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Referred: Resources and Finance

1 IN THE SENATE

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2 SENATE BILL NO. 84

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 to approval of Alaska coastal management
8 programs; establishing the Permit Reform Commission;
9 and providing for an effective date."

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

11 * Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

2 ARTICLE 8A. PERMIT PROCESSING.

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

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

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

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

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

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

27 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
28 ING. (a) Each state agency required by AS 44.62.632 to adopt regu-
29 lations classifying its permits shall also adopt regulations estab-

1 lishing uniform deadlines for interagency consultation, public notice,
2 and public hearing on permits.

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

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

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

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

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

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

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

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

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

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

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

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

11 Sec. 44.62.634. DEFECTIVE APPLICATIONS; NOTICE TO APPLICANT. (a)
12 If a state agency receives a permit application requesting a permit that
13 the agency believes it does not have authority to issue, or that it
14 believes is unnecessary, it shall notify the applicant within 10 days
15 after its receipt of the application. A notice given under this sub-
16 section is the final agency decision.

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

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

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

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

28 (2) "final decision" means that decision of a state agency
29 arising out of an adjudicatory decision or mandatory administrative

1 appeal or the pre-adjudicatory or appeal decision if an adjudicatory
2 hearing or appeal is not timely requested;

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

9 (4) "permit" means a permit, license, certification, consis-
10 tency determination, comments on pending permit applications before
11 other governmental entities including environmental impact statement
12 comments, plan review, or other authorization or approval issued as a
13 written document which is required to be obtained or is solicited from a
14 state agency before the construction or operation of a project; "permit"
15 does not include

16 (A) conveyances of interest in state land or water, but
17 does include all authorizations and approvals, whether proprietary
18 or regulatory, necessary to undertake a project under a previously
19 conveyed property interest; and

20 (B) the provision of financial assistance;

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

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

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

29 (6) "project" means a new activity or expansion or addition

1 to an existing activity for which permits are required before construc-
2 tion or operation; "project" does not include pursuing a trade or pro-
3 fession, providing a regulated public or health service, or operating a
4 financial institution;

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

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

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

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

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

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

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

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

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

27 (b) Appointments made by the governor under (a) of this section shall
28 be made with due consideration of the availability and willingness of an
29 appointee to devote the time and effort necessary to allow the Permit Reform

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

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

12 (d) Private members of the commission serve without compensation, but
13 are entitled to the same travel allowance and per diem as state officials and
14 employees.

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

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

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

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

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

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

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

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

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

18 (B) recommended changes in applicable laws which would

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

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

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

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

29 (2) the federal Circular A-95 process, as administered by the

1 division of policy development and planning.

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

12 * Sec. 7. AS 46.40.080 is amended to read:

13 Sec. 46.40.080. EFFECTIVE DATE OF ALASKA COASTAL MANAGEMENT PRO-
14 GRAM. The Alaska coastal management program adopted by the council, and
15 any additions, revisions, or amendments of the program, take effect upon
16 approval by law of the program or of an addition, revision, or amendment
17 to the program [ADOPTION OF A CONCURRENT RESOLUTION BY A MAJORITY OF THE
18 MEMBERS OF EACH HOUSE OF THE LEGISLATURE OR BY A VOTE OF THE MAJORITY OF
19 THE MEMBERS OF EACH HOUSE AT THE TIME THE HOUSES ARE CONVENED IN JOINT
20 SESSION TO CONFIRM EXECUTIVE APPOINTMENTS SUBMITTED BY THE GOVERNOR].

21 * Sec. 8. AS 46.40.080 is repealed and re-enacted to read:

22 Sec. 46.40.080. EFFECTIVE DATE OF ALASKA COASTAL MANAGEMENT PRO-
23 GRAM. The Alaska coastal management program adopted by the council, and
24 any additions, revisions, or amendments of the program, take effect upon
25 adoption of a concurrent resolution by a majority of the members of each
26 house of the legislature or by a vote of the majority of the members of
27 each house at the time the houses are convened in joint session to
28 confirm executive appointments submitted by the governor.

29 * Sec. 9. TERMINATION OF COMMISSION. The Permit Reform Commission ter-

1 minates June 30, 1982.

2 * Sec. 10. Section 8 of this Act takes effect upon the condition and at
3 the time that the Supreme Court of the State of Alaska finds that approval of
4 actions of agencies by concurrent resolution of the legislature is constitu-
5 tional or an amendment to the Constitution of the State of Alaska relating to
6 approval of actions of agencies by concurrent resolution and consistent with
7 sec. 8 of this Act becomes effective, whichever is earlier.

8 * Sec. 11. EFFECTIVE DATE. Sections 1 - 7 and 9 - 11 of this Act take
9 effect immediately in accordance with AS 01.10.070(c).

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