

Original Sponsor: Judiciary
Committee by Request

Offered: 3/29/66
Referred: Rules

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR 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 Act 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 or lease of land
18 parcels in the state;

19 (3) confirming and establishing the exact areas avail-
20 able 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 the 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 before 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 boundaries
3 as fixed by the earthslide, which was an act of God, and filed
4 subsequent to judicial approval will accurately represent the
5 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 af-
8 fected by an earthslide, rather than in numerous separate actions;

9 (7) safeguarding the due process of the remedial pro-
10 cedure in rem, established by the provisions of this Act by allow-
11 ing deviations from the rules of civil procedure wisely established
12 by the Supreme Court of Alaska for all other actions and pro-
13 ceedings of a civil nature, legal, equitable or otherwise. It is
14 expressly declared to be the purpose of the legislature to change
15 these established rules to the extent, but only to the extent,
16 authorized in this Act, and only in the conduct of the actions
17 authorized in this Act.

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

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

22 ARTICLE 10. EARTHSLIDE RELIEF ACT.

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

1 quiet title within the boundaries in the persons judicially
2 found entitled to title under secs. 800 - 880 of this
3 chapter, is authorized, maintainable by the persons and with
4 the procedures in secs 800 - 880 of this chapter for the
5 handling of the emergencies dealt with in this chapter.

6 Sec. 09.45.805. PARTIES. (a) An action authorized by
7 secs. 800 - 880 of this chapter may be commenced by

8 (1) a borough with the joinder of a city or cities
9 included in the borough;

10 (2) a city not included within the boundaries of a
11 borough, if the earthslide has affected land in the city, or
12 land outside the city as to which outside land the city has
13 statutory power to approve a land map;

14 (3) a school district which has statutory power to
15 approve a land map; or

16 (4) any other entity or person, granted permission
17 by the court to bring the action.

18 (b) In an action authorized by secs. 800 - 880 of this
19 chapter every person in actual and peaceable possession of,
20 or having an estate or interest in any of the land affected
21 by the action, whose possession or evidence of estate or
22 interest is either recorded or known to the plaintiffs, must
23 be designated in the complaint of the action, and given
24 notice in the manner required by secs. 800 - 880 of this
25 chapter and the court rules of civil procedure.

26 (c) All unknown parties, including owners, claimants,
27 heirs, devisees, legatees or assigns, may be described in
28 the caption and complaint as "all persons claiming any
29 interest in or lien upon, the real property herein described

1 or any part of it".

2 Sec. 09.45.810. SEPARATE ACTIONS AS TO SEPARATE SLIDE
3 AREAS. An entity which is a permissible plaintiff under
4 sec. 805 of this chapter, may, in its discretion, bring a
5 separate action under secs. 800 - 880 of this chapter with
6 respect to each separate slide area located within its
7 boundaries and its decision regarding the desirability of the
8 separate action, and regarding the area to be dealt with in
9 each action is final.

10 Sec. 09.45.815. COMPLAINT. The complaint shall sub-
11 stantially include

12 (1) a statement of the facts making the provisions
13 in secs. 800 - 880 of this chapter applicable;

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

16 (3) a specification of the estate, title and
17 interest owned, and in the actual possession of the plaintiff
18 or plaintiffs in described parts of the entire real property
19 sought to be affected by the action;

20 (4) a specification of the estate, title and
21 interest, so far as they are known to the plaintiffs or
22 either of them, and so far as they are capable of being
23 discovered by reasonably diligent search by the plaintiff or
24 plaintiffs, in each separate part of the entire real property
25 sought to be affected by the action;

26 (5) a specification of the street areas offered
27 by the plaintiff, or plaintiffs, to be vacated in whole or
28 in part for judicial equitable allocation to landowners for
29 the mitigation of the losses inflicted upon the landowners

1 by the act of God consisting of the earthslide;

2 (6) a proposed replatting of the entire real
3 property sought to be affected by the action, embodying the
4 land boundaries as fixed by the act of God, except as these
5 have been liberalized by judicially directed use of the
6 vacated lands.

7 Sec. 09.45.820. PUBLICATION AND POSTING OF NOTICE. The
8 notice required by Rule 4(e)(5) of the court rules of civil
9 procedure shall be published as provided in the rules and a
10 copy of the notice shall be posted in a conspicuous place on
11 each separate parcel of the entire real property described
12 in the complaint within 20 days after the first publication
13 of the notice.

14 Sec. 09.45.825. PROCEDURE APPLICABLE. Except as
15 otherwise provided in secs. 800 - 880 of this chapter, the
16 court rules of civil procedure shall apply to actions
17 authorized by secs. 800 - 880 of this chapter.

18 Sec. 09.45.830. JURISDICTION. Upon the completion of
19 the service, publication and posting of the summons, as may
20 be required by secs. 800 - 880 of this chapter and the court
21 rules of civil procedure, the court has complete jurisdiction
22 over the parties plaintiff or plaintiffs and the entire
23 real property described in the complaint as intended to be
24 affected by the action and over the person of everyone having
25 or claiming an estate, right, title or interest in or to, or
26 lien upon, all or any part of the property and shall be con-
27 sidered to have obtained the possession and control of the
28 property for the purposes of the action with complete
29 jurisdiction to render the judgment provided for in secs.

1 800 - 880 of this chapter.

2 Sec. 09.45.835. ANSWER. (a) An answer to the com-
3 plaint must be served within 90 days after the first publi-
4 cation of the notice, or such further time not exceeding
5 30 days, as the court for good cause may grant.

6 (b) An answer must

7 (1) specifically set out the particulars in which
8 the claimant's estate, right, title, or interest in or to,
9 or lien upon all or any part of the property is different
10 from, or greater than, the interest of the claimant as it
11 is described in the complaint;

12 (2) be confined to rights based on events occurring
13 at the time of, or since the time of the act of God, con-
14 sisting of the earthslide.

15 (c) To whatever extent, if at all, the answering party
16 has rights against anyone whatsoever, based upon facts or
17 events which occurred before the earthslide, the claims shall
18 remain unaffected by the action brought under secs 800 - 880
19 of this chapter and shall be assertable subsequent to the
20 conclusion of the action at any time and in any manner per-
21 mitted by law, notwithstanding the judgment granted in this
22 action, recognizing however the finality of this judgment as
23 to the consequences, with respect to land boundaries, of the
24 earthslide.

25 Sec. 09.45.840. LIS PENDENS. A party to an action
26 authorized by secs. 800 - 880 of this chapter may file a
27 notice of the pendency of the action in the form and at the
28 place and with the effects specified in sec. 790 of this
29 chapter.

1 Sec. 09.45.845. VACATING OF STREETS IN WHOLE OR IN
2 PART. The vacating of streets in whole or in part by the
3 voluntary action of a municipality, for the purpose of
4 making it possible for the court to mitigate the hardships
5 suffered by individuals because of the change in land
6 boundaries caused by the act of God, consisting of an earth-
7 slide, can be accomplished by the offer of the municipality
8 expressed in the complaint followed by the court's approval
9 of it in the action authorized in secs. 800 - 880 of this
10 chapter, without other formalities. This provision is a
11 special emergency substitute for the provisions contained in
12 AS 40.15.140 - 40.15.180.

13 Sec. 09.45.850. PROOF OF FACTS. In an action of the
14 type authorized in secs. 800 - 880 of this chapter, judgment
15 shall not be given by default, but the court must require
16 proof of the facts alleged in the complaint and other
17 pleadings.

18 Sec. 09.45.855. SCOPE OF JUDGMENT. The judgment shall

19 (1) determine the land boundaries of each parcel
20 of land located within the entire area of real property
21 sought to be affected by the action, whether owned publicly
22 or privately after judicial equitable allocation of lands
23 voluntarily vacated by a municipality under sec. 845 of this
24 chapter;

25 (2) determine the person or persons having estates,
26 rights, titles, interests and claims in and to each parcel,
27 whether legal or equitable, present or future, vested or
28 contingent, or whether they consist of mortgages or liens of
29 any description;

1 (3) approve and direct the proper filing of a new
2 plat map covering the entire area of real property sought to
3 be affected by the action, as a substitute for the plat maps
4 previously filed, but rendered inaccurate by the act of God
5 consisting of an earthslide.

6 Sec. 09.45.860. STANDARDS FOR JUDGMENT. In reaching
7 the conclusions called for by sec. 855 of this chapter the
8 court shall give effect to the changes in land boundaries
9 caused by the earthslide, mitigated, however, so far as can
10 equitably be done, by allocating to contiguous lots parts of
11 the land released by a municipality by its voluntary vacation
12 of areas formerly constituting public ways, which vacatings
13 of streets shall be approved in this judgment.

14 Sec. 09.45.865. EFFECT OF JUDGMENT. The judgment shall
15 be conclusive with respect to land boundaries upon every
16 person who at the commencement of the action had or claimed
17 an estate, right, title or interest in or to a part of the
18 entire area of real property described in the complaint as
19 intended to be affected by this action, and upon every person
20 claiming under any such person by title subsequent to the
21 commencement of the action.

22 Sec. 09.45.870. RECORDING OF JUDGMENT. A certified
23 copy of the judgment shall be recorded, at the expense of
24 the plaintiff or plaintiffs in the action, in the office of
25 the recorder of the recording district in which the affected
26 land is situated.

27 Sec. 09.45.875. CUMULATIVE REMEDIES. The remedies
28 provided for by secs. 800 - 880 of this chapter are cumulative
29 and in addition to any other remedy provided by law for

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quieting or establishing title to real property or the boundaries of it.

Sec. 09.45.880. SHORT TITLE. Secs. 800 - 880 of this chapter may be cited as the Earthslide Relief Act.

* Sec. 3. DEVIATION FROM COURT PROCEDURE. This Act provides for deviations from the court 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. EFFECTIVE DATE. This Act ~~takes~~ effect on the day after its passage and approval, or on the day it becomes law without such approval.