

**CS FOR SENATE BILL NO. 278(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/9/02  
Referred: Rules

Sponsor(s): SENATORS TORGERSON, Taylor, Wilken

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act requiring a good faith effort to purchase property before that property is taken  
2 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 is necessary to the use;

9 (3) if already appropriated to a public use, the public use to which it is  
10 to be applied is a more necessary public use; **and**

11 **(4) except where the consent of a property owner cannot be**  
12 **obtained due to incapacity, inability to convey legal title, or absence, the**  
13 **condemnor has made a reasonable and diligent effort to acquire the property by**  
14 **negotiation.**

1 \* **Sec. 2.** AS 09.55.430 is amended to read:

2 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking  
3 must contain

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

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

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

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

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

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

13 (7) a statement that the property is taken by necessity for a project  
14 located in a manner that is most compatible with the greatest public good and the least  
15 private injury; **and**

16 **(8) except where the consent of a property owner cannot be**  
17 **obtained due to incapacity, inability to convey legal title, or absence, a statement**  
18 **that the plaintiff has made a reasonable and diligent effort to acquire the**  
19 **property by negotiation.**

20 \* **Sec. 3.** AS 09.55.460(b) is amended to read:

21 (b) The plaintiff may not be divested of a title or possession acquired except  
22 where the court finds that

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

25 **(2) except where the consent of a property owner could not be**  
26 **obtained due to incapacity, inability to convey legal title, or absence, the plaintiff**  
27 **did not make a reasonable and diligent effort to acquire the property by**  
28 **negotiation.**

29 **(c)** In the event of **a finding under (b) of this section** [THAT FINDING], the  
30 court shall enter the judgment necessary to (1) compensate the persons entitled to it for  
31 the period during which the property was in the possession of the plaintiff, (2) recover

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

6 \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).