

BY REP. BOUCHER BY REQUEST

1 IN THE HOUSE

2

HOUSE BILL NO. 537

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the taking and compensation for

7

damage of property by the state; and providing for an

8

effective date."

9

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

10

* Section 1. AS 34.60.020 is amended to read:

11

Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State

12

agencies shall establish and provide the means for implementing a

13

program providing fair and reasonable relocation and other payment for

14

persons displaced as a result of federally assisted activities under-

15

taken by state agencies, to carry out relocation assistance programs

16

for persons displaced, and to provide payments to persons as a result

17

of taking or damaging [ACQUISITION] of [REAL] property for activities

18

of state agencies.

19

* Sec. 2. AS 34.60.040(a) is amended to read:

20

(a) When the taking or damaging [ACQUISITION] of [REAL] property

21

for a federally assisted program or project undertaken by a state

22

agency will result in the displacement of a person, the state agency

23

responsible for the program or project shall make payment to the

24

displaced person, upon proper application as approved by the state

25

agency, for

26

(1) actual reasonable expenses in moving a person, the

27

person's family, business, farm operation, or other personal property;

28

(2) actual direct losses of tangible personal property as a

29

result of moving or discontinuing a business or farm operation, but

1 not to exceed an amount equal to the reasonable expenses that would
2 have been required to relocate the property as determined by the state
3 agency; and

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

6 * Sec. 3. AS 34.60.050 is amended to read:

7 Sec. 34.60.050. REPLACEMENT HOUSING FOR HOMEOWNERS. (a) In
8 addition to payments otherwise authorized by this chapter, the state
9 agency shall make an additional payment not to exceed \$22,500 [,] to a
10 displaced person who is displaced from a dwelling actually owned and
11 occupied by the person for not less than 180 days before the initia-
12 tion of negotiations for the acquisition of the property. This addi-
13 tional payment must [SHALL] include the following elements:

14 (1) the amount, if any, that [WHICH], when added to the
15 taking [ACQUISITION] cost of the dwelling taken [ACQUIRED] by the
16 state agency, equals the reasonable cost of a comparable replacement
17 dwelling that [WHICH] is a decent, safe, and sanitary dwelling ade-
18 quate to accommodate the displaced person, is reasonably accessible to
19 public services and places of employment, and is available on the
20 private market; all determinations required to carry out this para-
21 graph shall be made in accordance with standards established by the
22 state agency making the additional payment;

23 (2) the amount, if any, that [WHICH] will compensate the
24 displaced person for any increased interest costs that [WHICH] the
25 displaced person is required to pay for financing the acquisition of
26 the comparable replacement dwelling; this amount may be paid only if
27 the dwelling taken [ACQUIRED] by the state agency was encumbered by a
28 bona fide mortgage that [WHICH] was a valid lien on the dwelling for
29 not less than 180 days before the initiation of negotiations for the

1 taking [ACQUISITION] of the dwelling; and

2 (3) reasonable expenses incurred by the displaced person
3 for evidence of title, recording fees, and other closing costs inci-
4 dent to the purchase of the replacement dwelling, but not including
5 prepaid expenses.

6 (b) The additional payment authorized by (a) of this section may
7 be made only to a displaced person who purchases and occupies a re-
8 placement dwelling that [WHICH] is decent, safe, and sanitary not
9 later than the end of the one-year [ONE YEAR] period beginning on the
10 date on which the person receives from the state agency final payment
11 of all costs of the taken dwelling [,] or the date on which the person
12 moves from the taken [ACQUIRED] dwelling, whichever is the later date.

13 * Sec. 4. AS 34.60.060 is amended to read:

14 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In
15 addition to amounts otherwise authorized by this chapter, the state
16 agency shall make a payment to or for a displaced person displaced
17 from a dwelling, who is not eligible to receive a payment under
18 AS 34.60.050, if the dwelling was actually and lawfully occupied by
19 the displaced person for not less than 90 days before the initiation
20 of negotiations for taking [ACQUISITION OF] the dwelling. The payment
21 shall be either

22 (1) the amount necessary to enable the displaced person to
23 lease or rent for a period not to exceed three years and six months
24 [,] a decent, safe, and sanitary dwelling of standards adequate to
25 accommodate the displaced person in areas not generally less desirable
26 in regard to public utilities and public and commercial facilities,
27 and reasonably accessible to the person's place of employment, but not
28 to exceed \$5,250; or

29 (2) the amount necessary to enable the displaced person to

1 make a down payment, including incidental expenses described in
2 AS 34.60.050(a)(3), on the purchase of a decent, safe, and sanitary
3 dwelling of standards adequate to accommodate the displaced person in
4 areas not generally less desirable in regard to public utilities and
5 public and commercial facilities, but not to exceed \$5,250.

6 * Sec. 5. AS 34.60.070 is amended to read:

7 Sec. 34.60.070. EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY.
8 The state agency, as soon as practicable after the date of payment of
9 the purchase price or the date of deposit in court of funds to satisfy
10 the award of compensation in a condemnation proceeding to take or
11 compensate for damage to [ACQUIRE REAL] property, whichever is the
12 earlier, shall reimburse the owner, to the extent the department
13 considers fair and reasonable, for expenses necessarily incurred for

14 (1) recording fees, transfer taxes, and similar expenses
15 incidental to conveying the [REAL] property to the state agency;

16 (2) penalty costs for prepayment of a preexisting recorded
17 mortgage entered into in good faith encumbering the real property, if
18 the mortgage was a valid lien on the property for not less than 180
19 days before the initiation of negotiations for the acquisition of the
20 property; and

21 (3) the pro rata portion of [REAL] property taxes paid that
22 [WHICH] are allocable to a period subsequent to the date of vesting
23 title in the state [,] or the effective date of possession of the
24 [REAL] property by the state agency, whichever is the earlier.

25 * Sec. 6. AS 34.60.080(a) is amended to read:

26 (a) The state court having jurisdiction of a proceeding insti-
27 tuted by the state agency to take [ACQUIRE REAL] property by condemna-
28 tion shall award the owner of a [ANY] right to, or title to, or inter-
29 est in, the [REAL] property a sum that [WHICH] will in the opinion of

1 the court reimburse the owner for reasonable costs, disbursements, and
2 expenses, including reasonable attorney, appraisal, and engineering
3 fees [,] actually incurred because of the condemnation proceedings, if

4 (1) the final judgment is that the state agency cannot take
5 [ACQUIRE] the [REAL] property by condemnation; or

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

7 * Sec. 7. AS 34.60.090(a) is amended to read:

8 (a) When the taking or damaging [ACQUISITION] of [REAL] property
9 for a program or project undertaken by a state agency for a federally
10 assisted program or project undertaken by the state agency will result
11 in the displacement of a person [ON OR AFTER JANUARY 2, 1971], the
12 state agency shall provide a relocation assistance advisory program
13 for displaced persons that [WHICH] offers the services described in
14 (c) of this section. If the state agency determines that a person
15 occupying property immediately adjacent to the [REAL] property taken
16 [ACQUIRED] is caused substantial economic injury because of the taking
17 [ACQUISITION], it may offer the occupant relocation advisory services
18 under the program.

19 * Sec. 8. AS 34.60.120 is amended to read:

20 Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE COM-
21 PENSATION [ACQUISITION] POLICY. A state agency or other entity taking
22 or damaging [ACQUIRING REAL] property for a [ANY] project or program
23 in which federal or federal-aid funds are used shall to the greatest
24 extent practicable comply with the following policies:

25 (1) Every reasonable effort shall be made to expeditiously
26 take or make compensation for [ACQUIRE REAL] property by negotiation.

27 (2) Property to be taken or damaged [REAL PROPERTY] shall
28 be appraised before the initiation of negotiations, and the owner or a
29 designated representative shall be given an opportunity to accompany

1 the appraiser during the inspection of the property.

2 (3) Before the initiation of negotiations for [REAL] prop-
3 erty, an amount shall be established that [WHICH] is reasonably be-
4 lieved to be just compensation for the [REAL] property taken or dam-
5 aged, and that amount shall be offered for the property. In no event
6 shall the amount be less than the approved appraisal of the fair
7 market value of the property. A decrease or increase in the fair
8 market value of [REAL] property before the date of valuation caused by
9 the public improvement for which the property is taken [ACQUIRED] or
10 by the likelihood that the property would be taken [ACQUIRED] for or
11 damaged by the improvement, other than that due to physical deterio-
12 ration within the reasonable control of the owner, will be disregarded
13 in determining the compensation for the property. The owner of the
14 [REAL] property to be taken [ACQUIRED] shall be provided with a writ-
15 ten statement of, and a summary of the basis for, the amount estab-
16 lished as just compensation.

17 (4) An owner may not be required to surrender possession of
18 [REAL] property before the state agency concerned pays the agreed
19 purchase price or deposits with the court in accordance with applica-
20 ble law, for the benefit of the owner, an amount not less than the
21 approved appraisal of the fair market value of the property [,] or the
22 amount of the award of compensation in the condemnation proceeding for
23 the property.

24 (5) The construction or development of a public improvement
25 shall be so scheduled that, to the greatest extent practicable, a
26 person lawfully occupying [REAL] property is not required to move from
27 a dwelling, assuming a replacement dwelling will be available, or to
28 move the person's business or farm operation [,] without at least 90
29 days' written notice of the date by which the move is required.

1 (6) If an owner or tenant is permitted to occupy the [REAL]
2 taken or damaged property [ACQUIRED] on a rental basis for a short
3 term or for a period subject to termination by the state agency on
4 short notice, the amount of rent required shall not exceed the fair
5 rental value of the property to a short-term occupier.

6 (7) In no event may the time of condemnation be advanced or
7 negotiations or condemnation and the deposit of funds in court for the
8 use of the owner be deferred, nor any other coercive action be taken
9 in order to compel an agreement on the price to be paid for the taking
10 or damage to property.

11 (8) If an interest in [REAL] property is to be taken or
12 damaged [ACQUIRED] by exercise of the power of eminent domain, formal
13 condemnation proceedings shall be instituted. The [ACQUIRING] state
14 agency may not intentionally make it necessary for an owner to insti-
15 tute legal proceedings to prove the fact of the taking or damage of
16 the [REAL] property.

17 (9) If the taking or damage [ACQUISITION] of only part of
18 the property would leave its owner with an uneconomic remnant, an
19 offer to take [ACQUIRE] the entire property shall be made.

20 * Sec. 9. AS 34.60.130(a) is amended to read:

21 (a) Notwithstanding another [ANY OTHER] provision of law, if a
22 state agency takes an [ACQUIRES ANY] interest in real property, the
23 state agency must take [ACQUIRE] at least an equal interest in all
24 buildings, structures, or other improvements located upon the real
25 property that [WHICH] the state agency requires to be removed from the
26 real property or that [WHICH] the state agency determines will be
27 adversely affected by the use to which the real property will be put.

28 * Sec. 10. AS 34.60.130(b) is amended to read:

29 (b) For the purpose of determining just compensation to be paid

1 for a building, structure, or other improvement required to be taken
2 [ACQUIRED] under (a) of this section, the building, structure, or
3 other improvement is considered to be a part of the real property to
4 be taken [ACQUIRED] notwithstanding the right or obligation of a
5 tenant, as against the owner of another [ANY OTHER] interest in the
6 real property, to remove the building, structure, or improvement at
7 the expiration of the tenant's term, and the fair market value that
8 [WHICH] the building, structure, or improvement contributes to the
9 fair market value of the real property to be taken [ACQUIRED], or the
10 fair market value of the building, structure, or improvement for re-
11 moval from the real property, whichever is the greater, shall be paid
12 to the tenant.

13 * Sec. 11. AS 34.60.150 is amended to read:

14 Sec. 34.60.150. DEFINITIONS. In this chapter

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

17 (A) for the purchase, sale, lease, and rental of
18 personal and real property, and manufacture, processing, or
19 marketing of products, commodities, or any other personal prop-
20 erty;

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

22 (C) by a nonprofit organization; or

23 (D) for assisting, solely for the purpose of AS 34.-
24 60.040(a), in the purchase, sale, resale, manufacture, process-
25 ing, or marketing of products, commodities, personal property, or
26 services by the erection and maintenance of an outdoor advertis-
27 ing display, whether or not the display is located on the prem-
28 ises on which any of the above activities are conducted;

29 (2) "displaced person" means a [ANY] any person who [, ON

1 OR AFTER JANUARY 2, 1971] moves from [REAL] property, or moves per-
2 sonal property from [REAL] property, as a result of the taking [ACQUI-
3 SITION] of the [REAL] property, in whole or in part, or as a result of
4 the written order of the state agency to vacate [REAL] property, for a
5 program or project undertaken by the state agency, and solely for the
6 purpose of AS 34.60.040(a) and 34.60.090, as a result of the taking
7 [ACQUISITION] of, or as a result of the written order of a state
8 agency to vacate other [REAL] property on which the person conducts a
9 business or farm operation for the program or project;

10 (3) "farm operation" means any activity conducted solely or
11 primarily for the production of one or more agricultural products or
12 commodities, including timber, for sale or home use, and customarily
13 producing these products or commodities in sufficient quantity to be
14 capable of contributing materially to the operator's support;

15 (4) "mortgage" means those classes of liens commonly given
16 to secure advances on, or the unpaid purchase price of, real property
17 [,] under the law of the state in which the real property is located,
18 together with the credit instruments, if any, secured by the property;

19 (5) "person" means an individual, partnership, corporation,
20 or association;

21 (6) "state agency" means a department, agency, instrumen-
22 tality, corporate authority of the state, or a political subdivision
23 of the state, or a department, agency, instrumentality or authority of
24 two or more political subdivisions of the state participating in
25 federally assisted programs.

26 * Sec. 12. AS 34.60.100 is repealed.

27 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).