

CS FOR SENATE BILL NO. 382(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/15/04

Referred: Rules

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

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, including the right of municipalities to regulate remnant
8 parcels, while at the same time clarifying that that role is not intended to require the same
9 substantive review or procedures for review of replats for the acquisition of property by the
10 state or a municipality as required in replats for private landowner subdivisions or zoning
11 reviews. Regulations adopted by the Department of Transportation and Public Facilities shall
12 be the primary and governing authority for these replat 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 secs. 1 and 2 of this Act retrospectively to July 1, 1999, and to
 5 existing litigation such as State of Alaska v. Hartman, 3AN-03-13875 CI and State of Alaska
 6 v. Hinkel, 3AN-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7 * **Sec. 2.** AS 09.55.275 is repealed and reenacted to read: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 or other acquisition of
 13 property. The platting authority may establish applicable review procedures and
 14 standards, consistent with AS 44.42.085 and regulations adopted under that section,
 15 for a replat made for the purpose of a right-of-way acquisition or condemnation. If no
 16 municipal standards and procedures are in effect, then the provision of AS 44.42.085
 17 and the regulations adopted under that section shall apply. Final approval of replat
 18 shall also be obtained. However, if a state agency clearly demonstrates an overriding
 19 state interest, a waiver of the municipal approval requirements in this section may be
 20 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 procedures
 27 and standards for replatting required by (a) of this section. The regulations

28 (1) must be written narrowly to establish minimum baseline
 29 procedures or standards particular to replat issues arising in eminent domain
 30 proceedings and may not unnecessarily or without good cause infringe on general
 31 municipal zoning powers or authority;

1 (2) must be consistent with AS 09.55.240 - 09.55.460, AS 34.60.010 -
2 34.60.150, and 42 U.S.C. 4601 - 4655 (Uniform Relocation Assistance and Real
3 Property Acquisition Policies Act of 1970), as amended;

4 (3) must provide for a review by the platting authority of the
5 municipality in which the property subject to the eminent domain proceeding is
6 located; and

7 (4) shall allow the municipal authority to elect to provide preliminary
8 and final replat approval.

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

12 (d) Neither the adequacy of the municipal replat process or standards, if any,
13 nor the failure of a municipality to follow its own replat process and standards shall
14 deprive the state of the authority to exercise its power of eminent domain.

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

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

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