

HB

610

Introduced: 2/14/86  
Referred: Community & Regional  
Affairs and Judiciary

1 IN THE HOUSE

BY CLOCKSIN BY REQUEST

2

HOUSE BILL NO. 610

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain of a  
7 home rule municipality."

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

9 \* Section 1. AS 09.55.250 is amended to read:

10 Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE  
11 TAKEN. The following is a classification of the estates and rights in  
12 land subject to be taken for public use:

13 (1) a fee simple, when taken for public buildings or  
14 grounds, or for permanent buildings, for reservoirs and dams and  
15 permanent flooding occasioned by them, or for an outlet for a flow, or  
16 a place for the deposit of debris or tailings of a mine, or when, in  
17 the judgment of the Department of Natural Resources, [OR] the Depart-  
18 ment of Transportation and Public Facilities, or the governing body of  
19 a home rule municipality, a fee simple is necessary for any of the  
20 purposes for which the department, on behalf of the state, or the home  
21 rule municipality is authorized by law to acquire real property by  
22 condemnation;

23 (2) an easement when taken for any other use;

24 (3) the right of entry upon an occupation of land, and the  
25 right to take from the land earth, gravel, stones, trees, and timber  
26 as may be necessary for a public use.

27 \* Sec. 2. AS 29.35.090 is amended by adding new subsections to read:

28 (b) When a part of a parcel of land is taken and the remainder  
29 is in a shape or condition that is of little value to its owner, or

1 gives rise to claims or litigation concerning severance or other  
2 damage, a home rule municipality may acquire the whole parcel and may  
3 sell the remainder or exchange it for other property.

4 (c) When property that is devoted to or held for another public  
5 use for which the power of eminent domain may be exercised is taken by  
6 a home rule municipality for a street, the home rule municipality may,  
7 with the consent of the governmental body in charge of the other  
8 public use, condemn real property that is to be exchanged for the real  
9 property taken. This section does not limit the authority of the home  
10 rule municipality to acquire property for that purpose in a manner  
11 other than by condemnation.

12 (d) When the governing body of a home rule municipality declares  
13 by resolution that it is in the best interest of the home rule munic-  
14 ipality to do so, the home rule municipality may acquire by condem-  
15 nation or otherwise privately or publicly owned land or an interest in  
16 it for the purpose of exchanging it for privately or publicly owned  
17 land that the home rule municipality is authorized by law to acquire.



# STATE OF ALASKA

## DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 14, 1986  
(Corrected)

### POSITION PAPER

RE: HB 610

SPONSOR: Representative Clocksin by request

#### Program Effects of Bill

The bill contains several specific authorizations relating to the eminent domain powers of a home rule municipality. Under the bill, a home rule municipality is authorized to:

1. acquire fee simple title in real property when the governing body so acts;
2. acquire an entire parcel of land when it needs only part of it, and the remainder is of little value to the owner or gives rise to claims or litigation concerning severance or other damage;
3. condemn real property to be exchanged for other real property taken by eminent domain for use as a street, upon approval of the governing body; and
4. acquire, by condemnation or otherwise, privately or publicly owned land or an interest in it, for the purpose of exchanging it for privately or publicly owned land that the home rule municipality is authorized by law to acquire, with the consent of the governing body by resolution.

#### Comments

Title 29 does not now distinguish between classes of municipalities with respect to their authority to exercise eminent domain, except that second class cities may exercise the power only upon voter approval.

HB 610 specifically confers the power of eminent domain to home rule municipalities, without mention of general law municipalities. By this specific granting of powers, it is possible that other municipalities (i.e., general law) could be construed not to have this power. Specific reference should be made to general law municipalities as well, to preserve equity between classes and types of municipalities in their ability to exercise eminent domain.

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HB 610  
April 14, 1986  
Page Two

The bill is being requested by the Municipality of Anchorage, to assist in the city's timely acquisition of property for development under the accelerated road program. The city feels the change in statute is needed to specify and underwrite their authority, and to simplify property acquisition.

The eminent domain authority expressed in Title 9 of Alaska Statutes is evidently antiquated, and would benefit from revision and consolidation of the relevant (i.e., municipal) elements into Title 29. It may be worthwhile to consider the creation of a uniform, comprehensive condemnation act to replace existing statute. However, the Department believes that the private landowner must be assured full protection and be allowed to receive just and fair compensation for land acquired under eminent domain provisions. While the exercise of eminent domain is a vital governmental function, substantial justification for meeting the public interest should be required. The Department is also wary of use of land exchanges as a means to compensate individuals whose land holdings are subject to condemnation and taking.

In short, the eminent domain process is one of government's greatest and most far reaching powers. It needs to be handled with sensitivity and awareness to protect, to the greatest degree possible, the rights and interests of private landowners.

  
\_\_\_\_\_  
Emil Notti, Commissioner

# STATE OF ALASKA

## DEPT. OF COMMUNITY & REGIONAL AFFAIRS

### OFFICE OF THE COMMISSIONER

April 16, 1986

BILL SHEFFIELD, GOVERNOR

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#### POSITION PAPER

RE: CS for HB 610

SPONSOR: House Community and Regional Affairs Committee

#### Program Effects of Bill

The bill contains authorization relating to the eminent domain powers. Specifically the bill permits municipalities fee simple acquisition of property for roads.

#### Comments

The Department does not oppose this legislation and has no comments of a specific nature to make on the legislation.

The original bill was requested by the Municipality of Anchorage, to assist in the city's timely acquisition of property for development under the accelerated road program. The committee substitute should accomplish the same purpose as the original legislation.

Eminent domain authority is contained in Title 9 of Alaska Statutes. It may be worthwhile to consider the creation of a uniform, comprehensive condemnation act to replace existing statute through consolidation of the relevant (i.e., municipal) elements of Title 9 into Title 29. However, the Department believes that the private landowner must be assured full protection and be allowed to receive just and fair compensation for land acquired under eminent domain provisions. While the exercise of eminent domain is a vital governmental function, substantial justification for meeting the public interest should be required.

In short, the eminent domain process is one of government's greatest and most far reaching powers. It needs to be handled with sensitivity and awareness to protect, to the greatest degree possible, the rights and interests of private landowner.

  
Emil Notti, Commissioner

Original sponsor: Clocksin by request

1 IN THE HOUSE

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AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 610 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting a fee simple interest in land to  
7 be taken for roads through eminent domain."

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

9 \* Section 1. AS 09.55.250 is amended to read:

10 Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LAND SUBJECT TO BE  
11 TAKEN. The following is a classification of the estates and rights in  
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16 an outlet for a flow, or a place for the deposit of debris or tailings  
17 of a mine, or when, in the judgment of the Department of Natural  
18 Resources, or the Department of Transportation and Public Facilities,  
19 a fee simple is necessary for any of the purposes for which the  
20 department, on behalf of the state, is authorized by law to acquire  
21 real property by condemnation;

22 (2) an easement when taken for any other use;

23 (3) the right of entry upon an occupation of land, and the  
24 right to take from the land earth, gravel, stones, trees, and timber  
25 as may be necessary for a public use.  
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# REPRESENTATIVE DON CLOCKSIN

## Alaska House of Representatives

MAJORITY LEADER

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### M E M O R A N D U M

TO: Representative Peter Goll                      DATE: April 16, 1986  
Chair  
Community and Regional Affairs  
Committee

FROM: Representative Don Clocksin *DC*                      SUBJECT: CS SSHB 610  
Majority Leader

CS SSHB 610 adds "roads" to the list of projects for which a fee simple interest may be taken in AS 09.55.250(1). Its effect is to allow all condemning authorities to condemn a fee interest for a road project rather than an easement.

Currently AS 19.20.010-.090 as well as AS 09.55.250(1) allow the Department of Transportation and Public Facilities to condemn fee interest for road projects. That is their universal practice. Platting authorities also uniformly require that subdivision roads be dedicated to the public in fee simple. This bill allows condemning authorities to take a fee interest for roads that fall between those two categories -- state roads and subdivisions. This will eventually provide for a greater uniformity of interests of the public in its thoroughfares.

CS SSHB 610 also removes an ambiguity created by the current AS 09.55.250(2) and AS 19.20.010-.090 as to the power of municipalities to condemn a fee interest for roads. Since all roads can be taken in fee, there is no question as to the authority of a municipality to do so.

Taking a fee is not unfair to the landowner on highway projects because he does not lose any substantial interests. Under Alaska Supreme Court law, Fisher v. GVEA, 658 P.2d 127 (Alaska 1983), a road right-of-way easement carries with it the right to place utilities within the easement. Taking a fee interest removes possible areas of dispute over gray-area use of right-of-way easements, i.e., utilities not envisioned as of the date of taking, or other public uses. Thus, although a condemnor has greater certainty of freedom of use when it takes in fee, the landowner has not effectively lost any greater rights due to the dominance of a road easement and its uses over property.

Taking a fee interest also removes any question of whether a taxable interest remains in the land for tax-assessment purposes -- clearly it is unfair to tax a landowner for land under a road even if he remains the fee owner and is technically the owner of the record.

MEMORANDUM

To : Representative Clocksin  
From: Municipality of Anchorage  
Date: April 9, 1986  
Re : SSHB 610

*\*\* Note to the Committee*  
while this memo addresses an earlier form of the bill, it does provide a good statement of the reasons that Municipality of Anchorage wants the option of Taken Fee Simple Estate for Roads. (staff HCR)

You have asked for a technical explanation of the effect of SSHB 610. The following presents a brief explanation of its impacts. Tamara Cook's analysis dated April 7, 1986 is concise and accurate. The Municipality offers the following as rationales for why SSHB 610 should be adopted.

Section 1. Power to Take Fee Simple.

The purpose of the section is to clarify any ambiguities regarding the power of a municipality to condemn property in fee simple for road purposes. Although that power seems to be granted by AS 19.20.010-.090, its omission in AS 09.55.250(1) creates an unfortunate question as to whether the scope of a municipality's power extends this far.

There should be little concern over a municipality's power to condemn a road in fee simple. First, it is fair to the landowner because it removes the landowner from the title chain to the condemned property. Landowners' concerns over premise liability cannot be allayed if only an easement is taken; taking a fee interest removes such a concern. One potential landowner in the

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To : Representative Clocksin  
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Spenard-McRae project has raised this specific concern during settlement discussions. The concern was that he may be sued if an accident occurred on the road above his fee interest.

Taking a fee interest also removes any question of whether a taxable interest remains in the land for tax-assessment purposes -- clearly it is unfair to tax a landowner for land under a road even if he remains the fee owner.

Taking a fee is not unfair to the landowner on highway projects because he does not lose any substantial interests. Under Alaska Supreme Court law, Fisher v. GVEA, 658 P.2d 127 (Alaska 1983), a road right-of-way easement carries with it the right to place utilities within the easement. Taking a fee interest removes possible areas of dispute over gray-area uses of right-of-way easements, i.e., utilities not envisioned as of the date of taking, or other public uses. Thus, although a condemnor has greater certainty of freedom of use when it takes in fee, the landowner has not effectively lost any greater rights due to the dominance of a road easement and its uses over property.

This statute does not allow a condemnor to indiscriminately take an interest greater than needed as the requirements of AS 09.55.430(7) still require a finding of compatibility with the greatest public good and least private injury. Exercise of discretion requires a reasoned discretion -- the courts would not

To : Representative Clocksin  
From: Municipality of Anchorage  
Date: April 9, 1986  
Re : SSHB 610

abide by a taking of a fee interest when lesser interests alone, i.e., drainage or electrical utility easements, fully serve the condemnor's needs.

It is an anomaly that all roads in subdivisions are dedicated in fee simple to the public yet the ambiguity remains in AS 09.55.250 whether roads may be condemned in fee. It is also anomalous having state and municipal roads sitting side by side, each with a different interest taken -- fee for the state and easements for a municipality. SSHB 610 would remove such anomalies.

Cook

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**HOUSE  
COMMITTEE REPORT**

(7)

Date referred: 2/14/86

FURTHER REFERRALS: JUDICIARY

DATE: \_\_\_\_\_

The COMMUNITY AND REGIONAL AFFAIRS Committee has considered HB 610

"An Act relating to the power of eminent domain of a home rule municipality."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mr. J. Greenberg

Peter J. ...

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Roll E. Roll - Do Not Pass

Alvin Kozman - no rec.

F. Kay Wallis - No Rec.

W. A. ... (Furnell)

\_\_\_\_\_

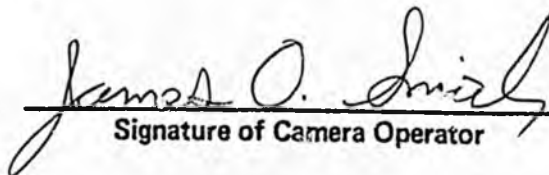
Peter J. ...  
Chairman

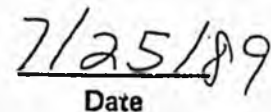


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Date