

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 HRES 12293

From: Linda Frey
Sent: Tuesday, February 12, 2008 7:29 PM
To: Rep. Wes Keller
Subject: HB 348 and HJR 31

Dear Rep. Keller,

I am writing to encourage you in your efforts to pass HB 348 and HJR 31. We are 24 year Alaskans who now have 2 younger generations of hunters in the family. We would like to be able to take our 1 year old twins grandsons hunting and fishing as they get older. We are proud to be Alaskans and recognize that Alaskans do know what is best for our state, not outside anti-hunter groups who wouldn't know what to do with a fresh side of moose if it was handed to them.

Thanks for your work on these bills.

Linda and Dana Frey



Congressman George Miller
(D-California, 7th District)
Committee on Education and Labor,
Committee on Resources

New Bill Would Stop Illegal Airborne Hunting of Alaskan Wolves and other Wildlife
Tuesday, September 26, 2007



- **WASHINGTON** – Legislation introduced today would protect wolves, bears, and other wildlife from the illegal and inhumane practice of airborne hunting. The new bill would close a loophole in federal law that **Alaska** officials have exploited to permit individual hunters to shoot and kill nearly 700 wolves from aircraft in the past four years.

- “It’s time to ground Alaska’s illegal and inhumane air assault on wolves,” said Congressman George Miller (D-CA), a leader in Congress on conservation and natural resource issues and author of the new bill. “The state of Alaska has been operating an airborne hunting program that not only ignores federal law but violates Alaskans’ and other Americans’ wishes.

- The bill does not alter existing exceptions for the use of aircraft for animal control where land, livestock, water, pets, crops, or human health and safety are at risk.



Miller was joined by Alka, a 5-year-old Arctic grey wolf, and two wildlife experts and advocates -- Joel Bennett, and Rodger Schlickeisen, President of Defenders of Wildlife



Photo Courtesy of David King
King's Outdoor World



Photo Courtesy of David King
King's Outdoor World



Photo Courtesy of David King
King's Outdoor World



Photo Courtesy of David King
King's Outdoor World

HJR 31 AND HB 348
LETS CONGRESS KNOW WE
HAVE EXPERTS MANAGING
OUR ASSET OF GAME

&

WE DON'T NEED
INTERFERENCE

ALASKA STATE LEGISLATURE

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Session:

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Juneau, Alaska 99801-1182
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REPRESENTATIVE WES KELLER DISTRICT 14 Sponsor Statement

HJR 31

A Resolution opposing the enactment of the Protect America's Wildlife Act of 2007 that intends to prohibit aerial hunting of wildlife, which is essential for predator control in Alaska.

For years now the state has been committed to manage our game despite the unique Alaska challenges. For more than a decade one of problems facing moose and caribou has been an increasing number of predators relative to the number of game animals. HJR 31 supports decisions by the Alaska Board of Game that aerial hunting is a critical tool to manage moose and caribou populations for abundance. This resolution is also premised on the belief that the harvesting of moose and caribou is a "preference among beneficial uses" of Alaska's wildlife. (Article 8, Paragraph 4 of the Alaska Constitution)

As early as the 1990's the State Board of Game has used aircraft, many times the ONLY means of access, to thin a growing population of predators so both subsistence and local hunters could continue to access sustained yield of this resource. This form of management has increased the moose and caribou population in many parts of the state. It has also cut down on the danger of random wolf attacks on dogs or small humans.

Despite this valuable management tool, there are those from other states who seem to believe they know better, or don't have a clue. They are wrong. Despite that, they continue to try and once again they have found a friend in Congress. The Honorable George Miller of California has introduced legislation that is specifically aimed at Alaska. It would make it a federal crime with a \$50,000 fine for Alaska to manage its game asset.

House Joint Resolution 31 says, "NO"; That Alaska knows what it is doing when it comes to wildlife management; That we have professional trained staff and biologists that make the correct necessary decisions to protect our valuable resources for all Alaskan's... What California considers sport hunting many Alaskans consider food on the table that doesn't have to be shipped from California.

Your support of HJR 31 lets Congress know by making it clear once again that Alaska is a sovereign state, with the ability to "utilize" and "maintain" our wildlife on the sustained yield principle without interference from people, many who have never seen or supplemented their pantry with a moose or caribou. It supports our Congressional delegation by saying game management of Alaska from Washington D.C. is not acceptable.

Protect America's Wildlife Act of 2007 (Introduced in House)

HR 3663 III

110th CONGRESS

1st Session

H. R. 3663

To amend the Fish and Wildlife Act of 1956 to establish additional prohibitions on shooting wildlife from aircraft, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 25, 2007

Mr. GEORGE MILLER of California (for himself, Mr. DINGELL, and Mr. DICKS) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Fish and Wildlife Act of 1956 to establish additional prohibitions on shooting wildlife from aircraft, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protect America's Wildlife Act of 2007".

SEC. 2. AMENDMENT TO PROHIBITIONS.

Section (a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(a)) is amended--

- (1) by striking "or" after the semicolon at the end of each of paragraphs (1) and (2);
- (2) by striking paragraph (3) and inserting the following:
 - (3) shoots or attempts to shoot any bird, fish, or other animal before 3:00 a.m. following a day on which the person has traveled by aircraft other than on a regularly scheduled commercial aircraft;
 - (4) knowingly participates in using an aircraft for any purpose referred to in paragraph (1), (2), or (3); or
 - (5) knowingly violates any regulation issued under this Act; and
- (3) in the matter following paragraph (5) (as added by this section) by striking "\$5,000" and inserting "\$50,000".

SEC. 3. EXCEPTIONS TO PROHIBITIONS.

Section 13(b) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(b)) is amended by adding at the end the following:

“(3) Except as provided in paragraph (5), a State may not authorize or undertake any action otherwise prohibited under this Act, for the purpose of increasing any game population or for the purpose of sport hunting.

“(4) Notwithstanding subsection (a), a State may shoot any wolf, bear, or other predator from an aircraft to prevent a biological emergency, if--

“(A) the head of the State's fish and wildlife agency determines, based on the best scientific data available, that a biological emergency is imminent and there is no other means available to eliminate the biological emergency;

“(B) the shooting is conducted by an officer or employee of the State fish and wildlife agency or of the United States Department of Agriculture;

“(C) the shooting occurs only in the specific geographical area where the biological emergency exists; and

“(D) the shooting removes only the minimum number of predators necessary to eliminate the biological emergency.

“(5) The Secretary of the Interior may authorize an action that is referred to in paragraph (1) to prevent the extinction of any species that is listed as an endangered species or threatened species under section 4(c) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)), if the Secretary determines that there is no other means available to address the threat of extinction.”

SEC. 4. DEFINITION OF BIOLOGICAL EMERGENCY.

Section 13(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(c)) is amended to read as follows:

“(c) As used in this section:

“(1) The term ‘aircraft’ means any contrivance used for flight in the air.

“(2) The term ‘biological emergency’ means an irreversible decline in a wildlife population caused by a predator population.”

SEC. 5. CITIZEN SUITS.

Section 13 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1) is amended by adding at the end the following:

“(g) Any person may commence a civil action on the person's own behalf--

“(1) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, who is alleged to be in violation of this Act; or

“(2) against the Secretary if there is alleged a failure of the Secretary to perform any act or duty under this Act that is not discretionary with the Secretary.”



Press Release

Congressman George Miller (D-California, 7th District)
Committee on Education and Labor, Committee on Resources

New Bill Would Stop Illegal Airborne Hunting of Alaskan Wolves and other Wildlife

Tuesday, September 25, 2007



WASHINGTON – Legislation introduced today would protect wolves, bears, and other wildlife from the illegal and inhumane practice of airborne hunting. The new bill would close a loophole in federal law that Alaska officials have exploited to permit individual hunters to shoot and kill nearly 700 wolves from aircraft in the past four years.

"It's time to ground Alaska's illegal and inhumane air assault on wolves," said Congressman George Miller (D-CA), a leader in Congress on conservation and natural resource issues and author of the new bill. "The state of Alaska has been operating an airborne hunting program that not only ignores federal law but violates Alaskans' and other Americans' wishes. The PAW Act will help to protect our nation's wildlife from the unethical and unfair practice of airborne hunting."

The Protect America's Wildlife Act, or PAW Act, was introduced by Miller along with Rep. John Dingell (D-MI), the dean of the House and floor manager of the debate on the original Airborne Hunting Act, and Rep. Norm Dicks (D-WA), the chair of the Interior Appropriations Subcommittee.

At a press conference on Capitol Hill, Miller was joined by Atka, a 5-year-old Arctic grey wolf, and two wildlife experts and advocates -- Joel Bennett, an Alaska resident and former member of the state's Board of Game and Rodger Schlickeisen, President of Defenders of Wildlife, a national conservation and environmental advocacy organization.

In response to public outcry over airborne wolf hunting in Alaska, Congress passed the Airborne Hunting Act in 1972 to prohibit shooting or harassing animals from aircraft. However, for the last several years, officials in Alaska have licensed people to shoot hundreds of wolves from aircraft under the guise of wildlife management and predator control but in clear violation of the intent of the federal ban.

In 1996 and again in 2000, Alaskans approved two popular ballot measures that banned airborne hunting in the state, but the state legislature largely overturned each of those measures.

Hunting wildlife from an aircraft violates wildlife management principles and the hunting rules of fair chase, as does the related practice of chasing animals in an aircraft until they are exhausted and then executing them on the ground, known as 'land and shoot.'

The FAW Act makes it clear that states can only conduct activities prohibited by the Airborne Hunting Act to respond to legitimate biological and other emergencies, not just to authorize otherwise-illegal hunting practices. The bill does not alter existing exceptions for the use of aircraft for animal control where land, livestock, water, pets, crops, or human health and safety are at risk.

The bill is numbered H.R. 3663, and has been referred to the Committee on Natural Resources.

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Wildlife Conservation

Overview of Relationships Between Bears, Wolves, and Moose in Alaska

Relationships between large predators and their prey in Alaska are complex, and no one model fits all situations. It is possible to generalize about some situations, particularly in Interior Alaska. This information on the biology of moose, bears, and wolves, represents highlights from 25 years of research and management programs conducted by universities and state, provincial and federal governments in Alaska and Canada. In 1997, the National Academy of Sciences published a summary and review of predator/prey interactions in Alaska (National Research Council, 1997). More research has been conducted since that review. The published references listed below can be found in most university or large municipal libraries.

In the boreal forest of northern Canada and Interior Alaska, where bears (either black bears, grizzly bears, or both) and wolves are lightly harvested and are major predators on moose, moose densities typically remain well below levels that their habitat can support. Under these circumstances, moose density fluctuates between about 0.1 and 1.0 moose/mi² over large areas; most commonly densities are 0.4 to 0.6 moose/mi². Biologists refer to this situation as the Low Density Dynamic Equilibrium or LDDE because moose density fluctuates yet remains low. This occurs primarily because, together, bears and wolves are efficient predators on moose calves, and kill most of the calves born each year. The highest densities reached in these systems (about 1 moose/mi²) tend to occur in very large burns where habitat is excellent and moose apparently are more successful at avoiding predators.

Although the LDDE prevails in much of remote interior Alaska, differences occur between areas. In most areas, bears are the major predator on moose calves. An exception occurs in Game Management Unit 20A where wolf control has been shown to be effective at maintaining high numbers of moose and high long-term harvests of moose. In Unit 20A, initial reductions in wolves increased moose population density, wolves also quickly increased after wolf control because, ultimately, the number of wolves in an area depends mostly on the number of prey animals in the area. Number of moose harvested also remained high after wolves increased. An abundance of trappers in Unit 20A has kept wolves from increasing to the point where they could cause declines in the moose population. A similar situation likely occurs in portions of Units 20B and 20D South.

Grizzly bears have been shown to be particularly effective predators of moose calves from birth to about 2 months of age and often kill adult moose in the spring. In this regard, one grizzly bear is equivalent to many black bears. Not all bears are equal, however, and some bears seem to become specialists at killing both adult and calf moose.

Black bears have been found to be the most important predator of moose calves in some areas of Alaska where grizzly bears are uncommon. In these areas, black bears killed about 40% of all moose calves that were born. Most predation was by adult males.

Biologists expect that significant reductions in bear numbers (either black or grizzly or both) will also lead to higher numbers of moose for harvest. For example, in areas of Canada and the northern states where moose coexist only with wolves, moose are often found at high densities that fluctuate with weather and habitat (e.g. Isle Royale).

Numbers of grizzly bears have probably increased in Interior Alaska since the 1950s. We base this on incidental observations by older hunters, local residents, cabin owners, and Native elders, who all indicate that grizzly bear numbers have increased. This is corroborated to some degree by modern studies. For example, grizzly bears were recently found to be significant predators of moose calves on the Yukon Flats and are commonly seen by local residents, whereas 20-30 years ago, observations of grizzly bears were rare.

In the Anchorage and Fairbanks areas, where wolves and bears are not common, moose are abundant.

Grizzly bear populations appear to be much more resilient to harvest than previously believed. During the last 10 years, the Alaska Board of Game has made a deliberate effort to reduce numbers of grizzly bears in a few important hunting areas (e.g. Game Management Unit 13-the Nelchina Basin) by increasing the bag limit and extending hunting seasons. So far, these new regulations have had no noticeable effect on grizzly bear populations even though hunters have taken an increased number of bears.

Wolves have been found to be very adaptable and they recover from low numbers within a few years. Despite relatively heavy hunting and trapping over the last century in Alaska, wolves occur on nearly all of their traditional habitat throughout mainland Alaska. Historically, wolf numbers were greatly depressed. Specifically, wolves were rare in Interior Alaska between about 1910 and 1925, and during the 1950s. During 1910-1925 wolves may have succumbed to diseases brought in by sled dogs or to widespread poisoning. During the 1950s, federal predator control agents reduced wolves by poisoning and aerial shooting. Wolves have been abundant and have occurred in all of their historic ranges in Alaska since state management began in about 1960 (except for the Anchorage and Fairbanks areas, and the western Seward Peninsula).

Wolves are social animals that live in large family groups. Usually, only a single female per pack successfully raises pups, but depending upon the relationship of adult males and females in a wolf pack, multiple litters may occur in a single pack in a single year. Most pups born into a pack stay in the pack for at least one year, but virtually all have dispersed away from their natal pack by the age of 3. Large packs of 20 or more wolves may occur in areas where food is abundant and pup survival is high. Wolf populations in North America commonly sustain annual harvests or natural mortality rates of 20-40% without experiencing a year-to-year decline in numbers. High reproductive rates, high mortality rates and long distance dispersal behavior results in extensive gene flow within wolf populations and between wolf packs.

In Alaska and other areas, if wolves are not hunted or trapped, most mortality is from intraspecific aggression (fighting with other wolves). In trapped wolf populations, natural mortality rates are often lower than in untrapped populations.

In coastal areas of Alaska, where fox rabies is endemic, wolves are periodically reduced to low levels by rabies.

Practical Aspects of managing moose in areas where the LDDE exists

Usually, without predator control, hunters can take about 5% of a low-density moose population each year – almost all of the harvest must be bulls or the population will decline.

LDDE does not present a biological problem – moose are not likely to become threatened, endangered or extinct due to predation.

The fact that the LDDE prevails in large areas does not usually present a management problem either. Interior Alaska is sparsely populated and access to moose populations is often poor. This means that hunting pressure is relatively light in many areas anyway.

The LDDE can cause a management problem around villages, or in areas that have become important hunting areas for Alaskans near the road system. In these areas, people need or want to harvest more moose than the system can support. In Alaska, moose are valuable to people as a source of food and income (i.e. guiding and transporting hunters), particularly in rural areas. This is why people often express the desire for predator control.

In some areas, where there is a demand to increase moose harvests, it might be possible to harvest more moose by reducing bear predation. Although this idea is reasonable, it is a relatively new idea, has not been adequately tested in Alaska, and programs of this nature need to be viewed as experiments.

References:

- Ballard, W.B., J.S. Whitman, and D.J. Reed. 1991. Population dynamics of moose in southcentral Alaska. *Wildlife Monographs* 114:1-49.
- Boertje R.D., P. Valkenburg, and M.E. McNay. 1996. Increases in moose, caribou, and wolves following wolf control in Alaska. *Journal of Wildlife Management* 60(3):474-489.
- Gasaway, W.C., R.O. Stephenson, J.L. Davis, P.E.K. Shepherd, and O.E. Burris. 1983. Interrelationships of wolves, prey, and man in interior Alaska. *Wildlife Monographs* 84:1-50.
- Gasaway, W.C., R.D. Boertje, D.V. Grangaard, D.G. Kellyhale, R.O. Stephenson, and D.G. Larsen. 1992. The role of predation in limiting moose at low densities in Alaska and Yukon and implications for conservation. *Wildlife Monographs* 120:1-59.
- Mech, L.D., L.G. Adams, T.J. Meier, J.W. Burch, and B.W. Dale. 1998. *The wolves of Denali*. University of Minnesota Press, Minneapolis and London.
- National Research Council. 1997. *Wolves, bears, and their prey in Alaska*. National Academy Press, Washington.
- Franzman, A.W., and C.C. Schwartz, Editors. 1997. *Ecology and management of the North American moose*. Smithsonian Institution Press, Washington and London.

Debra Higgins

From: John Manly
Sent: Wednesday, January 30, 2008 11:25 AM
To: lhscjwm+pr@legis.state.ak.us
Subject: Press Release - Keller introduces anti-predator control resolution
Attachments: PR - Keller Introduces Anti-Predator Control Resolution.doc

FOR IMMEDIATE RELEASE: January 30, 2008 **CONTACT:** Rep. Wes Keller (907) 465-2186

Keller Introduces Anti-Predator Control Resolution

HJR 31 Answers Congressional Critics Attempt to Meddle in State's Programs

(Juneau) - Representative Wes Keller (R-Wasilla) today introduced House Joint Resolution 31 (HJR 31) addressed to Congress in response to H.R. 3663 by Congressman George Miller (D-California). The Congressional bill makes it a crime punishable by a \$50,000 fine for Alaskans to continue management of predator populations.

"Animal rights activist have found a friend in Congressman Miller, who does not make allowance for realities in Alaska," said. Rep. Keller. "The bill would not prevent aerial predator control if the animals are killing livestock, but does not make the same exception to allow for managing for abundance of moose and caribou in Alaska. This is management of one of Alaska's very important assets from Washington, D.C. and it is not acceptable.

"Our delegation has been fighting in the halls of Congress against this and other legislation that is meddling with Alaska's assets and lifestyle. This resolution will let them know we support them in this fight to protect Alaska," added Keller. "Predator control based on California values is one of the most visible intrusions making its way through Congress. We don't have the highway system they have in the Lower 48, and access is by boat or plane. Some outsiders just don't seem to understand the handicap it would be for our game management."

HJR 31 has been referred to the House Resources Committee.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14

MEMO

To: Representative Craig Johnson

Fm: Jim Pound

Cc: Representative Carl Gatto

Date: January 30, 2008

Re: Request for Hearing HJR 31

Please accept this memo and the attached packet as a request for the House Resources Committee to schedule for hearing House Joint Resolution 31 Opposing the enactment of the Protect America's Wildlife Act of 2007 that intends to prohibit aerial hunting of wildlife, which is essential for predator control in Alaska.

HJR 31 is a direct reaction to a bill introduced in Congress by Congressman George Miller of California aimed specifically at Alaska's predator control program. This resolution will notify the members of Congress that we as a state legislature understand managing for abundance and do not need assistance in making decisions from Washington, D.C.

I urge your assistance by placing HJR 31 on the House Resources Committee hearing schedule at your earliest convenience.

Attachments: Sponsor Statement, HJR 31, H.R. 3663, Congressman Miller's Introduction Press Release,
F&G Wildlife Report

E-Mail: [Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

SB

46

HOUSE
RESOURCES
COMMITTEE
PACKET

February 12, 2007

1

CSSB 46(RES)
*Coastal Management
Program*

2

Division of Geological and
Geophysical Surveys Presentation
Cook Inlet Gas:
Reality and Exploration
Potential

3

4

5

6

7

Alaska State Legislature

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SENATOR DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedea
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

February 6, 2007

MEMORANDUM

To: Representative Gatto, Co-chair
Representative Johnson, Co-chair
House Resources Committee

From: Senator Olson 

Re: Request for committee hearing of SB 46, Coastal Zone Management

I would appreciate a resources committee hearing of SB 46 at your earliest convenience. Attached is a sponsor statement and background information. The senate bill is restricted to only those items that extend a March 1 deadline for existing coastal management organizations to complete an acceptable management plan and the associated deadline for the ABC list completion. Because of the short time available for legislative consideration of the extensions, it is almost imperative that a committee hearing and action take place during the week of Feb. 12 to 19.

Alaska State Legislature

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In Session:
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SENATOR DONALD C. OLSON

SPONSOR STATEMENT

DISTRICT T

SB 46, Coastal Zone Management

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedea
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

Alaska's Coastal Management Program has undergone major modification in the last several years under the previous administration. These changes required the coastal zone management districts throughout the state to completely revise their management plans. Compliance and approval of the new plans by both the state and federal authorities must be achieved before the March 1, 2007 termination date of their existing plans.

Of the 28 coastal management districts, 16 have new plans that have been approved or are near approval. Of the remaining districts, 9 are still being revised or are under review and 3 have requested mediation. They are not likely to make the March 1 deadline. The reasons most often given for the delays are the complexity and extent of information required by the Department of Resources for justification of the plan proposals. This is particularly true for large districts where revisions to resources inventories and analysis required significant effort.

CS SB 46 (RES) accomplishes two things. First, it extends the March 1 deadline for completion and approval of district plans six months to September 1. Secondly, it extends a related deadline for the designation of categorical and generally consistent determinations (the ABC list) six months also.

I urge you to give favorable consideration of SB 46 and its importance to 70 % of Alaska's coastal area and the people who call it home.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB046-DNR-ACMP-01-25-07
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title Coastal Management Program
 Sponsor Senator Olson
 Requester Senate Resource Committee

Dept. Affected: Natural Resources
 RDU Resource Development
 Component Alaska Coastal Management Program
 Component No. 2680

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 191 (Chapter 24 SLA 2003) required the districts to have plans submitted by 6/30/2005, with the district plan review and approval process completed by 6/30/2006. CS SB 102 (Chapter 31 SLA 2005) extended the district submission deadline to 3/1/2006, 8 months after the deadline established in HB 191. The review and approval process of those plans would not be complete until 3/1/2007.

Though 28 coastal districts submitted plans by the deadline (3/1/2006), several of the coastal districts have withdrawn or continued to work on their plan, delaying the review and approval process. Implementation of SB 46 extends the review and approval process of those plans to 9/1/2007, 14 months after the deadline established in HB 191. SB 46 will also extend the completion of the ABC List by 6 months, to June 29, 2008. Funding for existing staff to continue the work necessary for the district plan review and approval process will be absorbed in the existing budget.

Prepared by: Randy Bates, Acting Director
 Division Office of Project Management and Permitting
 Approved by: Marty Rutherford, Acting Commissioner
 Agency Natural Resources

Phone 465-8797
 Date/Time 1/25/2007
 Date 1/25/2007



MEMORANDUM

STATE OF ALASKA

Department of Natural Resources
Office of Project Management and Permitting

TO: Distribution

DATE: January 16, 2007

TELEPHONE: 465-8797

FROM: Randy Bates
Acting Director
Office of Project Management and Permitting
Department of Natural Resources

SUBJECT: ACMP Status – Coastal
District Plan Revisions

This memorandum is intended to provide you with a status report of the Alaska Coastal Management Program (ACMP) coastal district plan amendments.

The following coastal district plan revisions have been approved by the DNR Commissioner and the Office of Ocean and Coastal Resource Management (OCRM):

- (1) City of Skagway
- (2) City of Hoonah
- (3) City of Pelican
- (4) Bristol Bay Borough
- (5) Aleutians West CRSA
- (6) City of Bethel
- (7) City of Craig
- (8) City of Nome
- (9) City of Valdez
- (10) City of Whittier
- (11) Haines Borough
- (12) City and Borough of Yakutat
- (13) Matanuska-Susitna Borough
- (14) City of Thorne Bay

The City of Craig and Aleutians West CRSA coastal district plan revisions were submitted to the Lt. Governor's Office last week. As soon as the Lt. Governor signs and files the plan revisions, a public notice will be issued and the plans will go into effect 30 days from the Lt. Governor's filing date.

The remaining coastal districts listed above should be in the process of obtaining the necessary resolution/ordinance from the district's governing body, as appropriate, and in accordance with 11 AAC 114.360. In order to ensure the coastal district plan revisions go into effect in advance of the March 1, 2007 sunset date for the existing plans, coastal districts should plan to submit the required resolution/ordinance to OPMP by 12:00 noon Friday, January 26. This will allow OPMP the opportunity to prepare the necessary filing and associated paperwork to ensure a timely submittal to the Lt. Governor's Office for filing. For information and documents relating to the DNR Commissioner's approval and OCRM approval for the above listed coastal districts, please see the front web page

(<http://alaskacoast.state.ak.us/>) and the front page archive
(<http://alaskacoast.state.ak.us/Enews/Archives/FrontPageArchives.htm>).

The following coastal district plan revision has been approved by the DNR Commissioner and is currently undergoing review by OCRM:

(1) Municipality of Anchorage (OCRM response expected by February 6, 2007)

The following coastal district plan revision has been approved by the DNR Commissioner and is being prepared for submission to OCRM:

(1) City and Borough of Sitka

The following coastal district plan revisions were approved by the DNR Commissioner, but the coastal district has requested mediation of the DNR Commissioner's decision under 11 AAC 114.350:

(1) Bristol Bay CRSA

(2) City and Borough of Juneau

(3) Northwest Arctic Borough

The 9 remaining coastal district plans listed below were either submitted late to OPMP (after the August 10, 2006 deadline established by OPMP for priority processing) and are still undergoing review by OPMP, and/or were voluntarily withdrawn by the coastal district and are currently being revised by the coastal district:

(1) Aleutians East Borough

(2) Bering Straights CRSA

(3) Cenaliulriit CRSA

(4) City of Cordova

(5) Kenai Peninsula Borough

(6) Ketchikan Gateway Borough

(7) Kodiak Island Borough

(8) Lake and Peninsula Borough

(9) North Slope Borough

TIME DEPENDENT – READ IMMEDIATELY

**The Alaska Coastal District Association
Resolution 2007-01**

A RESOLUTION SUPPORTING SB 46 (CS), AN ACT RELATING TO AN EXTENSION OF THE PLAN REVISION DEADLINE FOR COASTAL MANAGEMENT PLANS FROM MARCH 1, 2007 TO SEPTEMBER 1, 2007.

WHEREAS, Senator Donny Olsen has introduced Senate Bill 49 to the Alaska State Legislature extending the Alaska Coastal Management Program (ACMP) district plan revision deadline from March 1, 2007 to September 1, 2007 by amending the effective date of sec. 45, ch. 24, SLA 2003, as amended by sec 21, ch.31, SLA 2005; and

WHEREAS, At least ten (10) coastal district plans will expire on March 1, 2007 without this extension; and

WHEREAS, SB 46 also extends the deadline for revision of the *ABC List* from 25 months (after the Office of Coastal Resource Management (OCRM) approval of the ACMP changes) to 30 months (i.e., from December 29, 2007 to August 29, 2008), which will allow incorporation of the new enforceable policies into the A and B List revisions; and

WHEREAS, the Alaska Coastal District Association (ACDA), represents Alaska's coastal districts with common interests in monitoring and/or regulation of development activities occurring in Alaska's coastal zone; and

WHEREAS, the Alaska coastal districts have repeatedly elected to participate in the State of Alaska Coastal Management Program and have entered into grant agreements with the Alaska Department of Natural Resources (ADNR)-Office of Project Management and Permitting (OPMP) to amend their respective coastal management plans by the March 1, 2007 deadline; and


WHEREAS, OPMP has approved some of the district coastal management plan revisions while other district plans are still in the negotiation process. Once approved by OPMP, each plan must be forwarded to ADNR for signature prior to being sent to OCRM for final approval; and

WHEREAS, once a district plan is reviewed and approved by ADNR and OCRM, each plan must then go through a local public review process before it can be adopted by local governments; and

WHEREAS, several Alaska district coastal management plan revisions will not meet the March 1, 2007 approval deadline.

NOW, THEREFORE BE IT RESOLVED, the ACDA supports passage of SB 46 and strongly encourages House and Administrative approval to extend the ACMP district plan revision deadline from March 1, 2007 to September 1, 2007.

BE IT FURTHER RESOLVED, the ACDA member districts remain committed to completing their respective coastal management plan revisions to ensure the citizens of Alaska's coastal districts have due deference in the public review process in coastal management decisions affecting Alaska's coastal zone boundary.

 *Marv Smith* Feb. 1 '07

Marv Smith Chair, Alaska Coastal District Association



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99513

Telephone: (907) 246-3421
Fax: (907) 246-6602



January 18, 2007

Senator Donny Olson
State Capitol, Room 514
Juneau, AK 99801-1182

Re: Senate Bill 46

Dear Senator Olson,

Enclosed please find Lake and Peninsula Borough's Resolution 07-01 in support of Senate Bill 46. If you have any questions or would like additional information regarding the Lake and Peninsula Borough's Coastal Management Plan, please contact Marv Smith at (907) 246-3421 or via email at marvsmith.lpboro@starband.net.

Sincerely,

Sheila Bergey

Sheila Bergey
Borough Clerk / Special Projects Coordinator

CC: Senator Lyman Hoffman
Senator Gary Stevens
Representative Gabrielle LeDoux
Representative Bryce Edgmon
Mark Hickey

**LAKE AND PENINSULA BOROUGH
RESOLUTION 07-01**

A RESOLUTION SUPPORTING SB46, AN ACT RELATING TO AN EXTENSION OF THE PLAN REVISION DEADLINE FOR COASTAL MANAGEMENT PLANS FROM MARCH 1, 2007 TO SEPTEMBER 1, 2007.

WHEREAS, Senator Donny Olson has introduced Senate Bill 46 to the Alaska State Legislature extending the Alaska Coastal Management Plan (ACMP) district plan revision deadline from March 1, 2007 to September 1, 2007 by amending the effective date of sec. 45, ch. 24, SLA 2003, as amended by sec 21, ch. 31, SLA 2005; and

WHEREAS, At least ten (10) coastal district plans will expire on March 1, 2007 without this extension; and

WHEREAS, SB46 requires Alaska Department of Environmental Conservation to provide a public comment period for Outer Continental Shelf (OCS) projects. Currently there is no opportunity to comment on air or water quality issues for an OCS project during the ACMP review; and

WHEREAS, SB46 also extends the deadline for revision of the ABC list from 24 months (after the Office of Coastal Resource Management (OCRM's) approval of the ACMP changes) to 30 months (i.e., from December 29, 2007 to August 29, 2008), which will allow incorporation of the new enforceable policies into the A and B list revisions; and

WHEREAS, the Lake and Peninsula Borough is one of thirty-five coastal districts with common interest in monitoring and or regulation of development activities occurring in the coastal zone boundary; and

WHEREAS, the Lake and Peninsula Borough has repeatedly elected to participate in the State of Alaska Coastal Management Program and has entered into a grant agreement with OPMP to amend the Borough's Coastal Management Plan by the deadline of March 1, 2007; and

WHEREAS, the Department of Natural Resources (DNR), Office of Project Management and Permitting (OPMP) has approved some of the district coastal management plan revisions while other district plans are still negotiating the final language. Once approved by OPMP, the plan must be forwarded to DNR for signature before sending individual district plans to OCRM for final approval; and

WHEREAS, once a district plan is reviewed and approved by DNR and OCRM, that district plan will be required to go through a local 60 day public review process before it can be adopted by local governments; and

WHEREAS, the Lake and Peninsula Borough's coastal management plan revision will not meet the March 1, 2007 approval deadline.

NOW THEREFORE BE IT RESOLVED, the Lake and Peninsula Borough Assembly support passage of SB46 and strongly encourage House and Administrative approval to extend the Alaska Coastal Management Plan (ACMP) district plan revision deadline from March 1, 2007 to September 1, 2007.

BE IT FURTHER RESOLVED, the Lake and Peninsula Borough Assembly is committed to completing the Borough's Coastal Management Plan revision to ensure the citizens of the Lake and Peninsula Borough have due deference in the public review process in coastal management decisions affecting the Borough.

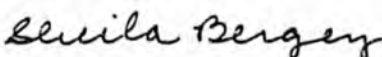
PASSED AND APPROVED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 16th day of January, 2007.

IN WITNESS THERETO:



Glen Alsworth Sr., Mayor

ATTEST:



Sheila Bergey, Borough Clerk

SB

109

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 109(RES)
 (S) Publish Date: 4/16/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title Oil and Gas Conservation Commission RDU AOGCC
 Component AOGCC
 Sponsor Rules / Leg Budget & Audit
 Requester Senate Resources Committee Component No. 2010

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1162 AOGCC Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not anticipated to have any fiscal impact on the AOGCC.

Most of the amendments are technical revisions involving responsibilities that are already under the purview of the Alaska Oil and Gas Conservation Commission. The bill deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well. Since the Commission is fully funded through a regulatory cost charge it is more efficient to collect those costs as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year and then collecting by individual application. This will also streamline the process for permitting as the Commission moves towards implementing e-permitting.

Prepared by: Jody J. Colombie, Special Assistant I Phone 793-1221
 Division Alaska Oil and Gas Conservation Commission Date/Time 3/7/07 10:00 AM
 Approved by: Rachael Petro, Deputy Commissioner Date 3/7/07 2:00pm
 Agency Department of Administration



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SPONSOR STATEMENT

CS for SENATE BILL 109

"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

The Alaska Oil and Gas Conservation Commission (AOGCC) requested legislation that would make several needed updates and improvements to Title 31, its governing statute.

CS for Senate Bill 109 would accomplish the following:

1. Clarify the Commission's authority to regulate underground storage of natural gas. Gas storage is a way of dealing with seasonal variations in demand. Although the Commission clearly has statutory authority to regulate other types of underground injection related to oil & gas operations, the statute is unclear as to the Commission's authority with respect to gas storage.
2. Clarify that the Commission's existing authority to regulate various types of oil and gas operations, such as drilling and plugging wells and disposing of oil field wastes, may be for public health and safety purposes as well as conservation purposes. Currently, the statute uses the phrase "for conservation purposes." While this is a broad concept, there are aspects of the Commission's mission, such as preventing well blowouts or explosions that clearly impact public health and safety. There should be no question that the latter are appropriate goals of Commission oversight of oil field operations, and the bill would make this explicit.

3. Make a "mid-course correction" in a regulatory program concerning nonconventional gas, in particular, coal bed methane. One of the new requirements is for the operator of a well used for production **or production testing** of coal bed methane "to design and implement a water well testing program to provide baseline data on water quality and quantity." However, production testing is a short-term activity that would not have a significant impact on aquifers. Moreover, production testing often occurs during exploratory activities and is very low risk to the environment, before an operator has any idea whether a prospect may ultimately be developed and put in production. Requiring an operator to design and implement a water well testing program at this early stage is an unnecessary burden that will discourage exploration without providing an offsetting public benefit. The bill would therefore modify this requirement to apply only to regular production of coal bed methane, not production testing.

4. Update the reconsideration and appeals provision. There is a conflict between the judicial appeal provisions of the Alaska Oil and Gas Conservation Act, which date essentially unchanged from a territorial enactment in 1955, and the more modern and streamlined uniform appeal provisions of the judiciary statute. The Commission has taken the position that the judiciary statute superseded the earlier territorial enactment, and the Supreme Court recently upheld that position in *Allen v. Alaska Oil and Gas Conservation Commission*, 139 P3d 564 (Alaska 2006). This bill would eliminate the outmoded territorial provisions and leave appeals from Commission decisions to be governed by the uniform procedures of the judiciary statute and Rules of Appellate Procedure.

5. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. For some years the Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an *estimate* of the fees that might be generated in the coming year.

6. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and, to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

Sponsor Statement

Page 3

CSSB 109

7. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

8. Updates the penalty section by increasing the penalty amounts available to the Commission and adds a specific list of criteria for the Commission to consider in determining the amount of a penalty. The bill would change the maximum amount of a penalty from \$5,000 a day for each day of violation, to provide for a civil penalty of ***no more than \$100,000 for an initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.*** It also increases the civil penalty for natural gas that is flared, vented or otherwise determined to be waste from the fair market value to two times the fair market value. It also adds a new subsection setting out factors to be used in determining the amount of a penalty.

9. Makes a few housekeeping changes like substituting the Commission for an outdated reference to the Department of Natural Resources (the Department of Natural Resources has independent authority in Title 38), updating the classification of wells, and substituting ***for which a permit to drill has been issued by the commission*** where it is more efficient than listing each type of well subject to the Commission's authority.



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SECTIONAL ANALYSIS

CS for Senate Bill 109

Section 1. Statement of intent

(a) Confirms that AS 22.10.020(d), or court rules, have superseded inconsistent appeal provisions of AS 31.05.080; and

(b) Confirms that civil penalties may be administratively assessed by the Commission.

Section 2. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well in (d)(2) and substitutes the word commission for an outdated reference to the Department of Natural Resources in (d)(7).

Section 3. Clarifies that the commission may regulate drilling and other oil and gas operations not only for conservation purposes but, as in the case of preventing blowouts or explosions, for public health and safety purposes under (e)(I).

(e)(I)(B) substitutes more precise terminology for the term "shooting."

(e)(I)(G) clarifies the commission's authority to regulate underground natural gas storage.

Section 4. Updates the various classifications of wells regulated by the Commission, to allow the Commission to more precisely classify each well and to reflect the increasing complexity of oil and gas drilling operations.

Section 5. Slightly narrows a requirement enacted in 2004 relating to coal bed methane operations. The 2004 enactment requires a water well testing program whenever a well is drilled for production *or production testing* of coal bed methane. Production testing is a short-term operation that may occur during the exploration phase and presents minimal risk to the environment. Requiring a water well testing program in such circumstances may discourage exploration with no significant offsetting benefit to the public. The bill therefore would modify the requirement to apply only where a well will be used for regular production of coal bed methane.

Section 6. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well.

Section 7. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and, to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

Section 8. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

Section 9. The current statute uses the term "rehearing" and in accordance with more modern usage, the bill substitutes the term "reconsideration" for "rehearing."

Section 10. Clarifies that a person who has applied for reconsideration and who is dissatisfied with the disposition of the application for reconsideration may appeal to the Superior Court. The questions reviewed on appeal are limited to the questions presented to the Commission by the application for reconsideration. This section and section 15 update the appeal provisions of the existing statute by eliminating outmoded procedures that were enacted before statehood and clarifying that appeals from the Commission decisions are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure.

Section 11. Allows the Commission to allocate costs of time incurred by Commission staff for investigation or hearings.

Section 12. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. The Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year.

This section also clarifies the types of wells that require a permit from the Commission and requires the Commission to consider the nature and magnitude of violations by an applicant if a permit is denied.

Section 13. Deletes the reference to the \$100 fee for the permit to drill from the regulatory cost charge formula.

Section 14. Updates the penalty section by increasing the penalty amounts available to the Commission. This section would change the penalty from \$5,000 a day for each day of violation to *no more than a \$100,000 for the initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.*

Makes clear that civil penalties may be administratively assessed by the Commission and if not paid are recoverable by a lawsuit filed by the attorney general on behalf of the Commission.

Increases the civil penalties for natural gas that is flared, vented, or otherwise determined to be waste from the fair market value to two times the fair market value.

Adds a new subsection setting out the factors to be used in determining the amount of a penalty.

Section 15. AS 31.05.080(c), and AS 31.05.080(d) are repealed to eliminate outmoded procedures that were enacted before statehood.

Section 16. Adds a revisors' instruction to change the heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

Section 17. Provides for an immediate effective date under AS 01.01.070(c).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 109(RES)
 (S) Publish Date: 4/16/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title Oil and Gas Conservation Commission RDU AOGCC
 Component AOGCC
 Sponsor Rules / Leg Budget & Audit
 Requester Senate Resources Committee Component No. 2010

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1162 AOGCC Receipts	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not anticipated to have any fiscal impact on the AOGCC.

Most of the amendments are technical revisions involving responsibilities that are already under the purview of the Alaska Oil and Gas Conservation Commission. The bill deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well. Since the Commission is fully funded through a regulatory cost charge it is more efficient to collect those costs as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year and then collecting by individual application. This will also streamline the process for permitting as the Commission moves towards implementing e-permitting.

Prepared by: Jody J. Colombie, Special Assistant I
 Division: Alaska Oil and Gas Conservation Commission
 Approved by: Rachael Petro, Deputy Commissioner
 Agency: Department of Administration

Phone 793-1221
 Date/Time 3/7/07 10:00 AM
 Date 3/7/07 2:00pm



LEGISLATIVE BUDGET & AUDIT COMMITTEE
Representative Ralph Samuels, Chairman

SPONSOR STATEMENT

CS for SENATE BILL 109

"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

The Alaska Oil and Gas Conservation Commission (AOGCC) requested legislation that would make several needed updates and improvements to Title 31, its governing statute.

CS for Senate Bill 109 would accomplish the following:

1. Clarify the Commission's authority to regulate underground storage of natural gas. Gas storage is a way of dealing with seasonal variations in demand. Although the Commission clearly has statutory authority to regulate other types of underground injection related to oil & gas operations, the statute is unclear as to the Commission's authority with respect to gas storage.
2. Clarify that the Commission's existing authority to regulate various types of oil and gas operations, such as drilling and plugging wells and disposing of oil field wastes, may be for public health and safety purposes as well as conservation purposes. Currently, the statute uses the phrase "for conservation purposes." While this is a broad concept, there are aspects of the Commission's mission, such as preventing well blowouts or explosions that clearly impact public health and safety. There should be no question that the latter are appropriate goals of Commission oversight of oil field operations, and the bill would make this explicit.

3. Make a "mid-course correction" in a regulatory program concerning nonconventional gas, in particular, coal bed methane. One of the new requirements is for the operator of a well used for production **or production testing** of coal bed methane "to design and implement a water well testing program to provide baseline data on water quality and quantity." However, production testing is a short-term activity that would not have a significant impact on aquifers. Moreover, production testing often occurs during exploratory activities and is very low risk to the environment, before an operator has any idea whether a prospect may ultimately be developed and put in production. Requiring an operator to design and implement a water well testing program at this early stage is an unnecessary burden that will discourage exploration without providing an offsetting public benefit. The bill would therefore modify this requirement to apply only to regular production of coal bed methane, not production testing.

4. Update the reconsideration and appeals provision. There is a conflict between the judicial appeal provisions of the Alaska Oil and Gas Conservation Act, which date essentially unchanged from a territorial enactment in 1955, and the more modern and streamlined uniform appeal provisions of the judiciary statute. The Commission has taken the position that the judiciary statute superseded the earlier territorial enactment, and the Supreme Court recently upheld that position in *Allen v. Alaska Oil and Gas Conservation Commission*, 139 P3d 564 (Alaska 2006). This bill would eliminate the outmoded territorial provisions and leave appeals from Commission decisions to be governed by the uniform procedures of the judiciary statute and Rules of Appellate Procedure.

5. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. For some years the Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an **estimate** of the fees that might be generated in the coming year.

6. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and, to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

7. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

8. Updates the penalty section by increasing the penalty amounts available to the Commission and adds a specific list of criteria for the Commission to consider in determining the amount of a penalty. The bill would change the maximum amount of a penalty from \$5,000 a day for each day of violation, to provide for a civil penalty of **no more than \$100,000 for an initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.** It also increases the civil penalty for natural gas that is flared, vented or otherwise determined to be waste from the fair market value to two times the fair market value. It also adds a new subsection setting out factors to be used in determining the amount of a penalty.

9. Makes a few housekeeping changes like substituting the Commission for an outdated reference to the Department of Natural Resources (the Department of Natural Resources has independent authority in Title 38), updating the classification of wells, and substituting **for which a permit to drill has been issued by the commission** where it is more efficient than listing each type of well subject to the Commission's authority.



LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

SECTIONAL ANALYSIS

CS for Senate Bill 109

Section 1. Statement of intent

(a) Confirms that AS 22.10.020(d), or court rules, have superseded inconsistent appeal provisions of AS 31.05.080; and

(b) Confirms that civil penalties may be administratively assessed by the Commission.

Section 2. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well in (d)(2) and substitutes the word commission for an outdated reference to the Department of Natural Resources in (d)(7).

Section 3. Clarifies that the commission may regulate drilling and other oil and gas operations not only for conservation purposes but, as in the case of preventing blowouts or explosions, for public health and safety purposes under (e)(I).

(e)(I)(B) substitutes more precise terminology for the term "shooting."

(e)(I)(G) clarifies the commission's authority to regulate underground natural gas storage.

Section 4. Updates the various classifications of wells regulated by the Commission, to allow the Commission to more precisely classify each well and to reflect the increasing complexity of oil and gas drilling operations.

Section 5. Slightly narrows a requirement enacted in 2004 relating to coal bed methane operations. The 2004 enactment requires a water well testing program whenever a well is drilled for production *or production testing* of coal bed methane. Production testing is a short-term operation that may occur during the exploration phase and presents minimal risk to the environment. Requiring a water well testing program in such circumstances may discourage exploration with no significant offsetting benefit to the public. The bill therefore would modify the requirement to apply only where a well will be used for regular production of coal bed methane.

Section 6. Substitutes the language "for which a permit to drill has been issued by the commission" to capture all wells under the commission's regulatory authority rather than listing each type of well.

Section 7. Narrows the data that would be subject to a 24-month period of confidentiality to only the data from "exploratory" and "stratigraphic test" wells; and to those portions of applications for permits to drill such wells that the commission determines contain proprietary information. This change is consistent with the regulatory practice in most other oil and gas producing states that does not afford confidentiality to well data in established oil and gas fields.

Section 8. Adds a new subsection (f) to clarify that information "voluntarily" provided under subsection (d) of this section does not apply to information submitted in connection with a petition for a Commission order or in connection with a hearing. This is consistent with Commission practice which requires the applicant to make a showing that the information is entitled to confidentiality under another provision of law as one would, for example, for proprietary information or trade secrets.

Section 9. The current statute uses the term "rehearing" and in accordance with more modern usage, the bill substitutes the term "reconsideration" for "rehearing."

Section 10. Clarifies that a person who has applied for reconsideration and who is dissatisfied with the disposition of the application for reconsideration may appeal to the Superior Court. The questions reviewed on appeal are limited to the questions presented to the Commission by the application for reconsideration. This section and section 15 update the appeal provisions of the existing statute by eliminating outmoded procedures that were enacted before statehood and clarifying that appeals from the Commission decisions are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure.

Section 11. Allows the Commission to allocate costs of time incurred by Commission staff for investigation or hearings.

Section 12. Deletes the requirement that an applicant pay a \$100 fee for a permit to drill a well in this state. The Commission has been fully funded by the regulated industry through a regulatory cost charge. The costs associated with permitting are more efficiently collected as part of the overall regulatory cost charge rather than by subtracting an estimate of the fees that might be generated in the coming year.

This section also clarifies the types of wells that require a permit from the Commission and requires the Commission to consider the nature and magnitude of violations by an applicant if a permit is denied.

Section 13. Deletes the reference to the \$100 fee for the permit to drill from the regulatory cost charge formula.

Section 14. Updates the penalty section by increasing the penalty amounts available to the Commission. This section would change the penalty from \$5,000 a day for each day of violation to *no more than a \$100,000 for the initial violation, and, no more than \$10,000 a day for each day thereafter on which the violation continues.*

Makes clear that civil penalties may be administratively assessed by the Commission and if not paid are recoverable by a lawsuit filed by the attorney general on behalf of the Commission.

Increases the civil penalties for natural gas that is flared, vented, or otherwise determined to be waste from the fair market value to two times the fair market value.

Adds a new subsection setting out the factors to be used in determining the amount of a penalty.

Section 15. AS 31.05.080(c), and AS 31.05.080(d) are repealed to eliminate outmoded procedures that were enacted before statehood.

Section 16. Adds a revisors' instruction to change the heading of AS 31.05.080 from "Rehearings and appeals" to "Reconsiderations and appeals."

Section 17. Provides for an immediate effective date under AS 01.01.070(c).

Debra Higgins

From: Cheryl Sutton
Sent: Thursday, April 26, 2007 5:22 PM
To: Debra Higgins; Heath Hilyard
Subject: SB 109

Debra and Heath,

I wanted to let you know that Commissioner John Norman of the Alaska Oil & Gas Conservation Commission will be coming to Juneau to testify before the committee on SB 109 on Monday. In addition, Kara Moriarty from AOGA will testify via teleconference from Anchorage and someone from ConocoPhillips will be testifying either on line or here. ConocoPhillips is no longer a member of AOGA and that is why they will testify separately. All the testimony is in support of the bill.

I will begin the testimony and then defer to Chairman Norman. LB&A introduced the bill through Rules by request of the AOGCC. Thanks.

Cheryl

Cheryl Sutton, Staff
Legislative Budget & Audit Committee
Representative Ralph Samuels, Chairman
907-165-2705 (phone)
907-165-5003 (fax)

#2705

SB

1 1 1

ALASKA STATE LEGISLATURE



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Senator Gary Stevens Majority Leader

Sponsor Statement for Senate Bill 111

"An Act creating the Kodiak Narrow Cape Public Use Area"

SB 111 proposes the establishment of a new public use area of 46,902 acres for the Narrow Cape area on Kodiak Island.

Located at the end of the Kodiak Island Road System, Narrow Cape is an important public use and recreational area, used for a wide range of activities including hiking, picnicking, berry picking, fossil collecting, surfing, horseback riding, all terrain vehicle driving, beachcombing, and other traditional public uses of fish and wildlife populations such as fishing, hunting, viewing and photographing of gray whales and waterfowl. This area is also subject to existing grazing leases and an interagency land management agreement with the Alaska Aerospace Development Corporation for the Kodiak Launch Complex.

Creation of a public use area for Narrow Cape recognizes the special multiple use activities within this area, and increases the protection to ensure continued public use is allowed. At the same time, valid existing rights are protected. Explicit language is included in Sec. 41.23.250(c) listing grazing and missile launch activity as allowable uses.

Additional protection is afforded under Sec. 42.23.250(b) by not allowing the commissioner of natural resources to dispose of the surface estate in state land within the public use area. This provision means that any disposal of the surface estate will require approval by a future legislature.

Creation of a public use area triggers a requirement to adopt and maintain a management plan for the area, which should help to manage any use conflicts and ensure the important multiple uses are managed in an active manner.

Recent initiatives such as the proposal a few years ago to transfer this land to the University of Alaska triggered a review of possible steps to recognize and protect the important public use values of this land. This move is a reasoned, time-tested approach to manage multi-use activities, while providing more assurance that a range of public uses will not be diminished or eliminated.

I ask for your support of this important legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

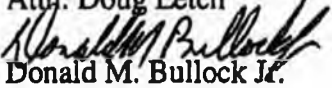
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2007

SUBJECT: Sectional summary for SB 111 (Work Order No. 25-LS0695\C)

TO: Senator Gary Stevens
Attn: Doug Letch

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds four sections to AS 41.23 that create the Kodiak Narrow Cape Public Use Area.

Sec. 41.23.240. States the purpose for creating the public use area.

Sec. 41.23.250. Assigns the management of the public use area to the commissioner of natural resources and requires the commissioner to develop a management plan. Recognizes grazing and missile launch activity as allowable uses within the public use area. Lists specific uses that are consistent with the purpose for establishing the public use area and authorizes the commissioner to allow additional consistent uses. Prohibits the exercise of the power of eminent domain to acquire privately owned land within the boundaries described in AS 41.23.270, but authorizes the acquisition of privately owned land by purchase, exchange, or other means. Prohibits the commissioner from managing the public use area as a unit of the state park system.

Sec. 41.23.260. Authorizes the commissioner of natural resources to prohibit or restrict uses determined to be incompatible with the purposes of the public use area. Allows the Department of Public Safety and the Department of Fish and Game access to the public use area for management of fish and wildlife and for enforcement purposes. Prohibits the restriction of fishing, hunting, or trapping rights. Requires the commissioner of natural resources to allow the use of motorized and non motorized means of transportation. Requires the commissioner of natural resources to explain the basis for finding an incompatible use.

Sec. 41.23.270. Describes the boundaries within which the public use area is created and designates the state land within those boundaries as the Kodiak Narrow Cape Public Use Area.

DMB:ljw
07-142.ljw

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 111(RES)
 (S) Publish Date: 4/25/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Kodiak Narrow Cape Public Use Area RDU: Resource Development
 Component: Claims, Permits and Leases
 Sponsor: Sen. Stevens
 Requester: Senate Resources Component No.: 2460

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill establishes the Kodiak Narrow Cape Public Use Area. The legislation provides that DNR may prepare and adopt a land management plan under the department existing authority (AS 38.04.065) and manage the area consistent with the purposes established in the legislation.

However, DNR believes that the existing Kodiak Area Plan for State Lands adopted in 2004, in coordination with this legislation, is sufficient to address the current public land use issues in the area. Therefore, a new detailed management plan for the Narrow Cape area will not be required at this time.

Because DNR has no plans to prepare a new management plan specifically for the Kodiak Narrow Cape Public Use Area in the near future it is submitting this "zero" fiscal note.

Prepared by: Dick Mylius, Acting Director Phone 269-8600
 Division: Mining, Land & Water Date/Time 4/24/2007
 Approved by: Tom Irwin, Commissioner Date 4/24/2007
 Agency: Natural Resources

ALASKA STATE LEGISLATURE



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Senator Gary Stevens
Senate Majority Leader

Memo

To: Representative ~~Craig Johnson~~, Co-Chair, House Resources Committee
From: Senator Gary Stevens
Date: May 8, 2007
Re: CS for SB 111 Hearing Request

I respectfully request a House Resources Committee hearing on CS for SB 111 (RES): "An Act creating the Kodiak Narrow Cape Public Use Area" at your earliest convenience. The bill is identical to HB 203, which your committee previously advanced.

In the enclosed packet are the sponsor statement, copy of the current version of the bill, a sectional analysis, a map from the Departments of Natural Resource, resolutions of support from the Kodiak Island Borough and City of Kodiak, and support from constituents.

I would like to request the Kodiak Legislative Information Office be added as a teleconference site. I also expect testimony from the DNR and possibly the Alaska Aerospace Development Corporation through the off-net teleconference line.

At this time, I do not anticipate the need for any special audio or video equipment.

Thank you for your consideration of this request. Please contact myself, or my aide Doug Letch at extension 1283 with any questions you may have.

SB

121



SENATOR KIM ELTON

SB 121

Sponsor Statement

"An Act relating to discharge from small commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date."

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

When the Legislature enacted the alternate compliance provision in 2004, the drafters and the legislature did not account for the proposed initiative that eventually became law in 2006 and inadvertently repealed Chapter 153, SLA 04.

The initiative was drafted, submitted to the Division of Elections and certified in 2003. The signatures were subsequently gathered and the initiative was the subject of litigation. It was eventually approved by the voters in August 2006.

The problem developed because the supporters and drafters of the 2004 Legislation did not check the pending initiative for potential conflicts. This understandable oversight was unintended by the drafters of the initiative and the Legislature. Sponsors of the initiative do not oppose the corrective action applied by this bill.

It is appropriate under these circumstances to reenact the 2004 provisions.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108

SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to cruise ship discharge RDU Civil
 Component ENVIRONMENTAL
 Sponsor SENATOR(S) ELTON
 Requester SENATE LABOR & COMMERCE Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page 2.

Prepared by: Robert Meiners, Acting Director Phone 465-5427
 Division: Administrative Services Division Date/Time 3/19/07 4:12 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 3/19/2007
 Agency: Department of Law

FISCAL NOTE # 1

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSSB 121(L&C)

ANALYSIS CONTINUATION

As described in the sponsor's statement, the bill "...adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing 'best management practices' passed by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04." This assertion in the sponsor statement appears to be essentially correct, although the bill apparently proposes, as a new concept, that all commercial passenger vessels (large and small) be required to have a GP when discharging in the state, rather than just large vessels as contemplated under the initiative. Law and DEC are still reviewing the bill to see if it deviates in any other respect from the previous implemented best management practices program. The bill was introduced by an apparent unintended consequence resulting from voter approval of the cruise ship initiative in August 1996 and its inadvertent repeal of Chapter 153, SLA 04. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 121(L&C)
 (S) Publish Date: 3/23/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title Act relating to discharge from commercial RDU Division of Water
passenger vessels Component Water Quality
 Sponsor Senator Eiton
 Requester Labor and Commerce Component No. 2062

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

There is no fiscal impact associated with this legislation.

Prepared by: Lynn J. Tomich Kent Phone 907-269-7599
 Division Director Date/Time 3/16/07 4:50 PM
 Approved by: Larry Hartig, Commissioner Date 3/19/2007
 Agency Department of Environmental Conservation

JOSEPH W. GELDHOF

Attorney at Law
229 4th Street
Juneau, Alaska 99801
(907) 586-8193
FAX: (907) 586-8216
E-mail: jog@alaska.com

HAND DELIVERED

March 16, 2007

Senator Kim Elton,
Alaska State Senate
Alaska Capitol
Juneau, Alaska 99801

Re: SB 121

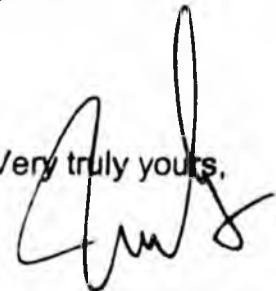
Dear Senator Elton:

I have reviewed SB 121, an act that would reinstate the "alternate compliance program" for small cruise vessels. This program was previously enacted by the Alaska Legislature in 2004 as Chapter 153, SLA 04. The alternate compliance provisions were eliminated with the passage of the recent cruise ship initiative in 2006 as a result of a drafting oversight in 2004. This oversight is completely understandable given that the cruise ship initiative was drafted and submitted in 2003 but not effective until 2006.

I have consulted with the other drafters and proponents of the 2006 cruise ship initiative; everyone that was involved with the successful initiative believes SB 121 should be promptly enacted and made effective as spelled out in the bill.

The legislature is to be commended for seeking to fix this matter. Thank you for seeking a just solution to this issue.

Very truly yours,



Joseph W. Geldhof

Copy: Gershon Cohen

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MEMORANDUM

March 26, 2007

SUBJECT: Constitutionality of CSSB 121() (Work Order No. 25-LS0734\A)

TO: Senator Kim Elton
Attn: Paula Cadiente

FROM: Alpheus Bullard 
Legislative Counsel

You have requested a legal opinion as to whether CSSB 121() (version L) offends the Alaska constitutional prohibition against the repeal of an initiated law. It is my opinion that the Committee Substitute, if challenged, will be found by a court to be constitutional. In this instance, without the benefit of a bright-line rule or clear precedent, a review of the relevant legal and historical information is helpful in providing a complete answer to your question. Allow me to provide a summary.

Constitutionality of Amending an Initiated Law

Two Alaska court decisions are implicated.

In early 1974, two related initiative petitions were filed with the lieutenant governor. One dealt with conflict of interest, and the other election campaign disclosure. Both petitions were certified as having sufficient signatures and were scheduled for inclusion on a statewide election ballot. The 1974 Legislature considered both matters. The legislature did not take any action on the conflict of interest petition, but did adopt legislation, approved as ch. 76, SLA 1974, on campaign disclosures.

The lieutenant governor concluded that the campaign disclosure enactment was substantially the same as the campaign disclosure petition and voided the initiative. That decision was challenged. The challenger, Cliff Warren, an initiative sponsor, contended that the legislature had short-circuited the initiative process by passing a law determined to be substantially the same as the proposed initiative. In its decision upholding the lieutenant governor's conclusion, the Alaska Supreme Court observed that the legislature enjoys broad authority to amend an initiative:

The final constitutional provision states in pertinent part:

An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital government functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.

Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975).

But the legislature's authority to amend is not without limits. At the August 1974 primary election, the voters approved the second initiative petition, the conflict of interest proposal, and it was certified and became law on December 11, 1974. The 1975 Legislature amended the law to change deadlines and to exclude certain former officials, who under the initiative were required to file disclosures, from having to file. Ch. 2, SLA 1975. The law was amended again that session by adding a further delay to the filing deadline. Ch. 25, SLA 1975. Mr. Warren challenged the amendments, contending that the changes were beyond the authority of the legislature to approve and amounted to a "repeal" of the initiated law.

The court rejected his contentions in its decision in Warren v. Thomas, 568 P.2d 400 (Alaska 1977):

The central issue in the case at bar is whether the legislature has exceeded the broad power by passing an amendment which so vitiates the initiative as to "constitute its repeal." [Warren v. Boucher, 543 P.2d 731,] at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments . . . amount to a repeal of the law. We disagree. "[A]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, . . . 243 P.2d 38, 42 (Cal. 1952); see also W.R. Grasley Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974)

[T]here remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant Finally, the amended law still imposes substantial disclosure requirements on public officials and

effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

...

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of an initiated law.

Warren v. Thomas, 568 P.2d 400, 402 - 404.

This pair of cases has not been the court's last word. In Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985), the court decided an appeal by setting out the full text of the trial court opinion, "which explains the questions presented and, in our view, properly resolves them." Id. at 1175. The trial court opinion, which the Supreme Court acknowledged, declared that "[t]he two Warren cases establish the proposition that the provisions of section 6 of article XI on amendment of adopted initiatives and on voiding pending initiatives vest the legislature with broad powers to protect the state against the untoward effects of initiatives." Id. at 1179.

2006 Ballot Measure No. 2, Secs. 4, 5, and 6

AS 46.03.462, 46.03.463, and 46.03.465 owe their current form to the 2006 Initiative entitled "An Initiative providing for taxation of certain commercial ship vessels, pertaining to certain vessel activities, and related to ship vessel operations taking place in the marine waters of the State of Alaska; and providing for an effective date." The initiative repealed and reenacted AS 46.03.462 and 46.03.465, and amended AS 46.03.463. These sections of the initiative are now the subject of amendment in CSSB 121() (version L). The pertinent inquiry is whether the contemplated amendment of these sections so vitiates the initiative as to "constitute its repeal." Warren v. Boucher at 737.

In summarizing the changes made to these sections, the August 22, 2006 Ballot¹ encapsulated the effect as "requir[ing] cruise ship operators to gather and report more information, and to get a new sort of permit for sewage, graywater or other wastewater before discharging in state marine waters." The Legislative Affairs Agency Summary in the 2006 Official Primary Election Voter Pamphlet² was marginally more informative: "[the initiative] requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges

¹ See State of Alaska Primary Election August 22, 2006, Official Primary Election Voter Pamphlet, available at <http://www.gov.state.ak.us/ltagov/elections/publications.php>.

² See Id.

Senator Kim Elton
March 26, 2007
Page 4

without a permit. It changes the monitoring and record keeping requirements for waste water discharges." In the voter pamphlet, in the "Ballot Measure 2, Statement In Support" and "Ballot Measure 2, Statement In Opposition" pages, there was more rhetoric than analysis, and all discussion was directed at, or concerned, "cruise ships." There was no discussion of discharge or information gathering requirements from and for small commercial passenger vessels. This was the extent of analysis provided to the electorate about secs. 4, 5, and 6 of the initiative.

The initiative repealed and reenacted AS 46.03.462 and amended AS 46.03.463 (which prior to the initiative had provided terms, conditions, limitations, and prohibitions on discharges for all commercial passenger vessels) to apply only to large commercial passenger vessels, resulting in small passenger vessels dropping out of the regulatory regime altogether. It seems quite unlikely that this was an intended effect of the initiative.

While the initiative left AS 46.03.465 applicable to all commercial passenger vessels, I do not believe that the exception proposed by CSSB 121() "operates as a repeal of [the initiatives] provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers, 243 P.2d at 42. The draft returns small commercial passenger vessels to the regulatory framework of the chapter, an effort which is not at odds with the essence of the changes made by the initiative, or the will of the electorate.

Amendment of AS 46.03.462, 46.03.463, and 46.03.465 in CSSB 121()

If the initiative is understood as "effectuat[ing] the intent of the electorate" Warren v. Thomas (1977), the changes that would result by the enactment of CSSB 121() are constitutional. Ballot Measure No. 2 was aimed at the cruise ship industry. This is reflected in the "Statement In Support" and the initiative's provisions rather myopic focus on "large commercial passenger vessel[s]". I believe that the "broad power" of the legislature to amend adopted initiatives recognized by the courts is entirely sufficient in this instance to prevent the present amendments from being interpreted by a court as offending art. XI, sec. 6 of the Alaska Constitution. The bill draft's proposed amendments to AS 46.03.462, 46.03.463, and 46.03.465 address only three of eleven substantive sections (the twelfth provided an effective date) of the initiative, and the draft does not seek to change any application of the initiative's provisions to the "large" cruise ship industry at which it was directed. For these reasons, if the amendment were to be challenged, a court could find that the amendment does not operate as a repeal of the initiative's provisions "to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Supervisors of Los Angeles County, 243 P.2d 38, 42 (Cal. 1952).

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

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Alaska Division of Elections

**INITIATIVE PETITION BILL LANGUAGE
by Petition Sponsors**

Petition ID: 03CTAX

**FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN
COMMERCIAL SHIP
VESSELS, PERTAINING TO CERTAIN VESSEL
ACTIVITIES and RELATED TO
SHIP VESSEL OPERATIONS TAKING PLACE IN THE
MARINE WATERS OF THE
STATE OF ALASKA**

Posted 7/13/06

Proposed Bill:

**FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP
VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO
SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE
STATE OF ALASKA**

Be it enacted by the People of the State of Alaska:

***Section 1.** AS 43 is amended by adding a new chapter to read:

Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.

Sec. 42.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine waters.

Sec. 43.52.020. Rate of tax. The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of \$46 a passenger per voyage.

Sec. 43.52.030. Liability for payment of tax. A passenger traveling on a commercial

passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department

(1)) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

Sec. 43.52.040. Disposition of receipts. (a) (a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.

(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call \$5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute \$2.50 per passenger to the city and \$2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or watercraft visits and to enhance the safety and efficiency of interstate and foreign commerce.

(c) "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or watercraft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or watercraft activities.

Sec. 43.52.050. Administration. (a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

Sec. 43.52.060. Local levies. Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

Sec. 43.52.095. Definitions. In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include

(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

* **Sec. 2.** AS 05, is amended by adding a new chapter to read:

Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.

Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law. This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.

Sec. 05.16.020. Tax on gambling activities authorized by AS 05.16.010. There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

Sec. 05.16.030. Disposition of receipts. (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

***Sec. 3.** AS 43.20.021 is repealed and reenacted as follows:

Sec. 43.20.021(a). Internal Revenue Code adopted by reference. (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.

(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43.52.095.

***Sec 4.** AS 46.03.462 is repealed and re-enacted as follows:

Sec. 46.03.462. Terms and conditions of discharge permits.(a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:

(1) may not discharge untreated sewage, treated sewage, graywater, or other wastewaters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a):

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect those samples required by AS 46.03.475(c);

- (4) shall report discharges in accordance with AS 46.03.475(a);
- (5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and
- (6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

***Sec. 5.** AS 46.03.463 is amended to read as follows:

Sec. 46.03.463(d) is repealed.

Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.

Sec. 46.03.463(g) is repealed.

***Sec 6.** AS 46.03.465 repealed and reenacted to read as follows:

Sec. 46.03.465. Information-gathering requirements. (a) The owner or operator of a commercial passenger vessel shall maintain daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.

(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.

(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.

(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.

(f) if the owner or operator of a commercial passenger vessel has, when complying with another state of federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

***Sec. 7.** AS 46.03 is amended to include new provisions as follows:

Sec. 46.03.476. Ocean Rangers. (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.

46.03.481. Citizens suits. (a) Any citizen of the State of Alaska may commence a civil action (1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or (2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

***Sec. 8.** AS 46.03.480 is amended as follows:

Sec. 46.03.480 is amended by adding a new section to read:

(d) An additional fee in the amount of \$4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

Sec. 46.03.480(d) shall be repealed and reenacted as 46.03.480(e).

***Sec. 9.** As 46.03.760 is amended as follows:

Sec. AS 46.03.760 is amended by adding a new section to read:

(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5000 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

***Sec. 10.** AS 45.50.474 is repealed and reenacted to read as follows:

Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships.(a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing, the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than \$100 for each violation. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

Section 11. Severability. It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

Section 12. Effective Date. This Act takes effect 90 days after enactment.

End

← Initiative Petition Status Report

← Alaska Division of Elections Home Page



LAWS OF ALASKA

2004

Source
HB 522 am

Chapter No.

AN ACT

Relating to discharges from small commercial passenger vessels; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to discharges from small commercial passenger vessels; and providing for an
2 effective date.

3

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) the Department of Environmental Conservation was required under sec. 8,
8 ch. 1, FSSLA 2001, to submit a report to the governor recommending whether small
9 commercial passenger vessels should remain in the commercial passenger vessel
10 environmental compliance program; due to concerns regarding discharges while vessels are
11 stationary in port or at anchorage, the department recommended that small commercial
12 passenger vessels remain in the commercial passenger vessel environmental compliance
13 program;

14 (2) small commercial passenger vessels built after December 31, 2003, can be

1 designed, constructed, and equipped to fully comply with the water discharge standards in
2 AS 46.03.460 - 46.03.490; and

3 (3) older small commercial passenger vessels, built before January 1, 2004,
4 cannot comply with AS 46.03.462(c) and 46.03.463(b) and (c) due to limitations of maritime
5 construction, United States Coast Guard stability restrictions, and licensing requirements;
6 therefore, a different regulatory scheme should be devised for this category of small
7 commercial passenger vessels.

8 (b) It is the intent of this Act to create a regulatory system that allows older small
9 commercial passenger vessels to continue to operate in Alaska waters, while taking steps to
10 minimize discharges and harm to the marine environment from vessel activities.

11 * Sec. 2. AS 46.03.462(a) is amended to read:

12 (a) An owner or operator required to register under AS 46.03.461 shall comply
13 with [EITHER] the standard terms and conditions of vessel discharges specified in (b)
14 of this section, [OR] the alternative terms and conditions of vessel discharges specified
15 in (c) of this section, or the alternative terms and conditions included in the plan
16 approved by the department under (e) of this section.

17 * Sec. 3. AS 46.03.462(a) is amended to read:

18 (a) An owner or operator required to register under AS 46.03.461 shall comply
19 with either the standard terms and conditions of vessel discharges specified in (b) of
20 this section or [,] the alternative terms and conditions of vessel discharges specified in
21 (c) of this section [, OR THE ALTERNATIVE TERMS AND CONDITIONS
22 INCLUDED IN THE PLAN APPROVED BY THE DEPARTMENT UNDER (e) OF
23 THIS SECTION].

24 * Sec. 4. AS 46.03.462(d) is amended to read:

25 (d) Alternative terms and conditions of vessel discharges approved by the
26 department under (c) of this section may, if determined appropriate by the department,
27 include a waiver by the department of portions of the requirements of AS 46.03.463
28 and 46.03.465, for the time period that the department determines to be appropriate.
29 Alternative terms and conditions of vessel discharges approved by the
30 department under (e) of this section may, if determined appropriate by the
31 department, include a waiver by the department of portions of the requirements

1 of AS 46.03.463 for the time period for which the plan submitted under (e) of this
2 section is approved.

3 * Sec. 5. AS 46.03.462(d) is amended to read:

4 (d) Alternative terms and conditions of vessel discharges approved by the
5 department under (c) of this section may, if determined appropriate by the department,
6 include a waiver by the department of portions of the requirements of AS 46.03.463
7 and 46.03.465, for the time period that the department determines to be appropriate.
8 [ALTERNATIVE TERMS AND CONDITIONS OF VESSEL DISCHARGES
9 APPROVED BY THE DEPARTMENT UNDER (e) OF THIS SECTION MAY, IF
10 DETERMINED APPROPRIATE BY THE DEPARTMENT, INCLUDE A WAIVER
11 BY THE DEPARTMENT OF PORTIONS OF THE REQUIREMENTS OF
12 AS 46.03.463 FOR THE TIME PERIOD FOR WHICH THE PLAN SUBMITTED
13 UNDER (e) OF THIS SECTION IS APPROVED.]

14 * Sec. 6. AS 46.03.462 is amended by adding new subsections to read:

15 (e) The owner or operator of a small commercial passenger vessel may submit
16 a plan for alternative terms and conditions of vessel discharges if the keel of the vessel
17 was laid before January 1, 2004. Except as provided in (f) of this section, the
18 department shall approve the plan for a three-year period if the department finds that
19 the alternative terms and conditions in the plan incorporate the best management
20 practices for protecting the environment to the maximum extent feasible. The
21 department shall adopt regulations to implement this subsection but may not require
22 an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the
23 retrofitting requires additional stability testing or relicensing by the United States
24 Coast Guard. In this subsection, "best management practices" means schedules of
25 activities, prohibitions of practices, maintenance procedures, and other management
26 practices to prevent or reduce the pollution of the marine waters of the state.

27 (f) A plan submitted under (e) of this section after December 31, 2012, may
28 not be approved by the department for a period extending beyond December 31, 2015.

29 * Sec. 7. AS 46.03.463(b) is amended to read:

30 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
31 [AS 46.03.462(c) - (d)], a person may not discharge sewage from a commercial

1 passenger vessel into the marine waters of the state that has suspended solids greater
2 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
3 100 milliliters except that the department may by regulation adopt a protocol for
4 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
5 which a discharger will be considered to be in compliance with the fecal coliform limit
6 if the geometric mean of fecal coliform count in the samples considered under the
7 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
8 owner or operator of a small commercial passenger vessel of a plan for interim
9 protective measures under AS 46.03.462(c)(2) and (d), the department shall extend
10 the time for compliance of that vessel with this subsection.

11 * **Sec. 8.** AS 46.03.463(b) is amended to read:

12 (b) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
13 [AS 46.03.462(c) - (e)], a person may not discharge sewage from a commercial
14 passenger vessel into the marine waters of the state that has suspended solids greater
15 than 150 milligrams per liter or a fecal coliform count greater than 200 colonies per
16 100 milliliters except that the department may by regulation adopt a protocol for
17 retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under
18 which a discharger will be considered to be in compliance with the fecal coliform limit
19 if the geometric mean of fecal coliform count in the samples considered under the
20 protocol does not exceed 200 colonies per 100 milliliters. Upon submission by the
21 owner or operator of a small commercial passenger vessel of a plan for interim
22 protective measures [UNDER AS 46.03.462(c)(2) AND (d)], the department shall
23 extend the time for compliance of that vessel with this subsection.

24 * **Sec. 9.** AS 46.03.463(c) is amended to read:

25 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (e)
26 [AS 46.03.462(c) - (d)], a person may not discharge graywater or other wastewater
27 from a commercial passenger vessel into the marine waters of the state that has
28 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
29 than 200 colonies per 100 milliliters except that the department may by regulation
30 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
31 coliform is exceeded, under which a discharger will be considered to be in compliance

1 with the fecal coliform limit if the geometric mean of fecal coliform count in the
2 samples considered under the protocol does not exceed 200 colonies per 100
3 milliliters. Upon submission by the owner or operator of a large commercial
4 passenger vessel of a plan for interim protective measures, the department shall extend
5 the time for compliance of that vessel with this subsection for a period of time that
6 ends not later than January 1, 2003. Upon submission by the owner or operator of a
7 small commercial passenger vessel of a plan for interim protective measures under
8 AS 46.03.462(c)(2) and (d), the department shall extend the time for compliance of
9 that vessel with this subsection.

10 * **Sec. 10.** AS 46.03.463(c) is amended to read:

11 (c) Except as provided in (h) of this section or under AS 46.03.462(c) - (d)
12 [AS 46.03.462(c) - (e)], a person may not discharge graywater or other wastewater
13 from a commercial passenger vessel into the marine waters of the state that has
14 suspended solids greater than 150 milligrams per liter or a fecal coliform count greater
15 than 200 colonies per 100 milliliters except that the department may by regulation
16 adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal
17 coliform is exceeded, under which a discharger will be considered to be in compliance
18 with the fecal coliform limit if the geometric mean of fecal coliform count in the
19 samples considered under the protocol does not exceed 200 colonies per 100
20 milliliters. Upon submission by the owner or operator of a large commercial
21 passenger vessel of a plan for interim protective measures, the department shall extend
22 the time for compliance of that vessel with this subsection for a period of time that
23 ends not later than January 1, 2003. Upon submission by the owner or operator of a
24 small commercial passenger vessel of a plan for interim protective measures [UNDER
25 AS 46.03.462(c)(2) AND (d)], the department shall extend the time for compliance of
26 that vessel with this subsection.

27 * **Sec. 11.** AS 46.03.463(e) is amended to read:

28 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
29 (e) [AS 46.03.462(c) - (d)], a person may not discharge any treated sewage, graywater,
30 or other wastewater from a large commercial passenger vessel into the marine waters
31 of the state unless

1 (1) the vessel is underway and proceeding at a speed of not less than
2 six knots;

3 (2) the vessel is at least one nautical mile from the nearest shore,
4 except in areas designated by the department;

5 (3) the discharge complies with all applicable vessel effluent standards
6 established under the federal cruise ship legislation and any other applicable law; the
7 standards under the federal cruise ship legislation and other applicable law may be
8 adopted by regulation by the department; and

9 (4) the vessel is not in an area where the discharge of treated sewage,
10 graywater, or other wastewater is prohibited.

11 * **Sec. 12.** AS 46.03.463(e) is amended to read:

12 (e) Except as provided in (g) and (h) of this section or under AS 46.03.462(c) -
13 (d) [AS 46.03.462(c) - (e)], a person may not discharge any treated sewage, graywater,
14 or other wastewater from a large commercial passenger vessel into the marine waters
15 of the state unless

16 (1) the vessel is underway and proceeding at a speed of not less than
17 six knots;

18 (2) the vessel is at least one nautical mile from the nearest shore,
19 except in areas designated by the department;

20 (3) the discharge complies with all applicable vessel effluent standards
21 established under the federal cruise ship legislation and any other applicable law; the
22 standards under the federal cruise ship legislation and other applicable law may be
23 adopted by regulation by the department; and

24 (4) the vessel is not in an area where the discharge of treated sewage,
25 graywater, or other wastewater is prohibited.

26 * **Sec. 13.** AS 46.03.462(e) and 46.03.462(f) are repealed.

27 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **RETROACTIVE EFFECT FOR 2004 SEASON.** (a) If the owner or operator of a
30 small passenger vessel whose keel was laid before December 31, 2003, submits a plan under
31 AS 46.03.462(e), enacted by sec. 6 of this Act, within 30 days after the effective date of this

1 section and the Department of Environmental Conservation accepts the plan, the plan is
2 considered to be approved retroactively to the first day the vessel operated in the marine
3 waters of the state in 2004.

4 (b) The plan of an owner or operator is considered to be submitted by the deadline in
5 (a) of this section if initial submission is by that date, notwithstanding that amendments to the
6 plan may be required after that date in order for the department to approve the plan.

7 (c) Notwithstanding (a) and (b) of this section, the retroactive effect of the
8 department's approval under this section applies only if the plan submitted under
9 AS 46.03.462(e) is approved by December 31, 2004.

10 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **RETROACTIVITY.** Sections 1, 2, 4, 6, 7, 9, and 11 of this Act are retroactive to
13 January 1, 2004.

14 * **Sec. 16.** Sections 3, 5, 8, 10, 12, and 13 of this Act take effect January 1, 2016.

15 * **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect immediately under
16 AS 01.10.070(c).



SENATOR KIM ELTON

MEMORANDUM

DATE: March 23, 2007
TO: Senator John Cowdery, Chair
Senate Rules Committee
FROM: Senator Kim Elton
SUBJ: Scheduling request for SB 121

I respectfully request that you schedule SB 121, an Act relating to discharge from small commercial passenger vessels.

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed unanimously by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

Ballot measure 2 inadvertently repealed HB 522 and this bill would reinstate that legislation.

Attached are a sponsor statement and copy of the bill with a Zero Fiscal Note as moved out of Senate Labor and Commerce.

SENATOR KIM ELTON

MEMORANDUM

DATE: April 11, 2007

TO: Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
House Resources Committee

FROM: Senator Kim Elton

SUBJ: Hearing Request for SB 121, an Act relating to discharge from commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date.

I respectfully request that you schedule a hearing for SB 121, an Act relating to discharge from small commercial passenger vessels.

SB 121 adopts an alternate compliance program for a group of small cruise vessels built before 2004. It is the same alternate compliance program employing "best management practices" passed unanimously by the legislature in 2004 as HB 522 and enacted as Chapter 153, SLA 04.

Ballot measure 2 inadvertently repealed HB 522 and this bill would reinstate that legislation.

Attached are a sponsor statement and copy of the bill with a Zero Fiscal Note as moved out of Senate Labor and Commerce and subsequently passed unanimously on the Senate Floor.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 24, 2007

SUBJECT: Technical corrections related to the 2006 Primary Initiative related to Cruise Ships (Work Order No. 25-LS0175\A)

TO: Representative Craig Johnson
Co-Chair of House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

*May introduce
leg. on this
H Resources*

One of the ballot measures that passed at the 2006 primary election errors in statutes that are within the jurisdiction of your committee.

The 2006 Primary Election Ballot Measure No. 2 repealed and reenacted AS 46.03.462, but failed to conform cross-references and also failed to address delayed amendments. I have drafted a bill for your consideration that would fix these problems by deleting the cross-references and repealing the delayed amendments. It may be that your committee does not want to address this issue but this office believes it should be brought to your attention.

An explanation of the problem and the bill follows.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.462:

AS 46.03.462(a) and (b) set out "standard terms and conditions of vessel discharges" into the state's marine water.

Under former AS 46.03.462(c), enacted by ch. 1, FSSLA 2001,

(c) The [D]epartment [of Environmental Conservation] may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under (b) of this section, or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under (b) of this section. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if

(1) the vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;

(2) the vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under (b) of this section but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or

(3) an experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.

This subsection, subsection (c), had the effect of authorizing the department to establish alternative standards for discharges that differed from the so-called "standard terms and conditions of vessel discharges" set out in former and current subsection (b) of AS 46.03.462.

Further, under former AS 46.03.462(e), added by sec. 6, ch. 153, SLA 2004,

(e) The owner or operator of a small commercial passenger vessel may submit a plan for alternative terms and conditions of vessel discharges if the keel of the vessel was laid before January 1, 2004. Except as provided in (f) of this section, the department shall approve the plan for a three-year period if the department finds that the alternative terms and conditions in the plan incorporate the best management practices for protecting the environment to the maximum extent feasible. The department shall adopt regulations to implement this subsection but may not require an owner or operator to retrofit a vessel solely for the purpose of waste treatment if the retrofitting requires additional stability testing or relicensing by the United States Coast Guard. In this subsection, "best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the marine waters of the state.

This subsection, subsection (e), authorized the department to approve plans and alternative terms and conditions for discharges from certain vessels constructed before 2004. Under related provisions of ch. 153, SLA 2004, the authority to approve these plans and alternative terms was scheduled to expire January 1, 2016.

Finally, sec. 4, ch. 153, SLA 2004, proposed an amendment to former AS 46.03.462(d) to authorize certain small vessel discharge waiver provisions. Again, under related provisions, the authority to allow these waivers was to expire January 1, 2016.

Section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminated the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former subsection (c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former subsections (d) and (e).

Sections 3 and 5, ch. 153, SLA 2004, effective January 1, 2016, would restore the language of subsections (a) and (d) to read as they did before their amendments elsewhere in that 2004 Act. Section 13, ch. 153, SLA 2004, also effective January 1, 2016, would repeal AS 46.03.462(e) and (f), provisions under which the department had discretion to set alternative vessel discharge plans and conditions.

Given the initiative's elimination of the alternative authorities and its imposition of a single set of discharge standards, however, provisions proposing to revert to former language or to authorize exceptions, eliminated by the intervention of the voter-approved initiative, become obsolete or are at least inconsistent with the initiative's direction. Section 3 of the accompanying bill draft proposes the repeal of these three bill sections, sections 3, 5, and 13, ch. 158, SLA 2004, affecting subsections or amendments to subsections within AS 46.03.462.

INITIATIVE AMENDMENTS AFFECTING AS 46.03.463:

As noted earlier in this memo, section 4 of the recently-approved initiative, 2006 Primary Election Ballot Measure 2, repealed and reenacted AS 46.03.462 in its entirety. By the use of the repeal and reenactment device, the initiative eliminates the department's "permanent" authority to establish alternative terms and conditions of vessel discharges under former AS 46.03.462(c) and its separate authority, authorized through January 2016, to approve plans for alternative terms and conditions for discharges from small vessels and for waivers under former AS 46.03.462(d) and (e). In actuality, the initiative's section 4 retains material identified as AS 46.03.462(a) and (b) but eliminates material identified as AS 46.03.462(c) - (f).

AS 46.03.463(b), amended by sec. 7, ch. 153, SLA 2004 (the same amendments are thereafter repealed by sec. 8, ch. 153, SLA 2004, effective January 1, 2016), incorporates references to "AS 46.03.462(c) - (e)" and "AS 46.03.462(c)(2) and (d)"; sec. 4 of the initiative renders these references obsolete because, due to the drafting device chosen in the initiative, subsections (c) - (e) no longer exist. Section 1 of the accompanying bill draft proposes to eliminate the references in subsection (b) that are made obsolete by the initiative.

AS 46.03.463(c), amended by sec. 9, ch. 153, SLA 2004, (the same amendments are thereafter repealed by sec. 10, ch. 153, SLA 2004, effective January 1, 2016), also

Representative Craig Johnson
January 24, 2007
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incorporates references to "AS 46.03.462(c) - (e)" and "AS 46.03.462(c)(2) and (d)"; sec. 4 of the initiative also renders these references obsolete. Section 2 of the accompanying bill draft proposes to eliminate the references in subsection (c) that are made obsolete by the initiative.

AS 46.03.463(e), amended by sec. 11, ch. 153, SLA 2004, (the same amendments are thereafter repealed by sec. 12, ch. 153, SLA 2004, effective January 1, 2016), also incorporates a reference to "AS 46.03.462(c) - (e)," but the subsection is itself directly amended by the initiative. Because of the direct amendment by the initiative, a separate treatment of that subsection is not proposed in the accompanying bill draft.

The so-called repealing amendments, reversing changes made to AS 46.03.463(b), (c), and (e), are rendered obsolete by the initiative and are proposed for repeal by section 3 of the bill draft; in that bill section, the references are to "secs. 8, 10, and 12" of ch. 153, SLA 2004.

*

Because the amendments to AS 46.03.463(b) and (c) by the initiative took effect December 17, 2006, the substantive amendments are proposed to be given retroactive effect to that date and the bill, in its entirety, is proposed to have immediate effect. The retroactive section could be deleted if you wish.

JBC:med
07-040.med

Enclosure

cc: Representative Carl Gatto
Senator Charlie Huggins