

Introduced: 2/1/85
Referred: Community & Regional
Affairs, Transportation and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 159

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST 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, unless the department provides otherwise by regula-
16 tion.

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

28 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
29 encroachment exists in, on, under, or over a state airport the

1 department may require the removal of the encroachment, at the expense
2 of the owner, in the manner provided in AS 02.15.112 -- 02.15.114.

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

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

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

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

22 (3) costs and expense of suit.

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

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

28 (15) "cost of change, relocation, or removal" means the
29 entire cost incurred by the utility properly attributed to the change,

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

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

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

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

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

7 * Sec. 3. AS 19.25.200 is amended to read:

8 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be
9 constructed, placed, changed, or maintained across or along a highway,
10 but only in accordance with regulations adopted by the department. No
11 encroachment may be constructed, placed, maintained, or changed until
12 it is [DULY] authorized by a written permit issued by the department,
13 unless the department provides otherwise by regulation.

14 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

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

1 pipeline, or a similar means;

2 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

3 (14) "utility facility" includes poles, plants, lines,
4 trenches, bridges, utilidors, tunnels, pipelines, and any other system
5 for furnishing, producing, generating, transmitting, or distributing
6 power, electricity, communications, telecommunications, water, gas,
7 oil, petroleum products, coal or other mineral slurry, steam, heat,
8 light, chemicals, air, sewage, drainage not connected with a highway
9 drainage system, irrigation, or any other substance; "utility facili-
10 ty" also includes any system for furnishing transportation of goods or
11 persons by means of railway, tramway, cableway, conveyor, flume,
12 canal, tunnel, pipeline, or a similar means.

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

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

15 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
16 utility facility may be constructed, placed, or maintained across,
17 along, over, under, or within a state public facility only in accor-
18 dance with regulations adopted or procedures prescribed by the depart-
19 ment and only if authorized by a written permit issued by the depart-
20 ment.

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

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, any permit authorizing the
2 utility issued by the department under AS 35.10.210 becomes invalid
3 and the facility will be considered an unauthorized encroachment
4 subject to the provisions of AS 35.10.270.

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

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

11 (2) by the utility if there is no utility permit issued for
12 the utility facility;

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

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
17 constructed, placed, changed, or maintained across or within a public
18 facility, but only in accordance with regulations or procedures adopt-
19 ed by the department. No encroachment may be constructed, placed,
20 maintained, or changed until it is authorized by a written permit
21 issued by the department, unless the department provides otherwise by
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
24 incidental to the construction or maintenance of a state public facil-
25 ity, the department determines and orders that an encroachment pre-
26 viously authorized by written permit must be changed, relocated, or
27 removed, the owner of the encroachment shall change, relocate, or
28 remove it within a reasonable time set by the department in the order.
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,
2 or remove an encroachment within the time set by the department, the
3 encroachment will be considered an unauthorized encroachment and
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
6 encroachment exists in, on, under, or over a state public facility,
7 the department may require the removal of the encroachment, at the
8 expense of the owner, in the manner provided in AS 35.10.260 --
9 35.10.270.

10 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
11 Notice shall be given the owner, occupant, or person in possession of
12 an unauthorized encroachment, or to any other person causing or per-
13 mitting the encroachment to exist, by serving upon any of them a
14 notice demanding the removal of the encroachment within a time limit
15 set by the department. The notice shall describe the encroachment
16 with reasonable certainty as to its character and location. Service
17 of the notice may be made by certified mail.

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.
19 After a failure of the owner of an unauthorized encroachment to comply
20 with the notice or order of the department under AS 35.10.220, 35.10.-
21 240, or 35.10.260, the department may remove the encroachment, or
22 cause it to be removed. The owner of the unauthorized encroachment
23 shall pay to the department

- 24 (1) the expense of the removal of the encroachment;
25 (2) all costs and expenses paid by the state as a result of
26 a claim or claims filed against the state by third parties for damages
27 due to delays because the encroachment was not changed, removed, or
28 relocated according to the order of the department; and
29 (3) costs and expense of suit.

1 Sec. 35.10.280. SUMMARY REMOVAL. The department may at any time
2 and without notice remove from a state public facility an encroachment
3 or a utility facility which obstructs or prevents the use of the
4 public facility by the public, or interferes with the safe operation
5 of the public facility.

6 * Sec. 7. AS 35.25.020 is repealed and reenacted to read:

7 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
8 requires otherwise,

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

12 (2) "cost of change, relocation, or removal" means the
13 entire cost incurred by the utility properly attributed to the change,
14 relocation, or removal of a facility, less any costs for improvements
15 or upgrading over and above the cost of a functionally equal facility;
16 if a facility is to be relocated and replaced with new equipment,
17 there shall also be subtracted from the entire cost any salvage value
18 derived from the old facility;

19 (3) "department" means the Department of Transportation and
20 Public Facilities;

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

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

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

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

6 (8) "public facility" or "public work" means any structure
7 or project constructed or maintained by the department except airports
8 and highways, and includes public buildings, boat harbors, port facil-
9 ities, dikes, jetties, and breakwaters;

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

26 (10) "utility facility" includes poles, plants, lines,
27 trenches, bridges, utilidors, tunnels, pipelines, and any other system
28 for furnishing, producing, generating, transmitting, or distributing
29 power, electricity, communications, telecommunications, water, gas,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,
2 light, chemicals, air, sewage, drainage not connected with a public
3 facility drainage system, irrigation, or any other substance; "utility
4 facility" also includes any system for furnishing transportation of
5 goods or persons by means of a railway, tramway, cableway, conveyor,
6 flume, canal, tunnel, pipeline, or a similar means.

7 * Sec. 8. This Act takes effect July 1, 1985.