

Introduced: 1/31/84
Referred: Labor and Commerce,
Transportation and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 398

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility must change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or
25 removed in accordance with the order, any permit authorizing the
26 facility issued by the department under AS 02.15.102 becomes invalid
27 and the facility will be considered an unauthorized encroachment
28 subject to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260(15), ordered under (a) of this section is to be paid as
2 follows:

3 (1) by either the department as a cost of airport construc-
4 tion, or by the utility, depending on the terms of the utility permit;

5 (2) by the utility if there is no utility permit issued for
6 the utility facility;

7 (3) by the utility if the utility facility is not installed
8 in the location provided for in the utility permit, regardless of
9 whether the utility permit requires payment by the department.

10 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
11 constructed, placed, changed, or maintained across or within an air-
12 port, but only in accordance with regulations or procedures adopted by
13 the department. No encroachment may be constructed, placed, main-
14 tained, or changed until it is authorized by a written permit issued
15 by the department.

16 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
17 incidental to the construction or maintenance of a state airport the
18 department determines and orders that an encroachment previously
19 authorized by written permit must be changed, relocated, or removed,
20 the owner of the encroachment shall change, relocate, or remove it
21 within a reasonable time set by the department in the order. The cost
22 of the change, relocation, or removal shall be paid as provided in
23 AS 02.15.104(c). If the owner does not change, relocate, or remove an
24 encroachment within the time set by the department, the encroachment
25 will be considered an unauthorized encroachment and subject to the
26 provisions of AS 02.15.114.

27 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
28 encroachment exists in, on, under, or over a state airport the depart-
29 ment may require the removal of the encroachment, at the expense of

1 the owner, in the manner provided in AS 02.15.112 -- 02.15.114.

2 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
3 Notice shall be given the owner, occupant, or person in possession of
4 an unauthorized encroachment, or to any other person causing or per-
5 mitting the encroachment to exist, by serving upon any of them a
6 notice demanding the removal of the encroachment within a time limit
7 set by the department. The notice shall describe the encroachment
8 with reasonable certainty as to its character and location. Service
9 of the notice may be made by certified mail.

10 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
11 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
12 encroachment to comply with a notice or order of the department under
13 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
14 encroachment, or cause it to be removed. The owner of the unauthor-
15 ized encroachment shall pay to the department

16 (1) the expense of the removal of the encroachment;

17 (2) all costs and expenses paid by the state as a result of
18 a claim or claims filed against the state by third parties for damages
19 due to delays because the encroachment was not changed, removed, or
20 relocated according to the order of the department; and

21 (3) costs and expense of suit.

22 Sec. 02.15.116. SUMMARY REMOVAL. The department may at any time
23 and without notice remove from a state airport an encroachment or
24 utility facility which obstructs or prevents the use of the airport by
25 the public, or interferes with the safe operation of the airport.

26 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

27 (15) "cost of change, relocation, or removal" means the
28 entire cost incurred by the utility properly attributed to the change,
29 relocation, or removal of a facility, less any costs for improvements

1 or upgrading over and above the cost of a functionally equal facility;
2 if a facility is to be relocated and replaced with new equipment,
3 there shall also be subtracted from the entire cost any salvage value
4 derived from the old facility;

5 (16) "encroachment" includes a tower, pole, poleline, pipe,
6 pipeline, driveway, private road, fence, billboard, stand or building,
7 or structure or object of any kind which is or has been placed in, on,
8 under, or over a portion of an airport;

9 (17) "utility" includes any corporation, company, individu-
10 al, or association of individuals, or any lessee, trustee, or court-
11 appointed receiver, that owns, operates, manages, or controls any
12 line, plant, pipeline, or system for furnishing, producing, generat-
13 ing, transmitting, or distributing power, electricity, communications,
14 telecommunications, water, gas, oil, petroleum products, coal or other
15 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage
16 not connected with highway drainage, irrigation, or similar products
17 including publicly owned fire and police signal systems and street
18 lighting systems which directly or indirectly serve the public or a
19 segment of the public; "utility" also includes any corporation, compa-
20 ny, individual, or association of individuals, or any lessee, trustee,
21 or court-appointed receiver that owns, operates, manages, or controls
22 any system for furnishing transportation of goods or persons by means
23 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,
24 pipeline, or a similar means;

25 (18) "utility facility" includes poles, plants, lines,
26 trenches, bridges, utilidors, tunnels, pipelines, and any other system
27 for furnishing, producing, generating, transmitting, or distributing
28 power, electricity, communications, telecommunications, water, gas,
29 oil, petroleum products, coal or other mineral slurry, steam, heat,

1 light, chemicals, air, sewage, drainage not connected with an airport
2 drainage system, irrigation, or any other substance; "utility facili-
3 ty" also includes any system for furnishing transportation of goods or
4 persons by means of a railway, tramway, cableway, conveyor, flume,
5 canal, tunnel, pipeline, or a similar means.

6 * Sec. 3. AS 35.10 is amended by adding new sections to read:

7 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

8 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
9 utility facility may be constructed, placed, or maintained across,
10 along, over, under, or within a state public facility only in accor-
11 dance with regulations adopted or procedures prescribed by the depart-
12 ment and only if authorized by a written permit issued by the depart-
13 ment.

14 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
15 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
16 public facility project, the department determines and orders that a
17 utility facility located across, along, over, under, or within a state
18 public facility must be changed, relocated, or removed, the utility
19 owning or maintaining the facility must change, relocate, or remove it
20 in accordance with the order, within a reasonable time set by the
21 department in the order.

22 (b) If the utility facility is not changed, relocated, or
23 removed in accordance with the order, any permit authorizing the
24 utility issued by the department under AS 35.10.210 becomes invalid
25 and the facility will be considered an unauthorized encroachment
26 subject to the provisions of AS 35.10.270.

27 (c) The cost of change, relocation, or removal, as defined in
28 AS 35.25.020(2), ordered under (a) of this section is to be paid as
29 follows:

1 (1) by either the department as a cost of public facility
2 construction, or by the utility, depending on the terms of the utility
3 permit;

4 (2) by the utility if there is no utility permit issued for
5 the utility facility;

6 (3) by the utility if the utility facility is not installed
7 in the location provided for in the utility permit, regardless of
8 whether the utility permit requires payment by the department.

9 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
10 constructed, placed, changed, or maintained across or within a public
11 facility, but only in accordance with regulations or procedures adopt-
12 ed by the department. No encroachment may be constructed, placed,
13 maintained, or changed until it is authorized by a written permit
14 issued by the department.

15 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
16 incidental to the construction or maintenance of a state public facil-
17 ity, the department determines and orders that an encroachment pre-
18 viously authorized by written permit must be changed, relocated, or
19 removed, the owner of the encroachment shall change, relocate, or
20 remove it within a reasonable time set by the department in the order.
21 The cost of the change, relocation, or removal shall be paid as pro-
22 vided in AS 35.10.220(c). If the owner does not change, relocate, or
23 remove an encroachment within the time set by the department, the
24 encroachment will be considered an unauthorized encroachment and
25 subject to the provisions of AS 35.10.270.

26 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
27 encroachment exists in, on, under, or over a state public facility,
28 the department may require the removal of the encroachment, at the
29 expense of the owner, in the manner provided in AS 35.10.260 --

1 35.10.270.

2 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
3 Notice shall be given the owner, occupant, or person in possession of
4 an unauthorized encroachment, or to any other person causing or per-
5 mitting the encroachment to exist, by serving upon any of them a
6 notice demanding the removal of the encroachment within a time limit
7 set by the department. The notice shall describe the encroachment
8 with reasonable certainty as to its character and location. Service
9 of the notice may be made by certified mail.

10 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.
11 After a failure of the owner of an unauthorized encroachment to comply
12 with the notice or order of the department under AS 35.10.220, 35.10.-
13 240, or 35.10.260, the department may remove the encroachment, or
14 cause it to be removed. The owner of the unauthorized encroachment
15 shall pay to the department

- 16 (1) the expense of the removal of the encroachment;
17 (2) all costs and expenses paid by the state as a result of
18 a claim or claims filed against the state by third parties for damages
19 due to delays because the encroachment was not changed, removed, or
20 relocated according to the order of the department; and
21 (3) costs and expense of suit.

22 Sec. 35.10.280. SUMMARY REMOVAL. The department may at any time
23 and without notice remove from a state public facility an encroachment
24 or a utility facility which obstructs or prevents the use of the
25 public facility by the public, or interferes with the safe operation
26 of the public facility.

27 * Sec. 4. AS 35.25.020 is repealed and reenacted to read:

28 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
29 requires otherwise,

1 (1) "construction" or any derivative of the term "con-
2 struction" means construction, reconstruction, alteration, improve-
3 ment, or major repair;

4 (2) "cost of change, relocation, or removal" means the
5 entire cost incurred by the utility properly attributed to the change,
6 relocation, or removal of a facility, less any costs for improvements
7 or upgrading over and above the cost of a functionally equal facility;
8 if a facility is to be relocated and replaced with new equipment,
9 there shall also be subtracted from the entire cost any salvage value
10 derived from the old facility;

11 (3) "department" means the Department of Transportation and
12 Public Facilities;

13 (4) "encroachment" includes a tower, pole, poleline, pipe,
14 pipeline, driveway, private road, fence, billboard, stand or building,
15 or a structure or object of any kind which is or has been placed in,
16 on, under, or over a portion of a public facility;

17 (5) "excess lands" means lands acquired for the state in
18 excess of land required for a public facility, when the remaining
19 portion of a parcel of land acquired is left in a shape or condition
20 as to be of little or no value to its owner, or to give rise to claims
21 or litigation concerning severance or other damage;

22 (6) "maintenance" means the preservation of each type of
23 facility as nearly as possible in its original condition as construct-
24 ed, or as improved;

25 (7) "public building" means a building owned or controlled
26 and held by the state for government or public use;

27 (8) "public facility" or "public work" means any structure
28 or project constructed or maintained by the department except airports
29 and highways, and includes public buildings, boat harbors, port

1 facilities, dikes, jetties, and breakwaters;

2 (9) "utility" includes any corporation, company, individu-
3 al, or association of individuals, or any lessee, trustee, or court-
4 appointed receiver, that owns, operates, manages, or controls any
5 line, plant, pipeline, or system for furnishing, producing, generat-
6 ing, transmitting, or distributing power, electricity, communications,
7 telecommunications, water, gas, oil, petroleum products, coal or other
8 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage
9 not connected with highway drainage, irrigation, or similar products
10 including publicly owned fire and police signal systems and street
11 lighting systems which directly or indirectly serve the public or a
12 segment of the public; "utility" also includes any corporation, compa-
13 ny, individual, or association of individuals, or any lessee, trustee,
14 or court-appointed receiver that owns, operates, manages, or controls
15 any system for furnishing transportation of goods or persons by means
16 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,
17 pipeline, or a similar means;

18 (10) "utility facility" includes poles, plants, lines,
19 trenches, bridges, utilidors, tunnels, pipelines, and any other system
20 for furnishing, producing, generating, transmitting, or distributing
21 power, electricity, communications, telecommunications, water, gas,
22 oil, petroleum products, coal or other mineral slurry, steam, heat,
23 light, chemicals, air, sewage, drainage not connected with a public
24 facility drainage system, irrigation, or any other substance; "utility
25 facility" also includes any system for furnishing transportation of
26 goods or persons by means of a railway, tramway, cableway, conveyor,
27 flume, canal, tunnel, pipeline, or a similar means.

28 * Sec. 5. AS 19.45.001(12) is repealed and reenacted to read:

29 (12) "utility" includes any corporation, company,

1 individual, or association of individuals, or any lessee, trustee, or
2 court-appointed receiver, that owns, operates, manages, or controls
3 any line, plant, pipeline, or system for furnishing, producing, gen-
4 erating, transmitting, or distributing power, electricity, communica-
5 tions, telecommunications, water, gas, oil, petroleum products, coal
6 or other mineral slurry, steam, heat, light, chemicals, air, sewage,
7 drainage not connected with highway drainage, irrigation, or similar
8 products including publicly owned fire and police signal systems and
9 street lighting systems which directly or indirectly serve the public
10 or a segment of the public; "utility" also includes any corporation,
11 company, individual, or association of individuals, or any lessee,
12 trustee, or court-appointed receiver that owns, operates, manages, or
13 controls any system for furnishing transportation of goods or persons
14 by means of a railway, tramway, cableway, conveyor, flume, canal,
15 tunnel, pipeline, or a similar means;

16 * Sec. 6. This Act takes effect July 1, 1984.