

Introduced: 1/17/83  
Referred: Labor & Commerce,  
Resources and Judiciary

BY MARTIN, LINDAUER  
AND TISCHER

1 IN THE HOUSE

2 HOUSE BILL NO. 14

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST 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  
16 limits, the proliferation of agency reviews, the number of agencies in-  
17 volved in the permit process, and unjustified agency requirements upon the  
18 processing of permit applications have cost Alaskans millions of dollars in  
19 lost employment and higher prices;

20 (3) the public interest has not been advanced by protracted  
21 delay 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;  
26 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  
7 a final decision within 30 days after the date of receipt of a com-  
8 pleted permit application; and

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

16 (b) Final regulations classifying its permits, and uniform  
17 procedural regulations providing for the processing of these permits,  
18 shall be adopted by each state resource agency by October 1, 1983,  
19 following appropriate notice and hearing. Permits applied for after  
20 October 1, 1983, must be issued in accordance with the time periods  
21 specified in (a) of this section, and the provisions of the implement-  
22 ing regulations.

23 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-  
24 CESSING. (a) Upon a finding by the head of a resource agency that a  
25 permit being considered involves unusually complex issues so that the  
26 agency cannot render a final decision within the time period specified  
27 in AS 44.62.632(a), the head of the agency may prescribe a time period  
28 within which the final decision will be made. The finding of the head  
29 of the agency may be appealed by the applicant to the superior court

1 under the Appellate Rules of Procedure. The time period may not be  
2 extended more than 120 days beyond the time period specified in  
3 AS 44.62.632(a) unless the applicant agrees otherwise.

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

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

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

19 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource  
20 agency receives a completed permit application that does not contain  
21 sufficient information concerning the project's compliance with the  
22 agency's statutes and regulations, the agency shall notify the appli-  
23 cant within 15 days after receipt of a completed permit application  
24 for a class I permit, and within 30 days after receipt for a class II  
25 permit.

26 (b) The notification must specify those particular facts or  
27 issues concerning the proposal upon which the agency requires addi-  
28 tional information in order to determine whether the project will  
29 conform to the agency's statutes and regulations.

1 (c) If a timely request under (a) and (b) of this section is  
2 made, the time period specified in AS 44.62.632 is suspended from the  
3 date of request to the date of full compliance with the request.  
4 Subsequent requests for additional information may be made, but must  
5 relate only to new issues raised by the response to the initial noti-  
6 fication. Subsequent requests do not extend the time periods speci-  
7 fied in AS 44.62.632.

8 (d) Nothing in this section grants a resource agency the author-  
9 ity to request information beyond the authority given to it by other  
10 statutes.

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

24 (b) Substantive consideration shall be given to the documented  
25 factual statements or data submitted by resource agencies and to the  
26 office of coastal management within their primary areas of expertise,  
27 and to the documented factual statements or data submitted by coastal  
28 resource districts made under an approved district coastal management  
29 program. The lead agency shall consider opinions, conclusions or

1 recommendations submitted by the commenting agency, but may, in its  
2 discretion, reach contrary opinions, conclusions or recommendations  
3 according to the evidence received. The lead agency shall then bal-  
4 ance competing factors in reaching its final decision. No resource  
5 agency other than the lead agency has primary expertise in the balanc-  
6 ing of competing factors.

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

9 (d) For activities involving a disposal of interest in land and  
10 a certification under sec. 401 of the Clean Water Act (33 U.S.C. sec.  
11 1341), the lead agency shall be the Department of Natural Resources.

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

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

20 (1) comments on class I permits shall be submitted within  
21 15 days after the agency's receipt of the request;

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

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

29 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform

1 procedural regulations adopted under AS 44.62.632(b) must provide for  
2 an administrative appeal from a final decision on a permit applica-  
3 tion. The administrative appeal is to the head of the resource agency  
4 involved. Except as provided in this section the procedure is con-  
5 ducted under AS 44.62.330 - 44.62.630.

6 (b) The administrative appeal must be resolved within 45 days  
7 after the final decision on a permit application, or, if a hearing is  
8 held on the administrative appeal, within 65 days after the final  
9 decision on the permit application.

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

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

15 (e) In an appeal from the denial or conditioning of a permit the  
16 head of the agency may, if the head of the agency determines that the  
17 public interest would be served, grant the permit or remove conditions  
18 of the permit until the appeal is determined.

19 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial  
20 review by the superior court of a final decision issued under AS 44.-  
21 62.632 - 44.62.637 may be had by filing a notice of appeal in the  
22 superior court in accordance with the applicable Rules of Appellate  
23 Procedure. The review is governed by the provisions of AS 44.62.-  
24 560(b) - (e) and AS 44.62.570.

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

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

29 (c) As used in AS 44.62.632 - 44.62.638,

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

5           (2) "permit" means a permit, license, certification, con-  
6 sistency determination, or other authorization or approval issued by a  
7 resource agency as a written document that is required to be obtained  
8 or is solicited from a state agency before the construction or opera-  
9 tion of a project; "permit"

10           (A) does not include the approval of a unit agreement,  
11 a unit development plan, or a unit exploration plan, or convey-  
12 ances of interest in state land or water;

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

16           (3) "project" means a new activity or expansion or addition  
17 to an existing activity for which permits are required before con-  
18 struction or operation; "project" does not include pursuing a trade or  
19 profession, providing public health service, or operating a financial  
20 institution;

21           (4) "resource agency" includes the Department of Natural  
22 Resources, the Department of Environmental Conservation, and the  
23 Department of Fish and Game with respect to permits issued for the  
24 protection of fish habitat or the regulation of state sanctuaries,  
25 refuges, and critical habitat areas.