

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9506 SENATE • COMMUNITY & REGIONAL AFFAIRS •

SB

161

Revision Date: _____ Dept. Affected: Revenue
 Title: An Act relating to management of certain municipal BRU: Alaska Permanent Fund Corporation
assets by the Alaska Permanent Fund Corporation. Component: Alaska Permanent Fund Corporation
 Sponsor: Senator Sharp
 Requestor: CRA, ~~XXXXXX~~ COMPONENT SERIAL NO. 109

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	300.0	309.0	318.0	328.0	341.0	355.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	300.0	309.0	318.0	328.0	341.0	355.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()	300.0	309.0	318.0	328.0	341.0	355.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-Corporate Receipts	300.0	309.0	318.0	328.0	341.0	355.0
TOTAL	300.0	309.0	318.0	328.0	341.0	355.0

Estimate of any current year (FY97) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Byron I. Mallott
 Division: Alaska Permanent Fund Corporation
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3172
 Date: April 11, 1997
 Date: April 11, 1997

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**Analysis to Accompany Fiscal Note for
Proposed Senate Community & Regional Affairs
Committee Substitute for Senate Bill 161**

April 11, 1997

Proposed SCS SB161(C&RA) provides for the management of certain municipal assets by the Alaska Permanent Fund Corporation (APFC). The APFC would hold and invest the municipal assets, provide quarterly financial reports and audited annual reports, make certain transfers and advise the municipality of revisions to investment policy or changes in asset allocation. The municipality will pay the corporation a management fee to cover the costs of managing these assets. This fee shall be deposited in the earnings reserve account and the APFC would request that the legislature appropriate these funds for the operations of the corporation.

The projected costs above are calculated based on a municipal fund value of \$90 million and a 3-4% growth rate. The management fee represents a pro-rata share of the APFC operating expenses which includes investment manager and custody fees and administrative costs for accounting, reporting, communications and other support.

This fiscal note is prepared on the assumption that the APFC would be directed to invest one municipal fund with approximately \$90 million in assets. If it turns out that a number of municipalities seek to take advantage of this legislation, it would likely raise at least two issues at the legislative level:

- Would the increased operating costs and administrative, accounting and reporting responsibilities required for the APFC to effectively and prudently manage a number of municipal funds be consonant with the corporation's primary fiduciary responsibility – the preservation of the Alaska Permanent Fund's principal and the cost-effective management and investment of its assets?
- Is it appropriate public policy for the APFC to compete with private sector investment firms who are able to provide virtually the same investment management services as the APFC?

PARTICIPATING LIOs

ANCHORAGE

FAIR BANKS

KENAI

Jim Kelly
Perm Fund.

AGENDA

1. SB 161, Perm. Fund Manage Muni. Assets
2. SB 98, Convey Land to Muni/Boro.

04/14/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:31:10

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70635

SCHEDULED FOR:04/14/97 13:30 TO 15:00

FOR:ANC

PUBLIC HEARING

SENATE COMMUNITY & REGIONAL AFFAIRS

LOCATION:ANCHORAGE

SB 98

GARY

GUSTAFSON (ANS ?)

MUNI OF ANCH

TESTIFY

04/14/97 13:30:44 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120
JNU

RE TCN: 70635 SCHEDULED FOR:04/14/97 13:30 TO 15:00
SPONSOR: SENATE COMMUNITY & REGIONAL AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: OF1, JANE ANVIK, IS ON TO T ON SB 98

COMMITTEE PACKET

SB 161, Perm. Fund Corp. Manage Mun. Assets

1. Sponsor Statement
2. Bill Sectional
3. Proposed CS
4. SB 161
4. Letter of Support

Alaska State Legislature

SENATOR
BERT SHARP

DISTRICT P

CO-CHAIRMAN
SENATE FINANCE COMMITTEE

MEMBER
RESOURCE COMMITTEE



Senate

FAIRBANKS
DENALI BANK BUILDING
119 N. CUSHMAN, SUITE 201
FAIRBANKS, ALASKA 99701
(907) 452-7885/7886
FAX (907) 456-4221

SESSION ADDRESS:
STATE CAPITOL, ROOM 516
JUNEAU, ALASKA 99801-1182
(907) 465-3004/4921
FAX (907) 465-2070

SPONSOR STATEMENT

SB-161

BY: SENATOR BERT SHARP

THIS LEGISLATION AUTHORIZES THE PERMANENT FUND CORPORATION TO MANAGE THE ASSETS OF A MUNICIPAL SAVINGS OR INVESTMENT ACCOUNT.

THE PARAMETER OF A MANAGEMENT AGREEMENT STARTS ON PAGE 1, LINE 9 THROUGH THE REMAINDER OF THE BILL.

THESE WERE SET BY THE PERMANENT FUNDS CORPORATION AS CONDITIONS THEY COULD ACCOMMODATE WITHOUT COMPROMISING THEIR MISSION.

THIS OFFERS MUNICIPALITIES THE OPTION OF INVESTMENT MANAGEMENT SERVICES WITHIN ALASKA AND ONE IN WHICH THE AVERAGE CITIZEN HAS CONFIDENCE.

MANAGEMENT COSTS ARE TOTALLY REIMBURSABLE TO THE PERMANENT FUND CORPORATION BY THE MUNICIPALITIES .



REPRESENTING
GOLDEN HEART
OF ALASKA

LEGAL SERVICES

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

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 11, 1997

SUBJECT: Management of municipal assets by the Alaska Permanent Fund Corporation (CSSB 161()); 20-LS0864\E)

TO: Senator Bert Sharp
Attn: Marilyn Wilson

FROM: Tamara B. Cook *TBC*
Director

Here is the sectional summary you requested of the above referenced draft.

Sec. 1. Requires the Alaska Permanent Fund Corporation to manage the assets in an account of a municipality when directed to do so by resolution of the municipal governing body if the account meets certain requirements. The municipality must pay an amount sufficient to reimburse the corporation for the costs of managing those assets. Payments are deposited in the earnings reserve account and the corporation may request the legislature to appropriate those payments for operations of the corporation.

TBC:jdr
97-262.jdr

0-LS0864E
Cook
4/8/97

CS FOR SENATE BILL NO. 161()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SHARP

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of certain municipal assets by the Alaska
2 Permanent Fund Corporation."

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

4 * Section 1. AS 37.13 is amended by adding a new section to read:

5 Sec. 37.13.310. Management of municipal assets. (a) When directed to do
6 so by resolution of the governing body of a municipality, the corporation shall manage
7 the assets in an account of that municipality if the account was established by the
8 municipality under an ordinance or charter provision and the account

9 (1) is a savings or investment account for the municipality;

10 (2) has investment goals and objectives similar to those established by
11 the corporation for the fund;

12 (3) consists only of cash and other financial assets belonging to the
13 municipality; and

14 (4) has an asset value of at least \$50,000,000.

1 (b) In managing the assets of a municipality under (a) of this section, the
2 corporation shall

3 (1) hold and invest those assets subject to AS 37.13.120;

4 (2) at least quarterly, prepare, publish, and distribute to the governing
5 body of the municipality a financial report showing investment revenue and
6 expenditures, including the allocation of the assets in the account among investments;

7 (3) annually prepare, publish, and distribute to the governing body of
8 the municipality financial statements prepared in accordance with generally accepted
9 accounting principles consistently applied and an audit report prepared by a certified
10 public accountant;

11 (4) periodically advise the governing body of the municipality when
12 revisions to long-range investment policy, including asset allocation changes, are
13 contemplated and provide an opportunity for consultation and comment on the changes
14 before they are implemented; and

15 (5) when directed by resolution of the governing body of the
16 municipality, transfer from the account to the municipality the amount requested in the
17 resolution, but not to exceed the total value of the assets being managed for the
18 municipality.

19 (c) A municipality with assets managed by the corporation under this section
20 shall pay to the corporation the amount determined by the corporation to be sufficient
21 to reimburse the corporation for the costs of managing those assets. All charges
22 collected by the corporation under this subsection shall be deposited in the earnings
23 reserve account in the fund. The corporation may request the legislature to appropriate
24 the amount deposited in the earnings reserve account under this subsection for
25 operations of the corporation.

26 (d) Net income from assets managed by the corporation for a municipality
27 under this section may not be included in the computation of net income available for
28 distribution under AS 37.13.140.

SENATE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR SHARP

Introduced: 4/4/97
Referred: CRA, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of certain municipal assets by the Alaska
2 Permanent Fund Corporation."

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

4 * Section 1. AS 37.13 is amended by adding a new section to read:

5 Sec. 37.13.310. Management of municipal assets. (a) When directed to do
6 so by resolution of the governing body of a municipality, the corporation shall manage
7 the assets in a fund of that municipality if the fund was established by the municipality
8 under an ordinance or charter provision and the fund

9 (1) is a savings or investment fund or account for the municipality;

10 (2) consists only of cash and other financial assets belonging to the
11 municipality; and

12 (3) has an asset value of at least \$50,000,000.

13 (b) In managing the assets of a municipality under (a) of this section, the
14 corporation shall

- 1 (1) hold and invest those assets subject to AS 37.13.120;
- 2 (2) at least quarterly, prepare, publish, and distribute to the governing
3 body of the municipality a financial report showing investment revenue and
4 expenditures, including the allocation of the assets in the fund among investments;
- 5 (3) annually prepare, publish, and distribute to the governing body of
6 the municipality financial statements prepared in accordance with generally accepted
7 accounting principles consistently applied and an audit report prepared by a certified
8 public accountant;
- 9 (4) periodically advise the governing body of the municipality when
10 revisions to long-range investment policy, including asset allocation changes, are
11 contemplated and provide an opportunity for consultation and comment on the changes
12 before they are implemented; and
- 13 (5) when directed by resolution of the governing body of the
14 municipality, transfer from the fund to the municipality the amount requested in the
15 resolution, but not to exceed the total value of the assets being managed for the
16 municipality.
- 17 (c) A municipality with assets managed by the corporation under this section
18 shall pay to the corporation the amount determined by the corporation to be sufficient
19 to reimburse the corporation for the costs of managing those assets. All charges
20 collected by the corporation under this subsection shall be deposited in the general
21 fund. The corporation may request the legislature to appropriate the amount deposited
22 in the general fund under this subsection for operations of the corporation.
- 23 (d) Net income from assets managed by the corporation for a municipality
24 under this section may not be included in the computation of net income available for
25 distribution under AS 37.13.140.



CITY OF FAIRBANKS
James C. Hayes, Mayor
800 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4683
OFFICE: 907-459-6793



March 7, 1997

Senator Bert Sharp
State Capitol
Juneau, Alaska 99801-1182

Re: City of Fairbanks' Permanent Fund

Dear Senator Sharp:

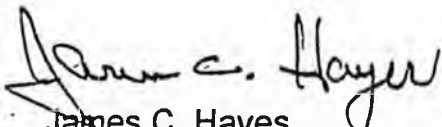
Pursuant to our conversation earlier this week, I wish to formally request your sponsorship of legislation regarding the management of the City's Permanent Fund. As I explained to you, it is the City's desire that it be allowed to deposit the proceeds of the utility sale into the State's Permanent Fund, to be managed by the State Permanent Fund Corporation. Because the sale is expected to take place this summer, I would respectfully request that this legislation be proposed by late summer, and acted upon during this Legislative Session.

I am certain you are aware that this is currently being done for both the Alaska Mental Health Lands Trust and the Alaska Science Technology Foundation. This, I am sure, will help pave the way for the passing of this proposed legislation.

Thank you for your assistance. If you have any further questions, please do not hesitate to contact me.

Sincerely,

CITY OF FAIRBANKS


James C. Hayes
Mayor

JCH:bss

SB

190

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 190

Revision Date _____	Dept. Affected <u>DOT&PF</u>
Title <u>Attempt to Purchase Before Eminent Domain</u>	BRU <u>Commissioners Office</u>
Sponsor <u>Senator Mackie</u>	Component <u>Office of the Commissioner</u>
Requester <u>(S) CRA</u>	Component Serial No. <u>530</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Prepared by Dennis Poshard, Special Assistant
 Division Commissioners Office
 Approved by [Signature] Commissioner
 Agency Department of Transportation and Public Facilities

Phone 465-3900
 Date 2/18/98
 Date 2/18/98

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April 13, 1998

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
The State Senate
State Capitol Rm 30
Juneau AK 99801-1182

Re: CS SB 190
An Act Relating to Eminent Domain

Dear Senator Taylor:

Thank you for the opportunity to testify before the Senate Judiciary Committee on April 8. During my testimony in favor of CS SB 190, relating to certain amendments to Alaska's eminent domain laws, committee members asked two questions that I could not readily answer. Please accept this letter to supplement my testimony and provide a response to the members' inquiries.

First, does the addition of the language "property interest to be taken" or "interest in the property" as used in the bill expand the right of the government to take property? I consulted with Sealaska's legal counsel, who is of the opinion that the references to interests in property do not expand the scope of the government's right to take property. Rather, this phrase is consistent with existing law, that a taking may consist of something less than the entire fee simple interest in property, and that such a taking should also be subject to just compensation. In that sense, the "interest in property" language is a narrowing or clarifying phrase, and simply reinforces the idea that the government must pay a

Senator Robin Taylor
April 13, 1998
Page 2

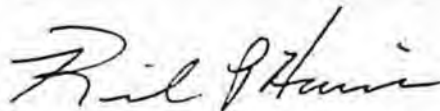
property owner for the taking of any compensable interest in property, even if it is not a complete taking.

The second issue discussed was whether similar language is contained in the laws of other states. As I mentioned in my testimony, the suggested language is found in the Model Eminent Domain Code. This Code is published by a national organization on uniform laws and is intended to be a consensus of the best laws from several jurisdictions. Our inquiry reveals that many states have adopted eminent domain language that includes the "interest in property" clause, including particularly the states of Washington, California, and Oregon. Accordingly, it is Sealaska's position that adoption of the recommended amendments would bring Alaska's eminent domain law more in line with the trend in the United States. Attached are examples from the Model Code and from the three states mentioned above.

Thank you for the opportunity to testify before the Committee, and for allowing me to expand on that testimony by this letter.

Sincerely,

SEALASKA CORPORATION



Richard P. Harris
Senior Vice President
Natural Resources

cc: Senate Judiciary Committee
Sam Kito
Robert W. Loescher, President and Chief Executive Officer
Senator Jerry Mackie

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE IV. COMMENCEMENT OF ACTION BY CONDEMNOR
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Current through Annual Meeting Nat Conf
of Commissioners Unif State Laws (8/96).

§ 404. [Contents of Complaint].

(a) In addition to other allegations required or permitted by law, the complaint shall:

(1) designate as a plaintiff each person on whose behalf the property is sought to be taken;

(2) name as defendants all persons who to the plaintiff's knowledge are owners of or who have or claim any interest in the property sought to be taken; defendants whose names are not known may be included under the designation "unknown claimants";

(3) contain a legal description of the property and of the interest therein sought to be taken; and

(4) allege the basis of the plaintiff's right to take the property by eminent domain and maintain the action, including (i) a reference to the plaintiff's legal authority to take the property; and (ii) a statement of the purpose for which the property is sought to be taken.

(b) If a plaintiff claims any interest in the property sought to be taken or that the property is devoted to a public use, the complaint must describe that interest or public use.

(c) For purposes of information and notice, the complaint shall be accompanied by a map or diagram portraying as far as practicable the property sought to be taken and the property that will be affected by the taking, showing their location in relation to the project for which the property is to be taken.

<General Materials (GM) - References, Annotations, or Tables >

COMMENT

1986 Main Volume

Section 404 describes the essential minimum contents of the complaint in a condemnation action. A complaint that does not contain all of the elements provided in this section is subject to preliminary objection. See Section 502. Allegations not required by Section 404 (e.g., market value; necessity for the taking) may, but need not, be made.

Under Subsection (a)(1), each condemnor must be identified, since this information may be relevant to the issue of the right to exercise the power of eminent domain. For example, if a joint and cooperative condemnation action is brought by agreement between different agencies, each condemnor must be named as a plaintiff. Similarly, a condemnor taking property to convey it to a specific private developer, in furtherance of an authorized community redevelopment project, must designate the person for whose benefit the plaintiff is condemning the property.

Under Subsection (a)(2), the complaint is required to name as defendants all persons who are known or believed to be owners of or to have or claim any interest, including a lien or other security interest, in the property sought

to be taken by the condemner. Under this rule, it would not be necessary to join a lessee if the plaintiff seeks to take the property "subject to" the lease, for the lessee's interest would not be described in the complaint as property sought to be taken. Since persons who have an interest in the property, but who are not named and served with process either personally or constructively, ordinarily are not bound by the judgment, this rule permits the condemner to secure full title without collateral litigation.

Subsection (a)(3) requires a "legal" description of the property sought to be taken. Present practice in this regard varies from state to state; the Code seeks to provide a uniform rule of accurate description as a means for giving the defendants notice of the scope of the take. In this respect, notice through the pleadings is deemed more efficient than to rely on discovery, as in other civil litigation. The complaint is not required to describe the interest which each defendant has or claims in the property; specification of the defendants' individual interests is a matter for their several responses. The complaint is sufficient if it merely alleges that each defendant has or claims to have some interest in the property described.

Clauses (i) and (ii) of Subsection (a)(4) require allegations of legal authority and purpose in order to show the plaintiff's right to take. Since there may be many different statutory provisions of varying scope that relate to the right to take, specification of the source of authority and public use claimed by the condemner should assist in reducing the number of unnecessary challenges to the right to take by clarifying that issue from the inception of the action. Compare Section 310(a) (similar requirement for condemnation authorization).

Subsection (b) is intended to provide notice of any claim by the condemner of an existing interest in the property, and of any issue of "higher public use" arising from the fact that the property sought to be taken is already devoted to public use.

Subsection (c), requiring a map or diagram to be annexed to the complaint, is designed for informational assistance only. Practice currently varies in this regard, with some states requiring a map, others making no such requirement, and still others requiring a map to be filed and made available for examination to interested parties. Since a well prepared map may explain graphically and give better notice than a legal description of the property which the plaintiff seeks to take, or which may be affected by the taking, its attachment to the complaint is required. The map or diagram, however, need only attempt to portray the property sought to be taken "as far as practicable" thereby recognizing that certain interests, such as mineral or water rights, air rights, or development easements, may not be capable of fully accurate representation by cartographic means. The map or diagram, as part of the complaint, is subject to amendment as are other pleadings; and it may constitute an admission of the plaintiff to the same extent as other parts of the complaint.

This section does not prescribe an explicit rule for designating condemnees whose interests may be affected by death, pendency of probate proceedings, or other analogous circumstances. The determination of who should be named as a defendant in an action affecting the property of a decedent, or property under guardianship, conservatorship, or included within a trust, should be conformed to the requirements of acceptable title practice in the state where the action is pending. The appointment of a guardian or other representative for a minor, an incompetent person, or some other similarly situated condemnee, is also left to local practice and procedure.

LIBRARY REFERENCES

1986 Main Volume

Eminent Domain ☞ 191(1) to (8).

Pretrial Procedure ☞ 650.

C.J.S. Pleading § 457 et seq.

C.J.S. Eminent Domain § 251 et seq.

NOTES OF DECISIONS

Parties 1

proceeding. *Weldon v. State*, Ala.Civ.App.1985, 495 So.2d 1113, affirmed as modified 495 So.2d 1121.

1. Parties

Model Eminent Domain Code § 404

Where rights of those owning dominant tenements in right-of-way across lot were not obstructed in any way by condemnation of small, noncontiguous portion of lot, they did not have to be joined as necessary and indispensable parties in condemnation

ULA EM DOMAIN § 404

END OF DOCUMENT

UNIFORM LAWS ANNOTATED
UNIFORM LAW COMMISSIONERS' MODEL EMINENT DOMAIN CODE 1974 ACT
ARTICLE I. GENERAL PROVISIONS AND DEFINITIONS

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Conference of Commissioners on Uniform State Laws.
Current through Annual Meeting Nat Conf
of Commissioners Unif State Laws (8/96).

§ 103. [Definitions].

As used in this Act:

- (1) "action" means condemnation action;
- (2) "appraisal" means an opinion as to the value of or compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of property;
- (3) "business" means a lawful activity, whether or not for profit, other than a farm operation, conducted primarily for the purchase, sale, lease, rental, manufacture, processing, or marketing of products, commodities, or other property, or for providing services;
- (4) "condemn" means to take property under the power of eminent domain;
- (5) "condemnation action" includes all acts incident to the process of condemning property after commencement of suit;
- (6) "condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action;
- (7) "condemnor" means a person empowered to condemn;
- (8) "costs" means the reasonable fees, charges and expenses necessarily incurred in an action, including the fees and charges of expert witnesses, the cost of transporting the court and jury to view the premises, and other recoverable costs;
- (9) "court" means a [] court of this state, and includes, when the context requires, any [judge] [justice] of the court;
- (10) "crops" means any form of vegetation intended to be removed and used or sold for commercial purposes, including grass, flowers, fruits, vegetables, trees, vines, and nursery stock;
- (11) "farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing those products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;
- (12) "improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss;
- (13) "lien" means a security interest in property arising from contract, mortgage, deed or trust, statute, common

law, equity, or creditor action;

(14) "litigation expenses" means the sum of the costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, necessary to prepare for anticipated or participation in actual court proceedings;

(15) "local public entity" means a public entity other than the State;

(16) "person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity;

(17) "personal property" means any property other than real property;

(18) "property" means an interest in real or personal property under the law of this State;

(19) "real property" means land and any improvements upon or connected with land; and includes an easement, servitude, or other interest therein; and

(20) "work" includes construction, alteration, repair, remodeling, excavation, demolition, rehabilitation, relocation and landscaping.

<General Materials (GM) - References, Annotations, or Tables >

COMMENT

1986 Main Volume

The definitions in the Uniform Code are designed to carry out the purpose of the Code to make uniform the eminent domain procedures of the enacting state in all condemnation actions by either public or private condemnors.

The pivotal term "property" is defined in paragraph (18) to include "any interest" in real or personal property. This terminology is intended to be accorded a broad interpretation so that it is coextensive with the state law of property and, if state law admits, will include such interests as air rights, subsurface rights, mineral interests, estates in submerged lands, water rights of any character, flowage or flooding easements, easements or servitudes for aircraft noise or operations, rights or permits for the temporary use and occupancy, franchises, rights to limit land use and development, leaseholds, liens, future interests, copyrights, etc.

LIBRARY REFERENCES

1986 Main Volume

Eminent Domain ↪ 1 et seq.
 Statutes ↪ 179.
 C.J.S. Eminent Domain §§ 1, 2.
 C.J.S. Statutes § 315.

NOTES OF DECISIONS

"Condemnor" 1
 "Taking" 2

1. "Condemnor"

"Condemnor," within meaning of Eminent Domain Code, could be "empowered to condemn" pursuant to statutes authorizing pipeline companies to acquire by

condemnation rights of way for pipelines. Walker v. Gateway Pipeline Co., Ala.1992, 601 So.2d 970.

2. "Taking"

Although regulations which do not physically invade private property may be considered "taking" under Fifth Amendment, "taking" is more likely to be found where government action is physical invasion. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

In determining whether government action constitutes "taking" under Fifth Amendment, court looks to economic impact of regulation on claimant and extent to which action interferes with investment-backed expectations. Jones Truck Lines, Inc. v. Price Rubber Corp., M.D.Ala.1995, 182 B.R. 901.

Government action which is not reasonably related to proper purpose is insufficient, by itself, to constitute taking; deprivation of all beneficial use of property is required. Estate and Heirs of Sanchez v. County of Bernalillo, N.M.1995, 902 P.2d 550, 120 N.M. 395.

Model Eminent Domain Code § 103

ULA EM DOMAIN § 103

END OF DOCUMENT

8.08.100 Mode of appropriation. The right of eminent domain for the purposes intended in RCW 8.08.090 through 8.08.130 is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in RCW 8.08.090 is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [1895 c 2 § 3; RRS § 903.]

8.08.110 Tax levy to pay costs. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in RCW 8.08.090 to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in RCW 8.08.090, and the expenses incident thereto. [1895 c 2 § 2; RRS § 902.]

8.08.120 Indebtedness is for general county purposes. Any county purpose mentioned in RCW 8.08.090 through 8.08.130 shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under RCW 8.08.090 through 8.08.130, but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of RCW 8.08.090 through 8.08.130 shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [1895 c 2 § 4; RRS § 904.]

Public contracts and indebtedness Title 39 RCW

8.08.130 Limitation. Any condemnation, appropriation or disposition intended in RCW 8.08.090 through 8.08.130 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.090 through 8.08.130 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the Constitution of this state. [1895 c 2 § 5; RRS § 905.]

8.08.140 Condemnation for military purposes. See RCW 8.04.170.

8.08.141 Condemnation for military purposes—Construction. See RCW 8.04.180.

8.08.150 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests. See RCW 8.25.270.

Chapter 8.12

EMINENT DOMAIN BY CITIES

Sections

CONDEMNATION

8.12.010	"City" defined.
8.12.020	Other terms defined.
8.12.030	Condemnation authorized—Purposes enumerated.
8.12.040	Ordinance to specify method of payment—Limitations.
8.12.050	Petition for condemnation.
8.12.060	Contents of petition.
8.12.070	Summons—Service.
8.12.080	Service when state or county lands are involved.
8.12.090	Waiver of jury—Adjudication of public use—Procedure.
8.12.100	Trial—Jury—Right to separate juries.
8.12.120	Interested party may be brought in.
8.12.130	Jury may view premises.
8.12.140	Damages to building—Measure.
8.12.150	Separate findings where there are several interests— Interpleader of adverse claimants.
8.12.160	Verdict—New trial—Continuance—New summons.
8.12.170	Change of ownership—Powers of court.
8.12.190	Findings by jury.
8.12.200	Judgment—Appellate review—Payment of award into court.
8.12.210	Title vests upon payment.

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8.12.220	Payment from general fund.
8.12.230	Payment by special assessment.
8.12.240	Petition for assessment—Appointment of commissioners.
8.12.250	Advancement from general funds against assessments.

ASSESSMENTS—IMMEDIATE PAYMENT

8.12.260	Appointment of board of eminent domain commissioners— Terms of office.
8.12.270	Oath of commissioners—Compensation.
8.12.280	Duties of commissioners—Assessment of benefits— Apportionment.
8.12.290	Assessment roll.
8.12.300	Hearing on assessment roll—Notice.
8.12.310	Proof of service.
8.12.320	Continuance of hearing.
8.12.330	Objections to assessment roll.
8.12.340	Modification of assessment.
8.12.350	Judgment, effect—Lien.
8.12.360	Certification of roll to treasurer.
8.12.370	Treasurer's notice to pay when assessments immediately payable.
8.12.380	Notice by mail—Penalty for default.

BONDS—INSTALLMENT PAYMENT

8.12.390	Bonds authorized.
8.12.400	Maturity—Interest—Payment.
8.12.410	Sale—Application of proceeds.
8.12.420	Installment payment of assessments.
8.12.430	Notice to pay—Due date of installments—Penalty—Interest.
8.12.440	Bond owner may enforce collection.
8.12.450	Bondholder's remedy limited to assessments.
8.12.460	Payment of bonds—Call—Notice.

DELINQUENCY—REDEMPTION

8.12.470	Enforcement of collection—Interest on delinquency.
8.12.480	Assessment fund to be kept separate.
8.12.490	Record of payment and redemption.

ARTICLE 2

Rights Included in Grant of Eminent Domain Authority

- § 1240.110. Interests in property which may be acquired
- § 1240.120. Property necessary to carry out principal purpose; Acquisition with intent to sell or otherwise dispose of property
- § 1240.125. Local public entities; Property outside territorial limits; Purpose of acquisition
- § 1240.130. Acquisition of property by other means
- § 1240.140. Joint exercise of power by public agencies
- § 1240.150. Acquisition of remainder of property
- § 1240.160. Authorizations distinct and separate

Collateral References:

- 29 Cal Jur 3d Eminent Domain § 5.
- 19 Cal Practice Rev, Ch 386, Eminent Domain Proceeding.

§ 1240.110. [Interests in property which may be acquired]

(a) Except to the extent limited by statute, any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire any interest in property necessary for that use including, but not limited to, submerged lands, rights of any nature in water, subsurface rights, airspace rights, flowage or flooding easements, aircraft noise or operation easements, right of temporary occupancy, public utility facilities and franchises, and franchises to collect tolls on a bridge or highway.

(b) Where a statute authorizes the acquisition by eminent domain only of specified interests in or types of property, this section does not expand the scope of the authority so granted.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Prior Law:

(a) Former § 1239, as enacted 1872, amended by Code Amdts 1873-74 ch 383 § 161, Stats 1911 ch 356 § 1, Stats 1913 ch 394 § 1, Stats 1949 ch 978 § 1.

(b) Former § 1240 subds 1, 7, 8, as enacted 1872, amended by Stats 1901 ch 144 § 1, Stats 1905 ch 124 § 1, Stats 1907 ch 271 § 1, Stats 1911 ch 115 § 1, ch 358 § 1, Stats 1913 ch 292 § 1, Stats 1915 ch 429 § 1, Stats 1933 ch 465 § 1, Stats 1967 ch 751 § 1.

CA CCP

Citation
OR ST s 366.340
O.R.S. § 366.340

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TEXT

1996 OREGON REVISED STATUTES
TITLE 31. HIGHWAYS, ROADS, BRIDGES AND FERRIES
CHAPTER 366. STATE HIGHWAYS
STATE HIGHWAYS

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Current through End of 1995 Sp. Sess.

366.340. Acquisition of real property generally.

The department may acquire by purchase, agreement, donation or by exercise of the power of eminent domain real property, or any right or interest therein, including any easement or right of access, deemed necessary for:

(1) Construction of shops, equipment sheds, office buildings, maintenance sites, patrolmen accommodations, snow fences, quarry sites, gravel pits, storage sites, stock pile sites, weighing stations and broadcasting stations.

(2) Appropriation, acquisition or manufacture of road-building materials, approach or hauling roads, connecting roads, frontage road, highway drainage and drainage tunnels.

(3) Maintenance of an unobstructed view of any state highway so as to provide for the safety of the traveling public.

(4) Any other use or purpose deemed necessary for carrying out the purposes of this Act.

(5) Elimination or prevention of hazardous or undesirable points of entry from adjacent property to state highways.

CREDIT

(Amended by 1953 c. 252 § 2)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

366.340

NOTES OF DECISIONS

Proposed use of property acquired by condemnation need not be lawful use at time of acquisition. Oregon Department of Transportation v. Schrock Farms, 140 Or App 140, 914 P2d 1116 (1996)

O. R. S. § 366.340
OR ST § 366.340
END OF DOCUMENT

Alaska State Legislature



State Capitol
Juneau, AK 99801-1182
(907) 465-3720
(907) 465-2689

Official Business
Fax: (907) 465-3472

Speaker of the House of Representatives

April 8, 1998

Mr. Dennis Metrokin
President
Koniag, Inc.
4300 B Street, Suite 407
Anchorage, AK 99503

Dear Mr. Metrokin:

Thank you for your letter regarding several bills before the legislature. SB 190, 191 and 286 were all introduced by Senator Jerry Mackie; and I will pass your comments of support along to him.

HB 373, amending the forest practices act, is currently headed for Senate Finance Committee – its last committee of referral. I personally introduced this bill earlier this session. It has since passed the House with strong support, and it appears to have strong support in the Senate as well. I appreciate receiving your positive comments regarding this bill and will include them in the bill files as well.

Again, I appreciate hearing from you and hope you will continue to share with me those issues of concern to your corporation.

Sincerely,

A handwritten signature in cursive script that reads "Gail Phillips".

Gail Phillips
SPEAKER OF THE HOUSE

GP:jmj

cc: Senator Jerry Mackie

04-07-98 10:25 IN

*Judi -
Do a brief
response - can you
believe anyone
using paper like
this?*

*To this
Printer
- it
needs
cleaning.*



KONIAG
INCORPORATED

April 1, 1998

Representative Gail Phillips
State Capitol
Juneau, AK 99801-1182

Dear Representative Phillips,

Koniag, ^{7K V} Inc. is the Regional Native Corporation for the Kodiak Island archipelago and neighboring portion of the Alaska Peninsula. Koniag has 3400 shareholders, over half of whom are residents of Alaska. As its President, I wish to speak out in favor of certain land management and forestry related bills now before the State Legislature.

S.B. 190 to amend Alaska's eminent domain laws. We feel very strongly that Alaska's private lands including those belonging to Native Corporations, should have the same measure of added protection that are provided in the laws of nearly half of the other 50 states. Namely, that the condemning authorities first diligently attempt to purchase, in good faith, private land before exercising the power of eminent domain.

S.B. 191 relating to the exchange of essential municipal or public purpose lands for the State tidelands. This sounds like a good idea to us and Koniag conceivably might even get to use it on the Women's Bay and Afognak Island submerged lands which are currently intolerably burdened with claims of dual jurisdiction by both the U.S. Fish and Wildlife Service, Maritime Refuge, and by the State.

S.B. 286 which amends current law relating to adverse possession of private lands. We also believe that this is a good proposal to tighten up current State adverse possession laws whose original purposes have largely been superseded by modern conditions and technology.

H.B. 373 which amends the Alaska Forest Practices Act. As you are probably aware, the Koniag Region and a number of its Village Corporations are heavily involved in the timber industry. Koniag and everyone we are aware of in the Alaska Forest Industry strongly supports these proposed amendments as being a win-win situation for both the timber industry and public interest.

Thank you for taking the time to read this far, and for the opportunity to comment.

Sincerely,
KONIAG, INC.

Dennis Metrokin
Dennis Metrokin,
President

cc: Sealaska
Afognak Joint Venture
Alaska Federation Of Natives
Afognak Native Corporation

4300 B Street, Suite 407
Anchorage, Alaska 99503
(907) 561-2668
FAX (907) 562-5258

**TESTIMONY OF RICHARD P. HARRIS
Senior Vice President
SEALASKA CORPORATION**

**Senate Judiciary Committee
April 8, 1998**

CS SENATE BILL 190 -EMINENT DOMAIN

I am Richard Harris, Senior Vice President of Sealaska Corporation, a Native Regional Corporation, organized under the Alaska Native Claims Settlement Act and under the laws of the State of Alaska. Sealaska Corporation has over 16,000 shareholders, with over half being residents of the State of Alaska. Under the Settlement Act, Sealaska will receive over 330,000 acres of fee estate and an additional 300,000 acres of subsurface estate underlying ANCSA Village and Urban Corporations' lands. Sealaska is the largest private landowner in Southeast Alaska, with its land base is primarily located on Prince of Wales Island, Chicagof Island, Kupreanof Island, and Dall Island. Much of Sealaska's land surround Southeast villages and municipalities.

Eminent domain is a power that the government has to take the property of another for a public purpose. It is referenced in our constitution and is a fundamental power of the government. (*See* Article I, Section 18, Alaska State Constitution) This right is tempered by the constitutional protection which requires the government to fairly compensate the person for the taking.

CS SB 190 adds some additional protections to the private landowner. CS SB 190 amends Alaska's eminent domain laws by requiring the government, and other condemning authorities, to diligently attempt, in good faith, to purchase private land before taking that land through the power of eminent domain. The reasons for the legislation are these:

Alaskans value the importance of private property rights, and they believe that government should intrude on those rights gingerly--and only as a last resort. Unfortunately, Alaska's current eminent domain laws reflect neither Alaskans' respect for private property, nor Alaska's lack of it. We believe Alaska's law omits two prerequisites to condemnation that should, in every case, guide those seeking to take private property. These prerequisites are:

- A. The requirement of a diligent, good faith attempt to purchase.**
- B. The requirement to justify the particular property interest taken.**

The amendments in this bill are not unreasonable. At least 23 other states offer such protection. Further, the Uniform Eminent Domain Code recommends such provisions.

A. Good Faith Effort to Purchase:

There is usually some discussion between the condemnor and the property owner before eminent domain proceedings are instituted, but nothing requires it. Officials are free to make unreasonable offers, or none at all. They can end discussions at their whim, and they are under no obligation to take even the most reasonable landowner concerns seriously.

As a result, the discussions--to the extent that they occur--are not arms-length. The amendment proposed in CS SB 190 will help to level the playing field. The landowner and the state begin with an arms-length bargaining relationship. The landowner will have the benefit of full disclosure of information used by the State to determine the public purpose for the taking and value of the interest taken. The purpose of the amendments in CS SB 190 is best stated by the Eminent Domain Uniform Code, which states:

The purposes of preliminary purchase attempts include the protecting of property owners from arbitrary and unexpected exercises of eminent domain power, facilitation of amicable settlement of disputes as to the amount of just compensation, minimizing acquisition costs through reduction of litigation and promotion of citizen cooperation with governmental programs involving land acquisition.

Id. at §306, Commentary.

B. Specific Property Interest Taken:

Current Alaska law requires that the state, or any other condemning authority, justify the need to take the property at issue. But, it does not necessarily require a justification for the particular interest (e.g. fee title, rights-of-way, or easements) in the property being taken. Our laws should expressly require that the state take as little of a person's property, or interest in property, as is actually necessary to accommodate the public need.

For example, there is no need to take a fee estate when an easement or right of way might suffice.

C. Conclusion:

In sum, CS SB 190 will have little impact on officials who already treat landowners fairly when condemnation seems necessary. At the same time, it will assure that, in each case, every appropriate step is taken to protect property owners from arbitrary and unexpected exercises of eminent domain. CS SB 190 will accomplish this result by requiring the state, or other condemning authority, to negotiate in good faith with the landowner to purchase the property interest and require the justification for the particular interest taken. We have included with this testimony a more detailed rationale and sectional analysis, including a summary of other states' "requirements to negotiate."

Thank you for this opportunity to speak on this issue. I would be pleased to answer any questions the committee members may have.

SUMMARY CS SENATE BILL 190

EMINENT DOMAIN

Section 1. AS 09.55. '70 lists the matters that any condemning authority must prove before it can condemn property through a judicial eminent domain complaint. Section 1 adds to that list proof that the authority made a good faith effort to purchase the property.

Section 1 also amends the existing "necessity" showing to require the authority to demonstrate not only that it is necessary to take the property at issue, but that it is also necessary to take the particular interest (e.g. fee title, rights-of-way, or easements) in the property that the authority is trying to condemn.

Section 2. Provides protection to the condemning authority by placing burden of proof on the landowner to show a good faith effort to acquire property was not made.

Section 3. Section 3 further amends the statute to add a subsection (8) requiring the condemning authority to show it has made a good faith effort to purchase the land. It also amends subsection (7) to require an explanation of why the particular interest being taken is necessary for a public purpose. By virtue of Section 3, authorities would now be required to also explain, in their decisional documents, how the good-faith requirement was met.

Section 4. Under current law, the filing of a declaration of taking serves to condemn the property at issue. *See* AS 09.55.440(a). The law protects property owners by allowing them to contest the truth, or sufficiency, of the statements made in the declaration. *See* AS 09.55.450(b).

Section 4 would further protect private property owners by amending AS 09.55.460(b) to allow the court to divest the condemnor of title when it was ultimately shown that a good-faith effort to purchase the property had not been made.

Without Section 4, Section 3 of the bill would be mostly meaningless, since: (1) the state (or other authority) would be obliged to make a statement that the good-faith

requirement had been met; but (2) the landowner would have no remedy in any case where the statement proved untrue.

Section 5. Section 5 provides an immediate effective date.

Sec. 09.55.310. Hearing.

(a) The jury or master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of each parcel and each estate or interest in each parcel shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

(3) separately, how much the portion not sought to be condemned and each estate or interest in it will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the owner of the parcel shall be allowed no damages except the value of the portion taken; but if the benefits are less than the damages so assessed, the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value;

(4) if the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

(b) As far as practicable, compensation shall be assessed for each source of damages separately.

(§ 13.08 ch 101 SLA 1962; am § 2 ch 138 SLA 1968)

Cross references. For related court rules, see Civ. R. 72(e)(4) and (h).

NOTES TO DECISIONS

ANALYSIS

- I. General Consideration
- II. Just Compensation
 - A. Generally
 - B. Damages to Remainder
 - C. Benefits to Remainder
- III. Role of Witnesses

I. GENERAL CONSIDERATION.

Editor's notes. - This section is based on a Montana statute.

Applied in State v. Hammer, 550 P.2d 820 (Alaska 1976).

Cited in Scavenius v. City of Anchorage, 539 P.2d 1161 (Alaska 1975).

II. JUST COMPENSATION.

reflecting the facts and premises on which their decisions are based, in conjunction with their use of declarations of taking, holding that decisional documents will not be required with respect to any declaration of taking filed before the publication of this opinion *Ship Creek Hydraulic Syndicate v. State, DOT & Pub. Facilities*, 685 P.2d 715 (Alaska 1984).

The statement required by paragraph (7) does not qualify as a decisional document. *Ship Creek Hydraulic Syndicate v. State, DOT & Pub. Facilities*, 685 P.2d 715 (Alaska 1984).

Judicial review of question of necessity only where showing of fraud, etc. - In proceedings in eminent domain by way of a declaration of taking under AS 09.55.420 - 09.55.450, the court is without authority, either by virtue of the express mandate of AS 09.55.460(b) or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. *Arco Pipeline Co. v. 3.60 Acres, More or Less*, 539 P.2d 64 (Alaska 1975), (decided prior to 1976 amendment which added paragraph (7)).

Notwithstanding such provisions as AS 09.55.270(2), judicial inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle. *Arco Pipeline Co. v. 3.60 Acres, More or Less*, 539 P.2d 64 (Alaska 1975), (decided prior to 1976 amendment which added paragraph (7)).

State's failure to consider several important, relevant factors made it impossible to rationally determine whether intended taking was compatible with the greatest public good and the least private injury, and rendered its action arbitrary; thus taking of subject land could not be upheld. *State, DOT & Pub. Facilities v. 2.072 Acres, More or Less*, 652 P.2d 465 (Alaska 1982).

Distinction between various types of condemnation proceedings. - See *Arco Pipeline Co. v. 3.60 Acres, More or Less*, 539 P.2d 64 (Alaska 1975), (decided prior to 1976 amendment which added paragraph (7)).

Specification of amounts of separate interests. - Where the state has adequate knowledge of separate interests, amounts should be specified for each. *Russian Orthodox Greek Catholic Church of N. Am. v. Alaska State Hous. Auth.* 498 P.2d 737 (Alaska 1972).

Quoted in *State, DOT & Pub. Facilities v. 0.644 Acres*, 613 P.2d 829 (Alaska 1980); *State v. 4.62 Acres, More or Less*, 704 P.2d 1340 (Alaska 1985).

Sec. 09.55.440. Vesting of title and compensation.

(a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment must include interest at the rate of 10.5 percent a year on the amount finally awarded that exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess.

(§ 13.21 ch 101 SLA 1962; am § 3 ch 21 SLA 1985; am § 21 ch 26 SLA 1997)

MEMORANDUM


State of Alaska
Department of Law

TO: Dennis Poshard
Legislative Liaison

DATE: April 29, 1998

FILE NO.:

TELEPHONE NO.: 465-3600


FROM: William F. Cummings
Assistant Attorney General
Transportation Section - Juneau

SUBJECT: SB 190 (JUD)

I have serious reservations regarding SB 190 (JUD). While the amendments made to the bill in the Senate Judiciary Committee have clarified the language, the bill has a number of unresolved problems.

This bill is unnecessary. DOT&PF acquires between two and five percent of its land acquisitions through condemnation actions. The rest of its land acquisitions, i.e., more than 95 percent of the total, is acquired through voluntary negotiations. It is not credible to argue that DOT&PF does not make good faith efforts to acquire interests in land cases through negotiations before filing condemnation cases.

Under existing law, a taking in a condemnation case can be voided if the property owner can prove that it was not acquired in a manner consistent with the "greatest public good and least private injury." This standard allows an aggrieved property owner to successfully attack a taking, if he/she can prove that the taking is arbitrary, capricious, or an abuse of discretion. The analysis under this existing language requires that the condemning authority carefully balance the public needs against private injury, with the intent to maximize the public benefit, but minimize private injury. This analysis would include whether the interest that DOT&PF seeks to acquire is appropriate for the facility to be constructed.

Under SB 190 two new means to challenge a taking are provided, i.e., the property owner could argue the interest to be acquired is not appropriate for the facility to be constructed and the negotiations, conducted prior to filing, were not made in good faith. These sorts of determinations are incredibly fact dependent and would be complicated to address in a judicial proceeding. The result of requiring these sorts of analysis in superior court will be to delay badly needed public projects until their resolution. This consequence is particularly troublesome because the bill addresses problems that do not exist.

I have written this memorandum from the perspective of DOT&PF. Senate Bill 190 (JUD) would have a similar impact upon condemnation actions filled by municipalities.

Dennis Poshard
Legislative Liaison
DOT&PF

April 29, 1998
Page 2

If you have any questions on this matter, please contact me at your earliest convenience.

WFC/bap

KODIAK OFFICE
112 MILL BAY ROAD
KODIAK, ALASKA 99615
(907) 486-4925
(907) 486-5264 (FAX)

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-4925
(800) 821-4925 (TOLL FREE)
(907) 465-3517 (FAX)

SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SECTIONAL

CS SB 190 (JUD)

Section 1. This section specifically includes that property interests must also be necessary for the authorized public use as a prerequisite for an eminent domain taking.

Section 2. This section provides a new condition that a good faith effort to negotiate the purchase of the property interest is also required prior to an eminent domain taking. However, in any dispute over nature of the negotiation, it is the opposing party's burden of proof to show that a good faith effort was not made.

Section 3. A statement that the good faith effort has been made (or in certain circumstances, not made) to purchase of property is added to the list of contents in a declaration of taking.

Section 4. The appeals section is amended to allow a court denial of an eminent domain taking if it finds that a good faith effort to purchase was not made.

Section 5. Effective date clause.

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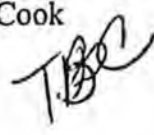
MEMORANDUM

February 26, 1998

SUBJECT: Eminent domain (CSSB 190(CRA))

TO: Senator Jerry Mackie, Chair
Senate Community and Regional Affairs Committee

FROM: Tamara Brandt Cook
Director



Here is the final committee substitute you requested. The bill as it has evolved now contains an ambiguity. SB 190 originally required a reasonable and diligent effort to acquire property by purchase before a governmental entity could take the property through eminent domain, except when negotiation is not possible because of the incapacity, inability to convey legal title, or absence of one or more of the owners. The CS in bill sec. 2 still requires negotiation and places the burden of proving that a good faith effort to acquire the property by purchase was not made on the party opposing the taking. However, in bill sec. 3 the contents of a declaration of taking no longer require a statement regarding negotiation, and in bill sec. 4 the court is no longer required to make a finding that an effort to acquire the property by purchase has been made before divesting the plaintiff of title to the property. Is negotiation required, as is suggested by bill sec. 2? If so, bill sec. 4 should be changed to permit a court to halt the transfer of title in a condemnation proceeding where negotiation has not occurred.

TBC:jdr
98-112.jdr

Enclosure

KODIAK OFFICE
112 MILL BAY ROAD
KODIAK, ALASKA 99615
(907) 486-4925
(907) 486-5264 (FAX)

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-4925
(800) 821-4925 (TOLL FREE)
(907) 465-3517 (FAX)

SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SECTIONAL

CS SB 190 (JUD)

Section 1. This section specifically includes that property interests must also be necessary for the authorized public use as a prerequisite for an eminent domain taking.

Section 2. This section provides a new condition that a good faith effort to negotiate the purchase of the property interest is also required prior to an eminent domain taking. However, in any dispute over nature of the negotiation, it is the opposing party's burden of proof to show that a good faith effort was not made.

Section 3. A statement that the good faith effort has been made (or in certain circumstances, not made) to purchase of property is added to the list of contents in a declaration of taking.

Section 4. The appeals section is amended to allow a court denial of an eminent domain taking if it finds that a good faith effort to purchase was not made.

Section 5. Effective date clause.

SENATE DISTRICT C
KODIAK ISLAND
SOUTHEAST ISLANDS

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-4925
(800) 821-4925 (TOLL FREE)
(907) 465-3517 (FAX)
Senator_Jerry_Mackie@legis.state.ak.us

SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SB 190, Require Negotiations Prior to Eminent Domain Taking.

I introduced SB 190 to bring fairness and expediency to state and municipal government actions which require the acquisition of private land for public purposes. The usual practice is to acquire private property through condemnation proceedings. This is a process where the governmental entity exercises the power of eminent domain to take the property and compensate the owner with or without the private owner's consent or agreement. The only recourse for an unwilling owner is to challenge in court the validity of the takings public purpose and the amount of compensation. In most cases the court's consideration is principally to determine the appropriate level of compensation. For both the governmental entity and the private property owner, this can be an expensive and time consuming procedure. For many landowners the prospect of contesting a condemnation proceeding in court is often beyond the landowner's financial abilities to pursue. In these situations, the landowner is at the mercy of the governmental entity, the extent of its property desires, and its method of determining compensation.

SB 190 would simply require that, prior to condemnation, a "good faith" effort is made to purchase private property through negotiations with the property owner. At least 23 states have similar requirements.

0-LS0890\K
Cook
3/3/98

CS FOR SENATE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eminent domain and to negotiations to purchase property
2 before it is taken 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 and the property interest to be taken are [IS]
9 necessary to the use;

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

12 * Sec. 2. AS 09.55.270 is amended by adding a new subsection to read:

13 (b) Except when negotiation is not possible because of the incapacity, inability
14 to convey legal title, or absence of one or more of the property's owners, a good faith

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effort at negotiation to acquire the property interest by purchase shall be made. In a proceeding involving the taking of a property interest through eminent domain, the burden of proof is on the party opposing the taking to show that a good faith effort to acquire the property interest by purchase was not made.

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

Sec. 09.55.430. Contents of declaration of taking. The declaration of taking must contain

- (1) a statement of the authority under which the property or an interest in it is taken;
- (2) a statement of the public use for which the property or an interest in it is taken;
- (3) a description of the property sufficient for the identification of it;
- (4) a statement of the estate or interest in the property;
- (5) a map or plat showing the location of the property;
- (6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it;
- (7) a statement that the property or interest in the property is taken by necessity for a project located in a manner that is most compatible with the greatest public good and the least private injury; and
- (8) a statement that a good faith effort at negotiation to acquire the property by purchase has been made or that negotiation is not possible because of the incapacity, inability to convey legal title, or absence of one or more of the property's owners.

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

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

- (1) the property or interest in the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury; or
- (2) a good faith effort at negotiation to acquire the property by purchase has not been made and negotiation was not made impossible by the

1 incapacity, inability to convey legal title, or absence of one or more of the
2 property's owners.

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

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

***Issue: Should the State be Required to Undertake
Good Faith Negotiations With a Private Landowner
Before Taking Property by
Eminent Domain (SB 190)***

Description of the Issue: Should the State of Alaska be required to conduct good faith negotiations with a private landowner before initiating eminent domain proceedings against that landowner?

Discussion of the Issue: At least 23 states require that the State, before taking property through eminent domain, make a good faith effort to acquire the property by consensual purchase. And, the drafters of the Uniform Eminent Domain Code recommend such a requirement in model state legislation. Although Alaska agencies will often undertake negotiations as a matter of practice, there is no current requirement in Alaska law that they do so.

A "good faith negotiations" requirement sets a cooperative tone in the state's dealings with its private sector. Moreover, supporters believe that it minimizes the likelihood of contested litigation, since the government and the private party begin their relationship as negotiators rather than adversaries.

Moreover, because the clause is common, there is considerably judicial precedent giving the clause a common sense interpretation. No prolonged face-to-face negotiations are required. A reasonable offer, based on full disclosure, and a willingness to consider timely counteroffers, is sufficient. And, the requirement does not apply where it is not practical--such as where the owner can't be found, or is incapable of conveying title.

Recommendation: In a state with so limited a private property base, the use of eminent domain should be a last resort in Alaska. SB 190 would establish precisely such a policy by requiring that a good faith effort to purchase be made before property is involuntarily taken. The bill would also require the state to justify the particular interest in the property taken, in order to avoid a more intrusive interest being taken than is necessary to accomplish the state's goal.

Legislation to Require a Good Faith Effort to Purchase Land Before it is Acquired Through Eminent Domain, and Requiring Condemning Authorities to Justify the Interest Condemned:

A Rationale and Section-by-Section Analysis

I. Rationale

The enclosed legislation would amend Alaska's eminent domain laws by requiring the government, and other condemning authorities, to diligently attempt, in good faith, to purchase private land before taking that land through the power of eminent domain. The reasons for the legislation are these:

With only 10% of Alaska's land in private ownership, the State of Alaska should proceed carefully before eroding that already-insufficient private land base through the exercise of the power of eminent domain. Moreover, Alaskans value the importance of private property rights, and they believe that government should intrude on those rights gingerly--and only as a last resort.

Unfortunately, Alaska's eminent domain laws reflect neither Alaskans' respect for private property, nor Alaska's lack of it. Although the condemning authority must demonstrate the "necessity" of the land being taken, our laws omit two prerequisites to condemnation that should, in every case, guide those seeking to take private property:

A. The requirement of a diligent, good faith attempt to purchase. There is usually some discussion between the condemnor and the property owner before eminent domain proceedings are instituted, but nothing requires it. Officials are free to make only an unreasonable offer, or none at all. They can end discussions at their whim, and

they are under no obligation to take even the most reasonable landowner concerns seriously.

As a result, the discussions--to the extent that they occur--are not arms-length. Fair dealing necessitates that both sides have an incentive to deal, and the proposed legislation provides that incentive by engraining the better practice of sincere bargaining into statute.

At least 23 of our sister states currently impose such a requirement, as Appendix A to this rationale illustrates. Moreover, the Uniform Eminent Domain Code recommends such a provision, and the appended legislation is patterned after §202(a) of that model law. ^{1/} And, the requirement that the condemning authority "shall make every reasonable effort to acquire expeditiously real property by negotiation" has been an integral element of federal real property acquisition policy since 1971. ^{2/}

Because of its widespread use, the "good faith negotiation" requirement, as a prerequisite to the use of eminent domain, has been extensively interpreted by the nation's courts, which have given the clause a common-sense interpretation. For example:

- "Lengthy or face-to-face negotiations are not required." ^{3/} A letter offer can suffice, and if the private landowner doesn't make a reasonable counteroffer within a reasonable period of time, the

^{1/} Uniform Laws Annotated, *Uniform Law Commissioners' Model Eminent Domain Code, 1974 Act*, §202 ("Uniform Code") ("A condemnor shall make every reasonable and diligent effort to acquire property by negotiation."); see also §306(a) ("[A]n action to condemn property may not be maintained...unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action.")

^{2/} Sec. 301, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646).

^{3/} *City of Thornton v. Farmers Reservoir and Irrigation Company*, 575 P.2nd 382, 392 (Colorado 1978).

property can then be condemned. *Id.* According to the leading commentator on eminent domain law, "no lengthy series of negotiations, offers and counter-offers is required. If the corporation desiring the property submits an offer to the owner and upon his refusal to accept the same asks for a counter-offer from him, and he refuses to name any figures or names an unreasonable one, it is sufficient...Even when the owner does not definitely reject the offer, but says he will give his answer within a specified time, the condemnor need not wait, but may institute proceedings at once." ^{4/}

- Section 203 of the *Uniform Code* requires that the state, at the outset of negotiations, offer the owner full appraised value for the property; however, that offer--in-and-of-itself--is not conclusive evidence of "good faith." ^{5/} The requirement of an initial full-value offer has been omitted from the enclosed legislation; and, as a result, the state's initial offer needn't be for full appraised value; rather, it need only be a reasonable offer "likely to preserve the framework for further negotiations"--in other words, not something that any reasonable person would dismiss as a deal-killer; ^{6/}
- The state would be obliged to disclose any appraisal that it has conducted on the property, along with some reasonable breakdown of the various items that the appraisal covers. ^{7/} In this way, the landowner will be an informed negotiator, and the controversy will be more likely to lead to an amicable resolution; ^{8/} and
- The state must be specific as to the interest and property for which the offer is made, so that the landowner can intelligently respond. ^{9/}

These legislatures, and their courts, believe that a good-faith requirement will "save time and expense incident to a condemnation

^{4/} 3 J. Sackman, *Nichols on Eminent Domain* ("Nichols"), §24.15 at 24-264.

^{5/} *Uniform Code*, §206, Commentary.

^{6/} *State Highway and Transportation Commissioner of Virginia v. Herndon*, 302 S.E.2nd 55, 58 (Virginia 1983).

^{7/} See, e.g., *State v. Rowland*, 444 A.2nd 1123, 1129 (N.J. Super. 1982).

^{8/} This requirement is similar to that imposed by §203(c) of the *Uniform Code*. Section 202(b) of the *Uniform Code* imposes the further requirement that the owner be allowed to accompany the state's appraiser, but that requirement is omitted from the enclosed legislation.

^{9/} *Prarie View Telephone Company v. County of Cherry*, 138 N.W.2nd 468, 470 (Nebraska 1965).

proceeding.”^{10/} As the Supreme Court of Virginia put it 71 years ago in

Charles v. Big Sandy & C.R. Co., 129 S.E. 384, 385:

A landowner should not be put to the trouble and possible expense of counsel fees upon the mere whim or caprice of the condemnor, when a bona fide effort to purchase his land would in all probability terminate the transaction.

With such a statute, the landowner and the state begin with an arms-length bargaining relationship based on full disclosure. Without such a statute, the parties begin as adversaries. These statutes are thus designed to make litigation and prolonged delay less likely; for, as our own Supreme Court has noted, a landowner who feels fairly treated at the outset is far less inclined to ultimately litigate.^{11/} According to *Nichols* (see n. 4, above), the requirement to negotiate is “designed to provide the negotiating parties with an atmosphere conducive to independent settlement.”^{12/} Or as the drafters of the *Uniform Code* explained:

The purposes of preliminary purchase attempts include the protecting of property owners from arbitrary and unexpected exercises of eminent domain power, facilitation of amicable settlement of disputes as to the amount of just compensation, minimizing acquisition costs through reduction of litigation and promotion of citizen cooperation with governmental programs involving land acquisition.

Id. at §306, Commentary. In sum, this proposal will have little impact on officials who already treat landowners fairly when condemnation seems necessary. At the same time,

^{10/} *Clements v. North Worth D.S.P.Ry. Co.*, 7 S.W.2nd 895, 897 (Texas App. 1928).

^{11/} *Ship Creek Hydraulic Syndicate v. State*, 685 P.2nd 715, 718 (Alaska 1984). At a minimum, the court said, procedural fairness prior to condemnation will allow the landowner to make rational decisions about his property, rather than reactive decisions provoked by perceived heavy-handedness.

^{12/} *Nichols*, *supra* at §24.12, p. 24-185.

it will assure that, in each case, every appropriate step is taken to avoid prolonged litigation.

B. The requirement to justify the particular property interest taken. Current Alaska law requires that the state, or any other condemning authority, justify the need to take the property at issue. But, it does not necessarily require a justification for the particular *interest* in the property being taken.¹³ / True to the thought that Alaska's private property base ought to be eroded for public purposes only as a last resort, our laws should expressly require that the state take as little of a person's property as is actually necessary to accomplish the public task at hand.

For example, there is no need to take a fee estate when an easement or right of way might suffice. If land is taken for conservation purposes, a conservation easement might suffice. And for public works in particular, the landowner might be left with its sand and gravel resources, or its subsurface estate. In this way, the landowner might benefit from the enterprise as a valuable source of supply for building materials.

The proposed legislation would accomplish this result by requiring the state, or other condemning authority, to justify the particular interest taken.

II. Section-by-Section Analysis

Section 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. Section 1 adds to that list proof that the authority made a good faith effort to purchase the

¹³ / It can be argued that, by requiring a showing of "necessity," Alaska's current law implicitly requires a showing that the particular interest taken is "necessary." *See Nichols, supra* at §9.2[2]. The enclosed legislation would remove any argument in this regard.

property. Of course, there are occasions when the authority can't negotiate. The owner may be absent, or may be legally incapable of conveying title. Other states recognize these exceptions, and they are also incorporated in Section 1.

Section 1 also amends the existing "necessity" showing in subsection (2) to require the authority to demonstrate not only that it is necessary to take the property at issue, but that it is also necessary to take the particular interest in the property that the authority is trying to condemn.

Section 2. AS 09.55.420-460 deal with "declarations of taking." Declarations of taking differ from an eminent domain complaint in that once a declaration is filed, the property is taken immediately, rather than after judicial proceedings are completed (as is the case with eminent domain complaints).^{14/} Before 1976, the state could take land summarily under a declaration of taking without proving the necessity for the taking. In 1976, however, the legislature added subsection (7) to the statute, which required the declaration to contain a statement explaining how the taking was necessary.

Section 2 further amends that statute to add a subsection (8) to contain a statement verifying that, where possible, the condemning authority has made a good faith effort to purchase the land. It also amends subsection (7) to require an explanation of why the particular interest being taken is necessary for a public purpose.

In *Ship Creek Hydraulic Syndicate v. State*, 685 P.2nd 715, the Alaska Supreme Court ruled that, by virtue of the 1976 addition of subsection (7), the state (and other condemning authorities) were obliged to write decisional documents explaining the

^{14/} For a more complete discussion of the differences between the two procedures, see *Arco Pipeline Co. v. 3.60 Acres of Land, More or Less*, 539 P.2nd 64 (Alaska 1975).





necessity of the taking, and file those documents with the declaration of taking. By virtue of Section 2, authorities would now be required to also explain, in their decisional documents, how the good-faith requirement was met.

Section 3. As noted above, the mere filing of a declaration of taking serves to condemn the property at issue. See AS 09.55.440(a). The property owner, however, must have some opportunity to contest the truth, or sufficiency, of the statements made in the declaration. Under AS 09.55.450, the court may not award the state actual possession of the property until the property owner has been afforded a hearing on any objections it might have to the declaration. In turn, AS 09.55.460 authorizes the court to divest the authority of its new title if it is ultimately shown that the taking wasn't 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 good-faith effort to purchase the property had not been made. Without Section 3, Section 2 of the bill would be mostly meaningless, since: (1) the state (or other authority) would be obliged to make a statement that the good-faith requirement had been met; but (2) the landowner would have no remedy in any case where the statement proved untrue.

Section 4. Section 4 provides an immediate effective date.

Appendix A: The Requirement to Negotiate in Other States

	<u>State</u>	<u>Citation</u>	<u>Language</u>
	Model Eminent Domain Code	Uniform Law Commissioner's Model Eminent Domain Code 1974 Act §306	<i>Except as provided in Section 308, an action to condemn property may not be maintained over timely objection by the owner unless the condemnor made a good faith effort to acquire property by purchase before commencing the action.</i>
	Alabama	Ala. Code §18-1A-22	<i>Before commencing a condemnation action, the condemnor shall establish an amount based on an appraisal which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's established amount of just compensation for the property.</i>
	Colorado	Colo. Rev. Stat. §38-1-102	<i>In all cases where the right to take private property for public or private use without the owner's consent...is conferred by general laws...and the compensation to be paid for, in respect of property sought to be appropriated or damaged for the purposes mentioned, cannot be agreed upon by the parties interested; or in the case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a nonresident of the state, it is lawful for the party authorized to take or damage the property to apply to the judge....</i>
	Connecticut	Conn. Gen. Stat. §48-12	<i>The procedure for condemning land or other property for any of the purposes specified in sections..., if those desiring to take such property cannot agree with the owner upon the amount to be paid him for any property taken, shall be as follows:</i>



Idaho

Idaho Code
§7-707(6)

The complaint [for condemnation] must contain:

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



Illinois

Ill. Rev. Stat.
§5/7-102

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



Indiana

Ind. Code
§32-11-1-1

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



Kentucky

Ky. Rev. Stat. Ann. §416.550

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



Michigan

Mich. Comp. Laws §213.55

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



Missouri

Mo. Rev. Stat. §523.010

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



Nebraska

Neb. Rev. Stat. §76-704

if any condemnee shall fail to agree with the condemnner with respect to the acquisition of property sought by the condemnner, a petition to condemn the property may be filed by the condemnner 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

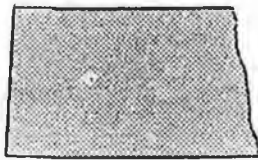
A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.



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, if 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

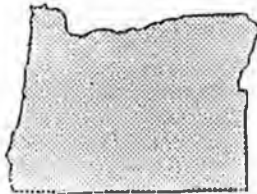
Appropriation shall be made only after the agency is unable to agree, for any reason, with the owner...or when any owner is incapable of contracting...or is unknown, or is not a resident of this state, or his residence is unknown to the agency and cannot with reasonable diligence be ascertained.



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

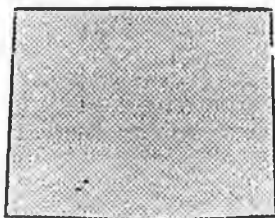
No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more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

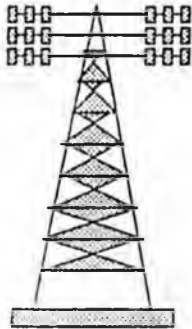
Note: Pursuant to §102 of the Act, the policies of §301 do not affect the validity of individual condemnation actions. However, they do govern the use of federal funds by states "to the greatest extent practicable under State law." Sec. 305(1).

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

SB

2024

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to municipal service BRU: none
areas and providing for voter ... Component: none
 Sponsor: SENATOR PARNELL
 Requestor: Senate CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY98) Impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation provides for voter approval of the formation, alteration, or abolishment of certain municipal service areas. This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 2/05/98
 Approved by Commissioner: *[Signature]* Date: 2/05/98
 Agency: Community & Regional Affairs

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 204

Revision Date: _____ Dept Affected: Natural Resources
 Title: "...Grants of state land to municipalities for BRU: Resource Development
construction...of sport and recreational facilities...." Component: Land Development
 Sponsor: Sen. Taylor
 Requestor: S CRA Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
	FY99	FY00	FY01	FY02	FY03	FY04
OPERATING EXPENDITURES						
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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ _____

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated because the bill largely duplicates existing DNR authority. AS 38.05.810(a) already allows DNR to grant land to a municipality for public purposes, which would include a public recreation or sport facility, and AS 38.05.810(g) already requires DNR to retain a reversionary interest in the granted land. The bill's new authority, allowing the municipality to trade the former state land for other land, would probably not be used and therefore is not anticipated to have any fiscal impact. The reverter clause would attach to the land granted by DNR, not to other land the municipality swaps it for. Private landowners would probably not be willing to exchange their parcels for municipal land encumbered by a reverter clause, as the private landowners would lose title to their new land if the municipality's development plans fall through or are not executed on time.

Prepared by: Jane Angvik *[Signature]* Phone: 907-269-8503
 Division: Land Date: 6-Feb-98
 Approved by Commissioner: [Signature] Date: 2-6-98
 Agency: Natural Resources

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor
Senate Majority Leader

TO: Senator Jerry Mackie, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Robin Taylor *R.L.T.*

DATE: February 2, 1998

RE: Senate Bill 204 "An Act providing the commissioner of natural resources with the authority to make grants of state land to municipalities for the construction and operation of sport and recreational facilities and structures."

I request that you schedule Senate Bill 204 for public hearing at your earliest convenience. This legislation will grant land to local governments for sports and recreational facilities but the grant will not count against the local government entitlement. This will make the development of sports and recreational facilities more economically feasible.

Recreational and sports facilities in communities offer an alternative to crime and other undesirable activities. Our youth are too often left unattended after school, at night, and on weekends with little to do. If there are facilities to use, kids and adults as well are less likely to become involved in criminal activities. Senate Bill 204 proposes to give state land to municipalities for sports and recreational facilities.

Your prompt consideration will be appreciated. Thank you.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



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Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor
Senate Majority Leader

SPONSOR STATEMENT

SENATE BILL 204

Recreational and sports facilities in communities offer an alternative to crime and other undesirable activities. Our youth are too often left unattended after school, at night, and on weekends with little to do. If there are facilities to use, kids and adults as well are less likely to become involved in criminal activities. Senate Bill 204 proposes to give state land to municipalities for sports and recreational facilities.

This legislation will grant land to local governments but the grant will not count against the local government entitlement. This will make the development of sports and recreational facilities more economically feasible.

Senate Bill 204 is consistent with the intent of the Alaska Constitution:

Article VIII, Section 1, Statement of Policy:

"It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

Article VIII, Section 9, Sales and Grants:

"Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures."

The bill contains a reversionary provision which prohibits local governments from selling the land. The municipalities will, however, be allowed to trade the land for land that might be more suitable for a particular project.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: SB 204

1 Page 1, lines 8 - 9:

2 Delete "The commissioner shall retain a reversionary interest on each grant of land
3 under this subsection."

4 Page 1, line 11, following "structure."

5 Insert "The commissioner shall retain a reversionary interest on each grant of land
6 under this subsection, but if that land is traded for other land, the commissioner may release
7 the reversionary interest on the granted land when the commissioner receives a reversionary
8 interest on the land received in trade."

between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than \$4,000,000 per fiscal year, and not more than \$12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than \$1,000,000 per fiscal year, and not more than \$8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities that have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under AS 29.65.020 or 29.65.030.

(h) Payments made under this section shall be used by a municipality that levies property taxes to reduce the levy in proportion to the amount of state payments received by the municipality for a given fiscal year. The governing body of each municipality shall furnish a notice with the tax statement describing the effect on property tax levies of payments received under this section. (§ 17 ch 74 SLA 1985)

Sec. 29.65.090. Authorization for land exchanges. The director and a municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the nonmonetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.945 apply to exchanges of land under this section. The provisions of AS 38.50 do not apply to exchanges of land under this section. (§ 17 ch 74 SLA 1985)

Sec. 29.65.100. Public purpose and expansion needs. (a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it is the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.810 or (b) of this section.

(b) The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the capital and other expenses that the director determines to be necessary and reasonable.

(c) Nothing in this chapter limits or impairs the authority of the director to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.810. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.810 shall be credited toward fulfillment of the entitlement. (§ 17 ch 74 SLA 1985)

Sec. 29.65.110. Election of benefits. [Repealed, § 12 ch 34 SLA 1987.]

Sec. 29.65.120. Regulations. The commissioner of natural resources may, after consultation with the Department of Community and Regional Affairs, adopt regulations

SB

2008

Alaska State Legislature

SENATE DISTRICT 1

Bayshore	Abbott Loop
Campbell	Bear Valley
Dimond	Bird Creek/Indian
Independence Park	Girdwood
Klatt	Glen Alps
Old Seward	Hillside
Southport	Huffman/O'Malley
Taku	Portage
	Rabbit Creek

716 WEST 4TH AVENUE, SUITE 530
ANCHORAGE, ALASKA 99501
(907) 258-8194

While in Session:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

SENATOR SEAN PARNELL

February 4, 1998

Senator Jerry Mackie
Chair, Senate Community and Regional Affairs
Capital Room 427

Dear Senator  Mackie:

I am respectfully submitting this request for a Community and Regional Affairs committee hearing on Senate Bill 208, an act providing for voter approval of the alteration or abolishment of certain municipal service areas. I would appreciate any effort that can be made to hear the bill late next week or early the week following.

Regards,



Senator Sean Parnell

Alaska State Legislature

SENATE DISTRICT 1

Bayshore	Abbott Loop
Campbell	Bear Valley
Dimond	Bird Creek/Indian
Independence Park	Girdwood
Klatt	Glen Alps
Old Seward	Hillside
Southport	Huffman/O'Malley
Taku	Portage
	Rabbit Creek

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(907) 258-8194

While in Session:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

SENATOR SEAN PARNELL

SPONSOR STATEMENT

Senate Bill 208

"An act providing for voter approval of the alteration or abolishment of certain municipal service areas"

This legislation was introduced as a means of strengthening local control of service areas. These areas have enabled residents to assess themselves to the particular degree and scope of service they seek without the overhead that typically exists if service were provided by a larger governmental entity.

Essentially, SB 208 would prohibit a borough or municipality from absorbing or abolishing a service area without first requiring a vote of the people covered by the service area.

Board of Supervisors
R.S.A. #25 Bogard
P.O. Box 2274
Palmer, AK. 99645

January 24, 1998

TO: Senator Sean Parnell
State Capitol Room 504
Juneau, AK. 99801

Dear Senator Parnell,

The board of supervisors for R.S.A. # 25 Bogard has discussed Senate Bill 208 and we enthusiastically support it. We believe it is still important to allow taxpayers to have a voice in the spending of their tax monies. Local control is important to the residents of this road service area. Thank you for your assistance in maintaining it.

Sincerely Yours,

Valen C. Bair
Primary R.S.A. # 25

Valen C. Bair

William Larkin
Board R.S.A. # 25

William Larkin

Wrex Diem
Board R.S.A. # 25

Wrex R Diem

Law Offices of
Douglas L. Blankenship
 406 Cushman Street, Suite 2
 Fairbanks, Alaska 99701
 907-452-4300 fax 456-2523
 E-Mail Address: 104576.2433@compuserve.com

Via Facsimile -- 465-6592

January 26, 1998

JAN 26 1998

Senator Sean Parnell
 State Capitol Room 504
 Juneau, AK 99801

Dear Senator Parnell:

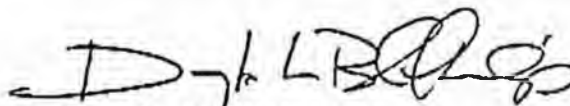
I am chairman of the Scenic Heights Service Area located in the Fairbanks North Star Borough. I support the amendments contained in Senate Bill 208. Several years ago, the Fairbanks North Star Borough mandated that the Scenic Heights Service Area include a noncontiguous subdivision located at approximately one-half mile from the border of the Scenic Heights Service Area. Although our service area objected, we were required to accept the Borough's decision.

The amendments requested in your bill are reasonable because, as you know, the members of the Service Area Commission volunteer their time to assist their community. It is inappropriate for a municipality to impose additional responsibility and time commitments upon the Service Area Commissioners who volunteer their time when the majority of the service area members object to a proposed action.

Thank you for your efforts.

Very truly yours,

LAW OFFICES OF DOUGLAS L. BLANKENSHIP



Douglas L. Blankenship

DLB/clm

cc: Senator Gary Wilken via facsimile 465-4714
 Representative John Davies via facsimile 465-3519

cc:Mail for: Senator Sean Parnell

Subject: SB208

From: vhoefler@mosquitonet.com (Vaughan Hoefler) at CC2MHS1 1/28/98 11:18 AM

To: Senator Sean Parnell at LAA_TRANS

Dear Senator Parnell,

On behalf of the road service area commissioners for the Ester Lump Service Area located near Fairbanks, we support your effort to implement SB 208.

Voter approval for the formation, alteration, or abolishment of certain service areas would allow residents to more fairly decide on such changes. Our service area recently faced an annexation issue in which the Borough sought to add non-contiguous roads several miles distant to our road system. The condition of the roads proposed for annexation were significantly different than our own, built at different times, and subject to

slightly different weather conditions. Nevertheless, the North Star Borough

Rural Services Division presented this annexation issue as the only option to the residents of both areas. Many of our area's residents vented their frustration for not having any "say" in the ability to direct the future of our roads.

After two Assembly meetings, and following the testimony of many residents, the assembly moved for the creation of a separate service area.

Had AS 29.35.450 (voter approval of alteration or abolishment of service areas)

been in effect, our concerns would have been brought forth long before the Borough expended considerable time and funds developing this plan.

Thank you for taking the effort to make these changes, as they will provide service area residents the opportunity to more effectively govern the growth or change of their areas.

Please feel free to call me at 907-452-7955 if you have any questions.

Carol Hoefler

SB

246

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: SB246

(S) Publish Date: 1/16/98

Revision Date (Note if correction) _____	Dept. Affected <u>Corrections</u>
Title <u>An Act amending the definition of a correctional facility to include a therapeutic treatment center;...</u>	BRU <u>Administration and Operations</u>
Sponsor <u>Rules Committee</u>	Component <u>Office of the Commissioner</u>
Requester <u>Governor</u>	Component Serial No. <u>#0694</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	787.3	1,049.7	1,049.7	1,049.7	1,049.7	1,049.7
Travel	49.5	22.0	22.0	22.0	22.0	22.0
Contractual	1,326.4	1,533.0	1,535.7	1,538.4	1,541.1	1,543.9
Supplies	131.5	87.0	87.0	87.0	87.0	87.0
Equipment	141.5	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	24.0	32.0	32.0	32.0	32.0	32.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	2,460.2	2,723.7	2,726.4	2,729.1	2,731.8	2,734.6

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

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	133.9	133.9	0.0	0.0	0.0	0.0
1003 GF Match	44.6	44.6	0.0	0.0	0.0	0.0
1004 GF	2,281.7	2,545.2	2,726.4	2,729.1	2,731.8	2,734.6
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	2,460.2	2,723.7	2,726.4	2,729.1	2,731.8	2,734.6

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	18	18	18	18	18	18
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Valdez Therapeutic Community will be a sixty bed, six to ten month intensive residential substance abuse treatment program for minimum and medium custody level prisoners within the DOC. Male prisoners will be referred from Alaska's correctional institutions around the state. The DOC will maintain security while a contracted treatment provider will be responsible for delivery of the treatment program.

This fiscal analysis assumes that facility operations will start on 10/1/98 of FY99 and only incur 3 quarters of operational costs during that fiscal year. FY99 and FY00 Federal Funds are based on a limited two year Federal RSAT Grant which requires a 33% GF Match. FY99 also includes all one-time "Start Up" costs associated with Medical, Treatment, Administrative D&WP, and Correctional operations (e.g., library, clothing, bedding, furniture, correctional equipment, etc.) Program Evaluation will be funded through the Federal RSAT grant with technical assistance provided by the Office of Justice Programs. This fiscal note does not contain inflationary costs except for a 2% Cost Index increase on annual lease payments. (Continued)

Prepared by <u>Dwayne Peeples, Director</u>	Phone <u>465-3339</u>
Division <u>Administrative Services</u>	Date <u>1/15/98</u>
Approved by: <u>Commissioner Margaret M. Pugh</u> <i>Margaret M. Pugh</i>	Date <u>1-15-98</u>
Agency <u>Department of Corrections</u>	

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Fiscal Note
Valdez Therapeutic Community
Page 2

Costs Featuring 60 Inmates:

	Start-Up Costs (FY99 One Time)	On-Going Annual Costs
Inmate Health /Medical	\$20.0	\$234.0
Inmate Programs/Treatment	\$61.3	\$624.0
Design & Outcome	\$40.0*	\$0.0
Admin. Services/D&WP	\$40.0	\$6.8
Institution Operations	\$162.4	\$1,473.7
DOA/GSS	<u>\$0.0</u>	<u>\$385.2</u> 2% CPI Increase Annually
TOTALS	\$323.7	\$2,723.7

Operating Costs:

	FY99	Annually FY00-FY04	Notes
Institutions/Operating			
Pers.Svcs	\$649.3	\$865.7	15 PFT Staff Personal Services FY99 Includes \$33.0 start up funds
Travel	\$49.5	\$22.0	
Contractual Svcs	\$353.3	\$467.0	Includes \$360.0 for Food Contracts
Supplies	\$104.9	\$87.0	FY99 Includes \$ 39.6 start up funds
Equipment	\$86.8	\$0.0	FY99 Includes \$ 86.8 start up funds
Grants	\$24.0	\$32.0	Inmate Gratuities/wages
Total	<u>\$1,267.8</u>	<u>\$1,473.7</u>	
Inmate Health Care			
Pers. Svcs	\$138.0	\$184.0	3 PFT Staff Personal Services On-call Doctor Services
Contractual Svcs	\$37.5	\$50.0	
Supplies	\$20.0	\$0.0	Pharmacy & Medical start up
Total	<u>\$195.5</u>	<u>\$234.0</u>	
Inmate Programs			
Contractual Svcs	\$508.0	\$624.0	Treatment (11 contract positions) Office Supplies Furniture, PCs, Cabinets, etc.
Supplies	\$6.6	\$0.0	
Equipment	\$54.7	\$0.0	
Total	<u>\$569.3</u>	<u>\$624.0</u>	
Administrative Services/Data & Word Processing			
Contracts	\$45.1	\$6.8	Establish Network System
Total	<u>\$45.1</u>	<u>\$6.8</u>	
DOA/General Services & Supply			
Leasing	\$382.5	\$385.2	2% CPI Increase Annually FY00-FY04
Total	<u>\$382.5</u>	<u>\$385.2</u>	
Grand Total	\$2,460.2	\$2,723.7	

*Note: Program evaluation funded with RSAT grant.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 2
Bill Version: SB246
(S) Publish Date: 1/16/98

Revision Date: _____
Title: An act amending the definition of correctional facility to include therapeutic...
Sponsor: Rules Committee
Requestor: Governor's Office

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Health Planning and Facilities Management
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.00	0.00	0.00	0.00	0.00	0.00
1003 GF Match	0.00	0.00	0.00	0.00	0.00	0.00
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	none	none	none	none	none	none
PART-TIME	none	none	none	none	none	none
TEMPORARY	none	none	none	none	none	none

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

After conveyance of Harborview, the City of Valdez would then lease back a portion of Harborview to the Department of Corrections for a therapeutic drug and alcohol program for Alaska inmates. If the Legislature does not fund the therapeutic treatment center program, the City of Valdez won't be able to takeover ownership of the Harborview facility. That would mean that the Harborview facility would remain in State ownership with the Department of Health and Social Services. Effective July 1, 1998 the Department of Health and Social Services has no operating funds to operate the Harborview facility in the Asset Protection mode. It is estimated that annual operating costs for Harborview after July 1, 1998 in the Asset Protection mode (one maintenance person, utility and heating costs, etc.) would be approximately \$265 thousand dollars.

There is one further complication. The City of Valdez has expressed concern that if the Legislature fails to appropriate funds for the Department of Corrections therapeutic treatment program, the Valdez Community Hospital, located in the Harborview building, could close, resulting in serious health care implications for the local community.

5/18
Prepared by: Janet Clarke
Division: Administrative Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3015
Date: 01/08/98
Date: 1/13/98

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