

Introduced: 4/1/81
Referred: Resources and
Judiciary

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 HOUSE BILL NO. 441

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to solar energy and to property
7 rights in solar energy; and providing for an effective
8 date."

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

10 * Section 1. AS 34 is amended by adding a new chapter to read:

11 CHAPTER 65. PROPERTY RIGHTS IN SOLAR ENERGY.

12 Sec. 34.65.010. ACQUISITION OF PROPERTY RIGHT. A property right
13 in solar energy may be acquired by

- 14 (1) actual use, in accordance with AS 34.65.020; and
15 (2) the filing of a solar energy use notice in accordance
16 with AS 34.65.030.

17 Sec. 34.65.020. ACQUISITION OF PROPERTY RIGHT BY ACTUAL USE.

18 Actual use of solar energy is the basis, measure, and limit of a prop-
19 erty right in solar energy, and requires an ability by the holder of
20 the property right to collect not less than 25,000 British thermal
21 units of solar energy on a clear day at the equinox and to convert,
22 store, or distribute the collected solar energy by device, design
23 feature, or structural element, for

- 24 (1) heating or cooling a building or structure;
25 (2) heating or pumping water;
26 (3) generating electricity; or
27 (4) application to an industrial commercial or agricultural
28 process.

29 Sec. 34.65.030. SOLAR ENERGY USE NOTICE. (a) A person who

1 desires to protect his property right in solar energy may prepare a
2 solar energy use notice. The notice shall accurately describe the
3 location, nature, and extent of the solar energy use which the person
4 wants to protect.

5 (b) A notice prepared under (a) of this section

6 (1) shall be amended by the person who desires to protect
7 his property right in solar energy if a change occurs in the solar
8 energy use described in the notice; and

9 (2) may be amended at any time.

10 (c) A solar energy use notice and amendments to it shall be filed
11 with the office of the recorder in the recording district in which the
12 property right which is to be protected is located. The recorder shall
13 append a copy of the solar use notice to each title, deed, or other
14 instrument concerning the affected property which is subsequently
15 recorded by him.

16 Sec. 34.65.040. ESTABLISHMENT OF PROPERTY RIGHT. A property
17 right in solar energy is established as of the date of filing of notice
18 in accordance with AS 34.65.030(c), and becomes effective

19 (1) immediately as to property where there is actual use of
20 solar energy;

21 (2) as an inchoate right as to property where there is no
22 actual use of solar energy, until becoming effective in accordance with
23 (1) of this section where there is actual use of the solar energy.

24 Sec. 34.65.050. CHANGE IN PROPERTY RIGHT. (a) If there is a
25 change in the nature or extent of actual use of solar energy, the
26 change, if reasonable, will be protected as of the date of filing of
27 the original notice if an amendment is properly filed under AS 34.65.-
28 030(c) within 30 days of the change.

29 (b) If there is a change in the location of the actual use of

1 solar energy, or if an amendment required because of a change in the
2 nature or extent of actual use is not filed within the time required by
3 (a) of this section, the property right in solar energy ceases. The
4 property right may be reestablished by filing a new notice under AS 34.-
5 65.030(c).

6 Sec. 34.65.060. LOSS OF PROPERTY RIGHT. A property right in
7 solar energy established under AS 34.65.040 is extinguished when

8 (1) actual use of the solar energy ceases; or

9 (2) the property right is abandoned; a property right in
10 solar energy is conclusively presumed to have been abandoned if the
11 holder of the property right fails to use the right for at least two
12 years.

13 Sec. 34.65.070. NATURE OF PROPERTY RIGHT IN SOLAR ENERGY. A
14 property right in solar energy is appurtenant to the real property on
15 which actual use of solar energy is or may be made. The property right
16 accompanies a transfer or conveyance of the real property unless other-
17 wise agreed to by the parties to the transfer.

18 Sec. 34.65.080. ACTION FOR INJURY TO PROPERTY RIGHT IN SOLAR
19 ENERGY. (a) A person who has a property right in solar energy may
20 maintain a civil action for an actual or potential impairment of the
21 property right.

22 (b) When a civil action is commenced under this section, the
23 matter shall be considered and decided by the judge without benefit of
24 a jury.

25 (c) When the judge finds that continued exercise of the property
26 right in solar energy will provide greater public and private benefits
27 than the public and private benefits related to the activity which
28 would be enjoined, he shall issue a temporary restraining order or
29 injunction to enjoin the impairment of the property right in solar

1 energy. Unless a temporary restraining order or injunction is issued
2 to enjoin the impairment of the property right in solar energy, the
3 judge shall require the person impairing the property right to compen-
4 sate the holder of the property right in solar energy for the impairment
5 or loss of the right.

6 (d) When compensation for impairment or loss of a property right
7 in solar energy is required under (c) of this section, the measure of
8 the compensation

9 (1) for the holder of a valid property right in solar energy
10 which has taken effect in accordance with AS 34.65.040(1) is an amount
11 that will enable the holder of the property right to obtain equivalent
12 energy at a life cycle cost comparable to the cost of energy to him
13 realized through the exercise of his property right in solar energy;

14 (2) for the holder of a valid property right in solar energy
15 which is an inchoate right under AS 34.65.040(2) is an amount which

16 (A) recovers any expenditure made by the holder of the
17 property right in reliance on the inchoate right; and

18 (B) recovers all expenditures which he has made to
19 attempt to convert the right from an inchoate right through actual
20 use.

21 * Sec. 2. AS 29.33.090(c) is amended by adding a new paragraph to read:

22 (8) encourage the development and use of solar energy and
23 regulate the location, nature, and extent of solar energy use.

24 * Sec. 3. AS 34.15.145 is repealed.

25 * Sec. 4. The repeal of AS 34.15.145 by sec. 3 of this Act does not
26 impair a valid solar easement attained and recorded in accordance with
27 AS 34.15.145 before the effective date of this Act.

28 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
29 070(c).