

COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date March 25, 1977

The Committee on FINANCE has had CS488 537

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR HOUSE 1865 17 AND THAT

CS FOR 1865 17 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original sponsor: Rules Committee by
request of the Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 557 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and state rights-of-way:
7 and providing for an effective date."

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

9 * Section 1. AS 19.05.130(4) is amended to read:

10 (4) "cost of change, relocation, or removal" means the entire
11 cost incurred by the utility properly attributed to the change, reloca-
12 tion, or removal of a facility, less any costs for improvements or
13 upgrading over and above the cost of a functionally equal facility; if
14 a facility is to be relocated and replaced with new equipment, there
15 shall also be subtracted from the entire cost [UTILITY AFTER DEDUCTING
16 ANY INCREASE IN THE VALUE OF THE NEW FACILITY AND] any salvage value
17 derived from the old facility.

18 * Sec. 2. AS 19.05.130(12) is amended to read:

19 (12) "utility" includes railroads and all publicly, privately,
20 or [AND] cooperatively owned lines, facilities and systems for producing,
21 transmitting or distributing communications, power, electricity, light,
22 heat, gas, oil, crude products, water, steam, waste, storm water not
23 connected with highway drainage, and other similar commodities, includ-
24 ing publicly owned fire and police signal systems, and street lighting
25 systems [UTILITIES];

26 * Sec. 3. AS 19.25.010 is amended to read:

27 Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility
28 facility [AN ELECTRIC TRANSMISSION, TELEPHONE, OR TELEGRAPH LINE, POLE
29 LINE, RAILWAY, DITCH, SEWER, WATER, HEAT, OR GAS MAIN, FLUME, OR OTHER

1 STRUCTURE WHICH BY LAW] may be constructed, placed, or maintained
2 across, [OR] along, over, under, or within a state right-of-way [A HIGH-
3 WAY BY A PERSON OR POLITICAL SUBDIVISION MAY BE MAINTAINED OR CON-
4 STRUCTED] only in accordance with regulations prescribed by the depart-
5 ment and [. NO UTILITY PROJECT OF THIS NATURE MAY BE UNDERTAKEN UNTIL
6 IT IS] authorized by a written permit issued by the department.

7 * Sec. 4. AS 19.25.020 is repealed and re-enacted to read:

8 Sec. 19.25.020. RELOCATION OF UTILITIES INCIDENT TO HIGHWAY PRO-
9 JECTS. (a) If, incident to the construction of a highway project, the
10 department determines and orders that a utility facility located across,
11 along, over, under, or within a state right-of-way must be changed,
12 relocated or removed, the utility owning or maintaining the facility
13 shall change, relocate or remove it in accordance with the order. The
14 order shall provide a reasonable time period for compliance and will
15 allow the utility sufficient time to complete condemnation proceedings
16 for acquisition of alternate right-of-way.

17 (b) If the utility facility is not changed, relocated or removed
18 in accordance with the order, the facility becomes an unauthorized
19 encroachment and may be disposed of in accordance with secs. 240 - 250
20 of this chapter, and the owner of the facility is liable to the state
21 in liquidated damages in the amount of \$100 for each day the encroach-
22 ment exists. In addition, the owner of the facility shall indemnify the
23 state for any amount for which the state may be liable to a contractor
24 by reason of the encroachment.

25 (c) The cost of change, relocation, or removal necessitated by
26 highway construction is a cost of highway construction to be paid by
27 the state in accordance with AS 19.05.130(4), notwithstanding the terms
28 or provisions of any existing permit, agreement regulation or statute to
29 the contrary.

1 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
2 070(c).
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see p 2 for changes made 3-25-76

Original sponsor: Rules Committee by
request of the Governor

Offered: 2/18/76
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 557

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and state rights-of-way;
7 and providing for an effective date."

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9 * Section 1. AS 19.05.130(4) is amended to read:

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13 upgrading over and above the cost of a functionally equal facility; if
14 a facility is to be relocated and replaced with new equipment, there
15 shall also be subtracted from the entire cost [UTILITY AFTER DEDUCTING
16 ANY INCREASE IN THE VALUE OF THE NEW FACILITY AND] any salvage value
17 derived from the old facility.

18 * Sec. 2. AS 19.05.130(12) is amended to read:

19 (12) "utility" includes railroads and all publicly, privately,
20 or [AND] cooperatively owned lines, facilities and systems for producing,
21 transmitting or distributing communications, power, electricity, light,
22 heat, gas, oil, crude products, water, steam, waste, storm water not
23 connected with highway drainage, and other similar commodities, includ-
24 ing publicly owned fire and police signal systems, and street lighting
25 systems [UTILITIES];

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29 LINE, RAILWAY, DITCH, SEWER, WATER, HEAT, OR GAS MAIN, FLUME, OR OTHER

STRUCTURE WHICH BY LAW] may be constructed, placed, or maintained
across, [OR] along, over, under, or within a state right-of-way [A HIGH-
WAY BY A PERSON OR POLITICAL SUBDIVISION MAY BE MAINTAINED OR CONSTRUCTED]
only in accordance with regulations prescribed by the department. ~~No~~
~~utility facility may be constructed, placed, or maintained across, under,~~
~~over, under, or within a state right-of-way unless a PROJECT OF THIS~~
~~NATURE MAY BE UNDERTAKEN UNTIL~~ ^{AND} it is authorized by a written permit
issued by the department.

* Sec. 4. AS 19.25.020 is repealed and re-enacted to read:

Sec. 19.25.020. RELOCATION OF UTILITIES INCIDENT TO HIGHWAY PRO-
JECT. (a) If, incident to the construction of a highway project, the
department determines and orders that a utility facility located across,
along, over, under, or within a state right-of-way must be changed,
relocated or removed, the utility owning or maintaining the facility
shall change, relocate or remove it in accordance with the order. The

order shall provide a reasonable time period for compliance and will allow the
utility sufficient time to complete condemnation proceedings for acquisition

(b) If the utility facility is not changed, relocated or removed ^{of alternate}
in accordance with the order, the facility become an unauthorized right of way.
encroachment and may be disposed of in accordance with secs. 240 - 250
of this chapter, and the owner of the facility is liable to the state
in liquidated damages in the amount of \$100 for each day the encroach-
ment exists. In addition, the owner of the facility shall indemnify the
state for any amount for which the state may be liable to a contractor
by reason of the encroachment.

(c) The cost of change, relocation, or removal necessitated by
highway construction is a cost of highway construction to be paid by
the state in accordance with AS 19.05.130(4).

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
070(c).

Introduced: 1/14/76
Referred: State Affairs
and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 557

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and state rights-of-
7 way; and providing for an effective date."

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

9 * Section 1. AS 19.05.130(4) is amended to read:

10 (4) "cost of change, relocation, or removal" means the
11 entire cost incurred by the utility properly attributed to the change,
12 relocation, or removal of a facility, less any costs for improvements
13 or upgrading over and above the cost of a functionally equal facility;
14 if a facility is to be relocated and replaced with new equipment,
15 there shall also be subtracted from the entire cost [UTILITY AFTER
16 DEDUCTING ANY INCREASE IN THE VALUE OF THE NEW FACILITY AND] any
17 salvage value derived from the old facility and the value of expired
18 service life credit expressed as the product of the original cost of
19 the existing equipment times the number of years the facility has been
20 in service divided by the total life expectancy of the facility in
21 years;

22 * Sec. 2. AS 19.05.130(12) is amended to read:

23 (12) "utility" includes railroads and all publicly, private-
24 ly, or [AND] cooperatively owned lines, facilities and systems for
25 producing, transmitting or distributing communications, power, electri-
26 city, light, heat, gas, oil, crude products, water, steam, waste,
27 storm water not connected with highway drainage, and other similar
28 commodities, including publicly owned fire and police signal systems,
29 and street lighting systems [UTILITIES];

1 # Sec. 3. AS 19.25.010 is amended to read:

2 Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility
3 facility [AN ELECTRIC TRANSMISSION, TELEPHONE, OR TELEGRAPH LINE, POLE
4 LINE, RAILWAY, DITCH, SEWER, WATER, HEAT, OR GAS MAIN, FLUME, OR OTHER
5 STRUCTURE WHICH BY LAW] may be constructed, placed, or maintained
6 across, [OR] along, over, under, or within a state right-of-way [A
7 HIGHWAY BY A PERSON OR POLITICAL SUBDIVISION MAY BE MAINTAINED OR
8 CONSTRUCTED] only in accordance with regulations prescribed by the
9 department. No utility facility may be constructed, placed, or main-
10 tained across, along, over, under, or within a state right-of-way
11 unless [PROJECT OF THIS NATURE MAY BE UNDERTAKEN UNTIL] it is authorized
12 by a written permit issued by the department.

13 # Sec. 4. AS 19.25.020 is repealed and re-enacted to read:

14 Sec. 19.25.020. RELOCATION OF UTILITIES INCIDENT TO HIGHWAY
15 PROJECTS. (a) If, incident to the construction of a highway project,
16 the department determines and orders that a utility facility located
17 across, along, over, under, or within a state right-of-way must be
18 changed, relocated or removed, the utility owning or maintaining the
19 facility shall change, relocate or remove it in accordance with the
20 order. The order shall provide a reasonable time period for compliance.

21 (b) If the utility facility is not changed, relocated or removed
22 in accordance with the order, the facility becomes an unauthorized
23 encroachment and may be disposed of in accordance with secs. 240 -
24 250 of this chapter, and the owner of the facility is liable to the
25 state in liquidated damages in the amount of \$100 for each day the
26 encroachment exists. In addition, the owner of the facility shall
27 indemnify the state for any amount for which the state may be liable
28 to a contractor by reason of the encroachment.

29 (c) The cost of change, relocation, or removal necessitated by

1 highway construction is a cost of highway construction to be paid by
2 the state, unless the facility was installed or located on an existing
3 state right-of-way after July 1, 1960 without a permit from the
4 department.

5 (d) If a utility is relocated under this section to a new
6 location within a state right-of-way and the costs of the relocation
7 are reimbursed by the state under (c) of this section, the utility
8 retains the same right to reimbursement for the cost of any subsequent
9 relocation necessitated by highway construction.

10 * Sec. 2. This Act takes effect immediately in accordance with AS
11 01.10.070(e).

Second Session - Ninth Legislature

I. REQUEST

Bill No. _____

Title: "... Utilities and State Rights of Way ..."

Requested by: Government

Date: _____

Return Date Requested: _____

Agency: Law

Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: _____

NONE

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section 115)

IV. ATTACHMENTS

V. DATE: 12/1/75

PREPARED BY: _____

[Signature]
LEGAL ADMINISTRATOR

Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill
 Title: Utilities and State
 Requested by: Frank W. ... Date: December 26, 1975
 Return Date Requested: _____
 Agency: Highways Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: None

A. EXPENDITURES: (Thousands of Dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

V. DATE: December 8, 1975

PREPARED BY: Walter B. Parker
 Commissioner of Highways

THE LEGISLATURE OF THE STATE OF ALASKA
 Second Session - Winter Legislature

I. REQUEST

Bill No. House Bill 557
 Title: An Act to amend the constitution and state rights-of-way, and appropriation for
 Requested by: Bill to Amend Legislative Chairman Date: January 20, 1976
 Return Date Requested: _____
 Agency: Highways Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: None

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CENSUS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT / TEMPORARY	/	/	/	/	/	/
MAN MONTHS (M./Y.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

V. DATE: January 23, 1976 PREPARED BY: William B. Papp
 Commissioner of Highways

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to utilities and State rights-of-way. The bill is designed to clarify the jurisdiction of the Department of Highways in situations where State highways would intersect a utility facility or run together with it. There have been instances of confusion both over what constitutes a utility for purposes of AS 19.25.020 and the manner in which replacement costs for utility relocation should be calculated. The bill would also clarify the rights and duties both of the State and the utility in those situations.

In particular, the bill would make it clear that once a utility's facilities have been relocated due to highway construction, it will retain the same rights (primarily, the right to reimbursement) for any subsequent relocation necessitated by highway construction.

Sincerely,

Jay S. Hammond
Governor

MAR 04 1976

ALASKA ELECTRIC LIGHT AND POWER CO.

134 N. FRANKLIN STREET



JUNEAU, ALASKA 99801

(907) 586-2222

March 1, 1976

Mr. Hugh Malone
Chairman
House Finance Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Chairman Malone:

I am writing in regard to House Bill No. 557 entitled "An act relating to utilities and state rights-of-way; and providing for an effective date." The Alaska Electric Light and Power Company is in favor of this bill in concept, however, it has a problem with Sec. 19, 25, 020(A). This section requires that a utility will move its facilities in accordance with an order from the Highway Department. The order shall provide a reasonable period of time for compliance. Unfortunately, investor owned utilities do not have the right to "take" an easement or right-of-way and settle on the price at a later date through the courts. An investor owned utility must exercise the right of eminent domain which may take two to three years if the proceedings are contested by the owner. I believe this section should be amended to provide some protection for the investor of the utility against being placed in a time-squeeze by the Highway Department and the court system.

Thank you for your attention to this matter.

Very truly yours,
William A. Corbus
William A. Corbus
Assistant Manager

WAG:akd

FORM 02-001BC
FOR BRIEF COMMUNICATIONS
MAY BE HANDWRITTEN

MEMORANDUM

State of Alaska

TO:

Bill Berrier
Legislative Affairs

DEPT. _____
DIV. _____
SEC. _____

DATE :

April 28, 1976

FROM:

Marlys Burnett
House Finance

SUBJECT:

HB 557
CS by State Affairs
CS by Finance

Due to an oversight we are late in getting this bill
through its process. Please expedite asap. Thankyou.

TO: [Chairman of House State Affairs
Alaska State Legislature

: February 5, 1977

FROM: Walter B. Parker
Commissioner of Highways
Department of Highways
Juneau, Alaska

NUMBER: HB557

This bill would clarify and strengthen existing legislation regarding relocation of utilities incident to highway construction. Briefly, the aspect and scope of Alaska Statute modification follows:

AS 19.05.130(4), "cost of change, relocation or removal" is amended and broadened to provide that a replacement facility will be functionally equal to the existing facility less any cost of improvements and any salvage derived from the old facility.

AS 19.05.130(12), "Utility" is amended and broadened to identify the types of facilities to be identified as a utility. This listing parallels Federal Highway Administration usage and definitions as well as those used by the Alaska Public Service Commission. APUC commented on the proposed legislation to the extent that CATV or Cable TV was omitted and should be included.

AS 19.25.010, Use of Highways for Utilities, is amended to eliminate from the listing of utilities the words "other structures". The definition of "other structures" is very broad. It is felt that a structure, other than a utility facility as defined by AS 19.05.130 should be considered as an encroachment and fall within the parameter of AS 19.25.200-250, Encroachments in Highways. This will eliminate confusion between utility facilities and other type of structure encroachments.

AS 19.25.020, Relocation of Utilities Incident Federal-Aid Highway Projects, is repealed to be re-enacted to provide and accomplish the following:

(a) Reference to Federal-aid has been eliminated from the title, and references to the primary, secondary interstate system have been eliminated amending the section to include utilities "within states right-of-way" incident to highway construction. The change will clarify the intent of the statute and simply include utilities within the Department's right-of-way without regard to classification of system status.

(b) Is a new statute... strength and means to the... utilities to... manner. If... or relocate... accordance with... the Department... authority to declare the un-relocated facilities... collect liquidated damages, and... owner of the encroaching facility shall be... to pay the state any amount the state may be... a contractor due to the utility facility encroachments.

(c) This section provides for reimbursement to utility companies for costs incurred for relocation.

We recommend the following changes in the Bill as written:

On line 17 of page 1, after facility place a semicolon and strike the balance of the underlined. The formula for expired service life is a Federal Highway Administration requirement and should appear as a regulation in the Administrative Code where the limitation and requirements may be more readily modified than as a provision in a statute.

On line 2 of page 3, strike everything after the word state and insert "in accordance with AS 19.05.130(4)". With this change the State would qualify for Federal-Aid on Federal projects where facilities to be relocated are now under permits obligating the State for a second adjustment. Presently, it is unclear when the State would qualify for Federal-Aid.

Delete paragraph (d) on page 3. If the recommended change in the above paragraph is incorporated, paragraph (d) is unnecessary.

These recommended changes are shown on a marked up version of the Bill attached.

The Department feels the proposed legislation will effectively eliminate many problems that have been encountered between the Department and the utility industry with regard to the interpretation of the existing statutes. It also will modify the existing statutes to reflect a position slowly developed by Attorney General Opinions over the years and a similar opinion taken and expressed by the utility industry after the passage of Chapter 57, SIA 1961, with increased emphasis each year. The legislation will provide legal authority for the state to recognize a utility's land interest and to reimburse the utility for a second or

Chairman of
House State Affairs

February 1, 1964

subsequent meetings have been a critical problem and an issue
with several states and the Federal Highway Administration.
for the problem remains unresolved even though
A.C. opinion has been submitted to the FHWA, substantiating
the State's right to reimburse the utility.

The Department's position is that the legislation will improve
the State's relationship with the utility industry by a
clearer interpretation and intent of legislation pertaining
to utilities, and it is recommended for affirmative action and
passage.