

CS FOR HOUSE BILL NO. 154(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/30/96
Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state regulatory actions relating to or affecting private
2 property; and providing for an effective date."

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

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

5 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.

6 **Except as otherwise provided under AS 34.50.130, a** [A] person may not bring an
7 action for the recovery of real property [,] or for the recovery of the possession of it
8 unless the action is commenced within 10 years. An action may not be maintained for
9 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
10 grantor of the plaintiff was seized or possessed of the premises in question within 10
11 years before the commencement of the action.

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

13 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
14 LIABILITIES TO BE BROUGHT IN TWO YEARS. **Except as otherwise provided**

1 by AS 34.50.130, a [A] person may not bring an action (1) for libel, slander, assault,
2 battery, seduction, false imprisonment, or for any injury to the person or rights of
3 another not arising on contract and not specifically provided otherwise; (2) upon a
4 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
5 other than a penalty or forfeiture; unless the action is commenced within two years.

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

7 ARTICLE 2. STATE REGULATORY ACTIONS.

8 Sec. 34.50.100. RESTRICTIONS ON REGULATORY AGENCY ACTION.

9 (a) When a state regulatory agency exercises its discretion under a statute or
10 regulation to deny or condition a permit, certification, approval, or other authorization
11 relating to the use of private real property, the agency may not make the denial or
12 impose the condition if the denial or condition precludes an otherwise lawful use of
13 the property unless

14 (1) substantial evidence demonstrates that the denial or condition is
15 necessary to prevent significant irreparable harm to the public health, public welfare,
16 or environment; and

17 (2) the harm described in (1) of this subsection cannot be avoided or
18 adequately mitigated by restrictions that are less intrusive, limiting, or costly.

19 (b) When making a determination reasonably necessary to exercise its
20 discretion under (a) of this section, a state regulatory agency may not require an
21 applicant for a permit, certification, approval, or other authorization to

22 (1) submit information to the agency unless the information is

23 (A) personally known by or in the records of the applicant when
24 the agency requests information; or

25 (B) capable of being learned by the applicant through
26 reasonable investigation, reasonable studies, or other data collection efforts that
27 the agency is not prohibited under (2) of this subsection from requiring the
28 applicant to undertake;

29 (2) undertake or pay for investigations, reports, or other data collection
30 efforts if the sole purpose of the data collection efforts is to assess speculative or
31 insignificant effects of the permit, certification, approval, or other authorization.

1 Sec. 34.50.110. FULL COMPENSATION REQUIRED. (a) When a state
2 regulatory agency exercises its discretion under a statute or regulation to deny or
3 condition a permit, certification, approval, or other authorization relating to the use of
4 private real property, the agency may not make the denial or impose the condition if
5 the denial or imposition of the condition results in a taking of private property unless
6 the agency pays full compensation for the taking to the owner of the private property.

7 (b) The full compensation required by (a) of this section is the monetary value
8 of the reduction in the fair market value of the private property taken. Interest at three
9 and one-half percent above the annual rate charged member banks for advances by the
10 12th Federal Reserve District on the date of the taking shall be paid on the full
11 compensation, from the date of the taking until the compensation is paid in full.

12 (c) An owner claiming compensation for a taking under this section is not
13 required to exhaust available administrative or judicial appeal before claiming the
14 compensation.

15 (d) This section may not be construed as diminishing in any way the rights of
16 private property owners under the constitution and laws of the state and the United
17 States.

18 Sec. 34.50.120. WAIVER PROHIBITED. A state regulatory agency may not
19 require the owner of private real property to waive the compensation required by
20 AS 34.50.110 in order to obtain the agency's issuance of a permit, certification,
21 approval, or other authorization relating to the use of private real property.

22 Sec. 34.50.130. TIME FOR BRINGING ACTION. (a) An owner of private
23 property may not commence a civil action for a taking under AS 34.50.110 unless the
24 action is commenced within three years after the date of the taking.

25 (b) The three-year period in which to commence an action under this section
26 does not begin to run on the date of the taking if the state regulatory agency fails to
27 give, under the statutes or regulations applicable to the notice, the owner or applicant
28 proper notice of the agency's final decision.

29 (c) If an agency fails to give proper notice of its final decision under (b) of
30 this section, the period in which to commence an action under (a) of this section does
31 not begin to run until the owner or applicant actually receives the notice required by

1 (b) of this section.

2 (d) If an owner or applicant pursues an administrative appeal or a judicial
3 appeal of the agency's decision, the period in which to commence an action does not
4 run while the appeal is pending.

5 Sec. 34.50.140. REGULATIONS PROHIBITED. A state regulatory agency
6 may not adopt regulations to implement AS 34.50.100 - 34.50.150.

7 Sec. 34.50.150. DEFINITIONS. In AS 34.50.100 - 34.50.150, unless the
8 context clearly requires otherwise,

9 (1) "applicant" means a person, or a person's representative or agent,
10 who applies directly or indirectly to a state regulatory agency for a permit,
11 certification, approval, or other authorization relating to the use of private real
12 property;

13 (2) "date of the taking" is the date when the decision of the state
14 regulatory agency that results in the taking becomes final;

15 (3) "full compensation" means the monetary value of the reduction in
16 the fair market value of private property or of an interest in private property;

17 (4) "owner" means the holder of a legally protectable interest in private
18 property, including the grantee of an easement, lease, use authorization, or other
19 interest amounting to less than fee simple ownership;

20 (5) "private property" means real or personal property that is not owned
21 by the state, a municipality, or the federal government; in this paragraph, "personal
22 property" means tangible property other than real property, and includes merchandise,
23 stock-in-trade, machinery, equipment, furniture, fixtures, vehicles, boats, and aircraft;

24 (6) "private real property" means private property that is real property;
25 in this paragraph, "real property" includes land, improvements to land, proprietary
26 water rights, and crops;

27 (7) "state regulatory agency" means a department, institution, board,
28 commission, division, authority, public corporation, or other administrative unit of the
29 executive branch of state government authorized by the constitution or statutes of the
30 state to make decisions or recommendations regarding whether a permit, certification,
31 approval, or other authorization relating to the use of real property is approved;

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(8) "taking" means

(A) eliminating all practical economically viable uses of the property, the portion of the property proposed for use under the requested authorization, or the owner's or applicant's interest in the property;

(B) reducing by more than 30 percent the fair market value of the property, the portion of the property proposed for use under the requested authorization, or the owner's or applicant's interest in the property.

* **Sec. 4. SEVERABILITY CLAUSE.** Under AS 01.10.030, a provision of this Act or the application of this Act to a person or circumstance is held to be invalid, the remainder of this Act and the application of this Act to other persons or circumstances is not affected.

* **Sec. 5. NO RETROACTIVE EFFECT.** This Act does not apply to statutes, regulations, or ordinances that are in effect on the day before the effective date of this Act.

* **Sec. 6. EFFECTIVE DATE.** This Act takes effect immediately under AS 01.10.070(c).