

**SENATE BILL NO. 278**

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

BY SENATORS TORGERSON, Taylor, Wilken

Introduced: 2/4/02

Referred: Community and Regional Affairs, Judiciary

**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; for purposes of this paragraph, "reasonable and diligent effort"**

1 **includes inviting the property owner to secure an appraisal from a real estate**  
 2 **appraiser certified under AS 08.87, and either offering to purchase the property**  
 3 **for its full appraised value as determined by the property owner's appraiser plus**  
 4 **the cost of the appraisal, or explaining to the property owner why full appraised**  
 5 **value is not being offered.**

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **(2) except where the consent of a property owner could not be**  
 31 **obtained due to incapacity, inability to convey legal title, or absence, the plaintiff**

1        **did not make a reasonable and diligent effort to acquire the property by**  
2        **negotiation.**

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

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