

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8513 HOUSE • COMMUNITY & REGIONAL AFFAIRS •

HB

86

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE HANLEY

TO: HB 86

1 Page 1, lines 5 - 7:

2 Delete all material after "(1)" and insert:

3 "[CLASSIFY BOATS AND VESSELS FOR THE PURPOSES OF TAXATION AND
4 MAY ESTABLISH THE ASSESSED VALUATION OF BOATS AND VESSELS ON THE
5 BASIS OF THEIR REGISTERED OR CERTIFICATED NET TONNAGE;]"

6 Page 1, line 8:

7 Delete "(2)"

8 Insert "[(2)]"

9 Page 2, line 10:

10 Delete "(3) classify as to type and"11 Insert "(2) classify as to type and [(3)]"

12 Page 3, line 16:

13 Delete "property owned and"

14 After "property values"

15 Insert "of property subject to an ad valorem tax"

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: "An Act relating to municipal property taxes." BRU: _____
 Component: _____
 Sponsor: Representative Hanley, Bunde
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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						
---------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
State Impact Aid Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) Impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Administrative Services Date: 1/19/95
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 1/19/95
 Agency: Community & Regional Affairs

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Representative Mark Hanley Alaska State Legislature

MEMORANDUM

DATE: January 19, 1995

TO: Representative Ivan Ivan
Representative Alan Austerman
Co-Chairmen, Community & Regional Affairs

FROM: Representative Mark Hanley *MH*

RE: HB 86: "An Act relating to municipal property taxes"

This memo is to respectfully request that you schedule HB 86 for a hearing at your earliest convenience.

HB 86 amends AS 29.45.050 to allow municipalities to classify as to type and exempt or partially exempt some or all types of personal property from ad valorem taxes. It also creates a new section, 29.45.055, to allow municipalities to levy a flat tax on personal property that has been exempted.

HB 86 was introduced to give municipalities flexibility in taxing private property. It does not mandate change in any municipalities' tax structure; it simply allows them by ordinance to exempt items from ad valorem taxing, and to set a flat rate. HB 86 has *no fiscal impact* on the State of Alaska.

The 18th Alaska State Legislature passed HB 263, which allowed the exemption of certain types of personal property from taxation. It did not allow for a flat rate tax to be levied, as was intended. HB 86 is "clean-up" legislation. In addition to allowing flat rate taxing, wording has been changed to allow exemption of any type of personal property, as defined in AS 29.71.800 (16), rather than listing each item.



217 Second Street, Suite 2(X) • Juneau, Alaska 99801 • Tel (907) 586-1325. Fax (907) 463-5480

To: Representative Mark Hanley

From: *Kevin Kitchin*, Executive Director

Date: January 27, 1995

Re: HB 86 - An Act relating to municipal property taxes

The AML supports the passage of HB 86 which allows municipalities the option of implementing a categorical "flat" tax on a new, broader definition of personal property. For example, this bill would clearly allow municipalities to tax airplanes based on wing span, snowmobiles based on number of seats, motor vehicles based on age, etc. instead of traditional value methods. This bill offers municipalities an alternative that may reduce the administrative costs of property valuation and provide municipalities with a revenue policy tool that may work better for their community.

As a local option, this bill simply provides a tool that each municipality may or may not choose to use. In general, the AML strongly supports legislation that appropriately broadens local discretion in local policy issues.

cc. AML Board and Legislative Committee



Matanuska-Susitna Borough

BOROUGH MANAGER

January 23, 1995

JAN 26 1995

The Honorable Mark Hanley
Alaska State Legislature
State Capitol, Rm. 507
Juneau, Alaska 99801-1182

Dear Representative Hanley:

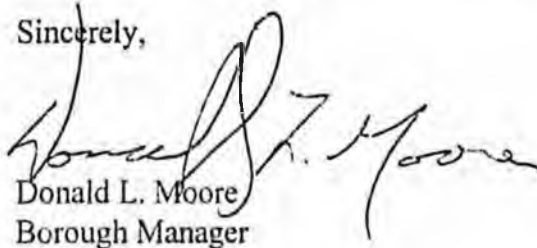
Thank you for sponsoring House Bill 86, "An Act Relating to Municipal Property Taxes."

The Matanuska-Susitna Borough feels this legislation would assist local governments to better control their taxation programs in a way that best meets the needs of the people that live in a region. The existing state law often constrains local options in ways that lead to great inequities in taxation levels. The most pronounced example of this is, of course, the large inequity between airplane taxation and motor vehicles. The legislature, through your efforts last year, has addressed this one. We feel HB86 completes the job, and we thank you for introducing it.

I would like to recommend one change. In my opinion, the language of AS 29.45.050(b)(3) should reflect the same language as in AS 29.45.055(a).

(3) classify as to type based upon any characteristic and exempt or partially exempt any or all types of personal property from ad valorem taxes [taxation];

Sincerely,



Donald L. Moore
Borough Manager

er

CLERK'S OFFICE

APPROVED

Date: 2-23-93

Submitted by: Mayor
Prepared by: Department of Law
For Reading: February 23, 1993 *ALA*

ANCHORAGE, ALASKA
RESOLUTION NO. AR 93-46(S)

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE ENDORSING OPTIONAL EXEMPTION OF DESIGNATED ITEMS FROM PERSONAL PROPERTY TAX

THE ANCHORAGE ASSEMBLY FINDS:

WHEREAS, Alaska Statutes 29.45.050 permits municipalities to exempt certain items from property taxation; and

WHEREAS, AS 29.45.050 does not permit a partial or total exemption for aircraft and some other personal property items but does allow such exemptions for boats, vessels or motor vehicles; and

WHEREAS, the Municipality of Anchorage wishes to adopt a partial exemption for certain personal property.

NOW, THEREFORE, the Anchorage Assembly resolves that:

Section 1. The Municipality endorse an amendment to AS 29.45.050 to allow partial or total exemption of aircraft, pick-up campers, shells and canopies, all-terrain vehicles, snow vehicles, undocumented boats and motors, and unlicensed trail bikes from property taxation as part of its legislative program.

Section 2. An ordinance providing a partial exemption (i.e. flat fee tax) for exempt items taxation will be introduced within 30 days of passage of an amendment to AS 29.45.050 which authorizes use of such an approach.

Section 3. Passage of this resolution indicates a firm statement of intent of those Assembly members voting for this resolution to vote in favor of the ordinance referenced in Section 2.

PASSED AND APPROVED this 23rd day of February, 1993.

ATTEST:

Lejane Ferguson
Municipal Clerk

James R. Kame
Chairman

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

NO. AM 127-93

Meeting Date: February 2, 1993

From: Assemblymember Campbell

Subject: AN ORDINANCE PROPOSING AN AMENDMENT TO CHAPTER 12, SECTION 12.10.020 OF THE ANCHORAGE MUNICIPAL CODE PERTAINING TO EXEMPTIONS FOR CERTAIN AIRCRAFT NOT SUBJECT TO THE TAX PROVISIONS OF SECTION 12.10.060, FROM THE "FULL AND TRUE VALUE" PROVISIONS OF 12.10.60.

There is a lack of equity and consistency in the municipal tax code in the taxation applied to various classes of personal property. For example, motor homes, some of considerable value, are not subject to a municipal personal property tax; but instead pay a relatively flat fee to the State of Alaska, with a tax remuneration from the State being transferred to the municipality. The maximum fee received by the municipality from the State is \$60 for a brand new vehicle or motor home, regardless of book value.

However, privately owned, non-commercial aircraft are taxed by the municipality based upon their full book value. Thus while Anchorage resident owning a \$50,000 book value motor home is paying a fee of \$60 to the municipality, a private aircraft assessed at \$50,000 owned by an Anchorage resident is costing that resident about \$1,000 in personal property taxes.

Unfortunately the Assembly cannot change the State statute regarding the taxes on motor vehicles. However the Assembly can address inequities the statute creates in the municipal personal property tax system by modifying the method of property taxation to come more closely in line with the State's approach. This ordinance represents a first step toward addressing the inequity issues in the personal property tax system. It proposes changing the method of taxing private aircraft from an ad valorem system to a flat fee, based on the number of engines the aircraft possesses. Single engine aircraft would pay a fee of \$75, and multi-engine aircraft would pay a fee of \$125.

The municipality obtains roughly \$800,000 annually from the taxes on about 2,100 private airplanes, for an average tax of \$381/aircraft. Between 100-200 of the 2,100 fees are appealed annually: however most protests are resolved at staff level, with only 3 or 4 proceeding to the Board of Equalization for a more formal review.

The new tax structure would generate about \$160,000 in annual revenue, and would likely eliminate the need for about 1-1.5 municipal positions, for an approximate personnel savings of \$60,000 to \$90,000. Net loss of municipal tax revenue would thus be about \$520,000-550,000 annually. However, the change would place more equity in the personal property tax system.

971

HB



ALASKA STATE LEGISLATURE
REPRESENTATIVE RICHARD FOSTER

Session: STATE CAPITOL, ROOM 410, JUNEAU, ALASKA 99811 • 907-465-3789 • FAX 907-465-3242
Interim: PO BOX 1630, NOME, ALASKA 99762 • 907-443-5036 • FAX 907-443-2162

CO-CHAIR, HOUSE FINANCE COMMITTEE

MEMORANDUM

TO: Representative Alan Austerman, Co-Chair
Representative Ivan Ivan, Co-Chair
Community and Regional Affairs Committee

FROM: Representative Richard Foster, Prime Sponsor *RF*

DATE: February 7, 1995

RE: Scheduling request - House Bill 146

Please consider this a request to schedule House Bill 146 "An act relating to Sled Dog Classics" at your earliest convenience. HB 146 will grant the Iditarod Trail Committee the statutory authority to conduct annual sweepstakes.

The Iditarod Sled Dog Race has received generous financial support from the legislature in the past. However, this assistance has been declining and in the interim, other methods of keeping the Iditarod race financially afloat are being explored.

Concerns from animal rights activists have received substantial coverage in both the national and statewide media. As a direct result, important corporate sponsorships have been withdrawn. Without these sponsorships the future of the Iditarod race is in jeopardy.

HB 146 will provide the Iditarod Trail Committee with the means to raise money by creating a statewide sweepstakes. Tickets can be sold to people who wager the arrival times of mushers into checkpoints and the finish line. The Iditarod sweepstakes once created, will be designed and administered by the Iditarod Trail Committee. The state will not be involved beyond regulatory duties.

Thank you for considering this request. Please contact Bryce Edgmon of my staff at 465-3809 for further information.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 146

Revision Date: _____ Dept. Affected: Revenue
 Title: Sled Dog Race Classics BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Representative Foster
 Requester: Community & Regional Affairs COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/F.ogram Receipts						
1006 GF/MHTIA						
Other						
TOTAL	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will not fiscally impact the Department of Revenue.

Prepared by: Jeff Prather, Acting Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 2/8/95
 Approved by: _____
 Commissioner: Wilson L. Condon Date: 2/8/95
 Agency: Department of Revenue

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ALASKA STATE LEGISLATURE
REPRESENTATIVE RICHARD FOSTER

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Interim PO BOX 1630 NOME ALASKA 99762 • 907 443 5036 • FAX 907 443 2162

CO-CHAIR, HOUSE FINANCE COMMITTEE

MEMORANDUM

TO: Representative Alan Austerman, Co-Chair
Representative Ivan Ivan, Co-Chair
Community and Regional Affairs Committee

FROM: Representative Richard Foster, Prime Sponsor *RF*

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Thank you for considering this request. Please contact Bryce Edgmon of my staff at 465-3809 for further information.

Press Release
February 3, 1995

Foster Introduces Iditarod Sweepstakes Legislation

Representative Richard Foster (D-Nome) introduced legislation today (HB 146) allowing the Iditarod Trail Committee to conduct a statewide sled dog race classic.

“The Iditarod Dog Sled Race is an Alaskan institution and raising money is becoming more and more difficult for the many volunteers and sponsors,” stated Foster. “Allowing the Race Committee to conduct a statewide classic enables them to become financially secure.”

The Iditarod Sled Dog Race was first run in 1973. Alaskans have grown accustomed to the annual event but recent pressures from animal rights advocates have frustrated fundraising efforts in the past few years.

“Iditarod has been good for all Alaska, especially my home town of Nome and I felt this is the least I could do to give them a hand. I’m hoping Alaskans will rally in support of this legislation,” Foster concluded.

HB 146 already gained the support of fellow representatives Speaker Gail Phillips (Kenai/Homer), Eldon Mulder (Muldoon/Anchorage), Mike Nauarre (Kenai), Tom Brice (Fairbanks) and former Speaker Ben Grussendorf (Sitka).

**Contact: John Walsh
Representative Foster’s Office
Phone (907) 465-3789
Fax (907) 465-3242**




Stan Hooley . Executive Director . Iditarod Trail Sled Dog Race . 907.352.2204

FAX MEMORANDUM

DATE: Mon Feb 13, 1995 8:00AM

TO: Representative Richard Foster

FROM: 
Stan Hooley
Executive Director

RE: Support Materials for HB 146

Following is a copy of an economic impact report which was released in December of 1992. The report quantifies, as best any report can, the economic impact generated by the Iditarod Trail Sled Dog Race. Obviously, beyond the desire of any House member to help ensure that an Alaskan tradition of some note lives on, the economic aspects of the race speak clearly.

cc: Wendy Mulder - via facsimile - 907.463.4620



ECONOMIC IMPACT REPORT

THE 1992 IDITAROD SLED DOG RACE

Prepared for:

The Iditarod Trail Committee

Prepared by:

Gilmore Research Group

December, 1992

SUITE 300
2324 CASLAKE AVENUE E
SEATTLE WA 98102-3306
PHONE 726-3555
FAX (206) 726-5620

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BACKGROUND AND PURPOSE

The annual Iditarod Sled Dog Race is one of Alaska's premier historical events. This attraction draws an estimated 16 percent of the state's out-of-state visitors during the Fall, Winter and Spring season.¹ The race itself also draws thousands of visitors from within the state. These persons attend numerous events, stay at local hotels, eat at local restaurants, rent cars, buy gifts and participate in local cultural and entertainment activities. They are an important source of revenue. Their expenditures contribute to the local economy in the form of jobs, sales, and taxes. The purpose of this study is to estimate the impact of these expenditures upon the total economy in general and the tourism industry in particular.

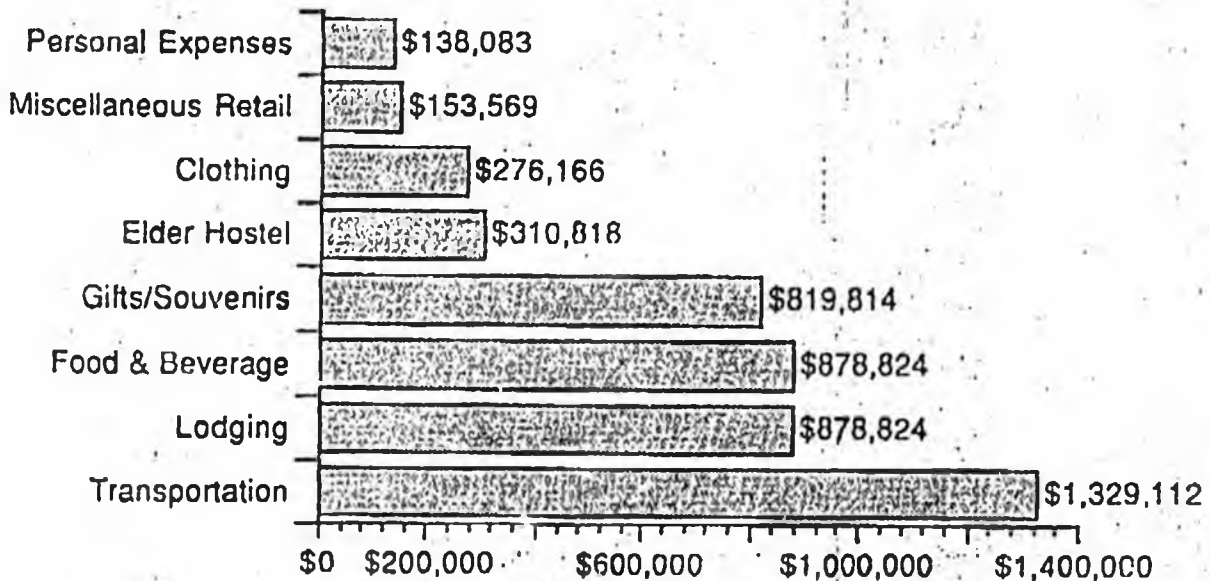
This is the second Iditarod Economic Impact study. A previous study was conducted in 1985. Improved estimates of state tourism patterns and expenditures have become available since 1985. The availability of the data provided in the Alaska Visitor Statistics Program (AVSP)² enabled estimates of impact in the communities directly affected by the Iditarod Sled Dog Races: Anchorage, Wasilla and Nome. The improved data and a different methodological approach have resulted in somewhat lower estimates of economic impact than 1985. However, the new findings reinforce earlier observations that the races are an important economic contributor to the state and local economy and to the Fall-Winter-Spring tourism program.

¹Alaska Visitor Statistics Program, Department of Commerce & Economic Development, Alaska Division of Tourism, State of Alaska, 1991

²ibid.

Transportation captured the largest percentage of expenditures, 28%. This category includes ground transportation, in-state air travel, car rentals, personal vehicle expenses and in-state ferries.⁴ Food-and-beverage and lodging each captured an estimated 18% of total expenditures, followed by gifts and souvenirs with 17%.

Figure 2
1992 Expenditures by Retail Category



Total Retail Expenditures = \$4,785,210

⁴All retail classifications with the exception of miscellaneous retail were adopted from the Alaska Visitor Statistics Program. Miscellaneous retail is called undistributed expenses in the AVSP.

2. Local Impact: Anchorage, Wasilla and Nome

The City of Anchorage captured approximately 40% of the 1992 expenditures related to the Iditarod Race. The Anchorage percentage is attributable to the concentration of stores, entertainment facilities, hotels and eating and drinking places in that city. Although the Iditarod Sled Dog Race and the related events took place over a large geographical area, participants relied upon Anchorage to provide most of their lodging, entertainment and dining needs. Wasilla captured 58% of the direct expenditures and Nome captured two percent. There are no available reliable measures of expenditures in the other small communities along the race trail. These expenditures were, however, thought to be less than one percent of the total and therefore not considered for the purpose of this study. A breakdown of expenditures by city is shown in Figure 3.

The Wasilla ratio is distorted by the inclusion of Trail Committee Expenditures and Musher Investments which actually occur throughout the area. Removing these two institutional expenditures changes the distribution of direct expenditures dramatically, as shown in Figure 4. The Anchorage capture rate increases to 81 percent. The Wasilla portion declines to 15 percent and the Nome ratio increases to 4 percent.

Figure 3
1992 Direct Expenditures by City

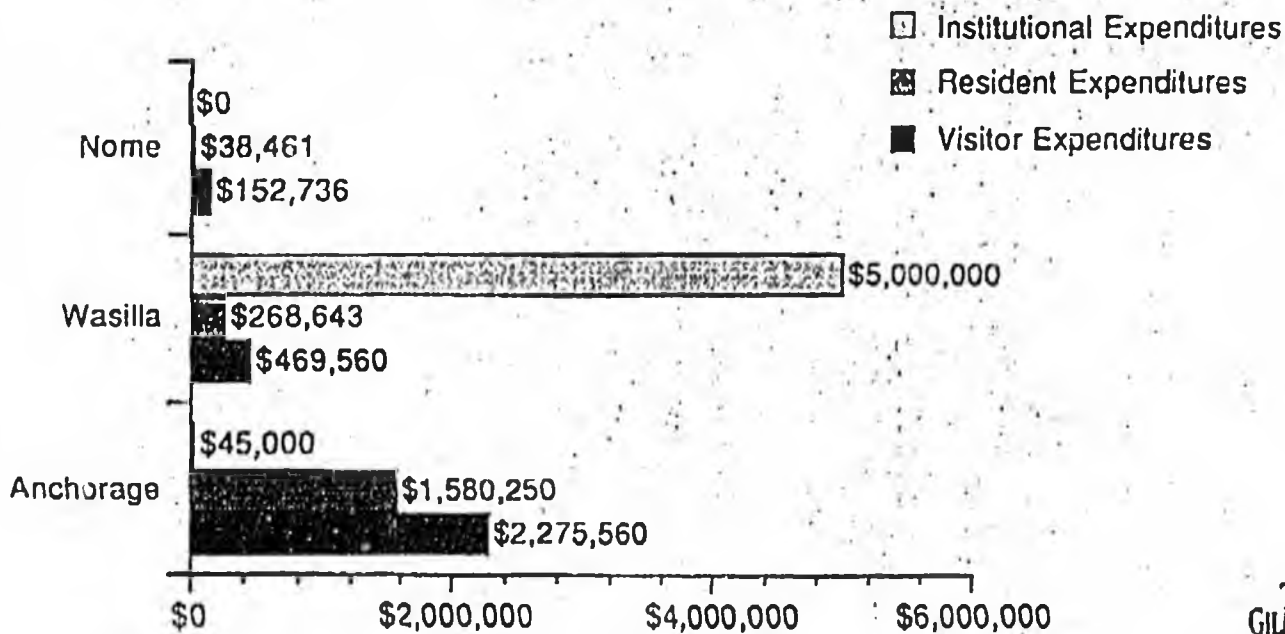
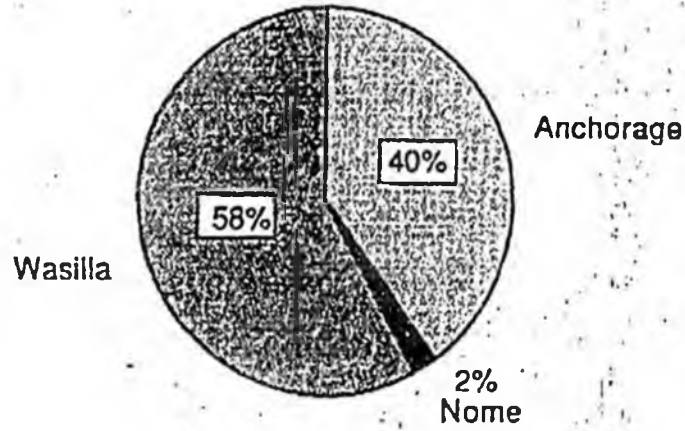
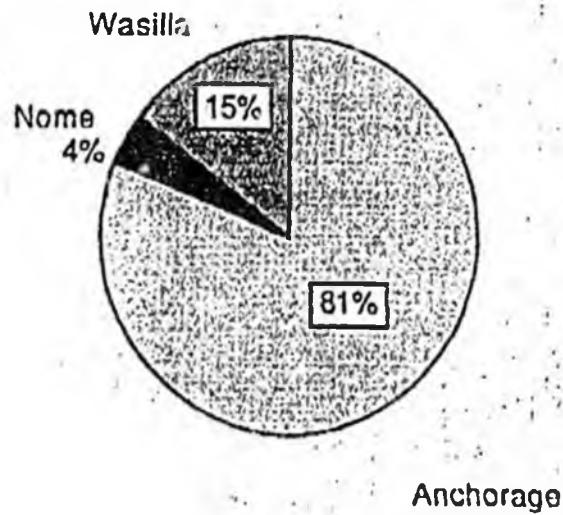


Figure 4
Expenditure Distribution by City



Including Institutional Expenditures*



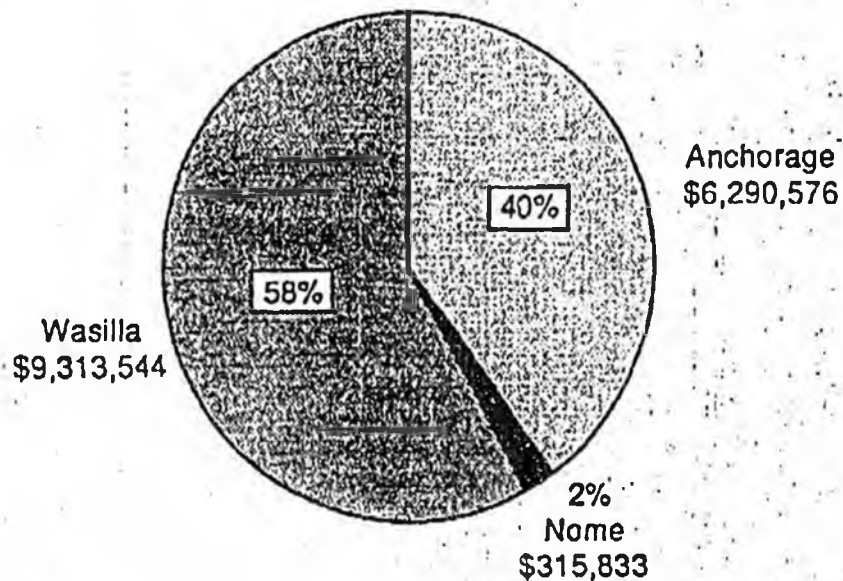
Without Institutional Expenditures*

*Institutional Expenditures = Trail Committee and Musher Expenditures

Figure 5 presents the total economic impact of the Iditarod Sled Dog Race on the three cities. Estimated total impact in Anchorage was about \$6.3 million. The impact in Wasilla was over \$9.3 million and in Nome it was about \$316,000.

Payroll and jobs in these cities was estimated to be about \$1.2 million in Anchorage with 68.6 FTE's, \$1.8 million in Wasilla with 65.9 FTE's and about \$65,500 in Nome with 3.6 FTE's. Detailed breakdown by city is shown in Tables 2 to 4 in Appendix I.

Figure 5
Economic Impact by City



3. Television Coverage

There was extraordinary television coverage of the Iditarod Sled Dog Race in 1992. ABC's *Wide World of Sports* carried three consecutive weeks of stories about the history, people and outcome of the race. On February 29 approximately nine minutes was devoted to the story, on March 7 about 18 minutes, and on March 14 about 24 minutes. This amounts to approximately 51 minutes of coverage, excluding commercial breaks. These broadcasts reached at least 3.8 to 4.7 million households across the U.S. (ABC reported ratings on the three Saturday broadcasts at 5.3, 4.3 and 4.8 respectively.)

To be conservative, we estimate that about half of that time -- 25 minutes -- dealt with issues that support Alaska tourism. These issues include the scenery, the history, the frontier image, the romance of the wilderness and wildlife, as well as the "rugged individualist nature" of the people who live in Alaska.

If the state purchased tourism advertising to reach this number and type of households for 25 minutes of exposure, the estimated cost would be \$1,750,000.

APPENDIX I
DETAILED TABLES

Table 1: Total Economic Impact

Alaska	Total Direct Impact				
	Income	Wages	Jobs	Industry	Profit
All Industries	\$5,045,000	\$1,616,114	53.75	\$822,335	\$302,700
Transportation	\$1,329,112	\$425,767	14.16	\$215,245	\$79,747
Lodging	\$678,824	\$88,624	7.63	\$143,248	\$52,729
Food/Beverage	\$678,824	\$101,793	8.20	\$152,558	\$52,729
Gifts/Souvenirs	\$819,814	\$380,283	22.88	\$133,649	\$49,109
Personal Expenses	\$138,083	\$65,736	3.85	\$47,828	\$8,285
Clothing	\$276,166	\$131,472	7.71	\$51,284	\$16,570
Miscellaneous Retail	\$153,569	\$73,108	4.29	\$55,762	\$9,214
Elder Hostel	\$310,818	\$204,631	13.66	\$66,201	\$18,649
Total Direct Impact	\$9,830,211	\$3,262,820	152.50	\$1,677,922	\$713,435
Total Indirect Impact	\$4,243,724	\$1,337,992	440.14	\$621,727	\$203,031
Total Induced Impact	\$1,846,020	\$590,726	194.94	\$300,901	\$126,965
Total Impact	\$15,922,955	\$5,211,638	795.58	\$2,670,539	\$1,143,431
Estimated Multiplier Effect	1.62				

Table 2: City of Anchorage

Anchorage	Direct Impact				
	Income	Wages	Jobs	Industry	Profit
Stream 1: Institutional Expenditures (City of Anchorage Estimated Expenses)					
All Industries	\$45,000	\$14,415	0.48	\$7,335	\$2,700
Stream 2: Out-of-State Visitor Expenditures					
Transportation	\$630,717	\$204,607	6.80	\$104,111	\$38,323
Lodging	\$422,084	\$47,357	3.66	\$88,800	\$25,325
Food/Beverage	\$422,084	\$48,089	3.94	\$68,800	\$25,325
Gifts/Souvenirs	\$365,130	\$173,825	10.19	\$59,516	\$21,908
Personal Expenses	\$68,397	\$32,561	1.91	\$11,149	\$4,104
Clothing	\$138,794	\$65,122	3.82	\$22,297	\$8,208
Miscellaneous Retail	\$68,397	\$32,561	1.91	\$11,149	\$4,104
Elder Hostel	\$153,958	\$101,360	6.77	\$25,095	\$9,237
Total Stream 2	\$2,275,560	\$706,292	39.00	\$370,916	\$136,534
Stream 3: Local Resident Expenditures					
Transportation	\$443,554	\$142,088	4.73	\$72,299	\$26,813
Lodging	\$293,114	\$32,894	2.54	\$47,778	\$17,587
Food/Beverage	\$293,114	\$33,951	2.73	\$47,778	\$17,587
Gifts/Souvenirs	\$253,562	\$120,711	7.08	\$41,331	\$15,214
Personal Expenses	\$47,498	\$22,612	1.33	\$7,742	\$2,850
Clothing	\$94,996	\$45,224	2.85	\$15,484	\$5,700
Miscellaneous Retail	\$47,498	\$22,612	1.33	\$7,742	\$2,850
Elder Hostel	\$106,915	\$70,389	4.70	\$257,581	\$6,415
Total Stream 3	\$1,580,250	\$490,481	27.08	\$257,581	\$94,815
Total Direct	\$3,900,810	\$1,211,189	68.66	\$635,832	\$234,049
Indirect Impact	\$1,665,342	\$532,910	175.88	\$271,451	\$101,010
Induced Impact	\$724,424	\$231,816	76.50	\$118,081	\$42,322
Induced Impact	\$6,290,576	\$1,975,914	318.82	\$1,025,364	\$377,381

Table 3: City of Wasilla

Wasilla	Direct Impact				
	Income	Wages	Jobs	Industry	Profit
Stream 1: Institutional Expenditures (\$2,000,000 Trail Committee, \$3,000,000 Musher's Investment)					
All Industries	\$5,000,000	\$1,601,689	53.27	\$815,000	\$300,000
Stream 2: Out-of-State Visitor Expenditures					
Transportation	\$131,799	\$42,220	1.40	\$21,483	\$7,908
Lodging	\$87,097	\$9,774	0.78	\$14,197	\$5,228
Food/Beverage	\$87,097	\$10,088	0.81	\$14,197	\$5,226
Gifts/Souvenirs	\$75,344	\$35,869	2.10	\$12,281	\$4,521
Personal Expenses	\$14,114	\$8,719	0.39	\$2,301	\$847
Clothing	\$20,227	\$13,438	0.79	\$4,601	\$1,694
Miscellaneous Retail	\$14,114	\$6,719	0.39	\$2,301	\$847
Elder Hostel	\$31,769	\$20,916	1.40	\$5,178	\$1,906
Total Stream 2	\$469,560	\$145,743	8.05	\$78,538	\$28,174
Stream 3: Local Resident Expenditures					
Transportation	\$75,404	\$24,155	0.80	\$12,291	\$4,524
Lodging	\$49,829	\$5,592	0.43	\$8,122	\$2,990
Food/Beverage	\$49,829	\$5,772	0.46	\$8,122	\$2,990
Gifts/Souvenirs	\$43,106	\$20,521	1.20	\$7,026	\$2,586
Personal Expenses	\$8,075	\$3,844	0.23	\$1,316	\$474
Clothing	\$16,149	\$7,688	0.45	\$2,632	\$969
Miscellaneous Retail	\$8,075	\$3,844	0.23	\$1,316	\$484
Elder Hostel	\$18,176	\$11,966	0.80	\$2,953	\$1,091
Total Stream 3	\$268,643	\$83,392	4.60	\$43,789	\$16,119
Total Direct	\$6,738,203	\$1,830,824	66.92	\$936,327	\$344,291
Indirect Impact	\$2,491,527	\$797,289	263.11	\$406,119	\$101,010
Induced Impact	\$1,083,814	\$346,821	114.45	\$176,662	\$42,322
Total Impact	\$9,319,544	\$2,974,933	443.48	\$1,518,108	\$487,624

Table 4: City of Nome

Nome	Direct Impact				
	Income	Wages	Jobs	Industry	Profit
Stream 1: Institutional Expenditures					
All Industries	\$0	\$0	0.00	\$0	\$0
Stream 2: Out-of-State Visitor Expenditures					
Transportation	\$26,820	\$8,591	0.29	\$4,372	\$1,609
Lodging	\$18,230	\$,046	0.16	\$2,971	\$1,094
Food/Beverage	\$18,230	\$2,112	0.17	\$2,971	\$1,094
Gifts/Souvenirs	\$75,344	\$35,869	2.10	\$12,281	\$4,521
Miscellaneous Retail	\$14,114	\$6,719	0.39	\$2,301	\$847
Total Stream 2	\$152,736	\$55,336	3.11	\$24,806	\$9,164
Stream 3: Local Resident Expenditures					
Transportation	\$12,819	\$4,106	0.14	\$2,089	\$769
Lodging	\$8,471	\$951	0.07	\$1,381	\$508
Food/Beverage	\$8,471	\$981	0.08	\$1,381	\$508
Gifts/Souvenirs	\$7,328	\$3,489	0.20	\$1,184	\$440
Miscellaneous Retail	\$1,373	\$653	0.04	\$224	\$82
Total Stream 3	\$38,461	\$10,180	0.53	\$6,269	\$2,308
Total Direct	\$191,198	\$65,516	3.64	\$31,165	\$11,472
Indirect Impact	\$86,854	\$27,793	9.17	\$14,157	\$4,922
Induced Impact	\$37,782	\$12,090	3.99	\$6,158	\$2,077
Total Impact	\$315,833	\$105,400	16.60	\$51,481	\$18,471

APPENDIX 2

METHODS

METHODS

MODEL DEVELOPMENT

The economic impact model used in this study is an adaptation of the Ad Hoc Model developed by Archer.⁵ The Ad Hoc Model concentrates on income generated in an area by initial travel expenditures. The model and its components are stated below.

$$I = f(j, Q_i, K_j \times Y_j)$$

I = total direct input

j = types of visitors

i = types of business outlets serving visitors

Q = proportion of total each type of visitors spends

K = proportion visitors spend in each type of outlet

Y = direct income generated per dollar by type of outlet

⁵"Tourism Multipliers, the State of the Art", Archer, B., University of Wales Press, Bangor, Wales, 1977

DISTRIBUTION OF EXPENDITURES

Multipliers were developed for each type of retail outlet included in the model. These ratio computations involved dividing sales, employment and payroll by retail sector in a borough. These ratios were used to estimate the induced and indirect effects of travel expenditures.⁶

Direct travel expenditure ratios were derived from the expenditure by retail outlet data provided in Alaska Visitor Statistics Program.⁷

THE MULTIPLIER EFFECT

The multiplier effect is a method of measurement that attempts to track subsequent expenditures resulting from an initial expenditure. If a person purchases a gift item in a local store for ten dollars, part of the purchase distributes to wages, taxes, profit and inventory replacement. The employee receiving the wage takes the money received minus taxes and makes a purchase at another store or stores. The owner buys new inventory, and the chain of events continues. Traditionally, this sequence of transactions is traced through three stages:

- **Direct Impact** estimates the effect of the initial inflow of money on the portion of the economy being studied. In travel and tourism related activities, direct expenditures normally aggregate to specific retail classifications such as hotels and motels, bars and restaurants, gift shops and clothing, taxi and bus services, tours and antique shops.

⁶All income, expenditure wages and employment data for Alaska and Anchorage were obtained from the MAX Evaluation System of National Planning Data Services.

⁷Alaska Visitor Statistics Program II, Department of Commerce & Economic Development, Alaska Division of Tourism, 1991

- **Indirect Impact** measures the effect of subsequent expenditures on the portion of the economy being studied. Indirect expenditures tend to reflect the buying patterns of the resident population and the business community.
- **Induced Impact** measures the effect of later or "third round" expenditures on the portion of the economy being studied. Induced expenditures tend to reflect the buying patterns of the resident population and the business community.

INCOME STREAMS

Three income streams were identified during the study. Each of these classifications constituted a distinct source of income as related to the revenues generated by the Iditarod Sled Dog Race. The three streams identified were:

- **Institutional Expenditures** are expenditures by the Trail Committee, the Musher Investments and the City of Anchorage in promoting and providing public safety for the event.
- **Local Resident Expenditures** are expenditures by Alaska residents.
- **Out-of-State Visitor Expenditures** are expenditures by persons from the lower United States and abroad.

INCOME DISTRIBUTION

Local resident and visitor expenditures were distributed to the major retail categories directly affected by travel expenditures, transportation, lodging, food and beverage, gifts, personal expenses, clothing, elder hostel and miscellaneous retail.⁸

Institutional Expenditures were distributed against the total economy or all industries because of the non-travel related nature of these expenditures. Due to the large number of classifications in this category and the relatively small sums of money involved, no breakdown to individual classifications was attempted.

The expenditures were distributed against the following major categories.

⁸ Distribution ratios were adapted from the Alaska Visitor Statistics Program.

- **Income:** The total dollar amounts expended in each of the three revenue streams.
- **Wages:** The estimated salaries and wages paid to workers as result of the direct, indirect and induced impacts.
- **Jobs:** The estimated full time equivalent jobs supported by the levels of direct indirect and induced impacts.
- **Industry:** The estimated levels of expenditures between businesses as result of the direct, indirect and induced impacts.
- **Profits:** The estimated percentage of revenues retained by owners of the establishments affected.

ASSUMPTIONS

Attendance: Data taken from the AVSP indicated that 16% of the fall, winter, spring visitors to the South Central Region came to attend dog sled race activities. The report estimated this number as 6,880 persons. The report also indicated that there has been no noticeable increase in travel during this season since 1985. The estimated number of out-of-state visitors was held constant therefore at 6,880. Officials in the city of Anchorage estimated total attendance at 10,000-15,000 persons, approximately 60% of whom were local residents.⁹ Assuming 6,880 out-of-state visitors constituted 40% of the total number of attendees, the estimated total attendance is 17,200 persons.

Expenditures: Expenditure estimates were based upon average expenditure data provided in the Alaska Visitors Statistics Program. Lodging, clothing, personal expenses and elder hostel classifications were deleted in computing local resident expenditures.

Profit: Profit estimates are held constant at six percent.

State Revenues: The average corporate tax is estimated to be 8% of profit. The beverage tax is estimated at 3%.

⁹Telephone interviews conducted by Gilmore Research Group with city officials of Anchorage, Nome and Wasilla, October 1992.



Iditarod Trail Sled Dog Race

P.O. Box 870800 • Wasilla, AK 99687-0800 • (907) 376-5155 • Fax (907) 373-6998

VIA FACSIMILE 907.465.3242

February 7, 1995

CONFIRMATION COPY

The Honorable Richard Foster
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

My dear Representative Foster:

Thank you for your sponsorship of HB 146!

As you know Alaska's Iditarod has evolved very rapidly from its inception in 1973. Today the Race is closely followed by Alaskan's young and old. The Race has also captured the attention and curiosity of millions of people around the world, which as we all know, translates into a significant economic benefit to the State of Alaska.

Unfortunately, the Race and its large national sponsors have been, and continue to be, the target of an ever-increasing amount of negative and harmful publicity by various radical animal rights groups. As a way to diversify its funding base, and as a way to insulate itself from the most measurable effect of the animal rights groups (the erosion of financial support from large national advertisers outside the State of Alaska), this past spring the Iditarod Trail Committee, Inc. (ITC), asked the legislature to consider a permanent fund check-off which would allow Alaskan's to support their Race. This effort ultimately failed... not because of a lack of support for the Iditarod, but because of the many sensitivities surrounding the permanent fund itself.

As was predicted this past spring the two remaining outside sponsors announced this fall that they would not be renewing their sponsorship of the Race. \$390,000 disappeared from the Race budget this year and an additional \$175,000 will disappear this next year.

For the past six months the ITC has worked very hard to replace the lost revenues. Revenues which made it possible for the ITC to stage the caliber of Race which Alaskan's have come to expect, and the caliber of Race which, through national and international television coverage, helped to 'export Alaska' and benefit the visitor industry.

While corporate Alaska as well as individual Alaskans have responded quite admirably, the ITC believes it is vitally important to put a mechanism in place which will help to ensure the long-

The Honorable Richard Foster

February 7, 1995


Page 2

term financial stability of the Race. The ITC believes that the passage of HB 146, which would allow the ITC to conduct 'The Iditarod Sweepstakes,' a game of chance where a prize of money would be awarded to the closest guess to the winning time of the Iditarod, represents a significant fundraising opportunity for Alaska's Iditarod and would provide the ITC with an ongoing and stable funding base.

Please know that your support for this legislation is greatly appreciated!

Sincerely yours for,

THE IDITAROD TRAIL COMMITTEE, INC.



Stan Hooley
Executive Director

cc: ITC Board of Directors

AURORA INTERNATIONAL
SLED DOG DEBRY INCORPORATED

P. O. Box 120681

Big Lake, Alaska 99652

Phone (907) 892-8261

Fax (907) 892-8445

February 10, 1995

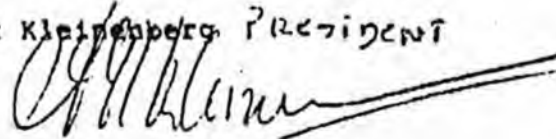
Senator Lyda Green
Juneau
Alaska

Dear Senator Green,

This letter is in support of Senate Bill number 66, providing for Sled Dog Race Classics.

Sincerely,

Burt Kleinberg, President



cc; Representative Beverly Masek
Representative Richard Foster



February 10, 1995

Senator Lyda Green
Juneau
Alaska

Dear Senator Green,

This letter is in support of Senate Bill number 66, providing for Sled Dog Race Classics.

Sincerely,

Nancy J. Wright
Secretary
Alaska-Chukotka Great Race, Inc.
(Hope Friendship Run)

cc; Representative Beverly Masek
Representative Richard Foster

The International-Intercontinental Sled Dog Race
3400 Wolverine Drive
Wasilla, Alaska 99654
Phone/Fax (907) 376-0301

DEPARTMENT OF REVENUE
Charitable Gaming Division

AUTHORIZED GAMES OF CHANCE AND SKILL PERMIT



This certifies that the municipality or qualified organization named below has applied and paid the fee for a permit to conduct games of chance and skill during all or part of the period from January 1 through December 31 of the license year. Games shall be conducted in accordance with AS 05 15.

IDITAROD TRAIL COMMITTEE, INC.
P.O. BOX 870300
WASILLA, AK

99687

This license must be posted in a conspicuous place at the location of the authorized activities.

PERMIT NUMBER	PERMIT YEAR	DATE ISSUED
240131	1994	01/13/94
OPERATOR OR VENDOR		
AUTHORIZED LOCATION		
GREATER CITY OF WASILLA AREA		
WASILLA, AK		99687
GAMING ACTIVITIES AUTHORIZED		
RAFFLES AND LOTTERIES		

THIS LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE.

Don Stolworthy, Director

ISSUED BY

04-0217 (Rev. 8/93)

Iditarod
(Capital Funds)

	Approved GF	SLA YR	Chapter	Page	Line
Iditarod Trail Race	15,000	77	11	1	0
Iditarod Trail Race	20,000	78	16	1	0
Iditarod Trail Race	20,000	79	4	1	9
Nome - Month of Iditarod	16,700	81	82	164	25
Iditarod Trail Improvements	100,000	82	101	87	13
Iditarod Trail Headquarters Grant	300,000	84	24	63	24
Right of Way Acquisition for Iditarod National Historic Trail	150,000	84	171	56	5
1984 Iditarod Sled Dog Race Operations Grant	65,050	84	8	1	12
1985 Iditarod Sled Dog Race Operations Grant	72,000	85	19	1	10
Wasilla - Iditarod Trail Committee Building	50,000	86	128	29	17
Iditarod FY87 Operating Expenses	50,000	86	130	77	20
1986 Iditarod Sled Dog Race Operations Grant	40,000	86	89	1	10
ROW Acquisition, Maintenance, & Operations of the Iditarod Historic	73,003	87	3	17	28
Right-of-Way Acquisition for Iditarod National Historic Trail	(73,003)	87	3	17	28
City of Wasilla-Iditarod Trail Upgrade	15,000	88	10	29	16
Wasilla Iditarod Trail Comm Bldg/Museum	0	90	208	43	28
Iditarod Trail Comm Inc Iditarod Bldg/Museum Impro	40,000	91	96	71	13
Iditarod Trail Committee	10,000	92	5	79	10
Iditarod Trail Committee Communications Equipment	0	92	5	80	18
City of Wasilla - Iditarod Trail Upgrade	20,000	92	5	101	15
City of Wasilla - Iditarod Trail Headquarters Addition	25,000	93	79	103	26
TOTAL	1,008,750				

HB

154

CS FOR HOUSE BILL NO. 154(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg, Kott

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring the Department of Law to provide guidelines regarding state
2 and municipal takings of private property; 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; relating to actions for state or municipal takings of private
6 property or for certain violations; prohibiting certain regulations; and providing
7 for an effective date."

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

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

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

11 Except as otherwise provided under AS 34.50.190, a [A] person may not bring an
12 action for the recovery of real property [,] or for the recovery of the possession of it
13 unless the action is commenced within 10 years. An action may not be maintained for

1 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
2 grantor of the plaintiff was seized or possessed of the premises in question within 10
3 years before the commencement of the action.

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

5 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
6 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided
7 by AS 34.50.190, a [A] person may not bring an action (1) for libel, slander, assault,
8 battery, seduction, false imprisonment, or for any injury to the person or rights of
9 another not arising on contract and not specifically provided otherwise; (2) upon a
10 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
11 other than a penalty or forfeiture; unless the action is commenced within two years.

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

13 ARTICLE 2. GOVERNMENT TAKINGS.

14 Sec. 34.50.100. GOVERNMENT TAKINGS GUIDELINES. The Department
15 of Law shall develop and submit guidelines to the lieutenant governor each year for
16 publication in the Alaska Administrative Code to assist state agencies, municipalities,
17 and the public to identify and evaluate governmental action that may result in a taking
18 of private real or personal property. The guidelines must be based on current law as
19 articulated by the United States Supreme Court and the state supreme court and the
20 principles stated in AS 34.50.110. The guidelines may not be construed to enlarge or
21 reduce the scope of private property protection provided by the state or federal
22 constitution.

23 Sec. 34.50.110. PRINCIPLES FOR GOVERNMENTAL ACTION. A
24 governmental entity shall follow the following principles when considering and taking
25 governmental action affecting private property:

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

31 (2) the assertion that a public health and safety purpose is involved is

1 insufficient to avoid a taking, and governmental actions that are purportedly designed
2 to protect public health and safety may not be taken unless they

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

5 (B) are designed to significantly advance the purpose of health
6 and safety; and

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

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

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

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

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

21 Sec. 34.50.120. RESTRICTIONS ON GOVERNMENTAL ACTION. (a) A
22 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
23 to private property, or impose a restraint on private property use unless the regulation,
24 ordinance, or restraint has the least possible effect on private property and still
25 accomplishes the necessary public purpose, and unless a statement complying with (b)
26 of this section is prepared by the governmental entity and made available to the public
27 at least 30 days before the adoption of the regulation or imposition of the restraint by
28 the entity.

29 (b) The statement required by (a) of this section must contain a full analysis
30 of the total economic effect of the regulation, ordinance, or restraint, an analysis of the
31 economic effect of all reasonable alternatives to the regulation, ordinance, or restraint,

1 and an identification of the manner in which the proposed regulation, ordinance, or
2 restraint will substantially advance the purpose of protecting public health and safety
3 from identifiable public health or safety risks created by the use of the private real
4 property.

5 Sec. 34.50.130. FULL COMPENSATION REQUIRED. (a) A governmental
6 entity may not take governmental action that results in a taking of private property,
7 unless the governmental entity pays full compensation for the taking to the owner of
8 the private property.

9 (b) The full compensation required by (a) of this section shall be paid to the
10 owner within three months after the adoption of the regulation or ordinance that results
11 in the taking, or within three months after the restraint on private property use that
12 results in the taking. The compensation shall be measured as of the date of the
13 adoption of the regulation or ordinance, or the imposition of the restraint. Interest at
14 the London Interbank Offering Rate plus 3.5 percent shall be paid on the amount due
15 the property owner from the time that the regulation or ordinance is enforced as to the
16 private property, or from the time the restraint is imposed on the private property, until
17 the time payment is received by the owner.

18 Sec. 34.50.140. PROHIBITION AGAINST VALUE DEFLATION. A
19 governmental entity may not deflate the value of private property by suggesting or
20 threatening to take action that would avoid the entity's paying full compensation to the
21 owner.

22 Sec. 34.50.150. WAIVER PROHIBITED. A governmental entity may not
23 require the owner of private property to waive the full compensation required by
24 AS 34.50.130 as a condition of approving a use of the person's property, including
25 receiving a permit or subdividing real property.

26 Sec. 34.50.160. ACCESS REQUIRED. In addition to the full compensation
27 required by AS 34.50.130, a governmental entity that adopts a regulation or ordinance,
28 or imposes a restraint on private property use shall also, at the governmental entity's
29 expense, provide an alternate access to the property or purchase the inaccessible
30 property, if the regulation, ordinance, or restraint deprives the owner of the property
31 of access to the property.

1 Sec. 34.50.170. PROHIBITION AGAINST IMPOSING COSTS. A
2 governmental entity may not require an owner of private property to provide or pay
3 for studies, maps, plans, reports, or other information used in the governmental entity's
4 decisions to adopt a regulation or ordinance relating to private property, or to impose
5 a restraint on private property use.

6 Sec. 34.50.180. STATE RESPONSIBILITY FOR COMPENSATION. The
7 state shall compensate municipalities for the full compensation that the municipalities
8 are required to pay under AS 34.50.130 for taking private property by governmental
9 action if the municipality's governmental action is required by state law.

10 Sec. 34.50.190. TIME FOR BRINGING ACTION. A person may not
11 commence a civil action for a taking of the person's private property by governmental
12 action unless the action is commenced within five years after the taking has occurred.

13 Sec. 34.50.200. ADJUSTMENT OF VALUE FOR PROPERTY TAX. (a) If
14 a determination has been made that there has been a taking of private property by
15 governmental action, a municipality that levies a tax on the property shall adjust
16 valuation of the property for the purposes of the tax and notify the owner of the new
17 tax valuation. The new tax valuation must be reflected and identified in the next tax
18 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 the valuation used by the municipality
23 when taxing the property.

24 Sec. 34.50.210. ENFORCEMENT. A person who owns property that is
25 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
26 superior court against a governmental entity that fails to comply with the provision.
27 If the person prevails in an action brought under this section, the owner may recover,
28 to the extent awarded by the court, the owner's attorney fees and costs from the budget
29 of the governmental entity involved in the governmental action on which the court
30 action was based.

31 Sec. 34.50.220. REGULATIONS PROHIBITED. A state agency may not

1 adopt regulations to implement AS 34.50.100 - 34.50.250.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace
2 Development Corporation, and the Alaska State Pension Investment Board;

3 (9) "taking" includes

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

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

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

14 * Sec. 4. AS 29.25.020(b) is amended to read:

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

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

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

21 (3) if applicable, a notice containing the statement under
22 AS 34.50.120 shall be given;

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

26 (5) [(4)] copies of the ordinance shall be available to all persons present
27 at the hearing, or the ordinance shall be read in full;

28 (6) [(5)] during the hearing the governing body shall hear all interested
29 persons wishing to be heard;

30 (7) [(6)] after the public hearing the governing body shall consider the
31 ordinance, and may adopt it with or without amendment;

1 (8) [(7)] the governing body shall print and make available copies of
2 an ordinance that is adopted.

3 * Sec. 5. AS 29.25.040 is amended to read:

4 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a
5 single ordinance adopt or amend by reference provisions of a published code of
6 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
7 adopted under this section, except that neither the ordinance or its amendments must
8 be distributed to the public or read in full at the public hearing. For a period of 15
9 days before adoption of an ordinance under this section, at least five copies of the code
10 of regulations shall be made available for public inspection at a time and place set out
11 in the hearing notice. Only the ordinance must be printed after it is adopted under this
12 section. The governing body shall provide for an adopted code of regulations to be
13 made available to the public at no more than cost. **Notwithstanding the other**
14 **provisions of this section and if applicable, the adoption of a published code of**
15 **regulations under this section shall comply with AS 34.50.120.**

16 * Sec. 6. AS 29.45.110 is amended by adding a new subsection to read:

17 (d) When assessing the full and true value of property, the assessor shall
18 comply with AS 34.50.120.

19 * Sec. 7. AS 44.62.130(a) is amended to read

20 (a) The lieutenant governor shall provide for the continuing compilation,
21 codification, and publication, with periodic supplements, of the guidelines developed
22 by the Department of Law under AS 34.50.100 and of all regulations filed by the
23 lieutenant governor's office, or of appropriate references to any regulations the printing
24 of which the lieutenant governor finds to be impractical, such as detailed schedules or
25 forms otherwise available to the public, or that [WHICH] are of limited or particular
26 application. The publication of the guidelines and the compiled regulations is the
27 Alaska Administrative Code. The periodic supplements to it are the Alaska
28 Administrative Register. The code and register must contain appropriate annotations
29 to judicial decisions and opinions of the attorney general.

30 * Sec. 8. AS 44.62.200(a) is amended to read:

31 (a) The notice of proposed adoption, amendment, or repeal of a regulation

1 must include

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

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

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

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

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

12 (6) if applicable, the information required by AS 34.50.120.

13 * Sec. 9. 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. 10. INITIAL GUIDELINES. The Department of Law shall prepare the initial
17 guidelines required by AS 34.50.100, enacted by sec. 3 of this Act, by January 1, 1996.

18 * Sec. 11. This act takes effect July 1, 1995.

9-LS0602K ✓
Bannister
3/9/95

CS FOR HOUSE BILL NO. 154()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOHRING, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring the Department of Law to provide guidelines regarding state
2 and municipal takings of private property; 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; relating to actions for state or municipal takings of private
6 property or for certain violations; prohibiting certain regulations; and providing
7 for an effective date."

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

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

10 Sec. 09.10.030. ACTIONS TO RECOVER REAL PROPERTY IN 10 YEARS.
11 Except as otherwise provided under AS 34.50.190, a [A] person may not bring an
12 action for the recovery of real property [,] or for the recovery of the possession of it
13 unless the action is commenced within 10 years. An action may not be maintained for

1 the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the
2 grantor of the plaintiff was seized or possessed of the premises in question within 10
3 years before the commencement of the action.

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

5 Sec. 09.10.070. ACTIONS FOR TORTS AND CERTAIN STATUTORY
6 LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided
7 by AS 34.50.190, a [A] person may not bring an action (1) for libel, slander, assault,
8 battery, seduction, false imprisonment, or for any injury to the person or rights of
9 another not arising on contract and not specifically provided otherwise; (2) upon a
10 statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute,
11 other than a penalty or forfeiture; unless the action is commenced within two years.

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

13 ARTICLE 2. GOVERNMENT TAKINGS.

14 Sec. 34.50.100. GOVERNMENT TAKINGS GUIDELINES. The Department
15 of Law shall develop and submit guidelines to the lieutenant governor each year for
16 publication in the Alaska Administrative Code to assist state agencies, municipalities,
17 and the public to identify and evaluate governmental action that may result in a taking
18 of private real or personal property. The guidelines must be based on current law as
19 articulated by the United States Supreme Court and the state supreme court and the
20 principles stated in AS 34.50.110. The guidelines may not be construed to enlarge or
21 reduce the scope of private property protection provided by the state or federal
22 constitution.

23 Sec. 34.50.110. PRINCIPLES FOR GOVERNMENTAL ACTION. A
24 governmental entity shall follow the following principles when considering and taking
25 governmental action affecting private property:

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

31 (2) the assertion that a public health and safety purpose is involved is

1 insufficient to avoid a taking, and governmental actions that are purportedly designed
2 to protect public health and safety may not be taken unless they

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

5 (B) are designed to significantly advance the purpose of health
6 and safety; and

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

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

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

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

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

21 Sec. 34.50.120. RESTRICTIONS ON GOVERNMENTAL ACTION. (a) A
22 governmental entity may not adopt, amend, or repeal a regulation or ordinance relating
23 to private property, or impose a restraint on private property use unless the regulation,
24 ordinance, or restraint has the least possible effect on private property and still
25 accomplishes the necessary public purpose, and unless a statement complying with (b)
26 of this section is prepared by the governmental entity and made available to the public
27 at least 30 days before the adoption of the regulation or imposition of the restraint by
28 the entity.

29 (b) The statement required by (a) of this section must contain a full analysis
30 of the total economic effect of the regulation, ordinance, or restraint, an analysis of the
31 economic effect of all reasonable alternatives to the regulation, ordinance, or restraint,

1 and an identification of the manner in which the proposed regulation, ordinance, or
2 restraint will substantially advance the purpose of protecting public health and safety
3 from identifiable public health or safety risks created by the use of the private real
4 property.

5 Sec. 34.50.130. FULL COMPENSATION REQUIRED. (a) A governmental
6 entity may not take governmental action that results in a taking of private property,
7 unless the governmental entity pays full compensation for the taking to the owner of
8 the private property.

9 (b) The full compensation required by (a) of this section shall be paid to the
10 owner within three months after the adoption of the regulation or ordinance that results
11 in the taking, or within three months after the restraint on private property use that
12 results in the taking. The compensation shall be measured as of the date of the
13 adoption of the regulation or ordinance, or the imposition of the restraint. Interest at
14 the London Interbank Offering Rate plus 3.5 percent shall be paid on the amount due
15 the property owner from the time that the regulation or ordinance is enforced as to the
16 private property, or from the time the restraint is imposed on the private property, until
17 the time payment is received by the owner.

18 Sec. 34.50.140. PROHIBITION AGAINST VALUE DEFLATION. A
19 governmental entity may not deflate the value of private property by suggesting or
20 threatening to take action that would avoid the entity's paying full compensation to the
21 owner.

22 Sec. 34.50.150. WAIVER PROHIBITED. A governmental entity may not
23 require the owner of private property to waive the full compensation required by
24 AS 34.50.130 as a condition of approving a use of the person's property, including
25 receiving a permit or subdividing real property.

26 Sec. 34.50.160. ACCESS REQUIRED. In addition to the full compensation
27 required by AS 34.50.130, a governmental entity that adopts a regulation or ordinance,
28 or imposes a restraint on private property use shall also, at the governmental entity's
29 expense, provide an alternate access to the property or purchase the inaccessible
30 property, if the regulation, ordinance, or restraint deprives the owner of the property
31 of access to the property.

1 Sec. 34.50.170. PROHIBITION AGAINST IMPOSING COSTS. A
2 governmental entity may not require an owner of private property to provide or pay
3 for studies, maps, plans, reports, or other information used in the governmental entity's
4 decisions to adopt a regulation or ordinance relating to private property, or to impose
5 a restraint on private property use.

6 Sec. 34.50.180. STATE RESPONSIBILITY FOR COMPENSATION. The
7 state shall compensate municipalities for the full compensation that the municipalities
8 are required to pay under AS 34.50.130 for taking private property by governmental
9 action if the municipality's governmental action is required by state law.

10 Sec. 34.50.190. TIME FOR BRINGING ACTION. A person may not
11 commence a civil action for a taking of the person's private property by governmental
12 action unless the action is commenced within five years after the taking has occurred.

13 Sec. 34.50.200. ADJUSTMENT OF VALUE FOR PROPERTY TAX. (a) If
14 a determination has been made that there has been a taking of private property by
15 governmental action, a municipality that levies a tax on the property shall adjust
16 valuation of the property for the purposes of the tax and notify the owner of the new
17 tax valuation. The new tax valuation must be reflected and identified in the next tax
18 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 the valuation used by the municipality
23 when taxing the property.

24 Sec. 34.50.210. ENFORCEMENT. A person who owns property that is
25 affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the
26 superior court against a governmental entity that fails to comply with the provision.
27 If the person prevails in an action brought under this section, the owner may recover,
28 to the extent awarded by the court, the owner's attorney fees and costs from the budget
29 of the governmental entity involved in the governmental action on which the court
30 action was based.

31 Sec. 34.50.220. REGULATIONS PROHIBITED. A state agency may not

1 adopt regulations to implement AS 34.50.100 - 34.50.250.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Corporation, the Alaska Housing Finance Corporation, the Alaska Aerospace
2 Development Corporation, and the Alaska State Pension Investment Board;

3 (9) "taking" includes

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

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

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

14 * Sec. 4. AS 29.25.020(b) is amended to read:

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

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

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

21 (3) if applicable, a notice containing the statement under
22 AS 34.50.120 shall be given;

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

26 (5) [(4)] copies of the ordinance shall be available to all persons present
27 at the hearing, or the ordinance shall be read in full;

28 (6) [(5)] during the hearing the governing body shall hear all interested
29 persons wishing to be heard;

30 (7) [(6)] after the public hearing the governing body shall consider the
31 ordinance, and may adopt it with or without amendment;

1 (8) [(7)] the governing body shall print and make available copies of
2 an ordinance that is adopted.

3 * Sec. 5. AS 29.25.040 is amended to read:

4 Sec. 29.25.040. CODES OF REGULATION. The governing body may in a
5 single ordinance adopt or amend by reference provisions of a published code of
6 municipal regulations. The procedure under AS 29.25.020 applies to an ordinance
7 adopted under this section, except that neither the ordinance or its amendments must
8 be distributed to the public or read in full at the public hearing. For a period of 15
9 days before adoption of an ordinance under this section, at least five copies of the code
10 of regulations shall be made available for public inspection at a time and place set out
11 in the hearing notice. Only the ordinance must be printed after it is adopted under this
12 section. The governing body shall provide for an adopted code of regulations to be
13 made available to the public at no more than cost. Notwithstanding the other
14 provisions of this section and if applicable, the adoption of a published code of
15 regulations under this section shall comply with AS 34.50.120.

16 * Sec. 6. AS 29.45.110 is amended by adding a new subsection to read:

17 (d) When assessing the full and true value of property, the assessor shall
18 comply with AS 34.50.120.

19 * Sec. 7. AS 44.62.130(a) is amended to read

20 (a) The lieutenant governor shall provide for the continuing compilation,
21 codification, and publication, with periodic supplements, of the guidelines developed
22 by the Department of Law under AS 34.50.100 and of all regulations filed by the
23 lieutenant governor's office, or of appropriate references to any regulations the printing
24 of which the lieutenant governor finds to be impractical, such as detailed schedules or
25 forms otherwise available to the public, or that [WHICH] are of limited or particular
26 application. The publication of the guidelines and the compiled regulations is the
27 Alaska Administrative Code. The periodic supplements to it are the Alaska
28 Administrative Register. The code and register must contain appropriate annotations
29 to judicial decisions and opinions of the attorney general.

30 * Sec. 8. AS 44.62.200(a) is amended to read:

31 (a) The notice of proposed adoption, amendment, or repeal of a regulation

1 must include

2 (1) a statement of the time, place, and nature of proceedings for
3 adoption, amendment, or repeal of the regulation:

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

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

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

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

12 (6) if applicable, the information required by AS 34.50.120.

13 * Sec. 9. 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. 10. INITIAL GUIDELINES. The Department of Law shall prepare the initial
17 guidelines required by AS 34.50.100, enacted by sec. 3 of this Act, by January 1, 1996.

18 * Sec. 11. This act takes effect July 1, 1995.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 154

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...requiring the Department of Law to provide BRU: Legal Services
guidelines...unconstitutional...takings..." Component: Operations
 Sponsor: Representative Kohring
 Requester: Representative Kohring COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 (FY95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill would require the Department of Law to develop and submit guidelines to the lieutenant governor each year for publication in the Alaska Administrative Code to assist state agencies, municipalities, and the public to identify and evaluate government action that may result in an unconstitutional taking of private real property. The bill further requires that the guidelines must be based on current law as articulated by the United States Supreme Court and the state supreme court. The bill also provides that the guidelines may not be construed to enlarge or reduce the scope of private property protection provided by the state or federal constitutions.

United States Supreme Court decisions regarding takings are extremely fact-specific. For instance, in Penn Central Transportation Co. v. New York City, the court acknowledged that it finds the question of what constitutes a taking for purposes of the Fifth Amendment to be a problem of considerable difficulty. And the Court admitted to its inability to develop any "set formula" for determining when "justice and fairness" require

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/19/95
 Date: 2/19/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 154

ANALYSIS CONTINUATION:

injuries caused by public action to be compensated by the government, rather than be disproportionately concentrated on a few persons. The Court frequently has observed that whether a particular restriction will be rendered invalid by the government's failure to pay for any losses proximately caused by it depends largely "upon the particular circumstances [in that] case." In Andrus v. Allard the Court said that resolution of each case ultimately calls as much for the exercise of judgment as for the application of logic. The Court has identified standards that it uses for guidance in its determination of whether a taking has occurred. However, these standards are somewhat broad. For example, in cases involving land use regulation, the Court will hold that the regulation can effect a taking if it does not substantially advance legitimate state interests or denies an owner economically viable use of his land. Even if neither of these standards is met, a regulation still may constitute a taking if it interferes sufficiently with "reasonable investment expectations" or where it is of an extraordinary nature. But none of this can be determined without a thorough examination of the facts and the particular circumstances involved.

Because the Court bases its takings determinations on individual factual inquiries, the Department of Law would be forced to speculate about factual situations that have not occurred, if the department provided guidelines that ventured beyond a simple compilation of the Court's current takings decisions. This would be problematic for two reasons.

First, any form of interpretative guidelines prepared by the Department of Law could mislead the public into either taking action when they should not, or not taking action when they should, in response to government action. It is the courts' role, and not the department's, to interpret the law on behalf of the public.

Second, the department, which does have responsibility for interpreting the law for state agencies, could be placed in a position of furnishing "legal advice" to members of the public who may rely on that advice in an adverse action against a state agency, whom the department has the responsibility of defending. This is a conflict that could not be overcome, probably requiring the use of outside counsel in the state's defense. The cost for such counsel cannot be predicted in advance, but it could be very expensive.

Consequently, if interpretative guidelines are to be provided, this bill could cause a significant undetermined cost for the Department of Law. The department could produce a compilation of current Court decisions at a small additional cost. About two months of attorney time would be required to prepare the initial compilation in the first year, and a few weeks of attorney time would be required each year thereafter to prepare annual updates.

FISCAL NOTE

Revision Date: February 13, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act requiring the Department of Law to provide guidelines regarding unconst. BRU: none
 Sponsor: Representative Kohring Component none
 Requestor: House C & RA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 2/13/95
 Approved by Commissioner: *Mike Aron* Date: 2/13/95
 Agency: Community & Regional Affairs

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 154

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to the unconstitutional taking of private real property. BRU: Resource Development
 Component: Land Development
 Sponsor: Rep Kohring
 Requestor: Community and Regional Affairs Committee Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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 (FY95) cost: \$ _____

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)

Requires the Department of Law to provide guidelines regarding unconstitutional state and municipal taking of private real property when there is not adequate compensation.

This bill has no impact on DNR as we do not have eminent domain authority and AS 38 specifically excludes private land from any action or decision we may make on adjacent state land.

Prepared by: Ron Swanson *[Signature]* Phone: 762-2692
 Division: Land Date: 8-Feb-95
 Approved by Commissioner: *[Signature]* Date: 2/10/95
 Agency: Natural Resources

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REPRESENTATIVE VIC KOHRING DISTRICT 26 MEMORANDUM

DATE: April 20, 1995
TO: Representative Alan Austerman, Co-chair
House Community & Regional Affairs Committee
FROM: Representative Vic Kohring
SUBJ: Report on House Bill 154

In the interest of moving this important legislation along, I have attempted to answer the subcommittee's concerns. I believe that many of these concerns can be addressed to the committee's satisfaction and have attempted to do so. Since many of these concerns seem to be of a legal nature it would seem logical for the Judiciary Committee to be the proper place to study this bill in more depth.

Questions:

1. What constitutes a regulatory "taking" of economic value of property?

The U.S. Supreme Court ruled in Lucas v. S. Carolina Coastal Council that "the Fifth Amendment is violated when land-use regulation does not substantially advance legitimate state interests or denies an owner economically viable use of his land." They continue by holding "regulations that leave the owner of land without economically beneficial or productive options for its use . . . carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." The Court has also held in Nollan v. California Coastal Commission that a property regulation which does not substantially advance its avowed governmental purpose also constitutes a taking.

The U.S. Congress and many other states have differing proposals on the percent of decrease that constitutes a compensable taking, varying from 1% to 33%. CSHB 154 uses a standard that requires any loss in value to be compensated.

2. Who defines what is the reasonable use of private property?

Sec. 34.50.110, subsection (3) states that "the government entity responsible for taking the governmental action has the burden of proving the need for the governmental action." In other words, the government entity must prove that their action is necessary to avoid or correct a public nuisance.

3. Who decides what is the most profitable use of the land?

The most profitable use of any property, be it real or personal (this includes money) is best decided by the person who owns it.

4. What is the effect of this bill on:

Pollution prevention, public safety, design controls and resource protection are addressed in section 3, AS 34.50.110, page 2, line 31 - page 3, line 8 and section 3 AS 34.50.250, page 7, lines 3 through 7. These sections allow governmental actions that are designed to protect public health and safety. Scenic views are an altruistic pastime, purely a subjective matter on the part of the individual. To limit the value or use of a person's property based upon this criteria without compensating that person is unfair.

5. How will municipal and state governments handle the fiscal impact of compensating property owners?

State and local governments will have to be very prudent in their determinations of what use of land is in the public interest. Currently, the power of eminent domain is used very sparingly. The reason for this is because a monetary value is placed upon the property which is being condemned, thus effectively limiting its use, due to the fiscal impact. The purpose of this bill is to apply the same prudence upon these governmental agencies in regard to regulatory takings. Despite some recent court rulings, a property owner prevailing in a regulatory case is the exception rather than the rule. Consequently, takings litigation today is a long and arduous process that only the most well-financed and dedicated property owner can endure. The scales of justice are unfairly tipped in favor of the government when citizens are faced with the threat of losing their property because of regulatory burdens.

6. Where will these disputes be settled: in the regulatory agency or in the court?

Section 3, AS 34.50.100, page 2, line 14 - 22 of the bill are very specific in this regard. A governmental agency will review the potential impact of a regulatory or administrative action on specific property, using the guidelines set up by this bill. It is expected that the guidelines supplied by the Attorney General' Office will give wise guidance upon this subject for the enlightenment of the several agencies. Of course, the person who is affected always has the option of going to court.

7. How will a government resolve secondary challenges from property owners who believe their property values are diminished by a government's decision not to enforce a regulation on a neighbor?

This is a matter of equity and the decision of the individual property owners to decide whether or not they feel their grievances are sufficient enough to pursue in court is subject to them.

8. Are there significant numbers of regulatory appeals and lawsuits which point up the need for this legislation?

In the last 5 years, there have been 121 administrative appeals of state natural resource agency permit decisions. These include ADF&G, DEC, DNR, as well as DGC (Division of Governmental Coordination). The Alaska Courts have their record system on paper and they also do not seem to have these cases sorted by category instead of case record number. We do not have the time or resources to comb through these files. As presented to the committee in earlier testimony, we have copies of 15 Alaska Supreme Court cases relating to regulations and regulatory takings.

9. What is the financial burden to other states that have enacted similar laws?

According to Larry Morandi with NCSL, only 3 states have passed legislation with stringent compensation requirements. None have provided fiscal notes showing a large financial burden.

10. What section of HB 154 speaks to "retroactivity?"

The bill sponsor has indicated a willingness to add a section to the bill that would state, in very clear terms, that no portion of this bill is retroactive.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

HB 154: Regulatory Takings of Private Property

The Alaska Environmental Lobby opposes HB 154:

- * HB 154 offers a hollow and misleading promise. HB 154 neither increases nor decreases the constitutional protection guaranteed owners of private property (P. 2, Line 18-20). This measure appears innocuous, but is an attempt to negate health, safety and environmental regulation by saddling enforcement agencies with untenable costs. In addition, HB 154 could undermine municipal and local laws covering everything from building heights to occupancy limits in restaurants.
- * HB 154 will add another layer of bureaucratic review to the regulatory process. The consequence of this bill becoming law is that governmental programs will be less efficient and more costly. HB 154 represents movement in the wrong direction at a time when there is a manifest need for government to be more efficient and less costly.
- * Private property owners are entitled to "just compensation" when their property is taken by government action. The US. Constitution offers Fifth Amendment protection and delivers this right. HB 154 is based on the premise that meaningful takings analysis can be done in the abstract, without reference to a specific piece of property.
- * We believe that takings issues are the appropriate jurisdiction of the courts. Legislation would have far-reaching implications for state and local zoning, land management, and public health. The idea that property owners can demand government compensation on the grounds of perceived limitations for health, safety, and other laws and regulations is constitutionally unsound and dangerous.

February 21, 1995



REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

MEMORANDUM

TO: Representative Ivan Ivan, Co-Chair
House Community & Regional Affairs Cmte.

FROM: Representative Alan Austerman, Chair
Subcommittee on House Bill 154

DATE: April 11, 1995

RE: Report on House Bill 154

The Subcommittee on House Bill 154 met on Thursday, March 30th to address concerns brought forth by the full committee. It was decided by the subcommittee, that because of the far reaching aspects of this legislation; the fact that "takings legislation" was currently being considered at the federal level and the limited time available this session, that the full committee address the following issues during the interim:

1. What constitutes a regulatory "taking" of economic value of property?
 - What percent of decrease in the property's value applies?
2. Who defines what is the reasonable use of private property, the private property owner or the state or municipal government?
3. Who decides what is the most profitable use of the land?
4. What is the affect of this bill on:
 - pollution prevention
 - public safety
 - scenic views
 - design controls
 - resource protection (e.g. salmon habitat on the Kenai River)?

5. How will municipal and state governments handle the fiscal impact of compensating property owners?
6. Where will these disputes be settled: in the regulatory agency or in the court?
 - If in the courts, will these cases get jammed up in an overburdened judicial system?
7. How will a government resolve secondary challenges from property owners who believe their property values are diminished by a government's decision not to enforce a regulation on a neighbor?
8. Are there significant number of regulatory appeals and lawsuits which point up the need for this legislation?
9. What is the financial burden to other states that have enacted similar laws?
10. What section of HB 154 speaks on "retroactivity"?

These are some of the questions that have brought some concern among subcommittee members and various state agencies.

AA/spp

cc: All C&RA Committee members
Representative Kohring
Dept. of Fish & Game
Dept. of Public Safety
Dept. of Law
Ak. Environmental Lobby

**DIVISION OF LEGAL 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

March 9, 1995

SUBJECT: Sectional Summary of CSHB 154 () (Work Order No. 9-LS0602K)

TO: Representative Vic Kohring
Attn: Craig Lyon

FROM: Theresa Bannister *TB*
Legislative Counsel

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. 34.50.190 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. 34.50.190.

Section 3 adds a new article on government takings.

Sec. 34.50.100 directs the Department of Law to prepare and submit certain guidelines to the lieutenant governor each year. The purpose of the guidelines is to assist state agencies, municipalities, and the public to identify and evaluate governmental action that may result in a taking of private property. The guidelines are to be published in the Alaska Administrative Code.

Sec. 34.50.110 directs governmental entities to follow the principles listed in the section when considering and taking governmental action affecting private property.

Sec. 34.50.120 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 private property and still accomplishes its public purpose and unless an analysis, as described in (b), of the action is made available to the public at least 30 days before the action.

Sec. 34.50.130 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. 34.50.140 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. 34.50.150 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. 34.50.160 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. 34.50.170 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. 34.50.180 requires the state to reimburse municipalities for the compensation they have to pay under sec. 34.50.130 for their takings, if the municipalities' actions are required by state law.

Sec. 34.50.190 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. 34.50.200 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 shown 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 valuation and secures the independent appraisal.

Sec. 34.50.210 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.

Sec. 34.50.220 prohibits a state agency from adopting regulations to implement the new article.

Sec. 34.50.250 defines terms for the new article.

Representative V. Rohring
March 9, 1995
Page 3

Section 4 amends the main section governing the enactment of ordinances to include the statement required under sec. 34.50.120.

Section 5 amends the section relating to municipal adoption of published codes of regulations to require compliance with AS 34.50.120.

Section 6 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. 34.50.120.

Section 7 amends a section on the Alaska Administrative Code to provide that the code includes the guidelines developed by the Department of Law under new sec. 34.50.100.

Section 8 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. 34.50.120.

Section 9 provides a severability clause for the Act.

Section 10 directs the Department of Law to prepare the initial governmental takings' guidelines by January 1, 1996.

Section 11 makes the Act effective July 1, 1995.

If I may be of further assistance, please advise.

TLB.lmb:glc
95-144.lmb

DIVISION OF LEGAL SERVICES
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Juneau, Alaska 99801-2105

MEMORANDUM

February 9, 1995

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

TO: Representative Vic Kohring
Attn: Craig

FROM:  Theresa Bannister
Legislative Counsel

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. 09.57.020 (proposed 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. 09.57.020 (proposed in sec. 3 of the bill).

Section 3 adds a new chapter on government takings.

Sec. 09.57.010 directs the Department of Law to prepare and submit certain guidelines to the lieutenant governor each year. The purpose of the guidelines is to assist state agencies, municipalities, and the public to identify and evaluate government action that may result in an unconstitutional taking of private real property. The guidelines are to be published in the Alaska Administrative Code.

Sec. 09.57.020 prohibits a person from beginning an civil court action for an unconstitutional taking of private real property by government action, unless the action is begun within five years.

Sec. 09.57.030 requires a municipality to take into consideration for property tax purposes a reduction in value of private real property, if a court determines that there has been an

Representative Vic Koning

February 9, 1995

Page 2

unconstitutional taking of the property by government action and if the taking has reduced the property's value.

Sec. 09.57.090 defines certain terms for the new chapter.

Section 4 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. 09.57.030.

Section 5 amends a section on the Alaska Administrative Code to provide that the code includes the guidelines developed by the Department of Law under new sec. 09.57.010.

Section 6 gives the provisions in the bill an effective date of July 1, 1995.

TLB:glc:klb

95-129.glc



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Representative Vic Kohring

State Capitol
Juneau, AK 99801-1182

Sponsor Statement

HB 154, An Act relating to regulatory takings of private property

HB 154 would help provide relief for private citizens who have had their property "taken" through regulatory means. In many cases environmental regulations restricting the use of land have the same consequences for the property owner as a physical "taking" of the land under eminent domain, (such as for a highway) which requires compensation. I don't believe that a landowner should have to bear the costs of environmental benefits enjoyed by all citizens.

This legislation would require the Department of Law to provide guidelines to assist state agencies, municipalities, and the public to identify and evaluate government action that may result in an unconstitutional taking of private real property. If such a taking has occurred which results in a decrease in the value of the property, this legislation would require such a reduction be taken into consideration when assessing the value of the property for tax purposes.

I believe that passage of HB 154 will provide the public with protection from the government of any unconstitutional taking of their private property without at least some form of compensation. I respectfully request favorable consideration of this legislation by the committee.

jon isaacs and associates . 2418 forest park drive . anchorage, alaska . 99517 . (907)274-9719 . fax 276-6117

Facsimile Cover Sheet

FACSIMILE COVER PAGE

To: ivan ivan
Time: 15:02:11
Pages (including cover): 4

From:
Date: 3/27/95

To: Honorable Representative Ivan
From: Jon Isaacs, APA

Enclosed is written testimony on HB 154 that supports my oral testimony before your committee on March 25. Could you please distribute a copy to other committee members? Thank you for consideration of this matter.

TESTIMONY BEFORE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
HOUSE BILL 154

Testimony of Jon Isaacs
Alaska Chapter, American Planning Association

Mr. Chairman, committee members, I appreciate the opportunity to testify today. My name is Jon Isaacs, and I represent the Alaska Chapter, of the American Planning Association. My office address is 308 G street, suite 313, Anchorage, Alaska 99517, and my phone number is 274-9719. The APA is an association of planners and resource managers working for local, state, and federal government, and private industry. Members work for communities across the state such as Valdez, Wasilla, Juneau, and the Kodiak Island and Mat-Su Boroughs. In the past, the association has worked to develop constructive solutions to problems facing Alaskan communities, including changing current federal wetlands permitting practices.

Position on HB 154

The APA supports the legislative intent that insupportable and excessive taking of property by state and local government should be avoided. In particular, developing guidelines for avoiding the taking of property meets a real need. However, the legislation as written is excessively broad and vague with regard to defining government action subject to consideration, and determination of adverse effect. As a result, implementation would be subject to diverse legal interpretation and subsequent challenge in courts at the cost of both the property owner, government, and residents as a whole, which seems to defeat the legislation's purpose. We recommend that language changes take place before passing the bill out of committee.

Background

The taking of property, whether it be through acquisition, restrictions on use, or effect value, is an issue being discussed nation-wide. Of particular concern are instances where the taking of property appears arbitrary or capricious, is not clearly tied to approved regulations or planning processes, or occurs through a process without adequate public review. Land use laws and regulations must balance the 5th amendment protection of property rights with the protection of the community as a whole from

injurious or harmful effects of development, which include more than just health and safety issues, such as the economic value of adjacent property or resources such as salmon that are held in common for the benefit of the state. Alaskan communities are more attuned to property rights and the need for flexible development than most places in the country.

Without a doubt, government must take more responsibility in minimizing takings and providing fair compensation to property owners. Several solutions or remedies to unjustified takings currently exist. Laws, regulations, and plans must be developed and adopted through a public approval process, and receive adequate public review. Communities have the freedom to adopt minimal land use controls if they so desire. The national chapter of APA has recently developed guidelines on developing laws, regulations, and plans in a manner that avoids unjustified takings.

Appeal mechanisms are available through local and state governments and through the courts. Recent national court cases have found in favor of property owners in several takings issues. Undeniably, this puts an economic burden on the property owner, but appears to be working.

Problems with HB 154

There are several serious problems with the way this bill is currently constructed:

- *excessively broad and vague definitions of government action subject to consideration, and determination of adverse effect* - using the example of salmon streams and timber buffers, the landowner could sue over imposition of any buffer, the fisherman could sue over loss of fish, or both could sue simultaneously if dissatisfied. The same could occur with a rezoning to a noxious use, where the applicant could sue over restriction of use, and adjacent property owners suing over loss of property value.
- *a five year statute of limitations to file a claim allows a government to be blindsided with a future claim, without any requirement to go through available appeal procedures* - the financial uncertainty could result in government afraid to take any action to protect the health and welfare of its citizens
- *method of assessing loss in value* - several municipal assessors have expressed

concerns regarding provisions for assessing loss in value

Those likely to bear the biggest cost of the legislation as written will be 1) property owners who will end up in court more frequently, 2) municipalities who will be liable for a broad category of claims and may hesitate to act at all, and 3) citizens who will face greater uncertainty about how their community will develop and how their property will be affected.

Recommendations

The Alaska chapter of the American Planning Association recommends that language changes take place before passing the bill out of the Community and Regional Affairs committee. It may be more appropriate to emphasize developing guidelines to avoid or minimize takings of property, rather than broadly allowing property owners affected by any government action be allowed to seek compensation on any effect on property value for up to five years after the action occurs. The APA would be glad to work with the committee and bill sponsors that addresses the problem without creating vastly greater ones.

CSHB154 - "Regulatory taking of Private Property" 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.



Alaska Environmental Lobby, Inc.

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OPPOSE HB 154 REGULATORY TAKINGS

HB 154, Regulatory Takings, is an overreaching and dangerous piece of legislation. HB154 ensures that government programs will be less efficient and more costly. Instead of fine-tuning government, it would add a new layer of bureaucracy, cost the state millions of dollars, and render virtually useless the regulations which ensure we all have safe air and water, a healthy fishing economy, uncontaminated food to eat and safe working conditions.

IT WILL COST MILLIONS OF DOLLARS

In states with similar legislation, millions of dollars have been spent on administrative costs alone. Our State agencies would have to hire legions of attorneys and then come up with the money to pay thousands of claims. Consider how costly this legislation would be.

IT IS DANGEROUS

HB 154 would negate health, safety and environmental regulations by making it too expensive for State agencies to enforce them. While there is certainly a legitimate concern with over-regulation, most regulations serve the basic purpose of ensuring the public health and safety.

IT DESTROYS LOCAL CONTROL

HB154 would undermine municipal and local laws covering everything from zoning restrictions, labor laws and seafood handling.

The litigation would be endless. If my neighbor wants to build a porn shop on his property and sues to win exemption from zoning regulations, then it follows that I will then sue the government for compensation because MY property value will be diminished. Where will the line be drawn?

IN AN EXAMPLE GIVEN BY THE SPONSOR, OF THE LITTLE GUY VS GOVERNMENT Steve Noey wanted compensation for not being allowed to build an improper sewage disposal system for his subdivision on Kachamak Bay. He sought exemption from the waste disposal permitting process because, in his assessment, the guidelines regulating safe sewage treatment interfered with his profit margin. In *Noey vs. DEC*, a Dept. of Law trial brief states:

"DEC's engineers will testify that it would be appropriate to reject (Noey's) proposal because waste water would be discharged to the surface of the land, which in turn could impact adjoining property and pose a hazard to public health"

If HB154 were enacted, Noey would be either allowed exemption from DEC permitting, or, he would have the right to sue and make all the rest of us pay for the money he says he lost by not being able to build his 15 unit subdivision. (DEC did inform Mr. Noey of other options - an appropriate disposal system or subdividing to 5 lots , thus being able to bypass the permit that was the problem.)

In a state with the highest Hepatitis A rate in the country and high rates of other infectious disease, do we really want to weaken regulations that monitor sewage??

ALASKA'S CONSTITUTION PROTECTS US

The state constitution explicitly protects private property rights. In Article 8, section 16. It states, "No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements effecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law."

3/25/95



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/588-2820
Fax: 907/463-2545
3/25/95

TESTIMONY ON CSHB 154 BEFORE THE HOUSE COMMUNITY & REGIONAL AFFAIRS COMMITTEE

My name is Riki Ott. I am a resident of Cordova. I am testifying on behalf of United Fishermen of Alaska as Chair of the Habitat Committee.

UFA opposes HB 154. While this bill purports to "avoid imposing unanticipated or undue additional burdens on the public or on the public treasury" (p. 2), it will in fact do exactly the opposite. We simply cannot afford this bill—nor would we want it even if we could afford it for the following reasons.

- The bill provides a powerful incentive for land developers to propose the most highly damaging uses of property in order to receive payments in exchange for more responsible use. Why not? The government would fund the difference. For example, a landowner wants to build a high density subdivision on his property but DEC is only willing to permit for family units because of concerns about sewage disposal. Under this bill, DEC would have to compensate the landowner for the difference in profit even if both uses would be profitable. Clearly, this throws the constitutional standard of takings and replaces it with a subsidy to land speculators.
- This bill opens the state treasury to unlimited liability for state and local government actions. While this bill seems to be targeting environmental regulation and law as being over burdensome, there are many other laws that would also apply. For example, a landowner wants to build an "adult" business next to a school or church. Such "adult" businesses are not considered public nuisances under state law and could also be highly profitable. Further, civil rights laws deprive real estate developers of the higher price bigots would pay to live in subdivisions with racially restrictive covenants. Under this bill, the state would have to compensate the landowners in these two cases if it denied the landowner the right to build the proposed businesses.

This bill also limits the state's ability to deny permits or impose conditions on permits for restaurants, seafood processing plants or food sanitation businesses (like small smokeries) for unsafe handling practices because of (1) cost to the state under the "takings" law, and (2) the proposed standard that government action may only be taken in response to "real or substantial threats to public health and safety" (p. 9). This could result in unsafe food reaching the market and a subsequent backlash for the seafood or other food industries. In order to achieve preventative as well as sufficiently protective action, the government would have to pay the property owner!

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Independent Fishermen's Marketing Association • Alaska Longline Fisherman's Association
Alaska Trollers Association • Area K Seiners Association • Bering Sea Fishermen's Association • Bristol Bay Drillmen's Association
Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative • Southeast Alaska Seiners
Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

UFA

page 2

Clearly, if the government were required to pay compensation in all such cases, either we would need to have few laws and allow property owners to do as they please despite the social, environmental and economic consequences or we could resign ourselves to allocating a large portion of our state budget to fill all the demands for "just compensation."

- This bill subverts the appropriations process. Without clearly appropriating funds to pay for newly authorized property rights claims and for increased agency staff, the bill allows unelected bureaucrats within resource and public health agencies to cancel or cut other state programs because there won't be time or funds for everything.

- The state government would be required to pay enterprises not to pollute. For example, the state's water quality standards limit the amount and types of pollutants that may be discharged into public waterbodies. Under the proposed bill, a mining company or oil industry could argue that if it had to cease polluting, it would become unprofitable and the state would have to pay the industry not to pollute.

- This bill is unbalanced as does not consider the benefits to landowners, other industries, and society from government takings. For example, property in Anchorage adjacent to and near the Coastal Trail increased in value and generated more tax revenue. "Greenways" such as this attract tourism and outdoor recreation to further benefit the economy.

- Finally, this bill amounts to a backdoor effort to undermine the state's environmental legislation. But the rights of property owners in the above examples are no different in principle from, for example, a timber company that is required to leave trees in a buffer to protect fish and wildlife habitat. They are all being deprived of some of the market value of their property in order to prevent harm to society.

The only reason to require compensation for the timber company, or the mining or oil company, but not for other property owners, would be a belief that the state laws protecting Alaska's water, land, air and natural resources are not legitimate or are, in the words of the sponsors, only "purportedly designed to protect public health and safety" (p. 3).

All Alaskans, not just those involved in the seafood industry, depend upon healthy, productive fisheries for diversifying and stabilizing the state's economy through harvest of a renewable resource. Healthy, productive fisheries are in turn dependent upon management of both public and private lands in ways that adhere to applicable laws such as the Clean Water Act and the Forest Practice Act.

If the supporters of this bill believe environmental laws are not legitimate, they should challenge the laws directly rather than bury the challenge in abstract notions of property rights that go beyond what the Fifth Amendment requires. This bill would not work if consistently applied to all forms of property, or even if it was only applied when laws affect the value of the land.

HB 154 protects only landowners at the expense of the public and other resource users--please do not let it pass.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES144 # 2270 Tom Wright
DIVISION OF
*Coastal Regional Office*TO: Patty Bielawski
Special Assistant

DATE: March 15, 1995

FILE NO.:

PHONE: 465-2491

FROM: Tom Boutin
State Forester

SUBJECT: CS For HB 154

The DOF opposes House Bill 154 as written for the following reasons:

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.

This division was advised by the Department of Law, specifically Assistant Attorneys General Jim Wanamaker, Robert Nauheim and John Baker, that in order to prevent a successful challenge concerning "taking" the variation process, AS 41.17.087, which allows for the selective harvest within the buffer areas must be workable. The state has done this since 1991 through a rigorous but fair process.

Sec. 34.50.110 (4) provides that a governmental entity shall avoid undue delay in its processes. The Forest Practices Act does have built in time constraints causing the state to take timely action. This is however dependent upon adequate funding for forest practices enforcement.

ice of The Times

In California, a landowner loses again

By GIDEON KANNER

LOS ANGELES — Richard K. Ehrlich, a California developer, has just learned the hard way that his First Amendment rights and a victory in the U.S. Supreme Court can take a back seat to the whims of municipal bureaucrats. In doing so, he has confirmed the assessment of Richard Babcock, the late dean of the nation's land-use bar, who said: "In California, the courts have elevated government arrogance to an art form."

In 1988, Mr. Ehrlich sought to build 30 townhouses on the vacant site of a failed private tennis club in Culver City. The city denied his request on the grounds that since the defunct tennis club had once provided "recreational facilities," no other use would be permitted, even though the only recreation the lot then provided was watching weeds grow.

A lawsuit and a partial settlement followed, allowing Mr. Ehrlich to build, provided he paid a \$280,000 "mitigation fee" for the loss of the recreational facilities. Additionally, he was to pay a \$30,000 "in lieu park fee," plus a \$33,220 "in lieu art fee" — the latter to pay for public art to be placed on Mr. Ehrlich's property, subject to the city's approval.

The "in lieu art fee" was based on the city's bizarre finding that as development of land and urbanization go on, "the opportunity for creation of cultural and artistic resources is diminished," and that alternative sources for cultural and artistic outlets should therefore be provided with developers' funds. All told, this came to \$11,400 extra per proposed new townhouse, which goes a long way toward explaining why young people, confronted with the incompatibility of their entry-level salaries with prevailing housing costs, are turning up on their parents' doorsteps inquiring if their old bedrooms are still available.

Mr. Ehrlich exercised his right to litigate the validity of these exactions, and in 1990 Los Angeles County Superior Court Judge John Zebrowski struck down the mitigation fee. He reasoned that a landowner is free to go out of the private tennis club business, and the city may not demand payment as a condition of exercising one's freedom to do so.

In the ensuing appeal, California Court of Appeal Associate Justice Margaret Grignon disagreed. She delivered the astonishing ruling that the \$280,000 mitigation fee was proper because it compensated the city "for the benefit con-



ferred on the developer by the City's approval of the townhouse project and for the burden on the community resulting from the loss of recreational facilities."

But the law does not permit exactions to be based on benefits to the landowner. That would be tantamount to a sale of municipal favors. In its 1987 decision, *Nollan v. California Coastal Commission*, the U.S. Supreme Court held that exactions must bear a reasonable relationship to the burden imposed on the community by the private development. Government demands beyond that, said the court, are an "out-and-out plan of extortion."

In other words, every landowner acts in pursuit of private benefit when seeking to build, but that hardly justifies extortion of money by the government as some sort of a quid pro quo for the "favor" of permitting lawful, productive use of the applicant's own land, or worse, for the "privilege" of discontinuing an unprofitable private business.

As for the city's demand that Mr. Ehrlich pay the "in lieu art fee," Justice Grignon opined that requiring a landowner to install municipally approved art on his land against his wishes or to pay the city an in lieu fee, was no different than a requirement to put in landscaping. So much for decades of First Amendment law that holds artistic expression to be constitutionally protected speech.

Last August, the U.S. Supreme Court

summarily vacated the Ehrlich opinion and remanded the matter back to the California Court of Appeal for reconsideration.

Anywhere else the Supreme Court's order would have been the end of the story. But not in California. On remand last month, Justice Grignon reached the same result all over again. Her majority opinion defiantly reiterates that the city's demand on Mr. Ehrlich was not related to any public burden on the community flowing from his project, but, rather, was imposed to compensate the city for having "lost" the now defunct private tennis club which, of course, was never the city's in the first place.

Remarkably, the court ordered that its opinion not be published, which means that under California rules it cannot be cited in future cases. This is inconsistent with the importance of a case that has been reviewed on the merits by the U.S. Supreme Court.

The upshot of the Court of Appeal's decision in Ehrlich is that once California landowners devote property to a particular private use, they become subject to municipal conscription as involuntary operators for the indefinite future, even after that use ceases to be beneficial. To get back their freedom to make new, economically rational uses of their land, they may be required to pay ransom to the city in the form of exactions or in lieu fees.

The remarkable thing is that Judge Grignon's Ehrlich opinion produced no outcry in California. These days such draconian treatment of productive citizens is par for the course in that state, where the whim of municipal bureaucrats is the supreme law of the land, readily enforceable by compliant state courts. No wonder that businesses are continuing their exodus from California, that the cost of local housing remains one of the highest in the nation, and that the once proud Golden State has been reduced to running booster ads in newspapers, carrying on a childish quarrel with Texas, which is attracting more and more disgusted California entrepreneurs.

It remains to be seen whether the U.S. Supreme Court will tolerate this unabashed nullification of its decision. Stay tuned.

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