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Referred: Resources

1 IN THE SENATE BY POLAND AND TILLION

2 HCS (S) SENATE BILL NO. 227

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act regulating the procedure on applications for
7 permits for the use of the state's air, land, or water
8 resources."

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

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

11 CHAPTER 30. ENVIRONMENTAL PROCEDURES COORDINATION.

12 Sec. 46.30.010. LEGISLATIVE DETERMINATION. The legislature deter-
13 mines that the substantial burdens placed upon persons who are proposing
14 to undertake certain types of projects in this state through require-
15 ments to obtain numerous permits and related documents from various
16 state and local agencies are undesirable and should be alleviated. The
17 legislature further finds that present methods for obtaining public
18 views relating to applications to state and local agencies pertaining to
19 these projects are cumbersome and place undue hardships on members of
20 the public with the result that the public ability to express its views
21 is hindered and not facilitated.

22 Sec. 46.30.020. PURPOSE. It is the purpose of this chapter to

23 (1) establish a simplified procedure to assist those who, in
24 the course of satisfying the requirements of the state law before
25 undertaking a project which will require the use of the state's air,
26 land, or water resources, must obtain a permit from one or more state or
27 local agencies by establishing a procedure in the state government which
28 will coordinate the administrative decision-making procedures relating
29 to the permit;

1 (2) provide to the members of the public a better opportunity
2 to present their views on proposed uses of the state's natural resources
3 and related environmental concerns before the time state and local
4 agencies make decisions on applications;

5 (3) provide to applicants for the use of the air, land or
6 water resources of the state a greater degree of certainty in terms of
7 the permit requirements of state and local government;

8 (4) increase the coordination between state and local agen-
9 cies in their administration of programs affecting the state's air,
10 land, and water resources;

11 (5) establish an opportunity for members of the public to
12 obtain information pertaining to requirements of federal and state law
13 which must be satisfied before undertaking a project in this state.

14 §ec. 46.30.030. MASTER APPLICATION. (a) A person proposing a
15 project may submit a master application to the department requesting the
16 issuance of all permits and documents necessary before the construction
17 and operation of the project in the state. The master application shall
18 be on a form established by the department and shall contain precise
19 information as to the location and the nature of the project, including
20 discharge of wastes and use of or interference with natural resources of
21 the state. No master application for the use of land, air, and water
22 within an organized city or borough may be processed by the department
23 under this chapter until it is accompanied by the certification of local
24 government provided for in sec. 130 of this chapter.

25 (b) Upon receipt of a properly completed master application, the
26 department shall immediately notify in writing each state agency having
27 a possible interest in the master application arising from responsibili-
28 ties pertaining to a permit program under its jurisdiction. The notifi-
29 cation from the department shall be accompanied by a copy of the master

1 application together with the date by which the agency shall respond to
2 the notice.

3 (c) Each agency notified shall respond in writing to the depart-
4 ment by the specified date, not exceeding 15 days from receipt, as
5 determined by the department, advising

6 (1) whether the agency has an interest in the master appli-
7 cation;

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

11 (3) whether, in relation to the master application, a public
12 hearing as provided in secs. 50 and 60 of this chapter would be in the
13 public interest.

14 (d) Each notified agency which (1) responds within the specified
15 date that it does not have an interest in the master application; or (2)
16 does not respond as required within the specified date, may not sub-
17 sequently require a permit of the applicant for the project described in
18 the master application unless the master application contained false,
19 misleading, or deceptive information, or other information or lack of
20 information which would reasonably lead an agency to misjudge its
21 interest in the master application.

22 (e) The department shall submit application forms relating to per-
23 mit programs identified in affirmative responses under (c) of this
24 section to the applicant with a direction to complete and return them to
25 the department within a reasonable time as specified by the department.

26 (f) When the applications, properly completed, have been returned
27 to the department, each of the applications shall be transmitted to the
28 appropriate state agency for the performance of its responsibilities of
29 decision making in accordance with the procedures of this chapter.

1 Sec. 46.30.040. SUSPENSION OF PROCEDURES. When it appears that
2 the applicant does not own or control the land or water necessary for
3 the siting of the project in the master application, the department
4 shall suspend the proceedings under this chapter until the applicant has
5 obtained ownership or control of the land or water necessary for the
6 site of the project. If the applicant has applied for land or water
7 necessary for the siting of the project from the state or a municipality
8 of the state, the state agency or municipality shall promptly adjudicate
9 the application for the land or water filed by applicant.

10 Sec. 46.30.050. NOTICE OF PROPOSED PROJECT. (a) The department,
11 within 30 days after transmittal under sec. 30(f) of this chapter, shall
12 cause a notice to be published at the applicant's expense once each week
13 on the same day of the week for three consecutive weeks in a newspaper
14 of general circulation within each municipality in which the project is
15 proposed to be constructed or operated. The notice shall describe the
16 nature of the master application, including, with reasonable specificity,
17 the project proposed, its location, the various permits or documents
18 applied for, and the state agency having jurisdiction over each permit
19 or document. Except as provided in (b) of this section, the notice
20 shall also state the time and place of the public hearing which shall be
21 scheduled not less than 20 days after the date of last publication of
22 the notice. It shall further state that a copy of the master applica-
23 tion and a copy of all applications for the project are available for
24 public inspection in the regional office of the department nearest to
25 where the project is proposed to be constructed or operated, as well as
26 at the department office in the capital and any other locations the
27 department may designate in the notice.

28 (b) If the responses received by the department from state agen-
29 cies under sec. 30(f) of this chapter unanimously state the position

1 that a public hearing concerning a master application is not necessary
2 in the public interest, and the department, after a careful evaluation,
3 taking into consideration all interests involved, including the oppor-
4 tunity for members of the public to present views, agrees, the pro-
5 visions of (a) of this section pertaining to the time and place of a
6 public hearing shall not be included in the notice. In that case the
7 notice shall state that members of the public may present their views
8 and supporting materials in writing to the department regarding any of
9 the permits applied for within 30 days after the last date of public-
10 ation of the notice in a newspaper.

11 Sec. 46.30.060. PUBLIC HEARING. (a) Except as provided in sec.
12 50(b) of this chapter, before a final decision is made on a permit
13 application relating to a project subject to the procedures of this
14 chapter, a public hearing shall be held in or near the municipality in
15 which all or a major part of the proposed project is to be constructed
16 or operated; the hearing shall be held in accordance with the notice
17 given under sec. 50(a) of this chapter. At the hearing the applicant
18 may submit any relevant information and material in support of his
19 applications, and members of the public may present relevant views and
20 supporting materials relating to any or all of the applications being
21 considered.

22 (b) Each state agency having an application for a permit before it
23 under sec. 50(a) of this chapter shall be represented at the public
24 hearing by its commissioner or his designee. The commissioner of the
25 department, his designee, or a hearing officer appointed by the gover-
26 nor, shall chair the hearing; however, the representative of any state
27 agency other than the department within whose jurisdiction a specific
28 application lies shall conduct the portion of the hearing pertaining to
29 submission of information, views, and supporting materials which concern

1 that application. The chairman may continue a hearing from time to time
2 and place to place.

3 (c) No provisions of AS 44.62 apply to the hearing conducted under
4 this section, and the hearing shall be conducted for the purpose of
5 obtaining information for the assistance of state agencies and not as a
6 trial or adversary proceeding.

7 Sec. 46.30.070. FINAL DECISION. (a) Upon completion of the
8 public hearing the chairman, after consultation with the state agency
9 representatives, shall establish the date by which all state agencies
10 shall forward their final decisions on applications before them to the
11 department. The date established shall be within the following 60-day
12 period after the public hearing.

13 (b) In a situation where a notice is provided under sec. 50(b) of
14 this chapter and no public hearing is held, the department shall, 30
15 days after the last notice publication in the newspaper, submit a copy
16 of all views and supporting material received by it to each agency as
17 described in the notice as having an application before it. At the same
18 time, the department shall notify each state agency, in writing, of the
19 date by which final decisions on applications shall be forwarded to the
20 department. The date may be extended by the department for reasonable
21 cause.

22 (c) Each final decision shall state the basis for the conclusion
23 together with a final order denying the application for a permit or
24 granting it, subject to a condition of approval as the deciding agency
25 may have the power to impose. An agency which denies an application
26 shall, with its final decision denying the application, provide a written
27 summary describing alternate means of completing the project or, if no
28 alternative is feasible, the agency shall provide a written summary of
29 its reasons for that conclusion.

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

5 (e) Each state agency having jurisdiction to approve or deny an
6 application for a permit shall have the power vested in it before
7 enactment of this chapter to make such determinations. Nothing in secs.
8 30 - 70 of this chapter lessens or reduces these powers, and secs. 30 -
9 70 of this chapter modify only the procedures to be followed in the
10 carrying out of the powers.

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

15 Sec. 46.30.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. A state
16 agency responding affirmatively under sec. 30(b) of this chapter may
17 withdraw from participation in the processing provided in secs. 30 - 70
18 of this chapter at any time, by written notification to the department,
19 if it subsequently appears to the state agency that it has no permit
20 programs under its jurisdiction applicable to the project.

21 Sec. 46.30.090. JUDICIAL REVIEW. (a) A person aggrieved by a
22 final decision issued by the department under sec. 70(d) of this chapter
23 may appeal the decision to the superior court for the district in which
24 the project is proposed.

25 Sec. 46.30.100. TIME. It is the sense of the legislature that
26 time is of the essence in the processing of applications under this
27 chapter. Whenever a section in this chapter states a time within which
28 an Act or a review is to be completed, the legislature has determined
29 that the time allotted is adequate for a responsive state agency or

1 municipality to complete the act or review. If unusual conditions pre-
2 vent this from happening, it is the sense of the legislature that mini-
3 mum extensions of the period established in this chapter may be granted
4 upon a determination that the delay occurred beyond the control of the
5 reviewing agency or municipality.

6 Sec. 46.30.110. APPLICATION. (a) Notwithstanding any other law
7 relating to the processing of application for permits, the procedures
8 set out in this chapter are exclusive regarding applications for permits
9 filed under sec. 30 of this chapter. The procedures of this chapter are
10 in lieu of any procedures otherwise provided by law or regulation
11 whether enacted before or after this chapter, and are to be followed by
12 a state agency in ruling upon an application for a permit for a project
13 under this chapter.

14 (b) The procedures established in this chapter apply only to pro-
15 jects defined in sec. 200(7) of this chapter and only through the com-
16 pletion of final decisions under sec. 70 of this chapter. This chapter
17 has no applicability to an application for permit renewal, amendment,
18 extension, or other similar application, or for replacing a permit which
19 is required after the completion of the decisions and proceedings under
20 secs. 70 and 90 of this chapter.

21 Sec. 46.30.120. FEE SCHEDULES. Fee schedules previously estab-
22 lished or authorized by law for an application for a permit continue to
23 apply. The department shall collect the fees and forward them to the
24 appropriate state agency.

25 Sec. 46.30.130. COMPLIANCE WITH LOCAL ZONING ORDINANCES AND PLANS.
26 (a) No master application for a project filed under sec. 30 of this
27 chapter may be processed under this chapter until it is accompanied by a
28 certification from the appropriate local government that the project is
29 in compliance with the zoning ordinances and associated comprehensive

1 plans administered by the local government regarding the project. If the
2 local government has no such ordinances or plans the local government
3 shall certify that fact. A local government may accept applications for
4 certification under this section and shall rule upon them within 30
5 days. Upon certification, the local government may not change the zoning
6 ordinances as to the proposed project until the procedures of this
7 chapter, including an appeal, are completed.

8 (b) Approval of an application for certification as provided in
9 this section shall not eliminate any requirements of ordinances admin-
10 istered by a local government. A ruling by local government denying an
11 application for certification is not appealable under this chapter,
12 except that the denial of an application for certification under (a) of
13 this section does not preclude the applicant from filing an application
14 under a different statute or procedure.

15 Sec. 46.30.140. APPLICABILITY OF OTHER LAWS. Nothing in this
16 chapter modifies in any manner the applicability of a land use law or
17 regulation or local zoning ordinances to land of a state agency.

18 Sec. 46.30.150. REGULATIONS AND AUTHORITIES. The department may
19 adopt regulations to implement the provisions of this chapter. In co-
20 operation with other state agencies, it shall prepare a listing of the
21 various permits covered under this chapter.

22 Sec. 46.30.160. PERMIT REQUIREMENTS INFORMATION CENTERS. (a) The
23 department shall establish permit requirements information centers at
24 the commissioner's office and in all of its regional offices to provide
25 information to the public, in readily understandable form, regarding the
26 requirements of federal, state, and local governments for permits which
27 must be acquired before initiating projects in this state.

28 (b) Each regional office of the department and other offices as
29 the department may establish shall provide a master application to any

1 person requesting it. The department shall provide information, forms,
2 instructions, and assistance in the completion of a master application
3 under this chapter to a person requesting assistance.

4 Sec. 46.30.170. CONFLICTS AND COMPLIANCE WITH FEDERAL REQUIREMENTS.

5 (a) If any part of this chapter is found in conflict with federal
6 requirements regarding the allocation of federal funds to the state,
7 that part of this chapter is inoperative to the extent of the conflict
8 regarding the agencies affected, and the determination shall not affect
9 the operation of the remainder of this chapter.

10 (b) The department, to the extent necessary to comply with pro-
11 cedural requirements of federal law relating to permit systems operated
12 by the state, may modify the notice, timing, hearing and related pro-
13 cedural matters provided in this chapter.

14 Sec. 46.30.200. DEFINITIONS. In this chapter

15 (1) "commissioner" means the commissioner of environmental
16 conservation;

17 (2) "department" means the Department of Environmental
18 Conservation;

19 (3) "local government" means a city or borough including a
20 municipality unified under AS 29.68.240 - 29.68.440;

21 (4) "permit" means a license, permit, certificate, certifi-
22 cation, approval, compliance schedule, or other similar document per-
23 taining to a regulatory or management program related to the protection,
24 conservation, or use of, or interference with, the natural resources of
25 land, air or water in the state, which is required to be obtained from a
26 state agency before constructing or operating a project in the state;
27 nothing in this chapter relates to a permit issued by the Alaska Trans-
28 portation Commission or the Alaska Public Utilities Commission nor to
29 the granting of proprietary interests in publicly owned property such as

1 by sale, lease, easement, use permit and license;

2 (5) "person" means an individual, municipal, public, or
3 private corporation, or other entity, and includes a state agency and a
4 local government;

5 (6) "processing" and "processing of applications" means the
6 entire process followed in relation to the making of decisions on an
7 application for a permit and review of it as provided in secs. 30 - 80
8 of this chapter;

9 (7) "project" means any new activity or expansion of or addi-
10 tion to an existing activity, fixed in location, for which permits are
11 required before construction or operation;

12 (8) "state agency" means a state department, commission,
13 board or other agency of the state; for the purposes of this chapter
14 "state agency" also means a local or regional air pollution control
15 authority established under AS 46.03.210.

16 Sec. 46.30.210. SHORT TITLE. This Act may be cited as the En-
17 vironmental Coordination Procedures Act.

18 * Sec. 2. The department, after consultation with other state agencies
19 and local governments, shall submit to the legislature by January 1, 1978, a
20 report setting out the results of the experience under this chapter together
21 with any recommendations and views pertaining to ways and means of improving
22 the procedures and otherwise satisfying the purposes of this chapter.

23 * Sec. 3. This Act takes effect July 1, 1977.
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