

Introduced: 2/26/85
Referred: Transportation, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 193

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain; and
7 providing for an effective date."

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

9 * Section 1. AS 09.55.270 is amended by adding a new subsection to
10 read:

11 (b) If the property is to be taken by a declaration of taking
12 filed under AS 09.55.440, the state or the municipality shall prepare
13 a decisional document that (1) states that the property is taken in a
14 manner compatible with the greatest public good and least private
15 injury, (2) summarizes the major facts supporting that decision, and
16 (3) identifies any reports, studies, or statements relied upon for the
17 decision.

18 * Sec. 2. AS 09.55.300(a) is amended to read:

19 (a) The court has power

20 (1) to regulate and determine the place and manner of
21 making the connections and crossings or of enjoying the common uses
22 mentioned in AS 09.55.260(5), and of the occupying of canyons, passes,
23 and defiles for railroad purposes, as permitted and regulated by law;

24 (2) to limit the amount of property sought to be condemned
25 if, in its opinion, the quantity sought to be condemned is not neces-
26 sary;

27 (3) to determine whether the property is taken by necessity
28 for a public use or purpose in a manner compatible with the greatest
29 public good and least private injury, based upon the decisional

1 document required by AS 09.55.270 and the evidence allowed by AS 09.-
2 55.460(d), if the taking is accomplished by a declaration of taking
3 filed by the state or a municipality under the provisions of AS 09.-
4 55.440.

5 * Sec. 3. AS 09.55.410 is amended to read:

6 Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The
7 money deposited in the court, or a part of it, may be withdrawn by a
8 party in interest in the manner provided in AS 09.55.440. The[, AND
9 THE] court may [SHALL HAVE THE POWER TO] direct the payment of delin-
10 quent taxes and special assessments out of the amount determined to be
11 just compensation and to make orders with respect to encumbrances,
12 liens, rents, insurance, and other charges as are just and equitable.
13 The withdrawal of any part of the deposit by a party in interest is a
14 waiver of all issues concerning the taking of the property, except the
15 amount of just compensation.

16 * Sec. 4. AS 09.55.430 is amended to read:

17 Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declara-
18 tion of taking must [SHALL] contain

- 19 (1) a statement of the authority under which the property
20 or an interest in it is taken;
21 (2) a statement of the public use for which the property or
22 an interest in it is taken;
23 (3) a description of the property sufficient for the iden-
24 tification of it;
25 (4) a statement of the estate or interest in the property;
26 (5) a map or plat showing the location of the property;
27 (6) a statement of the amount of money estimated by the
28 plaintiff to be just compensation for the property or the interest in
29 it;

1 (7) a statement that the property is taken by necessity for
2 a project located in a manner which is most compatible with the great-
3 est public good and the least private injury;

4 (8) a decisional document as described in AS 09.55.270(b).

5 * Sec. 5. AS 09.55.440(a) is amended to read:

6 (a) Upon the filing of the declaration of taking, and the depos-
7 it with the court of the amount of the estimated compensation stated
8 in the declaration, title to the estate as specified in the declara-
9 tion vests in the plaintiff, and that property is condemned and taken
10 from the use of the plaintiff, and the right to just compensation for
11 it vests in the persons entitled to it. The compensation must [SHALL]
12 be ascertained and awarded in the proceeding and established by judg-
13 ment. The judgment must [SHALL] include interest at the lawful inter-
14 est rate set out in AS 45.45.010(a) [THE RATE OF SIX PER CENT PER
15 YEAR] on the amount finally awarded which exceeds the amount paid into
16 court under the declaration of taking. The interest runs from the
17 date title vests to the date of payment of the judgment.

18 * Sec. 6. AS 09.55.450(a) is amended to read:

19 (a) Upon the filing of the declaration of taking and the deposit
20 of the estimated compensation, the court may, upon motion, fix the
21 time during which and the terms upon which the parties in possession
22 are required to surrender possession to the petitioner. However, the
23 right of entry may [SHALL] not be granted the plaintiff until after
24 the running of the time for the defendant to file an objection to the
25 declaration of taking or until after the hearing on any objection to
26 the declaration of taking if the objection is filed [MADE] in the time
27 allowed by Rule 72, Rules of Civil Procedure [LAW]. If an objection
28 to the declaration of taking is filed in the time allowed, a hearing
29 for the review of the taking must be held within 30 days after the

1 filing, or as soon after that as possible, to establish the validity
2 of any objections. If no objection to the declaration of taking is
3 filed in the time allowed, the defendant has waived all defenses and
4 objections, and the plaintiff has a right of entry onto the property
5 without further action by the court. If [WHERE] the party in posses-
6 sion withdraws any part of the award and remains in possession, the
7 court may fix a reasonable rental for the premises to be paid by that
8 party to the plaintiff during the [SUCH] possession.

9 * Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

10 (c) The taking of property is necessary for a public use or
11 purpose in a manner compatible with the greatest public good or least
12 private injury unless the defendant establishes by clear and convinc-
13 ing evidence that the plaintiff's decision to condemn is arbitrary,
14 capricious, or an abuse of discretion.

15 (d) The court, when making its finding under this section, shall
16 consider the decisional document prepared by the plaintiff; supporting
17 reports, studies, or statements; affidavits submitted by the parties,
18 their officers, or employees; and depositions taken by the parties.
19 The court, in the exercise of its discretion, may allow the parties to
20 submit additional necessary evidence.

21 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).