 (3) borrow money for the use of a corporation.

21 * Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

22 (c) To the extent that the political subdivision is authorized
23 to acquire, own, or operate a public utility, it may exercise that
24 power by acquiring and owning, in a manner consistent with law, all of
25 the capital stock of a corporation that owns or operates a public
26 utility. The political subdivision's authority with respect to lend-
27 ing its credit and borrowing money for the use of the corporation is
28 the same as if the political subdivision had acquired the assets of
29 the corporation.

1 * Sec. 3. AS 42.05.461 is amended to read:

2 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
3 require a public utility to establish, provide, and maintain as a part
4 of its system of accounts, continuing property records segregated by
5 the year of placement in service, including a list or inventory of all
6 the units of tangible property used or useful in the public service,
7 identifying the property by location and project [SHOWING THE CURRENT
8 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
9 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
10 sion may require a public utility to keep accounts and records in
11 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost
12 of the property when first devoted to the public service, and the
13 current related reserve for depreciation. A public utility with
14 annual revenues exceeding \$100,000 shall keep continuing property
15 records.

16 * Sec. 4. AS 42.05.720(3) is amended to read:

17 (3) "public" or "general public" means

18 (A) a [ANY] group of 10 or more customers that pur-
19 chase the service or commodity furnished by a public utility; [AS
20 DEFINED IN (4) OF THIS SECTION; AND] OR USE A UTILITY

21 (B) one or more customers that purchase a service or
22 product which

23 (i) is equivalent to a service or product furnished by a public utility, BUT THAT PURCHASE THE PRODUCT OR SERVICE FROM
24 AN ENTITY OTHER THAN THE PUBLIC UTILITY CERTIFICATED FOR
25 THE SERVICE AREA, IF THE TOTAL ANNUAL COMPENSATION RECEIVED
26 CERTIFICATED PUBLIC UTILITY, AND
27 BY THE ENTITY FROM THE SALE OF UTILITY PRODUCTS AND SERVICES EXCEEDS
28 (\$50,000); and IN THE SERVICE AREA \$50,000.

29 (C) a [ANY] utility purchasing the product or service

1 or paying for the transmission of electric energy, natural or
2 manufactured gas, or petroleum products that [WHICH] are re-sold
3 to a person or group included in (A) or (B) of this paragraph or
4 that [WHICH] are used to produce the service or commodity sold to
5 the public by the utility;

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: Reacquisition and ownership of BRU: Alaska Public Utilities Commission
capital stock of a public utility by a political subdivision
 Sponsor: Senate Labor & Commerce Components: _____
 Requestor: Senate Community & Regional Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact for FY 90

Prepared by: Ted Moninski, Executive Director Phone: 276-6222
 Division: Alaska Public Utilities Commission Date: 3/27/90
 Approved by Commissioner: Larry Merculieff Date: 3/28/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE LEGISLATURE · SENATE

SENATOR RICHARD I. ELIASON

LABOR & COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
RULES COMMITTEE
SPECIAL COMMITTEE ON HIGH SEAS
SALMON INTERCEPTION
SELECT COMMITTEE ON
LEGISLATIVE ETHICS



P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

FAX (907) 465-4928

M E M O R A N D U M

TO: Senator Mike Szymanski, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Dick Eliason

DATE: March 22, 1990

RE: SB 532 - Acquisition of capital stock of a public
utility

I would appreciate a hearing on SB 532, "relating to the acquisition of capital stock of a public utility", at your earliest convenience.

This legislation will allow a municipality to purchase the stock of a public utility in order to acquire ownership of the utility. Back-up information supporting this approach is attached.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 20, 1990

SUBJECT: Political subdivision ownership of
capital stock in a public utility
(Work Order No. 6-2371)

TO: Senator Dick Eliason, Chair
Labor & Commerce Committee

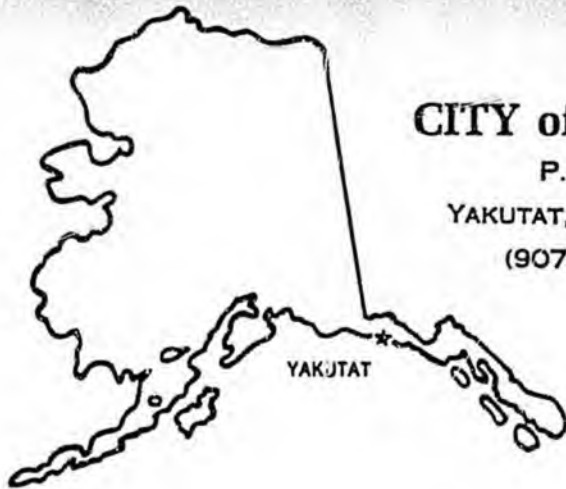
FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for a brief explanation of the effect of W.O. 6-2371.

Section 2 of the bill allows a city or other political subdivision to buy the stock of a public utility in order to acquire ownership of the utility if the political subdivision is authorized by other law to own or operate a utility. This is an alternative to buying the utility by buying the physical plant and other assets of the utility. The bill does not address what the city does with the corporate structure of the public utility after acquiring the stock.

If I may be of further assistance, please advise.

TBC:gc
G14/002



CITY of YAKUTAT

P.O. Box 6

YAKUTAT, ALASKA 99689

(907) 784-3323

March 13, 1990

The Honorable Richard Eliason
Rm. 417, Capitol
P.O. Box V
Juneau, AK. 99811

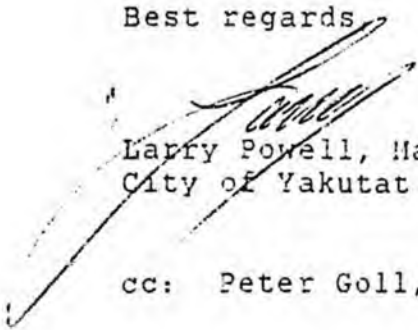
Dear Dick:

Please review the enclosed letter citing the necessity for introducing legislation to remedy a situation that is presently working adversely against the City of Yakutat in our efforts to purchase the Yakutat Power Co. It may also create problems for other public entities in similar situations.

Our request is that a very basic bill (suggested language is included in the attachment) be introduced at the earliest possible time for the Legislature's consideration.

Call at your earliest convenience should additional information or justification be required.

Best regards



Larry Powell, Mayor
City of Yakutat

cc: Peter Goll, Representative

enclosure

LAW OFFICES

HEDLAND, FLEISCHER, FRIEDMAN, BRENNAN & COOKE

A PROFESSIONAL CORPORATION

ANCHORAGE:

JOHN S. HEDLAND
HUGH W. FLEISCHER
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TELEFAX (907) 278-0877

BETHEL OFFICE:

251 SEVENTH AVENUE
P. O. BOX 555
BETHEL, ALASKA 99559
(907) 543-2744

March 8, 1990

BETHEL:

CHRISTOPHER R. COOKE

RECEIVED

MAR 12 1990

CITY OF YAKUTAT
CITY CLERK

Mayor Larry Powell
CITY OF YAKUTAT
PO Box 6
Yakutat, AK 99689

Re: Yakutat Power

Dear Larry:

Pursuant to our conversation of March 2, 1990, I am enclosing herewith a proposed amendment to AS 37.10.085 which, if enacted, would clear up any question about the ability of the City to continue operation of the utility company in the corporate form rather than dissolving the corporation.

According to John Parisena, dissolution of the corporation would result in a tax obligation of approximately \$137,000. Shelby Stastny has looked into the matter and concluded that the City could maintain the tax exempt status of the corporation under the Internal Revenue Code so long as the income accrues to the state or a political subdivision. Since all of the project revenues would be pledged to payment of the bonds or, to the extent of any excess, can be paid to the City, dissolution is not required to avoid taxation. Additionally, since the City, not the corporation, will be the issuer of the bonds, their tax exempt status is not in jeopardy according to the information from bond counsel for the bond bank.

I am also enclosing a memorandum which sets out the justification for the amendment, as well as an opinion that, whether the statute is amended or not, it is not violated by City ownership of the stock. However, bond

Mayor Larry Powell
CITY OF YAKUTAT
Page Two
March 8, 1990

counsel may be nervous absent a concrete opinion from
the court, and amendment of the statute would clear up
any doubt.

Please let me know if you have further questions.

Sincerely,



John S. Hedland

JSH:jp

MEMORANDUM

TO: Larry Powell
FROM: John S. Hedland
DATE: March 8, 1990

1. Proposed statutory change.

AS 37.10.085 is amended by the addition of subsection (c) as follows:

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility, and the political subdivision's authority with respect to lending its credit and borrowing money for the use of said corporation shall be the same as if the political subdivision had acquired the assets of said corporation.

2. Justification.

AS 37.10.085 as currently written stated as follows:

Sec. 37.10.085. Financial aid to corporations by state or political subdivision. (a) Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

(b) This section does not apply to debt issued by a municipality or a municipal joint insurance arrangement under AS 21.76.120.

The purpose of the amendment is to make it clear that a municipality may exercise its power to own and operate a public utility by acquiring the stock in a corporation that owns and

operates a public utility, and is not restricted to acquiring the assets of the company, and that it may finance acquisition or operation of the company in the same manner as if it owned the assets directly. If a municipality is required to acquire the assets, rather than the stock, of a public utility company, the assets must be sold by the corporation or the corporation must be dissolved. In either case, assuming that the fair market value of the assets (presumptively the purchase price) exceeds the corporation's depreciated basis in the assets, a substantial tax liability will arise that must ultimately be borne by the municipality, either through payment of the tax or an increase in the purchase price. There is no justification for imposing this unnecessary expense upon the municipality, since municipal ownership of the stock, rather than the assets, of a public utility company does not contravene any policy under Alaska law relating to either municipalities or utilities.

I do not believe that enactment of the proposed amendment would change the substantive law of Alaska. AS 37.10.085 as presently written does not, in my view, prohibit a municipality from acquiring all of the capital stock of a public utility company. However, under the strictures applicable to the sale of municipal bonds, bond counsel for either the municipality or the Alaska Municipal Bond Bank may raise questions about the authority of the municipality to acquire the stock in a public utility company, with the consequence that the bonds may not be marketable. The proposed amendment is designed to eliminate that problem.

It is clear that the evil at which AS 37.10.085 is directed--diverting public funds to private purposes--is not present when a municipality acquires, through a stock acquisition, a public utility that it may lawfully acquire through an asset acquisition. In Wright v. City of Palmer, 468 P.2d 325 (Alaska 1970), the court upheld the issuance of municipal bonds to be used to finance industrial sites to be leased to private companies. The court characterized the statute as one

which prohibits either the state or a political subdivision to lend its credit for the use of a private corporation, or to borrow money for the use of a private corporation. . . . We think that the question of whether the public credit is being pledged for a private purpose is also comprehended under the broader question of whether a public purpose is served by the bond issue and plan for its expenditure. . . . (Emphasis added). 468 P.2d at 328-29.

In State, ex rel. Johnson v. Consumers Public Power District, 10 N.W.2d 784 (Neb. 1943), the court was confronted with a Nebraska constitutional provision which provided that "no city, county, town, precinct, municipality, or other subdivision of the state, shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein of, any railroad, or private corporation, or association." The case involved the legality of the public power district's acquisition of all of the common stock of an electric power company, for purposes of dissolving it and acquiring its assets. The court stated as follows:

Even if respondent is a political subdivision of the state . . . [the constitutional provision] has no application under the circumstances. This provision of our Constitution must be construed

with reference to the evils it was intended to correct or prevent. It was intended to prohibit any subdivision of the state from entering into private business by being associated as a stockholder, or being a partner, or a part owner, in a private business venture or enterprise. . . . [The constitutional provision] was never intended to prohibit a purchase by a subdivision of the state of all the capital stock of a corporation solely for the purpose of lawfully acquiring the physical property of such corporation for a public use, constitutionally defined and lawfully authorized by the legislature. 10 N.W.2d at 794.

It is clear that the Yakutat Power acquisition does not place the City in the position of investing in a private business venture or enterprise, and the same reasoning should apply here.

Acquisition of stock that has already been issued, from an existing shareholder, does not constitute making a "subscription" to the stock of the corporation. As the court noted in Sprague v. Straub, 451 P.2d 49, 52 (Ore. 1969):

The distinction between a subscription to stock and a purchase of stock is well established. The term subscription is ordinarily used to refer to an agreement to purchase stock in a prospective corporation to be organized in the future; it is to be contrasted with the purchase of the stock of an existing corporation.

The court cited Astoria & S.C.R. Co. v. Hill, 25 Pac. 379 (Ore. 1890); Commercial State Bank v. Eilers, 264 Pac. 452 (Ore. 1928). The Alaska statute must therefore be distinguished from statutes or constitutional provisions in other states which prohibit the state or municipality from 'becoming a stockholder in any . . . corporation'. (See, §9 Article XI, Oregon Constitution); being "directly or indirectly the owner of, any stock or bonds of any . . . corporation (New Jersey Constitution, Art. VIII, §III, ¶2), see,

Whelan v. N. J. Power & Light Co., 212 A.2d 136, 139-40 (N.J. 1965); "subscribe to, or be interested in the stock of any . . . corporation" (Oregon Constitution, Article XI, §6); "become a stockholder in any . . . corporation (original Ohio Constitution, see, Sprague v. Straub, supra, 451 P.2d at 54. Indeed, AS 37.13.120(g)(18) expressly authorizes the investment of permanent fund money in "preferred and common stock of corporations incorporated in the United States".

Since a corporation wholly owned by the municipality is not a "private corporation" within the court's interpretation of AS 37.10.085, municipal financing activities do not violate the prescription against lending credit or borrowing money in aid of a corporation. Even if such a corporation were treated as a private one, the issuance of revenue bonds to be repaid solely via a pledge of revenue earned through corporate operations would not amount to a pledge of public credit. Wright v. City of Palmer, supra, 468 P.2d at 329, n. 4; Miles v. City of Eugene, 451 P.2d 59, 62 (Oregon 1969); ("Likewise, the proposal in this case would not come within the constitutional prohibition against raising money or lending credit. Money coming from revenue bonds and not from tax money does not fall within the prohibition.")

S C R

15



Alaska State Legislature

Senator Mike Szymanski

While in Session:

P.O. Box V
State Capitol, Room 11
Juneau, Alaska 99811
(907) 465-4978/4979
FAX (907) 465-2652

During Interim:

3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617

165 E. Parks Highway
Legislative Information Office
Wasilla, Alaska 99687
(907) 376-MIKE

POSITION PAPER
SCR 15

NIKISKI HYDROGEOLOGICAL SURVEY

While considerable progress has been made during the past year to identify and begin cleaning up hazardous waste sites on the Kenai Peninsula, there is still considerable concern among residents of the Kenai/Nikiski area that pollutants from the Kenai industrial complex may potentially contaminate the local water supply. In order to monitor water quality on an on-going basis, the Division of Geologic and Geophysical Surveys of DNR has proposed to initiate a comprehensive groundwater survey of the North Kenai Peninsula area to better understand and manage the area's water resources.

This study would provide valuable information regarding the location, quality and flow patterns of groundwater on the North Kenai Peninsula; information which is necessary for the continued protection of the communities' water supplies as well as the planning and siting of future industrial activities and waste disposal areas. Since good management of groundwater resources includes providing water for a variety of uses, it is necessary to know as much about the resource as possible.

The Division of Geologic and Geophysical Surveys has developed an outline for conducting a comprehensive study for the Kenai-Nikiski area which includes: reviewing existing groundwater data; collecting information on current water quality from existing monitoring wells; mapping underground water deposits; developing flow maps to chart water flow patterns; and monitoring changes in ground-water levels, quality and usage over time.

SCR 15 requests the Governor to direct the Division of Geologic and Geophysical Surveys to conduct a North Kenai Peninsula hydrogeologic study to insure clean water supplies for area residents and assist in site planning for future industrial projects.

Senate District E

Mat-Su • So. Anchorage • Bird/Indian • Girdwood • Whittier • Nikiski • Cooper Landing • Hope • Seward • Cordova • Valdez

Hydrogeologists lack money, staff for Nikiski groundwater study

By **BEN SWAN**
Staff Writer

State water geologists have begun preliminary work on a groundwater survey of the Nikiski area but stressed any results may be long in coming without sufficient money or staff.

"The fact that we're here today means that we've started something," said Jim Munter, head hydrogeologist with the division of geological and geophysical surveys. The division is part of the state Department of Natural Resources. Munter spoke at the North Kenai Chamber of Commerce weekly luncheon Thursday in Nikiski about the process of a comprehensive groundwater survey.

Bill Long, the division's chief of water resources, prefaced Munter's talk with colorful facts about the division's limitations.

"We're a small department with a small

budget," Long said. "We have 39 projects statewide and four of those projects are on the Kenai Peninsula. We understand you're concerned about groundwater and will try to integrate a program as far as funds are allowed."

Munter told the group that without additional funding any study would be slow. He also said the upcoming fiscal year did not indicate any study for the area.

"If there's going to be money from the state, it'll have to come from the Legislature," Munter said.

The division's interest in a groundwater survey stems from a petition coordinated by Nikiski resident Gary Superman. Superman gathered more than 250 signatures after it was determined that a Nikiski well was contaminated with tetrachloroethylene, an ingredient found in solvent, degreaser and dry

cleaning fluid.

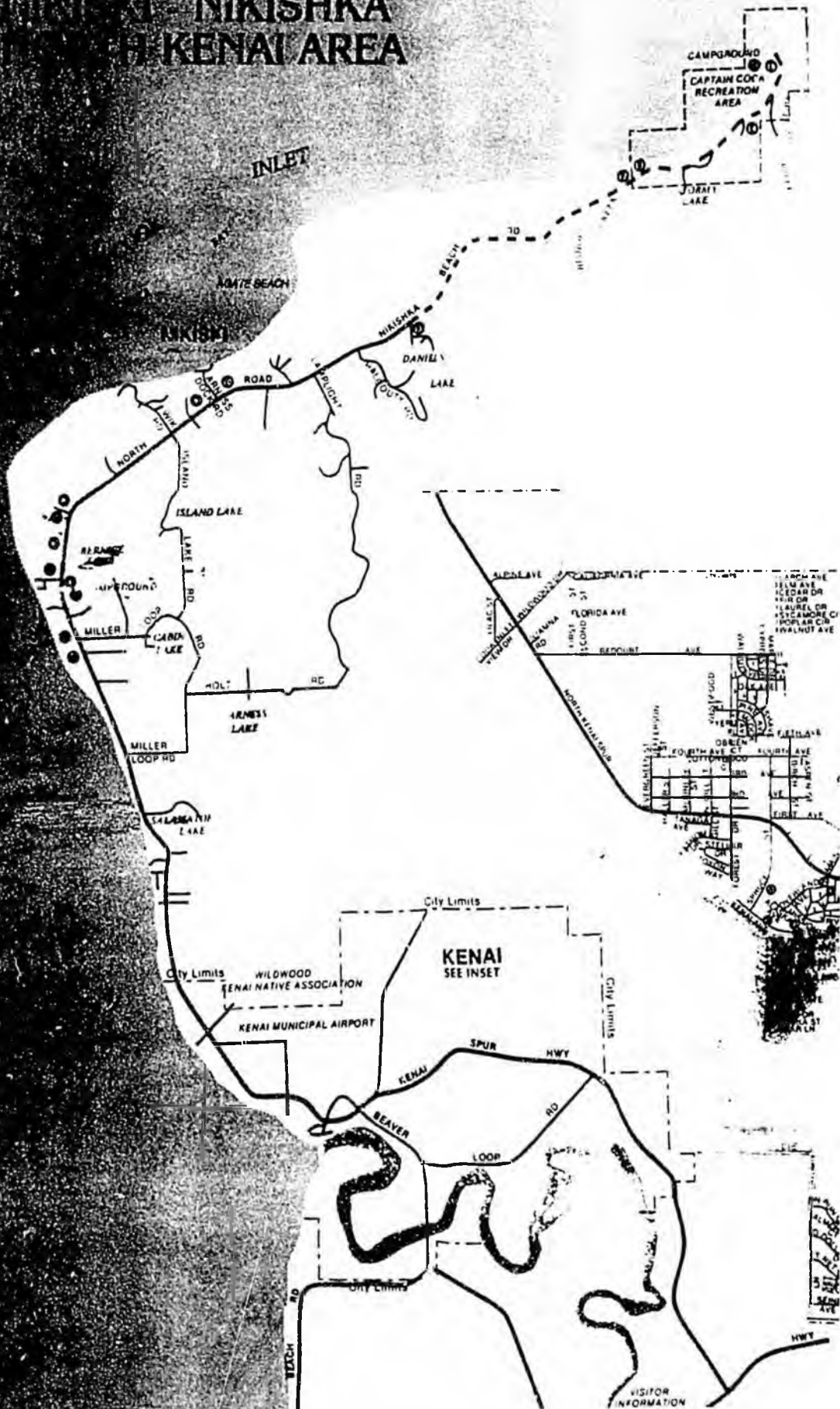
The petition requested a comprehensive groundwater survey on the Nikiski industrial complex and the surrounding area, Superman said. Water flow, water quality, soil identification of upper confining levels and the depths of the aquifer levels — the region under the ground that contains water — would be examined in the survey.

In a teleconference last week, hydrogeologists were asked to come to Nikiski and speak about the logistics of a comprehensive survey, Superman said.

"The timing for the petition was very good," Munter said. "It was a good thing to get us started (on a survey) because we don't just go into an area and tell the people a survey needs to be done."

Although a study has not been initiated, Munter said he was in Nikiski to solicit input and gather feedback from people about the water evaluation. He said any survey conducted should be done from the long-term perspective that the Nikiski groundwater would be the primary water source for years to come.

NIKISHKA NIKISHKA NORTH KENAI AREA



FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environmental Conservation
 Title: Relating to hydrogeological survey BRU: Environmental Quality
on the Kenai Peninsula
 Sponsor: Senator Szymanski and Senator Components: _____
 Requestor: Senator Szymanski Kerttula

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: 10 February 1989
 Approved by Commissioner: *CD/Kyle* Date: 2/10/89
 Agency: Department of Environmental Conservation

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

AEL ISSUES PAPER - SCR 15 CENTRAL KENAI HYDROGEOLOGICAL SURVEY

The Alaska Environmental Lobby is strongly in favor of a comprehensive ground-water study on the Kenai Peninsula, as proposed in Senate Concurrent Resolution 15.

The groundwater in the Kenai/Nikiski area is at high risk of contamination because of extensive industrial and waste disposal activity. In its 1987 investigation of the extent of ground-water contamination in Alaska, the Division of Geological and Geophysical surveys found that "the major sites of potential contamination in Alaska are petroleum-product storage and transportation facilities, historic oil spills, hazardous-waste disposal areas, waste-water discharge lands, landfills and dumps, and coastal areas with relatively large rates of ground-water extraction." Many of these criteria describe the situation on the Kenai.

The report continues on to cite a study done in 1986, which noted that "estimates of the quantity of hazardous waste generated in Alaska are about twice as large as estimates of quantities disposed of annually." This comment, and the fact that little is currently known about the basic dynamics of water flow patterns on the Kenai, highlight the need for study in the region.

At this point in time, the probability that contamination of one well will spread to other areas is unknown. But because of the great amount of water that is used on the Kenai (Nikiski uses several million gallons of water each day), the consequences of contamination or of a change in the center of pumping are potentially far-reaching.

The Environmental Lobby agrees that the non-regulatory nature of the Division of Geological and Geophysical Surveys is appropriate to the need for data collection and research on the Kenai Peninsula. A basic pool of knowledge will provide citizens, industry, and regulatory agencies such as the Department of Environmental Conservation with a foundation from which to make decisions.

A comprehensive ground-water study such as the one proposed will be invaluable for both short and long-term use. We believe it will also fulfill the responsibility of the state to "control water, land and air pollution in order to enhance the health, safety and welfare of the people of the state." (AK Statute 46.03.010)

Senate Community and Regional Affairs Committee
February 21, 1989

Karen Wood

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • SITKA GROUP SIERRA CLUB
 KNIK GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
 DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
 KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE
 SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL
 KNIK HANDBOOK AND MAKERS

S J R

19

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2.9.89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

1/31/89

DATE TURNED INTO OFFICE 2.14.89

Mr. President:

C&RA

Committee considered

SJR 19

Disapproving the Local Boundary Commission recommendation for annexation of territory to the Fairbanks North Star Borough

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mark DO NOT PASS

Mike ... - no Rec.

John ... no Rec

Ed Adams - DO PASS

Chairman signature and recommendation

Committee backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "Disapproving Annexation of
 territory to Fairbanks North Star Borough"
 Sponsor: Binkley
 Requestor: _____

Agency Affected: C&RA
 BRU: Local Government Assistance
 Components: Local soundry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Jim Beraman*
 Division: Municipal & Regional Assistance

Phone: 465-4750
 Date: 2/13/89

Approved by Commissioner: *[Signature]*
 Agency: Community & Regional Affairs

Date: 13 Feb 89

Distribution (by preparer):

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- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)