

allowed as in the case of other similar expenses incurred by Commissioners and now audited and allowed.

Presumptive death certificate: recording and filing.

Section 6. After the Commissioner has entered an order declaring that such person is presumed to be dead, either under this section or under Section 62-1-15, ACLA 1949, the Commissioner shall make out and sign a certificate entitled "Presumptive Death Certificate" in the form and manner, and containing such information, as may be required by the Territorial Bureau of Vital Statistics. Such certificate shall be recorded by the Commissioner and then filed with the Bureau of Vital Statistics. Upon the entry of the order and the recording and filing of the "Presumptive Death Certificate" as herein provided, such missing person shall be presumed to be dead, and his estate may be administered in accordance with the then existing provision of law applicable to the administration of the estates of deceased persons.

Correction of certificate.

Section 7. The Bureau of Vital Statistics shall make provisions for the correction, substitution or removal of such certificates where the body of such person is later found, where additional facts are brought to light, or where the person is later discovered to be alive.

Approved March 27, 1953.

CHAPTER 90

AN ACT

[S. B. 89]

To provide for obtaining possession of lands taken for public highway purposes by eminent domain through the use of a declaration of taking, under prescribed circumstances; and declaring an emergency.

Be it enacted by the Legislature of the Territory of Alaska:

Declaration of taking by Territory.

Section 1. **AUTHORITY TO FILE DECLARATION OF TAKING.** In any proceeding instituted by and in the name of the Territory of Alaska involving the acquisi-

tion of any real property or any interests therein or any easement for public highway purposes the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the Territorial authority empowered by law to acquire the real property or any interests therein or any easement described in the petition, declaring that said real property or any interests therein or any easement is thereby taken for the use of the Territory of Alaska.

Section 2. WHAT DECLARATION OF TAKING TO CONTAIN. The declaraton of taking shall contain or have annexed thereto the following:

Contents of
declaration.

(a) A statement of the authority under which the property or any interests therein or any easement is taken.

(b) A statement of the public use for which such property or any interests therein or any easement is taken.

(c) A description of the property taken or any interests therein or any easement, sufficient for the identification thereof.

(d) A statement of the estate or interest in such property taken for said public use.

(e) A plan showing the property taken, or any interests therein or any easement.

(f) A statement of the amount of money estimated by the acquiring agency to be just compensation for the property taken, or any interests therein or any easement.

Section 3. VESTING OF TITLE: COMPENSATION. Upon the filing of the declaration of taking and the deposit with the clerk of the court in which the proceeding is pending, for the use of the persons entitled thereto, of the amount of the estimated compensation stated in the said declaration, title to the real property in fee

Vesting of title
of property.

simple absolute, or such lesser estate or interest therein as is specified in the said declaration, shall vest in the Territory of Alaska, and such real property or interests therein or easement shall be deemed to be condemned and taken for the use of the Territory of Alaska, and the right to just compensation for the same shall vest in the persons entitled thereto. The compensation shall be ascertained and awarded in the proceeding and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date title vests in the Territory of Alaska to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid to the clerk of the court.

Award of
compensation.

Upon the application of any party in interest, and upon due notice to all parties, the court may order that the money deposited in the court, or any part thereof, be paid forthwith to the person or persons entitled thereto for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded shall exceed the amount of money so deposited, the court shall enter judgment against the Territory of Alaska and in favor of the parties entitled thereto for the amount of the deficiency. If the compensation finally awarded shall be less than the amount of money so deposited and paid to the persons entitled thereto, the court shall enter judgment in favor of the Territory of Alaska and against the proper parties for the amount of the excess.

Payment.

Deficiency.

Section 4. RIGHT OF ENTRY AND POSSESSION. Upon the filing of the declaration of taking and the deposit with the clerk of the court of the estimated compensation, the court shall have the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner; Provided, that the right of entry shall in no case be granted the petitioner until after the running

Right of entry.

of the time for the defendant to file a challenge to the declaration of taking under Section 6 of this Act. If, for any reason, the right of entry is postponed by the court in any case where the party in possession has withdrawn any part of the award, the court may fix a reasonable rental for the premises to be paid by such party to the Territory of Alaska during such occupancy.

Rental.

The court also shall have the power to direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation, and to make such orders with respect to encumbrances, liens, rents, insurance, and other charges, as shall be just and equitable.

Payment of charges against property.

The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this Act shall be in addition to any right, power, or authority conferred by the Territory under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

Possession.

Section 5. EFFECT OF APPEAL. No appeal in any cause under this Act nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to real property or any interests therein or any easement in the Territory of Alaska.

Effect of appeal.

The Territory of Alaska shall not be divested of any title to real property or any interests therein or any easement acquired under this Act by court order except where such court finds that said property or any interests therein or any easement were not taken for a public use. In the event of such finding, the court shall enter such judgment as may be necessary (1) to compensate the persons entitled thereto for the period during which the property was in the possession of the Territory and (2) to recover for the Territory any award paid to any person.

Effect of court orders.

Procedure for
challenging
declaration.

Section 6. CHALLENGING DECLARATION OF TAKING. In any case in which a declaration of taking has been filed as provided in this Act, any defendant desiring to raise any question with respect to the validity of the taking shall do so by filing a motion to strike the declaration of taking and dismiss the suit. The motion shall be made on or before the return day mentioned in the summons or notice of publication, or within 20 days after the filing of the declaration of taking, whichever is later. Failure to file such motion within the time herein provided shall constitute a waiver of the right of any defendant to challenge the validity of the taking; Provided, that for good cause shown the court may permit filing of the motion at a later time as if the time hereid provided had not expired.

Severability
clause.

Section 7. SEVERABILITY. If any section, provision, or clause of this Act shall be declared invalid or inapplicable to any person or circumstance, such invalidity or inapplicability shall not be construed to affect the portions not so held or persons or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this Act are hereby repealed to the extent of such inconsistency in their application to the declaration of taking procedure authorized by this Act.

Emergency clause.

Section 8. An emergency is hereby declared to exist, and this Act shall take effect immediately upon its passage and approval.

Approved March 27, 1953.

CHAPTER 91

AN ACT

[S. B. 901

Authorizing the Territorial Board of Road Commissioners to obtain on behalf of the Territory of Alaska a fee simple estate in land acquired by condemnation; amending Section 57-7-4 ACLA 1949.