

1 IN THE SENATE

BY ZIEGLER

2 SENATE BILL NO. 215

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to eminent domain proceedings."

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

8 * Section 1. AS 09.55.300(b) is amended to read:

9 (b) If the court determines that the property is to be taken for
10 a public use, any party to the suit may demand a jury trial [THE COURT
11 SHALL APPOINT A MASTER] to ascertain and determine the amount to be paid
12 by the plaintiffs to each owner or other person interested in the pro-
13 perty as compensation and damages by reason of the appropriation of the
14 property, unless the court in its discretion orders that, because of
15 the character, location, or quantity of the property to be condemned,
16 or for other reasons in the interest of justice, the issue of compensa-
17 tion shall be determined by a commission of three persons appointed by
18 it.

19 * Sec. 2. AS 09.55.310(a) is amended to read:

20 (a) The jury or commission [MASTER] shall hear the allegations
21 and evidence of persons interested and shall ascertain and assess the
22 following:

23 (1) the value of the property sought to be condemned, and all
24 improvements on it pertaining to the realty, and of each separate estate
25 or interest in it; if it consists of different parcels, the value of
26 each parcel and each estate or interest in each parcel shall be separately
27 assessed;

28 (2) if the property sought to be condemned constitutes only a
29 part of a larger parcel, the damages which will accrue to the portion

1 not sought to be condemned by reason of its severance from the portion
2 sought to be condemned, and the construction of the improvements in
3 the manner proposed by the plaintiff;

4 (3) separately, how much the portion not sought to be con-
5 demned and each estate or interest in it will be benefited, if at all,
6 by the construction of the improvements proposed by the plaintiff; and,
7 if the benefit is equal to the damages assessed under (2) of this sec-
8 tion, the owner of the parcel shall be allowed no damages except the
9 value of the portion taken; but if the benefits are less than the
10 damages so assessed, the former shall be deducted from the latter and
11 the remainder shall be the only damages allowed in addition to the
12 value;

13 (4) if the property sought to be condemned is for a rail-
14 road, the cost of good and sufficient fences along the line of the
15 railroad, and the cost of cattle guards where fences may cross the line
16 of the railroad.

17 * Sec. 3. AS 09.55.320 is repealed.

18 * Sec. 4. AS 09.55.380 is amended to read:

19 Sec. 09.55.380. ORDER AUTHORIZING PLAINTIFF TO CONTINUE IN OR
20 TAKE POSSESSION. Upon application of the plaintiff at any time after
21 the jury's verdict has been returned or the commission's [MASTER'S]
22 report has been filed in the court, the court may make an order that,
23 upon payment into court of the amount of damages assessed by the jury
24 or in the report, [IN THE REPORT OR BY THE JURY,] the plaintiff, if
25 already in possession of the property sought to be condemned, may con-
26 tinue in possession and, if not in possession, the court may authorize
27 the plaintiff to take possession of the property and use and possess it
28 until the final conclusion of the proceedings, and that all actions and
29 proceedings against the plaintiff on that account be stayed until that

1 time. However, where an appeal is taken by the defendant, the court
2 may also require the plaintiff to give a bond or undertaking with suf-
3 ficient sureties before continuing or taking possession. The bond or
4 undertaking shall be approved by the court and shall be in the sum the
5 court may direct, and conditioned to pay defendant any additional
6 damages and costs given by the judgment over and above the amount
7 assessed, and the damages which defendant sustains if the property is
8 not taken for public uses. For the purposes of this section the amount
9 assessed as damages by the jury or in the report [IN THE REPORT OR BY
10 THE JURY] is considered as just compensation for the property appro-
11 priated until reassessed or changed in further proceedings. However,
12 the plaintiff, by payment into court of the amount assessed or by
13 giving security as above provided, is not precluded from an appeal,
14 but may appeal in the manner and with the effect as if no money had
15 been deposited or security given. If the plaintiff deposits the amount
16 of the assessment and continues in possession or takes possession of
17 the property and there is no dispute as to the ownership of the prop-
18 erty, the defendant may at any time demand and receive from the court
19 the money deposited, and the demand or receipt does not bar or pre-
20 clude him from his right of appeal. However, if the amount of the
21 assessment is reduced on appeal by either party, the defendant who has
22 received the amount of the assessment deposited is liable to the
23 plaintiff for the difference between the amount received by him and
24 the amount finally assessed with legal interest from the time the
25 defendant received the money deposited, and it may be recovered by
26 action.
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