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IN THE SENATE

BY THE RULES COMMITTEE  
AT THE REQUEST OF THE GOVERNOR

SENATE BILL NO. 195

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIRST LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the power of the State of Alaska, boroughs, cities, schools and other political subdivisions of the state, and of private persons to condemn property for public uses; prescribing the procedure to be followed; repealing certain laws relating to condemnation; and providing for an effective date."

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

ARTICLE I

POWERS TO CONDEMN: POWERS OF COURT

Section 1. USES FOR WHICH AUTHORIZED. Subject to the provisions of this Act, the right of eminent domain may be exercised as follows:

(a) In every case in which the State of Alaska or any of its departments, agencies or boards, or any officer thereof, has been, or hereafter shall be, authorized to procure real estate or any interest therein for the erection of a public building or for other public uses, it or he may acquire the same for the State of Alaska by condemnation, under judicial process, whenever in its or his opinion it is necessary or advantageous to the State of Alaska to do so.

(b) A borough, city, whether incorporated or not, school district, public utility district or other political

1 subdivision of the state may condemn for the following public  
2 uses: public buildings and grounds; roads, streets and alleys;  
3 parking areas and facilities; controlled-access facilities and  
4 service roads, including rights of access, air, view and light;  
5 pipes, ditches, flumes, aqueducts or canals conducting water,  
6 heat, or gas; raising the banks of streams, removing obstructions  
7 therefrom, and widening, deepening or straightening their  
8 channels; airport and aviation purposes; and all other public  
9 uses as may be deemed necessary for the benefit of such political  
10 subdivision which may be authorized by law.

11 (c) The right of eminent domain may also be exercised  
12 in behalf of the following public uses:

13 (1) Wharves, docks, piers, chutes, booms, ferries,  
14 bridges of all kinds, private roads, plank and turnpike roads,  
15 railroads, canals, ditches, flumes, aqueducts, and pipes for  
16 public transportation, supplying mines and farming neighbor-  
17 hoods with water, and draining and reclaiming lands, and for  
18 floating logs and lumber on streams not navigable, and sites  
19 for reservoirs necessary for collecting and storing water.

20 (2) Roads, tunnels, ditches, flumes, pipes, and  
21 dumping places for working mines, oil and gas wells; also  
22 outlets, natural or otherwise, for the flow, deposit, or  
23 conduct of tailings or refuse matters from mines, oil or gas  
24 wells; also an occupancy in common by the owners of posses-  
25 sors of different mines, oil or gas wells of any place for  
26 the flow, deposit, or conduct of tailings or refuse matter  
27 from their several mines, oil or gas wells, and sites for  
28 reservoirs necessary for collecting and storing water or  
29 refuse matter.

1           (3) Private roads leading from public roads to  
2 residences or farms or which are necessary to provide  
3 essential access for extraction or utilization of resources,  
4 provided however, that use of such roads shall be non-  
5 exclusive.

6           (4) Electric power installations and transmission  
7 facilities and electric light lines.

8           (5) Telephone, telegraph, and other communication  
9 lines, installations and facilities.

10           (6) Sewers or sewer systems and sewerage disposal  
11 and treatment facilities of any state agency, borough, city,  
12 town, village, school district or other political subdivision  
13 of the state, whether incorporated or unincorporated, or any  
14 subdivision thereof, college or university, or of any settle-  
15 ment consisting of not less than ten families. When appli-  
16 cation for the condemnation of a right of way for the pur-  
17 poses of handling sewerage is made on behalf of any politi-  
18 cal subdivision which is not incorporated or any settlement,  
19 any three citizens thereof authorized thereunto by a written  
20 instrument, signed by not less than one-half of the whole  
21 number of inhabitants of such political subdivision or  
22 settlement over the age of nineteen years, which fact shall  
23 be set forth in the complaint, may act and be named as  
24 plaintiffs for such purpose.

25           (7) Tramway lines and conveyor systems.

26           (8) Pipe lines for gathering, transmitting,  
27 transporting, storing or delivering of natural or artificial  
28 gas or oil or any liquid or gaseous hydrocarbons, including,  
29 but not limited to, pumping stations, terminals, storage

1 tanks or reservoirs and related installations.

2 (9) Development, production and extraction of  
3 sub-surface mineral resources in Alaska including the  
4 locating of oil and gas well drilling and production equip-  
5 ment and the drilling of directional holes to gain access  
6 to mineral reserves, when deemed necessary in the public  
7 interest by the Commissioner of Natural Resources.

8 Sec. 2. ESTATES AND LANDS SUBJECT TO BE TAKEN. Except as  
9 otherwise authorized by law the following is the classification  
10 of the estates and rights in land subject to be taken for a  
11 public use:

12 (a) A fee simple, when taken for public buildings or  
13 grounds, or for permanent buildings, for reservoirs and dams,  
14 and permanent flooding occasioned thereby, or for an outlet for a  
15 flow, or a place for the deposit of debris or tailings of a mine,  
16 oil, or gas well, or whenever in the judgment of the State of  
17 Alaska such an estate in real property, or any other estate  
18 therein, is necessary for any of the purposes for which the State  
19 of Alaska is authorized by law to acquire real property by con-  
20 demnation.

21 (b) An easement or right of way when taken for any  
22 other use.

23 (c) The right of entry upon and occupation of lands,  
24 and the right to take therefrom such earth, gravel, stones, trees,  
25 and timber as may be necessary for some public use.

26 Sec. 3. PRIVATE PROPERTY DEFINED. The private property  
27 which may be taken under this Act includes:

28 (a) All real property belonging to any person,

29 (b) Lands belonging to the State of Alaska or to any

1 borough, city, school district, public utility district, or other  
2 political subdivision of the state, whether incorporated or  
3 unincorporated, not appropriated to some public use.

4 (c) Property appropriated to public use; but such  
5 property must not be taken unless for a more necessary purpose  
6 than that to which it has already been appropriated.

7 (d) Franchises for roads, bridges, and ferries, and  
8 all other franchises; but such franchises must not be taken  
9 unless for free highways, free bridges, railroads, or other more  
10 necessary public use.

11 (e) All rights of way for any and all the purposes  
12 mentioned in Sec. 1 of this Article, and any and all structures  
13 and improvements thereon, and the lands held and used in connec-  
14 tion therewith are subject to being connected with, crossed, or  
15 intersected by any other right of way or improvements or struc-  
16 tures thereon. They are also subject to a limited use, in common  
17 with the owner thereof, when necessary.

18 (f) All classes of private property not enumerated  
19 may be taken for public use when such taking is authorized by  
20 law.

21 Sec. 4. ENTRY UPON, SURVEY AND LOCATION OF LANDS. In all  
22 cases where land is required for public use, the public body or  
23 the private person who has the authority to condemn, or its  
24 agents, may survey and locate the same, make examination, surveys  
25 and maps thereof as is necessary to locate the area which it may  
26 be necessary to condemn, doing no damage thereby. Such entry  
27 shall constitute no cause of action in favor of the owners of the  
28 land, except from injuries resulting from negligence, wantonness,  
29 or malice.

1           Sec. 5. DECLARATION OF TAKING - AUTHORITY TO FILE. In any  
2 proceeding instituted by and in the name of the State of Alaska,  
3 public utility district, or school district, hereinafter referred  
4 to as "condemning agency", involving the acquisition of any real  
5 property or any interest therein, for any purpose for which the  
6 condemning agency is authorized the power of eminent domain, the  
7 condemning agency may file in the cause, with the complaint or at  
8 any time before judgment, a declaration of taking signed by the  
9 state or other authority empowered by law to acquire the real  
10 property or any interests therein or any easement described in  
11 the petition, declaring that said real property or any interest  
12 therein or any easement is thereby taken for the use of the state,  
13 public utility district, or school district. Cities of the first  
14 class are permitted to use a declaration of taking in the exer-  
15 cise of eminent domain for street or highway, school, sewer,  
16 water, telephone, electric, other utility, and slum clearance  
17 purposes or use granted to cities of the first class.

18           Sec. 6. CONTENTS OF DECLARATION OF TAKING. The declaration  
19 of taking shall contain or have annexed thereto the following:

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

22           (b) A statement of the public use for which such  
23 property or any interests therein or any easement is taken.

24           (c) A description of the property taken or any  
25 interests therein or any easement, sufficient for the identifi-  
26 cation thereof.

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

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

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

4 Sec. 7. VESTING OF TITLE: COMPENSATION. Upon the filing  
5 of the declaration of taking and the deposit with the clerk  
6 of the court in which the proceeding is pending, for the use of  
7 the persons entitled thereto, of the amount of the estimated  
8 compensation stated in the said declaration, title to the real  
9 property in fee simple absolute, or such lesser estate or  
10 interest therein as is specified in said declaration, shall vest  
11 in the condemning agency and such real property or interests  
12 therein or easement shall be deemed to be condemned and taken  
13 for the use of the condemning agency and the right to just  
14 compensation for the same shall vest in the persons entitled  
15 thereto. The compensation shall be ascertained and awarded in  
16 the proceeding and established by judgment therein, and the  
17 judgment shall include, as part of the just compensation awarded,  
18 interest at the rate of 6 per centum per annum on the amount  
19 finally awarded as the value of the property as of the date title  
20 vests in the condemning agency to the date of payment; but  
21 interest shall not be allowed on so much thereof as shall have  
22 been paid to the clerk of the court.

23 Upon the application of any party in interest, and upon  
24 due notice to all parties, the court may order that the money  
25 deposited in the court, or any part thereof, be paid forthwith  
26 to the person or persons entitled thereto for or on account of  
27 the just compensation to be awarded in the proceedings. If the  
28 compensation finally awarded shall exceed the amount of money so  
29 deposited, the court shall enter judgment against the condemning

1 agency and in favor of the parties entitled thereto for the  
2 amount of the deficiency. If the compensation finally awarded  
3 shall be less than the amount of money so deposited and paid to  
4 the persons entitled thereto, the court shall enter judgment in  
5 favor of the condemning agency and against the proper parties  
6 for the amount of the excess.

7       Sec. 8. EFFECT OF APPEAL. No appeal in any cause under  
8 Sections 5, 6 and 7 of this Article nor any bond or undertaking  
9 given therein shall operate to prevent or delay the vesting of  
10 title to real property or any interests therein or any easement  
11 in the condemning agency.

12       The condemning agency shall not be divested of any title  
13 to real property or any interests therein or any easement  
14 acquired under Sections 5, 6 and 7 by court order except where  
15 such court finds that said property or any interests therein  
16 or any easement were not taken for a public use. In the event  
17 of such finding, the court shall enter such judgment as may be  
18 necessary (1) to compensate the persons entitled thereto for the  
19 period during which the property was in the possession of the  
20 condemning agency, and (2) to recover for the condemning agency  
21 any award paid to any person.

22       Sec. 9. VESTING OF TITLE WHERE NO DECLARATION OF TAKING IS  
23 FILED. If no declaration of taking has been filed the court  
24 shall have the power, after notice to the interested parties  
25 and a hearing, to vest title to the property sought to be con-  
26 demned in the plaintiff upon it being satisfied by competent  
27 proof that the property sought to be condemned is necessary for a  
28 public use.

29       Sec. 10. POWERS OF COURT WHERE NO DECLARATION OF TAKING HAS

1 BEEN FILED. If no declaration of taking has been filed the  
2 court shall have power (1) to regulate and determine the place  
3 and manner of making connections and crossings of rights of ways  
4 and any structures and improvements thereon and (2) to limit the  
5 amount of property sought to be taken, if in the opinion of the  
6 court the quantity sought to be appropriated is not necessary to  
7 the public use for which it is sought to be taken.

8 Sec. 11. POWER OF COURT TO AUTHORIZE PLAINTIFF TO TAKE  
9 POSSESSION. The court may, upon motion, fix the time within which  
10 and the terms upon which the parties in possession shall be  
11 required to surrender possession to the plaintiff. Possession  
12 may be granted to the plaintiff before or after the vesting of  
13 title. However, possession shall not be granted before vesting  
14 of title unless there is an urgent public necessity requiring a  
15 speedy occupation. In such cases the court shall grant or  
16 refuse the motion according to the equity of the case and the  
17 relative damages which may accrue to the parties, giving con-  
18 sideration also to the public interest involved.

19 Sec. 12. JUST COMPENSATION. Just compensation shall be  
20 made for property taken or for resultant damages to other  
21 property rights.

22 For the purpose of assessing just compensation the right  
23 thereto shall be deemed to have accrued at the time title is  
24 vested in the plaintiff if property has been taken and if property  
25 has not been taken, but has been damaged, the right thereto shall  
26 be deemed to have accrued at the time that the physical acts of  
27 the plaintiff gives rise to the damage. If an order be made  
28 letting the plaintiff into possession before vesting of title in  
29 the plaintiff of the property sought to be condemned, the

1 compensation shall draw interest at the rate of 6 per centum on  
2 the amount finally awarded from the date of such order to the  
3 date of payment; provided that no interest shall be allowed on  
4 so much thereof as shall have been deposited with the clerk of  
5 the court under Section 7 of this Article.

6 ARTICLE II

7 PROCEDURE FOR CONDEMNATION

8 Sec. 13. APPLICABILITY OF OTHER RULES. The Rules of Civil  
9 Procedure of the State of Alaska govern the procedure for the  
10 condemnation of real and personal property under the power of  
11 eminent domain, except as otherwise provided in this Act. The  
12 Supreme Court shall have the power to change any of the pro-  
13 visions in this Article II pertaining to procedure, pursuant to  
14 Section 15 of Article IV of the Constitution of the State of  
15 Alaska; provided any changes of these provisions or any restate-  
16 ment of these provisions as a rule or rules may be changed by  
17 the legislature by two-thirds vote of the members elected to  
18 each house.

19 Sec. 14. JOINDER OF PROPERTIES. The plaintiff may join in  
20 the same action one or more separate pieces of property, whether  
21 in the same or different ownership and whether or not sought for  
22 the same use.

23 Sec. 15. COMPLAINT.

24 (a) CAPTION. The complaint shall contain a caption  
25 as provided in Rule 10(a) of the Rules of Civil Procedure of the  
26 State of Alaska, except that the plaintiff shall name as defend-  
27 ants the property, designated generally by kind, quantity, and  
28 location, and at least one of the owners of some part of or  
29 interest in the property.

1 (b) CONTENTS. The complaint shall contain a short  
2 and plain statement of the authority for the taking, the use  
3 for which the property is to be taken, a description of the  
4 property sufficient for its identification, the interests to be  
5 acquired, and as to each separate piece of property a designation  
6 of the defendants who have been joined as owners thereof or of  
7 some interest therein. Upon the commencement of the action, the  
8 plaintiff need join as defendants only the persons having or  
9 claiming an interest in the property whose names are then known,  
10 but prior to any hearing involving the compensation to be paid  
11 for a piece of property, the plaintiff shall add as defendants all  
12 persons having or claiming an interest in that property whose  
13 names can be ascertained by a reasonable diligent search of the  
14 records, considering the character and value of the property  
15 involved and the interests to be acquired, and also those whose  
16 names have otherwise been learned. All others may be made def-  
17 endants under the designation "Unknown Owners." Process shall  
18 be served as provided in Section 16 of this Article upon all def-  
19 endants, whether named as defendants at the time of the commence-  
20 ment of the action or subsequently added, and a defendant may  
21 answer, appear or move to strike the declaration of taking and  
22 dismiss the suit as provided in Section 17 of this Article. The  
23 court meanwhile may order such distribution of a deposit as the  
24 facts warrant.

25 (c) FILING. In addition to filing the complaint with  
26 the court, the plaintiff shall furnish to the clerk at least one  
27 copy thereof for the use of the defendants and additional copies  
28 at the request of the clerk or of a defendant.

29 Sec. 16. PROCESS.

(a) NOTICE: DELIVERY. Upon the filing of the complaint

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1 the plaintiff shall forthwith deliver to the clerk joint or  
2 several notices directed to the defendants named or designated  
3 in the complaint. Additional notices directed to defendants  
4 subsequently added shall be so delivered. The delivery of the  
5 notice and its service shall have the same effect as the delivery  
6 and service of the summons under Rule 4 of the Rules of Civil  
7 Procedure of the State of Alaska.

8 (b) SAME: FORM. Each notice shall state the court,  
9 the title of the action, the name of the defendant or defendants,  
10 to whom it is directed, that the action is to condemn property,  
11 a description of the property sufficient for its identification,  
12 the interest to be taken, the authority for the taking and the  
13 uses for which the property is to be taken.

14 If the notice is for an action in which no declaration of  
15 taking has been filed the notice shall further state that the  
16 defendant may serve upon the plaintiff's attorney an answer  
17 within 20 days after service of the notice (or if the law pre-  
18 scribes a later date as the return day, that date), and that the  
19 failure so to serve an answer constitutes a consent to the taking  
20 and to the authority of the court to proceed to hear the action  
21 and to fix the compensation.

22 If the notice is for an action in which a declaration of  
23 taking has been filed the notice shall contain substantially the  
24 following information: You are notified that if you desire to  
25 present any objection or defense to the taking of your property;  
26 you are required to do so by filing a motion to strike the  
27 declaration of taking and dismiss the suit which motion must  
28 be served on the plaintiff's attorney within 20 days after  
29 service of the notice (or if the law prescribes a later date, that

1 date).

2 The notice shall further substantially advise that the  
3 defendant, without filing an answer (if no declaration of taking  
4 has been filed), or a motion to strike the declaration of taking  
5 and dismiss the suit (if a declaration of taking has been filed),  
6 may serve on the plaintiff's attorney a notice of appearance  
7 designating the property in which he claims to be interested;  
8 that thereafter he will receive notice of all proceedings affect-  
9 int it; that at the hearing on the issue of just compensation,  
10 he may present evidence as to the amount of the compensation to  
11 be paid for his property; that he may share in the distribution  
12 of the award; and that if neither an appearance, an answer (if  
13 no declaration of taking has been filed) or motion to strike the  
14 declaration of taking and dismiss the suit (if a declaration of  
15 taking has been filed) is filed, judgment by default will be  
16 taken against the defendant for the relief demanded in the com-  
17 plaint and the Court will proceed to hear the action and to fix  
18 the compensation without further notice.

19 The notice shall conclude with the name of the plaintiff's  
20 attorney and an address where he may be served. The notice  
21 need contain a description of no other property than that to be  
22 taken from the defendant to whom it is directed.

23 (c) SERVICE OF NOTICE.

24 (1) PERSONAL SERVICE. Personal service of the  
25 notice (but without copies of the complaint) shall be made in  
26 accordance with Rule 4(c) and (d), Rules of Civil Procedure of  
27 the State of Alaska, upon a defendant who resides within the  
28 State of Alaska and whose residence is known.

29 (2) SERVICE BY PUBLICATION. Upon the filing of a

1 certificate of the plaintiff's attorney stating that he believes  
2 a defendant cannot be personally served, because after diligent  
3 inquiry within the State of Alaska his place of residence cannot  
4 be ascertained by the plaintiff or, if ascertained, that he  
5 cannot be personally served within the State of Alaska, service  
6 of the notice shall be made on this defendant by publication in  
7 the newspaper to be designated by the court, judge or clerk as  
8 the most likely to give notice to the person to be served, once a  
9 week for not less than four successive weeks. Prior to the last  
10 publication, a copy of the notice shall also be mailed to a  
11 defendant who cannot be personally served as provided in this rule  
12 but whose place of residence is then known. Unknown owners may  
13 be served by publication in like manner by a notice addressed to  
14 "Unknown Owners."

15 Service by publication is complete upon the date of the last  
16 publication.

17 Proof of publication of the notice of filing a complaint  
18 shall be made by the affidavit of the publisher of the newspaper,  
19 the manager, the foreman, or the principal clerk, or by certificate  
20 of the plaintiff's attorney, to which shall be attached a printed  
21 copy of the published notice with the name and dates of the news-  
22 paper marked thereon. Proof of mailing shall be made by certi-  
23 ficate or affidavit of the plaintiff's attorney.

24 When publication is authorized, personal service of a copy  
25 of the notice of filing complaint out of the state shall be  
26 equivalent to publication and deposit in the post office. In case  
27 of personal service out of the state, the defendant shall appear,  
28 answer or move to strike the declaration of taking and dismiss  
29 the suit within forty days after the date of such personal service.

1 (d) RETURN: AMENDMENT. Proof of service of the notice  
2 shall be made and amendment of the notice or proof of its service  
3 allowed in the manner provided for the return and amendment of  
4 the summons under the Rule 4(f) and (g) of the Rules of Civil  
5 Procedure of the State of Alaska.

6 Sec. 17. APPEARANCE, ANSWER OR MOTION TO DISMISS. If a  
7 defendant has no objection or defense to the taking of his  
8 property, he may serve a notice of appearance designating the  
9 property in which he claims to be interested. Thereafter he shall  
10 receive notice of all proceedings affecting it. If no declaration  
11 of taking has been filed and if the defendant has any objection  
12 or defense to the taking of his property, he shall serve his  
13 answer on or before the return day mentioned in the notice of  
14 filing complaint. If a declaration of taking has been filed,  
15 and if the defendant has any objection or defense to the taking  
16 of his property, he shall serve his motion to strike the decla-  
17 ration of taking and dismiss the suit on or before the return  
18 day mentioned in the notice of filing complaint or within  
19 twenty (20) days after the filing of the declaration of taking,  
20 whichever is later, provided that for good cause shown, the  
21 court may permit filing of the motion at a later time as if  
22 the time herein provided had not expired. The answer or the  
23 motion to strike the declaration of taking and dismiss the suit  
24 shall identify the property in which the defendant claims to have  
25 an interest, state the nature and extent of the interest claimed,  
26 and state all his objections and defenses to the taking of his  
27 property. No other pleadings or motion asserting any additional  
28 defense or objection shall be allowed.

29 A defendant waives all defenses and objections not so

1 presented. Whether or not a defendant has appeared, answered or  
2 filed a motion to strike the declaration of taking and dismiss  
3 the suit, he may share in the distribution of the award. However,  
4 failure to file an appearance, answer, if no declaration of taking  
5 has been filed, or motion, if a declaration of taking has been  
6 filed, constitutes a consent to the taking and to the authority  
7 of the court to proceed to hear the action and to fix the comp-  
8 ensation. In the event of failure to file an appearance, answer,  
9 or motion, judgment by default shall be entered pursuant to Rule  
10 55 of the Rules of Civil Procedure of the State of Alaska; pro-  
11 vided that a hearing on the question of the necessity of the  
12 taking for a public use must be had before vesting of title in  
13 every case where no declaration of taking has been filed. No.  
14 notice of such hearing shall be required where service has been  
15 had and the defendant or defendants have failed to answer, more or  
16 otherwise appear in the time prescribed. If the court at such  
17 hearing determines that the property sought to be condemned is not  
18 necessary for a public use it shall dismiss the action. In order  
19 to determine just compensation in a default matter, the court may  
20 conduct such hearings or order such references to a referee,  
21 master, three commissioners appointed to assess damages, or other-  
22 wise, as it deems proper.

23 Sec. 18. VESTING OF TITLE.

24 (a) WHERE DECLARATION OF TAKING IS FILED. Where a  
25 declaration of taking is filed title shall be vested in the  
26 condemning agency pursuant to the provisions of Section 5 through  
27 Section 8 of Article I of this Act.

28 (b) WHERE NO DECLARATION OF TAKING IS FILED: HEARING.  
29 If no declaration of taking has been filed the person or agency

1 seeking to condemn shall, after the defendants have been duly  
2 served with copies of the notice of filing complaint, move for a  
3 hearing pursuant to the Rules of Civil Procedure of the State of  
4 Alaska at which the court will consider whether or not the taking  
5 is necessary for a public purpose. At the time and place appoint-  
6 ed for hearing, if the court shall have satisfactory proof that  
7 all parties interested in the property described in the complaint  
8 have been duly served with the notice of hearing as prescribed  
9 herein, or that no appearance, answer or motion has been filed  
10 within the time prescribed, and shall be further satisfied by  
11 competent proof that the contemplated use for which the property  
12 sought to be appropriated is necessary for a public use, the  
13 court may make and enter an order adjudicating that the property  
14 sought to be condemned is necessary for a public use. Such order  
15 shall be final and shall vest title in the person or agency which  
16 seeks to condemn the property unless review thereof to the  
17 Supreme Court be taken within five days after entry of such order.

18 Sec. 19. ORDER AUTHORIZING PLAINTIFF TO TAKE POSSESSION.

19 (a) PLAINTIFFS OCCUPANCY PENDING SERVICE. At any time  
20 after the action is commenced and before or after service may be  
21 had upon the defendants, the court may, upon motion, hold a hear-  
22 ing and enter an order permitting the plaintiff to occupy the  
23 premises sought to be condemned pending the action and do work,  
24 lay out roads and erect structures required for the purpose for  
25 which the land is sought to be condemned. The order shall be  
26 entered only after ten days notice, of the time and place of  
27 hearing as to the occupying of the premises, to defendants by  
28 registered mail, addressed to them at their last known addresses,  
29 as shown on the last tax roll of the political subdivision in

1 which the premises are located or as indicated by other evidence  
2 which shall be satisfactory to the court or be required by the  
3 court regarding the last known addresses of the defendants;  
4 provided, the court may require a longer period of notice than  
5 ten days. The judge shall take proof in open court at the time  
6 fixed for the hearing, to establish the reasonable probable value  
7 of the premises and the amount of damages, if any, which will  
8 accrue from the condemnation, and of the reasons for granting  
9 the speedy occupation, and shall grant or refuse a motion accord-  
10 ing to the equity of the case and the relative damages which may  
11 accrue to the parties, giving consideration also to the public  
12 interest involved. This power shall be exercised only when  
13 there is an urgent public necessity for its exercise.

14 (b) PLAINTIFFS BOND FOR OCCUPANCY PENDING SERVICE.

15 If the motion for occupancy under the previous sub-section is  
16 granted, the order shall require the plaintiff to execute and file  
17 with the clerk of court a bond, approved by the court, to the  
18 defendants, with sureties as otherwise provided by law; the bond  
19 to be in such sum as may be adjudged, but in no event less than  
20 double the probable value of the premises sought to be condemned,  
21 with the damages, if any, which will ensue from the condemnation  
22 and speedy occupation; the bond to be payable to the defendants  
23 as their respective interests may subsequently appear in the  
24 action and to be conditioned for the payment of the adjudged  
25 value of the premises and the damages which will ensue in case  
26 the property is condemned in the action, and for payment of all  
27 damage arising from the occupation before judgment in case the  
28 premises are not condemned, and all costs, disbursements and  
29 interest adjudged to the defendants in the action. Evidence as

1 to the finding or judgment of the court regarding amount of such  
2 bond shall not be admissable at the hearing or trial on the issue  
3 of just compensation.

4 (c) WHERE DECLARATION OF TAKING HAS BEEN FILED AND  
5 SERVICE HAD UPON DEFENDANTS. Upon the filing of the declaration  
6 of taking and the deposit with the clerk of the court of the  
7 estimated compensation, the court shall have the power to fix the  
8 time within which and the terms upon which the parties in possess-  
9 ion shall be required to surrender possession to the petitioner;  
10 provided, that the right of entry shall in no case be granted the  
11 petitioner under this subsection until after the running of the  
12 time for the defendant to file a challenge to the declaration of  
13 taking under Section 17 of this Article. If for any reason the  
14 right of entry is postponed by the court in any case where the  
15 party in possession has withdrawn any part of the award, the court  
16 may fix a reasonable rental for the premises to be paid by such  
17 party to the condemning agency during such occupancy.

18 (d) WHERE DECLARATION OF TAKING HAS NOT BEEN FILED  
19 AND WHERE SERVICE HAS BEEN HAD UPON DEFENDANTS. If no declaration  
20 has been filed, the court shall have the power at any time after  
21 the filing of the report of the commissioners, and either before  
22 or after appeal from their assessment, pursuant to Section 22(e)  
23 of this Article, to fix the time within which and the terms upon  
24 which the parties in possession shall be required to surrender  
25 possession to the plaintiff; provided however, where an appeal  
26 has been taken by the defendant or where the time for appeal has  
27 not expired, the court may, in its discretion, require the  
28 plaintiff, before taking possession, in addition to paying into  
29 the registry of the court the amount of damages assessed, to give

1 a bond or undertaking, with sufficient sureties, to be approved  
2 by the court, and to be in such sum as the court or judge may  
3 direct, conditioned to pay defendant any additional damages and  
4 costs over the amount assessed which it may finally be determined  
5 that defendant is entitled to for the condemnation of the property  
6 or all damages which defendant might sustain if for any cause such  
7 property shall not be taken for a public use.

8 (e) POWER OF COURT TO REQUIRE PAYMENT OF TAXES, ETC.

9 In any case where occupation has been granted the court shall  
10 have the power to direct the payment of delinquent taxes and  
11 special assessments out of the amount determined to be just  
12 compensation, and to make such orders with respect to encumbrances,  
13 liens, rents, insurance, and other charges, as shall be just and  
14 equitable.

15 Sec. 20. AMENDMENT OF PLEADINGS. Without leave of court,  
16 the plaintiff may amend the complaint at any time before the  
17 trial of the issue of compensation and as many times as desired,  
18 but no amendment shall be made which will result in a dismissal  
19 forbidden by Section 23 of this Article. The plaintiff need not  
20 serve a copy of an amendment, but shall serve notice of the filing  
21 as provided in Rule 5(b) of the Rules of Civil Procedure of the  
22 State of Alaska, upon any party affected thereby who has appeared  
23 and, in the manner provided in Section 16 of this Article, upon  
24 any party affected thereby who has not appeared. The plaintiff  
25 shall furnish to the clerk of the court for the use of the  
26 defendants at least one copy of each amendment, and he shall  
27 furnish additional copies on the request of the clerk or of a  
28 defendant. Within the time allowed by Section 17 of this Article,  
29 a defendant may serve his answer or motion to strike the

1 declaration of taking and dismiss the suit to the amended pleading  
2 in the form and manner and with the same effect as there provided.

3       Sec. 21. SUBSTITUTION OF PARTIES. If a defendant dies or  
4 becomes incompetent or transfers his interest after his joinder,  
5 the court may order substitution of the proper party upon motion  
6 and notice of hearing. If the motion and notice of hearings are  
7 to be served upon a person not already a party, service shall be  
8 made as provided in Section 16 of this Article.

9       Sec. 22. DETERMINATION OF JUST COMPENSATION.

10       (a) APPOINTMENT OF COMMISSIONERS. After not less than  
11 forty days after vesting of title in the plaintiff the court  
12 shall make an order appointing three competent persons, resident  
13 in the precinct or borough, commissioners to ascertain and  
14 determine the amount to be paid by the plaintiff to each owner  
15 or other person interested in such property, and shall have the  
16 power to specify the time and place of the first meeting of such  
17 commissioners, and shall fix their compensation. Any party may  
18 object to the appointment of any person as a commissioner on the  
19 same grounds that he might object to him as a trial juror.

20       (b) POWERS OF COMMISSION. The commission shall have  
21 the powers of a master provided in subdivision (b) of Rule 53 of  
22 the Rules of Civil Procedure of the State of Alaska, and proceed-  
23 ings before it shall be determined by a majority and its findings  
24 and report shall have the effect, and be dealt with by the court  
25 in accordance with the practice prescribed in paragraph (2) of  
26 subdivision (d) of Rule 53 of the Rules of Civil Procedure of the  
27 State of Alaska. Trial of all issues shall otherwise be by the  
28 court.

29       (c) COMMISSIONERS' REPORT. Within thirty days after

1 giving their appraisal and the assessment of damage, the  
2 commissioners must file a report of their proceedings, in  
3 the office of the clerk of the court.

4 (d) SERVICE OF NOTICE OF FILING REPORT. The clerk  
5 must notify the parties interested or their attorneys that  
6 such report has been filed.

7 (e) APPEAL FROM COMMISSIONERS' AWARD. An appeal  
8 from any assessment made by the commissioners may be taken  
9 and prosecuted by any party interested in the court where the  
10 report of the commissioners is filed. Such appeal must be  
11 taken within the period of thirty days after the service  
12 upon the defendant of the notice of filing commissioners  
13 report by the service of notice of such appeal upon the  
14 other parties, or their attorneys in such proceedings, and the  
15 same shall be brought on for trial upon the same notice and  
16 in the same manner as other civil actions; and any party  
17 may have a trial by jury of the issue of just compensation  
18 by filing a demand therefor within ten days after the time  
19 allowed for service of notice of the appeal. At such trial  
20 the court or jury may find as compensation or damages an  
21 amount the same as, less than or more than that found by the  
22 commissioners.

23 Sec. 23. DISMISSAL OF ACTION.

24 (a) AS OF RIGHT. If no hearing has begun to determine  
25 the compensation to be paid for a piece of property and the  
26 plaintiff has not acquired the title or a lesser interest in or  
27 taken possession, the plaintiff may dismiss the action as to  
28 that property, without an order of the court, by filing a notice  
29

1 of dismissal setting forth a brief description of the property as  
2 to which the action is dismissed.

3 (b) BY STIPULATION. Before the entry of any judgment  
4 vesting the plaintiff with title or a lesser interest in or  
5 possession of property, the action may be dismissed in whole or  
6 in part, without an order of the court, as to any property by  
7 filing a stipulation of dismissal by the plaintiff and the  
8 defendant affected thereby; and, if the parties so stipulate,  
9 the court may vacate any judgment that has been entered.

10 (c) BY ORDER OF THE COURT. At any time before compen-  
11 sation for a piece of property has been determined and paid and  
12 after motion and hearing, the court may dismiss the action as to  
13 that property, except that it shall not dismiss the action as to  
14 any part of the property of which the plaintiff has taken posses-  
15 sion or in which the plaintiff has taken title or a lesser inter-  
16 est, but shall award just compensation for the possession, title  
17 or lesser interest so taken. The court at any time may drop a  
18 defendant unnecessarily or improperly joined.

19 (d) EFFECT. Except as otherwise provided in the  
20 notice, or stipulation of dismissal, or order of the court, any  
21 dismissal is without prejudice.

22 Sec. 24. FINAL JUDGMENT.

23 (a) ORDER CONFIRMING COMMISSIONERS' REPORT. If no  
24 appeal has been taken within thirty days of service of the filing  
25 of the commissioners' report the plaintiff shall forthwith file a  
26 motion to confirm commissioners' report and for final judgment.  
27 If the court, after reviewing the commissioners' report, confirms  
28 and adopts it, the report shall serve as findings of fact and a  
29 final judgment based thereon shall be entered vesting or

1 confirming in the plaintiff the title and interest in the property  
2 sought to be condemned and awarding to defendants the sum  
3 assessed as damages.

4 (b) UPON COURT OR JURY TRIAL. If a court or jury  
5 trial has been had, final judgment shall be entered pursuant to  
6 the Rules of Civil Procedure of the State of Alaska vesting or  
7 confirming in the condemnor the title and interest in the property  
8 sought to be condemned and awarding to the defendants the sum  
9 assessed as damages.

10 Sec. 25. DEPOSIT AND ITS DISTRIBUTION. The plaintiff  
11 shall deposit with the court any money required by law as a  
12 condition to the exercise of the power of eminent domain; and  
13 although not so required, may make a deposit when permitted by  
14 statute or rule of the court. In such case the court and  
15 attorneys shall expedite the proceedings for the distribution of  
16 the money so deposited and for the ascertainment and payment of  
17 just compensation. The plaintiff must within thirty days after  
18 the entry of final judgment deposit with the court the sum of  
19 money assessed as damages. If the compensation finally awarded  
20 to any defendant exceeds the amount which has been paid to him  
21 on distribution of the deposit, the court shall enter judgment  
22 against the plaintiff and in favor of that defendant for the  
23 deficiency. If the compensation finally awarded to a defendant  
24 is less than the amount which has been paid to him, the court  
25 shall enter judgment against him in favor of the plaintiff for  
26 the overpayment.

27 Sec. 26. VACATION OF JUDGMENT FOR FAILURE TO MAKE DEPOSIT.  
28 If final judgment has been entered and the money required to be  
29 deposited in the registry of the court has not been deposited as

1 required by law, the defendants may have execution as in civil  
2 cases or may, upon motion made within six months of the date of  
3 the final judgment, upon a showing that such amount has not been  
4 deposited, have the judgment in the cause vacated, and title and  
5 possession of the property restored to the defendant.

6 Sec. 27. COSTS. Costs may be allowed, or, if not so  
7 allowed, may be apportioned between the parties on the same or  
8 adverse sides, in the discretion of the court.

9 ARTICLE III

10 GENERAL PROVISIONS

11 Sec. 28. REPEAL OF PRIOR LAWS. Sections 57-7-2, 57-7-3,  
12 57-7-5, 57-7-6, 57-7-7, 57-7-8, 57-7-9, 57-7-10, 57-7-11,  
13 57-7-12, 57-7-13, 57-7-14, 57-7-15, 57-7-16, 57-7-17, 57-7-18,  
14 57-7-19, 57-7-20, 57-7-21, 57-7-22, 57-7-23, ACLA 1949; Sec.  
15 57-7-1, ACLA 1949, as amended by Ch. 9, SLA 1957; Sec. 57-7-4,  
16 ACLA 1949, as amended by Ch. 91, SLA 1953; Ch. 90 SLA 1953, as  
17 amended by Ch. 138, SLA 1955 and by Ch. 146, SLA 1959, are hereby  
18 repealed; provided that nothing in this Act shall limit or  
19 destroy any power of the state, any political subdivision thereof,  
20 or of any private person to condemn property for any public use  
21 which they or any of them had under law before the effective  
22 date of this Act.

23 Sec. 29. SAVING CLAUSE. This Act does not affect rights  
24 and duties that matured, rights to compensation that have  
25 accrued, and proceedings that were begun before its effective  
26 date.

27 Sec. 30. EFFECTIVE DATE. This Act takes effect on the day  
28 after its passage and approval or on the day it becomes law  
29 without such approval.