

HB

154

STATE OF ALASKA
ROUTE SLIP

Rm
178

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| TO: Mail Station | Department | Division |
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Attention *HSE JUD.*

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Remarks:
re: CS HB 154 (JUD) -
revised fiscal note -

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| FROM: Mail Station <i>0101</i> | Department <i>006</i> | Division <i>Ad Sv.</i> |
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| By <i>Lude</i> | Date <i>4/2/86</i> |
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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: 4/22/96 Dept. Affected: Office of the Governor
 Title: "An Act relating to state regulatory actions relating to or affecting private property; and providing for an effective date." BRU: Office of Management & Budget
 Sponsor: Representatives Kohring, Rokeberg, Kott, Kelly, Component: Governmental Coordination
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 18

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 100 | FY 01 | FY 02 |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 64.2 | 66.4 | 68.3 | 70.6 | 72.6 | 75.1 |
| TRAVEL | | | | | | |
| CONTRACTUAL | 10.6 | 10.6 | 10.6 | 10.6 | 10.7 | 10.7 |
| SUPPLIES | 1.0 | 1.0 | 1.0 | 1.0 | 1.1 | 1.1 |
| EQUIPMENT | 14.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 5,100.0 | 5,100.0 | 5,100.0 | 5,100.0 | 5,100.0 | 5,100.0 |
| TOTAL OPERATING | 5,190.3 | 5,178.0 | 5,179.9 | 5,182.2 | 5,184.4 | 5,186.9 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 5,190.3 | 5,178.0 | 5,179.9 | 5,182.2 | 5,184.4 | 5,186.9 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 5,190.3 | 5,178.0 | 5,179.9 | 5,182.2 | 5,184.4 | 5,186.9 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 1 | 1 | 1 | 1 | 1 | 1 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Section 3 of the bill adds requirements to Sec. 34.50.100 restricting a state regulatory agency's ability to deny or condition approvals or other authorizations relating to private real property. Specifically, the agency may not condition or deny an approval unless "substantial evidence demonstrates that the denial or condition is necessary to prevent significant irreparable harm to the public health, public welfare, or environment" and the harm "cannot be avoided or adequately mitigated by restrictions that are less intrusive, limiting, or costly."

The Division of Governmental Coordination (DGC) is the primary agency responsible for implementing the Alaska Coastal Management Program (ACMP). Under that program, the state reviews proposed projects to determine if they are consistent with the standards of the ACMP (6 AAC 80) and the enforceable policies of district coastal management programs, which have the force of law. As part of this review, the state routinely places conditions on consistency determinations to ensure these legal requirements are met.

A purpose of the ACMP is to preserve, protect, develop, and use coastal resources. As such, most of the standards could be considered in the interest of public health, public welfare, and the environment. However, DGC's determination as to whether a project is consistent is based on whether it meets the standards and

Prepared by: Diane Mayer Phone: 465-3562
 Division: Governmental Coordination Date: 4/22/96
 Approved by Commissioner: Jim Ayers, Chief of Staff Date: 4/22/96
 Agency: Office of the Governor

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policies, not whether it will significantly, irreparably harm the public health, welfare, or environment. As such, it is highly likely that some percentage of DGC's consistency determinations could be considered takings under this proposed legislation, even though such decisions are required under the Alaska Coastal Management Act.

It is very difficult to estimate potential fiscal costs of this proposed legislation. On an annual basis DGC conducts approximately 450 consistency reviews, and typically adds conditions to approximately 75% of our determinations and finds 1% of projects inconsistent. As such, approximately 76% of DGC's consistency determinations could be affected by this legislation. Since easily obtainable data are lacking, we estimate that an applicant might argue half of our conditioned determinations or inconsistent findings did not meet the "significant irreparable harm to the public health, public welfare, or environment" test. This is largely due to the fact that our standards of review we are legally required to consider are broader. Potentially 171 of DGC's consistency determinations could annually be challenged under this legislation.

As an estimate only, we assume half of the 171 would be legally upheld in court and half would not. Legal fees for these cases alone could be very high, but we leave those costs to be estimated by the Department of Law.

What is left to estimate is the "full compensation" that DGC would have to pay for 85 projects that may not meet this proposed legislation. Since the array of projects DGC reviews is very broad (e.g., oil and gas development on the North Slope to small wetland fills by private individuals), it is nearly impossible to estimate costs of compensation.

Again, for discussion only, as in earlier versions of a fiscal note for this bill, we estimate that each project involves an average of 2 acres. Further, we acknowledge that there will be enormous variability in the value of property based on location and site-specific characteristics, but will use an average land value of \$30,000/acre. Therefore, under these assumptions, the cost to the Division to compensate for takings as a result of stipulations or inconsistent findings would be \$5,100,000 annually (85 projects X 2 acres X \$30,000/acre).

In order to coordinate all the additional work required to address takings issues, the Division also estimates the need for a full-time, Range 20 staff person and associated costs to oversee the additional tasks associated with meeting the requirements of this legislation. Finally, as discussed previously, while it is likely some of the Division's action may end up in litigation, we have not included additional costs for attorney services, assuming that the Department of Law is addressing this potential cost separately.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CS HB 154 (JUD)

Revision Date: 4/18/96 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to state regulatory actions BRU: none
relating to or affecting private property;... Component: none
 Sponsor: Rep. Kohring
 Requestor: House Judiciary COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|--|--|--|--|--|--|--|
| CHANGE IN REVENUES () Revenue Code | | | | | | |
|--|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year (FY 96) impact: \$ none

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to DCRA from this bill.

Prepared By: Remond Henderson *Remond Henderson* Phone: 465-4708
 Division: Director, Div. of Administrative Services Date: 4/18/96
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 4/18/96
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: An Act relating to state regulatory actions relating BRU: _____
to or affecting private property; and providing for an effective date. Component: _____
 Sponsor: Representative Kohring
 Requester: House Finance COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | **** | **** | **** | **** | **** | **** |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 154 raises three areas of possible fiscal impact on the Department of Corrections.

- 1) The potential for nuisance litigation from inmates and probationers/parolees alleging interference with their ability to engage in certain business activities.
- 2) The potential for property and business owners to assert legal claims of value deflation resulting from the location of prisons, jails, community residential centers, or other types of correctional facilities.
- 3) The potential for property and business owners to assert legal claims of value deflation from the Department of Corrections permitting probationers/parolees to dwell in their neighborhoods.

**** The Department has no experience on which to base cost estimates, however one successful claim of value deflation from a property or business owner could be quite substantial.

Prepared by: Jerry Shriner
 Division: Office of the Commissioner
 Approved by Commissioner: Margaret M. Pugh
 Agency: Department of Corrections

Phone: 465-4652
 Date: 4/22/96
 Date: 4/22/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(Jud)

Revision Date: _____
Title: Regulatory Takings
Sponsor: Kohring
Requestor: House Judiciary

Department Affected: Environmental Conservation
BRU: All
Component: _____

COMPONENT SERIAL NO. 633

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| PERSONAL SERVICES | ** | ** | ** | ** | ** | ** |
| TRAVEL | ** | ** | ** | ** | ** | ** |
| CONTRACTUAL | ** | ** | ** | ** | ** | ** |
| SUPPLIES | ** | ** | ** | ** | ** | ** |
| EQUIPMENT | ** | ** | ** | ** | ** | ** |
| LAND&STRUCTURES | ** | ** | ** | ** | ** | ** |
| GRANTS,CLAIMS | ** | ** | ** | ** | ** | ** |
| MISCELLANEOUS | ** | ** | ** | ** | ** | ** |
| TOTAL OPERATING | ** | ** | ** | ** | ** | ** |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE

| | | | | | | |
|-------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | ** | ** | ** | ** | ** | ** |
| 1005 GF/Program Receipt | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | ** | ** | ** | ** | ** | ** |
| TOTAL | ** | ** | ** | ** | ** | ** |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|----|----|----|----|----|----|
| FULL-TIME | ** | ** | ** | ** | ** | ** |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Janice Adair
Division: Director, Division of Environmental Health

Phone: 269-7645
Date: 4/23/96

Approved by Commissioner: 
Agency: Department of Environmental Conservation

Date: 4/24/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: 4/19/96 Dept. Affected: Fish and Game
 Title: Regulatory Taking of Private Property BRU: Habitat and Restoration
 Component: Stream and Refuge
 Sponsor: Representative Kohring
 Requester: House Judiciary COMPONENT SERIAL NO. 2099

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 100 | FY 01 | FY 02 |
|------------------------|--------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 180.0 | 180.0 | 180.0 | 180.0 | 180.0 | 180.0 |
| TRAVEL | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| CONTRACTUAL | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |
| SUPPLIES | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | 800.0 | 1,800.0 | 2,000.0 | 2,000.0 | 1,500.0 | 1,000.0 |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 992.0 | 1,992.0 | 2,192.0 | 2,192.0 | 1,692.0 | 1,192.0 |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 992.0 | 1,992.0 | 2,192.0 | 2,192.0 | 1,692.0 | 1,192.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 992.0 | 1,992.0 | 2,192.0 | 2,192.0 | 1,692.0 | 1,192.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 4 | 4 | 4 | 4 | 4 | 4 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached sheet

Prepared by: Janet Kowalski *J. K.*
 Division: Habitat and Restoration
 Approved by Com: Frank Rue *Frank Rue*
 Agency: Department of Fish and Game

Phone: 465-4105
 Date: 4/19/96
 Date: 4/24/96

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FISCAL NOTE CONTINUATION PAGE
STATE OF ALASKA BILL NO. CSHB 154(JUD)
1996 LEGISLATIVE SESSION

CSHB 154(JUD) would have a significant fiscal impact on the Alaska Department of Fish and Game (ADF&G). Sec. 34.50.100 would restrict the department from denying or imposing a condition on a Title 16 permit for activities affecting private real property *unless substantial evidence demonstrates that the denial or condition is necessary to prevent significant irreparable harm to the public health, public welfare, or environment and the harm cannot be avoided or adequately mitigated by restrictions that are less intrusive, limiting, or costly*. Because ADF&G issues some 1,200 Title 16 permits annually, additional staff would be needed to analyze and determine issues of "significant irreparable harm" and the "costs" of various permit conditions. This would require three additional economists in the Habitat and Restoration Division to analyze both internal (property owner) and external (public) costs of various levels of restrictions required to protect common property fish and wildlife resources. Additional staff time would be required to defend the department against takings claims under Sec. 34.50.110. Permit reviews would become more protracted and adversarial, and could become focused on economic issues which are unrelated to the department's fish and wildlife responsibilities. Because of these additional burdens imposed on the department's Title 16 permitting program, this bill would hamstring the protection of important fish and wildlife resources in Alaska, such as the Kenai River.

ADF&G would have to carefully review all permits, orders, and management actions to determine if its actions might directly or indirectly restrain some use of private real property and thereby constitute a taking. If ADF&G had to take some action that it judged was a taking, the department would have to pay compensation. On the Kenai River alone, compensation claims could amount to millions of dollars. Money would have to be available to pay compensation. The money would have to come from the General Fund because none of the department's federal funding sources or program receipts allow for the payment of compensation to private land owners. It is estimated that initially, the department would pay claims amounting to \$800 thousand. This could increase to \$2 million in two years as more claims are filed and adjudicated. In the out years, claims could decline to about \$1 million annually as the department becomes more successful in avoiding claims and decreases its habitat protection measures to minimize restraining uses of private real property. However, the outcome of decreasing habitat protection to avoid takings claims is likely to ultimately deplete some fish and wildlife stocks and diminish many fishing and hunting opportunities that the public has come to expect. If money were unavailable for paying compensation, the department would have to cease protecting many fish habitats.

The fiscal impacts could be much higher than estimated depending on the number and value of claims that are paid. The department would have to be prepared to analyze claims and defend itself against what could be a large number of takings cases.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...relating to actions for state or municipal takings BRU: Civil Division
of private property... Component: General Legal Services
 Sponsor: Representative Kohring
 Requester: Representative Kohring COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | ***** | ***** | ***** | ***** | ***** | ***** |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | ***** | ***** | ***** | ***** | ***** | ***** |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | ***** | ***** | ***** | ***** | ***** | ***** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 154 contemplates that claims for takings may be enforced in the Superior Court. The amount of legal services that will be required if HB 154 is enacted is dependent on the number of takings claims that are filed. Because no similar law of this scope has ever been enacted in Alaska or any other state, there is no way to use past experience to estimate the number of cases that will arise each year. However, the ambiguities in the current version of HB 154 coupled with the amount of money likely to be at stake in most cases suggests that initially a significant number of cases will arise and that they will be extensively litigated rather than settled. Over time, as legal issues are resolved some kinds of cases will disappear. The number of cases which arise in the first five years will depend in large part on whether the retroactive application limitation is construed narrowly or broadly. However, no matter how that issue is resolved, over time changes in statutes and regulations will open the door for more claims and more cases will arise. We estimate that at least for the first few years ten or more cases could be filed, with that number escalating over time to about twenty to thirty per year.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/19/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/19/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

ANALYSIS CONTINUATION:

The individual takings cases will have new legal issues with respect to the application of HB 154, but will be similar in many factual respects, such as valuation, to takings cases that we litigate now under the constitution. Based on that experience it is clear that cases such as these invariably require significant involvement from experts for appraisal and economic valuation purposes. In addition, each case requires substantial attorney time. Thus these cases will be expensive for contractual services (between \$10,000 and \$100,000 per case for experts). In addition, all agencies making discretionary decisions will require additional counsel from the department, often in areas that have not required attorney involvement in the past. Thus, the department will require new attorney positions. We estimate that two new attorneys will be required initially, growing to six over a five or six year period. Expert costs exceeding \$1,000,000 per year may be required. The average weighted cost of a trial attorney in the department is about \$126,000 per year. This includes all of our law office overhead costs such as secretaries, communications, legal research, computer and library support. It does not include out-of-pocket litigation costs such as travel, court reporters, and experts. Although we cannot provide a definite fiscal impact amount, because we simply do not have any experience on which to base an estimate, it appears the department's total cost will range between \$1,250,000 and \$1,750,000 per year.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB154(JUD)

Revision Date: Original Dept Affected Natural Resources
 Title: Regulatory taking of private property BRU: Resource Development
 Component: Forest Mgmt. & Development
 Sponsor: Representative(s) Kohring, Rokeberg, Kott
 Requestor: House Judiciary Component Serial No. 435

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|-------------------------------|------------------------|------|------|------|------|------|
| OPERATING EXPENDITURES | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ None

| POSITIONS | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|-----------|------|------|------|------|------|------|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

This 'zero' fiscal note is predicated upon the sponsor statement that, "forest products" are removed from the definition of real property. This removes the annual permitting for timber buffer zones from being effected." (See Memorandum of April 17, 1996, Vic Kohring to House Judiciary Committee Members). It is also predicated upon Sec. 5 of the CS, which removes application to statutes and regulations in effect on day before bill becomes effective as law.

There are significant questions remaining and they are questions of law rather than of resource management. None the less, the fiscal impact underlying the questions is so great that the questions are a material part of the fiscal note. If "private property" on Page 4, Line 24, includes timber, then the fiscal note of January 15, 1996, and the expenditure amounts shown therein would generally apply to this CS.

Prepared by: Tom Boutin, Director Phone: 465-3379
 Division: Forestry Date: 19-Apr-96
 Approved by Commissioner: [Signature] Date: 19-Apr-96
 Agency: Natural Resources

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CSHB154(JUD) Fiscal Analysis Continued

A second question relates to variations to the Alaska Forest Resources and Practices Act under AS 41.17.087. A landowner/operator can ask for a variation to any part of AS 41.17 and that variation must be given by the state if doing so will not cause significant harm. If a determination of significant harm would be exempt from 'No Retroactive Effect' (Page 5, Line 11, of the CS), and significant harm is a less stringent test than 'significant irreparable harm' (Page 2, Line 15 of the CS) as it would seem to be, then a landowner/operator could apply for variations from AS 41.17 and qualify for payment when the variation was disallowed as required by AS 41.17.087. The fiscal impact under this scenario cannot really be measured since a landowner/operator might apply for the same variation without limit.

A final issue is the definition of "taking" found on Page 5. At least in the instance of timber harvest, we believe that the test of 30 percent of the fair market value does not place any effective limit on what might be a taking since property can be segmented until any reduction exceeds 30 percent. For example, if the timber in a 66-foot no-harvest buffer constituted less than 30 percent of the fair market value of the property, the size of the parcel could be reduced through sale until the timber value in the buffer exceeded 30 percent of the fair market value of the parcel.

STATE OF ALASKA

ROUTE SLIP

| | | |
|---|---------------------------------|--------------|
| TO: Mail Station 3100 | Department State Legislature | Division |
| Attention (H) JUD | | |
| <input type="checkbox"/> Approval <input type="checkbox"/> Note & Return <input type="checkbox"/> Signature <input type="checkbox"/> Initial & Return <input type="checkbox"/> Comment <input type="checkbox"/> Return as Requested <input type="checkbox"/> Contact Me <input type="checkbox"/> Return for Approval <input type="checkbox"/> Prepare Reply <input type="checkbox"/> Necessary Action <input type="checkbox"/> For Your File <input type="checkbox"/> For Your Information | | |
| Remarks: REQUESTOR COPY no hearing scheduled | | |
| FROM: Mail Station 0420 | Department Revenue | Division |
| By Bob Bartholomew | | Date 4/22 |

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 154(JUD)

Revision Date: 4/19/96 Dept. Affected: Revenue
Title: Regulatory Taking of Private Property BRU: Revenue
Component: Gaming/ABC

Sponsor: Reps. Kohring, Rokeberg/Kott
Requester: (H)JUD COMPONENT SERIAL NO. 125

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 100 | FY 101 | FY 102 |
|------------------------|-------|-------|-------|--------|--------|--------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | . | . | . | . | . | . |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | . | . | . | . | . | . |

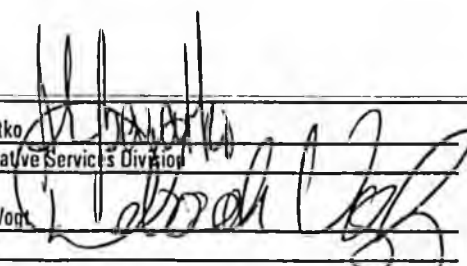
Estimate of any current year (FY96) cost: \$ _____

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | . | . | . | . | . | . |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Costs to the Department of Revenue should CSHB 154 (JUD) (3/13/96 work draft) be enacted are impossible to ascertain but would likely be substantial. Both proposed AS 34.50.100 and proposed AS 34.50.110 appear to be applicable, at least in some circumstances, to licensing/permitting actions by the Alcoholic Beverage Control Board and the Charitable Gaming Division. Proposed AS 34.50.100 would add a new basis for challenging license/permit denials, increasing the department's costs in handling appeals. Proposed AS 34.50.110 would apparently require compensation in many circumstances for license/permit denials and for revocations. Depending on the interpretation of the ambiguous applicability clause in Section 5, these effects might be immediate or might be delayed until the statutes or regulations governing ABC and gaming matters were amended in some way.

Prepared by: Bob Baratko  Phone: 465-2312
Division: Administrative Services Division Date: 4/19/96
Approved by: _____
Commissioner: Deborah Vogt Date: 4/19/96
Agency: Revenue

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (JUD)

Revision Date: 4/25/96 Dept. Affected: DOT&PF
 Title: "An Act relating to state regulatory actions relating to or affecting private property; and providing for an effective date." BRU: All
 Sponsor: Representatives Kohring, Rokeberg...Foster Component: All
 Requester: House Judiciary COMPONENT SERIAL NO. N/A

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|--------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

There is a wide range of potential impacts due to the variety of issues of CSHB 154 that could have lasting effects on this department. Many would require a case by case analysis to determine their full financial impact, but the attached pages identify a few of them that could cause, at least, a potential \$15 million annual expense.

Prepared by: Loren Rasmussen, P.E., Acting Director *Loren Rasmussen* Phone: 465-2960
 Division: Engineering and Operations Date: 4/25/96
 Approved by: Joseph L. Perkins *Joseph L. Perkins* Date: 4/25/96
 Agency: Department of Transportation and Public Facilities

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CSHB 154

RIGHT-OF-WAY:

Section 34.50.140 Prohibition Against Value Deflation.

Designation of potential "transportation corridors" may become very costly with this provision if property values fall as a result of releasing transportation studies identifying proposed routes. For example, if a "Super Seward Highway" corridor in East Anchorage results in a property value decrease of merely 10%, or if values don't keep pace with the rest of the market trend, 35 homes and 5 businesses could cost the state over \$500,000 in the first year, and eventually could require additional payments as the value continues to be affected to \$1 million or more.

Section 34.50.130 Full Compensation Required.

This section may change current guidelines concerning payment of lost business profits; payment for moving traffic away from commercial areas; payment for temporary impairment of access, construction smoke, vibration, dust, odors; payment for changing access to commercial properties, or payment for mineral-bearing properties. On a current small intersection improvement project in Fairbanks, the total cost could reach \$2 million in additional expenses, in the worst case.

CSHB 154

DRIVEWAYS:

Sec. 34.50.160 ACCESS REQUIRED.

If the department, through its regulation, requires driveway permits (and owner construction) for individuals desiring to build access to their property from state roads, and these permit requirements create an additional expense to the owner that the owner did not anticipate, CSHB 154 may cause the department an additional expense to reimburse these extra costs to the applicant. In fact, its possible that this bill could prevent the department from requiring a permit document or a design from the property owner, thus requiring this department to perform the actual design and construction (to assure it is done to our specifications) work for the owner.

The department annually issues approximately 800 driveway permits statewide. If we must now provide a design and perform the construction of each one (because of this bill's requirements) it could cost an estimated \$160,000 per year for the design (\$200 each - 5 hrs design engineer @ \$40/hr work including site visit) and \$3,200,000 per year for construction (\$4,000 per driveway - average estimate for labor, materials, and equipment) for a potential total of more than \$3,000,000 annually.

ROAD MAINTENANCE:

Sec. 34.50.110 PRINCIPLES FOR GOV. ACTION. (shall not cause undue public burden)

Say budget reductions or restrictions for current department highway maintenance operations created a situation where we no longer performed roadway maintenance on the 75 lane miles of state "hillside" roads in southeast Anchorage. This action could devalue homeowner properties either due to higher city taxes (inability to provide the similar roadway maintenance by city forces, or by forcing homeowners to set up their own service districts). This bill could force the state to compensate those homeowners for the extra tax or service district cost, as they do not now pay an expense for our current level of roadway maintenance. If general state highway maintenance costs \$5,500 per lane mile in urban residential areas (and the extra tax or service district expense is approximately the same), then this action could create a state cost of \$400,000.

If similar action was repeated on a statewide basis, due to M&O budget restrictions, it is estimated that considerable urban residential and rural mileage (2,000 lane miles of "Class 3" roads) would be affected. At a statewide average maintenance cost of \$2,500 per lane mile, the total cost to the state is estimated to be \$5,000,000.

CSHB 154

ALASKA MARINE HIGHWAY SYSTEM:

Sec. 34.50.110 PRINCIPLES FOR GOVERNMENTAL ACTION.

The Alaska Marine Highway System (AMHS) budget could be affected by any bill that increases costs to the department. Ferry terminal locations deal with the following related issues - vendors on state property, vendors in the right-of-way, and traffic safety in the general terminal area.

Reduced maintenance, due to budget reductions, means increased liability which eventually translates to increased risk management costs. Vendor encroachment can result in losses of on-board service revenues (the passenger stocks up on sandwiches, drinks, and other consumables prior to boarding) and increased legal costs. We have, so far, successfully dealt with parties encroaching in the ferry terminal right-of-way, but could expect our prime waterfront locations to be mobbed by "get-rich-quick" purveyors of last chance articles if our jurisdictional rights were questioned.

The AMHS deals with citizens who believe they are inconvenienced or adversely affected by schedule changes, adjustments to annual operating plans, mechanical breakdowns, delays due to weather or emergency services, and management decisions based upon the best interests of the state. If such persons had an avenue to seek financial recourse for their "hurt", the AMHS could become mired in legal entanglements and numerous operating efficiency losses. While it is difficult to identify a specific amount, it is certainly possible to modestly expect losses in revenues of \$1 million, and increased costs in excess of \$1 million.

CSHB 154

ADA:

Sec. 34.50.120 RESTRICTIONS ON GOVERNMENTAL ACTION.

17 AAC 50 and AS 35.10.015 requires the department to ensure that all space occupied by governmental entities (local government as well as state agencies) conforms to the requirements of the Americans with Disabilities Act (ADA). As such, all facilities, both owned and leased, which are inaccessible are mandated to have elevator access to government occupied, rental spaces above the ground floor. Historically we have encountered approximately ten situations a year where potential landlords have opted to install elevators so as to enable them to offer rental space to the state. Due to the short life of the potential lease agreement (generally less than five years), they argue that the full cost of the improvements cannot be recovered from the additional proceeds generated by the lease.

Typically the cost of adding an elevator into an existing two or three story facility will fall in the range of approximately \$225,000 - \$275,000 per installation. Assuming that the lease is for 5,000 square feet of space, that the contractor is able to remain competitive and still get an increased rental rate of \$0.15 per square foot; it follows that they would recover a maximum of \$45,000 over the life of the contract. Leaving, on the average, a cost to be borne by the landlord of \$195,000 per site. Considering that this event occurs approximately ten times per year, it produces an annual cost of nearly \$2,000,000.

MEMORANDUM

To: Carolyn Jones, AAG
Supervisor
Transportation Section
Anchorage AGO

From: Ross A. Kopperud, AAG
Transportation Section
Anchorage AGO

Re: CSHB 154

Date: April 24, 1996

I reviewed the above bill regarding how it might impact the issuance of driveway permits. Note, that DOT&PF also issues encroachment permits and utility permits for private and public utility uses within highway rights of way.

The principle fiscal impact of the proposed legislation is that it could make for a great deal of litigation. Although the denial or condition of the permit would occur on DOT&PF land or right of way, its impact would be on the private property owner. Take for instance the denial or conditioning of a driveway permit. A driveway permit allows an abutting property owner to build a driveway from abutting property to the travel lanes of many roads. The landowner usually has a right to reasonable access to the system of highways. Properties with access to the highways are usually much more valuable than properties without access. DOT&PF issues driveway permits to regulate the access to the highways. If the landowner driveway were restricted in the width, length, height, placement, radius, culverts, sight distances, deceleration lanes, construction materials or other similar restriction, in installing his driveway, then he could argue that such restrictions were unwarranted and were therefore a taking under this bill. AS 34.50.110 appears to make the exercise of discretion, regardless of whether the discretion has been abused or not, a taking. As such, the denial or conditioning of the driveway permit may be reasonable yet could still be a taking.

I think the costs of CSHB 154 to DOT&PF would likely be increased administrative costs, legal costs, judgments against it for principle, interest, costs, and attorney's fees for the takings. Such costs should not be more than a few million a year. The principle impact is that all decisions would be made by the court since the court would decide or review any denials or conditioning of a permit under AS 34.50.100 (a) (1) and (2).

Department of Transportation & Public Facilities
Commissioner's Office
Voice Telephone: (907) 465-3900
Text Telephone: (907) 465-3652
Fax Number: (907) 586-8365

FAX

TO: Peggy LaGrone / Representative Kohning's Office Phone: 465-2195
FROM: Melissa McCormick / DOT&PF Commissioner's Office Phone: 465-3903
Number of Pages (Including this Cover Sheet): 3

Comments: Peggy - As per our discussion. If you have any questions, please give me a call at 465-3903 or you can contact
— Melissa Ross Kopperud (via fax only at 907) 279-5832 as their phone lines are down today). Ross would be able to answer any legal questions.
Thanks -

STATE OF ALASKA, DEPT OF LAW
ATTORNEY GENERAL'S OFFICE
TRANSPORTATION SECTION
1031 WEST 4TH AVE., SUITE 200
ANCHORAGE, ALASKA 99501

Phone: (907) 269-5163
Fax : (907) 279-5832

FAX TRANSMITTAL SHEET

Date: April 30, 1995 Time: 11:18am Total Pages: 2

From: Ross A. Kopperud
Transportation Section, Attorney General's Office
Anchorage

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: BRUCE R. FRIETAG

LOCATION: DOT&PF JUNEAU, HC

FAX NO. : 907-465-2460

COMMENTS:

Bruce, per our telephone conversation of yesterday, enclosed please find my memo to Carolyn Jones regarding HB 154 regarding the impact of that bill on driveway permits. Please fax me any questions as our phones are down. Ross K.

CASE:

IF YOU DO NOT RECEIVE ALL THE PAGES, OR HAVE ANY PROBLEMS WITH THE TRANSMITTAL, PLEASE CALL DENISE AT (907) 269-5163.

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(7)

Date Referred: April 21, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/17/96

The JUDICIARY Committee considered:

HB 154

HOUSE BILL NO. 154

REGULATORY TAKING OF PRIVATE PROPERTY

"An Act requiring the Department of Law to provide guidelines regarding unconstitutional state and municipal takings of private real property; relating to the taxation of private real property taken unconstitutionally by state or municipal action; establishing a time limit for bringing an action for an unconstitutional state or municipal taking of private real property; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 154 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) COV, CIRA, Corrections] fiscal note(s) _____

DEC, FIG, Law, Nat. Res. Rev, DOT/PF _____

zero fiscal note(s) _____ zero fiscal note(s) _____

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|----|
| <i>Brian Foster</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
| <i>[Signature]</i> | | | <input checked="" type="checkbox"/> | |
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| | | | | |

CHAIR'S SIGNATURE *Brian Foster*

CS FOR HOUSE BILL NO. 154(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan,
G.Davis, James, Mulder, Foster

A BILL

FOR AN ACT ENTITLED

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

12 * Sec. 2. AS 09.10.070 is amended to read:

13 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
14 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided

1 by AS 34.50.130, a [A] person may not bring an action (1) for libel, slander, assault,
2 battery, seduction, false imprisonment, or for any injury to the person or rights of
3 another not arising on contract and not specifically provided otherwise; (2) upon a
4 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
5 other than a penalty or forfeiture; unless the action is commenced within two years.

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

7 ARTICLE 2. STATE REGULATORY ACTIONS.

8 Sec. 34.50.100. RESTRICTIONS ON REGULATORY AGENCY ACTION.

9 (a) When a state regulatory agency exercises its discretion under a statute or
10 regulation to deny or condition a permit, certification, approval, or other authorization
11 relating to the use of private real property, the agency may not make the denial or
12 impose the condition if the denial or condition precludes an otherwise lawful use of
13 the property unless

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

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

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

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

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

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

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

1 Sec. 34.50.110. FULL COMPENSATION REQUIRED. (a) When a state
2 regulatory agency exercises its discretion under a statute or regulation to deny or
3 condition a permit, certification, approval, or other authorization relating to the use of
4 private real property, the agency may not make the denial or impose the condition if
5 the denial or imposition of the condition results in a taking of private property unless
6 the agency pays full compensation for the taking to the owner of the private property.

7 (b) The full compensation required by (a) of this section is the monetary value
8 of the reduction in the fair market value of the private property taken. Interest at three
9 and one-half percent above the annual rate charged member banks for advances by the
10 12th Federal Reserve District on the date of the taking shall be paid on the full
11 compensation, from the date of the taking until the compensation is paid in full.

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

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

18 Sec. 34.50.120. WAIVER PROHIBITED. A state regulatory agency may not
19 require the owner of private real property to waive the compensation required by
20 AS 34.50.110 in order to obtain the agency's issuance of a permit, certification,
21 approval, or other authorization relating to the use of private real property.

22 Sec. 34.50.130. TIME FOR BRINGING ACTION. (a) An owner of private
23 property may not commence a civil action for a taking under AS 34.50.110 unless the
24 action is commenced within three years after the date of the taking.

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

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

1 (b) of this section.

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

5 Sec. 34.50.140. REGULATIONS PROHIBITED. A state regulatory agency
6 may not adopt regulations to implement AS 34.50.100 - 34.50.150.

7 Sec. 34.50.150. DEFINITIONS. In AS 34.50.100 - 34.50.150, unless the
8 context clearly requires otherwise,

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

13 (2) "date of the taking" is the date when the decision of the state
14 regulatory agency that results in the taking becomes final;

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

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

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

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

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

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(8) "taking" means

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

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

* Sec. 4. SEVERABILITY CLAUSE. Under AS 01.10.030, a provision of this Act or the application of this Act to a person or circumstance is held to be invalid, the remainder of this Act and the application of this Act to other persons or circumstances is not affected.

* Sec. 5. NO RETROACTIVE EFFECT. This Act does not apply to statutes, regulations, or ordinances that are in effect on the day before the effective date of this Act.

* Sec. 6. EFFECTIVE DATE. This Act takes effect immediately under AS 01.10.070(c).

(7)

Date Referred: April 21, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/17/96

The JUDICIARY Committee considered:

HB 154

HOUSE BILL NO. 154

REGULATORY TAKING OF PRIVATE PROPERTY

"An Act: requiring the Department of Law to provide guidelines regarding unconstitutional state and municipal takings of private real property; relating to the taxation of private real property taken unconstitutionally by state or municipal action; establishing a time limit for bringing an action for an unconstitutional state or municipal taking of private real property; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 154 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|----|
| <i>Brian D. Porter</i> | | | <input checked="" type="checkbox"/> | |
| <i>Al Kruse</i> | <input checked="" type="checkbox"/> | | | |
| <i>Carol J. Johnston</i> | | <input checked="" type="checkbox"/> | | |
| <i>Janet L. ...</i> | | | <input checked="" type="checkbox"/> | |
| <i>Car Bruce</i> | | | <input checked="" type="checkbox"/> | |
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CHAIR'S SIGNATURE *Brian D. Porter*

9-LS0602J
Bannister
4/13/96

CS FOR HOUSE BILL NO. 154()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan,
G.Davis, James, Mulder, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state regulatory actions relating to or affecting private
2 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.

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

12 * Sec. 2. AS 09.10.070 is amended to read:

13 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
14 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided

1 by AS 34.50.130, a [A] person may not bring an action (1) for libel, slander, assault,
2 battery, seduction, false imprisonment, or for any injury to the person or rights of
3 another not arising on contract and not specifically provided otherwise; (2) upon a
4 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
5 other than a penalty or forfeiture; unless the action is commenced within two years.

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

7 ARTICLE 2. STATE REGULATORY ACTIONS.

8 Sec. 34.50.100. RESTRICTIONS ON REGULATORY AGENCY ACTION.

9 (a) When a state regulatory agency exercises its discretion under a statute or
10 regulation to deny or condition a permit, certification, approval, or other authorization
11 relating to the use of private real property, the agency may not make the denial or
12 impose the condition if the denial or condition precludes an otherwise lawful use of
13 the property unless

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

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

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

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

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

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

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

1 Sec. 34.50.110. FULL COMPENSATION REQUIRED. (a) When a state
2 regulatory agency exercises its discretion under a statute or regulation to deny or
3 condition a permit, certification, approval, or other authorization relating to the use of
4 private real property, the agency may not make the denial or impose the condition if
5 the denial or imposition of the condition results in a taking of private property unless
6 the agency pays full compensation for the taking to the owner of the private property.

7 (b) The full compensation required by (a) of this section is the monetary value
8 of the reduction in the fair market value of the private property taken. Interest at three
9 and one-half percent above the annual rate charged member banks for advances by the
10 12th Federal Reserve District on the date of the taking shall be paid on the full
11 compensation, from the date of the taking until the compensation is paid in full.

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

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

18 Sec. 34.50.120. WAIVER PROHIBITED. A state regulatory agency may not
19 require the owner of private real property to waive the compensation required by
20 AS 34.50.110 in order to obtain the agency's issuance of a permit, certification,
21 approval, or other authorization relating to the use of private real property.

22 Sec. 34.50.130. TIME FOR BRINGING ACTION. (a) An owner of private
23 property may not commence a civil action for a taking under AS 34.50.110 unless the
24 action is commenced within three years after the date of the taking.

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

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

1 (b) of this section.

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

5 Sec. 34.50.140. REGULATIONS PROHIBITED. A state regulatory agency
6 may not adopt regulations to implement AS 34.50.100 - 34.50.150.

7 Sec. 34.50.150. DEFINITIONS. In AS 34.50.100 - 34.50.150, unless the
8 context clearly requires otherwise,

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

13 (2) "date of the taking" is the date when the decision of the state
14 regulatory agency that results in the taking becomes final;

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

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

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

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

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

1 (8) "taking" means

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

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

8 * Sec. 4. SEVERABILITY CLAUSE. Under AS 01.10.030, a provision of this Act or the
9 application of this Act to a person or circumstance is held to be invalid, the remainder of this
10 Act and the application of this Act to other persons or circumstances is not affected.

11 * Sec. 5. NO RETROACTIVE EFFECT. This Act does not apply to statutes, regulations,
12 or ordinances that are in effect on the day before the effective date of this Act.

13 * Sec. 6. EFFECTIVE DATE. This Act takes effect immediately under AS 01.10.070(c).



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

Testimony presented to the House Judiciary Committee concerning House Bill 154 by Anthony Crupi of the Alaska Environmental Lobby, 4/17/96:

This committee has been working on this bill for quite some time, and the Alaska Environmental Lobby has presented our position in opposition to the bill. While we feel that the recent changes to the bill attempt to address important concerns with this legislation, we believe that the legislation itself is fatally ill and no bandaid can save the patient.

Instead of improving government, takings legislation such as this bill threatens to cost the State of Alaska many millions of dollars by making government less efficient and more costly. There will be assessment costs, litigation fees, and the staggering cost of compensating property owners who claim a "taking." Who will fund these costs? The taxpayers, whose tax dollars will be used to fund legions of attorneys and pay thousands of claims. In this era of frugal budgets, adding a new layer of expensive bureaucracy is a move in the wrong direction.

Under the Fifth Amendment of the U.S. Constitution, property owners have the right to seek just compensation through the judicial process when they believe that their property has been unjustly taken by the government. We feel that the courts are the proper place for such claims to be heard on their individual merits before a jury of fellow Alaskans. No legislative blanket can cover the entire spectrum of individual possibilities envisioned by this legislation.

From the beginning of modern democratic government, the rights of property owners have always been protected. But these rights have also always been balanced with the responsibility not to use one's property in such a way as to harm one's neighbors. This bill would destroy that careful balance between rights and responsibilities. It would undermine regulations that protect public health and safety and the environment. For these reasons, we oppose House Bill 154.

House Bill 154

The following anecdotes of people who have testified in support of HB 154 give documentation to the types of situations we believe may be helped by this legislation. These cases have occurred over a several year period, lending support to the fact that an onslaught of litigation will not occur.

- Jerry Fletcher, Wasilla--Bought Property in the Mat-Su Valley in the early 80's. Years later, the property was declared wetlands. Corp of Engineers issued a permit to develop, based on wetlands, saying if he could get the State to sign off, he could develop. State would not sign off, he has lost the value of the property.
- Ray Briggs, Palmer--Old City of Palmer dump site contains varied hazardous materials. Palmer has not cleaned up the mess, nor has DEC correctly addressed the problem. Currently in Federal court.
- Steve Noey, Anchorage--Well known case of a person who bought property and is not allowed to subdivide because DEC will not let him install the sewer system he knows will work.
- Chuck Dennis, Valdez--The State is holding up development of his land because the corp of engineers issued a permit against the will of the state. He claims they are giving away 16 acres to habitat.
- Walter Zesiger, Fairbanks--The State traded 200 acres with him, acre for acre, but found that 100 acres of what he received was wetlands.
- Larry Petty, Fairbanks--A farmer in the Eielson Farm Road area told of the state giving land to farmers in Delta and Pt. McKenzie, but then forced failure on most of the farms.
- Mick Manns, Bettles--Documented a loss of \$218,312. on his mining claim in Bettles.
- Betty Rollins, Fairbanks--Was negotiating the sale of her home and commercial property when the DEC issued a temporary alert of toxic water in the area. Her deal fell through, after which the alert was lifted.
- Lars Ehrlander, Fairbanks--Bought property for a subdivision, but the state stalled subdivision approval with the borough because they were going to build a road in the area. When the state did make an offer to purchase the property, they were able to do so at the single lot price, rather than the subdivided price, additionally not including the cost of his improvements to date.



FAX TRANSMITTAL

April 12, 1996

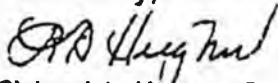
TO: Representatives
Al Vezey
Jeannette James
Pete Kelly
Gene Therriault
Tom Brice

ORG.: Alaska House of Representatives
CITY: Juneau, AK

Fred James played the AVT produced tape on Vic Kohring's House Bill 154, the "Takings" bill, to the Friday (today's) morning meeting of members, directors, and guests of the Alaska Miners Association. The tape is well done and is shocking in its exposition of the degree and capriciousness of "takings" that have occurred in Alaska without compensation to the victims. It is also shocking to see the resistance to this bill by the bureaucrats. I wish to go on record as strongly supporting this bill. I'm sure, also, that I speak for all of the Fairbanks miners on this issue as Chairman of the Fairbanks Branch of the Alaska Miners Association. I urge you to support Representative Kohring in his quest to move this bill through the House and into the Senate.

Should this bill fail to move through the legislature, perhaps a citizens initiative would be in order to get something on the state ballot. I need your advice on this issue.

Yours truly,



Richard A. Hughes, P. E.
Project Manager

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB154(JUD)

Revision Date: 4/12/96 Dept. Affected: Fish and Game
 Title: Regulatory Taking of Private Property BRU: Habitat and Restoration
 Component: Stream and Refuge
 Sponsor: Representative Kohring
 Requester: House JUD COMPONENT SERIAL NO. 2099

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 100 | FY 01 | FY 02 |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 240.0 | 240.0 | 240.0 | 240.0 | 240.0 | 240.0 |
| TRAVEL | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| CONTRACTUAL | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |
| SUPPLIES | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | 800.0 | 1,800.0 | 4,500.0 | 3,500.0 | 2,000.0 | 1,500.0 |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 1,053.0 | 2,053.0 | 4,753.0 | 3,753.0 | 2,253.0 | 1,753.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 1,253.0 | 2,253.0 | 5,253.0 | 5,253.0 | 2,253.0 | 2,253.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 1,053.0 | 2,253.0 | 4,753.0 | 3,753.0 | 2,253.0 | 1,753.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 4 | 4 | 4 | 4 | 4 | 4 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached sheet

Prepared by: Janet Kowalski JK
 Division: Habitat and Restoration
 Approved by Commissioner: [Signature]
 Agency: Department of Fish and Game

Phone: 465-4105
 Date: 4/12/96
 Date: 4-12-96

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FISCAL NOTE CONTINUATION PAGE
STATE OF ALASKA BILL NO. CSHB154(JUD)
1996 LEGISLATIVE SESSION

It is difficult to assess the fiscal effect of CSHB154(Jud), but it appears that it would heavily impact the Alaska Department of Fish and Game (ADF&G). Sec. 34.50.120 requires an extensive economic analysis of all new regulations to determine the value of private property potentially impacted and the percentage of taking. Because the department and the Boards of Fisheries and Game annually promulgate hundreds of new regulations potentially restraining the use of both real property and personal property in the harvest of fish and game this will substantially increase the workload and time necessary to prepare, adopt, and enforce regulations for a wide variety of Title 16 regulatory responsibilities. These analyses and the subsequent adjudication and processing of compensation claims will require hiring approximately four or more additional staff members and millions in payments to property owners. Additional staff would be needed to address takings issues in the divisions of Sport Fish, Commercial Fisheries Management and Development, Wildlife Conservation, and Habitat and Restoration, as well as the Boards of Fisheries and Game.

The Department would also have to carefully review all permits, orders, and management actions to determine if its actions might directly or indirectly restrain some use of private property and thereby constitute a taking. If the department had to take some action that it judged was a taking, the department would have to pay compensation. Money would have to be available to pay compensation. The money would have to come from the General Fund because none of the department's federal funding sources or program receipts allow for the payment of compensation. It is estimated that initially, the department would pay claims amounting to \$800 thousand. This would increase to \$4.5 million in two years as more claims are filed and adjudicated. After this high level, claims could decline to about \$1.5 million annually as the department becomes more successful in avoiding claims and freezes or modifies many of its harvest regulations to minimize restraining uses of private property. However, the outcome of radically altering harvest regulations to avoid the takings claims imposed by this bill is unknown and is likely to deplete some fish and wildlife stocks and diminish many fishing and hunting opportunities that the public has come to expect.

The fiscal impacts could be orders of magnitude higher than estimated because of the billions of dollars in value of private property used in the harvest of fish and wildlife resources including fishing vessels; fishing, hunting, and trapping gear; aircraft; boats, vehicles, limited-entry permits, equipment, and land. The appraisals prepared by claimants and estimates of diminished value are likely to be very high. The 20% floor on the value of compensatable takings in Sec. 34.50.120 would reduce but not eliminate substantial takings claims. The department would have to be prepared to analyze these values and defend itself against what could be a large number of takings cases.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(CRA)

Revision Date: _____
Title: State/Municipal Takings of Private Property

Sponsor: Kohring
Requestor: House Judiciary

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Commissioner's Office
COMPONENT SERIAL NO. 317
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|------------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| PERSONAL SERVICES | 129.2 | 133.1 | 137.1 | 141.2 | 145.4 | 149.8 |
| TRAVEL | 24.0 | 24.7 | 25.5 | 26.2 | 27.0 | 27.8 |
| CONTRACTUAL | 731.0 | 752.9 | 775.5 | 798.8 | 822.7 | 847.4 |
| SUPPLIES | 2.0 | 2.1 | 2.1 | 2.2 | 2.3 | 2.3 |
| EQUIPMENT | 10.0 | 1.5 | 1.5 | 1.6 | 1.6 | 1.7 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | 7,923.9 | 8,161.6 | 8,406.5 | 8,658.7 | 8,918.4 | 9,186.0 |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 8,820.1 | 9,075.9 | 9,348.2 | 9,628.6 | 9,917.5 | 10,215.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|----------------------------|--------|--------|--------|--------|--------|--------|
| CHANGES IN REVENUES (1005) | (73.9) | (76.1) | (78.4) | (80.8) | (83.2) | (85.7) |
|----------------------------|--------|--------|--------|--------|--------|--------|

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 8,820.1 | 9,075.9 | 9,348.2 | 9,628.8 | 9,917.5 | 10,215.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other (please specify) | | | | | | |
| TOTAL | 8,820.1 | 9,075.9 | 9,348.2 | 9,628.6 | 9,917.5 | 10,215.0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 2 | 2 | 2 | 2 | 2 | 2 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Note: This fiscal analysis reflects the Department's belief that existing programs referenced below meet the standards contained in Section 3 of the bill (proposed Sec. 34.50.110 (2)) and would remain in force. The fiscal note takes a conservative approach to the interpretation of actions constituting a taking under the bill; costs would increase if other activities (e.g. grant regulations, medicaid/medicare reimbursement decisions, other licensing regulations) are interpreted as takings. An assumption in this fiscal note is that no delays in departmental actions would be considered "undue delays" requiring compensation for any loss to private property.

Grants and Claims: Estimated FY97 costs (increased at 3% per annum inflation rate for FY98-02) are based on :
1.) Reimbursements to hospitals and nursing homes for preparation of Certificate of Need applications. Over the last few years the Department of Health and Social Services has processed about seven Certificate of Need applications each year. The Department estimates the cost to reimburse a hospital or nursing home for a preparing a Certificate of Need applications would be approximately \$50.0 per application. Therefore the annual cost of reimbursement under this bill would be \$350.0.

Prepared by: Janet Clarke
Division: Administrative Services

Approved by Commissioner: Karen Ferdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3082
Date: 01/31/96

Date: 2/1/96

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ANALYSIS (cont.):

2.) Reimbursements to nursing homes of \$7.5 million for denial of Certificate of Need applications, based on a potential denial of 50% of nursing home beds. Additional reimbursements could be required for denial of Acute Care hospital beds. (See Bill Analysis.)

3.) Mental Health and Developmental Disabilities assisted living facility licensing upgrades, estimated at an annual cost of \$73.9 in FY97.

Changes in Revenue: Approximately \$73.9 in FY97 in licensing fees would be lost for radiological equipment licenses. The bill would require reimbursement of costs from regulation; instead rebating the license fees, the simplest procedure would be to not collect them in the first place. License applications are projected to increase at 3% per annum.

Contractual: (Annual costs expected to increase at 3% per annum). In addition to small contractual amounts for the positions needed, additional funds would be required as described below:

1.) The bill would require a full analysis of the total economic effect of any new regulation or change in regulation, as well as an analysis of the economic effect of all reasonable alternatives, prior to adopting a regulation or change in regulation. In 1995, the department initiated fourteen regulatory changes. At an estimated cost of \$50.0 per full economic analysis, fourteen regulation changes would require \$700.0. Costs may be understated for the early years after passage of the bill into law, because the severe measures contained in the bill would probably lead to the Department making more than the average number of changes in regulations.

2.) The Department expects that the bill, if passed, would lead to many claims for compensation. The bill would impose heavy financial penalties on the Department for any delays in compensation payments. Formal and timely determinations of taking as defined under the the bill and calculation of the value of a taking would often be quite complex. Outside economic and appraisal experts would be required in some cases to assist the Department in determining actual impacts of Departmental actions and the values, if any, involved. An estimated \$25.0 would be required in FY97.

Personal Services: Technical staff will be required to evaluate claims for purported takings resulting from an action of the Department and to recommend approval or disapproval of those claims. Staff would also evaluate the value of those claims. An in-house appraising capability will be required. In many cases, complex evaluations of general economic conditions and of hypothetical markets in the absence of government regulation will be needed in order to calculate values of takings, as defined by the bill. Staff will also be needed to coordinate and monitor the economic impact analyses required for regulatory changes. A new Economist I (GGU Salary Range 18) position and a new appraisal position equivalent to a Right of Way Review Appraiser I (GGU Salary Range 21) will be required. These specialists would work with little direct supervision and would have no peers within the Department. Once claims were approved, existing administrative and fiscal staff would handle the processing of payments.

| | | | | |
|---|----------------------|---------------------|-------------------|------------------------|
| Position Title Economist I | | No. of Positio 1 | Range/Step 18A | Bargaining Unit GGU |
| Time Status Full | Staff Months 12.0 | Location Juneau | | Election District 3 |
| TYPE of EXPENDITURE | | AMOUNT | | |
| Salary | | 42.0 | | |
| Benefits | | 16.6 | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 58.6 | | |
| Travel | | 12.0 | | |
| Contractual | | 3.0 | | |
| Commodities | | 1.0 | | |
| Equipment | | 5.0 | | |
| Other | | | | |
| Total Cost | | 79.6 | | |
| FUNDING SOURCE for TOTAL COST | | | | |
| 1002 Federal Receipts | | | | |
| 1003 GF Match | | | | |
| 1004 General Fund | | 79.6 | | |
| 1005 GF/Program Receipts | | | | |
| 1006 GF/Mental Health Trust | | | | |
| 1007 I/A Receipts | | | | |
| 1061 CIP Receipts | | | | |
| Other () | | | | |
| Justification Position needed to coordinate assessment of economic impact on private property resulting from regulatory changes. Position will also perform complex evaluations of general economic conditions and of hypothetical markets in the absence of government regulation in order to calculate values of takings, as defined by HB 154. | | | | |

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: _____
 COMPONENT: _____

FY96

Page: _____
 Revised Date: _____

| | | | | | |
|--|----------------------|--|----------------------|-------------------|------------------------|
| Position Title Right of Way Review Appraiser I | | | No. of Position 1 | Range/Step 21A | Bargaining Unit GGU |
| Time Status Full | Staff Months 12.0 | | Location Juneau | | Election District 3 |
| TYPE of EXPENDITURE | | | AMOUNT | | |
| Salary | | | 51.4 | | |
| Benefits | | | 19.2 | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | | | 70.6 | | |
| Travel | | | 12.0 | | |
| Contractual | | | 3.0 | | |
| Commodities | | | 1.0 | | |
| Equipment | | | 5.0 | | |
| Other | | | | | |
| Total Cost | | | 91.6 | | |
| FUNDING SOURCE for TOTAL COST | | | | | |
| 1002 Federal Receipts | | | | | |
| 1003 GF Match | | | | | |
| 1004 General Fund | | | 91.6 | | |
| 1005 GF/Program Receipts | | | | | |
| 1006 GF/Mental Health Trust | | | | | |
| 1007 I/A Receipts | | | | | |
| 1061 CIP Receipts | | | | | |
| Other () | | | | | |
| <p>Justification:</p> <p>An appraiser position of this caliber is required for the evaluation of claims for taking pursuant to HB 154. The position will be required to appraise a large variety of property types and impacts from government actions and will require significant and broad appraisal expertise. The position will be only of its kind in the department and will be required to work as a specialist and relatively independently. It will be reviewing and evaluating claims made by others and will be the primary specialist involved in claim determinations.</p> | | | | | |

**REQUEST for
NEW POSITION**

AGENCY: **Health and Social Services**

BRU: _____

COMPONENT: _____

FY96

Page: _____

Revised Date: _____

FISCAL NOTE

Revision Date: January 31, 1996 Dept. Affected: Community & Regional Affairs
 Title: An Act requiring the Department of Law to provide guidelines regarding unconst. BRU: Local Government Assistance
 Sponsor: Representative Kohring Component Training and Development
 Requestor: House Judiciary COMPONENT SERIAL NO. 672

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | 62.1 | 64.0 | 65.9 | 67.9 | 69.9 | 72.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 62.1 | 64.0 | 65.9 | 67.9 | 69.9 | 72.0 |

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|---------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| REVENUE FUND SOURCE: | | | | | | |
|----------------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 62.1 | 64.0 | 65.9 | 67.9 | 69.9 | 72.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 62.1 | 64.0 | 65.9 | 67.9 | 69.9 | 72.0 |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)
 As law, HB 154 would create a new responsibility for local governments exercising planning powers to assess the economic impact of planning decisions on private property owners. For local governments, wishing to continue the exercise of planning powers consistent with traditional practice, this will mean a substantial increase in the amount of work performed for each land decision. For example, planning commissions could not issue or deny conditional permits or variances without accompanying impact analyses. Nor could councils and assemblies adopt or revise comprehensive plans, zoning and planning codes or other land use regulations without the required analysis and payment of public funds to individuals. This work would materialize just as municipalities are facing shrinking budgets, tax resistance and service curtailments. (continued on attached)

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 1/31/96
 Approved by Commissioner: *[Signature]* Date: 1/31/96
 Agency: Community & Regional Affairs

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Fiscal Note Analysis Continued

The department believes that many municipalities will look to this department to provide technical assistance in both understanding the law and complying with its requirements. The department works not just with small and/or remote communities, but with many mid-sized and large communities as well, that have active planning commissions and a tradition of community development based on the exercise of powers granted in AS 29.40. It is estimated that municipalities that exercise planning powers will request approximately 1.0 FTE in planning technical assistance services from the department in each of the first six years this law would be in effect. This is a service that cannot be absorbed by existing department staff without diverting staff from existing workloads. It is assumed that the expertise and experience of a Planner III position would be required to meet these new service demands.

CSHB 154

ADA:

Sec. 34.50.120 RESTRICTIONS ON GOVERNMENTAL ACTION.

17 AAC 50 and AS 35.10.015 requires the department to ensure that all space occupied by governmental entities (local government as well as state agencies) conforms to the requirements of the Americans with Disabilities Act (ADA). As such, all facilities, both owned and leased, which are inaccessible are mandated to have elevator access to government occupied, rental spaces above the ground floor. Historically we have encountered approximately ten situations a year where potential landlords have opted to install elevators so as to enable them to offer rental space to the state. Due to the short life of the potential lease agreement (generally less than five years), they argue that the full cost of the improvements cannot be recovered from the additional proceeds generated by the lease.

Typically the cost of adding an elevator into an existing two or three story facility will fall in the range of approximately \$225,000 - \$275,000 per installation. Assuming that the lease is for 5,000 square feet of space, that the contractor is able to remain competitive and still get an increased rental rate of \$0.15 per square foot; it follows that they would recover a maximum of \$45,000 over the life of the contract. Leaving, on the average, a cost to be borne by the landlord of \$195,000 per site. Considering that this event occurs approximately ten times per year, it produces an annual cost of nearly \$2,000,000.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(CRA)

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: An Act requiring the Department of Law to provide BRU: _____
guidelines regarding state and municipal takings of private property... Component: _____
 Sponsor: Representative Kohring
 Requester: House Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | **** | **** | **** | **** | **** | **** |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 154 raises three areas of possible fiscal impact on the Department of Corrections.

- 1) The potential for nuisance litigation from inmates and probationers/parolees alleging interference with their ability to engage in certain business activities.
- 2) The potential for property and business owners to assert legal claims of value deflation resulting from the location of prisons, jails, community residential centers, or other types of correctional facilities.
- 3) The potential for property and business owners to assert legal claims of value deflation from the Department of Corrections permitting probationers/parolees to dwell in their neighborhoods.

**** The Department has no experience on which to base cost estimates, however one successful claim of value deflation from a property or business owner could be quite substantial.

Prepared by: Jerry Shriner Phone: 465-4652
 Division: Office of the Commissioner Date: 2/15/96
 Approved by Commissioner: Margaret M. Pugh Date: 2/15/96
 Agency: Department of Corrections

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FISCAL NOTE

Revision Date: N/A
Title: Regulatory Takings.

Department Affected: DOT&PF
BRU:

Sponsor: Representatives Kohring, Rokebert, Kott
Requestor: Requestor:
Component: Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|-------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING: | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------------------|---|---|---|---|---|---|
| REVENUE FUND SOURCE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------------------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1002 FEDERAL RECEIPTS | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF MATCH | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |
| 1005 GF/PROGRAM RECEIPTS | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL FUNDING: | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 | 15,000.0 |

POSITIONS (NONE REQ'D)

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

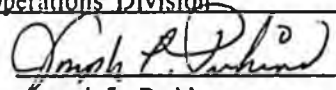
Estimate of current year (FY96) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

There is a wide range of potential impacts due to the variety of issues of CSHB 154 that could have lasting affects on this department. Many would require a case by case analysis to determine their full financial impact, but the attached pages identify a few of them that could cause, at least, a potential \$15 million annual expense.

Prepared by: Bruce Freitag
Division: Engineering & Operations Division

Phone: 465-6963
Date: 2/16/96

Approved by Commissioner: 
Joseph L. Perkins

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date:

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shall hereafter apply to the Territory [State] of Alaska: *Provided*, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984) [25 USCS §§ 476, 477, and 470].
(May 1, 1936, ch 254, § 1, 49 Stat. 1250.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Hereafter" or "heretofore", referred to in this section, is probably a reference to before and after the date of enactment of this section by Act May 1, 1936.

Explanatory notes:

The bracketed word "State" was inserted on the authority of Proc. No. 3268 of Jan. 3, 1959, 24 Fed. Reg. 81, 73 Stat. c16, which proclaimed the admission of Alaska into the Union on Jan. 3, 1959. For Alaska Statehood Law, see Act July 7, 1958, P. L. 85-508, 72 Stat. 339, which appears as a note preceding 48 USCS § 21.

This section was formerly classified to 48 USCS § 362.

CODE OF FEDERAL REGULATIONS

Bureau of Indian Affairs, Department of the Interior—Surface exploration, mining, and reclamation of lands, 25 CFR Part 216.

Bureau of Land Management, Department of the Interior—Areas subject to special mining laws, 43 CFR Part 3820.

CROSS REFERENCES

This section is referred to in 25 USCS § 324.

RESEARCH GUIDE

Federal Procedure L Ed:

19 Fed Proc L Ed, Indians and Indian Affairs §§ 46:52, 179, 902.

§ 474. Continuance of allowances

The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 Stat. L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance

Stat. 984, which appears generally as 25 USCS §§ 461 et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed word "State" was inserted on the authority of Proc. No. 3268 of Jan. 3, 1959, 24 Fed. Reg. 81, 73 Stat. c16, which proclaimed the admission of Alaska into the Union on Jan. 3, 1959. For Alaska Statehood Law, see Act July 7, 1958, P. L. 85-508, 72 Stat. 339, which appears as a note preceding 48 USCS § 21.

Amendments:

1990. Act May 24, 1990 substituted "sections 4," for "sections 2, 4,".

CROSS REFERENCES

Oklahoma Indians as having rights secured to organize Indian tribes under sections to which reference is made, 25 USCS § 503.

Tribes authorized to be organized with charter allowing participation in revolving credit fund and other rights secured to organized tribes under sections to which reference is made in text, 25 USCS § 503.

RESEARCH GUIDE

Federal Procedure L Ed:

19 Fed Proc L Ed, Indians and Indian Affairs §§ 46:52, 179, 902.

INTERPRETIVE NOTES AND DECISIONS

1. Congressional intent
2. Recognition by Secretary

1. Congressional Intent

Congress did not originally intend statutes governing organization of new Indian tribes (25 USCS §§ 473 et seq.) to apply to aboriginal groups in Hawaii, since, in 1934, when § 473 was enacted, Hawaii was territory. *Price v Hawaii* (1985, CA9 Hawaii) 764 F2d 623, cert den (1986) 474 US 1055, 88 L Ed 2d 771, 106 S Ct 793, reh den (1986) 475 US 1091, 89 L Ed 2d 736, 106 S Ct 1482.

Neither Wheeler-Howard Act (Indian Reorganization Act, 25 USCS § 276) nor Oklahoma Indian Welfare Act (25 USCS § 503) applies to Osage tribe (25 USCS §§ 473 and 508), but absent express legislation to contrary, Osage tribe possesses inherent sovereign power to form constitutional government, irrespective of any authority which might have been granted in those two acts; court would

not impute to Congress intent to leave Osage as virtually only tribe of Indians in United States without general governing body or right to establish such body. *Logan v Andrus* (1978, ND Okla) 457 F Supp 1318.

2. Recognition by Secretary

By organizing tribes under provisions of Indian Reorganization Act (25 USCS §§ 471 et seq.), approving their constitutions, and issuing tribal treaty fishing identification cards to their members pursuant to 25 CFR Part 256, Secretary of Interior has recognized Bay Mills Indian Community and Sault Ste. Marie Tribe of Chippewa Indians as Indian tribes which are political successors in interest to Ottawa and Chippewa Nation which was signatory to treaty of March 28, 1836 with United States. *United States v Michigan* (1979, WD Mich) 471 F Supp 192.

§ 473a. Application to Alaska

Sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes," approved June 18, 1934 (48 Stat. 984) [25 USCS §§ 461, 465, 467, 468, 475, 477, and 479],

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 23, 1996 Dept. Affected: Public Safety
 Title: An Act relating to actions for state or municipal BRU: Fire Prevention
takings of private property Component: Fire Prevention Operations
 Sponsor: Representative Kohring
 Requestor: House Judiciary COMPONENT SERIAL NO. 0494

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | 25,432.3 | 25,432.3 | 25,517.8 | 25,432.3 | 25,432.3 | 25,517.8 |
| SUPPLIES | | | 7.5 | | | 7.5 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 |
| TOTAL OPERATING | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |

| | | | | | | |
|----------------|------------|------------|------------|------------|------------|------------|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|------------|------------|------------|------------|------------|------------|

| | | | | | | |
|--|---------|---------|---------|---------|---------|---------|
| CHANGE IN REVENUES () Revenue Code | <483.7> | <483.7> | <483.7> | <483.7> | <483.7> | <483.7> |
|--|---------|---------|---------|---------|---------|---------|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-----------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

The Division of Fire Prevention is a code enforcement agency which implements and enforces the Uniform Building Code and Uniform Fire Code.

These codes are enforced through a series of activities, including fire prevention inspections, which locate fire code violations and can lead to the closure of a building to human occupancy if serious violations are not corrected.

Prepared By: Kenneth H. Lea, Deputy Fire Marshal Phone: 465-5522
 Division: Fire Prevention Date: January 24, 1996
 Approved by Commissioner: *Ronald L. Otte* Date: 1/24/96
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

The Division locates and eliminates code violations prior to construction through a plan review process which assures that buildings are constructed in a manner consistent with the adopted codes; these include the review of architectural, electrical, mechanical and specialty shop drawings prior to construction.

If construction of a building is started prior to approval of plans, the project may be shut down by issuance of a stop work order.

No increase in funding is needed for field operations which would continue essentially unchanged. Additional costs associated with this bill would result from payments to owners, occupants, and contractors as a result of the provisions of this bill.

Sec. 34.50.110 The Division would be required to prepare a full analysis of the total economic impact of its proposed regulations prior to adoption. The Uniform Building Code (UBC) impacts all aspects of building construction. The Division does not have on staff a professional economist capable of determining the cost of a building built to the current edition of the UBC versus a building built according to some later edition of the code.

The number, size, type of construction, occupancy, height, location of the buildings are unknown as are such design decisions as the location of buildings on property or the topography of the building site. The implementation of the Uniform Building Code results in an indirect taking by limiting the use of property or requiring additional construction costs beyond that anticipated by the developer. Given the numerous design variables enumerated above plus the fact that the UBC is a performance standard which allows the designer maximum latitude in the selection of means of compliance, in all probability no meaningful figure could be developed.

This function would be required every third year, based on the code update cycle of the model codes, which are adopted by the Division.

Contractual funds would be required every third year. Based on a State of Alaska Economist III, in Juneau, the following cost was assumed.

Estimated cost: \$78,000

Sec. 34.50.120 and .150 Full compensation to parties deprived in part or in whole of their use and enjoyment of property through a "taking" must be reimbursed.

Fire prevention inspections routinely fall within the definition of a "taking" in that such action often results in a deprivation of use or value.

The value, reimbursable to the owner/occupant, was calculated as follows.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

The following assumptions were used based on three year averages of the above functions.

Inspections per year: 2,028

Violations per inspection: 5 to 10, average 7.5

Correction cost per violation: \$0 to \$500,000 (Large dollar value items are relatively rare, \$250 per item was assumed for this calculation).

Correction expense reimbursable to owners per year: \$3,802,500

Building closures per year: 12

Duration of closure: 1 day to permanent (Most closures last a maximum of 60 days). Cost to the property owner-loss of business, loss of rental income, loss of building (Varies considerably based upon the size of the building, the amount of business conducted in a building during a given year, and the extent of the closure; i.e. the Division tries to close only those portions of the building directly impacted by the unsafe condition) \$1,000 per day up to the value of the building which could be millions of dollars. Assumed \$1,000 per day for 30 days.

Losses reimbursable to owners and occupants: \$360,000

Note: The actual cost of such closures will ultimately be determined as a result of civil litigation. Additional substantial costs for attorneys fees and fee reimbursement to the prevailing attorneys are anticipated, but would be in a fiscal note for the Department of Law.

Sec. 34.50.160 A governmental agency would be prohibited from requiring an owner to provide plans, reports, or other information where the governmental agency places a restraint on private property use. The UBC limits or constrains how building may be constructed.

Plans are reviewed prior to construction. Plans are prepared following lengthy and involved discussions between the design team and the owner.

In as much as the Division could no longer require that plans be submitted by the owner, a second set of drawings, specifications, and calculations would have to be prepared as as-built drawings after the fact. This would require the presence of a design team on the construction sight for observational purposes and the subsequent review of their observations. Features constructed contrary to the code would be required to be corrected on a change order or retrofit basis to assure the fire and life safety of the building and its occupants.

The above observations and document preparation would closely parallel the function of the original design team. Their costs were used to estimate the cost of as-built drawing preparation was used for purposes of determining the cost of as-built drawings.

Plan reviews per year (including automatic fire suppression systems):
972

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

Construction documents typically cost 10-15% of the value of a project. The most recent statewide construction figure available was for FY 91, that year plans reviewed by the Division was for buildings representing \$203.3 millions. An average plan preparation cost was calculated at 12.5%.

Total contractual cost for preparation of design documents:
\$25,400,000

An additional unknown expense would most probably result from errors detected in the owner/occupants design assumptions. These would have to be corrected by the owner prior to occupancy of the subject building.

The actual figure could be expected to have increased beyond this level based on normally expected increases in construction costs and construction starts.

Stop Work Orders-73

Where construction has begun and is proceeding without prior plan review, construction is shut down until such time as code compliance can be verified. Costs incurred by the developer include labor costs, interest on construction loans, disruption of construction schedules and possible fees for late completion. Stop work orders tend to be on smaller projects, in as much as most larger firms are aware of and follow code requirements.

The use of stop work orders would change under this bill. Where it previously occurred where construction started without plan review, it would probably have to be used to stop work which was proceeding contrary to the UBC, thereby limiting the amount of construction which is improperly built and subject to abatement.

Work force idled: 1 - 5 workers; assume 2.5 workers.
Man hours lost per day: 8 to 12 hours per day, assume 10 hours per day. Cost per hour/per worker: \$20.00 (most small projects are not Union or Bacon-Davis projects).
Stop work duration: 1 day to 60 days; assume an average project hold of 5 days.

Cost of stop work orders: \$182,500

The Division currently collects a plan review fee which is deposited to the General Fund. This sum would no longer be collected under this bill.

Loss to the General Fund (FY 95): \$483,767

This loss must be made up from the General Fund to the sum of \$292,300. The program receipts received from the plan review function have been reappropriated to the Division for personal services (\$260.0) and contractual (\$32.3).

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

The Division would have to conduct business in radically different ways. Since most operations are conducted in compliance with Title 13 of the AAC, the regulations would have to be revised. The cost of our most recent regulations package, exclusive of personnel costs, was approximately \$15,000. This was evenly split between contractual (postage, advertising, reproduction costs, etc.) and supply (letter head, envelopes, code books, etc.).

Sec. 34.50.170 The State of Alaska is responsible for compensating municipalities for takings which they are required to perform by state law. The Division of Fire Prevention sets minimum state fire and life safety codes which other jurisdictions must meet as a minimum. An additional unknown financial liability would arise.

Sec. 9 of the bill now states that this act will not be retroactive, this will have no impact on the fiscal note previously prepared.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154 (Jud)

Revision Date: 27-Jan-96
 Title: Regulatory Takings
 Sponsor: Kohring
 Requestor: (H) Jud

Department Affected: Environmental Conservation
 BRU: All
 Component: _____

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | 191.5 | 201.5 | 211.5 | 221.5 | 231.5 | 241.5 |
| TRAVEL | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| CONTRACTUAL | 200,177.0 | 200,177.0 | 200,177.0 | 200,177.0 | 200,177.0 | 200,177.0 |
| SUPPLIES | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| EQUIPMENT | 15.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND&STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 200396.5 | 200391.5 | 200401.5 | 200411.5 | 200421.5 | 200431.5 |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE

| | | | | | | |
|-------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 120,237.9 | 120,234.9 | 120,240.9 | 120,246.9 | 120,252.9 | 120,258.9 |
| 1005 GF/Program Receipt | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1052 Oil Response | 80,158.6 | 80,156.6 | 80,160.6 | 80,164.6 | 80,168.6 | 80,172.6 |
| TOTAL | 200,396.5 | 200,391.5 | 200,401.5 | 200,411.5 | 200,421.5 | 200,431.5 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 3 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

Personal Services includes three positions: Environmental Specialist 3, Environmental Health Officer 3, and an Economist 2. This group would evaluate any proposed action to determine full costs to the public and identify alternatives. Both technical economic skills are needed.

Please see attached page.

Prepared by: Larry Jones *Larry Jones*
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 1/30/96

Approved by Commissioner: *[Signature]*
 Agency: Department of Environmental Conservation

Date: 1/30/96

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Fiscal Analysis CSHB 154 (Jud)

This legislation would require the Department of Environmental Conservation undertake three findings before adopting, amending or repealing any regulation or taking any action under a regulation:

Finding One. The proposal must be in response to real and substantial threats to the public health and safety, must be designed to significantly advance the purpose of health and safety and may not exceed the minimum action necessary to respond to the real and substantial threat.

Finding Two. Each proposal must be accompanied by a full analysis of the total economic effect of the regulation, amendment or repeal.

Finding Three. Each proposal must be accompanied by a full economic effect of all reasonable alternatives to that which is proposed.

The bill would prohibit the agency from adopting, amending or repealing a regulation that reduces the value of either personal or real property, or places a restraint on that property's use to achieve a public benefit unless the agency compensated the owner for the value lost or the property that could not be used, even if the government action is temporary (that is, the owner would get the full use of his property back). The state must also reimburse a municipality for the full costs of compensation if a municipal action governed by this legislation was the result of a state requirement, such as the I/M program.

An exemption to the requirement for compensation is where the regulation is necessary to avoid or correct a public nuisance. However, the economic analyses would still be required. Also, it appears a government agency order that resulted from a violation of law (which would include statutes, regulations, and permit stipulations) is not a government action. Because all of DEC's regulations and permit stipulations are based on statutory law, it is unclear if any DEC action to enforce those regulations would be a government action.

In any case, whether or not a "government action," the agency would have to pay for any plans, reports or other information used to adopt a regulation or place a restraint on private property use

It is difficult to assess the full economic impact to the department of this requirement. Presumably, DEC would have to pay for 1) contaminant monitoring by private water systems which stems from a federal requirement and are intended to ensure the safety of the drinking water; 2) emission testing of vehicles to meet the federal Clean Air Act requirements; 3) purchase and installation of best available control technology for stationary air emissions, again to meet federal Clean Air Act requirements; failure to meet those requirements would result in the loss of federal highway funds; 4) contingency plans required of oil shippers, storage facilities, and producers; 5) dike liners required for tank farms to contain a release; 6) Plans of Operation required of seafood processors; without this or a similar plan, exporting to Japan and Europe would cease, as would exports to other states by 1997 when the federal requirement for a similar plan takes effect; and 7) water quality monitoring of shellfish growing areas; without this

monitoring, shellfish cannot be sold interstate.

The estimate in the contractual line of our fiscal note is just that - an estimate and is intended to show primarily the costs for studies or reports such as those listed above, the costs of municipal implementation of DEC's programs or statutory requirements that fall under DEC's authorities.

We have also included \$77.0 to cover the costs of two assistant attorney generals in the Department of Law to assist the Department with challenges to the findings, determinations of whether or not a "taking" had occurred, and determinations of compensable values.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

Revision Date: 1/17/96 Dept. Affected: Office of the Governor
 Title: "An Act relating to actions for state or municipal
takings of private property or for certain violations; relating to state..." BRU: Office of Management & Budget
 Sponsor: Representatives Kohring, Rokeberg, Kott, Kelly, Component: Governmental Coordination
 Requester: House Judiciary COMPONENT SERIAL NO. 18

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 100 | FY 01 | FY 02 |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 64.2 | 66.4 | 68.3 | 70.3 | 72.6 | 75.1 |
| TRAVEL | 8.4 | 8.4 | 8.4 | 8.4 | 8.5 | 8.5 |
| CONTRACTUAL | 49.2 | 49.2 | 49.2 | 49.2 | 49.3 | 49.3 |
| SUPPLIES | 1.0 | 1.0 | 1.0 | 1.0 | 1.1 | 1.1 |
| EQUIPMENT | 14.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 6,600.0 | 6,600.0 | 6,600.0 | 6,600.0 | 6,600.0 | 6,600.0 |
| TOTAL OPERATING | 6,737.3 | 6,725.0 | 6,726.9 | 6,728.9 | 6,731.5 | 6,734.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|--------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 6,737.3 | 6,725.0 | 6,726.9 | 6,728.9 | 6,731.5 | 6,734.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 6,737.3 | 6,725.0 | 6,726.9 | 6,728.9 | 6,731.5 | 6,734.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 1 | 1 | 1 | 1 | 1 | 1 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Sec. 6 of the bill adds requirements to AS 34.50.110 that restrict government action. This addition requires that whenever a governmental entity prepares regulations it must include a statement that contains a full analysis of the total economic effect of the regulation and an identification of the manner in which the proposed regulation will substantially advance the purpose of protecting public health and safety. The Division has determined that the most efficient means to meet the new requirement would be to contract with an economic consultant. The consultant would prepare the statement and analysis required under AS 34.50.110. The fiscal impact to the Division is based on the average of three regulatory projects per year that would require one week of an economic consultant's time per project. The inflation rate is based on current revenue forecasts.

Sec. 6 of the bill adds requirements to AS 34.50.120 that specify that a governmental entity may not take action that results in a taking of private property unless the governmental entity pays full compensation for the taking to the owner of the private property. As a part of determining whether a project is consistent with the Alaska Coastal Management Program, the Division routinely places conditions on consistency determinations to ensure that the standards of the ACMP (6 AAC 80) and the enforceable policies of district coastal management

Prepared by: Diane Mayer *Diane Mayer* Phone: 465-3562
 Division: Governmental Coordination Date: 1/30/96
 Approved by Commissioner: Jim Ayers, Chief of Staff *Jim Ayers* Date: _____
 Agency: Office of the Governor

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programs are met. The Division database does not currently maintain data that provides exact numbers of all projects affecting private property where conditions that could be considered a "taking" are imposed. Therefore, the following analysis provides an estimate of costs to the Division to meet this new requirement.

To estimate costs for this fiscal note, the Division utilized data concerning consistency reviews for projects in wetlands, which are often privately owned. Wetlands projects can also include tidelands, which are owned by the State, but since there are other projects on private lands that do not include wetlands where we do not have specific data, we are using the number of wetlands projects as an estimate. During FY 95, the Division conducted 164 project reviews that required wetlands permits. Of these review, 67% (or 110 projects) contained conditions in the final consistency determinations. Although some of the conditions contained in the determination may not constitute a "taking" under this bill, the projects that contained stipulations are used as an estimate to determine costs of complying with this proposed legislation.

Also lacking is easily obtainable data on the number of acres involved in each project and the location of the projects. While this information is contained in our review files, a laborious hand-search would be required to get specific information. Also, even if we obtained this information, our files do not contain information on the value of the wetlands. As such, the potential cost to the Division to compensate for a taking is very difficult to ascertain.

For purposes of estimate only, we have assumed that each wetlands fill project involves an average of 2 acres of fill, and that stipulations placed on these acres could constitute a taking as defined by this bill. Further, we acknowledge that there will be enormous variability in the value of property based on location and site-specific characteristics, but will use an average land value of \$30,000/acre. Therefore, under these assumptions, the cost to the Division to compensate for takings as a result of stipulations contained in consistency determinations would be \$6,600,000 annually.

In order to coordinate all the additional work required to address takings issues, the Division estimates the need for a full-time Range 20 staff person and associated costs to oversee the additional tasks associated with meeting the requirements of this legislation. Included in the costs for a full-time staff person are monthly trips to Anchorage to attend multi-agency project meetings; review project files, or conduct site visits. Anchorage is selected as a representative location of average travel costs. While it is likely some of the Division's action may end up in litigation, we have not included additional costs for attorney services, assuming that the Department of Law is addressing this potential cost separately.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB154(C&RA)

Revision Date: 15-Jan-96 Dept Affected: Natural Resources
 Title: Regulatory taking of private property BRU: Resource Development
 Component: Forest Mgmt. & Development
 Sponsor: Representative(s) Kohring, Rokeberg, Kott
 Requestor: _____ Component Serial No. 435

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|-------------------------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 200,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 200,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 200,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 200,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 | 40,000.0 |

Estimate of any current year (FY96) cost: \$ None

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED.

Prepared by: Tom Boutin, Director Phone: 485-3379
 Division: Forestry Date: 15-Jan-96
 Approved by Commissioner: [Signature] Date: 15-Jan-96
 Agency: Natural Resources

**ATTACHMENT FOR
FISCAL NOTE CSHB154(CRA)
April 28, 1995**

Sec. 34.50.250(a) defines taking in terms such that the provisions of the Alaska Forest Resources and Practices Act as revised in 1990 requiring private landowners to leave 66 foot buffers along certain defined waterbodies (AS 41.17.116) would now be considered a taking.

AS 41.17 as now written and enforced by this agency provides for a process of selective removal of many of the most valuable trees within these 66 foot buffers, however 90 percent or more of all trees within these buffer areas on hundreds of miles of protected waterbodies on private lands throughout the state remain standing. The harvest of these trees is now prevented by AS 41.17. The estimated value of these trees to the private landowners, who are primarily native village and regional corporations, would be in the hundreds of millions of dollars at today's prices.

EXAMPLE OF IMPACT

Sec. 34.50.250(9)...Buffer Zones

Last year an ANCSA village corporation, Klawock Heenya Corporation, told the board of forestry that they had left an estimated \$20 million worth of standing timber in the 66 foot riparian buffers required by AS 41.14.116 on Type A water bodies. Village corporations received 23, 040 acres. Regional corporations like Sealaska received hundreds of thousands of acres. Forestry has received advice that the variation process (AS 41.17.087) in which any tree can be logged if doing so would not cause significant harm keeps the requirement to leave trees standing from being a taking. Our guess would be that if HB154 were enacted and signed into law the requirements which would protect fish habitat and water quality would continue to be in law. For example, the 10 habitat components in AS 41.14.115 would still be the test for determining which trees can be removed from buffers. However, if the state had to pay for those trees the value of the trees would certainly run into hundreds of millions of dollars.

FISCAL IMPACT OF CSHB154(CRA)

The fiscal impact of implementation of this legislation is difficult to determine, however, it is anticipated that the cost to the agency will be in the hundreds of millions of dollars. We estimate the first year cost of the bill to be approximately \$200 million dollars to cover compensation for existing buffers, and the estimated cost to be incurred over the out-years to be approximately \$40 million per year.

Sec. 34.50.110(6) states "the source of all compensation is the budget of the governmental entity that took the action that resulted in the taking." The language is not entirely clear, however, this appears to imply that this becomes a viable purpose for

money normally appropriated within the agency's operating budget. The operating budget would first fund the purposes of this bill, then fund regular operating programs. The Forestry operating budget is approximately \$7.6 million dollars, which includes funding for timber sales, Forest Practices Act and fire pre-suppression. If the existing operating dollars were required to fund the purposes of CSHB154(CRA), there would essentially be a shut-down of business, with no funding left for timber sales, forest practices or fire pre-suppression. Furthermore, an estimated additional \$40 million would be required to fund this bill on an annual basis.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(CRA)

Revision Date: _____ Dept. Affected: Public Safety
 Title: Regulatory Taking of Private Property BRU: Fire Prevention
 Component: Fire Prevention Operations
 Sponsor: Representative Kohring
 Requestor: House Judiciary COMPONENT SERIAL NO. 0494

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | 25,432.3 | 25,432.3 | 25,517.8 | 25,432.3 | 25,432.3 | 25,517.8 |
| SUPPLIES | | | 7.5 | | | 7.5 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 | 4,345.0 |
| TOTAL OPERATING | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| CHANGE IN REVENUES () Revenue Code | <483.7> | <483.7> | <483.7> | <483.7> | <483.7> | <483.7> |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-----------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 30,037.3 | 30,037.3 | 30,130.3 | 30,037.3 | 30,037.3 | 30,130.3 |

Estimate of current year (FY 95) impact: \$ _____

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)
 See the attached, pages 1 - 4.

Prepared By: Kenneth H. Lea, Deputy Fire Marshal Phone: 465-5522
 Division: Fire Prevention Date: January 18, 1996
 Approved by Commissioner: *Ronald L. Otte* Date: 1/18/96
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: January 18, 1996

Dept. Affected: Public Safety

ANALYSIS CONTINUED:

The Division of Fire Prevention is a code enforcement agency which implements and enforces the Uniform Building Code and Uniform Fire Code.

These codes are enforced through a series of activities including fire prevention inspections which locate fire code violations and can lead to the closure of a building to human occupancy if serious violations are not corrected.

The Division locates and eliminates code violations prior to construction through a plan review process which assures that buildings are constructed in a manner consistent with the adopted codes; these include the review of architectural, electrical, mechanical and specialty shop drawings prior to construction.

If construction of a building is started prior to approval of plans, the project may be shut down by issuance of a stop work order.

No increase in funding is needed for field operations which would continue essentially unchanged. Additional costs associated with this bill would result from payments to owners, occupants, and contractors as a result of the provisions of this bill.

Sec. 34.50.120 The Division would be required to prepare a full analysis of the total economic impact of its proposed regulations prior to adoption. The Uniform Building Code (UBC) impacts all aspects of building construction. The Division does not have on staff a professional economist capable of determining the cost of a building built to the current edition of the UBC versus a building built according to some later edition of the code.

The number, size, type of construction, occupancy, height, location of the buildings are unknown as are such design decisions as the location of buildings on property or the topography of the building site. The implementation of the Uniform Building Code results in an indirect taking by limiting the use of property or requiring additional construction costs beyond that anticipated by the developer. Given the numerous design variables enumerated above plus the fact that the UBC is a performance standard which allows the designer maximum latitude in the selection of means of compliance, in all probability no meaningful figure could be developed.

This function would be required every third year, based on the code update cycle of the model codes, which are adopted by the Division.

Contractual funds would be required every third year. Based on a State of Alaska Economist III, in Juneau, the following cost was assumed.

Estimated cost: \$78,000

Sec. 34.50.130 and .160 Full compensation to parties deprived in part or in whole of their use and enjoyment of property through a "taking" must be reimbursed.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: January 18, 1996

Dept. Affected: Public Safety

Fire prevention inspections routinely fall within the definition of a "taking" in that such action often results in a deprivation of use or value.

The value, reimbursable to the owner/occupant, was calculated as follows.

The following assumptions were used based on three year averages of the above functions.

Inspections per year: 2,028

Violations per inspection: 5 to 10, average 7.5

Correction cost per violation: \$0 to \$500,000 (Large dollar value items are relatively rare, \$250 per item was assumed for this calculation).

Correction expense reimbursable to owners per year: \$3,802,500

Building closures per year: 12

Duration of closure: 1 day to permanent (Most closures last a maximum of 60 days). Cost to the property owner-loss of business, loss of rental income, loss of building (Varies considerably based upon the size of the building, the amount of business conducted in a building during a given year, and the extent of the closure; i.e. the Division tries to close only those portions of the building directly impacted by the unsafe condition) \$1,000 per day up to the value of the building which could be millions of dollars. Assumed \$1,000 per day for 30 days.

Losses reimbursable to owners and occupants: \$360,000

Note: The actual cost of such closures will ultimately be determined as a result of civil litigation. Additional substantial costs for attorneys fees and fee reimbursement to the prevailing attorneys are anticipated but would be in a fiscal note for the Department of Law.

Sec. 34.50.170 A governmental agency would be prohibited from requiring an owner to provide plans, reports, or other information where the governmental agency places a restraint on private property use. The UBC limits or constrains how building may be constructed.

Plans are reviewed prior to construction. Plans are prepared following lengthy and involved discussions between the design team and the owner.

In as much as the Division could no longer require that plans be submitted by the owner, a second set of drawings, specifications, and calculations would have to be prepared as as-built drawings after the fact. This would require the presence of a design team on the construction sight for observational purposes and the subsequent review of their observations. Features constructed contrary to the code would be required to be corrected on a change order or retrofit basis to assure the fire and life safety of the building and its occupants.

The above observations and document preparation would closely parallel the function of the original design team. Their costs were used to

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

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Dept. Affected: Public Safety

estimate the cost of as-built drawing preparation was used for purposes of determining the cost of as-built drawings.

Plan reviews per year (including automatic fire suppression systems):
972

Construction documents typically cost 10 - 15% of the value of a project. The most recent statewide construction figure available was for FY 91, that year plans reviewed by the Division was for buildings representing \$203.3 millions. An average plan preparation cost was calculated at 12.5%.

Total contractual cost for preparation of design documents: \$25,400,000

An additional unknown expense would most probably result from errors detected in the owner/occupants design assumptions. These would have to be corrected by the owner prior to occupancy of the subject building.

The actual figure could be expected to have increased beyond this level based on normally expected increases in construction costs and construction starts.

Stop Work Orders-73

Where construction has begun and is proceeding without prior plan review, construction is shut down until such time as code compliance can be verified. Costs incurred by the developer include labor costs, interest on construction loans, disruption of construction schedules and possible fees for late completion. Stop work orders tend to be on smaller projects, in as much as most larger firms are aware of and follow code requirements.

The use of stop work orders would change under this bill. Where it previously occurred where construction started without plan review, it would probably have to be used to stop work which was proceeding contrary to the UBC, thereby limiting the amount of construction which is improperly built and subject to abatement.

Work force idled: 1 - 5 workers; assume 2.5 workers.

Man hours lost per day: 8 to 12 hours per day, assume 10 hours per day.
Cost per hour/per worker: \$20.00 (most small projects are not Union or Bacon-Davis projects).

Stop work duration: 1 day to 60 days; assume an average project hold of 5 days.

Cost of stop work orders: \$182,500

The Division currently collects a plan review fee which is deposited to the General Fund. This sum would no longer be collected under this bill.

Less to the General Fund (FY 95): \$483,767

FISCAL NOTE

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This loss must be made up from the General Fund to the sum of \$292,300. The program receipts received from the plan review function have been reappropriated to the Division for personal services (\$260.0) and contractual (\$32.3).

The Division would have to conduct business in radically different ways. Since most operations are conducted in compliance with Title 13 of the AAC, the regulations would have to be revised. The cost of our most recent regulations package, exclusive of personnel costs, was approximately \$15,000. This was evenly split between contractual (postage, advertising, reproduction costs, etc.) and supply (letter head, envelopes, code books, etc.).

FISCAL NOTE

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

BILL NO. CS HB154(CRA)

Revision Date: _____ Dept. Affected: Revenue
 Title: Regulatory Taking of Private Property BRU: ALL
 Component: ALL
 Sponsor: Ieps. Kohring, Rokeberg, Kott
 Requester: (H)JUD COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 70.0 | 70.0 | 70.0 | 70.0 | 70.0 | 70.0 |
| TRAVEL | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| CONTRACTUAL | 30.0 | 30.0 | 30.0 | 30.0 | 30.0 | 30.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 110.0 | 110.0 | 110.0 | 110.0 | 110.0 | 110.0 |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|------------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 110.0 | 110.0 | 110.0 | 110.0 | 110.0 | 110.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | | | | | | |

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|----|----|----|----|----|----|
| FULL-TIME | *1 | *1 | *1 | *1 | *1 | *1 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Finite costs for the enactment of CS HB 154(CRA) are difficult to determine. Based upon the Departments estimate of 8-10 regulation projects/year and the requirements of 34.50120a., increased staff time would be required to research and prepare the required statement. An increase in the number of hearings is anticipated. The Bill appears to provide for a citizen to request a regulation adjustment, and that the request be granted by the agency, unless the agency can provide proof that the request should not be granted. There is no burden upon the individual to justify the request. Potentially, the burden would fall upon this Department to prove to oil companies that existing tax regulations do not "take" more than statutes authorize; that Child Support Enforcement actions are authorized in all cases and garnishment is legal; that income lost as a result of not allowing liquor to be sold in a location that sells pull tabs is not reimbursable; that garnishment of a PFD is not reimbursable; and that ABC Board regulatory actions should not incur fiscal liability. This Department believes that CS HB154(CRA) as written is onerous and oppressive, and in its broad scope will inhibit fair and equal application of existing regulations, and will deter implementation of regulations supporting new Statutes. This regulation is not limited to the seizure of "real property," but, as drafted would include personal property such as Permanent Fund Dividend's or bank accounts.

Personal Services: 1 Range 21 Regulation Specialist (* Minimum anticipated)

Travel: Additional Board meetings/Investigatory travel (additional funding may be required)

Contractual: Additional Public Hearings/publications (additional funding may be required)

Prepared by: Bob Baratko Phone: 465-2312
 Division: Administrative Services Date: 4/28/95
 Approved by Commissioner: Deborah Vogt Date: 4/28/95
 Agency: Department of Revenue

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REPRESENTATIVE VIC KOHRING
DISTRICT 26

MEMORANDUM

April 15, 1996

To: Rep. Brian Porter
Chair, House Judiciary

From: Vic Kohring

Subject: CS for House Bill 154

Per your request, I have outlined the changes to the new version of House Bill 154, my "regulatory takings" legislation.

1. Replaced language for "governmental entities" with "state regulatory agency". This removes boroughs, municipalities and cities from the government agencies to which this legislation would apply.
2. Replaced "government action" with "permit, certification, approval, or other authorization required for proposed land use". This removes the vague wording in the previous version.
3. Changed the "time for bringing action" from five the three years.
4. Changed the compensation value to fair market value. This removes the ability for an appraiser to submit an deflated appraisal. This also removes speculative suits for proposed uses, since fair market value is based on current area composition.
5. Removed "forest products" from the definition of real property. This removes the annual permitting for timber buffer zones from being effected.

6. Changed the loss in value threshold from 20% to 30%.
7. The section titled "Principles for Government Action" has been removed. This section said that assertions of threats to public health and safety were not enough to justify a taking.
8. The section titled "Inaccessible Property" has been removed. This section said that compensation had to be paid for a loss of access that created a loss in value of more than 20%. This means
9. The section titled "Adjustment of Value for Property Tax" has been removed. This section said that municipalities must adjust the valuation of the property for taxation purposes. Under the new version, a person will be allowed to appeal the tax valuation using existing methods.

I believe this new version of HB 154 answers all concerns previously brought forth during public testimony. The claim that litigation will flourish is unfounded. Of the four states that have enacted takings legislation with compensation, there has been only one lawsuit.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 154

Page 5, line 4 after "property"

Insert ", unless the action is necessary to avoid or correct a public or private nuisance"

Page 5, line 7 after "property"

Insert ", unless the action is necessary to avoid or correct a public or private nuisance"

fails

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 154

Page 5, line 5

Delete "30"

Insert "60"

Failed



PHOTO BY T. KOHRING FOR ANCHORAGE DAILY NEWS

The Gaylor, Jeannie Simpson and Stevie Simpson

es into new digs

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 February...
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 the house from Habitat, part of an...
 international group that sponsors home...
 building for low-income families...
 Habitat families pay rent when they...
 move in, while they save for a down...

Bill fuels land-use debate

Anti-regulation law costly, critics warn

By STEVE RINEHART
 Daily News reporter

If the state refused to let loggers cut trees next to a salmon stream, should it pay for the trees left standing?

If a city council told a landowner not to build a fast-food restaurant in a residential neighborhood, should the government have to pay her for the lost land value?

If a borough government told waterfront landowners they could not build on the edge of a lake because that would spoil the view for everyone, should they be reimbursed for the lost use of their land?



Kohring

The answers are yes, yes and yes, according to Rep. Vic Kohring, freshman Republican from Wasilla and author of a proposed law to require the government to pay landowners when regulations significantly diminish the value of their property. Government regulation has systematically eroded people's rights to use their property as they desire, he said.

The answers are no, no and no, according to critics, who worry that such a law could tie the government in knots and pit neighbors against each other.

Kohring's bill, HB 154, has brought Alaska into a nationwide debate about property rights and government regulations. The issue grabbed a high profile as part of congressional Republicans' "Contract With America" last year, but so-called "regulatory takings" laws have been introduced in dozens of state legislatures in recent years and have passed in several.

In one of the most publicized cases, the Washington Legislature passed a takings law, only to have voters dump it with a referendum last fall.

The fate of the Alaska proposal is uncertain. It didn't get very far when

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The fate of the Alaska proposal is uncertain. It didn't get very far when introduced last year, but has drawn 10 more co-sponsors this session, for a total of 11, mostly from the Republican majority. As it gains momentum, it also has



Kohring

1, Debbie Gaylor, Jeannie Simpson and Stevie Simpson

Titles into new digs

last summer. The Gaylors active in the community, Gaylor, 37, was elected vice president of the Mountain View Commu-

around here now," said Gaylor, 38. "I've only heard one of the last two or three

lor said the streets feel at the govt walking with- d Baron, the Notwellers ard in a job in the yard, including children Billy ean.

moved into the new four-bedroom ranch-style house on Thompson Avenue last February.

A year later, they are about to close on a no-interest mortgage loan to buy the house from Habitat, part of an international group that sponsors home-building for low-income families.

Habitat families pay rent when they move in, while they save for a down payment and other closing costs.

In the case of the Gaylors, unexpected medical crises slowed them, said their

Please see Page B-2, HABITAT

Salvage logging puts
Northwest plan in peril

gotten attention from critics.

For example, local government officials warn that it could make local building codes and land-use laws practically unenforceable. The state forester said it could devastate the forest practices act — a state law that prohibits most logging next to streams to protect salmon runs. The attorney general's office said it opens the door to endless and unforeseen financial claims against the state.

The costs would not become clear until years of lawsuits, the attorney general told the Legislature. But here's one measure of the potential cost: Just paying for the timber left standing in streamside logging buffers could cost \$40 million a year, the Division of Forestry estimated.

State Forester Tom Boutin said that estimate was based on timber prices and the known length of stream buffers. The figure could change, he said, depending on amendments to Kohring's bill.

At such a cost, critics warn, it would be virtually impossible for state and local government agencies to enforce regulations. That's just what the bill's sponsor says he is looking for.

"I hope to blunt regulation," Kohring said.

"Frankly I think the agencies are opposed to this is because it takes away a lot of their power," he said. "It would inhibit their ability to exercise control over the public."

But the agencies are an arm of the public, enforcing the public's laws, counters Sara Hannon of the Alaska Environmental Lobby. "My contention is this is a democracy, and people should decide. Mostly, we have decided we should regulate for the collective good."

Kohring says his bill would allow governments to regulate obvious nuisances, like keeping chemical plants out of neighborhoods. But if the Kenai Peninsula Borough decides — as is being discussed — to restrict certain kinds of development within 50 feet of the Kenai River, then the public should pay the property owners for the lost value of their land, Kohring said.

The salmon are a public resource; protecting them should be a public cost, he said.

Yet, in that example, the landowners would also benefit from riverside habitat protection, Rep. David Finkelstein, D-Anchorage, rejoined during a recent Judiciary Committee hearing. The salmon runs would be healthier, recreational use would increase and riverfront property values would rise.

Kohring's office produced a list of people who had testified for the bill or called to complain about various regulations, especially from wetlands protection to restrictions on home building in

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"My contention is this is a democracy, and people should decide. Mostly, we have decided we should regulate for the collective good."

— Sara Hannon of the Alaska Environmental Lobby

avalanche hazard zones. An example Kohring points to is lakeshore landowners whose property development is limited by Matanuska-Susitna Borough's 75-foot shoreline setback law.

The lakeside buffer allows docks and moorings, for example, but not habitable dwellings, houses or garages. It is intended to protect lakeshore habitat and the view, according to Ken Hudson, the borough's code compliance chief.

Big Lake homeowner Doyle Currier, who testified for the bill, said he thinks it's wrong to be taxed on that portion of his shoreline property that he can't use freely. He called it "government at it's worst," and said he is enlisting property owners in a letter-writing campaign against the setback rule.

The setback went into effect in 1973, Hudson said. The Mat-Su Borough Assembly narrowed the lakeside buffer to 45 feet in 1986, he said. Soon after, residents launched a petition drive to overturn the Assembly's action. At a special election the following year, voters put a 75-foot buffer law back on the books.

"This was the public telling the borough government to put (the buffer) back in place," he said. "It seems odd to me that this example would be chosen as a poster boy."

According to Hudson, many people believe the requirement enhances property values. He said he hears more complaints about violations of the setback than about the setback itself.

Judiciary Chairman Brian Porter, a Republican and former Anchorage Assembly member, said he's heard many stories about property owners running afoul of government regulations. But some complaints have to do with federal law, some are governed by court rulings, and others

HABITAT: Family gets on feet in ne

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are purely local. "I am coming to the conclusion there is not a single answer," he said.

"It is one of those great-sounding bills until you get into it," he said. "Then it becomes a real quagmire of complexity."

Porter said his committee is trying to address a number of legal questions raised by the bill, before forwarding it to the Finance Committee.

Judiciary member Al Vezey, a North Pole Republican, said he supports Kohring's bill but thinks it may be too complex to get through the Legislature this year.

In addition to Vezey, co-sponsors include Republicans Eldon Mulder, Norm Rokeberg, Terry Martin and Ramona Barnes, all of Anchorage, Scott Ogan of Palmer, Pete Kelly of Fairbanks, Gary Davis of Soldotna, Pete Kott of Eagle River, Jeannette James of North Pole and Richard Foster, a Democrat from Nome.

Like some city officials, Porter said he's concerned about the bill's effect on local zoning laws and neighboring property owners.

Kohring said his bill would not affect current city or borough zoning. But governments could not place additional restrictions on property, for instance designating commercial land as residential land, without paying the landowners for their lost property value. The bill sets a threshold; if the land value declines by more than 20 percent, the government would have to pay.

This ignores a fact of Alaska life, municipal officials said: growing population and changing land-use patterns. With growth comes property conflicts, Kenai Peninsula Borough Attorney Tom Boedecker said. But under Kohring's bill, local government could not sort out the land uses with new zoning laws.

Jon Isaacs, local representative of the American Planning Association, said land-use laws try to balance competing property rights. He gave this example, drawn from his experience as a member of the Anchorage city platting board: allowing a gravel pit in South Anchorage would benefit the pit owner while at the same time lowering property values for the surrounding neighbors.

Vezey also chose a gravel pit for an example. In his view, the public should pay the pit owner if the public decides it does not want a gravel pit in the neighborhood.

Both Isaacs and Boedecker said they found merit in Kohring's goal, reducing regulation. The government should have clear, defensible reasons for limiting the use of property, they said, but this bill is overkill.

"If there was no problem, people would not be so heated up about it," Boedecker said. "But is this bill the solution, or will it create a new problem?"

damaged in v

Fire damaged two second floor of a b Quality Litho Print warehouse district Street off Internat Road, Anchorage officials said. Batt Bullock said he di extent of damage fire, which was re p.m. Sunday, beca were still on the j occupies most of t Jim Hogan rents apartment on the his son and a frie dinner when his s Hogan said. The f apartment, and th flames, he said. " very thick smoke Hogan. "That wa

Indian affair sentenced i

JUNEAU — The Indian Affairs' been sentenced t on a drunken dr Juneau District Froehlich gave Cesar, a sentenc what most first. As part of a ple pleaded no cont alcohol-breath dismissal of a d charge, a cap of term and a \$400 he imposed the Cesar, 54, cause that could have killed the two v car. Cesar's ref alcohol-breath harsher sentenc

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Family gets on feet in neighborhood



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

ALASKA ENVIRONMENTAL LOBBY OPPOSES HB 154

Private property rights are protected by the foundations of our government (Federal and State Constitution) and over 200 years of judicial precedent and procedure. From the beginning of governing, decisions are made to balance the rights of one land owner with the rights of their neighbors, and the overall responsibility to their community. Land use must be regulated in a balanced, fair, and deliberative manner for the collective interest. If we are failing to protect the guaranteed rights of citizens and their property, we are not the free world democracy we claim to be and we should correct this.

HB 154 is not a solution to any demonstrated problem. It is an overreaching piece of legislation that **ensures government programs will be less efficient and more costly**. Instead of improving government, it will add a new layer of bureaucracy, cost local governments millions, and the State government billions of dollars. It will render useless the standards that ensure we all have clean air and water, that raw sewage is not discharged, that the food we eat is uncontaminated, that we have safe working conditions, healthy fish stocks, and comfortable neighborhoods in which to live.

The advocates of this legislation will claim, it doesn't prevent the government from regulating these behaviors, the government just has to pay the property owner for restricting their use. Who is this anonymous government? It is us!

SO, if your community decided that certain types of businesses are not appropriate in certain locations, could your neighbors asserts, that this restriction prohibits their use of their land as they want? In the April 20, 1995 memo from Rep. Kohring to Rep. Austerman, the question of "who decides what is the most profitable use of the land?" "the most profitable use of any property be it real or personal is best decided by the person who owns it." If I decide the best use of my land is a bar or liquor store, in your neighborhood, can I assert that the government can not keep me from opening my business, unless they pay for my lost future revenue? What about shutting down my currently operating bar, when the community

decides it should go dry? What about my porn shop? What about my toxic waste disposal site?

In the letter from Craig Tillery, Asst. AG to this committee, dated January 26, 1996, "under CSHB 154, any restraint on use of private property as a result of government action, no matter how small or temporary and regardless of its reasonableness or of the owner's expectations, is a taking". Consider just how costly this will be. There will be assessment costs, litigation fees and the staggering cost of compensating property owners who claim a "taking". Our state agencies would need to hire legions of additional attorneys and then come up with the money to pay thousands of claims. **When there is a manifest need for government to be more efficient and less costly, this is movement in the wrong direction.**

HB 154, if enacted, will negate important health, safety and environmental standards by making it too expensive for State agencies to enforce them. It is more efficient (cheaper, faster) to prevent problems than to correct them. If we do not continue to regulate sewage, hepatitis A will spread faster and farther than it already has. If we do not protect our anadromous streams our salmon industry will be devastated. If we do not continue to regulate industry, we will have toxic waste sites in our neighborhoods.

HB 154 is a draconian solution to a problem that exists mainly in the minds of land developers. Proponents of this bill try to embrace the public by presenting themselves as the grand protectors to the individual, but **it is the individual Alaskan who will be harmed if this passes.** Those who are protected and profit will have as their goal personal profit, not public health and safety.

There is a system in place for citizens to appeal decisions made by State Agencies. The Alaska Court System handles civil actions if an individual decides to sue the State. **If these current systems do not work we should fix them.** But, if isolated cases do not resolve the way the proponent would like it to, we should review the facts, not redo the entire system. **There are remedies for citizens who are unjustly mistreated by the government.**

Some environmental advocates have actually asserted I should support this legislation. More environmental victories come out of courtroom juries by our peers, then in front of policy makers we disagree with. From all the legal expertise I've heard about this bill I assume that there would be many "New York Lawyers" that would be happy to come defend my property

- rights against the encroaching developers moving in to my former quiet corner of the Kenai Peninsula. I think this is the wrong approach.

Let's strive for efficient, user-friendly government. Alaska is a diverse place, with diverse needs that must be balanced. Local governments struggle regularly to balance the rights of individual property owners against the collective good of the community. If my neighbor decides to build a junkyard next-door, that certainly decreases my property value and poses a serious safety hazard for my children. Do we then pay the junkyard builder not to build? Do we pay polluters not to pollute? The shape and growth of every community rightly belongs to that community, not to one dissatisfied property owner within it.

We all live downstream, downwind or next-door to property where pollution and other harmful activities have been restrained to protect *all* of our property values and our collective interest in safe, healthy and enjoyable communities.

2/2/96

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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January 26, 1996

Rep. Brian Porter
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: HB 154

Dear Representative Porter:

At the January 19, 1996 House Judiciary Committee hearing on CSHB 154, you requested the Department of Law to provide a written summary of the primary concerns it expressed at that hearing. This letter responds to that request, using the "R" version of the bill adopted by the committee as the basis for these comments.

Our starting point for analysis is that CSHB 154 substantially broadens the potential liability for the State and municipalities with respect to alleged "regulatory takings." Most significantly, the United States and Alaska Constitutions provide for a "per se" taking only where all or virtually all use of private property is restricted by governmental action. In cases of lesser restriction, constitutional law requires the court to conduct an analysis of the character of the governmental action, the economic impact on the private property and the interference with reasonable investment expectations, in order to determine whether a taking occurs. In contrast, under CSHB 154 any restraint on use of private property as a result of government action, no matter how small or temporary and regardless of its reasonableness or of the owner's expectations, is a taking per se.

In addition, CSHB 154 includes repeals of regulations and ordinances within the ambit of actions which may give rise to a takings claim, while the constitutions do not. Constitutionally, no "right to be regulated" has been established; CSHB 154 establishes such a right. Finally, in a constitutional takings claim there is an exception for public and private nuisance; under CSHB 154 there is an exception only for public nuisances and even that exception appears to be negated by other provisions.

The effect of these differences is to substantially broaden the scope of potential takings claims against the State and municipalities. The extent of the state's exposure will presumably be addressed in agency fiscal notes. However, the broad and ambiguous language in the bill which describes what is compensable means that any analysis of impacts is at best a guess and only after years of protracted litigation would the full extent be known. By way of example, the State of

example, the State of Washington recently considered a "regulatory takings" bill which, though not as broad in scope as CSHB 154, contains many similarities to this bill. There was much debate in Washington as to the extent of the potential liabilities, and an independent analysis by the University of Washington concluded that the range of potential liability for local governments in Washington state was between \$3.8 billion and \$11 billion for compensation and \$300 million and \$1 billion for the cost of economic impact analysis required by the proposed Washington statute. Similar uncertainty is likely to attend the proposed Alaska legislation.

One significant ambiguity in the bill is the extent to which future restraints based on existing laws are compensable. CSHB 154 is clearly not retroactive, and thus prior restraints are not compensable. For example, with respect to the timber buffer zone requirement it is clear that the inability to log trees within the statutory buffer zone last year is not compensable. What is less clear is whether a renewed effort to log those same trees next year, which is denied based on the presently existing regulatory scheme, is compensable. Under the broad language of the statute such compensation is apparently required. This is because the proposed bill predicates liability not on the legal basis of the action restraining the use of private land, but rather on the governmental action denying that use.

In addition to concerns over the breadth and potential expense of the proposed bill there are significant legal concerns with the way in which specific provisions work. The most significant of those will be discussed below in the order they appear in CSHB 154.

AS 34.50.110 This paragraph prohibits adoption, reform or repeal of a regulation relating to private property unless the regulation has the least possible effect on the private property, supported by a complete analysis of the economic effects and the public purposes. Such effects would be expensive and difficult to quantify in many instances. In Washington state, a similar proposed requirement was estimated to cost state and local governments between \$500 million and \$2.2 billion per year. This may result in the abandonment by the agencies of efforts to amend or repeal regulations.

Similarly, the requirements of this section would make other regulatory actions, such as fishery allocation decisions, much more cumbersome and could impact decision where values other than economics are at stake, such as allocations between commercial and sport fishermen.

Finally, subsection (a) refers to real and personal property while subsection (b) is limited to real property. While this may be intentional, it appears to be an inconsistency.

AS 34.50.150 This provision requires that "in addition to the full compensation", if a "taking" deprives the owner of access to property, alternate access must be provided. The loss of access has already been compensated through full compensation; therefore, providing alternate access gives the property owner a double recovery. Also, this proposed provision is ambiguous as to whether alternative access is required where any portion of access or type of access is deprived,

or only where all access is deprived.

AS 34.50.160 This provision prohibits an agency from requiring a property owner to submit plans, studies, and so forth, for use in the agency's decisions that may impose a restraint on the use of private property. This would substantially increase the difficulty of conducting certain longstanding government activities. For example, issuance of building permits by a municipality may be effectively eliminated since it would not be possible to require submission of plans or blueprints. In another instance, under AS 16.05.870, the ADF&G may not approve activities which impact an anadromous fish stream unless the plans and specifications of the activities are adequate to demonstrate that fish and game will be protected. Similarly, under AS 16.10.010, DEC may not lawfully be able to issue permits relating to salmon spawning streams in the absence of plans, thereby stifling mining, logging, construction of power plants and so forth.

Concern also arises where a federal mandate is involved. The Department of Motor Vehicles requires proof that a vehicle in Anchorage has passed an emission test in order to receive its registration. This response to a federal mandate would be illegal under the bill and registrations could not be entered. If the registrations are issued without the certification, the state risks losing federal highway funds.

AS 34.50.190(b) This section requires that municipalities take into account the value of a taking in assessing property taxes. If the value is disputed, subsection (b) requires that the value placed on it by an "independent" appraiser hired by the owner be accepted without question if such an appraisal is done. The state assessor as well as the assessors of various entities have stated that this requirement is unprecedented and contrary to good appraisal practice.

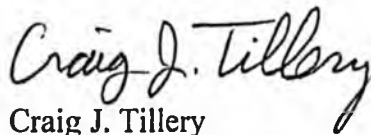
AS 34.100(6); AS 34.50.200 These provisions require that compensation for a taking under this bill is to come from the budget of the governmental entity whose action triggered the taking. There must be an appropriation each year which authorizes such payments.

AS 34.50.200 This provision states that a prevailing landowner in an action under this bill "may recover, to the extent awarded by the court, the owner's attorney fees and costs". It is unclear whether this is full fees or simply references Alaska Civil Rule 82. If this changes Rule 82 then it may be a change to a court rule and need to be in the title and require a two-thirds majority for passage.

Thank you for allowing me the opportunity to testify in front of the House Judiciary Committee on this bill. I hope this summary of that testimony is useful.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

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CS FOR HOUSE BILL NO. 154()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan, G.Davis, James, Mulder, Foster

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions for state or municipal takings of private
2 property or for state or municipal violations; relating to state and municipal
3 regulations, ordinances, and actions relating to private property; relating to
4 compensation for, access to, and taxation of private property taken by state or
5 municipal action; and providing for an effective date."

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

7 * Section 1. AS 09.10.030 is amended to read:

8 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.
9 Except as otherwise provided under AS 34.50.180, a [A] person may not bring an
10 action for the recovery of real property [,] or for the recovery of the possession of it
11 unless the action is commenced within 10 years. An action may not be maintained for
12 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
13 grantor of the plaintiff was seized or possessed of the premises in question within 10

1 years before the commencement of the action.

2 * Sec. 2. AS 09.10.070 is amended to read:

3 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
4 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided
5 by AS 34.50.180, a [A] person may not bring an action (1) for libel, slander, assault,
6 battery, seduction, false imprisonment, or for any injury to the person or rights of
7 another not arising on contract and not specifically provided otherwise; (2) upon a
8 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
9 other than a penalty or forfeiture; unless the action is commenced within two years.

10 * Sec. 3. AS 29.25.040 is amended to read:

11 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a
12 single ordinance adopt or amend by reference provisions of a published code of
13 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
14 adopted under this section, except that neither the ordinance or its amendments must
15 be distributed to the public or read in full at the public hearing. For a period of 15
16 days before adoption of an ordinance under this section, at least five copies of the code
17 of regulations shall be made available for public inspection at a time and place set out
18 in the hearing notice. Only the ordinance must be printed after it is adopted under this
19 section. The governing body shall provide for an adopted code of regulations to be
20 made available to the public at no more than cost. Notwithstanding the other
21 provisions of this section and if applicable, the adoption or amendment of a
22 published code of regulations under this section shall comply with AS 34.50.110.

23 * Sec. 4. AS 29.45.110 is amended by adding a new subsection to read:

24 (d) When assessing the full and true value of property, the assessor shall
25 comply with AS 34.50.190.

26 * Sec. 5. AS 34.50 is amended by adding new sections to read:

27 ARTICLE 2. GOVERNMENT TAKINGS.

28 Sec. 34.50.100. PRINCIPLES FOR GOVERNMENTAL ACTION. A
29 governmental entity shall follow the following principles when considering and taking
30 governmental action affecting private property:

31 (1) to avoid imposing unanticipated or undue additional burdens on the

1 public or on the public treasury, a governmental entity shall be sensitive to, anticipate,
2 and account for the obligations imposed by the fifth and fourteenth amendments to the
3 United States Constitution and art. I, sec. 18, Constitution of the State of Alaska when
4 planning and carrying out governmental action;

5 (2) the assertion that a public health and safety purpose is involved is
6 insufficient to justify a taking, and governmental actions that are purportedly designed
7 to protect public health and safety may not be taken unless they

8 (A) are taken only in response to real and substantial threats to
9 public health and safety;

10 (B) are designed to significantly advance the purpose of health
11 and safety; and

12 (C) do not exceed the governmental action that is necessary to
13 achieve the health and safety purpose;

14 (3) the governmental entity responsible for taking the governmental
15 action has the burden of proving the criteria under (2) of this section;

16 (4) a governmental entity shall avoid undue delay in its governmental
17 processes; although normal governmental processes do not ordinarily constitute takings,
18 undue delay in some decision-making may create a taking, and, in addition, a delay
19 in processing may increase significantly the size of compensation due to the owner of
20 the private property if a taking is later found to have occurred;

21 (5) the constitutional protections against taking private property are
22 self-executing and require compensation regardless of whether the underlying authority
23 for the action contemplated a taking or authorized the payment of compensation.

24 Sec. 34.50.110. RESTRICTIONS ON GOVERNMENTAL ACTION. A
25 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
26 to private property, or impose a restraint on private property use unless the regulation,
27 ordinance, or restraint has the least possible effect on private property and still
28 accomplishes the necessary public purpose.

29 Sec. 34.50.120. FULL COMPENSATION REQUIRED. (a) A governmental
30 entity may not take governmental action that results in a taking of private property,
31 unless the governmental entity pays full compensation for the taking to the owner of

1 the private property when the value of the loss exceeds 20 percent or more of the total
2 value of the property before the taking.

3 (b) The full compensation required by (a) of this section is the monetary value
4 of the reduction in the fair market value of the property on the day the property is
5 taken. Interest at 3.5 percent above the annual rate charged member banks for
6 advances by the 12th Federal Reserve District on the day of the taking shall be paid
7 on the full compensation from the day of the taking.

8 Sec. 34.50.130. PROHIBITION AGAINST VALUE DEFLATION. A
9 governmental entity may not deflate the value of private property by suggesting or
10 threatening to take action that would avoid the entity's paying full compensation to the
11 owner.

12 Sec. 34.50.140. WAIVER PROHIBITED. A governmental entity may not
13 require the owner of private property to waive the full compensation required by
14 AS 34.50.120, or AS 34.50.150 if applicable, as a condition of approving a use of the
15 person's property, including receiving a permit or subdividing real property.

16 Sec. 34.50.150. INACCESSIBLE PROPERTY. (a) A governmental entity
17 that adopts a regulation or ordinance, or imposes a restraint on private property use
18 shall, at the governmental entity's expense, provide an alternate access to the property
19 or purchase the inaccessible property, if the regulation, ordinance, or restraint deprives
20 the owner of the property of all access to the property.

21 (b) If the governmental entity provides alternate access under (a) of this
22 section, the governmental entity is not required to pay the owner full compensation
23 under AS 34.50.120, except that, if the fair market value of the property has been
24 reduced more than 20 percent due to the regulation, ordinance, or restraint even with
25 the alternate access, and if the regulation, ordinance, or restraint is governmental action
26 that results in a taking, the governmental entity shall pay full compensation for the
27 taking under AS 34.50.120. Notwithstanding AS 34.50.120, the full compensation
28 required to be paid by this subsection is the difference between the fair market value
29 of the property the day before the taking and the fair market value of the property,
30 including any value added by the alternate access, after the taking.

31 Sec. 34.50.160. PROHIBITION AGAINST IMPOSING COSTS. A

1 governmental entity may not require an owner of private property to provide or pay
2 for studies, maps, plans, reports, or other information used in the governmental entity's
3 decisions to adopt a regulation or ordinance relating to private property.

4 Sec. 34.50.170. STATE RESPONSIBILITY FOR COMPENSATION. The
5 state shall compensate municipalities for the full compensation that the municipalities
6 are required to pay under AS 34.50.120, or AS 34.50.150 if applicable, for taking
7 private property by governmental action if the municipality's governmental action is
8 required by state law.

9 Sec. 34.50.180. TIME FOR BRINGING ACTION. A person may not
10 commence a civil action for a taking of the person's private property by governmental
11 action unless the action is commenced within five years after the taking has occurred.

12 Sec. 34.50.190. ADJUSTMENT OF VALUE FOR PROPERTY TAX. (a) If
13 a determination has been made that there has been a taking of private property by
14 governmental action, a municipality that levies a tax on the property shall adjust the
15 valuation of the property for the purposes of the tax to the fair market value of the
16 property calculated under AS 34.50.120(b), or AS 34.50.150(b) if applicable, and shall
17 notify the owner of the new tax valuation. The new tax valuation must be reflected
18 and identified in the next tax assessment notice.

19 (b) If the property owner contests the reduction in valuation, and if the
20 property owner secures an independent appraisal of the property from a person who
21 has a valid real estate appraiser certificate issued under AS 08.87.110, the appraisal
22 provided by the independent appraiser shall be averaged with the fair market value
23 calculated under AS 34.50.120(b), or AS 34.50.150(b) if applicable, and the average
24 is the valuation used by the municipality when taxing the property.

25 Sec. 34.50.200. ENFORCEMENT. A person who owns property that is
26 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
27 superior court against a governmental entity that fails to comply with the provision.
28 If the person prevails in an action brought under this section, the owner may recover,
29 to the extent awarded by the court, the owner's attorney fees and costs.

30 Sec. 34.50.210. REGULATIONS PROHIBITED. A state agency may not
31 adopt regulations to implement AS 34.50.100 - 34.50.250.

1 Sec. 34.50.250. DEFINITIONS. In AS 34.50.100 - 34.50.250, unless the
2 context clearly requires otherwise,

3 (1) "full compensation" means the monetary value of the reduction in
4 the fair market value of private property, if the reduction is caused by a taking by
5 governmental action;

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

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

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

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

15 (D) the discontinuation of state government programs or the
16 government programs of a municipality;

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

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

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

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

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

28 (8) "state agency" means a department, institution, board, commission,
29 division, authority, public corporation, or other administrative unit of the executive
30 branch of state government, including the University of Alaska, the Alaska Railroad
31 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace

1 Development Corporation, and the Alaska State Pension Investment Board;

2 (9) "taking" includes

3 (A) a regulation or other governmental action that regulates or
4 imposes a restraint on private property use for public benefit, including
5 restraints on wetlands fish or wildlife habitat or the creation of buffer zones
6 unless the regulation is necessary to avoid or correct a public nuisance;

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

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

13 * Sec. 6. SEVERABILITY CLAUSE. If a provision of this Act or the application of this
14 Act to a person or circumstance is held to be invalid, the remainder of this Act and the
15 application of this Act to other persons or circumstances is not affected.

16 * Sec. 7. This Act does not apply to statutes, regulations, or ordinances that are in effect
17 on the day before the effective date of this Act.

18 * Sec. 8. This Act takes effect July 1, 1996.

3818

CS FOR HOUSE BILL NO. 154()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan, G.Davis, James, Mulder

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to ^{civil} actions for state or municipal takings of private property or
 2 for ^{state or municipal} ~~certain~~ violations; relating to state and municipal regulations, ordinances, and
 3 actions relating to private property; relating to compensation for, ~~access to,~~ and
 4 taxation of private property taken by state or municipal action; and providing for
 5 an effective date."

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

7 * Section 1. AS 09.10.030 is amended to read:

8 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.

9 Except as otherwise provided under AS 34.50.180, a [A] person may not bring an
 10 action for the recovery of real property [,] or for the recovery of the possession of it
 11 unless the action is commenced within 10 years. An action may not be maintained for
 12 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
 13 grantor of the plaintiff was seized or possessed of the premises in question within 10

1 years before the commencement of the action.

2 * Sec. 2. AS 09.10.070 is amended to read:

3 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
4 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided
5 by AS 34.50.180, a [A] person may not bring an action (1) for libel, slander, assault,
6 battery, seduction, false imprisonment, or for any injury to the person or rights of
7 another not arising on contract and not specifically provided otherwise; (2) upon a
8 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
9 other than a penalty or forfeiture; unless the action is commenced within two years.

10 * Sec. 3. AS 29.25.020(b) is amended to read:

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

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

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

17 (3) if applicable, a notice containing the statement under
18 AS 34.50.110 shall be given:

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

22 (5) [(4)] copies of the ordinance shall be available to all persons present
23 at the hearing, or the ordinance shall be read in full;

24 (6) [(5)] during the hearing the governing body shall hear all interested
25 persons wishing to be heard;

26 (7) [(6)] after the public hearing the governing body shall consider the
27 ordinance, and may adopt it with or without amendment;

28 (8) [(7)] the governing body shall print and make available copies of
29 an ordinance that is adopted.

30 * Sec. 4. AS 29.25.040 is amended to read:

31 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a

1 single ordinance adopt or amend by reference provisions of a published code of
2 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
3 adopted under this section, except that neither the ordinance or its amendments must
4 be distributed to the public or read in full at the public hearing. For a period of 15
5 days before adoption of an ordinance under this section, at least five copies of the code
6 of regulations shall be made available for public inspection at a time and place set out
7 in the hearing notice. Only the ordinance must be printed after it is adopted under this
8 section. The governing body shall provide for an adopted code of regulations to be
9 made available to the public at no more than cost. Notwithstanding the other
10 provisions of this section and if applicable, the adoption of a published code of
11 regulations under this section shall comply with AS 34.50.110.

12 * Sec. 5. AS 29.45.110 is amended by adding a new subsection to read:

13 (d) When assessing the full and true value of property, the assessor shall
14 comply with AS 34.50.190.

15 * Sec. 6. AS 34.50 is amended by adding new sections to read:

16 ARTICLE 2. GOVERNMENT TAKINGS.

17 Sec. 34.50.100. PRINCIPLES FOR GOVERNMENTAL ACTION. A
18 governmental entity shall follow the following principles when considering and taking
19 governmental action affecting private property:

20 (1) to avoid imposing unanticipated or undue additional burdens on the
21 public or on the public treasury, a governmental entity shall be sensitive to, anticipate,
22 and account for the obligations imposed by the fifth and fourteenth amendments to the
23 United States Constitution and art. I, sec. 18, Constitution of the State of Alaska when
24 planning and carrying out governmental action;

25 (2) the assertion that a public health and safety purpose is involved is
26 insufficient to justify a taking, and governmental actions that are purportedly designed
27 to protect public health and safety may not be taken unless they

28 (A) are taken only in response to real and substantial threats to
29 public health and safety;

30 (B) are designed to significantly advance the purpose of health
31 and safety; and

1 (C) do not exceed the governmental action that is necessary to
2 achieve the health and safety purpose;

3 (3) the governmental entity responsible for taking the governmental
4 action has the burden of proving the criteria under (2) of this section;

5 (4) a governmental entity shall avoid undue delay in its governmental
6 processes; although normal governmental processes do not ordinarily constitute takings,
7 undue delays in some decision-making may create a taking, and, in addition, a delay
8 in processing may increase significantly the size of compensation due to the owner of
9 the private property if a taking is later found to have occurred;

10 (5) the constitutional protections against taking private property are
11 self-executing and require compensation regardless of whether the underlying authority
12 for the action contemplated a taking or authorized the payment of compensation;

13 (6) the source of all compensation is the budget of the governmental
14 entity that took the action that resulted in the taking.

15 Sec. 34.50.110. RESTRICTIONS ON GOVERNMENTAL ACTION. (a) A
16 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
17 to private property, or impose a restraint on private property use unless the regulation,
18 ordinance, or restraint has the least possible effect on private property and still
19 accomplishes the necessary public purpose, and unless a statement complying with (b)
20 of this section is prepared by the governmental entity and made available to the public
21 at least 30 days before the adoption of the regulation or imposition of the restraint by
22 the entity.

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

30 Sec. 34.50.120. FULL COMPENSATION REQUIRED. (a) A governmental
31 entity may not take governmental action that results in a taking of private property,

1 unless the governmental entity pays full compensation for the taking to the owner of
2 the private property.

3 (b) The full compensation required by (a) of this section shall be paid to the
4 owner within three months after the adoption of the regulation or ordinance that results
5 in the taking, or within three months after the restraint on private property use that
6 results in the taking. The compensation shall be measured as of the date of the
7 adoption of the regulation or ordinance, or the imposition of the restraint. Interest
8 shall be paid on the amount due the property owner from the time that the regulation
9 or ordinance is enforced as to the private property, or from the time the restraint is
10 imposed on the private property, until the time payment is received by the owner. The
11 interest rate to be paid is 3.5 percent above the average lending rate charged by banks
12 in the state for unsecured loans on the date the regulation or ordinance is first enforced
13 as to the private property or the restraint is first imposed on the private property. The
14 interest shall be compounded monthly. In this subsection, "bank" does not include a
15 credit union, savings association, or trust company.

16 Sec. 34.50.130. PROHIBITION AGAINST VALUE DEFLATION. A
17 governmental entity may not deflate the value of private property by suggesting or
18 threatening to take action that would avoid the entity's paying full compensation to the
19 owner.

20 Sec. 34.50.140. WAIVER PROHIBITED. A governmental entity may not
21 require the owner of private property to waive the full compensation required by
22 AS 34.50.120 as a condition of approving a use of the person's property, including
23 receiving a permit or subdividing real property.

24 Sec. 34.50.150. ACCESS REQUIRED. In addition to the full compensation
25 required by AS 34.50.120, a governmental entity that adopts a regulation or ordinance,
26 or imposes a restraint on private property use shall also, at the governmental entity's
27 expense, provide an alternate access to the property or purchase the inaccessible
28 property, if the regulation, ordinance, or restraint deprives the owner of the property
29 of access to the property.

30 Sec. 34.50.160. PROHIBITION AGAINST IMPOSING COSTS. A
31 governmental entity may not require an owner of private property to provide or pay

1 for studies, maps, plans, reports, or other information used in the governmental entity's
2 decisions to adopt a regulation or ordinance relating to private property, or to impose
3 a restraint on private property use.

4 Sec. 34.50.170. STATE RESPONSIBILITY FOR COMPENSATION. The
5 state shall compensate municipalities for the full compensation that the municipalities
6 are required to pay under AS 34.50.120 for taking private property by governmental
7 action if the municipality's governmental action is required by state law.

8 Sec. 34.50.180. TIME FOR BRINGING ACTION. A person may not
9 commence a civil action for a taking of the person's private property by governmental
10 action unless the action is commenced within five years after the taking has occurred.

11 Sec. 34.50.190. ADJUSTMENT OF VALUE FOR PROPERTY TAX. (a) If
12 a determination has been made that there has been a taking of private property by
13 governmental action, a municipality that levies a tax on the property shall adjust
14 valuation of the property for the purposes of the tax and notify the owner of the new
15 tax valuation. The new tax valuation must be reflected and identified in the next tax
16 assessment notice.

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

22 Sec. 34.50.200. ENFORCEMENT. A person who owns property that is
23 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
24 superior court against a governmental entity that fails to comply with the provision.
25 If the person prevails in an action brought under this section, the owner may recover,
26 to the extent awarded by the court, the owner's attorney fees and costs from the budget
27 of the governmental entity involved in the governmental action on which the court
28 action was based.

29 Sec. 34.50.210. REGULATIONS PROHIBITED. A state agency may not
30 adopt regulations to implement AS 34.50.100 - 34.50.250.

31 Sec. 34.50.250. DEFINITIONS. In AS 34.50.100 - 34.50.250, unless the

1 context clearly requires otherwise,

2 (1) "full compensation" means the monetary value of the reduction in
3 the fair market value of private property, if the reduction is caused by a taking by
4 governmental action;

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

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

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

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

14 (D) the discontinuation of state government programs or the
15 government programs of a municipality;

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

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

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

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

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

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

1 (9) "taking" includes

2 (A) a regulation or other governmental action that regulates or
3 imposes a restraint on private property use for public benefit, including
4 restraints on wetlands fish or wildlife habitat or the creation of buffer zones
5 unless the regulation is necessary to avoid or correct a public nuisance;

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

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

12 * Sec. 7. AS 44.62.200(a) is amended to read:

13 (a) The notice of proposed adoption, amendment, or repeal of a regulation
14 must include

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

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

20 (3) an informative summary of the proposed subject of agency action;

21 (4) other matters prescribed by a statute applicable to the specific
22 agency or to the specific regulation or class of regulations;

23 (5) a summary of the fiscal information required to be prepared under
24 AS 44.62.195;

25 (6) if applicable, the information required by AS 34.50.110.

26 * Sec. 8. SEVERABILITY CLAUSE. If a provision of this Act or the application of this
27 Act to a person or circumstance is held to be invalid, the remainder of this Act and the
28 application of this Act to other persons or circumstances is not affected.

29 * Sec. 9. This Act is not retroactive.

30 * Sec. 10. This Act takes effect July 1, 1996.

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Feb. 15, 1996

TO: Members of House Judiciary Committee

FROM: Tom Meyer

RE: Materials for Friday, February 16, 1996, meeting

This hearing will likely focus only on HB 154, the regulatory takings bill. Attached are materials received since the last meeting on the bill and are forwarded to you for your review.

I have not received a new version of the bill. I will attempt to distribute any such version to your office once it arrives here.

JOSEPH L. KASHI

Attorney at Law

35477 Spur Highway, Suite 207
Second Floor, 4-D Commercial Building
Soldotna, Alaska 99669

907-262-4604

FAX 907-262-9766

January 27, 1996

Honorable Senator John Torgenson
Room 427
State Capitol
Juneau, AK 99801-1182

Dear John:

I am writing in opposition to the pending legislative proposal to require compensation to private property owners whenever a regulation "significantly" impacts upon an individuals "property rights". Although such a regulation seems laudable when considered in the abstract, it will inevitably open a real nightmare of litigation here in Alaska. The courts tend to interpret such things very broadly, and would undoubtedly result in administrative paralysis on everything, either because of direct legal challenges or fears of difficult to calculate, but possibly very expensive damages to an unknown but large quantity of private parties.

I believe the same is true regarding the proposal that any legislative action be the least restrictive alternative. Again, this makes sense when considered in the abstract, but would quickly result in a vast amount of unreasonable litigation. From my own economic standpoint as an attorney, such legislation although undoubtedly legal, is bad public policy. Any "regulation" could be considered a taking or a significant limitation. It doesn't take much of stretch of imagination to consider that public health and safety regulations such as commercial truck or aircraft safety standards, food and health inspections, septic system standards, or almost anything else would be considered a compensable taking, at least arguably. Arguments over the "least restrictive" alternative regulation would be asserted in almost every case where someone was unhappy with government regulation, and there are many such claims, valid or otherwise. These statutes would probably be applied unpredictably by the courts. Overall, I think that we will have a significant and costly paralysis of both state and local government.

Yours very truly,


Joseph L. Kashi
Attorney at Law

JLK/tlp



Alaska Center for the Environment

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-3621

February 1, 1996

House Judiciary Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: H.B. 154

Dear Committee Members:

Since I expect to be out of town tomorrow and will therefore be unable to be at the teleconference hearing on H.B. 154, the takings bill, we would like to submit this letter for your consideration.

We very much oppose H.B. 154. As the Alaska Municipal League has suggested, this bill would cripple local and other governmental efforts to protect not just the environment, but public health and safety as well.

Our legal system at the present time balances the interests of individual property owners and those of the public as a whole. This bill would tilt the balance heavily in favor of the individual property owner, and give far too little deference to the needs and rights of the neighbors of property owners. This would be a bad neighbor policy.

Basically, H.B. 154 would enact into law a very selfish concept that we do not believe is supported by the great majority of Alaskans--that the interests of any one individual are more important than those of society as a whole, and that individual property owners have no responsibility to make some sacrifices, monetary or otherwise, for the benefit of the public good. This sounds too much like the recent "me, me, me" decade that one would hope we had put behind us.

Finally, mechanisms are already in place to compensate property owners for constitutionally recognized takings. This historic mechanism is time-tested and entirely adequate, and should not be tampered with.

Thank you for your serious consideration of these comments.

Sincerely,

Cliff Eames
Issues Director



February 6, 1996

Representative Porter
House Judiciary Committee
State Capital, Room 120
Juneau, Alaska 99801-1182

Dear committee members

My name is Don Mackinnon and I would like to express my disapproval of HB 154. I am a life long Alaskan and my family has lived in Juneau for four generations. I also own a small business running boat tours.

I find this bill makes many broad based assumption that are unrealistic in the real world. One of them is it assume that each and every property owner makes appropriate use choices for their property. This has never been the case in the past, its not the case in the present, and it will not be the case in the future. Do we as a community allow private property owners to effect our quality of life through poor use choices, the answer is no! We all have the same basic needs, clean air, clean water, and a wish to live in nice safe neighborhoods and because of this we must safeguard our property.

HB 154 would compensate property owners anytime their use choices differed with state or local regulations. I disagree with the idea that we as a community should pay anyone for not making bad choices. There are already avenues available for individuals to contest regulations if they so desire. So why do we need the increased expense and red tape that HB 154 adds to government?

I strongly urge the committee to vote against HB 154.

I look forward to making public comment on this bill to your committee in the future and please share this letter with the other members of the Judiciary Committee

Sincerely



Don Mackinnon III
9115 Miner Ct.
Juneau, AK 99801
(907) 789-2713

cc. Kim Elton

9-LS0602\W
Bannister
1/25/96

CS FOR HOUSE BILL NO. 154(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott, Kelly, Vezey, Martin, Barnes, Ogan,
G.Davis, James, Mulder**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions for state or municipal takings of private
2 property or for state or municipal violations; relating to state and municipal
3 regulations, ordinances, and actions relating to private property; relating to
4 compensation for, access to, and taxation of private property taken by state or
5 municipal action; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * Section 1. AS 09.10.030 is amended to read:

8 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.

9 Except as otherwise provided under AS 34.50.180, a [A] person may not bring an
10 action for the recovery of real property [,] or for the recovery of the possession of it
11 unless the action is commenced within 10 years. An action may not be maintained for
12 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
13 grantor of the plaintiff was seized or possessed of the premises in question within 10

1 years before the commencement of the action.

2 * Sec. 2. AS 09.10.070 is amended to read:

3 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
4 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided
5 by AS 34.50.180, a [A] person may not bring an action (1) for libel, slander, assault,
6 battery, seduction, false imprisonment, or for any injury to the person or rights of
7 another not arising on contract and not specifically provided otherwise; (2) upon a
8 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
9 other than a penalty or forfeiture; unless the action is commenced within two years.

10 * Sec. 3. AS 29.25.020(b) is amended to read:

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

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

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

17 (3) if applicable, a notice containing the statement under
18 AS 34.50.110 shall be given;

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

22 (5) [(4)] copies of the ordinance shall be available to all persons present
23 at the hearing, or the ordinance shall be read in full;

24 (6) [(5)] during the hearing the governing body shall hear all interested
25 persons wishing to be heard;

26 (7) [(6)] after the public hearing the governing body shall consider the
27 ordinance, and may adopt it with or without amendment;

28 (8) [(7)] the governing body shall print and make available copies of
29 an ordinance that is adopted.

30 * Sec. 4. AS 29.25.040 is amended to read:

31 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a

1 single ordinance adopt or amend by reference provisions of a published code of
2 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
3 adopted under this section, except that neither the ordinance or its amendments must
4 be distributed to the public or read in full at the public hearing. For a period of 15
5 days before adoption of an ordinance under this section, at least five copies of the code
6 of regulations shall be made available for public inspection at a time and place set out
7 in the hearing notice. Only the ordinance must be printed after it is adopted under this
8 section. The governing body shall provide for an adopted code of regulations to be
9 made available to the public at no more than cost. Notwithstanding the other
10 provisions of this section and if applicable, the adoption of a published code of
11 regulations under this section shall comply with AS 34.50.110.

12 * Sec. 5. AS 29.45.110 is amended by adding a new subsection to read:

13 (d) When assessing the full and true value of property, the assessor shall
14 comply with AS 34.50.190.

15 * Sec. 6. AS 34.50 is amended by adding new sections to read:

16 ARTICLE 2. GOVERNMENT TAKINGS.

17 Sec. 34.50.100. PRINCIPLES FOR GOVERNMENTAL ACTION. A
18 governmental entity shall follow the following principles when considering and taking
19 governmental action affecting private property:

20 (1) to avoid imposing unanticipated or undue additional burdens on the
21 public or on the public treasury, a governmental entity shall be sensitive to, anticipate,
22 and account for the obligations imposed by the fifth and fourteenth amendments to the
23 United States Constitution and art. I, sec. 18, Constitution of the State of Alaska when
24 planning and carrying out governmental action;

25 (2) the assertion that a public health and safety purpose is involved is
26 insufficient to justify a taking, and governmental actions that are purportedly designed
27 to protect public health and safety may not be taken unless they

28 (A) are taken only in response to real and substantial threats to
29 public health and safety;

30 (B) are designed to significantly advance the purpose of health
31 and safety; and

1 (C) do not exceed the governmental action that is necessary to
2 achieve the health and safety purpose;

3 (3) the governmental entity responsible for taking the governmental
4 action has the burden of proving the criteria under (2) of this section;

5 (4) a governmental entity shall avoid undue delay in its governmental
6 processes; although normal governmental processes do not ordinarily constitute takings,
7 undue delays in some decision-making may create a taking, and, in addition, a delay
8 in processing may increase significantly the size of compensation due to the owner of
9 the private property if a taking is later found to have occurred;

10 (5) the constitutional protections against taking private property are
11 self-executing and require compensation regardless of whether the underlying authority
12 for the action contemplated a taking or authorized the payment of compensation;

13 (6) the source of all compensation is the budget of the governmental
14 entity that took the action that resulted in the taking.

15 Sec. 34.50.110. RESTRICTIONS ON GOVERNMENTAL ACTION. (a) A
16 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
17 to private property, or impose a restraint on private property use unless the regulation,
18 ordinance, or restraint has the least possible effect on private property and still
19 accomplishes the necessary public purpose, and unless a statement complying with (b)
20 of this section is prepared by the governmental entity and made available to the public
21 at least 30 days before the adoption of the regulation or imposition of the restraint by
22 the entity.

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

30 Sec. 34.50.120. FULL COMPENSATION REQUIRED. (a) A governmental
31 entity may not take governmental action that results in a taking of private property,

1 unless the governmental entity pays full compensation for the taking to the owner of
2 the private property.

3 (b) The full compensation required by (a) of this section shall be paid to the
4 owner within three months after the adoption of the regulation or ordinance that results
5 in the taking, or within three months after the restraint on private property use that
6 results in the taking. The compensation shall be measured as of the date of the
7 adoption of the regulation or ordinance, or the imposition of the restraint. Interest
8 shall be paid on the amount due the property owner from the time that the regulation
9 or ordinance is enforced as to the private property, or from the time the restraint is
10 imposed on the private property, until the time payment is received by the owner. The
11 interest rate to be paid is 3.5 percent above the average lending rate charged by banks
12 in the state for unsecured loans on the date the regulation or ordinance is first enforced
13 as to the private property or the restraint is first imposed on the private property. The
14 interest shall be compounded monthly. In this subsection, "bank" does not include a
15 credit union, savings association, or trust company.

16 Sec. 34.50.130. PROHIBITION AGAINST VALUE DEFLATION. A
17 governmental entity may not deflate the value of private property by suggesting or
18 threatening to take action that would avoid the entity's paying full compensation to the
19 owner.

20 Sec. 34.50.140. WAIVER PROHIBITED. A governmental entity may not
21 require the owner of private property to waive the full compensation required by
22 AS 34.50.120 as a condition of approving a use of the person's property, including
23 receiving a permit or subdividing real property.

24 Sec. 34.50.150. INACCESSIBLE PROPERTY. In addition to the full
25 compensation required by AS 34.50.120, a governmental entity that adopts a regulation
26 or ordinance, or imposes a restraint on private property use shall also, at the
27 governmental entity's expense, provide an alternate access to the property or purchase
28 the inaccessible property, if the regulation, ordinance, or restraint deprives the owner
29 of the property of access to the property.

30 Sec. 34.50.160. PROHIBITION AGAINST IMPOSING COSTS. A
31 governmental entity may not require an owner of private property to provide or pay

1 for studies, maps, plans, reports, or other information used in the governmental entity's
2 decisions to adopt a regulation or ordinance relating to private property, or to impose
3 a restraint on private property use.

4 Sec. 34.50.170. STATE RESPONSIBILITY FOR COMPENSATION. The
5 state shall compensate municipalities for the full compensation that the municipalities
6 are required to pay under AS 34.50.120 for taking private property by governmental
7 action if the municipality's governmental action is required by state law.

8 Sec. 34.50.180. TIME FOR BRINGING ACTION. A person may not
9 commence a civil action for a taking of the person's private property by governmental
10 action unless the action is commenced within five years after the taking has occurred.

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12 a determination has been made that there has been a taking of private property by
13 governmental action, a municipality that levies a tax on the property shall adjust
14 valuation of the property for the purposes of the tax and notify the owner of the new
15 tax valuation. The new tax valuation must be reflected and identified in the next tax
16 assessment notice.

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

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23 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
24 superior court against a governmental entity that fails to comply with the provision.
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26 to the extent awarded by the court, the owner's attorney fees and costs from the budget
27 of the governmental entity involved in the governmental action on which the court
28 action was based.

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14 (D) the discontinuation of state government programs or the
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24 harvested or extracted;

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26 restriction imposed by a governmental entity that limits the use of private property;

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

1 (9) "taking" includes

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9 (C) governmental action that results in less than a complete
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15 (1) a statement of the time, place, and nature of proceedings for
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17 (2) reference to the authority under which the regulation is proposed
18 and a reference to the particular code section or other provisions of law that are being
19 implemented, interpreted, or made specific;

20 (3) an informative summary of the proposed subject of agency action;

21 (4) other matters prescribed by a statute applicable to the specific
22 agency or to the specific regulation or class of regulations;

23 (5) a summary of the fiscal information required to be prepared under
24 AS 44.62.195;

25 (6) if applicable, the information required by AS 34.50.110.

26 * Sec. 8. SEVERABILITY CLAUSE. If a provision of this Act or the application of this
27 Act to a person or circumstance is held to be invalid, the remainder of this Act and the
28 application of this Act to other persons or circumstances is not affected.

29 * Sec. 9. This Act is not retroactive.

30 * Sec. 10. This Act takes effect July 1, 1996.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 18, 1996

SUBJECT: Sectional Summary of CSHB 154 ()
(Work Order No. 9-LS0602\R)

TO: Representative Al Vezey
Attn: Joe Ryan

FROM: Theresa Bannister
Legislative Counsel

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 3

| | | | |
|-------|-------|---------|--------|
| To | Vezey | From | Tanner |
| Co. | | Co. | |
| Dept. | | Phone # | |
| Fax # | 5818 | Fax # | |

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 amends the section limiting how long a person has to begin a court action to recover real property. Conforms the section to new sec. 34.50.180 in sec. 3 of the bill.

Section 2 amends the section limiting how long a person has to begin a court action for certain torts and certain statutory liabilities. Conforms the section to new sec. 34.50.180.

Section 3 amends the main section governing the enactment of ordinances to include the statement required under sec. 34.50.110, if applicable.

Section 4 amends the section relating to municipal adoption or amendment of published codes of regulations to require the adoption to comply with AS 34.50.110, if applicable.

Section 5 amends the statute that generally requires municipal assessors to assess property at its full and true value. Requires the assessor to comply with new sec. 34.50.190.

Section 6 adds a new article on government takings.

Sec. 34.50.100 directs governmental entities to follow the principles listed in the section when considering and taking governmental action affecting private property.

Sec. 34.50.110 prohibits a governmental entity from taking certain actions, e.g. adopting regulations relating to private property, unless the action has the least possible effect on

Representative Al Vezey

January 18, 1996

Page 2

private property and still accomplishes its public purpose and unless a statement, as described in (b), of the action is made available to the public at least 30 days before the action.

Sec. 34.50.120 prohibits a governmental entity from taking governmental action that results in a taking of private property without paying full compensation to the owner. Establishes when the compensation is to be paid, when the compensation is measured, and what interest is to be paid.

Sec. 34.50.130 prohibits a governmental entity from deflating private property value by suggesting or threatening to take action to avoid having to pay the full compensation.

Sec. 34.50.140 prohibits a governmental entity from requiring a private property owner to waive the full compensation requirement in order to obtain approval for a use of the owner's property.

Sec. 34.50.150 requires that if a governmental entity that takes certain governmental action, e.g. adopting a regulation, that removes access to private property, the governmental entity must provide alternate access to the property or purchase the property.

Sec. 34.50.160 prohibits a governmental entity from requiring a private property owner to provide or pay for certain information used by the entity when it makes certain decisions affecting private property.

Sec. 34.50.170 requires the state to reimburse municipalities for the compensation they have to pay under sec. 34.50.120 for their takings, if the municipalities' actions are required by state law.

Sec. 34.50.180 prohibits a person from beginning a civil court action for a taking of private property by governmental action unless the action is begun within five years after the taking.

Sec. 34.50.190 requires a municipality to adjust the valuation of private property for property tax purposes if a determination has been made that there has been a taking of the property by governmental action. Requires the municipality to notify the owner of the new valuation. Requires the new valuation to be reflected and identified in the next tax notice. Requires the municipality to use an independent appraisal obtained by the owner to set the valuation, if the property owner contests the reduction in valuation and secures the independent appraisal.

Sec. 34.50.200 permits a property owner to enforce the provisions of the new article in court. Allows a prevailing owner to collect its awarded attorney fees and costs from the budget of the governmental entity involved in the violation of the article.

Representative Al Vezey

January 18, 1996

Page 3

Sec. 34.50.210 prohibits a state agency from adopting regulations to implement the new article.

Sec. 34.50.250 defines terms for the new article.

Section 7 amends the section governing what is included in a notice of a proposed adoption, amendment, or repeal of a regulation to include, if applicable, the information required by sec. 34.50.110.

Section 8 provides a severability clause for the Act.

Section 9 states that the Act is not retroactive.

Section 10 makes the Act effective July 1, 1996.

If I may be of further assistance, please advise.

TLB:klb

965-009.klb

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 1

Page 3, Lines 25-29

(2) [the assertion that a public health and safety purpose is involved is insufficient to justify a taking, and] governmental actions that are purportedly designed to protect public health and safety may not be taken unless they

(A) are taken only in response to potential or real and substantial threats to public health and safety;

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 2

Page 4, Lines 3-4 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 3

Page 4, Lines 5-9

(4) a governmental entity shall avoid undue delay in its governmental processes; although normal governmental processes[; although normal governmental processes do not ordinarily constitute takings, undue delays in some decision-making may create a taking, and, in addition, a delay in processing may increase significantly the size of compensation due to the owner of the private property if a taking is later found to have occurred];

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 4

Page 4, Lines 13-14 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 5

Page 4, Lines 23-29.

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

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 6

Page 4, Lines 30-31 are deleted.
Page 5, Lines 1-2 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 7

Page 5, Lines 24-29 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 8

Page 5, Lines 30-31 are deleted.
Page 6, Lines 1-3 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 9

Page 6, Lines 4-7 are deleted.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 10

Page 6, Lines 8-10.

Sec. 34.50.180. TIME FOR BRINGING ACTION. A person may not commence a civil action for a taking of the person's private property by governmental action unless the action is commenced within 180 days [five years] after the taking has occurred.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 11

Page 6, Lines 22-28.

Sec. 34.50.200. ENFORCEMENT. A person who owns property that is affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the superior court against a state or municipal government[al entity that] for failure [that fails] to comply with the provision. If the person prevails in an action brought under this section, the owner may recover, to the extent awarded by the court, the owner's attorney fees and costs from the state or municipal [budget of the] government[al entity] involved in the governmental action on which the court action was based.

CSHB 154 (ver. R)
Amendment proposed by Rep. Bettye Davis
House Judiciary Committee
January 19, 1996

AMENDMENT 12

Page 8, Lines 2-5 are deleted.

Page 8, Lines 6-11.

(A) governmental action that results in a physical invasion or occupancy of private property or that denies an owner [any or all] more than 50 percent of economic or other use of the person's private property; or

(B) governmental action that results in [less than a complete] more than 50 percent deprivation of [all] use or value of private property, or of all interest in the property[,even if the action is only temporary in nature].

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 3. Line 25-Page 4. Line 4

delete all material

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 4, Line 13-14

delete all material

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 5, Lines 3-15

delete all material

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 6, Line 10

delete "five"

insert "one"

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 8, Line 11

delete ", even if the action is only temporary in nature"