

CS FOR HOUSE BILL NO. 318(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/10/06

Referred: Rules

Sponsor(s): REPRESENTATIVES MCGUIRE, HOLM AND HAWKER, Stoltze, Gatto, Wilson, Kohring, LeDoux, Dahlstrom, Kelly, Anderson, Olson, Lynn, Elkins, Foster, Kapsner, Samuels, Ramras, Meyer

A BILL

FOR AN ACT ENTITLED

1 **"An Act limiting the exercise of eminent domain; and providing for an effective date."**

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 LEGISLATIVE INTENT AND FINDINGS. (a) The legislature finds that

6 (1) the United States Supreme Court decision in *Kelo v. City of New London*,
7 545 U.S. ___, 125 S.Ct. 2655, 162 L. Ed. 2d 439 (2005) demonstrates that an overly
8 expansive application of eminent domain powers can be a threat to the property rights of all
9 private property owners;

10 (2) it is necessary to provide clarification regarding the exercise of eminent
11 domain in the following two situations:

12 (A) the taking of private property if the purpose is to transfer the
13 property to another private person for economic development;

14 (B) the taking of a landowner's personal residence to develop an indoor
15 or outdoor recreational facility or project.

(b) In recognizing that many public projects will have economic effects, the legislature intends by this Act not to

(1) restrict those public uses already recognized in state law merely because the project may have an associated economic effect; or

(2) provide an absolute bar on transfers of land to private entities, but to place restrictions on when such transfers occur.

(c) In this section, "economic development" means development of property for a commercial enterprise carried on for profit or to increase tax revenue, tax base, or employment.

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

(a) **Except as provided in (d) and (e) of this section, the** [THE] right of eminent domain may be exercised for the following public uses:

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

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

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

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

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for

working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water;

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

(7) telephone lines;

(8) fiberoptic lines;

(9) [(8)] telegraph lines;

(10) [(9)] sewerage of an organized or unorganized borough, city, town, village, or other municipal division, whether incorporated or unincorporated, or a subdivision of it, or of a settlement consisting of not less than 10 families, or of public buildings belonging to the state or to a college or university;

(11) [(10)] tramway lines;

(12) [(11)] electric power lines;

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

* **Sec. 3.** AS 09.55.240 is amended by adding new subsections to read:

(d) The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development purposes. This subsection does not apply to transfers of private property to another private person if one or more of the following apply:

(1) the landowner consents, either before or after a condemnation proceeding has been filed, to the use of the property for a private commercial enterprise or other economic development;

(2) the private person has been expressly authorized by statute either to exercise the power of eminent domain, or to receive an interest in land acquired by the exercise of eminent domain;

(3) the transferred property is used for a private way of necessity to permit essential access for extraction or use of resources;

(4) the acquisition is used, in part, for leasing property to a private person that occupies a portion of public property or a public facility, including a private business that occupies a portion of an airport, port, or public building;

(5) the property is transferred to a person by oil and gas lease under AS 38.05.180;

(6) the property is transferred to a common carrier;

(7) the legislature has approved by law the transfer of the property.

(e) The power of eminent domain may not be exercised for the purpose of developing a recreational facility or project if the property to be acquired includes an individual landowner's personal residence or that portion of an individual's property attached to and within 250 linear feet of an individual landowner's personal residence unless the landowner consents either before or after a condemnation proceeding has been filed.

(f) In this section,

(1) "common carrier" has the meaning given in AS 04.16.125;

(2) "economic development" means development of property for a commercial enterprise carried on for profit or to increase tax revenue, tax base, or employment;

(3) "personal residence" means a structure that is the dwelling place of an individual that

(A) must be used by the owner as a dwelling unit, as opposed to a rental, storage, or other commercial space;

(B) must be inhabited by the owner for at least 90 days during the 12-month period immediately before the date an action for the exercise of the power of eminent domain is filed;

(C) must constitute an ordinary home for general living purposes, as opposed to a dwelling used only for seasonal recreational or temporary purposes; and

(D) may not have been constructed, placed, or occupied for the

1 purpose of avoiding eminent domain proceedings;

2 (4) "private person" means a person that is not a public corporation as
3 defined in AS 45.77.020 or a government as defined in AS 11.81.900;

4 (5) "recreational facility or project"

5 (A) means a facility or project, the primary purpose of which is
6 recreational;

7 (B) includes a park, trail or pedestrian pathway, greenbelt,
8 amusement park, small boat harbor, sports facility, playground, infrastructure,
9 or other facility related to or in support of an indoor or outdoor recreational
10 facility or project;

11 (C) does not include

12 (i) a highway, sidewalk, or path within the right-of-way
13 of a highway;

14 (ii) a path, trail, or lane used as a safe route to a school
15 program;

16 (iii) a wayside or rest stop;

17 (iv) a development, the primary purpose of which is not
18 recreational, such as a path, trail, or lane developed to reduce
19 congestion, or to encourage use of an alternate, gas-saving mode of
20 transportation;

21 (v) a path or trail to or between villages or from a
22 village to a facility or resource;

23 (vi) a stormwater retention or treatment facility or
24 wetland, habitat, or other acquisition required to obtain a permit for a
25 highway, airport, or other public project;

26 (vii) a taking under AS 19.05.110, 19.05.120;
27 AS 19.22.020; AS 27.21.300; AS 35.20.040, 35.20.050; or
28 AS 41.35.060;

29 (viii) a taking not prohibited by law before January 1,
30 2007, under AS 41.21; and

31 (ix) a path, trail, road, or site for which no reasonable

alternative exists and which is necessary to preserve or establish public access to publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water rather than primarily for recreation.

* **Sec. 4.** AS 29.35.030(a) is amended to read:

(a) **Except as provided in (c) of this section, a** [A] municipality may, only within its boundaries, exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the municipality under the procedures set out in AS 09.55.250 - 09.55.460. In the case of a second class city, the exercise of the power of eminent domain or declaration of taking must be by ordinance that is submitted to the voters at the next general election or at a special election called for that purpose. A majority of the votes on the question is required for approval of the ordinance.

* **Sec. 5.** AS 29.35.030 is amended by adding new subsections to read:

(c) The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development, except as provided by AS 09.55.240(d)(1) - (6), and may not be exercised for purposes expressed in AS 09.55.240(e).

(d) In this section,

(1) "economic development" has the meaning given in AS 09.55.240;

(2) "private person" has the meaning given in AS 09.55.240.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to condemnation actions filed on or after the effective date of this Act.

* **Sec. 7.** This Act takes effect January 1, 2007.