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1 IN THE HOUSE

BY M.MILLER, SPECKING AND
TILLION

2 HOUSE BILL NO. 337

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Land Use Board."

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

8 * Section 1. AS 46 is amended by adding a new chapter to read:

9 CHAPTER 28. LAND USE BOARD.

10 Sec. 46.28.010. FINDINGS. (a) The state finds that there is a
11 state interest in a more efficient system of land use planning and
12 decision making and that the rapid and continued growth of the state's
13 population, proliferating urban development, expanding transportation
14 systems, large-scale industrial and economic growth, conflicts in
15 patterns of land use, fragmentation of governmental entities exercising
16 land use planning powers, and the increased size, scope, and impact of
17 private actions, have created a situation in which land use management
18 decisions of wide public concern often are being made on the basis of
19 expediency, tradition, short-term economic considerations, and other
20 factors which too frequently are unrelated or contradictory to sound
21 environmental, economic, and social land use considerations.

22 (b) The state finds that a failure to conduct comprehensive land
23 use planning has, on occasion, resulted in delay, litigation, and
24 cancellation of proposed significant development, including, but not
25 limited to, facilities for the development, generation, and trans-
26 mission of energy, thereby too often wasting human and economic resources,
27 creating a threat to public services, or vastly increasing the cost of
28 such services to the public, and invoking decisions to locate activities
29 in areas of least public and political resistance, but without regard

1 to sound environmental, economic, and social land use considerations.

2 (c) The state further finds and declares that there is an increas-
3 ing mutuality of interest and responsibility between the various levels
4 of government in the state which call for coordinate and unified
5 policies in planning for growth and development in the interests of
6 order and economic viability for present and future generations, and
7 that the most effective means of attaining the objectives set out in
8 this chapter is through the adoption of a statewide system of land use.

9 Sec. 46.28.020. CREATION OF THE BOARD. There is created within
10 the Department of Environmental Conservation the Land Use Board.

11 Sec. 46.28.030. COMPOSITION AND APPOINTMENT. The board consists
12 of the commissioner of environmental conservation or his designee, the
13 director of planning and research or his designee within the Office of
14 the Governor, and five members appointed by the governor and confirmed
15 by the legislature in joint session. The five appointed members shall
16 be representative of the following: two from the public at large, one
17 active in conservation activities, one from industry, and one repre-
18 senting general landowner interests. Members shall serve staggered
19 four-year terms but initial appointments are as follows: one initial
20 appointee representing the public shall serve for one year and one
21 for four years, the initial appointee representing industry shall serve
22 for two years, the initial appointee representing conservation shall
23 serve for three years, and the initial appointee representing general
24 landowner interests shall serve for four years. The commissioner of
25 environmental conservation is designated as chairman.

26 Sec. 46.28.040. VACANCY. (a) A vacancy on the board shall be
27 filled by appointment by the governor and the appointment shall be con-
28 firmed by the legislature in joint session. A member selected to fill
29 a vacancy shall hold office for the balance of the full term for which

1 his predecessor on the board was appointed.

2 (b) A vacancy on the board does not impair the authority of a
3 quorum of its members to exercise all the powers and perform all the
4 duties of the board.

5 Sec. 46.28.050. QUORUM. Four members of the board constitute
6 a quorum for the transaction of business, for the performance of a duty,
7 or for the exercise of a power.

8 Sec. 46.28.060. COMPENSATION. Members of the board are in the
9 exempt service and shall receive an initial annual salary at range 28,
10 step B of the state pay plan, subject to merit raises as approved by
11 the governor. This section does not apply to the commissioner of
12 environmental conservation or the director of planning and research.

13 Sec. 46.28.070. LEGAL COUNSEL. The attorney general is the legal
14 counsel for the board. He shall advise the board in legal matters
15 arising in the discharge of its duties and represent the board in suits
16 to which it is a party. The board may retain additional legal counsel
17 as appropriate.

18 Sec. 46.28.080. EMPLOYMENT AND COMPENSATION OF PERSONNEL. (a)
19 The board may employ those persons necessary to carry out the purposes
20 of this chapter. Employees of the board are in the exempt service
21 under AS 39.25.110.

22 (b) In addition to its staff of regular employees, the board may
23 contract for and engage the services of consultants, experts and hearing
24 officers as necessary.

25 Sec. 46.28.090. DUTIES. (a) The board shall develop a compre-
26 hensive state land use classification plan, to include but not be
27 limited to the following:

28 (1) the preparation and continuing revision of a statewide
29 inventory of the land, water, and other natural resources of the state;

1 (2) the compilation and continuing revision of data, on a
2 statewide basis, related to population densities and trends, economic
3 characteristics and projections, environmental conditions and trends,
4 and directions and extent of urban and rural growth;

5 (3) projections of the nature and quantity of land needed
6 and suitable for the following:

7 (A) recreation and esthetic appreciation;

8 (B) conservation and preservation of natural resources;

9 (C) agriculture;

10 (D) mineral development;

11 (E) forestry;

12 (F) industry and commerce, including the development,
13 generation, and transmission of energy;

14 (G) transportation;

15 (H) urban development, including the revitalization of
16 existing communities, and the economic diversification of existing
17 communities which possess a narrow economic base;

18 (I) rural development, taking into consideration future
19 demands for and limitations upon products of the land, and health,
20 educational, and other state and local governmental services;

21 (4) the preparation and continuing revision of an inventory
22 of environmental, geological, and physical conditions, including soil
23 types, which influence the desirability of various uses of land;

24 (5) the preparation and continuing revision of an inventory
25 of state, local, and private needs and priorities concerning the use of
26 federal lands within the state;

27 (6) the preparation and continuing revision of an inventory
28 of public and private institutional and financial resources available
29 for land use planning and management within the state and of state and

1 local programs and activities which have a land use impact of more than
2 local concern;

3 (7) the establishment of a method for inventorying and desig-
4 nating areas of critical environmental concern and areas which are, or
5 may be, impacted by significant development;

6 (8) the provision, where appropriate, of technical assistance
7 and training programs for state and local agency personnel concerned
8 with the development and implementation of state and local land use
9 programs;

10 (9) the establishment of arrangements for the exchange of
11 land use planning information and data among governmental agencies of
12 all levels and with members of the public;

13 (10) the establishment of a method for coordinating all state
14 and local governmental programs and services which significantly affect
15 land use;

16 (11) the conducting of public hearings, the preparation of
17 reports, and the soliciting of comments on reports concerning the state-
18 wide land use planning process or aspects of it;

19 (12) the consideration of, and consultation with other
20 appropriate states on the interstate aspects of land use issues of more
21 than local concern;

22 (13) the establishment of specific categories for the classi-
23 fication of state land and the actual classification of it;

24 (14) an assessment of the extent to which existing land
25 classification under AS 38.05 may be appropriate and conform to the
26 purposes of this chapter.

27 (b) In developing its land use plan, the board shall recognize
28 that the decision-making authority as to the character and use of land
29 is, in many cases, most appropriately at the lowest level of government

1 possible. In this regard, the board shall establish criteria by which
2 land use management problems will be classified as matters of state
3 concern, matters of regional concern, matters of local concern, and
4 other classifications or subclassifications that the board considers
5 necessary.

6 (c) Land use plans of a general law or home rule municipality
7 existing as of the effective date of this Act or adopted thereafter,
8 shall be reviewed by the board for the purpose of determining whether
9 they conform to the purposes and requirements of this chapter. A non-
10 conforming or unsuitable classification by a municipality may be super-
11 ceded by a classification under this chapter. In addition, upon receipt
12 of a petition by the governing body of a municipality for a moratorium
13 on development, when no such moratorium power exists within the munic-
14 ipality, the board, after considering and approving the request,
15 is authorized to impose a moratorium on the specific development as
16 requested within the municipality.

17 (d) No classification or restriction established under this
18 chapter may bind or commit federally-owned lands. However, nothing in
19 this chapter shall be construed as an agreement by the state to surrender,
20 waive, or condition a right granted to it under the Alaska Statehood
21 Act (P.L. 85, 508, 72 Stat. 339).

22 (e) Except for land in excess of 640 acres closed to multiple
23 purpose use under sec. 125 of this chapter, a land classification made
24 under this chapter that conflicts with a classification made under AS 38
25 shall, unless development of the land has occurred or a property right
26 will be impaired, be superceded by a classification under this chapter.

27 (f) In carrying out its duties under this section, the board,
28 where appropriate, shall obtain the advice and consultation of the
29 commissioner of fish and game, the commissioner of natural resources,

1 and other department heads within state government, as appropriate.

2 Sec. 46.28.100. AREAS OF CRITICAL ENVIRONMENTAL CONCERN. (a)

3 The board shall, after a thorough review and evaluation of the land use
4 planning data available to it and after consultation with the Department
5 of Fish and Game and the Department of Natural Resources, undertake a
6 specific identification of areas of critical environmental concern.

7 In general, an area is considered of critical environmental concern
8 if development there can result in significant irreversible damage to
9 important historic, cultural, or esthetic values, or natural systems,
10 or where uncontrolled development can unreasonably endanger life,
11 health, safety and property. Critical environmental areas subject to
12 specific boundary delineation by the board shall include, but not be
13 limited to, the following:

- 14 (1) coastal wetlands, marshes, and other lands inundated by
15 the tides;
- 16 (2) beaches and dunes;
- 17 (3) significant estuaries, shorelands, rivers, lakes, streams
18 and their flood plains;
- 19 (4) precipitous slopes, areas of unstable soils, and areas
20 subject to high seismicity influences;
- 21 (5) rare or valuable ecosystems;
- 22 (6) significant undeveloped agricultural, grazing, and
23 watershed lands;
- 24 (7) forests and related land which require long stability
25 for continuing renewal;
- 26 (8) scenic or historic areas;
- 27 (9) significant wildlife habitat areas; however, a critical
28 habitat area established under AS 16.20.220 - 16.20.270 is not subject
29 to reduction or limitation under this chapter.

1 (b) At least 60 days before the identification of an area under
2 (a) of this section, the board shall issue reasonable notice of the
3 proposed classification in the general area to be classified and in
4 any other area or population center which the board reasonably feels
5 may be affected by the classification. At least 30 days before the
6 identification of an area under (a) of this section, no less than one
7 public hearing shall be held within or near the area to be affected.

8 (c) Uses within a critical environmental area identified under
9 this section shall be restricted to uses that are compatible with the
10 purposes for which the area was established.

11 (d) The restriction of an area to certain uses under this section
12 may be appealed by any affected person, under procedures to be estab-
13 lished by the board that are not inconsistent with due process of law.

14 Sec. 46.28.110. SPECIFIC LAND USE RESTRICTION. (a) In addition
15 to restrictions imposed by the comprehensive overall classification of
16 land under this chapter or related to areas of critical environmental
17 concern under sec. 100 of this chapter, a plan for each action, activity,
18 or project undertaken by a person which may significantly affect the
19 quality of the land or water shall be submitted to the board for review
20 and approval. The plan shall include the following:

- 21 (1) an environmental evaluation of the proposed action;
- 22 (2) any adverse environmental effects which cannot be
23 avoided should the proposal be implemented;
- 24 (3) alternatives to the proposed action;
- 25 (4) any irreversible and irretrievable commitments of
26 resources which would be involved in the proposed action should it be
27 implemented;
- 28 (5) an economic evaluation of the proposed action.

29 (b) The board shall consider the specific plan required under (a)

1 of this section within 60 days from the date of its receipt by the
2 board.

3 (c) For purposes of this section, "significantly affecting the
4 quality of the land" means changing its nature or makeup, either by
5 natural or artificial means, so that the land or water is adversely
6 environmentally affected in a substantial or irreversible way.

7 Sec. 46.28.120. REGULATIONS. The board may establish regulations
8 necessary to carry out its duties and responsibilities under this
9 chapter.

10 Sec. 46.28.125. LEGISLATIVE CLASSIFICATION. No state land, water,
11 or land and water area shall, except by act of the state legislature,
12 be closed to multiple purpose use, if the area involved contains more
13 than 640 acres.

14 Sec. 46.28.130. COORDINATION WITH JOINT FEDERAL-STATE LAND USE
15 PLANNING COMMISSION. The board shall confer and coordinate its compre-
16 hensive land use plan with the Joint Federal-State Land Use Planning
17 Commission or any other group acting under the authority of or succeeding
18 the commission. When appropriate, both agencies shall work together in
19 an effort to assure the orderly planning for lands within the state.

20 Sec. 46.28.135. COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE
21 ACT. When not in conflict with the provisions of this chapter, the
22 Administrative Procedure Act (AS 44.62) applies to proceedings under
23 this chapter.

24 Sec. 46.28.140. REPORT TO THE LEGISLATURE. The board shall sub-
25 mit a report of its activity, to include but not be limited to specific
26 land classifications and restrictions, to the legislature before
27 January 30 of each odd-numbered year.

28 Sec. 46.28.150. DEFINITIONS. In this chapter "board" means the
29 Land Use Board.

1 * Sec. 2. AS 38.05.300 is repealed.
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