

HOUSE BILL NO. 154

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOHRING, Ogan

Introduced: 2/24/97

Referred: State Affairs, Judiciary, Finance

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 and taxation of private property taken by state or municipal
5 action; relating to actions for state or municipal takings of private property or
6 for certain violations; prohibiting certain regulations; and providing for an effective
7 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. Except as**
11 **otherwise provided under AS 34.50.190, a** [A] person may not bring an action for
12 the recovery of real property [,] or for the recovery of the possession of it unless the
13 action is commenced within 10 years. An action may not be maintained for the

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

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

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

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

12 **Article 2. Government Takings.**

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

22 **Sec. 34.50.110. Principles for governmental action.** A governmental entity
 23 shall follow the following principles when considering and taking governmental action
 24 affecting private property:

25 (1) to avoid imposing unanticipated or undue additional burdens on the
 26 public or on the public treasury, a governmental entity shall, when planning and
 27 carrying out governmental action, be sensitive to, anticipate, and account for the
 28 obligations imposed by the Fifth and Fourteenth Amendments to the United States
 29 Constitution and art. I, sec. 18, and art. VIII, sec. 16, Constitution of the State of
 30 Alaska, as those amendments and sections relate to takings of private property;

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

26 (b) The statement required by (a) of this section must contain a full analysis
27 of the total economic effect of the regulation, ordinance, or restraint, an analysis of the
28 economic effect of all reasonable alternatives to the regulation, ordinance, or restraint,
29 and an identification of the manner in which the proposed regulation, ordinance, or
30 restraint will substantially advance the purpose of protecting public health and safety
31 from identifiable public health or safety risks created by the use of the private real

1 property.

2 **Sec. 34.50.130. Full compensation required.** (a) A governmental entity may
3 not take governmental action that results in a taking of private property unless the
4 governmental entity pays full compensation for the taking to the owner of the private
5 property.

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

15 **Sec. 34.50.140. Prohibition against value deflation.** A governmental entity
16 may not deflate the value of private property by suggesting or threatening to take
17 action that would avoid the entity's paying full compensation to the owner.

18 **Sec. 34.50.150. Waiver prohibited.** A governmental entity may not require
19 the owner of private property to waive the full compensation required by AS 34.50.130
20 as a condition of approving a use of the person's property, including receiving a permit
21 or subdividing real property.

22 **Sec. 34.50.160. Access.** In addition to the full compensation required by
23 AS 34.50.130, a governmental entity that adopts a regulation or ordinance or imposes
24 a restraint on private property use shall also, at the governmental entity's expense,
25 provide an alternate access to the property or purchase the inaccessible property if the
26 regulation, ordinance, or restraint deprives the owner of the property of access to the
27 property.

28 **Sec. 34.50.170. Prohibition against imposing costs.** A governmental entity
29 may not require an owner of private property to provide or pay for studies, maps,
30 plans, reports, or other information used in the governmental entity's decisions to adopt
31 a regulation or ordinance relating to private property or to impose a restraint on private

1 property use.

2 **Sec. 34.50.180. State responsibility for compensation.** The state shall
3 compensate municipalities for the full compensation that the municipalities are required
4 to pay under AS 34.50.130 for taking private property by governmental action if the
5 municipality's governmental action is required by state law.

6 **Sec. 34.50.190. Time for bringing action.** A person may not commence a
7 civil action for a taking of the person's private property by governmental action unless
8 the action is commenced within five years after the taking has occurred.

9 **Sec. 34.50.200. Adjustment of value for property tax.** (a) If a
10 determination has been made that there has been a taking of private property by
11 governmental action, a municipality that levies a tax on the property shall adjust
12 valuation of the property for the purposes of the tax and notify the owner of the new
13 tax valuation. The new tax valuation must be reflected and identified in the next tax
14 assessment notice.

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

20 **Sec. 34.50.210. Enforcement.** A person who owns property that is affected
21 by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the superior
22 court against a governmental entity that fails to comply with the provision. If the
23 person prevails in an action brought under this section, the owner may recover, to the
24 extent awarded by the court, the owner's attorney fees and costs.

25 **Sec. 34.50.220. Regulations prohibited.** A state agency may not adopt
26 regulations to implement AS 34.50.100 - 34.50.250.

27 **Sec. 34.50.250. Definitions.** In AS 34.50.100 - 34.50.250, unless the context
28 clearly requires otherwise,

29 (1) "full compensation" means the monetary value of the reduction in
30 the fair market value of private property if the reduction is caused by a taking by
31 governmental action;

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

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

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

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

10 (D) the discontinuation of state government programs or the
11 government programs of a municipality;

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

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

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

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

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

23 (8) "state agency" means a department, institution, board, commission,
24 division, authority, public corporation, or other administrative unit of the executive
25 branch of state government, including the University of Alaska, the Alaska Railroad
26 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace
27 Development Corporation, and the Alaska State Pension Investment Board;

28 (9) "taking" includes

29 (A) a regulation or other governmental action that regulates or
30 imposes a restraint on private property use for public benefit, including
31 restraints on wetlands or fish or wildlife habitat, or the creation of buffer zones,

1 unless the regulation is necessary to avoid or correct a public nuisance;

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

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

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

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

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

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

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

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

20 (5) [(4)] copies of the ordinance shall be available to all persons present
21 at the hearing, or the ordinance shall be read in full;

22 (6) [(5)] during the hearing the governing body shall hear all interested
23 persons wishing to be heard;

24 (7) [(6)] after the public hearing, the governing body shall consider the
25 ordinance [,] and may adopt it with or without amendment;

26 (8) [(7)] the governing body shall print and make available copies of
27 an ordinance that is adopted.

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

29 **Sec. 29.25.040. Codes of regulation.** The governing body may in a single
30 ordinance adopt or amend by reference provisions of a published code of municipal
31 regulations. The procedure under AS 29.25.020 applies to an ordinance adopted under

1 this section, except that neither the ordinance or its amendments must be distributed
 2 to the public or read in full at the public hearing. For a period of 15 days before
 3 adoption of an ordinance under this section, at least five copies of the code of
 4 regulations shall be made available for public inspection at a time and place set out
 5 in the hearing notice. Only the ordinance must be printed after it is adopted under this
 6 section. The governing body shall provide for an adopted code of regulations to be
 7 made available to the public at no more than cost. **Notwithstanding the other**
 8 **provisions of this section and if applicable, the adoption of a published code of**
 9 **regulations under this section shall comply with AS 34.50.120.**

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

11 (d) When assessing the full and true value of property, the assessor shall
 12 comply with AS 34.50.200.

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

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

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

25 (a) The notice of proposed adoption, amendment, or repeal of a regulation
 26 must include

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

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

- 1 (3) an informative summary of the proposed subject of agency action;
- 2 (4) other matters prescribed by a statute applicable to the specific
- 3 agency or to the specific regulation or class of regulations;
- 4 (5) a summary of the fiscal information required to be prepared under
- 5 AS 44.62.195;
- 6 **(6) if applicable, the information required by AS 34.50.120.**

7 * **Sec. 9.** INITIAL GUIDELINES. The Department of Law shall prepare the initial
8 guidelines required by AS 34.50.100, enacted by sec. 3 of this Act, by January 1, 1998.

9 * **Sec. 10.** This Act takes effect July 1, 1997.