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Offered: 6/23/81  
For Today's Supplemental  
Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 84 (2d 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 granting of land use authoriza-  
7 tions by state agents."

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  
15 limits, the proliferation of agency reviews, the number of agencies involved  
16 in the permit process, and unjustified agency requirements upon the process-  
17 ing of permit applications have cost Alaskans millions of dollars in lost  
18 employment 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 in-  
22 volved in the permit process, and by requiring state agencies to process  
23 permit applications in an expeditious manner, the social, economic, and  
24 environmental health and well-being of Alaska citizens will be promoted; and

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

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

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

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

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

22           (b) Upon a finding by the head of a resource agency that a permit  
23 being considered involves unusually complex issues so that the agency  
24 cannot render a final, pre-adjudicatory decision within the time period  
25 specified in AS 44.62.632(a), the head of the agency may prescribe a  
26 time period within which the final, pre-adjudicatory decision will be  
27 made. The finding of the head of the agency may be appealed to the  
28 superior court under the Appellate Rules of Procedure.

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, and  
6 strict adherence to the time periods established in AS 44.62.632(a)  
7 would pose an irreconcilable conflict with a federal statute or regula-  
8 tion.

9 (e) Subject to (a) - (d) of this section and AS 44.62.634, fail-  
10 ure of a resource agency to make a final, pre-adjudicatory decision  
11 within 30 days after the receipt of a completed application for a class  
12 I permit, or within 65 days after the receipt of a completed applica-  
13 tion for a class II permit, constitutes approval of the application.  
14 In an appeal of a permit issued by operation of this subsection, the  
15 record shall be construed in a light most favorable to the applicant,  
16 and the permit shall be accorded a presumption of regularity.

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

26 (b) The initial and any subsequent notification must specify  
27 those particular facts or issues concerning the proposal that require  
28 more information than is provided on a completed application form.  
29 Subsequent requests for additional information must be made within the

1 permit deadline as extended, and may be made only with respect to new  
2 issues raised by the response to the initial notification.

3 (c) If a timely request under this section is made, the time per-  
4 iod specified in AS 44.62.632 is suspended from the date of request to  
5 the date of full compliance with the request.

6 Sec. 44.62.635. LEAD AGENCY. There are established lead agencies  
7 which are solely responsible for issuing coastal management consistency  
8 determinations under AS 46.40 and for preparing and submitting state  
9 comments on federal permit applications. The lead agency may vary for  
10 classes of activities, but shall be that agency that has principal  
11 responsibility for authorizing the overall activity. For classes of  
12 activities for which no agency with principal responsibility exists the  
13 governor shall designate a lead agency by administrative order no later  
14 than October 1, 1981. In performing its functions under this section,  
15 the lead agency shall consult with other resource agencies and with  
16 coastal resource districts under AS 46.40. The lead agency shall  
17 balance competing factors in reaching its decision. Great weight shall  
18 be given to the comments of resource agencies within their primary area  
19 of expertise, and also to the comments of coastal resource districts  
20 with approved coastal management plans, unless the district's recom-  
21 mendation would result in the arbitrary or unreasonable restriction or  
22 exclusion of uses of state concern as that term is defined in AS 46.40.-  
23 070(c).

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 - 44.62.635,

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

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

6 (3) "permit" means a permit, license, certification, consis-  
7 tency determination, plan review, or other authorization or approval  
8 issued by a resource agency as a written document that is required to  
9 be obtained or is solicited from a state agency before the construction  
10 or operation of a project; "permit" does not include conveyances of in-  
11 terest in state land or water, but does include all authorizations and  
12 approvals, whether proprietary or regulatory, necessary to undertake a  
13 project under a previously conveyed property interest;

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

17 (5) "resource agency" includes the Department of Natural  
18 Resources, the Department of Environmental Conservation, the Alaska  
19 Coastal Policy Council, and the Department of Fish and Game with respect  
20 to permits issued for the protection of fish habitat or the regulation  
21 of state sanctuaries, refuges, and critical habitat areas.

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

23 Sec. 38.05.075. SURFACE LEASING PROCEDURE. (a) Except as pro-  
24 vided in AS 38.05.068, 38.05.082, and (b) - (e) of this section, and  
25 leasing shall be conducted by public auction, to the highest pre-quali-  
26 fied bidder, as determined by the director. An aggrieved pre-qualified  
27 bidder may appeal to the commissioner by a letter postmarked within  
28 five days after the director's determination. Lease auctions shall be  
29 conducted by the director or his representative, and the successful

1 pre-qualified bidder shall deposit at the auction the first year's  
2 rental or that percentage of it that the commissioner shall require.  
3 The director may require a deposit for any survey and appraisal costs  
4 reasonably incurred by another pre-qualified bidder acting in accor-  
5 dance with the department's regulations. If a bidder making a deposit  
6 of survey or appraisal costs is determined to be the highest pre-quali-  
7 fied bidder under this subsection, his deposit shall be paid to the un-  
8 successful bidder who incurred those costs. The director or his repre-  
9 sentative shall immediately issue a receipt to the successful pre-quali-  
10 fied bidder containing a description of the land or interest leased,  
11 the total price bid, the terms of the lease, and the amount, if any, to  
12 be paid for the survey or appraisal. The receipt shall be immediately  
13 acknowledged by the bidder. If the receipt is not acknowledged by the  
14 bidder in accordance with this subsection, the director may re-offer  
15 the land in accordance with this section. The lease, on a form ap-  
16 proved by the attorney general, shall be signed by the successful  
17 bidder within 30 days after the auction, and shall thereafter be signed  
18 by the director, after approval by the commissioner.

19 (b) When a valid existing grazing lease is cancelled to permit  
20 state selection of the land under lease, the lessee of the land has a  
21 preference right to lease the land without competitive bidding for a  
22 term equal to the unexpired term originally granted in the cancelled  
23 federal lease, and upon terms no less favorable to the lessee than  
24 those contained in the cancelled federal lease.

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

28 (1) lease of the tide or submerged land is sought solely for  
29 the purpose of facilitating water transport of material extracted,

1 harvested, produced, or processed on the adjacent uplands;

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

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

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

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

11 (d) The annual rental for a lease issued under (c) of this sec-  
12 tion shall be determined by an appraisal conducted under AS 38.05.310.  
13 If the adjacent upland ownership interest is less than fee simple, the  
14 term of the lease acquired under (c) of this section may not exceed the  
15 unexpired term of the upland interest. Termination of a less-than-fee  
16 upland interest before its normal expiration, for any reason, shall  
17 terminate the lease acquired under (c) of this section.

18 (e) The department shall, in conformity with AS 38.05.345, re-  
19 quire pre-qualification of bidders for a lease to be issued under  
20 AS 38.05.070. If, as a result of pre-qualification, the director de-  
21 termines that there is only one qualified bidder for the lease, he may  
22 issue a lease to that bidder at the appraised value as determined by  
23 AS 38.05.310, without competitive bidding. Notwithstanding AS 38.05.-  
24 345, disposal shall occur as soon as practicable following completion  
25 of survey and appraisal, and notice of any auction shall be made per-  
26 sonally or by registered mail to all pre-qualified bidders.

27 \* Sec. 5. AS 44.19.162 is amended to read:

28 Sec. 44.19.162. COUNCIL STAFF. The council shall utilize the  
29 staff of the office of coastal management within the Department of

1 Community and Regional Affairs [DIVISION OF POLICY DEVELOPMENT AND  
2 PLANNING] in discharging its powers and duties. The commissioner  
3 [COORDINATOR OF THE OFFICE], with the concurrence of the council, may  
4 contract with or employ personnel or consultants he considers necessary  
5 to carry out the powers and duties of the council.

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

7 Sec. 46.35.025. PRE-APPLICATION CONFERENCE. (a) A person con-  
8 sidering the submission of a permit coordination request under AS 46.-  
9 35.030, or a master application under AS 46.35.035, may request a per-  
10 mit requirement information center established under AS 46.35.160 to  
11 hold a pre-application conference.

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

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

19 \* Sec. 7. AS 46.35.030 is amended to read:

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

21 (a) A person proposing a project which requires the issuance of one or  
22 more permits may at his sole discretion submit a permit coordination  
23 request [MASTER APPLICATION] to the department requesting the issuance  
24 of all permits and documents covered by this chapter [NECESSARY BEFORE  
25 THE CONSTRUCTION AND OPERATION OF THE PROJECT IN THE STATE]. The  
26 request [MASTER APPLICATION] shall be on a form established by the  
27 department and shall contain sufficient information as to the location  
28 and the nature of the project, including discharge of wastes and use of  
29 or interference with natural resources of the state.

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

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

11 (1) whether the agency has permit jurisdiction over [AN IN-  
12 TEREST IN] the request [MASTER APPLICATION]; and

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

17 (3) WHETHER, IN RELATION TO THE MASTER APPLICATION, A PUBLIC  
18 HEARING AS PROVIDED IN AS 46.35.050 and 46.35.060 WOULD BE IN THE  
19 PUBLIC INTEREST].

20 (d) Each notified agency which (1) responds within the specified  
21 date that it does not have permit jurisdiction over the project de-  
22 scribed in the request [AN INTEREST IN THE MASTER APPLICATION]; or (2)  
23 does not respond as required within the specified date, may not subse-  
24 quently require a permit of the applicant for the project described in  
25 the request [MASTER APPLICATION] unless the request [MASTER APPLICA-  
26 TION] contained false, misleading, or deceptive information, or other  
27 information or lack of information which would reasonably lead an agen-  
28 cy to misjudge its interest in the project [MASTER APPLICATION].

29 (e) The department shall submit application forms relating to

1 permit programs identified in affirmative responses under (c) of this  
2 section to the applicant with a direction to complete and return them  
3 to the department within a reasonable time as specified by the depart-  
4 ment.

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

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

12 Sec. 46.35.035. MASTER APPLICATION. (a) The department shall  
13 periodically develop master applications on a commercial or industrial  
14 activity basis.

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

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

23 (d) The use of the master application procedures established in  
24 this chapter is at the sole discretion of the applicant.

25 Sec. 46.35.051. PERMIT PROCEDURES. (a) Permits sought under  
26 AS 46.35.030 or 46.35.035 shall be processed in one consolidated pro-  
27 ceeding. The proceeding shall be governed by those procedures that  
28 would otherwise be applicable to a permit being sought and that provide  
29 for the greatest degree of public participation and interagency review.

1 The decisional deadline applicable to the procedure used shall apply to  
2 each final decision made under AS 46.35.070. If the holding of a  
3 public hearing is discretionary under the applicable procedure, a  
4 majority of the permitting agencies shall determine whether to hold a  
5 public hearing under applicable criteria.

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

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

12 Sec. 46.35.070. FINAL DECISION. Each permitting agency shall  
13 forward its final decision to the department within the deadline estab-  
14 lished under AS 46.35.051(a). As soon as all final decisions are re-  
15 ceived by the department, the department shall incorporate them, with-  
16 out modification, into one document and transmit it to the applicant  
17 either personally or by registered mail.

18 \* Sec. 10. AS 46.35.080 is amended to read:

19 Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. (a) A  
20 state agency participating in a consolidated proceeding [RESPONDING AF-  
21 FIRMATIVELY UNDER AS 46.35.030(b)] may withdraw from participation  
22 as to one or more permits [IN THE PROCESSING PROVIDED IN AS 46.35.030 -  
23 46.35.070] at any time, by written notification to the department, if  
24 it subsequently appears to the state agency that it does not have [HAS  
25 NO] permit [PROGRAMS UNDER ITS] jurisdiction [APPLICABLE TO THE PRO-  
26 JECT].

27 (b) A decision by a state agency to withdraw from the proceeding  
28 is irreversible, and the state agency may not subsequently require the  
29 [A] permit of the applicant for the project described in the master ap-

1 plication unless the master application contained false, misleading, or  
2 deceptive information, or other information or lack of information  
3 which would reasonably lead an agency to misjudge its interest in the  
4 permit coordination request or master application.

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

6 (a) A person aggrieved by a final decision issued under AS 46.35.-  
7 070 [AS 46.35.070(d)] may file a notice of appeal with the commissioner  
8 requesting an adjudicatory hearing within 15 [30] days of receipt  
9 [TRANSMITTAL] of the final decision by [TO] the person. A failure to  
10 file a timely notice of appeal constitutes a waiver of the person's  
11 right to review the final decision, unless the failure was due to cir-  
12 cumstances beyond the applicant's control.

13 \* Sec. 12. AS 46.35.110 is amended to read:

14 Sec. 46.35.110. APPLICATION. Notwithstanding any other provi-  
15 sions of regulation or statute relating to the processing of applica-  
16 tion for permits, the procedures set out in this chapter are exclusive  
17 for permits sought under AS 46.35.030 and applications filed under  
18 AS 46.35.035 [AS 46.35.030]. The procedures of this chapter are in  
19 lieu of any procedures otherwise provided by law or regulation, and are  
20 to be followed by a state agency in ruling upon those applications.

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

22 (a) No permit for a project filed under AS 46.35.030 or 46.35.035  
23 may be issued unless the application has provided a certification from  
24 the appropriate local government that the project is in compliance with  
25 the zoning ordinances and associated comprehensive plans administered  
26 by the local government regarding the project. If the local government  
27 has no such ordinances or plans, the local government shall certify that  
28 fact. A local government may accept applications for certification  
29 under this section and shall rule upon them within 30 days. A local

1 government may impose stipulations of performance in its approval, but,  
2 upon certification, the local government may not change the zoning  
3 ordinances as to the proposed project until the procedures of this  
4 chapter, including an appeal, are completed.

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

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

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

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

13 (1) application for the surface lease shall be coordinated  
14 under AS 46.35.030 or, when applicable, subsumed in the master applica-  
15 tion submitted under AS 46.35.035;

16 (2) the determination required under AS 38.05.035(a)(14)  
17 shall be consolidated in the proceeding conducted under AS 46.35.051,  
18 and the procedure for making that determination shall govern the con-  
19 solidated proceeding; and

20 (3) AS 46.35.040 applies if there is more than one pre-  
21 qualified bidder.

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

23 (4) "permit" means a permit, license, certification, consis-  
24 tency determination, plan review, or other authorization or approval  
25 issued as a written document that is required to be obtained from ei-  
26 ther the Department of Fish and Game, Department of Environmental Con-  
27 servation, Department of Natural Resources, or Office of the Governor,  
28 division of policy development and planning; "permit" does not include  
29 disposals of an interest in state land or water, but does include all

1 authorizations and approvals, whether proprietary or regulatory, neces-  
2 sary to undertake a project under a previously conveyed property inter-  
3 est; the department, by regulation and with the consent of the permit-  
4 ting agency, may delete a permit from the coverage of this chapter if  
5 its inclusion unduly complicates consolidated review, and may add addi-  
6 tional permits issued by other agencies;

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