ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672
10310 HOUSE JUDICIARY
155

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NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CA 95814
Tel (916) 446-2455
Fax (916) 448-7469
www.nra.org

October 9, 2001

Captain David Hudson
Alaska Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

Dear Captain Hudson,

On behalf of the more than 24,000 National Rifle Association members who reside in the State of Alaska, I would like to express appreciation for the opportunity to provide comments on the proposed regulations intended to implement the statutory changes brought about by Senate Bill 294 from the 2000 Legislative Session. As you are aware, NRA members are particularly interested in this issue and, as such, I was intimately involved, on their behalf, in the process leading to the passage of this legislation.

Upon reviewing the proposed regulations, I find them to generally be a very appropriate reflection of the changes intended by SB 294. There are only two subjects on which the NRA wishes to submit substantive comments on behalf of our members: Reciprocity (13 AAC 30.150) and Confidentiality (13 AAC 30.800).

Reciprocity

Prior to the passage of SB 294, Alaska law (AS §18.65.748) provided that concealed weapon permit holders from other states would be recognized in Alaska if the other state had "permit requirements at least as strict" as those in the Alaska statute. In March of 1998, based on this statute, the Department of Public Safety released a Memorandum listing seventeen states from which permits would be recognized. At some point in time between March 1998 and May 1999, DPS changed its position and issued a directive that no other states' permits were recognized. In November 1999, I was personally informed by the DPS Permits and Licensing Unit that individual permit holders could, on an individual case-by-case basis, attempt to secure approval of their permit. It was, in large part, this particular issue that led NRA to push for statutory changes which resulted in the introduction of SB 294.

In order to remove the subjectivity which apparently led to the changing DPS policy, it was a major goal of that bill to specifically clarify what issuance criteria other states' permits must be subject to in order to be recognized by the State of Alaska. As introduced, SB 294 offered a list of four specific criteria to be applied to other states so a clear and simple determination could be made by DPS. In the House State Affairs Committee hearing on April 15, 2000, SB 294 was amended and a second criterion for recognition by Alaska was added. The new language provided that Alaska would, additionally, recognize permits from other states or political subdivisions which honor Alaska permits. The amendatory language also required DPS to determine which states grant reciprocity to Alaska and distribute a list of such states to law enforcement agencies in Alaska.

The National Rifle Association offers the following two comments with respect to 13 AAC 30.150:

1) The proposed regulation states that DPS will post on its website the status of reciprocity with other states. The NRA is not certain that this will meet the requirements of AS §18.65.748 which directs DPS to ensure that each law enforcement agency in the state receives a copy of the listing. Has DPS confirmed that every law enforcement agency in Alaska has Internet access? While the NRA applauds DPS for posting the information on its website so the public-at-large is privy to the same information on which Alaska law enforcement will be basing its enforcement actions, we want to ensure that all Alaska law enforcement personnel have accurate and up-to-date information.

2) SB 294, and the resulting statute, neglected to require DPS to determine which states are recognized by Alaska based on the first criterion and, in turn, notify law enforcement. The NRA respectfully suggests that good government practices and full implementation in the "spirit of the law" would lead DPS to list not only those states granting reciprocity but also those states recognized by Alaska based on their issuance criteria meeting the standards set forth in AS §18.65.748 (1).

Further, up until very recently, the DPS website only listed states with which Alaska had a formal reciprocity agreement. The statute does not require that there be an agreement between Alaska and other states and, thus, there are many other states whose permits are valid in Alaska. I was encouraged to see the recent addition of Michigan (based, I assume, on criterion (1)) to the list of recognized states provided on the DPS website and I am hopeful that the complete and accurate listing of all states will be forthcoming soon. NRA research indicates that, in addition to the states listed on the DPS website as of today, Louisiana, Nevada, New Mexico and Oregon all have "similar" issuance criteria and are, thus, valid in Alaska and should be added based on AS §18.65.748 (1). Idaho, Indiana, Kentucky and Montana all recognize Alaska permits and are, thus, valid in Alaska and should be added based on AS §18.65.748 (2).

The DPS website also lists "possible" reciprocity states. Among those listed are Arkansas, Georgia, Mississippi and Tennessee, all of which are actively entering into reciprocity agreements and would most assuredly respond favorably to contact by your department. New Hampshire is also in the process of entering into reciprocity agreements, but, it appears, not as aggressively as the aforementioned states.

Confidentiality

The original concealed handgun permit law was passed in 1994 and included specific language in AS §18.65.770 to limit access to the information regarding permit holders compiled by DPS. The regulations promulgated in response to the new law appropriately included 13 AAC 30.800 to accurately reflect legislative intent. Because Senate Bill 294 made no change to §18.65.770, the NRA believes there should be no change to the corresponding regulation. The confidentiality of private information, particularly relating to firearm ownership, is one of the absolute foremost concerns of NRA members and all law-abiding firearm owners. It is the nature of regulations that they are somewhat redundant as they mirror the statutes which they serve to implement. Therefore, regardless of the fact that there may be confidentiality provisions which "already exist in statute," as stated in the DPS notice, NRA is opposed to the repeal of 13 AAC 30.800.

The National Rifle Association, on behalf of the membership, would like to thank the Department of Public Safety, in advance, for its consideration of these comments. If we can be of assistance in providing information or helping in any way to bring the DPS website up to date with regard to the recognition of other states' permits, please don't hesitate to contact me.

Sincerely,

Brian Judy

Brian Judy
Alaska State Liaison

cc: Senator Robin Taylor
Senator Rick Halford
Senator Lyda Green
Representative Jeannette James
Wayne Anthony Ross, Attorney-at-Law and NRA Director
Alaska Outdoor Council

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www.nra.org

January 8, 2002

Senator Robin Taylor
50 Front Street, Suite 203
Ketchikan, AK 99901

Dear Senator Taylor,

It has now been twenty-two months since you held the informational hearing on Alaska's Concealed Handgun Permit law and sixteen months since the resultant Senate Bill 294 was signed into law by Governor Knowles. I am very disappointed to notify you that the Department of Public Safety foot-dragging which led to that original hearing continues to this day.

As I had done prior to the March 2000 hearing, I have contacted various officials at DPS on numerous occasions since the hearing and have only been successful in achieving partial (and agonizingly slow) progress on their part in implementing the changes made by your SB 294.

If you would be willing and if you think it would be politically viable, it is my recommendation, on behalf of NRA members inside and outside the State of Alaska, that legislation be drafted to remove DPS from the process and simply recognize all other states' concealed firearm permits. The bureaucracy has had way more time than it needed and has been given much more opportunity and notice than should have been required and, still, it has failed to fully implement the law.

Attached is recommended language for your consideration. Thank you for your ongoing interest and support on this issue.

Sincerely,

Brian Judy
Alaska State Liaison

cc: Senate President Rick Halford
Senator Lyda Green
Representative Jeannette James
Wayne Anthony Ross, Attorney-at-Law and NRA Director
Alaska Outdoor Council

Letter of Support

Subject: [Fwd: SB 242]
Date: Wed, 13 Mar 2002 08:29:44 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: SB 242
Date: Tue, 12 Mar 2002 17:46:21 -0900
From: "Fred & Mic" <fred-mick@gci.net>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Mr. Rokeberg

Mr. Randy Phillips told me that SB 242 is in your Judiciary committee. Be advised I, having a Alaska concealed weapons permit, have a problem with the bill. What little I know about it, I understand the bill would recognize any other US State's concealed permit in Alaska.

While I support the concept, I must take an exception. For example, Alaska currently recognizes the State of Oregon concealed permit. When I traveled last year to Oregon, they informed me that they don't honor Alaska permits. I was informed I can apply for one however.

I think SB 242 is a good concept, but I think it should be amended with the proper language to recognize only those state permits that also recognize Alaska's permits in their state. The bill should have a provision that, when in the future other states recognize our permit, so will we recognize their permit. I don't think Alaska should unilaterally recognize other states permits without reciprocity.

Thank you for considering my view
Have a Nice Day
Fred Keller
333-1759 Home
360-1366 Cell

Fast Facts
Concealed Handgun Legislation

HB346
SB242

Jennifer Yuhas Legislative Aide to Representative Beverly Masek

It is not necessary for those visiting the state who wish to exercise their concealed carry permit to notify the Department of Public Safety as they enter the state. All visitors with out of state permits will be subject to the same conditions of permitting as Alaska residents, and will be required to declare their weapon and permit in the event that they are contacted by a peace officer.

AS 18.65.750. Possession and display of permit.
(a) A permittee shall carry the permit at all times the permittee carries a concealed handgun. The permittee shall display both the license and other proper identification when asked to do so by a peace officer at any time.
(b) Whenever a permittee who is carrying a concealed handgun is contacted by a peace officer, the permittee shall immediately inform the peace officer that the permittee is carrying a concealed handgun under the permit.
(c) During a contact with a permittee, a peace officer may secure a handgun, or direct that it be secured, during the duration of the contact if the peace officer determines that the action is necessary for the safety of any person, including the peace officer, present. The permittee shall submit to the securing of the handgun.
(d) In this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.
(e) A person who violates (a) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100.
(f) A person who violates (b) or (c) of this section is guilty of a class A misdemeanor.

This legislation is for Alaskans. Many Alaskan permit holders have revealed that they choose not to carry concealed in Alaska, but would like to exercise their permit as they travel, expressing that they do not feel the Lower *48 affords them the same comfort level that they enjoy in their home state. In order to be granted permit recognition in several other states, Alaska must first meet the reciprocity requirements for those states.

Under his legislation persons from non-permitting states such as Vermont will unfortunately remain excluded from the right to carry concealed in Alaska. This

legislation will honor permits held in other states. Since Vermont does not issue permits, those from Vermont will have no permit to honor.

A representative from the Million Mom March testified before the House Judiciary Committee Friday, March 1st that she would not like to see visitors afforded the right to carry concealed, citing that she would have comfort in knowing that people in Alaska were only permitted to legally carry their firearms openly. She claimed that this would afford her peace of mind, considering that she would know that someone had a gun, and she would have the option of being in their presence. Concealed carry permittees have undergone background checks, and are supported by statistics that exhibit exemplary records of safety and precaution. Conversely, the persons of ill character who pose a very real threat to our MMM representative and the rest of us, will more than likely conceal the firearm they use to commit a violent crime without any background check or permitting procedure. In most instances, they will have also obtained the firearm illegally, and there will be no record of it's purchase. Alaska should not further restrict responsible law abiding citizens in an effort to exhibit empathy for the fears of those who misunderstand the gun control issue.

One representative expressed a desire to preserve a 120 day limitation to reciprocity of permits. Doing so would exclude 3 states from granting permit recognition to Alaskan residents as they travel. Permits held in other states generally have a 1-5 year expiration date, and are unable to be renewed by non-residents. Permittees wishing to remain in Alaska beyond the duration of their out of state permit will be required to obtain an Alaska permit.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 242
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: Concealed Handgun Permittees
BRU: AST-Detachments
Component: AST-Detachments
Sponsor: Senator Taylor
Requester: House Judiciary Committee
Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill will have no fiscal impact for the Department of Public Safety.

Prepared by: Lt. Julia Grimes
Phone 269-4532
Division: Division of Alaska State Troopers
Date/Time 3/19/02 3:40 PM
Approved by: Commissioner Glenn Godfrey
Date 3/19/2002
Agency: Department of Public Safety

(Revised 9/2001 OMB)

SB

263

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 15, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 4.24.02

The JUDICIARY Committee considered: **CSSB 263(RLS)**

CS FOR SENATE BILL NO. 263(RLS) **AFTER ACQUIRED TITLE IN REAL PROPERTY**

"An Act relating to the subsequent acquisition of title to, or an interest in, real property by a person to whom the property has purportedly been granted in fee or fee simple; and providing for an effective date."

Recommends it be replaced with _____CS_____(_____) [ ] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*For Chief Clerk's Office Use Only

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
ALL	1			✓

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	BENKOWITZ			✓	
	Coghill	✓			
	JAMES	✓			
	KOOKESH	✓			
Chair:	ROKEBERG	✓			
Chair:					

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 fax

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 fax

Senator Loren Leman

Sponsor Statement
CS SB 263(Rules): Real Property Conveyances

This legislation would cure an otherwise obscure common law rule that has created a problem for Alaska landowners, including Alaska Native Claims Settlement Act (ANCSA) corporations. Changes in the Senate Judiciary Committee further narrow the effect of the legislation by specifically applying it to property conveyed under the Alaska Native Claims Settlement Act. **This language is further clarified in the Rules Committee Substitute by specifically referring to ANCSA real property rather than Native corporation real property, and defining that term in Sec. 2(b).**

Under the ANCSA, village corporations own the surface estate to lands conveyed under that law. Regional corporations own the subsurface estate. Some village corporations have conveyed some of their lands to shareholders. Those shareholders currently have no right to use or disturb the subsurface, and some may be technically trespassing on regional corporation property.

Regional Corporations would like to solve this problem by granting the Village Corporations a limited easement to disturb the subsurface for (in most cases) residential use, and have that easement then pass automatically to the resident.

The old common law rule allows this automatic pass through from the regional corporation to the village corporation to the shareholder to happen only if the village had originally conveyed the land to the shareholders by *warranty* deed. Unfortunately, the village corporations used *quitclaim* deeds. There is no practical reason to treat these two types of deeds differently for this purpose, and so the enclosed legislation solves the problem by allowing this automatic pass-through of so-called "after acquired rights" for ANCSA conveyed-property to occur regardless of which kind of deed is employed.

Contact: Annette Kreitzer, Staff to Senator Leman Updated April 8, 2002

Senator_Loren_Leman@legis.state.ak.us • www.akrepublicans.org/Leman.htm

During Session, January - May:
State Capitol, Room 115
Juneau, Alaska 99801
(907) 465-2095
465-3810 FAX

During Interim, June - December:
716 W 4th Ave, Suite 520
Anchorage, Alaska 99501
(907) 269-0240
269-0242 FAX

Senator Loren Leman

FREQUENTLY ASKED QUESTIONS ABOUT CS SB 263(Rules): REAL PROPERTY CONVEYANCES

1) ***What is the meaning of the phrase "in fee or in fee simple" in the proposed legislation?*** As Alaska law describes it, a quitclaim deed conveys "fee" title, (AS 34.15.040(b) while a warranty deed conveys "fee simple" title (AS 34.15.030(b). Thus, by saying that after-acquired property rights will automatically pass to the grantee whenever the prior conveyance was "fee or fee simple" title, the bill is saying that either a quitclaim or warranty deed will serve to pass after-acquired interests.

2) ***What is the difference between a quitclaim deed and a warranty deed?*** A quitclaim deed only passes whatever title (if any) that the grantor might possess, while the latter actually warrants that the grantor has fee simple title to the property.

3) ***How would this legislation solve the Native conveyance issue to which it is addressed?*** Under ANCSA, while village corporations own the surface estate to lands conveyed under that law, regional corporations own the subsurface estate. Because these village/shareholder conveyances were almost always done by quitclaim deed, an easement granted now to the village corporation would not automatically pass to the individual shareholder grantees, unless the law were changed in the manner provided in the legislation.

4) ***How does Section 2 affect the legislation?*** Section 2 provides that the bill applies only to title or interest that is acquired after the legislation is enacted. The "title or interest" to which the section refers is the after-acquired interest or subsurface easement to be granted to the village corporations. That easement would be granted only after the bill is enacted, and therefore the bill would serve to pass that easement on to the shareholders.

Contact: Annette Kreitzer, Staff to Senator Leman Updated April 8, 2002

Senator_Loren_Leman@legis.state.ak.us • www.akrepublicans.org/Leman.htm

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 263(L&C)
(S) Publish Date: 2/13/02

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Real Property Conveyances
BRU
Component
Sponsor: Senator Leman
Requester: Senate Labor & Commerce
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: SENATE LABOR & COMMERCE COMMITTEE
Phone 465-4993
Division
Date/Time
Approved by: /s/ Senator Stevens, Chair
Date 2/13/02
Agency

(Revised 9/2001 OMB)

SB

278

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 25, 2002 **FURTHER REFERRALS: Finance**

Date of Committee Action: 5·3·02

The JUDICIARY Committee considered: **CSSB 278(FIN)**

CS FOR SENATE BILL NO. 278(FIN) **TAKING PROPERTY BY EMINENT DOMAIN**

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

Recommends it be replaced with H **CS** FOR CSSB278 (JUD) [✓] **Same Title** [ ] **New Title**
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
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DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*For Chief Clerk's Office Use Only

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOT		✓		

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
CRT	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	PEKOWITZ			✓	
	Meyer			✓	
	Kookesh	✓			
	Coghill	✓			
Chair:	ROKSBERG	✓			
Chair:					

22-LS1399\S
Kurtz
5/3/02

Adopted 5.3.02 Amended

HOUSE CS FOR CS FOR SENATE BILL NO. 278(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS TORGERSON, Taylor, Wilken

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 09.55.270 is amended to read:

Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear that

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

(2) the taking is necessary to the use;

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

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

Concept #2 Amend. Adopted

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

(b) Before taking property ~~valued~~ estimated by the condemnor at $15,000 or more, a condemnor shall invite the property owner, within a reasonable period of time set by the condemnor, to obtain an appraisal from a real estate appraiser certified under AS 08.87 and offer to

(1) sell the property to the condemnor for the appraised value plus the cost of appraisal; or

(2) exchange the property for a parcel of comparable value.

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

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

* **Sec. 4.** AS 09.55.440(a) is amended to read:

(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. **If the court finds that the plaintiff has not complied with AS 09.55.270(b), the court may award a sum** ~~equal~~ **up to 10 percent of the** ~~value of the property~~ **final settlement amount as additional compensation.** 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.

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

ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

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

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

Sponsor Statement
Senate Bill 278

Taking Property By Eminent Domain

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

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

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

ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

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

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

Sectional Analysis of SB 278

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

Sec. 1: AS 09.55.270 lists the matters that any condemning authority must prove before it can condemn property through a judicial eminent domain complaint. The statute is amended by adding subsection (4) that requires the state to make a "reasonable and diligent effort" when trying to purchase land through eminent domain.

Sec.2: AS 09.55.270 is amended by adding new subsections (b) and (c) that define "reasonable and diligent effort." Subsection (b) requires a condemnor to invite the property owner to secure an appraisal from a real estate appraiser certified under AS 08.87 or offer any alternative means of satisfying the public purpose for which the property is sought. Subsection (c) provides that if the conditions in (b) are met than a condemnor must either accept the offer or provide a reasonable explanation otherwise. If the property owner does not meet the conditions of (b), the condemnor may commence eminent domain proceedings.

Sec. 3: AS 09.55.430 deals with "declarations of taking" which differ from eminent domain complaints in that once a declaration is filed, the property is taken immediately, rather than after judicial proceedings are completed. Before 1976, the state could take land under a declaration of taking without proving the necessity for the taking. In 1976, however, the legislature added subsection (7), which required the declaration to contain a statement explaining how the taking was necessary. Section 3 further amends the statute to add a subsection (8) to include a statement verifying that, where possible, the condemning authority has made a "reasonable and diligent effort" to purchase the land.

Sec. 4: AS 09.55.460 authorizes the court to divest the authority of its new title if it is ultimately shown that the taking was not necessary. Section 4 would amend AS 09.55.460(b) by authorizing the court to also divest the condemnor of title when it was ultimately shown that a "reasonable and diligent effort" to purchase the property had not been made. Without Section 3, Section 2 of the bill would be meaningless, since the state would be obliged to make a statement that the "reasonable and diligent effort" requirement had been met but the landowner would have no remedy in any case where the statement proved untrue.

Sec. 5: Sets an effective date of the Act.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

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

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CS SB278 (JUD)
(S) Publish Date: 4/18/2002

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

** See attached analysis.

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

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSSB 278(JUD) #3

ANALYSIS CONTINUATION

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

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

Appendix
Analysis of Takings Laws by Category of Legislation

1. Attorney General Review of Proposed Regulations

Delaware

One of the first states to pass takings legislation, Delaware's 1992 law (Del. Code Ann., 29-605) requires the attorney general to review all proposed state agency regulations before they go into effect and to inform the issuing agency of their potential to result in a taking of private property requiring compensation. Most state agencies are aware that they should ask a deputy attorney general assigned to their agency for an evaluation of a proposed regulation before it is issued. The attorney general's office will give a written response to any regulation submitted for review. The office has taken a position that if a proposed regulation will in any way restrict the use of private property, it will advise the agency that there is a potential for a taking and that a more meaningful analysis can only be done on a property-specific basis. In the 18-month period ending June 30, 1996, the office estimates that there may have been six to 12 proposed regulations that, depending on how they are implemented by a state agency, have the potential to constitute a taking. No litigation has been filed against a state agency by a landowner as a result of those regulations reviewed by the attorney general's office. The office has absorbed the staff time necessary to review the proposed regulations within its existing budget.

Indiana

Similar to Delaware's law, Indiana's 1993 legislation (Ind. Code Ann., 4-22-2-32) requires the attorney general to review all proposed state agency regulations before they go into effect for their potential takings implications. If the attorney general determines that a proposed regulation may constitute a taking, it must inform the governor and the issuing agency. The attorney general's advice is protected under attorney-client privilege. The office has indicated that most proposed regulations are of such a general nature that it is difficult to determine if they will constitute a taking until they are applied on a property-specific basis. The office has provided state agencies with a process for evaluating proposed regulations. Because of the attorney-client privilege afforded advice to state agencies, the effect of consultations between the attorney general's office and state agencies on the issuance of regulations cannot be determined. No litigation has been filed against a state agency as a result of regulations reviewed by the attorney general under the statute. The attorney general's office reports that it has always conducted a thorough review of proposed regulations for other purposes; as a result, it has been able to absorb any additional costs relating to the takings legislation within its existing budget.

2. State Agency and Local Government Assessment of Proposed Regulations

Arizona

Legislation passed in 1995 (Ariz. Rev. Stat. Ann., 9-500.12, 9.500.13, 11-810, 11-811) establishes an administrative appeals process whereby a property owner may appeal a municipal or county dedication or exaction of real property required as a condition of the property's use, improvement or development. The law does not apply to a dedication or exaction required by a municipal or county legislative act in which the administering agency has no discretion in determining the nature or extent of the action. The municipality or county must appoint a hearing officer to hear appeals. Once an appeal is made, the municipality or county must prove that there is an essential nexus between the dedication or exaction and a legitimate public purpose, and that the action is roughly proportional to the impact of the proposed property use. The law further requires every municipality with a population greater than 2,000 and every county to prepare administrative procedures to facilitate the administrative appeals process.

Every municipality and county to which the law applies has prepared administrative procedures. The League of Arizona Cities & Towns reports that there have been at least two appeals filed under the law, both in the city of Scottsdale (a third appeal was resolved before going to hearing). One concerned a scenic corridor easement, the other the dedication of a right-of-way for a water and sewer line. The city lost both appeals and withdrew the dedication or exaction. There have been no appeals in Phoenix, the largest city in the state. The Phoenix Development Services Department has indicated that it meets with property owners informally before a dedication or exaction is finalized in an attempt to resolve potential appeals.

There are two sets of costs that a municipality or county may incur under the law. The first is the *process* costs of performing individual analyses of proposed dedications or exactions to ensure that they comply with the essential nexus and rough proportionality requirements of United States Supreme Court decisions. The city of Phoenix plans to use existing plan review staff to perform these analyses. The city acknowledges that "this may cause some degradation of plan review turnaround time" and that "the overall fee schedule may have to be increased to recover the costs of individualized analyses since customers cannot be directly charged." The city of Scottsdale estimates that handling the appeals process incurs costs equivalent to approximately one-half day to one day of a staff person's time.

The second set of costs is the *capital* costs of having to purchase foregone right-of-way dedications and improvements of real property in order to maintain, in the words of one Phoenix official, "a safe, functional and aesthetically pleasing municipality." As of April 30, 1996, the city of Phoenix estimated that the value of foregone dedications and exactions in the first year of the law's operation amounted to $690,000.

Idaho

The stated purpose of Idaho's 1994 legislation (Idaho Code, 67-8001 et seq.) is to "establish an orderly, consistent review process that better enables state agencies to evaluate whether proposed regulatory or administrative actions may result in a taking of private property without due process of law." The statute goes on to stipulate that its purpose is not to "expand or reduce the scope of private property protections provided in the state and federal constitutions." It requires the attorney general to establish a process and a checklist to assist state agencies in evaluating proposed regulations or administrative actions for their takings implications (the most recent guidelines were prepared in October 1995). The state agency review process is protected by attorney-client privilege. The law was extended to cover local government regulations or administrative actions in 1995 (Chapter 182).

The Idaho Office of the Attorney General has indicated that the evaluation process is informal and undocumented, but that implicit in the Department of Environmental Quality's permitting and rulemaking processes is a practical and legal evaluation of any takings implications. State agency budgets have not increased as a result of conducting the evaluations; additional costs, if any, are from minimal legal training for staff on takings issues. The Department of Environmental Quality has not revised any proposed regulations or administrative actions based on the takings evaluations. Comparable information for local governments has not been available.

Kansas

The 1995 Private Property Protection Act (Kan. Stat. Ann., 77-701 et seq.) requires the attorney general to prepare guidelines to assist state agencies in evaluating whether a proposed government action constitutes a taking as articulated by the United States Supreme Court and the Kansas Supreme Court. State agencies must use the guidelines in preparing a written report on each proposed action that may constitute a taking. The report must:

- Identify the risk to the public health, safety or welfare of the use of private property that the action proposes to regulate.
- Describe how the proposed action will substantially advance the public interest.
- State the facts used to justify the proposed action.
- Assess the takings implications of the proposed action.
- Identify alternatives, if any, to the proposed action.

State agencies must submit a copy of each written report to the governor and the attorney general before implementing a government action for which a report has been prepared. Unlike other state takings assessment laws, the Kansas legislation requires state agencies to review and evaluate all existing rules and regulations in accordance with the attorney

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general's guidelines, and submit to the governor and the attorney general a written report by Jan. 1, 1997.

The attorney general prepared guidelines to assist state agencies in evaluating the takings implications of proposed government actions on Dec. 21, 1995. The Department of Health and Environment, the primary state agency responsible for issuing rules and regulations that may affect property rights, adopted procedures to prepare the written report required under the law on July 16, 1996. Each bureau within the department prepares the written report on proposed government actions as required under the law. The department's Office of Legal Services answers the questions posed in the attorney general's guidelines.

The department has indicated that it routinely conducted some type of takings assessment on proposed rules and regulations prior to passage of the Private Property Protection Act in 1995, and that its assessments had been reviewed by the attorney general's office before implementing a proposed rule or regulation. No proposed rules or regulations have been found by the department or the attorney general's office to constitute a taking, and none have been revised based on that determination. The department has not incurred any additional costs to comply with the 1995 legislation's takings assessment requirements.

The Department of Health and Environment submitted its evaluation of existing rules and regulations to the governor and the attorney general on Oct. 21, 1996. After consulting the attorney general's guidelines, the department determined that none of its existing rules and regulations constitutes a taking.

North Dakota

Legislation enacted in 1995 (N.D. Cent. Code, 28-32-02.5) requires a state agency to prepare a written assessment of the takings implications of any proposed rule that might limit the use of private real property. The agency assessment must:

- Assess the likelihood that a proposed rule may result in a taking.
- Clearly identify the purpose of the proposed rule.
- Explain why the proposed rule is necessary.
- Identify alternatives to the proposed rule.
- Estimate the cost to government if the proposed rule results in a taking.
- Certify that the benefits of the proposed rule exceed the estimated costs if compensation is required.

The Department of Health has reviewed its proposed rules to determine if a takings assessment is necessary. It determined that a takings assessment was not necessary for its ground water monitoring well rules (the only rules proposed since enactment of N.D. Cent. Code, 28-32-02.5) because their implementation would not result in a taking. The Office of Attorney General subsequently approved the rules. The department has incurred some additional costs to determine whether a takings assessment is necessary, but not

enough to justify seeking a budget increase. The department has not revised any proposed rules based on its takings assessment.

Tennessee

Legislation enacted in 1994 (Tenn. Code Ann., 12-1-201 et seq.) requires the attorney general to develop guidelines to assist state agencies in identifying and evaluating proposed government actions that might result in a taking of private property. The initial guidelines were published in July 1995. They were revised in August 1996. The attorney general's office considers consultation with state agencies to be covered by attorney client privilege. As a result, it cannot divulge how state agencies have used the guidelines or whether the office has suggested modifications to proposed regulations. Because state agencies are not required to prepare written assessments of their proposed actions, it is difficult to determine the effect of the guidelines on their final actions.

Texas

The 1995 Private Real Property Rights Preservation Act (Tex. Gov't Code Ann., 2007.001 et seq.) contains both takings assessment and mitigation/compensation provisions. The law requires the attorney general to prepare guidelines to assist government agencies in preparing takings impacts assessments (TIAs) of proposed actions covered under the law. The guidelines were published in the *Texas Register* on Jan. 12, 1996. In addition to determining whether the proposed action constitutes a taking, the assessment must demonstrate how the proposed action substantially advances its stated purpose, the burdens placed on private real property, the benefits to the public of the proposed action, and alternatives that might accomplish the same purpose as the proposed action. The law also required the state comptroller to present a report to the legislature before the convening of the 1997 session on how well government agencies are complying with the assessment provisions and what the compliance costs have been. The comptroller submitted its report on Jan. 15, 1997.

The comptroller sent a written survey to 131 state agencies to obtain compliance information; 119 agencies responded. The responses addressed two sets of costs; those for preparing procedures to determine whether a government action requires a TIA, and the actual costs of preparing the TIA. Ninety-five agencies indicated that they took no actions in FY 1996 that are covered under the act. Twenty-five agencies responded that they either took actions in FY 1996 that are covered under the act, or that they anticipate taking actions during FY 1997 that are covered under the act. Five agencies prepared specific procedures in FY 1996 to help them determine whether a proposed action requires a TIA; 11 agencies anticipate preparing specific procedures during 1997. Nine agencies will determine on an ad hoc basis whether a TIA is necessary. Agency costs for preparing specific procedures in FY 1996 ranged from zero to $11,000 per agency.

Four agencies prepared a total of 139 TIAs during FY 1996, with the Texas Natural Resources Conservation Commission (TNRCC) preparing 116 of the TIAs. Agency costs for preparing the TIAs ranged from $500 to $1,250 per agency. Agencies project that their FY 1997 costs for preparing TIAs will range from $500 to $5,000 per agency based on an increase in the number of TIAs being prepared (from 139 in FY 1996, to between 148-156 in FY 1997).

Based on comments received from government agencies, the comptroller made the following recommendations to the legislature:

- Clarify the types of agencies that are required to prepare TIAs.
- Clarify the types of government actions covered under the act.
- Clarify the rights of adjacent landowners to relief from actions undertaken by government agencies.
- Clarify the agency responsible for preparing the TIA, where more than one agency is involved in undertaking an action that affects a property owner.

Utah

Utah's 1993 takings assessment law (Utah Code Ann., 63-90-1 et seq.) provides very specific criteria for the composition of state agency assessments. It requires state agencies to adopt guidelines to assist them in identifying and evaluating government actions that have constitutional takings implications. Each assessment must include an analysis of:

- The likelihood that the proposed action will result in a taking.
- Alternatives to the proposed action.
- The estimated costs to the state for compensation should the action result in a taking, and the source of payment within the agency's budget.

The law further requires a state agency to:

- Clearly identify the public health or safety risk created by the property use.
- Ensure that the proposed action substantially advances a legitimate public purpose.
- Establish that the conditions imposed by the action are proportionate to the impacts caused by the property use.

The law was expanded in 1994 (Utah Code Ann., 63-90a-1 et seq.) to require each political subdivision in the state to enact an ordinance establishing similar guidelines to those developed by state agencies. The law does not specify criteria to be included in a local government takings assessments; it merely requires each political subdivision to consider the guidelines when taking an action that might result in a taking. It further states that the guidelines are only advisory.

The Department of Environmental Quality has not prepared any takings assessments under the law. The reason relates to the definition of the term "government action" for which a takings assessment is required. Government action means "proposed rules and emergency rules by a state agency that if adopted and enforced may limit the use of private property *unless its provisions are in accordance with applicable state or federal statutes* [emphasis added]." The department has stated that all of its actions have been "in accordance with applicable state or federal statutes," and, therefore, do not require the preparation of a takings assessment. The department has also noted that if it were required to conduct the assessments, it would need additional financial resources.

Comments received from the Utah Association of Counties suggest that local governments may not be aware of the takings assessment requirement; there is little communication between local governments and the state attorney general's office. To the degree political subdivisions are aware of the takings assessment requirement, the association feels that they are already in compliance with the law. County governments in Utah are very sensitive to the effects of land use regulation on private property and on the county's property tax base.

Washington

A section of the state's Growth Management Act passed in 1991 (Rev. Code Wash., 36.70A.370) requires the attorney general to develop an orderly, consistent process to help state agencies and local governments evaluate proposed regulations to ensure that they do not constitute a taking of private property. The attorney general must review and update the process annually to reflect any changes in court decisions. Local governments that prepare comprehensive growth management plans must use the process. A property owner may not bring an action against a local government, however, for failure to use the process. The process is protected by attorney client privilege.

The attorney general completed the initial guidance document in February 1992 (the first state to do so), and revised it in April 1993. The most recent update was prepared in 1995. The document consists of a "recommended process" and an "advisory memorandum" for evaluating proposed regulations. The recommended process suggests to local governments and state agencies that they review the advisory memorandum with their legal counsel and distribute it to all decision makers and key staff under their jurisdiction. The advisory memorandum contains warning signals that local governments and state agencies should use as a checklist to determine if a proposed regulation might go too far. The advisory memorandum concludes with a list and summary of relevant federal and state takings cases.

Two provisions of the statute make it difficult to determine the extent of local government and state agency use of the takings guidelines: (1) there is no requirement that a written takings assessment be completed; and (2) review of proposed regulations by legal counsel is protected by attorney client privilege. One attorney in the state attorney general's

office noted, however, that he was surprised by the limited reference to the guidelines by local governments preparing growth management plans.

West Virginia

The Private Real Property Protection Act of 1994 (W.Va. Code, 22-1A-1 et seq.) requires the Division of Environmental Protection to prepare an assessment of any action that is reasonably likely to result in a taking of private property. The assessment goes beyond a determination of the takings implications of a proposed regulation to include:

- Identifying the risk of the regulated activity and the benefits to be achieved by the regulation.
- The potential effects on other landowners and the environment without the regulation.
- How the regulation mitigates the risk.
- Why the division believes the regulation may result in a taking requiring compensation.
- Alternative actions to the regulation.
- Estimated costs to the state if compensation is required.

The statute contains an exclusion that significantly limits its application. An assessment is not required for agency actions undertaken pursuant to state or federal statutes, rules or regulations. The Division of Environmental Protection has determined that none of its regulatory actions are taken independent of state or federal statutes, rules or regulations. It has not, therefore, prepared any assessments or assumed any additional costs to comply with the law.

3. Compensation for Regulatory Takings

Louisiana

Louisiana's 1995 Right to Farm and Forest Act (La. Rev. Stat. Ann., 3:3601 et seq.) authorizes the owner of agricultural or forest land to bring an action against a state or local government agency to determine whether a government action has reduced the value of the property by 20 percent or more. If the court determines that a government action has reduced the value of the land by 20 percent or more, the property owner is entitled to compensation for the reduction and retention of title to the property, or, in the case of agricultural land only, recovery of the fair market value of the property and transfer of title to the government agency. As an option, the government agency may rescind the action resulting in the regulatory taking; the government agency remains liable for damages incurred while the action is in effect. The Louisiana Department of Agriculture and Forestry has reported that no actions have been filed against it or any local government agency seeking compensation for a regulatory action covered under the law.

Mississippi

Mississippi was the first state to enact legislation requiring compensation for a regulatory taking. Passed in 1994 and amended in 1995, the Mississippi Agricultural and Forestry Activity Act (Miss. Code Ann., 49-33-1 et seq.) grants a cause of action to seek compensation to an owner of forest or agricultural land whose property value is reduced by more than 40 percent as a result of a state or local government action. The government agency may repeal the action before a final court decision is reached. As in Louisiana, the government agency remains liable for damages incurred while the action is in effect. The attorney general's office has indicated that no legal actions have been taken against the state seeking compensation under the act.

Texas

Texas' 1995 Private Real Property Rights Preservation Act (Tex. Gov't Code Ann., 2007.001 et seq.) defines a "taking" to include a reduction in value of private real property of 25 percent or more caused by a state or local government action. It authorizes a property owner to bring suit to determine whether a government action constitutes a taking. If a court determines that a taking has occurred, the court may invalidate the action. The government agency responsible for the action may elect to pay compensation in lieu of rescinding the action. The law exempts actions that are reasonably taken to comply with state or federal mandates.

The Texas Natural Resource Conservation Commission (TNRCC) has reported that no litigation has been filed against the state alleging that a government action has reduced property value by 25 percent or more. The TNRCC has been sued, however, by landowners adjacent to a confined animal feed lot who argue that they have no recourse under the takings law to allege a reduction in their property value associated with the permit the TNRCC issued for the feed lot.

4. Dispute Resolution

Florida

The 1995 Bert J. Harris, Jr., Private Property Rights Protection Act (Fla. Stat. Ann., 70.001 et seq.) provides judicial relief for a property owner resulting from a state or local government action that inordinately burdens the use of real property, and a dispute resolution process to resolve a property owner's grievance outside of court. "Inordinate burden" is defined to mean a government action that restricts the use of private real property such that the owner is unable to obtain reasonable, investment-backed expectations from its use, or that places a disproportionate share of the burden to protect the public interest on the property owner. If a court determines that a government action amounts to an inordinate burden, it may require financial compensation for the actual loss in the property's fair market value.

Under the dispute resolution provisions of the act, a landowner who believes that a development order or an enforcement action of a government entity is unreasonable or unfairly burdens the use of the property may request relief from a special master mutually agreed upon by the landowner and the governmental entity responsible for the order or action. Before initiating a proceeding before a special master, the landowner must exhaust all nonjudicial administrative appeals. All hearings conducted by the special master must be informal, open to the public and not require an attorney. The role of the special master is to act as a mediator between the two parties in order to reach a mutually acceptable resolution of the dispute.

If an acceptable solution is not reached, the special master must make a written recommendation to both parties. If the special master determines that the development order or enforcement action is not unreasonable or does not unfairly burden the use of the owner's property, the special master must recommend that the order or action remain in place. If the special master determines that the order or action is unreasonable or unfairly burdens the use of the owner's property, the special master may recommend alternatives that protect the public interest but reduce the restrictions on the use of the property. The government entity may accept, modify or reject the recommendation. Regardless of the government's response, the property owner may seek judicial relief through the courts.

There has been no litigation alleging that a government action to which the law is applicable has placed an inordinate burden on the use of private real property. The courts have not determined what types of government actions or what level of reduction in property value constitute an inordinate burden. The courts have not awarded compensation to any property owner under the act. At least one county has not issued a development order drafted before passage of the act because of concern that it might be interpreted to place an inordinate burden on the use of private property if challenged in the courts.

According to the Florida Conflict Resolution Consortium, at least 30 cases have proceeded under the dispute resolution provisions of the act; 28 cases have been filed against county or municipal government actions, with one each having been filed against a regional water management district and the state Department of Environmental Protection. At least five of the cases have resulted in a mutually acceptable solution between the property owner and the government entity. The difficulty in determining the exact number of cases is that there is no central location for initiating the dispute resolution process and selecting a special master. Some cities and state agencies are developing procedural guidelines to assist in the dispute resolution process. The Florida Conflict Resolution Consortium has developed "Model Procedural Guidelines for Special Master Proceedings," and has begun a training program for special masters.

Maine

Chapter 537 of the 1996 session laws (Me. Rev. Stat. Ann., 5-3341) established a land use mediation program in the Court Mediation service to provide private landowners with an alternative to litigation for resolving disputes over state and local government land use actions. The act establishes a fee not to exceed $175 for every four hours of mediation services to be paid by the landowner. Eligible landowners are those who have suffered significant harm as a result of a government action denying a land use permit. Use of the mediation services does not prevent a landowner from seeking judicial review of a permit decision.

One case has been filed under the land use mediation program. It involved a challenge to a local government denial of a variance. The mediator successfully resolved the issue to the satisfaction of the property owner and the local government in four hours at a cost of $175 to the landowner.

STATE's Questions

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

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

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

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

February 6, 2002

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

Dear Senator Wilken:

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

1. Prior to condemnation being filed, the person representing the State was courteous but misleading in attempting to convince me to accept a settlement that was completely unfair.

2. Prior to condemnation being filed, the State appraiser provided no meaningful information. She was quite insistent about her authority to be on my property and utilize space in a business located in the mall for her office. She was deceptively courteous and misleading in her attempt to promote an unfair evaluation of the property.

3. The State did not provide me a copy of their completed appraisal report and Market Data Book.

4. I was unable to settle with the State based on that appraisal because the compensation was totally inadequate and unfair.

5. The appraisal did not fairly set forth the value of the Taking and the consequences to the Remainder Property.

6. In the appraisal of my property, the "Before the Taking Value" was based on the current use of the property rather than the "Highest and Best Use" of the property.

7. The following items were not fairly considered when analyzing the effects of the Right-of-Way Taking on my property:
   a. Loss of parking
   b. Change in Highest and Best Use
   c. Decline in Market Appeal
   d. Change in the Business Use of the property
   e. Decline in Market Value

8. When it became apparent the State was misleading and unfair in their attempts to reach settlement, I hired an attorney and an appraiser to provide me accurate and fair counsel.

9. The State appraiser concluded that just compensation for the property taken and damages was $80,229. The appraiser for North Gate Square and Philip Evans concluded that just compensation for property taken and damages was $676,000. As a consequence, we proceeded to hearing.

10. Frank King, an appraiser, was appointed by the State to preside over the Master's Hearing. At the conclusion of the Hearing, Mr. King rendered a decision awarding $324,000, for property taken and damages. Although this was approximately half of the amount sought, I decided rather than continue with litigation I would settle. The State subsequently appealed.

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

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

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

Your assistance and interest in this proceeding is appreciated.

Sincerely,

Philip B. Evans

4 P 1

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

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

SUBJ: HIGHWAY RIGHT OF WAY ACQUISITION

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

PROPERTY DESCRIPTION

MY BAR/NIGHTCLUB SITS ON 2½ ACRES. THE BUILDING IS 25 FEET FROM THE FRONTAGE ROAD WHICH ALLOWS PARKING FOR 15 VEHICLES AT OR NEAR THE FRONT ENTRANCE. A WAREHOUSE/RETAIL SPACE IS BEHIND AND OFFSET TO THE BAR WHICH SHARES PARKING WITH THE BAR. FOR OVER 23 YEARS THE BAR HAS USED THE AREA OF LAND BETWEEN THE BAR AND FRONTAGE ROAD FOR CUSTOMER PARKING. ALSO IN 1995 WHEN WE

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

ANSWERING YOUR QUESTIONS AS NUMBERED:

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

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

pg 3

THE APPRAISAL ALLOWED A VALUE FOR A TEN FOOT STRIP THE WIDTH OF THE PROPERTY, BUT DID NOT GIVE AN ALLOWANCE FOR THE REMAINING FIFTEEN FEET BETWEEN THE RIGHT OF WAY AND MY BUILDING THAT WILL BE USELESS. BEST USE IS GONE. ONLY FLOWERS CAN BE PLANTED WHERE INCOME HAD BEEN GENERATED.

3. I DID GET A COPY OF THE APPRAISAL REPORT, BUT DO NOT KNOW WHAT THE MARKET DATA BOOK IS.

4. I HAVE NOT RESPONDED TO THE STATE YET OTHER THAN VERBALLY. AS, THE OFFER IS NOT FAIR.

5. THE APPRAISAL DID NOT SET FORTH THE VALUE OF THE TAKING AND THE CONSEQUENCES OF THE REMAINDER OF THE PROPERTY. ALTHOUGH, THE APPRAISER STATES THE MARKET VALUE AFTER THE TAKING IS THE SAME AS BEFORE. (OH REALLY)

6. BEST USE OF THE PROPERTY WAS MENTIONED IN THE APPRAISAL BUT VALUED IN THE APPROACH

P 5 4

7. • LOSS OF PARKING WAS NOT FAIRLY CONSIDERED
• CHANGE IN HIGHEST AND BEST USE WAS NOT CONSIDERED
• MARKET ~~VALUE~~ APPEAL WILL BE HIGHLY IMPACTED NEGATIVELY
• MARKET VALUE WAS STATED AS THE SAME BOTH BEFORE AND AFTER. THIS IS NOT REALISTIC.
• BUSINESS USE OF THE PROPERTY REMAINS THE SAME, BUT INCOME WILL BE NEGATIVELY IMPACTED.

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

By 5

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

IF YOU WOULD LIKE TO CONTACT ME FEEL FREE TO CALL OR FAX. NOW THAT I KNOW OF PROPOSED SB 276 I WILL READ UPON IT AND CONTACT SENATOR LYDA GREEN

Mike

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT : (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

May 1, 2002

Honorable Norman Rokeberg
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801

Dear Representative Rokeberg:

One of the biggest challenges facing transportation departments on the national level is the ability to deliver projects in a timely manner. Federally required planning processes, national environmental laws, and property acquisitions are costly, time consuming and provide a fertile field for litigation. It currently takes from 6-10 years to get a project ready to bid in urban areas. My colleagues from the other 50 state transportation departments and I, the American Association of State Highway and Transportation Officials, trucking associations, as well as the design and construction industry are all working diligently on the federal level to streamline the project delivery process. The upcoming reauthorization of TEA-21 is a golden opportunity for us to achieve some changes of Federal requirements.

Property acquisition can be a major factor in project delay and is generally governed by State Statutes. Currently, Alaska has a very fair, efficient, and proven property acquisition process. We settle 93% of our acquisitions in the negotiation process. I am concerned that Senate Bill 278 will add an unnecessary step in the property acquisition process that will result in lengthy delays in delivering projects especially in urban areas. By requiring the department to prove in court, that we have been reasonable and diligent in our negotiations with property owners before we can divest them of title, the bill can cause significant project delays and cost increases. This could, in Alaska's case, effectively negate any gains made in changes to Federal rules and result in extensive litigation for many projects.

Currently, the department can acquire title to property by proving authority and necessity, relatively objective standards, in court. We then either finalize negotiations or litigate over the fair market value of the property. This bill gives an unhappy property owner one more tool to delay a project regardless of the reason. For example, an urban project that has public support and requires the acquisition of forty properties could be delayed at

great expense due to one unhappy property owner challenging the reasonableness of the department in the negotiation process, a very subjective standard to prove.

At a time when we are trying to streamline the project delivery process at the Federal level, I would urge the committee not to add unnecessary State of Alaska steps by passing Senate Bill 278.

Sincerely,

Joseph L. Perkins, P.E.
Commissioner

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CS SB278 (FIN)
() Publish Date: 5/1/2002

Revision Date/Time (Note if correction): 05/01/02 11:30am
Dept. Affected: DOT&PF
Title: An Act requiring a good faith effort to purchase property before that property is taken...
BRU
Component
Sponsor: Torgerson
Requester: House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	1,313.0	1,313.0	1,313.0	1,313.0	1,313.0	1,313.0
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

** See attached analysis.

Prepared by: Dennis R. Poshard, Assistant to Commissioner
Phone 465-3904
Division: Commissioner's Office
Date/Time 5/1/02 11:46 AM
Approved by: Joseph L. Perkins, Commissioner
Date 5/1/2002
Agency: Alaska Department of Transportation and Public Facilities

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CS SB278 (FIN)

ANALYSIS CONTINUATION

The Department acquired 980 parcels statewide during 1999 to 2001 (an average of 327 parcels per year). Sixty-seven (67) parcels (7%) out of the 980 parcels were acquired through condemnation action.

On average, 23 parcels per year are acquired through condemnation action.

Currently there is one (1) Authority and Necessity (A&N) Challenge per year. If SB 278 passes the likelihood of A&N challenges to acquisitions will substantially increase due to new legal requirements to prove "reasonableness and due diligence."

Authority and Necessity (A&N) Challenges cost an average of $36,500 per challenge to defend (based on Department of Law figures).

With passage of SB 278, we predict that the number of condemnation parcels will increase (from 7% to 14%) as well as an increase in A&N Challenges (18 to 46 A&N Challenges per year) for an estimate of $657,000 to $1,350,500* in legal fees to only defend against the challenges.

* 327 parcels per year at 7% condemnation rate = 23 parcels
23 parcels X 80% A&N Challenge rate = 18 parcels
18 parcels X $36,500 = $657,000 increased cost to defend.

* 327 parcels per year at 14% condemnation rate = 46 parcels
46 parcels X 80% A&N Challenge rate = 37 parcels
37 parcels X $36,500 = $1,350,500 increased cost to defend.

Notes:
• The property owner does not prevail with the A&N Challenge they will be responsible for their legal fees.
• If the State loses the A&N Challenge, then the property owner's legal fees will be paid by the State.

SB 278

Considerations:

- The DOT&PF regards the acquisition of property through Eminent Domain as a serious matter and we respect the rights and concerns of property owners. Our guidance to the Department's staff begins by describing the rights of individual property owners as they are stated in the Alaska Constitution and the Fifth Amendment of the U.S. Constitution
- The current process works well
    - Acquisitions take place under the Federal Uniform Act and Alaska Statutes
    - By law we are required to offer fair market value. Property owners are allowed to rebut our appraisal or offer their own
    - Our Right-of-Way Manual guidance stresses the importance of fairness and just compensation
    - There is exhaustive case law on Eminent Domain
    - Review appraisals are required by FHWA
    - Under existing law, a judge already decides the issues of authority, necessity and fair market value
- Percentage of condemnations in Alaska is low – approximately 7% of the acquisitions
- The bill encourages additional litigation during the acquisition process
- The bill will shift Federal-Aid Highway funds from hard assets like new pavement and safety improvements toward additional attorney fees without giving the property owner anything more than the just compensation that they are already entitled to
- The bill will result in project delays
- The bill may cause expenses to be ineligible for federal reimbursement. If Section 2.b.1 of the bill intends that the Department purchase the property at the property owners appraised value rather than the value determined under the CFR's then any expense in excess of that amount will be ineligible for federal reimbursement
- Alternatives proposed by the property owner under Section 2.b.2 may be outside of approved environmental document. In order to accept the proposal, we would have to stop all design, utility and right-of-way work until we had a revised environmental document approved by the FHWA

DOT&PF is addressing the issues:

- ADOT&PF is willing to consider the concerns of the sponsor or other interested parties without the passage of SB 278
- We have amended our internal delegation of authority to require that the appeal of a Master's decision be approved by the Department's Chief Engineer\
- We are working with the FHWA to develop a pilot project of bonuses to sellers who are willing to settle quickly
- Existing statutes, AS 19.05.120, allow us to address the concerns of the ANCSA Corporations regarding purchase property for the purpose of exchange
- We have initiated a review of our processes relating to ANSCA Corporations so that we have a structured policy in place to follow when we have a request for an exchange of lands in lieu of a purchase

SIMPLIFIED PROJECT DEVELOPMENT FLOW CHART

Project Phase

Planning

Environmental Document

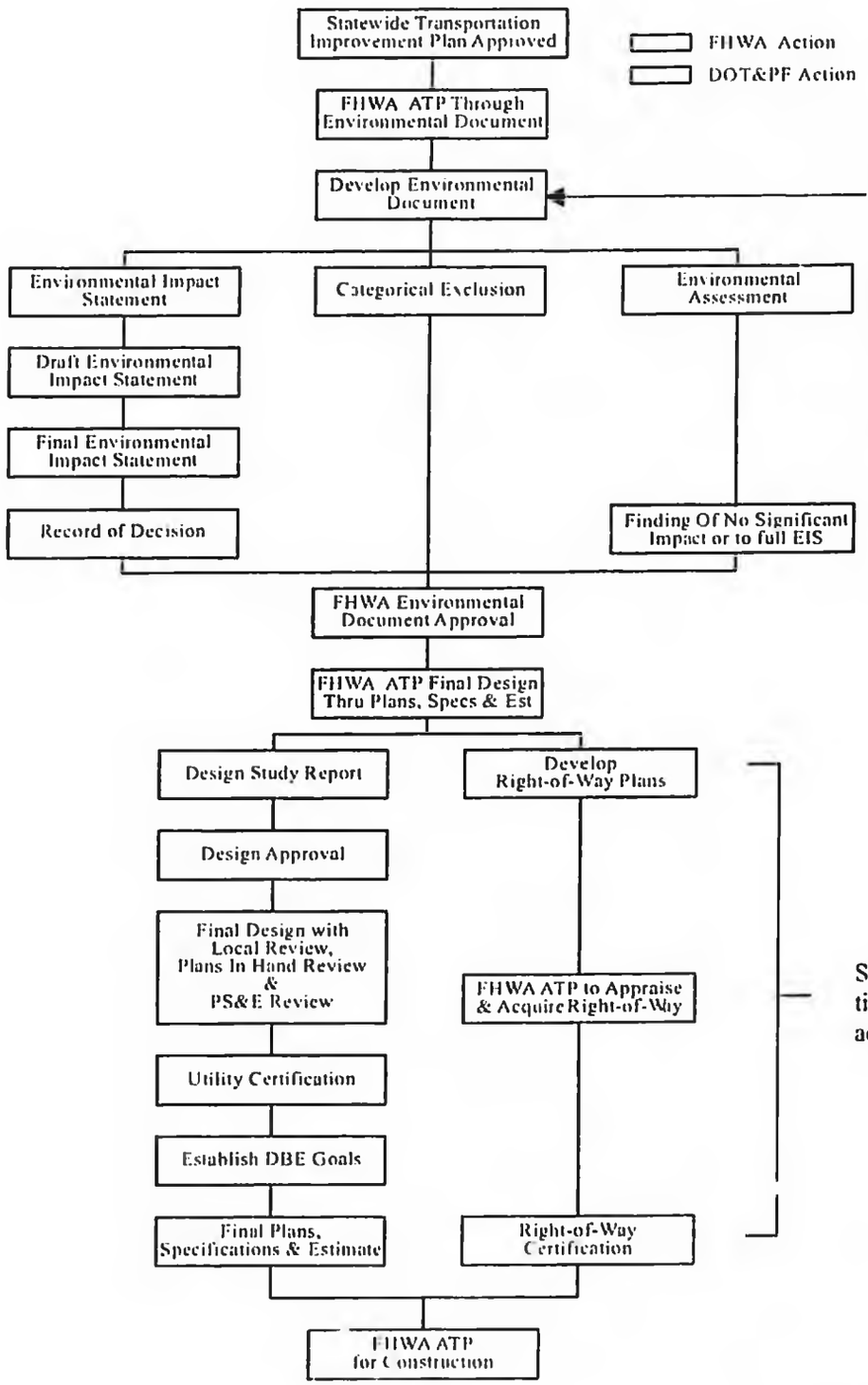
Preliminary Design

Final Design

Utilities

Right-Of-Way*

Construction



If the "Alternate Means" proposed under Section 2.b.2 is not consistent with the approved environmental document, then to accept the proposal DOT&PF must stop all work and revert back to this step until a revised environmental document is approved by FHWA.

SB 278 will extend the time required for ROW acquisition.

*ROW Acquisition is very often on the critical path of project development

Excerpt from AKDOT&PF's Right of Way Manual: CHAPTER 4. APPRAISAL PROCEDURES AND GUIDELINES

4.00.00. INTRODUCTION.

The Alaska Constitution, Article I, Section 18, Eminent Domain, reads in part: "Private property shall not be taken or damaged for public use without just compensation." The Fifth Amendment to the United States Constitution states: " No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Title III of the Uniform Act requires that real property be appraised before the initiation of negotiations. FHWA has waived this requirement for parcels with a value of $2500 or less and for donated parcels. The owner or a designated representative shall be given the opportunity to accompany the appraiser during inspection of the property. DOT&PF shall establish an amount that it believes to be just compensation for the property. This amount may be no less than the approved appraisal of the property's fair market value.

The 1987 amendments to the Uniform Act, for the first time in federal law, define an appraisal as follows: "A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information."

This chapter is designed to guide those involved in both the preparation of appraisals and the management of appraisal functions. It presents formats that will:

(1) conform to state and federal policies regarding the appraisal of real estate for the purpose of acquiring rights-of-way and land;

(2) ensure that the appraiser has considered all the required elements in arriving at the conclusion of value;

(3) maintain a uniform method of appraisal report writing that will conform with industry standards, and support DOT&PF's review, acquisition, relocation, and property management functions; and

(4) ensure that the value is just, not merely to the person whose property is acquired, but to the public paying for it.

The format and level of documentation required in an appraisal are dependent on the assignment, and the complexity of the appraisal problem to be solved. For the purposes of this chapter, the terms "appraisal", "appraisal report" and "valuation" are used interchangeably.

4.01.00. GENERAL

4.01.01. Acceptable Appraisal. An acceptable appraisal report is one that fulfills all the requirements of this chapter, and contains enough factual support, documentation, and sound reasoning for its conclusions to be readily understood. An appraisal report that fulfills all requirements of DOT&PF's guidelines as to form may still be unacceptable due to substance (inadequate investigation or interpretation of market facts; improper application of appraisal techniques; analysis or conclusions based on misleading, inaccurate, or incomplete data, etc.).

All appraisals performed for DOT&PF must include documentation showing that the owner or designated representative was allowed the opportunity to accompany the appraiser during the inspection. (Form 25A-132)

Guidance concerning the acceptability of specific techniques or processes, policy, or technical guidance may be requested from Appraisal Review. For various reasons DOT&PF may find more than one appraisal acceptable for a parcel, but there will be only one approved appraisal per parcel (Section 5.00.00).

4.01.02. Fair Market Value. Fair market value and market value are synonyms for purposes of this manual. The Uniform Act and 49 C.F.R. refer to fair market value, while the Appraisal Foundation refers to market value. Fair market value is defined in the "Uniform Standards of Professional Appraisal Practice" (1995 Edition) as:

> "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and

seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and acting in what they consider their best interests; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

The Alaska Supreme Court has defined fair market value as "the price in (terms of) money that the property could be sold for on the open market under fair conditions between an owner willing to sell and a purchaser willing to buy, with a reasonable time allowed to find a purchaser."
State v. 7.026 Acres, Sup. Ct. Op. No. 601, 466 P.2d 364, 365 (1970). The opinion further reads, in part: "The highest and most profitable use for which the property is adaptable is to be considered, to the extent that the prospect of demand for such use affects the market value while the property is privately held." Fair market value is normally based on a parcel's fee simple value.

When preparing the report, the appraiser should keep in mind that no consideration should be given (or allowance made) for the involuntary nature of the taking, the lack of desire of the owner to part with their property, or inconvenience and possible hardship caused the owner. The appraiser must be concerned exclusively with estimating fair market value. DOT&PF has established separate administrative, relocation, and property management programs to assist with "making the owner whole," and these considerations must NOT enter into the appraisal process.

4.01.03. Highest and Best Use. Highest and best use analysis should identify the highest and most profitable use for which the property may be privately held, to the extent that the demand for that use affects market value. Highest and best use must be demonstrated, and may not be too speculative. The report must show that the appraiser's choice is **(1)** physically possible, **(2)** legally permissible, **(3)** financially feasible, and **(4)** maximally productive. These criteria are usually considered sequentially (a use may be physically possible, but financially infeasible or legally prohibited). The value of the subject's land is generally estimated as though vacant, unless the land is improved with legally nonconforming improvements. The highest and best use of the land as though vacant must be considered in relation to its existing use, as well as all potential uses.

4.01.04. Determining the Larger Parcel. The appraiser is responsible for determining the larger parcel in the appraisal problem. Typically, DOT&PF's larger parcel recommendation to the appraiser is based on engineering and/or title information. The appraiser must support a larger parcel decision using the principles of substitution, demand, and applied economics.

"The Dictionary of Real Estate Appraisal" (published by the Appraisal Institute) defines larger parcel as:

"1. In condemnation, that tract or tracts of land which are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

2. In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use."

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Statewide Design & Engineering Services

TO: Rick Kauzlarich,
State ROW Chief
Frank Mielke, Chief ROW Agent,
Southeast Region
John F. Bennett, Chief ROW
Northern Region
Kim Rice, PE, Chief ROW Agent
Central Region

DATE: May 1, 2002

FILE NO:

TELEPHONE NO: 465-2960

FAX NUMBER: 465-2460
TEXT TELEPHONE: 465-3652

FROM: Michael L. Downing, PE
Chief Engineer

SUBJECT: Land Exchange Option for Project Acquisitions

The purpose of this memo is request your assistance in exploring the option of using land exchanges to acquire property for projects. This option is presented in A.S. 19.05.110 and A.S. 19.05.120.

My intent is to have a procedure available to us to use in negotiations with property owners such as ANCSA corporations that request an exchange of lands in lieu of a purchase. Rick Kauzlarich, State Right- of-Way Chief, will be convening a Chief's meeting in May 2002. I expect a draft of this procedure for my approval by July 30, 2002.

cc: Joe Perkins, PE, Commissioner
Robert J. Doll, Regional Director, Southeast
Ralph D. Swarthout, PE, Regional Director, Northern
David R. Eberle, Regional Director, Central

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities
Statewide Design & Engineering Services

TO: Pat Kemp, P.E.
Steve Horn, P.E.
Dave Bloom, P.E.

DATE: May 1, 2002

FILE NO:

TELEPHONE NO: 465-2960
FAX NUMBER: 465-2460
TEXT TELEPHONE: 465-3652

FROM: Michael L. Downing, PE
Chief Engineer

SUBJECT: Appeals of Master's Hearing Award

This memo is to clarify the Division's delegation of authority with regard to appeals of Master's Hearing Award decisions. Effective today, appeals of a Master's Award need to be approved in the Chief Engineer's office.

When a request to appeal a Master's Award is sent to my office, please include all relevant information necessary for the decision and allow enough time for consultation with the Commissioner if necessary.

cc: Joe Perkins, PE, Commissioner
Robert J. Doll, Regional Director, Southeast
Ralph D. Swarthout, PE, Regional Director, Northern
David R. Eberle, Regional Director, Central
Rick Kauzlarich, State Right of Way Chief
Frank Mielke, Chief Right of Way Agent, Southeast
John F. Bennett, Chief Right of Way Agent, Northern
Kim Rice, PE, Chief Right of Way Agent, Central

THE IMPACT OF SB 278 UPON ORGANIZATIONS OTHER THAN DOT&PF

The amendments proposed to AS 09.55.270 and 09.55. 430 and 09.55. 470 will have an impact upon the following entities that have the authority to exercise the power of eminent domain, which are in addition to Department of Transportation and Public Facilities land acquisitions for highway construction for which it has presented testimony and addressed in its fiscal note.

- Lessees under the Alaska Right of Way Leasing Act who are delegated the state's eminent domain power under AS 38.35.130. (Gas pipelines and oil pipelines)
- Public Utilities under AS 42.05.631
- Municipalities under AS 29.35.030
- The Alaska Railroad under AS 42.40.385

Subject: acquisition statistics
Date: Fri, 03 May 2002 11:14:32 -0800
From: Rick Kauzlarich <rick_kauzlarich@dot.state.ak.us>
Organization: Alaska DOT/PF
To: Michael L Downing <mike_downing@dot.state.ak.us>,
Dennis R Poshard <dennis_poshard@dot.state.ak.us>

Mike and Dennis,

Here are the statistics you asked for:

1999 - 2001 Statewide Acquisitions
parcels acquired under $15,000 = 670
parcels acquired over $15,000 = 310

These figures include several projects with minor type strip takings, consequently the totals reflected are not typical. My experience is that AKDOT acquires more properties above the $15,000 range.

Also none of our condemnation acquisitions are under $15,000. The average dollar amount for condemnation acquisitions is $140,000.

State Right of Way Chief
State of Alaska DOT&PF
Statewide Design & Engineering Services

SB

295

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 26, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 5.3.02

The JUDICIARY Committee considered: **SB 295**

SENATE BILL NO. 295 **LICENSING:DISCLOSURE OF MINORS RECORDS**

"An Act relating to the disclosure of information regarding delinquent minors to certain licensing agencies; and providing for an effective date."

Recommends it be replaced with _____CS_____(_____) [ ] Same Title [ ] New Title

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments

[ ] add new referral to _____Committee

[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
HSS	1			✓

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Berkowitz			–	
	Meyer	✓			
	Coghill			–	
				✓	
Chair:	ROKEBERG			–	
Chair:					

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2327
Fax: (907) 465-5241

Interim:
119 N. Cushman
Fairbanks, AK 99701
Phone: (907) 456-8161
Fax: (907) 456-8163

Senator Pete Kelly
District P

SB 295 Sponsor Statement

"An Act relating to the disclosure of information regarding delinquent minors to certain licensing agencies; and providing for an effective date."

Both State and Federal laws currently require all child and adult care licensing authorities to review criminal histories of every individual, aged 16 and older, who is seeking either a care license, employment with a care provider, or residing in the home of a care provider seeking licensure.

Criminal history information for persons under 18 is not accessible through the Alaska Public Safety Information Network, but is available through the Division of Juvenile Justice (DJJ). Yet due to the language in the current statute, the division may release certain information for specific situations to only a few of the licensing agencies. The fact that an applicant may have a son living in the home who is a convicted child molester could be kept from a licensing agency because of the limitations on the division's authority to release that information.

This bill will give the Department of Health and Social Services clear authority to provide all child and adult care licensing agencies access to appropriate delinquency information. This will help facilitate the licensing of suitable individuals as well as help ensure quality of care and safety concerns are met for every client receiving services in a care facility or program.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 295
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction): 2/21/2002 3:24 pm
Dept. Affected: Health & Social Services
Title: DISCLOSURE OF JUVENILE DELINQUENCY INFORMATION TO LICENSING AGENCIES
BRU: Juvenile Justice
Component: Probation Services
Sponsor: KELLY
Requestor: SENATE (HES)
Component Number: 2134

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost:

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

While our administrative staff may have to compile information and transmit it to DEED, Senior Services, etc., we do not anticipate a significant fiscal impact with the passage of this bill.

Prepared by: Susan M. Taylor, Administrative Manager
Phone 465-2212
Division Juvenile Justice
Date/Time 02/21/2002
Approved by: Elmer A. Lindstrom, Deputy Commissioner
Date 02/23/2002
Agency Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

(Rev 2/7/2001 OMB)

SB

331

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 19, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 4.29.02

The JUDICIARY Committee considered: **SB 331**

SENATE BILL NO. 331 **DISTRICT COURT JURISDICTIONAL AMOUNT**

"An Act relating to the jurisdiction of district courts."

Recommends it be replaced with _____CS_____(_____) [ ] Same Title [ ] New Title
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
CRT				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	DERKOWITZ				✓
	Meyer	✓			
	Coghill	✓			
Jeannette James	JAMES	✓			
Chair:	ROKEBERG	✓			
Chair:					

Alaska State Legislature

SENATOR
GENE THERRIAULT
Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884

Senate District Q

Senate

Senate Bill 331: **"An Act relating to the jurisdiction of district courts"**

Sponsor: **Senator Gene Therriault**

Sponsor Statement

Senate Bill 331 addresses and clarifies the current statute relating to civil awards in district court cases. Current statute is unclear regarding the monetary limit in a civil case where there are multiple defendants. As a result, the only way to get around this uncertainty is if plaintiffs file multiple suits in district court to allow for an award in excess of $50,000. Such a course of action would be expensive for the plaintiff and grossly inefficient for the court.

Senate Bill 331 proposes to address this problem by clearly stating that the $50,000 limit is per defendant. This action would also ensure that residents in certain rural settings would not be required to travel to Superior Court venues in urban areas just to get access to moderate award limits.

Email: Senator_Gene_Therriault@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 331
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Jurisdiction of District Courts
BRU: Alaska Court System
Component: Trial Courts
Sponsor: Senator Therriault
Requester: Senate Judiciary
Component No.: 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of SB 331.

Prepared by: Douglas Wooliver
Phone 463-4750
Division: Alaska Court System
Date/Time 2/28/02 2:01 PM
Approved by: Stephanie Cole
Date 2/28/02
Agency: Alaska Court System

(Revised 9/2001 OMB)

SB

339

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 1, 2002 **FURTHER REFERRALS: Finance**

Date of Committee Action: 5.3.02

The JUDICIARY Committee considered: **SB 339**

SENATE BILL NO. 339 **INCREASE CRIMINAL FINES**

"An Act increasing fines for certain criminal offenses."

Recommends it be replaced with _____CS_____(_____) [ ] Same Title [ ] New Title

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____

[ ] attach amendments

[ ] add new referral to _____Committee

[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
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DFG
GOV
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LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
ADM	2		✓	
LAW	1		✓	

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Berkowitz			—	
	Meyer	✓			
	Corbett			—	
	Rokeach			✓	
Chair:	ROKEBERG	✓			
Chair:					

Alaska State Senate
Senate Finance Committee

Official Business

Mail Stop 3:00
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT

Senate Bill 339

"An Act for increasing fines for certain criminal offenses."

Senate Bill 339 increases maximum criminal fines that may be imposed on an individual or organization for certain criminal offenses. Alaska has not increased the maximum criminal fine amounts on individuals since the revision of the Alaska Criminal Code in 1978. Inflation since 1978 has been 215 percent. Alaska has not increased the maximum criminal fine amount on organizations since 1990. Inflation since 1990 has been 46 percent.

In existing law, the maximum allowable criminal fine to an individual who is convicted of an unclassified felony under AS 12.55.035(a) is **$75,000**. Senate Bill 339 would increase this maximum criminal fine to **$500,000**.

The existing maximum allowable criminal fine imposed on an individual for a Class A, B or C Felony is **$50,000**. Senate Bill 339 separates and imposes a maximum allowable criminal fine for each class individually: a Class A felony maximum fine is increased to **$250,000**; a Class B felony maximum fine is **$100,000** and a Class C felony maximum fine is left at **$50,000**. For a Class A misdemeanor, the maximum fine is increased to **$10,000** and the maximum fine for a Class B misdemeanor is increased to **$2,000**. A violation maximum fine is increased to **$500**.

Maximum Criminal Fines Imposed on an Individual

	Existing	Proposed
Unclassified Felony	$ 75,000.00	$500,000.00
Class A Felony	50,000.00	250,000.00
Class B Felony	50,000.00	100,000.00
Class C Felony	50,000.00	50,000.00
Class A Misdemeanor	5,000.00	10,000.00
Class B Misdemeanor	1,000.00	2,000.00
Violation	$ 300.00	$ 500.00

The current maximum allowable fine imposed on an organization convicted of a felony or a misdemeanor resulting in death (AS 12.55.035(b)) is the greater of **$500,000** or **twice** the pecuniary gain of a defendant or pecuniary loss to the victim as a result of that offense. Senate Bill 339 increases the maximum fine under AS 12.55.035(b) that may be imposed to the greater of **$1,000,000** or **three** times the pecuniary gain or loss.

This legislation applies only to offenses committed on or after its effective date. The fine amounts are not mandatory; they are the maximum amounts allowed to be imposed. Judges retain their discretion to set the fines based on the conditions surrounding individual offenses.

The sponsor recognizes that most criminals will not be able to pay the higher of these increased fines. But, those that can pay should be subject to meaningful fines. Increasing the maximum allowable fines that may be imposed for committing criminal offenses will hopefully help to deter crime. Additionally, these higher fines will help reimburse the state for the costs of the criminal justice system.

DD/mjw

Attachments

Alaska State Senate
Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

To: Representative Norm Rokeberg, Chair
House Judiciary Committee

Fr: Senator Dave Donley, Co-Chair
Senate Finance Committee

Re: Senate Bill 339, "An Act for increasing fines for certain criminal offenses"

Date: April 22, 2002

On behalf of the Senate Finance Committee, I request your support for Senate Bill 339, which would increase the maximum criminal fine that may be imposed on an individual or organization for certain criminal offenses.

The maximum criminal fine amounts for an individual have not been increased since the revision of the Alaska Criminal Code in 1978, twenty-four years ago. Inflation has been 215 percent since 1978. 1990 is the last time there was a maximum fine increase on organizations. Inflation since 1990 has been 46 percent.

These fine increases are not mandatory. They are the maximum allowed and Judges retain their discretion to set the fines based on the conditions of the individual offenses. Most criminals will not be able to pay the higher of these increased fines, but those that can pay should be subject to meaningful fines.

Hopefully, increasing the maximum allowable fines that may be imposed will help deter crime. Additionally, these higher fines will help partially reimburse the state for the costs of the criminal justice system.

Attached, for your information, is the sponsor statement. If you have any questions, please contact Marilyn Wilson of my staff at 6541.

Thank you for your time and consideration.

DD/mjw

Attachment

LEGAL SERVICES

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

(907) 465-3 67 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 7, 2002

SUBJECT: Sectional Summary of Work Order No. 22-LS1268\A

TO: Senator Dave Donley
Attn: Marilyn

FROM: Gerald P. Luckhaupt
Legal Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Increases the maximum fine amounts for individual defendants that are convicted of offenses subject to AS 12.55.035(a).

Section 2. Increases the maximum fine amounts for a defendant that is an organization and is convicted of offenses subject to AS 12.55.035(b).

Section 3. Makes a technical change to conform to changes made in section 1 of the bill.

Section 4. Makes a technical change to conform to changes made in section 1 of the bill.

Section 5. Makes a technical change to conform to changes made in section 1 of the bill.

Section 6. Provides an applicability section.

GPL:pjc
02-021.pjc

Table 1: Maximum Fines for Criminal Offenses Committed by Individuals in Selected States

State	Felonies				Misdemeanors			Other	Statute
	Unclassified[a]	Class A	Class B	Class C	Class A	Class B	Class C	Violations	Reference
Alaska	75,000	50,000	50,000	50,000	5,000	1,000	N/A	300	AS 12.55.035
Arizona	150,000	150,000	150,000	150,000	2,500	750	500	300	ARS 13-801 & 802
Connecticut	20,000	20,000	15,000	10,000[b]	2,000	1,000	500	500	CGS 53a-41--43
Illinois	N/A	25,000	25,000	25,000	2,500	1,500	1,500	1,000	730 ILCS 5/5-9
Kansas	500,000	300,000	100,000	N/A	2,500	1,000	500	500	KSA 21-4503a
North Dakota	N/A	10,000	10,000	5,000	2,000	1,000	N/A	500	NDCC 12.1-32-01
Oregon	N/A	300,000	200,000	100,000	5,000	2,000	1,000	N/A	ORS 161.625 & 635
South Dakota	See note (c) below				1,000	2,000	N/A	N/A	SDCL 22-6-1 & 2
Texas	10,000	10,000	10,000	N/A	N/A	N/A	N/A	N/A	VTCA Pen. Code 12.32--34
Utah	10,000	10,000	10,000	5,000	2,500	1,000	750	750	UCA 76-3-301
Washington	N/A	50,000	20,000	10,000	5,000	1,000	1,000	N/A	RCW 9A.20.020
Average	127,500	92,500	59,000	44,375	3,000	1,045	821	550	

Notes:
The designation N/A means one of the following: (1) there is no penalty for the offense; (2) we were unable to locate a penalty for the offense; or (3) numerous penalties exist for the level of offense listed, and they are specified by each offense individually.
(a) Several states have a separate classification for the most heinous of crimes, including those such as murder, sexual assault, kidnapping, etc. In some states such crimes only carry prison sentences (usually lifelong or indefinite in term) and a fine is not imposed.
(b) Connecticut law also has a Class D felony, which carries a maximum fine of $5,000.
(c) South Dakota law delineates 8 classes of felonies as follows: Class A & B - the highest class, to which a fine is not specified; and Classes 1 through 6 - which carry fines as follows: Class 1 - $25,000; Class 2 - $25,000; Class 3 - $15,000; Class 4 - $10,000; Class 5 - $5,000; and Class 6 - $2,000.
Source: Lexis search of applicable statutes for each of the states listed.

Table 2: Maximum Fines for Criminal Offenses Committed by Enterprises in Selected States

State	Felonies			Misdemeanors			Other	Statute
	Class A	Class B	Class C	Class A	Class B	Class C	Violations	Reference
Alaska[a]	500,000[b]	N/A	N/A	200,000	25,000	N/A	10,000	AS 12.55.035
Arizona	1,000,000	#######	#######	20,000	10,000	2,000	1,000	ARS 13-803
Connecticut	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Kansas	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
North Dakota	50,000	35,000	25,000	15,000	10,000	N/A	N/A	CC 12.1-32-01.01
Oregon[c]	50,000	50,000	50,000	5,000	2,500	1,000	N/A	ORS 161.655
South Dakota	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Texas[c][d]	20,000	20,000	20,000	10,000	10,000	2,000	N/A	Pen. Code 12.51
Utah	20,000	20,000	20,000	10,000	5,000	1,000	1,000	UCA 76-3-302
Washington	10,000	10,000	10,000	1,000	500	500	N/A	RCW 10.01.100
Average	235,714	189,167	187,500	37,286	9,000	1,300	4,000	

Notes:
The designation N/A means one of the following: (1) there is no penalty for the offense; (2) we were unable to locate a penalty for the offense; or (3) numerous penalties exist for the level of offense listed, and they are specified by each offense individually.
(a) Alaska law also provides for fines of up to two times the pecuniary gain realized by the defendant as a result of the offense or two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.
(b) Alaska law imposes fines on organizations convicted of criminal offenses based on whether the offense results in death. All offenses, whether they be felonies or misdemeanors, carry a maximum fine of $500,000 if the offense results in death.
(c) In lieu of fines listed, laws in Oregon and Texas provide for fines of up to two times the pecuniary gain realized by the defendant as a result of the offense.
(d) Texas law provides that any offense resulting in serious bodily injury or death carries a maximum fine of $50,000.
Source: Lexis search of applicable statutes for each of the states listed.

Distributed by
Senator Donley

Prepared by: Legislative Research Agency

CURRENT LAW AMENDED BY SB-339

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

(c) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 339
(S) Publish Date: 3/18/02

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act increasing fines for certain criminal offenses."
BRU Civil Division
Component Collections and Support
Sponsor Senate Finance Committee
Requester Senate Finance Committee
Component No. 2210

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	*******	*******	*******	*******	*******	*******

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 339 increases the maximum fine that a defendant who is not an organization may be sentenced to pay upon conviction of an unclassified felony; a class A, B, or C felony; a class A or a B misdemeanor, or a violation. The bill also increases the fines that may be levied against a defendant who is an organization upon conviction of certain crimes.

The Civil Division's Collection unit in the Collections and Support section is responsible for collecting criminal fines in default status. Defendants have the opportunity to pay criminal fines voluntarily to the court system. If they do not pay voluntarily, after 60 days the judgment for the criminal fine is transferred to the Department of Law for collection. The costs of collection of criminal fines is driven by the number of judgments, not their size. Court system data indicates that the rate of voluntary payments decreases as the size of the fine increases, so it is possible that more judgments will be transferred to the Department of Law for collection. To the extent increasing the size of criminal fines causes

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/15/02 12:58 PM
Approved by: Kathryn Daughhetee for Bruce M. Botelho, Attorney General
Date 3/15/2002
Agency Department of Law

ANALYSIS CONTINUATION

more unpaid judgments to be transferred to Law, there could be a fiscal impact on the Collections unit, but we believe any impact would be minimal.

As for the potential impact on revenues that may result from increasing these criminal fines, we are unable to calculate a reliable estimate. There are simply too many variables:

The criminal fines in SB 339 are maximum fines for each type of offense. The fines may be set lower, and we have no way of estimating what the average fine would be for each level of offense. Even if we could determine an average fine, and multiplied it against an estimate of the number of convictions for each type of offense, it would be impossible to know how much revenue may actually be collected in any given year.

The department's primary means of collecting debts is through attachment of the Permanent Fund dividend, assuming the defendant is eligible for one. Under current law, felons and certain repeat misdemeanants are not eligible for a PFD if they are incarcerated at anytime during the qualifying year. Unless the defendant has significant assets, it is usually not cost effective to pursue collection of unpaid fines until they are eligible for the PFD.

If the defendant is eligible for a PFD, the amount that can be garnished from an annual dividend to pay criminal fines is limited by the size of the fine, the size of the dividend, and by what other debts are owed the state or a victim by the defendant. This latter factor is important because AS 43.23.065 prioritizes the order of debts for which a dividend may be seized. So, if the defendant also owes child support and/or restitution, the state cannot start collecting the criminal fine until those other obligations are fulfilled, as they hold a higher priority. This could take some years. Even if there are no other debts with a higher priority, if the fine is larger than the dividend amount, it again may take more than one dividend cycle to complete. It is impossible to predict how these factors would impact future revenues from criminal fines.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 339
(S) Publish Date: 3/18/02

Revision Date/Time (Note if correction):
Title "An Act increasing fines..."

Dept. Affected: Administration
BRU Legal and Advocacy Services
Component Public Defender Agency

Sponsor Senate Finance
Requester (S) Finance

Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
See attached.

Prepared by: Barbara Brink, Director
Division Public Defender Agency
Phone (907) 334-4416
Date/Time 3/15/02 10:00 AM

Approved by: Jim Duncan, Commissioner
Agency Department of Administration
Date 3/15/2002

(Revised 9/2001 OMB)

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. SB 339 #2

ANALYSIS CONTINUATION

This legislation would significantly increase the allowable fines in title 12 upon conviction of an offense. It proposes to raise the maximum fine for an unclassified felony from $75,000 to $500,000, with comparable increases for lesser offenses, including violations.

This legislation will likely have a fiscal impact on the Public Defender Agency, because with an increase in penalties come more violations of conditions of probation. If an offender doesn't or can't pay the fine, he will be in violation of his probation, and a petition to revoke will be filed. The Agency is appointed in many of these revocation cases, and this bill likely result in more cases handled by the Agency, charging a violation for failure to pay a hefty fine. However, it is not possible to predict with any certainty the number of new cases this bill will generate, therefore an indeterminate fiscal note is submitted.