

CS FOR SENATE BILL NO. 190(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 2/26/98
Referred: Judiciary

Sponsor(s): SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eminent domain and to negotiations to purchase property
2 before it is taken through eminent domain; and providing for an effective date."

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

4 * **Section 1.** AS 09.55.270 is amended to read:

5 **Sec. 09.55.270. Prerequisites.** Before property can be taken, it shall appear
6 that

7 (1) the use to which it is to be applied is a use authorized by law;

8 (2) the taking and the property interest to be taken are [IS]
9 necessary to the use;

10 (3) if already appropriated to a public use, the public use to which it
11 is to be applied is a more necessary public use.

12 * **Sec. 2.** AS 09.55.270 is amended by adding a new subsection to read:

13 (b) Except when negotiation is not possible because of the incapacity, inability
14 to convey legal title, or absence of one or more of the property's owners, a good faith

1 effort at negotiation to acquire the property interest by purchase shall be made. In a
 2 proceeding involving the taking of a property interest through eminent domain, the
 3 burden of proof is on the party opposing the taking to show that a good faith effort to
 4 acquire the property interest by purchase was not made.

5 * **Sec. 3.** AS 09.55.430 is amended to read:

6 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
 7 must contain

8 (1) a statement of the authority under which the property or an interest
 9 in it is taken;

10 (2) a statement of the public use for which the property or an interest
 11 in it is taken;

12 (3) a description of the property sufficient for the identification of it;

13 (4) a statement of the estate or interest in the property;

14 (5) a map or plat showing the location of the property;

15 (6) a statement of the amount of money estimated by the plaintiff to
 16 be just compensation for the property or the interest in it;

17 (7) a statement that the property **or interest in the property** is taken
 18 by necessity for a project located in a manner that is most compatible with the greatest
 19 public good and the least private injury; **and**

20 **(8) if the statement is accurate, a statement that a good faith effort**
 21 **at negotiation to acquire the property by purchase has been made or that**
 22 **negotiation is not possible because of the incapacity, inability to convey legal title,**
 23 **or absence of one or more of the property's owners.**

24 * **Sec. 4.** AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession acquired except
 26 where the court finds that the property **or interest in the property** was not taken by
 27 necessity for a public use or purpose in a manner compatible with the greatest public
 28 good and the least private injury. In the event of that finding, the court shall enter the
 29 judgment necessary to (1) compensate the persons entitled to it for the period during
 30 which the property was in the possession of the plaintiff, (2) recover for the plaintiff
 31 any award paid to any person, and (3) order the plaintiff to restore the property to the

1 condition in which it existed at the time of the filing of the declaration of taking unless
2 such restoration is impossible, in which case the court shall award damages to the
3 proper persons as compensation for any diminution in the value of the property caused
4 by the plaintiff's wrongful possession.

5 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).