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BY COMMITTEE ON TRANSPORTATION,
HIGHWAYS AND NAVIGATION

1 IN THE SENATE

2 SENATE BILL NO. 89

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to provide for obtaining possession
7 of lands taken for public highway
8 purposes by eminent domain through the
9 use of a declaration of taking, under
10 prescribed circumstances; and declaring
11 an emergency."

12 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

13 Section 1. AUTHORITY TO FILE DECLARATION OF TAKING. In
14 any proceeding instituted by and in the name of the Territory of
15 Alaska involving the acquisition of any real property or any
16 interests therein or any easement for public highway purposes the
17 petitioner may file in the cause, with the petition or at any
18 time before judgment, a declaration of taking signed by the
19 Territorial authority empowered by law to acquire the real
20 property or any interests therein or any easement described in
21 the petition, declaring that said real property or any interests
22 therein or any easement is thereby taken for the use of the
23 Territory of Alaska.

24 Section 2. WHAT DECLARATION OF TAKING TO CONTAIN. The
25 declaration of taking shall contain or have annexed thereto the
26 following:

27 (a) A statement of the authority under which the
28 property or any interests therein or any easement is taken.

29 (b) A statement of the public use for which such

1 property or any interests therein or any easement is taken.

2 (c) A description of the property taken or any
3 interests therein or any easement, sufficient for the
4 identification thereof.

5 (d) A statement of the estate or interest in such
6 property taken for said public use.

7 (e) A plan showing the property taken, or any interests
8 therein or any easement.

9 (f) A statement of the amount of money estimated by
10 the acquiring agency to be just compensation for the property
11 taken, or any interests therein or any easement.

12 Section 3. VESTING OF TITLE: COMPENSATION. Upon the
13 filing of the declaration of taking and the deposit with the
14 clerk of the court in which the proceeding is pending, for the
15 use of the persons entitled thereto, of the amount of the
16 estimated compensation stated in the said declaration, title to
17 the real property in fee simple absolute, or such lesser estate
18 or interest therein as is specified in the said declaration,
19 shall vest in the Territory of Alaska, and such real property or
20 interests therein or easement shall be deemed to be condemned
21 and taken for the use of the Territory of Alaska, and the right
22 to just compensation for the same shall vest in the persons
23 entitled thereto. The compensation shall be ascertained and
24 awarded in the proceeding and established by judgment therein,
25 and the judgment shall include, as part of the just compensation
26 awarded, interest at the rate of 6 per centum per annum on the
27 amount finally awarded as the value of the property as of the
28 date title vests in the Territory of Alaska to the date of
29 payment; but interest shall not be allowed on so much thereof as

1 shall have been paid to the clerk of the court.

2 Upon the application of any party in interest, and upon due
3 notice to all parties, the court may order that the money
4 deposited in the court, or any part thereof, be paid forthwith
5 to the person or persons entitled thereto for or on account of
6 the just compensation to be awarded in the proceedings. If the
7 compensation finally awarded shall exceed the amount of money so
8 deposited, the court shall enter judgment against the Territory
9 of Alaska and in favor of the parties entitled thereto for the
10 amount of the deficiency. If the compensation finally awarded
11 shall be less than the amount of money so deposited and paid to
12 the persons entitled thereto, the court shall enter judgment in
13 favor of the Territory of Alaska and against the proper parties
14 for the amount of the excess.

15 Section 4. RIGHT OF ENTRY AND POSSESSION. Upon the filing
16 of the declaration of taking and the deposit with the clerk of
17 the court of the estimated compensation, the ^{current Governor} (Territory of Alaska #1
18 shall thereupon have the right of entry and) the parties in
19 possession shall be required to surrender possession to the
20 petitioner, upon such terms as shall be fixed by the court.) If,
21 for any reason, the right of entry is postponed by the court in
22 any case where the party in possession has withdrawn any part of
23 the award, the court may fix a reasonable rental for the premises
24 to be paid by such party to the Territory of Alaska during such
25 occupancy.

26 The court also shall have the power to direct the payment of
27 delinquent taxes and special assessments out of the amount
28 determined to be just compensation, and to make such orders with
29 respect to encumbrances, liens, rents, insurance, and other

1 charges, as shall be just and equitable.

2 The right to take possession and title in advance of final
3 judgment in condemnation proceedings as provided by this Act
4 shall be in addition to any right, power, or authority conferred
5 by the Territory under which such proceedings may be conducted,
6 and shall not be construed as abrogating, limiting, or modifying
7 any such right, power, or authority.

8 Section 5. EFFECT OF APPEAL. No appeal in any cause under
9 this Act nor any bond or undertaking given therein shall operate
10 to prevent or delay the vesting of title to real property or any
11 interests therein or any easement in the Territory of Alaska.

12 The Territory of Alaska shall not be divested of any title
13 to real property or any interests therein or any easement
14 acquired under this Act by court order except where such court
15 finds that said property or any interests therein or any
16 easement were not taken for a public use. In the event of such
17 finding, the court shall enter such judgment as may be necessary
18 (1) to compensate the persons entitled thereto for the period
19 during which the property was in the possession of the Territory
20 and (2) to recover for the Territory any award paid to any person.

21 Section 6. CHALLENGING DECLARATION OF TAKING. In any case
22 in which a declaration of taking has been filed as provided in
23 this Act, any defendant desiring to raise any question with
24 respect to the validity of the taking shall do so by filing a
25 motion to strike the declaration of taking and dismiss the suit.
26 The motion shall be made on or before the return day mentioned
27 in the summons, or notice of publication, or within 20 days after
28 the filing of the declaration of taking, whichever is later.
29 Failure to file such motion within the time herein provided

1 shall constitute a waiver of the right of any defendant to
2 challenge the validity of the taking. * *to be amended.*

3 Section 7. SEVERABILITY. If any section, provision, or
4 clause of this Act shall be declared invalid or inapplicable to
5 any person or circumstance, such invalidity or inapplicability
6 shall not be construed to affect the portions not so held or
7 persons or circumstances not so affected. All laws or portions
8 of laws inconsistent with the policy and provisions of this Act
9 are hereby repealed to the extent of such inconsistency in their
10 application to the declaration of taking procedure authorized
11 by this Act.

12 Section 8. An emergency is hereby declared to exist, and
13 this Act shall take effect immediately upon its passage and
14 approval.

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