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Offered: 2/24/82
Referred: Rules

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to processing of permits by state
7 agencies, and to administration of the Alaska Coastal
8 Management program."

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

10 * Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

ARTICLE 8A. PERMIT PROCESSING.

Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource agency shall by regulation classify each of the permits issued by that agency within one of the two following categories:

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

(2) class II permits, for which, because of a necessary public notice or interagency review period, a final decision cannot be issued within 30 days; a final decision on a class II permit must be issued within 65 days after the date of receipt of a completed permit application, unless a public hearing is held on the permit, in which case a final decision must be issued within 75 days of the date of receipt.

(b) Final regulations classifying its permits, and uniform procedural regulations providing for the processing of these permits, shall be adopted by each state resource agency by October 1, 1982, following appropriate notice and hearing. Permits applied for after October 1, 1982 must be issued in accordance with the time periods specified in (a) of this section, and the provisions of the implementing regulations.

Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESSING. (a) Upon a finding by the head of a resource agency that a permit being considered involves unusually complex issues so that the agency cannot render a final decision within the time period specified in AS 44.62.632(a), the head of the agency may prescribe a time period within which the final decision will be made. The finding of the head of the agency may be appealed by the applicant to the superior court under the Appellate Rules of Procedure. The time period may not be extended more than 120 days beyond the time period specified in AS 44.-

1 62.632(a) unless the applicant agrees otherwise.

2 (b) The time period specified in AS 44.62.632(a) may be extended
3 if necessary to facilitate joint processing of a permit application by
4 state and federal agencies, but only if adherence to the time periods
5 established in AS 44.62.632(a) would cause an irreconcilable conflict
6 with a federal statute or regulation.

7 (c) Subject to (a) and (b) of this section and AS 44.62.634,
8 failure of a resource agency to make a final decision within 30 days
9 after the receipt of a completed permit application for a class I
10 permit, or within 65 days after the receipt of a completed permit
11 application for a class II permit, is approval of the application. In
12 an appeal of a permit issued by operation of this subsection, the
13 record shall be considered in the light most favorable to the applicant,
14 and the permit shall be accorded a presumption of regularity.

15 (d) A state agency may not condition the issuance of a permit
16 upon the issuance of a permit from another governmental agency.

17 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agen-
18 cy receives a completed permit application that does not contain suffi-
19 cient information concerning the project's compliance with the agency's
20 statutes and regulations, the agency shall notify the applicant within
21 15 days after receipt of a completed permit application for a class I
22 permit, and within 30 days after receipt for a class II permit.

23 (b) The notification must specify those particular facts or
24 issues concerning the proposal upon which the agency requires additional
25 information in order to determine whether the project will conform to
26 the agency's statutes and regulations.

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

1 Subsequent requests for additional information may be made, but must
2 relate only to new issues raised by the response to the initial noti-
3 fication. Subsequent requests do not extend the time periods specified
4 in AS 44.62.632.

5 (d) Nothing in this section grants a resource agency the authority
6 to request information beyond the authority given to it by other sta-
7 tutes.

8 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
9 agency that is solely responsible for issuing coastal management consis-
10 tency determinations under AS 46.40 and for preparing and submitting
11 state comments on federal permit applications. The lead agency is that
12 resource agency that has principal responsibility for authorizing the
13 overall activity, including instances where an activity requires permits
14 from more than one resource agency. For classes of activities for
15 which no agency with principal responsibility exists the governor shall
16 designate a resource agency to be a lead agency for each class by
17 administrative order no later than October 1, 1982. In performing its
18 functions under this section, the lead agency shall consult with other
19 resource agencies and with coastal resource districts under AS 46.40.

20 (b) Substantive consideration shall be given to the documented
21 factual statements or data submitted by resource agencies and to the
22 office of coastal management within their primary areas of expertise,
23 and to the documented factual statements or data submitted by coastal
24 resource districts made under an approved district coastal management
25 program. The lead agency shall consider opinions, conclusions or
26 recommendations submitted by the commenting agency, but may, in its
27 discretion, reach contrary opinions, conclusions or recommendations
28 according to the evidence received. The lead agency shall then balance
29 competing factors in reaching its final decision. No resource agency

1 other than the lead agency has primary expertise in the balancing of
2 competing factors.

3 (c) Except as required by federal law no state agency other than
4 the lead agency may comment to a federal permitting agency.

5 (d) For activities involving a disposal of interest in land and a
6 certification under sec. 401 of the Clean Water Act (33 U.S.C. sec.
7 1341), the lead agency shall be the Department of Natural Resources.

8 (e) For activities involving a plan of operation approval under a
9 previous disposal of an interest in land and a certificate under sec.
10 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall
11 be the Department of Natural Resources.

12 Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or
13 state agency that receives a request for comment in connection with a
14 permit application or plan review being processed by a resource agency
15 shall submit these comments in accordance with the following schedule:

16 (1) comments on class I permits shall be submitted within 15
17 days after the agency's receipt of the request;

18 (2) comments on class II permits and federal permits shall
19 be submitted within 30 days after the agency's receipt of the request;

20 (3) when under AS 44.62.633, the requesting agency has
21 extended the time periods specified in AS 44.62.632, that agency may
22 extend the time period specified in this section; however, comments
23 submitted under this paragraph must be submitted no later than 30 days
24 before the date on which the lead agency must issue a final decision.

25 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform proce-
26 dural regulations adopted under AS 44.62.632(b) must provide for an
27 administrative appeal from a final decision on a permit application.
28 The administrative appeal is to the head of the resource agency in-
29 volved. Except as provided in this section the procedure is conducted

1 under AS 44.62.330 - 44.62.630.

2 (b) The administrative appeal must be resolved within 45 days
3 after the final decision on a permit application, or, if a hearing is
4 held on the administrative appeal, within 65 days after the final
5 decision on the permit application.

6 (c) An appeal taken from a decision granting a permit may, but
7 need not, stay the issuance of the permit.

8 (d) The head of the agency may summarily dismiss an appeal before
9 the time established in this section, and the dismissal is the final
10 agency action on the matter.

11 (e) In an appeal from the denial or conditioning of a permit the
12 head of the agency may, if he determines that the public interest would
13 be served, grant the permit or remove conditions of the permit until
14 the appeal is determined.

15 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial
16 review by the superior court of a final decision issued under AS 44.-
17 62.632 - 44.62.637 may be had by filing a notice of appeal in the
18 superior court in accordance with the applicable Rules of Appellate
19 Procedure. The review is governed by the provisions of AS 44.62.-
20 560(b) - (e) and AS 44.62.570.

21 (b) An appeal taken under this section should have preference on
22 the calendar of civil actions before the court and should be decided
23 without unnecessary delay.

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 - 44.62.638,

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) "permit" means a permit, license, certification, consis-
2 tency determination, or other authorization or approval issued by a
3 resource agency as a written document that is required to be obtained
4 or is solicited from a state agency before the construction or opera-
5 tion of a project; "permit"

6 (A) does not include the approval of a unit agreement,
7 a unit development plan, or a unit exploration plan, or conveyances
8 of interest in state land or water;

9 (B) does include all authorizations and approvals,
10 whether proprietary or regulatory, necessary to undertake a project
11 under a previously conveyed property interest;

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

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