

Introduced: 2/21/66
Referred: Judiciary

BY THE JUDICIARY COMMITTEE
BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 427

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to establishment of land
7 boundaries affected by earthslides; and
8 providing for an effective date."

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

10 * Section 1. PURPOSES. (a) This chapter is enacted as an
11 exercise of the police power of the state, for the purpose of
12 serving the public welfare of the people of Alaska by

13 (1) making fully available for new constructions the
14 entire area owned by each entity, either public or private, which
15 purpose can only be served by a re-establishment of certainty as
16 to the present location of land boundaries;

17 (2) facilitating the sale, mortgage and/or lease of
18 land parcels within the state;

19 (3) confirming and establishment the exact areas
20 available for public uses in streets and other public ways;

21 (4) minimizing the losses suffered by land owning
22 entities, which have been caused by an earthslide, by allocating
23 to adjacent owners areas of land released by the narrowing or
24 vacating of streets owned by a municipality, with the consent of
25 such municipality, given for the promotion of the general welfare
26 of the people of Alaska, thus reducing in an equitable manner the
27 number of landowners having losses, caused by an Act of God, in
28 the square footage of land owned prior to the earthslide;

29 (5) correcting existing public records, consisting of

1 land plats, which no longer are accurate, so that a substitute
2 plat, judicially found to be in accordance with existing
3 boundaries as fixed by the earthslide, which was an Act of God,
4 and filed subsequent to judicial approval, will accurately repre-
5 sent the existing land boundaries;

6 (6) permitting these ends to be accomplished in a
7 single action in rem, brought with respect to a large area
8 affected by an earthslide, rather than in numerous separate
9 actions; and

10 (7) safeguarding the due process of the remedial pro-
11 cedure in rem, established by the provisions of this chapter by
12 allowing deviations from the Rules of Civil Procedure. It is
13 expressly declared to be the purpose of the legislature to
14 change these established rules to the extent, but only to the
15 extent, authorized in this chapter, and only the conduct of the
16 actions authorized in this chapter.

17 (b) The legislature finds that the attainment of each of
18 the objectives enumerated in this section will significantly
19 promote the welfare of all the people in the state.

20 * Sec. 2. AS 09.45 is amended by adding new sections to read:

21 **ARTICLE 10. EARTHSLIDE RELIEF ACT**

22 **Sec. 09.45.800. PREREQUISITE EARTHSLIDE CHANGING LAND**
23 **BOUNDARIES.** Whenever the boundaries of land, owned either
24 by public or by private persons have been moved by an Act
25 of God, consisting of an earthslide, so that they are in a
26 location different from that at which, by solar survey, they
27 were located before such earthslide, an action in rem to
28 recognize the boundaries as they presently exist and to
29 quiet title within such boundaries in the persons judicially

1 found entitled thereto under the provisions of secs. 800 -
2 905 of this chapter, is authorized, maintainable by the
3 persons and with the procedures provided for in secs. 800 -
4 905 of this chapter for the handling of the emergencies
5 dealt with herein.

6 Sec. 09.45.805. VENUE. An action, authorized by the
7 provisions of secs. 800 - 905 of this chapter, shall be
8 brought in the superior court in the judicial district
9 wherein is located the land wholly or chiefly affected by
10 the earthslide.

11 Sec. 09.45.810. PERMISSIBLE PLAINTIFFS. An action,
12 authorized by secs. 800 - 905 of this chapter may be begun by

13 (1) any borough, with the joinder of any city
14 or cities included therein;

15 (2) any city not included within the boundaries
16 of a borough, where the earthslide has affected land within
17 such city, or land outside such city as to which outside
18 land the city has statutory power to approve a land map;

19 (3) any school district, which has statutory
20 power to approve a land map; or

21 (4) any other entity or person, not described in
22 (1), (2) or (3) of this section, who on proper application
23 to the superior court having jurisdiction of the action if
24 brought, is granted permission by the court to bring such
25 an action.

26 Sec. 09.45.815. PREREQUISITE DESIGNATION OF PARTIES
27 AND NOTICE. In an action authorized by secs. 800 - 905 of
28 this chapter every person in actual and peaceable possession
29 of, or having any estate or interest in any of the land

1 affected by the action, whose possession or evidence of
2 whose estate or interest is either recorded or known to the
3 plaintiffs, must be designated in the complaint of the
4 action, and given due notice thereof in the manner required
5 by secs. 800 - 905 of this chapter. The action is an action
6 in rem, and is binding upon all the world.

7 Sec. 09.45.820. SEPARATE ACTIONS AS TO SEPARATE SLIDE
8 AREAS. An entity which is a permissible plaintiff under
9 sec. 810 of this chapter, may, in its discretion, bring a
10 separate action under secs. 800 - 905 of this chapter with
11 respect to each separate slide area located within its
12 boundaries; and its decision as to the desirability of such
13 separate action and as to the area to be dealt with in each
14 action shall be final.

15 Sec. 09.45.825. COMMENCEMENT OF ACTION; PARTIES;
16 CONTENTS OF COMPLAINT. The action shall be commenced by the
17 filing of a verified complaint with the court. The party
18 or parties commencing the action shall be named as plaintiff
19 or plaintiffs. The defendants shall be described as "all
20 persons claiming any interest in or lien upon, the real
21 property herein described or any part thereof." The com-
22 plaint shall contain

23 (1) a statement of the facts making applicable
24 the provisions contained in secs. 800 - 820 of this chapter;

25 (2) a description of the entire real property
26 sought to be affected by the action;

27 (3) a specification of the estate, title and
28 interest owned, and in the actual possession of the
29 plaintiff or plaintiffs in described parts of the entire

1 real property sought to be affected by the action;

2 (4) a specification of the estate title and
3 interest, so far as they are known to the plaintiffs or
4 either of them, and so far as they are capable of being
5 discovered by reasonably diligent search by such plaintiff
6 or plaintiffs, in each separate part of the entire real
7 property sought to be affected by the action;

8 (5) a specification of the street areas offered
9 by the plaintiff, or plaintiffs, to be vacated in whole or
10 in part for judicial equitable allocation to adjoining land-
11 owners for the mitigation of the losses inflicted upon such
12 adjoining landowners by the Act of God consisting of the
13 earthslide;

14 (6) a proposed replatting of the entire real
15 property sought to be affected by the action, embodying the
16 land boundaries as fixed by the Act of God, except as these
17 have been liberalized by judicially directed use of the
18 vacated lands; and

19 (7) a statement of the relief demanded in the
20 action.

21 Sec. 09.45.830. SUMMONS; ISSUANCE; FORM. (a) Upon
22 the filing of the complaint, the clerk shall forthwith issue
23 a summons under the seal of the court and shall deliver it
24 for service to a peace officer or to a person specially
25 appointed by the court to serve it. Upon request of the
26 plaintiff separate or additional summons shall issue against
27 any person found to have an estate or interest in the entire
28 real property sought to be affected by the action.

29 (b) The summons shall contain the name of the court

1 and the judicial district in which the action is brought,
2 the name of the plaintiff or plaintiffs; shall state the
3 name and address of the attorney for the plaintiff or
4 plaintiffs; a description of the entire real property sought
5 to be affected by the action and shall be directed to "all
6 persons claiming any interest in, or lien upon the real pro-
7 perty described herein, or any part thereof," as defendants,
8 and shall be substantially in the following form:

9 IN THE SUPERIOR COURT OF THE STATE OF ALASKA
10 JUDICIAL DISTRICT AT _____

11 _____
12 Plaintiff,

13 vs.

14 All Persons Claiming any Interest
15 In, or Lien Upon, the Real Property
16 Herein Described, or Any Part Thereof,
17 Defendants.

18 Civil Action No. _____

19 The people of the State of Alaska, to all persons claiming
20 any interest in, or lien upon, the real property herein
21 described, or any part thereof, defendants, greetings:

22 You are hereby required to appear and answer the
23 complaint of _____ plaintiff, filed with the
24 clerk of the above entitled court and district, within
25 three months after the first publication of this summons
26 and to set forth what interest or lien, if any, different
27 from, or greater than that described in the complaint as
28 your interest, you have in or upon that certain real pro-
29 perty or any part of it, situated in the recording district

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of _____, particularly described

(here insert description of the entire
real property sought to be affected by the action)

And you are hereby notified that unless you so appear
and answer, the plaintiff will apply to the court for the
relief demanded in the complaint, to wit: (here insert a
statement of the relief so demanded.)

[Seal of the
Superior Court]

Clerk of the Court

DATED: _____

By: _____
Deputy Clerk

Sec. 09.45.835. SUMMONS; PUBLICATION. (a) The
summons shall be published in a newspaper of general circu-
lation published in the district in which the action is
pending, or if none is published therein, then in a news-
paper published in this state circulating in such district.
The newspaper in which publication is to be made shall be
designated by an order of the court or a judge of that court
to be signed and filed with the clerk. No other order for
the publication of the summons shall be necessary, nor shall
any affidavit for the publication of the summons be required,
nor need any copy of the complaint be served, except as
required by secs. 800 - 905 of this chapter.

(b) Publication shall be made four times during four
consecutive calendar weeks, once in each week and to each
publication there shall be appended a memorandum in sub-
stance as follows:

"The first publication of this summons was made in

1 (here insert name of newspaper) on the _____ day of _____
2 A.D. _____ (insert the date)."

3 Sec. 09.45.840. SUMMONS; MEMORANDUM OF KNOWN INTERESTS;
4 POSTING. A memorandum listing the names and addresses, so
5 far as they can be ascertained by the plaintiff or plain-
6 tiffs through reasonably diligent inquiry, of each person
7 mentioned in the complaint as having an estate or interest
8 in the entire real property sought to be affected by the
9 action, identified in each case as to the lot or lots in
10 which such interest exists, shall be appended to the
11 summons. A copy of the summons, and a copy of the memo-
12 randum, shall be posted in a conspicuous place on each
13 separate parcel of the entire real property described in
14 the complaint as being affected, within 15 days after the
15 first publication of the summons.

16 Sec. 09.45.845. SUMMONS; SERVICE ON PERSONS HAVING
17 KNOWN INTERESTS. A copy of the summons and complaint and
18 of the memorandum of known interests described in sec. 840
19 of this chapter shall be personally served before the date
20 of the last publication of the summons, upon each person
21 named in the memorandum of known interests, if he can be
22 found in the state. Service shall be made by the person
23 and in the manner prescribed in Rule 4 of the Rules of Civil
24 Procedure for personal service of a summons. If he resides
25 out of the state, within 15 days after the first publica-
26 tion of the summons, a copy of the summons, complaint and
27 memorandum of known interests shall be deposited in the
28 United States Post Office, enclosed in a sealed envelope,
29 postage prepaid, addressed to him at the address given in

1 the memorandum, or if no address is there given, at the
2 office of the clerk of the borough in which the action is
3 brought. If he resides in the state and with due diligence
4 cannot be found in the state before the date of the last
5 publication of the summons, the copies shall be promptly
6 mailed to him as above provided and within 10 days after
7 the date of the last publication of the summons.

8 Sec. 09.45.850. JURISDICTION. Upon the completion of
9 the publication and posting of the summons, its personal
10 service or mailing, as required by secs. 835 - 845 of this
11 chapter inclusive, the court has complete jurisdiction over
12 the plaintiff or plaintiffs and the entire real property
13 described in the complaint as intended to be affected by
14 the action and over the person or everyone having or
15 claiming any estate, right, title or interest in or to, or
16 lien upon, all or any part of the property and shall be
17 considered to have obtained the possession and control of
18 the property for the purposes of the action with complete
19 jurisdiction to render the judgment provided for in secs.
20 800 - 905 of this chapter.

21 Sec. 09.45.860. APPEARANCE; TIME; RESTRICTION ON CON-
22 TENT OF ANSWERS; SAYING OF RIGHTS OF PARTIES NOT LITIGABLE
23 IN THIS ACTION. (a) At any time within three months after
24 the first publication of the summons, or such further time
25 not exceeding 30 days, as the court for good cause may
26 grant, any person having or claiming any estate, right,
27 title or interest in or to, or lien upon, all or any part
28 of the property may appear and make himself a party to the
29 action by pleading to the complaint. All answers must be

1 verified and must

2 (1) specifically set forth the particulars in
3 which the claimant's estate, right, title or interest in or
4 to, or lien upon all or any part of the property is different
5 from, or greater than, the interest of the claimant as it is
6 described in the complaint; and

7 (2) be confined to rights based on events occur-
8 ring at the time of, or since the time of the Act of God,
9 consisting of the earthslide.

10 (b) To whatever extent, if at all, the answering party
11 has rights against anyone whatsoever, based upon facts or
12 events which occurred before such earthslide, the claims
13 shall remain unaffected by this action and shall be assert- .
14 able subsequent to the conclusion of this action at any time
15 and in any manner permitted by law, notwithstanding the
16 judgment granted in this action; recognizing however the
17 finality of this judgment as to the consequences, with
18 respect to land boundaries, of such earthslide.

19 Sec. 09.45.860. LIS PENDENS. The plaintiff, on the
20 commencement of an action authorized in secs. 800 - 905 of
21 this chapter, and an answering defendant, on the filing of
22 an answer, is privileged to file a notice of the pendency of
23 the action in the form and at the place and with the effects
24 specified in AS 09.45.790.

25 Sec. 09.45.870. VACATING OF STREETS IN WHOLE OR IN
26 PART. The vacating of streets in whole or in part by the
27 voluntary action of a municipality, for the purpose of making
28 it possible for the court to mitigate the hardships suffered
29 by individuals because of the change in land boundaries

1 caused by the Act of God consisting of an earthslide, can
2 be accomplished by the offer of the municipality expressed
3 in the complaint described in sec. 825 of this chapter
4 followed by the court's approval of the offer in the action
5 authorized in secs. 800 - 905 of this chapter, without any
6 other formalities of any kind. This provision is declared
7 to be a special emergency substitute for the provisions
8 contained in AS 40.15.140 - 40.15.180 inclusive.

9 Sec. 09.45.870. JUDGMENT; PROOF OF FACTS. In an
10 action of the type authorized in secs. 800 - 905 of this
11 chapter, judgment shall not be given by default, but the
12 court must require proof of the facts alleged in the com-
13 plaint and other pleadings.

14 Sec. 09.45.875. JUDGMENT; SCOPE. The judgment shall

15 (1) determine the land boundaries of each parcel
16 of land located within the entire area of real property
17 sought to be affected by the action, whether owned publicly
18 or privately;

19 (2) determine the person or persons having
20 estates, rights, titles, interests and claims in and to
21 each such parcel, whether legal or equitable, present or
22 future, vested or contingent, or whether they consist of
23 mortgages or liens of any description; and

24 (3) approve and direct the proper filing of a
25 new plat map covering the entire area of real property
26 sought to be affected by the action, as a substitute for
27 the plat maps heretofore filed, but rendered inaccurate by
28 the Act of God, consisting of an earthslide.

29 Sec. 09.45.880. JUDGMENT; STANDARDS. In reaching the

1 conclusion called for by sec. 875 of this chapter the court
2 shall give effect to the changes in land boundaries caused
3 by the earthslide, mitigated, however, so far as can
4 equitably be done, by allocating to contiguous lots parts
5 of the land released by a municipality by its voluntary
6 vacation of areas formerly constituting public ways, which
7 vacating of streets shall be approved in this judgment.

8 Sec. 09.45.885. JUDGMENT; EFFECT. This judgment shall
9 be conclusive with respect to land boundaries upon every
10 person who at the commencement of this action had or claimed
11 any estate, right, title or interest in or to any part of
12 the entire area of real property described in the complaint
13 as intended to be affected by this action, and upon every
14 person claiming under any such person by title subsequent
15 to the commencement of the action.

16 Sec. 09.45.890. JUDGMENT; RECORDING. A certified
17 copy of the judgment shall be recorded, at the expense of
18 the plaintiff or plaintiffs in the action, in the office
19 of the recorder of the recording district or districts in
20 which the affected land is situated.

21 Sec. 09.45.895. PROCEDURE APPLICABLE. Except as
22 otherwise provided in secs. 800 - 905 of this chapter, all
23 rules of law relating to evidence, pleading, practice, new
24 trials and appeals applicable to other civil actions shall
25 apply to actions authorized by secs. 800 - 905 of this
26 chapter.

27 Sec. 09.45.900. CUMULATIVE REMEDIES. The remedies
28 provided for by secs. 800 - 905 of this chapter are cumula-
29 tive and in addition to any other remedy provided by law

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for quieting or establishing title to real property or the boundaries thereof.

Sec. 09.45.905. SHORT TITLE. This chapter may be cited as the Earthslide Relief Act.

* Sec. 3. This Act provides for deviations from the Rules of Civil Procedure and therefore the Act must receive an affirmative vote of at least two-thirds of the full membership of each house in order to be effective.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.