Sean Parnell, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Labor & State Affairs Section
P.O. BOX 110300
123 4TH ST., DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

November 29, 2011

The Honorable Mead Treadwell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Review of 11ACMP Initiative Application
A.G. File No. JU2011200659

Dear Lieutenant Governor Treadwell:

You have asked us to review an application for an initiative entitled "An Act establishing the Alaska Coastal Management Program." Despite numerous potential constitutional concerns with this initiative bill as discussed herein, and numerous irregularities involving draftsmanship, inconsistencies, and ambiguities in the bill itself, the application complies with the specific constitutional and statutory provisions governing the initiative process and we therefore recommend that you certify the application.

I. SUMMARY OF THE PROPOSED BILL

A. BRIEF SUMMARY AND BACKGROUND

The bill proposed by this initiative would create an Alaska Coastal Management Program (hereafter "ACMP"). In 2005, the legislature repealed the state's prior coastal management program with an effective sunset date of July 1, 2011.[1] On June 28, 2011, the legislature adjourned the second of two special sessions without passing legislation required to extend the prior coastal management program. Because the prior coastal management program was fully repealed, the similarities and differences between this initiative bill and the prior program are irrelevant unless expressly noted otherwise. Therefore we must analyze the initiative bill on its own merits.

---

[1] *See* former AS 46.39.010-.040; AS 46.40.010-46.40.210 (repealed ch. 31, SLA 2005); AS 44.66.020- 44.66.030.

B. SECTIONAL SUMMARY

The bill proposed by this initiative is 15 pages long, double-spaced, and consists of one designated section containing 18 new statutory provisions. The bill amends Title 46 of the Alaska Statutes by adding a new chapter entitled "Alaska Coastal Management Program." The 18 new statutory provisions are summarized as follows:

- **AS 46.41.010. Coastal Policy Board.** This provision would create operational criteria for a 13-member Coastal Policy Board in the Department of Commerce, Community and Economic Development (hereafter "the Department of Commerce"). The 13 governor-appointed members would include nine coastal resource district representatives and the four state commissioners from the Alaska Department of Environmental Conservation, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, and the Alaska Department of Commerce.

- **AS 46.41.020. Powers and duties of the board.** This provision describes the proposed powers and duties of the Coastal Policy Board. In significant part, this provision would require the Coastal Policy Board to develop an interagency program of strategic coastal and ocean planning for each geographic region of the state. The provision also lists a number of other duties, such as to direct the Department of Commerce to seek required federal approval of the ACMP; to review, approve, and evaluate coastal district management plans; to establish coordination among state agencies to facilitate the ACMP; to contract for necessary services; to apply for and accept grants, contributions, and appropriations; and to review and approve regulations necessary to implement the coastal management program under this chapter and the federal Coastal Zone Management Act.

- **AS 46.41.030. Division of Coastal Management.** This provision would create a division of ocean and coastal management within the Department of Commerce. The division's duties would include issuing state consistency determinations and responding to federal consistency determinations and certifications; adopting regulations approved by the Coastal Policy Board; providing data and information to coastal districts to carry out their planning and management functions; and developing and maintaining a financial assistance program to help coastal districts.

- **AS 46.41.040. Development of Alaska Coastal Management Program.** This provision would direct the promulgation of regulations for statewide coastal standards, and the criteria and procedures for the preparation and approval of district coastal management plans and consistency review procedures for coastal projects. It would also restore the coastal districts, coastal district boundaries, and approved coastal management plans that were in effect as of June 30, 2011.

- **AS 46.41.050. Objectives.** This provision establishes objectives for the ACMP, which are largely the same as those in the prior coastal management program. The provision adds that the coast should be used, managed, restored, and enhanced "for this and succeeding generations." It also adds three objectives: (1) the coordination of coastal planning among government and citizens; (2) public and government participation in the program; and (3) the requirement that state agencies comply with the program.

- **AS 46.41.060. Development of district coastal management plans.** This provision would require coastal districts to develop and adopt district coastal management plans, and would provide requirements for the plans and for the plans' policies.

- **AS 46.41.070. Submission of district plans by coastal districts.** This provision would require coastal districts to review their coastal management plans within one year after the effective date of implementing regulations and submit any necessary changes to the plans to the Department of Commerce for review and approval by the Coastal Policy Board.

- **AS 46.41.080. Implementation of district coastal management plans.** This provision would require districts to implement plans when the district has and exercises zoning or other controls on the use of resources within the district. Where a district does not have or exercise zoning or other controls on the use of resources, state agencies would implement the district plan.

- **AS 46.41.090. Compliance and enforcement.** This provision would require municipalities and state resource agencies to administer land and water use regulations or controls in conformity with district plans, and

states that the superior court has jurisdiction to enforce lawful orders of the board and the Department of Commerce.

- **AS 46.41.100. Coastal management plans in the unorganized borough.** This provision would require coastal resource service areas in unorganized boroughs to exercise all authorities and perform duties required by the chapter.

- **AS 46.41.110. Coastal resource service areas.** This provision would provide for the establishment of coastal resource service areas and allow such areas to be geographically linked to pre-existing regional educational attendance areas established under AS 14.08.031.

- **AS 46.41.120. Organization of a coastal resource service area.** This provision would permit the organization of coastal resource service areas by petition of voters within the area or by resolution approved by the relevant city or village council and submitted to the voters at an election at the council's request.

- **AS 46.41.130. Coastal resource service area boards.** This provision would create elected boards consisting of seven members each, representing the population of the coastal resource service areas. The boards would have the powers and duties of coastal districts.

- **AS 46.41.140. Elections in coastal resource service areas.** This provision would establish that the lieutenant governor would administer elections of board members of coastal resource service areas and could adopt regulations for these elections.

- **AS 46.41.150. Preparation of district coastal management program by the Department of Commerce.** This provision would allow the Coastal Policy Board to submit a district plan to the legislature for consideration if a coastal resource service area rejects organization. At the request of the Coastal Policy Board, the Department of Commerce would complete a district plan for a coastal resource service area that has been organized but that has failed on its own to make substantial progress in the plan.

- **AS 46.41.160. Approval of plans in coastal resource service areas.** This provision would create a process through which district coastal

management plans would be submitted for review to each city or village within the applicable coastal resource service area, which would then have 60 days to approve or object to the plan.

- **AS 46.41.170. Cooperative administration.** This provision would include a city within an adjacent coastal resource service area if it is in a coastal area but is not part of the coastal resource service area, unless the city opts out by resolution. The provision further specifies that the chapter as a whole does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area.

- **AS 46.41.180. Construction with other laws.** This provision would set forth the relationship between the new chapter and state jurisdiction, state requirements imposed under federal law, and municipal zoning and planning authority.

- **AS 46.41.900. Definitions.** This provision would set out definitions for the new chapter 41.

II. ANALYSIS

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative and within 60 calendar days of receipt either "certify it or notify the initiative committee of the grounds for denial." The application for the 11ACMP initiative was filed on October 7, 2011. The 60th calendar day after the filing date is December 6, 2011. Under AS 15.45.080, certification shall only be denied if: (1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors.

A. FORM OF THE PROPOSED BILL

In evaluating an initiative application, you must determine whether the application is in its "proper form."[2] Specifically, you must inquire whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the

[2] Alaska Const. art. XI, § 2.

initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[3]

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that: (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects, which are identified in AS 15.45.010 and article XI, section 7 of the Alaska Constitution, are: (1) dedication of revenue; (2) the making or repealing of appropriations; (3) the creation of courts, the definition of their jurisdiction, or prescribing rules of court; and (4) the enactment of local or special legislation.

This initiative bill meets the first three requirements. It is confined to one subject, the Alaska Coastal Management Program; the subject is expressed in the title, "An Act establishing the Alaska Coastal Management Program"; and the required enacting clause is present.

Although there are concerns as to whether the initiative bill complies with the requirement that it not contain a prohibited subject, the Alaska Supreme Court has adopted a "deferential attitude toward initiatives,"[4] and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.[5] Accordingly, we have analyzed the bill with these principles in mind and conclude that the initiative bill contains no prohibited subject. As such, the fourth requirement relating to the form of the bill is therefore satisfied.

---

3 *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988) (citing *Boucher v. Engstrom*, 528 P.2d 456, 460-61 (Alaska 1974) (overruled on other grounds)).

4 *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

5 *McAlpine*, 762 P.2d at 91 (Alaska 1988); *Yute Air*, 698 P.2d at 1181.

1. Does the Bill Make an Appropriation?

Six provisions of this initiative bill appear at first blush to implicate the restriction against making an appropriation by initiative.[6] When viewed in the context of the entire initiative bill and the case law governing appropriations in such bills, however, none of these six provisions constitutes a prohibited appropriation. In reaching this conclusion, we are mindful of the firmly-held principle that unless an initiative bill is "*clearly* unconstitutional," it should reach the ballot and be left to the voters to decide.[7] "Merely doubtful" legality is not enough.[8] Because no provision of the bill makes a clearly unconstitutional appropriation, certification should not be denied on that basis.

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, the initiative process may not be used to "make or repeal appropriations." The Alaska Supreme Court has held that these provisions "prohibit an initiative whose primary object is to require the outflow of state assets" in the form of either land or money.[9] A key element in determining whether an initiative makes an appropriation is whether the initiative bill would "designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action."[10] Specifically, the analysis is whether the initiative sets aside specific sums of money for a specific purpose that is "ascertainable" and "definite," as opposed to being "ancillary," "incidental," or "redundant."[11] The Alaska Supreme Court has found that laws that "merely create new government programs or liabilities do not constitute appropriations" in the context of

---

6 Proposed AS 46.41.020(a)(7); Proposed AS 46.41.030; Proposed AS 46.41.030(b)(4); Proposed AS 46.41.010(h); Proposed AS 46.41.130(h); and Proposed AS 46.41.140.

7 *Kohlhaas v. State, Office of Lieutenant Governor*, 147 P.3d 714, 717 (Alaska 2006) (emphasis added); *see also Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)(same).

8 *Yute Air*, 698 P.2d at 1181.

9 *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979).

10 *McAlpine* ,762 P.2d at 91.

11 *Id.* at 89-90.

initiatives.[12] Indeed, the lieutenant governor must include in the petition booklets that circulate after certification "an estimate of the cost to the state of implementing the proposed law."[13] Moreover the legislature in fact anticipates that implementing a law appropriately enacted by initiative will have associated costs, and the existence of such costs does not alone constitute an appropriation.

The first provision in question would require the Department of Commerce "to apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds that may become available for coastal planning and management."[14] This provision does not designate the use of state assets, but merely directs a state agency to seek funding sources for coastal planning and management. This provision therefore does not make an appropriation.

Second, the bill creates a Division of Ocean and Coastal Management.[15] This proposed division would have four tasks: (1) to respond to all federal consistency determinations and certifications authorized by the federal Coastal Zone Management Act and issue state consistency determinations; (2) to adopt regulations; (3) to assure continued provision of data and information to coastal districts to carry out planning and management functions; and (4) to develop and maintain a program of financial assistance.

Although this portion of the bill creates a new division in the Department of Commerce, as noted above the mere creation of a government program or entity does not of itself constitute a prohibited appropriation.[16] The Alaska Supreme Court adopted this principle in *McAlpine v. University of Alaska*, when it cited favorably to case law concluding that an initiative establishing a government program does not violate the prohibition against the use of initiatives for appropriation if the initiative itself commits no assets to the program. The funding level for the program still "rests within the power"

---

12 *Id.* at 90.

13 AS 15.45.090(4).

14 Proposed AS 46.41.020(a)(7).

15 Proposed AS 46.41.030.

16 *McAlpine*, 762 P.2d at 90.

of the legislature, and that is dispositive.[17] The legislature would have complete discretion to determine what types and levels of funding the new division would receive, and further legislative action would be required to appropriate any funds for that purpose. The creation of this division does not "designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action."[18] Nor does creation of the division set aside specific sums of money for a specific purpose that is "ascertainable" and "definite."[19] Indeed, the provision designates the use of no state assets at all. An unfunded mandate is not an appropriation. The fact that a new agency would have costs, potentially including personnel and operating expenses, does not render the creation of the agency an appropriation. Accordingly, the creation of the division and its duties, without more, does not amount to a prohibited appropriation.

The third provision in question would require the Division of Ocean and Coastal Management to "develop and maintain a program of financial assistance to aid coastal districts in the development and implementation of district coastal management plan." [*sic*].[20] This provision simply directs the Division of Ocean and Coastal Management to develop and maintain a program of financial assistance. It creates a new government program, but says nothing about how, or from what source, such a program would be funded. And it does not designate the use of state assets at all, much less in a manner that is executable, mandatory, and reasonably definite with no further legislative action. This provision therefore does not make an appropriation.

The fourth and fifth such provisions provide that members and alternates of the Coastal Policy Board and members of the Coastal Resource Service Area Boards would be entitled to per diem and travel expenses "authorized by law for members of boards and commissions."[21] Although these provisions technically entitle board members to state funds in the form of per diem and travel expenses, these expenses are, by the express

---

17 *Id.* (citing *Dist. of Columbia Bd. of Elections and Ethics v. Dist. of Columbia*, 520 A.2d 671, 675 (D.C.App. 1986)).

18 *Id.* at 91.

19 *Id.* at 89-90.

20 Proposed AS 46.41.030(b)(4).

21 Proposed AS 46.41.010(h) and Proposed AS 46.41.130(h).

terms of the provisions, no different than those already authorized for members of boards and commissions. The per diem expenses and travel expenses do not set aside any specific amount of state assets, but rather are incidental liabilities that flow from the creation of the new government program and its implementing boards, and by the express terms of the bill are no different from the state liability that accrues to any other board or commission. Further, the outflow of state assets is clearly not the primary object of this bill. Thus, this provision is likely not a prohibited appropriation.[22]

Finally, the bill provides that "the state shall pay all election costs" to administer and conduct the elections of coastal resource service area board members.[23] Again, the elections system created by this initiative bill and the costs of implementing that system are incidental and ancillary to the creation of the program rather than its primary objective, and no specific amount of state assets is set aside or dedicated to cover the costs of these elections. This is likewise not a prohibited appropriation.

2. Does the Bill Dedicate Revenue?

This initiative bill proposes a new "objectives" statute, providing in part that "[t]he Alaska coastal management program shall be consistent with the following objectives … the recognition of the need for a … contribution of a share of the state's resources to meet national energy needs."[24] Under article XI, section 7 of the Alaska Constitution, the initiative process may not be used to "dedicate revenues." Likewise, under AS 15.45.010, an initiative "may not be proposed to dedicate revenue."

The vague "objective" of "recognition" of an ongoing need to utilize an unspecified type or amount of state resources does not amount to the dedication of revenue, so this provision does not violate that prohibition.

---

[22] A similar analysis would apply to proposed AS 46.41.010(i), requiring department staff to provide administrative support for the board and requiring the department, at the board's direction, to contract with or employ personnel or consultants the department considers necessary to assist the board in carrying out its duties and responsibilities.

[23] Proposed AS 46.41.140.

[24] Proposed AS 46.41.050(7) (emphasis added).

3. Does the Bill Define the Jurisdiction of Courts?

This initiative bill contains a provision that would give Alaska's superior courts "jurisdiction to enforce lawful orders of the board and the department under this chapter."[25] Accordingly, this provision raises the question whether the initiative bill "defines the jurisdiction of courts" in violation of the constitutional and statutory provisions governing the use of the initiative. Because the provision neither limits nor expands the existing jurisdiction of the superior court, we conclude that it does not define the jurisdiction of courts.

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, the initiative process may not be used to "define the jurisdiction of courts." The Alaska Supreme Court has not interpreted this particular restriction, but minutes from the Alaska Constitutional Convention reveal that the delegates were concerned primarily with the creation of special courts for special purposes by use of the initiative.[26]

Article IV, section 3 of the Alaska Constitution establishes the superior court as "the trial court of general jurisdiction" in the state. This constitutional provision is implemented by statute at AS 22.10.010-AS 22.10.190. Alaska Statute 22.10.020(a) provides that "[t]he superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters …." The Alaska Supreme Court has held that trial courts of general jurisdiction such as the superior court have "traditionally been regarded as having the power to hear all controversies which may be brought before a court within legal bounds of rights or remedies, except insofar as has been expressly and unequivocally denied by the state's constitution or statutes."[27]

In giving the superior court "jurisdiction to enforce lawful orders of the board and the department under this chapter,"[28] the initiative bill does not limit the existing

---

[25] Proposed AS 46.41.090(b).

[26] 1987 Inf. Op. Att'y Gen. (Mar. 23; 663-87-0323) at 4; 4 Proceedings of the Alaska Constitutional Convention 2854, 2967-2992 (1955-56).

[27] *Matter of C.D.M.*, 627 P.2d 607, 610 (Alaska 1981).

[28] Proposed AS 46.41.900 defines "board" as "the Alaska Coastal Policy Board established in AS 46.41.010" and "department" as "the Department of Commerce, Community and Economic Development."

jurisdiction of the superior court or confer upon the court any jurisdiction it does not already have under the Alaska Constitution and statutes." It is not clear from the bill exactly what "orders" of the board this provision intends to cover, but read in context, the provision seems aimed at ensuring access to judicial process—not at "defining" jurisdiction of the courts.

Although the precise meaning and intent of the proposed AS 46.40.090(b) is somewhat ambiguous, defining the jurisdiction of the court system is manifestly not an aim of this bill. Even a strict construction of the initiative restrictions in this case favors adherence to the long-standing principle that the people should generally have liberal access to the initiative process, and we have previously resolved similar ambiguities in favor of certification.[29] So we conclude that the initiative bill does not contain a prohibited subject with respect to defining the jurisdiction of courts.

4. Does the Bill Raise Any Additional Constitutional Concerns?

We note that this initiative bill is long and complex. In places, the bill is not clearly drafted and contains a number of typographical errors, inconsistencies, and ambiguities. Also, some provisions potentially raise specific constitutional issues or give rise to constitutional concerns.

For example, proposed AS 46.41.040(b) may raise potential due process issues with respect to implementation. That provision states that "the coastal districts, coastal district boundaries and approved coastal management plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska Coastal Management Program." This raises questions concerning the immediate application of these district plans to projects, given that the consistency review provisions will not be in place until adopted as regulations under AS 46.41.040(a)(2) and approved by the U.S. Department of Commerce under the Federal Coastal Zone Management Act as required in AS 46.41.020(a)(2). Similarly, the Division of Coastal Management will not be able to issue state responses on federal consistency determinations and certifications under AS 46.41.030(b) until the program is approved by the U.S. Department of Commerce.

---

[29] 2009 Op. Alaska Att'y Gen. (July 2) at 13 (finding that where provisions of an initiative bill possibly implicated the prohibition on prescribing court rules, that conclusion was "not so clear that we can recommend that [the Lt. Governor] deny certification of [the] initiative application.").

AS 46.41.040(b) raises potential due process problems under article I, section 7 of the Alaska Constitution and delegation of legislative authority issues under article II, section 1 because of the ambiguity and lack of standards for application of the local district plans in this interim period. However, a court is likely to interpret these provisions to avoid these constitutional infirmities[30] by applying these local district plan requirements to project reviews only after the scope of such projects and the consistency review procedures are defined in the regulations required by AS 46.41.040(a)(2) and those regulations are submitted and approved by the U.S. Department of Commerce as called for by proposed AS 46.41.020(a)(2).

Another potential problem involves pre-emption issues under the Alaska Constitution and the supremacy clause of the federal constitution with respect to the application of certain local district standards. Many of these potential pre-emption issues will not arise or become clear until the statewide and district coastal standards are adopted under AS 46.41.040(a)(1) and (2). Depending on how AS 46.41.060(b)(2), (c) and AS 46.41.180 are interpreted and implemented, and on what factual basis, these pre-emption and conflict of law issues may not arise. The same is true for any argument that differing coastal district enforceable policies may invoke equal protection concerns under article I, section 1 of the Alaska Constitution.

At this point, these provisions should be construed in favor of constitutionality.[31] You have the authority to deny certification if you determine that the measure violates any of the liberally construed restrictions on initiatives—the constitutional and statutory provisions regulating initiatives.[32] As discussed above, we do not believe such violations exist. With respect to other constitutional challenges "grounded in general contentions that the provisions of an initiative are unconstitutional," you may deny certification only

---

30 Where it is reasonable to do so, the Alaska Supreme Court "will construe statutes to avoid constitutional problems." *See, e.g., Whitesides v. State, Dep't of Public Safety, Div. of Motor Vehicles*, 20 P.3d 1130, 1139 (Alaska 2001) (citing *Chenega Corp. v. Exxon Corp.*, 991 P.2d 769, 785 (Alaska 1999)).

31 *See, e.g., Whitesides*, 20 P.3d at 1139.

32 *Alaska Action Center, Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004).

if "controlling authority leaves no room for argument about its unconstitutionality."[33] We find no such authority. In sum, we cannot say that these provisions are clearly unconstitutional on their face, or that the people should be denied access to the initiative process on that basis.

Finally, we should note that a court may sever impermissible portions of a proposed initiative bill during a pre-election review.[34]

B. FORM OF THE APPLICATION

The form of an initiative application is prescribed in AS 15.45.030, which provides:

> The application must include the
>
> (1) proposed bill;
>
> (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
>
> (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

---

[33] *Id*. (internal citations and quotations omitted).

[34] Specifically, severance is appropriate where "(1) standing alone, the remainder of the proposed bill can be given legal effect; (2) deleting the impermissible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than to be invalidated in its entirety." *McAlpine*, 762 P.2d at 94.

The application meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

C. NUMBER OF QUALIFIED SPONSORS

As noted above, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

III. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared a ballot-ready petition summary and title for your consideration. It is our practice to provide you with a summary and title to assist you in compliance with AS 15.45.090(2) and AS 15.45.180. Under AS 15.45.180, the title of an initiative is limited to 25 words and the body of the summary is limited to the number of sections in the proposed law multiplied by 50. "Section" in AS 15.45.180 is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter."

Technically this initiative bill has only one "section," but this single section creates an entire new chapter of the Alaska Statues consisting of 18 new statutory provisions governing a complex new program. All of these provisions are distinguishable in purpose, if not subject matter. If the bill were treated as a single section, the summary would be limited to 50 words. Alaska Statute 15.45.180 requires that the ballot proposition "give a true and impartial summary" of an initiative bill, and the Alaska Supreme Court has held that such a summary should provide "an accurate depiction of the scope and substance of the initiative."[35]

It is not possible to accomplish these mandates by summarizing this initiative bill in 50 or fewer words. So we think the proper approach is to treat these 18 provisions as separate sections for purposes of summary preparation. Therefore the maximum number of words for the summary may not exceed 900. We have used 703 words in the summary and seven words in the title of the following proposed summary, which we submit for your review:

---

[35] *Pebble L.P. v. Parnell*, 215 P.3d 1064, 1084 (Alaska 2009).

Establishment of an Alaska Coastal Management Program

This bill would create the Alaska Coastal Management Program in the Department of Commerce, Community, and Economic Development ("the Department"). The program would develop new state and local standards to review projects in coastal areas of the State. These standards would be in addition to existing state and federal permitting requirements. Both state and federally permitted projects would be reviewed under the program. The program would go into effect upon federal approval of these new state and local standards by the U.S. Department of Commerce under the federal Coastal Zone Management Act.

The bill creates a Coastal Policy Board. The board would have 13 members appointed by the governor. Nine would be members of the public from coastal areas. 4 would be state commissioners. The board would coordinate agencies for coastal and ocean planning. The board would work with agencies to develop and implement the program. The board would also review, approve, and evaluate coastal district management plans ("district plans"). The board would direct the Department to apply for funding. The board would review and approve regulations. Board members could receive per diem and travel expenses.

The bill sets out 9 coastal districts. Each district would adopt a district plan. District plans would need board approval. To be approved, the district plan must comply with the bill's provisions and regulations approved by the board. Each district plan would set boundaries for the coastal area subject to the district plan. District plans would define the land and water uses subject to the district plan's requirements. District plans would also set special management areas and enforceable policies. The bill sets standards for district enforceable policies. The bill defines when an enforceable policy is pre-empted by existing state or federal law.

The bill would restore coastal districts, boundaries, and district plans that were in effect on June 30, 2011 under the prior coastal management program. Coastal districts would have to review their prior district plans and submit any needed changes for board approval. Coastal districts with zoning or land use authority would use those powers to apply their district plans. Otherwise, state agencies would put the district plan into effect. Local and state agencies would regulate uses to conform to the district plans. The superior court could enforce board or department orders.

The bill would also create the Division of Ocean and Coastal Management in the Department. This division would issue state consistency determinations and respond to

federal consistency determinations and certifications. It would adopt board-approved regulations. It would also give planning and management information to coastal districts. The division would create a financial aid program to help coastal districts create and effect their district plans.

The bill sets goals for the program. These goals include (1) management goals for coastal uses and resources; (2) the coordination of coastal planning among government and citizens; (3) public and government participation in the program; and (4) require state agencies to comply with the program.

The bill requires that regulations be adopted. The regulations would be approved by the board and then issued by the division. They would set state coastal standards, district plan requirements, and consistency review procedures.

The bill would allow regional education attendance areas ("REAAs") in the unorganized borough to be used as Coastal Resource Service Areas ("CRSAs"). CRSAs would act through a board and function like coastal districts. The Department could combine or divide REAAs into CRSAs under set conditions. A coastal city could also be included in a CRSA under set conditions. CRSAs could also be created by voters or by a voter-approved city or village council decision. Service areas would elect boards with seven members. The State would run and fund CRSA board elections. Under some circumstances, board members could be appointed. Board members could be recalled. They could receive per diem and travel expenses. If voters fail to create a needed service area, the Department could create a district plan for the area to submit to the legislature. Under set conditions, the Department could complete a district plan for a CRSA. The bill creates a development, approval and implementation process for district plans in service areas.

The bill sets out rules of construction and defines 16 terms.

Should this initiative become law?

This summary has a Flesch test score of 52.8 and thus approximates the target readability score of 60 set out in AS 15.80.005. We have tried to use simple words to summarize the complex subject matter of this initiative to ensure that the summary meets the statutory readability standards set forth in AS 15.80.005.

IV. CONCLUSION

For the foregoing reasons, we find that the proposed bill and application are in the proper form and that the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact me if we can be of further assistance in this matter.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:
Elizabeth M. Bakalar
Assistant Attorney General