

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8596 HOUSE JUDICIARY

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

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services

BRU: \_\_\_\_\_

COMPONENT: \_\_\_\_\_

**FY96**

Page: \_\_\_\_\_

Revised Date: \_\_\_\_\_

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

**REQUEST for  
NEW POSITION**

AGENCY: **Health and Social Services**

BRU: \_\_\_\_\_

COMPONENT: \_\_\_\_\_

**FY96**

Page: \_\_\_\_\_

Revised Date: \_\_\_\_\_

# FISCAL NOTE

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

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

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

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

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

**Fiscal Note Analysis Continued**

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

## CSHB 154

### **ADA:**

Sec. 34.50.120 RESTRICTIONS ON GOVERNMENTAL ACTION.

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(CRA)

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

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

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

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

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

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

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

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

**FISCAL NOTE**

Revision Date: N/A  
Title: Regulatory Takings.

Department Affected: DOT&PF  
BRU:

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

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS (NONE REQ'D)**

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

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

**ANALYSIS: (Attach a separate page if necessary)**

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

Prepared by: Bruce Freitag  
Division: Engineering & Operations Division

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

Approved by Commissioner:   
Joseph L. Perkins

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date:

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

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

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

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

##### Explanatory notes:

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

This section was formerly classified to 48 USCS § 362.

#### CODE OF FEDERAL REGULATIONS

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

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

#### CROSS REFERENCES

This section is referred to in 25 USCS § 324.

#### RESEARCH GUIDE

Federal Procedure L Ed:

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

#### § 474. Continuance of allowances

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

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

**Explanatory notes:**

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

**Amendments:**

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

**CROSS REFERENCES**

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

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

**RESEARCH GUIDE**

**Federal Procedure L Ed:**

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

**INTERPRETIVE NOTES AND DECISIONS**

1. Congressional intent
2. Recognition by Secretary

**1. Congressional Intent**

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

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

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

**2. Recognition by Secretary**

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

**§ 473a. Application to Alaska**

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

shall I  
groups  
having  
well-d  
adopt  
Federa  
Stat. 9  
(May

P  
r  
N  
I  
7  
t  
t  
t

Bu  
mi  
Bu  
spe

Th

§ 47-

The  
the a  
L. 8  
Stat.  
sions  
of th  
who  
the  
clair  
mad  
purp

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: CSHB 154(JUD)**

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

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

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

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
----------------	------------	------------	------------	------------	------------	------------

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

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	30,037.3	30,037.3	30,130.3	30,037.3	30,037.3	30,130.3
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>30,037.3</b>	<b>30,037.3</b>	<b>30,130.3</b>	<b>30,037.3</b>	<b>30,037.3</b>	<b>30,130.3</b>

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

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**

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

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

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

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

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

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

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

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

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

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

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

Estimated cost: \$78,000

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

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

Inspections per year: 2,028

Violations per inspection: 5 to 10, average 7.5

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

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

Building closures per year: 12

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

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

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

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

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

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

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

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

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

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

## Stop Work Orders-73

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

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

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

Cost of stop work orders: \$182,500

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154(JUD)

Revision Date: January 24, 1996

Dept. Affected: Public Safety

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

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

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

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO.** CSHB 154 (Jud)

Revision Date: 27-Jan-96  
 Title: Regulatory Takings

Department Affected: Environmental Conservation

Sponsor: Kohring  
 Requestor: (H) Jud

BRU: All  
 Component: \_\_\_\_\_

**COMPONENT SERIAL NO.**

Expenditures/Revenues:

(Thousands of Dollars)

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

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

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

**FUND SOURCE**

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

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

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary.)

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

Please see attached page.

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

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

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

Date: 1/30/96

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information, call the Governor's Legislative Office

## Fiscal Analysis CSHB 154 (Jud)

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

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

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

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

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

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

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

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

monitoring, shellfish cannot be sold interstate.

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 154(JUD)

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

**Expenditures/Revenues**

(Thousands of Dollars)

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

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

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

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

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

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

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

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

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

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

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

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

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. CSHB154(C&RA)**

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

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES		FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL	200,000.0	40,000.0	40,000.0	40,000.0	40,000.0	40,000.0	40,000.0
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
<b>TOTAL OPERATING</b>	<b>200,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	200,000.0	40,000.0	40,000.0	40,000.0	40,000.0	40,000.0	40,000.0
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
<b>TOTAL</b>	<b>200,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>	<b>40,000.0</b>

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

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

**ANALYSIS:** (Attach a separate page if necessary)

SEE ATTACHED.

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

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

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

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

**EXAMPLE OF IMPACT**

**Sec. 34.50.250(9)...Buffer Zones**

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

**FISCAL IMPACT OF CSHB154(CRA)**

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

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

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

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. CSHB 154(CRA)**

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

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

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

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	30,037.3	30,037.3	30,130.3	30,037.3	30,037.3	30,130.3
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>30,037.3</b>	<b>30,037.3</b>	<b>30,130.3</b>	<b>30,037.3</b>	<b>30,037.3</b>	<b>30,130.3</b>

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

**POSITIONS:**

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

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

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

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: January 18, 1996

Dept. Affected: Public Safety

## ANALYSIS CONTINUED:

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

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

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

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

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

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

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

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

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

Estimated cost: \$78,000

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: January 18, 1996

Dept. Affected: Public Safety

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

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

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

Inspections per year: 2,028

Violations per inspection: 5 to 10, average 7.5

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

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

Building closures per year: 12

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

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

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

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

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: January 18, 1996

Dept. Affected: Public Safety

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

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

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

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

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

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

## Stop Work Orders-73

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

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

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

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

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

Cost of stop work orders: \$182,500

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

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

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 154

Revision Date: Januarv 18, 1996

Dept. Affected: Public Safety

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

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

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CS HB154(CRA)

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

**Expenditures/Revenues** (Thousands of Dollars)

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

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	110.0	110.0	110.0	110.0	110.0	110.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>						

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

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

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

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

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

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

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax (907) 373-4729

*Session:*  
State Capitol Building, Room 428  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax (907) 465-3818

REPRESENTATIVE VIC KOHRING  
DISTRICT 26

## MEMORANDUM

April 15, 1996

**To:** Rep. Brian Porter  
Chair, House Judiciary

**From:** Vic Kohring

**Subject:** CS for House Bill 154

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

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 154

Page 5, line 4 after "property"

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

Page 5, line 7 after "property"

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

fails

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 154

Page 5, line 5

Delete "30"

Insert "60"

*Failed*



PHOTO BY J. KOHRING FOR ANCHORAGE DAILY NEWS

The Gaylor, Jeannie Simpson and Stevie Simpson

## es into new digs

ummer The Gaylor family moved into the new four-bedroom ranch-style house on Thompson Avenue last February. A year later, they are about to close on a no-interest mortgage loan to buy the house from Habitat, part of an international group that sponsors home building for low-income families. Habitat families pay rent when they move in, while they save for a down payment. The streets feel

# Bill fuels land-use debate

## Anti-regulation law costly, critics warn

By STEVE RINEHART  
Daily News reporter

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

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

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



Kohring

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

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

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

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

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

# land-use debate

## Anti-regulation law costly, critics warn

By STEVE RINEHART  
Daily News reporter

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

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

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

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

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

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

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

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



Kohring

1, Debbie Gaylor, Jeannie Simpson and Stevie Simpson

## Titles into new digs

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

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

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

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

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

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

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

Please see Page B-2, HABITAT

MARK HILL / Anchorage Daily News

Salvage logging puts  
Northwest plan in peril

gotten attention from critics.

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

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

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

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

"I hope to blunt regulation," Kohring said.

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

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

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

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

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

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

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

— Rep. Vic Kohring

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

— Sara Hannon of the Alaska Environmental Lobby

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

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

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

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

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

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

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

HABITAT: Family gets on feet in ne

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

— Rep. Vic Kohring

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

— Sara Hannon of the Alaska Environmental Lobby

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## damaged in v

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

## Indian affair sentenced i

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

## State work prepares fo

The largest uni says it's prepar Republican legi they'll reject a last year with t administration. 8,000-member A Employees Ass anyr about ho treaty and the \$100,000 to begi walkout. The c summer would boost of 1.4 per House Finance co-chairman M state can't affo legislators are Alaska's fiscal

West Valle wins Acad FAIRBANKS

Family gets on feet in neighborhood



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

## ALASKA ENVIRONMENTAL LOBBY OPPOSES HB 154

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

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

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

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

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

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

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

2/2/96

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

## ALASKA ENVIRONMENTAL LOBBY OPPOSES HB 154

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

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

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

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

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

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

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

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

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

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

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

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

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

2/2/96

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

January 26, 1996

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

Re: HB 154

Dear Representative Porter:

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

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

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

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

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

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

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

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

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

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

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

or only where all access is deprived.

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

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

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

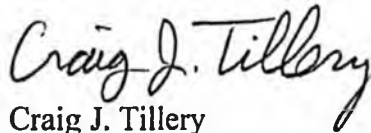
AS 34.100(6); AS 34.50.200 These provisions require that compensation for a taking under this bill is to come from the budget of the governmental entity whose action triggered the taking. There must be an appropriation each year which authorizes such payments.

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

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

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Craig J. Tillery  
Assistant Attorney General

cc: Pat Pourchot  
Bruce Botelho  
Barbara Ritchie  
Chrystal Smith

CJT:mes  
I:TILLERYC\WP\HB154-2.WPD

9-LS0602NH  
Bannister  
2/16/96

CS FOR HOUSE BILL NO. 154( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

1 years before the commencement of the action.

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

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

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

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

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

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

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

27 ARTICLE 2. GOVERNMENT TAKINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 34.50.160. PROHIBITION AGAINST IMPOSING COSTS. A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (9) "taking" includes

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

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

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

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

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

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

3818

CS FOR HOUSE BILL NO. 154( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

1 years before the commencement of the action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 ARTICLE 2. GOVERNMENT TAKINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 context clearly requires otherwise,

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) "taking" includes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

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

Feb. 15, 1996

TO: Members of House Judiciary Committee

FROM: Tom Meyer

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

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

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

**JOSEPH L. KASHI**

**Attorney at Law**

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

907-262-4604

FAX 907-262-9766

January 27, 1996

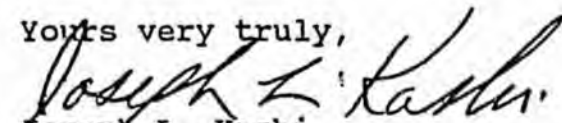
Honorable Senator John Torgenson  
Room 427  
State Capitol  
Juneau, AK 99801-1182

Dear John:

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

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

Yours very truly,

  
Joseph L. Kashi  
Attorney at Law

JLK/tlp



# Alaska Center for the Environment

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

February 1, 1996

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

Re: H.B. 154

Dear Committee Members:

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

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

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

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

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

Thank you for your serious consideration of these comments.

Sincerely,

Cliff Eames  
Issues Director



February 6, 1996

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

Dear committee members

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

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

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

I strongly urge the committee to vote against HB 154.

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

Sincerely



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

cc. Kim Elton

9-LS0602\W  
Bannister  
1/25/96

**CS FOR HOUSE BILL NO. 154(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

1 years before the commencement of the action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 ARTICLE 2. GOVERNMENT TAKINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 context clearly requires otherwise,

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) "taking" includes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# LEGAL SERVICES

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

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

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

## MEMORANDUM

January 18, 1996

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

**TO:** Representative Al Vezey  
Attn: Joe Ryan

**FROM:** Theresa Bannister  
Legislative Counsel

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

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

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

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

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

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

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

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

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

**Section 6** adds a new article on government takings.

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

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

Representative Al Vezey

January 18, 1996

Page 2

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

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

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

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

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

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

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

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

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

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

Representative Al Vezey

January 18, 1996

Page 3

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

Sec. 34.50.250 defines terms for the new article.

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

Section 8 provides a severability clause for the Act.

Section 9 states that the Act is not retroactive.

Section 10 makes the Act effective July 1, 1996.

If I may be of further assistance, please advise.

TLB:klb

965-009.klb

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

AMENDMENT 1

Page 3, Lines 25-29

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

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

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

**AMENDMENT 2**

Page 4, Lines 3-4 are deleted.

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

**AMENDMENT 3**

Page 4, Lines 5-9

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

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

AMENDMENT 4

Page 4, Lines 13-14 are deleted.

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

**AMENDMENT 5**

Page 4, Lines 23-29.

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

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

AMENDMENT 6

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

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

**AMENDMENT 7**

Page 5, Lines 24-29 are deleted.

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

**AMENDMENT 8**

Page 5, Lines 30-31 are deleted.  
Page 6, Lines 1-3 are deleted.

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

**AMENDMENT 9**

Page 6, Lines 4-7 are deleted.

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

AMENDMENT 10

Page 6, Lines 8-10.

Sec. 34.50.180. TIME FOR BRINGING ACTION. A person may not commence a civil action for a taking of the person's private property by governmental action unless the action is commenced within 180 days [five years] after the taking has occurred.

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

**AMENDMENT 11**

Page 6, Lines 22-28.

Sec. 34.50.200. ENFORCEMENT. A person who owns property that is affected by a provision of AS 34.50.100 - 34.50.250 may enforce the provision in the superior court against a state or municipal government[al entity that] for failure [that fails] to comply with the provision. If the person prevails in an action brought under this section, the owner may recover, to the extent awarded by the court, the owner's attorney fees and costs from the state or municipal [budget of the] government[al entity] involved in the governmental action on which the court action was based.

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

**AMENDMENT 12**

Page 8, Lines 2-5 are deleted.

Page 8, Lines 6-11.

(A) governmental action that results in a physical invasion or occupancy of private property or that denies an owner [any or all] more than 50 percent of economic or other use of the person's private property; or

(B) governmental action that results in [less than a complete] more than 50 percent deprivation of [all] use or value of private property, or of all interest in the property[,even if the action is only temporary in nature].

AMENDMENT TO CSHB 154 (JUD)

Representative Finkelstein

Page 3. Line 25-Page 4. Line 4

delete all material