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Referred: Resources, Judiciary
and Finance

1 IN THE HOUSE

BY RINGSTAD

2

HOUSE BILL NO. 73

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to processing of permits by state agencies, and to administration of the Alaska coastal management program."

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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 unnecessarily 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 involved 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 reducing the number of agencies and agency reviews involved in the permit process, and by requiring state agencies to process permit applications in an expeditious manner, the social, economic, and environmental health and well-being of Alaska citizens will be promoted;

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(5) there are many administrative orders and similar documents that have been promulgated by the executive branch relating to interagency 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. 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 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PRO-
17 CESSING. (a) Upon a finding by the head of a resource agency that a
18 permit being considered involves unusually complex issues so that the
19 agency cannot render a final decision within the time period specified
20 in AS 44.62.632, the head of the agency may prescribe a time period
21 not to exceed a total of 120 days within which the final decision will
22 be made. The finding of the head of the agency may be appealed by the
23 applicant to the superior court under the Appellate Rules of Proce-
24 dure.

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

1 (c) Failure of a resource agency to make a final decision within
2 30 days after the receipt of a completed permit application for a
3 class I permit, within 65 days after the receipt of a completed permit
4 application for a class II permit, or within a time period extended by
5 (a) or (b) of this section or by AS 44.62.634, is approval of the
6 application. In an appeal of a permit issued by operation of this
7 subsection, the record shall be considered in the light most favorable
8 to the applicant, and the permit shall be accorded a presumption of
9 regularity.

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

12 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource
13 agency receives a permit application that does not contain sufficient
14 information concerning the project's compliance with the agency's
15 statutes and regulations, the agency shall notify the applicant within
16 15 days after receipt of a permit application for a class I permit,
17 and within 30 days after receipt for a class II permit.

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

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

29 (d) Nothing in this section grants a resource agency the

1 authority to request information beyond the authority given to it by
2 other statutes.

3 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
4 agency that is solely responsible for issuing coastal management
5 consistency determinations under AS 46.40. For resource development
6 activities on state and federal land, water, and submerged land, the
7 lead agency is the Department of Natural Resources. In all other
8 cases, the lead agency is that resource agency that has principal
9 administrative responsibility for the type of development for which
10 the consistency determination is required, even though the development
11 may require permits from more than one resource agency. The lead
12 agency is solely responsible for preparing and submitting state com-
13 ments on federal permit applications. For classes of activities for
14 which no agency with principal responsibility exists the governor
15 shall designate a resource agency to be a lead agency for each class
16 by administrative order no later than October 1, 1985.

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

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

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

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

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

14 (g) In making a consistency determination under this section for
15 an activity occurring outside the boundaries of a coastal resource
16 district with an approved district plan, the lead agency or any re-
17 source agency may consider only those statewide standards and guide-
18 lines adopted by the Alaska Coastal Policy Council under AS 46.40.-
19 040(1).

20 Sec. 44.62.636. COMMENT PERIOD. (a) A coastal resource dis-
21 trict or state agency that receives a request for comment in connec-
22 tion with a permit application or plan review being processed by a
23 resource agency shall submit the comments in accordance with the
24 following schedule:

25 (1) comments on class I permits shall be submitted within
26 15 days after receipt of the request by the commenting coastal re-
27 source district or state agency;

28 (2) comments on class II permits and federal permits shall
29 be submitted within 30 days after receipt of the request by the

1 commenting coastal resource district or state agency.

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

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

13 (b) An administrative appeal must be resolved within 30 days
14 from the date the appeal on a permit application is filed, or if a
15 hearing is held on the appeal, within 45 days from the date the appeal
16 was filed.

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

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

24 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. Judicial review
25 by the superior court of a decision issued under AS 44.62.632 - 44.-
26 62.637 shall be by filing a notice of appeal in the superior court in
27 accordance with the applicable Rules of Appellate Procedure. The
28 review is governed by the provisions of AS 44.62.560(b) - (e) and
29 AS 44.62.570.

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

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

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

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

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

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

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

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