

CS FOR SENATE BILL NO. 278(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/18/02

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 as provided in (b) and (c) of this section.**

1 * **Sec. 2.** AS 09.55.270 is amended by adding new subsections to read:

2 (b) Before taking property, a condemnor shall invite the property owner to,
3 within a reasonable period of time set by the condemnor,

4 (1) obtain an appraisal from a real estate appraiser certified under
5 AS 08.87 and offer to sell the property to the condemnor for the appraised value plus
6 the cost of appraisal; or

7 (2) offer any alternative means of satisfying the public purpose for
8 which the property is sought.

9 (c) If a property owner makes an offer under (b) of this section within the
10 reasonable period of time set by the condemnor, the condemnor must either accept the
11 offer, or reject the offer and provide a reasonable explanation of the reasons for the
12 rejection along with a reasonable counter offer. If a condemnor invites the property
13 owner to make an offer to sell the property as described in (b) of this section and the
14 property owner fails to respond within a reasonable period of time, or if the property
15 owner rejects a reasonable counter offer made under this subsection, the condemnor
16 may commence eminent domain proceedings under AS 09.55.290.

17 * **Sec. 3.** AS 09.55.430 is amended to read:

18 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
19 must contain

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

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

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

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

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

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

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

1 **(8) except where the consent of a property owner cannot be**
 2 **obtained due to incapacity, inability to convey legal title, or absence, a statement**
 3 **that the plaintiff has complied with AS 09.55.270(b) and (c).**

4 * **Sec. 4.** AS 09.55.460(b) is amended to read:

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

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

9 **(2) the plaintiff was required to make a reasonable and diligent**
 10 **effort to acquire the property by negotiation under AS 09.55.270(b) and (c) and**
 11 **the plaintiff failed to comply with AS 09.55.270(b) and (c).**

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

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