

Offered: 3/21/86  
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 160 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH 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;  
8 relocation of utilities; and providing for an effective  
9 date."

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

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

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

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

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

1 (c) The cost of change, relocation, or removal, as defined in  
2 AS 02.15.260, ordered under (a) of this section is to be paid as  
3 follows:

4 (1) by the department as a cost of airport construction, if  
5 the utility facility is installed or authorized after the effective  
6 date of this Act under a utility permit or a regulation and is in-  
7 stalled in the location specified in the permit;

8 (2) by the department as a cost of airport construction, if  
9 the facility was installed before the effective date of this Act under  
10 a utility permit or utility easement and is in the location specified  
11 in the permit or easement;

12 (3) by the department as a cost of airport construction, if  
13 the utility facility was installed before the location became part of  
14 a state airport or before permits were required;

15 (4) by the department as a cost of airport construction, if  
16 the utility permit that requires the utility to pay the relocation  
17 cost was issued more than five years before the contract for the  
18 airport construction project was first advertised;

19 (5) by the utility in all other cases unless the commis-  
20 sioner finds it is in the public interest for the cost to be paid by  
21 the department.

22 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
23 constructed, placed, changed, or maintained across or within an air-  
24 port, but only in accordance with regulations or procedures adopted by  
25 the department. An encroachment may not be constructed, placed, main-  
26 tained, or changed until it is authorized by a written permit issued  
27 by the department, unless the department provides otherwise by regula-  
28 tion.

29 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,

1 incidental to the construction or maintenance of a state airport the  
2 department determines and orders that an encroachment previously  
3 authorized by written permit must be changed, relocated, or removed,  
4 the owner of the encroachment shall change, relocate, or remove it  
5 within a reasonable time set by the department in the order. The cost  
6 of the change, relocation, or removal shall be paid as provided in  
7 AS 02.15.104(c). If the owner does not change, relocate, or remove an  
8 encroachment within the time set by the department, the encroachment  
9 will be considered an unauthorized encroachment subject to the pro-  
10 visions of AS 02.15.114.

11 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
12 encroachment exists in, on, under, or over a state airport the depart-  
13 ment may require the removal of the encroachment, at the expense of  
14 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

15 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
16 Notice shall be given the owner, occupant, or person in possession of  
17 an unauthorized encroachment, or to another person causing or per-  
18 mitting the encroachment to exist, by serving upon any of them a  
19 notice demanding the removal of the encroachment within a time limit  
20 set by the department. The notice shall describe the encroachment  
21 with reasonable certainty as to its character and location. Service  
22 of the notice may be made by certified mail.

23 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;  
24 REMOVAL EXPENSE. After a failure of the owner of an unauthorized  
25 encroachment to comply with a notice or order of the department under  
26 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the  
27 encroachment, or cause it to be removed. The owner of the unauthor-  
28 ized encroachment shall pay to the department

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

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

5           (3) costs and expense of suit.

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

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

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

18           (17) "utility" includes a corporation, company, individual,  
19 or association of individuals, or a lessee, trustee, or court-appoint-  
20 ed receiver, that owns, operates, manages, or controls a line, plant,  
21 pipeline, or system for furnishing, producing, generating, transmit-  
22 ting, or distributing power, electricity, communications, telecommu-  
23 nications, water, gas, oil, petroleum products, coal or other mineral  
24 slurry, steam, heat, light, chemicals, air, sewage, drainage not  
25 connected with airport drainage, irrigation, or similar products  
26 including publicly owned fire and police signal systems and street  
27 lighting systems that directly or indirectly serve the public or a  
28 segment of the public; "utility" also includes a corporation, company,  
29 individual, or association of individuals, or a lessee, trustee, or

1 court-appointed receiver that owns, operates, manages, or controls a  
2 system for furnishing transportation of goods or persons by means of a  
3 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,  
4 or a similar means;

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

15 \* Sec. 3. AS 19.25.020(c) is amended to read:

16 (c) The cost of change, relocation, or removal necessitated by  
17 highway construction is a cost of highway construction to be paid [BY  
18 THE STATE] in accordance with AS 19.45.001(4) as follows:

19 (1) by the department as a cost of highway construction, if  
20 the utility facility is installed or authorized under a utility permit  
21 or a regulation after the effective date of this Act and is installed  
22 in the location specified in the permit;

23 (2) by the department as a cost of highway construction, if  
24 the facility was installed before the effective date of this Act under  
25 a utility permit issued on or after July 1, 1960, and is in the loca-  
26 tion specified in the permit;

27 (3) by the department as a cost of highway construction, if  
28 the utility facility was installed before July 1, 1960, or before the  
29 road became part of the state highway system;

1           (4) by the department as a cost of highway construction, if  
2 the utility permit that requires the utility to pay the relocation  
3 cost was issued more than five years before the contract for the  
4 highway construction project was first advertised;

5           (5) by the utility in all other cases, unless the commis-  
6 sioner finds it is in the public interest for the cost to be paid by  
7 the department [, NOTWITHSTANDING THE TERMS OR PROVISIONS OF ANY  
8 EXISTING PERMIT, AGREEMENT, REGULATION OR STATUTE TO THE CONTRARY].

9 \* Sec. 4. AS 19.25.200 is amended to read:

10           Sec. 19.25.200. ENCROACHMENT PERMITS. (a) An encroachment may,  
11 be constructed, placed, changed, or maintained across or along a  
12 highway, but only in accordance with regulations adopted by the de-  
13 partment. An [NO] encroachment may not be constructed, placed, main-  
14 tained, or changed until it is [DULY] authorized by a written permit  
15 issued by the department, unless the department provides otherwise by  
16 regulation.

17           (b) The provisions under (a) of this section do not apply to a  
18 mailbox or a newspaper box attached to a mailbox.

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

20           (12) "utility" includes a corporation, company, individual,  
21 or association of individuals, or a lessee, trustee, or court-appoint-  
22 ed receiver, that owns, operates, manages, or controls a line, plant,  
23 pipeline, or system for furnishing, producing, generating, transmit-  
24 ting, or distributing power, electricity, communications, telecommu-  
25 nications, water, gas, oil, petroleum products, coal or other mineral  
26 slurry, steam, heat, light, chemicals, air, sewage, drainage not  
27 connected with highway drainage, irrigation, or similar products  
28 including publicly owned fire and police signal systems and street  
29 lighting systems that directly or indirectly serve the public or a

1 segment of the public; "utility" also includes a corporation, company,  
2 individual, or association of individuals, or a lessee, trustee, or  
3 court-appointed receiver that owns, operates, manages, or controls a  
4 system for furnishing transportation of goods or persons by means of a  
5 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,  
6 or a similar means;

7 \* Sec. 6. AS 19.45.001 is amended by adding a new paragraph to read:

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

18 \* Sec. 7. AS 35.10 is amended by adding new sections to read:

19 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

26 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO  
27 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a  
28 public facility project, the department determines and orders that a  
29 utility facility located across, along, over, under, or within a state

1 public facility must be changed, relocated, or removed, the utility  
2 owning or maintaining the facility shall change, relocate, or remove  
3 it in accordance with the order, within a reasonable time set by the  
4 department in the order.

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

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

13 (1) by the department as a cost of public facility con-  
14 struction, if the utility facility is installed or authorized after  
15 the effective date of this Act under a utility permit or a regulation  
16 and is installed in the location specified in the permit;

17 (2) by the department as a cost of public facility con-  
18 struction, if the facility was installed before the effective date of  
19 this Act under a utility permit and is in the location specified in  
20 the permit;

21 (3) by the department as a cost of public facility con-  
22 struction, if the utility facility was installed before the location  
23 became a state public facility or before permits were required;

24 (4) by the department as a cost of public facility  
25 construction, if the utility permit that requires the utility to pay  
26 the relocation cost was issued more than five years before the  
27 contract for the public facility construction project was first  
28 advertised;

29 (5) by the utility in all other cases unless the

1 commissioner finds it is in the public interest for the cost to be  
2 paid by the department.

3 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
4 constructed, placed, changed, or maintained across or within a public  
5 facility, but only in accordance with regulations or procedures adopt-  
6 ed by the department. An encroachment may not be constructed, placed,  
7 maintained, or changed until it is authorized by a written permit  
8 issued by the department, unless the department provides otherwise by  
9 regulation.

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

21 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
22 encroachment exists in, on, under, or over a state public facility,  
23 the department may require the removal of the encroachment, at the  
24 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-  
25 270.

26 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
27 Notice shall be given the owner, occupant, or person in possession of  
28 an unauthorized encroachment, or to another person causing or per-  
29 mitting the encroachment to exist, by serving upon any of them a

1 notice demanding the removal of the encroachment within a time limit  
2 set by the department. The notice shall describe the encroachment  
3 with reasonable certainty as to its character and location. Service  
4 of the notice may be made by certified mail.

5 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
6 After a failure of the owner of an unauthorized encroachment to comply  
7 with the notice or order of the department under AS 35.10.220, 35.10.-  
8 240, or 35.10.260, the department may remove the encroachment, or  
9 cause it to be removed. The owner of the unauthorized encroachment  
10 shall pay to the department

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

17 \* Sec. 8. AS 35.25.020 is repealed and reenacted to read:

18 Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
19 requires otherwise,

20 (1) "construction" or a derivative of the term "construc-  
21 tion" means construction, reconstruction, alteration, improvement, or  
22 major repair;

23 (2) "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 any 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 any salvage value  
29 derived from the old facility;

1                   (3) "department" means the Department of Transportation and  
2 Public Facilities;

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

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

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

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

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

1 by means of a railway, tramway, cableway, conveyor, flume, canal,  
2 tunnel, pipeline, or a similar means;

3 (9) "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 public  
9 facility drainage system, irrigation, or another substance; "utility  
10 facility" also includes a system for furnishing transportation of  
11 goods or persons by means of a railway, tramway, cableway, conveyor,  
12 flume, canal, tunnel, pipeline, or a similar means.

13 \* Sec. 9. This Act takes effect immediately in accordance with AS 01.-  
14 10.070(c).