



# LAWS OF ALASKA

1971

Source

Chapter No.

CSHB 282 am S

41

## AN ACT

Providing for uniform relocation assistance and real property acquisition practices; and providing for an effective date.

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

\* Section 1. AS 44 is amended by adding a new chapter to read:

#### CHAPTER 81. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION PRACTICES.

Sec. 44.81.010. DECLARATION OF POLICY. The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federally assisted programs in order that the displaced persons will not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Sec. 44.81.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall establish and provide the means for implementing a program providing fair and reasonable relocation and other payment for persons displaced as a result of federally assisted activities undertaken by state agencies, to carry out relocation assistance programs for persons displaced, and to provide payments to persons as a result of acquisition of real property for activities of state agencies.

Sec. 44.81.030. ADMINISTRATION OF PROGRAM. In order to prevent unnecessary expenses and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under this chapter, state agencies may enter into contracts with any individual, firm, association, or corporation for services in connection with relocation

assistance programs, or may carry out its functions under this chapter through any federal or state governmental agency or instrumentality having an established organization for conducting relocation assistance programs.

Sec. 44.81.040. RELOCATION PAYMENTS. (a) When the acquisition of real property for a federally assisted program or project undertaken by a state agency will result in the displacement of a person on or after January 2, 1971, the state agency responsible for the program or project shall make payment to the displaced person, upon proper application as approved by the state agency, for

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property as determined by the state agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) A displaced person eligible for payments under (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in place of payments authorized by (a) of this section may receive a moving expense allowance, determined according to a schedule established by the state agency not to exceed \$300 and a dislocation allowance of \$200.

(c) A displaced person eligible for payments under (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in place of the payment authorized by (a) of this section, may receive a fixed payment in an amount equal to the average annual net earning of the business or farm operation, except that this payment shall not be less than \$2,500 or more than \$10,000. In the case of a business, no payment may be made under this subsection unless the state agency is satisfied that the business

(1) cannot be relocated without a substantial loss of its existing patronage; and

(2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the state agency or by the United States, which is engaged in the same or similar business; for purposes of this subsection, "average annual net earnings" means one-half of the net earnings of the business or farm operation, before federal and state income taxes, during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project, or during any other period the state agency determines to

be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during the applicable period.

Sec. 44.81.050. REPLACEMENT HOUSING FOR HOMEOWNERS.

(a) In addition to payments otherwise authorized by this chapter, the state agency shall make an additional payment not in excess of \$15,000, to a displaced person who is displaced from a dwelling actually owned and occupied by him for not less than 180 days before the initiation of negotiations for the acquisition of the property. This additional payment shall include the following elements

(1) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the state agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe and sanitary dwelling adequate to accommodate the displaced person, reasonably accessible to public services and places of employment and available on the private market; all determinations required to carry out this paragraph shall be made in accordance with standards established by the state agency making the additional payment;

(2) the amount, if any, which will compensate the displaced person for any increased interest costs which the displaced person is required to pay for financing the acquisition of the comparable replacement dwelling; this amount may be paid only if the dwelling acquired by the state agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days before the initiation of negotiations for the acquisition of the dwelling; this amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value; the discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located;

(3) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by (a) of this section may be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the one year period beginning on the date on which he receives from the state agency final payment of all costs of the acquired dwelling, or the date on which he moves from the acquired dwelling, whichever is the later date.

Sec. 44.81.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In addition to amounts otherwise authorized by this chapter, the state agency shall make a payment to or for a displaced person displaced from a dwelling not eligible to receive a payment under sec. 50 of this chapter.

which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days before the initiation of negotiations for acquisition of the dwelling. The payment shall be either

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed four years, a decent, safe and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000; or

(2) the amount necessary to enable the displaced person to make a downpayment, including incidental expenses described in sec. 50(a)(3) of this chapter on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if this amount exceeds \$2,000, the displaced person must equally match any amount in excess of \$2,000 in making the downpayment.

Sec. 44.81.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The state agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the department considers fair and reasonable, for expenses he necessarily incurred for

(1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the state agency;

(2) penalty costs for prepayment of a pre-existing recorded mortgage entered into in good faith encumbering the real property, provided that the mortgage was a valid lien on the property for not less than 180 days before the initiation of negotiations for the acquisition of the property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the state, or the effective date of possession of the real property by the state agency, whichever is the earlier.

Sec. 44.81.080. LITIGATION EXPENSES. (a) The state court having jurisdiction of a proceeding instituted by the state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, the real property a sum which will in the opinion of the court reimburse the owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if

(1) the final judgment is that the state agency cannot acquire the real property by condemnation;

or

(2) the proceeding is abandoned by the state agency.

(b) An award made under (a) of this section shall be paid by the state agency for whose benefit the condemnation proceedings were instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought against a state agency, awarding compensation for the taking of property by the state agency, or the attorney for the state agency effecting a settlement of any such proceeding, shall determine and award or allow to the plaintiff, as a part of the judgment or settlement, a sum which will in the opinion of the court or the attorney for the state agency reimburse the plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the proceeding.

(d) If an inconsistency occurs between the provisions of this section and the Alaska Rules of Civil Procedure, the provisions of the Rules of Civil Procedure govern.

Sec. 44.81.090. RELOCATION SERVICES. (a) When the acquisition of real property for a program or project undertaken by a state agency for a federally assisted program or project undertaken by the state agency will result in the displacement of a person on or after January 2, 1971, the state agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in (c) of this section. If the state agency determines that a person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer the occupant relocation advisory services under this program.

(b) State agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the state agency causing the displacement to assure that the displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by (a) of this section shall include measures, facilities, or services necessary or appropriate in order to

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on availability, prices and rentals, of comparable decent, safe and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, before displacement there will be available in

areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe and sanitary dwellings, as defined by the state agency, equal in number to the number of and available to the displaced persons who require the dwellings and reasonably accessible to their places of employment except that the state agency may prescribe by regulation situations when these assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships in adjusting to relocation.

(d) The state agency shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Sec. 44.81.100. EMINENT DOMAIN. Nothing contained in this chapter may be construed as creating, in a condemnation proceeding brought under the power of eminent domain, an element of damages not in existence on January 2, 1971.

Sec. 44.81.110. NONTAXATION OF PAYMENTS. No payment received by a displaced person under this chapter may be considered as income for the purposes of the state or federal income tax, personal or corporate. The payments may not be considered as income or resources to a recipient of public assistance and the payments may not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Sec. 44.81.120. UNIFORM REAL PROPERTY ACQUISITION POLICY. A state agency or other entity acquiring real property for any project or program in which federal or federal-aid funds are used shall to the greatest extent practicable comply with the following policies:

(1) Every reasonable effort shall be made to expeditiously acquire real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which is

reasonably believed to be just compensation for the real property and that amount shall be offered for the property. In no event shall the amount be less than the approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property before the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and a summary of the basis for, the amount established as just compensation.

(4) No owner may be required to surrender possession of real property before the state agency concerned pays the agreed purchase price or deposits with the court in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of the property, or the amount of the award of compensation in the condemnation proceeding for the property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property may be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation, without at least 90 days' written notice of the date by which the move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the state agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event may the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, nor any other coercive action be taken in order to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring state agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

Sec. 44.81.130. UNIFORM ACQUISITION POLICY FOR IMPROVEMENTS. (a) Notwithstanding any other provision of law, if a state agency acquires any interest in real property, the state agency must acquire at least an equal

interest in all buildings, structures, or other improvements located upon the real property which the state agency requires to be removed from the real property or which the state agency determines will be adversely affected by the use to which the real property will be put.

(b) For the purpose of determining just compensation to be paid for a building, structure, or other improvement required to be acquired under (a) of this section, the building, structure or other improvement is considered to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure or improvement at the expiration of his term, and the fair market value which the building, structure or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

(c) Payment for the buildings, structures or improvements under this section may not result in duplication of payments otherwise authorized by law. No payment for buildings, structures or improvements may be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release to the state agency all his right, title and interest in and to the improvements. Nothing in this subsection and in (b) of this section may be construed to deprive the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of the state.

Sec. 44.81.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In addition to the other programs authorized by this chapter, a state agency may make loans in order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons. These loans are a part of the federally assisted project cost and may be made to nonprofit, limited dividend, or cooperative organizations or public bodies. The loans may be made only for necessary and reasonable expenses, before construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for displaced persons. The loans may not exceed 80 per cent of the reasonable costs expected to be incurred in planning, and in obtaining financing for housing for displaced persons. Reasonable costs include but are not limited to costs for preliminary surveys and analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the state agency. All other loans shall be without interest. The state agency shall require repayment of loans made under this section, under terms and conditions established by the state agency. Repayment shall be made upon completion of the project or sooner, and except in the case of

a loan to an organization established for profit, the state agency may cancel any part or all of a loan following a determination by the state agency that a permanent loan to finance the rehabilitation or construction of the housing cannot be obtained in an amount adequate for repayment of the loan.

Sec. 44.81.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT. If a federally aided program or project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the state agency determines that this housing cannot otherwise be made available, the agency may take action necessary or appropriate to provide the housing by use of funds authorized for the project.

Sec. 44.81.140. REGULATIONS. State agencies are authorized to adopt regulations to implement this chapter. These regulations shall include provisions relating to

- (1) a moving expense allowance for displaced persons who move from a dwelling, determined according to a schedule, not to exceed \$300;
- (2) procedures for an aggrieved person to have his determination of eligibility or amount of payment reviewed by the state agency;
- (3) eligibility of a displaced person for relocation assistance payments, the procedure for displaced persons to claim the payments, amount of the payments; and
- (4) other regulations necessary to implement the provisions of this chapter.

Sec. 44.81.150. DEFINITIONS. In this chapter

- (1) "business" means any lawful activity, excepting a farm operation, conducted primarily
  - (A) for the purchase, sale, lease and rental of personal and real property, and manufacture, processing, or marketing of products, commodities, or any other personal property;
  - (B) for the sale of services to the public;
  - (C) by a nonprofit organization; or
  - (D) for assisting (solely for the purpose of sec. 40(a) of this chapter) in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted;
- (2) "displaced person" means any person who, on or after January 2, 1971 moves from real property, or moves his personal property from real property, as a

result of the acquisition of the real property, in whole or in part, or as a result of the written order of the state agency to vacate real property, for a program or project undertaken by the state agency, and solely for the purpose of secs. 40(a) and 90 of this chapter, as a result of the acquisition of, or as a result of the written order of a state agency to vacate other real property on which the person conducts a business or farm operation for the program or project;

(3) "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(4) "mortgage" means those classes of liens commonly given to secure advances on, or the unpaid purchase price of, real property, under the law of the state in which the real property is located, together with the credit instruments, if any, secured by the property;

(5) "person" means an individual, partnership, corporation, or association;

(6) "state agency" means a department, agency, instrumentality, corporate authority of the state, or a political subdivision of the state, or a department, agency, instrumentality or authority of two or more political subdivisions of the state participating in federally assisted programs.

\* Sec. 2. AS 19.35 is repealed.

\* Sec. 3. This Act is retroactive to January 2, 1971.

\* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.