

Original sponsors: Poland and Tillion

Offered: 5/4/77
Referred: Rules

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

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HOUSE CS FOR CS FOR SENATE BILL NO. 227

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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TENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act regulating the procedure on applications for permits for the use of the state's air, land, or water resources; and providing for an effective date."

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

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

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CHAPTER 35. ENVIRONMENTAL PROCEDURES COORDINATION.

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Sec. 46.35.010. LEGISLATIVE DETERMINATION. The legislature determines that the substantial burdens placed upon persons who are proposing to undertake certain types of projects in this state through requirements to obtain numerous permits and related documents from various federal, state and local agencies are undesirable and should be alleviated. The legislature further finds that present methods for obtaining public views relating to applications to state and local agencies pertaining to these projects are cumbersome and place undue hardships on members of the public with the result that the public ability to express its views is hindered and not facilitated.

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Sec. 46.35.020. PURPOSE. It is the purpose of this chapter to

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(1) establish a simplified procedure to assist those who, to satisfy the requirements of federal, state, and local law must obtain a permit from one or more federal, state or local government agencies by establishing a procedure to coordinate the administrative decision-making process;

(2) provide to the members of the public a better opportunity to present their views on proposed uses of the state's natural resources

1 and related environmental concerns before federal, state and local
2 agencies decide on applications for permits;

3 (3) provide to applicants for the use of the air, land or
4 water resources of the state a greater degree of certainty on permit
5 requirements of federal, state, and local governments;

6 (4) increase the coordination between federal, state, and
7 local agencies in their administration of programs affecting the state's
8 air, land, and water resources;

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

13 Sec. 46.35.030. MASTER APPLICATION. (a) A person proposing a
14 project which requires the issuance of one or more permits may submit a
15 master application to the department requesting the issuance of all
16 permits and documents necessary before the construction and operation of
17 the project in the state. The master application shall be on a form
18 established by the department and shall contain sufficient information
19 as to the location and the nature of the project, including discharge of
20 wastes and use of or interference with natural resources of the state.

21 (b) Upon receipt of a properly completed master application, the
22 department shall immediately forward a copy of the application to all
23 heads of executive departments of the state and the chief elected
24 official of all municipalities in which a portion of the project is pro-
25 posed to be constructed, together with the date by which the agency
26 shall respond to the master application.

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

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

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

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

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

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

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

25 Sec. 46.35.040. WITHHOLDING FINAL PERMIT. When it appears that
26 the applicant does not own or control the land or water necessary for
27 the siting of the project in the master application, the department
28 shall continue the proceedings under this chapter but may withhold the
29 final permit until the applicant has obtained ownership or control of

1 the land or water necessary for the site of the project. If the appli-
2 cant has applied for land or water necessary for the siting of the
3 project from the state or a municipality of the state, the state agency
4 or municipality shall promptly adjudicate the application for the land
5 or water filed by applicant.

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

24 (b) If no part of the project is to be constructed or operated in
25 a municipality, or if there is no regularly published newspaper of
26 frequency at least weekly, the public notice shall be published in a
27 newspaper in the judicial district in which the project is proposed.

28 (c) 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. 46.35.060. 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, or, if the project is not to be constructed or operated in
17 a municipality, the hearing shall be held at a location reasonably con-
18 venient to the site of the proposed project. The hearing shall be held
19 in accordance with the notice given under sec. 50(a) of this chapter.
20 At the hearing the applicant may submit any relevant information and
21 material in support of his applications, and members of the public may
22 present relevant views and supporting materials relating to any or all
23 of the applications being considered.

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

1 application lies shall conduct the portion of the hearing pertaining to
2 submission of information, views, and supporting materials which concern
3 that application. The chairman may continue a hearing from time to time
4 and place to place.

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

9 (d) Federal and local government agencies may be represented at
10 the hearings, at their option, by their chief executive officer or his
11 designee.

12 (e) The hearing shall be electronically recorded, and copies of
13 the recording shall be made available to state, federal and local
14 agencies upon request.

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

21 (b) In a situation where a notice is provided under sec. 50(b) of
22 this chapter, the department shall, 30 days after the last notice publi-
23 cation in the newspaper, submit a copy of all views and supporting
24 material received by it to each agency as described in the notice as
25 having an application before it. At the same time, the department shall
26 notify each state agency, in writing, of the date by which final deci-
27 sions on applications shall be forwarded to the department. That date
28 shall be no later than 90 days after the date of last publication of the
29 notice, but may be extended by the department for reasonable cause.

1 (c) Each final decision shall state the basis for the conclusion
2 together with a final order denying the application for a permit or
3 granting it, subject to a condition of approval as the deciding agency
4 may have the power to impose. An agency which denies an application
5 shall, with its final decision denying the application, provide a written
6 summary suggesting alternate means of completing the project or, if no
7 alternative is feasible, the agency shall provide a written summary of
8 its reasons for that conclusion.

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

13 (e) Each state agency having jurisdiction to approve or deny an
14 application for a permit shall have the power vested in it before
15 enactment of this chapter to make such determinations. Nothing in secs.
16 30 - 70 of this chapter lessens or reduces these powers, and secs. 30 -
17 70 of this chapter modify only the procedures to be followed in the
18 carrying out of the powers.

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

23 Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. (a) A
24 state agency responding affirmatively under sec. 30(b) of this chapter
25 may withdraw from participation in the processing provided in secs. 30 -
26 70 of this chapter at any time, by written notification to the depart-
27 ment, if it subsequently appears to the state agency that it has no
28 permit programs under its jurisdiction applicable to the project.

29 (b) A decision by a state agency to withdraw from the proceeding

1 is irreversible, and the state agency may not subsequently require a
2 permit of the applicant for the project described in the master applica-
3 tion unless the master application contained false, misleading, or
4 deceptive information, or other information or lack of information which
5 would reasonably lead an agency to misjudge its interest in the master
6 application.

7 Sec. 46.35.090. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) A person
8 aggrieved by a final decision issued under sec. 70(d) of this chapter
9 may file a notice of appeal with the commissioner requesting an adjudica-
10 tory hearing within 30 days of transmittal of the final decision to the
11 person. A failure to file a timely notice of appeal constitutes a waiver
12 of the person's right to review the final decision, unless the failure
13 was due to circumstances beyond the applicant's control.

14 (b) The commissioner shall grant a request for an adjudicatory
15 hearing within 20 days of filing of the notice of appeal if he determines
16 that the notice raises a reasonable issue of fact or law material to the
17 final decision.

18 (c) A hearing officer appointed under AS 44.62.350 shall preside
19 at hearings under this section, rule on the admission and exclusion of
20 evidence, advise the deciding officers on matters of law, and partici-
21 pate in posthearing deliberations.

22 (d) Appeals shall be heard jointly by the commissioner, or his
23 designee, of each agency which rendered a final decision under sec. 70
24 of this chapter for which the person requesting the hearing is aggrieved.
25 The commissioner, or his designee, of each agency shall decide only that
26 portion of the appeal which involves his agency.

27 (e) The commissioner, after consultation with other state agencies
28 and local governments, shall adopt regulations governing the conduct of
29 adjudicatory hearings under this section. The commissioner may enter

1 into cooperative agreements with local governments and federal agencies
2 for the joint holding of adjudicatory hearings. To the extent feasible,
3 regulations adopted under this section shall conform to adjudicatory
4 hearing procedures for the review of permit decisions under AS 30.25 and
5 AS 46.03. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing
6 procedures to review permit decisions under this chapter, or under
7 AS 30.25 or AS 46.03, need not conform to the Administrative Procedure
8 Act (AS 44.62.330 et seq).

9 (f) A person aggrieved by a final decision of the commissioner
10 under this section may appeal the decision to the superior court in the
11 manner provided by AS 44.62.560 - 44.62.570.

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

22 Sec. 46.35.110. APPLICATION. Notwithstanding any other provisions
23 of regulation or statute relating to the processing of application for
24 permits, the procedures set out in this chapter are exclusive for appli-
25 cations filed under sec. 30 of this chapter. The procedures of this
26 chapter are in lieu of any procedures otherwise provided by law or
27 regulation, and are to be followed by a state agency in ruling upon
28 those applications.

29 Sec. 46.35.120. FEE SCHEDULES. Fee schedules previously

1 established or authorized by law for an application for a permit con-
2 tinue to apply. The department shall collect the fees and forward them
3 to the appropriate state agency.

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

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

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

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

27 Sec. 46.35.150. REGULATIONS AND AUTHORITIES. The department may
28 adopt regulations to implement the provisions of this chapter.

29 Sec. 46.35.160. PERMIT REQUIREMENTS INFORMATION CENTERS. (a) The

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

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

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

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

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

25 Sec. 46.35.200. DEFINITIONS. In this chapter

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

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

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

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

7 (A) waste water disposal permit -- AS 46.03.100, 18
8 AAC 72;

9 (B) solid waste disposal permit -- AS 46.03.100, 18
10 AAC 60;

11 (C) air emissions permit -- AS 46.03.150, 18 AAC 50.120;

12 (D) pesticides permit -- AS 46.03.320, 18 AAC 90;

13 (E) surface oiling permit -- AS 46.03.740, 18 AAC 75;

14 (F) open burning permit -- AS 46.03.020, 18 AAC 50.120;

15 (G) anadromous fish protection permit -- AS 16.05.870,
16 5 AAC 95.100;

17 (H) critical habitat area permit -- AS 16.20.250 - 16.-
18 20.260;

19 (I) state game refuge land permit -- AS 16.20.050 - 16.-
20 20.060;

21 (J) encroachment permit -- AS 19.25.200;

22 (K) utility permit -- AS 19.25.010;

23 (L) driveway permit -- AS 19.05.020, 17 AAC 10.020;

24 (M) state park incompatible use permit -- AS 41.20.020,
25 11 AAC 18.010;

26 (N) access roads permit -- AS 41.20.020, 11 AAC 18.020;

27 (O) water well permit -- AS 31.05.030, 11 AAC 22.140;

28 (P) brine or other salt water waste disposal permit --
29 AS 31.05.070, 11 AAC 22.250;

- 1 (Q) coal development permit -- AS 27.20.010, 11 AAC
2 46.010;
- 3 (R) right-of-way and easement permits -- AS 38.05.330,
4 11 AAC 58.200;
- 5 (S) special land use permit -- AS 38.05.035, 11 AAC 58.-
6 210;
- 7 (T) tidelands permit -- AS 38.05.320, 11 AAC 62.710;
- 8 (U) tidelands right-of-way or easement permit -- AS 38.-
9 05.320, 11 AAC 62.810;
- 10 (V) limited personal use permit -- AS 38.05.320, 11 AAC
11 62.820;
- 12 (W) permit to appropriate water -- AS 46.15.040, 11 AAC
13 72.050;
- 14 (X) dam construction permit -- AS 46.15.040, 11 AAC
15 72.060;
- 16 (Y) preferred use permit -- AS 46.15.040, 11 AAC 72.160;
- 17 (Z) permit for use of timber or materials -- AS 38.05.-
18 110, 11 AAC 76.185;
- 19 (AA) authorization for tidelands transportation -- AS 38.-
20 05.110, 11 AAC 76.205;
- 21 (BB) special material use permit -- AS 38.05.115, 11 AAC
22 76.540;
- 23 (CC) mineral and geothermal prospecting permits -- AS
24 38.05.145;
- 25 (DD) tide and submerged lands prospecting permit -- AS
26 38.05.250;
- 27 (EE) surface use permit -- AS 38.05.255, 11 AAC 86.600;
- 28 (FF) burning permit during fire season -- AS 41.15.050,
29 11 AAC 92.010;

1 (GG) miscellaneous state land use permit -- AS 38.05.035,
2 11 AAC 96.010;

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

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

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

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

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

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

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

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

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

1 the procedures and otherwise satisfying the purposes of this chapter.

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

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