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COMMITTEE REPORT

SENATE

FURTHER: None

5/18/81

Date: _____

Mr. President:

The Committee on JUDICIARY has had SE 473

urban renewal and development projects of municipalities

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Walter A. Doolittle Jr.
Feb 11 1981

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 12, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 473 - "An Act relating to municipal powers; and providing for an effective date."
- SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."
- HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Ray, and Anderson. Senators Bennett and Parr were absent.

002 - Call to order.

005 - Chairman Rodey brought SB 473 before the committee.

030 - Bill Cummings, Assistant Attorney General, testified against amendment number one by Senator Zeigler, stating it would cause hardships to person's whose property was claimed.

341 - Mr. Sharp, representing the city and municipality of Juneau, also testified against Senator Zeigler's amendments.

490 - Chairman Rodey laid SB 473 on the table.

550 - Chairman Rodey brought HB 194 before the committee.

564 - Mr. Campbell, and Mr. Roman, of the Division of Corrections, testified in favor of HB 194.

630 - Senator Ray objected to the language on Page 2, Line 24.

832 - Senator Rodey offered language change to Page 2, Line 24 and directed staff to prepare language. There was no objection.

845 - HB 194 was laid on the table.

SIDE TWO

012 - Chairman Rodey brought SB 863 before the committee.

022 - After brief discussion, Chairman Rodey returned SB 863 to the file until Wednesday's meeting.

Adjourned at 2:00 P.M. for Senate Session.

A M E N D M E N T # 1

Offered in the SENATE

By Ziegler

TO: CSSB 473 (Judiciary)

Page 1, line 6:

Delete "municipal powers" and insert "eminent domain"

Page 2, lines 8 - 11:

Delete all material and insert:

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

(a) After the running of the time for a defendant to file an objection to the declaration of taking or after the hearing on an objection to the declaration of taking if the objection is made in the time allowed by law, [UPON THE FILING OF THE DECLARATION OF TAKING] and after the deposit with the court of the amount of the estimated compensation stated in the declaration, the court may order that title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six percent per year on the amount finally awarded that [WHICH] exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
JUNEAU ALASKA 99801
907-465-2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1982

SUBJECT: CSSB 473 (Judiciary)
TO: Senator Robert H. Ziegler Sr.
FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the amendment you requested insuring that filing of a declaration of taking does not result in the immediate vesting of title in the plaintiff. In order to avoid a violation of the single subject rule, this amendment deletes section 3 of the Act relating to urban renewal rather than to eminent domain. That section serves little purpose because AS 18.55.480 - 18.55.960 (Slum Clearance and Redevelopment Act) does not appear to be subject to being construed as limiting the authority of municipalities to undertake other urban renewal projects.

The amendment as drafted provides that title vests only upon order of the court and only after the running of the time to file an objection or after the hearing on an objection if the objection is made in the time allowed by law. Although we discussed establishing a 10 day time period for filing an objection, this approach avoids possible conflicts with the Court Rules. Civil Rule 12 currently provides that an answer be filed in 20 days. The approach in this amendment also conforms with AS 09.55.450 providing that a right of entry may be granted to the plaintiff only after "the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law.

Under existing law although title vests when a declaration of taking and deposit are filed, the right of entry onto the property is not granted until after the plaintiff has time to object. (AS 09.55.450(a)) While no appeal operates to

April 8, 1982

prevent or delay the vesting of title to property or the right to possession of it, the plaintiff may be divested of title or possession if "the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public goods and the least private injury." (AS 09.55.460) Upon such a finding the court is required to enter the judgment necessary to compensate for the period during which the property was in the possession of the plaintiff, recover for the plaintiff any award paid for the property, and order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking. If restoration is impossible, the court must award damages as compensation for diminution in the value of the property caused by the possession. These provisions may provide adequate protection to a property owner under existing law.

I attempted to confer with you further regarding this amendment and was unable to reach you. Because of the rush, I have prepared it as indicated in this memo. Please contact me if you would like changes made to the amendment.

TBC:csn



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 22, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 845 - "An Act to provide for reinstatement of certain dissolved Alaska Native Claims Settlement Act village corporations to corporate status."
- SB 592 - "An Act providing that the parents of delinquent minors and children in need of aid have the right to counsel in certain proceedings under AS 47.10."
- SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."
- HB 640 - "An Act relating to games of chance and contests of skill; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Chairman Rodey called the meeting to order.

005 - The first item of business, SB 845, was brought before the committee.

015 - James Kohler, Department of Community and Regional Affairs, testified in favor of the bill, stating that several corporations were dissolved at no fault of their own.

209 - Mr. Kirkpatrick, Director of Banking Securities Corporations, testified stating neither support nor opposition. He only wanted to see clarification of fees due.

443 - Senator Anderson moved that the bill be passed with individual recommendations. There was no objection and the bill was passed with Senators Anderson, Parr, and Rodey signing do pass, Senator Ray signed no recommendation.

463 - Next Chairman Rodey brought HB 640 before the committee.

470 - Chairman Rodey gave the amendments made to the bill.

552 - Chairman Rodey suggested moving the bill from committee and directed staff to prepare a committee substitute to include the new amendments previously adopted by the committee. There was no objection and the committee substitute was passed with Senators Parr, Ray, and Anderson signing do pass. Senator Rodey signed no recommendation.

650 - Chairman Rodey brought SB 473 before the committee.

727 - After discussion, Senator Ray moved that the committee substitute be passed with individual recommendations. There was no objection and the bill was passed with Senators Parr, Rodey, and Anderson signing do pass. Senator Ray signed no recommendation.

730 - The last item on the agenda was SB 592.

745 - Francis Still, representing herself, testified in favor of SB 592.

780 - Senator Parr moved that on Page 1, Line 12, the following be deleted: [to transfer custody, or to appoint a person other than the parent of a child as guardian of the child,]. There was no objection.

795 - Senator Parr moved that the committee pass SB 592 with a committee substitute to be drafted to include the new amendment. There was no objection and the bill was passed with Senator Parr signing do pass. Senators Ray, Rodey, and Anderson signed no recommendation.

802 - Chairman Rodey adjourned the meeting at 2:20 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 17, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 573 - "An Act relating to the crime of tampering with a witness."
- SB 741 - "An Act relating to child support enforcement."
- SB 633 - "An Act relating to work programs for prisoners in state institutions."
- SB 473 - "An Act relating to urban renewal and development projects of municipalities; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Ray, and Anderson. Senator Bennett was absent.

010 - Call to order by Chairman Rodey.

012 - Chairman Rodey brings SB 741 before the committee.

014 - Mr. Bruce gave explanation of the committee substitute.

037 - Senator Ray moves to adopt the committee substitute and pass the bill with individual recommendations. There was no objection.

085 - Next Chairman Rodey brought HB 573 before the committee.

100 - Mr. Bruce explains the changes that the committee substitute would make.

126 - Senator Ray moves to adopt the committee substitute and move the bill from committee with individual recommendations. There was no objection.

144 - SB 473 was the next item on the agenda.

2

152 - Mr. Lee Shark, City Attorney for Juneau, testified in favor of SB 473, stating it would clear up some confusion that exists in present law.

367 - Palmer McCarter, representing the Department of Community and Regional Affairs, testified in favor of the bill.

401 - Pat Anderson, representing the Municipality of Anchorage, testified in favor of SB 473.

526 - After brief discussion, Senator Parr asked that the bill be held in committee until Monday's meeting to enable time to review the bill further. There was no objection.

534 - Chairman Rodey next brought SB 633 before the committee.

540 - Senator Parr gave an overview of the bill.

581 - Mr. Walt Jones, Division of Corrections, testified in favor of SB 633.

The Committee spent considerable time discussing the merits of work programs and gratuity payments.

SIDE TALK

177 - Chairman Rodey suggests adopting amendments to SB 633 made by the Department of Health, Education, and Social Services. See attached amendments.

185 - Senator Ray objects to amendment on Page 1, Line 17. Chairman Rodey requested the Division of Corrections to review its fiscal note to insure that no fiscal impact is possible.

287 - SB 633 is laid on the table.

293 - Chairman Rodey adjourned at 2:35 P.M.

✓

CITY OF FAIRBANKS

ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

STEVEN J. BERGER
ASSISTANT CITY ATTORNEY

Legal Department
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

September 29, 1981

Honorable Patrick M. Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Dear Senator Rodey:


For your information, Mr. Gibson is no longer with the City Attorney's Office and has assumed the position of Area Court Administrator for the Fourth Judicial District. Responding to your invitation for comment to SB 473 relating to municipal powers, I offer the following observations. In reading the opening paragraph of Section 1 of AS 09.55.240(a), the newly proposed paragraph (13), might read a little more fluently as follows:

(13) authorized power or function performed by
a home rule, general law, or unified
municipality in accordance with AS 29.73.020.

The proposed amendment to AS 09.55.420(a) seems a good amendment, particularly from a standpoint that it injects a good deal of clarity to its import and makes applicability more uniform. Lastly, with respect to Section 3 of the proposed bill, this language should clear up any doubts which may have been suggested by the original section as to operative limitations, if any, devolving from Sections 480 through 750. I further note that the new subsection is to read as (b), but I cannot find subsection (a) according to my cumulative supplement of October, 1980.

Thank you for bringing this matter to our attention and requesting our response.

Sincerely,



Herbert P. Kuss
Acting City Attorney

HPK:bjw cc: W.C. Droz

Municipality of Anchorage



POUCH 6-650

ANCHORAGE, ALASKA 99502

(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 7, 1981

Senator Donald Gilman, Chairman
Senate Community & Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 473

Dear Senator Gilman:

Thank you for taking the time to meet with me during my recent visit to Juneau. As I mentioned during our meeting, the Municipality of Anchorage strongly supports efforts, such as SB 473, to eliminate ambiguities concerning the ability of municipalities to utilize eminent domain proceedings in the exercise of duly authorized municipal powers and duties.

As you know, AS 29.73.020 presently provides that a home rule or general law municipality may exercise the powers of eminent domain and declaration of taking "...in the performance of an authorized power or function of the municipality in accordance with AS 09.55.250-.460." However, AS 09.55.240 dealing with eminent domain and entitled "uses for which authorized" does not expressly cross-reference AS 29.73.020; although the section does refer to cities, boroughs and "municipal divisions".

My legal staff has researched this and other conflicting language in AS 09.55, and we believe that a serious potential for dispute exists due to a failure to clearly cross-reference AS 29.73.020 and AS 09.55.240 and 09.55.420. Although this may appear to be a very minor technical concern, I know you can appreciate the problems that can be caused by needless litigation and delay due to the presently confusing statutory language. This concern is, in my opinion, made much more serious by the fact that local capital improvement construction has grown enormously in recent years, thanks to increased state funding. Often, major local improvement projects such as roads, sewers, public buildings and other projects may involve the use of eminent domain, and it is

important that these projects not run the risk of delay due to litigation over inconsistent statutory language.

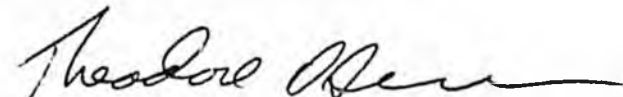
The Municipality additionally supports language clarifying our present ability to utilize eminent domain to encourage economic development and redevelopment efforts. Presently, AS 09.55.420 refers to the use of that statute for "...slum clearance purposes or use granted to cities of the first class...." The term "slum clearance" is rather vague as is the reference to first class cities since AS 29.73.020 grants the power of eminent domain for all authorized municipal powers and functions. The Municipality would therefore support referencing "economic development or redevelopment in AS 09.55.420(a) and replacing the present reference to first class cities with a cross-reference to AS 29.73.020.

Finally, the Municipality supports language presently in Section 2 of SB 473 to clarify the fact that the state's urban renewal statutes do not limit municipalities from pursuing their own urban improvement or urban redevelopment programs.

Again, thank you for your time and attention on this matter. If I can answer any questions concerning the above, please contact my office at 264-4236.

Very truly yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml

cc: Senator Colletta
Senator Sturgulewski

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

334 FRONT STREET

P. O. BOX 7300

KETCHIKAN, ALASKA 99901

(907) 225-3111, EX. 327

October 28, 1981

Senator Patrick Rodey
Senate Committee on Judiciary
Alaska State Legislature
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Re: SB 473 (Eminent Domain; Declaration
of Taking)

Dear Chairman Rodey:

Thank you for your letter under date September 23, 1981, requesting our comments and observations regarding SB 473 relating to including municipalities within the same declaration of taking provisions as currently enjoyed by the State of Alaska.

Please be advised that both the City of Ketchikan, a home rule, chartered municipality, and also the Ketchikan Gateway Borough, support SB 473.

Not infrequently a public agency is required to acquire parcels of property, or rights-of-way from several owners in order to proceed with construction of a public project which clearly qualifies as a proper public use and purpose. Many times the agency is successful in negotiating an acceptable price as to most of the property necessary to the project, however, is unable to settle as to one or several of the owners.

In such event, under existing law, the State would be authorized to proceed with acquiring possession and proceeding with the project pursuant to the declaration of taking proceedings, subject to the property owner's right to litigate the amount of just compensation to be paid, however, a municipality, even a first class, home rule chartered municipality, such as the City of Ketchikan, may not be able to proceed under the same situation unless the project could be "pigeon holed" into one of the classes of projects inventoried in existing AS 9.55.420.

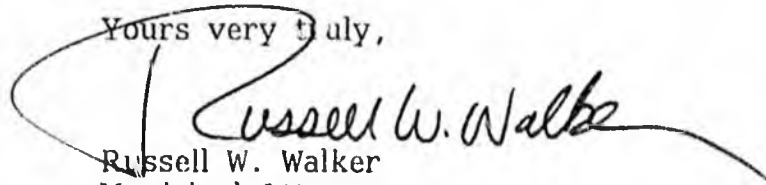
Senator Patrick Rodey
October 28, 1981
Page Two

Such inability could, and in many cases does, delay the public project several years until after trial has been conducted and entry of a final judgment of condemnation even though the only issue before the Court is the amount of money to be paid by the acquiring agency.

To delay construction of a public project which is clearly a proper public purpose for which property can be acquired, for several years, with attendant major costs and inflation factors, and also uncertainties, is unrealistic and the current declaration of taking proceedings now applicable to State acquisitions should be similarly available to acquisitions by municipalities.

I would be pleased to participate in a teleconference regarding this bill as scheduled by the committee.

Yours very truly,



Russell W. Walker
Municipal Attorney

RWW:sf

cc: City Manager
Borough Manager
Ted Berns, Esq.

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

Attorneys at Law

JOHN C. HUGHES	CARL J. D. BAUMAN	TIMOTHY R. BYRNES
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RICHARD O. GANTZ	ROBERT T. PRICE	BONNIE L. THIE
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BRIAN J. BRUNDIN	MARY K. HUGHES	FREDERICK J. OJSEN
*MARCUS R. CLAPP	FRANK A. PFIFFNER	*MICHAEL L. LESSMEIER
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3550 AIRPORT WAY
FAIRBANKS, ALASKA 99701
Telephone (907) 479-3161
Cable Address: DENALI

*Fairbanks Office

Please reply to: ANCHORAGE

October 26, 1981

Mr. Patrick M. Rodey, Chairman
Alaska Senate Judiciary Committee
601 West Fifth, Suite 315
Anchorage, Alaska 99501

Re: Senate Bill No. 473
Relating to Municipal Declarations of Taking

Dear Pat:

I am writing this letter in response to your letter addressed generally to the City Attorney for the City of Valdez, Alaska, dated September 23, 1981, requesting comments on Senate Bill 473.

Senate Bill No. 473 appears to be a very good bill, in that it allows the declaration of taking procedure to be used equally by the state and the municipalities, except for off-street parking where public notice is required. The broadening of the municipal declaration of taking power to make it essentially coextensive with the power of the state makes good sense, and should minimize confusion and disagreement in that area of law.

With respect to declarations of taking, however, there is one other area in the statutes which has caused trouble to the City of Valdez in the past, and consideration should be given to amending it. AS 09.55.450(a) provides that the right of entry on the property shall not be granted to the condemning authority until after the running of the time for the property owner to file an objection to the declaration of taking, or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. This statute should be amended to allow the right of entry immediately upon the filing of the declaration of taking. Often times, declarations of taking are filed because the condemning authority needs immediate entry on the property to begin the construction of the

Mr. Patrick M. Rodey, Chairman
October 26, 1981
Page 2

public project. This would occur more often with municipalities, than with the state, because many municipalities have a philosophy of trying to negotiate a purchase with the property owner, and resorting to condemnation only at the last minute. Under the presently existing statute, the property owner can file a non-meritorious or bad faith objection to the declaration of taking, and can prohibit the condemning authority from entering the property for a period of six weeks or more. This can cause the condemning authority to lose a construction season, pay substantial penalties to the contractor, or make some sort of unwarranted payment to, or agreement with, the property owner. This actually happened to the City of Valdez during the acquisition of the property necessary for the city's new container terminal facility.

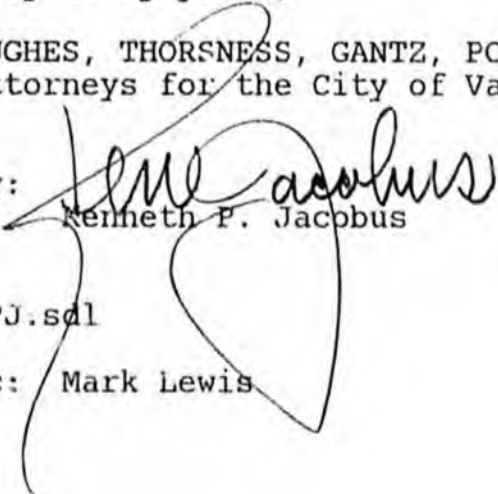
If municipalities and the state resort to the condemnation procedure immediately, substantially in advance of the actual construction of the project, no real problem occurs. If the municipality attempts to negotiate reasonably with the property owner, however, it can and does get into a position where it can be blackmailed by the property owner because the municipality cannot obtain the right of entry onto the property. In order to encourage reasonable negotiations regarding the property acquisition, and yet still protect the right of a municipality to start the construction on its projects, AS 09.55.450(a) should be amended to allow the right of entry to be granted to the condemning authority immediately upon its filing of the declaration of taking.

Thank you very much for your consideration of this suggestion.

Very truly yours,

HUGHES, THORSNESS, GANTZ, POWELL & BRUNDIN
Attorneys for the City of Valdez

By:


Kenneth P. Jacobus

KPJ:sdl

cc: Mark Lewis



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

601 West Fifth, Suite 315
Anchorage, Alaska 99501
274-1042

Pouch V
State Capitol
Juneau, Alaska 99811

RECEIVED

SEP 30 1981

BURTON C. BISS, INC.

September 23, 1981

Mr. Burton Biss
City Attorney
P.O. Box 1368
Palmer, Alaska 99645

Dear Mr. Biss:

As you may be aware, the Senate Rules Committee has introduced SB473, "An Act relating to municipal powers; and providing for an effective date." The bill is currently in the Senate Judiciary Committee for consideration.

I would appreciate your reviewing the attached legislation for comments and suggestions. If you would be interested in offering testimony on the bill next session, please indicate so in your reply and I will arrange for a tele-conference hearing.

Thank you in advance for your cooperation and assistance.

Sincerely,

Patrick M. Rodey
Patrick M. Rodey
Chairman

PMR/ds

Sept 30 '81

Dear Senator,

We have no objection to the proposed bill. Thank you.

Yours,

Benjamin D. ...

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
937-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 23, 1981

SUBJECT: Urban renewal and redevelopment projects of
municipalities (Work Order Number 1576)

TO: Senator Tim Kelly
Chairman, Senate Rules Committee

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

You have asked for a section-by-section analysis of SB 473.

Sec. 1 amends AS 09.55.240, listing the uses for which the right of eminent domain may be exercised. A new use is added to allow a municipality which has the power to provide for urban renewal and development to exercise the right of eminent domain in order to carry out urban renewal and development projects. Under AS 29.73.020, a home rule or general law municipality may exercise the powers of eminent domain in the performance of an authorized power or function of the municipality. The power must be exercised in accordance with AS 09.55.250 - 09.55.460, but the list of uses for which the power of eminent domain may be exercised contained in AS 09.55.240 is not included as a limitation on the exercise of eminent domain by a municipality. The amendment contained in Sec. 1 of this bill is probably not necessary since a municipality with the power to provide for urban renewal and development may, under AS 29.73.020, exercise the power of eminent domain in to carry out those projects.

Sec. 2 provides that the Slum Clearance and Redevelopment Act may not be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects. In view of the specific grant of authority contained in Title 29 which permits municipalities to adopt building codes, engage in planning and zoning, and allows home rule municipalities to exercise any power not prohibited by law, the Slum Clearance and

Senator Tim Ke...
Page 2
April 23, 1981

Redevelopment Act is not likely to be construed to limit the authority of a municipality to undertake or participate in other urban renewal and urban development projects in the absence of this provision.

Sec. 3 of the bill provides for an immediate effective date.

TBC:ljb

Best Commission
Provisions should TITLE 29
be in

Little for tax burden, special utility taxation
NO BENEFIT TO OWNER,

Lee S. Ward:

THE STANDARD FOR EMANATING FROM IS THE GREATEST PUBLIC ~~GOOD~~ ^{BENEFIT}
WITH THE LEAST PERSONAL HARM.