

Sponsor Statement
Prepared by Alaska Department of Transportation and Public Facilities
April 1, 2004
In Support of SB 382

In late March, Commissioner Barton wrote to both Senate and House Transportation, requesting legislation be prepared to address an urgent problem regarding the method used to perform property line changes associated with right-of-way for new transportation projects. His concern was based on a recent lawsuit filed on the C Street extension project in Anchorage. Based on discussion between the Department of Law and right-of-way staff within the department, there was a concern the argument used in the lawsuit could be extended to several other projects across the state. Indeed, that same week, a second lawsuit was filed on the Kenai River bridge project at Soldotna, based on the same legal argument.

The novel legal theory being advanced in the C-Street and Kenai River cases is based on a state law that dates back to 1975. What's new is the interpretation that the state cannot fulfill the typical replat provisions required by local governments (mandated by AS 09.55.275) while also fulfilling the legal processes associated with property acquisition under eminent domain powers.

While the state will vigorously defend against these lawsuits, we are quite fearful of the consequence of an adverse decision as well as the time delay associated with such litigation. Several major projects across the state are at risk. Most critical is the Soldotna project that is slated for construction this summer and several others slated for construction in 2005. If either case is decided in favor of the landowner, the state's ability to use eminent domain powers will be virtually extinguished.

Our principal concern with the current language in AS 09.55.275 is that it requires:

“The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners.

Inherently, a replat associated with property acquired under eminent domain proceedings, is different than a replat a property owner pursues voluntarily. Accordingly, boroughs with platting authority have created different procedures for such replats involving right-of-way. The argument being advanced in court is that having two separate procedures violates the 1975 legislative intent. The state strongly disagrees with this position, but it is possible that an Alaska Superior Court judge could find that the separate procedures are not treated in the “same manner,” and could therefore also find that the state has no authority to acquire needed property.

To prevent further project delay, the legislation before you is offered. It ensures that a state or municipal entity can still reasonably proceed with property acquisition under eminent domain while retaining the local government's locally structured replat procedure.