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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99611

SUMMARY SB 281:

Amends the Small Loans Act, and relates to open-ended loans and the maximum rate of interest permitted. The interest may not exceed the greater of $1\frac{1}{2}\%$ ^(18%) per month, or 8% points above the Federal Reserve Discount Rate on 90 day commercial paper charged to banks for advances by the 12th Fed. Res District.

A judgement, after the declaration of taking, shall include lawful interest on the amount finally awarded 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 judgement.

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

Attorneys at Law

JOHN C. HUGHES	CARL J. D. BAUMAN	TIMOTHY R. SYRNES
DAVID H. THORSNESS	FRED B. ARVIDSON	JAMES M. SEEDORF
RICHARD O. GANTZ	ROBERT T. PRICE	BONNIE L. THIE
JAMES M. POWELL	DENNIS M. BUMP	PAUL J. ERICKSON
BRIAN J. BRUNDIN	MARY K. HUGHES	GARY G. FOSTER
MARCUS R. CLAPP	FRANK A. PFIFFNER	FREDERICK J. ODSEN
KENNETH P. JACOBUS	RALPH R. BEISTLINE	MICHAEL L. LESSMEIER
GARY W. GANTZ	GORDON J. TANS	STEVEN S. TERVOOREN
JERRY E. MELCHER	R. CRAIG HESSER	GARY L. MARSHALL
JOE H. HUDDLESTON	ROBERT L. MANLEY	MATTHEW K. PETERSON
SIGURD E. MURPHY	DORIS R. EHRENS	JOSEPH R. D. LOESCHER
RICHARD D. THALER	JAMES M. GORSKI	RONALD E. NOEL
		JAMES F. KLASCN

509 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501
Telephone (907) 274-7322
Cable Address: DENALI
Telecopier: 274-7323
Telex: 090-26376

3550 AIRPORT WAY
FAIRBANKS, ALASKA 99701
Telephone (907) 479-3461
Cable Address: DENALI

*Fairbanks Office

February 6, 1981

Please reply to: ANCHORAGE

Senator Patrick Rodey
Pouch V
Juneau, AK 99811

RE: Senate Bill No. 19

Dear Senator Rodey:

I would like to take this opportunity to offer some suggestions for amendments to Senate Bill No. 19, "An act relating to the legal rate of interest; and providing for an effective date," introduced January 13, 1981 under your sponsorship and presently referred to the Senate Labor and Commerce Committee.

Due to apparent oversight by the legislature in prior sessions, an inequitable anachronism has been carried forward in the statutes of Alaska. AS 09.55.440(a) provides that the rate of judgment interest awarded under a declaration of taking proceeding will equal six per cent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. This provision was enacted in 1962, and has never been amended (ch. 101, § 13.21, SLA 1962).

By way of background, a declaration of taking is often used by the State of Alaska in lieu of a complaint for condemnation and the correlative court order for possession. It provides for immediate possession in the State; otherwise the State must await the execution of an order giving it possession. The impact upon Alaskan landowners is the same regardless of whether their land is taken by a declaration of taking or a complaint for condemnation. However, a different rate of interest is paid to the landowner depending upon which method is used by the State. When a complaint seeking condemnation and an order for possession is used,

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interest due the landowner (on amounts not deposited by the State) is governed by AS 09.55.330 which provides that the "lawful" rate of interest (AS 45.45.010) applies. This provision was enacted along with the provision applying to declarations of taking in 1962 (ch. 101, § 13.10, SLA 1962). Accordingly, it can be seen that in 1962 the legislature provided for the payment of interest at the rate of six per cent whether a declaration of taking or complaint seeking condemnation and an order for possession was used. However, in 1976 the statute setting the "lawful" rate of interest in Alaska [AS 45.45.010(a)] was amended to increase the rate of interest from six per cent to eight per cent. However, it would appear that no one has brought to the attention of the legislature the fact that interest under a declaration of taking condemnation remains at six per cent. Subsequent increases in the legal rate of interest have similarly failed to be reflected in AS 09.55.440(a).

It has been my unfortunate experience to witness the inequitable application of the six per cent interest statute to many landowners whose land is taken for public use. Surely, the procedural means by which possession is taken by the State should not dictate the rate of interest to be paid landowners on compensation which is delayed. However, attorneys in the Office of the Attorney General for the State of Alaska, while apparently recognizing the inequity of such differential treatment, are bound by AS 09.55.440(a).

The inequity in treatment was recently noted by the Supreme Court for the State of Alaska in State of Alaska v. Alaska Continental Development Corporation and Alaska General Properties, Inc., No. 2254, December 31, 1980 (emphasis added):

We note the disparity between the interest rate specified in AS 09.55.440(a) and the other statutes mentioned. We also are concerned about the inequity in awarding a higher rate of interest on judgments obtained in one form of eminent domain proceeding than in another, as may result from the current provisions of AS 09.55.440(a) and AS 09.55.330. We strongly urge the legislature to consider amending what appears

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to be a defect in the current statutory scheme. But we decline to repeal by judicial action the clear and unambiguous provision of an enactment of the legislature on the grounds that it must be an oversight.

Although the Alaska Supreme Court's recognition of the doctrine of separation of powers is admirable, landowners in the State of Alaska remain in need of an amendment to bring the rate of interest under a declaration of taking eminent domain proceeding in line with the other interest rate provisions in the Alaska statutes.

Since Senate Bill No. 19 will focus the legislature's attention on interest rate matters, it would seem an amendment or amendments may be attached to the bill which will remedy the inequitable situation described above. I would recommend for your consideration amendments to Senate Bill No. 19 along the following lines:

1. Insert a new Section 3--"AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, 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 lawful interest [AT THE RATE OF SIX PERCENT PER YEAR] on the amount finally awarded 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.

2. Renumber present Section 3 of Senate Bill No. 19 as Section 4.

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I am enclosing for your convenience a copy of the relevant section from State of Alaska v. Alaska Continental Development Corporation and Alaska General Properties, Inc., No. 2254, December 31, 1980, and a version of Senate Bill No. 19 with the suggested amendments. Please feel free to contact me should you have any questions or need for further information with respect to this matter. I thank you for your time and consideration.

Very truly yours,


Steven S. Tervooren

SST/bs

Enclosure

cc: Senator Mulcahy, Chairman
Senate Labor and Commerce Committee

tiff to be just compensation for the property or the interest in it. (§ 13.20 ch 101 SLA 1962)

Cross reference.—See Civ. R. 72-(e)(3).

Where the state has adequate knowledge of separate interests, amounts should be specified for each.

Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, 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 per cent per year on the amount finally awarded 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.

(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess. (§ 13.21 ch 101 SLA 1962)

Cross reference.—See Civ. R. 72-(e)(3).

Condemnation takes estate sought in declaration of taking.—The Alaska declaration of taking statutes are as effective as the federal statutes in effecting the vesting of title in the condemnor or whatever interest in the land it seeks to condemn. If the state undertakes to obtain title to real property in fee simple absolute by the filing of a declaration of taking that is the title which it obtains. 1960 Op. Att'y Gen., No. 15.

Alaska Const., art. I, § 18, necessitates that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. If an award were paid immediately upon the taking of the land by the state no damages to the property owner would ensue. But where, due

to the necessity of lengthy proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Therefore, it is well established that the owner of property is entitled to interest from the date of taking to the date of payment. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

This section provides for interest on the amount awarded which exceeds the amount paid into court under the declaration of taking. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Au-

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§ 06.20.230

BANKS AND FINANCIAL INSTITUTIONS

§ 06.20.250

"A person may" near the beginning of the subsection.
As the rest of the section was not

affected by the amendment, it is not set out.

Sec. 06.20.230. Maximum interest permitted. (a) A licensee may lend any sum of money not exceeding \$25,000 and may charge, contract for, and receive on the loan interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of \$500; two percent a month on the remainder of any unpaid principal balance exceeding \$500 but not exceeding \$1,000; and one percent a month on the remainder of any unpaid principal balance exceeding \$1,000 but not exceeding \$25,000. On loans the principal of which is \$50 or less a licensee may charge, contract and receive interest at a rate not exceeding five percent a month.

(b) Notwithstanding the provisions of (a) of this section, a licensee who makes open-end loans under this chapter or who makes a loan under this chapter exceeding \$5,000 but not exceeding \$25,000 may elect to charge, contract for, and receive interest not to exceed the greater of

(1) one and one-half percent a month; or

(2) eight percentage points above the Federal Reserve discount rate on 90-day commercial paper charged to banks for advances by the 12th Federal Reserve District on the first day of the month before the calendar quarter during which the loan is made.

(c) Interest on loans under (b) of this section shall be computed according to the actuarial method on the entire unpaid principal balance as determined in AS 06.20.285(b). (§ 16(a) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 7 ch 71 SLA 1978; am § 2 ch 84 SLA 1979; am § 3 ch 63 SLA 1980)

Effect of amendments.

The 1979 amendment added subsection (b).

The 1980 amendment, effective June 5, 1980, in subsection (a), substituted "\$25,000" for "\$5,000" twice; in subsection (b), inserted "or who makes a loan under this chapter exceeding \$5,000 but not exceeding \$25,000" and "the greater of", restructured the subsection into the

percent introductory paragraph and paragraphs (1) and (2), added "or" following "a month" in paragraph (1), added the provisions of paragraph (2); designated the provisions beginning "Interest on loans" as subsection (c), added "Interest on loans under (b) of this section shall be", and inserted "entire" preceding "unpaid principal" in subsection (c).

Sec. 06.20.250. Computation and payment of interest. (a) Interest shall not be paid, deducted, or received in advance. Except for open-end loans made under AS 06.20.285, interest shall be computed and paid only on unpaid principal balances and shall not be compounded; however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the loan contract may include any unpaid charges on the prior loan which have accrued within 60 days before the

tiff to be just compensation for the property or the interest in it. (§ 13.20 ch 101 SLA 1962)

Cross reference.— See Civ. R. 72-(e)(3).

Where the state has adequate knowledge of separate interests, amounts should be specified for each.

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(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess. (§ 13.21 ch 101 SLA 1962)

Cross reference.— See Civ. R. 72-(e)(3).

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Alaska Const., art. 1, § 18, necessitates that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. If an award were paid immediately upon the taking of the land by the state no damages to the property owner would ensue. But where, due

to the necessity of legal proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Therefore, it is well established that the owner of property is entitled to interest from the date of taking to the date of payment. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

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FISCAL NOTE

I. REQUEST SB 281
 Bill/Resolution No. SB 281
 Title An Act Relating to interest calculation and state preemption of federal usury statutes
 Requested by Senate Labor and Commerce Committee Date 3/19/81

II. FISCAL DETAIL Department of Commerce & Economic Development
 Agency Affected Department of Commerce & Economic Development
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Financial Institutions
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 3/19/81 PREPARED BY Willis F. Kirkpatrick, Director of Banking
 AGENCY Department of Commerce & Economic Development
 Original: Legislative Finance PHONE 465-2521
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)