

**HOUSE BILL NO. 500**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY THE HOUSE TRANSPORTATION COMMITTEE**

**Introduced: 2/27/02**

**Referred: Community and Regional Affairs, Transportation**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the advance acquisition of real property for public purposes."**

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

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

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

12 (b) The legislature finds that the purchase and condemnation of real property  
13 necessary for the construction, improvement, reconstruction, and maintenance of facilities for  
14 public purposes reasonably in advance of programmed construction, is for a public use and  
15 purpose.

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

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

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

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

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

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

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

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

29 (7) telephone lines;

30 (8) telegraph lines;

31 (9) sewerage of an organized or unorganized borough, city, town,

1 village, or other municipal division, whether incorporated or unincorporated, or a  
 2 subdivision of it, or of a settlement consisting of not less than 10 families, or of public  
 3 buildings belonging to the state or to a college or university;

4 (10) tramway lines;

5 (11) electric power lines;

6 (12) for the location of pipelines for gathering, transmitting,  
 7 transporting, storing, or delivering natural or artificial gas or oil or any liquid or  
 8 gaseous hydrocarbons, including, but not limited to, pumping stations, terminals,  
 9 storage tanks, or reservoirs, and related installations;

10 **(13) advance acquisition of real property or an interest in real**  
 11 **property for a public use described in this subsection that will occur more than**  
 12 **five years in the future.**

13 \* **Sec. 3.** AS 09.55.270 is amended to read:

14 **Sec. 09.55.270. Prerequisites.** Before property can be taken, it shall appear  
 15 that

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

17 (2) the taking is necessary to the use;

18 (3) if already appropriated to a public use, the public use to which it is  
 19 to be applied is a more necessary public use;

20 **(4) if the use is for an advance acquisition of real property or an**  
 21 **interest in real property for a future public use, the future public use is a**  
 22 **reasonably foreseeable use that has been identified in a development plan**  
 23 **prepared, published, and made available to the public by the agency or entity**  
 24 **that exercises the power of eminent domain.**

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

26 (a) The corporation may

27 (1) acquire by eminent domain real property that **the corporation** [IT]  
 28 considers necessary within the boundaries of the redevelopment project or for **the**  
 29 **corporation's present or reasonably foreseeable future** [ITS] purposes under  
 30 AS 18.55.480 - 18.55.960 after the adoption by **the corporation** [IT] of a resolution  
 31 declaring that the acquisition of the real property described in the resolution is

1 necessary for those purposes; and

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

5 \* **Sec. 5.** AS 19.05.080 is amended to read:

6 **Sec. 19.05.080. Acquisition of land, easements, and materials by purchase**  
7 **or eminent domain.** The department, on behalf of the state and as part of the cost of  
8 constructing or maintaining a highway, may purchase in the open market, acquire, take  
9 over, or condemn under the right and power of eminent domain land in fee simple or  
10 easements that it considers necessary for present public use **or for advance**  
11 **acquisition for future public use**, either temporary or permanent, or that it considers  
12 necessary and reasonable for the public use. By the same means, the department may  
13 obtain material, including clay, gravel, sand, or rock, or the land necessary to obtain  
14 material, including access to it. The department may acquire the land or materials  
15 notwithstanding the fact that title to it is vested in the state or a department, agency,  
16 commission, or institution of the state. Acquisition of materials by purchase in the  
17 open market under this section is governed by AS 36.30 (State Procurement Code).

18 \* **Sec. 6.** AS 35.20.010 is amended to read:

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

1 \* **Sec. 7.** AS 42.05.631 is amended to read:

2           **Sec. 42.05.631. Eminent domain.** A public utility may exercise the power of  
3 eminent domain for public utility uses **including present public utility uses or for**  
4 **advance acquisition for future public utility uses.** This section does not authorize  
5 the use of a declaration of taking.

6 \* **Sec. 8.** AS 42.40.385(a) is amended to read:

7           (a) The corporation may exercise the power of eminent domain under  
8 AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes  
9 **including present railroad transportation purposes or for advance acquisition for**  
10 **future railroad transportation purposes,** consistent with this chapter.  
11 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title  
12 whenever, in the judgment of the board, ownership of a fee simple title is necessary to  
13 carry out the purposes of this chapter.