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IN THE SENATE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 25

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to eminent domain proceedings, amending Sec. 57-7-13, ACLA 1949 and Sec. 1, Ch. 134, SLA 1960, repealing Sec. 57-7-12(4), ACLA 1949, Sec. 57-7-15, ACLA 1949, Sec. 57-7-16, ACLA 1949, Sec. 57-7-21, ACLA 1949, and providing for an effective date."

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

Section 1. ELECTION OF TRIAL BY COURT OR JURY. Within 10 days after answering the complaint in an eminent domain proceeding, any party desiring to have the cause tried before a jury shall file in the office of the clerk of the Superior Court in which such cause is pending, a notice of demand for jury trial, accompanied by the proper fees as prescribed by law. If no notice of demand for jury trial has been so filed, then the right to jury trial shall be deemed to have been waived and the cause shall be tried by the court without a jury.

The court with or without a jury may separately try the case involving each tract of land affected which is under different ownership, or separate tracts under the same ownership.

Sec. 2. ARGUMENT. In any condemnation action brought under the provisions of this Act, the defendant shall have the burden of proceeding and the right to commence and conclude the argument.

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Sec. 3. DEFAULT.

A. If any defendant who has appeared in the cause shall fail to appear at the time set for trial, whether such trial be set before the court with or without a jury, the court shall direct that his default be entered and shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due to the defendant.

B. If any defendant has failed to appear or answer within the time allowed and the clerk has entered his default, then the court shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due the defendant.

C. For the purpose of the hearing required in Sub-section A and B above, the court may consider by affidavit or other proof of the value of the property taken, the damage, if any, which may result from the occupation and condemnation, and the amount offered as set forth in the petition and shall enter such judgment as it deems proper.

Sec. 4. Sec. 57-7-13 is amended to read as follows:

Sec. 57-7-13. [COMMISSIONERS' OATH: MEETING:] ASSESSMENT OF DAMAGES, ETC. [THE COMMISSIONERS MENTIONED IN THE LAST SECTION MUST, BEFORE ENTERING UPON THEIR DUTIES, SEVERALLY TAKE AND SUBSCRIBE AN OATH BEFORE SOME PERSON QUALIFIED TO ADMINISTER OATHS, TO FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF THEIR APPOINTMENT. THE COMMISSIONERS MUST MEET AT THE TIME AND PLACE MENTIONED IN THE ORDER APPOINTING THEM, AND PROCEED TO EXAMINE THE LANDS SOUGHT TO BE APPROPRIATED, AND SHALL HEAR THE ALLEGATIONS AND EVIDENCE OF ALL PERSONS INTERESTED IN EACH OF THE SEVERAL PARCELS OF

1 LAND, AND SHALL ASCERTAIN AND ASSESS:] To provide for just
2 compensation for real property acquired by condemnation, the
3 condemning agency must ascertain and assess:

4 (1) The value of the property sought to be appropri-
5 ated, and all improvements thereon, pertaining to the realty
6 and each [AND] of every separate estate and interest there-
7 in; if it consists of different parcels, the value of each
8 parcel and each estate or interest therein must be separate-
9 ly assessed.

10 (2) If the property sought to be appropriated consti-
11 tutes only a part of a larger parcel, the damages which
12 will accrue to the portion not sought to be condemned by
13 reason of its severance from the portion sought to be con-
14 demned, and the construction of the improvements in the
15 manner proposed by the plaintiff.

16 (3) Separately, how much the portion not sought to be
17 condemned, and each estate or interest therein will be ben-
18 efitied, if at all, by the construction of the improvements
19 proposed by the plaintiff, and if the benefit shall be
20 equal to the damages assessed under subdivision two the
21 owner of the parcel shall be allowed no compensation except
22 the value of the portion taken; but if the benefits shall
23 be less than the damages assessed the former shall be deduct-
24 ed from the latter, and the remainder shall be the only
25 damages allowed in addition to the value.

26 (4) If the property sought to be condemned be for a
27 railroad, the cost of good and sufficient fences along the
28 line of such railroad, and the cost of cattle guards where
29 fences may cross the line of such railroad.

1 (5) As far as practicable compensation must be asses-
2 sed for each source of damage separately.

3 Sec. 5. Section 1, Ch. 134, SLA 1960 is amended to read as
4 follows:

5 Section 1. PROCEDURE TO BE FOLLOWED. The procedure
6 for the exercise of the right of eminent domain, in condem-
7 ning property for a public use or uses, shall be governed by
8 the provisions of Rule 71A, Federal Rules of Civil Proced-
9 ure, which Rule 71A is hereby incorporated by reference as
10 though set forth in full herein, to the extent that the
11 procedure prescribed in that rule can be made applicable to
12 Alaska substantive law governing eminent domain, until such
13 time as the Supreme Court of Alaska shall promulgate rules
14 pertaining to eminent domain. [THE PROCEDURES SET FORTH
15 ABOVE FOR APPOINTMENT OF, AND HEARING BY, COMMISSIONERS
16 WITH THE RIGHT TO APPEAL THE AWARD, WITH JURY TRIAL, UNLESS
17 JURY TRIAL IS WAIVED BY BOTH PARTIES, SHALL CONTINUE IN
18 EFFECT, AS PROVIDED FOR IN SECS. 57-7-12 THROUGH 57-7-16,
19 ACLA 1949.]

20 Sec. 6. Subsection (4) of Sec. 57-7-12, ACLA 1949, Sec.
21 57-7-15, ACLA 1949, Sec. 57-7-16, ACLA 1949, and Sec. 57-7-21,
22 ACLA 1949 are repealed.

23 Sec. 7. This Act takes effect on the day after its pas-
24 sage and approval or on the day it becomes law without such
25 approval.