

Original sponsor: Ziegler

Offered: 3/20/68
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

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HOUSE CS FOR SENATE BILL NO. 215

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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(b) If the court determines that the property is to be taken for a public use, and if all parties to the action do not object, the court shall appoint a master to [ASCERTAIN AND] determine the amount to be paid by the plaintiffs to each owner or other person interested in the property as compensation and damages by reason of the appropriation of the property. If all parties to the action object to the appointment of a master the court shall proceed with a jury trial, unless the jury is waived by all parties to the action.

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

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(a) The jury or master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

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

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(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

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

9 (4) if the property sought to be condemned is for a railroad,
10 the cost of good and sufficient fences along the line of the railroad,
11 and the cost of cattle guards where fences may cross the line of the
12 railroad.

13 * Sec. 3. AS 09.55.380 is amended to read:

14 Sec. 09.55.380. ORDER AUTHORIZING PLAINTIFF TO CONTINUE IN OR TAKE
15 POSSESSION. Upon application of the plaintiff at any time after the
16 jury's verdict has been returned or the master's report has been filed
17 in the court, the court may make an order that, upon payment into court
18 of the amount of damages assessed in the report or by the jury, the
19 plaintiff, if already in possession of the property sought to be con-
20 demned, may continue in possession and, if not in possession, the court
21 may authorize the plaintiff to take possession of the property and use
22 and possess it until the final conclusion of the proceedings, and that
23 all actions and proceedings against the plaintiff on that account be
24 stayed until that time. However, where an appeal is taken by the defen-
25 dant, the court may also require the plaintiff to give a bond or under-
26 taking with sufficient sureties before continuing or taking possession.
27 The bond or undertaking shall be approved by the court and shall be in
28 the sum the court may direct, and conditioned to pay defendant any
29 additional damages and costs given by the judgment over and above the

1 amount assessed, and the damages which defendant sustains if the property
2 is not taken for public uses. For the purposes of this section the
3 amount assessed as damages in the report or by the jury is considered as
4 just compensation for the property appropriated until reassessed or
5 changed in further proceedings. However, the plaintiff, by payment into
6 court of the amount assessed or by giving security as above provided, is
7 not precluded from an appeal, but may appeal in the manner and with the
8 effect as if no money had been deposited or security given. If the
9 plaintiff deposits the amount of the assessment and continues in posses-
10 sion or takes possession of the property and there is no dispute as to
11 the ownership of the property, the defendant may at any time demand and
12 receive from the court the money deposited, and the demand or receipt
13 does not bar or preclude him from his right of appeal. However, if the
14 amount of the assessment is reduced on appeal by either party, the
15 defendant who has received the amount of the assessment deposited is
16 liable to the plaintiff for the difference between the amount received
17 by him and the amount finally assessed with legal interest from the
18 time the defendant received the money deposited, and it may be recovered
19 by action.
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