

**HOUSE BILL NO. 309**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES BERKOWITZ, Kerttula**

**Introduced: 5/8/05**

**Referred: House Special Committee on Oil and Gas, Resources, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the adoption and use of a unified application, review, decision, and**  
2 **appeal process for certain project permits; and providing for an effective date."**

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

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

6 LEGISLATIVE PURPOSE. It is the purpose of this Act to provide an efficient  
7 permitting system for projects in Alaska that encourages responsible resource development  
8 and public participation in the permit review process.

9 \* **Sec. 2.** AS 44.19 is amended by adding new sections to read:

10 **Article 5A. Unified Permit Application and Process.**

11 **Sec. 44.19.851. Unified permit application center.** The Resource Permitting  
12 Center is established in the Office of the Governor.

13 **Sec. 44.19.852. Unified permit application.** (a) The center shall, in  
14 consultation with the resource agencies, develop a unified permit application form.

1 The center may develop different versions of the form applicable to specific activities.  
 2 All versions of the form must be approved by the commissioner of each resource  
 3 agency before use. The form must require the applicant to provide the following  
 4 information and any other information necessary to meet the statutory and regulatory  
 5 permit requirements of a resource agency:

- 6 (1) the applicant's name;
- 7 (2) the applicant's contact information, including the applicant's
  - 8 (A) address;
  - 9 (B) telephone number;
  - 10 (C) electronic mail address, if any;
  - 11 (D) facsimile number, if any;
- 12 (3) a description of the project, including
  - 13 (A) a complete and detailed description of the proposed project,  
 14 with sufficient specificity for the reviewing agencies to determine the purpose  
 15 of the proposed project;
  - 16 (B) maps, diagrams, technical data, and other relevant material  
 17 that precisely describe the site location, topographical information, township,  
 18 range, section, meridian, and other site-specific information of the project;
- 19 (4) the proposed start and end dates for the project; and
- 20 (5) for a project that requires a federal or resource agency permit that  
 21 is subject to the Alaska coastal management program, a consistency certification that  
 22 states, "The proposed project complies with the applicable enforceable policies of the  
 23 Alaska coastal management program and will be conducted in a manner consistent  
 24 with the program."

25 (b) Following adoption of a unified permit application form by the center and  
 26 the resource agencies, a unified permit application shall be the only application  
 27 required for any state permitting action, including a consistency review under the  
 28 Alaska coastal management program.

29 (c) Through a collaborative process, the center and the resource agencies may,  
 30 from time to time, revise the unified permit application form as necessary to conform  
 31 to changes in applicable statutes and regulations.

1           **Sec. 44.19.853. Project questionnaire.** The center shall develop a project  
 2 questionnaire to solicit information regarding the project description and site  
 3 information from a prospective applicant.

4           **Sec. 44.19.854. Preapplication assistance.** (a) The center shall, on request,  
 5 assist a prospective applicant in identifying the permits needed for a project.

6           (b) At the time a prospective applicant requests assistance under this section,  
 7 the prospective applicant shall, at a minimum, provide a brief description of the  
 8 proposed project. To the extent feasible, the applicant shall provide the center with

9                   (1) a completed project questionnaire on a form approved by the center  
 10 in consultation with the resource agencies;

11                   (2) a map identifying the location of the project and adjacent facilities;  
 12 and

13                   (3) a description of any structures or natural features that are at or  
 14 adjacent to the project site.

15           (c) The applicant may request that the center provide information, including

16                   (1) information about the project questionnaire and review process;

17                   (2) preliminary identification of local governments and coastal  
 18 resource districts that may have an interest in the project;

19                   (3) preliminary identification of each permit that is likely to be needed  
 20 for the project;

21                   (4) to the extent feasible, an estimate of the time for the project review;  
 22 and

23                   (5) to the extent feasible, preliminary identification of information that  
 24 may be required to determine compliance with the requirements for each resource  
 25 agency permit and potential mitigation requirements.

26           **Sec. 44.19.855. Notice to local government and coastal resource district.**

27 (a) The center shall inform a local government and coastal resource district of a  
 28 proposed project

29                   (1) within the boundaries of the local government or coastal resource  
 30 district; or

31                   (2) that may have an effect within the local government or district

1 boundaries.

2 (b) The center shall invite representatives of a potentially affected local  
3 government and coastal resource district to attend any preapplication meeting  
4 scheduled.

5 **Sec. 44.19.856. Submission of permit application; initial review.** (a) An  
6 applicant for permits from two or more resource agencies shall complete a unified  
7 permit application on a form provided by the center and submit the application to the  
8 center.

9 (b) Within seven days after receipt of a unified permit application, the center  
10 shall determine whether the application is complete.

11 (c) An application is complete if the application

12 (1) contains the information described in AS 44.19.852; and

13 (2) is sufficient to begin a review under the statutory and regulatory  
14 requirements for each resource agency from which a permit is required.

15 (d) If the center determines that the application is incomplete, the center shall  
16 notify the applicant and identify the information necessary to complete the application.  
17 Once the center has determined that an application is complete, it shall immediately  
18 submit a copy of the application to each member of the regional project review team  
19 for the region or regions in which the project will be located.

20 **Sec. 44.19.857. Unified permit application review.** (a) Within 14 days  
21 after receipt of a complete unified permit application, a project review team member  
22 shall request from the center any additional information the team member's agency  
23 needs to conduct the agency's review of the application. The center shall submit a  
24 consolidated request for additional information to the applicant. The center shall  
25 supply any additional information provided by the applicant to each project review  
26 team member reviewing the application.

27 (b) Within seven days after receiving the additional information provided by  
28 the applicant from the center, the regional project review team member requesting the  
29 information shall notify the center whether the information is adequate. If the  
30 information is not adequate, the project review team member shall

31 (1) explain how the information submitted is inadequate; and

1 (2) identify

2 (A) the information that is needed to satisfy the original  
3 request; and

4 (B) any information needed to analyze issues raised by the  
5 response to the original request for additional information.

6 **Sec. 44.19.858. Regional project review teams.** (a) The center, in  
7 consultation with the resource agencies, shall establish regional project review teams  
8 to review proposed projects within each of the following geographic regions:

9 (1) Northwest Alaska, including the North Slope Borough and the  
10 Northwest Arctic Borough;

11 (2) Bering Strait, including the Bering Strait regional educational  
12 attendance area;

13 (3) Southwest Alaska, including the area within the Lower Yukon,  
14 Lower Kuskokwim, and Southwest regional educational attendance areas and the Lake  
15 and Peninsula and Bristol Bay Boroughs;

16 (4) Kodiak-Aleutians, including the Kodiak Island and Aleutian East  
17 Boroughs and the Aleutian, Adak, and Pribilof regional educational attendance areas;

18 (5) Upper Cook Inlet, including the Municipality of Anchorage and the  
19 Matanuska-Susitna Borough;

20 (6) Lower Cook Inlet, including the Kenai Peninsula Borough;

21 (7) Prince William Sound, including the area east of the Kenai  
22 Peninsula Borough to 141 West longitude;

23 (8) northern Southeast Alaska, including the area southeast of 141  
24 West longitude and north of 57 North latitude, including the City and Borough of  
25 Sitka;

26 (9) southern Southeast Alaska, including that portion of Southeast  
27 Alaska not contained within the area described in (8) of this subsection; and

28 (10) Interior Alaska, including the Fairbanks North Star Borough.

29 (b) Each regional project review team must include at least one member  
30 appointed by the commissioner of each resource agency.

31 (c) Each team member shall review the completed unified permit application

1 under the statutes and regulations of that team member's agency. No agency shall  
2 have veto authority over another agency's review findings.

3 (d) For a project subject to the requirements of the Alaska coastal management  
4 program, each regional project review team member shall review a unified permit  
5 application for consistency with applicable statewide standards and coastal resource  
6 district enforceable policies. When considering coastal district enforceable policies,  
7 the review team shall defer to the coastal district in interpretation and application of  
8 the enforceable policy.

9 (e) A project review team shall

10 (1) work cooperatively to reach preliminary and final unified permit  
11 decisions;

12 (2) meet established deadlines;

13 (3) represent the best interest of the state in the review of a proposed  
14 project;

15 (4) consult with the applicant, affected local governments, coastal  
16 resource districts, federal agencies, and the public to ensure an effective review  
17 process that addresses state and local concerns; and

18 (5) make use of the best available scientific information and applicable  
19 local knowledge in the decision-making process.

20 **Sec. 44.19.859. Scope of review.** The scope of the review by the project  
21 review team shall, at a minimum, include each project activity that requires a resource  
22 agency permit and each activity that requires a federal permit subject to the Alaska  
23 coastal management program.

24 **Sec. 44.19.860. Phased project reviews.** (a) With the consent of the  
25 applicant, the review team may limit a project review to a discrete phase of the project  
26 when

27 (1) at the time the project review is initiated, there is insufficient  
28 information to evaluate and make a unified permit decision for the entirety of the  
29 proposed project;

30 (2) the proposed project is capable of proceeding in discrete phases,  
31 and information is being developed and was not available to the applicant at the time

1 the previous phase was subject to review; and

2 (3) each subsequent phase of the proposed project is subject to the  
3 discretion to implement alternative decisions, including permit denial, based on  
4 developing information.

5 (b) When a project review is limited to a review of a discrete phase under (a)  
6 of this section, the review team shall describe in the preliminary and final unified  
7 permit decision the reasons for its decision to conduct the review in phases.

8 (c) Each phase of a proposed project will require an individual review subject  
9 to the requirements of AS 44.19.851 - 44.19.869.

10 **Sec. 44.19.861. Timeline for review.** (a) A project review team shall issue a  
11 preliminary unified permit decision within 30 days after the team's receipt of a  
12 complete application, or within 30 days after the team's receipt of any additional  
13 information required to complete an application, unless the commissioner of a  
14 resource agency finds that additional time is necessary for that agency to fulfill  
15 statutory requirements and responsibilities.

16 (b) At the time a preliminary decision under (a) of this section is issued, a  
17 project review team shall establish the period for receiving public comment based on  
18 the complexity, size, and effect of the project; a minimum of 20 days for receipt of  
19 public comment shall be provided for all projects.

20 (c) A project review team shall issue a final unified permit decision within 10  
21 days after the close of the period for public comment unless the commissioner of a  
22 resource agency finds that additional time is necessary for that agency to fulfill  
23 statutory requirements and responsibilities.

24 **Sec. 44.19.862. Form of preliminary unified permit decision.** (a) The  
25 preliminary unified permit decision must

26 (1) be in writing;

27 (2) contain a

28 (A) description of the proposed project;

29 (B) list of required resource agency permits;

30 (C) description of the scope of the project subject to review;

31 (3) provide sufficient information to serve as a basis for public

1 comment;

2 (4) identify any conditions necessary to ensure the project complies  
3 with resource agency statutes and regulations that relate to the permit and is consistent  
4 with applicable coastal program statewide standards and coastal resource district  
5 enforceable policies; and

6 (5) for a project subject to the Alaska coastal management program,  
7 contain a concurrence with or objection to a consistency certification or federal  
8 consistency determination.

9 (b) The center, in consultation with the resource agency commissioners or  
10 designees, shall resolve any conflicting conditions proposed by project review team  
11 members that deal with the same subject matter before issuing a preliminary permit  
12 decision. The center may extend the decision deadline as needed to resolve any  
13 disputed issues.

14 **Sec. 44.19.863. Public notice.** The project review team shall provide public  
15 notice of a preliminary unified permit decision issued under AS 44.19.860 and  
16 44.19.861. The notice must

17 (1) contain sufficient information, expressed in commonly understood  
18 terms, to inform the public of the nature of the proposed project that is the subject of  
19 the preliminary decision;

20 (2) explain how the public may comment on the preliminary decision;

21 (3) specify the deadline for receipt of comments;

22 (4) be issued and publicized by one or more of the following methods:

23 (A) publication in a newspaper of general circulation within the  
24 affected region; or

25 (B) posting

26 (i) on an Internet website dedicated to preliminary  
27 decision public notices; and

28 (ii) in at least two public places within each affected  
29 community within the affected region; and

30 (5) be provided by mail, or by electronic format if the recipient has  
31 agreed to receive notices in electronic format, to each person who has requested public

1 notice from the center or the review team relating to

2 (A) the proposed project; or

3 (B) any proposed project affecting a specific region.

4 **Sec. 44.19.864. Public hearings.** The project review team may hold a public  
5 meeting or hearing if considered appropriate by a resource agency or review team.  
6 The public meeting or hearing may be held jointly with local and federal permitting  
7 entities. The meeting or hearing may be structured in any manner that facilitates  
8 meaningful public comment.

9 **Sec. 44.19.865. Final unified permit decision.** (a) The final unified permit  
10 decision must

11 (1) be in writing;

12 (2) contain a

13 (A) description of the proposed project;

14 (B) list of required resource agency permits;

15 (C) description of the scope of the project subject to review;

16 (D) statement that the project meets resource agency statutory  
17 and regulatory requirements;

18 (E) statement of how public, local government, and coastal  
19 resource district comments have been addressed;

20 (F) statement identifying the availability of an administrative  
21 appeal to the center;

22 (3) identify any conditions necessary to ensure the project complies  
23 with resource agency statutes and regulations applicable to the permit and is consistent  
24 with applicable coastal program statewide standards and coastal district enforceable  
25 policies;

26 (4) for a project subject to the Alaska coastal management program,  
27 contain a concurrence or objection to a consistency certification or federal consistency  
28 determination; and

29 (5) for a federally permitted project subject to the Alaska coastal  
30 management program, contain a statement identifying the availability of an appeal  
31 under federal regulations.

1 (b) A condition in a final unified permit decision is enforceable by the agency  
 2 or agencies that required the condition under the agency's statutory or regulatory  
 3 authority, including authority under the coastal management program.

4 **Sec. 44.19.866. Administrative appeals.** (a) The applicant or an eligible  
 5 person may appeal a final unified permit decision to the center within 30 days after  
 6 issuance of the decision. A person other than the applicant is eligible if the person  
 7 participated in the public comment process by

8 (1) submitting a timely written comment on the preliminary unified  
 9 permit decision to the project review team; or

10 (2) presenting oral testimony at a public hearing or meeting at which  
 11 the permit was under review.

12 (b) An appeal under this section must specify

13 (1) the final unified permit decision that is the source of the person's  
 14 grievance;

15 (2) the basis of the challenge; and

16 (3) the name and mailing address of the person making the appeal.

17 (c) The center shall provide notice of the appeal to each resource agency  
 18 involved in the review of the permit. Each agency shall evaluate each point of appeal  
 19 and determine whether the point on appeal raises a relevant issue of fact or law  
 20 material to the final unified permit decision. Within five days after making its  
 21 determinations, the agency shall notify the center of its determination for each point  
 22 on appeal. If the agency determines that the appeal identifies a reasonable issue of  
 23 fact or law, the center shall accept the appeal for consideration.

24 (d) If an agency determines that the appeal does not raise a reasonable issue of  
 25 fact or law, the center shall notify the person making the appeal that the final unified  
 26 permit is the final administrative order and decision for purposes of appeal to the  
 27 superior court.

28 (e) The center shall prepare the record on appeal with the assistance of each  
 29 resource agency participating in the review of the permit. The record on appeal  
 30 consists of

31 (1) the unified permit application;

- 1 (2) public comments;
- 2 (3) relevant material supplied to the resource agencies by the applicant;
- 3 (4) other information used by the resource agencies as a basis for the
- 4 unified permit decision; and
- 5 (5) the preliminary and final unified permit decision.

6 (f) An appeal of a final unified permit decision shall be heard and decided by

7 the commissioner or commissioner's designee of each resource agency for which a

8 point of appeal addresses a statutory or regulatory requirement within the resource

9 agency's authority or an enforceable policy within the resource agency's expertise.

10 When an appeal addresses a coastal resource district enforceable policy, each

11 commissioner or designee shall consult with the coastal resource district and defer to

12 the coastal resource district's interpretation and application of the enforceable policy.

13 (g) The center shall consolidate all decisions of each participating resource

14 agency into one final decision. The center shall distribute a copy of the final decision

15 on appeal to each party to the appeal.

16 (h) Notwithstanding AS 44.62.330, procedures for an appeal under

17 AS 44.19.851 - 44.19.869 need not conform to AS 44.62.330 - 44.62.630

18 (Administrative Procedure Act). Each agency participating in an appeal shall structure

19 the proceedings in a manner that provides for a fair and efficient decision-making

20 process. Submission of new information is allowed as part of the record on appeal if

21 relevant to the unified permit decision.

22 (i) Only an eligible person who filed an administrative appeal under (a) of this

23 section may appeal a final unified permit decision issued under AS 44.19.865 to the

24 superior court. An appeal to the superior court must be filed within the time allowed

25 under applicable court rules.

26 **Sec. 44.19.867. Minimal effect activities.** When a unified permit decision is

27 appealed, a minimal effect activity that is permitted under the unified permit decision

28 may proceed at the applicant's risk if the activity is not a subject of the appeal. For

29 purposes of this section, "minimal effect activity" means an activity that is temporary

30 and expected to have insignificant direct or indirect effects on state resources.

31 **Sec. 44.19.869. Definitions.** For purposes of AS 44.19.851 - 44.19.869,

1 (1) "best available scientific information" means objective and  
 2 repeatable analyses based on adequate empirical data collected with appropriate  
 3 quality assurance and quality control procedures in place;

4 (2) "center" means Resource Permitting Center established in  
 5 AS 44.19.851;

6 (3) "enforceable policy" has the meaning given in 16 U.S.C. 1453;

7 (4) "local knowledge" means a body of knowledge or information  
 8 about the regional environment or the human use of that environment, including  
 9 information passed down through generations, if that information is

10 (A) derived from experience and observations; and

11 (B) generally accepted by the local community;

12 (5) "permit" means each of the following permits or authorizations  
 13 required to be obtained from a resource agency before constructing or operating a  
 14 project in the state, or any other license, permit or authorization that may be  
 15 designated by the commissioner of a resource agency:

16 (A) permit to apply pesticides;

17 (B) air quality control construction permit;

18 (C) air quality control operating permit;

19 (D) solid waste disposal permit;

20 (E) waste water disposal permit;

21 (F) certificate of reasonable assurance section 401;

22 (G) oil discharge contingency plan;

23 (H) fish habitat permit;

24 (I) permit to operate a clam dredge;

25 (J) aquatic farm operations permit;

26 (K) fish and game special area permit;

27 (L) hatchery permit;

28 (M) fish resource permit for mariculture site suitability;

29 (N) lease of cleared or drained agricultural land;

30 (O) aquatic farm site permit and lease;

31 (P) coal prospecting permit;

- 1 (Q) lease of tidelands;
- 2 (R) material sales;
- 3 (S) offshore mining prospecting permit;
- 4 (T) oil and natural gas pipeline right-of-way leasing;
- 5 (U) potassium compound prospecting permit and lease;
- 6 (V) right-of-way or easement permit;
- 7 (W) sodium compound prospecting permit and lease;
- 8 (X) sulfur prospecting permit and lease;
- 9 (Y) upland mining lease;
- 10 (Z) water use permit;
- 11 (AA) land use permit;
- 12 (BB) temporary water use permit;
- 13 (CC) tideland use permit;
- 14 (DD) geothermal prospecting permit;
- 15 (EE) geothermal well drilling approval;
- 16 (FF) geophysical exploration permit;
- 17 (GG) authorization to construct a structure in state parks;
- 18 (HH) permit for access across state parks;
- 19 (II) state parks special use permit;
- 20 (JJ) archaeological permit;
- 21 (KK) hazardous waste permit;

22 (6) "project" means any new activity or expansion of or addition to an  
 23 existing activity, for which permits are required before construction or operation;

24 (7) "resource agency" means

- 25 (A) the Department of Environmental Conservation;
- 26 (B) the Department of Fish and Game; or
- 27 (C) the Department of Natural Resources.

28 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
 29 read:

30 REGULATIONS. The Resource Permitting Center, in consultation with the resource  
 31 agencies, may adopt regulations to implement AS 44.19.851 - 44.19.869, added by sec. 2 of

1 this Act.

2 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 **ADOPTION OF INITIAL UNIFIED PERMIT APPLICATION FORM.** Under  
5 AS 44.19.852, added by sec. 2 of this Act, the Department of Environmental Conservation,  
6 the Department of Fish and Game, and the Department of Natural Resources shall adopt the  
7 initial unified permit application form within six months after the effective date of this  
8 section.

9 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 **TRANSITION.** On the effective date of this section, the resource agencies listed in  
12 AS 44.19.869, added by sec. 2 of this Act, shall review the statutory authorities pertaining to  
13 project permitting for the purpose of determining whether there are any conflicts that prohibit  
14 compliance with this Act. The resource agencies shall, within six months after the effective  
15 date of this section, prepare and submit to the chair of the Senate Resources Committee and  
16 the chair of the House Resources Committee recommendations for legislation that modifies or  
17 repeals conflicting laws.

18 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
19 read:

20 **TRANSITION.** A permit application filed before the effective date of AS 44.19.854,  
21 44.19.855, 44.19.856, 44.19.857, 44.19.859, 44.19.860, 44.19.861, 44.19.862, 44.19.863,  
22 44.19.864, 44.19.865, 44.19.866, and 44.19.867, enacted in sec. 2 of this Act, must meet the  
23 requirements for the permit in effect before those sections take effect.

24 \* **Sec. 7.** AS 44.19.854, 44.19.855, 44.19.856, 44.19.857, 44.19.859, 44.19.860, 44.19.861,  
25 44.19.862, 44.19.863, 44.19.864, 44.19.865, 44.19.866, and 44.19.867, enacted in sec. 2 of  
26 this Act, take effect on the date that the governor notifies the revisor of statutes that the  
27 resource agencies have developed the unified permit application described in AS 44.19.852,  
28 as enacted in sec. 2 of this Act.

29 \* **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect immediately under  
30 AS 01.10.070(c).