

**HOUSE BILL NO. 484**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES KOHRING, Ogan**

**Introduced: 2/19/02**

**Referred: Community and Regional Affairs, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

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

12 \* **Sec. 2.** AS 34.50 is amended by adding new sections to read:

13 **Article 2. State and Municipal Regulatory Actions.**

14 **Sec. 34.50.100. Restrictions on regulatory agency action.** (a) When a state

1 or municipal regulatory agency exercises its discretion under a statute, or ordinance,  
 2 charter, or regulation to deny or condition a permit, certification, approval, or other  
 3 authorization relating to the use of private real property, the agency may not make the  
 4 denial or impose the condition if the denial or condition precludes an otherwise lawful  
 5 use of the property unless

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

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

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

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

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

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

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

24 **Sec. 34.50.110. Full compensation required.** (a) When a state or municipal  
 25 regulatory agency exercises its discretion under a statute, ordinance, charter, or  
 26 regulation to deny or condition a permit, certification, approval, or other authorization  
 27 relating to the use of private real property, the agency may not make the denial or  
 28 impose the condition if the denial or imposition of the condition results in a taking of  
 29 private property unless the agency pays full compensation for the taking to the owner  
 30 of the private property.

31 (b) Interest at three and one-half percent above the annual rate charged

1 member banks for advances by the 12th Federal Reserve District on the date of the  
 2 taking shall be paid on the full compensation, from the date of the taking until the  
 3 compensation is paid in full.

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

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

10 **Sec. 34.50.120. Waiver prohibited.** A state or municipal regulatory agency  
 11 may not require the owner of private real property to waive the compensation required  
 12 by AS 34.50.110 in order to obtain the agency's issuance of a permit, certification,  
 13 approval, or other authorization relating to the use of private real property.

14 **Sec. 34.50.130. Time for bringing action.** (a) Notwithstanding AS 09.10, an  
 15 owner of private property may not commence a civil action for a taking under  
 16 AS 34.50.110 unless the action is commenced within three years after the date of the  
 17 taking.

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

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

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

29 **Sec. 34.50.140. Exception.** AS 34.50.100 - 34.50.190 do not apply to a  
 30 situation covered by AS 09.55.240 - 09.55.460, AS 29.35.030, or AS 38.05.130.

31 **Sec. 34.50.150. Regulations prohibited.** A state or municipal regulatory

1 agency may not adopt regulations or ordinances to implement AS 34.50.100 -  
2 34.50.190.

3 **Sec. 34.50.190. Definitions.** In AS 34.50.100 - 34.50.190, unless the context  
4 clearly requires otherwise,

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

9 (2) "date of the taking" is the date when the decision of the state or  
10 municipal regulatory agency that results in the taking becomes final;

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

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

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

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

24 (7) "state or municipal regulatory agency" means

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

31 (B) a department, institution, board, commission, division, or

1 other administrative unit of a municipality authorized by a regulation or statute  
 2 of the state or an ordinance or charter of the municipality to make decisions or  
 3 recommendations regarding whether a permit, certification, approval, or other  
 4 authorization relating to the use of real property is approved;

5 (8) "taking" means

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

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

12 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
 13 read:

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

17 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
 18 read:

19 NO RETROACTIVE EFFECT. This Act does not apply to statutes, regulations,  
 20 charter provisions, or ordinances that are in effect on the day before the effective date of this  
 21 Act.

22 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).