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1 IN THE HOUSE

2 HOUSE BILL NO. 415

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the processing of permits by state
7 agencies; and providing for an effective date."

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

9 * Section 1. FINDINGS. The legislature finds that

10 (1) the orderly development of state resources is being unneces-
11 sarily delayed by the length of time required to obtain permits from state
12 agencies, by the complexity of the permitting process, and by the number of
13 agencies involved in the permitting process;

14 (2) the uncertainties created by the lack of specific time limits,
15 the proliferation of agency reviews, the number of agencies involved in the
16 permit process, and unjustified agency requirements upon the processing of
17 permit applications have cost Alaskans millions of dollars in lost employment
18 and higher prices;

19 (3) the public interest has not been advanced by protracted delay
20 in the processing of permit applications by state agencies;

21 (4) by reducing the number of agencies and agency reviews involved
22 in the permit process, and by requiring state agencies to process permit
23 applications in an expeditious manner, the social, economic, and environ-
24 mental health and well-being of Alaska citizens will be promoted; and

25 (5) there are many administrative orders and similar documents
26 which have been promulgated by the executive branch relating to interagency
27 review which conflict and overlap, retarding the permit issuing process.

28 * Sec. 2. AS 44.62 is amended by adding new sections to read:

29 ARTICLE 8A. PERMIT PROCESSING.

1 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) By August 1, 1981,
2 each state agency which issues permits shall publish notice of proposed
3 regulations which classify each of the permits issued by that agency
4 within one of the three following categories:

5 (1) class I permits, which include all permits not covered
6 by (2) - (3) of this subsection, and for which the state agency must
7 issue a final, pre-adjudicatory decision within 30 days after receipt
8 of a completed application;

9 (2) class II permits, for which, because of a specifically
10 required public notice, public hearing, or interagency review period, a
11 final, pre-adjudicatory decision cannot be issued until 65 days after
12 receipt of a completed application; and

13 (3) class III permits, which, because of their unique com-
14 plexity or other compelling reason, cannot receive a final pre-adjudica-
15 tory decision until 90 days after receipt of a completed application.

16 (b) Final regulations classifying the permits shall be adopted by
17 October 1, 1981, after which permits must be issued in accordance with
18 the time periods specified in (a) of this section. Regulations adopted
19 under this section may be revised.

20 (c) Draft and final environmental impact statements are considered
21 separate permits for the purposes of (a) of this section. The failure
22 of an agency to make timely comments on a permit application before
23 another agency does not preclude the agency from making timely comments
24 in response to a change in the permit or impact statement.

25 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
26 ING. (a) Each state agency required by AS 44.62.632 to adopt regu-
27 lations classifying its permits shall also adopt regulations estab-
28 lishing uniform deadlines for interagency consultation, public notice,
29 and public hearing on permits.

1 (b) An applicant and a permit-issuing agency may agree to waive a
2 time limit required by regulation for the classification of the ap-
3 plicable permit.

4 (c) Upon a finding by the head of a permit-issuing agency that a
5 class II or class III permit being considered by the agency is so
6 complex that even with due diligence by the agency the permit cannot
7 receive a final, pre-adjudicatory decision within the time period
8 specified in AS 44.62.632(a)(2) - (3), the head of the permit-issuing
9 agency may prescribe a time period within which the final, pre-adjudica-
10 tory decision will be made. The finding of the head of the agency is
11 subject to judicial review.

12 (d) Subject to (b) and (c) of this section, failure of a permit-
13 issuing agency to make a final, pre-adjudicatory decision within 30
14 days after the receipt of a completed application for a class I permit,
15 within 65 days after the receipt of a completed application for a class
16 II permit, or within 90 days after receipt of a completed application
17 for a class III permit, constitutes approval of the application.

18 (e) The final decision on a class II or class III permit applica-
19 tion, other than a comment on a pending permit application before
20 another state agency, must include the following information:

21 (1) the name and address of the state agency, and the divi-
22 sion of the agency, if any, issuing the final decision;

23 (2) the name of the state employee or employees responsible
24 for issuing the final decision;

25 (3) the name and address of the applicant or applicants;

26 (4) citation of the statute which requires the issuance of
27 the permit and empowers the state agency to process the application;

28 (5) a general statement concerning the nature of the project
29 for which the permit is sought;

1 (6) findings made by the state agency concerning the pro-
2 ject's compliance with the statutes and regulations of the permitting
3 agency;

4 (7) conclusions of the state agency which support its final
5 decision concerning the permit application, including justification of
6 any conditions or stipulations to which the permit is subject; and

7 (8) the final decision on the permit application by the
8 state agency.

9 Sec. 44.62.634. DEFECTIVE APPLICATIONS; NOTICE TO APPLICANT. (a)

10 If a state agency receives a permit application requesting a permit
11 which the agency believes it does not have authority to issue, or which
12 it believes is unnecessary, it shall notify the applicant within 10
13 days after its receipt of the application. A notice given under this
14 subsection is the final agency decision.

15 (b) If a state agency receives a permit application which it
16 believes is not a complete application because it does not contain
17 sufficient information concerning the location or nature of the project
18 to allow the agency to determine compliance of the project with state
19 law, the agency shall notify the applicant within 10 days after its
20 receipt of the application. The notice must specify all information
21 which the agency requires to determine compliance of the project with
22 state law.

23 * Sec. 3. AS 44.62.640 is amended by adding a new subsection to read:

24 (c) As used in AS 44.62.632 - 44.62.634,

25 (1) "date of receipt" means the date on which a state agency
26 actually receives an application requesting issuance of a permit;

27 (2) "final decision" means that decision of a state agency
28 arising out of an adjudicatory decision or mandatory administrative
29 appeal or the pre-adjudicatory or appeal decision if an adjudicatory

1 hearing or appeal is not timely requested;

2 (3) "final, pre-adjudicatory decision" means that decision
3 of a state agency, or recommendation of its staff, which forms the
4 basis for a timely request for an adjudicatory hearing, or mandatory
5 administrative appeal, and which becomes the agency's final decision if
6 an adjudicatory hearing or mandatory administrative appeal is not
7 timely requested; and

8 (4) "permit" means a permit, license, certification, consis-
9 tency determination, comments on pending permit applications before
10 other governmental entities including environmental impact statement
11 comments, plan review, or other authorization or approval issued as a
12 written document which is required to be obtained or is solicited from
13 a state agency before the construction or operation of a project;
14 "permit" does not include conveyances of interest in state land or
15 water, but does include all authorizations and approvals, whether
16 proprietary or regulatory, necessary to undertake a project under a
17 previously conveyed property interest; and does not include the provi-
18 sion of financial assistance;

19 (5) "permit application" includes the following documents:

20 (A) a document requesting the issuance of a permit
21 containing sufficient information concerning the location and
22 nature of a project to allow the state agency to which it is
23 directed to determine compliance of the project with state law;
24 and

25 (B) a document, submitted to a state agency by a govern-
26 mental entity, which solicits comments in connection with a permit
27 being processed by that governmental entity;

28 (6) "project" means a new activity or expansion or addition
29 to an existing activity for which permits are required before construc-

1 tion or operation; "project" does not include pursuing a trade or pro-
2 fession, providing a regulated public or health service, or operating a
3 financial institution;

4 (7) "state agency" means a state department, commission,
5 board or other agency of the state; "state agency" includes local or
6 regional air pollution control authorities established under AS 46.03.-
7 210, and coastal resource districts and coastal resource service boards
8 established under AS 46.40.010 - 46.40.210.

9 * Sec. 4. PERMIT REFORM COMMISSION. (a) The Permit Reform Commission
10 is established, consisting of the following members:

11 (1) the lieutenant governor who shall chair the commission;

12 (2) one representative each of the oil, timber, fishing, mining,
13 and construction industries, appointed by the governor under (b) of this
14 section;

15 (3) one representative of small business in Alaska appointed by
16 the governor under (b) of this section;

17 (4) one representative of an Alaska Native corporation appointed
18 by the governor under (b) of this section;

19 (5) one representative of a major Alaska environmental organiza-
20 tion appointed by the governor under (b) of this section;

21 (6) one representative of the Alaska Municipal League appointed
22 by the governor under (b) of this section; and

23 (7) the attorney general and the commissioners of the Departments
24 of Natural Resources, Environmental Conservation, Fish and Game, and Commerce
25 and Economic Development.

26 (b) Appointments made by the governor under (a) of this section shall
27 be made with due consideration of the availability and willingness of an
28 appointee to devote the time and effort necessary to allow the Permit Reform
29 Commission to function effectively. The governor may solicit nominations

1 from each represented industry, the Alaska Chapter of the National Federation
2 of Independent Businessmen or the Alaska Chamber of Commerce, regional cor-
3 porations established under the Alaska Native Claims Settlement Act (43
4 U.S.C. sec. 1601 et seq.), the Alaska Municipal League, and environmental
5 groups in the state. At least two members of the commission shall be women.
6 All appointments shall be made, if possible, within 30 days after the effec-
7 tive date of this Act or after the effective date of a vacancy in the member-
8 ship of the commission.

9 (c) Appointments to fill vacancies in the membership of the commission
10 shall be made in the manner provided in (b) of this section.

11 (d) Private members of the commission do not receive compensation for
12 their services, but are entitled to the same travel allowance and per diem
13 as state officials and employees.

14 (e) The Department of Law shall provide necessary staff assistance to
15 the commission. However, the commission, with the approval of the attorney
16 general, may retain additional legal counsel.

17 (f) Two-thirds of the membership of the commission constitutes a
18 quorum.

19 (g) A public official designated as a member of the commission under
20 (a) of this section may appoint a designee to perform the duties of that
21 official under this Act.

22 * Sec. 5. POWERS AND DUTIES OF THE PERMIT REFORM COMMISSION. (a) To
23 redress the findings set out in sec. 1 of this Act, the Permit Reform Commis-
24 sion

25 (1) shall review all permit classifications made by state agencies
26 under AS 44.62.632 - 44.62.640 and advise the agencies and the legislature,
27 with respect to each permit classification, whether the classification is
28 appropriate;

29 (2) may administer oaths, certify to all official acts, and issue

1 subpoenas and other process to compel the attendance of witnesses and the
2 production of testimony, records, papers, accounts, and documents in an
3 inquiry, investigation, hearing, or proceeding before the commission in any
4 part of the state; the commission may petition the superior court to enforce
5 its subpoenas or other process; and

6 (3) by the 10th day of the Second Session of the Twelfth Legisla-
7 ture, transmit to the presiding officer of each house of the legislature a
8 report and accompanying proposed legislation with respect to the following
9 matters:

10 (A) recommended changes in the Administrative Procedure Act
11 (AS 44.62.320 - 44.62.550) which would

- 12 (i) expedite the permit application process;
13 (ii) expedite the conclusion of adjudicatory proceedings;
14 (iii) make adjudicatory proceedings more equitable; and
15 (iv) enable the Administrative Procedure Act to be more
16 uniformly used by state agencies; and

17 (B) recommended changes in applicable laws which would

18 (i) minimize the number of state agencies commenting on
19 permits; and

20 (ii) reduce both the frequency of state agency review of
21 permits, and redundant reviews of the same project by the same
22 agency.

23 (b) In preparing the report and legislative proposals, the commission
24 shall consider methods of eliminating duplication within the permitting
25 process, including duplication within

26 (1) the consistency procedure required by the Alaska Coastal
27 Management Act (AS 46.40); and

28 (2) the federal Circular A-95 process, as administered by the
29 division of policy development and planning.

1 * Sec. 6. REVIEW BY PERMIT REFORM COMMISSION. At the same time that it
2 issues public notice of regulations under AS 44.62.632(a), a permit-issuing
3 agency shall submit the proposed regulations to the Permit Reform Commission
4 for its recommendations. To the extent feasible, the Permit Reform Commis-
5 sion shall respond to the proposed regulations during the public comment
6 period for the regulations. When the recommendations of the Permit Reform
7 Commission are not followed or are substantially modified, the permit-issuing
8 agency shall provide a detailed explanation for the deviation. Copies of
9 the detailed explanation shall be forwarded by the permit-issuing agency to
10 the resources committee of each house of the legislature.

11 * Sec. 7. TERMINATION OF COMMISSION. The Permit Reform Commission ter-
12 minates June 30, 1982.

13 * Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accor-
14 dance with AS 01.10.070(c).

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