

1 IN THE SENATE

BY ZIEGLER

2 SENATE BILL NO. 216

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 hearing and trial in eminent do-  
7 main proceedings."

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

9 \* Section 1. Subdivision (h) of Rule 72 of the Rules of Civil Procedure  
10 is repealed and re-enacted to read:

11 (h) TRIAL. Any party may have a trial by jury of the issue of  
12 just compensation by filing a demand therefor within the time allowed  
13 for answer or within further time which the court may fix, unless the  
14 court in its discretion orders that, because of the character, location,  
15 or quantity of the property to be condemned, or for other reasons in  
16 the interest of justice, the issue of compensation shall be determined  
17 by a commission of three persons appointed by it. If a commission is  
18 appointed it shall have the powers of a master provided in subdivision  
19 (b) of Rule 53 and proceedings before it shall be governed by the pro-  
20 visions of subdivision (c) of Rule 53. Its action and report shall be  
21 determined by a majority and its findings and report shall have the  
22 effect, and be dealt with by the court in accordance with the practice,  
23 prescribed in subdivision (d) of Rule 53. Trial of all issues shall  
24 otherwise be by the court.

25 \* Sec. 2. This Act repeals subdivision (h) of Rule 72 of the Rules of  
26 civil Procedure which deals with hearings and trials in eminent domain pro-  
27 ceedings and which states:

28 (h) HEARING AND TRIAL.

29 (1) Procedure. The hearing of the allegations and evidence

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1 of persons interested, whether before the court, jury, or a master,  
2 shall be conducted in the manner prescribed by these rules.

3 (2) Hearing Before Master. A master appointed by the court  
4 to ascertain the amount to be paid by the plaintiff to each owner or  
5 other person interested in the property shall report to the court  
6 pursuant to Rule 53(d)(1).

7 (3) Notice of Report. Upon the filing of a report by the  
8 master, the clerk shall forthwith mail notice of the filing to all  
9 parties who have appeared or answered.

10 (4) Appeal and Trial De Novo. A party who has appeared or  
11 answered before the filing of a master's report may appeal within ten  
12 (10) days after being served with notice of the filing of the master's  
13 report. Any other interested person desiring to appeal from a master's  
14 report must take his appeal within ten (10) days after the filing of  
15 such report.

16 (5) Notice of Appeal. A party or other interested person  
17 may appeal from the master's report by filing with the clerk a notice  
18 of appeal in duplicate, with sufficient additional copies for all  
19 parties who have appeared or answered. The notice of appeal shall con-  
20 tain the following:

21 [a] The title of the action.

22 [b] The names of the parties taking the appeal.

23 [c] The master's report or part thereof appealed from  
24 and the date of its filing.

25 [d] The name of the court to which the appeal is taken.

26 [e] A concise statement of the grounds of appeal.

27 Notification of the filing of the notice shall be given by the  
28 clerk by mailing copies thereof to all parties who have appeared or  
29 answered other than the party or parties taking the appeal, but his

1 failure to do so does not affect the validity of the appeal. The  
2 notification to a party shall be given by mailing a copy of the notice  
3 of appeal to his attorney of record, or if the party is not represented  
4 by an attorney, then to the party at his last known address.

5 \* Sec. 3. Subdivision (d)(2) of Rule 72 of the Rules of Civil Pro-  
6 cedure is amended to read:

7 (2) Form. Each notice shall state the court, the title of the  
8 action, the name of the defendant to whom it is directed, that the  
9 action is to condemn property, a description of his property sufficient  
10 for its identification, the interest to be taken, the authority and  
11 necessity for the taking, and the use for which the property is to be  
12 taken. The notice must show the location, route and termini of any  
13 easement or right-of-way sought to be condemned.

14 The notice shall also state that the defendant may serve upon the  
15 plaintiff's attorney an answer within twenty (20) days after service of  
16 the notice, that a failure to serve an answer constitutes a consent to  
17 the taking and to the authority of the court to proceed to hear the  
18 action and to fix the compensation, and that at a designated time and  
19 place the court will conduct a hearing to determine the authority and  
20 necessity for the taking.

21 The notice shall further state that the defendant, without filing  
22 an answer, may serve on plaintiff's attorney a notice of appearance  
23 designating the property in which he claims to be interested; that  
24 thereafter he will receive notice of all proceedings affecting it;  
25 that regardless of whether the defendant appears or answers, he may  
26 present evidence as to the amount of compensation to be paid for his  
27 property at the hearing or trial of the issue of just compensation;  
28 that regardless of whether he appears or answers he may share in the  
29 distribution of the award; that if neither an appearance nor an answer

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is filed the court will proceed to hear the action and to fix the compensation without further notice; and that if neither an appearance nor an answer is filed before ten (10) days after the jury's verdict is returned or the commission's [MASTER'S] report is filed, judgment by default will be taken against the defendant for the relief demanded in the complaint.