

CS FOR SENATE BILL NO. 190(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/28/98

Referred: Rules

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

27 **(1) the property or interest in the property** was not taken by necessity
 28 for a public use or purpose in a manner compatible with the greatest public good and
 29 the least private injury; **or**

30 **(2) a good faith effort at negotiation to acquire the property by**
 31 **purchase has not been made and negotiation was not made impossible by the**

1 **incapacity, inability to convey legal title, or absence of one or more of the**
2 **property's owners.**

3 (c) In the event of **a finding under (b) of this section** [THAT FINDING], the
4 court shall enter the judgment necessary to (1) compensate the persons entitled to it
5 for the period during which the property was in the possession of the plaintiff, (2)
6 recover for the plaintiff any award paid to any person, and (3) order the plaintiff to
7 restore the property to the condition in which it existed at the time of the filing of the
8 declaration of taking unless such restoration is impossible, in which case the court
9 shall award damages to the proper persons as compensation for any diminution in the
10 value of the property caused by the plaintiff's wrongful possession.

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