

HOUSE BILL NO. 74

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES JOULE, EDGMON, AND BUCH, Herron, Neal Foster, Salmon, Austerman,
Thomas, Johansen, Kerttula**

Introduced: 1/20/09

Referred: Community and Regional Affairs, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program; and establishing the**
2 **Alaska Coastal Policy Board."**

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

4 *** Section 1.** AS 46.39 is amended by adding a new section to article 1 to read:

5 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) There is created in the
6 Department of Natural Resources the Alaska Coastal Policy Board. The board consists
7 of the following:

8 (1) five public members appointed by the governor, including one at-
9 large member from any coastal district and four members from a list composed of at
10 least three names from each region, nominated and submitted by the coastal districts
11 of each region; one public member shall be appointed from each of the following
12 regions:

13 (A) northwest Alaska, including, generally, the area of the
14 North Slope Borough and the Northwest Arctic Borough; and the Bering Strait

1 area, including, generally, the area of the Bering Strait regional educational
2 attendance area;

3 (B) southwest Alaska, including, generally, the area within the
4 Lower Yukon, Lower Kuskokwim, and Southwest regional educational
5 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs; and
6 the Kodiak-Aleutians area, including the Kodiak Island and area of the
7 Aleutians East Boroughs and the area of the Aleutian, Adak, and Pribilof
8 regional educational attendance areas;

9 (C) Upper Cook Inlet area, including the Municipality of
10 Anchorage and the Matanuska-Susitna Borough; the Lower Cook Inlet area,
11 including, generally, the Kenai Peninsula Borough; and the Prince William
12 Sound area, including, generally, the area east of the Kenai Peninsula Borough
13 to 141 West longitude; and

14 (D) Southeast Alaska, generally the area east of 141 West
15 longitude;

16 (2) each of the following:

17 (A) the commissioner of environmental conservation;

18 (B) the commissioner of fish and game;

19 (C) the commissioner of natural resources; and

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

22 (b) Each public member appointed by the governor under (a)(1) of this section
23 serves a term of two years and until a successor is appointed and qualified. A public
24 member may be reappointed.

25 (c) The board shall designate co-chairs, one of whom shall be selected from
26 among the public members appointed under (a)(1) of this section and one from among
27 the members designated in (a)(2) of this section.

28 (d) Each member of the board shall select one person to serve as a permanent
29 alternate at meetings of the board. If a member of the board is unable to attend, the
30 member shall advise the alternate, who may attend and act in the place of the member.
31 The alternate for each public member appointed under (a)(1) of this section shall be

1 approved by the coastal districts in the region from which the public member was
 2 appointed. The alternate for a commissioner serving under (a)(2) of this section shall
 3 be a deputy commissioner or the director of a division in the commissioner's
 4 department. The names of alternates shall be filed with the board.

5 (e) Three public members and two designated members of the board constitute
 6 a quorum, but the board may delegate to one or more of its members the power to hold
 7 hearings. All decisions of the board shall be by a majority vote of the members present
 8 and voting.

9 (f) Members of the board or their alternates are entitled to per diem and travel
 10 expenses authorized by law for members of boards and commissions.

11 (g) Administrative support for the board shall be provided by the division in
 12 the department responsible for coastal and ocean management. The director of the
 13 division in the department responsible for coastal and ocean management, under
 14 direction of the co-chair designated by the board from the individuals listed in (a)(2)
 15 of this section, may contract with or employ persons as necessary to assist the board in
 16 carrying out the board's duties and responsibilities.

17 * **Sec. 2.** AS 46.39.010(a) is amended to read:

18 (a) The Department of Natural Resources shall render, on behalf of the state,
 19 all federal consistency determinations and certifications authorized by 16 U.S.C. 1456
 20 (Sec. 307, Coastal Zone Management Act of 1972), and each conclusive state
 21 consistency determination when a project requires a permit, lease, or authorization
 22 **from the department or** from two or more state resource agencies.

23 * **Sec. 3.** AS 46.39.010(b) is amended to read:

24 (b) The department may adopt regulations **approved by the board** necessary
 25 to implement this chapter.

26 * **Sec. 4.** AS 46.39.030 is amended to read:

27 **Sec. 46.39.030. Powers of the board [DEPARTMENT].** The **board**
 28 [DEPARTMENT] may

29 (1) apply for and accept grants, contributions, and appropriations,
 30 including application for and acceptance of federal funds that may become available
 31 for coastal planning and management;

1 (2) contract for necessary services;

2 (3) consult and cooperate with

3 (A) persons, organizations, and groups, public or private,
4 interested in, affected by, or concerned with coastal area planning and
5 management;

6 (B) agents and officials of the coastal resource districts of the
7 state, and federal and state agencies concerned with or having jurisdiction over
8 coastal planning and management;

9 (4) take any reasonable action necessary to carry out the provisions of
10 this chapter or AS 46.40.

11 * **Sec. 5.** AS 46.39.040 is amended to read:

12 **Sec. 46.39.040. Duties of the board [DEPARTMENT].** In conformity with
13 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the
14 **board** [DEPARTMENT] shall

15 (1) **approve** [DEVELOP] statewide standards for the Alaska coastal
16 management program [,] and criteria for the preparation and approval of district
17 coastal management plans **developed by the department** in accordance with
18 AS 46.40;

19 (2) establish continuing coordination among state agencies to facilitate
20 the development and implementation of the Alaska coastal management program; in
21 carrying out its duties under this paragraph, the department shall initiate an
22 interagency program of comprehensive coastal resource planning for each geographic
23 region of the state;

24 (3) assure continued provision of data and information to coastal
25 resource districts to carry out their planning and management functions under the
26 program.

27 * **Sec. 6.** AS 46.39.900 is amended to read:

28 **Sec. 46.39.900. Definitions [DEFINITION].** In this chapter, unless the
29 context requires otherwise,

30 (1) **"board" means the Alaska Coastal Policy Board established in**
31 **AS 46.39.005;**

1 (2) "department" means the Department of Natural Resources.

2 * **Sec. 7.** AS 46.40.010 is amended to read:

3 **Sec. 46.40.010. Development of Alaska coastal management program.** (a)

4 The Alaska Coastal Policy Board [DEPARTMENT] shall approve, in accordance
5 with this chapter, program changes to the Alaska coastal management program.

6 (b) The board [DEPARTMENT] may approve the Alaska coastal
7 management program for a portion or portions of the coastal area before approving the
8 [COMPLETE] program changes under (a) of this section. Portions of the program
9 approved under this subsection shall be incorporated into the Alaska coastal
10 management program.

11 (c) The Alaska coastal management program shall be reviewed by the board
12 [DEPARTMENT] and, when appropriate, revised to

13 (1) add newly approved district coastal management plans [,] or
14 revisions and amendments to the Alaska coastal management program;

15 (2) integrate newly approved district coastal management plans [,] or
16 revisions and amendments of district coastal management plans [,] with existing
17 approved plans and with plans developed by state agencies;

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

20 (4) evaluate [REVIEW] the effectiveness [OF IMPLEMENTATION]
21 of district coastal management plans; and

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

24 (d) All reviews and revisions shall be in accordance with the statewide
25 standards and district plan criteria adopted under AS 46.40.040.

26 * **Sec. 8.** AS 46.40.020 is amended to read:

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

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

31 (2) the development of industrial or commercial enterprises that are

1 consistent with the social, cultural, historic, economic, and environmental interests of
2 the people of the state;

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

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

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

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

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

18 (8) the full and fair evaluation of all demands on the land and water in
19 the coastal area.

20 * **Sec. 9.** AS 46.40.030 is amended to read:

21 **Sec. 46.40.030. Development of district coastal management plans.** (a)

22 Coastal resource districts shall develop and adopt district coastal management plans in
23 accordance with the provisions of this chapter. The plan adopted by a coastal resource
24 district shall be based upon a municipality's existing comprehensive plan or a new
25 comprehensive resource use plan or comprehensive statement of needs, policies,
26 objectives, and standards governing the use of resources within the coastal area of the
27 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
28 criteria adopted under AS 46.40.040 and must include

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

31 (2) a statement, list, or definition of the land and water uses and

1 activities subject to the district coastal management plan;

2 (3) a statement of policies to be applied to all [THE] land and water
3 uses subject to the district coastal management plan as well as policies that apply
4 only to special management areas; and

5 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
6 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
7 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
8 WATER WITHIN THE COASTAL AREA; AND

9 (5) a designation of any special management [, AND THE
10 POLICIES THAT WILL BE APPLIED TO THE USE OF,] areas under [WITHIN]
11 the district coastal management plan and enforceable policies that will be
12 applicable within those special management areas [RESOURCE DISTRICT THAT
13 MERIT SPECIAL ATTENTION].

14 (b) In developing enforceable policies in its coastal management plan under
15 (a) of this section, a coastal resource district shall ensure that the enforceable
16 policies,

17 (1) whether prescriptive or performance-based, are clear and
18 concise as to the activities and persons affected by the policies and the
19 requirements of the policies; and

20 (2) if stricter or more specific than state or federal statutes or
21 regulations, are necessary, given local conditions, and are supported by scientific
22 evidence or contemporary or traditional local knowledge sufficient to justify the
23 policies [MEET THE REQUIREMENTS OF AS 46.40.070 AND MAY NOT
24 DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE STATUTES
25 AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE OR FEDERAL
26 AGENCIES].

27 * **Sec. 10.** AS 46.40.040(a) is amended to read:

28 (a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the
29 department shall, after approval by the board,

30 (1) by regulation, adopt, under the provisions of AS 44.62
31 (Administrative Procedure Act) for the use of and application by coastal resource

1 districts and state agencies for carrying out their responsibilities under this chapter,
2 statewide standards and district coastal management plan criteria for

3 (A) identifying the boundaries of the coastal area subject to the
4 Alaska coastal management program;

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

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

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

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

14 (F) designating and developing policies for **special**
15 **management areas** [THE USE OF AREAS OF THE COAST THAT MERIT
16 SPECIAL ATTENTION]; and

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

19 (2) [DEVELOP AND MAINTAIN A PROGRAM OF TECHNICAL
20 AND FINANCIAL ASSISTANCE TO AID COASTAL RESOURCE DISTRICTS IN
21 THE DEVELOPMENT AND IMPLEMENTATION OF DISTRICT COASTAL
22 MANAGEMENT PLANS;

23 (3) UNDERTAKE REVIEW AND APPROVAL OF DISTRICT
24 COASTAL MANAGEMENT PLANS IN ACCORDANCE WITH THIS CHAPTER;

25 (4) INITIATE A PROCESS FOR IDENTIFYING AND MANAGING
26 USES OF STATE CONCERN WITHIN SPECIFIC AREAS OF THE COAST;

27 (5) DEVELOP PROCEDURES OR GUIDELINES FOR
28 CONSULTATION AND COORDINATION WITH FEDERAL AGENCIES
29 MANAGING LAND OR CONDUCTING ACTIVITIES POTENTIALLY
30 AFFECTING THE COASTAL AREA OF THE STATE;

31 (6)] by regulation, establish a consistency review and determination or

1 certification process that conforms to the requirements of AS 46.40.096.

2 * **Sec. 11.** AS 46.40.040 is amended by adding a new subsection to read:

3 (d) Except as provided in AS 41.17, the board shall

4 (1) develop and maintain a program of technical and financial
5 assistance to aid coastal resource districts in the development and implementation of
6 district coastal management plans;

7 (2) undertake review of and, after public hearing, approve district
8 coastal management plans in accordance with this chapter;

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

11 (4) develop procedures or guidelines for consultation and coordination
12 with federal agencies managing land or conducting activities potentially affecting the
13 coastal area of the state.

14 * **Sec. 12.** AS 46.40.050(b) is amended to read:

15 (b) Within 30 months after certification of the organization of a new coastal
16 resource district, the coastal resource district shall complete and submit to the **board**
17 [DEPARTMENT] a proposed district coastal management plan. If, after receipt of a
18 written request for extension from the coastal resource district, the **board**
19 [DEPARTMENT] considers an extension proper, the **board** [DEPARTMENT] may
20 grant an extension to a date that is within 54 months after certification of the results of
21 the coastal resource district's organization. A request under this subsection must
22 include the reasons for the extension.

23 * **Sec. 13.** AS 46.40.060 is repealed and reenacted to read:

24 **Sec. 46.40.060. Review and approval.** (a) A coastal resource district shall
25 submit its district coastal management plan for review by the department. The division
26 in the department responsible for coastal and ocean management shall attempt to reach
27 a consensus with a coastal resource district concerning any changes required to
28 comply with the district plan criteria approved by the department and the board.

29 (b) If a consensus between the division and the coastal resource district is
30 reached, the division shall forward a recommendation to the commissioner, and the
31 commissioner shall submit the recommendation to the board.

1 (c) If a consensus between the division and the coastal resource district is not
2 reached, the division shall forward a recommendation to the commissioner with an
3 explanation of the reasons for its recommendation and, if applicable, offer
4 recommended changes to the district coastal management plan that would meet the
5 district plan criteria. The coastal resource district may request that the commissioner
6 reconsider the division's recommendation before the commissioner submits the
7 recommendation to the board.

8 (d) If, after receiving the commissioner's recommendation, the board finds that
9 the district coastal management plan meets the provisions of this chapter and the
10 district plan criteria adopted by the department, the board may approve the district
11 coastal management plan or may approve portions of the district coastal management
12 plan that meet those requirements.

13 (e) If the board finds that a district coastal management plan is not approvable
14 or is approvable only in part under (d) of this section, the board shall direct the
15 department to meet with officials of the coastal resource district to resolve differences.
16 If requested by a coastal resource district, the board shall direct that deficiencies in the
17 district coastal management plan submitted by the coastal resource district be resolved
18 through mediation conducted by a neutral third party. During mediation, the board
19 may call for one or more public hearings in the district.

20 (f) If, after mediation, the differences have not been resolved and mutually
21 agreed to by the coastal resource district and the board, the board shall enter findings
22 and, by order, may require

23 (1) that the district coastal management plan be amended to satisfy the
24 provisions of this chapter or meet the statewide standards and district plan criteria
25 approved by the board;

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

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

30 (g) An order of the board entered under (f) of this section is a final
31 administrative order that the coastal resource district may appeal to the superior court

1 under AS 44.62 (Administrative Procedure Act). The attorney general, at the request
 2 of the board, may file an action in superior court to enforce an order issued under (f)
 3 of this section.

4 * **Sec. 14.** AS 46.40.070 is repealed and reenacted to read:

5 **Sec. 46.40.070. Requirements for board review and approval.** (a) The board
 6 shall approve a district coastal management plan submitted for review and approval if
 7 the

8 (1) district coastal management plan meets the requirements of this
 9 chapter and the district plan criteria adopted by the department; and

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

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

13 (B) are not preempted by federal statutes or regulations; and

14 (C) do not arbitrarily or unreasonably restrict a use of state
 15 concern.

16 (b) In (a)(2)(B) of this section, an enforceable policy of the district coastal
 17 management plan is preempted by federal statutes or regulations if the United States
 18 Congress expressly declares that local law or regulation is preempted, if the United
 19 States Congress demonstrates the intent to occupy the field exclusively, or if there is
 20 an actual conflict between federal and local law or regulation.

21 * **Sec. 15.** AS 46.40.096(a) is amended to read:

22 (a) The department shall, by regulation **approved by the board**, establish a
 23 consistency review and determination process that conforms to the requirements of
 24 this section.

25 * **Sec. 16.** AS 46.40.096(d) is amended to read:

26 (d) In preparing a consistency review and determination for a proposed
 27 project, the reviewing entity shall

28 (1) request consistency review comments for the proposed project
 29 from state resource agencies, affected coastal resource districts, and other interested
 30 parties as determined by regulation adopted by the department;

31 (2) prepare proposed consistency determinations;

1 (3) coordinate elevations [SUBSEQUENT REVIEWS] of proposed
 2 consistency determinations prepared under (2) of this subsection; an elevation [A
 3 SUBSEQUENT REVIEW] of a proposed consistency determination under this
 4 paragraph

5 (A) is limited to a review by state resource agencies [THE
 6 DEPARTMENT];

7 (B) may occur only if requested by

8 (i) the project applicant;

9 (ii) a state resource agency; or

10 (iii) an affected coastal resource district; and

11 (C) shall be completed by the resource agencies
 12 [DEPARTMENT] within 45 days after the initial request for subsequent
 13 review under this paragraph;

14 (4) render the final consistency determination and certification.

15 * **Sec. 17.** AS 46.40.096(g) is amended to read:

16 (g) The reviewing entity shall exclude from the consistency review and
 17 determination process for a project

18 (1) an aspect of an activity that

19 [(A)] is specifically authorized under a general or nationwide
 20 permit that has previously been determined to be consistent with the Alaska
 21 coastal management program; [OR

22 (B) IS SUBJECT TO AUTHORIZATION BY THE
 23 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE
 24 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

25 (2) activities excluded from a consistency review under AS 41.17; and

26 (3) the issuance of an authorization or permit issued by the Alaska Oil
 27 and Gas Conservation Commission.

28 * **Sec. 18.** AS 46.40.096(k) is amended to read:

29 (k) Except as provided in (g) of this section, AS 41.17, [AS 46.40.040(b),] and
 30 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
 31 of this section, is limited to activities that are located within the areas described in (l)

1 of this section and that either are subject to a state resource agency permit, lease,
 2 authorization, approval, or certification or are the subject of a coastal resource district
 3 enforceable policy approved by the **board** [DEPARTMENT] under this chapter. The
 4 scope of a consistency review subject to 16 U.S.C. 1456 is determined under 16
 5 U.S.C. 1456 and 15 C.F.R. Part 930.

6 * **Sec. 19.** AS 46.40.096(l) is amended to read:

7 (l) The regulations adopted under (a) of this section apply, as authorized by 16
 8 U.S.C. 1456(c), to

9 (1) activities within the coastal zone **or inland of the coastal zone if**
 10 **the activities would cause direct and significant impacts to a coastal use or**
 11 **resource**; and

12 (2) activities on federal land **and water**, including the federal outer
 13 continental shelf, that would affect any land or water use or natural resource of the
 14 state's coastal zone; for purposes of this paragraph, those activities consist of any
 15 activity on the federal outer continental shelf, **including seismic survey activity**, and
 16 any activity on federal land that are within the geographic boundaries of the state's
 17 coastal zone notwithstanding the exclusion of federal land in 16 U.S.C. 1453(1).

18 * **Sec. 20.** AS 46.40.096(m) is amended to read:

19 (m) As part of the regulations adopted under (a) of this section, the department
 20 shall establish a list of permits, certifications, leases, approvals, and authorizations
 21 issued by a state resource or federal agency that will trigger a consistency review
 22 under (j) of this section. In addition, the department shall establish in regulation
 23 categories and descriptions of uses and activities that, for purposes of evaluating
 24 consistency with the Alaska coastal management program, are determined to be
 25 categorically consistent or generally consistent after the inclusion of standard
 26 alternative measures. These categories of uses and activities must be as broad as
 27 possible so as to minimize the number of **routine** projects that must undergo an
 28 individualized consistency review under this section.

29 * **Sec. 21.** AS 46.40.096(o) is amended to read:

30 (o) The time limitations in (n) of this section

31 (1) do not apply to a consistency review involving

1 (A) the disposal of an interest in state land or resources;

2 (B) an activity proposed by a federal agency; or

3 (C) an activity permitted by a federal agency;

4 (2) are suspended

5 (A) from the time a review schedule is modified in response
6 to [THE REVIEWING ENTITY DETERMINES THAT THE APPLICANT
7 HAS NOT ADEQUATELY RESPONDED IN WRITING WITHIN 14 DAYS
8 AFTER THE RECEIPT OF] a written request from the reviewing entity for
9 additional information, until the time the reviewing entity determines that the
10 applicant has provided an adequate written response;

11 (B) during a period of time requested by the applicant;

12 (C) during the period of time a consistency review is
13 undergoing a subsequent review under (d)(3) of this section;

14 (D) for 30 days if requested by an affected coastal resource
15 district exercising authority under AS 29 to accommodate the
16 adjudication process of an authorization issued by a coastal resource
17 district pending the results of the adjudication.

18 * **Sec. 22.** AS 46.40.096(q)(1) is amended to read:

19 (1) "affected coastal resource district" means a coastal resource district
20 with a publicly reviewed draft or approved plan in which a project is proposed to
21 be located or that [WHICH] may experience a direct and significant impact from a
22 proposed project;

23 * **Sec. 23.** AS 46.40.096 is amended by adding a new subsection to read:

24 (r) Notwithstanding any provision of this section, for federal agency activities
25 defined in 15 C.F.R. 930.31, including Outer Continental Shelf lease sales and
26 development projects, the department shall conduct a full consistency review and
27 provide its consistency response with respect to proposed uses or activities involved in
28 the project regardless of whether an earlier consistency review for a similar project has
29 been completed.

30 * **Sec. 24.** AS 46.40.100(b) is amended to read:

31 (b) A party that is authorized under (g) of this section may file a petition

1 showing that a district coastal management plan is not being implemented. A petition
 2 filed under this subsection may not seek review of a proposed or final consistency
 3 determination regarding a specific project. On receipt of a petition, the **board**
 4 [DEPARTMENT], after giving public notice in the manner required by (f) of this
 5 section, shall convene a hearing to consider the matter. A hearing called under this
 6 subsection shall be held in accordance with regulations adopted under this chapter.
 7 After **the** hearing, the **board** [DEPARTMENT] may order that the coastal resource
 8 district or a state resource agency take any action with respect to future
 9 implementation of the district coastal management plan that the **board**
 10 [DEPARTMENT] considers necessary, except that the **board** [DEPARTMENT] may
 11 not order that the coastal resource district or a state agency take any action with
 12 respect to a proposed or final consistency determination that has been issued.

13 * **Sec. 25.** AS 46.40.100(c) is amended to read:

14 (c) In determining whether an approved district coastal management plan is
 15 being implemented by a coastal resource district that exercises zoning authority or
 16 controls on the use of resources within the coastal area or by a state resource agency,
 17 the **board** [DEPARTMENT] shall find in favor of the district or the state resource
 18 agency, unless the **board** [DEPARTMENT] finds a pattern of nonimplementation.

19 * **Sec. 26.** AS 46.40.100(e) is amended to read:

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

22 * **Sec. 27.** AS 46.40.100(f) is amended to read:

23 (f) Upon receipt of a petition under (b) of this section, the **board**
 24 [DEPARTMENT] shall give notice of the hearing at least 10 days before the
 25 scheduled date of the hearing. The notice must

26 (1) contain sufficient information in commonly understood terms to
 27 inform the public of the nature of the petition; and

28 (2) indicate the manner in which the public may comment on the
 29 petition.

30 * **Sec. 28.** AS 46.40.100(h) is amended to read:

31 (h) If the **board** [DEPARTMENT] finds a pattern of nonimplementation

1 under (c) of this section, the **board** [DEPARTMENT] may order a coastal resource
 2 district or a state resource agency to take action with respect to future implementation
 3 of the district coastal management plan that the **board** [DEPARTMENT] considers
 4 necessary to implement the district coastal management plan. The **board's**
 5 [DEPARTMENT'S] determination under (c) of this section and any order issued under
 6 this subsection shall be considered a final administrative order for purposes of judicial
 7 review under AS 44.62.560.

8 * **Sec. 29.** AS 46.40.180(b) is amended to read:

9 (b) If a city or village within a coastal resource service area fails to approve a
 10 portion of the district coastal management plan prepared and submitted for approval
 11 under (a) of this section, the governing body shall advise the coastal resource service
 12 area board of its objections to the proposed plan and suggest alternative elements or
 13 components for inclusion in the district coastal management plan. New matter
 14 submitted by a city or village that meets the [STATEWIDE STANDARDS AND]
 15 district plan criteria adopted under this chapter **may** [SHALL] be accepted **by the**
 16 **district** and the district coastal management plan modified accordingly. If a city or
 17 village fails to provide objections and suggested alternatives within the time limits
 18 established in this section, the coastal resource service area board may adopt the
 19 district coastal management plan as initially offered.

20 * **Sec. 30.** AS 46.40.190 is amended to read:

21 **Sec. 46.40.190. Cooperative administration.** (a) A **municipality** [CITY]
 22 within the coastal area that is **within** [NOT PART OF] a coastal resource service area
 23 shall be included for purposes of this chapter within **the** [AN ADJACENT] coastal
 24 resource service area unless **the municipality's** [ITS] governing body, by resolution
 25 [ADOPTED BY A MAJORITY OF ITS MEMBERSHIP], chooses to exclude the
 26 **municipality** [CITY] from **the** [AN] adjacent coastal resource service area and a copy
 27 of the resolution is filed with the commissioner of commerce, community, and
 28 economic development.

29 (b) This chapter does not restrict or prohibit cooperative or joint
 30 administration of functions between a municipality and a coastal resource service area
 31 organized under the provisions of this chapter upon initiation of a mutual agreement

1 for the purpose. [A CITY THAT ELECTS TO BE EXCLUDED FROM AN
 2 ADJACENT COASTAL RESOURCE SERVICE AREA UNDER (a) OF THIS
 3 SECTION SHALL ENTER INTO A MUTUAL AGREEMENT FOR
 4 COOPERATIVE OR JOINT ADMINISTRATION OF FUNCTIONS WITH THE
 5 COASTAL RESOURCE SERVICE AREA BOARD FROM THE ADJACENT
 6 COASTAL RESOURCE SERVICE AREA.]

7 * **Sec. 31.** AS 46.40.210(2) is amended to read:

8 (2) "coastal resource district" means each of the following that
 9 contains a portion of the coastal area of the state:

10 (A) unified municipalities;

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

13 (C) home rule and first class cities of the unorganized borough
 14 [OR WITHIN BOROUGHES THAT DO NOT EXERCISE PLANNING AND
 15 ZONING AUTHORITY];

16 (D) second class cities of the unorganized borough [, OR
 17 WITHIN BOROUGHES THAT DO NOT EXERCISE PLANNING AND
 18 ZONING AUTHORITY,] that have established a planning commission, and
 19 that, in the opinion of the commissioner of commerce, community, and
 20 economic development, have the capability of preparing and implementing a
 21 comprehensive district coastal management plan under AS 46.40.030;

22 (E) coastal resource service areas established and organized
 23 under AS 29.03.020 and AS 46.40.110 - 46.40.180;

24 * **Sec. 32.** AS 46.40.210(4) is amended to read:

25 (4) "coastal zone" means the coastal water including land within and
 26 under that water, and adjacent shoreland, including the water within and under that
 27 shoreland, within the boundaries approved by the former Alaska Coastal Policy
 28 Council and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465
 29 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes areas
 30 added as a result of any boundary changes approved by the **board** [DEPARTMENT]
 31 and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465;

1 "coastal zone" does not include

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

3 (B) areas deleted as a result of any boundary changes by the

4 **board** [DEPARTMENT] in conformance with 16 U.S.C. 1451 - 1465;

5 * **Sec. 33.** AS 46.40.210(7) is amended to read:

6 (7) "district coastal management plan" means a plan developed by a
7 coastal resource district, including enforceable policies of that plan, setting out
8 policies and standards to guide public and private uses of land and water within that
9 district and approved by the **board** [DEPARTMENT] as meeting the requirements of
10 this chapter and the regulations adopted under this chapter;

11 * **Sec. 34.** AS 46.40.210(8) is amended to read:

12 (8) "enforceable policy" means a policy established by this chapter or
13 approved by the **board** [DEPARTMENT] as a legally binding policy of the Alaska
14 coastal management program applicable to public and private activities;

15 * **Sec. 35.** AS 46.40.210(9) is amended to read:

16 (9) "project" means all activities that will be part of a proposed
17 development **and includes all federal agency activities as defined in 15 C.F.R.**
18 **930.31, including lease sales and development projects affecting a coastal use or**
19 **resource;**

20 * **Sec. 36.** AS 46.40.210 is amended by adding new paragraphs to read:

21 (13) "board" has the meaning given in AS 46.39.900;

22 (14) "special management area" means a delineated geographic area
23 within the coastal area that is sensitive to change or alteration and that, because of
24 plans or commitments or because a claim on the resources within the area delineated
25 would preclude subsequent use of the resources to a conflicting or incompatible use,
26 warrants special management attention, or that, because of its value to the general
27 public, should be identified for current or future planning, protection, or acquisition;
28 these areas, subject to the board's definition of criteria for their identification, include:

29 (A) areas of unique, scarce, fragile or vulnerable natural
30 habitat, cultural value, historical significance, or scenic importance;

31 (B) areas of high natural productivity or essential habitat for

- 1 living resources;
- 2 (C) areas of substantial recreational value or opportunity;
- 3 (D) areas where development of facilities is dependent upon
4 the utilization of, or access to, coastal water;
- 5 (E) areas of unique geologic or topographic significance that
6 are susceptible to industrial or commercial development;
- 7 (F) areas of significant hazard due to storms, slides, flooding,
8 earthquakes, active faults, tsunamis, volcanoes, liquefaction, ice movement or
9 snow avalanches, or erosion; and
- 10 (G) areas needed to protect, maintain, or replenish coastal land
11 or resources, including coastal flood plains, aquifer recharge areas, beaches,
12 and offshore sand deposits;
- 13 * **Sec. 37.** AS 46.40.040(b), 46.40.040(c), 46.40.050(a), 46.40.096(i), 46.40.205, and
14 46.40.210(1) are repealed.