

## SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS RODEY, Halford

Introduced: 2/6/91

Referred: State Affairs and Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the taking and compensation for damage of property by state  
2 agencies, municipalities, and other entities; and providing for an effective date."

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

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

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

7 (1) the value of the property sought to be condemned, and all improvements on  
8 it pertaining to the realty, and of each separate estate or interest in it; if it consists of different  
9 parcels, the value of each parcel and each estate or interest in each parcel shall be separately  
10 assessed;

11 (2) if the property sought to be condemned constitutes only a part of a larger  
12 parcel, the damages that [WHICH] will accrue to the portion not sought to be condemned by  
13 reason of its severance from the portion sought to be condemned, and the construction of the  
14 improvements in the manner proposed by the plaintiff;

1 (3) separately, how much the portion not sought to be condemned and each estate  
2 or interest in it will be benefited, if at all, by the construction of the improvements proposed by  
3 the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the  
4 owner of the parcel may not [SHALL] be allowed [NO] damages except for the value of the  
5 portion taken; but if the benefits are less than the damages [SO] assessed, the former shall be  
6 deducted from the latter and the remainder shall be the only damages allowed in addition to the  
7 value;

8 (4) if the property sought to be condemned is for a railroad, the cost of good and  
9 sufficient fences along the line of the railroad, and the cost of cattle guards where fences may  
10 cross the line of the railroad;

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

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

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

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

22 (a) Upon the filing of the declaration of taking and the deposit of the estimated  
23 compensation, the court may, upon motion, fix the time during which and the terms upon which  
24 the parties in possession are required to surrender possession to the petitioner. However, the  
25 right of entry may [SHALL] not be granted the plaintiff until after the running of the time for  
26 the defendant to file an objection to the declaration of taking or until after the hearing on an  
27 [ANY] objection to the declaration of taking if the objection is made in the time allowed by law.  
28 In addition, the court may not grant the right of entry until the court determines that the  
29 amount of the deposit of the estimated just compensation for all property that has been  
30 taken or damaged is substantiated by one or more appraisals prepared in good faith.

31 Where the party in possession withdraws a [ANY] part of the award and remains in possession,

1 the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff  
2 during the [SUCH] possession.

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

4 (b) The plaintiff may not be divested of a title or possession taken unless [ACQUIRED  
5 EXCEPT WHERE] the court finds that the property was not taken by necessity for a public use  
6 or purpose in a manner compatible with the greatest public good and the least private injury, the  
7 amount of estimated just compensation deposited under AS 09.55.440(a) is not adequate,  
8 the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply  
9 with AS 34.60, or the plaintiff failed to comply with AS 09.55.275. In the event of that  
10 finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to  
11 it for the period during which the property was in the possession of the plaintiff, (2) recover for  
12 the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to  
13 the condition in which it existed at the time of the filing of the declaration of taking unless  
14 [SUCH] restoration is impossible, in which case the court shall award damages to the proper  
15 persons as compensation for a [ANY] diminution in the value of the property caused by the  
16 plaintiff's wrongful possession.

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

18 Sec. 09.55.465. DEFINITIONS. In AS 09.55.240 - 09.55.465,

19 (1) "business loss" includes short-term business loss, long-term business loss, and  
20 the loss of goodwill;

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

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

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

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

27 (a) A municipality may, only within its boundaries, exercise the powers of eminent  
28 domain and declaration of taking in the performance of a power or function of the municipality  
29 but must use [UNDER] the procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60,  
30 regardless of the source of funding. In the case of a second class city, the exercise of the  
31 power of eminent domain or declaration of taking must be by ordinance that is submitted to the

1 voters at the next general election or at a special election called for that purpose. A majority of  
2 the votes on the question is required for approval of the ordinance.

3 \* **Sec. 8.** AS 34.60.010 is amended to read:

4 Sec. 34.60.010. **PURPOSE.** The purpose of this chapter is to establish a uniform policy  
5 for the fair and equitable treatment of persons displaced as a result of activities undertaken by  
6 state agencies [FEDERALLY ASSISTED PROGRAMS] in order that the displaced persons will  
7 not suffer disproportionate injuries as a result of programs designed for the benefit of the public  
8 as a whole.

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

10 Sec. 34.60.020. **STATE AGENCIES TO ESTABLISH PROGRAM.** State agencies shall  
11 establish and provide the means for implementing a program providing fair and reasonable  
12 relocation and other payment for persons displaced as a result of [FEDERALLY ASSISTED]  
13 activities undertaken by state agencies, to carry out relocation assistance programs for persons  
14 displaced, and to provide payments to persons as a result of taking or damaging  
15 [ACQUISITION] of [REAL] property for activities of state agencies.

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

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

21 (1) actual reasonable expenses in moving a person, the person's family, business,  
22 farm operation, or other personal property;

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

27 (3) actual reasonable expenses in searching for a replacement business or farm.

28 \* **Sec. 11.** AS 34.60.050 is amended to read:

29 Sec. 34.60.050. **REPLACEMENT HOUSING FOR HOMEOWNERS.** (a) In addition  
30 to payments otherwise authorized by this chapter, the state agency shall make an additional  
31 payment not to exceed \$22,500 [,] to a displaced person who is displaced from a dwelling

1 actually owned and occupied by the person for not less than 180 days before the initiation of  
2 negotiations for the acquisition of the property. This additional payment must include the  
3 following elements:

4 (1) the amount, if any, that when added to the taking [ACQUISITION] cost of  
5 the dwelling taken [ACQUIRED] by the state agency, equals the reasonable cost of a comparable  
6 replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the  
7 displaced person, is reasonably accessible to public services and places of employment, and is  
8 available on the private market; all determinations required to carry out this paragraph shall be  
9 made in accordance with standards established by the state agency making the additional  
10 payment;

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

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

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

26 \* Sec. 12. AS 34.60.060 is amended to read:

27 Sec. 34.60.060. REPLACEMENT HOUSING FOR TENANTS AND OTHERS. In  
28 addition to amounts otherwise authorized by this chapter, the state agency shall make a payment  
29 to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment  
30 under AS 34.60.050, if the dwelling was actually and lawfully occupied by the displaced person  
31 for not less than 90 days before the initiation of negotiations for taking [ACQUISITION OF] the

1 dwelling. The payment must be either

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

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

12 \* **Sec. 13.** AS 34.60.070 is amended to read:

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

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

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

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

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

28 (a) The state court having jurisdiction of a proceeding instituted by the state agency to  
29 take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to,  
30 or title to, or interest in, the [REAL] property a sum that will in the opinion of the court  
31 reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable

1 attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation  
2 proceedings, if

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

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

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

7 (a) When the taking or damaging [ACQUISITION] of [REAL] property for a program  
8 or project undertaken by a state agency [FOR A FEDERALLY ASSISTED PROGRAM OR  
9 PROJECT UNDERTAKEN BY THE STATE AGENCY] will result in the displacement of a  
10 person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation  
11 assistance advisory program for displaced persons that [WHICH] offers the services described  
12 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a person occupying  
13 property immediately adjacent to the [REAL] property taken [ACQUIRED] is caused substantial  
14 economic injury because of the taking, the state agency shall [ACQUISITION, IT MAY] offer  
15 the occupant relocation advisory services under the program.

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

17 Sec. 34.60.120. UNIFORM [REAL] PROPERTY TAKING AND DAMAGE  
18 COMPENSATION [ACQUISITION] POLICY. (a) A state agency or other entity taking or  
19 damaging [ACQUIRING REAL] property for a [ANY] project or program [IN WHICH  
20 FEDERAL OR FEDERAL-AID FUNDS ARE USED] shall to the greatest extent practicable  
21 comply with the [FOLLOWING] policies set out in this section. [:]

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

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

27 (d) [(3)] Before the initiation of negotiations for [REAL] property, an amount shall be  
28 established that is reasonably believed to be just compensation for all [THE REAL] property  
29 taken or damaged, and that amount shall be offered for the property. In no event may the  
30 amount be less than the approved appraisal of the fair market value of the property. A decrease  
31 or increase in the fair market value of [REAL] property before the date of valuation caused by

1 the public improvement for which the property is **taken** [ACQUIRED] or by the likelihood that  
2 the property would be **taken** [ACQUIRED] for **or damaged by** the improvement, other than that  
3 due to physical deterioration within the reasonable control of the owner, will be disregarded in  
4 determining the compensation for the property. The owner of the [REAL] property to be **taken**  
5 [ACQUIRED] shall be provided with a written statement of, and a summary of the basis for, the  
6 amount established as just compensation.

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

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

18 **(1) determines that the prerequisites under AS 09.55.270 have been met; or**  
19 **(2) has ruled under AS 09.55.450(a) on any objections made to a declaration**  
20 **of taking, or the time for filing objections under AS 09.55.450(a) has ended without an**  
21 **objection being filed.**

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

26 **(h)** [(7)] In no event may the time of condemnation be advanced or negotiations or  
27 condemnation and the deposit of funds in court for the use of the owner be deferred, nor any  
28 other coercive action be taken in order to compel an agreement on the price to be paid for the  
29 **taking or damage to** property.

30 **(i)** [(8)] If an interest in [REAL] property is to be **taken or damaged** [ACQUIRED] by  
31 exercise of the power of eminent domain, formal condemnation proceedings shall be instituted.

1 The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute  
2 legal proceedings to prove the fact of the taking or damage of the [REAL] property.

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

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

7 (a) Notwithstanding another [ANY OTHER] provision of law, if a state agency takes  
8 an [ACQUIRES ANY] interest in real property, the state agency shall take [MUST ACQUIRE]  
9 at least an equal interest in all buildings, structures, or other improvements located upon the real  
10 property that [WHICH] the state agency requires to be removed from the real property or that  
11 [WHICH] the state agency determines will be adversely affected by the use to which the real  
12 property will be put.

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

14 (b) For the purpose of determining just compensation to be paid for a building, structure,  
15 or other improvement required to be taken [ACQUIRED] under (a) of this section, the building,  
16 structure, or other improvement is considered to be a part of the real property to be taken  
17 [ACQUIRED] notwithstanding the right or obligation of a tenant, as against the owner of  
18 another [ANY OTHER] interest in the real property, to remove the building, structure, or  
19 improvement at the expiration of the tenant's term, and the fair market value that [WHICH] the  
20 building, structure, or improvement contributes to the fair market value of the real property to  
21 be taken [ACQUIRED], or the fair market value of the building, structure, or improvement for  
22 removal from the real property, whichever is the greater, shall be paid to the tenant.

23 \* **Sec. 19.** AS 34.60.135 is amended to read:

24 Sec. 34.60.135. PLANNING LOANS FOR ADDITIONAL HOUSING. In addition to  
25 the other programs authorized by this chapter, a state agency may make loans in order to  
26 encourage and facilitate the construction or rehabilitation of housing to meet the needs of  
27 displaced persons. These loans are a part of the [FEDERALLY ASSISTED] project cost and  
28 may be made to nonprofit, limited dividend, or cooperative organizations or public bodies. The  
29 loans may be made only for necessary and reasonable expenses, before construction, for planning  
30 and obtaining federally insured mortgage financing for the rehabilitation or construction of  
31 housing for displaced persons. The loans may not exceed 80 percent of the reasonable costs

1 expected to be incurred in planning, and in obtaining financing for housing for displaced persons.  
2 Reasonable costs include [BUT ARE NOT LIMITED TO] costs for preliminary surveys and  
3 analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage  
4 commitment fees, and construction loan fees and discounts. Loans to an organization established  
5 for profit [SHALL] bear interest at a market rate established by the state agency. All other loans  
6 are [SHALL BE] without interest. The state agency shall require repayment of loans made under  
7 this section [,] under terms and conditions established by the state agency. Repayment shall be  
8 made upon completion of the project or sooner, and except in the case of a loan to an  
9 organization established for profit, the state agency may cancel a [ANY] part or all of a loan  
10 following a determination by the state agency that a permanent loan to finance the rehabilitation  
11 or construction of the housing cannot be obtained in an amount adequate for repayment of the  
12 loan.

13 \* **Sec. 20.** AS 34.60.137 is amended to read:

14 Sec. 34.60.137. HOUSING REPLACEMENT ASSISTANCE AS LAST RESORT. If a  
15 state agency [FEDERAL AIDED] program or project cannot proceed to actual construction  
16 because comparable replacement sale or rental housing is not available, and the state agency  
17 determines that housing cannot otherwise be made available, the agency may take action  
18 necessary or appropriate to provide the housing by use of funds authorized for the project.

19 \* **Sec. 21.** AS 34.60.150 is amended to read:

20 Sec. 34.60.150. DEFINITIONS. In this chapter

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

23 (A) for the purchase, sale, lease, and rental of personal and real property,  
24 and manufacture, processing, or marketing of products, commodities, or other personal  
25 property;

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

27 (C) by a nonprofit organization; or

28 (D) for assisting, solely for the purpose of AS 34.60.040(a), in the  
29 purchase, sale, resale, manufacture, processing, or marketing of products, commodities,  
30 personal property, or services by the erection and maintenance of an outdoor advertising  
31 display, whether or not the display is located on the premises on which any of the above

1 activities are conducted;

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

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

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

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

18 (6) "property" includes short-term and long-term business interests;

19 (7) "state agency" means a department, agency, instrumentality, corporate  
20 authority of the state, or a political subdivision of the state, or a department, agency,  
21 instrumentality, or authority of two or more political subdivisions of the state [PARTICIPATING  
22 IN FEDERALLY ASSISTED PROGRAMS].

23 \* Sec. 22. AS 34.60.100 is repealed.

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