

CS FOR SENATE BILL NO. 142(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/14/03
Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act designating the Department of Natural Resources as lead agency for resource**
2 **development projects; making conforming amendments; and providing for an effective**
3 **date."**

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

5 * **Section 1.** AS 38.05.020(b) is amended to read:

6 (b) The commissioner may

7 (1) establish reasonable procedures and adopt reasonable regulations
8 necessary to carry out this chapter and, whenever necessary, issue directives or orders
9 to the director to carry out specific functions and duties; regulations adopted by the
10 commissioner shall be adopted under AS 44.62 (Administrative Procedure Act);
11 orders by the commissioner classifying land, issued after January 3, 1959, are not
12 required to be adopted under AS 44.62 (Administrative Procedure Act);

13 (2) enter into agreements considered necessary to carry out the
14 purposes of this chapter, including agreements with federal and state agencies;

- 1 (3) review any order or action of the director;
- 2 (4) exercise the powers and do the acts necessary to carry out the
- 3 provisions and objectives of this chapter;
- 4 (5) notwithstanding the provisions of any other section of this chapter,
- 5 grant an extension of the time within which payments due on any exploration license,
- 6 lease, or sale of state land, minerals, or materials may be made, including payment of
- 7 rental and royalties, on a finding that compliance with the requirements is or was
- 8 prevented by reason of war, riots, or acts of God;
- 9 (6) classify tracts for agricultural uses;
- 10 (7) after consulting with the Board of Agriculture and Conservation
- 11 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements
- 12 of a contract for the sale of agricultural land if
- 13 (A) the land is inaccessible by road; or
- 14 (B) transportation, marketing, and development costs render
- 15 the required development uneconomic;
- 16 (8) reconvey or relinquish land or an interest in land to the federal
- 17 government if
- 18 (A) the land is described in an amended application for an
- 19 allotment under 43 U.S.C. 1617; and
- 20 (B) the reconveyance or relinquishment is
- 21 (i) for the purposes provided in 43 U.S.C. 1617; and
- 22 (ii) in the best interests of the state;

23 **(9) lead and coordinate all matters relating to the state's review**

24 **and authorization of resource development projects.**

25 * **Sec. 2.** AS 41.17.085 is amended by adding a new subsection to read:

26 (c) An operator may apply through the commissioner for permits required by

27 other state agencies to operate on forest land. The applications may be forwarded to

28 the commissioner of environmental conservation for procedures under AS 46.35. The

29 commissioner shall notify the operator of the action taken.

30 * **Sec. 3.** AS 46.03.020 is amended by adding a new paragraph to read:

31 (13) after consultation with other state agencies and local government

1 officials, identify and propose for addition or deletion, by regulation, other licenses,
2 permits, or authorizations for which the provisions of AS 46.35 are applicable.

3 * **Sec. 4.** AS 46.03.880 is amended by adding a new subsection to read:

4 (b) Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to
5 review permit decisions under this chapter need not conform to AS 44.62.330 -
6 44.62.630 (Administrative Procedure Act).

7 * **Sec. 5.** AS 46.04 is amended by adding a new section to article 3 to read:

8 **Sec. 46.04.890. Applicability of Administrative Procedure Act.**

9 Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review
10 permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630
11 (Administrative Procedure Act).

12 * **Sec. 6.** AS 46.35 is amended by adding new sections to read:

13 **Sec. 46.35.011. Legislative determination.** The legislature determines that
14 the substantial burdens placed upon persons who are proposing to undertake certain
15 types of projects in this state through requirements to obtain numerous permits and
16 related documents from various federal, state, and local agencies are undesirable and
17 should be alleviated. The legislature further finds that present methods for obtaining
18 public views relating to applications to state and local agencies pertaining to these
19 projects are cumbersome and place undue hardships on members of the public with the
20 result that the public ability to express its views is hindered and not facilitated.

21 **Sec. 46.35.021. Purpose.** It is the purpose of AS 46.35.011 - 46.35.211 to

22 (1) establish a simplified procedure to assist those who, to satisfy the
23 requirements of federal, state, and local law, must obtain a permit from one or more
24 federal, state or local government agencies by establishing a procedure to coordinate
25 the administrative decision-making process;

26 (2) provide to the members of the public a better opportunity to present
27 their views on proposed uses of the state's natural resources and related environmental
28 concerns before federal, state, and local agencies decide on applications for permits;

29 (3) provide to applicants for the use of the air, land, or water resources
30 of the state a greater degree of certainty on permit requirements of federal, state, and
31 local governments;

1 (4) increase the coordination between federal, state, and local agencies
2 in their administration of programs affecting the state's air, land, and water resources;

3 (5) establish an opportunity for members of the public to obtain
4 information pertaining to requirements of federal, state, and local law that must be
5 satisfied before undertaking a project in this state.

6 **Sec. 46.35.031. Master application.** (a) A person proposing a project that
7 requires the issuance of one or more permits may submit a master application to the
8 department requesting the issuance of all permits and documents necessary before the
9 construction and operation of the project in the state. The master application must be
10 on a form established by the department and must contain sufficient information as to
11 the location and the nature of the project, including discharge of wastes and use of or
12 interference with natural resources of the state.

13 (b) Upon receipt of a properly completed master application, the department
14 shall immediately forward a copy of the application to all heads of executive
15 departments of the state and the chief elected official of all municipalities in which a
16 portion of the project is proposed to be constructed, together with the date by which
17 the agency shall respond to the master application.

18 (c) Each agency notified shall respond in writing to the department by the
19 specified date, not exceeding 15 days from receipt, as determined by the department,
20 advising

21 (1) whether the agency has an interest in the master application;

22 (2) if the response to (1) of this subsection is affirmative, the permit
23 program under the agency's jurisdiction to which the project described in the master
24 application is pertinent; and

25 (3) whether, in relation to the master application, a public hearing as
26 provided in AS 46.35.051 and 46.35.061 would be in the public interest.

27 (d) Each notified agency that (1) responds within the specified date that it does
28 not have an interest in the master application; or (2) does not respond as required
29 within the specified date, may not subsequently require a permit of the applicant for
30 the project described in the master application unless the master application contained
31 false, misleading, or deceptive information, or other information or lack of

1 information that would reasonably lead an agency to misjudge its interest in the master
2 application.

3 (e) The department shall submit application forms relating to permit programs
4 identified in affirmative responses under (c) of this section to the applicant with a
5 direction to complete and return them to the department within a reasonable time as
6 specified by the department.

7 (f) When the applications, properly completed, have been returned to the
8 department, each of the applications shall be transmitted to the appropriate state
9 agency for the performance of its responsibilities of decision making in accordance
10 with the procedures of AS 46.35.011 - 46.35.211.

11 **Sec. 46.35.041. Withholding final permit.** When it appears that the
12 applicant does not own or control the land or water necessary for the siting of the
13 project in the master application, the department shall continue the proceedings under
14 AS 46.35.011 - 46.35.211 but may withhold the final permit until the applicant has
15 obtained ownership or control of the land or water necessary for the site of the project.
16 If the applicant has applied for land or water necessary for the siting of the project
17 from the state or a municipality of the state, the state agency or municipality shall
18 promptly adjudicate the application for the land or water filed by applicant.

19 **Sec. 46.35.051. Notice of proposed project.** (a) The department, within 30
20 days after transmittal under AS 46.35.031(f), shall cause a notice to be published at the
21 applicant's expense once each week for three consecutive weeks in a newspaper of
22 general circulation within each municipality in which the project is proposed to be
23 constructed or operated. The notice must describe the nature of the master application,
24 including, with reasonable specificity, the project proposed, its location, the various
25 permits or documents applied for, and the state agency having jurisdiction over each
26 permit or document. Except as provided in (c) of this section, the notice must also
27 state the time and place of the public hearing, which shall be scheduled not less than
28 20 or more than 30 days after the date of last publication of the notice. It must further
29 state that a copy of the master application and a copy of all applications for the project
30 are available for public inspection in the regional office of the department nearest to
31 where the project is proposed to be constructed or operated, as well as at the

1 department office in the capital and any other locations the department may designate
2 in the notice.

3 (b) If no part of the project is to be constructed or operated in a municipality,
4 or if there is no regularly published newspaper of frequency at least weekly, the public
5 notice shall be published in a newspaper in the judicial district in which the project is
6 proposed.

7 (c) If the responses received by the department from state agencies under
8 AS 46.35.031(f) unanimously state the position that a public hearing concerning a
9 master application is not necessary in the public interest, and the department, after a
10 careful evaluation, taking into consideration all interests involved, including the
11 opportunity for members of the public to present views, agrees, the provisions of (a) of
12 this section pertaining to the time and place of a public hearing need not be included in
13 the notice. In that case the notice must state that members of the public may present
14 their views and supporting materials in writing to the department regarding any of the
15 permits applied for within 30 days after the last date of publication of the notice in a
16 newspaper.

17 **Sec. 46.35.061. Public hearing.** (a) Except as provided in AS 46.35.051(c),
18 before a final decision is made on a permit application relating to a project subject to
19 the procedures of AS 46.35.011 - 46.35.211, a public hearing shall be held in or near
20 the municipality in which all or a major part of the proposed project is to be
21 constructed or operated, or, if the project is not to be constructed or operated in a
22 municipality, the hearing shall be held at a location reasonably convenient to the site
23 of the proposed project. The hearing shall be held in accordance with the notice given
24 under AS 46.35.051(a). At the hearing the applicant may submit any relevant
25 information and material in support of the applications, and members of the public
26 may present relevant views and supporting materials relating to any or all of the
27 applications being considered.

28 (b) Each state agency having an application for a permit before it under
29 AS 46.35.051(a) shall be represented at the public hearing by its commissioner or a
30 designee of the commissioner. The commissioner of the department, a designee of the
31 commissioner, or a hearing officer appointed by the governor, shall chair the hearing;

1 however, the representative of any state agency other than the department within
2 whose jurisdiction a specific application lies shall conduct the portion of the hearing
3 pertaining to submission of information, views, and supporting materials that concern
4 that application. The chair may continue a hearing from time to time and place to
5 place.

6 (c) The provisions of AS 44.62 do not apply to the hearing conducted under
7 this section, and the hearing shall be conducted for the purpose of obtaining
8 information for the assistance of state agencies and not as a trial or adversary
9 proceeding.

10 (d) Federal and local government agencies may be represented at the hearings,
11 at their option, by their chief executive officer or the officer's designee.

12 (e) The hearing shall be electronically recorded, and copies of the recording
13 shall be made available to state, federal and local agencies upon request.

14 **Sec. 46.35.071. Final decision.** (a) Upon completion of the public hearing
15 the chair, after consultation with the state agency representatives, shall establish the
16 date by which all state agencies shall forward their final decisions on applications
17 before them to the department. The date established shall be within the following 90-
18 day period after the public hearing.

19 (b) In a situation where a notice is provided under AS 46.35.051(c), the
20 department shall, 30 days after the last notice publication in the newspaper, submit a
21 copy of all views and supporting material received by it to each agency as described in
22 the notice as having an application before it. At the same time, the department shall
23 notify each state agency, in writing, of the date by which final decisions on
24 applications shall be forwarded to the department. That date shall be not later than 90
25 days after the date of last publication of the notice, but may be extended by the
26 department for reasonable cause.

27 (c) Each final decision shall state the basis for the conclusion together with a
28 final order denying the application for a permit or granting it, subject to a condition of
29 approval as the deciding agency may have the power to impose. An agency that
30 denies an application shall, with its final decision denying the application, provide a
31 written summary suggesting alternate means of completing the project, or, if no

1 alternative is feasible, the agency shall provide a written summary of its reasons for
2 that conclusion.

3 (d) As soon as all final decisions are received by the department under (b) and
4 (c) of this section, the department shall incorporate them, without modification, into
5 one document and transmit it to the applicant either personally or by registered mail.

6 (e) Each state agency having jurisdiction to approve or deny an application for
7 a permit shall have the power vested in it by law to make such determinations.
8 Nothing in AS 46.35.031 - 46.35.071 lessens or reduces these powers, and
9 AS 46.35.031 - 46.35.071 modify only the procedures to be followed in the carrying
10 out of the powers.

11 (f) A state agency, in the performance of its responsibilities of decision
12 making under AS 46.35.011 - 46.35.211, may request or receive additional
13 information from an applicant and others before or after the public hearing.

14 **Sec. 46.35.081. Withdrawal of agency from participation.** (a) A state
15 agency responding affirmatively under AS 46.35.031(c) may withdraw from
16 participation in the processing provided in AS 46.35.031 - 46.35.071 at any time, by
17 written notification to the department, if it subsequently appears to the state agency
18 that it has no permit programs under its jurisdiction applicable to the project.

19 (b) A decision by a state agency to withdraw from the proceeding is
20 irreversible, and the state agency may not subsequently require a permit of the
21 applicant for the project described in the master application unless the master
22 application contained false, misleading, or deceptive information, or other information
23 or lack of information which would reasonably lead an agency to misjudge its interest
24 in the master application.

25 **Sec. 46.35.091. Administrative and judicial review.** (a) A person aggrieved
26 by a final decision issued under AS 46.35.071(d) may file a notice of appeal with the
27 commissioner requesting an adjudicatory hearing within 30 days of transmittal of the
28 final decision to the person. A failure to file a timely notice of appeal constitutes a
29 waiver of the person's right to review the final decision, unless the failure was due to
30 circumstances beyond the applicant's control.

31 (b) The commissioner shall grant a request for an adjudicatory hearing within

1 20 days of filing of the notice of appeal if the commissioner determines that the notice
2 raises a reasonable issue of fact or law material to the final decision.

3 (c) A hearing officer appointed under AS 44.62.350 shall preside at hearings
4 under this section, rule on the admission and exclusion of evidence, advise the
5 deciding officers on matters of law, and participate in posthearing deliberations.

6 (d) Appeals shall be heard jointly by the commissioner, or a designee, of each
7 agency that rendered a final decision under AS 46.35.071 for which the person
8 requesting the hearing is aggrieved. The commissioner, or the designee, of each
9 agency shall decide only that portion of the appeal that involves that agency.

10 (e) The commissioner, after consultation with other state agencies and local
11 government, shall adopt regulations governing the conduct of adjudicatory hearings
12 under this section. The commissioner may enter into cooperative agreements with
13 local governments and federal agencies for the joint holding of adjudicatory hearings.
14 To the extent feasible, regulations adopted under this section must conform to
15 adjudicatory hearing procedures for the review of permit decisions under AS 46.03
16 and AS 46.04. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures
17 to review permit decisions under AS 46.35.011 - 46.35.211, or under AS 46.03 or
18 AS 46.04, need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure
19 Act).

20 (f) A person aggrieved by a final decision of the commissioner under this
21 section may appeal the decision to the superior court in the manner provided by
22 AS 44.62.560 - 44.62.570.

23 **Sec. 46.35.101. Time; extensions.** It is the sense of the legislature that time is
24 of the essence in the processing of applications under AS 46.35.011 - 46.35.211.
25 Whenever a section in AS 46.35.011 - 46.35.211 states a time within which an act or a
26 review is to be completed, the legislature has determined that the time allotted is
27 adequate for a responsive state agency or municipality to complete the act or review. If
28 unusual conditions prevent this from happening, it is the sense of the legislature that
29 minimum extensions of the period established in AS 46.35.011 - 46.35.211 may be
30 granted upon a determination that the delay occurred beyond the control of the
31 reviewing agency or municipality.

1 **Sec. 46.35.111. Application.** Notwithstanding any other provisions of
2 regulation or statute relating to the processing of application for permits, the
3 procedures set out in AS 46.35.011 - 46.35.211 are exclusive for applications filed
4 under AS 46.35.031. The procedures of AS 46.35.011 - 46.35.211 are in lieu of any
5 procedures otherwise provided by law or regulation, and are to be followed by a state
6 agency in ruling upon those applications.

7 **Sec. 46.35.121. Fee schedules.** Fee schedules previously established or
8 authorized by law for an application for a permit continue to apply. The department
9 shall collect the fees and forward them to the appropriate state agency.

10 **Sec. 46.35.131. Compliance with local zoning ordinances and plans.** (a) A
11 permit for a project filed under AS 46.35.031 may not be issued unless the application
12 has provided a certification from the appropriate local government that the project is in
13 compliance with the zoning ordinances and associated comprehensive plans
14 administered by the local government regarding the project. If the local government
15 has no ordinances or plans, the local government shall certify that fact. A local
16 government may accept applications for certification under this section and shall rule
17 upon them within 30 days. A local government may impose stipulations of
18 performance in its approval, but, upon certification, the local government may not
19 change the zoning ordinances as to the proposed project until the procedures of
20 AS 46.35.011 - 46.35.211, including an appeal, are completed.

21 (b) Approval of an application for certification as provided in this section does
22 not eliminate any requirements of ordinances administered by a local government. A
23 ruling by local government denying an application for certification is not appealable
24 under AS 46.35.011 - 46.35.211, except that the denial of an application for
25 certification under (a) of this section does not preclude the applicant from filing an
26 application under a different statute or procedure.

27 **Sec. 46.35.141. Applicability of other laws.** AS 46.35.011 - 46.35.211 do
28 not modify in any manner the applicability of a land use law or regulation or local
29 zoning ordinances to land of a state agency.

30 **Sec. 46.35.151. Regulations.** The department may adopt regulations to
31 implement the provisions of AS 46.35.011 - 46.35.211.

1 **Sec. 46.35.161. Permit requirement information centers.** (a) The
2 department shall establish permit requirement information centers at the
3 commissioner's office and in all of its regional offices and may enter into an
4 agreement with the governing body of any municipality having a population of more
5 than 1,000 persons to establish and maintain local information centers to provide
6 information to the public, in readily understandable form, regarding the requirements
7 of federal, state, and local governments for permits which must be acquired before
8 initiating projects in this state and to provide assistance in the completion of permit
9 applications.

10 (b) Each regional office of the department and other offices as the department
11 may establish shall provide a master application to any person requesting it. The
12 department shall provide information, forms, instructions, and assistance in the
13 completion of a master application under AS 46.35.011 - 46.35.211 to a person
14 requesting assistance.

15 **Sec. 46.35.171. Conflicts and compliance with federal requirements.** (a)
16 If any part of AS 46.35.011 - 46.35.211 is found in conflict with federal requirements
17 regarding the allocation of federal funds to the state, that part of AS 46.35.011 -
18 46.35.211 is inoperative to the extent of the conflict regarding the agencies affected,
19 and the determination does not affect the operation of the remainder of AS 46.35.011 -
20 46.35.211.

21 (b) The department, to the extent necessary to comply with procedural
22 requirements of federal law relating to permit systems operated by the state, may
23 modify the notice, timing, hearing, and related procedural matters provided in
24 AS 46.35.011 - 46.35.211.

25 **Sec. 46.35.201. Definitions.** In AS 46.35.011 - 46.35.211,

26 (1) "commissioner" means the commissioner of environmental
27 conservation;

28 (2) "department" means the Department of Environmental
29 Conservation;

30 (3) "local government" means a city or borough including a unified
31 municipality;

1 (4) "permit" means each of the following licenses, permits or
 2 authorizations required to be obtained from a state agency before constructing or
 3 operating a project in the state, or any other license, permit or authorization which
 4 may be designated by the commissioner:

5 (A) emission control permit - AS 46.14, 18 AAC 50.120;

6 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;

7 (C) burning permit during fire season - AS 41.15.050, 11
 8 AAC 92.010;

9 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;

10 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;

11 (F) brine or other salt water waste disposal permit -
 12 AS 31.05.030, 11 AAC 22.250;

13 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;

14 (H) tidelands right-of-way or easement permit -
 15 AS 38.05.820, 11 AAC 62.810;

16 (I) authorization for tidelands transportation - AS 38.05.110,
 17 11 AAC 76.205;

18 (J) tide and submerged lands prospecting permit -
 19 AS 38.05.250;

20 (K) mineral and geothermal prospecting permits -
 21 AS 38.05.145;

22 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;

23 (M) dam construction permit - AS 46.15.040, 11 AAC
 24 72.060;

25 (N) water well permit - AS 31.05.030, 11 AAC 22.140;

26 (O) permit to appropriate water - AS 46.15.040, 11 AAC
 27 72.050;

28 (P) permit for use of timber or materials - AS 38.05.110, 11
 29 AAC 76.185;

30 (Q) special material use permit - AS 38.05.115, 11 AAC
 31 76.540;

- 1 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;
- 2 (S) limited personal use permit - AS 38.05.820, 11 AAC
- 3 62.820;
- 4 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;
- 5 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;
- 6 (V) miscellaneous state land use permit - AS 38.05.035, 11
- 7 AAC 96.010;
- 8 (W) anadromous fish protection permit - AS 16.05.870, 5
- 9 AAC 95.100;
- 10 (X) critical habitat area permit - AS 16.20.520 - 16.20.530;
- 11 (Y) state game refuge land permit - AS 16.20.050 -
- 12 16.20.060;
- 13 (Z) state park incompatible use permit - AS 41.21.020, 11
- 14 AAC 18.010;
- 15 (AA) pesticides permit - AS 46.03.320, 18 AAC 90;
- 16 (BB) surface oiling permit - AS 46.03.740, 18 AAC 75;
- 17 (CC) encroachment permit - AS 19.25.200;
- 18 (DD) utility permit - AS 19.25.010;
- 19 (EE) driveway permit - AS 19.05.020, 17 AAC 10.020;
- 20 (FF) access roads permit - AS 41.21.020, 11 AAC 18.020;
- 21 (GG) right-of-way and easement permits - AS 38.05.850, 11
- 22 AAC 58.200;
- 23 (HH) right-of-way permit - AS 38.05.850;
- 24 (5) "person" means an individual, municipal, public, or private
- 25 corporation, or other entity, and includes a state agency and a local government;
- 26 (6) "processing" and "processing of applications" means the entire
- 27 process followed in relation to the making of decisions on an application for a permit
- 28 and review of it as provided in AS 46.35.031 - 46.35.081;
- 29 (7) "project" means any new activity or expansion of or addition to an
- 30 existing activity, fixed in location, for which permits are required before construction
- 31 or operation;

1 (8) "state agency" means a state department, commission, board or
2 other agency of the state; for the purposes of AS 46.35.011 - 46.35.211, "state agency"
3 also means a local or regional air pollution control authority established under
4 AS 46.14.400.

5 **Sec. 46.35.211. Short title.** AS 46.35.011 - 46.35.211 may be cited as the
6 Environmental Procedures Coordination Act.

7 * **Sec. 7.** AS 41.17.085(a); AS 46.03.020(11); AS 46.35.010, 46.35.020, 46.35.030,
8 46.35.040, 46.35.050, 46.35.060, 46.35.070, 46.35.080, 46.35.090, 46.35.100, 46.35.110,
9 46.35.120, 46.35.130, 46.35.140, 46.35.150, 46.35.160, 46.35.170, 46.35.200, and 46.35.210
10 are repealed.

11 * **Sec. 8.** AS 38.05.020(b)(9); AS 46.03.880(b); and AS 46.04.890 are repealed.

12 * **Sec. 9.** Sections 1, 4, 5, and 7 of this Act take effect immediately under AS 01.10.070(c).

13 * **Sec. 10.** Sections 2, 3, 6, and 8 of this Act take effect July 1, 2007.