

LEG. FINANCE - BILLS 1981 - 1982 1609

CSSSB 69 cont. - HCS/CSSB 84

1609

1 62.632(a) unless the applicant agrees otherwise.

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

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

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

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

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

1 Subsequent requests for additional information may be made, but must
2 relate only to new issues raised by the response to the initial noti-
3 fication. Subsequent requests do not extend the time periods specified
4 in AS 44.62.632.

5 (d) Nothing in this section grants a resource agency the authority
6 to request information beyond the authority given to it by other sta-
7 tutes.

8 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
9 agency that is solely responsible for issuing coastal management consis-
10 tency determinations under AS 46.40 and for preparing and submitting
11 state comments on federal permit applications. The lead agency is that
12 resource agency that has principal responsibility for authorizing the
13 overall activity, including instances where an activity requires permits
14 from more than one resource agency. For classes of activities for
15 which no agency with principal responsibility exists the governor shall
16 designate a resource agency to be a lead agency for each class by
17 administrative order no later than October 1, 1982.

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20 resource districts under AS 46.40. The lead agency shall consider
21 documented facts, data, opinion, conclusions, or recommendations sub-
22 mitted by the commenting agency and the coastal resource districts with
23 an approved district coastal management program, within their areas of
24 expertise, but may, in its discretion, reach contrary opinions, conclu-
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26 agency shall give substantive consideration to the documented facts and
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4 ably relied on by experts in the field. The lead agency shall then
5 balance competing factors in reaching its final decision. No resource
6 agency other than the lead agency has primary expertise in the balancing
7 of competing factors.

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

10 (d) For activities involving a disposal of interest in land and a
11 certification under sec. 401 of the Clean Water Act (33 U.S.C. sec.
12 1341), the lead agency shall be the Department of Natural Resources.

13 (e) For activities involving a plan of operation approval under a
14 previous disposal of an interest in land and a certificate under sec.
15 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall
16 be the Department of Natural Resources.

17 Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or
18 state agency that receives a request for comment in connection with a
19 permit application or plan review being processed by a resource agency
20 shall submit these comments in accordance with the following schedule:

21 (1) comments on class I permits shall be submitted within 15
22 days after the agency's receipt of the request;

23 (2) comments on class II permits and federal permits shall
24 be submitted within 30 days after the agency's receipt of the request;

25 (3) when under AS 44.62.633, the requesting agency has
26 extended the time periods specified in AS 44.62.632, that agency may
27 extend the time period specified in this section; however, comments
28 submitted under this paragraph must be submitted no later than 30 days
29 before the date on which the lead agency must issue a final decision.

1 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform proce-
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3 administrative appeal from a final decision on a permit application.
4 The administrative appeal is to the head of the resource agency in-
5 volved. Administrative appeals conducted under this section are not
6 subject to the procedures in AS 44.62.330 - 44.62.630.

7 (b) The administrative appeal must be resolved within 45 days
8 after the final decision on a permit application, or, if a hearing is
9 held on the administrative appeal, within 65 days after the final
10 decision on the permit application.

11 (c) An appeal taken from a decision granting a permit may, but
12 need not, stay the issuance of the permit.

13 (d) The head of the agency may summarily dismiss an appeal before
14 the time established in this section, and the dismissal is the final
15 agency action on the matter.

16 (e) In an appeal from the denial or conditioning of a permit the
17 head of the agency may, if he determines that the public interest would
18 be served, grant the permit or remove conditions of the permit until
19 the appeal is determined.

20 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial
21 review by the superior court of a final decision issued under AS 44.-
22 62.632 - 44.62.637 may be had by filing a notice of appeal in the
23 superior court in accordance with the applicable Rules of Appellate
24 Procedure. The review is governed by the provisions of AS 44.62.-
25 560(b) - (e) and AS 44.62.570.

26 (b) An appeal taken under this section should have preference on
27 the calendar of civil actions before the court and should be decided
28 without unnecessary delay.

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

1 (c) As used in AS 44.52.632 - 44.62.638,

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

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

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

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

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

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

27 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
28 070(c).
29

Original sponsors: Bennett, Parr and
Fahrenkamp

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to processing of permits by state agen-
7 cies, and to administration of the Alaska Coastal Man-
8 agement program; and providing for an effective date."

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 limits,
16 the proliferation of agency reviews, the number of agencies involved in the
17 permit process, and unjustified agency requirements upon the processing of
18 permit applications have cost Alaskans millions of dollars in lost employment
19 and higher prices;

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

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

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

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

1 ARTICLE 8A. PERMIT PROCESSING.

2 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource
3 agency shall by regulation classify each of the permits issued by that
4 agency within one of the two following categories:

5 (1) class I permits, for which the state agency must issue a
6 final decision within 30 days after the date of receipt of a completed
7 permit application; and

8 (2) class II permits, for which, because of a necessary
9 public notice or interagency review period, a final decision cannot be
10 issued within 30 days; a final decision on a class II permit must be
11 issued within 65 days after the date of receipt of a completed permit
12 application, unless a public hearing is held on the permit, in which
13 case a final decision must be issued within 75 days of the date of
14 receipt.

15 (b) Final regulations classifying its permits, and uniform proce-
16 dural regulations providing for the processing of these permits, shall
17 be adopted by each state resource agency by October 1, 1982, following
18 appropriate notice and hearing. Permits applied for after October 1,
19 1982 must be issued in accordance with the time periods specified in
20 (a) of this section, and the provisions of the implementing regulations.

21 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
22 ING. (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 within which the final decision will be made. The finding of the head
27 of the agency may be appealed by the applicant to the superior court
28 under the Appellate Rules of Procedure. The time period may not be
29 extended more than 120 days beyond the time period specified in AS 44.-

1 62.632(a) unless the applicant agrees otherwise.

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) Subject to (a) and (b) of this section and AS 44.62.634,
8 failure of a resource agency to make a final decision within 30 days
9 after the receipt of a completed permit application for a class I
10 permit, or within 65 days after the receipt of a completed permit
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12 an appeal of a permit issued by operation of this subsection, the
13 record shall be considered in the light most favorable to the applicant,
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24 issues concerning the proposal upon which the agency requires additional
25 information in order to determine whether the project will conform to
26 the agency's statutes and regulations.

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

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2 relate only to new issues raised by the response to the initial noti-
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15 which no agency with principal responsibility exists the governor shall
16 designate a resource agency to be a lead agency for each class by
17 administrative order no later than October 1, 1982.

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23 an approved district coastal management program, within their areas of
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21 institution;

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

27 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
28 070(c).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 16, 1982

The Honorable Tony Vaska
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: 2nd HCS CSSSB 84 (L & C): Impact of
legislation on local government authority

Dear Representative Vaska:

By memorandum of April 1, 1982, you requested the views of this office regarding the effect of proposed compromise language to the above-captioned bill on local government authority under the Alaska Coastal Management Act (AS 46.40). The language in question is contained in a proposal Finance Committee substitute for the above-captioned bill as AS 44.62.635(a) and (b). The passages in question were presented by members of the administration to the Alaska Oil and Gas Association and the House Finance Committee as a proposed solution to the most difficult and bitterly argued aspect of the permit reform controversy. Because the language constitutes only a proposal, we believe that a legislative statement of intent, rather than a legal opinion as to its meaning, is more appropriate under the circumstances. ^{1/} However, in response to your request, we have set out understanding of its effect.

¹ Accordingly, we are providing a copy of this letter to members of the House Finance Committee, and to the original sponsors of SB 84.

In sum, it is our view that the proposed language would call for deference by individual state agencies to the opinions of local governments with approved coastal district programs on questions involving interpretation of that approved local program. Proposed AS 44.62.635(b), would provide that the "the professional judgments and recommendations" of coastal resource districts would be entitled to "substantive consideration" if the recommendation was "within [the district's] primary areas of expertise," and was "substantiated by . . . facts and data." The subsection further provides that:

A professional judgment or recommendation is adequately substantiated under this section if it is based on document or data reasonably relied upon by experts in the field.

The question posed by your April 1 request involves the applicability of that language to a recommendation by a coastal resource district that a particular activity is consistent or inconsistent with that district's approved coastal plan. We believe that interpretation of an approved coastal plan would be within the "primary area of expertise" of the district authoring that plan. It has generally been held that, in interpreting its own regulations, an administrative agency will be entitled to substantial deference. United States v. Larionoff, 431 U.S. 864, 872-73 (1977); Immigration and Naturalization Service v. Stanisic, 395 U.S. 62, 72 (1969); Bowles v. Seminole Rock Company, 325 U.S. 410, 413-414 (1945). The agency adopting the regulation is far more familiar with its background and purpose than would be the reviewing court. The same is also true of a local government's interpretation of its own plan. Therefore, it seems clear that an interpretation of its local coastal plan would fall within the "primary area of expertise" of the district.

It has been suggested that, irrespective of the expertise or familiarity involved, the local district's interpretation is not in the nature of an expert opinion, and therefore would not be entitled to deference under the proposed language. The grist for the argument is the language quoted above, which establishes the conditions under which an expert opinion is "adequately substantiated."

We do not view that language as impliedly denying to local governments that which the previous sentence explicitly grants them. The limited purpose of the pertinent sentence is to constrain those situations in which expert opinions demand "substantive consideration," but not to require that only expert opinions are entitled to deference. It is, in short, responsive to a wholly different problem. To read it to strip local governments of the deference which the preceding sentence would accord them would be nonsensical, and it seems unlikely that the courts would interpret those provisions in a manner which would lead to such a result. See, Sands, "Sutherland Statutory Construction", §§ 46.06, 46.07, Vol. 2A, pp. 63-66.

Under the proposed language, in order for a coastal resource district to have its interpretation accorded "substantive consideration" by the lead agency it must meet two thresholds. These are:

1. The local recommendation must involve an "interpretation" of the plan or other "primary area of expertise" (e.g. impact on local cultural resources), and not merely a factual finding. The scope of the limitation is perhaps best described by example. Suppose that a coastal resource district establishes a standard which states that "logging is permissible if it does not unreasonably impair important wildlife habitat." The factual "determinations" are whether wildlife habitat is "impaired," and whether that habitat is "important" to the wildlife affected. These are in the nature of factual determinations, and presumably fall within the primary area of expertise not of the local governments, but of the Department of Fish and Game. The critical question in the example, however, is whether, given the Department of Fish and Game's opinions as to adverse impact, the impacts resultantly found are "unreasonable." The phrase may imply either that impacts are "unreasonable" viewed in the absolute, or that the "reasonableness" of the impact should be judged in light of the beneficial economic impacts of the logging activity, the severity of the impacts, and the likelihood of their occurring. The interpretation of the term "unreasonable" would be within the primary area of expertise of the local coastal resource district.

If the coastal resource district were to determine that the latter was the appropriate interpretation, it would remain for the lead agency to balance the perceived economic benefits of the logging activity against the likelihood and severity of adverse impacts as found by the Department of Fish and Game, and to then determine whether the impacts were "unreasonable" as that term is interpreted by the coastal resource service district. 2/

This "division of deference" may seem overly intricate. It is, however, precisely the type of inquiry in which the courts routinely engage to determine the level of deference, to be accorded the decision of administrative agencies. It is also necessary. Under the bill, the "lead agency" will essentially be speaking for the entire state on coastal management issues, and it is therefore important to ensure a proper role for local governments and other agencies.

² The lead agency would not be required to defer to the local government's determination that a particular balance should be struck. That latter comment would not constitute "interpretation" of the local plan, but rather the ultimate decisional judgment on the application over which the local government does not have peculiar expertise. In this regard, proposed AS 44.62.635(b) states:

No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

That section does not apply to coastal resource districts, since these districts are not "resource agencies" under proposed AS 44.62.640(c)(4). Indeed, "interpretive" recommendations may often influence the "balancing process," since a local government's "interpretation" may involve the varying weight to be given different factors in the balancing process. However, once the lead agency has been given the factors to be balanced and the respective weight to be accorded them, the ultimate balancing decision would remain that of the lead agency.

2. The local government's judgments and recommendations on matters within its primary area of expertise (e.g. the interpretation of its plan) must be "substantiated by facts and data." A coastal resource service district therefore could not simply offer unsupported statements that its plan should be interpreted in a particular manner. Rather, the district would have to cite to particular support within the plan or its history to demonstrate that the interpretation offered is in fact that envisioned by its drafters.

Finally, you have asked us to clarify what "substantive consideration" as used in the proposal actually means. As you know, the administration's proposed uniform procedural regulations (22 AAC 10) used the term "great weight," as did earlier versions of permit reform legislation which the administration supported. However, you may not be aware that, in negotiations with the Alaska Oil and Gas Association this previous summer, representatives of this department, on behalf of the administration, agreed to substitute the phrase "substantive consideration" for "great weight," not as a change in substance, but rather because the phrase "great weight" had become a bete noire among some parties. It was thought that a different phrase—with the same meaning might be more acceptable. Thus, in our view "substantive consideration" and "great weight" as used in earlier versions of the legislation mean the same thing, even though the former term is undefined in the most recent proposal for the bill: the two phrases have acquired an understood synonymous meaning in the course of deliberations over permit reform. Hence, we believe that "substantive consideration" means that the comment received carries with it a presumption of correctness, and that the burden of proof lies with the agency to demonstrate, by a preponderance of the evidence in the administrative record, that a contrary conclusion on the matter should be reached.³

³ Obviously, as a principal in the negotiation which led to the change from "great weight" to substantive consideration, our department is aware of the intent of the parties. However, while the actual intent of the change was, as described above, there is no guarantee, in the absence of a definition of the term within the legislation itself, that a court would not reach a contrary conclusion and decide that "substantive consideration" means something less than "great weight."

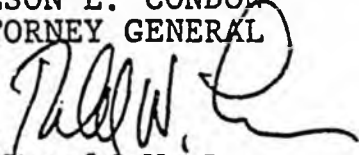
April 16, 1982

This burden of proof applies not only at the administrative level, but as well on judicial review. Thus, if an agency reaches a conclusion contrary to a comment entitled to "substantive consideration", it is not sufficient for the agency to show in court that its contrary conclusion had a "reasonable basis" or that it was supported by "substantial evidence in the record as a whole." Rather, the burden of proof would be upon the agency to justify in court the contrary result by a preponderance of the evidence.

If you have any further questions, please feel free to call.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Ronald W. Lorensen
Deputy Attorney General

RWL:mr

cc: Members, House Finance Committee

Jerry Reinwand, Executive Assistant
Office of the Governor

John Katz, Commissioner
Department of Natural Resources

COMMITTEE REPORT

HOUSE

2/24
Rules

(5)

FURTHER:

1/11/82

Date: Feb. 19, '82

Mr. Speaker: (Taken from calendar 1/11/82) *referred to*

The Committee on LABOR & COMMERCE has had ^{CS} HCS/SB 84(2d Rules)amH

"An Act relating to the granting of land use authorizations by state agents."

under consideration and ~~the committee reports it back with the following recommendations:~~
reports it back with the following recommendations:

do pass do not pass

do pass with attached amendments(s)

replace with CS for CS FOR SENATE Bill # 84 (L+C) same title new title

and recommends it do pass

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Randolph
Byler
Terry Martin, Ch.

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Terry Martin Do Not Pass until Amended

Terry Martin
Terry Martin
CHAIRMAN

HCS SB 84(2d Rules) amH

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO 84(2d Rules) amH (relating to the granting of land
use authorization by state agents) lacking the necessary
three-fourths vote to advance to third reading the same day
(page 2585 of the ^{JUNE 24} 1981 House Journal) was automatically before
the House in third reading and read the third time.

Amendment No. 5 by Fanning adopted 6/24/81 Page 2583

Page 5, Line 24:

Delete the second "and" and insert "all"

Return L & C. o

am #1 by Clocker - failed
am #2 by Wickson - failed
am #3 by Clocker - wild
am #4 by Clocker - wild
am #5 by Fanning - adopted
am #6 by Nekeffe - failed

HOUSE

ENROSS: _____
ENROLL: _____
HB # _____
HJR # _____
HCR # _____
HR # _____

ACS CS SB # 846 (Ad Rules) am #

SJR # _____
SCR # _____

DATE PASSED 6/24/81

ROLL CALL: YEARS: _____ EFFECTIVE DATE: YEARS: _____
NAYS: _____ NAYS: _____
ABSENT: _____ ABSENT: _____
EXCUSED: _____ EXCUSED: _____

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 2nd HCC CSSB 84 (L&C)

Title An act relating to Processing Permits by State Agencies

Requested by House Finance

Date 3/17/82

II. FISCAL DETAIL

Agency Affected See below - various

Program Category Affected NRMEC

BRU, Program, Or Subprogram(s) Affected _____

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		738.9	646.4	544.1		
200 TRAVEL		40.2	43.4	46.9		
300 CONTRACTUAL		185.0	203.0	219.3		
400 COMMODITIES		42.8	46.7	49.9		
500 EQUIPMENT		32.4	0	0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		1,042.3	939.0	860.2		

FUNDING (Thousands of Dollars)

GENERAL FUND		1,042.3	939.0	860.2		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		23	19	16		
PART TIME						
TEMPORARY						

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

This fiscal note combines the attached fiscal notes from the following four agencies:

	<u>FY 83 Fiscal Note</u>	<u>Positions</u>
Natural Resources	519.3	13
Fish & Game	135.9	2
Public Safety	86.3	2
Env. Conservation	300.8	6
	<u>1,042.3</u>	<u>23</u>

Eight percent inflation factor was used for future years. The note was also adjusted to reflect Natural Resources estimated decrease in positions required to 9 PFT in FY 84 and 6 PFT in FY 85.

IV. DATE 3/17/82

PREPARED BY Bob Grogan

AGENCY Legislative Finance

Original: Legislative Finance

PHONE 165-3795

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

FISCAL IMPACT SB 84 - FY 84 & FY 85

FY 84

DMEM	156.8 (3 PFT)
DTS	<u>222.1 (6 PFT)</u>
	378.9 (9 PFT) plus inflation

FY 85

DMEM	156.8 (3 PFT)
DTS	<u>109.9 (3 PFT)</u>
	266.7 (6 PFT) plus inflation

3/16/82

Bob,

The attached fiscal note was prepared by Budget and Management without the benefit of DNR's DTS figures for FY 84 and FY 85. Accordingly, Budget and Management simply extrapolated those costs based on the FY 83 costs. We expect, however, for the costs to decrease substantially over the two year period, with the manpower requirement in DTF dropping from 10 in FY 83 to 6 in FY 84 and 3 in FY 85. Thus, the fiscal note should be revised downward to reflect these more accurate estimates. (Attached). My apologies for our oversight in not providing Budget and Management with these figures earlier.

Mary
Mary Halloran

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: Mary Halloran
Special Assistant
Commissioner's Office

DATE: March 11, 1982

FILE NO: 1150

TELEPHONE NO: 265-4194

FROM:  Joseph C. Burch, Deputy Director
Division of Technical Services

SUBJECT: Senate Bill 84
(2nd HCS (SSB 84[L & C])
FY 84 & 85 Fiscal Impact

Analysis

This portion of the fiscal note assumes the following for FY '84 & FY '85 in addition to the original assumptions:

ALARS (LAS) is operational by January 1, 1983.

	<u>DTS</u>	
	<u>1984</u>	<u>1985</u>
100	176.1 (6 PFT)	85.8 (3 PFT)
200	-0-	-0-
300	24.0	12.0
400	22.0	12.1
500	<u>-0-</u>	<u>-0-</u>
	222.1	109.9

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FILE COPY

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 2nd HCC CSSB 84 (L&C)
 Title An act relating to Processing Permits by State Agencies
 Requested by Jerry Reinwand Date 3/3/82

II. FISCAL DETAIL

Agency Affected See below - various
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected _____
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		738.9	798.0	861.8	930.8	1,005.2
200 TRAVEL		40.2	43.4	46.9	50.6	54.7
300 CONTRACTUAL		188.0	203.0	219.3	236.8	255.8
400 COMMODITIES		42.8	46.2	49.9	53.9	58.2
500 EQUIPMENT		32.4	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		1,042.3	1,090.6	1,177.9	1,272.1	1,373.9

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		1,042.3	1,090.6	1,177.9	1,272.1	1,272.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		23	23	23	23	23
PART TIME						
TEMPORARY						

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

This fiscal note combines the attached fiscal notes from the following four agencies:

	FY83 Fiscal Note	Positions
Natural Resources	519.3	13
Fish & Game	135.9	2
Public Safety	86.3	2
Env. Conservation	300.8	6
	<u>1,042.3</u>	<u>23</u>

Eight percent inflation factor was used for future years.

IV. DATE 3/3/82 PREPARED BY Jeff Morrison
 AGENCY Budget and Management
 Original: Legislative Finance PHONE 465-2213
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA RECEIVED
 TWELFTH LEGISLATURE

FEB 25 1982

FISCAL NOTE

BUDGET AND MANAGEMENT

I. REQUEST

Bill/Resolution No. SB 84
 Title An Act relating to processing of permits by state agencies
 Requested by House Labor & Commerce Date 2-19-82

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
 Program Category Affected NRMEC
 BRU, Program, or Subprogram(s) Affected Regulations Implementation
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES			366.0			
200 TRAVEL			11.0			
300 CONTRACTUAL			94.5			
400 COMMODITIES			33.8			
500 EQUIPMENT			14.0			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			519.3			

FUNDING (Thousands of Dollars)

GENERAL FUND			519.3			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME			13.0			
PART TIME						
TEMPORARY						

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

See attachment.

IV. DATE February 19, 1982 PREPARED BY *[Signature]*
 AGENCY Natural Resources
 PHONE 465-2400

Original: Legislative Finance
 cc: Budget and Management

	DTS	DMEM	DL&W	DRD	TOTAL
100	267.4	97.6	1.0	-0-	366.0
200	-0-	4.0	5.0	2.0	11.0
300	40.0	50.0	0.5	4.0	94.5
400	32.6	1.2	-0-	-0-	33.8
500	10.0	4.0	-0-	-0-	14.0
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	350.0	156.8	6.5	6.0	519.3

III. ANALYSIS

This fiscal note assumes the following:

First, that the proposed Governor's Capital Budget item of \$890.0 for automated drafting is funded, thus reducing the amount of human labor which would otherwise be needed to comply with SB 84;

Second, that the Department of Natural Resources streamlines its mining location notice;

Third, that the federally funded positions supplied by the Coastal Zone Management program are approved by the Legislature and are continued within the Department of Natural Resources; and

Fourth, that the level of service offered for mining permits may be less than the current level.

A. Personal Services.

The permit reform program will require 13 new positions for FY 83: 10 positions for the Division of Technical Services and 3 positions for the Division of Minerals and Energy Management. The majority of these positions are required for the processing of mining claims and mining permits. The following would be added to Technical Services: 1 Land Management Officer II, 1 Land Management Officer I, 2 Drafting Technician IIIs, 4 Drafting Technician I/IIIs, 1 Administrative Support Technician, Range 10 and 1 Administrative Support Technician, Range 8. The duties of these personnel will be to update the State's land status records, which are currently 30 to 100 days behind, so that mining claims can be adjudicated and mining permits issued within the deadlines established by SB 84.

With appropriate funding, the Department would endeavor to bring all land status records current by July 1983. As land records keeper for the entire state, the Division of Technical Services faces a volumetrically increasing workload caused by the transfer of approximately 13 million acres to the State every year from the federal government. Last year 12,325 land case files were processed by 25 full-time employees, approximately 500 case files per employee, but 3,027 case files were unprocessed at the end of the year. To that backlog, the Division estimates that another 3,693 case files will be unprocessed at the end of this fiscal year for a total of 6,720 case files or about 33% of the case files.

The duties of the new personnel for the Division of Minerals and Energy Management (1 Land Management Technician and 1 Land Management Officer I for mining, and 1 Land Management Officer I for oil and gas) would be to process the permits, in particular, to adjudicate the mining claims, and handle appeals as necessary.

B. Travel.

Travel would be limited to necessary public hearings on proposed regulations changes and implementation.

C. Contractual.

The contractual funds would be used to provide necessary newspaper publishing of notices and general overhead for operations such as telephone.

Department of Natural Resources
Division of Technical Services

POSTING MINING CLAIMS

TO

STATE LAND RECORDS



**ACCOMPLISHMENTS AND NEEDS
SOLUTION ALTERNATIVES**

December 18, 1981

*Estimated Workload Increases
(not including Mining)*

~~OTHER RECORDS WORKLOAD~~

REQUESTED MINING CLAIM PROJECT BUDGET DOES NOT INCLUDE OTHER RECORDS WORKLOAD WHICH CANNOT BE PROCESSED BY PRESENT STAFF :

JUL COAL NEW ITEM

DMEM will start issuing COAL PROSPECTING PERMITS In the spring of 1982

MAR :

Present applications (EST. 2,000,000 acres)	450
F/Y 83 application projection (EST 500,000 acres)	<u>100</u>
Total applications	<u>550</u>

Records Impact thru F/Y 83 (Serial register, Historical Index Status plat, and automated) 1.5 man years

~~2~~ **WATER RIGHTS**

3. NAVIGABILITY

4. INCREASED TA'S AND PATENTS

5. INCREASED CLASSIFICATIONS

6. INCREASED MINERAL CLOSING ORDERS

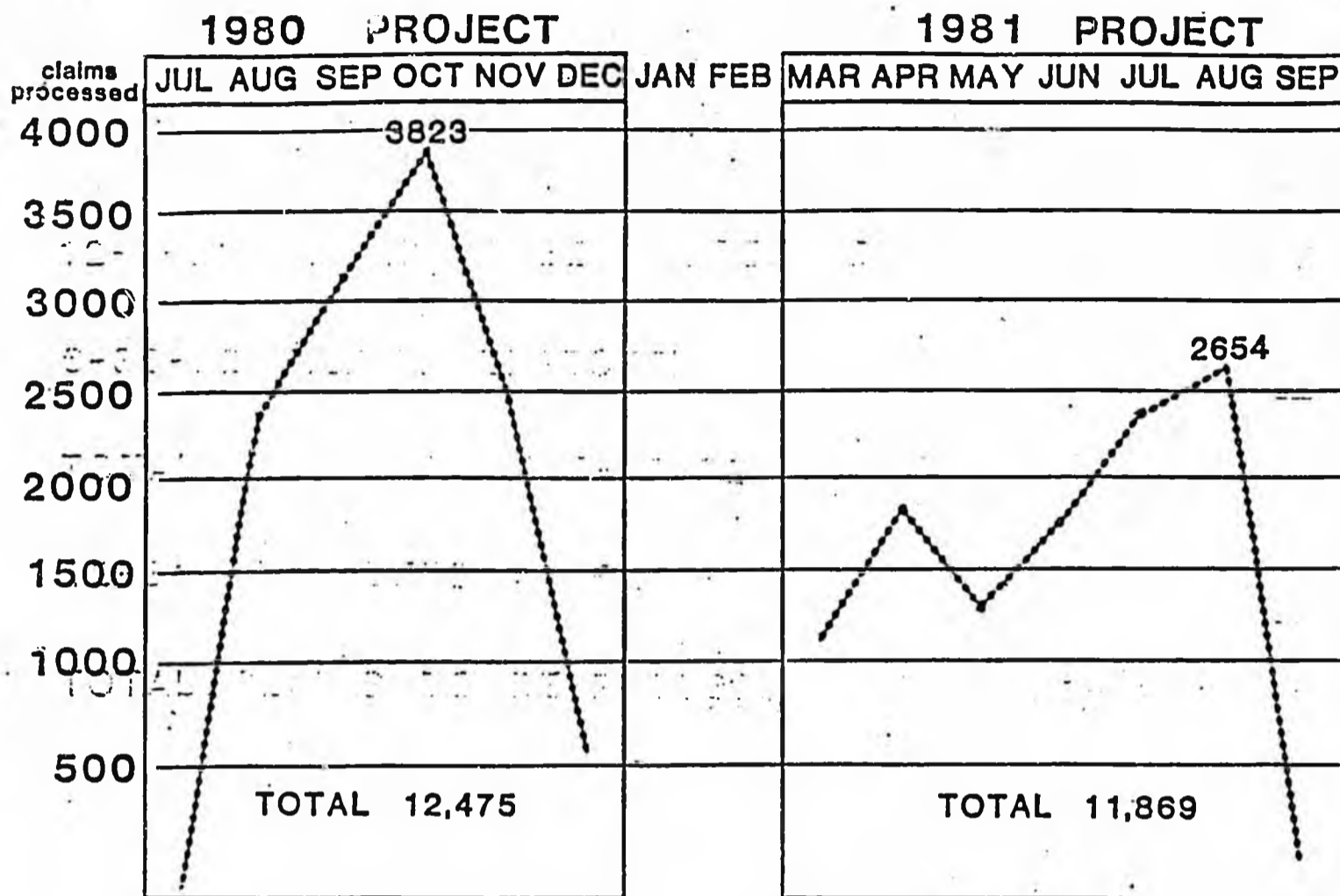
7. NATIVE LAND CORRIDORS

8. RECORDS AUDIT

ETC ETC

MINING CLAIMS DRAFTED PER MONTH

JOINT DMEM/DTS MINING CLAIMS PROJECTS 1980 & 1981



TOTAL TWO PROJECTS 24,344
TEAM AVERAGE 2400 PER MONTH

High peaks due to to efficiency in plotting blocks of several hundred adjacent claims .

Valleys due generally to nonpermanent personnel staffing problems.

NOTE: In addition to drafting, each mining claim requires one serial register entry, one historical index entry, and two automated entries .

MINING CLAIM WORKLOAD

JULY 1, 1980 - DEC 1, 1981

(FIGURES ROUNDED)

JUL 1, 1980	NOT PROCESSED (BEGIN 1980 PROJECT)	6,000
MAR 1, 1981	FILED 7-1-80 TO 3-1-81	<u>+ 14,500</u>
	CLAIMS TO BE PROCESSED	20,500
	LESS CLAIMS PROCESSED 1980 PROJECT	<u>- 12,500</u>
2.	NOT PROCESSED	8,000
DEC 1, 1981	FILED 3-1-81 TO 11-30-81	<u>+ 15,500</u>
	CLAIMS TO BE PROCESSED	23,500
	LESS CLAIMS PROCESSED 1981 PROJECT	<u>- 12,000</u>
	NOT PROCESSED	11,500
<hr/>		
<u>RECAP</u>	7-1-80 TO 12-1-81	
	CLAIMS TO BE PROCESSED	36,000
	PROCESSED	<u>- 24,500</u>
	NOT PROCESSED 12-1-81	11,500

MINING CLAIM PROJECTION

12-1-81 TO 6-30-83

12-1-81 CLAIMS TO BE PROCESSED	11,500
6-30-82 FILINGS EXPECTED	<u>10,000</u>
TOTAL CLAIMS THRU 6-30-82	21,500
12-31-82 ADDITIONAL FILINGS EXPECTED	<u>17,000</u>
TOTAL CLAIMS TO BE PROCESSED BY 12-31-82	38,500
6-30-83 ADDITIONAL FILINGS EXPECTED	<u>15,000</u>
TOTAL CLAIMS WORKLOAD THROUGH FISCAL YEAR 1983	53,500

*IMPACT FACTOR, D-2 ADJUSTMENT :

20,000,000 acres will be selected by mid-February 1982. 13,000,000
acres presently selected will be relinquished. Estimated impact 10,000
claims included above.

SOLUTION OF MINING CLAIMS WORKLOAD
ALTERNATIVES

1. POST MINING CLAIMS WITH EXISTING
PERSONNEL DURING FY 83 :

	MAN YEARS
EXISTING PERSONNEL	24
REQUIRED FOR MINING CLAIMS	<u>-14</u>
AVAILABLE FOR REGULAR WORK	10

58% OF WORK NOW BEING DONE WILL NOT
BE DONE

2. DO NOTHING (NO SOLUTION)

3. ISSUE MINERAL CLOSING ORDER (WOULD AFFECT
ONLY CLAIMS AFTER DATE OF ORDER)
(NO SOLUTION)

4. DO THE JOB:

(A) TWO TEAMS, EACH CONSISTING OF EIGHT
NON-PERMANENT OR OTHER PERSONNEL
TO PROCESS THE CALENDAR YEAR 1982
WORKLOAD

(B) ONE TEAM OF EIGHT PERMANENT
PERSONNEL IN THE FY-83 BUDGET

(C) \$480,000 FOR F/Y 83 BUDGET

5. ANY COMBINATION OF THE ABOVE

MINING CLAIMS WORKLOAD

PERSONNEL REQUIREMENTS

A. PROVEN BY EXPERIENCE OVER TWO PROJECTS :

1. AN EFFICIENT TEAM

- 1 Drafting Technician II.
- 2 Drafting Technician III
- 1 Land Management Officer I - Checking
- 1 Clerk Typist III - Serial Register
- 1 Clerk Typist III - Historical Index
- 2 Data Entry Clerks III
- 8 Persons Per Team

2. EACH TEAM WILL PROCESS - 2,400 CLAIMS PER MONTH
(ROUNDED TO 30,000 PER YEAR)

B. REQUIRED

1. TWO TEAMS, NONPERMANENT, SIX MONTHS EACH,
TO PROCESS WORKLOAD THROUGH
CALENDER YEAR 1982 ☆
2. ONE TEAM FOR PERMANENT F/Y 83. ☆☆

☆ Personnel procedures require approximately 6 month to get on board

☆☆ Personnel procedures require approximately 3 months to get on board

COST

An efficient work unit consists of eight persons :

- 1 Land Management Officer
- 3 Drafters
- 2 Typists
- 2 Data Entry Clerks

They work as a team to record 2,400 mining claims per month on status plat, serial register, historical index and automated records. Less than eight persons per unit will mean that one or more of the four record entries will not be made.

1. (A) Cost per unit for six month project utilizing non-permanent personnel (to post 15,000 mining claims)

Salary ☆	110,000 ☆
Equipment Rental	12,000
Commodities	16,000
	<hr/>
	\$138,000

- (B) Two units needed, to record 30,000 mining claims

2 X 138,000 \$276,000

2. Cost per unit for F/Y 83 permanent personnel

Salary	180,000 ☆☆
Equipment	12,000
Commodities	12,000
	<hr/>
	\$204,000

204,000

Total Cost

\$480,000

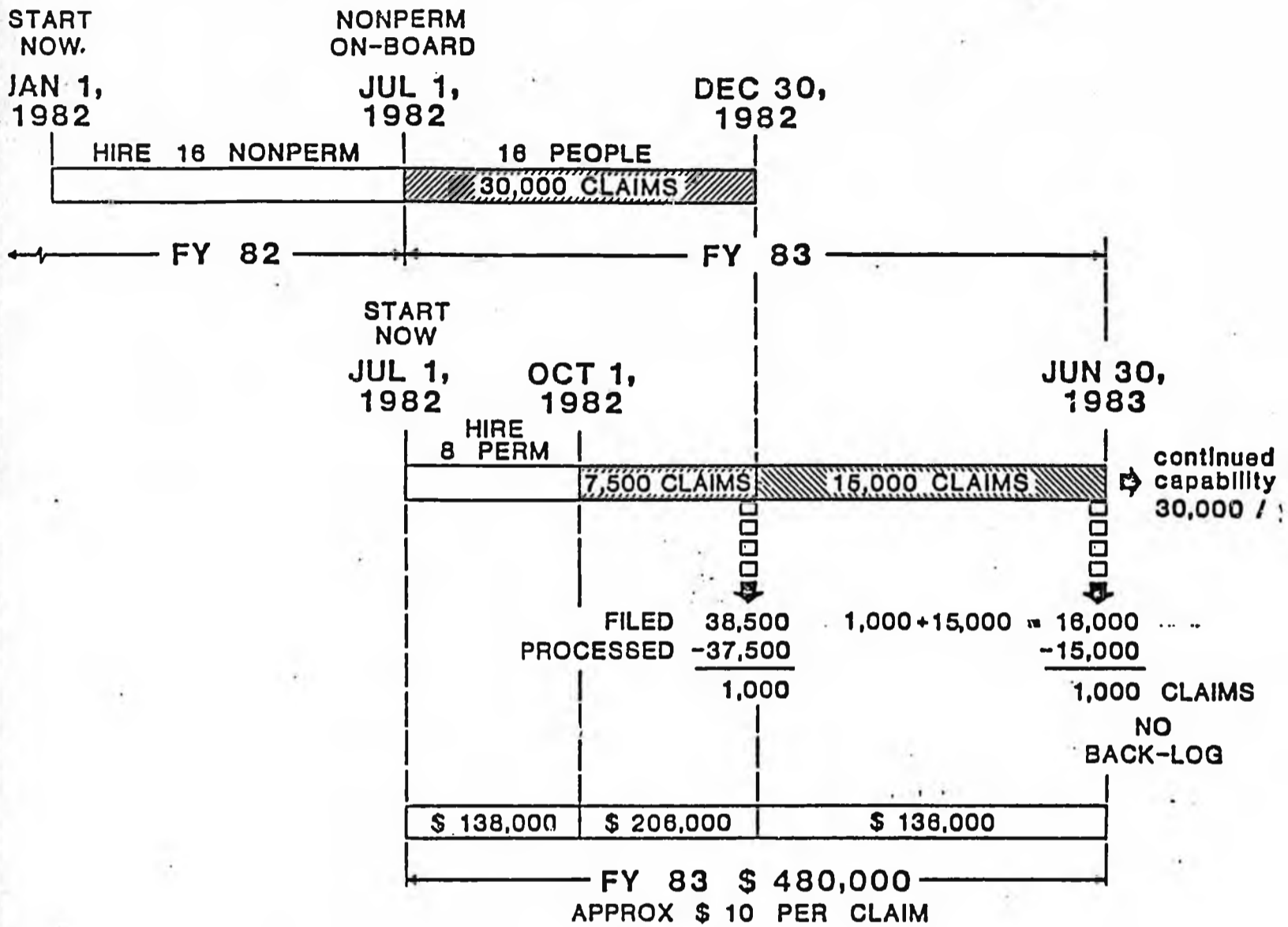
NOTES

☆ Based on six months employment (non-permanent).

☆☆ It is assumed that permanent personnel authorized for F/Y 83 will not be available until October 1, 1982

SUMMARY

CALENDER YEAR



TOTAL MINING CLAIM PROGRAM BUDGET FOR FY 83	\$ 480,000
TOTAL RECORDS INCREMENTAL BUDGET SUBMITTED FOR DTS FY 83	- \$ 186,000
DEFICIT	(\$ 294,000)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 2d House CS for CS for Senate Bill No. 84 (L&C)
 Title An Act relating to processing of permits by State agencies, and re-
 Requested by Budget & Management Date 2/26/82
 administration of the Alaska Coastal Management program.

II. FISCAL DETAIL

Agency Affected Fish & Game
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected Habitat Division
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		94.2				
200 TRAVEL		15.2				
300 CONTRACTUAL		23.0				
400 COMMODITIES		2.5				
500 EQUIPMENT		1.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		135.9				

FUNDING (Thousands of Dollars)

GENERAL FUND		135.9				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		2				
PART TIME						
TEMPORARY						

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

N/A



IV. DATE 2/26/82 PREPARED BY Bruce Baker
 AGENCY Alaska Department of Fish & Game
 PHONE 465-4105
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. 2d House CS for CS for Senate Bill No. 84 (L & C)
Title An act relating to processing of permits by state agencies
Requested by Budget and Management Date 2/26/82

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Property Protection
BRU, Program, Or Subprogram(s) Affected Fire Safety
(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		67.9	73.4	79.2	85.6	92.4
200 TRAVEL		6.0	6.6	7.3	7.8	8.8
300 CONTRACTUAL		6.5	7.1	7.7	8.4	9.2
400 COMMODITIES		.5	.6	.7	.8	.9
500 EQUIPMENT		5.4				1.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		86.3	87.7	94.9	102.6	112.3

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		86.3	87.7	94.9	102.6	112.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

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

Recurring Costs

Assuming Sec. 44.62.626 (Comment Period) of Sec. 2 of the bill would apply to our life and fire safety plan review and approval program in projects being reviewed by a resource agency and in order to comply with Sec. 2 of the bill if passed, it is estimated that the following additional positions would be needed, beginning FY 83.

One (1) Fire Protection Engineer, Range 19A, Anchorage

One (1) Clerk Typist II, Range 7B, Anchorage

IV. DATE 2/26/82 PREPARED BY Gary Crouse, Deputy Director
AGENCY Public Safety, Fire Prevention
Original: Legislative Finance PHONE 272-2406 (Anchorage)
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Recurring Costs

Personal services, travel, contractual, commodities and equipment costs are shown above. Inflation is calculated at 9% except for travel, to which a 10% inflation factor has been applied.

Expenditures FY 83 Breakdown

100	Fire Protection Engineer, Range 19A (Anchorage)	44.4
	Clerk Typist II, Range 7B (Anchorage)	<u>23.5</u>
		67.9
200	Instate travel expenses for the Fire Protection Engineer	6.0
300	Space expense for new positions. (200 sq. ft. x \$2.50 x 12)	6.0
	Telephone, Postage	.5
400	Normal office supplies	<u>.5</u>
		80.9

One Time Costs (Equipment)

500	Executive desk	.7
	Executive chair	.2
	Secretarial desk	.6
	Secretarial chair	.2
	Filing Cabinets - 5 drawers	.6
	Typewriter	1.3
	Plan Review Table	1.5
	Calculator	<u>.3</u>
		5.4

Replaced equipment should not be needed until FY 87 and is estimated at 1.0.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 2nd HCS CSSB 84 (L & C)

Title An Act Relating to Processing Permits by State Agencies

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Environmental Conservation

Program Category Affected NRMEC

BRU, Program, or Subprogram(s) Affected Environmental Quality Operations

(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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	210.8	227.6	245.9	265.5	286.8	309.7
200 TRAVEL	8.0	9.6	11.5	13.8	16.6	19.9
300 CONTRACTUAL	64.0	24.0	27.6	31.7	36.5	42.0
400 COMMODITIES	6.0	7.0	8.0	9.2	10.6	12.2
500 EQUIPMENT	12.0	-----	-----	-----	-----	-----
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	300.8	268.7	293.0	320.2	350.5	383.8

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	300.8	268.7	293.0	320.2	350.5	383.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME	6.0	6.0	6.0	6.0	6.0	6.0
PART TIME	---	---	---	---	---	---
TEMPORARY	---	---	---	---	---	---

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

This bill will provide for two classes of permits and establish a definite time frame for processing. A permit would be automatically granted if processing was not completed within the specific time. Many applications require public participation through public notices and hearings, comments from other state and federal agencies, provision of additional technical information, and complex technical review. Appeal provisions are also provided.

To accomplish permit processing within the allotted time, additional technical staff and staff to track processing through, an automated tracking system is essential. Since extensive regulation revision must take place prior to October 1, 1982 a contract for legal services would be necessary.

IV. DATE March 1, 1982

PREPARED BY W.A. Publicover/W. Angst

AGENCY Environmental Conservation

PHONE 465-2696

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

The budget proposal reflects additional technical staff to process applications and clerical staff to maintain a system to track the application through the various reviews, public notices, public hearings, interagency comments, public comments, appeals and adjudicatory hearings in order to maintain the required schedule. An Environmental Engineer in each of our three regional offices would augment existing staff. A Clerk IV in each office would be responsible for keeping the application on track. A strong paper trail with adequate records of action would be required, especially where the applicant may appeal or seek review by the superior court.

Contractual services funds are required to cover costs of telephone, office space, telegraph, express and certified mail services, publication of public notices, transcription of hearings, and services of hearing officers. This would amount to \$24,000.

Since this bill will require extensive rewrite of 18 AAC 15 in an exceptionally short time to meet the October 1, 1982 deadline, legal services must be provided through contract. \$25,000 is required for this essential element of the bill.

A computerized tracking system is necessary to follow the several hundred permit applications through processing. This is the only way to keep track of the paper flow and ensure adherence to the required schedules. Developing new software and upgrading existing terminals would cost \$15,000.

Support funds for travel, office equipment, and commodities would also be required.

Breakdown of costs for FY 83:

	<u>Southeast Region</u>	<u>Central Region</u>	<u>Northern Region</u>	<u>Permit Section</u>	<u>TOTAL</u>
100	67.3	67.3	76.2	----	210.8
200	2.0	2.0	2.0	2.0	8.0
300	8.0	8.0	8.0	40.0	64.0
400	1.5	1.5	1.5	1.5	6.0
500	3.0	3.0	3.0	3.0	12.0
TOTAL	<u>81.8</u>	<u>81.8</u>	<u>90.7</u>	<u>46.5</u>	<u>300.8</u>
PFT	1-EE III Range 19	1-EE III Range 19	1-EE III Range 19	----	6
	1-CLK IV Range 09	1-CLK IV Range 09	1-CLK IV Range 09		

HOUSE CS FOR CS FOR SENATE BILL NO. 84 (RULES)

"An Act relating to the processing of permits by state agencies; to surface leasing of land; and to administration of the Alaska coastal management programs; and providing for an effective date."

This Bill would place time limits on processing applications for a State license or permit for a new project and would standardize some aspects of permit processing.

During the last legislative session, former versions of the Bill (House Bill No. 999 and CS for Senate Bill No. 548) were discussed in several work sessions. It was determined, at that time, that the provisions of the Bills should not apply to permit processing for public service and certain other programs. The exemptions were accomplished in the definition of a "project." The provisions of the Bill would apply to permit issuance to new projects. Project was defined to exclude "pursuing a trade or profession, providing a regulated public or health service, or operating a financial institution."

House CS for CS for Senate Bill No. 84 (Rules) contains the same exemptions in the definition of a "project." It is, therefore, our understanding that the provisions of this Bill would not apply to the following permit or licensure activities of the Department of Health and Social Services:

Child Foster Home Licensing	AS 47.35.010-080
Child Day Care Home Licensing	AS 47.35.010-080
Adult Foster Home Licensing	AS 47.35.010-080
Child Day Care Center Home Licensing	AS 47.35.010-080
Residential Child Care Facility Licensing	AS 47.35.010-090
Adult Residential Care Facility Licensing	AS 47.35.010-090
Child Placement Agency Licensing	AS 47.35.100
Certificate of Need	AS 18.07.010
Health Facility Certification and Licensing	AS 18.20.010
Health Facility Construction	AS 18.20.080

With the understandings contained in this position paper, the Department has no objection to passage of this Bill.

RECOMMENDED BY: John R. Pugh
John R. Pugh, Director
Division of Family and
Youth Services

DATE: 3/1/82

RECOMMENDED BY: Phoebe A. Lindsey
Phoebe Lindsey, Director
Division of State Health
Planning and Development

DATE: 3-1-82

APPROVED BY: Helene D. Cairne
Helene D. Cairne
Commissioner

DATE: 3-1-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HCS CSSB 84 (Rules)
Title "An Act relating to the processing of permits by state agencies..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected _____
BRU, Program, Or Subprogram(s) Affected _____
(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.		-0-	-0-	-0-	-0-	-0-
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Senate Bill No. 84 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 3/1/82 PREPARED BY John R. Pugh, Director
AGENCY Division of Family and Youth Services
Original: Legislative Finance PHONE 465-3170
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

JCC

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

April 15, 1982

to: House Finance Committee
from: Ginny Chitwood, AML Executive Director *g.c.*
re: SB 84 - Processing of Permits & ACM Administration

The Alaska Municipal League is a strong supporter of streamlining the regulatory process and basically agrees with the findings in Section 1 of SB 84. We applaud the steps that have been taken already on both the state and federal level to improve the situation.

I have some questions, however, on how the process established in SB 84 would work: Where does local government fit into the picture? Is the existing relationship between the state and municipalities changed? What happens to the "consistency with local plans" that was promised in the Coastal Policy Act? Are coastal resource districts in the process of developing programs precluded from participating in the process?

Part of the confusion arises because of some undefined terms that are used in the bill, such as "substantive consideration" and "primary areas of expertise". Additionally, it is unclear what kind of agency and public notice would be required.

Because this bill establishes major state policy and because this latest version has had very little public exposure, I urge you to hold a teleconference hearing before passing out this bill. I realize you plan to adjourn soon, but since this is the last committee of referral, there should be enough time to one more hearing, preceded by some advance publicity.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

April 16, 1982

The Honorable Tony Vaska
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: 2nd HCS CSSSB 84 (L & C): Impact of
legislation on local government authority

Dear Representative Vaska:

By memorandum of April 1, 1982, you requested the views of this office regarding the effect of proposed compromise language to the above-captioned bill on local government authority under the Alaska Coastal Management Act (AS 46.40). The language in question is contained in a proposal Finance Committee substitute for the above-captioned bill as AS 44.62.635(a) and (b). The passages in question were presented by members of the administration to the Alaska Oil and Gas Association and the House Finance Committee as a proposed solution to the most difficult and bitterly argued aspect of the permit reform controversy. Because the language constitutes only a proposal, we believe that a legislative statement of intent, rather than a legal opinion as to its meaning, is more appropriate under the circumstances. ^{1/} However, in response to your request, we have set out understanding of its effect.

¹ Accordingly, we are providing a copy of this letter to members of the House Finance Committee, and to the original sponsors of SB 84.

In sum, it is our view that the proposed language would call for deference by individual state agencies to the opinions of local governments with approved coastal district programs on questions involving interpretation of that approved local program. Proposed AS 44.62.635(b), would provide that the "the professional judgments and recommendations" of coastal resource districts would be entitled to "substantive consideration" if the recommendation was "within [the district's] primary areas of expertise," and was "substantiated by . . . facts and data." The subsection further provides that:

A professional judgment or recommendation is adequately substantiated under this section if it is based on document or data reasonably relied upon by experts in the field.

The question posed by your April 1 request involves the applicability of that language to a recommendation by a coastal resource district that a particular activity is consistent or inconsistent with that district's approved coastal plan. We believe that interpretation of an approved coastal plan would be within the "primary area of expertise" of the district authoring that plan. It has generally been held that, in interpreting its own regulations, an administrative agency will be entitled to substantial deference. United States v. Larionoff, 431 U.S. 864, 872-73 (1977); Immigration and Naturalization Service v. Stanisic, 395 U.S. 62, 72 (1969); Bowles v. Seminole Rock Company, 325 U.S. 410, 413-414 (1945). The agency adopting the regulation is far more familiar with its background and purpose than would be the reviewing court. The same is also true of a local government's interpretation of its own plan. Therefore, it seems clear that an interpretation of its local coastal plan would fall within the "primary area of expertise" of the district.

It has been suggested that, irrespective of the expertise or familiarity involved, the local district's interpretation is not in the nature of an expert opinion, and therefore would not be entitled to deference under the proposed language. The grist for the argument is the language quoted above, which establishes the conditions under which an expert opinion is "adequately substantiated."

We do not view that language as impliedly denying to local governments that which the previous sentence explicitly grants them. The limited purpose of the pertinent sentence is to constrain those situations in which expert opinions demand "substantive consideration," but not to require that only expert opinions are entitled to deference. It is, in short, responsive to a wholly different problem. To read it to strip local governments of the deference which the preceding sentence would accord them would be nonsensical, and it seems unlikely that the courts would interpret those provisions in a manner which would lead to such a result. See, Sands, "Sutherland Statutory Construction", §§ 46.06, 46.07, Vol. 2A, pp. 63-66.

Under the proposed language, in order for a coastal resource district to have its interpretation accorded "substantive consideration" by the lead agency it must meet two thresholds. These are:

1. The local recommendation must involve an "interpretation" of the plan or other "primary area of expertise" (e.g. impact on local cultural resources), and not merely a factual finding. The scope of the limitation is perhaps best described by example: Suppose that a coastal resource district establishes a standard which states that "logging is permissible if it does not unreasonably impair important wildlife habitat." The factual "determinations" are whether wildlife habitat is "impaired," and whether that habitat is "important" to the wildlife affected. These are in the nature of factual determinations, and presumably fall within the primary area of expertise not of the local governments, but of the Department of Fish and Game. The critical question in the example, however, is whether, given the Department of Fish and Game's opinions as to adverse impact, the impacts resultantly found are "unreasonable." The phrase may imply either that impacts are "unreasonable" viewed in the absolute, or that the "reasonableness" of the impact should be judged in light of the beneficial economic impacts of the logging activity, the severity of the impacts, and the likelihood of their occurring. The interpretation of the term "unreasonable" would be within the primary area of expertise of the local coastal resource district.

If the coastal resource district were to determine that the latter was the appropriate interpretation, it would remain for the lead agency to balance the perceived economic benefits of the logging activity against the likelihood and severity of adverse impacts as found by the Department of Fish and Game, and to then determine whether the impacts were "unreasonable" as that term is interpreted by the coastal resource service district. 2/

This "division of deference" may seem overly intricate. It is, however, precisely the type of inquiry in which the courts routinely engage to determine the level of deference to be accorded the decision of administrative agencies. It is also necessary. Under the bill, the "lead agency" will essentially be speaking for the entire state on coastal management issues, and it is therefore important to ensure a proper role for local governments and other agencies.

² The lead agency would not be required to defer to the local government's determination that a particular balance should be struck. That latter comment would not constitute "interpretation" of the local plan, but rather the ultimate decisional judgment on the application over which the local government does not have peculiar expertise. In this regard, proposed AS 44.62.635(b) states:

No resource agency other than the lead agency has primary expertise on the balancing of competing factors.

That section does not apply to coastal resource districts, since these districts are not "resource agencies" under proposed AS 44.62.640(c)(4). Indeed, "interpretive" recommendations may often influence the "balancing process," since a local government's "interpretation" may involve the varying weight to be given different factors in the balancing process. However, once the lead agency has been given the factors to be balanced and the respective weight to be accorded them, the ultimate balancing decision would remain that of the lead agency.

2. The local government's judgments and recommendations on matters within its primary area of expertise (e.g. the interpretation of its plan) must be "substantiated by facts and data." A coastal resource service district therefore could not simply offer unsupported statements that its plan should be interpreted in a particular manner. Rather, the district would have to cite to particular support within the plan or its history to demonstrate that the interpretation offered is in fact that envisioned by its drafters.

Finally, you have asked us to clarify what "substantive consideration" as used in the proposal actually means. As you know, the administration's proposed uniform procedural regulations (22 AAC 10) used the term "great weight," as did earlier versions of permit reform legislation which the administration supported. However, you may not be aware that, in negotiations with the Alaska Oil and Gas Association this previous summer, representatives of this department, on behalf of the administration, agreed to substitute the phrase "substantive consideration" for "great weight," not as a change in substance, but rather because the phrase "great weight" had become a bete noire among some parties. It was thought that a different phrase-with the same meaning might be more acceptable. Thus, in our view "substantive consideration" and "great weight" as used in earlier versions of the legislation mean the same thing, even though the former term is undefined in the most recent proposal for the bill: the two phrases have acquired an understood synonymous meaning in the course of deliberations over permit reform. Hence, we believe that "substantive consideration" means that the comment received carries with it a presumption of correctness, and that the burden of proof lies with the agency to demonstrate, by a preponderance of the evidence in the administrative record, that a contrary conclusion on the matter should be reached.³

³ Obviously, as a principal in the negotiation which led to the change from "great weight" to substantive consideration, our department is aware of the intent of the parties. However, while the actual intent of the change was, as described above, there is no guarantee, in the absence of a definition of the term within the legislation itself, that a court would not reach a contrary conclusion and decide that "substantive consideration" means something less than "great weight."

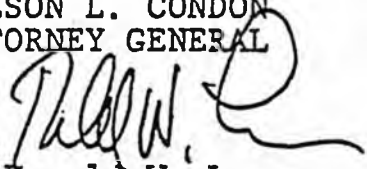
April 16, 1982

This burden of proof applies not only at the administrative level, but as well on judicial review. Thus, if an agency reaches a conclusion contrary to a comment entitled to "substantive consideration", it is not sufficient for the agency to show in court that its contrary conclusion had a "reasonable basis" or that it was supported by "substantial evidence in the record as a whole." Rather, the burden of proof would be upon the agency to justify in court the contrary result by a preponderance of the evidence.

If you have any further questions, please feel free to call.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Ronald W. Lorensen
Deputy Attorney General

RWL:mr

cc: Members, House Finance Committee

Jerry Reinwand, Executive Assistant
Office of the Governor.

John Katz, Commissioner
Department of Natural Resources

Original sponsors: Bennett, Parr and
Fahrenkamp

Offered: 2/24/82
Referred: Rules

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 2d HOUSE CS FOR CS FOR SENATE BILL NO. 84 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND 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 limits,
16 the proliferation of agency reviews, the number of agencies involved in the
17 permit process, and unjustified agency requirements upon the processing of
18 permit applications have cost Alaskans millions of dollars in lost employ-
19 ment and higher prices;

20 (3) the public interest has not been advanced by protracted delay
21 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; and

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

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

1 ARTICLE 8A. PERMIT PROCESSING.

2 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource
3 agency shall by regulation classify each of the permits issued by that
4 agency within one of the two following categories:

5 (1) class I permits, for which the state agency must issue a
6 final decision within 30 days after the date of receipt of a completed
7 permit application; and

8 (2) class II permits, for which, because of a necessary
9 public notice or interagency review period, a final decision cannot be
10 issued within 30 days; a final decision on a class II permit must be
11 issued within 65 days after the date of receipt of a completed permit
12 application, unless a public hearing is held on the permit, in which
13 case a final decision must be issued within 75 days of the date of
14 receipt.

15 (b) Final regulations classifying its permits and uniform proce-
16 dural regulations providing for the processing of these permits, shall
17 be adopted by each state resource agency by October 1, 1982, following
18 appropriate notice and hearing. Permits applied for after October 1,
19 1982 must be issued in accordance with the time periods specified in
20 (a) of this section, and the provisions of the implementing regulations.

21 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
22 ING. (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 within which the final decision will be made. The finding of the head
27 of the agency may be appealed by the applicant to the superior court
28 under the Appellate Rules of Procedure. The time period may not be
29 extended more than 120 days beyond the time period specified in AS 44.-

1 62.632(a) unless the applicant agrees otherwise.

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

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

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

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

27 (c) If a timely request under (a) and (b) of this section is
28 made, the time period specified in AS 44.62.632 is suspended from the
29 date of request to the date of full compliance with the request.

1 Subsequent requests for additional information may be made, but must
2 relate only to new issues raised by the response to the initial noti-
3 fication. Subsequent requests do not extend the time periods specified
4 in AS 44.62.632.

5 (d) Nothing in this section grants a resource agency the authority
6 to request information beyond the authority given to it by other sta-
7 tutes.

8 Sec. 44.62.635. LEAD AGENCY. (a) There is established a lead
9 agency that is solely responsible for issuing coastal management consis-
10 tency determinations under AS 46.40 and for preparing and submitting
11 state comments on federal permit applications. The lead agency is that
12 resource agency that has principal responsibility for authorizing the
13 overall activity, including instances where an activity requires permits
14 from more than one resource agency. For classes of activities for
15 which no agency with principal responsibility exists the governor shall
16 designate a resource agency to be a lead agency for each class by
17 administrative order no later than October 1, 1982. In performing its
18 functions under this section, the lead agency shall consult with other
19 resource agencies and with coastal resource districts under AS 46.40.

20 (b) Substantive consideration shall be given to the documented
21 factual statements or data submitted by resource agencies and to the
22 office of coastal management within their primary areas of expertise,
23 and to the documented factual statements or data submitted by coastal
24 resource districts made under an approved district coastal management
25 program. The lead agency shall consider opinions, conclusions or
26 recommendations submitted by the commenting agency, but may, in its
27 discretion, reach contrary opinions, conclusions or recommendations
28 according to the evidence received. The lead agency shall then balance
29 competing factors in reaching its final decision. No resource agency

1 other than the lead agency has primary expertise in the balancing of
2 competing factors.

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

5 (d) For activities involving a disposal of interest in land and a
6 certification under sec. 401 of the Clean Water Act (33 U.S.C. sec.
7 1341), the lead agency shall be the Department of Natural Resources.

8 (e) For activities involving a plan of operation approval under a
9 previous disposal of an interest in land and a certificate under sec.
10 401 of the Clean Water Act (33 U.S.C. sec. 1341), the lead agency shall
11 be the Department of Natural Resources.

12 Sec. 44.62.636. COMMENT PERIOD. A coastal resource district or
13 state agency that receives a request for comment in connection with a
14 permit application or plan review being processed by a resource agency
15 shall submit these comments in accordance with the following schedule:

16 (1) comments on class I permits shall be submitted within 15
17 days after the agency's receipt of the request;

18 (2) comments on class II permits and federal permits shall
19 be submitted within 30 days after the agency's receipt of the request;

20 (3) when under AS 44.62.633, the requesting agency has
21 extended the time periods specified in AS 44.62.632, that agency may
22 extend the time period specified in this section; however, comments
23 submitted under this paragraph must be submitted no later than 30 days
24 before the date on which the lead agency must issue a final decision.

25 Sec. 44.62.637. ADMINISTRATIVE APPEALS. (a) The uniform proce-
26 dural regulations adopted under AS 44.62.632(b) must provide for an
27 administrative appeal from a final decision on a permit application.
28 The administrative appeal is to the head of the resource agency in-
29 volved. Except as provided in this section the procedure is conducted

1 under AS 44.62.330 - 44.62.630.

2 (b) The administrative appeal must be resolved within 45 days
3 after the final decision on a permit application, or, if a hearing is
4 held on the administrative appeal, within 65 days after the final
5 decision on the permit application.

6 (c) An appeal taken from a decision granting a permit may, but
7 need not, stay the issuance of the permit.

8 (d) The head of the agency may summarily dismiss an appeal before
9 the time established in this section, and the dismissal is the final
10 agency action on the matter.

11 (e) In an appeal from the denial or conditioning of a permit the
12 head of the agency may, if he determines that the public interest would
13 be served, grant the permit or remove conditions of the permit until
14 the appeal is determined.

15 Sec. 44.62.638. REVIEW BY THE SUPERIOR COURT. (a) Judicial
16 review by the superior court of a final decision issued under AS 44.-
17 62.632 - 44.62.637 may be had by filing a notice of appeal in the
18 superior court in accordance with the applicable Rules of Appellate
19 Procedure. The review is governed by the provisions of AS 44.62.-
20 560() - (e) and AS 44.62.570.

21 () An appeal taken under this section should have preference on
22 the calendar of civil actions before the court and should be decided
23 without unnecessary delay.

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

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

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

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(2) "permit" means a permit, license, certification, consistency determination, or other authorization or approval issued by a resource agency as a written document that is required to be obtained or is solicited from a state agency before the construction or operation of a project; "permit"

(A) does not include the approval of a unit agreement, a unit development plan, or a unit exploration plan, or conveyances of interest in state land or water;

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

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

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

Original sponsors: Bennett, Parr and
Fahrenkamp

Offered: 6/23/81
For Today's Supplemental
Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 84 (2d Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the granting of land use authoriza-
7 tions by state agents."

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
15 limits, the proliferation of agency reviews, the number of agencies involved
16 in the permit process, and unjustified agency requirements upon the process-
17 ing of permit applications have cost Alaskans millions of dollars in lost
18 employment and higher prices;

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

21 (4) by reducing the number of agencies and agency reviews in-
22 volved 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; and

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

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

29 ARTICLE 8A. PERMIT PROCESSING.

1 Sec. 44.62.632. PERMIT CLASSIFICATION. (a) Each state resource
2 agency shall by regulation classify each of the permits issued by that
3 agency within one of the two following categories:

4 (1) class I permits, for which the state agency must issue a
5 final, pre-adjudicatory decision within 30 days after the date of
6 receipt of a completed application; and

7 (2) class II permits, for which, because of a necessary or
8 appropriate public notice or interagency review period, a final, pre-
9 adjudicatory decision cannot be issued until 65 days after the date of
10 receipt of a completed application.

11 (b) Final regulations classifying its permits, and uniform proce-
12 dural regulations providing for the processing of these permits, shall
13 be adopted by each state resource agency by October 1, 1981. Permits
14 applied for after this date must be issued in accordance with the time
15 periods specified in (a) of this section, and the provisions of the
16 implementing regulations. Regulations adopted under this section may
17 be revised.

18 Sec. 44.62.633. OTHER REGULATORY REQUIREMENTS FOR PERMIT PROCESS-
19 ING. (a) An applicant and a resource agency may agree to waive a time
20 limit required by regulation for the classification of the applicable
21 permit.

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

29 (c) The time period specified in AS 44.62.632(a) may be extended

1 by a maximum of 20 days if a public hearing is held on a permit appli-
2 cation.

3 (d) The time period specified in AS 44.62.632(a) may be extended
4 if necessary to facilitate joint processing of a permit application
5 through memorandum of understanding by state and federal agencies, and
6 strict adherence to the time periods established in AS 44.62.632(a)
7 would pose an irreconcilable conflict with a federal statute or regula-
8 tion.

9 (e) Subject to (a) - (d) of this section and AS 44.62.634, fail-
10 ure of a resource agency to make a final, pre-adjudicatory decision
11 within 30 days after the receipt of a completed application for a class
12 I permit, or within 65 days after the receipt of a completed applica-
13 tion for a class II permit, constitutes approval of the application.
14 In an appeal of a permit issued by operation of this subsection, the
15 record shall be construed in a light most favorable to the applicant,
16 and the permit shall be accorded a presumption of regularity.

17 Sec. 44.62.634. ADDITIONAL INFORMATION. (a) If a resource agen-
18 cy receives a completed permit application form which does not contain
19 sufficient information concerning the project's compliance with the
20 agency's statutes and regulations, the agency shall notify the appli-
21 cant within 15 days after receipt of a completed application for a
22 class I permit, and within 30 days after receipt for a class II permit.
23 The notification must specify all information that the agency believes
24 at the time to be necessary to determine compliance of the project with
25 the agency's statutes and regulations.

26 (b) The initial and any subsequent notification must specify
27 those particular facts or issues concerning the proposal that require
28 more information than is provided on a completed application form.
29 Subsequent requests for additional information must be made within the

1 permit deadline as extended, and may be made only with respect to new
2 issues raised by the response to the initial notification.

3 (c) If a timely request under this section is made, the time per-
4 iod specified in AS 44.62.632 is suspended from the date of request to
5 the date of full compliance with the request.

6 Sec. 44.62.635. LEAD AGENCY. There are established lead agencies
7 which are solely responsible for issuing coastal management consistency
8 determinations under AS 46.40 and for preparing and submitting state
9 comments on federal permit applications. The lead agency may vary for
10 classes of activities, but shall be that agency that has principal
11 responsibility for authorizing the overall activity. For classes of
12 activities for which no agency with principal responsibility exists the
13 governor shall designate a lead agency by administrative order no later
14 than October 1, 1981. In performing its functions under this section,
15 the lead agency shall consult with other resource agencies and with
16 coastal resource districts under AS 46.40. The lead agency shall
17 balance competing factors in reaching its decision. Great weight shall
18 be given to the comments of resource agencies within their primary area
19 of expertise, and also to the comments of coastal resource districts
20 with approved coastal management plans, unless the district's recom-
21 mendation would result in the arbitrary or unreasonable restriction or
22 exclusion of uses of state concern as that term is defined in AS 46.40.-
23 070(c).

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

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

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

1 (2) "final, pre-adjudicatory decision" means that decision
2 of a state agency, or its staff that forms the basis for a timely re-
3 quest for an adjudicatory hearing or administrative appeal, and that
4 becomes the agency's final decision if an adjudicatory hearing or man-
5 datory administrative appeal is not timely requested;

6 (3) "permit" means a permit, license, certification, consis-
7 tency determination, plan review, or other authorization or approval
8 issued by a resource agency as a written document that is required to
9 be obtained or is solicited from a state agency before the construction
10 or operation of a project; "permit" does not include conveyances of in-
11 terest in state land or water, but does include all authorizations and
12 approvals, whether proprietary or regulatory, necessary to undertake a
13 project under a previously conveyed property interest;

14 (4) "project" means a new activity or expansion or addition
15 to an existing activity for which permits are required before construc-
16 tion or operation; and

17 (5) "resource agency" includes the Department of Natural
18 Resources, the Department of Environmental Conservation, the Alaska
19 Coastal Policy Council, and the Department of Fish and Game with respect
20 to permits issued for the protection of fish habitat or the regulation
21 of state sanctuaries, refuges, and critical habitat areas.

22 * Sec. 4. AS 38.05.075 is repealed and reenacted to read:

23 Sec. 38.05.075. SURFACE LEASING PROCEDURE. (a) Except as pro-
24 vided in AS 38.05.068, 38.05.082, and (b) - (e) of this section, and
25 leasing shall be conducted by public auction, to the highest pre-quali-
26 fied bidder, as determined by the director. An aggrieved pre-qualified
27 bidder may appeal to the commissioner by a letter postmarked within
28 five days after the director's determination. Lease auctions shall be
29 conducted by the director or his representative, and the successful

1 pre-qualified bidder shall deposit at the auction the first year's
2 rental or that percentage of it that the commissioner shall require.
3 The director may require a deposit for any survey and appraisal costs
4 reasonably incurred by another pre-qualified bidder acting in accor-
5 dance with the department's regulations. If a bidder making a deposit
6 of survey or appraisal costs is determined to be the highest pre-quali-
7 fied bidder under this subsection, his deposit shall be paid to the un-
8 successful bidder who incurred those costs. The director or his repre-
9 sentative shall immediately issue a receipt to the successful pre-qual-
10 ified bidder containing a description of the land or interest leased,
11 the total price bid, the terms of the lease, and the amount, if any, to
12 be paid for the survey or appraisal. The receipt shall be immediately
13 acknowledged by the bidder. If the receipt is not acknowledged by the
14 bidder in accordance with this subsection, the director may re-offer
15 the land in accordance with this section. The lease, on a form ap-
16 proved by the attorney general, shall be signed by the successful
17 bidder within 30 days after the auction, and shall thereafter be signed
18 by the director, after approval by the commissioner.

19 (b) When a valid existing grazing lease is cancelled to permit
20 state selection of the land under lease, the lessee of the land has a
21 preference right to lease the land without competitive bidding for a
22 term equal to the unexpired term originally granted in the cancelled
23 federal lease, and upon terms no less favorable to the lessee than
24 those contained in the cancelled federal lease.

25 (c) A littoral owner or lessee has a preference right to acquire,
26 without competitive bidding, a lease for tide and submerged land di-
27 rectly adjacent to his upland parcel if

28 (1) lease of the tide or submerged land is sought solely for
29 the purpose of facilitating water transport of material extracted,

1 harvested, produced, or processed on the adjacent uplands;

2 (2) the proposed use of the tide and submerged land is com-
3 patible with the classification of this land and the adjacent uplands;

4 (3) there is no competing interest for a higher and better
5 use of the subject tide and submerged land;

6 (4) where the land was formed by isostatic rebound, granting
7 of a lease would not violate the state's irrevocable trust respon-
8 sibilities; and

9 (5) issuance of the lease will not interfere with prior ex-
10 isting rights.

11 (d) The annual rental for a lease issued under (c) of this sec-
12 tion shall be determined by an appraisal conducted under AS 38.05.310.
13 If the adjacent upland ownership interest is less than fee simple, the
14 term of the lease acquired under (c) of this section may not exceed the
15 unexpired term of the upland interest. Termination of a less-than-fee
16 upland interest before its normal expiration, for any reason, shall
17 terminate the lease acquired under (c) of this section.

18 (e) The department shall, in conformity with AS 38.05.345, re-
19 quire pre-qualification of bidders for a lease to be issued under
20 AS 38.05.070. If, as a result of pre-qualification, the director de-
21 termines that there is only one qualified bidder for the lease, he may
22 issue a lease to that bidder at the appraised value as determined by
23 AS 38.05.310, without competitive bidding. Notwithstanding AS 38.05.-
24 345, disposal shall occur as soon as practicable following completion
25 of survey and appraisal, and notice of any auction shall be made per-
26 sonally or by registered mail to all pre-qualified bidders.

27 * Sec. 5. AS 44.19.162 is amended to read:

28 Sec. 44.19.162. COUNCIL STAFF. The council shall utilize the
29 staff of the office of coastal management within the Department of

1 Community and Regional Affairs [DIVISION OF POLICY DEVELOPMENT AND
2 PLANNING] in discharging its powers and duties. The commissioner
3 [COORDINATOR OF THE OFFICE], with the concurrence of the council, may
4 contract with or employ personnel or consultants he considers necessary
5 to carry out the powers and duties of the council.

6 * Sec. 6. AS 46.35 is amended by adding a new section to read:

7 Sec. 46.35.025. PRE-APPLICATION CONFERENCE. (a) A person con-
8 sidering the submission of a permit coordination request under AS 46.-
9 35.030, or a master application under AS 46.35.035, may request a per-
10 mit requirement information center established under AS 46.35.160 to
11 hold a pre-application conference.

12 (b) The department will invite to the conference appropriate fed-
13 eral, state, and local agencies. The conference will be held no later
14 than 30 days after receipt of a request under (a) of this section.

15 (c) The purpose of a pre-application conference is to enable a
16 potential applicant and appropriate federal, state, and local agencies
17 to discuss the nature of the proposed activity, tentative or possible
18 agency concerns over the activity, and permits that may be required.

19 * Sec. 7. AS 46.35.030 is amended to read:

20 Sec. 46.35.030. PERMIT COORDINATION REQUEST [MASTER APPLICATION].

21 (a) A person proposing a project which requires the issuance of one or
22 more permits may at his sole discretion submit a permit coordination
23 request [MASTER APPLICATION] to the department requesting the issuance
24 of all permits and documents covered by this chapter [NECESSARY BEFORE
25 THE CONSTRUCTION AND OPERATION OF THE PROJECT IN THE STATE]. The
26 request [MASTER APPLICATION] shall be on a form established by the
27 department and shall contain sufficient information as to the location
28 and the nature of the project, including discharge of wastes and use of
29 or interference with natural resources of the state.

1 (b) Upon receipt of a properly completed request [MASTER APPLICA-
2 TION], the department shall immediately forward a copy of the request
3 [APPLICATION] to each agency administering a permit covered by this
4 chapter [ALL HEADS OF EXECUTIVE DEPARTMENTS OF THE STATE] and the chief
5 elected official of all municipalities in which a portion of the project
6 is proposed to be constructed, together with the date by which the
7 agency shall respond to the request [MASTER APPLICATION].

8 (c) Each agency notified shall respond in writing to the depart-
9 ment by the specified date, not exceeding 15 days from receipt, as de-
10 termined by the department, advising

11 (1) whether the agency has permit jurisdiction over [AN IN-
12 TEREST IN] the request [MASTER APPLICATION]; and

13 (2) if the response to (1) of this subsection is affirma-
14 tive, the permit program under the agency's jurisdiction to which the
15 project described in the request [MASTER APPLICATION] is pertinent ;
16 AND

17 (3) WHETHER, IN RELATION TO THE MASTER APPLICATION, A PUBLIC
18 HEARING AS PROVIDED IN AS 46.35.050 and 46.35.060 WOULD BE IN THE
19 PUBLIC INTEREST].

20 (d) Each notified agency which (1) responds within the specified
21 date that it does not have permit jurisdiction over the project de-
22 scribed in the request [AN INTEREST IN THE MASTER APPLICATION]; or (2)
23 does not respond as required within the specified date, may not subse-
24 quently require a permit of the applicant for the project described in
25 the request [MASTER APPLICATION] unless the request [MASTER APPLICA-
26 TION] contained false, misleading, or deceptive information, or other
27 information or lack of information which would reasonably lead an agen-
28 cy to misjudge its interest in the project [MASTER APPLICATION].

29 (e) The department shall submit application forms relating to

1 permit programs identified in affirmative responses under (c) of this
2 section to the applicant with a direction to complete and return them
3 to the department within a reasonable time as specified by the depart-
4 ment.

5 (f) When the applications, properly completed, have been returned
6 to the department, each of the applications shall be transmitted to the
7 appropriate state agency for the performance of its responsibilities of
8 decision making in accordance with the procedures of this chapter, and
9 any applicable permit deadline shall begin on the date of receipt of a
10 completed application by the permitting agency.

11 * Sec. 8. AS 46.35 is amended by adding new sections to read:

12 Sec. 46.35.035. MASTER APPLICATION. (a) The department shall
13 periodically develop master applications on a commercial or industrial
14 activity basis.

15 (b) A master application developed under this section serves as
16 the application form for each permit that is generally required for the
17 commercial or industrial activity.

18 (c) When a person submits a master application developed under
19 this section, AS 46.35.030 does not apply. The master application
20 shall be served on the office of the department specified in regulation
21 and any applicable permit deadline shall begin on the date of receipt
22 of a complete application by the appropriate office of the department.

23 (d) The use of the master application procedures established in
24 this chapter is at the sole discretion of the applicant.

25 Sec. 46.35.051. PERMIT PROCEDURES. (a) Permits sought under
26 AS 46.35.030 or 46.35.035 shall be processed in one consolidated pro-
27 ceeding. The proceeding shall be governed by those procedures that
28 would otherwise be applicable to a permit being sought and that provide
29 for the greatest degree of public participation and interagency review.

1 The decisional deadline applicable to the procedure used shall apply to
2 each final decision made under AS 46.35.070. If the holding of a
3 public hearing is discretionary under the applicable procedure, a
4 majority of the permitting agencies shall determine whether to hold a
5 public hearing under applicable criteria.

6 (b) Any change in the application or coordination request made
7 during the pendency of proceedings under AS 46.35.030 or this section
8 which is either jurisdictional or would result in significant new ad-
9 verse impacts from the project shall be treated as the filing of a new
10 application or coordination request.

11 * Sec. 9. AS 46.35.070 is repealed and reenacted to read:

12 Sec. 46.35.070. FINAL DECISION. Each permitting agency shall
13 forward its final decision to the department within the deadline estab-
14 lished under AS 46.35.051(a). As soon as all final decisions are re-
15 ceived by the department, the department shall incorporate them, with-
16 out modification, into one document and transmit it to the applicant
17 either personally or by registered mail.

18 * Sec. 10. AS 46.35.080 is amended to read:

19 Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. (a) A
20 state agency participating in a consolidated proceeding [RESPONDING AF-
21 FIRMATIVELY UNDER AS 46.35.030(b)] may withdraw from participation
22 as to one or more permits [IN THE PROCESSING PROVIDED IN AS 46.35.030 -
23 46.35.070] at any time, by written notification to the department, if
24 it subsequently appears to the state agency that it does not have [HAS
25 NO] permit [PROGRAMS UNDER ITS] jurisdiction [APPLICABLE TO THE PRO-
26 JECT].

27 (b) A decision by a state agency to withdraw from the proceeding
28 is irreversible, and the state agency may not subsequently require the
29 [A] permit of the applicant for the project described in the master ap-

1 plication unless the master application contained false, misleading, or
2 deceptive information, or other information or lack of information
3 which would reasonably lead an agency to misjudge its interest in the
4 permit coordination request or master application.

5 * Sec. 11. AS 46.35.090(a) is amended to read:

6 (a) A person aggrieved by a final decision issued under: AS 46.35.-
7 070 [AS 46.35.070(d)] may file a notice of appeal with the commissioner
8 requesting an adjudicatory hearing within 15 [30] days of receipt
9 [TRANSMITTAL] of the final decision by [TO] the person. A failure to
10 file a timely notice of appeal constitutes a waiver of the person's
11 right to review the final decision, unless the failure was due to cir-
12 cumstances beyond the applicant's control.

13 * Sec. 12. AS 46.35.110 is amended to read:

14 Sec. 46.35.110. APPLICATION. Notwithstanding any other provi-
15 sions of regulation or statute relating to the processing of applica-
16 tion for permits, the procedures set out in this chapter are exclusive
17 for permits sought under AS 46.35.030 and applications filed under
18 AS 46.35.035 [AS 46.35.030]. The procedures of this chapter are in
19 lieu of any procedures otherwise provided by law or regulation, and are
20 to be followed by a state agency in ruling upon those applications.

21 * Sec. 13. AS 46.35.130(a) is amended to read:

22 (a) No permit for a project filed under AS 46.35.030 or 46.35.035
23 may be issued unless the application has provided a certification from
24 the appropriate local government that the project is in compliance with
25 the zoning ordinances and associated comprehensive plans administered
26 by the local government regarding the project. If the local government
27 has no such ordinances or plans, the local government shall certify that
28 fact. A local government may accept applications for certification
29 under this section and shall rule upon them within 30 days. A local

1 government may impose stipulations of performance in its approval, but,
2 upon certification, the local government may not change the zoning
3 ordinances as to the proposed project until the procedures of this
4 chapter, including an appeal, are completed.

5 * Sec. 14. AS 46.35.170 is amended by adding a new subsection to read:

6 (c) The department may enter into memoranda of understanding with
7 federal agencies for the full or partial processing of related federal
8 permits under the procedures established by this chapter.

9 * Sec. 15. AS 46.35 is amended by adding a new section to read:

10 Sec. 46.35.175. RELATION TO SURFACE LEASING PROCEDURE. When a
11 project requires a surface lease under AS 38.05.075 in addition to per-
12 mits covered by this chapter,

13 (1) application for the surface lease shall be coordinated
14 under AS 46.35.030 or, when applicable, subsumed in the master applica-
15 tion submitted under AS 46.35.035;

16 (2) the determination required under AS 38.05.035(a)(14)
17 shall be consolidated in the proceeding conducted under AS 46.35.051,
18 and the procedure for making that determination shall govern the con-
19 solidated proceeding; and

20 (3) AS 46.35.040 applies if there is more than one pre-
21 qualified bidder.

22 * Sec. 16. AS 46.35.200(4) is repealed and reenacted to read:

23 (4) "permit" means a permit, license, certification, consis-
24 tency determination, plan review, or other authorization or approval
25 issued as a written document that is required to be obtained from ei-
26 ther the Department of Fish and Game, Department of Environmental Con-
27 servation, Department of Natural Resources, or Office of the Governor,
28 division of policy development and planning; "permit" does not include
29 disposals of an interest in state land or water, but does include all

1 authorizations and approvals, whether proprietary or regulatory, neces-
2 sary to undertake a project under a previously conveyed property inter-
3 est; the department, by regulation and with the consent of the permit-
4 ting agency, may delete a permit from the coverage of this chapter if
5 its inclusion unduly complicates consolidated review, and may add addi-
6 tional permits issued by other agencies;

7 * Sec. 17. AS 46.35.050, 46.35.060, and 46.35.090(b) are repealed.
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CORRECTION

HOUSE CS FOR CS FOR SENATE BILL NO. 84(Rules)

Please discard Page 1 of this bill and insert this corrected page.

The Correction made:

HOUSE CS FOR CS FOR SENATE BILL NO. 84

to
HOUSE CS FOR CS FOR SENATE BILL NO. 84 (Rules)

Original sponsors: Bennett, Parr and
Fahrenkamp

Offered: 6/22/81
For Today's Calendar

1 IN THE SENATE

BY THE RULES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 84 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the processing of permits by state
7 agencies; to surface leasing of and; and to admini-
8 stration of the Alaska coastal management program; and
9 providing for an effective date."

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

11 * Section 1. FINDINGS. The legislature finds that

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

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

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

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

Original sponsors: Bennett, Parr and
Fahrenkamp

Offered: 4/14/81
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

CS FOR SENATE BILL NO. 84 (Resources)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST 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."

7

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 delay
20 in the processing of permit applications by state agencies;

21

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

25

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

26

ARTICLE 8A. ISSUANCE OF PERMITS.

27

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

28

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

1 responsible state agency shall issue a final decision granting, denying,
2 or reasonably conditioning the issuance of the permit, or issue a final
3 response to the federal agency's request for state review, within the
4 following time periods, unless the applicant and the agency mutually
5 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 by
8 state law and a public notice, public hearing, or comment period is
9 specifically required by state law in connection with the permit appli-
10 cation;

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 the following information:

14 (1) conclusions of the state agency which support its deci-
15 sion concerning the permit application, including the factual basis and
16 statutory authority for any conditions or stipulations to which the
17 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 fair
21 and substantial relation to the object of the law under which the state
22 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 which has not been approved or rejected
27 by the responsible state agency within the time period specified in (a)
28 of this section is approved as submitted. The permit is approved on
29 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. (a)
3 If a state agency receives a permit application requesting a permit
4 which the agency believes it does not have authority to issue, or which
5 it believes is unnecessary, it shall notify the applicant within 10
6 days after its receipt of the application. A notice given under this
7 subsection is the final agency decision.

8 (b) If a state agency receives a permit application which it
9 believes does not contain sufficient information concerning the location
10 and nature of the project to allow the agency to determine whether the
11 project complies with state law, the agency shall notify the applicant
12 within 10 days after its receipt of the application. The notice must
13 specify all information the agency requires to determine whether the
14 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 on
20 the record. The request must be filed with the commissioner or board
21 within 30 days of the applicant's receipt of the decision. The commis-
22 sioner or board shall issue a decision within 10 days of receipt of the
23 request if the review is a review on the record. If the applicant has
24 requested a hearing de novo, the hearing shall be held within 30 days
25 of receipt of the request, and the decision of the commissioner or
26 board shall be made within 30 days of the conclusion of the hearing.
27 Unless the agency decision is confirmed in its entirety, the commis-
28 sioner or board shall issue a written decision setting out the findings
29 and conclusions in full.