

Original sponsor: Rules Committee by
request of the Governor

Offered: 4/9/71
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 282

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for uniform relocation assistance
7 and real property acquisition practices; and providing
8 for an effective date."

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

10 * Section 1. AS 44 is amended by adding a new chapter to read:

11 CHAPTER 81. RELOCATION ASSISTANCE AND REAL
12 PROPERTY ACQUISITION PRACTICES.

13 Sec. 44.81.010. DECLARATION OF POLICY. The purpose of this
14 chapter is to establish a uniform policy for the fair and equitable
15 treatment of persons displaced as a result of federally assisted
16 programs in order that the displaced persons will not suffer dispro-
17 portionate injuries as a result of programs designed for the benefit
18 of the public as a whole.

19 Sec. 44.81.020. STATE AGENCIES TO ESTABLISH PROGRAM. State
20 agencies shall establish and provide the means for implementing
21 a program providing fair and reasonable relocation and other payment for
22 persons displaced as a result of federally assisted activities under-
23 taken by state agencies, to carry out relocation assistance programs
24 for persons displaced, and to provide payments to persons as a result
25 of acquisition of real property for activities of state agencies.

26 Sec. 44.81.030. ADMINISTRATION OF PROGRAM. In order to prevent
27 unnecessary expenses and duplication of functions, and to promote
28 uniform and effective administration of relocation assistance programs
29 for displaced persons under this chapter, state agencies may enter into

1 contracts with any individual, firm, association, or corporation for
2 services in connection with relocation assistance programs, or may
3 carry out its functions under this chapter through any federal or state
4 governmental agency or instrumentality having an established organiza-
5 tion for conducting relocation assistance programs.

6 Sec. 44.81.040. RELOCATION PAYMENTS. (a) Whenever the acquisi-
7 tion of real property for a federally assisted program or project
8 undertaken by a state agency will result in the displacement of any
9 person on or after January 2, 1971, the state agency responsible for
10 the program or project shall make payment to any displaced person, upon
11 proper application as approved by the state agency, for

12 (1) actual reasonable expenses in moving himself, his
13 family, business, farm operation, or other personal property;

14 (2) actual direct losses of tangible personal property as a
15 result of moving or discontinuing a business or farm operation, but not
16 to exceed an amount equal to the reasonable expenses that would have
17 been required to relocate the property as determined by the state
18 agency; and

19 (3) actual reasonable expenses in searching for a replace-
20 ment business or farm.

21 (b) Any displaced person eligible for payments under (a) of this
22 section who is displaced from a dwelling and who elects to accept the
23 payments authorized by this subsection in lieu of payments authorized
24 by (a) of this section may receive a moving expense allowance, deter-
25 mined according to a schedule established by the state agency not to
26 exceed \$300 and a dislocation allowance of \$200.

27 (c) Any displaced person eligible for payments under (a) of this
28 section who is displaced from his place of business or from his farm
29 operation and who elects to accept the payment authorized by this

1 subsection in lieu of the payment authorized by (a) of this section,
2 may receive a fixed payment in an amount equal to the average annual
3 net earning of the business or farm operation, except that such payment
4 shall not be less than \$2,500 or more than \$10,000. In the case of a
5 business, no payment may be made under this subsection unless the
6 state agency is satisfied that the business

7 (1) cannot be relocated without a substantial loss of its
8 existing patronage; and

9 (2) is not a part of a commercial enterprise having at
10 least one other establishment not being acquired by the state agency
11 or by the United States, which is engaged in the same or similar
12 business. For purposes of this subsection, the term "average annual
13 net earnings" means one-half of any net earnings of the business or
14 farm operation, before federal and state income taxes, during the two
15 taxable years immediately preceding the taxable year in which the
16 business or farm operation moves from the real property acquired for
17 the project, or during any other period as the state agency determines
18 to be more equitable for establishing the earnings, and includes any
19 compensation paid by the business or farm operation to the owner, his
20 spouse, or his dependents during the applicable period.

21 Sec. 44.81.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In
22 addition to payments otherwise authorized by this chapter, the state
23 agency shall make an additional payment not in excess of \$15,000, to
24 any displaced person who is displaced from a dwelling actually owned
25 and occupied by him for not less than 180 days prior to the initiation
26 of negotiations for the acquisition of the property. This additional
27 payment shall include the following elements

28 (1) the amount, if any, which when added to the acquisition
29 cost of the dwelling acquired by the state agency, equals the reasonable

1 cost of a comparable replacement dwelling which is a decent, safe and
2 sanitary dwelling adequate to accommodate the displaced person, reason-
3 ably accessible to public services and places of employment and avail-
4 able on the private market. All determinations required to carry out
5 this paragraph shall be made in accordance with standards established
6 by the state agency making the additional payment;

7 (2) the amount, if any, which will compensate the displaced
8 person for any increased interest costs which the displaced person is
9 required to pay for financing the acquisition of the comparable
10 replacement dwelling. This amount may be paid only if the dwelling
11 acquired by the state agency was encumbered by a bona fide mortgage
12 which was a valid lien on the dwelling for not less than 180 days
13 prior to the initiation of negotiations for the acquisition of the
14 dwelling. This amount shall be equal to the excess in the aggregate
15 interest and other debt service costs of that amount of the principal
16 of the mortgage on the replacement dwelling which is equal to the un-
17 paid balance of the mortgage on the acquired dwelling, over the
18 remainder term of the mortgage on the acquired dwelling, reduced to
19 discounted present value. The discount rate shall be the prevailing
20 interest rate paid on savings deposits by commercial banks in the
21 general area in which the replacement dwelling is located;

22 (3) reasonable expenses incurred by the displaced person
23 for evidence of title, recording fees, and other closing costs incident
24 to the purchase of the replacement dwelling, but not including prepaid
25 expenses.

26 (b) The additional payment authorized by (a) of this section may
27 be made only to a displaced person who purchases and occupies a
28 replacement dwelling which is decent, safe and sanitary not later than
29 the end of the one year period beginning on the date on which he

1 receives from the state agency final payment of all costs of the
2 acquired dwelling, or the date on which he moves from the acquired
3 dwelling, whichever is the later date.

4 Sec. 44.81.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In
5 addition to amounts otherwise authorized by this chapter, the state
6 agency shall make a payment to or for any displaced person displaced
7 from any dwelling not eligible to receive a payment under sec. 50 of
8 this chapter which dwelling was actually and lawfully occupied by the
9 displaced person for not less than 90 days prior to the initiation of
10 negotiations for acquisition of the dwelling. The payment shall be
11 either

12 (1) the amount necessary to enable the displaced person to
13 lease or rent for a period not to exceed four years, a decent, safe
14 and sanitary dwelling of standards adequate to accommodate such person
15 in areas not generally less desirable in regard to public utilities
16 and public and commercial facilities, and reasonably accessible to his
17 place of employment, but not to exceed \$4,000; or

18 (2) the amount necessary to enable the displaced person to
19 make a downpayment, including incidental expenses described in sec.
20 50(a)(3) of this chapter on the purchase of a decent, safe and
21 sanitary dwelling of standards adequate to accommodate the displaced
22 person in areas not generally less desirable in regard to public
23 utilities and public and commercial facilities, but not to exceed
24 \$4,000, except that if this amount exceeds \$2,000, the displaced person
25 must equally match any amount in excess of \$2,000 in making the down-
26 payment.

27 Sec. 44.81.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY. The
28 state agency, as soon as practicable after the date of payment of the
29 purchase price or the date of deposit in court of funds to satisfy the

1 award of compensation in a condemnation proceeding to acquire real
2 property, whichever is the earlier, shall reimburse the owner, to the
3 extent the department deems fair and reasonable, for expenses he
4 necessarily incurred for

5 (1) recording fees, transfer taxes, and similar expenses
6 incidental to conveying the real property to the state agency;

7 (2) penalty costs for prepayment of a preexisting recorded
8 mortgage entered into in good faith encumbering the real property,
9 provided that the mortgage was a valid lien on the property for not
10 less than 180 days prior to the initiation of negotiations for the
11 acquisition of the property; and

12 (3) the pro rata portion of real property taxes paid which
13 are allocable to a period subsequent to the date of vesting title in
14 the state, or the effective date of possession of the real property by
15 the state agency, whichever is the earlier.

16 Sec. 44.81.080. LITIGATION EXPENSES. (a) The state court
17 having jurisdiction of a proceeding instituted by the state agency
18 to acquire real property by condemnation shall award the owner of any
19 right, or title to, or interest in, the real property a sum which will
20 in the opinion of the court reimburse the owner for his reasonable
21 costs, disbursements and expenses, including reasonable attorney,
22 appraisal and engineering fees, actually incurred because of the
23 condemnation proceedings, if

24 (1) the final judgment is that the state agency cannot
25 acquire the real property by condemnation; or

26 (2) the proceeding is abandoned by the state agency.

27 (b) Any award made pursuant to (a) of this section shall be paid
28 be paid by the state agency for whose benefit the condemnation proceed-
29 ings were instituted.

1 (c) The court rendering a judgment for the plaintiff in a pro-
2 ceeding brought against a state agency, awarding compensation for the
3 taking of property by the state agency, or the attorney for the state
4 agency effecting a settlement of any such proceeding, shall determine
5 and award or allow to the plaintiff, as a part of the judgment or
6 settlement, a sum which will in the opinion of the court or the
7 attorney for the state agency reimburse the plaintiff for his reason-
8 able costs, disbursements and expenses, including reasonable attorney,
9 appraisal and engineering fees, actually incurred because of the
10 proceeding.

11 (d) In the event of any inconsistency between the provisions
12 of this section and the Alaska Rules of Civil Procedure, the provisions
13 of the Rules of Civil Procedure shall govern.

14 Sec. 44.81.090. RELOCATION SERVICES. (a) Whenever the acquisi-
15 tion of real property for a program or project undertaken by a state
16 agency for a federally assisted program or project undertaken by the
17 state agency will result in the displacement of any person on or after
18 January 2, 1971, the state agency shall provide a relocation assistance
19 advisory program for displaced persons which shall offer the services
20 described in (c) of this section. If the state agency determines that
21 any person occupying property immediately adjacent to the real
22 property acquired is caused substantial economic injury because of the
23 acquisition, it may offer the occupant relocation advisory services
24 under this program.

25 (b) State agencies administering programs which may be of assist-
26 ance to displaced persons covered by this chapter shall cooperate to
27 the maximum extent feasible with the state agency causing the dis-
28 placement to assure that the displaced persons receive the maximum
29 assistance available to them.

1 (c) Each relocation assistance advisory program required by (a)
2 of this section shall include measures, facilities, or services
3 necessary or appropriate in order to

4 (1) determine the need, if any, of displaced persons, for
5 relocation assistance;

6 (2) provide current and continuing information on avail-
7 ability, prices and rentals, of comparable decent, safe and sanitary
8 sales and rental housing, and of comparable commercial properties and
9 locations for displaced businesses;

10 (3) assure that, within a reasonable period of time, prior
11 to displacement there will be available in areas not generally less
12 desirable in regard to public utilities and public and commercial
13 facilities and at rents or prices within the financial means of the
14 families and individuals displaced, decent, safe and sanitary dwellings,
15 as defined by the state agency, equal in number to the number of and
16 available to the displaced persons who require the dwellings and
17 reasonably accessible to their places of employment except that the
18 state agency may prescribe by regulation situations when such
19 assurances may be waived;

20 (4) assist a displaced person displaced from his business
21 or farm operation in obtaining and becoming established in a suitable
22 replacement location;

23 (5) supply information concerning federal and state
24 housing programs, disaster loan programs, and other federal or state
25 programs offering assistance to displaced persons; and

26 (6) provide other advisory services to displaced persons in
27 order to minimize hardships in adjusting to relocation.

28 (d) The state agency shall coordinate relocation activities with
29 project work, and other planned or proposed governmental actions in

1 the community or nearby areas which may affect the carrying out of
2 relocation assistance programs.

3 Sec. 44.81.100. EMINENT DOMAIN. Nothing contained in this
4 chapter may be construed as creating in a condemnation proceeding,
5 brought under the power of eminent domain, an element of damages not
6 in existence on January 2, 1971.

7 Sec. 44.81.110. NONTAXATION OF PAYMENTS. No payment received by
8 a displaced person under this chapter may be considered as income for
9 the purposes of the state or federal income tax, personal or corporate.
10 The payments may not be considered as income or resources to a
11 recipient of public assistance and the payments may not be deducted
12 from the amount of aid to which the recipient would otherwise be
13 entitled.

14 Sec. 44.81.120. UNIFORM REAL PROPERTY ACQUISITION POLICY. Any
15 state agency or other entity acquiring real property for any project
16 or program in which federal or federal-aid funds are used shall to the
17 greatest extent practicable comply with the following policies:

18 (1) Every reasonable effort shall be made to expeditiously
19 acquire real property by negotiation.

20 (2) Real property shall be appraised before the initiation
21 of negotiations, and the owner or his designated representative shall
22 be given an opportunity to accompany the appraiser during his
23 inspection of the property.

24 (3) Before the initiation of negotiations for real property,
25 an amount shall be established which is reasonably believed to be
26 just compensation for the real property and that amount shall be offered
27 for the property. In no event shall the amount be less than the
28 approved appraisal of the fair market value of the property. Any
29 decrease or increase in the fair market value of real property prior

1 to the date of valuation caused by the public improvement for which the
2 property is acquired or by the likelihood that the property would be
3 acquired for the improvement, other than that due to physical
4 deterioration within the reasonable control of the owner, will be dis-
5 regarded in determining the compensation for the property. The owner
6 of the real property to be acquired shall be provided with a written
7 statement of, and a summary of the basis for, the amount established as
8 just compensation.

9 (4) No owner shall be required to surrender possession of
10 real property before the state agency concerned pays the agreed
11 purchase price or deposits with the court in accordance with applicable
12 law, for the benefit of the owner, an amount not less than the approved
13 appraisal of the fair market value of the property, or the amount of
14 the award of compensation in the condemnation proceeding for the
15 property.

16 (5) The construction or development of a public improvement
17 shall be so scheduled that, to the greatest extent practicable, no
18 person lawfully occupying real property shall be required to move from
19 a dwelling (assuming a replacement dwelling will be available) or to
20 move his business or farm operation, without at least 90 days' written
21 notice of the date by which the move is required.

22 (6) If an owner or tenant is permitted to occupy the real
23 property acquired on a rental basis for a short term or for a period
24 subject to termination by the state agency on short notice, the amount
25 of rent required shall not exceed the fair rental value of the property
26 to a short-term occupier.

27 (7) In no event shall the time of condemnation be advanced
28 or negotiations or condemnation and the deposit of funds in court for
29 the use of the owner be deferred, nor any other coercive action be

1 taken in order to compel an agreement on the price to be paid for the
2 property.

3 (8) If an interest in real property is to be acquired by
4 exercise of the power of eminent domain, formal condemnation proceedings
5 shall be instituted. The acquiring state agency shall not intention-
6 ally make it necessary for an owner to institute legal proceedings to
7 prove the fact of the taking of his real property.

8 (9) If the acquisition of only part of the property would
9 leave its owner with an uneconomic remnant, an offer to acquire the
10 entire property shall be made.

11 Sec. 44.81.130. UNIFORM ACQUISITION POLICY FOR IMPROVEMENTS. (a)
12 Notwithstanding any other provision of law, if a state agency acquires
13 any interest in real property, the state agency must acquire at least
14 an equal interest in all buildings, structures, or other improvements
15 located upon the real property which the state agency requires to be
16 removed from the real property or which the state agency determines
17 will be adversely affected by the use to which the real property will
18 be put.

19 (b) For the purpose of determining just compensation to be paid
20 for any building, structure, or other improvement required to be
21 acquired under (a) of this section, the building, structure or other
22 improvement is considered to be a part of the real property to be
23 acquired notwithstanding the right or obligation of a tenant, as
24 against the owner of any other interest in the real property, to remove
25 the building, structure or improvement at the expiration of his term,
26 and the fair market value which the building, structure or improvement
27 contributes to the fair market value of the real property to be acquired
28 or the fair market value of such building, structure or improvement for
29 removal from the real property, whichever is the greater, shall be

1 paid to the tenant.

2 (c) Payment for the buildings, structures or improvements under
3 this section may not result in duplication of any payments otherwise
4 authorized by law. No payment for buildings, structures or improvements
5 may be made unless the owner of the land involved disclaims all interest
6 in the improvements of the tenant. In consideration for any such
7 payment, the tenant shall assign, transfer and release to the state
8 agency all his right, title and interest in and to the improvements.
9 Nothing in paragraphs (10) and (11) of this section may be construed
10 to deprive the tenant of any rights to reject payment and to obtain
11 payment for the property interests in accordance with other laws of
12 the state.

13 Sec. 44.81.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In
14 addition to the other programs authorized by this chapter, a state
15 agency may make loans in order to encourage and facilitate the con-
16 struction or rehabilitation of housing to meet the needs of displaced
17 persons. These loans are a part of the federally assisted project
18 cost and may be made to nonprofit, limited dividend, or cooperative
19 organizations or public bodies. The loans may be made only for
20 necessary and reasonable expenses, before construction, for planning
21 and obtaining federally insured mortgage financing for the rehabilita-
22 tion or construction of housing for displaced persons. The loans may
23 not exceed 80 per cent of the reasonable costs expected to be incurred
24 in planning, and in obtaining financing for housing for displaced
25 persons. Reasonable costs include but are not limited to costs for
26 preliminary surveys and analysis of market needs, preliminary archi-
27 tectural fees, site acquisition, application and mortgage commitment
28 fees, and construction loan fees and discounts. Loans to an organiza-
29 tion established for profit shall bear interest at a market rate

1 established by the state agency. All other loans shall be without
2 interest. The state agency shall require repayment of loans made under
3 this section, under terms and conditions established by the state
4 agency. Repayment shall be made upon completion of the project or
5 sooner, and except in the case of a loan to an organization established
6 for profit, the state agency may cancel any part or all of a loan
7 following a determination by the state agency that a permanent loan
8 to finance the rehabilitation or construction of the housing cannot
9 be obtained in an amount adequate for repayment of the loan.

10 Sec. 44.81.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT.
11 If a federally aided program or project cannot proceed to actual
12 construction because comparable replacement sale or rental housing is
13 not available, and the state agency determines that this housing
14 cannot otherwise be made available, the agency may take action neces-
15 sary or appropriate to provide the housing by use of funds authorized
16 for the project.

17 Sec. 44.81.140. REGULATIONS. State agencies are authorized to
18 adopt regulations to implement this chapter. These regulations shall
19 include provisions relating to

20 (1) a moving expense allowance for displaced persons who
21 move from a dwelling, determined according to a schedule, not to exceed
22 \$300;

23 (2) procedures for an aggrieved person to have his deter-
24 mination of eligibility or amount of payment reviewed by the state
25 agency;

26 (3) eligibility of a displaced person for relocation assis-
27 tance payments, the procedure for displaced persons to claim the
28 payments, amount of the payments; and

29 (4) other regulations necessary to implement the provisions

1 of this chapter.

2 Sec. 44.81.150. DEFINITIONS. In this chapter

3 (1) "business" means any lawful activity, excepting a farm
4 operation, conducted primarily

5 (A) for the purchase, sale, lease and rental of personal
6 and real property, and manufacture, processing, or marketing of
7 products, commodities, or any other personal property;

8 (B) for the sale of services to the public;

9 (C) by a nonprofit organization; or

10 (D) solely for the purpose of sec. 40(a) of this
11 chapter, for assisting in the purchase, sale, resale, manufacture,
12 processing, or marketing of products, commodities, personal
13 property, or services by the erection and maintenance of an out-
14 door advertising display or displays, whether or not such display
15 or displays are located on the premises on which any of the
16 above activities are conducted;

17 (2) "displaced person" means any person who, on or after
18 January 2, 1971 moves from real property, or moves his personal
19 property from real property, as a result of the acquisition of the real
20 property, in whole or in part, or as a result of the written order of
21 the state agency to vacate real property, for a program or project
22 undertaken by the state agency, and solely for the purpose of secs.
23 40(a) and 90 of this chapter, as a result of the acquisition of, or as
24 a result of the written order of a state agency to vacate other real
25 property on which the person conducts a business or farm operation for
26 the program or project;

27 (3) "farm operation" means any activity conducted solely
28 or primarily for the production of one or more agricultural products
29 or commodities, including timber, for sale or home use, and customarily

1 producing these products or commodities in sufficient quantity to be
2 capable of contributing materially to the operator's support;

3 (4) "mortgage" means such classes of liens as are commonly
4 given to secure advances on, or the unpaid purchase price of, real
5 property, under the law of the state in which the real property is
6 located, together with the credit instruments, if any, secured by the
7 property;

8 (5) "person" means any individual, partnership, corporation,
9 or association;

10 (6) "state agency" means any department, agency, instru-
11 mentality, corporate authority of the state, or a political subdivision
12 of the state, or any department, agency, instrumentality or authority
13 of two or more political subdivisions of the state participating in
14 federally assisted programs.

15 * Sec. 2. AS 19.35 is repealed.

16 * Sec. 3. This Act is retroactive to January 2, 1971.

17 * Sec. 4. This Act takes effect on the day after its passage and approval
18 or on the day it becomes law without approval.
19
20
21
22
23
24
25
26
27
28
29