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Referred: Transportation  
and Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2

CS FOR HOUSE BILL NO. 159 (C&RA)

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 shall 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 re-  
25 moved in accordance with the order, any permit authorizing the facil-  
26 ity issued by the department under AS 02.15.102 becomes invalid and  
27 the facility will be considered an unauthorized encroachment subject  
28 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, ordered under (a) of this section is to be paid as  
2 follows:

3 (1) by the department as a cost of airport construction,  
4 provided that the utility facility is properly installed in accordance  
5 with a permit, or in the absence of a permit, was installed before the  
6 effective date of this Act in the proper location in accordance with  
7 department regulations;

8 (2) by the utility in all other cases.

9 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
10 constructed, placed, changed, or maintained across or within an air-  
11 port, but only in accordance with regulations or procedures adopted by  
12 the department. An encroachment may not be constructed, placed, main-  
13 tained, or changed until it is authorized by a written permit issued  
14 by the department, unless the department provides otherwise by regula-  
15 tion.

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 subject to the pro-  
26 visions 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 another 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. 2. AS 02.15.260 is amended by adding new paragraphs to read:

23 (15) "cost of change, relocation, or removal" means the  
24 entire cost incurred by the utility properly attributed to the change,  
25 relocation, or removal of a facility, less the costs for improvements  
26 or upgrading over and above the cost of a functionally equal facility;  
27 if a facility is to be relocated and replaced with new equipment,  
28 there shall also be subtracted from the entire cost the salvage value  
29 derived from the old facility;

1           (16) "encroachment" includes a tower, pole, poleline, pipe,  
2 pipeline, driveway, private road, fence, billboard, stand or building,  
3 or structure or object of any kind that is or has been placed in, on,  
4 under, or over a portion of an airport;

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

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

1 canal, tunnel, pipeline, or a similar means.

2 \* Sec. 3. AS 19.25.200 is amended to read:

3 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be  
4 constructed, placed, changed, or maintained across or along a highway,  
5 but only in accordance with regulations adopted by the department. An  
6 [NO] encroachment may not be constructed, placed, maintained, or  
7 changed until it is [DULY] authorized by a written permit issued by  
8 the department, unless the department provides otherwise by regula-  
9 tion.

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

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

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

28 (14) "utility facility" includes poles, plants, lines,  
29 trenches, bridges, utilidors, tunnels, pipelines, and any other system

1 for furnishing, producing, generating, transmitting, or distributing  
2 power, electricity, communications, telecommunications, water, gas,  
3 oil, petroleum products, coal or other mineral slurry, steam, heat,  
4 light, chemicals, air, sewage, drainage not connected with a highway  
5 drainage system, irrigation, or another substance; "utility facility"  
6 also includes a system for furnishing transportation of goods or  
7 persons by means of railway, tramway, cableway, conveyor, flume,  
8 canal, tunnel, pipeline, or a similar means.

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

10 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

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

25 (b) If the utility facility is not changed, relocated, or re-  
26 moved in accordance with the order, a permit authorizing the utility  
27 issued by the department under AS 35.10.210 becomes invalid and the  
28 facility will be considered an unauthorized encroachment subject to  
29 the provisions of AS 35.10.270.

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

4           (1) by the department as a cost of public facility con-  
5 struction, provided that the utility facility is properly installed in  
6 accordance with a permit, or in the absence of a permit, was installed  
7 before the effective date of this Act in the proper location in accor-  
8 dance with department regulations;

9           (2) by the utility in all other cases.

10          Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
11 constructed, placed, changed, or maintained across or within a public  
12 facility, but only in accordance with regulations or procedures adopt-  
13 ed by the department. An encroachment may not be constructed, placed,  
14 maintained, or changed until it is authorized by a written permit  
15 issued by the department, unless the department provides otherwise by  
16 regulation.

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

28          Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
29 encroachment exists in, on, under, or over a state public facility,

1 the department may require the removal of the encroachment, at the  
2 expense of the owner, in the manner provided in AS 35.10.260 -  
3 35.10.270.

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

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

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

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

23 (3) costs and expense of suit.

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

25 Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
26 requires otherwise,

27 (1) "construction" or a derivative of the term "construc-  
28 tion" means construction, reconstruction, alteration, improvement, or  
29 major repair;

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

8           (3) "department" means the Department of Transportation and  
9           Public Facilities;

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

14           (5) "maintenance" means the preservation of each type of  
15           facility as nearly as possible in its original condition as construct-  
16           ed, or as improved;

17           (6) "public building" means a building owned or controlled  
18           and held by the state for government or public use;

19           (7) "public facility" or "public work" means a structure or  
20           project constructed or maintained by the department except airports  
21           and highways, and includes public buildings, boat harbors, port facil-  
22           ities, dikes, jetties, and breakwaters;

23           (8) "utility" includes a corporation, company, individual,  
24           or association of individuals, or a lessee, trustee, or court-appoint-  
25           ed receiver, that owns, operates, manages, or controls a line, plant,  
26           pipeline, or system for furnishing, producing, generating, transmit-  
27           ting, or distributing power, electricity, communications, telecommu-  
28           nications, water, gas, oil, petroleum products, coal or other mineral  
29           slurry, steam, heat, light, chemicals, air, sewage, drainage not

1 connected with public facility drainage, irrigation, or similar prod-  
2 ucts including publicly owned fire and police signal systems and  
3 street lighting systems that directly or indirectly serve the public  
4 or a segment of the public; "utility" also includes a corporation,  
5 company, individual, or association of individuals, or a lessee,  
6 trustee, or court-appointed receiver that owns, operates, manages, or  
7 controls any system for furnishing transportation of goods or persons  
8 by means of a railway, tramway, cableway, conveyor, flume, canal,  
9 tunnel, pipeline, or a similar means;

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

20 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).