

CS FOR SENATE BILL NO. 104 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/13/91
Referred: Finance

Sponsor(s): SENATORS RODEY, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking, acquisition, and compensation for damage of property by
2 state agencies, municipalities, and other entities; amending Alaska Rule of Civil Procedure
3 72; and providing for an effective date."

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

5 * Section 1. AS 09.55.300(b) is amended to read:

6 (b) If the court determines that the property is to be taken for a public use [,] and if all
7 parties to the action agree [DO NO OBJECT], the court shall appoint a master to determine the
8 amount to be paid by the plaintiffs to each owner or other person interested in the property as
9 compensation and damages by reason of the appropriation of the property. If a party [ALL
10 PARTIES] to the action objects [OBJECT] to the appointment of a master, the court shall
11 proceed with a jury trial, unless the jury is waived by all parties to the action.

12 * Sec. 2. AS 09.55.310(a) is amended to read:

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

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

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

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

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

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

21 * Sec. 3. AS 09.55.330 is amended to read:

22 Sec. 09.55.330. COMPENSATION AND DAMAGES. For the purpose of assessing
23 compensation and damages, the right to compensation and damages [THEM] accrues at the date
24 of issuance of the summons, and their [ITS] actual value at that date is the measure of
25 compensation of the property, except business loss, to be actually taken, and the basis of
26 damages to property, except business loss, not actually taken but injuriously affected in the cases
27 where the damages are allowed. The amount of business loss to be awarded as just
28 compensation is the amount of actual or projected loss that is proved by a party in interest
29 by a preponderance of the evidence at a master's hearing or at trial. If an order is made
30 letting the plaintiff into possession, as provided in AS 09.55.380, the compensation and damages
31 awarded shall draw lawful interest from the date of the order. No improvements put upon the

1 property after the date of the service of summons shall be included in the assessment of
2 compensation or damages.

3 * Sec. 4. AS 09.55.440(b) is amended to read:

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

11 * Sec. 5. AS 09.55.450(a) is amended to read:

12 (a) Upon the filing of the declaration of taking and the deposit of the estimated
13 compensation, the court may, upon motion, fix the time during which and the terms upon which
14 the parties in possession are required to surrender possession to the petitioner. However, the
15 right of entry may [SHALL] not be granted the plaintiff until after the running of the time for
16 the defendant to file an objection to the declaration of taking or until after the hearing on an
17 [ANY] objection to the declaration of taking if the objection is made in the time allowed by law.
18 In addition, the court may not grant the right of entry until the court determines that the
19 amount of the deposit of the estimated just compensation for all property that has been
20 taken or damaged is substantiated by one or more appraisals prepared in good faith.
21 Where the party in possession withdraws a [ANY] part of the award and remains in possession,
22 the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff
23 during the [SUCH] possession.

24 * Sec. 6. AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession taken unless [ACQUIRED
26 EXCEPT WHERE] the court finds that the property was not taken by necessity for a public use
27 or purpose in a manner compatible with the greatest public good and the least private injury, the
28 amount of estimated just compensation deposited under AS 09.55.440(a) is not adequate,
29 the state failed to comply with AS 34.60, the plaintiff is a municipality that failed to comply
30 with AS 34.60, or the plaintiff failed to comply with AS 09.55.275. In the event of that
31 finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to

1 it for the period during which the property was in the possession of the plaintiff, (2) recover for
2 the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to
3 the condition in which it existed at the time of the filing of the declaration of taking unless
4 [SUCH] restoration is impossible, in which case the court shall award damages to the proper
5 persons as compensation for a [ANY] diminution in the value of the property caused by the
6 plaintiff's wrongful possession.

7 * Sec. 7. AS 09.55 is amended by adding a new section to article 3 to read:

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

9 (1) "business loss" includes short-term loss of profits, long-term loss of profits,
10 and the loss of goodwill;

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

13 * Sec. 8. AS 29.10.200(25) is amended to read:

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

16 * Sec. 9. AS 29.35.030(a) is amended to read:

17 (a) A municipality may, only within its boundaries, exercise the powers of eminent
18 domain and declaration of taking in the performance of a power or function of the municipality
19 and shall use [UNDER] the procedures set out in AS 09.55.250 - 09.55.460 and AS 34.60,
20 regardless of the source of funding. In addition, in the case of a second class city, the exercise
21 of the power of eminent domain or declaration of taking must be by ordinance that is submitted
22 to the voters at the next general election or at a special election called for that purpose. A
23 majority of the votes on the question is required for approval of the ordinance.

24 * Sec. 10. AS 34.60.010 is amended to read:

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

30 * Sec. 11. AS 34.60.020 is amended to read:

31 Sec. 34.60.020. STATE AGENCIES TO ESTABLISH PROGRAM. State agencies shall

1 establish and provide the means for implementing a program providing fair and reasonable
2 relocation and other payment for persons displaced as a result of [FEDERALLY ASSISTED]
3 activities undertaken by state agencies, to carry out relocation assistance programs for persons
4 displaced, and to provide payments to persons as a result of the acquisition, taking, or damaging
5 of [REAL] property for activities of state agencies.

6 * Sec. 12. AS 34.60.040(a) is amended to read:

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

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

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

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

18 * Sec. 13. AS 34.60.050 is amended to read:

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

25 (1) the amount, if any, that when added to the acquisition or taking cost of the
26 dwelling acquired or taken by the state agency, equals the reasonable cost of a comparable
27 replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the
28 displaced person, is reasonably accessible to public services and places of employment, and is
29 available on the private market; all determinations required to carry out this paragraph shall be
30 made in accordance with standards established by the state agency making the additional
31 payment;

1 (2) the amount, if any, that will compensate the displaced person for any
2 increased interest costs that the displaced person is required to pay for financing the acquisition
3 of the comparable replacement dwelling; this amount may be paid only if the dwelling acquired
4 or taken by the state agency was encumbered by a bona fide mortgage that was a valid lien on
5 the dwelling for not less than 180 days before the initiation of negotiations for the acquisition
6 or taking of the dwelling; and

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

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

16 * Sec. 14. AS 34.60.060 is amended to read:

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

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

28 (2) the amount necessary to enable the displaced person to make a down payment,
29 including incidental expenses described in AS 34.60.050(a)(3), on the purchase of a decent, safe,
30 and sanitary dwelling of standards adequate to accommodate the displaced person in areas not
31 generally less desirable in regard to public utilities and public and commercial facilities, but not

1 to exceed \$5,250.

2 * Sec. 15. AS 34.60.070 is amended to read:

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

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

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

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

17 * Sec. 16. AS 34.60.080(a) is amended to read:

18 (a) The state court having jurisdiction of a proceeding instituted by the state agency to
19 take [ACQUIRE REAL] property by condemnation shall award the owner of a [ANY] right to,
20 or title to, or interest in, the [REAL] property a sum that will in the opinion of the court
21 reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable
22 attorney, appraisal, and engineering fees [,] actually incurred because of the condemnation
23 proceedings, if

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

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

27 * Sec. 17. AS 34.60.090(a) is amended to read:

28 (a) When the acquisition, taking, or damaging of [REAL] property for a program or
29 project undertaken by a state agency [FOR A FEDERALLY ASSISTED PROGRAM OR
30 PROJECT UNDERTAKEN BY THE STATE AGENCY] will result in the displacement of a
31 person [ON OR AFTER JANUARY 2, 1971], the state agency shall provide a relocation

1 assistance advisory program for displaced persons that [WHICH] offers the services described
2 in (c) of this section. If [THE STATE AGENCY DETERMINES THAT] a person occupying
3 property immediately adjacent to the [REAL] property acquired or taken is caused substantial
4 economic injury because of the acquisition or taking, the state agency shall [IT MAY] offer
5 the occupant relocation advisory services under the program.

6 * **Sec. 18.** AS 34.60.120 is amended to read:

7 **Sec. 34.60.120. UNIFORM [REAL] PROPERTY ACQUISITION, TAKING, AND**
8 **DAMAGE COMPENSATION POLICY. (a)** A state agency or other entity acquiring, taking,
9 or damaging [REAL] property for a [ANY] project or program [IN WHICH FEDERAL OR
10 FEDERAL-AID FUNDS ARE USED] shall to the greatest extent practicable comply with the
11 [FOLLOWING] policies set out in this section. [:]

12 **(b) [(1)]** Every reasonable effort shall be made to expeditiously acquire, take, or make
13 compensation for [REAL] property by negotiation.

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

17 **(d) [(3)]** Before the initiation of negotiations for [REAL] property, an amount shall be
18 established that is reasonably believed to be just compensation for all [THE REAL] property
19 acquired, taken, or damaged, and that amount shall be offered for the property. In no event
20 may the amount be less than the approved appraisal of the fair market value of the property. A
21 decrease or increase in the fair market value of [REAL] property before the date of valuation
22 caused by the public improvement for which the property is acquired or taken or by the
23 likelihood that the property would be acquired, taken for, or damaged by the improvement,
24 other than that due to physical deterioration within the reasonable control of the owner, will be
25 disregarded in determining the compensation for the property. The owner of the [REAL]
26 property to be acquired, taken, or damaged shall be provided with a written statement of, and
27 a summary of the basis for, the amount established as just compensation.

28 **(e) [(4)]** An owner may not be required to surrender possession of [REAL] property
29 before the state agency concerned pays the agreed purchase price or deposits with the court in
30 accordance with applicable law, for the benefit of the owner, an amount not less than the
31 approved appraisal of the fair market value of the property [,] or the amount of the award of

1 compensation in the condemnation proceeding for the property.

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

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

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

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

20 (i) [(8)] If an interest in [REAL] property is to be taken or damaged [ACQUIRED] by
21 exercise of the power of eminent domain, formal condemnation proceedings shall be instituted.
22 The [ACQUIRING] state agency may not intentionally make it necessary for an owner to institute
23 legal proceedings to prove the fact of the taking or damage of the [REAL] property.

24 (j) [(9)] If the acquisition, taking, or damage of only part of the property would leave
25 its owner with an uneconomic remnant, an offer to acquire or take the entire property shall be
26 made.

27 * Sec. 19. AS 34.60.130(a) is amended to read:

28 (a) Notwithstanding another [ANY OTHER] provision of law, if a state agency acquires
29 or takes an [ANY] interest in real property, the state agency shall [MUST] acquire or take at
30 least an equal interest in all buildings, structures, or other improvements located upon the real
31 property that [WHICH] the state agency requires to be removed from the real property or that

1 [WHICH] the state agency determines will be adversely affected by the use to which the real
2 property will be put.

3 * Sec. 20. AS 34.60.130(b) is amended to read:

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

13 * Sec. 21. AS 34.60.135 is amended to read:

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

1 or construction of the housing cannot be obtained in an amount adequate for repayment of the
2 loan.

3 * Sec. 22. AS 34.60.137 is amended to read:

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

9 * Sec. 23. AS 34.60.150 is amended to read:

10 Sec. 34.60.150. DEFINITIONS. In this chapter

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

13 (A) for the purchase, sale, lease, and rental of personal and real property,
14 and manufacture, processing, or marketing of products, commodities, or other personal
15 property;

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

17 (C) by a nonprofit organization; or

18 (D) for assisting, solely for the purpose of AS 34.60.040(a), in the
19 purchase, sale, resale, manufacture, processing, or marketing of products, commodities,
20 personal property, or services by the erection and maintenance of an outdoor advertising
21 display, whether or not the display is located on the premises on which any of the above
22 activities are conducted;

23 (2) "displaced person" means a [ANY] any person who [, ON OR AFTER
24 JANUARY 2, 1971] moves from [REAL] property, or moves personal property from [REAL]
25 property, as a result of the acquisition or taking of the [REAL] property, in whole or in part, or
26 as a result of the written order of the state agency to vacate [REAL] property, for a program or
27 project undertaken by the state agency, and solely for the purpose of AS 34.60.040(a) and
28 34.60.090, as a result of the acquisition or taking of, or as a result of the written order of a state
29 agency to vacate other [REAL.] property on which the person conducts a business or farm
30 operation for the program or project;

31 (3) "farm operation" means any activity conducted solely or primarily for the

1 production of one or more agricultural products or commodities, including timber, for sale or
2 home use, and customarily producing these products or commodities in sufficient quantity to be
3 capable of contributing materially to the operator's support;

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

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

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

9 (7) "state agency" means a department, agency, instrumentality, corporate
10 authority of the state, or a political subdivision of the state, or a department, agency,
11 instrumentality, or authority of two or more political subdivisions of the state [PARTICIPATING
12 IN FEDERALLY ASSISTED PROGRAMS].

13 * Sec. 24. AS 34.60.100 is repealed.

14 * Sec. 25. AS 09.55.300(b), amended by sec. 1 of this Act, amends Alaska Rule of Civil Procedure
15 72(h)(2) by establishing different criteria for determining whether a master's hearing is held to determine
16 the amount to be paid by the plaintiff.

17 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).