

SB

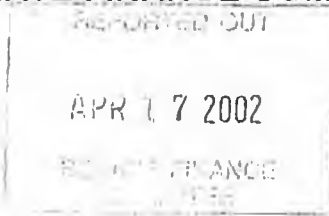
278

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/10/02



FURTHER:

DATE TURNED IN TO OFFICE: 04/17/02

Finance Committee considered

SENATE BILL NO. 278

SB 278 TAKING PROPERTY BY EMINENT DOMAIN

"An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date."

and recommends:

- be replaced with CS SB 278 (FIN)
- adopt previous CS SC Forthcoming
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOTPF	4/12/02		0	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Court	2/28/02		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Linda Green</i>	✓			
<i>Allen Wright</i>	✓			
<i>Tom Hahn</i>			x	
<i>Mike Boy</i>	✓			
<i>Sam White</i>	✓			
<i>Soren D. Jensen</i>	✓			
COCHAIR: <i>David Duggley</i>			x	
COCHAIR: <i>Robert Kelly</i>			✓	

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

APR 17 2002

Fiscal Note Number: _____
Bill Version: CS SB278 (JUD)
() Publish Date: 4/12/2002

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: An Act requiring a good faith effort to BRU _____
purchase property before that property is taken... Component _____
Sponsor: Torgerson
Requester: Senate Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

** See attached analysis.

Prepared by: Dennis R. Poshard, Assistant to Commissioner Phone 465-3904
Division: Commissioner's Office Date/Time 4/12/02 4:16 PM
Approved by: Joseph L. Perkins, Commissioner Date 4/12/2002
Agency: Alaska Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

AKDOT&PF acquires approximately 500 parcels a year. The department estimates that at least 50% of the property owners would contract for their own appraisals if AKDOT&PF was paying for them. The average cost per appraisal is \$2,500. 250 parcels X \$2,500 = \$625,000 per year. The increased cost of property acquisition will cause a reduction in the amount of capital funding available for design and construction of projects. The Department is unable to determine if federal project sponsors will participate in funding the increased right-of-way costs.

The Department would not have any control over the performance of the appraisal or the complexity of the assignment. This bill is also likely to result in the delay of projects.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION APR 17 2002

Fiscal Note Number: 1
Bill Version: SB 278
(S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title: Taking property by eminent domain BRU: Alaska Court System
Component: Trial Courts
Sponsor: Senator Torgerson
Requester: Senate Comm. and Reg. Affairs Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of SB 278.

Prepared by: Douglas Wooliver Phone 463-4750
Division: Alaska Court System Date/Time 2/28/02 8:59 AM
Approved by: Stephanie Cole Date 2/28/02
Agency: Alaska Court System

Amend # 1
adopted

1 * Sec. 2. AS 09.55.270 is amended by adding new subsections to read:

2 (b) Before taking property, a condemnor shall invite the property owner to,
3 within a reasonable period of time set by the condemnor,

4 (1) obtain an appraisal from a real estate appraiser certified under
5 AS 08.87 and offer to sell the property to the condemnor for the appraised value plus
6 the cost of appraisal; or

7 (2) offer any alternative means of satisfying the public purpose for
8 which the property is sought.

9 (c) If a property owner makes an offer under (b) of this section within the
10 reasonable period of time set by the condemnor, the condemnor must either accept the
11 offer, or reject the offer and provide a reasonable explanation of the reasons for the
12 rejection along with a reasonable counter offer. If a condemnor invites the property
13 owner to make an offer to sell the property as described in (b) of this section and the
14 property owner fails to respond within a reasonable period of time, or if the property
15 owner rejects a reasonable counter offer made under this subsection, the ~~property~~
16 ~~owner~~ may commence eminent domain proceedings under AS 09.55.290.

eminent
condemnor

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

18 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
19 must contain

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

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

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

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

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

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

29 (7) a statement that the property is taken by necessity for a project
30 located in a manner that is most compatible with the greatest public good and the least
31 private injury; and

Our Proof

22-LS1399'L
ok'd by Laura
4/18/02 AM

CS FOR SENATE BILL NO. 278(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE:

Offered:
Referred:

Sponsor(s): SENATORS TORGERSON, Taylor, Wilken

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring a good faith effort to purchase property before that property is taken
2 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 is necessary to the use;

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

11 (4) except where the consent of a property owner cannot be
12 obtained due to incapacity, inability to convey legal title, or absence, the
13 condemnor has made a reasonable and diligent effort to acquire the property by
14 negotiation as provided in (b) and (c) of this section.

1 * Sec. 2. AS 09.55.270 is amended by adding new subsections to read:

2 (b) Before taking property, a condemnor shall invite the property owner to,
3 within a reasonable period of time set by the condemnor,

4 (1) obtain an appraisal from a real estate appraiser certified under
5 AS 08.87 and offer to sell the property to the condemnor for the appraised value plus
6 the cost of appraisal; or

7 (2) offer any alternative means of satisfying the public purpose for
8 which the property is sought.

9 (c) If a property owner makes an offer under (b) of this section within the
10 reasonable period of time set by the condemnor, the condemnor must either accept the
11 offer, or reject the offer and provide a reasonable explanation of the reasons for the
12 rejection along with a reasonable counter offer. If a condemnor invites the property
13 owner to make an offer to sell the property as described in (b) of this section and the
14 property owner fails to respond within a reasonable period of time, or if the property
15 owner rejects a reasonable counter offer made under this subsection, the condemnor
16 may commence eminent domain proceedings under AS 09.55.290.

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

18 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
19 must contain

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

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

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

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

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

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

29 (7) a statement that the property is taken by necessity for a project
30 located in a manner that is most compatible with the greatest public good and the least
31 private injury; and

1 (8) except where the consent of a property owner cannot be
 2 obtained due to incapacity, inability to convey legal title, or absence, a statement
 3 that the plaintiff has complied with AS 09.55.270(b) and (c).

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

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

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

9 (2) the plaintiff was required to make a reasonable and diligent
 10 effort to acquire the property by negotiation under AS 09.55.270(b) and (c) and
 11 the plaintiff failed to comply with AS 09.55.270(b) and (c).

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

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

adopted

22-LS1399J
Kurtz
4/16/02

CS FOR SENATE BILL NO. 278()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS TORGERSON, Taylor, Wilken

A BILL
FOR AN ACT ENTITLED

1 "An Act requiring a good faith effort to purchase property before that property is taken
2 through eminent domain; and providing for an effective date."

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

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

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

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

11 (4) except where the consent of a property owner cannot be
12 obtained due to incapacity, inability to convey legal title, or absence, the
13 condemnor has made a reasonable and diligent effort to acquire the property by
14 negotiation as provided in (b) and (c) of this section.

1 * Sec. 2. AS 09.55.270 is amended by adding new subsections to read:

2 (b) Before taking property, a condemnor shall invite the property owner to,
3 within a reasonable period of time set by the condemnor,

4 (1) obtain an appraisal from a real estate appraiser certified under
5 AS 08.87 and offer to sell the property to the condemnor for the appraised value plus
6 the cost of appraisal; or

7 (2) offer any alternative means of satisfying the public purpose for
8 which the property is sought.

9 (c) If a property owner makes an offer under (b) of this section within the
10 reasonable period of time set by the condemnor, the condemnor must either accept the
11 offer, or reject the offer and provide a reasonable explanation of the reasons for the
12 rejection along with a reasonable counter offer. If a condemnor invites the property
13 owner to make an offer to sell the property as described in (b) of this section and the
14 property owner fails to respond within a reasonable period of time, or if the property
15 owner rejects a reasonable counter offer made under this subsection, the property
16 owner may commence eminent domain proceedings under AS 09.55.290.

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18 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
19 must contain

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21 in it is taken;

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

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

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

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

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

29 (7) a statement that the property is taken by necessity for a project
30 located in a manner that is most compatible with the greatest public good and the least
31 private injury; and

1 (8) except where the consent of a property owner cannot be
2 obtained due to incapacity, inability to convey legal title, or absence, a statement
3 that the plaintiff has complied with AS 09.55.270(b) and (c).

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6 where the court finds that

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

9 (2) the plaintiff was required to make a reasonable and diligent
10 effort to acquire the property by negotiation under AS 09.55.270(b) and (c) and
11 the plaintiff failed to comply with AS 09.55.270(b) and (c).

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

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

Adopted
to
replace CS SB 278(JUD)
22-LS1399A
22-LS1399/C

SENATE BILL NO. 278

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY SENATORS TORGERSON, Taylor

Introduced: 2/4/02
Referred: Community and Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring a good faith effort to purchase property before that property is taken
2 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 is necessary to the use;
- 9 (3) if already appropriated to a public use, the public use to which it is
10 to be applied is a more necessary public use; and

11 (4) except where the consent of a property owner cannot be
12 obtained due to incapacity, inability to convey legal title, or absence, the
13 condemnor has made a reasonable and diligent effort to acquire the property by
14 negotiation; for purposes of this paragraph, "reasonable and diligent effort"

1 includes inviting the property owner to secure an appraisal from a real estate
 2 appraiser certified under AS 08.87, and either offering to purchase the property
 3 for its full appraised value as determined by the property owner's appraiser plus
 4 the cost of the appraisal, or explaining to the property owner why full appraised
 5 value is not being offered.

6 * Sec. 2. AS 09.55.430 is amended to read:

7 **Sec. 09.55.430. Contents of declaration of taking.** The declaration of taking
 8 must contain

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

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

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

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

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

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

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

21 (8) except where the consent of a property owner cannot be
 22 obtained due to incapacity, inability to convey legal title, or absence, a statement
 23 that the plaintiff has made a reasonable and diligent effort to acquire the
 24 property by negotiation.

25 * Sec. 3. AS 09.55.460(b) is amended to read:

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

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

30 (2) except where the consent of a property owner could not be
 31 obtained due to incapacity, inability to convey legal title, or absence, the plaintiff

1 did not make a reasonable and diligent effort to acquire the property by
2 negotiation.

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 for
5 the period during which the property was in the possession of the plaintiff, (2) recover
6 for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the
7 property to the condition in which it existed at the time of the filing of the declaration
8 of taking unless such restoration is impossible, in which case the court shall award
9 damages to the proper persons as compensation for any diminution in the value of the
10 property caused by the plaintiff's wrongful possession.

11 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS SB278 (JUD)
() Publish Date: 4/12/2002

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title An Act requiring a good faith effort to BRU _____
purchase property before that property is taken... Component _____
Sponsor Torgerson _____
Requester Senate Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
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Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

** See attached analysis.

Prepared by: Dennis R. Poshard, Assistant to Commissioner Phone 465-3904
Division Commissioner's Office Date/Time 4/12/02 4:16 PM
Approved by: Joseph L. Perkins, Commissioner Date 4/12/2002
Agency Alaska Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

AKDOT&PF acquires approximately 500 parcels a year. The department estimates that at least 50% of the property owners would contract for their own appraisals if AKDOT&PF was paying for them. The average cost per appraisal is \$2,500. 250 parcels X \$2,500 = \$625,000 per year. The increased cost of property acquisition will cause a reduction in the amount of capital funding available for design and construction of projects. The Department is unable to determine if federal project sponsors will participate in funding the increased right-of-way costs.

The Department would not have any control over the performance of the appraisal or the complexity of the assignment. This bill is also likely to result in the delay of projects.



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 "reasonable and diligent effort" made by government agencies to negotiate with property owners before land is claimed under eminent domain.

It is reasonable to require a government entity to make a "reasonable and diligent 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 "reasonable and diligent effort" to 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 Nikolaevs Ninilchik Port Graham Razdolna Seward Seldovia
Soldotna Stariski Sterling Voznesenka*



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

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.

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 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.

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 Nikolaevs Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

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

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 306, 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

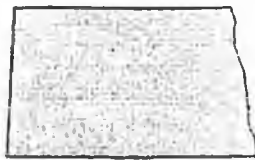
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



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 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 ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-563-8476

March 11, 2002

Senator John Torgerson
State Capitol
Juneau, Alaska 99801-1182

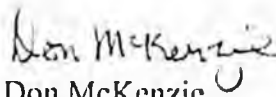
RE: SB 278 – An Act requiring a good faith effort to purchase property before that property is taken through eminent domain, and providing for an effective date.

Dear Senator Torgerson,

The Alaska Association of REALTORS with over 1,100 members statewide supports Senate Bill 278. We agreed that before property can be taken, the property owner should have the opportunity to secure an appraisal from a real estate appraiser. The condemnor should either offer to purchase the property for its full appraised value as determined by the property owner's appraisal plus the cost of the appraisal or explain to the property owner why the full appraised value is not being offered.

The Alaska Association of REALTORS encourages the passage of Senate Bill 278.

Sincerely,


Don McKenzie
President



Alaska State Chamber of Commerce

Position 2002 - 5

Compensation for Regulatory Takings

The Alaska State Chamber of Commerce urges the Governor, his Administration and the Legislature to pass legislation to clarify that property owners be compensated at fair market value for property taken by regulation.

ADOPTED

November 1, 2001

BY Pamela La Bolle
Pamela La Bolle
President

BY Helvi K. Sandvik
Helvi Sandvik
Chair

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
(907) 479-5407

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

TO: PHILIP EVANS
NORTH GATE SQUARE
479-5403 FAX
479-5407

FROM: MIKE LOHMAN
WASILLA BAR
376-0948 HOME/MESSAGE
376-0947 FAX

SUBJ: HIGHWAY RIGHT OF WAY ACQUISITION

IN RESPONSE TO YOUR INQUIRY REGARDING
THE STATE TAKING A PORTION OF MY PROPERTY
FOR HIGHWAY RIGHT OF WAY THE FOLLOWING
ADDRESSES MY SITUATION.

PROPERTY DESCRIPTION

MY BAR/NIGHTCLUB SITS ON 2 $\frac{1}{2}$ ACRES.
THE BUILDING IS 25 FEET FROM THE
FRONTAGE ROAD WHICH ALLOWS PARKING
FOR 15 VEHICLES AT OR NEAR THE
FRONT ENTRANCE. A WAREHOUSE/RETAIL
SPACE IS BEHIND AND OFFSET TO THE
BAR WHICH SHARES PARKING WITH THE BAR.
FOR OVER 23 YEARS THE BAR HAS USED
THE AREA OF LAND BETWEEN THE BAR
AND FRONTAGE ROAD FOR CUSTOMER
PARKING. ALSO IN 1995 WHEN WE

Pg 2

PURCHASED THE BUSINESS AND PROPERTY AND REMODELED THE BAR, THE PARKING SPACE BEING TAKEN BY THE STATE WAS APPROVED AND PERMITTED BY THE CITY OF WASHILLA. THE PROPOSED ACQUISITION WILL TAKE 15 PRIME PARKING SPACES IN FRONT OF THE BAR. I NEED ALL THE SPACE THAT I CURRENTLY HAVE FOR PARKING, ESPECIALLY IN SUCH A CONVENIENT LOCATION TO THE ENTRANCE TO THE BAR.

ANSWERING YOUR QUESTIONS AS NUMBERED:

1. THE REPRESENTATIVE OF THE STATE WAS COURTEOUS AND INFORMATIVE, BUT NOT COMPLETELY ACCURATE. I WAS TOLD THAT PARKING COULD CONTINUE ON THE RIGHT OF WAY WHEN IN FACT 1) A CONCRETE CURB IS TO BE INSTALLED, 2) A MULTI USE PATH IS TO BE BUILT BETWEEN THE CURB AND MY BUILDING, AND 3) IT IS NOT LEGAL TO BACK FROM A PARKING SPACE ON TO A DOT FRONTAGE ROAD, ALTHOUGH IT IS LEGAL TO DO SO PER THE CITY AND BURROUGH CODES ON THE MAINTAINED ROADS.

2. THE STATE APPRAISER WAS COURTEOUS, BUT IN WRITING THAT HE VERBALLY TOLD ME THAT I WOULD LOSE THE PARKING SPACE, BUT CONSIDERABLY UNDER APPRAISED THE AREA BEING TAKEN PER OTHER APPRAISERS THAT I CONTACTED.

Pg 3

- THE APPRAISAL ALLOWED A VALUE FOR A TEN FOOT STRIP THE WIDTH OF THE PROPERTY, BUT DID NOT GIVE AN ALLOWANCE FOR THE REMAINING FIFTEEN FEET BETWEEN THE RIGHT OF WAY AND MY BUILDING THAT WILL BE USELESS. BEST USE IS GONE. ONLY FLOWERS CAN BE PLANTED WHERE INCOME HAD BEEN GENERATED.
3. I DID GET A COPY OF THE APPRAISAL REPORT, BUT DO NOT KNOW WHAT THE MARKET DATA BOOK IS.
 4. I HAVE NOT RESPONDED TO THE STATE YET OTHER THAN VERBALLY. NO, THE OFFER IS NOT FAIR.
 5. THE APPRAISAL DID NOT SET FORTH THE VALUE OF THE TAKING AND THE CONSEQUENCES OF THE REMAINDER OF THE PROPERTY. ALTHOUGH, THE APPRAISER STATES THE MARKET VALUE AFTER THE TAKING IS THE SAME AS BEFORE. (OH REALLY)
 6. BEST USE OF THE PROPERTY WAS MENTIONED IN THE APPRAISAL BUT VALUED IN THE APPROACH

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7. • LOSS OF PARKING WAS NOT FAIRLY CONSIDERED

• CHANGE IN HIGHEST AND BEST USE WAS NOT CONSIDERED

• MARKET ~~VALUE~~ APPEAL WILL BE HIGHLY IMPACTED NEGATIVELY

• MARKET VALUE WAS STATED AS THE SAME BOTH BEFORE AND AFTER. THIS IS NOT REALISTIC.

• BUSINESS USE OF THE PROPERTY REMAINS THE SAME, BUT INCOME WILL BE NEGATIVELY IMPACTED.

8. I AM WORKING WITH AN APPRAISER AND AN ATTORNEY AT THIS TIME. COSTS ARE NOT KNOWN YET BUT WILL EXCEED THE OFFER PRICE BY THE STATE. I HAVE SPENT TIME OFF AND ON OVER THE LAST FIVE MONTHS MOSTLY WAITING ADVICE FROM THE APPRAISER. IN THE INTERIM I HAVE BEEN TALKING TO OTHER LANDOWNERS IN A SIMILAR SITUATION, A DEVELOPER, A BUILDER, A REAL ESTATE BROKER AND A SECOND OPINION APPRAISER. ALL FEEL IT IS UNFAIR FOR THE STATE TO TAKE PROPERTY AND NOT JUSTLY COMPENSATE THE OWNER FOR THE DAMAGES IT CAUSED.

Pg 5

9. THE STATE DOES NOT RECOGNIZE ANY
DAMAGE TO MY PROPERTY AT THIS TIME.

IF YOU WOULD LIKE TO CONTACT ME, FEEL
FREE TO CALL OR FAX. NOW THAT I KNOW
OF PROPOSED SB 278 I WILL READ UP ON
IT AND CONTACT SENATOR LYDA GREEN

Mike

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/4/02

FURTHER: Judiciary

Date of 5-Day Notice: 2/21/02
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/28/02

Community and Regional Affairs Committee considered

SENATE BILL NO. 278

SB 278 TAKING PROPERTY BY EMINENT DOMAIN

"An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
COURT	2/28		✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

SB 278-TAKING PROPERTY BY EMINENT DOMAIN
SENATE FINANCE COMMITTEE

SIGN-IN

~~Rick Kauzlarich (cos-la-rich)~~
NAME: _____ Subject/Bill No: 278
Co./Dept./Title: DOT State Right of Way Chief Phone: 465-6962
Address: DOT HQ Zip: 99801
Do you wish to testify? Yes No Respond To Questions

~~Jon Tillinghast~~
 ~~Ron Wolfe~~
NAME: _____ Subject/Bill No: 278
Co./Dept./Title: Sealaska Corporation Phone: 586-1400
Address: One Sealaska PLAZA Zip: 99801
Do you wish to testify? Yes No Respond To Questions

~~Bill Cummings~~
NAME: _____ Subject/Bill No: SB 278
Co./Dept./Title: AG Dept of Law Phone: 6711
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

