

CS FOR HOUSE BILL NO. 154(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/21/95

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan, G.Davis, James, Mulder, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring the Department of Law to provide guidelines regarding state
2 and municipal takings of private property; relating to state and municipal
3 regulations, ordinances, and actions relating to private property; relating to
4 compensation for, access to, and taxation of private property taken by state or
5 municipal action; relating to actions for state or municipal takings of private
6 property or for certain violations; prohibiting certain regulations; and providing
7 for an effective date."

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

9 * **Section 1.** AS 09.10.030 is amended to read:

10 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.
11 Except as otherwise provided under AS 34.50.190, a [A] person may not bring an
12 action for the recovery of real property [,] or for the recovery of the possession of it
13 unless the action is commenced within 10 years. An action may not be maintained for

1 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
2 grantor of the plaintiff was seized or possessed of the premises in question within 10
3 years before the commencement of the action.

4 * **Sec. 2.** AS 09.10.070 is amended to read:

5 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
6 LIABILITIES TO BE BROUGHT IN TWO YEARS. **Except as otherwise provided**
7 **by AS 34.50.190, a** [A] person may not bring an action (1) for libel, slander, assault,
8 battery, seduction, false imprisonment, or for any injury to the person or rights of
9 another not arising on contract and not specifically provided otherwise; (2) upon a
10 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
11 other than a penalty or forfeiture; unless the action is commenced within two years.

12 * **Sec. 3.** AS 34.50 is amended by adding new sections to read:

13 ARTICLE 2. GOVERNMENT TAKINGS.

14 Sec. 34.50.100. GOVERNMENT TAKINGS GUIDELINES. The Department
15 of Law shall develop and submit guidelines to the lieutenant governor each year for
16 publication in the Alaska Administrative Code to assist state agencies, municipalities,
17 and the public to identify and evaluate governmental action that may result in a taking
18 of private real or personal property. The guidelines must be based on current law as
19 articulated by the United States Supreme Court and the state supreme court and the
20 principles stated in AS 34.50.110. The guidelines may not be construed to enlarge or
21 reduce the scope of private property protection provided by the state or federal
22 constitution.

23 Sec. 34.50.110. PRINCIPLES FOR GOVERNMENTAL ACTION. A
24 governmental entity shall follow the following principles when considering and taking
25 governmental action affecting private property:

26 (1) to avoid imposing unanticipated or undue additional burdens on the
27 public or on the public treasury, a governmental entity shall be sensitive to, anticipate,
28 and account for the obligations imposed by the fifth and fourteenth amendments to the
29 United States Constitution and art. I, sec. 18, Constitution of the State of Alaska when
30 planning and carrying out governmental action;

31 (2) the assertion that a public health and safety purpose is involved is

1 insufficient to avoid a taking, and governmental actions that are purportedly designed
2 to protect public health and safety may not be taken unless they

3 (A) are taken only in response to real and substantial threats to
4 public health and safety;

5 (B) are designed to significantly advance the purpose of health
6 and safety; and

7 (C) do not exceed the governmental action that is necessary to
8 achieve the health and safety purpose;

9 (3) the governmental entity responsible for taking the governmental
10 action has the burden of proving the criteria under (2) of this section;

11 (4) a governmental entity shall avoid undue delay in its governmental
12 processes; although normal governmental processes do not ordinarily constitute takings,
13 undue delays in some decision-making may create a taking, and, in addition, a delay
14 in processing may increase significantly the size of compensation due to the owner of
15 the private property if a taking is later found to have occurred;

16 (5) the constitutional protections against taking private property are
17 self-executing and require compensation regardless of whether the underlying authority
18 for the action contemplated a taking or authorized the payment of compensation;

19 (6) the source of all compensation is the budget of the governmental
20 entity that took the action that resulted in the taking.

21 Sec. 34.50.120. RESTRICTIONS ON GOVERNMENTAL ACTION. (a) A
22 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
23 to private property, or impose a restraint on private property use unless the regulation,
24 ordinance, or restraint has the least possible effect on private property and still
25 accomplishes the necessary public purpose, and unless a statement complying with (b)
26 of this section is prepared by the governmental entity and made available to the public
27 at least 30 days before the adoption of the regulation or imposition of the restraint by
28 the entity.

29 (b) The statement required by (a) of this section must contain a full analysis
30 of the total economic effect of the regulation, ordinance, or restraint, an analysis of the
31 economic effect of all reasonable alternatives to the regulation, ordinance, or restraint,

1 and an identification of the manner in which the proposed regulation, ordinance, or
2 restraint will substantially advance the purpose of protecting public health and safety
3 from identifiable public health or safety risks created by the use of the private real
4 property.

5 Sec. 34.50.130. FULL COMPENSATION REQUIRED. (a) A governmental
6 entity may not take governmental action that results in a taking of private property,
7 unless the governmental entity pays full compensation for the taking to the owner of
8 the private property.

9 (b) The full compensation required by (a) of this section shall be paid to the
10 owner within three months after the adoption of the regulation or ordinance that results
11 in the taking, or within three months after the restraint on private property use that
12 results in the taking. The compensation shall be measured as of the date of the
13 adoption of the regulation or ordinance, or the imposition of the restraint. Interest at
14 the London Interbank Offering Rate plus 3.5 percent shall be paid on the amount due
15 the property owner from the time that the regulation or ordinance is enforced as to the
16 private property, or from the time the restraint is imposed on the private property, until
17 the time payment is received by the owner.

18 Sec. 34.50.140. PROHIBITION AGAINST VALUE DEFLATION. A
19 governmental entity may not deflate the value of private property by suggesting or
20 threatening to take action that would avoid the entity's paying full compensation to the
21 owner.

22 Sec. 34.50.150. WAIVER PROHIBITED. A governmental entity may not
23 require the owner of private property to waive the full compensation required by
24 AS 34.50.130 as a condition of approving a use of the person's property, including
25 receiving a permit or subdividing real property.

26 Sec. 34.50.160. ACCESS REQUIRED. In addition to the full compensation
27 required by AS 34.50.130, a governmental entity that adopts a regulation or ordinance,
28 or imposes a restraint on private property use shall also, at the governmental entity's
29 expense, provide an alternate access to the property or purchase the inaccessible
30 property, if the regulation, ordinance, or restraint deprives the owner of the property
31 of access to the property.

1 Sec. 34.50.170. PROHIBITION AGAINST IMPOSING COSTS. A
2 governmental entity may not require an owner of private property to provide or pay
3 for studies, maps, plans, reports, or other information used in the governmental entity's
4 decisions to adopt a regulation or ordinance relating to private property, or to impose
5 a restraint on private property use.

6 Sec. 34.50.180. STATE RESPONSIBILITY FOR COMPENSATION. The
7 state shall compensate municipalities for the full compensation that the municipalities
8 are required to pay under AS 34.50.130 for taking private property by governmental
9 action if the municipality's governmental action is required by state law.

10 Sec. 34.50.190. TIME FOR BRINGING ACTION. A person may not
11 commence a civil action for a taking of the person's private property by governmental
12 action unless the action is commenced within five years after the taking has occurred.

13 Sec. 34.50.200. ADJUSTMENT OF VALUE FOR PROPERTY TAX. (a) If
14 a determination has been made that there has been a taking of private property by
15 governmental action, a municipality that levies a tax on the property shall adjust
16 valuation of the property for the purposes of the tax and notify the owner of the new
17 tax valuation. The new tax valuation must be reflected and identified in the next tax
18 assessment notice.

19 (b) If the property owner contests the reduction in valuation, and if the
20 property owner secures an independent appraisal of the property from a person who
21 has a valid real estate appraiser certificate issued under AS 08.87.110, the appraisal
22 provided by the independent appraiser shall be the valuation used by the municipality
23 when taxing the property.

24 Sec. 34.50.210. ENFORCEMENT. A person who owns property that is
25 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
26 superior court against a governmental entity that fails to comply with the provision.
27 If the person prevails in an action brought under this section, the owner may recover,
28 to the extent awarded by the court, the owner's attorney fees and costs from the budget
29 of the governmental entity involved in the governmental action on which the court
30 action was based.

31 Sec. 34.50.220. REGULATIONS PROHIBITED. A state agency may not

1 adopt regulations to implement AS 34.50.100 - 34.50.250.

2 Sec. 34.50.250. DEFINITIONS. In AS 34.50.100 - 34.50.250, unless the
3 context clearly requires otherwise,

4 (1) "full compensation" means the monetary value of the reduction in
5 the fair market value of private property, if the reduction is caused by a taking by
6 governmental action;

7 (2) "governmental action" means action by a governmental entity,
8 including the adoption of a regulation or ordinance, or a restraint on private property
9 use, but does not include

10 (A) the formal exercise of the power of eminent domain;

11 (B) seizure of private property by law enforcement agencies as
12 evidence of a crime for violations of law or forfeiture ordered by a court;

13 (C) orders issued by a state agency, an agency of a
14 municipality, or a court that result from a violation of law and that are
15 authorized by law; or

16 (D) the discontinuation of state government programs or the
17 government programs of a municipality;

18 (3) "governmental entity" means a state agency or a municipality;

19 (4) "personal property" means tangible property other than real
20 property, but including merchandise, stock-in-trade, machinery, equipment, furniture,
21 fixtures, vehicles, boats, and aircraft;

22 (5) "private property" means real or personal property that is not owned
23 by the state, a municipality, or the federal government;

24 (6) "real property" includes land, an interest in land, improvements on
25 land, proprietary water rights, and crops, forest products, or resources capable of being
26 harvested or extracted;

27 (7) "restraint on private property use" means an action, requirement, or
28 restriction imposed by a governmental entity that limits the use of private property;

29 (8) "state agency" means a department, institution, board, commission,
30 division, authority, public corporation, or other administrative unit of the executive
31 branch of state government, including the University of Alaska, the Alaska Railroad

1 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace
2 Development Corporation, and the Alaska State Pension Investment Board;

3 (9) "taking" includes

4 (A) a regulation or other governmental action that regulates or
5 imposes a restraint on private property use for public benefit, including
6 restraints on wetlands fish or wildlife habitat or the creation of buffer zones
7 unless the regulation is necessary to avoid or correct a public nuisance;

8 (B) governmental action that results in a physical invasion or
9 occupancy of private property or that denies an owner any or all economic or
10 other use of the person's private property; or

11 (C) governmental action that results in less than a complete
12 deprivation of all use or value of private property, or of all interest in the
13 property, even if the action is only temporary in nature.

14 * **Sec. 4.** AS 29.25.020(b) is amended to read:

15 (b) The following procedure governs the enactment of all ordinances, except
16 emergency ordinances:

17 (1) an ordinance may be introduced by a member or committee of the
18 governing body, or by the mayor or manager;

19 (2) an ordinance shall be set by the governing body for a public hearing
20 by the affirmative vote of a majority of the votes authorized on the question;

21 (3) **if applicable, a notice containing the statement under**
22 **AS 34.50.120 shall be given;**

23 (4) at least five days before the public hearing a summary of the
24 ordinance shall be published together with a notice of the time and place for the
25 hearing;

26 (5) [(4)] copies of the ordinance shall be available to all persons present
27 at the hearing, or the ordinance shall be read in full;

28 (6) [(5)] during the hearing the governing body shall hear all interested
29 persons wishing to be heard;

30 (7) [(6)] after the public hearing the governing body shall consider the
31 ordinance, and may adopt it with or without amendment;

1 (8) [(7)] the governing body shall print and make available copies of
2 an ordinance that is adopted.

3 * **Sec. 5.** AS 29.25.040 is amended to read:

4 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a
5 single ordinance adopt or amend by reference provisions of a published code of
6 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
7 adopted under this section, except that neither the ordinance or its amendments must
8 be distributed to the public or read in full at the public hearing. For a period of 15
9 days before adoption of an ordinance under this section, at least five copies of the code
10 of regulations shall be made available for public inspection at a time and place set out
11 in the hearing notice. Only the ordinance must be printed after it is adopted under this
12 section. The governing body shall provide for an adopted code of regulations to be
13 made available to the public at no more than cost. **Notwithstanding the other**
14 **provisions of this section and if applicable, the adoption of a published code of**
15 **regulations under this section shall comply with AS 34.50.120.**

16 * **Sec. 6.** AS 29.45.110 is amended by adding a new subsection to read:

17 (d) When assessing the full and true value of property, the assessor shall
18 comply with AS 34.50.120.

19 * **Sec. 7.** AS 44.62.130(a) is amended to read

20 (a) The lieutenant governor shall provide for the continuing compilation,
21 codification, and publication, with periodic supplements, **of the guidelines developed**
22 **by the Department of Law under AS 34.50.100 and** of all regulations filed by the
23 lieutenant governor’s office, or of appropriate references to any regulations the printing
24 of which the lieutenant governor finds to be impractical, such as detailed schedules or
25 forms otherwise available to the public, or **that** [WHICH] are of limited or particular
26 application. The publication of **the guidelines and the** compiled regulations is the
27 Alaska Administrative Code. The periodic supplements to it are the Alaska
28 Administrative Register. The code and register must contain appropriate annotations
29 to judicial decisions and opinions of the attorney general.

30 * **Sec. 8.** AS 44.62.200(a) is amended to read:

31 (a) The notice of proposed adoption, amendment, or repeal of a regulation

1 must include

2 (1) a statement of the time, place, and nature of proceedings for
3 adoption, amendment, or repeal of the regulation;

4 (2) reference to the authority under which the regulation is proposed
5 and a reference to the particular code section or other provisions of law that are being
6 implemented, interpreted, or made specific;

7 (3) an informative summary of the proposed subject of agency action;

8 (4) other matters prescribed by a statute applicable to the specific
9 agency or to the specific regulation or class of regulations;

10 (5) a summary of the fiscal information required to be prepared under
11 AS 44.62.195;

12 **(6) if applicable, the information required by AS 34.50.120.**

13 * **Sec. 9.** SEVERABILITY CLAUSE. If a provision of this act or the application of this
14 Act to a person or circumstance is held to be invalid, the remainder of this Act and the
15 application of this Act to other persons or circumstances is not affected.

16 * **Sec. 10.** INITIAL GUIDELINES. The Department of Law shall prepare the initial
17 guidelines required by AS 34.50.100, enacted by sec. 3 of this Act, by January 1, 1996.

18 * **Sec. 11.** This act takes effect July 1, 1995.