

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

April 28, 2005

1:34 p.m.

**MEMBERS PRESENT**

Senator Charlie Huggins, Chair  
Senator John Cowdery, Vice Chair  
Senator Gene Therriault  
Senator Albert Kookesh  
Senator Hollis French

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 183

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

MOVED CSSB 183(TRA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 183

SHORT TITLE: OUTDOOR ADVERTISING; ENCROACHMENTS

SPONSOR(S): SENATOR(S) HUGGINS

04/20/05	(S)	READ THE FIRST TIME - REFERRALS
04/20/05	(S)	TRA, FIN
04/28/05	(S)	TRA AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

Ms. Deborah Grundman, Legislative Aide  
Staff to Senator Charlie Huggins  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced SB 183

Ms. Debbie Ossiander  
Anchorage School Board  
Municipality of Anchorage  
PO Box 196650  
Anchorage, AK 99519

**POSITION STATEMENT:** Testified in support of SB 183

Mr. John Mackinnon, Deputy Commissioner  
Department of Transportation & Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898

**POSITION STATEMENT:** Commented on SB 183

Representative Mike Hawker  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 183

**ACTION NARRATIVE**

**CHAIR CHARLIE HUGGINS** called the Senate Transportation Standing Committee meeting to order at [1:34:03 PM](#) present were Senators Hollis French, John Cowdery and Chair Charlie Huggins.

**SB 183-OUTDOOR ADVERTISING; ENCROACHMENTS**

CHAIR HUGGINS announced SB 183 was up for consideration.

SENATOR COWDERY moved Version \Y as the working document before the committee. Hearing no objections, the motion carried.

MS. DEBORAH GRUNDMANN, staff to Senator Charlie Huggins, introduced SB 183 and informed the committee it would allow the Department of Transportation and Public Facilities under certain conditions to grant encroachment permits, which would grandfather in people with existing encroachments so long as they do not affect road construction.

MS. DEBBIE OSSIANDER, member, Anchorage Assembly, testified in support of SB 183. The Assembly is concerned with encroachment issues in the reconstruction of the Old Glenn Highway Renewal Project especially with regards to the Anchorage Fire Department and the community of Chugiak.

SENATOR COWDERY asked whether the bill would affect construction of the gas pipeline.

[1:39:21 PM](#)

MR. JOHN MACKINNON, Deputy Commissioner, Department of Transportation and Public Facilities (DOTPF), said the gas

pipeline, as a utility, would not fall under the purview of SB 183.

[1:40:28 PM](#)

CHAIR HUGGINS asked the length of the permit.

MR. MACKINNON responded the permit would be issued for five years.

SENATOR FRENCH shared Senator Cowdery's concern regarding encroachments near the construction of the gas pipeline since the line will follow the highway.

Senator Kookesh and Senator Therriault joined the committee at [1:43:59 PM](#).

MR. MACKINNON informed the committee SB 183 deals with encroachments that exist at the time that the act is signed into law. There is concern there might be a rush to place encroachments before the act is signed so an amendment has been suggested, which would establish retroactive data to address that. The bill would not guarantee that encroachments would be permitted.

CHAIR HUGGINS said the bill provides a mechanism that would allow people to talk to the DOT about their encroachments to determine whether or not they are allowed.

[1:47:45 PM](#)

SENATOR FRENCH asked whether an encroachment was considered anything that is in the right-of-way. He asked if the impetus of the bill was only the reconstruction of the Old Glenn Highway or if there were other similar issues throughout the state.

MR. MACKINNON responded the bill is not specific to the Old Glenn Highway. Encroachments are things such as easements, garages, driveways, and decks. Mailboxes are allowed without a permit so long as they are built to certain specifications.

[1:50:12 PM](#)

CHAIR HUGGINS asked the process for encroachment consideration.

MR. MACKINNON explained the DOT surveys the entire right-of-way and they require people to remove all encroachments or apply for a permit to allow their encroachment to remain.

[1:51:45 PM](#)

SENATOR THERRIAULT asked fee rate of the permit and whether it would be transferable.

MR. MACKINNON answered the permit would have to be renewed when the property transferred. The fee is \$100 for the permit. Presently there are a number of encroachment permits statewide, mostly for commercial purposes. There was a recent ruling saying the DOT cannot collect rent on easements to residential property. The DOT suggested a second amendment.

CHAIR HUGGINS moved Amendment 1. Hearing no objections, the motion carried.

A M E N D M E N T 1

As 19.25.105(d)(2) and AS 19.25.200(c) delete "on the effective date of this Act" and insert "existed as of January 1, 2005, and".

CHAIR HUGGINS moved Amendment 2.

A M E N D M E N T 2

Add a new subsection (g):

The state is not liable for damage to, or damage or injury resulting from the presence of, and encroachment in the right-of-way of a state highway.

SENATOR FRENCH objected for the purpose of discussion. He said that there seems to be a difference between memorials and encroachments in that encroachments could be more substantial. Before giving the state immunity, this should be considered.

MR. MACKINNON said as an attorney he appreciates the work the DOT engineers put into the analysis of encroachments. They competently analyze the level of hazard presented by an encroachment when they evaluate the permit request.

[2:01:40 PM](#)

SENATOR FRENCH suggested the amendment be narrowed to address the concern. He suggested exempting the state for a negligent decision but not for gross negligence.

[2:02:40 PM](#)

MR. MACKINNON added a permit goes through numerous steps and signoffs and approvals. There are numerous people who view the permit request to ensure gross negligence does not occur.

SENATOR FRENCH removed his objection.

Hearing no further objections, Amendment 2 was adopted.

MS. SUSAN GORSKY, executive director, Chugiak Assembly, testified in support of SB 183.

[2:04:01 PM](#)

CHAIR HUGGINS asked Ms. Gorsky whether the Fire Department was impacted by the reconstruction of the Old Glenn Highway.

MS. GORSKY responded yes.

MS. FRANCIS JACOBS, cabin owner, Old Glenn Highway, testified she has trouble renting her cabin due to lack of parking because her parking lot has been excluded by the DOT. She asked what she could do.

[2:07:12 PM](#)

CHAIR HUGGINS informed SB 183 would allow her to apply for a permit.

MS. LINDA KOVAK, member, Chugiak Community Council Board, testified in support of SB 183. She described the current upgrades that are being constructed on the Old Glenn Highway and the current DOT regulations pertaining to encroachments on the highway. She described the negative impacts that current practices have upon property owners living near the proposed improvements. SB 183 would alleviate the impacts.

[2:11:18 PM](#)

MS. DIXIE WANDELL testified most of the parking space for her business is in the right-of-way of the Old Glenn Highway. If SB 183 were to pass it would allow her to maintain the parking space for her business. She mentioned elements of her community that would benefit from the legislation.

[2:15:39 PM.](#)

REPRESENTATIVE MIKE HAWKER testified he has right-of-way issues in his district particularly with respect to communities and buildings that were constructed before the highway existed. Federal right-of-way standards require some parts of these buildings to be demolished even though they do not pose a threat to drivers on the highway.

[2:18:56 PM](#)

CHAIR HUGGINS advised the committee does not want to create a burden on the DOT. He asked Mr. Mackinnon whether SB 183 would cause undue hardship for the department.

MR MACKINNON answered although his staff does not entirely agree with the bill overall it is reasonable. The permitting required by this bill would place a small burden on the department since it would involve a thorough investigation and analysis.

CHAIR HUGGINS envisioned the bill would apply primarily to old communities and to buildings in the right-of-way of major projects. He said given the federal requirements he is comfortable with the legislation.

[2:24:36 PM](#)

SENATOR FRENCH saw SB 183 as requiring the DOT to review every possible encroachment. He asked whether it was in the interest of the DOT to have that requirement in legislation.

Mr. Mackinnon suggested removing the first sentence in Section 2 subsection (d).

SENATOR THERRIAULT believed Senator French's suggestion to be logical and would also reduce the fiscal note.

CHAIR HUGGINS moved to adopt conceptual Amendment 3. Hearing no objections, the motion carried.

SENATOR KOOKESH asked how the state statute overrides the very strict and explicit language of the federal requirements.

MR. MACKINNON replied there are provisions that give the state a certain amount of leeway. Federal law does not preclude the language of the statute. It has not been DOT practice to approve encroachments but it might be in the interest of the state to change that policy in some instances.

[2:37:03 PM](#)

SENATOR THERRIAULT said Amendment 3 should be referenced in the public notice statute. He wondered whether doing so could affect the fiscal note attached to the bill.

[2:40:27 PM](#)

REPRESENTATIVE HAWKER said he could not imagine 500 citizens paying \$100 for an encroachment permit but citizens with a direct financial interest would apply.

MR. MACKINNON said SB 183 is worth the benefits that it will create in terms of public relations.

SENATER THERRIault moved CSSB 183(TRA) out of committee with individual recommendations and attached fiscal notes. The motion carried without objection.

There being no further business to come before the committee, Chair Huggins adjourned the meeting at [2:44:19 PM](#).