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Referred: Resources and
Finance

1 IN THE SENATE

BY BENNETT AND FAHRENKAMP

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SENATE BILL NO. 219

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

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THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to the processing of permits by
state agencies; and providing for an effective date."

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

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* Section 1. FINDINGS. The legislature finds that

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

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(2) the uncertainties created by the lack of specific time
limits, the proliferation of agency reviews, the number of agencies in-
volved in the permit process, and unjustified agency requirements upon the
processing of permit applications have cost Alaskans millions of dollars in
lost employment and higher prices;

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

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(4) by requiring state agencies to process permit applications
in an expeditious manner within a reasonable period of time, the state will
promote the social, economic, and environmental health and well-being of
its citizens.

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

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ARTICLE 8A. ISSUANCE OF PERMITS.

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Sec. 44.62.632. TIME LIMIT ON THE PROCESSING OF PERMITS. (a)

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Upon receipt of a permit application or receipt of a federal agency
request for state review of an application for a federal permit, the

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1 responsible state agency shall issue a final decision granting, deny-
2 ing, or reasonably conditioning the issuance of the permit, or issue a
3 final response to the federal agency's request for state review,
4 within the following time periods, unless the applicant and the agency
5 mutually agree to a different period of time:

6 (1) any time period specifically required by state law;

7 (2) 60 days if a time period is not specifically required
8 by state law and a public notice, public hearing, or comment period is
9 specifically required by state law in connection with the permit
10 application;

11 (3) 30 days if (1) or (2) of this subsection do not apply.

12 (b) The final decision on a permit application under (a) of this
13 section shall include:

14 (1) conclusions of the state agency that support its deci-
15 sion concerning the permit application, including the factual basis
16 and statutory authority for any conditions or stipulations to which
17 the permit is subject; and

18 (2) the granting, conditional granting, or denial of the
19 permit by the state agency.

20 (c) The final decision under (a) of this section must bear a
21 fair and substantial relation to the object of the law under which the
22 state agency is empowered to act.

23 (d) A permit may not be denied because of the lack of any other
24 permit, and may not be conditioned upon the acquisition of any other
25 permit.

26 (e) A permit application that has not been approved or rejected
27 by the responsible state agency within the time period specified in
28 (a) of this section is approved as submitted. The permit is approved
29 on the last day on which the state agency could have announced a final

1 decision under (a) of this section.

2 Sec. 44.62.634. DEFECTIVE APPLICATIONS; NOTICE TO APPLICANT.

3 (a) If a state agency receives a permit application requesting a
4 permit that the agency believes it does not have authority to issue,
5 or that it believes is unnecessary, it shall notify the applicant
6 within 10 days after its receipt of the application. A notice given
7 under this subsection is the final agency decision.

8 (b) If a state agency receives a permit application that it
9 believes does not contain sufficient information concerning the loca-
10 tion and nature of the project to allow the agency to determine
11 whether the project complies with state law, the agency shall notify
12 the applicant within 10 days after its receipt of the application.
13 The notice must specify all information the agency requires to deter-
14 mine whether the project complies with state law.

15 Sec. 44.62.635. REVIEW BY THE COMMISSIONER OR BOARD. A state
16 agency's final decision issued under AS 44.62.632 may be reviewed by
17 the commissioner or board of the issuing agency at the request of the
18 applicant. The applicant is entitled to a review de novo if requested
19 in the original request for review; otherwise the review is a review
20 on the record. The request must be filed with the commissioner or
21 board within 30 days of the applicant's receipt of the decision. The
22 commissioner or board shall issue a decision within 10 days of receipt
23 of the request if the review is a review on the record. If the appli-
24 cant has requested a hearing de novo, the hearing shall be held within
25 30 days of receipt of the request, and the decision of the commis-
26 sioner or board shall be made within 30 days of the conclusion of the
27 hearing. Unless the agency decision is confirmed in its entirety, the
28 commissioner or board shall issue a written decision setting out the
29 findings and conclusions in full.

1 Sec. 44.62.636. REVIEW BY THE SUPERIOR COURT. (a) Judicial
2 review by the superior court of a final decision issued by a state
3 agency under AS 44.62.632 or AS 44.62.634 or of a decision of the
4 commissioner or board issued under AS 44.62.635, may be had by filing
5 a notice of appeal in the superior court in accordance with the appli-
6 cable rules of appellate procedure. The right to appeal is not af-
7 fected by the failure to seek reconsideration or further review under
8 AS 44.62.635. The review shall be governed by the provisions of
9 AS 44.62.560(b) - (e) and AS 44.62.570.

10 (b) On an appeal by an applicant to the superior court, the
11 agency that issued the final decision has the burden of proving that
12 the decision is in accordance with AS 44.62.632 and AS 44.62.634.

13 (c) An appeal taken under this section has preference on the
14 calendar of civil actions before the court and shall be decided with-
15 out unnecessary delay.

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

17 (c) In AS 44.62.632 - 44.62.634,

18 (1) "permit" means a permit, license, certification, con-
19 sistency determination, comments on pending permit applications before
20 other governmental entities (including environmental impact statement
21 comments), plan review, or other authorization or approval issued as a
22 written document that is required to be obtained or is solicited from
23 a state agency before the construction or operation of a project;
24 "permit" does not include

25 (A) conveyances of interest in state land or water,
26 but does include all authorizations and approvals, whether pro-
27 prietary or regulatory, necessary to undertake a project under a
28 previously conveyed property interest; and

29 (B) the provision of financial assistance;

1 (2) "permit application" includes the following documents:
2 (A) a document requesting the issuance of a permit
3 that contains sufficient information concerning the location and
4 nature of a project to allow the state agency to which it is
5 directed to determine compliance of the project with state law;
6 (B) a document submitted to a state agency by a gov-
7 ernmental entity that solicits comments in connection with a
8 permit being processed by that governmental entity;
9 (3) "project" means a new activity or expansion or addition
10 to an existing activity for which permits are required before con-
11 struction or operation; "project" does not include pursuing a trade or
12 profession, providing public health service, or operating a financial
13 institution;
14 (4) "state agency" means a state department, commission,
15 board, or other agency of the state; "state agency" includes a local
16 or regional air pollution control authority established under AS 46.-
17 03.210 and a coastal resource district and coastal resource service
18 board established under AS 46.40.010 - 46.40.210.
19 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).