

CS FOR HOUSE BILL NO. 500(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 4/26/02

Referred: Rules

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the advance acquisition of real property for public purposes; and**
2 **authorizing pipeline carriers to exercise the power of eminent domain for pipeline**
3 **purposes."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 POLICY AND FINDINGS. (a) It is the policy of the State to provide for the
8 acquisition of real property and interests in real property necessary for the construction,
9 improvement, reconstruction, and maintenance of facilities for public purposes in advance of
10 actual construction, for the purpose of reducing the cost of real property for construction of
11 public facilities, reducing hardship to owners of real property, and eliminating economic
12 waste occasioned by the improvement of property immediately before its acquisition for a
13 public purpose.

14 (b) The legislature finds that the purchase and condemnation of real property

1 necessary for the construction, improvement, reconstruction, and maintenance of facilities for
2 public purposes reasonably in advance of programmed construction, is for a public use and
3 purpose.

4 * **Sec. 2.** AS 09.55.240(a) is amended to read:

5 (a) The right of eminent domain may be exercised for the following public
6 uses:

7 (1) all public uses authorized by the government of the United States;

8 (2) public buildings and grounds for the use of the state and all other
9 public uses authorized by the legislature of the state;

10 (3) public buildings and grounds for the use of an organized or
11 unorganized borough, city, town, village, school district, or other municipal division,
12 whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes
13 conducting water, heat, or gas for the use of the inhabitants of an organized or
14 unorganized borough, city, town, or other municipal division, whether incorporated or
15 unincorporated; raising the banks of streams, removing obstructions from them and
16 widening, deepening, or straightening their channels; roads, streets, and alleys, and all
17 other public uses for the benefit of an organized or unorganized borough, city, town,
18 or other municipal division whether incorporated or unincorporated, or its inhabitants,
19 which may be authorized by the legislature;

20 (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds,
21 private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts,
22 and pipes for public transportation, supplying mines and farming neighborhoods with
23 water, and draining and reclaiming land, and for floating logs and lumber on streams
24 not navigable, and sites for reservoirs necessary for collecting and storing water;

25 (5) roads, tunnels, ditches, flumes, pipes, and dumping places for
26 working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of
27 tailings or refuse matter from mines; also an occupancy in common by the owners or
28 possessors of different mines of any place for the flow, deposit, or conduct of tailings
29 or refuse matter from their several mines, and sites for reservoirs necessary for
30 collecting and storing water;

31 (6) private roads leading from highways to residences, mines, or farms;

- 1 (7) telephone lines;
- 2 (8) telegraph lines;
- 3 (9) sewerage of an organized or unorganized borough, city, town,
- 4 village, or other municipal division, whether incorporated or unincorporated, or a
- 5 subdivision of it, or of a settlement consisting of not less than 10 families, or of public
- 6 buildings belonging to the state or to a college or university;
- 7 (10) tramway lines;
- 8 (11) electric power lines;
- 9 (12) for the location of pipelines for gathering, transmitting,
- 10 transporting, storing, or delivering natural or artificial gas or oil or any liquid or
- 11 gaseous hydrocarbons, including, but not limited to, pumping stations, terminals,
- 12 storage tanks, or reservoirs, and related installations;

13 **(13) advance acquisition of real property or an interest in real**

14 **property for a public use described in this subsection that will occur in the**

15 **future.**

16 * **Sec. 3.** AS 09.55.270 is amended to read:

17 **Sec. 09.55.270. Prerequisites.** Before property can be taken, it shall appear

18 that

- 19 (1) the use to which it is to be applied is a use authorized by law;
- 20 (2) the taking is necessary to the use;
- 21 (3) if already appropriated to a public use, the public use to which it is
- 22 to be applied is a more necessary public use;

23 **(4) if the use is for an advance acquisition of real property or an**

24 **interest in real property for a future public use, the future public use is a**

25 **reasonably foreseeable use that has been identified in a development plan**

26 **prepared, published, and made available to the public by the agency or entity**

27 **that exercises the power of eminent domain.**

28 * **Sec. 4.** AS 18.55.550(a) is amended to read:

- 29 (a) The corporation may
- 30 (1) acquire by eminent domain real property that **the corporation** [IT]
- 31 considers necessary within the boundaries of the redevelopment project or for **the**

1 **corporation's present or reasonably foreseeable future** [ITS] purposes under
 2 AS 18.55.480 - 18.55.960 after the adoption by **the corporation** [IT] of a resolution
 3 declaring that the acquisition of the real property described in the resolution is
 4 necessary for those purposes; and

5 (2) exercise the power of eminent domain in the manner provided in
 6 AS 09.55.240 - 09.55.460 or in the manner provided by other statutory provisions for
 7 the exercise of the power of eminent domain.

8 * **Sec. 5.** AS 18.55.550 is amended by adding a new subsection to read:

9 (c) If the corporation does not use all or a portion of land acquired for advance
 10 acquisition for a future public use as authorized under (a) of this section for
 11 corporation purposes within 20 years following the acquisition of the land or if the
 12 corporation sells all or a portion of land acquired for advance acquisition for a future
 13 public use as authorized under (a) of this section, the corporation shall offer the land to
 14 the person, or the person's successor in interest, from whom the land was acquired at
 15 the same price that the corporation paid the person when the land was acquired. If
 16 only a portion of the land acquired for advance acquisition for a future public use is
 17 available to the former owner of the land under this subsection, the corporation shall
 18 prorate the price of the land to be sold based on the original price of the land and the
 19 proportion that the amount of land available for sale bears to the total amount of land
 20 originally acquired.

21 * **Sec. 6.** AS 19.05.080 is amended to read:

22 **Sec. 19.05.080. Acquisition of land, easements, and materials by purchase**
 23 **or eminent domain.** The department, on behalf of the state and as part of the cost of
 24 constructing or maintaining a highway, may purchase in the open market, acquire, take
 25 over, or condemn under the right and power of eminent domain land in fee simple or
 26 easements that it considers necessary for present public use **or for advance**
 27 **acquisition for a reasonably foreseeable future public use**, either temporary or
 28 permanent, or that it considers necessary and reasonable for the public use. By the
 29 same means, the department may obtain material, including clay, gravel, sand, or rock,
 30 or the land necessary to obtain material, including access to it. The department may
 31 acquire the land or materials notwithstanding the fact that title to it is vested in the

1 state or a department, agency, commission, or institution of the state. Acquisition of
 2 materials by purchase in the open market under this section is governed by AS 36.30
 3 (State Procurement Code).

4 * **Sec. 7.** AS 19.05.080 is amended by adding a new subsection to read:

5 (b) If the department does not use all or a portion of land acquired for advance
 6 acquisition for a future public use as authorized under (a) of this section for highway
 7 purposes within 20 years following the acquisition of the land or if the department
 8 sells all or a portion of land acquired for advance acquisition for a future public use as
 9 authorized under (a) of this section, the department shall offer the land to the person,
 10 or the person's successor in interest, from whom the land was acquired at the same
 11 price that the department paid the person when the land was acquired. If only a
 12 portion of the land acquired for advance acquisition for a future public use is available
 13 to the former owner of the land under this subsection, the department shall prorate the
 14 price of the land to be sold based on the original price of the land and the proportion
 15 that the amount of land available for sale bears to the total amount of land originally
 16 acquired.

17 * **Sec. 8.** AS 35.20.010 is amended to read:

18 **Sec. 35.20.010. Acquisition of land, rights-of-way, and materials by**
 19 **purchase or eminent domain.** The department, on behalf of the state and as part of
 20 the cost of constructing or maintaining a public work, may purchase in the open
 21 market, acquire, take over, or condemn under the right and power of eminent domain
 22 land in fee simple or easements that it considers necessary for present public use or
 23 for advance acquisition for a reasonably foreseeable future public use, either
 24 temporary or permanent, or that it considers necessary and reasonable for the public
 25 use. By the same means, the department may obtain material, including clay, gravel,
 26 sand, or rock, or the land necessary to obtain the material, and the necessary land or
 27 easements to provide access to it. The department may acquire the land or material
 28 notwithstanding the fact that the title to it is in the state or a department, agency,
 29 commission, or institution of the state. Acquisition of material in the open market
 30 under this section is governed by AS 36.30 (State Procurement Code).

31 * **Sec. 9.** AS 35.20.010 is amended by adding a new subsection to read:

1 (b) If the department does not use all or a portion of land acquired for advance
 2 acquisition for a future public use as authorized under (a) of this section for public
 3 work purposes within 20 years following the acquisition of the land or if the
 4 department sells all or a portion of land acquired for advance acquisition for a future
 5 public use as authorized under (a) of this section, the department shall offer the land to
 6 the person, or the person's successor in interest, from whom the land was acquired at
 7 the same price that the department paid the person when the land was acquired. If
 8 only a portion of the land acquired for advance acquisition for a future public use is
 9 available to the former owner of the land under this subsection, the department shall
 10 prorate the price of the land to be sold based on the original price of the land and the
 11 proportion that the amount of land available for sale bears to the total amount of land
 12 originally acquired.

13 * **Sec. 10.** AS 42.05.631 is amended to read:

14 **Sec. 42.05.631. Eminent domain.** A public utility may exercise the power of
 15 eminent domain for public utility uses **including present public utility uses or for**
 16 **advance acquisition for reasonably foreseeable future public utility uses.** This
 17 section does not authorize the use of a declaration of taking.

18 * **Sec. 11.** AS 42.05.631 is amended by adding a new subsection to read:

19 (b) If a public utility does not use all or a portion of land acquired for advance
 20 acquisition for a future public utility use as authorized under (a) of this section for
 21 public utility purposes within 20 years following the acquisition of the land or if the
 22 public utility sells all or a portion of land acquired for advance acquisition for a future
 23 public utility use as authorized under (a) of this section, the public utility shall offer
 24 the land to the person, or the person's successor in interest, from whom the land was
 25 acquired at the same price that the public utility paid the person when the land was
 26 acquired. If only a portion of the land acquired for advance acquisition for a future
 27 public utility use is available to the former owner of the land under this subsection, the
 28 public utility shall prorate the price of the land to be sold based on the original price of
 29 the land and the proportion that the amount of land available for sale bears to the total
 30 amount of land originally acquired.

31 * **Sec. 12.** AS 42.06 is amended by adding a new section to article 7 to read:

1 **Sec. 42.06.601. Eminent domain.** (a) A pipeline carrier may exercise the
 2 power of eminent domain for pipeline uses including present pipeline uses or for
 3 advance acquisition for reasonably foreseeable future pipeline uses. This section does
 4 not authorize the use of a declaration of taking.

5 (b) If a pipeline carrier does not use all or a portion of land acquired for
 6 advance acquisition for a future pipeline use as authorized under (a) of this section for
 7 pipeline purposes within 20 years following the acquisition of the land or if the
 8 pipeline carrier sells all or a portion of land acquired for advance acquisition for a
 9 future pipeline use as authorized under (a) of this section, the pipeline carrier shall
 10 offer the land to the person, or the person's successor in interest, from whom the land
 11 was acquired at the same price that the pipeline carrier paid the person when the land
 12 was acquired. If only a portion of the land acquired for advance acquisition for a
 13 future pipeline use is available to the former owner of the land under this subsection,
 14 the pipeline carrier shall prorate the price of the land to be sold based on the original
 15 price of the land and the proportion that the amount of land available for sale bears to
 16 the total amount of land originally acquired.

17 * **Sec. 13.** AS 42.40.385(a) is amended to read:

18 (a) The corporation may exercise the power of eminent domain under
 19 AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes
 20 **including present railroad transportation purposes or for advance acquisition for**
 21 **reasonably foreseeable future railroad transportation purposes,** consistent with
 22 this chapter. Notwithstanding AS 09.55.250, the corporation may acquire a fee simple
 23 title whenever, in the judgment of the board, ownership of a fee simple title is
 24 necessary to carry out the purposes of this chapter.

25 * **Sec. 14.** AS 42.40.385 is amended by adding a new subsection to read:

26 (e) If the corporation does not use all or a portion of land acquired for advance
 27 acquisition for a future public use as authorized under (a) of this section for railroad
 28 transportation purposes within 20 years following the acquisition of the land or if the
 29 corporation sells all or a portion of land acquired for advance acquisition for a future
 30 public use as authorized under (a) of this section, the corporation shall offer the land to
 31 the person, or the person's successor in interest, from whom the land was acquired at

1 the same price that the corporation paid the person when the land was acquired. If
2 only a portion of the land acquired for advance acquisition for a future public use is
3 available to the former owner of the land under this subsection, the corporation shall
4 prorate the price of the land to be sold based on the original price of the land and the
5 proportion that the amount of land available for sale bears to the total amount of land
6 originally acquired.