

**HB**

**175**

HFIN

FILE



# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 175(JUD)  
(H) Publish Date: 3/27/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
Title: Eminent Domain; Recreational Structures RDU: Administration and Support  
Component: Commissioner's Office  
Sponsor: Rep. Johnson  
Requester: House JUD Component No.: 530

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no fiscal impact on the Department of Transportation and Public Facilities.

Prepared by: Mary Siroky  
Division: Commissioner's Office  
Approved by: Nancy Slagle, Director Division of Administrative Support  
Agency: Department of Transportation and Public Facilities

Phone: 465-4772  
Date/Time: 3/09/07 3:00pm  
Date: 3/9/2007

# ALASKA STATE LEGISLATURE

**Interim:**

716 West 4th Avenue, Suite 640  
Anchorage, Alaska 99501  
Phone (907) 269-0200  
Fax (907) 269-0204  
Rep\_Craig\_Johnson@legis.state.ak.us



**Session:**

State Capitol Building, Room 126  
Juneau, Alaska 99801-1182  
Phone (907) 465-4993  
Fax (907) 465-3872  
Toll-free (866) 465-4993

REPRESENTATIVE CRAIG JOHNSON  
HOUSE DISTRICT 28

## Sponsor Statement

### House Bill 175

"An Act further limiting the exercise of eminent domain."

HB 175 strengthens the individual's property rights by protecting privately owned recreational structures from the exercise of eminent domain for recreational purposes.

Eminent domain is an important right of the government. However, it should only be used for the most judicious of purposes, and every effort should be made to minimize its impact to the right of the individual to own private property.

AS 09.55.240 limits the government's authority to exercise eminent domain and seize personal residences by clearly outlining its legitimate use (namely the construction and/or expansion of roads, schools, and public buildings) and by prohibiting its exercise for the purpose of economic development or to generate increased government revenues.

HB 175 affords privately owned recreational structures the same protection from government seizure already granted to personal residences in AS 09.55.240.

The right to own private property is one of the most important rights of Alaskans. By prohibiting government seizure of privately owned recreational structures for recreational purposes, HB 175 strengthens that right and ensures the continued use of land in the greatest of ways – that of private ownership.



ANCHORAGE BOARD  
OF REALTORS® INC.

REALTOR® *The Voice for Real Estate™* In Anchorage

1500 W. 33rd Avenue  
Suite #220  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8476 Fax

March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreation<sup>al</sup> structures

Dear Representative Johnson,

The Anchorage Board of REALTORS® with over 900 members supports House Bill 175, which relates eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Anchorage Board encourages the passage of House Bill 175.

Sincerely,

Art Clark  
ABR President



March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

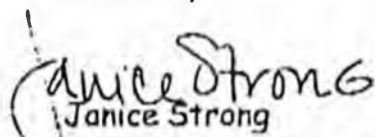
The Alaska Association of REALTORS with over 1,600 members statewide supports House Bill 175, which relates eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,

  
Janice Strong

Alaska Association of Realtors  
Secretary for the Board of Directors

# ASSOCIATED ISLAND BROKERS INC.

March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, AK 99801

RE: House Bill 175, Relating to the exercise of Eminent Domain and recreational structures

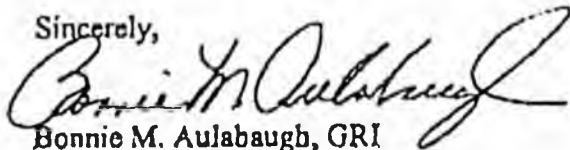
Dear Rep. Johnson:

I would like to express my support for House Bill 175. Since HB 318 passed during the last legislative session and defined whether or not it is appropriate to take a person's private property for economic development and also whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another, it seems that HB 175 is simply a "house-keeping" step to include recreational structures and second homes in the definition of primary residence.

I favor HB 175 since I believe it is something that is needed for consumer protection and would simply change the definition of primary residences in Alaska to include recreational structures and second homes, which as you know, are very common throughout our State.

I encourage the passage of House Bill 175. Thank you for your kind consideration.

Sincerely,



Bonnie M. Aulabaugh, GRI  
Associate Broker



202 Center Avenue, Suite 101

Office: (907) 486-2000

E-Mail: [aihi@ptialaska.net](mailto:aihi@ptialaska.net)

Kodiak, Alaska 99615

Fax: (907) 486-4016





*First American  
Title Insurance Company*

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

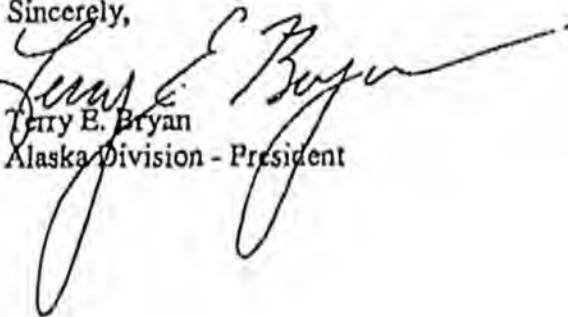
First American Title currently has offices in 10 communities' through-out the State of Alaska. Our offices assist in the facilitation of, in excess of 10,000, real estate transactions, involving Alaskan property owners, each year. Many of those transactions include, what could be considered, recreational properties.

Last session, I supported HB 318, which addressed the issue of 'taking' a property owner's private property for economic development and whether it is appropriate to take all or part of one's primary residence to enhance the recreational opportunities of another.

I favor this consumer protection, legislation because it correctly identifies primary residences to include recreational structures and second homes.

I support the passage of House Bill 175.

Sincerely,



Terry E. Bryan  
Alaska Division - President

Marsh:



The Honorable Craig Johnson, *Real Estate Leaders*  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 175, which relates eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,

Krystal Rogers  
Associate Broker  
ReMAX of Wasilla

*Krystal Rogers*  
Associate Broker

**RE/MAX** of Wasilla

3161 E. Palmer Wasilla Hwy. • Wasilla, AK 99654  
Call: (907) 355-8455 • Direct: (907) 352-9345 • Fax: (907) 373-6882  
E-mail: krystal@mtmonline.net  
Each Office Independently Owned and Operated

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

As a member of Alaska Association of REALTORS<sup>®</sup> with over 1,600 members statewide, I support House Bill 175, which relates eminent domain and recreational structures.

The government should not be able to confiscate private property!

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

Please support the passage of House Bill 175.

Sincerely,

*Holly Cirau*  
RE/MAX of Juneau

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

As a member of Alaska Association of REALTORS® with over 1,600 members statewide, I support House Bill 175, which relates eminent domain and recreational structures.

The government should not be able to confiscate private property!

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

Please support the passage of House Bill 175.

Sincerely,

*Kickie Hartley*  
*Remax of Juneau*

Stacy Risner  
PO Box 75188  
Fairbanks, AK 99701

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

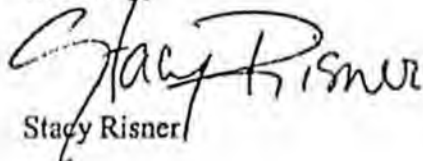
Dear Representative Johnson,

I am writing to you in support of House Bill 175, which relates eminent domain and recreational structures.

I wholeheartedly supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development. HB 175 will protect our citizens by including recreational structures and second homes in this protection. One of the great aspects of this state is the ability to get out and enjoy the beauty of our land and the wildlife that live there. Many people own recreational property to do just that, and it is simply unfair for anyone to be able to take this away for the gain of another.

Thank you for your time and consideration on this subject. I sincerely appreciate your support of House Bill 175.

Sincerely,

  
Stacy Risner

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

As a member of the Alaska Association of REALTORS® with over 1,600 members statewide, I support House Bill 175, which relates eminent domain and recreational structures.

The government should not be able to confiscate private property!

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

Please support the passage of House Bill 175.

Sincerely,



Debbie White  
REMAX of Juneau  
8800 Glacier Hwy #219  
Juneau, A.K. 99801



ALASKA ASSOCIATION OF REALTORS, INC.  
4205 Minnesota Drive Anchorage, Alaska 99503  
Telephone (907) 563-7133 Fax (907) 561-1779  
www.alaskarealtors.com

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 175, which relates eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,

A handwritten signature in cursive script that reads 'Judy Cloud'.

Judy Cloud  
AAR President



March 12, 2007

The Honorable Craig Johnson  
 Alaska House of Representatives  
 State Capitol Building  
 Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

As a member of Alaska Association of REALTORS® with over 1,600 members statewide, I support House Bill 175, which relates eminent domain and recreational structures.

The government should not be able to confiscate private property!

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

Please support the passage of House Bill 175.

Sincerely,

*Marybeth Stinchfield*  
 Associate Broker  
 RE/MAX of Juneau

March 12, 2007

The Honorable Craig Johnson  
 Alaska House of Representatives  
 State Capitol Building  
 Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

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The government should not be able to confiscate private property!

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes, which are very common throughout Alaska.

Please support the passage of House Bill 175.

Sincerely,



Remax of Juneau

March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

Dear Representative Johnson,

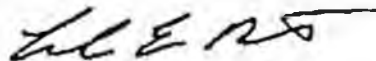
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Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

So I encourage the passage of House Bill 175.

Sincerely,



Carl E. Brent  
#16675

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

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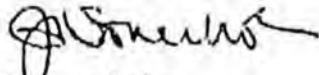
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We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,



Jo Sonerholm  
Associate Broker  
Prudential Jack White Vista

March 12, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

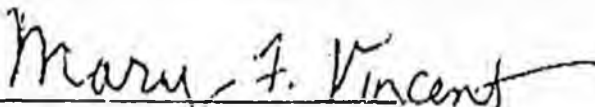
Dear Representative Johnson,

I have been selling real estate in the Mat-Su Borough for 27 years, and myself, along with the Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 175, which relates to eminent domain and recreational structures.

Last session the Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

Our primary focus as Realtors, is to PROTECT THE RIGHTS OF THE PUBLIC. Therefore, we favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are extremely common throughout Alaska. Private property rights must be protected in this country – we are NOT a socialistic nation.

The Association encourages the passage of House Bill 175.

Sincerely,   
Mary F. Vincent, Associate Broker  
Prudential JW/Vista RE  
907-352-1863 VM

Judy Cloud

March 13, 2007

The Honorable Craig Johnson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 175, relating to the exercise of eminent domain, recreational structures

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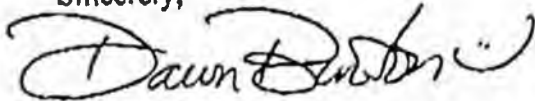
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I favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 175.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Burton" with a small smiley face at the end.

Dawn Burton ☺  
Realtor

Westlaw.

AK ST § 09.55.240

Page 1

AS 09.55.240

P

## ALASKA STATUTES

Title 9. Code of Civil Procedure.

Chapter 55. Special Actions and Proceedings.

Article 4. Eminent Domain.

Sec. 09.55.240 Uses for which authorized; rights-of-way.

(a) Except as provided in (d) and (e) of this section, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of an organized or unorganized borough, city, town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of an organized or unorganized borough, city, town, or other municipal division, whether incorporated or unincorporated; raising the banks of streams, removing obstructions from them, and widening, deepening, or straightening their channels; and roads, streets, and alleys, and all other public uses for the benefit of an organized or unorganized borough, city, town, or other municipal division whether incorporated or unincorporated, or its inhabitants, which may be authorized by the legislature;
- (4) wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plant and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming land, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water;
- (5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water;
- (6) private roads leading from highways to residences, mines, or farms;
- (7) telephone lines;
- (8) fiber-optic lines;
- (9) telegraph lines;
- (10) sewerage of an organized or unorganized borough, city, town, village, or other municipal division, whether incorporated or unincorporated, or a subdivision of it, or of a settlement consisting of not less than 10 families, or of public buildings belonging to the state or to a college or university;
- (11) tramway lines;

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AK ST § 09.55.240

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AS 09.55.240

(12) electric power lines;

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

(b) The use of water for mining, power, and municipal purposes and the use of pole and power lines for telephone and telegraph wires, for aerial trams, and for the transmission of electric light and electric power, by whomever utilized, are each declared to be beneficial to the public and to be a public use within the provisions of AS 09.55.240 -- 09.55.460. Rights-of-way across private property when they are necessary for the operation of the mine or other project in connection with which it is intended to be used may be condemned in the manner as for any other condemnation. The right-of-way may extend only to a right-of-way along, upon, and across the surface of the land to be condemned and to a strip of the land of sufficient width to permit the construction on the land of a ditch, flume, pipeline, canal, or other means of conveying water as is adequate for the purposes intended, for the setting of poles or the construction of towers upon which to string wires for telephone and telegraph lines and lines for the transmission of electric light or power for the operation of aerial trams, and to permit maintaining the lines and keeping them in repair.

(c) [Repealed, § 15 ch 59 SLA 1982.]

(d) The power of eminent domain may not be exercised to acquire private property from a private person for the purpose of transferring title to the property to another private person for economic development purposes. This subsection does not apply to transfers of private property to another private person if one or more of the following apply:

(1) the landowner consents, either before or after a condemnation proceeding has been filed, to the use of the property for a private commercial enterprise or other economic development;

(2) the private person has been expressly authorized by statute either to exercise the power of eminent domain or to receive an interest in land acquired by the exercise of eminent domain;

(3) the transferred property is used for a private way of necessity to permit essential access for extraction or use of resources;

(4) the acquisition is used, in part, for leasing property to a private person that occupies a portion of public property or a public facility, including a private business that occupies a portion of an airport, port, or public building;

(5) the property is transferred to a person by oil and gas lease under AS 38.05.180;

(6) the property is transferred to a common carrier.

(e) The power of eminent domain may not be exercised for the purpose of developing a recreational facility or project if the property to be acquired includes an individual landowner's personal residence or that portion of an individual's property attached to and within 250 linear feet of an individual landowner's personal residence unless the landowner consents either before or after a condemnation proceeding has been filed.

(f) Notwithstanding the limitations on the power of eminent domain in (d) and (e) of this section, the legislature may approve the exercise of eminent domain against private property in an Act, the subject of which is limited to the transfer of the property for a purpose otherwise restricted under (d) or (e) of this section.

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AK ST § 09.55.240

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(g) The power of eminent domain may only be delegated by statute.

(h) In this section,

(1) "common carrier" has the meaning given in AS 04.16.125;

(2) "economic development" means development of property for a commercial enterprise carried on for profit or to increase tax revenue, tax base, or employment;

(3) "personal residence" means a structure that is the dwelling place of an individual that

(A) must be used by the owner or beneficiary of a trust holding legal title to the structure as a dwelling unit, as opposed to a rental, storage, or other commercial space;

(B) must be inhabited by the owner, prior owner, or beneficiary of a trust holding legal title to the structure for at least 90 days during the 12-month period immediately before the date an action for the exercise of the power of eminent domain is filed;

(C) must constitute an ordinary home for general living purposes, as opposed to a dwelling used only for seasonal recreational or temporary purposes; and

(D) may not have been constructed, placed, or occupied for the purpose of avoiding eminent domain proceedings;

(4) "private person" means a person that is not a public corporation as defined in AS 45.77.020 or a government as defined in AS 11.81.900;

(5) "recreational facility or project"

(A) means a facility or project, the primary purpose of which is recreational;

(B) includes a park, trail or pedestrian pathway, greenbelt, amusement park, fresh water boat harbor, sports facility, playground, infrastructure, or other facility related to or in support of an indoor or outdoor recreational facility or project;

(C) does not include

(i) a highway, sidewalk, or path within the right-of-way of a highway;

(ii) a path, trail, or lane used as a safe route to a school program;

(iii) a wayside or rest stop;

(iv) a development, the primary purpose of which is not recreational, such as a path, trail, or lane developed to reduce congestion, or to encourage use of an alternate, gas-saving mode of transportation;

(v) a path or trail to or between villages or from a village to a facility or resource;

(vi) a stormwater retention or treatment facility or wetland, habitat, or other acquisition required to obtain a permit for a highway, airport, or other public project;

(vii) a taking under AS 19.05.110, 19.05.120, AS 19.22.020, AS 27.21.300, AS 35.20.040, 35.20.050, or AS

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AK ST § 09.55.240

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AS 09.55.240

41.35.060;

(viii) a taking not prohibited by law before January 1, 2007, under AS 41.21; and

(ix) a path, trail, road, or site for which no reasonable alternative exists and which is necessary to preserve or establish public access to or along publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water.

(§ 13.01 ch 101 SLA 1962; am § 2 ch 72 SLA 1972; am § 1 ch 62 SLA 1973; am § 24 ch 3 FSSLA 1973; am § 15 ch 59 SLA 1982; am §§ 2, 3 ch 84 SLA 2006)

#### REFERENCES

**Cross references.** -- For statement of legislative intent and findings for the 2006 amendment of (a) of this section and addition of (d) -- (h) of this section. see § 1, ch. 84, SLA 2006, in the 2006 Temporary and Special Acts.

#### HISTORICAL NOTES

**Effect of amendment.** -- The 2006 amendment, effective October 3, 2006, added "Except as provided in (d) and (e) of this section" at the beginning of subsection (a), inserted paragraph (a)(8), renumbering paragraphs (a)(8) -- (12) as (a)(9) -- (13), added subsections (d) through (h), and made a minor stylistic change.

**Editor's notes.** -- Under § 6, ch. 84, SLA 2006, the 2006 amendment of (a) of this section and addition of (d) -- (h) of this section apply "only to condemnation actions filed on or after October 3, 2006."

**Opinions of attorney general.** -- The state may use its condemnation powers for a state office complex to be constructed by, and leased from, a private developer. In order to insure that the leasing arrangement clearly qualifies as a public use, however, the department should enter into a long-term lease with the developer, and should not grant the developer any sort of purchase option at the conclusion of the lease term. April 17, 1981, Op. Att'y Gen.

#### NOTES TO DECISIONS

I. General Consideration.

II. Power to Condemn.

III. Public Uses.

A. Generally.

B. Mines.

C. Tramway Lines.

I. General Consideration.

Eminent domain proceedings are unique, and are governed by comprehensive rules of procedure applicable to condemnation actions alone. *Stewart & Grindle, Inc. v. State*, 524 P.2d 1242 (Alaska 1974).

**Strict construction.** -- Eminent domain statutes are universally construed strictly, particularly where a different

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construction would render the act of doubtful validity. *Northern Mining & Trading Co. v. Alaska Gold Recovery Co.*, 20 F.2d 5 (9th Cir. 1927).

Public subject matter. -- The subject matter of eminent domain proceedings is one of public rather than of private interest. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Questions to be considered by court. -- Ordinarily the only questions to be considered by the courts in condemnation proceedings are: First, whether the petitioner has the power to exercise the right of eminent domain; second, whether the property itself is of a nature subject to condemnation; third, whether the property is being taken for a public or a private use; and fourth, whether the power is being used for taking an excessive amount of property. *Town of Seward v. Margules*, 9 Alaska 354 (1938).

Appropriation deemed exercise of power of eminent domain. -- Neither the failure of the state to institute a condemnation action nor the owners' assertion of a claim based on the theory of trespass changed the essential nature of the state's action in appropriating the owners' property from one of the exercise of the power of eminent domain. *State, Dept of Highways v. Crosby*, 410 P.2d 724 (Alaska 1966).

Improvements to right of way reserved in patent. -- While the original reservation of a right-of-way and election provided for in former § 41-1-4 ACLA 1949 was without limitation as to initial choice on the part of either the federal government or Alaska, once the right-of-way has been selected and defined, later improvements necessitating the utilization of land upon which the road is not already located can only be accomplished pursuant to the condemnation and compensation provisions of this article. *Hillstrand v. Alaska*, 181 F. Supp. 219 (D. Alaska 1960), petition for interlocutory review denied, 352 P.2d 633 (1960).

Cited in *Mount Juneau Enters., Inc. v. City of Juneau*, 923 P.2d 768 (Alaska 1996).

## II. Power to Condemn.

Inherent power in government. -- The power of eminent domain is inherent in the government and does not depend upon the constitution. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Constitution only acts as limitation on power. -- See *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

The right of a municipality to proceed in eminent domain is conferred, when this section is considered in connection with the express statutory grant of power to municipalities to provide for the location, construction, and maintenance of the necessary streets, alleys, crossings, sidewalks, sewers, and wharves. *Asnby v. City of Juneau*, 174 F. 737 (9th Cir. 1910).

The power to locate and construct a street can only be exercised by a municipality, and can only be made effective by invoking the power of eminent domain. *Ashby v. City of Juneau*, 174 F. 737 (9th Cir. 1910).

Borough. -- A borough's authority to condemn land for a school can be inferred from the eminent domain statutory scheme. *Greater Anchorage Area Borough v. 10 Acres More or Less*, 563 P.2d 269 (Alaska 1977).

The express and exclusive authority to operate a school system, coupled with the statutory permission to condemn land for public buildings for school districts, conferred upon a borough the authority to condemn land for a school. *Greater Anchorage Area Borough v. 10 Acres More or Less*, 563 P.2d 269 (Alaska 1977).

Pipeline company as agent of state. -- Although pipeline company could, upon delegation from state, exercise power of eminent domain through declaration of taking or otherwise, its statutory authority does not extend so far

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as to immunize it from liability for trespass if it has not initiated eminent domain proceedings. *Ostrem v. Alyeska Pipeline Serv. Co.*, 648 P.2d 986 (Alaska 1982).

Right of foreign or domesticated corporations to condemn lands. -- See *Miocene Ditch Co. v. Lyng*, 138 F. 544 (9th Cir. 1905).

### III. Public Uses.

#### A. Generally.

"Public use" extends to use for public welfare. -- The term "public use" has received enlarged scope and meaning, and the test is no longer confined to use by the public, but use for the public welfare. The power of a state to work out from the conditions existing in a mining region the largest welfare of its inhabitants has often been recognized. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Question of public use is ultimately for jury. -- The question whether the use is in fact public or not, so as to justify the taking without the consent of the owner, is, ultimately, one which the courts alone may determine. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Mining gold. -- The mining of gold has been held to be a public use on account of its relation to the public currency. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Roads, streets and alleys. -- The words "roads, streets and alleys" in paragraph (a)(3) of this section are used independently as within the public uses defined by the statute, and relate to properties clearly made the subjects of condemnation. *Ashby v. City of Juneau*, 174 F. 737 (9th Cir. 1910).

#### B. Mines.

Lode and placer claims are included within "mines". -- The word "mines," as used in this section, e.g., "supplying mines . . . with water," and "roads, tunnels, ditches, flumes, pipes, and dumping places for working mines," is sufficiently broad to include, and was intended to include, placer mining ground, and both lode and placer claims are so included, irrespective of whether they are already opened up or not. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 386 (1926).

Land may be condemned for ditch to carry water to mining claims. -- A corporation authorized to own and operate mines and mining claims, to own and appropriate water and water rights for private and public use, and to build canals, ditches, flumes, and aqueducts, and to lay pipes for supplying its mines with water, and for the general use of the public has the right to condemn land for a ditch to carry water to work mining claims owned by it, by others, and by the public generally for mining purposes. *Miocene Ditch Co. v. Jacobsen*, 146 F. 680 (9th Cir. 1906).

Property may not be taken for site for equipment to operate mine. -- Where the main purpose of the taking was to obtain a site for plant and equipment to operate a mine which could not be maintained on the mining claim itself because of the periodical inflow of sea water, this section did not authorize such a taking. *Northern Mining & Trading Co. v. Alaska Gold Recovery Co.*, 20 F.2d 5 (9th Cir. 1927).

"An outlet for a flow" for which a fee simple taking is allowed refers only to the flow of tailings or refuse matter from mines. *Williams v. City of Valdez*, 603 P.2d 483 (Alaska 1979). See paragraph (a)(5) of this section and AS 09.55.250(1). -- Ed. note.

The phrase "an outlet for a flow" does not include a drainage ditch. *Williams v. City of Valdez*, 603 P.2d 483 (Alaska 1979).

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## C. Tramway Lines.

The right of way for a "tramway line" or "aerial tram" is intended also for power to operate them. *Alaska Gold Recovery Co. v. Northern Mining & Trading Co.*, 7 Alaska 455 (1927), rev'd on other grounds, 20 F.2d 5 (9th Cir. 1927).

## REFERENCES

Collateral references. -- Compensation for, or extent of rights acquired by, taking of land, as affected by, promissory statements as to character of use or undertakings to be performed by condemnor, 7 ALR2d 364.

Municipal power to condemn land for cemetery, 54 ALR2d 1322.

Necessity of condemnation where private rights are affected by regulation of bathing, swimming, boating, fishing, or the like, to protect public water supply, 56 ALR2d 790.

Electric light or power line in street or highway as additional servitude, 58 ALR2d 525.

Amount of property which may be condemned for public school, 71 ALR2d 1071.

Liability of public schools and institutions of higher learning for taking or damaging property for public use, 86 ALR2d 600; 33 ALR3d 703; 34 ALR3d 1166; 35 ALR3d 725; 35 ALR3d 758; 36 ALR3d 361; 37 ALR3d 712; 37 ALR3d 738; 38 ALR3d 830; 23 ALR5th 1.

Condemnation of underground areas for storage of natural gas reduced to possession, 94 ALR2d 548.

Use or improvement of highway as establishing grade necessary to entitle abutting owner to compensation on subsequent change, 2 ALR3d 985.

Right to condemn property in excess of needs for a particular public purpose, 6 ALR3d 297.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Right to condemn property owned or used by private educational, charitable, or religious organization, 80 ALR3d 833.

Validity of appropriation of property for anticipated future needs, 80 ALR3d 1085.

Possibility of overcoming specific obstacles as element in determining existence of necessary public use, 22 ALR4th 840.

Industrial park or similar development as public use justifying condemnation of private property, 62 ALR4th 1183.

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Current through all 2006 Legislation, Annotations current through Opinions  
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