

SB

275

**DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

OFFICE OF THE COMMISSIONER

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December 13, 1993

Senator Bert M. Sharp
119 N. Cushman Street, Suite 201
Fairbanks, AK 99701-2879

Representative Richard Foster
P.O. Box 1630
Nome, AK 99762-1630

Dear Senator Sharp and Representative Foster:

Enclosed are three proposed pieces of legislation which I would appreciate being introduced through the Transportation Committees in the next session:

AS 43.40.010

The increase in aviation fuel tax in the amount of \$.007/gallon is the result of the Legislative request to not assess landing fees on rural airports.

See the Legislative intent language contained in the DOT&PF FY'94 operating budget.

AS 38.05.030

This amendment simply makes airport property disposal consistent with highway property disposal. This is a housekeeping measure which should have been handled when DOT&PF was created -- it wasn't.

All property and right-of-ways are handled in one DOT&PF section and this housekeeping measure makes the operations consistent.

AS 19.05.040

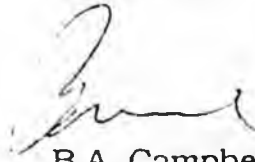
This minor addition to the statutes allows DOT&PF to enter property to determine if hazardous substances exist. This change is needed because DOT&PF has purchased property for right-of-way purposes only to find out that it is contaminated and the cost of cleanup exceeded the cost of moving the facility to avoid the contaminated area had that fact been known.

DOT&PF with this change would be able to know, in advance of purchase, if property is contaminated.

There are two or three more items that are in the mill that will be transmitted later.

Please let me know if you have any questions or I can provide more data.

Sincerely,

A handwritten signature in dark ink, appearing to read "B.A. Campbell", is written over a light-colored rectangular stamp or watermark.

B.A. Campbell
Commissioner

Enclosures

specific "agency" that decision, not the more ncy. Union Oil Co. v. tural Resources, 526 1974).

Administrative code ion as "reconsider- ough the administra- refer to the commis- etition for reconsider- irector, division of n application for dis- ation, as "reconsider- rocess is that of the y paragraph (b)(3). ate Dept of Natural 1357 (Alaska 1974). "reconsideration" "review" and "recon- d sense refer to a re- or a course of proceed- y used in the context djudication. "review" ion of a case by one y which initially de- sideration" implies a possibly a different the entity which ini- ion Oil Co. v. State rces, 526 P.2d 1357

able as to review. m Corp. v. Shell Oil Alaska 1969), estab- f seeking judicial re- lands decision with- ner remedies within Natural Resources. bit the pursuit of fur- n the department, s exist pursuant to d promulgated reg- section and former on Oil Co. v. State rces, 526 P.2d 1357

s in which one may es of either seeking y from a decision of r seeking review by then invoking judi- Co. v. State Dep't of 6 P.2d 1357 (Alaska

Sec. 38.05.025. Continuing regulations, agreements, etc. All rules, regulations, procedures, funds, contracts and agreements established or entered into by the Department of Lands before May 2, 1959, under the authority of ch. 126, SLA 1953, as amended, and ch. 184, SLA 1957, are continued, and are subject to amendment by the commissioner except where inconsistent with this chapter. (§ 2 art XIII ch 169 SLA 1959)

Sec. 38.05.027. Cooperative resource management or development agreements. (a) Consistent with the authority of the commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

(b) A summary of agreements entered into under this section shall be submitted to the legislature within 30 days of the beginning of each regular session. (§ 2 ch 143 SLA 1976)

Cross references. — For legislative intent, see § 1, ch. 143, SLA 1976 in the Temporary and Special Acts."

Sec. 38.05.030. Exceptions. (a) *[Repealed, § 88 ch 152 SLA 1984.]*

(b) The provisions of this chapter do not apply to any power, duty or authority now or in the future granted to the Department of Transportation and Public Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property. Land assigned by the division of lands to the Department of Transportation and Public Facilities shall be returned to the management of the division of lands when it is no longer needed for the purposes assigned.

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease, disposal, or exchange to the commissioner within three months after the date that they make the acquisition, lease, disposal, or exchange.

(d) Real property acquired by and under the management of the agencies referred to in (b) of this section that is no longer needed for its intended use shall be transferred to the commissioner, except that the Department of Transportation and Public Facilities may dispose of real property acquired by it under AS 19.05.040(2) and 19.05.080 — 19.05.120.

Sec. 02.15.060. Establishment, operation and maintenance. The department may plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities within the state. (§ 5 A ch 123 SLA 1949; am § 2 ch 68 SLA 1955)

NOTES TO DECISIONS

Applied in *Clark v. State*, Ct. App. Op. No. 716 (File No. A-1840), 738 P.2d 765 (1987).

Collateral references. — 8 Am. Jur. 2d, Aviation, §§ 17-19, 55 et seq.
2A C.J.S., Aeronautics and Aerospace, § 57 et seq.
Power to establish or maintain public airport, or to create separate airport au-
thority. 161 ALR 733.
Airport operations or flight of aircraft as nuisance. 79 ALR3d 253.
Airport operations liability insurance. 92 ALR3d 1267.

Sec. 02.15.070. Acquisition and disposal of property. (a) For the purposes specified in AS 02.15.060 the department may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire real or personal property, or any interest in the property including easements in airport hazards or land outside the boundaries of an airport or airport site, necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards. The department may acquire existing airports and air navigation facilities in the same manner except it may not acquire or take over an airport or air navigation facility owned or controlled by a municipality or person without the consent of the municipality or person.

(b) The department may, by sale, lease, or otherwise, dispose of all, a portion of, or an interest in a property, airport, or air navigation facility described in (a) of this section. The proceeds of any disposition shall be used for the purposes set out in this chapter. (§ 5 A, B ch 123 SLA 1949; am § 2 ch 68 SLA 1955)

Collateral references. — 8 Am. Jur. 2d, Aviation, §§ 9-19, 62, 67.
2A C.J.S., Aeronautics and Aerospace, §§ 61, 65-67.
Exercise of eminent domain for purposes of airport. 135 ALR 755.
Plotting or planning in anticipation of improvement as taking or damaging of property affected. 37 ALR3d 127.
Zoning regulations limiting use of prop-
erty near airport as taking of property. 18 ALR4th 542.
Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR4th 863.
Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR4th 674.

State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

The duty to maintain a highway safe for travel includes not only a duty to maintain the surface of the highway in a condition reasonably safe for travel, but also a duty of warning the travelling public of any other condition which endangers travel, whether caused by a force of nature, such as snow or ice, or by the act of third persons, such as a ditch dug in the sidewalk or roadway or an obstruction placed upon it. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Liability of state for negligent winter highway maintenance. — See State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Once the basic decision to maintain the highway in a safe condition throughout the winter is reached, the state should not be given discretion to do so negligently. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

In some circumstances the state will be held liable for dangerous highway conditions caused by ice and snow accumulation. State v. Abbott, Sup. Ct. Op. No. 804

(File Nos. 1463, 1467), 498 P.2d 712 (1972).

To impose a lesser standard of care upon the state for highway maintenance would substantially diminish the risk-spreading effects of AS 09.50.250 and seriously undermine the sound policy consideration upon which it is based. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

In making a determination of negligence by the state in maintaining highways, all of the following factors would be relevant: Whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highway, the availability of men and equipment, and the amount of traffic on the highway. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

To impose liability on the state for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the state. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Cited in State v. Alyeska Pipeline Serv. Co., Sup. Ct. Op. No. 3092 (File No. S-986), 723 P.2d 76 (1986).

Sec. 19.05.040. Powers of department. The department may

- (1) acquire property;
- (2) exercise the power of eminent domain;
- (3) take immediate possession of real property, or any interest in it under a declaration of taking or by other lawful means;
- (4) acquire rights-of-way for present or future use;
- (5) control access to highways;
- (6) regulate roadside development;
- (7) preserve and maintain the scenic beauty along state highways;
- (8) dispose of property acquired for highway purposes;
- (9) accept and dispose of federal funds or property available for highway construction, maintenance, or equipment;
- (10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision, or with a foreign government, if the contract is approved by the federal government;
- (11) establish, levy, and collect tolls, fees, charges, and rentals for the use of state roads, highways, bridges, tunnels, crossings, and causeways; and
- (12) exercise any other power necessary to carry out the purpose of AS 19.05 — AS 19.25. (§ 2 art III title I ch 152 SLA 1957; am § 3 ch 35 SLA 1971; am § 2 ch 162 SLA 1984; am § 1 ch 165 SLA 1988)

§ 19.05.070

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§ 19.05.080

HIGHWAYS AND FERRIES

§ 19.05.080

Sec. 19.05.080. Acquisition of land, rights-of-way, and materials by purchase or eminent domain. The department on behalf of the state and as part of the cost of constructing or maintaining a highway may purchase in the open market, acquire, take over, or condemn under the right and power of eminent domain land in fee simple or easements that it considers necessary for present public use, either temporary or permanent, or that it considers necessary and reasonable for the public use. By the same means, the department may obtain material, including clay, gravel, sand, or rock, or the land necessary to obtain material, including access to it. The department may acquire the land or materials notwithstanding the fact that title to it is vested in the state or a department, agency, commission, or institution of the state. Acquisition of materials by purchase in the open market under this section is governed by AS 36.30 (State Procurement Code). (§ 1 art I title IV ch 152 SLA 1957; am § 11 ch 106 SLA 1986)

Cross references. — For general provisions concerning eminent domain, see AS 09.55.240 — 09.55.460. For power of department of transportation and public facilities to exercise power of eminent domain, see AS 44.42.020(b).

Effect of amendments. — The 1986 amendment inserted "in the open market" near the middle of the first sentence and added the last sentence.

NOTES TO DECISIONS

Department may acquire real property for highway through eminent domain. — The Department of Highways [now Department of Transportation and Public Facilities] may acquire real property for the purpose of constructing a highway through the exercise of eminent domain power, under the authority of AS 19.05.040, this section through AS 19.05.120, and AS 19.20.040. *Babinec v. State*, Sup. Ct. Op. No. 908 (File No. 1539), 512 P.2d 563 (1973), rev'd on other grounds, Sup. Ct. Op. No. 1766 (File Nos. 3108, 3109), 586 P.2d 966 (1978).

Construction of state lease reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, division of lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Highways [now Department of Transportation and Public Facilities]. *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Collateral references. — 27 Am. Jur. 2d, Eminent Domain §§ 325-332 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 32-40.

39A C.J.S., Highways, §§ 2, 25-36.
Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highway. 2 ALR 746; 123 ALR 1462.

Classification as regards counties or other political subdivisions permissible in

statute imposing cost of construction or maintenance of highways upon property specially benefited. 77 ALR 1285.

Jurisdiction and power in respect of street or road which is part of or touching upon state or federal highway. 144 ALR 307.

Electric light or power line in street or highway as additional servitude. 58 ALR2d 525.

Inclusion or exclusion of first and last days in computing time for giving notice

of hearing for location of public highway, which notice must be given a certain number of days before a known future date. 98 ALR2d 1397.

Extent and reasonableness of use of private way in exercise of easement granted in general terms. 3 ALR3d 1256.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property. 36 ALR3d 751.

Plotting or planning in anticipation of improvement as taking or damaging of property affected. 37 ALR3d 127.

Measure of damages for condemnation of cemetery lands. 42 ALR3d 1314.

Traffic noise and vibration from highway as element of damages in eminent domain. 51 ALR3d 860.

Right to condemn property owned or used by private educational, charitable, or religious organization. 80 ALR3d 833.

Recovery of value of improvements made with knowledge of impending condemnation. 98 ALR3d 504.

Assemblage or plottage as factor affect-

ing value in eminent domain proceedings. 8 ALR4th 1202.

Measure and elements of lessee's compensation for condemnor's taking or damaging of leasehold. 17 ALR4th 337.

Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain. 21 ALR4th 765.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR4th 674.

Compensability of loss of view from owner's property — state cases. 25 ALR4th 671.

Statute of limitations applicable to inverse condemnation or similar proceedings to obtain compensation for direct appropriation of land without institution or conclusion of formal proceedings against specific owner. 26 ALR4th 68.

Private improvement of land dedicated but not used as street as estopping public rights. 36 ALR4th 625.

Unity or contiguity of separate properties sufficient to allow damages for diminished value of parcel remaining after taking of other parcel. 59 ALR4th 308.

Sec. 19.05.090. Declaration of taking. A declaration of taking in the form of an order signed by the commissioner, or by a designee of the commissioner within the department, declaring that the real property, or interest in it, or an easement, is necessary for the public use of the state vests title in the state. However, a declaration of taking is not effective until eminent domain proceedings have been instituted in the proper court, and a copy of the declaration of taking has been recorded in the office of the recorder in the district where the land is located. The department shall pay from the appropriate fund into court the amount it considers represents a reasonable valuation for the land, easement or materials taken. (§ 1 art I title IV ch 152 SLA 1957; am § 1 ch 88 SLA 1967)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

Cross references. — For general pro-

visions concerning eminent domain, see AS 09.55.240 — 09.55.460; for power of Department of Transportation and Public Facilities to exercise power of eminent domain, including declaration of taking, see AS 44.42.020(b).

NOTES TO DECISIONS

Access. — Although the language granting access was erroneously included in the declaration of taking of property for a controlled access facility, a party who purchased the remainder of the adjoining

parcel for his insurance business acted reasonably in believing that he would have direct access and was entitled to compensation because he did not receive direct access. State v. 18,018 square feet,

more or less, Sup. Ct. Op. No. 2232 (File No. 4637), 621 P.2d 887 (1980).

Sec. 19.05.100. Acquisition of excess land. When a part of a parcel of land is taken and the remainder is in a shape or condition that is of little value to its owner, or give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or exchange it for other property needed for state highway rights-of-way. (§ 2(1) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.110. Authority to condemn or acquire publicly owned property for the purpose of exchange. When property that is devoted to or held for another public use for which the power of eminent domain may be exercised is taken for highway purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn the real property to be exchanged for the real property so taken. This section does not limit the authorization of the department to acquire, other than by condemnation, property for that purpose in any other manner. (§ 2(2) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.120. Authority to purchase property for the purpose of exchange. When the commissioner formally declares that it is in the best public interest of the state to do so, the department may acquire by purchase or otherwise privately or publicly owned land or an interest in it for the purpose of exchanging it for privately or publicly owned land which the department is authorized by law to acquire. (§ 2(3) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.122. Utility corridor for extension of the Alaska Railroad. (a) Not later than April 1, 1982, the interior division of the department shall delineate a proposed utility corridor for the extension of the Alaska Railroad to the Canadian border. The proposed utility corridor shall include a complete legal description of the proposed railroad right-of-way.

(b) Within 90 days after receiving a report transmitting the work of the interior division of the department under (a) of this section, the commissioner shall, in conformity with the Administrative Procedure Act (AS 44.62), if necessary, adopt a regulation approving, modifying, or rejecting the proposed utility corridor and railroad right-of-way.

(c) If the commissioner approves or modifies the proposed utility corridor and railroad right-of-way.

DATE: 2/2/94

FURTHER: Judiciary

Date of 5-Day Notice: 2/2/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

Transportation Committee considered SB 275

"An Act relating to the disposal of real property by the Department of Transportation and Public Facilities."

and recommends:

replace with _____ CS _____ (_____)

same title
 new title
 technical title change
(HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DOT-PE	2/7/94	X	
DNR	2/9/94	X	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Tom Kelly

OTHER RECOMMENDATIONS:

NR

Robert E. Kelly

Bob Kelly
Chair: Signature and Recommendation

FISCAL NOTE

Revision Date:
Title: Disposal of Real Property by DOT&PF

Department Affected: DOT&PF
BRU:

Sponsor: Senate Transportation
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	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

Estimate of current year (FY94) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jonathan A. Widdis, Director

Phone: 266-1460

Division: Statewide Aviation

Date: February 7, 1994

Approved by Commissioner: 

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 7, 1994

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A M E N D M E N T # 1

OFFERED IN THE SENATE

BY

TO: SB 275

Page 1, line 11:

Delete "[AS 19.05.040(2)] and"

Insert "[AS 19.05.040(2) AND]"

Page 1, line 11, following "19.05.080 - 19.05.120":

Insert "AS 35.05.040(1) and (2), and AS 35.20.010 - 35.20.050"

A M E N D M E N T # 2

OFFERED IN THE SENATE

BY

TO: SB 275

Page 1, line 11, following the period:

Insert "Land conveyed under this section to a municipality shall be credited against the municipality's entitlement under AS 29.65, unless the land is conveyed in consideration for other land required for state purposes."

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB275

Revision Date: Original Dept Affected: Natural Resources
 Title: "An Act relating to the disposal of real property
by the Department of Transportation and Public Facilities." BRU: Resource Development
 Sponsor: Senate Transportation Committee Component: Land Development
 Requestor: Senate Transportation Committee Component Serial No. 431

(Thousands of Dollars)

Expenditures/Revenues	FY95	FY96	FY97	FY98	FY99	FY00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

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)

The Department of Natural Resources supports this bill. We suggest an amendment that if land is conveyed to a municipality that has an acreage entitlement under AS 29.65, that the land conveyed would be charged against that entitlement.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 9-Feb-94
 Approved by Commissioner: [Signature]
 Agency: Natural Resources Date: 9-Feb-94