

HB

500

ALASKA STATE LEGISLATURE

4/4/02

Interim:

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Wasilla, Alaska 99654
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Session:

State Capitol Building, Room 24
Juneau, Alaska 99801-1182
(907) 465-2186
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REPRESENTATIVE VIC KOHRING DISTRICT 26

To: Representative Carl Morgan
Co-Chair, Community & Regional Affairs Committee

From: Representative Vic Kohring *UK*

Date: March 27, 2002

Re: Request for Hearing, HB 500

I respectfully request that a hearing be scheduled in your committee for HB 500. ADVANCE ACQUISITION OF REAL PROPERTY. This bill allows the state, local governments, public utilities, and the railroad to advance purchase right-of-ways.

Attached are the bill, sponsor statement, and supporting documents.

Thank you for your consideration.

Alaska State Legislature



House Transportation Committee

SPONSOR STATEMENT

HOUSE BILL 500

Infrastructure development is key to economic development throughout Alaska. Right-of-way corridors are required to access resources and markets, enhance intrastate commerce, and improve Alaskan's quality of life. Inter-modal access to existing and future harbors and airports will also play a key role in determining many of the corridors.

Economical transportation and utilities are vital to developing Alaska's raw resources and value-added products. Lowering the cost of developing these corridors will allow Alaska's resources to compete in national and international markets.

Many times proposed resource extraction projects are hindered due to lack of established rights-of-way to access the sites or to move the resources to markets.

In urbanized areas, the public process to identify new rights-of-way (transportation and utility corridors) for past-due projects can extend over long periods. This results in bitter battles, pitting neighbor against neighbor, ending up with many dislocated property owners. Sky rocketing right-of-way costs and more expensive construction costs result in project delays and fewer projects statewide.

Passage of this bill will result in the direct benefits of approved corridors and pre-acquired rights-of-way are:

- Decreased rights-of-way acquisition costs;
- Accelerated permitting of future transportation and utility projects resulting in shorter timeframes to construct roads and utilities at a lower cost;
- Safeguards for property owners; and,
- Resource extraction and value-added industries will know that their projects can move forward during a shorter timeframe allowing them to capture emerging timber, mineral, and energy markets when market conditions are ripe.

HB 500

ADVANCE ACQUISITION OF REAL PROPERTY

Issue

There are few "reserved rights-of-way corridors" for roads, railroads, pipelines, and other utilities in Alaska. The lack of acquired rights-of-way has resulted in project costs skyrocketing or in the projects falling aside.

Problem

DOT, DNR, Alaska Railroad, local governments, and utility companies have a long process to go through to obtain new rights-of way (ROW), up to 5 years or more. While going through the lengthy ROW acquisition process, ROW costs escalate tremendously (land speculators or rapidly developing areas), causing construction project costs to escalate and for projects to be continually delayed. There are no statutes that allow for identifying and **preserving** corridors for future use.

Solution

Develop statutes that allow the state, local governments, public utilities, and the railroad to "memorialize" transportation/utility ROW corridors and to allow them to acquire the ROW corridors far in advance of any actual construction project. This will result in tremendous long term cost savings for ROW acquisition and for keeping projects on schedule.



Alaska Professional Design Council □ PO Box 100515 □ Anchorage AK 99501-0515

March 25, 2002

MEMBER SOCIETIES

Alaska Society of Professional
Engineers

House Community and Regional Affairs Committee
Alaska State Legislature
Juneau Alaska

Alaska Society of Professional
Land Surveyors

RE: House Bill 500

American Congress on
Surveying & Mapping Alaska
Section

Dear Members of the House Community and Regional Affairs Committee:

APDC is an organization composed of design professional associations representing over 5,000 licensed and registered professionals in Alaska.

American Institute of
Architects Alaska Chapter

As Chair of the Legislative Liaison Committee for the Alaska Professional Design Council (APDC), I would like to offer some comments on House Bill 500.

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Engineers Alaska Section

APDC supports House Bill 500, and the ability for local jurisdictions to engage in long-range planning for development of major infrastructure projects.

Thank you for the opportunity to present our comments on House Bill 500.

American Society of
Landscape Architects Alaska
Chapter

Sincerely,

Sam S. Kito III, PE
Chair, Legislative Liaison Committee
Alaska Professional Design Council

Architecture/Engineering
Marketing Association of
Alaska

Consulting Engineers Council
of Alaska

Professional Engineers in
Private Practice Alaska
Chapter

American Society of Interior
Designers

22-LS0610F
Utermohle
4/22/02

CS FOR HOUSE BILL NO. 500()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the advance acquisition of real property for public purposes."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **POLICY AND FINDINGS.** (a) It is the policy of the State to provide for the
6 acquisition of real property and interests in real property necessary for the construction,
7 improvement, reconstruction, and maintenance of facilities for public purposes in advance of
8 actual construction, for the purpose of reducing the cost of real property for construction of
9 public facilities, reducing hardship to owners of real property, and eliminating economic
10 waste occasioned by the improvement of property immediately before its acquisition for a
11 public purpose.

12 (b) The legislature finds that the purchase and condemnation of real property
13 necessary for the construction, improvement, reconstruction, and maintenance of facilities for
14 public purposes reasonably in advance of programmed construction, is for a public use and
15 purpose.

1 * Sec. 2. AS 09.55.240(a) is amended to read:

2 (a) The right of eminent domain may be exercised for the following public
3 uses:

4 (1) all public uses authorized by the government of the United States;

5 (2) public buildings and grounds for the use of the state and all other
6 public uses authorized by the legislature of the state;

7 (3) public buildings and grounds for the use of an organized or
8 unorganized borough, city, town, village, school district, or other municipal division,
9 whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes
10 conducting water, heat, or gas for the use of the inhabitants of an organized or
11 unorganized borough, city, town, or other municipal division, whether incorporated or
12 unincorporated; raising the banks of streams, removing obstructions from them and
13 widening, deepening, or straightening their channels; roads, streets, and alleys, and all
14 other public uses for the benefit of an organized or unorganized borough, city, town,
15 or other municipal division whether incorporated or unincorporated, or its inhabitants,
16 which may be authorized by the legislature;

17 (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds,
18 private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts,
19 and pipes for public transportation, supplying mines and farming neighborhoods with
20 water, and draining and reclaiming land, and for floating logs and lumber on streams
21 not navigable, and sites for reservoirs necessary for collecting and storing water;

22 (5) roads, tunnels, ditches, flumes, pipes, and dumping places for
23 working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of
24 tailings or refuse matter from mines; also an occupancy in common by the owners or
25 possessors of different mines of any place for the flow, deposit, or conduct of tailings
26 or refuse matter from their several mines, and sites for reservoirs necessary for
27 collecting and storing water;

28 (6) private roads leading from highways to residences, mines, or farms;

29 (7) telephone lines;

30 (8) telegraph lines;

31 (9) sewerage of an organized or unorganized borough, city, town,

1 village, or other municipal division, whether incorporated or unincorporated, or a
2 subdivision of it, or of a settlement consisting of not less than 10 families, or of public
3 buildings belonging to the state or to a college or university;

4 (10) tramway lines;

5 (11) electric power lines;

6 (12) for the location of pipelines for gathering, transmitting,
7 transporting, storing, or delivering natural or artificial gas or oil or any liquid or
8 gaseous hydrocarbons, including, but not limited to, pumping stations, terminals,
9 storage tanks, or reservoirs, and related installations;

10 (13) advance acquisition of real property or an interest in real
11 property for a public use described in this subsection that will occur in the
12 future.

13 * Sec. 3. AS 09.55.270 is amended to read:

14 **Sec. 09.55.270. Prerequisites.** Before property can be taken, it shall appear
15 that

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

17 (2) the taking is necessary to the use;

18 (3) if already appropriated to a public use, the public use to which it is
19 to be applied is a more necessary public use;

20 (4) if the use is for an advance acquisition of real property or an
21 interest in real property for a future public use, the future public use is a
22 reasonably foreseeable use that has been identified in a development plan
23 prepared, published, and made available to the public by the agency or entity
24 that exercises the power of eminent domain.

25 * Sec. 4. AS 18.55.550(a) is amended to read:

26 (a) The corporation may

27 (1) acquire by eminent domain real property that the corporation [IT]
28 considers necessary within the boundaries of the redevelopment project or for the
29 corporation's present or reasonably foreseeable future [ITS] purposes under
30 AS 18.55.480 - 18.55.960 after the adoption by the corporation [IT] of a resolution
31 declaring that the acquisition of the real property described in the resolution is

1 necessary for those purposes; and

2 (2) exercise the power of eminent domain in the manner provided in
3 AS 09.55.240 - 09.55.460 or in the manner provided by other statutory provisions for
4 the exercise of the power of eminent domain.

5 * Sec. 5. AS 18.55.550 is amended by adding a new subsection to read:

6 (c) If the corporation does not use all or a portion of land acquired for advance
7 acquisition for a future public use as authorized under (a) of this section for
8 corporation purposes within 20 years following the acquisition of the land or if the
9 corporation sells all or a portion of land acquired for advance acquisition for a future
10 public use as authorized under (a) of this section, the corporation shall offer the land to
11 the person, or the person's successor in interest, from whom the land was acquired at
12 the same price that the corporation paid the person when the land was acquired. If
13 only a portion of the land acquired for advance acquisition for a future public use is
14 available to the former owner of the land under this subsection, the corporation shall
15 prorate the price of the land to be sold based on the original price of the land and the
16 proportion that the amount of land available for sale bears to the total amount of land
17 originally acquired.

18 * Sec. 6. AS 19.05.080 is amended to read:

19 **Sec. 19.05.080. Acquisition of land, easements, and materials by purchase**
20 **or eminent domain.** The department, on behalf of the state and as part of the cost of
21 constructing or maintaining a highway, may purchase in the open market, acquire, take
22 over, or condemn under the right and power of eminent domain land in fee simple or
23 easements that it considers necessary for present public use or for advance
24 acquisition for future public use, either temporary or permanent, or that it considers
25 necessary and reasonable for the public use. By the same means, the department may
26 obtain material, including clay, gravel, sand, or rock, or the land necessary to obtain
27 material, including access to it. The department may acquire the land or materials
28 notwithstanding the fact that title to it is vested in the state or a department, agency,
29 commission, or institution of the state. Acquisition of materials by purchase in the
30 open market under this section is governed by AS 36.30 (State Procurement Code).

31 * Sec. 7. AS 19.05.080 is amended by adding a new subsection to read:

1 (b) If the department does not use all or a portion of land acquired for advance
2 acquisition for a future public use as authorized under (a) of this section for highway
3 purposes within 20 years following the acquisition of the land or if the department
4 sells all or a portion of land acquired for advance acquisition for a future public use as
5 authorized under (a) of this section, the department shall offer the land to the person,
6 or the person's successor in interest, from whom the land was acquired at the same
7 price that the department paid the person when the land was acquired. If only a
8 portion of the land acquired for advance acquisition for a future public use is available
9 to the former owner of the land under this subsection, the department shall prorate the
10 price of the land to be sold based on the original price of the land and the proportion
11 that the amount of land available for sale bears to the total amount of land originally
12 acquired.

13 * Sec. 8. AS 35.20.010 is amended to read:

14 **Sec. 35.20.010. Acquisition of land, rights-of-way, and materials by**
15 **purchase or eminent domain.** The department, on behalf of the state and as part of
16 the cost of constructing or maintaining a public work, may purchase in the open
17 market, acquire, take over, or condemn under the right and power of eminent domain
18 land in fee simple or easements that it considers necessary for present public use or
19 for advance acquisition for a future public use, either temporary or permanent, or
20 that it considers necessary and reasonable for the public use. By the same means, the
21 department may obtain material, including clay, gravel, sand, or rock, or the land
22 necessary to obtain the material, and the necessary land or easements to provide access
23 to it. The department may acquire the land or material notwithstanding the fact that
24 the title to it is in the state or a department, agency, commission, or institution of the
25 state. Acquisition of material in the open market under this section is governed by
26 AS 36.30 (State Procurement Code).

27 * Sec. 9. AS 35.20.010 is amended by adding a new subsection to read:

28 (b) If the department does not use all or a portion of land acquired for advance
29 acquisition for a future public use as authorized under (a) of this section for public
30 work purposes within 20 years following the acquisition of the land or if the
31 department sells all or a portion of land acquired for advance acquisition for a future

1 public use as authorized under (a) of this section, the department shall offer the land to
2 the person, or the person's successor in interest, from whom the land was acquired at
3 the same price that the department paid the person when the land was acquired. If
4 only a portion of the land acquired for advance acquisition for a future public use is
5 available to the former owner of the land under this subsection, the department shall
6 prorate the price of the land to be sold based on the original price of the land and the
7 proportion that the amount of land available for sale bears to the total amount of land
8 originally acquired.

9 * Sec. 10. AS 42.05.631 is amended to read:

10 Sec. 42.05.631. Eminent domain. A public utility may exercise the power of
11 eminent domain for public utility uses including present public utility uses or for
12 advance acquisition for future public utility uses. This section does not authorize
13 the use of a declaration of taking.

14 * Sec. 11. AS 42.05.631 is amended by adding a new subsection to read:

15 (b) If a public utility does not use all or a portion of land acquired for advance
16 acquisition for a future public use as authorized under (a) of this section for public
17 utility purposes within 20 years following the acquisition of the land or if the public
18 utility sells all or a portion of land acquired for advance acquisition for a future public
19 use as authorized under (a) of this section, the public utility shall offer the land to the
20 person, or the person's successor in interest, from whom the land was acquired at the
21 same price that the public utility paid the person when the land was acquired. If only a
22 portion of the land acquired for advance acquisition for a future public use is available
23 to the former owner of the land under this subsection, the public utility shall prorate
24 the price of the land to be sold based on the original price of the land and the
25 proportion that the amount of land available for sale bears to the total amount of land
26 originally acquired.

27 * Sec. 12. AS 42.40.385(a) is amended to read:

28 (a) The corporation may exercise the power of eminent domain under
29 AS 09.55.240 - 09.55.460 to acquire land for railroad transportation purposes
30 including present railroad transportation purposes or for advance acquisition for
31 future railroad transportation purposes, consistent with this chapter.

1 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title
2 whenever, in the judgment of the board, ownership of a fee simple title is necessary to
3 carry out the purposes of this chapter.

4 * Sec. 13. AS 42.40.385 is amended by adding a new subsection to read:

5 (e) If the corporation does not use all or a portion of land acquired for advance
6 acquisition for a future public use as authorized under (a) of this section for railroad
7 transportation purposes within 20 years following the acquisition of the land or if the
8 corporation sells all or a portion of land acquired for advance acquisition for a future
9 public use as authorized under (a) of this section, the corporation shall offer the land to
10 the person, or the person's successor in interest, from whom the land was acquired at
11 the same price that the corporation paid the person when the land was acquired. If
12 only a portion of the land acquired for advance acquisition for a future public use is
13 available to the former owner of the land under this subsection, the corporation shall
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REPRESENTATIVE VIC KOHRING
DISTRICT 26

To: Representative Kevin Meyer
Co-Chair, Community & Regional Affairs Committee

From: Representative Vic Kohring 

Date: March 27, 2002

Re: Request for Hearing, HB 500

I respectfully request that a hearing be scheduled in your committee for HB 500. ADVANCE ACQUISITION OF REAL PROPERTY. This bill allows the state, local governments, public utilities, and the railroad to advance purchase right-of-ways.

Attached are the bill, sponsor statement, and supporting documents.

Thank you for your consideration.

Library

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 9, 2002

SUBJECT: HB 500, An Act relating to the advance acquisition of real property for public purposes (Work Order No. 22-LS0610\C)

TO: Representative Vic Kohring
Attn: Mike Krieber

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 500, an Act relating to the advance acquisition of real property for public purposes.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the policy and findings of the legislature in regard to the advance acquisition of land for public purposes.

Section 2 of the bill amends AS 09.55.240(a) to authorize the power of eminent domain to be exercised for advance acquisition of real property or an interest in real property for a public use that will occur more than five years in the future.

Section 3 of the bill amends AS 09.55.270 to provide that in order for land or an interest in land to be taken for advance acquisition for a future public use, the use must be a reasonably foreseeable use that is identified in a development plan prepared, published, and made available to the public by the agency that exercises the power of eminent domain.

Section 4 of the bill amends AS 18.55.550(a) to provide that the Alaska Housing Finance Corporation may acquire land for present and reasonably foreseeable future purposes.

Section 5 of the bill amends AS 19.05.080 to provide that the Department of Transportation and Public Facilities may acquire land for advance acquisition for future public use as part of the cost of constructing or maintaining a highway.

Representative Vic Kohring
April 9, 2002
Page 2

Section 6 of the bill amends AS 35.20.010 to provide that the Department of Transportation and Public Facilities may acquire land for advance acquisition for future public use as part of the cost of constructing or maintaining a public work.

Section 7 of the bill amends AS 42.05.631 to provide that a public utility may exercise the power of eminent domain for present and future public utility uses.

Section 8 of the bill amends AS 42.40.385(a) to provide that the Alaska Railroad Corporation may exercise the power of eminent domain for present and future railroad transportation purposes.

GU:med
02-360.med

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Testimony of Rick Kauzlarich, Right-of-Way Chief
Alaska DOT&PF

- AKDOT supports HB 500, "An Act relating to the advance acquisition of real property for public purposes."
- AKDOT currently has the ability to perform advanced acquisitions, but it is a very complicated process. AKDOT must receive prior approval from the FHWA for advanced acquisitions. This often means the department must complete the required environmental process, which can be difficult, time consuming, and litigious.
- HB 500 adds another tool that AKDOT can use in its negotiation and acquisition process. It's a show of support for advanced acquisition policies. It will help with the creation of the Decisional Document. The Decisional Document is created when a property needs to be acquired by the condemnation process – simply put - it demonstrates that the acquired property is needed for the public good.
- An example of how advanced acquisitions would have saved the state money is the Parks Hwy project. Final R/W real estate costs were approximately 24M, while the construction costs were 16M. This was caused by the acceleration of land values and general boom in prices associated with an area transforming from a rural area to an urban area.
- Early involvement of R/W, at the design level, is imperative to the success of the project.
 - Right-of-way staff:
 - Considers the phasing of the construction and R/W acquisition to concentrate efforts in segments. Acquisition and relocation could be completed by segment and then a notice given to allow construction to proceed.

- Initiates title searches as soon as an alignment is determined
 - Identifies whole takings where R/W activities such as appraisal and even acquisition may be accomplished before design is final
 - Anticipates and identifies difficult acquisitions early in the process and concentrate early efforts on acquisition/relocation that will require more lead time
 - Reviews anticipated stages of construction and acquires necessary parcels in the phases which will occur first in the construction cycle along with properties that are expected construction starting points.
 - Holds regularly scheduled community meetings to keep the public informed.
- Again, let me state that AKDOT supports HB 500 because it adds another tool that AKDOT can use in its negotiation and acquisition process and it will help with the creation of the Decisional Document.
 - Mr. Chairman, and Committee Members, thank you for the opportunity to speak to you today.

Alaska State Legislature



House Transportation Committee

SPONSOR STATEMENT

HOUSE BILL 500

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In urbanized areas, the public process to identify new rights-of-way (transportation and utility corridors) for past-due projects can extend over long periods. This results in bitter battles, pitting neighbor against neighbor, ending up with many dislocated property owners. Sky rocketing right-of-way costs and more expensive construction costs result in project delays and fewer projects statewide.

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HB 500

ADVANCE ACQUISITION OF REAL PROPERTY

Issue

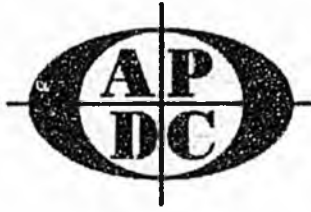
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Alaska Professional Design Council □ PO Box 100515 □ Anchorage AK 99501-0515

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March 25, 2002

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House Community and Regional Affairs Committee
Alaska State Legislature
Juneau Alaska

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RE: House Bill 500

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