

Offered: 6/15/83
Referred: Finance

Original sponsors: Bennett and Fahrenkamp

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 219 (Resources) am
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 a permit from a
13 state agency, by the complexity of the permit process, and by the number of
14 agencies involved in the permit process;
15 (2) the uncertainties created by the lack of specific time
16 limits, the proliferation of state agency review, the number of state
17 agencies involved in the permit process, and duplicative state agency
18 requirements for the processing of permit applications have resulted in
19 excessive costs to the public in lost employment and higher prices;
20 (3) unnecessary delay in the processing of permit applications
21 is not in the public interest; and
22 (4) a reduction in the number of state agency reviews and review
23 time required in the permit process would promote the social, economic and
24 environmental health and well being of state residents.
25 * Sec. 2. AS 44.62 is amended by adding new sections to read:
26 ARTICLE 8A. PERMIT PROCESSING.
27 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) A state resource
28 agency shall by regulation classify each permit issued by that agency
29 in one of the following categories:

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

4 (2) class II, for which, because of a necessary public
5 notice or interagency review period, a final decision cannot be issued
6 within 30 days; a final decision on a class II permit must be issued
7 within 65 days after the date of receipt of a completed permit appli-
8 cation, unless a public hearing is held on the permit, in which case a
9 final decision must be issued within 85 days of the date of receipt.

10 (b) Each state resource agency shall adopt final regulations
11 classifying its permits by October 1, 1983, following appropriate
12 notice and hearing. Permits applied for after October 1, 1983, must
13 be issued in accordance with the time periods specified in (a) of this
14 section, and the provisions of the implementing regulations.

15 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
16 CESSING. (a) An applicant and a resource agency may agree to waive
17 the time limit under AS 44.62.632(a).

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

25 (c) Subject to the provisions of (a) and (b) of this section and
26 AS 44.62.632, if the resource agency fails to make a final decision
27 within 30 days after the receipt of an application for a class I
28 permit or within the time specified in AS 44.62.632(a)(2) for a class
29 II permit, the permit application is approved.

1 (d) Unless otherwise required by law, a state agency may not
2 condition the issuance of a permit upon the issuance of a permit from
3 another governmental agency.

4 (e) 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 a conflict with federal
8 statute or regulation.

9 (f) In performing its functions under this section, the lead
10 agency shall consult with other resource agencies and with coastal
11 resource districts under AS 46.40. The lead agency shall consider
12 documented facts, data, opinion, conclusions, or recommendations
13 submitted by the commenting agency and the coastal resource districts
14 with an approved district coastal management program, within their
15 areas of expertise, but may, in its discretion, reach contrary opin-
16 ions, conclusions or recommendations according to the weight of the
17 evidence received. The lead agency shall balance competing factors in
18 reaching its final decision. No resource agency other than the lead
19 agency has primary responsibility in the balancing of competing
20 factors.

21 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource
22 agency receives a permit application that does not contain sufficient
23 information concerning compliance with the agency's statutes and
24 regulations, the agency shall notify the applicant within 15 days
25 after receipt of a permit application for a class I permit, and within
26 30 days after receipt for a class II permit.

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

1 conform to the agency's statutes and regulations.

2 (c) If a timely request under (a) and (b) of this section is
3 made, the time period specified in AS 44.62.632 is suspended from the
4 date of request to the date of full compliance with the request.
5 Subsequent requests for additional information may be made, but must
6 relate only to new issues raised by the response to the initial noti-
7 fication.

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

22 (b) Except as required by federal law no state agency other than
23 the lead agency may comment to a federal permitting agency.

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

27 (d) For activities occurring on privately owned land, and for
28 which one or more state permits or a disposal of interest in state
29 land is required to provide access to the privately owned land, or for

1 purposes otherwise ancillary to the activity, the lead agency shall be
2 the Department of Natural Resources.

3 (e) Nothing in this section or AS 46.40 authorizes a lead agency
4 or any resource agency to deny or condition a consistency determina-
5 tion because of effects that may be caused by activities not them-
6 selves requiring a state or federal permit or disposal of interest in
7 state land.

8 (f) In making a consistency determination under this section for
9 an activity occurring outside the boundaries of a coastal resource
10 district with an approved district plan, the lead agency or any re-
11 source agency may consider only those statewide standards and guide-
12 lines adopted by the Alaska Coastal Policy Council under AS 46.40.-
13 040(1).

14 * Sec. 3. AS 44.62.636 is amended by adding a new subsection to read:

15 (c) As used in AS 44.62.632 - 44.62.635,

16 (1) "date of receipt" means the date on which a state
17 agency physically receives an application filed in accordance with
18 agency regulations and at a place identified as appropriate for filing
19 in the agency's regulations;

20 (2) "permit" means a permit, license, certification, con-
21 sistency determination, comments on pending permit applications before
22 other governmental entities, or other authorization or approval issued
23 by a resource agency as a written document that is required to be
24 obtained or is solicited from a state agency before the construction
25 or operation of a project; "permit"

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

29 (B) does include all authorizations and approvals,

1 whether proprietary or regulatory, necessary to undertake a
2 project under a previously conveyed property interest;

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

8 (4) "resource agency" includes the Department of Natural
9 Resources, the Department of Environmental Conservation, and the
10 Department of Fish and Game with respect to permits issued for the
11 protection of fish habitat or the regulation of state sanctuaries,
12 refuges, and critical habitat areas.