

**SB**

**278**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 278  
 () Publish Date: 2/4/2002

Revision Date/Time (Note if correction):  
 Title Taking property by eminent domain  
 Sponsor Senator Torgerson  
 Requester Senate Comm. and Reg. Affairs  
 Dept. Affected:  
 BRU Alaska Court System  
 Component Trial Courts  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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  
 Division: Alaska Court System  
 Approved by: Stephanie Cole  
 Agency: Alaska Court System

Phone 463-4750  
 Date/Time 2/28/02 10:10 AM  
 Date 2/28/2002



# 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

## MEMORANDUM

To: Senator Robin Taylor, Chair  
Senate Judiciary Committee

From: Senator John Torgerson

Date: February 28, 2002

Re: Hearing request for SB 278  
"Taking Property By Eminent Domain"

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Please accept this memorandum as a request to schedule SB 278 for a hearing in the Senate Judiciary Committee at your earliest convenience. This bill requires the condemning authority to make a "reasonable and diligent effort" when negotiating the acquisition of property through eminent domain. The intent is to place the condemning authority and the landowner in an equal bargaining position in order to promote productive negotiations, and facilitate dialog over reasonable concerns held by involved parties.

I have enclosed the following back-up information for your review and inclusion in the bill packets:

- SB 278
- Alaska Court System fiscal note
- Sponsor Statement
- Sectional Analysis
- State-by-State Background Information
- AK State Chamber of Commerce support statement

Thank you for your consideration of this request.

### 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*

Request for Hearing



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### 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.

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**SPONSOR  
STATEMENT**



# ALASKA STATE LEGISLATURE

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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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Sponsor  
Statement/Sectional

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.



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

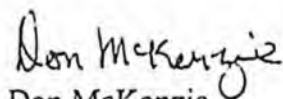
RE: SB 278 – An Act requiring a good faith effort to purchase property before that property is taken through eminent domain, and providing for an effective date.

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.



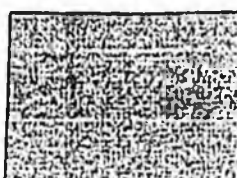

ADOPTED

November 1, 2001

BY Pamela La Bolle  
Pamela La Bolle  
President

BY Helvi K. Sandvik  
Helvi Sandvik  
Chair

## *Appendix A: The Requirement to Negotiate in Other States*

	<u>State</u>	<u>Citation</u>	<u>Language</u>
	<b>Model Eminent Domain Code</b>	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>
	<b>Alabama</b>	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>
	<b>Colorado</b>	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>
	<b>Connecticut</b>	Conn. Gen. Stat. §48-12	<i>The procedure for condemning land or other property for any of the purposes specified in sections..., if those desiring to take such property cannot agree with the owner upon the amount to be paid him for any property taken, shall be as follows:</i>



**Idaho**

Idaho Code  
§7-707(6)

*The complaint [for condemnation] must contain:*

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



**Illinois**

Ill. Rev. Stat.  
§5/7-102

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



**Indiana**

Ind. Code  
§32-11-1-1

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



**Kentucky**

Ky. Rev. Stat.  
Ann. §416.550

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



**Michigan**

Mich. Comp.  
Laws §213.55

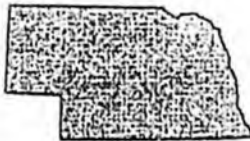
*Except as provided in section 25(4), before initiating negotiations for the purchase of property, the agency shall establish an amount which it believes to be just compensation and promptly shall submit to the owner a good faith offer to acquire the property for the full amount so established... If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



**Missouri**

Mo. Rev.  
Stat.  
§523.010

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



**Nebraska**

Neb. Rev.  
Stat.  
§76-704

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



**New  
Hampshire**

N.H. Rev. Stat.  
Ann. §498-A:4

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

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



**New Jersey**

N.J. Rev. Stat.  
§20:3-5

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



**New  
Mexico**

N.M. Stat. Ann.  
§42A-1-4

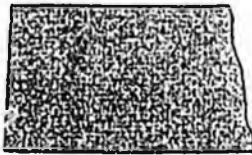
*A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.*



**New York**

N.Y. Em. Dom.  
Law §303

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



**North  
Dakota**

N.D. Cent. Code  
§32-15-06.1

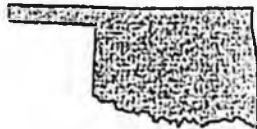
*A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.*



**Ohio**

Ohio Rev. Code  
Ann §163.04

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



**Oklahoma**

Okla. Stat.  
tit. 27, §13

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



**Oregon**

Or. Rev. Stat.  
§35.235

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



**Texas**

Tex. Prop. Code  
Ann. §21.012

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

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



**Vermont**

Vt. Stat. Ann. tit.  
24, §2805

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



**Virginia**

Va. Code Ann.  
§26-46.5

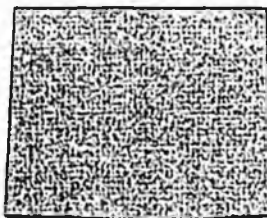
*No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more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



**Wisconsin**

Wis. Stat.  
§32,06(2a)

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



**Wyoming**

Wyo. Stat.  
§1-26-509

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

*And at the federal level...*



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

Sec. 301, P.L. 91-646

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

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

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

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

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



**Federal Energy  
Regulatory  
Commission**

16 U.S.C. §814