

SB

548

COMMITTEE REPORT

SENATE

FURTHER: None

4/7/80

Date: 4/15/80

Mr. President:

The Committee on JUDICIARY has had SB 548
processing of permits by state agencies

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 548 same title
 new title
- and recommends CS 548 Do Pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN



Alaska State Legislature
House

JUNEAU ALASKA

TO: Legislative Affairs Agency
FROM: Margaret W. Berck, Staff, House Judiciary Committee
DATE: May 31, 1980

Please prepare a House Judiciary Committee CS in final version form for CS for SB 548 that incorporates the Committee's intent as expressed in the attached Committee mark-up.

Should you have any questions please contact me. Thank you.

Original Sponsor: Rules/Administrative
Regulation Review Committee

1 IN THE SENATE

House
BY THE JUDICIARY COMMITTEE

2 *HCS for* CS FOR SENATE BILL NO. 548

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. FINDINGS. The legislature finds that

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

14 (2) the uncertainties created by the lack of specific time limits;
15 the proliferation of agency reviews, the number of agencies involved in the
16 permit process, and unjustified agency requirements upon the processing of
17 permit applications have cost Alaskans millions of dollars in lost employ-
18 ment and higher prices;

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

21 (4) by reducing the number of agencies and agencies' reviews
22 involved in the permit process, and by requiring state agencies to process
23 permit applications in an expeditious manner, the social, economic, and
24 environmental health and well-being of Alaska citizens will be promoted;
25 and

26 (5) there are many administrative orders and similar documents
27 which have been promulgated by the executive branch relating to interagency
28 review which conflict and overlap, retarding the permit issuing process.

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

ARTICLE 8A. PERMIT PROCESSING.

1
2 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) No later than August
3 1, 1980, each state agency which issues permits shall publish notice
4 of proposed regulations which would classify each of the permits
5 issued by that agency within one of the three following categories:.

6 (1) Class I permits, which include all permits not covered
7 by (2)-(3) of this subsection, and for which the agency must issue
8 a final, pre-adjudicatory decision within 30 days after receipt of
9 a completed application;

10 (2) Class II permits, for which, because of a specifically
11 required public notice, public hearing, or interagency review period,
12 a final, pre-adjudicatory decision cannot be issued until 65 days
13 after receipt of a completed application; and

14 (3) Class III permits, which, because of their unique
15 complexity or other compelling reason, cannot receive a final pre-ad-
16 judicatory decision until 90 days after receipt of a completed appli-
17 cation.

18 (b) Final agency regulations classifying the permits shall be
19 adopted no later than October 1, 1980, after which permits must be
20 issued in accordance with the time periods specified in (a) of this
21 section. Regulations issued under this section may be revised.

22 (c) Draft and final environmental impact statements are consider-
23 ed separate permits for the purposes of (a) of this section. (Not-
24 withstanding AS 44.62.^{632(a)(3)}~~633(3)~~, the failure of an agency to make timely
25 comments on a permit application before another agency does not
26 preclude the agency from making timely comments in response to a
27 change in the permit or impact statement.

28 Sec. 44.62.633. REGULATORY REQUIREMENTS. (a) Each agency
29 required by AS 44.62.632 to adopt regulations classifying its permits

1 shall also adopt regulations establishing uniform deadlines for in-
2 teragency consultation, public notice, and public hearing.

3 (b) The applicant and each permit-issuing ~~the~~ agency may agree
4 to waive any time limit required by the classification of the appli-
5 cable permit.

6 (c) Upon a finding (subject to judicial review) by the head of
7 a permit-issuing agency that the specific Class II or III permit being
8 considered by the agency is so complex that even with due diligence by
9 the agency the permit cannot receive a final, pre-adjudicatory decision
10 within the time period specified in AS 44.62.632(a)(2)-(3), the head
11 of the agency may prescribe a time period within which the final, pre-
12 adjudicatory decision will be made.

13 (d) Subject to (b) and (c) of this section, failure of the agency
14 to make a final, pre-adjudicatory decision within 30 days after receipt
15 of a completed application for a Class I permit, 65 days for a Class
16 II permit, or 90 days for a Class III permit, constitutes approval of
17 the application.

18 (e) The final decision on a Class II or III permit application,
19 other than a comment on a pending permit application before another
20 agency, must include the following information:

21 (1) the name and address of the state agency, and the
22 division of the agency, if any, issuing the final decision;

23 (2) the name of the state employee or employees responsible
24 for issuing the final decision;

25 (3) the name and address of the applicant or applicants;

26 (4) citation of the statute which requires the issuance of
27 the permit and empowers the agency to process the application;

28 (5) a general statement concerning the nature of the project
29 for which the permit is sought;

1 (6) findings made by the agency concerning the project's
2 compliance with the statutes and regulations of the permitting agency;

3 (7) conclusions of the agency which support its decision
4 concerning the permit application, including justification of any con-
5 ditions or stipulations to which the permit is subject; and

6 (8) the final decision on the permit application by the
7 agency.

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

9 (a) If an agency receives a permit application requesting a permit
10 which the agency believes it does not have authority to issue, or
11 which it believes is unnecessary, it shall notify the applicant within
12 10 days after its receipt of the application. A notice given under
13 this subsection is the final agency decision.

14 (b) If an agency receives a permit application which it believes
15 is not a completed application because it does not contain sufficient
16 information concerning the location or nature of the project to allow
17 the agency to determine compliance of the project with state law, it
18 shall notify the applicant within 10 days after its receipt of the
19 application. The notice must specify all information which the agency
20 requires to determine compliance of the project with state law.

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

22 (c) As used in AS 44.62.632-44.62.634:

23 (1) "date of receipt" means the date on which an agency
24 actually receives an application requesting issuance of a permit;

25 (2) "final decision" means that decision of an agency
26 arising out of an adjudicatory decision or mandatory administrative
27 appeal or the pre-adjudicatory or appeal decision if an adjudicatory
28 hearing or appeal is not timely requested;

29 (3) "final, pre-adjudicatory decision" means that decision

1 of an agency, or recommendation of its staff, which would form the
2 basis for a timely request for an adjudicatory hearing, or mandatory
3 administrative appeal, and which would become the agency's final
4 decision if an adjudicatory hearing or mandatory administrative appeal
5 is not timely requested; and

6 (4) "permit" means a permit, license, certification, con-
7 sistency determination, comments on pending permit applications before
8 other governmental entities (including environmental impact statement
9 comments), plan review, or other authorization or approval issued as
10 a written document which is required to be obtained or is solicited
11 from a state agency before the construction or operation of a project;
12 the term does not include conveyances of interests in state land or
13 water, but does include all authorizations and approvals, whether
14 proprietary or regulatory, necessary to undertake a project under a
15 previously conveyed property interest; the term also does not include
16 the provision of financial assistance;

17 (5) "permit application" includes the following documents:

18 (A) a document requesting the issuance of a permit
19 containing sufficient information concerning the location and nature
20 of a project to allow the state agency to which it is directed to
21 determine compliance of the project with state law; and

22 (B) a document, submitted to a state agency by a
23 governmental entity, which solicits comments in connection with a
24 permit being processed by that governmental entity;

25 (6) "project" means a new activity or expansion or addition
26 to an existing activity for which permits are required before construc-
27 tion or operation; the term does not include pursuing a trade or pro-
28 fession, providing a regulated public or health service, or operating
29 a financial institution;

(7) "state agency" means a state department, commission, board or other agency of the state; the term also includes local or regional air pollution control authorities, established under AS 46.-03.210, and coastal resource districts and coastal resource service boards established under AS 46.40.010 - 46.40.210;

* Sec. 4. PERMIT REFORM COMMISSION. (a) There is established the Permit Reform Commission, composed of the following members:

(1) the lieutenant governor who shall chair the commission;

(2) one representative each of the oil, timber, fishing, mining, and construction industries, appointed by the governor under (b) of this section;

(3) one representative of small business in Alaska appointed by the governor under (b) of this section;

(4) one representative of an Alaska Native corporation appointed by the governor under (b) of this section;

(5) one representative of a major Alaska environmental organization appointed by the governor under (b) of this section;

(6) ~~the director of the division of policy development and planning, and~~ ONE representative of the ALASKA MUNICIPAL League appointed by the governor under (b) of this section; and

(7) the attorney general and the commissioners of the Departments of Natural Resources, Environmental Conservation, Fish and Game, and Commerce and Economic Development.

(b) Appointments made by the governor under (a) of this section shall be made with due consideration to the availability and willingness of an appointee to devote the time and effort necessary to permit the commission to function effectively. The governor ~~shall~~ ^{MAY} solicit ~~three~~ nominations from each represented industry, the Alaska Chapter of the National Federation of Independent Businessmen or the Alaska Chamber of Commerce, ^{regional corporations established under} the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), and environmental groups

[^]
the ALASKA MUNICIPAL League

WOMEN.

1 At least two members of the Commission shall be
2 within this state. ~~and shall appoint from among these nominations.~~ All
3 appointments shall be made, if possible, within 30 days after the effective
4 date of this Act, or after the effective date of any vacancy in the member-
5 ship of the commission.

6 (c) Persons to fill vacancies in office shall be appointed in the
7 manner provided in (b) of this section.

8 (d) Private members of the commission do not receive compensation
9 for their services, but are entitled to the same travel allowance and per
10 diem as state officials and employees.

11 (e) The Department of Law shall provide necessary staff assistance
12 to the commission. However, the commission, with the approval of the
13 attorney general, may retain additional legal counsel.

14 (f) Two-thirds of the membership of the commission constitutes a
15 quorum.

16 (g) A public official appointed under (a) of this section may appoint
17 a designee to perform the duties of that official under this Act.

18 * Sec. 5. POWERS AND DUTIES OF THE PERMIT REFORM COMMISSION.

19 (a) To redress the findings set out in sec. 1 of this Act, the commis-
20 sion:

21 (1) shall review all permit classifications made by state agencies
22 under sec. ²/₇ of this Act, and advise the agencies and the legislature, with
23 respect to each permit classification, whether the classification is appro-
24 priate;

25 (2) may administer oaths, certify to all official acts, and
26 issue subpoenas and other process to compel the attendance of witnesses and
27 the production of testimony, records, papers, accounts and documents in
28 an inquiry, investigation, hearing or proceeding before the commission in
29 any part of the state; the commission may petition the superior court to
enforce its subpoenas & other process; and

1 (3) not later than the 10th day of the 1st session of the 12th Legis-
2 iature, transmit to the presiding officer of each house a report and accom-
3 panying proposed legislation with respect to the following matters:

4 (A) recommended changes in the Administrative Procedure Act
5 (AS 44.62.320 - 44.62.550) which would:

6 (i) expedite the permit application process;
7 (ii) expedite the conclusion of adjudicatory proceedings;
8 (iii) make adjudicatory proceedings more equitable; and
9 (iv) enable the Administrative Procedure Act to be more
10 uniformly utilized by state agencies; and

11 (B) recommended changes in applicable laws which would:

12 (i) minimize number of state agencies commenting on permits;
13 and

14 (ii) reduce both the frequency of state agency review of
15 permits, and redundant reviews of the same project by the same agency.

16 (b) In preparing the report and legislative proposals, the commission
17 shall consider methods of eliminating duplication within the permitting
18 process, including duplication within:

19 (1) the consistency procedure required by the Alaska Coastal
20 Management Act (AS 46.40); and

21 (2) the federal Circular A-95 process as administered by the
22 division of policy development and planning. ~~include consideration of~~
23 ~~the lead agency concept in the Circular A-95 process.~~

24 ~~(c) The commission may do all things necessary to the exercise of its~~
25 ~~powers under this Act, whether or not specifically designated in this Act.~~

26 * Sec. 6. REVIEW BY PERMIT REFORM COMMISSION. At the same time that
27 it issues public notice of regulations under AS 44.62.632(a), a permit-
28 issuing agency shall submit the proposed regulations to the Permit Reform
29 Commission for its recommendations. To the extent feasible, the commission

1 shall respond to the proposed regulations during the public comment period
2 for the regulations. In those cases where the commission's recommendations
3 are not followed or are substantially modified, the agency shall provide a
4 detailed explanation for the deviation. Copies of the agency's detailed
5 explanation shall be forwarded by it to the resources committees of both
6 houses of the legislature.

Sec. 7 Insert see Attached.

7 * Sec. 8. TERMINATION OF COMMISSION. The Permit Reform Commission
8 terminates June 30, 1981.

9 * Sec. 9. EFFECTIVE DATE. This Act takes effect immediately in accor-
10 dance with AS 01.10.070(c).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3600

May 14, 1980

The Honorable Charles H. Parr
Chairman, House Judiciary
Committee
Eleventh Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 548
Our file J-66-628-80

Dear Chairman Parr:

Attached is a proposed House Judiciary Committee Substitute for Senate Bill No. 548, "an Act relating to the processing of permits by state agencies; and providing for an effective date." It is the result of several days of negotiation between representatives of industries most affected by state permitting procedures and the administration. The proposed committee substitute is a compromise which everyone finds acceptable although not ideal.

Section 1 of the proposed committee substitute contains certain legislative findings demonstrating the need for such a bill. Basically, the findings indicate that the procedural process which must be followed is too complicated and lengthy, and that orderly development of resources in the state is being delayed unnecessarily as a result.

The remainder of the bill is directed toward solving the procedural problems. In that sense, the bill is not intended to be a substitute for or to impliedly repeal the substantive provisions of law which currently govern permits; its thrust is to reduce the procedural delay in the permitting process as it currently exists, and to create a vehicle for reviewing and suggesting changes to the state's overall approach to permitting.

Section 2 would add a new article, Permit Processing, to AS 44.62, the Administrative Procedure Act. The new provisions require each state agency with permitting authority to classify its permits into one of three classes depending on the length of time it takes the agency to make a final pre-adjudicatory decision on an application for those permits. These time frames could be waived by agreement between the agency and the applicant, and the head of the permitting agency, upon making a specific finding (subject to judicial review) regarding the complexity of a particular project, could establish a different time period for rendering a final pre-adjudicatory decision. If a final pre-adjudicatory decision is not rendered within the time frame specified, the application would be deemed automatically approved. Such automatic approval, of course, would still be subject to judicial review for substantive compliance with applicable laws governing the permit even though it was granted as a result of agency inaction. Agencies also would be required to adopt uniform deadlines for public notice, public hearing and inter-agency consultation, and would be required to include certain items in any final decision on an application for one of the more substantive permits (Classes II and III).

After substantial discussion and consideration of a variety of judicial review provisions, all parties agreed that it was more appropriate not to create a new, separate judicial review provision. Accordingly, judicial review would be governed by the existing provisions of the Administrative Procedure Act, particularly AS 44.62.560-570, the current Rules of Court, particularly Alaska Rule of Appellate Procedure 45(a)(2), and the various judicial doctrines which have developed under those provisions. See, e.g., Jager v. State, 537 P.2d 1100, 1107 (Alaska 1975). Again, this is an area where this bill would not change existing substantive law.

Section 4 of the proposed committee substitute would create the Permit Reform Commission. Composed of representatives of industry, the Native community, environmental groups, the executive branch, and chaired by the lieutenant governor, it would have two distinct missions. First, it would oversee the classification of permits by agencies under the provisions added to the Administrative Procedure Act. Where the commission disagreed with a

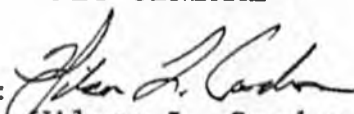
classification made by an agency, the agency would be required to submit to the resource committees of both houses of the Twelfth Alaska State Legislature, First Session, a detailed explanation of its reasons for deviating from the commission's recommendation. The commission's second task would be to recommend changes in the Administrative Procedure Act to facilitate the permitting process. While addressing the time frame issue in the proposed committee substitute, all parties recognized that there are other problem areas with the permitting process which cannot be solved by merely mandating action within a specified time frame. A comprehensive review of the whole process is needed to recommend substantive changes to streamline the system while retaining the necessary substance; the commission would accomplish this.

We have spoken with Senator Bennett, and he believes the approach set out in the proposed committee substitute is worth trying for a year. We believe it has the potential to benefit all interested parties in that it addresses certain concrete problems -- the timing of agency action -- immediately while also establishing a framework for a comprehensive review of the permitting process to recommend fundamental changes where appropriate.

We hope you will give favorable consideration to calendaring the proposed committee substitute before the House Judiciary Committee at an early date. If we can provide any further information, we will be happy to do so at your convenience.

Yours very truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Wilson L. Condon
Deputy Attorney General

WLC/lm
Attachment

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSR 548
 Title Processing of permits by state agencies
 Requested by House Judiciary Committee Date 5/14/80

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Executive Operations
 BRU, Program, or Subprogram(s) Affected Lieutenant Governor's Office
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		-				
200 TRAVEL		9.6				
300 CONTRACTUAL		-				
400 COMMODITIES		-				
500 EQUIPMENT		-				
600 LAND & STRUCTURES		-				
700 GRANTS, CLAIMS, ETC.		-				
TOTAL		9.6				

FUNDING (Thousands of Dollars)

GENERAL FUND		9.6				
FEDERAL FUNDS		-				
OTHER (Specify Fund Source)		-				

POSITIONS

FULL TIME		-				
PART TIME		-				
TEMPORARY		-				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

3 meetings of 2 days each.

10 of 15 members will require travel and per diem.

Per diem @ \$60.

Travel at \$200.

Total \$9,600.

IV. DATE 5/15/80 PREPARED BY Rod Mourant
 AGENCY Office of the Governor
 Original: Legislative Finance PHONE 465-3547
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

SB 548

RESOLUTION NUMBER 16

Resolution of the Alaska Coastal Policy Council

WHEREAS, the Alaska Coastal Policy Council is charged with determining whether coastal resource district plans meet certain Guidelines and Standards, and;

WHEREAS, the Alaska Coastal Policy Council must recommend approval of coastal resource district plans to the Alaska State Legislature, and;

WHEREAS, the Alaska State Legislature is required to approve district plans by Concurrent Resolution, and;

WHEREAS, the Attorney General has ruled that the Coastal Policy Council, because of a recent court case, may have final approval of District Programs, and;

WHEREAS, the legislative intent of the Coastal Management Act was for legislative oversight on all additions, modifications or regulations affecting the Coastal Management Act.

NOW, THEREFORE, be it resolved by the Alaska Coastal Policy Council that:

Section 1. The Alaska Coastal Policy Council requests the 11th Alaska State Legislature amend 46:40.080 to read as follows:

Effective date of Alaska Coastal Management Program. The Alaska Coastal Management Program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon [adoption of a concurrent resolution] enactment by the legislature of a statutory amendment pursuant to this section approving the program or any addition, revision or amendment of the program. [by a majority of the members of each house of the legislature or by vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor.]

Section 2. This resolution takes effect immediately.

Annal E. Gilman, Co-chairman

J. G. [unclear], Co-chairman

Dated this 30 day of May 1980

passed unanimously

Attest A. P. Knutson

SB 548

SC 18 947

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Former said no problem with placement sunset clause - if voters pass const. amend. allowing leg. to approve by concurrent resolution.

amendment

SB 548

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However this AMENDMENT shall automatically be repealed if the ~~rest~~ voters Amend the Alaska Constitution permitting the annulment of regulations by concurrent resolution.

Insert amendment

(Note to drafter see CS for AJR 82 am.)

Original Sponsor: Rules/Administrative
Regulation Review Committee

1 IN THE SENATE

House
BY THE JUDICIARY COMMITTEE

2 HCS for CS FOR SENATE BILL NO. 548

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4 ELEVENTH LEGISLATURE - SECOND SESSION

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13 agencies involved in the permitting process;

14 (2) the uncertainties created by the lack of specific time limits,
15 the proliferation of agency reviews, the number of agencies involved in the
16 permit process, and unjustified agency requirements upon the processing of
17 permit applications have cost Alaskans millions of dollars in lost employ-
18 ment and higher prices;

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

21 (4) by reducing the number of agencies and agencies' reviews
22 involved in the permit process, and by requiring state agencies to process
23 permit applications in an expeditious manner, the social, economic, and
24 environmental health and well-being of Alaska citizens will be promoted;
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27 which have been promulgated by the executive branch relating to interagency
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7 by (2)-(3) of this subsection, and for which the agency must issue
8 a final, pre-adjudicatory decision within 30 days after receipt of
9 a completed application;

10 (2) Class II permits, for which, because of a specifically
11 required public notice, public hearing, or interagency review period,
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24 withstanding AS 44.62.632^{632 a(3)}(3), the failure of an agency to make timely
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3 (b) The applicant and each permit-issuing ~~the~~ agency may agree
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5 cable permit.

6 (c) Upon a finding (subject to judicial review) by the head of
7 a permit-issuing agency that the specific Class II or III permit being
8 considered by the agency is so complex that even with due diligence by
9 the agency the permit cannot receive a final, pre-adjudicatory decision
10 within the time period specified in AS 44.62.632(a)(2)-(3), the head
11 of the agency may prescribe a time period within which the final, pre-
12 adjudicatory decision will be made.

13 (d) Subject to (b) and (c) of this section, failure of the agency
14 to make a final, pre-adjudicatory decision within 30 days after receipt
15 of a completed application for a Class I permit, 65 days for a Class
16 II permit, or 90 days for a Class III permit, constitutes approval of
17 the application.

18 (e) The final decision on a Class II or III permit application,
19 (other than a comment on a pending permit application before another
20 agency,) must include the following information:

21 (1) the name and address of the state agency, and the
22 division of the agency, if any, issuing the final decision;

23 (2) the name of the state employee or employees responsible
24 for issuing the final decision;

25 (3) the name and address of the applicant or applicants;

26 (4) citation of the statute which requires the issuance of
27 the permit and empowers the agency to process the application;

28 (5) a general statement concerning the nature of the project
29 for which the permit is sought;

1 (6) findings made by the agency concerning the project's
2 compliance with the statutes and regulations of the permitting agency;

3 (7) conclusions of the agency which support its decision
4 concerning the permit application, including justification of any con-
5 ditions or stipulations to which the permit is subject; and

6 (8) the final decision on the permit application by the
7 agency.

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

9 (a) If an agency receives a permit application requesting a permit
10 which the agency believes it does not have authority to issue, or
11 which it believes is unnecessary, it shall notify the applicant within
12 10 days after its receipt of the application. A notice given under
13 this subsection is the final agency decision.

14 (b) If an agency receives a permit application which it believes
15 is not a completed application because it does not contain sufficient
16 information concerning the location or nature of the project to allow
17 the agency to determine compliance of the project with state law, it
18 shall notify the applicant within 10 days after its receipt of the
19 application. The notice must specify all information which the agency
20 requires to determine compliance of the project with state law.

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

22 (c) As used in AS 44.62.632-44.62.634:

23 (1) "date of receipt" means the date on which an agency
24 actually receives an application requesting issuance of a permit;

25 (2) "final decision" means that decision of an agency
26 arising out of an adjudicatory decision or mandatory administrative
27 appeal or the pre-adjudicatory or appeal decision if an adjudicatory
28 hearing or appeal is not timely requested;

29 (3) "final, pre-adjudicatory decision" means that decision

1 of an agency, or recommendation of its staff, which would form the
2 basis for a timely request for an adjudicatory hearing, or mandatory
3 administrative appeal, and which would become the agency's final
4 decision if an adjudicatory hearing or mandatory administrative appeal
5 is not timely requested; and

6 (4) "permit" means a permit, license, certification, con-
7 sistency determination, comments on pending permit applications before
8 other governmental entities (including environmental impact statement
9 comments), plan review, or other authorization or approval issued as
10 a written document which is required to be obtained or solicited
11 from a state agency before the construction or operation of a project;
12 the term does not include conveyances of interests in state land or
13 water, but does include all authorizations and approvals, whether
14 proprietary or regulatory, necessary to undertake a project under a
15 previously conveyed property interest; the term also does not include
16 the provision of financial assistance;

17 (5) "permit application" includes the following documents:

18 (A) a document requesting the issuance of a permit
19 containing sufficient information concerning the location and nature
20 of a project to allow the state agency to which it is directed to
21 determine compliance of the project with state law; and

22 (B) a document, submitted to a state agency by a
23 governmental entity, which solicits comments in connection with a
24 permit being processed by that governmental entity;

25 (6) "project" means a new activity or expansion or addition
26 to an existing activity for which permits are required before construc-
27 tion or operation; the term does not include pursuing a trade or pro-
28 fession, providing a regulated public or health service, or operating
29 a financial institution;

1 (7) "state agency" means a state department, commission,
2 board or other agency of the state; the term also includes local or
3 regional air pollution control authorities, established under AS 46.-
4 03.210, and coastal resource districts and coastal resource service
5 boards established under AS 46.40.010 - 46.40.210;

6 * Sec. 4. PERMIT REFORM COMMISSION. (a) There is established the Permit
7 Reform Commission, composed of the following members:

8 (1) the lieutenant governor who shall chair the commission;

9 (2) one representative each of the oil, timber, fishing, mining,
10 and construction industries, appointed by the governor under (b) of this
11 section;

12 (3) one representative of small business in Alaska appointed
13 by the governor under (b) of this section;

14 (4) one representative of an Alaska Native corporation appointed
15 by the governor under (b) of this section;

16 (5) one representative of a major Alaska environmental organi-
17 zation appointed by the governor under (b) of this section;

18 (6) the director of the division of policy development and
19 planning; and

20 (7) the attorney general and the commissioners of the Departments
21 of Natural Resources, Environmental Conservation, Fish and Game, and Com-
22 merce and Economic Development.

23 (b) Appointments made by the governor under (a) of this section shall
24 be made with due consideration to the availability and willingness of an
25 appointee to devote the time and effort necessary to permit the commission
26 to function effectively. The governor shall solicit three nominations from
27 each represented industry, the Alaska Chapter of the National Federation of
28 Independent Businessmen or the Alaska Chamber of Commerce, ^{regional corporations established} the Alaska Native
29 Claims Settlement Act (43 U.S.C. § 1601 et seq.), and environmental groups

At least two member of the Commission must be women.
1 within this state, and shall appoint from among those nominations. All
2 appointments shall be made, if possible, within 30 days after the effective
3 date of this Act, or after the effective date of any vacancy in the member-
4 ship of the commission.

5 (c) Persons to fill vacancies in office shall be appointed in the
6 manner provided in (b) of this section.

7 (d) Private members of the commission do not receive compensation
8 for their services, but are entitled to the same travel allowance and per
9 diem as state officials and employees.

10 (e) The Department of Law shall provide necessary staff assistance
11 to the commission. However, the commission, with the approval of the
12 attorney general, may retain additional legal counsel.

13 (f) ^{Two thirds} ~~Two thirds~~ of the membership of the commission constitutes a
14 quorum.

15 (g) A public official appointed under (a) of this section may appoint
16 a designee to perform the duties of that official under this Act.

17 * Sec. 5. POWERS AND DUTIES OF THE PERMIT REFORM COMMISSION.

18 (a) To redress the findings set out in sec. 1 of this Act, the commis-
19 sion:

20 (1) shall review all permit classifications made by state agencies
21 under sec. 2 of this Act, and advise the agencies and the legislature, with
22 respect to each permit classification, whether the classification is appro-
23 priate;

24 (2) may administer oaths, certify to all official acts, and
25 issue subpoenas and other process to compel the attendance of witnesses and
26 the production of testimony, records, papers, accounts and documents in
27 an inquiry, investigation, hearing or proceeding before the commission in
28 any part of the state; the commission may petition the superior court to
29 enforce its subpoenas or other process; and

1 (3) not later than the 10th day of the 1st session of the 12th Legis-
2 lature, transmit to the presiding officer of each house a report and accom-
3 panying proposed legislation with respect to the following matters:

4 (A) recommended changes in the Administrative Procedure Act
5 (AS 44.62.320 - 44.62.550) which would:

6 (i) expedite the permit application process;
7 (ii) expedite the conclusion of adjudicatory proceedings;
8 (iii) make adjudicatory proceedings more equitable; and
9 (iv) enable the Administrative Procedure Act to be more
10 uniformly utilized by state agencies; and

11 (B) recommended changes in applicable laws which would:

12 (i) minimize number of state agencies commenting on permits;
13 and

14 (ii) reduce both the frequency of state agency review of
15 permits, and redundant reviews of the same project by the same agency.

16 (b) In preparing the report and legislative proposals, the commission
17 shall consider methods of eliminating duplication within the permitting
18 process, including duplication within:

19 (1) the consistency procedure required by the Alaska Coastal
20 Management Act (AS 46.40); and

21 (2) the federal Circular A-95 process, as administered by the
22 division of policy development and planning, to include consideration of
23 the lead agency concept in the Circular A-95 process.

24 (c) The commission may do all things necessary to the exercise of its
25 powers under this Act, whether or not specifically designated in this Act.

26 * Sec. 6. REVIEW BY PERMIT REFORM COMMISSION. At the same time that
27 it issues public notice of regulations under AS 44.62.632(a), a permit-
28 issuing agency shall submit the proposed regulations to the Permit Reform
29 Commission for its recommendations. To the extent feasible, the commission

1 shall respond to the proposed regulations during the public comment period
2 for the regulations. In those cases where the commission's recommendations
3 are not followed or are substantially modified, the agency shall provide a
4 detailed explanation for the deviation. Copies of the agency's detailed
5 explanation shall be forwarded by it to the resources committees of both
6 houses of the legislature.

7 * Sec. 7. TERMINATION OF COMMISSION. The Permit Reform Commission
8 terminates June 30, 1981.

9 * Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accor-
10 dance with AS 01.10.070(c).

SB 548

RESOLUTION NUMBER 16

Resolution of the Alaska Coastal Policy Council

WHEREAS, the Alaska Coastal Policy Council is charged with determining whether coastal resource district plans meet certain Guidelines and Standards, and;

WHEREAS, the Alaska Coastal Policy Council must recommend approval of coastal resource district plans to the Alaska State Legislature, and;

WHEREAS, the Alaska State Legislature is required to approve district plans by Concurrent Resolution, and;

WHEREAS, the Attorney General has ruled that the Coastal Policy Council, because of a recent court case, may have final approval of District Programs, and;

WHEREAS, the legislative intent of the Coastal Management Act was for legislative oversight on all additions, modifications or regulations affecting the Coastal Management Act.

NOW, THEREFORE, be it resolved by the Alaska Coastal Policy Council that:

Section 1. The Alaska Coastal Policy Council requests the 11th Alaska State Legislature amend 46:40.080 to read as follows:

Effective date of Alaska Coastal Management Program. The Alaska Coastal Management Program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon [adoption of a concurrent resolution] enactment by the legislature of a statutory amendment pursuant to this section approving the program or any addition, revision or amendment of the program. [by a majority of the members of each house of the legislature or by vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor.]

Section 2. This resolution takes effect immediately.

Annard E. Gilman Co-chairman

J. A. [unclear] Co-chairman

Dated this 30 day of May 1980

passed unanimously

Attest A. P. Knutson

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

May 6, 1980

The Honorable Charles Parr
Chairman
House Judiciary Committee
Room 124 - Capitol Building
Juneau, Alaska 99811

Dear Mr. Parr:

Re: CS for Senate Bill No. 548

CS for Senate Bill No. 548, an Act relating to processing of permits by state agencies, was read the first time in the House on April 23, 1980 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by P. A. Wall, Director, Administrative Services Division of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

P. A. Wall, Director
Administrative Services Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSB 548
 Title Relating to the processing of permits by State agencies
 Requested by House Rules Committee Date 5-6-80

II. FISCAL DETAIL
 Agency Affected _____ Revenue
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Administration & Support, Management Services
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		20.1	21.5	23.0	24.6	26.4
200 TRAVEL						
300 CONTRACTUAL		2.5	2.7	2.9	3.1	3.3
400 COMMODITIES		.2	.2	.2	.2	.2
500 EQUIPMENT		.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		23.3	24.4	26.1	27.9	29.9

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		23.3	24.4	26.1	27.9	29.9
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

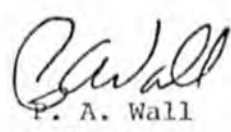
POSITIONS

	1/12mm	1/12mm	1/12mm	1/12mm	1/12mm
FULL TIME					
PART TIME					
TEMPORARY					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Under CSSB 548, the Department of Revenue would review each permit application addressed to any State agency and issue a decision on the license and tax requirements which would condition the issuance of the permit. We have found, in responding to master applications under AS 46.35.030, that each application must be reviewed, the related tax and license effect identified, a packet of material assembled and attached to the questionnaire from the Master Application Review Center and the questionnaire must be completed.

(continued on next page)

IV. DATE May 6, 1980 PREPARED BY  P. A. Wall
 AGENCY Revenue
 PHONE 465-2313
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

ASSUMPTIONS

A procedure like the Master Application process is assumed. The number of applications is unknown, however, work for a PFT employee is assumed.

Positions - 1 PFT Clerk Typist III @ \$1,277 mo.	=	15.3
Benefits - 2.3, FICA - 1.0, H.I. - 1.5	=	<u>4.8</u>
		20.1
Other Costs - Postage, Phone	=	2.0
Miscellaneous - Insurance, Copy Costs, Phone Installation	=	.5
Commodities	=	.2
Equipment	=	.5

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835 "D" Street #202, Anchorage, Alaska 99501 (907) 276-4244

May 9, 1980

Mail Stop Number 3100

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Bethel, Alaska

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Fairbanks, Alaska

Dr. Paul N. Ylvisaker
Dean, Grad. School of Ed.
Harvard University
Cambridge, Massachusetts

James Grandjean, Esq.
Office of the Honorable Joe McKinnon
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Jim:

Here are some comments, as you requested, on SB 548.

1. First of all, the whole rationale (or ostensible rationale) for this Procrustean approach is false. If there is in fact a significant problem of delay in obtaining state permits (and I doubt that this has been demonstrated) it is rarely because agencies are just twiddling their thumbs. Rather, "delay" is likely to be caused by either (a) inadequate staff, or (b) the complexity of the evaluation required to do an adequate job of decisionmaking on the permit applications. In other words, if the legislature is really serious about expediting permit decisionmaking, the answer is to ensure that the regulatory agencies are funded sufficiently.

Incidentally, on that score, it is worth noting that an honest fiscal note to a bill like this would have to show a very large increase in required funding, in order to enable the agencies to handle decent permit processing in a short period of time.

2. The basic reason why the approach of this bill is very harmful, is this: while there are certainly instances where permit applications could be dealt with in a very brief period of time, the fact is that in many cases it simply takes time to do an adequate job of reviewing and making decisions on permit applications. The applicant may have spent many months or even years in developing analyzing, doing his own decisionmaking on the project in question. The application may raise numerous, crucial questions about impacts on wildlife, wildlife habitat, water quality, etc.; if it took the applicant months or years to address the various aspects of the project how can reviewers in the state agencies do the job in less than 30 days? An example is the Prudhoe Bay waterflood project, which I am told took three years of development before the Army Corps of Engineers' permit was applied for.

3. The one ostensible safety valve in the bill, section 634(b), is entirely inadequate. Again, on a project of any magnitude or complexity, it is unrealistic to expect an agency to determine within ten days of receiving an application whether sufficient information is available. This provision reflects at best a lack of comprehension of the decisionmaking process, wherein there has

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 548 PROPOSED CS BY DEPT OF LAW
 Title An Act relative to the processing of permits by state agencies
 Requested by House Judiciary Date 05/31/80

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
 Program Category Affected NRMEC
 BRU, Program, or Subprogram(s) Affected Administration & Mgt/Research Special Projects
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		19.2				
200 TRAVEL		6.0				
300 CONTRACTUAL		5.4				
400 COMMODITIES		.2				
500 EQUIPMENT		.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		31.2				

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		31.2				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		6 mos.				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal No. c Preparation Instructions, Section III)

- 100- Mgt. Analyst III, Div. of Research and Development, Anchorage, 6 months
- 200- Travel and per diem for Mgt. Analyst III and Commissioner's representative on Commissioner for meetings and public hearings as well as final presentation to legislature
- 300- Printing and advertising costs associated with hearings on regulations to implement permit classification system
- 400- Office supplies for Mgt. Analyst III and for meetings/hearings
- 500- Office equipment for Mgt. Analyst III

IV. DATE 05/31/80 PREPARED BY Jeff Haynes, Deputy Commissioner
 AGENCY Dept. of Natural Resources
 PHONE 465-2400

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 548
 Title Processing of permits by state agencies
 Requested by House Judiciary Committee Date 5/14/80

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Executive Operations
 BRU, Program, or Subprogram(s) Affected Lieutenant Governor's Office

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		-				
200 TRAVEL		9.6				
300 CONTRACTUAL		-				
400 COMMODITIES		-				
500 EQUIPMENT		-				
600 LAND & STRUCTURES		-				
700 GRANTS, CLAIMS, ETC.		-				
TOTAL		9.6				

FUNDING (Thousands of Dollars)

GENERAL FUND		9.6				
FEDERAL FUNDS		-				
OTHER (Specify Fund Source)		-				

POSITIONS

FULL TIME		-				
PART TIME		-				
TEMPORARY		-				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

3 meetings of 2 days each.

10 of 15 members will require travel and per diem.

Per diem @ \$60.

Travel at \$200.

Total \$9,600.

IV. DATE 5/15/80 PREPARED BY Rod Mourant
 AGENCY Office of the Governor
 PHONE 465-3547

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Trustees for ALASKA

835 "D" Street #202, Anchorage, Alaska 99501 (907) 276-4244

May 9, 1980

Mail Stop Number 3100

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to be a certain amount of interchange, thought, and rethinking before the implications and ramifications of a proposal are fully understood.

4. Aside from the general problems involved in trying to compress decisionmaking into a thirty day period, there is an obvious opportunity for applicants to abuse the deadline: namely, one could bunch up numerous applications and thereby totally overwhelm the agency's ability to respond.

Incidentally, notice that "state agencies" is defined in the bill as ~~including coastal resource districts.~~ This perhaps provides some insight into the motivation of this bill.

I will try to obtain some additional examples of cases where any sort of deadline such as would be required under this bill would have precluded intelligent decisionmaking.

Thanks for your interest. I hope this helps a bit.

Best regards,



Robert E. Mintz
Executive Director

k

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P.S. I have not had a chance to research it yet, but it occurs to me that various federal requirements for state-administered programs (water pollution, coastal management, etc.) could arguably be violated if the effect of this bill were demonstrably to prevent rational review of permit applications.