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Referred: Resources and
Judiciary

1 IN THE HOUSE

BY ORSINI BY REQUEST

2 HOUSE BILL NO. 713

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Environmental Conservation
7 Commission."

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

9 * Section 1. AS 46.03 is amended by adding new sections to read:

10 ARTICLE 9. ENVIRONMENTAL CONSERVATION COMMISSION.

11 Sec. 46.03.902. ENVIRONMENTAL CONSERVATION COMMISSION. (a) There
12 is created within the Department of Environmental Conservation, an
13 Environmental Conservation Commission consisting of seven members
14 appointed by the governor. Insofar as is practicable, these members
15 shall be: a licensed physician knowledgeable in environmental health,
16 a professional engineer experienced in the field of environmental
17 engineering, an attorney knowledgeable in the field of environmental
18 law, a representative of a local or regional environmental control
19 agency, an industrial representative experienced in environmental pro-
20 tection, a representative of an environmental conservation organiza-
21 tion, and one member chosen at large. The commission shall select its
22 own chairman from among its members.

23 (b) The commissioner of environmental conservation shall serve
24 as a nonvoting ex officio member of the commission and shall act as
25 commission secretary.

26 (c) No voting member of the commission may be an officer or
27 employee of a state department or agency.

28 (d) Of the members of the commission first appointed by the
29 governor, two shall be appointed for a term of one year, two for a term

1 of two years, and three for a term of three years. Initial terms begin
2 on July 1, 1974. Thereafter, all appointments shall be made for terms
3 of three years, beginning on July 1 of the year in which the appointment
4 is made. Members of the board shall serve at the pleasure of the
5 governor. In case of a vacancy other than one arising by expiration of
6 term, an appointment to fill the vacancy shall be made by the governor
7 for the remainder of the unexpired term.

8 Sec. 46.03.904. MEETINGS. The commission shall hold at least two
9 regular meetings each year and additional meetings which the chairman
10 considers desirable, at a place and time fixed by the chairman. Fur-
11 ther, special meetings shall be called by the chairman upon the written
12 request of three members. Four members constitutes a quorum.

13 Sec. 46.03.906. EXPENSE AND PER DIEM OF COMMISSION MEMBERS. Each
14 member of the commission is entitled to travel expenses and per diem
15 allowed by law for each day going to and from and for each day in
16 actual attendance at commission meetings and other meetings or con-
17 ferences authorized by the commission.

18 Sec. 46.03.908. COMMISSION PERSONNEL. The commissioner of
19 environmental conservation shall, with the approval of the commission,
20 employ an executive director who may be a member of the commission and
21 who shall be an experienced administrator. The commission may employ
22 engineers, examiners, hearing officers, experts, clerks, accountants
23 and such other assistance as it considers necessary and shall set the
24 compensation for them when compensation for these employees has not
25 already been established by the state.

26 Sec. 46.03.910. ADMINISTRATIVE SUPERVISION. The commission
27 is under the general administrative supervision of the commissioner of
28 environmental conservation.

29 Sec. 46.03.912. POWERS OF THE COMMISSION. In addition to the

1 powers conferred on it by law, the commission shall have the power to

2 (1) adopt regulations necessary to effectuate the purposes
3 of this chapter including, by way of example and not limitation,
4 regulations providing for

5 (A) control, prevention and abatement of air, water,
6 land or subsurface land pollution;

7 (B) safeguard standards for petroleum and natural gas
8 pipeline construction, operation, modification, or alteration;

9 (C) protection of public water supplies by setting
10 standards for the construction, improvement and maintenance of
11 public water supply systems;

12 (D) collection and disposal of sewage and industrial
13 waste;

14 (E) collection and disposal of garbage, refuse and
15 other discarded solid material from industrial, commercial,
16 agricultural, and community activities or operations;

17 (F) control of radiation sources to prohibit and pre-
18 vent unnecessary radiation;

19 (G) control of pesticides;

20 (H) such other purposes as may be required for the
21 implementation of the policy declared in sec. 10 of this chapter;

22 (2) conduct investigations and hold hearings and compel
23 the attendance of witnesses and the production of accounts, books and
24 documents by the issuance of subpoenas;

25 (3) act as a hearing board for appeals submitted by persons
26 affected by regulations or orders issued under this chapter.

27 Sec. 46.03.914. POWERS OF THE DEPARTMENT. The department shall
28 have power to

29 (1) enforce the provisions of this chapter and all of the

1 orders, regulations, and rules adopted by the commission under this
2 chapter;

3 (2) enter into contracts necessary or convenient to carry
4 out the functions, powers and duties of the department;

5 (3) review and appraise programs and activities of state
6 departments and agencies in light of the policies set out in sec. 10
7 of this chapter for the purpose of determining the extent to which the
8 program and activities are contributing to the achievement of that
9 policy and to make recommendations to the departments and agencies
10 including but not limited to environmental guidelines;

11 (4) consult and cooperate with

12 (A) officials and representatives of any nonprofit
13 corporation or organization in the state;

14 (B) persons, organizations and groups, public and
15 private, using, served by, interested in or concerned with the
16 environment of the state;

17 (5) appear and participate in proceedings before any state
18 or federal regulatory agency involving or affecting the purposes of the
19 department;

20 (6) undertake studies, inquiries, surveys, or analyses it
21 may consider essential to the accomplishment of the purposes of the
22 department; these activities may be carried out by the personnel of
23 the department or in cooperation with public or private agencies
24 including educational, civic and research organizations, colleges,
25 universities, institutes and foundations;

26 (7) at reasonable times enter and inspect with the consent
27 of the owner or occupier any property or premises, to investigate
28 either actual or suspected sources of pollution or contamination, or
29 to ascertain compliance or noncompliance with any regulation promul-

1 gated under this chapter; information relating to secret processes or
2 methods of manufacture discovered during investigation shall be confi-
3 dential;

4 (8) advise and cooperate with municipal, regional, and other
5 local agencies and officials in the state to carry out the purposes
6 of this chapter;

7 (9) act as the official agency of the state in all matters
8 affecting the purposes of the department under federal laws now or
9 hereafter.

10 * Sec. 2. AS 46.03.040(b) is repealed and re-enacted to read:

11 (b) The department shall submit the first plan to the commission
12 for approval on or before January 1, 1975. The commission shall sub-
13 mit the original plan and periodic revisions of the plan to the governor.
14 The plan is effective upon approval by the governor and shall serve
15 thereafter as a guide to the public, state government, and political
16 subdivisions of the state in the development of the environment and
17 natural resources of the state.

18 * Sec. 3. AS 46.03.060 is amended to read:

19 Sec. 46.03.060. WATER POLLUTION CONTROL PLAN. The department
20 shall with the approval of the commission develop comprehensive plans
21 for water pollution control in the state and conduct investigations
22 it considers advisable and necessary for the discharge of its duties.

23 * Sec. 4. AS 46.03.070 is amended to read:

24 Sec. 46.03.070. POLLUTION STANDARDS. After public hearing, the
25 commission [DEPARTMENT] may adopt standards and make them public and
26 determine what qualities and properties of water indicate a polluted
27 condition actually or potentially deleterious, harmful, detrimental
28 or injurious to the public health, safety or welfare, to terrestrial
29 and aquatic life or their growth and propagation, or to the use of

1 waters for domestic, commercial, industrial, agricultural, recreational,
2 or other reasonable purposes.

3 * Sec. 5. AS 46.03.080 is amended to read:

4 Sec. 46.03.080. QUALITY AND PURITY STANDARDS. After study and
5 public hearings held upon due notice, the commission [DEPARTMENT] may
6 establish standards of quality and purity or group the designated
7 waters of the state into classes as to minimum quality and purity,
8 or both. The commission [DEPARTMENT] shall classify waters in accordance
9 with considerations of best usage in the interest of the public. The
10 commission [DEPARTMENT] may alter and modify classifications after
11 hearing.

12 * Sec. 6. AS 46.03.090 is amended to read:

13 Sec. 46.03.090. PLANS FOR POLLUTION DISPOSAL. The commission
14 [DEPARTMENT] may require the submission of plans for sewage and indus-
15 trial waste disposal or treatment or both for a publicly or privately
16 owned or operated industrial establishment, community, public or private
17 property subdivision or development.

18 * Sec. 7. AS 46.03.120 is amended by adding a new subsection to read:

19 (c) A person subject to a permit termination or modification as
20 described in (a) and (b) of this section, upon written request and in
21 accordance with the rules of the commission, is entitled to a hearing
22 before the commission on the termination or modification. Following
23 the hearing the termination or modification may be affirmed, altered,
24 or withdrawn.

25 * Sec. 8. AS 46.03.130(d) and (e) are amended to read:

26 (d) Within 30 days of receipt, a person affected may make applica-
27 tion for a hearing before the commission to review the compliance order.
28 Failure to make application for hearing within 30 days of the receipt of
29 a compliance order constitutes a waiver of the recipient's right of

1 review.

2 (e) The commission [DEPARTMENT] shall hold a hearing within 20
3 days of receipt of the application. After hearing, the commission
4 [DEPARTMENT] may rescind, modify or affirm a compliance order.

5 * Sec. 9. AS 46.03.160(c) is amended to read:

6 (c) A person subject to a prohibition order as described in (b)
7 of this section, upon written request, and in accordance with regulations
8 of the commission [DEPARTMENT], is entitled to a hearing before the
9 commission on the order. Following the hearing the order may be
10 affirmed, modified or withdrawn.

11 * Sec. 10. AS 46.03.170 is amended to read:

12 Sec. 46.03.170. VARIANCES. (a) A person who owns or is in
13 control of a plant, building, structure, establishment, process or
14 equipment may apply to the commission [DEPARTMENT] for a variance
15 from applicable emission control regulations. The commission
16 [DEPARTMENT] may grant the variance, but only after public hearing
17 following due notice, if it finds that

18 (1) the emissions occurring or proposed to occur do not
19 endanger human health or safety; and

20 (2) compliance with the rules or regulations from which
21 variance is sought would produce severe hardship without benefits to
22 the public.

23 (b) No variance may be granted under this section until the
24 commission [DEPARTMENT] has considered the relative interests of the
25 applicant, other owners of property likely to be affected by the emis-
26 sions and the general public.

27 (c) A variance granted under (a) of this section, shall be for
28 periods and under conditions consistent with the reasons for it and
29 within the following limitations:

1 (1) if the variance is granted on the ground that there is
2 no practicable means known or available for the adequate prevention,
3 abatement or control of the air pollution involved, it shall be only
4 until the necessary means for prevention, abatement, or control become
5 known and available, subject to the taking of substitute or alternate
6 measures that the department may prescribe;

7 (2) if the variance is granted on the ground that compliance
8 with the particular requirement from which variance is sought will
9 necessitate the taking of measures which, because of their extent or
10 cost, must be spread over a considerable period, it shall be for a
11 period not to exceed the reasonable time which in the opinion of the
12 commission [DEPARTMENT] is necessary; a variance granted on this ground
13 shall contain a timetable for taking action in an expeditious manner
14 and shall be conditioned on adherence to the timetable and shall be for
15 not more than five years;

16 (3) if the variance is granted on the ground that it is
17 justified to relieve or prevent hardship of a kind other than that
18 provided in (c)(1) and (2) of this section, it shall be for not more
19 than one year.

20 (d) The commission [DEPARTMENT] may upon application renew an
21 existing variance on terms and conditions and for periods which would
22 be appropriate on initial granting of a variance. If complaint is
23 made to the commission [DEPARTMENT] on account of the variance no
24 renewal of it may be granted unless, after public hearing on the com-
25 plaint following due notice, the commission [DEPARTMENT] finds that
26 renewal is justified. Application shall be made at least 60 days
27 before the expiration of the variance. Immediately upon receipt of
28 an application for renewal the commission [DEPARTMENT] shall give pub-
29 lic notice of it.

1 (e) A variance or renewal is not a right of the applicant but
2 is in the discretion of the commission [DEPARTMENT].

3 (f) No variance or renewal granted under this section may be
4 construed to prevent or limit the application of the emergency orders
5 of the commissioner issued under sec. 820 of this chapter.

6 * Sec. 11. AS 46.03.190(a) and (d) are amended to read:

7 (a) As the state of knowledge and technology relating to the
8 control of emissions from motor vehicles may permit or make appropriate,
9 and in furtherance of the purposes of this chapter, the commission
10 [DEPARTMENT] may provide by regulation for the control of these
11 emissions. The regulations may prescribe requirements for the instal-
12 lation and use of equipment designed to reduce or eliminate emissions
13 and for the proper maintenance of this equipment.

14 (d) When the commission [DEPARTMENT] has issued regulations
15 requiring the maintenance of features or equipment in or on motor
16 vehicles for the purpose of controlling emission from the vehicles,
17 no motor vehicle may be issued a certificate of inspection and approval
18 if required, unless the required features or equipment have been
19 inspected in accordance with the standards, testing techniques and
20 instructions furnished by the commission [DEPARTMENT] and have been
21 found to meet those standards.

22 * Sec. 12. AS 46.03.210(a)(4) is amended to read:

23 (4) be approved by the commission [DEPARTMENT] as being
24 satisfactory to meet the requirements of secs. 140 - 170 of this
25 chapter and the applicable regulations.

26 * Sec. 13. AS 46.03.210(d) is amended to read:

27 (d) If the commission [DEPARTMENT] finds that the location,
28 character, or extent of particular concentrations of population, air
29 contaminant sources, the geographic, topographic or meteorological

1 considerations or a combination of these factors make impracticable
2 the maintenance of appropriate levels of air quality without an
3 areawide air pollution control program, the commission [DEPARTMENT]
4 may determine the boundaries within which a program is necessary and
5 direct that a program spanning those boundaries is the only acceptable
6 alternative to direct state administration.

7 * Sec. 14. AS 46.03.220(a), (b), (d) and (e) are amended to read:

8 (a) If a municipality authorized to establish or participate
9 in an air pollution control program under sec. 210(a) or (d) of this
10 chapter fails to establish a program within the time specified, or if
11 the commission [DEPARTMENT] has reason to believe that an air pollu-
12 tion control program in force under that section is inadequate to
13 prevent and control air pollution in the jurisdiction to which the
14 program applies, or that the program is being administered in a manner
15 inconsistent with the requirements of this chapter the commission
16 [DEPARTMENT] shall, following 45 days notice, conduct a hearing on the
17 matter.

18 (b) If, after the hearing, the commission [DEPARTMENT] determines
19 that any of the deficiencies enumerated in (a) of this section exist,
20 it shall require that necessary corrective action be taken within a
21 reasonable period of time, not to exceed 90 days.

22 (d) If the commission [DEPARTMENT] finds that the control of a
23 particular class of air contaminant source, because of its complexity
24 or magnitude is beyond the reasonable capability of the local air
25 pollution control authorities or may be more efficiently and economi-
26 cally performed at the state level, it may assume and retain jurisdic-
27 tion over the class of air contaminant source. Classifications under
28 this subsection may be either on the basis of the nature of sources
29 involved or on the basis of their relationship to the size of the

1 communities in which they are located.

2 (e) A municipality in which the department administers the air
3 pollution control program under this section may with the approval of
4 the commission [DEPARTMENT] establish or resume a municipal program
5 which meets the requirements of sec. 210(a) or (d).

6 * Sec. 15. AS 46.03.260 is amended to read.

7 Sec. 46.03.260. USE OF ATOMIC RADIATION. Sources of radiation
8 shall be shielded, transported, handled, used and kept to prevent
9 users and persons within effective range from being exposed to unneces-
10 sary radiation in conformity with the commission's [DEPARTMENT'S]
11 regulations.

12 * Sec. 16. AS 46.03.270 is amended to read:

13 Sec. 46.03.270. ELECTRONIC PRODUCT RADIATION. All electronic
14 products capable or likely to be capable of emitting radiation shall be
15 shielded, handled, used, and kept to prevent users and persons within
16 the range of radiation from dangerous concentration of radiation in
17 conformity with the commission's [DEPARTMENT'S] regulations.

18 * Sec. 17. AS 46.03.280 is amended by adding a new subsection to read:

19 (b) A person subject to an order or notification as prescribed
20 in (a) of this section, upon written request in accordance with the
21 rules of the commission, is entitled to hearing before the commission
22 on the order. Following the hearing the order may be affirmed, modi-
23 fied or withdrawn.

24 * Sec. 18. AS 46.03.290 is amended to read:

25 Sec. 46.03.290. AUTHORITY OF COMMISSION [DEPARTMENT] IN CASES
26 OF EMERGENCY. When the commission [DEPARTMENT] finds that an emergency
27 exists requiring immediate action to protect the public health or
28 welfare from radiation it may issue an order reciting the existence of
29 an emergency and requiring that action be taken to meet the emergency.

1 The order is effective immediately. A person to whom an order is
2 directed shall comply with it immediately but on application to the
3 commission [DEPARTMENT] shall be given a hearing under the Administrative
4 Procedure Act (AS 44.62). Thereafter, the commission [DEPARTMENT] may
5 affirm, revoke or modify the order.

6 * Sec. 19. AS 46.03.320 is amended to read:

7 Sec. 46.03.320. AUTHORITY. (a) The commission [DEPARTMENT] is
8 authorized to

9 (1) regulate the transportation, testing, inspection,
10 packaging, labeling, handling and advertising of pesticides and broad-
11 cast chemicals offered for sale, or placed in commerce for use in the
12 state;

13 (2) regulate and supervise the distribution, application
14 or use of pesticides and broadcast chemicals in any state project or
15 program, or by a public agency under the jurisdiction of the state;

16 (3) regulate or prohibit the use of pesticides and broad-
17 cast chemicals.

18 (b) The commission [DEPARTMENT] may provide by regulation for
19 the licensing of persons engaged in the custom, commercial or contract
20 spraying or application of pesticides and broadcast chemicals including
21 the requirement of a surety bond and liability insurance for the
22 licensee.

23 * Sec. 20. AS 46.03.330(a) and (b) are amended to read:

24 (a) No officer, agent or employee of the state, or of a borough
25 or city of any class, may direct, carry out, or participate in the
26 spraying or application of a pesticide or broadcast chemical in any
27 program or project involving funds, materials or equipment of the
28 state, borough or city, except in accordance with regulations promul-
29 gated by the commission [DEPARTMENT] under sec. 320 of this chapter.

1 (b) Before a public project that would affect lands owned
2 separately by two or more persons is initiated, the person directing
3 the program shall give public notice of the program in the manner
4 required by regulations of the commission [DEPARTMENT]. The commission
5 [DEPARTMENT] shall conduct a public hearing on the proposed program
6 if a hearing is requested by the governing body of the affected borough
7 or city, or by a petition signed by at least 50 residents. The
8 requirement for public notice or public hearing may be waived if the
9 commission [COMMISSIONER] determines that a public emergency exists.

10 * Sec. 20. AS 46.03.740 is amended to read:

11 Sec. 46.03.740. OIL POLLUTION. No person may discharge, cause
12 to be discharged, or permit the discharge of petroleum, acid, coal or
13 oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product
14 of petroleum, into, or upon the waters or land of the state except
15 in quantities, and at times and locations or under circumstances and
16 conditions as the commission [DEPARTMENT] may by regulation permit
17 or where permitted under art. IV of the International Convention for
18 the Prevention of Pollution of the Sea by Oil, 1954, as amended.

19 * Sec. 21. AS 46.03.820 is amended to read:

20 Sec. 46.03.820. EMERGENCY POWERS. (a) When the commission
21 [DEPARTMENT] finds, after investigation, that a person is causing,
22 engaging in or maintaining a condition or activity which, in the judg-
23 ment of the commission [ITS COMMISSIONER] presents an imminent or
24 present danger to the health or welfare of the people of the state or
25 would result in or be likely to result in irreversible or irreparable
26 damage to the natural resources or environment, and it appears to be
27 prejudicial to the interests of the people of the state to delay action
28 until an opportunity for a hearing can be provided, the commission
29 [DEPARTMENT] may, without prior hearing, order that person by notice

1 to discontinue, abate or alleviate the condition or activity. The
2 proscribed condition or activity shall be immediately discontinued,
3 abated or alleviated.

4 (b) Upon receipt of an order of the commission [DEPARTMENT] made
5 under (a) of this section, the person affected has the right to
6 be heard and to present proof to the commissio [DEPARTMENT] that the
7 condition or activity does not constitute an actual or potential source
8 of irreversible or irreparable damage to the natural resources or
9 environment of the state, or that the order may constitute a substantial
10 private hardship.

11 (c) In the commissioner's discretion or upon application made
12 by the recipient of an order within 15 days of receipt of the order,
13 the department shall schedule a hearing before the commission at the
14 earliest possible time. The hearing shall be scheduled within five
15 days of the receipt of the application. The submission of an applica-
16 tion or the scheduling of a hearing does not stay the operation of the
17 department's order made under (a) of this section.

18 (d) After a hearing the commission [DEPARTMENT] may affirm,
19 modify or set aside the order. An order affirmed, modified or set
20 aside after hearing is subject to judicial review as provided in
21 AS 44.62.560. The order is not stayed pending judicial review unless
22 the commission [COMMISSIONER] so directs. If an order is not immediate-
23 ly complied with, the attorney general, upon request of the commissioner,
24 shall seek enforcement of the order.

25 (e) The commission [DEPARTMENT] may adopt additional regulations
26 prescribing the procedure to be followed in the issuance of emergency
27 orders.

28 * Sec. 22. AS 46.03.900 is amended by adding a new paragraph to read:

29 (23) "commission" means the Environmental Conservation

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Commission of the Department of Environmental Conservation.

* Sec. 23. AS 44.46.030 - 44.46.050 are repealed.