

CORRECTION

HOUSE CS FOR CS FOR SENATE BILL NO. 84(Rules)

Please discard Page 1 of this bill and insert this corrected page.

The Correction made:

HOUSE CS FOR CS FOR SENATE BILL NO. 84

to

HOUSE CS FOR CS FOR SENATE BILL NO. 84 (Rules)

Original sponsors: Bennett, Parr and
Fahrenkamp

Offered: 6/22/81
For Today's Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 84 (Rules)

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; to surface leasing of land; and to admini-
8 stration of the Alaska coastal management program; and
9 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 employ-
20 ment 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 in-
24 volved in the permit process, and by requiring state agencies to process
25 permit applications in an expeditious manner, the social, economic, and
26 environmental health and well-being of Alaska citizens will be promoted; and

27 (5) there are many administrative orders and similar documents
28 that have been promulgated by the executive branch relating to interagency
29 review that 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) Each state resource
4 agency shall by regulation classify each of the permits issued by that
5 agency within one of the two following categories:

6 (1) class I permits, for which the state agency must issue a
7 final, pre-adjudicatory decision within 30 days after the date of
8 receipt of a completed application; and

9 (2) class II permits, for which, because of a necessary or
10 appropriate public notice or interagency review period, a final, pre-
11 adjudicatory decision cannot be issued until 65 days after the date of
12 receipt of a completed application.

13 (b) Final regulations classifying its permits, and uniform proce-
14 dural regulations providing for the processing of these permits, shall
15 be adopted by each state resource agency by October 1, 1981, after
16 which time permits must be issued in accordance with the time periods
17 specified in (a) of this section. Regulations adopted under this sec-
18 tion may be revised.

19 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
20 ING. (a) An applicant and a resource agency may agree to waive a time
21 limit required by regulation for the classification of the applicable
22 permit.

23 (b) Upon a finding by the head of a resource agency that a permit
24 being considered by the agency is so complex that the agency cannot
25 render a final, pre-adjudicatory decision within the time period speci-
26 fied in AS 44.62.632(a), the head of the agency may prescribe a time
27 period within which the final, pre-adjudicatory decision will be made.
28 The finding of the head of the agency is subject to judicial review.

29 (c) The time period specified in AS 44.62.632(a) may be extended

1 by a maximum of 20 days if a public hearing is held on a permit appli-
2 cation.

3 (d) The time period specified in AS 44.62.632(a) may be extended
4 if necessary to facilitate joint processing of a permit application
5 through memorandum of understanding by state and federal agencies.

6 (e) Subject to (a) - (d) of this section and AS 44.62.634, fail-
7 ure of a resource agency to make a final, pre-adjudicatory decision
8 within 30 days after the receipt of a completed application for a class
9 I permit, or within 65 days after the receipt of a completed applica-
10 tion for a class II permit, constitutes approval of the application.

11 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agen-
12 cy receives a completed permit application form which does not contain
13 sufficient information concerning the project's compliance with the
14 agency's statutes and regulations, the agency shall notify the appli-
15 cant within 15 days of receipt of a completed application for a class I
16 permit, and within 30 days of receipt for a class II permit. The noti-
17 fication must specify all information that the agency believes at that
18 time to be necessary to determine compliance of the project with the
19 agency's statutes and regulations.

20 (b) The initial and any subsequent notification must specify
21 those particular facts or issues concerning the proposal that require
22 more information than is provided on a completed application form.
23 Subsequent requests for additional information must be made within the
24 permit deadline as extended, and may be made only with respect to new
25 issues raised by the response to the initial notification.

26 (c) If a timely request under this section is made, the time per-
27 iod specified in AS 44.62.632 is tolled from the date of request to the
28 date of full compliance with the request.

29 Sec. 44.62.635. LEAD AGENCY DESIGNATION. (a) On or before Octo-

1 ber 1, 1981, the governor shall, by administrative order, designate a
2 lead agency for the preparation and submission of a single state posi-
3 tion on federal permit applications. The lead agency may vary accord-
4 ing to the nature of the activity proposed. No other state agency may
5 comment on the federal permit application except through advisory com-
6 ment to the lead agency. The lead agency has the ultimate authority
7 with respect to the substance of the state's comments, but must consult
8 with other affected agencies, and shall give great weight to the
9 comments of other agencies within those agencies' primary area of
10 expertise.

11 (b) The administrative order required in (a) of this section must
12 not conflict with applicable federal law.

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

14 (c) As used in AS 44.62.632 - 44.62.635,

15 (1) "date of receipt" means the date on which a state agency
16 actually receives a completed application filed in accordance with
17 agency regulations and at a place identified as appropriate for filing
18 in the agency's regulations;

19 (2) "final, pre-adjudicatory decision" means that decision
20 of a state agency, or its staff that forms the basis for a timely re-
21 quest for an adjudicatory hearing or administrative appeal, and that
22 becomes the agency's final decision if an adjudicatory hearing or man-
23 datory administrative appeal is not timely requested;

24 (3) "permit" means a permit, license, certification, consis-
25 tency determination, plan review, or other authorization or approval
26 issued by a resource agency as a written document that is required to
27 be obtained or is solicited from a state agency before the construction
28 or operation of a project; "permit" does not include conveyances of in-
29 terest in state land or water, but does include all authorizations and

1 approvals, whether proprietary or regulatory, necessary to undertake a
2 project under a previously conveyed property interest;

3 (4) "project" means a new activity or expansion or addition
4 to an existing activity for which permits are required before construc-
5 tion or operation; and

6 (5) "resource agency" includes the Department of Natural
7 Resources, the Department of Environmental Conservation, the Alaska
8 Coastal Policy Council, and the Department of Fish and Game with respect
9 to permits issued for the protection of fish habitat or the regulation
10 of state sanctuaries, refuges, and critical habitat areas.

11 * Sec. 4. AS 38.05.075 is repealed and reenacted to read:

12 Sec. 38.05.075. SURFACE LEASING PROCEDURE. (a) Except as pro-
13 vided in AS 38.05.068, 38.05.082, and (b) - (e) of this section, and
14 leasing shall be conducted by public auction, to the highest pre-quali-
15 fied bidder, as determined by the director. An aggrieved pre-qualified
16 bidder may appeal to the commissioner by a letter postmarked within five
17 days after the director's determination. Lease auctions shall be con-
18 ducted by the director or his representative, and the successful
19 pre-qualified bidder shall deposit at the auction the first year's
20 rental or that percentage of it that the commissioner shall require.
21 The director may require a deposit for any survey and appraisal costs
22 reasonably incurred by another pre-qualified bidder acting in accor-
23 dance with the department's regulations. If a bidder making a deposit
24 of survey or appraisal costs is determined to be the highest pre-quali-
25 fied bidder under this subsection, his deposit shall be paid to the un-
26 successful bidder who incurred those costs. The director or his repre-
27 sentative shall immediately issue a receipt to the successful pre-qual-
28 ified bidder containing a description of the land or interest leased,
29 the total price bid, the terms of the lease, and the amount, if any, to

1 be paid for the survey or appraisal. The receipt shall be immediately
2 acknowledged by the bidder. If the receipt is not acknowledged by the
3 bidder in accordance with this subsection, the director may re-offer
4 the land in accordance with this section. The lease, on a form approved
5 by the attorney general, shall be signed by the successful bidder
6 within 30 days after the auction, and shall thereafter be signed by the
7 director, after approval by the commissioner.

8 (b) When a valid existing grazing lease is cancelled to permit
9 state selection of the land under lease, the lessee of the land has a
10 preference right to lease the land without competitive bidding for a
11 term equal to the unexpired term originally granted in the cancelled
12 federal lease, and upon terms no less favorable to the lessee than
13 those contained in the cancelled federal lease.

14 (c) A littoral owner or lessee has a preference right to acquire,
15 without competitive bidding, a lease for tide and submerged land di-
16 rectly adjacent to his upland parcel if

17 (1) lease of the tide or submerged land is sought solely for
18 the purpose of facilitating water transport of material extracted,
19 harvested, produced, or processed on the adjacent uplands;

20 (2) the proposed use of the tide and submerged land is com-
21 patible with the classification of this land and the adjacent uplands;

22 (3) there is no competing interest for a higher and better
23 use of the subject tide and submerged land;

24 (4) where the land was formed by isostatic rebound, granting
25 of a lease would not violate the state's irrevocable trust respon-
26 sibilities; and

27 (5) issuance of the lease will not interfere with prior ex-
28 isting rights.

29 (d) The annual rental for a lease issued under (c) of this sec-

1 tion shall be determined by an appraisal conducted under AS 38.05.310.
2 If the adjacent upland ownership interest is less than fee simple, the
3 term of the lease acquired under (c) of this section may not exceed the
4 unexpired term of the upland interest. Termination of a less-than-fee
5 upland interest before its normal expiration, for any reason, shall
6 terminate the lease acquired under (c) of this section.

7 (e) The department shall, in conformity with AS 38.05.345, re-
8 quire pre-qualification of bidders for a lease to be issued under
9 AS 38.05.070. If, as a result of pre-qualification, the director de-
10 termines that there is only one qualified bidder for the lease, he may
11 issue a lease to that bidder at the appraised value as determined by
12 AS 38.05.310, without competitive bidding. Notwithstanding AS 38.05.-
13 345, disposal shall occur as soon as practicable following completion
14 of survey and appraisal, and notice of any auction shall be made per-
15 sonally or by registered mail to all pre-qualified bidders.

16 * Sec. 5. AS 44.19.162 is amended to read:

17 Sec. 44.19.162. COUNCIL STAFF. The council shall utilize the
18 staff of the office of coastal management within the Department of En-
19 vironmental Conservation [DIVISION OF POLICY DEVELOPMENT AND PLANNING]
20 in discharging its powers and duties. The commissioner [COORDINATOR OF
21 THE OFFICE], with the concurrence of the council, may contract with or
22 employ personnel or consultants he considers necessary to carry out the
23 powers and duties of the council.

24 * Sec. 6. AS 46.35 is amended by adding a new section to read:

25 Sec. 46.35.025. PRE-APPLICATION CONFERENCE. (a) A person con-
26 sidering the submission of a permit coordination request under AS 46.-
27 35.030, or a master application under AS 46.35.035, may request a per-
28 mit requirement information center established under AS 46.35.160 to
29 hold a pre-application conference.

1 (b) The department will invite to the conference appropriate fed-
2 eral, state, and local agencies. The conference will be held no later
3 than 30 days after receipt of a request under (a) of this section.

4 (c) The purpose of a pre-application conference is to enable a
5 potential applicant and appropriate federal, state, and local agencies
6 to discuss the nature of the proposed activity, tentative or possible
7 agency concerns over the activity, and permits that may be required.

8 * Sec. 7. AS 46.35.030 is amended to read:

9 Sec. 46.35.030. PERMIT COORDINATION REQUEST [MASTER APPLICATION].

10 (a) A person proposing a project which requires the issuance of one or
11 more permits may submit a permit coordination request [MASTER APPLICA-
12 TION] to the department requesting the issuance of all permits and doc-
13 uments covered by this chapter [NECESSARY BEFORE THE CONSTRUCTION AND
14 OPERATION OF THE PROJECT IN THE STATE]. The request [MASTER APPLICA-
15 TION] shall be on a form established by the department and shall con-
16 tain sufficient information as to the location and the nature of the
17 project, including discharge of wastes and use of or interference with
18 natural resources of the state.

19 (b) Upon receipt of a properly completed request [MASTER APPLICA-
20 TION], the department shall immediately forward a copy of the request
21 [APPLICATION] to each agency administering a permit covered by this
22 chapter [ALL HEADS OF EXECUTIVE DEPARTMENTS OF THE STATE] and the chief
23 elected official of all municipalities in which a portion of the project
24 is proposed to be constructed, together with the date by which the
25 agency shall respond to the request [MASTER APPLICATION].

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

29 (1) whether the agency has permit jurisdiction over [AN IN-

1 INTEREST IN] the request [MASTER APPLICATION]; and

2 (2) if the response to (1) of this subsection is affirma-
3 tive, the permit program under the agency's jurisdiction to which the
4 project described in the request [MASTER APPLICATION] is pertinent [,
5 AND

6 (3) WHETHER, IN RELATION TO THE MASTER APPLICATION, A PUBLIC
7 HEARING AS PROVIDED IN AS 46.35.050 and 46.35.060 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 permit jurisdiction over the project de-
11 scribed in the request [AN INTEREST IN THE MASTER APPLICATION]; or (2)
12 does not respond as required within the specified date, may not subse-
13 quently require a permit of the applicant for the project described in
14 the request [MASTER APPLICATION] unless the request [MASTER APPLICA-
15 TION] contained false, misleading, or deceptive information, or other
16 information or lack of information which would reasonably lead an agen-
17 cy to misjudge its interest in the project [MASTER APPLICATION].

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

23 (f) When the applications, properly completed, have been returned
24 to the department, each of the applications shall be transmitted to the
25 appropriate state agency for the performance of its responsibilities of
26 decision making in accordance with the procedures of this chapter, and
27 any applicable permit deadline shall begin on the date of receipt of a
28 completed application by the permitting agency.

29 * Sec. 8. AS 46.35 is amended by adding new sections to read:

1 Sec. 46.35.035. MASTER APPLICATION. (a) The department shall
2 periodically develop master applications on a commercial or industrial
3 activity basis.

4 (b) A master application developed under this section serves as
5 the application form for each permit that is generally required for the
6 commercial or industrial activity.

7 (c) When a person submits a master application developed under
8 this section, AS 46.35.030 does not apply. The master application
9 shall be served on the office of the department specified in regulation
10 and any applicable permit deadline shall begin on the date of receipt
11 of a complete application by the appropriate office of the department.

12 Sec. 46.35.051. PERMIT PROCEDURES. (a) Permits sought under
13 AS 46.35.030 or 46.35.035 shall be processed in one consolidated pro-
14 ceeding. The proceeding shall be governed by those procedures that
15 would otherwise be applicable to a permit being sought and that provide
16 for the greatest degree of public participation and interagency review.
17 The decisional deadline applicable to the procedure used shall apply to
18 each final decision made under AS 46.35.070. If the holding of a
19 public hearing is discretionary under the applicable procedure, a
20 majority of the permitting agencies shall determine whether to hold a
21 public hearing under applicable criteria.

22 (b) Any change in the application or coordination request made
23 during the pendency of proceedings under AS 46.35.030 or this section
24 which is either jurisdictional or would result in significant new ad-
25 verse impacts from the project shall be treated as the filing of a new
26 application or coordination request.

27 * Sec. 9. AS 46.35.070 is repealed and reenacted to read:

28 Sec. 46.35.070. FINAL DECISION. Each permitting agency shall
29 forward its final decision to the department within the deadline estab-

1 lished under AS 46.35.051(a). As soon as all final decisions are re-
2 ceived by the department, the department shall incorporate them, with-
3 out modification, into one document and transmit it to the applicant
4 either personally or by registered mail.

5 * Sec. 10. AS 46.35.080 is amended to read:

6 Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. (a) A
7 state agency participating in a consolidated proceeding [RESPONDING AF-
8 FIRMATIVELY UNDER AS 46.35.030(b)] may withdraw from participation
9 as to one or more permits [IN THE PROCESSING PROVIDED IN AS 46.35.030 -
10 46.35.070] at any time, by written notification to the department, if
11 it subsequently appears to the state agency that it does not have [HAS
12 NO] permit [PROGRAMS UNDER ITS] jurisdiction [APPLICABLE TO THE PRO-
13 JECT].

14 (b) A decision by a state agency to withdraw from the proceeding
15 is irreversible, and the state agency may not subsequently require the
16 [A] permit of the applicant for the project described in the master ap-
17 plication unless the master application contained false, misleading, or
18 deceptive information, or other information or lack of information
19 which would reasonably lead an agency to misjudge its interest in the
20 permit coordination request or master application.

21 * Sec. 11. AS 46.35.090(a) is amended to read:

22 (a) A person aggrieved by a final decision issued under AS 46.35.-
23 070 [AS 46.35.070(d)] may file a notice of appeal with the commissioner
24 requesting an adjudicatory hearing within 15 [30] days of receipt
25 [TRANSMITTAL] of the final decision by [TO] the person. A failure to
26 file a timely notice of appeal constitutes a waiver of the person's
27 right to review the final decision, unless the failure was due to cir-
28 cumstances beyond the applicant's control.

29 * Sec. 12. AS 46.35.110 is amended to read:

1 Sec. 46.35.110. APPLICATION. Notwithstanding any other provi-
2 sions of regulation or statute relating to the processing of applica-
3 tion for permits, the procedures set out in this chapter are exclusive
4 for permits sought under AS 46.35.030 and applications filed under
5 AS 46.35.035 [AS 46.35.030]. The procedures of this chapter are in
6 lieu of any procedures otherwise provided by law or regulation, and are
7 to be followed by a state agency in ruling upon those applications.

8 * Sec. 13. AS 46.35.130(a) is amended to read:

9 (a) No permit for a project filed under AS 46.35.030 or 46.35.035
10 may be issued unless the application has provided a certification from
11 the appropriate local government that the project is in compliance with
12 the zoning ordinances and associated comprehensive plans administered
13 by the local government regarding the project. If the local government
14 has no such ordinances or plans, the local government shall certify that
15 fact. A local government may accept applications for certification
16 under this section and shall rule upon them within 30 days. A local
17 government may impose stipulations of performance in its approval, but,
18 upon certification, the local government may not change the zoning
19 ordinances as to the proposed project until the procedures of this
20 chapter, including an appeal, are completed.

21 * Sec. 14. AS 46.35.170 is amended by adding a new subsection to read:

22 (c) The department may enter into memoranda of understanding with
23 federal agencies for the full or partial processing of related federal
24 permits under the procedures established by this chapter.

25 * Sec. 15. AS 46.35 is amended by adding a new section to read:

26 Sec. 46.35.175. RELATION TO SURFACE LEASING PROCEDURE. When a
27 project requires a surface lease under AS 38.05.075 in addition to per-
28 mits covered by this chapter,

29 (1) application for the surface lease shall be coordinated

1 under AS 46.35.030 or, when applicable, subsumed in the master applica-
2 tion submitted under AS 46.35.035;

3 (2) the determination required under AS 38.05.035(a)(14)
4 shall be consolidated in the proceeding conducted under AS 46.35.051,
5 and the procedure for making that determination shall govern the con-
6 solidated proceeding; and

7 (3) AS 46.35.040 applies if there is more than one pre-quali-
8 fied bidder.

9 * Sec. 16. AS 46.35.200(4) is repealed and reenacted to read:

10 (4) "permit" means a permit, license, certification, consis-
11 tency determination, plan review, or other authorization or approval
12 issued as a written document that is required to be obtained from ei-
13 ther the Department of Fish and Game, Department of Environmental Con-
14 servation, Department of Natural Resources, or Office of the Governor,
15 division of policy development and planning; "permit" does not include
16 disposals of an interest in state land or water, but does include all
17 authorizations and approvals, whether proprietary or regulatory, neces-
18 sary to undertake a project under a previously conveyed property inter-
19 est; the department, by regulation and with the consent of the permit-
20 ting agency, may delete a permit from the coverage of this chapter if
21 its inclusion unduly complicates consolidated review, and may add addi-
22 tional permits issued by other agencies;

23 * Sec. 17. AS 46.35.050, 46.35.060, and 46.35.090(b) are repealed.

24 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).