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Offered: 4/14/81
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 84 (Resources)

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 employ-
18 ment 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 requiring state agencies to process permit applications in
22 an expeditious manner within a reasonable period of time, the state will
23 promote the social, economic, and environmental health and well-being of its
24 citizens.

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

26 ARTICLE 8A. ISSUANCE OF PERMITS.

27 Sec. 44.62.632. TIME LIMIT ON THE PROCESSING OF PERMITS. (a)
28 Upon receipt of a permit application or receipt of a federal agency
29 request for state review of an application for a federal permit, the

1 responsible state agency shall issue a final decision granting, denying,
2 or reasonably conditioning the issuance of the permit, or issue a final
3 response to the federal agency's request for state review, within the
4 following time periods, unless the applicant and the agency mutually
5 agree to a different period of time:

6 (1) any time period specifically required by state law;

7 (2) 60 days if a time period is not specifically required by
8 state law and a public notice, public hearing, or comment period is
9 specifically required by state law in connection with the permit appli-
10 cation;

11 (3) 30 days if (1) or (2) of this subsection do not apply.

12 (b) The final decision on a permit application under (a) of this
13 section shall include the following information:

14 (1) conclusions of the state agency which support its deci-
15 sion concerning the permit application, including the factual basis and
16 statutory authority for any conditions or stipulations to which the
17 permit is subject; and

18 (2) the granting, conditional granting, or denial of the
19 permit by the state agency.

20 (c) The final decision under (a) of this section must bear a fair
21 and substantial relation to the object of the law under which the state
22 agency is empowered to act.

23 (d) A permit may not be denied because of the lack of any other
24 permit, and may not be conditioned upon the acquisition of any other
25 permit.

26 (e) A permit application which has not been approved or rejected
27 by the responsible state agency within the time period specified in (a)
28 of this section is approved as submitted. The permit is approved on
29 the last day on which the state agency could have announced a final

1 decision under (a) of this section.

2 Sec. 44.62.634. DEFECTIVE APPLICATIONS; NOTICE TO APPLICANT. (a).
3 If a state agency receives a permit application requesting a permit
4 which the agency believes it does not have authority to issue, or which
5 it believes is unnecessary, it shall notify the applicant within 10
6 days after its receipt of the application. A notice given under this
7 subsection is the final agency decision.

8 (b) If a state agency receives a permit application which it
9 believes does not contain sufficient information concerning the location
10 and nature of the project to allow the agency to determine whether the
11 project complies with state law, the agency shall notify the applicant
12 within 10 days after its receipt of the application. The notice must
13 specify all information the agency requires to determine whether the
14 project complies with state law.

15 Sec. 44.62.635. REVIEW BY THE COMMISSIONER OR BOARD. A state
16 agency's final decision issued under AS 44.62.632 may be reviewed by
17 the commissioner or board of the issuing agency at the request of the
18 applicant. The applicant is entitled to a review de novo if requested
19 in the original request for review; otherwise the review is a review on
20 the record. The request must be filed with the commissioner or board
21 within 30 days of the applicant's receipt of the decision. The commis-
22 sioner or board shall issue a decision within 10 days of receipt of the
23 request if the review is a review on the record. If the applicant has
24 requested a hearing de novo, the hearing shall be held within 30 days
25 of receipt of the request, and the decision of the commissioner or
26 board shall be made within 30 days of the conclusion of the hearing.
27 Unless the agency decision is confirmed in its entirety, the commis-
28 sioner or board shall issue a written decision setting out the findings
29 and conclusions in full.

1 Sec. 44.62.636. REVIEW BY THE SUPERIOR COURT. (a) Judicial
2 review by the superior court of a final decision issued by a state
3 agency under AS 44.62.632 or 44.62.634 or of a decision of the commis-
4 sioner or board issued under AS 44.62.635, may be had by filing a
5 notice of appeal in the superior court in accordance with the applicable
6 rules of appellate procedure. The right to appeal is not affected by
7 the failure to seek reconsideration or further review under AS 44.62.-
8 635. The review shall be governed by the provisions of AS 44.62.560-
9 (b) - (e) and 44.62.570.

10 (b) On an appeal by an applicant to the superior court, the
11 agency which issued the final decision has the burden of proving that
12 the decision is in accordance with AS 44.62.632 and 44.62.634.

13 (c) An appeal taken under this section has preference on the
14 calendar of civil actions before the court and shall be decided without
15 unnecessary delay.

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

17 (c) In AS 44.62.632 - 44.62.634,

18 (1) "permit" means a permit, license, certification, consis-
19 tency determination, comments on pending permit applications before
20 other governmental entities (including environmental impact statement
21 comments), plan review, or other authorization or approval issued as a
22 written document which is required to be obtained or is solicited from
23 a state agency before the construction or operation of a project;
24 "permit" does not include

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

29 (B) the provision of financial assistance;

1 (2) "permit application" includes the following documents:

2 (A) a document requesting the issuance of a permit
3 which contains sufficient information concerning the location and
4 nature of a project to allow the state agency to which it is
5 directed to determine compliance of the project with state law;

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

9 (3) "project" means a new activity or expansion or addition
10 to an existing activity for which permits are required before construc-
11 tion or operation; "project" does not include pursuing a trade or pro-
12 fession, providing public health service, or operating a financial
13 institution;

14 (4) "state agency" means a state department, commission,
15 board, or other agency of the state; "state agency" includes a local or
16 regional air pollution control authority established under AS 46.03.210
17 and a coastal resource district and coastal resource service board
18 established under AS 46.40.010 - 46.40.210.

19 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).