

SB

278



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

Sponsor Statement Senate Bill 278

Taking Property By Eminent Domain

The enactment of this bill will bring fairness and expediency to government and other condemning authorities that require the acquisition of private lands for public uses. This bill is not trying to remove the authority of the state to take land by eminent domain. It will simply add a provision to ensure there is a good faith negotiation between government agencies and property owners before land is claimed under eminent domain.

It is reasonable to require a government entity to make a good faith effort to negotiate with the landowner on a value and price prior to taking the property. Someone that does not have the financial ability or an understanding of the legal process could be overwhelmed with the bureaucracy and be at a disadvantage in trying to protect his or her property rights.

By requiring a good faith effort to purchase and justify the state's authority of eminent domain, the landowner will have the benefit of full disclosure of information used by the state to determine the public purpose and legitimate value before property can be taken.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kaslof Lowell Point Moose Pass Nanwalek Nikolaevsk
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Sec. 1: AS 09.55.270 lists the matters that any condemning authority must prove before it can condemn property through a judicial eminent domain complaint. The statute is amended by adding subsection (4) that requires the state to make a "reasonable and diligent effort" when trying to purchase land through eminent domain. Subsection (4) defines a "reasonable and diligent effort" as one that invites the property owner to secure an appraisal from a real estate appraiser certified under AS 08.87 and as an offer to purchase the property for its full appraised value plus cost or an explanation to the property owner why the full appraised value is not being offered.

Sec. 2: AS 09.55.420-460 deals with "declarations of taking" which differ from eminent domain complaints in that once a declaration is filed, the property is taken immediately, rather than after judicial proceedings are completed. Before 1976, the state could take land under a declaration of taking without proving the necessity for the taking. In 1976, however, the legislature added subsection (7), which required the declaration to contain a statement explaining how the taking was necessary. Section 2 further amends the statute to add a subsection (8) to include a statement verifying that, where possible, the condemning authority has made a "reasonable and diligent effort" to purchase the land.

Sec. 3: AS 09.55.460 authorizes the court to divest the authority of its new title if it is ultimately shown that the taking was not necessary. Section 3 would amend AS 09.55.460(b) by authorizing the court to also divest the condemnor of title when it was ultimately shown that a "reasonable and diligent effort" to purchase the property had not

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Sec. 4: Sets an effective date of the Act.

STATE'S Questions

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2. Was the State's appraiser informative, courteous and fair?
3. Did the State provide you with a copy of their complete appraisal report and Market Data Book?
4. Were you able to settle with the State on the basis of that appraisal, and did you feel the compensation was adequate and fair? (If No, please answer the following questions.)
5. Did the appraisal fairly set forth the value of the Taking and the consequences to the Remainder Property?
6. In the appraisal of your property was the "BEFORE the Taking Value", based on the Highest and Best Use of the property rather than the existing use?
7. Were the following items fairly considered in analyzing the effects of the Right-of-way Taking on your property:
 - Loss of parking
 - Change in Highest and Best Use
 - Decline in Market Appeal
 - Change in the Business Use of the property
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8. Was it necessary for you to hire experts (attorney, appraiser, etc) to assist you in your negotiations?
 - What are the costs?
 - How much time have you spent?
9. Did the State fairly consider the damages to your property resulting from the Take?

Philip B. Evans
Owner, Association President
North Gate Square Commercial Condominiums

PO Box 85103
Fairbanks, AK 99708
(907) 479-5407

February 6, 2002

Senator Gary Wilken
State Capital Building
Juneau, AK 99801-1182

Dear Senator Wilken:

The State of Alaska Department of Transportation recently took a portion of my property to use for a road construction project. I would like to make you aware of my experience with them.

1. Prior to condemnation being filed, the person representing the State was courteous but misleading in attempting to convince me to accept a settlement that was completely unfair.
2. Prior to condemnation being filed, the State appraiser provided no meaningful information. She was quite insistent about her authority to be on my property and utilize space in a business located in the mall for her office. She was deceptively courteous and misleading in her attempt to promote an unfair evaluation of the property.
3. The State did not provide me a copy of their completed appraisal report and Market Data Book.
4. I was unable to settle with the State based on that appraisal because the compensation was totally inadequate and unfair.
5. The appraisal did not fairly set forth the value of the Taking and the consequences to the Remainder Property.
6. In the appraisal of my property, the "Before the Taking Value" was based on the current use of the property rather than the "Highest and Best Use" of the property.
7. The following items were not fairly considered when analyzing the effects of the Right-of-Way Taking on my property:
 - a. Loss of parking
 - b. Change in Highest and Best Use
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8. When it became apparent the State was misleading and unfair in their attempts to reach settlement, I hired an attorney and an appraiser to provide me accurate and fair counsel.
9. The State appraiser concluded that just compensation for the property taken and damages was \$80,229. The appraiser for North Gate Square and Philip Evans concluded that just compensation for property taken and damages was \$676,000. As a consequence, we proceeded to hearing.
10. Frank King, an appraiser, was appointed by the State to preside over the Master's Hearing. At the conclusion of the Hearing, Mr. King rendered a decision awarding \$324,000, for property taken and damages. Although this was approximately half of the amount sought, I decided rather than continue with litigation I would settle. The State subsequently appealed.

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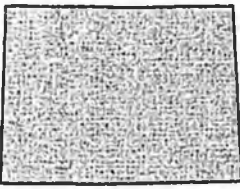

11. The State's decision to appeal will significantly increase costs for not only me but also for the State.

Your assistance and interest in this proceeding is appreciated.

Sincerely,

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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

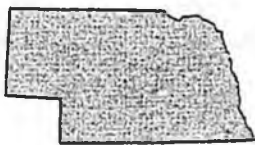
Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established... If an 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]henver 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

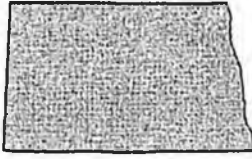
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



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

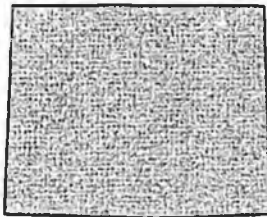
No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more 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**

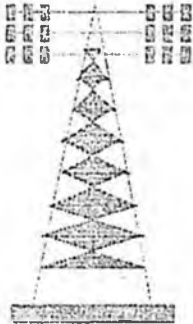
Sec. 301, P.L. 91-646
Note: Pursuant to §102 of the Act, the policies of §301 do not affect the vailidity of individual condemnation actions. However, they do govern the use of federal funds by states "to the greatest extent practicable under State law." Sec. 305(1).

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



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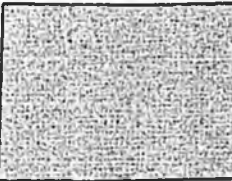

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Illinois

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

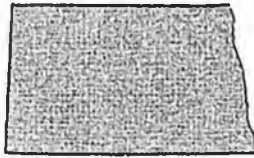
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



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.



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Tex. Prop. Code
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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

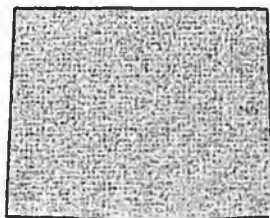
No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more 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**

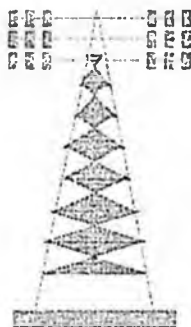
Sec. 301, P.L. 91-646
Note: Pursuant to §102 of the Act, the policies of §301 do not affect the validity of individual condemnation actions. However, they do govern the use of federal funds by states "to the greatest extent practicable under State law." Sec. 305(1).

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



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

Sponsor Statement Senate Bill 278

Taking Property By Eminent Domain

The enactment of this bill will bring fairness and expediency to government and other condemning authorities that require the acquisition of private lands for public uses. This bill is not trying to remove the authority of the state to take land by eminent domain. It will simply add a provision to ensure there is a good faith negotiation between government agencies and property owners before land is claimed under eminent domain.

It is reasonable to require a government entity to make a good faith effort to negotiate with the landowner on a value and price prior to taking the property. Someone that does not have the financial ability or an understanding of the legal process could be overwhelmed with the bureaucracy and be at a disadvantage in trying to protect his or her property rights.

By requiring a good faith effort to purchase and justify the state's authority of eminent domain, the landowner will have the benefit of full disclosure of information used by the state to determine the public purpose and legitimate value before property can be taken.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kasilof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka*



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Sectional Analysis of SB 278

Title 09.55.240-460 constitutes the statutory proceedings regarding the state's authority of eminent domain. Under present law, property owners whose land is to be condemned are faced with an unfairly steep barrier when trying to negotiate a fair settlement with the state. This bill will require that the state make a "reasonable and diligent effort" to negotiate equitably when trying to purchase land from private citizens through eminent domain.

Sec. 1: AS 09.55.270 lists the matters that any condemning authority must prove before it can condemn property through a judicial eminent domain complaint. The statute is amended by adding subsection (4) that requires the state to make a "reasonable and diligent effort" when trying to purchase land through eminent domain. Subsection (4) defines a "reasonable and diligent effort" as one that invites the property owner to secure an appraisal from a real estate appraiser certified under AS 08.87 and as an offer to purchase the property for its full appraised value plus cost or an explanation to the property owner why the full appraised value is not being offered.

Sec. 2: AS 09.55.420-460 deals with "declarations of taking" which differ from eminent domain complaints in that once a declaration is filed, the property is taken immediately, rather than after judicial proceedings are completed. Before 1976, the state could take land under a declaration of taking without proving the necessity for the taking. In 1976, however, the legislature added subsection (7), which required the declaration to contain a statement explaining how the taking was necessary. Section 2 further amends the statute to add a subsection (8) to include a statement verifying that, where possible, the condemning authority has made a "reasonable and diligent effort" to purchase the land.

Sec. 3: AS 09.55.460 authorizes the court to divest the authority of its new title if it is ultimately shown that the taking was not necessary. Section 3 would amend AS 09.55.460(b) by authorizing the court to also divest the condemnor of title when it was ultimately shown that a "reasonable and diligent effort" to purchase the property had not

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been made. Without Section 3, Section 2 of the bill would be meaningless, since the state would be obliged to make a statement that the "reasonable and diligent effort" requirement had been met but the landowner would have no remedy in any case where the statement proved untrue.

Sec. 4: Sets an effective date of the Act.

STATE'S Questions

The State of Alaska Department of Transportation recently took a portion of your property. Please respond to the following questions.

1. Were the people who contacted you from the State informative, courteous and fair?
2. Was the State's appraiser informative, courteous and fair?
3. Did the State provide you with a copy of their complete appraisal report and Market Data Book?
4. Were you able to settle with the State on the basis of that appraisal, and did you feel the compensation was adequate and fair? (If No, please answer the following questions.)
5. Did the appraisal fairly set forth the value of the Taking and the consequences to the Remainder Property?
6. In the appraisal of your property was the "BEFORE the Taking Value", based on the Highest and Best Use of the property rather than the existing use?
7. Were the following items fairly considered in analyzing the effects of the Right-of-way Taking on your property:
 - Loss of parking
 - Change in Highest and Best Use
 - Decline in Market Appeal
 - Change in the Business Use of the property
 - Decline in Market Value
8. Was it necessary for you to hire experts (attorney, appraiser, etc) to assist you in your negotiations?
 - What are the costs?
 - How much time have you spent?
9. Did the State fairly consider the damages to your property resulting from the Take?

Philip B. Evans
Owner, Association President
North Gate Square Commercial Condominiums

PO Box 85103
Fairbanks, AK 99708
(907) 479-5407

February 6, 2002

Senator Gary Wilken
State Capital Building
Juneau, AK 99801-1182

Dear Senator Wilken:

The State of Alaska Department of Transportation recently took a portion of my property to use for a road construction project. I would like to make you aware of my experience with them.

1. Prior to condemnation being filed, the person representing the State was courteous but misleading in attempting to convince me to accept a settlement that was completely unfair.
2. Prior to condemnation being filed, the State appraiser provided no meaningful information. She was quite insistent about her authority to be on my property and utilize space in a business located in the mall for her office. She was deceptively courteous and misleading in her attempt to promote an unfair evaluation of the property.
3. The State did not provide me a copy of their completed appraisal report and Market Data Book.
4. I was unable to settle with the State based on that appraisal because the compensation was totally inadequate and unfair.
5. The appraisal did not fairly set forth the value of the Taking and the consequences to the Remainder Property.
6. In the appraisal of my property, the "Before the Taking Value" was based on the current use of the property rather than the "Highest and Best Use" of the property.
7. The following items were not fairly considered when analyzing the effects of the Right-of-Way Taking on my property:
 - a. Loss of parking
 - b. Change in Highest and Best Use
 - c. Decline in Market Appeal
 - d. Change in the Business Use of the property
 - e. Decline in Market Value
8. When it became apparent the State was misleading and unfair in their attempts to reach settlement, I hired an attorney and an appraiser to provide me accurate and fair counsel.
9. The State appraiser concluded that just compensation for the property taken and damages was \$80,229. The appraiser for North Gate Square and Philip Evans concluded that just compensation for property taken and damages was \$676,000. As a consequence, we proceeded to hearing.
10. Frank King, an appraiser, was appointed by the State to preside over the Master's Hearing. At the conclusion of the Hearing, Mr. King rendered a decision awarding \$324,000, for property taken and damages. Although this was approximately half of the amount sought, I decided rather than continue with litigation I would settle. The State subsequently appealed.

Philip B. Evans
Owner, Association President
North Gate Square Commercial Condominiums

PO Box 85103
Fairbanks, AK 99708
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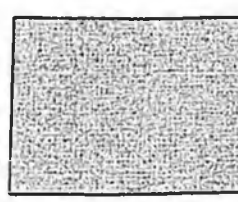

11. The State's decision to appeal will significantly increase costs for not only me but also for the State.

Your assistance and interest in this proceeding is appreciated.

Sincerely,

Philip B. Evans

Appendix A: The Requirement to Negotiate in Other States

<u>State</u>	<u>Citation</u>	<u>Language</u>
 <p>Model Eminent Domain Code</p>	<p>Uniform Law Commissioner's Model Eminent Domain Code 1974 Act §306</p>	<p><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></p>
 <p>Alabama</p>	<p>Ala. Code §18-1A-22</p>	<p><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></p>
 <p>Colorado</p>	<p>Colo. Rev. Stat. §38-1-102</p>	<p><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></p>
 <p>Connecticut</p>	<p>Conn. Gen. Stat. §48-12</p>	<p><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></p>



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...



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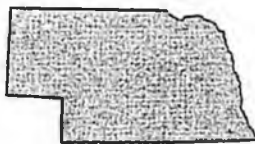
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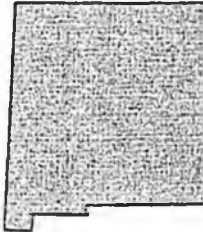
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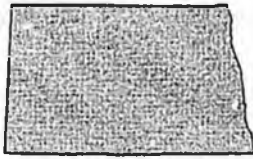
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The petition must...state that the entity and the property owner are unable to agree on the damages.



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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...



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Va. Code Ann. §26-46.5

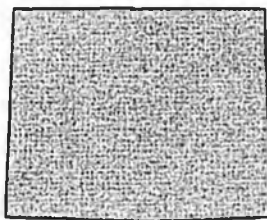
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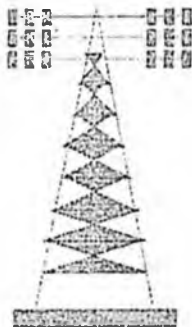
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**Federal Energy
Regulatory
Commission**

16 U.S.C. §814

LANDOWNER WINS BIG – PREVAILS IN ‘TAKING’ CASE!

From: <http://www.mountainstateslegal.com/litigator>

A long and hard fought battle for a New Mexico landowner, and for all property rights advocates nationwide, resulted in a stunning first stage victory for MSLF. On September 13, 2001, the U. S. Court of Federal Claims ruled that the Environmental Protection Agency (EPA) unconstitutionally took the property of Dr. Larry Squires, a rancher and veterinarian, when the EPA issued a May 1992 cease and desist order barring Squires' use of his land. Squires had sought to use his arid land near Hobbs, where the evaporation rate exceeds rainfall by 100 inches annually. The EPA said that, every one or two hundred years, it rains hard enough in the area so that rain collects in the sinkholes pocketing Squires' land. When birds land on the water, at least until the water evaporates, because the birds are "engaged in interstate commerce", the water becomes "waters of the United States."

Because the EPA order included a \$100,000 a day fine, Squires shut down his business use of the property, that is, disposing of waters produced during nearby oil and gas operations. With MSLF as his attorney, Squires sought a court judgment that the EPA order was unconstitutional. Both the Federal District Court and the Court of Appeals ruled that the EPA's order was not "final" and could not be appealed. The Supreme Court declined to hear the case.

Again, with MSLF by his side, Squires demanded to be provided "just compensation" for the EPA's taking of his "private property" for "public use". Clinton Administration lawyers sought to prevent Squires' case from being heard, erecting one stone wall after another. In January 2001, the U. S. Supreme Court declared the very rule by which Squires' property was taken from him, the Migratory Bird Rule, unconstitutional. Shortly thereafter, Squires' case went to trial.

The Court of Federal Claims held Squires' property was "rendered economically without value by the EPA's cease and desist order." Squires' legitimate, investment-backed expectations were thwarted. No economically viable uses remained. "We hold, therefore, that Squires' property was 'taken' within the meaning of the Fifth Amendment and that the government must compensate Squires." The court then ordered the parties to prepare documentation for the court's determination of the amount of "just compensation" owed to Squires.

MSLF's victory in this important case is huge. It may be one of the first rulings in the country holding that a statute that protects species and their habitat caused a taking. Not surprisingly, many are thrilled. "Great news! It holds promise for all of us in natural resources and agricultural production," enthused Roni Bell of LaSalle, Colorado.