

Original sponsor(s): REP. BOUCHER by Request

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 537 (State Affairs)
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 state agencies, municipalities,
8 and other entities; and providing for an effective
9 date."

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

11 * Section 1. AS 09.55.310(a) is amended to read:

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

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

19 (2) if the property sought to be condemned constitutes only
20 a part of a larger parcel, the damages that [WHICH] will accrue to the
21 portion not sought to be condemned by reason of its severance from the
22 portion sought to be condemned, and the construction of the improve-
23 ments in the manner proposed by the plaintiff;

24 (3) separately, how much the portion not sought to be
25 condemned and each estate or interest in it will be benefited, if at
26 all, by the construction of the improvements proposed by the plain-
27 tiff; and, if the benefit is equal to the damages assessed under (2)
28 of this section, the owner of the parcel shall not be allowed [NO]
29 damages except for the value of the portion taken; but if the benefits

1 are less than the damages [90] assessed, the former shall be deducted
2 from the latter and the remainder shall be the only damages allowed in
3 addition to the value;

4 (4) if the property sought to be condemned is for a rail-
5 road, the cost of good and sufficient fences along the line of the
6 railroad, and the cost of cattle guards where fences may cross the
7 line of the railroad;

8 (5) the full amount of business loss caused by taking or
9 damaging the property.

10 * Sec. 2. AS 09.55.440(b) is amended to read:

11 (b) Upon motion of a party in interest and notice to all par-
12 ties, the court shall expeditiously [MAY] order that the money depos-
13 ited [OR A PART OF IT] be paid immediately to the person or persons
14 entitled to it for or on account of the just compensation to be award-
15 ed in the proceedings. If the compensation finally awarded exceeds
16 the amount of money deposited, the deposit shall be offset against the
17 award. If the compensation finally awarded is less than the amount of
18 money deposited, the court shall enter judgment in favor of the plain-
19 tiff and against the proper parties for the amount of the excess.

20 * Sec. 3. AS 09.55.450(a) is amended to read:

21 (a) Upon the filing of the declaration of taking and the deposit
22 of the estimated compensation, the court may, upon motion, fix the
23 time during which and the terms upon which the parties in possession
24 are required to surrender possession to the petitioner. However, the
25 right of entry may [SHALL] not be granted the plaintiff until after
26 the running of the time for the defendant to file an objection to the
27 declaration of taking or until after the hearing on an [ANY] objection
28 to the declaration of taking if the objection is made in the time
29 allowed by law. In addition, the court may not grant the right of

1 entry until the court determines that the amount of the deposit of the
2 estimated just compensation for all property that has been taken or
3 damaged is substantiated by one or more appraisals prepared in good
4 faith. Where the party in possession withdraws a [ANY] part of the
5 award and remains in possession, the court may fix a reasonable rental
6 for the premises to be paid by that party to the plaintiff during the
7 [SUCH] possession.

8 * Sec. 4. AS 09.55.460(b) is amended to read:

9 (b) The plaintiff may not be divested of a title or possession
10 taken unless [ACQUIRED EXCEPT WHERE] the court finds that the property
11 was not taken by necessity for a public use or purpose in a manner
12 compatible with the greatest public good and the least private injury,
13 the amount of estimated just compensation deposited under AS 09.55.-
14 440(a) is not adequate, the state failed to comply with AS 34.60, the
15 plaintiff is a municipality that failed to comply with AS 34.60, or
16 the plaintiff failed to comply with AS 09.55.275. In the event of
17 that finding, the court shall enter the judgment necessary to (1)
18 compensate the persons entitled to it for the period during which the
19 property was in the possession of the plaintiff, (2) recover for the
20 plaintiff any award paid to any person, and (3) order the plaintiff to
21 restore the property to the condition in which it existed at the time
22 of the filing of the declaration of taking unless [SUCH] restoration
23 is impossible, in which case the court shall award damages to the
24 proper persons as compensation for a [ANY] diminution in the value of
25 the property caused by the plaintiff's wrongful possession.

26 * Sec. 5. AS 09.55 is amended by adding a new section to article 3 to
27 read:

28 Sec. 09.55.465. DEFINITIONS. In AS 09.55.240 - 09.55.465,
29 (1) "business loss" includes short-term business loss,

1 long-term business loss, and the loss of goodwill;

2 (2) "private injury" includes business loss caused by the
3 taking of or damage to property.

4 * Sec. 6. AS 29.10.200(25) is amended to read:

5 (25) AS 29.35.030 (eminent domain, relocation assistance,
6 and real property acquisition practices)

7 * Sec. 7. AS 29.35.030(a) is amended to read:

8 (a) A municipality may, only within its boundaries, exercise the
9 powers of eminent domain and declaration of taking in the performance
10 of a power or function of the municipality but must use [UNDER] the
11 procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60, regard-
12 less of the source of funding. In the case of a second class city,
13 the exercise of the power of eminent domain or declaration of taking
14 must be by ordinance that is submitted to the voters at the next
15 general election or at a special election called for that purpose. A
16 majority of the votes on the question is required for approval of the
17 ordinance.

18 * Sec. 8. AS 34.60.010 is amended to read:

19 Sec. 34.60.010. PURPOSE. The purpose of this chapter is to
20 establish a uniform policy for the fair and equitable treatment of
21 persons displaced as a result of activities undertaken by state agen-
22 cies [FEDERALLY ASSISTED PROGRAMS] in order that the displaced persons
23 will not suffer disproportionate injuries as a result of programs
24 designed for the benefit of the public as a whole.

25 * Sec. 9. AS 34.60.020 is amended to read:

26 Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State
27 agencies shall establish and provide the means for implementing a
28 program providing fair and reasonable relocation and other payment for
29 persons displaced as a result of [FEDERALLY ASSISTED] activities

1 undertaken by state agencies, to carry out relocation assistance
2 programs for persons displaced, and to provide payments to persons as
3 a result of taking or damaging [ACQUISITION] of [REAL] property for
4 activities of state agencies.

5 * Sec. 10. AS 34.60.040(a) is amended to read:

6 (a) When the taking or damaging [ACQUISITION] of [REAL] property
7 for a [FEDERALLY ASSISTED] program or project undertaken by a state
8 agency will result in the displacement of a person, the state agency
9 responsible for the program or project shall make payment to the
10 displaced person, upon proper application as approved by the state
11 agency, for

12 (1) actual reasonable expenses in moving a person, the
13 person's 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
16 not to exceed an amount equal to the reasonable expenses that would
17 have 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 * Sec. 11. AS 34.60.050 is amended to read:

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

29 (1) the amount, if any, that [WHICH], when added to the

1 taking [ACQUISITION] cost of the dwelling taken [ACQUIRED] by the
2 state agency, equals the reasonable cost of a comparable replacement
3 dwelling that [WHICH] is a decent, safe, and sanitary dwelling ade-
4 quate to accommodate the displaced person, is reasonably accessible to
5 public services and places of employment, and is available on the
6 private market; all determinations required to carry out this para-
7 graph shall be made in accordance with standards established by the
8 state agency making the additional payment;

9 (2) the amount, if any, that [WHICH] will compensate the
10 displaced person for any increased interest costs that [WHICH] the
11 displaced person is required to pay for financing the acquisition of
12 the comparable replacement dwelling; this amount may be paid only if
13 the dwelling taken [ACQUIRED] by the state agency was encumbered by a
14 bona fide mortgage that [WHICH] was a valid lien on the dwelling for
15 not less than 180 days before the initiation of negotiations for the
16 taking [ACQUISITION] of the dwelling; and

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

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

28 * Sec. 12. AS 34.60.060 is amended to read:

29 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In

1 addition to amounts otherwise authorized by this chapter, the state
2 agency shall make a payment to or for a displaced person displaced
3 from a dwelling, who is not eligible to receive a payment under
4 AS 34.60.050, if the dwelling was actually and lawfully occupied by
5 the displaced person for not less than 90 days before the initiation
6 of negotiations for taking [ACQUISITION OF] the dwelling. The payment
7 shall be either

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

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

21 * Sec. 13. AS 34.60.070 is amended to read:

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

29 (1) recording fees, transfer taxes, and similar expenses

1 incidental to conveying the [REAL] property to the state agency;

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

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

11 * Sec. 14. AS 34.60.080(a) is amended to read:

12 (a) The state court having jurisdiction of a proceeding insti-
13 tuted by the state agency to take [ACQUIRE REAL] property by condemna-
14 tion shall award the owner of a [ANY] right to, or title to, or inter-
15 est in, the [REAL] property a sum that [WHICH] will in the opinion of
16 the court reimburse the owner for reasonable costs, disbursements, and
17 expenses, including reasonable attorney, appraisal, and engineering
18 fees [,] actually incurred because of the condemnation proceedings, if

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

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

22 * Sec. 15. AS 34.60.090(a) is amended to read:

23 (a) When the taking or damaging [ACQUISITION] of [REAL] property
24 for a program or project undertaken by a state agency [FOR A FEDERALLY
25 ASSISTED PROGRAM OR PROJECT UNDERTAKEN BY THE STATE AGENCY] will
26 result in the displacement of a person [ON OR AFTER JANUARY 2, 1971],
27 the state agency shall provide a relocation assistance advisory pro-
28 gram for displaced persons that [WHICH] offers the services described
29 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a

1 person occupying property immediately adjacent to the [REAL] property
2 taken [ACQUIRED] is caused substantial economic injury because of the
3 taking, the state agency shall [ACQUISITION, IT MAY] offer the occu-
4 pant relocation advisory services under the program.

5 * Sec. 16. AS 34.60.120 is amended to read:

6 Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE COM-
7 PENSATION [ACQUISITION] POLICY. A state agency or other entity taking
8 or damaging [ACQUIRING REAL] property for a [ANY] project or program
9 [IN WHICH FEDERAL OR FEDERAL-AID FUNDS ARE USED] shall to the greatest
10 extent practicable comply with the following policies:

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

13 (2) Property to be taken or damaged [REAL PROPERTY] shall
14 be appraised before the initiation of negotiations, and the owner or a
15 designated representative shall be given an opportunity to accompany
16 the appraiser during the inspection of the property.

17 (3) Before the initiation of negotiations for [REAL] prop-
18 erty, an amount shall be established that [WHICH] is reasonably be-
19 lieved to be just compensation for all [THE REAL] property taken or
20 damaged, and that amount shall be offered for the property. In no
21 event shall the amount be less than the approved appraisal of the fair
22 market value of the property. A decrease or increase in the fair
23 market value of [REAL] property before the date of valuation caused by
24 the public improvement for which the property is taken [ACQUIRED] or
25 by the likelihood that the property would be taken [ACQUIRED] for or
26 damaged by the improvement, other than that due to physical deterio-
27 ration within the reasonable control of the owner, will be disregarded
28 in determining the compensation for the property. The owner of the
29 [REAL] property to be taken [ACQUIRED] shall be provided with a

1 written statement of, and a summary of the basis for, the amount
2 established as just compensation.

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

10 (5) The construction or development of a public improvement
11 shall be so scheduled that [, TO THE GREATEST EXTENT PRACTICABLE,] a
12 person lawfully occupying [REAL] property is not required to move from
13 a dwelling, assuming a replacement dwelling will be available, or to
14 move the person's business or farm operation, without at least 90
15 days' written notice of the date by which the move is required and
16 until at least 90 days have elapsed after a court

17 (A) determines that the prerequisites under AS 09.55.-
18 270 have been met; or

19 (B) has ruled under AS 09.55.450(a) on any objections
20 made to a declaration of taking, or the time for filing objec-
21 tions under AS 09.55.450(a) has ended without an objection being
22 filed.

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

28 (7) In no event may the time of condemnation be advanced or
29 negotiations or condemnation and the deposit of funds in court for the

1 use of the owner be deferred, nor any other coercive action be taken
2 in order to compel an agreement on the price to be paid for the taking
3 or damage to property.

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

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

13 * Sec. 17. AS 34.60.130(a) is amended to read:

14 (a) Notwithstanding another [ANY OTHER] provision of law, if a
15 state agency takes an [ACQUIRES ANY] interest in real property, the
16 state agency must take [ACQUIRE] at least an equal interest in all
17 buildings, structures, or other improvements located upon the real
18 property that [WHICH] the state agency requires to be removed from the
19 real property or that [WHICH] the state agency determines will be
20 adversely affected by the use to which the real property will be put.

21 * Sec. 18. AS 34.60.130(b) is amended to read:

22 (b) For the purpose of determining just compensation to be paid
23 for a building, structure, or other improvement required to be taken
24 [ACQUIRED] under (a) of this section, the building, structure, or
25 other improvement is considered to be a part of the real property to
26 be taken [ACQUIRED] notwithstanding the right or obligation of a
27 tenant, as against the owner of another [ANY OTHER] interest in the
28 real property, to remove the building, structure, or improvement at
29 the expiration of the tenant's term, and the fair market value that

1 [WHICH] the building, structure, or improvement contributes to the
2 fair market value of the real property to be taken [ACQUIRED], or the
3 fair market value of the building, structure, or improvement for re-
4 moval from the real property, whichever is the greater, shall be paid
5 to the tenant.

6 * Sec. 19. AS 34.60.135 is amended to read:

7 Sec. 34.60.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In
8 addition to the other programs authorized by this chapter, a state
9 agency may make loans in order to encourage and facilitate the con-
10 struction or rehabilitation of housing to meet the needs of displaced
11 persons. These loans are a part of the [FEDERALLY ASSISTED] project
12 cost and may be made to nonprofit, limited dividend, or cooperative
13 organizations or public bodies. The loans may be made only for neces-
14 sary and reasonable expenses, before construction, for planning and
15 obtaining federally insured mortgage financing for the rehabilitation
16 or construction of housing for displaced persons. The loans may not
17 exceed 80 percent of the reasonable costs expected to be incurred in
18 planning, and in obtaining financing for housing for displaced per-
19 sons. Reasonable costs include [BUT ARE NOT LIMITED TO] costs for
20 preliminary surveys and analysis of market needs, preliminary archi-
21 tectural fees, site acquisition, application and mortgage commitment
22 fees, and construction loan fees and discounts. Loans to an organiza-
23 tion established for profit must [SHALL] bear interest at a market
24 rate established by the state agency. All other loans must [SHALL] be
25 without interest. The state agency shall require repayment of loans
26 made under this section [,] under terms and conditions established by
27 the state agency. Repayment shall be made upon completion of the
28 project or sooner, and except in the case of a loan to an organization
29 established for profit, the state agency may cancel a [ANY] part or

1 all of a loan following a determination by the state agency that a
2 permanent loan to finance the rehabilitation or construction of the
3 housing cannot be obtained in an amount adequate for repayment of the
4 loan.

5 * Sec. 20. AS 34.60.137 is amended to read:

6 Sec. 34.60.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT.
7 If a state agency [FEDERAL AIDED] program or project cannot proceed to
8 actual construction because comparable replacement sale or rental
9 housing is not available, and the state agency determines that housing
10 cannot otherwise be made available, the agency may take action neces-
11 sary or appropriate to provide the housing by use of funds authorized
12 for the project.

13 * Sec. 21. 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 proper-
20 ty;

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) "property" includes short-term and long-term business
22 interests;

23 (7) "state agency" means a department, agency, instrumen-
24 tality, corporate authority of the state, or a political subdivision
25 of the state, or a department, agency, instrumentality or authority of
26 two or more political subdivisions of the state [PARTICIPATING IN
27 FEDERALLY ASSISTED PROGRAMS].

28 * Sec. 22. AS 34.60.100 is repealed.

29 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).