

COMMITTEE REPORT
SENATE

SB 193
Committee
5/7/85
T. A. [unclear]

FURTHER:

5/7/85

Date _____

Mr. President

The Committee on FINANCE considered SB 193

power of eminent domain; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/11/85

Date 5-7-85

Mr. President

The Committee on JUDICIARY considered SB 193
power of eminent domain; efd.

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

- do pass
- do pass with attached amendment(s) Trsp CS
- replace with/or adopt CS for SB193 (Trsp)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Rich Halford NO REC
Tim Kelly No Rec

[Signature]
 Chairman
DO PASS
 Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY
FINANCE

2/26/85

Date _____

Mr. President

The Committee on TRANSPORTATION considered SB 193
power of eminent domain; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with or adopt CS for SB 193 (TRANSP)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]

[Signature]
3 Paul Frick (No Rec)

[Signature]
Chairman
Do Not Pass
Chairman recommendation

Offered: 4/11/85
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE BILL NO. 193 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain; and
7 providing for an effective date."

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

9 * Section 1. AS 09.55.270 is amended by adding a new subsection to
10 read:

11 (b) If the property is to be taken by a declaration of taking
12 filed under AS 09.55.440, the state or the municipality shall prepare
13 a decisional document that (1) states that the property is taken in a
14 manner compatible with the greatest public good and least private
15 injury, (2) summarizes the major facts supporting that decision, and
16 (3) identifies any reports, studies, or statements relied upon for the
17 decision.

18 * Sec. 2. AS 09.55.300(a) is amended to read:

19 (a) The court has power

20 (1) to regulate and determine the place and manner of
21 making the connections and crossings or of enjoying the common uses
22 mentioned in AS 09.55.260(5), and of the occupying of canyons, passes,
23 and defiles for railroad purposes, as permitted and regulated by law;

24 (2) to limit the amount of property sought to be condemned
25 if, in its opinion, the quantity sought to be condemned is not neces-
26 sary;

27 (3) to determine whether the property is taken by necessity
28 for a public use or purpose in a manner compatible with the greatest
29 public good and least private injury, based upon the decisional
30

1 document required by AS 09.55.270 and the evidence allowed by AS 09.-
2 55.460(d), if the taking is accomplished by a declaration of taking
3 filed by the state or a municipality under AS 09.55.440.

4 * Sec. 3. AS 09.55.410 is amended to read:

5 Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The
6 money deposited in the court, or a part of it, may be withdrawn by a
7 party in interest in the manner provided in AS 09.55.440. The [. AND
8 THE] court may [SHALL HAVE THE POWER TO] direct the payment of delin-
9 quent taxes and special assessments out of the amount determined to be
10 just compensation and to make orders with respect to encumbrances,
11 liens, rents, insurance, and other charges as are just and equitable.
12 The withdrawal of any part of the deposit by a party in interest is a
13 waiver of all issues concerning the taking of the property, except the
14 amount of just compensation.

15 * Sec. 4. AS 09.55.430 is amended to read:

16 Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declara-
17 tion of taking must [SHALL] contain

18 (1) a statement of the authority under which the property
19 or an interest in it is taken;

20 (2) a statement of the public use for which the property or
21 an interest in it is taken;

22 (3) a description of the property sufficient for the iden-
23 tification of it;

24 (4) a statement of the estate or interest in the property;

25 (5) a map or plat showing the location of the property;

26 (6) a statement of the amount of money estimated by the
27 plaintiff to be just compensation for the property or the interest in
28 it;

29 (7) a statement that the property is taken by necessity for

1 a project located in a manner which is most compatible with the great-
2 est public good and the least private injury;

3 (8) a decisional document as described in AS 09.55.270(b).

4 * Sec. 5. AS 09.55.440(a) is amended to read:

5 (a) Upon the filing of the declaration of taking, and the depos-
6 it with the court of the amount of the estimated compensation stated
7 in the declaration, title to the estate as specified in the declara-
8 tion vests in the plaintiff, and that property is condemned and taken
9 for [FROM] the use of the plaintiff, and the right to just compensa-
10 tion for it vests in the persons entitled to it. The compensation
11 shall be ascertained and awarded in the proceeding and established by
12 judgment. The judgment must [SHALL] include interest at the lawful
13 interest rate set out in AS 45.45.010(4) [RATE OF SIX PER CENT PER
14 YEAR] on the amount finally awarded which exceeds the amount paid into
15 court under the declaration of taking. The interest runs from the
16 date title vests to the date of payment of the judgment.

17 * Sec. 6. AS 09.55.450(a) is amended to read:

18 (a) Upon the filing of the declaration of taking and the deposit
19 of the estimated compensation, the court may, upon motion, fix the
20 time during which and the terms upon which the parties in possession
21 are required to surrender possession to the petitioner. However, the
22 right of entry may [SHALL] not be granted the plaintiff until after
23 the running of the time for the defendant to file an objection to the
24 declaration of taking or until after the hearing on any objection to
25 the declaration of taking if the objection is filed [MADE] in the time
26 allowed by Rule 72, Rules of Civil Procedure. If an objection to the
27 declaration of taking is filed in the time allowed, a hearing for the
28 review of the taking shall be held as soon as the court calendar
29 allows to establish the validity of any objections. If no objection

1 to the declaration of taking is filed in the time allowed, the defen-
2 dant has waived all defenses and objections, and the plaintiff has a
3 right of entry onto the property without further action by the court.
4 If [LAW. WHERE] the party in possession withdraws any part of the
5 award and remains in possession, the court may fix a reasonable rental
6 for the premises to be paid by that party to the plaintiff during the
7 [SUCH] possession.

8 * Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

9 (c) The taking of property is necessary for a public use or
10 purpose in a manner compatible with the greatest public good or least
11 private injury unless the defendant establishes by a preponderance of
12 the evidence that the plaintiff's decision to condemn is arbitrary,
13 capricious, or an abuse of discretion.

14 (d) The court, when making its finding under this section, shall
15 consider the decisional document prepared by the plaintiff; supporting
16 reports, studies, or statements; sworn affidavits submitted by the
17 parties, their officers, or employees; and depositions taken by the
18 parties. The court, in the exercise of its discretion, may allow the
19 parties to submit additional necessary evidence.

20 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Introduced: 2/26/85
Referred: Transportation, Judiciary
and Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 193

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain; and
7 providing for an effective date."

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

9 * Section 1. AS 09.55.270 is amended by adding a new subsection to
10 read:

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13 a decisional document that (1) states that the property is taken in a
14 manner compatible with the greatest public good and least private
15 injury, (2) summarizes the major facts supporting that decision, and
16 (3) identifies any reports, studies, or statements relied upon for the
17 decision.

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21 making the connections and crossings or of enjoying the common uses
22 mentioned in AS 09.55.260(5), and of the occupying of canyons, passes,
23 and defiles for railroad purposes, as permitted and regulated by law;

24 (2) to limit the amount of property sought to be condemned
25 if, in its opinion, the quantity sought to be condemned is not neces-
26 sary;

27 (3) to determine whether the property is taken by necessity
28 for a public use or purpose in a manner compatible with the greatest
29 public good and least private injury, based upon the decisional
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1 document required by AS 09.55.270 and the evidence allowed by AS 09.-
2 55.460(d), if the taking is accomplished by a declaration of taking
3 filed by the state or a municipality under the provisions of AS 09.-
4 55.440.

5 * Sec. 3. AS 09.55.410 is amended to read:

6 Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The
7 money deposited in the court, or a part of it, may be withdrawn by a
8 party in interest in the manner provided in AS 09.55.440. The[, AND
9 THE] court may [SHALL HAVE THE POWER TO] direct the payment of delin-
10 quent taxes and special assessments out of the amount determined to be
11 just compensation and to make orders with respect to encumbrances,
12 liens, rents, insurance, and other charges as are just and equitable.
13 The withdrawal of any part of the deposit by a party in interest is a
14 waiver of all issues concerning the taking of the property, except the
15 amount of just compensation.

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18 tion of taking must [SHALL] contain

19 (1) a statement of the authority under which the property
20 or an interest in it is taken;

21 (2) a statement of the public use for which the property or
22 an interest in it is taken;

23 (3) a description of the property sufficient for the iden-
24 tification of it;

25 (4) a statement of the estate or interest in the property;

26 (5) a map or plat showing the location of the property;

27 (6) a statement of the amount of money estimated by the
28 plaintiff to be just compensation for the property or the interest in
29 it;

1 (7) a statement that the property is taken by necessity for
2 a project located in a manner which is most compatible with the great-
3 est public good and the least private injury;

4 (8) a decisional document as described in AS 09.55.270(b).

5 * Sec. 5. AS 09.55.440(a) is amended to read:

6 (a) Upon the filing of the declaration of taking, and the depos-
7 it with the court of the amount of the estimated compensation stated
8 in the declaration, title to the estate as specified in the declara-
9 tion vests in the plaintiff, and that property is condemned and taken
10 from the use of the plaintiff, and the right to just compensation for
11 it vests in the persons entitled to it. The compensation must [SHALL]
12 be ascertained and awarded in the proceeding and established by judg-
13 ment. The judgment must [SHALL] include interest at the lawful inter-
14 est rate set out in AS 45.45.010(a) [THE RATE OF SIX PER CENT PER
15 YEAR] on the amount finally awarded which exceeds the amount paid into
16 court under the declaration of taking. The interest runs from the
17 date title vests to the date of payment of the judgment.

18 * Sec. 6. AS 09.55.450(a) is amended to read:

19 (a) Upon the filing of the declaration of taking and the deposit
20 of the estimated compensation, the court may, upon motion, fix the
21 time during which and the terms upon which the parties in possession
22 are required to surrender possession to the petitioner. However, the
23 right of entry may [SHALL] not be granted the plaintiff until after
24 the running of the time for the defendant to file an objection to the
25 declaration of taking or until after the hearing on any objection to
26 the declaration of taking if the objection is filed [MADE] in the time
27 allowed by Rule 72, Rules of Civil Procedure [LAW]. If an objection
28 to the declaration of taking is filed in the time allowed, a hearing
29 for the review of the taking must be held within 30 days after the

1 filing, or as soon after that as possible, to establish the validity
2 of any objections. If no objection to the declaration of taking is
3 filed in the time allowed, the defendant has waived all defenses and
4 objections, and the plaintiff has a right of entry onto the property
5 without further action by the court. If [WHERE] the party in posses-
6 sion withdraws any part of the award and remains in possession, the
7 court may fix a reasonable rental for the premises to be paid by that
8 party to the plaintiff during the [SUCH] possession.

9 * Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

10 (c) The taking of property is necessary for a public use or
11 purpose in a manner compatible with the greatest public good or least
12 private injury unless the defendant establishes by clear and convinc-
13 ing evidence that the plaintiff's decision to condemn is arbitrary,
14 capricious, or an abuse of discretion.

15 (d) The court, when making its finding under this section, shall
16 consider the decisional document prepared by the plaintiff; supporting
17 reports, studies, or statements; affidavits submitted by the parties,
18 their officers, or employees; and depositions taken by the parties.
19 The court, in the exercise of its discretion, may allow the parties to
20 submit additional necessary evidence.

21 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).
23
24
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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 193
Title: _____

FISCAL DETAIL
Agency Affected: Transportation & Public Facilities
Program Category Affected: Capital Projects

Sponsor: Rules Committee
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected:
Right of Way & Land Acquisition

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|-----------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary

Although a dollar amount cannot be identified in this fiscal note, this bill should definitely provide a savings to the State. It will alleviate problems that have developed in regard to eminent domain procedures which have the potential to seriously delay badly needed public work projects. This bill should improve eminent domain procedures without prejudicing property owners' rights.

Prepared By: Milton H. Lentz, Chief, R/W & Land Acq. Phone: 465-2985
Division: Standards & Technical Services/HU Date: 2/13/85

Approved by Commissioner: [Signature] Date: 2/14/85
Agency: Dept. of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ANALYSIS OF FISCAL NOTE

"An Act relating to the power of eminent domain; and providing for an effective date"

This bill recognizes recent development in the law and contains provisions that should streamline eminent domain procedures without prejudicing property owner's rights.

First, this would require the court to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the Superior Court to deal expeditiously with hearings on objections to the authority and necessity for the taking.

This bill would amend AS 09-55-410 by clearly stating that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues except the amount of just compensation. This would require the property owner early on to make a choice between attempting to stop the project or only litigating the issue of compensation. This bill would also raise the statutory interest allowed under the declaration of taking procedure to the lawful interest rate.

This bill would clearly state that if a defendant does not make his objections in a timely manner, he has waived his objection and defense to the taking.

It is concluded that legislation that leaves a property owner's substantive rights intact, but that changes the procedural aspects of the litigation to a more effective and timely manner so that capital projects are not delayed is in the best interest of the public.

Although a dollar amount cannot be identified, this bill should provide a savings to the State, since it will alleviate problems that have developed in regard to eminent domain procedure which have the potential to seriously delay badly needed public work project.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

06-193

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the exercise of the power of eminent domain under AS 09.55.240 -- 09.55.460. This bill recognizes recent developments in the law and contains provisions that should streamline eminent domain procedures without prejudicing landowners' rights. The result will alleviate delays that public works projects can experience. The public is well served by the amendments because it will get the use of its public works projects sooner and at lower public expense.

Section 1 of the bill amends AS 09.55.270 by requiring the condemning authority, before the taking of real property by a "declaration of taking," to prepare a decisional document summarizing the decision. Section 4 amends AS 09.55.430 by requiring that the decisional document be part of the declaration of taking. These two amendments codify and implement the holding in Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715 (Alaska 1984).

Section 2 amends AS 09.55.300(a) by clearly specifying the power of the superior court when considering the requirement that a taking be made in a manner compatible with the greatest public good and least private injury. The court is to make its analysis based upon a review of the decisional document required by sec. 1 and on appropriate evidence as set out in sec. 7 of the bill.

Section 3 amends AS 09.55.410 by clearly stating the proposition that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues, except the amount of just compensation. This amendment codifies existing practice. We believe that it is reasonable because it requires the property owner early

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on to make a choice between attempting to stop the project or only litigating the issue of compensation.

Section 5 amends AS 09.55.440(a) by raising the statutory interest allowed under the declaration-of-taking procedure to the lawful interest rate. Under AS 45.45.010, that interest rate is currently 10.5 percent. Under the existing language of AS 09.55.440(a), a property owner is entitled to interest at the rate of six percent on the amount finally awarded that is in excess of the initial deposit. This interest rate was found unconstitutional in City of Valdez v. 18.99 Acres, 686 P.2d 682 (Alaska 1984), where the court held that condemning authorities are required to pay lawful interest.

Section 6 provides a number of amendments to AS 09.55.450(a) that will streamline the procedure in the superior court. First, the court is required to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the superior court to deal expeditiously with hearings on objections to the authority and necessity for the taking. When combined with the changed nature of that hearing under the amendments contained in sec. 7, the scheduling of a hearing on any objections to the declaration of taking should be greatly expedited.

Section 6 also contains amendments that clearly state that if a defendant does not make his objections in a timely fashion, he has waived his objections and defenses to the taking. This amendment parallels the existing law found in Civil Rule 72(e)(4). We believe that the amendment is necessary to avoid situations such as those that arose in Stewart v. State, Op. No. 2895 (Alaska, December 28, 1984).

In that case, the state filed its declaration of taking, and the property owners filed no objection to the taking. The project went out to bid and the contract was awarded. Six months after the action was filed and two months after the award of the contract, the property owners entered an objection to the taking and the superior court allowed the objections. Rather than litigate the propriety of the taking, the state dismissed its declaration of taking and redesigned its project. This resulted in higher construction costs. Section 6's amendment, absent extraordinary circumstances that the superior court may in the interest

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of justice address, is not prejudicial to a defendant's rights; it places him in no worse position than any other civil litigant; i.e., objections or defenses that are not made are waived.

Section 7 contains amendments that are a departure from the existing law and practice. Existing AS 09.55.460 requires an analysis by the superior court to determine whether the taking was accomplished in a manner compatible with the greatest public good and least private injury. If the court finds that the taking was not made in that manner, the state is divested of the title it has acquired with its declaration of taking. The difficulty with the current statute is that no procedural standards are given for the analysis, and no burden of proof is assigned to the parties. The result, in practice, of this lack of clarity in the statute has been generally to assign to the defendant the burden of proof that the taking was not made in a manner compatible with the greatest public good and least private injury, and a "mini-trial" was necessary for the taking of the parties' evidence.

Court calendars are quite crowded and, when coupled with the "mini-trial" practice, the effect has been to delay the hearing until a significant block of the court's calendar can be set aside. One recent Supreme Court case, Ship Creek Hydraulic Syndicate v. State, cited above, produced a hearing in the trial court which lasted nearly five days, during which expert testimony was presented by both sides. While the trial court did ultimately confirm the taking, time that could have been devoted to the project was lost. It should also be noted that the requirement for a decisional document, which is set out in sec. 1, is a product of this case.

The language proposed in AS 09.55.460(c) assigns the burden to the defendant to prove by clear and convincing evidence that the decision to condemn was arbitrary, capricious, or an abuse of discretion. We believe that this language is a codification of the holdings in State v. 0.644 Acres, 613 P.2d 829 (Alaska 1980) and State v. 2.072 Acres, 652 P.2d 465 (Alaska 1982), and only represents a departure from existing statutory language in that the appropriate review standards are clearly and succinctly stated.

The language proposed in AS 09.55.450(d) is a departure from existing practice, but, when combined with the amendments regarding decisional documents, should streamline the procedure in the superior court without prejudicing

Ab 193

the property owners' rights. Under this language, the superior court will consider the decisional document, any supporting reports, studies, or statements relied upon in reaching the decision to condemn, and any affidavits the parties might submit, as well as depositions taken by the parties. There is no provision for the taking of evidence by the court except in situations in which the court allows the presentation of additional evidence. This proposed language provides for a review process by the superior court which is analogous to the function it serves when reviewing decisions of the district court and administrative agencies under AS 22.15.240 and Appellate Rule 609.

Under the cited statute and rule, the superior court reviews cases involving significant liberty and property interests that have been adjudicated by the district court and a variety of administrative agencies. These appeals are all upon the record without the taking of additional evidence, except as provided by statute and rule in extraordinary circumstances.

There are significant differences between the record in an appeal from the district court or an administrative agency and the decisional document envisioned in sec. 1 of this bill. The most important is that the aggrieved party will have presented his case before the matter is in the superior court. We believe that allowing the parties to submit affidavits and depositions in response to, or to support objections to, the taking is a reasonable substitute. We reach this conclusion because of the extensive nature of the background analysis that is performed in the course of developing a public works project. Typically, location and design studies and, in many instances, environmental impact studies are prepared. An additional component of the planning and design of a public works project is a public hearing process during which comments are solicited from the public. Furthermore, AS 35.30.010 requires approval by local planning and zoning commissions. An analogous approval is required under AS 09.55.275 for any replatting which is necessary to accommodate the project. By the time an eminent domain action is filed, the project is a well-known entity and well defined, and has been the subject of local political decisions and adjudication procedures under AS 35.30.010 and AS 09.55.275.

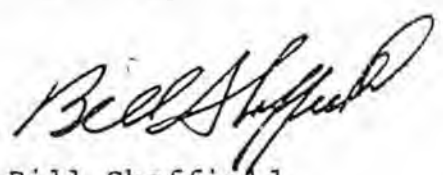
With this extensive administrative background, we believe that augmenting the evidence before the court with depositions and affidavits provides the superior court an adequate basis to review the appropriateness of the taking.

Rb 193

Under the amendments in this bill, the superior court has the discretion to allow the presentation of additional evidence as it does in its appellate jurisdiction.

I urge your favorable action on this measure, so that our eminent domain code accurately reflects the law, and so that the public's business is handled in an expeditious and fair manner for all concerned.

Sincerely,



Bill Sheffield
Governor

ALASKA STATE LEGISLATURE

14TH Legislature FINN Session

SENATE BILL NO. 103

By THE FINN COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act relating to the power of eminent domain; and providing for an effective date."

Introduced in the Senate 2/26, 1985

HISTORY IN THE SENATE

1985

Read first time and referred to Committee on

2 26

TRSP, JUDICIARY AND FINANCE

4 11

Reported back with recommendation that *replace w/cs (Trsp) new title, 1 do pass 2 do not pass, 1 no rec to Jud. Trs: 3 do pass 2 do not pass*

5 7

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

Gov. letter
Zero F-note w/analysis

Offered: 4/11/85
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE BILL NO. 193 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the power of eminent domain; and
7 providing for an effective date."

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

9 * Section 1. AS 09.55.270 is amended by adding a new subsection to
10 read:

11 (b) If the property is to be taken by a declaration of taking
12 filed under AS 09.55.440, the state or the municipality shall prepare
13 a decisional document that (1) states that the property is taken in a
14 manner compatible with the greatest public good and least private
15 injury, (2) summarizes the major facts supporting that decision, and
16 (3) identifies any reports, studies, or statements relied upon for the
17 decision.

18 * Sec. 2. AS 09.55.300(a) is amended to read:

19 (a) The court has power

20 (1) to regulate and determine the place and manner of
21 making the connections and crossings or of enjoying the common uses
22 mentioned in AS 09.55.260(5), and of the occupying of canyons, passes,
23 and defiles for railroad purposes, as permitted and regulated by law;

24 (2) to limit the amount of property sought to be condemned
25 if, in its opinion, the quantity sought to be condemned is not neces-
26 sary;

27 (3) to determine whether the property is taken by necessity
28 for a public use or purpose in a manner compatible with the greatest
29 public good and least private injury, based upon the decisional

1 document required by AS 09.55.270 and the evidence allowed by AS 09.-
2 55.460(d), if the taking is accomplished by a declaration of taking
3 filed by the state or a municipality under AS 09.55.440.

4 * Sec. 3. AS 09.55.410 is amended to read:

5 Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The
6 money deposited in the court, or a part of it, may be withdrawn by a
7 party in interest in the manner provided in AS 09.55.440. The [, AND
8 THE] court may [SHALL HAVE THE POWER TO] direct the payment of delin-
9 quent taxes and special assessments out of the amount determined to be
10 just compensation and to make orders with respect to encumbrances,
11 liens, rents, insurance, and other charges as are just and equitable.
12 The withdrawal of any part of the deposit by a party in interest is a
13 waiver of all issues concerning the taking of the property, except the
14 amount of just compensation.

15 * Sec. 4. AS 09.55.430 is amended to read:

16 Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declara-
17 tion of taking must [SHALL] contain

18 (1) a statement of the authority under which the property
19 or an interest in it is taken;

20 (2) a statement of the public use for which the property or
21 an interest in it is taken;

22 (3) a description of the property sufficient for the iden-
23 tification of it;

24 (4) a statement of the estate or interest in the property;

25 (5) a map or plat showing the location of the property;

26 (6) a statement of the amount of money estimated by the
27 plaintiff to be just compensation for the property or the interest in
28 it;

29 (7) a statement that the property is taken by necessity for

1 a project located in a manner which is most compatible with the great-
2 est public good and the least private injury;

3 (8) a decisional document as described in AS 09.55.270(b).

4 * Sec. 5. AS 09.55.440(a) is amended to read:

5 (a) Upon the filing of the declaration of taking, and the depos-
6 it with the court of the amount of the estimated compensation stated
7 in the declaration, title to the estate as specified in the declara-
8 tion vests in the plaintiff, and that property is condemned and taken
9 for [FROM] the use of the plaintiff, and the right to just compensa-
10 tion for it vests in the persons entitled to it. The compensation
11 shall be ascertained and awarded in the proceeding and established by
12 judgment. The judgment must [SHALL] include interest at the lawful
13 interest rate set out in AS 45.45.010(a) [RATE OF SIX PER CENT PER
14 YEAR] on the amount finally awarded which exceeds the amount paid into
15 court under the declaration of taking. The interest runs from the
16 date title vests to the date of payment of the judgment.

17 * Sec. 6. AS 09.55.450(a) is amended to read:

18 (a) Upon the filing of the declaration of taking and the deposit
19 of the estimated compensation, the court may, upon motion, fix the
20 time during which and the terms upon which the parties in possession
21 are required to surrender possession to the petitioner. However, the
22 right of entry may [SHALL] not be granted the plaintiff until after
23 the running of the time for the defendant to file an objection to the
24 declaration of taking or until after the hearing on any objection to
25 the declaration of taking if the objection is filed [MADE] in the time
26 allowed by Rule 72, Rules of Civil Procedure. If an objection to the
27 declaration of taking is filed in the time allowed, a hearing for the
28 review of the taking shall be held as soon as the court calendar
29 allows to establish the validity of any objections. If no objection

1 to the declaration of taking is filed in the time allowed, the defen-
2 dant has waived all defenses and objections, and the plaintiff has a
3 right of entry onto the property without further action by the court.

4 If [LAW. WHERE] the party in possession withdraws any part of the
5 award and remains in possession, the court may fix a reasonable rental
6 for the premises to be paid by that party to the plaintiff during the
7 [SUCH] possession.

8 * Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

9 (c) The taking of property is necessary for a public use or
10 purpose in a manner compatible with the greatest public good or least
11 private injury unless the defendant establishes by a preponderance of
12 the evidence that the plaintiff's decision to condemn is arbitrary,
13 capricious, or an abuse of discretion.

14 (d) The court, when making its finding under this section, shall
15 consider the decisional document prepared by the plaintiff; supporting
16 reports, studies, or statements; sworn affidavits submitted by the
17 parties, their officers, or employees; and depositions taken by the
18 parties. The court, in the exercise of its discretion, may allow the
19 parties to submit additional necessary evidence.

20 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Introduced: 2/26/85
Referred: Transportation, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 193

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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7 providing for an effective date."

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14 manner compatible with the greatest public good and least private
15 injury, (2) summarizes the major facts supporting that decision, and
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25 if, in its opinion, the quantity sought to be condemned is not neces-
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24 tification of it;

25 (4) a statement of the estate or interest in the property;

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28 plaintiff to be just compensation for the property or the interest in
29 it;

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2 a project located in a manner which is most compatible with the great-
3 est public good and the least private injury;

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10 from the use of the plaintiff, and the right to just compensation for
11 it vests in the persons entitled to it. The compensation must [SHALL]
12 be ascertained and awarded in the proceeding and established by judg-
13 ment. The judgment must [SHALL] include interest at the lawful inter-
14 est rate set out in AS 45.45.010(a) [THE RATE OF SIX PER CENT PER
15 YEAR] on the amount finally awarded which exceeds the amount paid into
16 court under the declaration of taking. The interest runs from the
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22 are required to surrender possession to the petitioner. However, the
23 right of entry may [SHALL] not be granted the plaintiff until after
24 the running of the time for the defendant to file an objection to the
25 declaration of taking or until after the hearing on any objection to
26 the declaration of taking if the objection is filed [MADE] in the time
27 allowed by Rule 72, Rules of Civil Procedure [LAW]. If an objection
28 to the declaration of taking is filed in the time allowed, a hearing
29 for the review of the taking must be held within 30 days after the

1 filing, or as soon after that as possible, to establish the validity
2 of any objections. If no objection to the declaration of taking is
3 filed in the time allowed, the defendant has waived all defenses and
4 objections, and the plaintiff has a right of entry onto the property
5 without further action by the court. If [WHERE] the party in posses-
6 sion withdraws any part of the award and remains in possession, the
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8 party to the plaintiff during the [SUCH] possession.

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13 ing evidence that the plaintiff's decision to condemn is arbitrary,
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16 consider the decisional document prepared by the plaintiff; supporting
17 reports, studies, or statements; affidavits submitted by the parties,
18 their officers, or employees; and depositions taken by the parties.
19 The court, in the exercise of its discretion, may allow the parties to
20 submit additional necessary evidence.

21 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. AS Senate Bill 193
 Title: An Act relating to the power of Eminent Domain
 Sponsor: Rules/Governor
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: DOT&PF
 BRU: Engineering & Operations Standards
 Components: Right of Way & Land Acquisition

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -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- |

ANALYSIS : Attach a separate page if necessary

Although the fiscal impact of this bill on State agencies cannot be identified, this bill should provide a savings to the State. The intent of this bill is to improve eminent domain procedures without prejudicing property owners' rights.

Prepared by: Milton H. Lentz
 Division: Engineering & Operations Standards

Phone: 465-2985
 Date: December 4, 1985

Approved by Commissioner: _____
 Agency: Transportation & Public Facilities

Date: 12/31/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS OF FISCAL NOTE

"An Act relating to the power of eminent domain; and providing for an effective date"

This bill recognizes recent development in the law and contains provisions that should streamline eminent domain procedures without prejudicing property owner's rights.

First, this would require the court to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the Superior Court to deal expeditiously with hearings on objections to the authority and necessity for the taking.

This bill would amend AS 09-55-410 by clearly stating that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues except the amount of just compensation. This would require the property owner early on to make a choice between attempting to stop the project or only litigating the issue of compensation. This bill would also raise the statutory interest allowed under the declaration of taking procedure to the lawful interest rate.

This bill would clearly state that if a defendant does not make his objections in a timely manner, he has waived his objection and defense to the taking.

It is concluded that legislation that leaves a property owner's substantive rights intact, but that changes the procedural aspects of the litigation to a more effective and timely manner so that capital projects are not delayed is in the best interest of the public.

Although a dollar amount cannot be identified, this bill should provide a savings to the State, since it will alleviate problems that have developed in regard to eminent domain procedure which have the potential to seriously delay badly needed public work project.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 193
 Title: _____

FISCAL DETAIL

Agency Affected: Transportation & Public Facilities
 Program Category Affected: Capital Projects

Sponsor: Rules Committee

Requestor: _____

Date of Request: _____

BRU, Program or Subprogram(s) Affected:

Right of Way & Land Acquisition

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|-----------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary

Although a dollar amount cannot be identified in this fiscal note, this bill should definitely provide a savings to the State. It will alleviate problems that have developed in regard to eminent domain procedures which have the potential to seriously delay badly needed public work projects. This bill should improve eminent domain procedures without prejudicing property owners' rights.

Prepared By: Milton H. Lentz, Chief, R/W & Land Acq. Phone: 465-2985
 Division: Standards & Technical Services/HU Date: 2/13/85

Approved by Commissioner:  Date: 2/14/85
 Agency: Dept. of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impaired Agency(ies)

7/1/84

ANALYSIS OF FISCAL NOTE

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Although a dollar amount cannot be identified, this bill should provide a savings to the State, since it will alleviate problems that have developed in regard to eminent domain procedure which have the potential to seriously delay badly needed public work project.

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

4/11/85

Date 5-7-85

Mr. President

The Committee on JUDICIARY considered SB 193
power of eminent domain; efd.

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

- do pass
- do pass with attached amendment(s) TRSP CS
- replace with/or adopt CS for SB193 (TRSP)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

John Ficks
3 copies
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Rick Hatford NO REC
Tim Kelly No Rec

[Signature]
 Chairman
AD PASS
 Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY
FINANCE

2/26/85

Date _____

Mr. President

The Committee on TRANSPORTATION considered SB 193
power of eminent domain; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with or adopt CS for SB 193 (TRANSP)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Paul Joseph

MEMBERS HAVING
OTHER RECOMMENDATIONS

1. [Signature] do not pass
2. Paul Frick (No Rec)

[Signature]
Chairman
DO NOT PASS
Chairman recommendation