

SENATE CS FOR CS FOR HOUSE BILL NO. 279(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/9/05

Referred: Today's Calendar

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to encroachments in the right-of-way of a highway."**

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

3 * **Section 1.** AS 19.25.105(d) is amended to read:

4 (d) Outdoor advertising may not be erected or maintained within the right-of-
5 way of an interstate, primary, or secondary highway except that outdoor advertising

6 **(1) on** [IS ALLOWED ON (1)] bus benches and bus shelters, and
7 adjacent trash receptacles, located within the right-of-way under the authority of a
8 permit issued under AS 19.25.200 **is allowed** [,] if the bus benches or bus shelters are
9 located within a borough or unified municipality and the buses that stop at that
10 location operate during the entire year; **or**

11 (2) **present in the right-of-way on January 1, 2005, may remain,**
12 **subject only to removals required by federal highway funding requirements**
13 **imposed on the state by federal law, until or unless an encroachment permit for**
14 **the outdoor advertising is denied under AS 19.25.200(c)** [REPEALED].

15 * **Sec. 2.** AS 19.25.200 is amended by adding new subsections to read:

1 (c) Upon receipt of an application, the department shall issue an encroachment
2 permit to a private person, a government agency acting in a business capacity, or an
3 owner or lessee of land contiguous to the right-of-way for an encroachment that, on
4 January 1, 2005, was present within the right-of-way of an interstate, primary, or
5 secondary highway and is not authorized by a written encroachment permit if the
6 department finds that

7 (1) the encroachment does not pose a risk to the traveling public, and
8 the integrity and safety of the highway is not compromised;

9 (2) the applicant has demonstrated the encroachment was erected with
10 the good faith belief it was lawful to erect and maintain the encroachment in its
11 location;

12 (3) the denial of the encroachment permit would pose a hardship on the
13 person, agency, owner, or lessee who applies for the permit;

14 (4) the issuance of an encroachment permit will not cause a break in
15 access control for the highway;

16 (5) the land will not be necessary for a highway construction project
17 during the initial term of the permit; and

18 (6) issuance of a permit is consistent with federal requirements
19 regarding encroachments on federal-aid highways.

20 (d) The department may not remove an encroachment present within the right-
21 of-way of an interstate, primary, or secondary highway on January 1, 2005, unless the
22 owner, occupant, or person in possession of the encroachment or any other person
23 causing or permitting the encroachment to exist receives the notice provided under
24 AS 19.25.230 and is informed of the application process for an encroachment permit
25 under (c) of this section. The department may charge a fee, not to exceed \$100, for an
26 encroachment permit issued under (c) of this section. An encroachment permit issued
27 under (c) of this section may contain reasonable conditions to protect the traveling
28 public, the safety and integrity of a highway's design, and the public interest.

29 (e) The land area described in an encroachment permit may not be used to
30 meet minimum requirements for a contiguous land use under applicable municipal
31 land use standards or under applicable regulations adopted by the Department of

1 Environmental Conservation. The use of land contiguous to the land area described in
2 the permit must satisfy the applicable municipal land use standards and applicable
3 regulations adopted by the Department of Environmental Conservation without regard
4 to the land area described in the permit.

5 (f) The issuance of an encroachment permit under AS 19.25.200 - 19.25.250
6 does not entitle the owner, occupant, or person in possession of the encroachment or
7 any other person to a payment of compensation or of relocation benefits under
8 AS 34.60 if the encroachment permit is revoked or not renewed or if the encroachment
9 must be changed, relocated, or removed under AS 19.25.200 - 19.25.250.

10 (g) The state is not liable for damage to, or damage or injury resulting from
11 the presence of, an encroachment in the right-of-way of a state highway.