

Original sponsors: Poland and Tillion

Offered: 4/13/77
Referred: Rules

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR 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; and providing for an effective date."

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 35. ENVIRONMENTAL PROCEDURES COORDINATION.

12 Sec. 46.35.010. 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. 46.35.020. 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 Sec. 46.35.030. MASTER APPLICATION. (a) A person proposing a
15 project which requires the issuance of one or more permits enumerated
16 in sec. 200(4) of this chapter or any other permit designated by the
17 commissioner may submit a master application to the department requesting
18 the issuance of all permits and documents necessary before the construc-
19 tion and operation of the project in the state. The master application
20 shall be on a form established by the department and shall contain
21 precise information as to the location and the nature of the project,
22 including discharge of wastes and use of or interference with natural
23 resources of the state. No master application for the use of land, air,
24 and water within an organized city or borough may be approved by the
25 department under this chapter until it is accompanied by the certifica-
26 tion of local government provided for in sec. 130 of this chapter.

27 (b) Upon receipt of a properly completed master application, the
28 department shall immediately notify in writing each state agency having
29 a possible interest in the master application arising from responsibili-

1 ties pertaining to a permit program under its jurisdiction. The notifi-
2 cation from the department shall be accompanied by a copy of the master
3 application together with the date by which the agency shall respond to
4 the notice.

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

8 (1) whether the agency has an interest in the master appli-
9 cation;

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

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

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

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

28 (f) When the applications, properly completed, have been returned
29 to the department, each of the applications shall be transmitted to the

1 appropriate state agency for the performance of its responsibilities of
2 decision making in accordance with the procedures of this chapter.

3 Sec. 46.35.040. WITHHOLDING FINAL PERMIT. When it appears that
4 the applicant does not own or control the land or water necessary for
5 the siting of the project in the master application, the department
6 shall continue the proceedings under this chapter but may withhold the
7 final permit until the applicant has obtained ownership or control of
8 the land or water necessary for the site of the project. If the appli-
9 cant has applied for land or water necessary for the siting of the
10 project from the state or a municipality of the state, the state agency
11 or municipality shall promptly adjudicate the application for the land
12 or water filed by applicant.

13 Sec. 46.35.050. NOTICE OF PROPOSED PROJECT. (a) The department,
14 within 30 days after transmittal under sec. 30(f) of this chapter, shall
15 cause a notice to be published at the applicant's expense once each week
16 on the same day of the week for three consecutive weeks in a newspaper
17 of general circulation within each municipality in which the project is
18 proposed to be constructed or operated. The notice shall describe the
19 nature of the master application, including, with reasonable specificity
20 the project proposed, its location, the various permits or documents
21 applied for, and the state agency having jurisdiction over each permit
22 or document. Except as provided in (b) of this section, the notice
23 shall also state the time and place of the public hearing which shall be
24 scheduled not less than 20 or more than 30 days after the date of last
25 publication of the notice. It shall further state that a copy of the
26 master application and a copy of all applications for the project are
27 available for public inspection in the regional office of the department
28 nearest to where the project is proposed to be constructed or operated,
29 as well as at the department office in the capital and any other

1 locations the department may designate in the notice.

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

14 Sec. 46.35.060. PUBLIC HEARING. (a) Except as provided in sec.
15 50(b) of this chapter, before a final decision is made on a permit
16 application relating to a project subject to the procedures of this
17 chapter, a public hearing shall be held in or near the municipality in
18 which all or a major part of the proposed project is to be constructed
19 or operated; the hearing shall be held in accordance with the notice
20 given under sec. 50(a) of this chapter. At the hearing the applicant
21 may submit any relevant information and material in support of his
22 applications, and members of the public may present relevant views and
23 supporting materials relating to any or all of the applications being
24 considered.

25 (b) Each state agency having an application for a permit before it
26 under sec. 50(a) of this chapter shall be represented at the public
27 hearing by its commissioner or his designee. The commissioner of the
28 department, his designee, or a hearing officer appointed by the gover-
29 nor, shall chair the hearing; however, the representative of any state

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

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

10 Sec. 46.35.070. FINAL DECISION. (a) Upon completion of the
11 public hearing the chairman, after consultation with the state agency
12 representatives, shall establish the date by which all state agencies
13 shall forward their final decisions on applications before them to the
14 department. The date established shall be within the following 90-day
15 period after the public hearing.

16 (b) In a situation where a notice is provided under sec. 50(b) of
17 this chapter, the department shall, 30 days after the last notice publi-
18 cation in the newspaper, submit a copy of all views and supporting
19 material received by it to each agency as described in the notice as
20 having an application before it. At the same time, the department shall
21 notify each state agency, in writing, of the date by which final deci-
22 sions on applications shall be forwarded to the department. The date
23 may be extended by the department for reasonable cause.

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

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

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

7 (e) Each state agency having jurisdiction to approve or deny an
8 application for a permit shall have the power vested in it before
9 enactment of this chapter to make such determinations. Nothing in secs.
10 30 - 70 of this chapter lessens or reduces these powers, and secs. 30 -
11 70 of this chapter modify only the procedures to be followed in the
12 carrying out of the powers.

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

17 Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. A state
18 agency responding affirmatively under sec. 30(b) of this chapter may
19 withdraw from participation in the processing provided in secs. 30 - 70
20 of this chapter at any time, by written notification to the department,
21 if it subsequently appears to the state agency that it has no permit
22 programs under its jurisdiction applicable to the project.

23 Sec. 46.35.090. JUDICIAL REVIEW. (a) A person aggrieved by a
24 final decision issued by the department under sec. 70(d) of this chapter
25 may appeal the decision to the commissioner. The appeal shall be
26 initiated by letter to the commissioner giving notice of the decision
27 which is the basis of the appeal and the reasons for the appeal. The
28 commissioner shall, within 60 days after receipt of an appeal and after
29 consultation with the commissioner of any other state agency having

1 jurisdiction over the permit that is the subject of the appeal, issue
2 his decision.

3 (b) A person aggrieved by a decision of the commissioner under
4 (a) of this section may appeal the decision to the superior court in
5 the manner provided by AS 44.62.560 - 44.62.570.

6 Sec. 46.35.100. TIME. It is the sense of the legislature that
7 time is of the essence in the processing of applications under this
8 chapter. Whenever a section in this chapter states a time within which
9 an act or a review is to be completed, the legislature has determined
10 that the time allotted is adequate for a responsive state agency or
11 municipality to complete the act or review. If unusual conditions pre-
12 vent this from happening, it is the sense of the legislature that mini-
13 mum extensions of the period established in this chapter may be granted
14 upon a determination that the delay occurred beyond the control of the
15 reviewing agency or municipality.

16 Sec. 46.35.110. APPLICATION. (a) Notwithstanding any other
17 regulation relating to the processing of application for permits, the
18 procedures set out in this chapter are exclusive regarding applications
19 for permits filed under sec. 30 of this chapter. The procedures of this
20 chapter are in lieu of any procedures otherwise provided by regulation
21 and are to be followed by a state agency in ruling upon an application
22 for a permit for a project under this chapter.

23 (b) The procedures established in this chapter apply only to pro-
24 jects defined in sec. 200(7) of this chapter and only through the com-
25 pletion of final decisions under sec. 70 of this chapter.

26 Sec. 46.35.120. FEE SCHEDULES. Fee schedules previously estab-
27 lished or authorized by law for an application for a permit continue to
28 apply. The department shall collect the fees and forward them to the
29 appropriate state agency.

1 Sec. 46.35.130. COMPLIANCE WITH LOCAL ZONING ORDINANCES AND PLANS.

2 (a) No master application for a project filed under sec. 30 of this
3 chapter may be approved under this chapter until it is accompanied by a
4 certification from the appropriate local government that the project is
5 in compliance with the zoning ordinances and associated comprehensive
6 plans administered by the local government regarding the project. If the
7 local government has no such ordinances or plans, the local government
8 shall certify that fact. A local government may accept applications for
9 certification under this section and shall rule upon them within 30
10 days. A local government may impose stipulations of performance in its
11 approval, but, upon certification, the local government may not change
12 the zoning ordinances as to the proposed project until the procedures of
13 this chapter, including an appeal, are completed.

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

21 Sec. 46.35.140. APPLICABILITY OF OTHER LAWS. Nothing in this
22 chapter modifies in any manner the applicability of a land use law or
23 regulation or local zoning ordinances to land of a state agency.

24 Sec. 46.35.150. REGULATIONS AND AUTHORITIES. The department may
25 adopt regulations to implement the provisions of this chapter. In co-
26 operation with other state agencies, it shall prepare a listing of the
27 various permits covered under this chapter.

28 Sec. 46.35.160. PERMIT REQUIREMENTS INFORMATION CENTERS. (a) The
29 department shall establish permit requirements information centers at

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

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

14 Sec. 46.35.170. CONFLICTS AND COMPLIANCE WITH FEDERAL REQUIREMENTS.

15 (a) If any part of this chapter is found in conflict with federal
16 requirements regarding the allocation of federal funds to the state,
17 that part of this chapter is inoperative to the extent of the conflict
18 regarding the agencies affected, and the determination shall not affect
19 the operation of the remainder of this chapter.

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

24 Sec. 46.35.200. DEFINITIONS. In this chapter

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

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

29 (3) "local government" means a city or borough including a

1 municipality unified under AS 29.68.240 - 29.68.440;

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

- 6 (A) waste water disposal permit -- AS 46.03.100, 18
7 AAC 72;
- 8 (B) solid waste disposal permit -- AS 46.03.100, 18
9 AAC 60;
- 10 (C) air emissions permit -- AS 46.03.150, 18 AAC 50.120;
- 11 (D) pesticides permit -- AS 46.03.320, 18 AAC 90;
- 12 (E) surface oiling permit -- AS 46.03.740, 18 AAC 75;
- 13 (F) open burning permit -- AS 46.03.020, 18 AAC 50.120;
- 14 (G) anadromous fish protection permit -- AS 16.05.870,
15 5 AAC 95.100;
- 16 (H) critical habitat area permit -- AS 16.20.250 - 16.-
17 20.260;
- 18 (I) state game refuge land permit -- AS 16.20.050 - 16.-
19 20.060;
- 20 (J) encroachment permit -- AS 19.25.200;
- 21 (K) utility permit -- AS 19.25.010;
- 22 (L) driveway permit -- AS 19.05.020, 17 AAC 10.020;
- 23 (M) state park incompatible use permit -- AS 41.20.020,
24 11 AAC 18.010;
- 25 (N) access roads permit -- AS 41.20.020, 11 AAC 18.020;
- 26 (O) water well permit -- AS 31.05.030, 11 AAC 22.140;
- 27 (P) brine or other salt water waste disposal permit --
28 AS 31.05.070, 11 AAC 22.250;
- 29 (Q) coal development permit -- AS 27.20.010, 11 AAC

1 46.010;

2 (R) right-of-way and easement permits -- AS 38.05.330,
3 11 AAC 58.200;

4 (S) special land use permit -- AS 38.05.035, 11 AAC 58.-
5 210;

6 (T) tidelands permit -- AS 38.05.320, 11 AAC 62.710;

7 (U) tidelands right-of-way or easement permit -- AS 38.-
8 05.320, 11 AAC 62.810;

9 (V) limited personal use permit -- AS 38.05.320, 11 AAC
10 62.820;

11 (W) permit to appropriate water -- AS 46.15.040, 11 AAC
12 72.050;

13 (X) dam construction permit -- AS 46.15.040, 11 AAC
14 72.060;

15 (Y) preferred use permit -- AS 46.15.040, 11 AAC 72.160;

16 (Z) permit for use of timber or materials -- AS 38.05.-
17 110, 11 AAC 76.185;

18 (AA) authorization for tidelands transportation -- AS 38.-
19 05.110, 11 AAC 76.205;

20 (BB) special material use permit -- AS 38.05.115, 11 AAC
21 76.540;

22 (CC) mineral and geothermal prospecting permits -- AS
23 38.05.145;

24 (DD) tide and submerged lands prospecting permit -- AS
25 38.05.250;

26 (EE) surface use permit -- AS 38.05.255, 11 AAC 86.600;

27 (FF) burning permit during fire season -- AS 41.15.050,
28 11 AAC 92.010;

29 (GG) miscellaneous state land use permit -- AS 38.05.035,

1 11 AAC 96.010;

2 (HH) right-of-way permit -- AS 38.05.330.

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

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

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

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

17 Sec. 46.35.210. SHORT TITLE. This Act may be cited as the En-
18 vironmental Coordination Procedures Act.

19 * Sec. 2. AS 46.03.020 is amended by adding a new paragraph to read:

20 (11) after consultation with other state agencies and local
21 government officials, identify and propose, by regulation, other li-
22 censes, permits or authorizations for which the provisions of ch. 30 of
23 this title are applicable, and report annually to the legislature the
24 permits which have been included.

25 * Sec. 3. The department, after consultation with other state agencies
26 and local governments, shall submit to the legislature by January 1, 1979,
27 a report setting out the results of the experience under this chapter together
28 with any recommendations and views pertaining to ways and means of improving
29 the procedures and otherwise satisfying the purposes of this chapter.

* Sec. 4. This Act takes effect October 1, 1977.

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