

Offered: 5/10/83
Referred: Judiciary and Finance

Original sponsors: Martin, Lindauer
and Tischer

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 14 (Resources)

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 shall be adopted
17 by each state resource agency by February 1, 1984, following appropri-
18 ate notice and hearing. Permits applied for after February 1, 1984,
19 must be issued in accordance with the time periods specified in (a) of
20 this section, and the provisions of the implementing regulations.

21 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
22 CESSING. (a) Upon a finding by the head of a resource agency that a
23 permit being considered involves unusually complex issues so that the
24 agency cannot render a final decision within the time period specified
25 in AS 44.62.632(a), the head of the agency may prescribe a time period
26 not to exceed a total of 120 days within which the final decision will
27 be made. The finding of the head of the agency may be appealed by the
28 applicant to the superior court under the Appellate Rules of Proce-
29 dure.

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

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

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

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

28 (c) If a timely request under (a) and (b) of this section is
29 made, the time period specified in AS 44.62.632 is suspended from the

1 date of request to the date of full compliance with the request.
2 Subsequent requests for additional information may be made, but must
3 relate only to new issues raised by the response to the initial noti-
4 fication. Subsequent requests do not extend the time periods speci-
5 fied in AS 44.62.632.

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

9 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
10 agency that is solely responsible for issuing coastal management
11 consistency determinations under AS 46.40. For resource development
12 activities on state and federal land, water, and submerged land, the
13 lead agency is the Department of Natural Resources. In all other
14 cases, the lead agency is that resource agency that has principal
15 administrative responsibility for the type of development for which
16 the consistency determination is required, even though the development
17 may require permits from more than one resource agency. The lead
18 agency is solely responsible for preparing and submitting state com-
19 ments on federal permit applications. For classes of activities for
20 which no agency with principal responsibility exists the governor
21 shall designate a resource agency to be a lead agency for each class
22 by administrative order no later than October 1, 1983.

23 (b) In performing its functions under this section, the lead
24 agency shall consult with other resource agencies and with coastal
25 resource districts under AS 46.40. The lead agency shall consider
26 documented facts, data, opinion, conclusions, or recommendations
27 submitted by the commenting agency and the coastal resource districts
28 with an approved district coastal management program, within their
29 areas of expertise, but may, in its discretion, reach contrary opin-

1 ions, conclusions or recommendations according to the weight of the
2 evidence received. The lead agency shall balance competing factors in
3 reaching its final decision. No resource agency other than the lead
4 agency has primary expertise in the balancing of competing factors.

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

7 (d) For activities involving approval of a plan of operation and
8 a certificate under 33 U.S.C. 1341 (sec. 401 of the Clean Water Act),
9 the lead agency shall be the Department of Natural Resources.

10 (e) For activities occurring on privately owned land, and for
11 which one or more state permits or a disposal of interest in state
12 land is required to provide access to the privately owned land, or for
13 purposes otherwise ancillary to the activity, the lead agency shall be
14 the Department of Natural Resources.

15 (f) Nothing in this section or AS 46.40 authorizes a lead agency
16 or any resource agency to deny or condition a consistency determina-
17 tion because of impacts which may be caused by activities not them-
18 selves requiring a state or federal permit or disposal of interest in
19 state land.

20 (g) In making a consistency determination under this section for
21 an activity occurring outside the boundaries of a coastal resource
22 district with an approved district plan, the lead agency or any re-
23 source agency may consider only those statewide standards and guide-
24 lines adopted by the Alaska Coastal Policy Council under AS 46.40.-
25 040(1).

26 Sec. 44.62.636. COMMENT PERIOD. (a) A coastal resource dis-
27 trict or state agency that receives a request for comment in connec-
28 tion with a permit application or plan review being processed by a
29 resource agency shall submit the comments in accordance with the

1 following schedule:

2 (1) comments on class I permits shall be submitted within
3 15 days after receipt of the request by the commenting coastal re-
4 source district or state agency;

5 (2) comments on class II permits and federal permits shall
6 be submitted within 30 days after receipt of the request by the com-
7 menting coastal resource district or state agency.

8 (b) When, under AS 44.62.633, the requesting agency has extended
9 the time periods specified in AS 44.62.632, that agency may extend the
10 time period specified in this section; however, comments submitted
11 under this subsection must be submitted no later than 30 days before
12 the date on which the lead agency must issue a final decision.

13 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) An administrative
14 appeal must be filed by the permit applicant within 10 days after the
15 date of issuance of a final decision denying or conditioning a permit
16 application. The appeal is to the head of the resource agency in-
17 volved. Administrative appeals conducted under this section are not
18 subject to the procedure in AS 44.62.330 - 44.62.630.

19 (b) An administrative appeal must be resolved within 30 days
20 from the date the appeal on a permit application is filed, or if a
21 hearing is held on the appeal, within 45 days from the date the appeal
22 was filed.

23 (c) The head of the agency may summarily dismiss an appeal
24 before the time established in (b) of this section, and the dismissal
25 is the decision on the matter for purposes of AS 44.62.638.

26 (d) In an appeal from the denial or conditioning of a permit the
27 head of the agency may, if the head of the agency determines that the
28 public interest would be served, grant the permit or remove conditions
29 of the permit until the appeal is determined.

1 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. Judicial review
2 by the superior court of a decision issued under AS 44.62.632 - 44.-
3 62.637 shall be by filing a notice of appeal in the superior court in
4 accordance with the applicable Rules of Appellate Procedure. The
5 review is governed by the provisions of AS 44.62.560(b) - (e) and
6 AS 44.62.570.

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

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

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

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

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

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

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

29 (4) "resource agency" includes the Department of Natural

1 Resources, the Department of Environmental Conservation, and the
2 Department of Fish and Game with respect to permits issued for the
3 protection of fish habitat or the regulation of state sanctuaries,
4 refuges, and critical habitat areas.