

SB

1900

cc:Mail for: Senator Robin Taylor

Subject: CSSB 190

From: dda@amc-engineers.com (AMC - Adams, Dave) at CC2MHS1 3/11/98 8:30 AM

To: Senator Robin Taylor at LAA_STAY

To: Senator_Jerry_Mackie@legis.state.ak.us at CC2MHS1

cc: Representative_Joe_Green@legis.state.ak.us at CC2MHS1

Dear Senator Taylor:

I am requesting your support for CSSB 190.

It is not clear why CSSB 190 was submitted, but it appears to provide excellent NEW protections to private property owners from the taking of easements "by the Gov., for the Guv."

In specific, local government has for many years now been extorting easements from property owners for an extension of THE TONY KNOWLES COASTAL TRAIL. People wanting to subdivide their land have been denied a replat w/o 'giving' an easement for the trail. All of these easements are in alignment, along a specific route.

Interestingly, the Guv's hacks, certain muni-crats and their hired guns (consultants) are THIS VERY DAY doing a "study" to determine the route of the "South 'Coastal' Trail." They have to do this to meet the requirements of Fed ISTEAFUNDING. They don't really take the study seriously. Sir, the "SCT" route has been determined and the 'study' is a farce.

The route they want will cut through the Anchorage Coastal Wildlife Refuge and also threaten the Rabbit Creek Rifle Range. At the same time, they will be "taking" easements all along the bluff in order to build or access the trail. ADF&G professional staff vigorously opposes a trail in the marsh, but the political cards are stacked against them. Remember that the professional staff at ADF&G work for appointed leaders who work for the man after whom the trail is named..... 'nuf said.

It would be easier if you contact Jeff Logan at Rep. Green's office. Jeff is 100% up to speed on what is going on, he can confirm what I've said about the trail, and can fill you in on more details.

In any case, please move CSSB 190 out of your committee with a "do pass" recommendation. Any other help you can offer to protect the ACWR from intrusion (and loss of use as a hunting area) and protect the RCRR from being shut down would be greatly appreciated, but I understand the issue is outside of your district.

Thank you
Dave Adams



April 13, 1998

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
The State Senate
State Capitol Rm 30
Juneau AK 99801-1182

Re: CS SB 190
An Act Relating to Eminent Domain

Dear Senator Taylor:

Thank you for the opportunity to testify before the Senate Judiciary Committee on April 8. During my testimony in favor of CS SB 190, relating to certain amendments to Alaska's eminent domain laws, committee members asked two questions that I could not readily answer. Please accept this letter to supplement my testimony and provide a response to the members' inquiries.

First, does the addition of the language "property interest to be taken" or "interest in the property" as used in the bill expand the right of the government to take property? I consulted with Sealaska's legal counsel, who is of the opinion that the references to interests in property do not expand the scope of the government's right to take property. Rather, this phrase is consistent with existing law, that a taking may consist of something less than the entire fee simple interest in property, and that such a taking should also be subject to just compensation. In that sense, the "interest in property" language is a narrowing or clarifying phrase, and simply reinforces the idea that the government must pay a

Senator Robin Taylor
April 13, 1998
Page 2

property owner for the taking of any compensable interest in property, even if it is not a complete taking.

The second issue discussed was whether similar language is contained in the laws of other states. As I mentioned in my testimony, the suggested language is found in the Model Eminent Domain Code. This Code is published by a national organization on uniform laws and is intended to be a consensus of the best laws from several jurisdictions. Our inquiry reveals that many states have adopted eminent domain language that includes the "interest in property" clause, including particularly the states of Washington, California, and Oregon. Accordingly, it is Sealaska's position that adoption of the recommended amendments would bring Alaska's eminent domain law more in line with the trend in the United States. Attached are examples from the Model Code and from the three states mentioned above.

Thank you for the opportunity to testify before the Committee, and for allowing me to expand on that testimony by this letter.

Sincerely,

SEALASKA CORPORATION



Richard P. Harris
Senior Vice President
Natural Resources

cc: Senate Judiciary Committee
Sam Kito
Robert W. Loescher, President and Chief Executive Officer
Senator Jerry Mackie

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE IV. COMMENCEMENT OF ACTION BY CONDEMNOR

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§ 404. [Contents of Complaint].

(a) In addition to other allegations required or permitted by law, the complaint shall:

(1) designate as a plaintiff each person on whose behalf the property is sought to be taken;

(2) name as defendants all persons who to the plaintiff's knowledge are owners of or who have or claim any interest in the property sought to be taken; defendants whose names are not known may be included under the designation "unknown claimants";

(3) contain a legal description of the property and of the interest therein sought to be taken; and

(4) allege the basis of the plaintiff's right to take the property by eminent domain and maintain the action, including (i) a reference to the plaintiff's legal authority to take the property; and (ii) a statement of the purpose for which the property is sought to be taken.

(b) If a plaintiff claims any interest in the property sought to be taken or that the property is devoted to a public use, the complaint must describe that interest or public use.

(c) For purposes of information and notice, the complaint shall be accompanied by a map or diagram portraying as far as practicable the property sought to be taken and the property that will be affected by the taking, showing their location in relation to the project for which the property is to be taken.

<General Materials (GM) - References, Annotations, or Tables>

COMMENT

1986 Main Volume

Section 404 describes the essential minimum contents of the complaint in a condemnation action. A complaint that does not contain all of the elements provided in this section is subject to preliminary objection. See Section 502. Allegations not required by Section 404 (e.g., market value; necessity for the taking) may, but need not, be made.

Under Subsection (a)(1), each condemnor must be identified, since this information may be relevant to the issue of the right to exercise the power of eminent domain. For example, if a joint and cooperative condemnation action is brought by agreement between different agencies, each condemnor must be named as a plaintiff. Similarly, a condemnor taking property to convey it to a specific private developer, in furtherance of an authorized community redevelopment project, must designate the person for whose benefit the plaintiff is condemning the property.

Under Subsection (a)(2), the complaint is required to name as defendants all persons who are known or believed to be owners of or to have or claim any interest, including a lien or other security interest, in the property sought

to be taken by the condemnor. Under this rule, it would not be necessary to join a lessee if the plaintiff seeks to take the property "subject to" the lease, for the lessee's interest would not be described in the complaint as property sought to be taken. Since persons who have an interest in the property, but who are not named and served with process either personally or constructively, ordinarily are not bound by the judgment, this rule permits the condemnor to secure full title without collateral litigation.

Subsection (a)(3) requires a "legal" description of the property sought to be taken. Present practice in this regard varies from state to state; the Code seeks to provide a uniform rule of accurate description as a means for giving the defendants notice of the scope of the take. In this respect, notice through the pleadings is deemed more efficient than to rely on discovery, as in other civil litigation. The complaint is not required to describe the interest which each defendant has or claims in the property; specification of the defendants' individual interests is a matter for their several responses. The complaint is sufficient if it merely alleges that each defendant has or claims to have some interest in the property described.

Clauses (i) and (ii) of Subsection (a)(4) require allegations of legal authority and purpose in order to show the plaintiff's right to take. Since there may be many different statutory provisions of varying scope that relate to the right to take, specification of the source of authority and public use claimed by the condemnor should assist in reducing the number of unnecessary challenges to the right to take by clarifying that issue from the inception of the action. Compare Section 310(a) (similar requirement for condemnation authorization).

Subsection (b) is intended to provide notice of any claim by the condemnor of an existing interest in the property, and of any issue of "higher public use" arising from the fact that the property sought to be taken is already devoted to public use.

Subsection (c), requiring a map or diagram to be annexed to the complaint, is designed for informational assistance only. Practice currently varies in this regard, with some states requiring a map, others making no such requirement, and still others requiring a map to be filed and made available for examination to interested parties. Since a well prepared map may explain graphically and give better notice than a legal description of the property which the plaintiff seeks to take, or which may be affected by the taking, its attachment to the complaint is required. The map or diagram, however, need only attempt to portray the property sought to be taken "as far as practicable" thereby recognizing that certain interests, such as mineral or water rights, air rights, or development easements, may not be capable of fully accurate representation by cartographic means. The map or diagram, as part of the complaint, is subject to amendment as are other pleadings; and it may constitute an admission of the plaintiff to the same extent as other parts of the complaint.

This section does not prescribe an explicit rule for designating condemnees whose interests may be affected by death, pendency of probate proceedings, or other analogous circumstances. The determination of who should be named as a defendant in an action affecting the property of a decedent, or property under guardianship, conservatorship, or included within a trust, should be conformed to the requirements of acceptable title practice in the state where the action is pending. The appointment of a guardian or other representative for a minor, an incompetent person, or some other similarly situated condemnee, is also left to local practice and procedure.

LIBRARY REFERENCES

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Eminent Domain ⇨ 191(1) to (8).

Pretrial Procedure ⇨ 650.

C.J.S. Pleading § 457 et seq.

C.J.S. Eminent Domain § 251 et seq.

NOTES OF DECISIONS

Parties 1

1. Parties

Where rights of those owning dominant tenements in right-of-way across lot were not obstructed in any way by condemnation of small, noncontiguous portion of lot, they did not have to be joined as necessary and indispensable parties in condemnation

proceeding. *Weldon v. State*, Ala.Civ.App.1985, 495 So.2d 1113, affirmed as modified 495 So.2d 1121.

Model Eminent Domain Code § 404

ULA EM DOMAIN § 404

END OF DOCUMENT

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE I. GENERAL PROVISIONS AND DEFINITIONS

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§ 103. [Definitions].

As used in this Act:

- (1) "action" means condemnation action;
- (2) "appraisal" means an opinion as to the value of or compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of property;
- (3) "business" means a lawful activity, whether or not for profit, other than a farm operation, conducted primarily for the purchase, sale, lease, rental, manufacture, processing, or marketing of products, commodities, or other property, or for providing services;
- (4) "condemn" means to take property under the power of eminent domain;
- (5) "condemnation action" includes all acts incident to the process of condemning property after commencement of suit;
- (6) "condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action;
- (7) "condemnor" means a person empowered to condemn;
- (8) "costs" means the reasonable fees, charges and expenses necessarily incurred in an action, including the fees and charges of expert witnesses, the cost of transporting the court and jury to view the premises, and other recoverable costs;
- (9) "court" means a [] court of this state, and includes, when the context requires, any [judge] [justice] of the court;
- (10) "crops" means any form of vegetation intended to be removed and used or sold for commercial purposes, including grass, flowers, fruits, vegetables, trees, vines, and nursery stock;
- (11) "farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing those products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;
- (12) "improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss;
- (13) "lien" means a security interest in property arising from contract, mortgage, deed or trust, statute, common

law, equity, or creditor action;

(14) "litigation expenses" means the sum of the costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, necessary to prepare for anticipated or participation in actual court proceedings;

(15) "local public entity" means a public entity other than the State;

(16) "person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity;

(17) "personal property" means any property other than real property;

(18) "property" means an interest in real or personal property under the law of this State;

(19) "real property" means land and any improvements upon or connected with land; and includes an easement, servitude, or other interest therein; and

(20) "work" includes construction, alteration, repair, remodeling, excavation, demolition, rehabilitation, relocation and landscaping.

< General Materials (GM) - References, Annotations, or Tables >

COMMENT

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The definitions in the Uniform Code are designed to carry out the purpose of the Code to make uniform the eminent domain procedures of the enacting state in all condemnation actions by either public or private condemnors.

The pivotal term "property" is defined in paragraph (18) to include "any interest" in real or personal property. This terminology is intended to be accorded a broad interpretation so that it is coextensive with the state law of property and, if state law admits, will include such interests as air rights, subsurface rights, mineral interests, estates in submerged lands, water rights of any character, flowage or flooding easements, easements or servitudes for aircraft noise or operations, rights or permits for the temporary use and occupancy, franchises, rights to limit land use and development, leaseholds, liens, future interests, copyrights, etc.

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Eminent Domain ☞ 1 et seq.
 Statutes ☞ 179.
 C.J.S. Eminent Domain §§ 1, 2.
 C.J.S. Statutes § 315.

NOTES OF DECISIONS

"Condemnor" 1
 "Taking" 2

1. "Condemnor"

"Condemnor," within meaning of Eminent Domain Code, could be "empowered to condemn" pursuant to statutes authorizing pipeline companies to acquire by

condemnation rights of way for pipelines. Walker v. Gateway Pipeline Co., Ala.1992, 601 So.2d 970.

2. "Taking"

Although regulations which do not physically invade private property may be considered "taking" under Fifth Amendment, "taking" is more likely to be found where government action is physical invasion. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

In determining whether government action constitutes "taking" under Fifth Amendment, court looks to economic impact of regulation on claimant and extent to which action interferes with investment-backed expectations. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

Government action which is not reasonably related to proper purpose is insufficient, by itself, to constitute taking; deprivation of all beneficial use of property is required. Estate and Heirs of Sanchez v. County of Bernalillo, N.M.1995, 902 P.2d 550, 120 N.M. 395.

Model Eminent Domain Code § 103

ULA EM DOMAIN § 103

END OF DOCUMENT

8.08.100 Mode of appropriation. The right of eminent domain for the purposes intended in RCW 8.08.090 through 8.08.130 is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in RCW 8.08.090 is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [1895 c 2 § 3; RRS § 903.]

8.08.110 Tax levy to pay costs. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in RCW 8.08.090 to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in RCW 8.08.090, and the expenses incident thereto. [1895 c 2 § 2; RRS § 902.]

8.08.120 Indebtedness is for general county purposes. Any county purpose mentioned in RCW 8.08.090 through 8.08.130 shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under RCW 8.08.090 through 8.08.130, but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of RCW 8.08.090 through 8.08.130 shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [1895 c 2 § 4, RRS § 904.]

Public contracts and indebtedness Title 39 RCW

8.08.130 Limitation. Any condemnation, appropriation or disposition intended in RCW 8.08.090 through 8.08.130 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.090 through 8.08.130 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the Constitution of this state. [1895 c 2 § 5; RRS § 905.]

8.08.140 Condemnation for military purposes. See RCW 8.04.170.

8.08.141 Condemnation for military purposes—Construction. See RCW 8.04.180.

8.08.150 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests. See RCW 8.25.270.

Chapter 8.12

EMINENT DOMAIN BY CITIES

Sections

CONDEMNATION

8.12.010	"City" defined
8.12.020	Other terms defined
8.12.030	Condemnation authorized—Purposes enumerated.
8.12.040	Ordinance to specify method of payment—Limitations.
8.12.050	Petition for condemnation.
8.12.060	Contents of petition
8.12.070	Summons—Service.
8.12.080	Service when state or county lands are involved.
8.12.090	Waiver of jury—Adjudication of public use—Procedure.
8.12.100	Trial—Jury—Right to separate juries.
8.12.120	Interested party may be brought in.
8.12.130	Jury may view pretrials.
8.12.140	Damages to building—Measure.
8.12.150	Separate findings where there are several interests— Interpleader of adverse claimants.
8.12.160	Verdict—New trial—Continuance—New summons.
8.12.170	Change of ownership—Powers of court.
8.12.190	Findings by jury.
8.12.200	Judgment—Appellate review—Payment of award into court.
8.12.210	Title vests upon payment.

PAYMENT FOR IMPROVEMENT

8.12.220	Payment from general fund.
8.12.230	Payment by special assessment.
8.12.240	Petition for assessment—Appointment of commissioners.
8.12.250	Advancement from general funds against assessments.

ASSESSMENTS—IMMEDIATE PAYMENT

8.12.260	Appointment of board of eminent domain commissioners— Terms of office
8.12.270	Oath of commissioners—Compensation
8.12.280	Duties of commissioners—Assessment of benefits— Apportionment.
8.12.290	Assessment roll.
8.12.300	Hearing on assessment roll—Notice.
8.12.310	Proof of service.
8.12.320	Continuance of hearing.
8.12.330	Objections to assessment roll.
8.12.340	Modification of assessment.
8.12.350	Judgment, effect—Lien.
8.12.360	Certification of roll to treasurer.
8.12.370	Treasurer's notice to pay when assessments immediately payable.
8.12.380	Notice by mail—Penalty for default.

BONDS—INSTALLMENT PAYMENT

8.12.390	Bonds authorized.
8.12.400	Maturity—Interest—Payment.
8.12.410	Sale—Application of proceeds.
8.12.420	Installment payment of assessments.
8.12.430	Notice to pay—Due date of installments—Penalty—Interest.
8.12.440	Bond owner may enforce collection.
8.12.450	Bondholder's remedy limited to assessments.
8.12.460	Payment of bonds—Call—Notice.

DELINQUENCY—REDEMPTION

8.12.470	Enforcement of collection—Interest on delinquency.
8.12.480	Assessment fund to be kept separate.
8.12.490	Record of payment and redemption.

ARTICLE 2

Rights Included in Grant of Eminent Domain Authority

- § 1240.110. Interests in property which may be acquired
- § 1240.120. Property necessary to carry out principal purpose; Acquisition with intent to sell or otherwise dispose of property
- § 1240.125. Local public entities; Property outside territorial limits; Purpose of acquisition
- § 1240.130. Acquisition of property by other means
- § 1240.140. Joint exercise of power by public agencies
- § 1240.150. Acquisition of remainder of property
- § 1240.160. Authorizations distinct and separate

Collateral References:

- 29 Cal Jur 3d Eminent Domain § 5.
- 19 Cal Practice Rev, Ch 386, Eminent Domain Proceeding.

§ 1240.110. [Interests in property which may be acquired]

(a) Except to the extent limited by statute, any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire any interest in property necessary for that use including, but not limited to, submerged lands, rights of any nature in water, subsurface rights, airspace rights, flowage or flooding easements, aircraft noise or operation easements, right of temporary occupancy, public utility facilities and franchises, and franchises to collect tolls on a bridge or highway.

(b) Where a statute authorizes the acquisition by eminent domain only of specified interests in or types of property, this section does not expand the scope of the authority so granted.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Prior Law:

(a) Former § 1239, as enacted 1872, amended by Code Amdts 1873-74 ch 383 § 161, Stats 1911 ch 356 § 1, Stats 1913 ch 394 § 1, Stats 1949 ch 978 § 1.

(b) Former § 1240 subds 1, 7, 8, as enacted 1872, amended by Stats 1901 ch 144 § 1, Stats 1905 ch 124 § 1, Stats 1907 ch 271 § 1, Stats 1911 ch 115 § 1, ch 358 § 1, Stats 1913 ch 292 § 1, Stats 1915 ch 429 § 1, Stats 1933 ch 465 § 1, Stats 1967 ch 751 § 1.

CA CCP

Citation
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O.R.S. § 366.340

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TEXT

1996 OREGON REVISED STATUTES
TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 366. STATE HIGHWAYS
STATE HIGHWAYS

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366.340. Acquisition of real property generally.

The department may acquire by purchase, agreement, donation or by exercise of the power of eminent domain real property, or any right or interest therein, including any easement or right of access, deemed necessary for:

(1) Construction of shops, equipment sheds, office buildings, maintenance sites, patrolmen accommodations, snow fences, quarry sites, gravel pits, storage sites, stock pile sites, weighing stations and broadcasting stations.

(2) Appropriation, acquisition or manufacture of road-building materials, approach or hauling roads, connecting roads, frontage road, highway drainage and drainage tunnels.

(3) Maintenance of an unobstructed view of any state highway so as to provide for the safety of the traveling public.

(4) Any other use or purpose deemed necessary for carrying out the purposes of this Act.

(5) Elimination or prevention of hazardous or undesirable points of entry from adjacent property to state highways.

CREDIT

(Amended by 1953 c. 252 § 2)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

366.340

NOTES OF DECISIONS

Proposed use of property acquired by condemnation need not be lawful use at time of acquisition. Oregon Department of Transportation v. Schrock Farms, 140 Or App 140, 914 P2d 1116 (1996)

O. R. S. § 366.340

OR ST § 366.340

END OF DOCUMENT

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CS SB 190(CRA)
BILL (S) Publish Date: 2/26/98

Revision Date _____	Dept. Affected <u>DOT&PF</u>
Title <u>Attempt to Purchase Before Eminent Domain</u>	BRU <u>Commissioners Office</u>
Sponsor <u>Senator Mackie</u>	Component <u>Office of the Commissioner</u>
Requester <u>(S) CRA</u>	Component Serial No. <u>530</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
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
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 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)

Prepared by <u>Dennis Poshard, Special Assistant</u>	Phone <u>465-3900</u>
Division <u>Commissioners Office</u>	Date <u>2/18/98</u>
Approved by <u>[Signature]</u> Commissioner	Date <u>2/18/98</u>
Agency <u>Department of Transportation and Public Facilities</u>	

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SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 190, Require Negotiations Prior to Eminent Domain Taking.

I introduced SB 190 to bring fairness and expediency to state and municipal government actions which require the acquisition of private land for public purposes. The usual practice is to acquire private property through condemnation proceedings. This is a process where the governmental entity exercises the power of eminent domain to take the property and compensate the owner with or without the private owner's consent or agreement. The only recourse for an unwilling owner is to challenge in court the validity of the taking's public purpose and the amount of compensation. In most cases the court's consideration is principally to determine the appropriate level of compensation. For both the governmental entity and the private property owner, this can be an expensive and time consuming procedure. For many landowners the prospect of contesting a condemnation proceeding in court is often beyond the landowner's financial abilities to pursue. In these situations, the landowner is at the mercy of the governmental entity, the extent of its property desires, and its method of determining compensation.

SB 190 would simply require that, prior to condemnation, a "reasonable and diligent" effort is made to purchase private property through negotiations with the property owner. At least 23 states have similar requirements.

***Issue: Should the State be Required to Undertake
Good Faith Negotiations With a Private Landowner
Before Taking Property by
Eminent Domain (SB 190)***

Description of the Issue: Should the State of Alaska be required to conduct good faith negotiations with a private landowner before initiating eminent domain proceedings against that landowner?


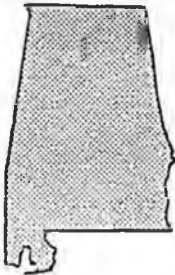


Discussion of the Issue: At least 23 states require that the State, before taking property through eminent domain, make a good faith effort to acquire the property by consensual purchase. And, the drafters of the Uniform Eminent Domain Code recommend such a requirement in model state legislation. Although Alaska agencies will often undertake negotiations as a matter of practice, there is no current requirement in Alaska law that they do so.

A "good faith negotiations" requirement sets a cooperative tone in the state's dealings with its private sector. Moreover, supporters believe that it minimizes the likelihood of contested litigation, since the government and the private party begin their relationship as negotiators rather than adversaries.

Moreover, because the clause is common, there is considerably judicial precedent giving the clause a common sense interpretation. No prolonged face-to-face negotiations are required. A reasonable offer, based on full disclosure, and a willingness to consider timely counteroffers, is sufficient. And, the requirement does not apply where it is not practical--such as where the owner can't be found, or is incapable of conveying title.

Recommendation: In a state with so limited a private property base, the use of eminent domain should be a last resort in Alaska. SB 190 would establish precisely such a policy by requiring that a good faith effort to purchase be made before property is involuntarily taken. The bill would also require the state to justify the particular interest in the property taken, in order to avoid a more intrusive interest being taken than is necessary to accomplish the state's goal.

Appendix A: The Requirement to Negotiate in Other States

<u>State</u>	<u>Citation</u>	<u>Language</u>	
	Model Eminent Domain Code	Uniform Law Commissioner's Model Eminent Domain Code 1974 Act §306	<i>Except as provided in Section 308, an action to condemn property may not be maintained over timely objection by the owner unless the condemnor made a good faith effort to acquire property by purchase before commencing the action.</i>
	Alabama	Ala. Code §18-1A-22	<i>Before commencing a condemnation action, the condemnor shall establish an amount based on an appraisal which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's established amount of just compensation for the property.</i>
	Colorado	Colo. Rev. Stat. §38-1-102	<i>In all cases where the right to take private property for public or private use without the owner's consent...is conferred by general laws...and the compensation to be paid for, in respect of property sought to be appropriated or damaged for the purposes mentioned, cannot be agreed upon by the parties interested; or in the case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, it is lawful for the party authorized to take or damage the property to apply to the judge...</i>
	Connecticut	Conn. Gen. Stat. §48-12	<i>The procedure for condemning land or other property for any of the purposes specified in sections..., if those desiring to take such property cannot agree with the owner upon the amount to be paid him for any property taken, shall be as follows:</i>



Idaho

Idaho Code
§7-707(6)

The complaint [for condemnation] must contain:

...
(6) In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages, but in all other cases these facts need not be alleged in the complaint, or proved.



Illinois

Ill. Rev. Stat.
§5/7-102

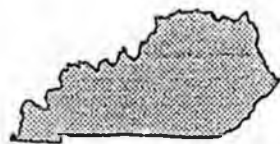
Where the right to take private property for public use... has been heretofore and shall hereafter be conferred by general law or special charter... and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or the owner's name or residence is unknown, or the owner is a nonresident of the state, the party authorized to take or damage the property... may apply to the circuit court...



Indiana

Ind. Code
§32-11-1-1

Before proceeding to condemn, such person, corporation or other body may enter upon any land for the purpose of examining and surveying the property sought to be appropriated or right sought to be acquired; and shall make an effort to purchase for the use intended such lands, right-of-way, easement or other interest therein or other property or right.



Kentucky

Ky. Rev. Stat. Ann. §416.550

Whenever any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed... the condemnor may condemn such property... It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.



Michigan

Mich. Comp. Laws §213.55

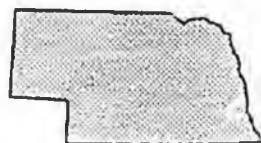
Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established... If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located.



Missouri

Mo. Rev. Stat. §523.010

In case land, or other property, is sought to be appropriated... and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court...



Nebraska

Neb. Rev. Stat. §76-704

If any condemnee shall fail to agree with the condemnor with respect to the acquisition of property sought by the condemnor, a petition to condemn the property may be filed by the condemnor in the county court of the county where the property or some part thereof is situated.



**New
Hampshire**

N.H. Rev. Stat.
Ann. §498-A:4

Before making the offer provided for in paragraph II, the condemnor shall make reasonable efforts to negotiate with the condemnees or their personal representatives for the purchase of the property, but failure to confer or negotiate shall not be a defense to condemnation of the property.

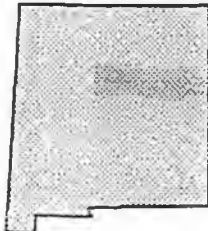
...No property shall be taken unless the condemnor shall serve upon the condemnee a written notice of offer to purchase...



New Jersey

N.J. Rev. Stat.
§20:3-5

...[W]henever any condemnor...shall have determined to acquire land or other property pursuant to law...but cannot acquire title thereto or possession thereof by agreement with a prospective condemnee, whether by reason of disagreement concerning the compensation to be paid or for any other cause...the condemnation of such property...shall be governed...in the manner provided by this act;



**New
Mexico**

N.M. Stat. Ann.
§42A-1-4

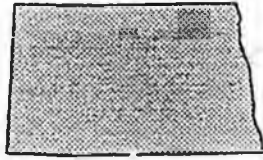
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



New York

N.Y. Em. Dom.
Law §303

The condemnor shall make a written offer to acquire the property for one hundred per centum of the valuation so established. In no event shall such amount be less than the condemnor's highest approved appraisal. Wherever practicable, the condemnor shall make the offer prior to acquiring the property, and shall also, wherever practicable, include within the offer an itemization of the total direct, the total severance or consequential damages and benefits as each may apply to the property.



**North
Dakota**

N.D. Cent. Code
§32-15-06.1

A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.



Ohio

Ohio Rev. Code
Ann §163.04

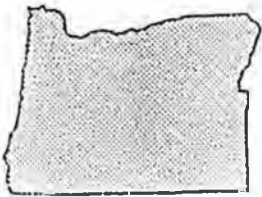
Appropriation shall be made only after the agency is unable to agree, for any reason, with the owner...or when any owner is incapable of contracting...or is unknown, or is not a resident of this state, or his residence is unknown to the agency and cannot with reasonable diligence be ascertained.



Oklahoma

Okla. Stat.
tit. 27, §13

Every reasonable effort shall be made to acquire, expeditiously, real property by negotiation.



Oregon

Or. Rev. Stat.
§35.235

...[T]he condemnor shall...attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.



Texas

Tex. Prop. Code
Ann. §21.012

If the United States, [or] this state...wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemning entity may begin a condemnation proceeding by filing a petition in the proper court.

The petition must...state that the entity and the property owner are unable to agree on the damages.



Vermont

Vt. Stat. Ann.
tit. 24, §2805

When the location of a municipal building is determined...and the owner refuses to release or convey the same to such municipality for a reasonable price... the mayor... shall set out the necessary lands and cause the same to be surveyed. They shall appoint a time and place for hearing...



Virginia

Va. Code Ann.
§26-46.5

No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more of such owners is unable to convey legal title to such property or is unknown or cannot with reasonable diligence be found in this State.



Wisconsin

Wis. Stat.
§32,06(2a)

Before making the jurisdictional offer under sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners...for the purchase of the property.



Wyoming

Wyo. Stat.
§1-26-509

A condemnor shall make reasonable and diligent efforts to acquire property by good faith negotiation.

And at the federal level...



**Federal
Uniform
Relocation and
Assistance and
Real Property
Acquisition
Policies Act of
1970**

Sec. 301, P.L. 91-646

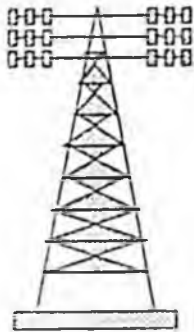
Note: Pursuant to §102 of the Act, the policies of §301 do not affect the vailidity of individual condemnation actions. However, they do govern the use of federal funds by states "to the greatest extent practicable under State law." Sec. 305(1).

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts... and to promote public confidence in Federal land acquisition practices...

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner... shall be given an opportunity to accompany the appraiser during his inspection of the property.

When a licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others... it may acquire the same by the exercise of the right of eminent domain...



**Federal Energy
Regulatory
Commission**

16 U.S.C. §814

0-LS0890\K
Cook
3/3/98

CS FOR SENATE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eminent domain and to negotiations to purchase property
2 before it is taken through eminent domain; and providing for an effective date."

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

4 * Section 1. AS 09.55.270 is amended to read:

5 Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear
6 that

7 (1) the use to which it is to be applied is a use authorized by law;

8 (2) the taking and the property interest to be taken are [IS]
9 necessary to the use;

10 (3) if already appropriated to a public use, the public use to which it
11 is to be applied is a more necessary public use.

12 * Sec. 2. AS 09.55.270 is amended by adding a new subsection to read:

13 (b) Except when negotiation is not possible because of the incapacity, inability
14 to convey legal title, or absence of one or more of the property's owners, a good faith

1 effort at negotiation to acquire the property interest by purchase shall be made. In a
2 proceeding involving the taking of a property interest through eminent domain, the
3 burden of proof is on the party opposing the taking to show that a good faith effort to
4 acquire the property interest by purchase was not made.

5 * Sec. 3. AS 09.55.430 is amended to read:

6 Sec. 09.55.430. Contents of declaration of taking. The declaration of taking
7 must contain

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

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

12 (3) a description of the property sufficient for the identification of it;

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

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

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

17 (7) a statement that the property or interest in the property is taken
18 by necessity for a project located in a manner that is most compatible with the greatest
19 public good and the least private injury; and

20 (8) a statement that a good faith effort at negotiation to acquire the
21 property by purchase has been made or that negotiation is not possible because
22 of the incapacity, inability to convey legal title, or absence of one or more of the
23 property's owners.

24 * Sec. 4. AS 09.55.460(b) is amended to read:

25 (b) The plaintiff may not be divested of a title or possession acquired except
26 where the court finds that

27 (1) the property or interest in the property was not taken by necessity
28 for a public use or purpose in a manner compatible with the greatest public good and
29 the least private injury; or

30 (2) a good faith effort at negotiation to acquire the property by
31 purchase has not been made and negotiation was not made impossible by the

1 incapacity, inability to convey legal title, or absence of one or more of the
2 property's owners.

3 (c) In the event of a finding under (b) of this section [THAT FINDING], the
4 court shall enter the judgment necessary to (1) compensate the persons entitled to it
5 for the period during which the property was in the possession of the plaintiff, (2)
6 recover for the plaintiff any award paid to any person, and (3) order the plaintiff to
7 restore the property to the condition in which it existed at the time of the filing of the
8 declaration of taking unless such restoration is impossible, in which case the court
9 shall award damages to the proper persons as compensation for any diminution in the
10 value of the property caused by the plaintiff's wrongful possession.

11 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT

DATE: 2/26/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-28-98

Judiciary Committee considered

SENATE BILL NO. 190

"An Act relating to eminent domain and to negotiations to purchase property before it is taken through eminent domain; and providing for an effective date."

and recommends:

be replaced with CS FOR SB 190 (JUD)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by Committee

further referral to the Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR#

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Al Green</i>	X		
		<i>Alan Hamell</i>	X		
		<i>A Pearce</i>	✓		
		<i>Mike Miller</i>	✓		
CHAIR:		CHAIR: <i>Wesley Taylor</i>	X		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>DOT/PF - COMMISSIONER</i>	<i>2-26-98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE COMMITTEE REPORT

DATE: 2/26/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-28-98

Judiciary Committee considered

SENATE BILL NO. 190

"An Act relating to eminent domain and to negotiations to purchase property before it is taken through eminent domain; and providing for an effective date."

and recommends:

- be replaced with CS FOR SB 190 (JUD)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill:
 - same title
 - new title
- House Bill:
 - same title
 - technical title
 - new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>John Gammell</i>	X		
		<i>Peace</i>	✓		
		<i>Mike Miller</i>	✓		
CHAIR:		CHAIR: <i>Christ. Taylor</i>	X		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DOT/PF - COMMISSIONER</i>	<i>2-26-98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill