

SENATE BILL NO. 382

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Introduced: 3/31/04

Referred: Transportation, Community and Regional Affairs

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to replat approval; relating to the platting of right-of-way acquired**
2 **through eminent domain proceedings; and providing for an effective date."**

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

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

6 PURPOSE AND INTENT. (a) The purpose of this Act is to confirm the municipal
7 role in eminent domain proceedings while at the same time clarifying that that role is not
8 intended to require the same substantive review or procedures for review of replats for the
9 acquisition of property by the state or a municipality as required in replats for private
10 landowner subdivisions or zoning reviews. Regulations adopted by the Department of
11 Transportation and Public Facilities shall be the primary and governing authority for replat
12 approval proceedings.

13 (b) It is the intent of the legislature to

14 (1) confirm the authority of an agency of the state or a municipality to conduct

1 condemnation proceedings so long as the agency of the state or municipality obtains
 2 preliminary replat approval as provided for in this Act, notwithstanding challenges to
 3 particular municipal replat ordinances, review standards, procedures, or applications; and

4 (2) apply this Act retrospectively to July 1, 1999, and to existing litigation
 5 such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska v. Hinkel, 3AN-
 6 04-4768 CI.

7 * **Sec. 2.** AS 09.55.275 is repealed and reenacted to read:

8 **Sec. 09.55.275. Replat approval.** An agency of the state or municipality
 9 acquiring property in fee that results in a boundary change located within a
 10 municipality exercising the powers conferred by AS 29.35.180 or 29.35.260(c) shall
 11 conform to this section and AS 44.42.085 by obtaining preliminary approval of a
 12 replat showing clearly the location of the proposed public street, easement, right-of-
 13 way, and other taking of private property. The platting authority may establish
 14 applicable review procedures and standards for a replat made for the purpose of a
 15 right-of-way acquisition or condemnation consistent with AS 44.42.085 and
 16 regulations adopted under that section. If no municipal standards and procedures are
 17 in effect, then the provision of AS 44.42.085 and the regulations adopted under that
 18 section shall apply. Final approval of replat shall also be obtained. However, if a state
 19 agency clearly demonstrates an overriding state interest, a waiver of the municipal
 20 approval requirements in this section may be granted by the governor.

21 * **Sec. 3.** AS 44.42 is amended by adding a new section to read:

22 **Sec. 44.42.085. Platting of right of way acquired through eminent domain**
 23 **proceedings.** (a) Except as provided in (c) of this section, the department shall
 24 comply with AS 09.55.275 when exercising eminent domain powers in municipalities
 25 that exercise the powers conferred by AS 29.35.180 or 29.35.260(c).

26 (b) The department shall adopt regulations providing for uniform standards for
 27 preparing replats that are consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -
 28 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real
 29 Property Acquisition Policies Act of 1970), as amended. The regulations must
 30 provide for a review by the platting authority of the municipality in which the property
 31 subject to the eminent domain proceeding is located and may allow the municipal

1 authority to elect to provide preliminary and final replat approval.

2 (c) The department is exempt from municipal platting requirements that are in
3 conflict with this section and the regulations adopted by the department under (b) of
4 this section.

5 (d) Neither the adequacy of the municipal replat process or standards, if any,
6 nor the failure of a municipality to follow its own replat process and standards, shall
7 provide a basis to deprive the state of the interest in land that is the subject of its
8 eminent domain action.

9 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **RETROACTIVITY.** Sections 1 and 2 of the Act are retroactive to July 1, 1999.

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