SB

50

3/15/77

TELEGRAM

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PMS SEN JOE ORSINI

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ON BEHALF OF THE UTILITY CONSUMERS OF ALASKA

PLEASE SUPPORT PASSAGE OF SB50.

R M CLEMENTS GENERAL MANAGER

MATANUSKA TELEPHONE ASSOC

BOX 1338 PALMER AK 99645

SB 50
SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

February 15, 1977

Present: Chairman Orsini, Senators Willis, Ferguson, Hackney, and Sumner; Charles Thompson, Dept. of Highways; Bill Corbus, Alaska Utilities Association; and Ted Burns, Municipality of Anchorage

The hearing was begun at 3:00 with the testimony from Charles Thompson, Chief Utilities Engineer of the Department of Highways. Ketchikan Public Utilities had sent a letter stating their feelings about SB 50, and Mr. Thompson explained and clarified the terms of the letter.

Bill Corbus from the Alaska Utilities Association then stated that they were endorsing SB 50. He testified that by having the State reimburse the utilities for relocation, their rates to the consumer are stable.

Senator Sumner asked if the $100 penalty was necessary, that he did believe the general public should not have to pay this fine. He pointed out that there had been no testimony or support from anyone on this point.

Mr. Corbus stated that they had never, to his knowledge, had any problems with unauthorized encroachment.

Ted Burns, the Assistant Anchorage Municipal Attorney, stated that they were favor of SB 50. He said that utility rates were ever-increasing and the cost imposed by relocating lines were contributing to the high cost of usage. He explained the difference between underground and overhead lines in relation to relocation costs.

Chairman Orsini asked Mr. Thompson about the definition of an functionally equal facility, and Mr. Thompson explained that the State would provide the funds for a new relocated facility with the same capabilities as the old one. The utility then would assume the costs for any extra capability or improvements.

Chairman Orsini asked if there were any motions to amend SB 50, and Senator Sumner suggested that page 2, line 18-20 be deleted, beginning after the word chapter, and ending after the word exist. This motion was passed unanimously, and Senator Ferguson then moved to pass the Bill as amended and all the members voted "Do Pass" on SB 50.

The hearing was adjourned at 3:55 p.m.

TO: Senator Orsini DATE: Feb. 14, 1977

FROM: Paul Conger RE: SB50

I talked to Richard Svobodny, Attorney, Department of Law, Highway Section, and he said the background to SB50 is as follows:

The Feds, in 1958, passed the Highway Act of 1958, which in essence stated "whenever a State shall pay for the cost of relocation of utility facilities necessitated by the construc-- tion of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project; Provided, that Federal funds shall not be apportioned to the states under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State."

Prior to this, utilities were incurring a significant burden because they were paying the costs of relocating the utility whenever highway changes took place. The 1958 Highways Act attempted to relieve this burden.

Naturally, once the Fed Act was enacted it was befitting to the States to enact legislation that would be compatible with the Highway Act. Emanating from this, we have AS 19.25.020 which is under scrutiny at this time.

Our lawmakers, in devising this statute, established July 1, 1960 as the determining date to act as a guideline in establishing criteria as to who would receive reimbursement and who would not. Then using this date, they imposed additional criteria ~~which is affixed~~ as attachment #1, p.2., delineated in R. C. Preston's memo, dated 11/28/75,

"The question of determining who must bear the costs of utility relocation can arise from a number of factual situation. In certain instances, however, the answer is clear and an initial and often determinative question which aids in the answer is which was there first? If a utility facility is validly in place prior to the establishment of a right-of-way and construction of a highway, there is no question that the State must pay for the adjustment or relocation of the utility facilities. On the other hand, if a right-of-way exists first, and, after July 1, 1960 a utility desires to locate facilities within the right-of-way, the State will not be responsible for that utility's relocation costs if such is later necessitated by highway modification or construc- tion." (Unless the two parties enter into an agreement which stipulates different terms).

However, this seems to be where the simplified approach ceases, and many problems arise regarding reimbursement, which have been a consistent "thorn in the side" for the State. They hope a panacea to the problem will be SB50.

Specifically, the statute has presented problems for those utilities who were located in State rights-of-way at the time the law went into effect and had to relocate their utility to adjust to highway construction. This initial relocation isn't the problem, it's if the facility (one located in the states right-of-way prior to 1960) has to relocate a 2nd time to accomodate to modifications made in the highway, that has presented the problem. Should the utility be reimbursed for the 2nd relocation?

The Department of Law in its memo, affixed hereto as attachment 2, page 6, dated 10/27/76, is of the opinion that the utility should be entitled to reimbursement.

The underlying problem regarding reimbursement is not being generated by the State, but by the Feds. The Feds are contending that State law is not clear on this point, therefore they are reluctant to provide any funds because they will not be in harmony with State law as the Federal law requires. So what the State is doing by introducing this Bill is making it lucid in the statute that the State will reimburse the utility in no uncertain terms, for a "cost of change, relocation, or removal necessitated by highway construction." (see Sec. 19.25.020(c) of SB50.) Therefore, the enactment of this law will prohibit any dispute by the Feds and they will have to reimburse the State because our statute will now specify that we will reimburse the utility if requested to relocate by the Department of Highways.

In the rest of the bill, the State is simply making the definition of utility more refined.

Special note should be given the new language in the first section of the bill, (AS 19.05.130(4)) "the State will not pay for any improvements above the costs of a functionally equal facility". I think this term can be wide-open for interpretation, and I have been unable to attain from anyone why they want to amend the present language in the statute.

PC/js

MEMORANDUM State of Alaska

TO: The Honorable Walter B. Parker
Commissioner
Department of Highways

DATE: November 26, 1975

FILE NO:

TELEPHONE NO:

SUBJECT: Whether the State is Obligated to reimburse Utilities for second Relocations under AS 19.25.020

FROM: Avrum M. Gross
Attorney General
Department of Law

By
Ray C. Preston
Assistant Attorney General

This memorandum attempts to dispose of a recurring question of law involving highway construction and the relocation of utility facilities located within State rights-of-way. The question involves the application and interpretation of AS 19.25.020 in situations where a utility has first been required to adjust or relocate its facilities due to highway construction, relocates its facilities still within the right-of-way, and then at a later date, is again required to shift its facilities due to highway construction. The question is whether the State is obligated by the statute to pay the utility's costs in having to relocate its facilities the second time around. AS 19.25.020 provides:

> Relocation of utilities incident to federal-aid highway projects.
> (a) If, incident to the construction of a highway project on a federal-aid primary or secondary system, or the interstate system including its extensions in an urban area, the department determines and orders that a utility facility located in, over, along, or under a road right-of-way must be changed, relocated, or removed, the utility owning or in charge of the facility shall change, relocate, or remove it as soon as possible in accordance with the order.
> (b) The cost of change, relocation, or removal is a part of the cost of the highway construction to be paid from highway funds and the department shall, on behalf of the state, pay the costs of the change, relocation, or removal unless the utility facility was constructed and installed under a valid agreement entered into by the state and the utility after July 1, 1960, which requires the utility to change, relocate, or remove its facilities on demand at its own expense. A utility which locates its facilities on a state owned right-or-way after July 1, 1960, without a permit from the department shall not be reimbursed for the cost of the change, relocation, or removal of its facility.

The question of determining who must bear the costs of utility relocations under the statute can arise from a number of factual situations. In certain instances, however, the answer is clear and an initial and often determinative question which aids in the answer is which was there first? If a utility facility is validly in place prior to the establishment of a right-of-way and construction of a highway, there is no question that the State must pay for the adjustment or relocation of the utility facilities. On the other hand, if a right-of-way exists first, and, after July 1, 1980 a utility desires to locate facilities within the right-of-way, the State will not be responsible for that utility's relocation costs if such is later necessitated by highway modification or construction. This latter result, however, is dictated more by the terms of the standard utility permit issued to the utility than by the language of the statute. The terms of the permit are contemplated by the statute. The situations which have not been so clear, however, are those which involve the first set of facts at the outset, and where the utility has been allowed to relocate its facilities within the newly established right-of-way. In such a situation, is the State legally obligated for the costs of relocating the utility facilities when highway construction necessitates their relocation a second time. In our opinion, the answer to that question is yes. This result and resolution of the question is based upon an analysis which focuses upon and considers the language of the statute, its purposes, the legislative history of the statute, the legislative history of the federal statute which apparently precipitated the Alaska statute, consideration of the realities involved in situations when highways and utilities must meet and run together (which merges back into the purposes of the statute) and other factors which are tangental to the main question, including certain existing regulations in the Alaska Administrative Code and past practices of the Department of Highways in dealing with such cases. The language of the statute is considered first. AS 19.25.020(b) provides in part:

> The cost of change, relocation, or removal is a part of the cost of the highway construction. . . and the department shall. . . pay the costs. . . unless the utility was constructed and installed under a valid agreement entered into by the state and the utility after July 1, 1980, which requires the utility to change, relocate, or remove its facilities on demand at its own expense. . . . (emphasis added)

The mandate thus is clear that except for the proviso which begins with the word "unless . . . the State is obligated to bear the costs of relocation." The proviso, however, is not so clear. It can mean only those facilities which come into being in the first instance after the right-of-way is established. It can also be interpreted as mandating that if a utility is initially relocated and is relocated within the right-of-way,

that the first relocation only is subject to reimbursement; that the utility must at the time of initial relocation enter into an agreement by which it must bear its own costs thereafter, even if a subsequent relocation is necessitated solely by highway construction. Since the language is somewhat ambiguous, resort must shift to the underlying purposes and intent of the statute. See generally Sands, Sutherland Statutory Interpretation vol. 2A §45.09 et seq. (4th edit., 1973). Such a shift and analysis however requires a look first of all at the congressional action which apparently precipitated AS 19.25.020. In 1958, Congress, in passing the Highway Act of 1958 (P.L. 84-627) included the following in sec. 111 of the Act:

> -- Subject to the conditions contained in this section, whenever a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project: Provided, that Federal funds shall not be apportioned to the states under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State.

This new addition to the federal-aid highway scheme of things was explained somewhat by the conference report of the House and Senate conferees. 1/ that part of the conference report is set out in full:

> SECTION 111. RELOCATION OF UTILITY FACILITIES
>
> The House bill (sec. 113 and the Senate amendment (sec. 111) contained similar provisions which would have permitted Federal funds to be used to reimburse a State for utility relocation costs which the State had paid for under its own laws or practices. Both the House and Senate provisions would have denied apportionment of Federal funds for this purpose to any State when the payment to the utility violated the law of the State or a legal contract between the utility and the

1/ Conference Report No. 2438, 1958 U.S. Code Congressional and Administrative News p. 2889, 2899.

> State. The Senate amendment differed from the House bill, however, in that it provided that no more than 2 percent of any sum apportioned to any State for any fiscal year might be expended under the section. The House bill contained no such limitation.
>
> This 2-percent limitation would have resulted in administrative difficulties. It could have caused inequities particularly to small utilities and municipalities and in some instances resulted in failure to fully reimburse States which would otherwise have been reimbursed under the policy which the Bureau of Public Roads has followed of reimbursing States that pay relocation costs. Section 113 of the bill as passed by the House and recommended and accepted by the conferees recognizes the equity of reimbursing utilities for the cost of relocating facilities when required for Federal-aid highway projects. Further, this section makes it clear that it is the intention of the Federal Government to assume its proportionate share of utility relocation costs whenever a State allows such costs.
>
> Under the existing practice of the Bureau of Public Roads, Federal funds may participate in utility relocation costs to the same extent as other construction costs without any percentage limitation based on the State's apportionment.
>
> In adopting the House language, the conference agreement intends that the section will be applicable to the amount paid by the State.

Two years later, in 1958 the new provision was amended by adding a new provisio, viz. Section 11, P.L. 85-381; 72 Stat. 89. While this new addition didn't add much to the 1956 Act, a serious effort was made in the Senate to contract from what the 1956 Act had established. The Senate committee which had considered the bill reported it to the floor with amendments which would have, inter alia, placed a ceiling on how much federal reimbursement a state would receive if it did pay the costs of utility relocation. In an emphatic (and apparently successful) attack on this proposed contraction, Senators Edward Martin, W. Kerr Scott, Robert S. Kerr and Roman L. Hruska prepared a dissent to the proposed amendment which is set out in full as an appendix to this opinion. 2/

2/ Their dissent appears at p. 2398 of U.S. Code Congressional and Administrative News for 1958

Their dissent is interesting for present purposes because it develops in much more detail the background and reasons for the 1956 enactment. Again, their dissenting efforts were ultimately successful, for the 1956 language was basically retained and has been retained in the same basic form ever since. The language is presently codified at 23 U.S.C. §123. 3/

Following this activity of Congress, the several states promptly began passing statutes which required utilities to be reimbursed for their relocation costs (at least when their relocation was necessitated by Federal-aid highway construction). Then, almost as soon as that happened, litigation developed challenging the new laws, usually on the grounds that they constituted an appropriation of public funds for a non-public purpose. See e.g. State Highway Department v. Delaware Power & Light Co., 167 A.2d 27 (Del., 1961).

3/ 23 U.S.C. §123 provides:

§123. RELOCATION OF UTILITY FACILITIES

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term "utility," for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

(c) The term "cost of relocation," for the purposes of this section shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.
(Aug. 27, 1958, P.L. 85-767, §1, 72 Stat. 900.)

And, a number of states did strike down the new law. See e.g. Washington State Highway Commission v. Pacific N.W. Bell Tel. Co., 367 P2d 605 (Wash., 1961). The constitutionality of the Alaska version being considered here has never been challenged.

This review of the history and background of the Alaska statute as a product of Congressional action is particularly helpful for present purposes as there is a total lack of meaningful legislative history relating to the enactment of AS 19.25.020 (ch. 57 SLA 1961) by the Alaska legislature. The journals of both the House and Senate contain only references to the recommendations of committees having considered the bill (HB 172) and lack any formal report which could be used as a guide for answering the present question of statutory interpretation. Further, there are no other formal minutes or records available of committee action. HB 172 did not pass as introduced, but the differences of its amended version, House Committee Substitute for HB 172 (HCS 172) do not appear relevant to the present question. The primary change made was deletion of language which would have expressly endorsed relocation payments in cases in which the State had made agreements with utilities to reimburse for relocation expenses if legislation was passed which required such payments. In other words, agreements which would have given retroactive effect to the legislation.

Having completed the review of the general historical background, the question of what general purposes were involved and objects sought to be accomplished in enacting §20 can be addressed. First, it appears that in expanding the list of items which were reimbursable to the States, Congress recognized the basic inequity if the cost of utility relocation continued to be borne by the utilities themselves during this period of accelerated highway construction. Such a situation would mean in effect that the subscribers to a utility would be subsidizing highway construction. See the 1958 conference report (quoted above) at p. 2000. More enlightening however is the dissenting view expressed by Senator Martin et al. in 1958 (see appendix). Beginning with the 1956 Act, and continued in 1958 and subsequent years, the greatly accelerated pace of highway construction (especially federal-aid highway construction) entailed a commensurate amount of increased costs to utilities which, prior to the 1956 Act had had to pay the costs of utility relocation whenever highway changes took place. Generally speaking, a utility with facilities located within a right-of-way has historically, not ranked the highest in the hierarchy of legal rights, at least where highway authorities are concerned. See 4 Nichols on Eminent Domain, §15.22 (3d edit., 1975). Since utility lines generally follow highway lines, and the highway usually came into being first, utilities took their places at the pleasure of the highway authority. They were issued "permits" or granted "franchises" by which they were allowed to place facilities within the right-of-way but if the highway authority decided to modify the highway in a way which entailed relocation, then the utility almost invariably had to bear the costs, even though it would not be necessary except for the highway modification. From the strictly legal point of view this was only a natural result. If one person has a superior right and title to real property, and cannot be forced to yield any part of it, a decision to allow a specialized use over the property

by someone else will only be granted subject to the fee owner's own rights and options -- retaining the right e.g. to force the freeloader off at will -- somewhat analogous to a tenancy at will. In the case of utilities however, (and even though their initial location on the right-of-way was gratis) repeated dislocation meant that subscribers of the utility were actually subsidizing highway construction, and it is that fact which was recognized in the Highway Act of 1956. The accelerated pace of highway construction brought about inordinate expenditures for moving vast amounts of facilities at a great cost to the users of the utilities. Id at 2398.

Section 11 of the 1956 Act attempted to correct that. The ultimately successful dissent of Martin et al. in 1958 concluded with a summary of reasons which support the 1958 formulation:

> 1. Relocation costs are legitimate construction costs which should be treated as an integral part of the cost of constructing Federal-aid highways.
> 2. If utilities are required to pay relocation costs utility users would be unfairly burdened. They would have to pay for the cost of constructing highways -- once as a taxpayer and again as a part of the cost of each utility used. This despite the fact that utilities and their customers receive no special benefit from the new Federal highways.
> 3. In many areas smaller local utilities, public and private, which happen to be in the path of highway construction, would be heavily burdened and possibly forced out of business.
> 4. The new Federal-aid highway program because of its immense size and complexity would accentuate the burden on utility users of all services, electric, gas, water, sewer, and communications.
> 5. Public rights-of-way are not solely for transportation of vehicles but to provide the public with all needed services and commodities as roads have always done. The public and not just the motorist provides these rights-of-way.

If this formulation might be accepted for present purposes as a fairly accurate statement of the purposes and objects sought to be accomplished at the federal level, and if the subsequent enactments in the several states including Alaska can generally be described as a means of enabling the broadened federal action to take effect in those states, note should be taken that these same purposes and objects apply just as much in the case of a second relocation as in the first. Indeed, a basic Congressional decision that utility

relocation costs should be part of highway construction and action by the states to implement the decision would be frustrated by an interpretation which would effect a one-time-only policy.

Beside the acknowledgment that relocation costs due to highway construction are and should be a cost of highway construction, note should also be made of a second important premise which both underlies the 1958 Congressional action, and which supports the present interpretation, to wit: highways generally, and including federal-aid highways, simply are not designed nor intended solely for vehicular traffic; they are usually designed and intended for use by utilities in addition to the traffic function; use of the right-of-way by utilities is something which is intended at the outset. Therefore, viewing the several utility functions which usually follow highway lines, and which serve the same business and residences as the roads themselves and as functions of equal importance, it becomes somewhat incongruous if utilities are not granted legal rights which recognize their standing and function. This aspect was rather nicely focused upon and considered by the Minnesota Supreme Court in Minneapolis Gas Company v. Zimmerman, 91 N.W. 2d 642 (Minn., 1958). Zimmerman involved the question of whether the Minnesota statute, which was passed after the 1958 Highway Act, and which authorized the state to pay the cost of relocating utility facilities on Federal-aid highway projects, was constitutional under the state constitution. In upholding the constitutionality of the law, the Minnesota court stated (Id. at 648):

> The concept of the functional uses or purposes of a highway has constantly expanded with the advancement of civilization until today a highway no longer exists for the limited, though principal, purpose of vehicular travel or transportation of persons and property over its surface. . .

Quoting from a prior case, the court continued (Id. at 649):

> In our judgment, public highways, whether urban or rural, are designed as avenues of communication; and, if the original conception of a highway was limited to travel and transportation of property in movable vehicles, it was because these were the only modes of communication then known; that as civilization advances, and new and improved methods of communication and transportation were developed, these are all in aid of and within the general purpose for which highways are designed. (Emphasis theirs)

The Minnesota court then concludes:

> Clearly since the Cater decision in 1895, Minnesota has been definitely commited to the view that the use of rights-of-way by utilities for locating their facilities is one of the proper and primary purposes for which highways are designed even though their principal use is for travel and the transportation of persons and property. Furthermore, the import of that decision is a clear recognition that the use of highway rights-of-way for the transmission of public intelligence and public utility services confers important and direct benefits upon the public and that such use is not solely for the benefit and convenience of the utilities. The soundness of the view that the placing of utility facilities upon a right-of-way is one of the proper uses of a highway benefiting thepublic is emphasized by the fact that convenience and economy result therefrom to utility users, who are usually located near highways, and by the public welfare -- in the view of our ever-increasing population -- to make full and efficient use of the land surface occupied by public roads.

Thus, an interpretation other than which is here adopted would be inconsistent with this notion of plurality of function in highway design which must be recognized. Such an interpretation would encourage utilities not to relocate within rights-of-way, simply to preserve their rights for the future, and would frustrate the general object of accomodating utilities within the right-of-way.

Finally, connected with the issue addressed here is the effect both of the language employed in existing agreements between various utilities and the Department of Highways and certain existing administrative regulations relating to utility relocation. As to the first of these, the Federal Highway Administration has apparently questioned the authority of the state to enter into agreements with utilities whereby the state has agreed to reimburse the utility for future relocations. See (1.) of the memorandum dated April 25, 1975 from the Division Engineer to Walter B. Parker, Commissioner of Highways concerning project F-031-2(32). However, it should be clear from this opinion, that whether an agreement exists or not, the State is bound by statutory mandate to reimburse utilities for second relocations, if the utility was there first, and without regard to whether the utility existed before July 1, 1980. Even if an agreement states that the utility and not the state must bear the costs, the statutory duty still exists.

Next, mention will again be made 4/ of at least one existing administrative regulation which is in conflict with the mandate of the statute, and therefore invalid. Specifically 17 AAC 15.170(c)(1) conflicts with the statutory mandate of AS 19.25.020 and should be repealed or amended to render it consistent. Note is made, however, of the fact that a wholesale revision of the regulations is in progress.

In conclusion, it is our opinion that if a utility facilities must initially be relocated due to highway construction, and are relocated within the right-of-way, the State is obligated under AS 19.25.020 to reimburse the utility if the facilities must subsequently be relocated due to highway construction. This interpretation is supported by the language of the statute; its purposes and objects as gleaned from research into the legislative history and the evolution of Federal-aid highway acts. It is hoped that this memorandum resolves the question, which apparently exists in a significant number of projects in which federal participation in utility relocation has been placed in a deferred status, pending resolution of the legal question.

4/ See a prior memorandum dated March 18, 1975 to R.D. Shumway, Chief Design Engineer, Department of Highways from Ray C. Preston, Assistant Attorney General, relating to Project No. F-044-1(5); Tudor Road East.

RCP:snp

Attachments

MEMORANDUM State of Alaska

TO: C. E. Thompson
Chief Utility Engineer
Department of Highways

DATE: October 27, 1976

FILE NO:

THRU: H. D. Sturgal
Commissioner

TELEPHONE NO:

FROM: Ray C. Preston
Assistant Attorney General
Department of Law

SUBJECT: AS 19.25.020(b); Rights of Utilities located within a Right-of-way prior to July 1, 1960

This memorandum responds to a request of the Division Engineer of the Federal Highway Administration and Regional Counsel of the FHWA for additional legal analysis relative to the question of the State's legal obligation to reimburse utilities for second relocation expenses where the utility or its predecessor in interest was located within a highway right-of-way prior to July 1, 1960. That date is included in the language of AS 19.25.020(b) which reads:

> The cost of change, relocation, or removal is a part of the cost of the highway construction to be paid from highway funds and the department shall, on behalf of the state, pay the costs of the change, relocation, or removal unless the utility facility was constructed and installed under a valid agreement entered into by the state and the utility after July 1, 1960, which requires the utility to change, relocate, or remove its facilities on demand at its own expense. A utility which locates its facilities on a state owned right-of-way after July 1, 1960, without permit from the department shall not be reimbursed for the cost of the change, relocation, or removal of its facility.

This section has recently been the subject of analysis and interpretation in an opinion dated November 26, 1975 (attached). That opinion primarily addressed the relative rights of utilities and obligations of the State in instances where utilities are required to relocate a second time due to highway construction, where the utilities had been initially relocated after July 1, 1960, and in the process had become located within the newly established right-of-way. Noting particular changes made by Congress in enacting the Federal-Aid Highway Act of 1956, which appeared to precipitate the enactment of AS 19.25.020 in 1961, the November 26 opinion concluded that § 20 established a first-in-time rule with respect to utility facilities initially relocated after July 1, 1960. If the utility facilities were in place before the highway right-of-way was established, their right to reimbursement for relocation expenses due to highway construction is a vested right, conferred by statute, which is enjoyed by the utility for

subsequent relocations as well as the initial relocation. On the other hand, if the highway right-of-way is established first, (after July 1, 1960) and a utility subsequently desires location within the right-of-way, the statute contemplates an agreement by which, as a condition to establishing the facility within the right-of-way, the utility would agree to relocate its facilities at its own expense if relocation is necessitated by highway construction. What was not precisely addressed in that opinion was the situation where utility facilities were in existence within a highway right-of-way before July 1, 1960. In that situation, there appears to be no question that the utility is entitled under the statute to reimbursement for relocation expenses the first time that it is made necessary by highway construction. However, a question apparently does exist as to whether such facilities are also entitled by dint of the statute to reimbursement for relocation for any subsequent moves due to highway construction, if the facilities are relocated within the highway right-of-way at the time of the initial relocation. Posed another way, the question is whether the rights of such facilities are vested by dint of the statute in the same manner as utilities encountered by highway construction after July 1, 1960.

In addition to the statute itself, certain administrative regulations of the department which interpret and implement AS 19.25.020 must also be considered in the analysis, viz. 17 AAC 15.020(b), and 17 AAC 15.170. 1/ Those regulations are attached. However, as noted in the previous opinion, the validity of administrative regulations depends in part on whether the regulation is consistent with the statute which it is interpreting or implementing. AS 44.62.030 provides:

> Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

1/ 17 AAC 15.170(c)(1) appears particulary relevant:

> (c) A utility facility which is wholly or partially relocated or adjusted, incident to a highway construction project, under the provisions of a utility agreement and at the expense of the department, the department will issue permits as follows:
>
> (1) Where the utility facility is adjusted or relocated to a new location or alignment within highway right-of-way, the department's standard permit will be issued to the extent of the relocation requiring that the permittee shall relocate said facility or facilities at no cost to the department when required by future highway improvements or construction.

With such as the background and context of the present analysis, the relevant part of § 20(b) is again presented:

> The cost of change, relocation, or removal is a part of the cost of . . . highway construction . . . and the department shall . . . pay the costs . . . unless the utility facility was constructed and installed under a valid agreement entered into by the state and the utility after July 1, 1960, which requires the utility to change, relocate, or remove its facilities on demand at its own expense. . . . (Emphasis added)

Here, notice may be taken first of all that the syntax of the section itself establishes only one circumstance in which utilities will not be entitled to reimbursement, viz. where the highway right-of-way is first-in-time after July 1, 1960. In all other cases the statute establishes a vested right to relocation expenses, e.g. utility facilities in existence, within a right-of-way prior to July 1, 1960. Thus, at least three categories of utilities can be identified from the language of the statute:

> (1) utility facilities in existence, not within a right-of-way, and encountered by highway construction after July 1, 1960;
>
> (2) utility facilities which came into existence within an existing right-of-way after July 1, 1960; and
>
> (3) utility facilities which were in existence within a right-of-way prior to July 1, 1960.

It is the first and third of these categories in which the syntax of the section is treating equally. Only where a highway or right-of-way is first-in-time after July 1, 1960 does the statute contemplate an agreement whereby the utility agrees to bear the cost of future relocation.

However, not only does the sentence structure and plain meaning of the words support this conclusion, but the same conclusion is reached by reference to the general and manifest purpose of the statute. The statute's general purpose was developed in the earlier, 1975 opinion chiefly by resort to the legislative history of the Federal-Aid Highway Act of 1956. That Act cleared the way for federal participation in utility relocations necessitated by highway construction. Following that action, it quite behooved each of the states to enact legislation to legitimize such payments. See particularly pages 5 and 6 of the 1975 opinion. In addition, however, it also appears that the same conclusion is entailed by an examination of the idea and rationale of a so-called "grandfather clause," as the use of the July 1, 1960 date in § 20 appears to be exactly that.

A "grandfather clause" is defined in Ballentines Law Dictionary (1969) as:

> A clause in a licensing statute which exempts persons already engaged in the regulated business or occupation . . . A provision in a statute requiring a certificate of public convenience and necessity which excepts carriers currently operating. . . .[citations omitted]

The idea of grandfather clauses is rather obvious and they are familiar provisions in many types of laws. The basic, underlying rationale may well rest as much upon notions of due process as anything else. One who has acted legitimately in the past in certain ways should not be penalized in the future for having done so when the governing body changes the rules of law which affect those same actions. The object of grandfather clauses in general is to confer upon those who had behaved legitimately in the past equality or parity with those who in the future must satisfy certain new requirements in order to be legitimate. One who has qualified for a particular right in the past will not be required to meet additional, often onerous, sometimes impossible qualifications in order to continue to enjoy that right in the future. To bring such an abstraction down to the concrete, see generally the annotation beginning at 4 ALR 2d 667 of cases construing and applying grandfather clauses with respect to businesses and professions. For a recent case in the area, see Bloom v. Texas State Board of Exam of Psychologists, 492 S. W. 2d 460 (Tex., 1973).

In the present situation, it appears not to be an unreasonable conclusion that the reason for insertion of the July 1, 1960 date sprang out of the same kind of reasons for the installation and use of grandfather clauses generally, and if that is so, the object and purpose may be stated as conferring upon utilities already in existence within rights-of-way, the same rights as was being conferred upon other utilities who, after July 1, 1960 found themselves in the path of highway construction. No doubt that in the early, developmental, "frontier" period of the State (which for present purposes includes the entire time prior to statehood) there simply was no consistency in the manner by which utilities came to be located within a right-of-way. Sometimes the utility facilities preceded an actual road, even if a right-of-way was established first. Sometimes, particularly where an actual road existed first, a permit, not unlike the one used even after the enactment of § 20, was used, which by its terms the utility would agree that future relocations necessitated by highway construction would be at no cost to the highway authority. See the attached sample permit approved on June 9, 1953 for utility facilities located in Juneau. Sometimes, it appears that the utility facilities would simply be located within a right-of-way without any formality whatsoever. Here, perhaps oral assent was at times granted by the highway authority, and perhaps not.

The case of certain facilities of Chugach Electric Association, designated as poles D1, D2, D3 and D4 which were relocated as part of project F-031-2(32) at the time of construction of the interchange of the New Seward Highway at Dowling Road, falls most closely into the latter category. See the attached memorandum from Monte Lyons to Charles E. Thompson, Chief Utilities Engineer dated March 25, 1976. Although it appears that CEA obtained an easement in 1952 from the adjoining landowner which covered these facilities, the easement was at the same time within the limits of the right-of-way which had been established in 1949. Thus, it appears that the easement was of no effect. Such a spotted pattern would be compounded whenever other utilities entered into joint use agreements with utilities with facilities already in place.

The existence of such an inconsistent factual pattern by which utilities became located within rights-of-way in Territorial days lends further credence to the conclusion that grandfather rights were conferred by the 1961 legislature. Although inconsistent in the manner by which the facilities came into being within the right-of-way, it can reasonably be assumed that their creation came about nevertheless by following existing practices and customs within the region or locality. Thus, it would be manifestly unfair to penalize such utilities in the prospective application of a rule which states that first-in-time entitles utilities to a vested right to relocation expenses. The underlying policy reasons for establishing the first-in-time rule exist with just as much force where utilities happen to be already in place at the time of establishing the rule. It also makes sense where confusion may have existed in many instances as to which did exist first, the utility facilities or the road. Thus, referring back to the syntax of the statute it appears that the words "constructed and installed . . . after July 1, 1960" refers to facilities which are constructed and installed in the first instance, after July 1, 1960. All facilities existing within rights-of-way prior to July 1, 1960 are to be treated as if they were there before the road was; that they therefore have a vested right to reimbursement expenses. This syntactical conclusion is further supported by the fact that "constructed and installed . . ." is used in conjunction with the words ". . . under a valid agreement . . . after July 1, 1960, . . ." (Emphasis added). Thus, instead of three categories, there are really only two categories of utilities under the statute, viz. those constructed and installed in the first instance within a pre-existing right-of-way, pursuant to an agreement with the Department of Highways, and all others. All others includes both utilities which are in existence before an initial relocation due to highway construction which takes place after July 1, 1960 and all utilities which came into place within a right-of-way, by any manner, before July 1, 1960. All utilities in the latter category have a vested right to reimbursement for their relocation expenses. This, of course, would include the Chugach facilities described above.

"

To summarize, three distinct factors all point to the same conclusion, viz. the syntax of the statute and plain meaning of the language employed, the manifest purpose and underlying rationale involved, and finally the rationale underlying the establishment and use of so-called "grandfather" clauses. All three indicate that facilities in place within a right-of-way prior to July 1, 1960 have a vested right to reimbursement just as much as utilities encountered by highway construction after that date. It follows as well that a regulation which is inconsistent with the statute is not valid. This includes existing 17 AAC 15.170(c)(1) and 17 AAC 15.020(h). This is not to say, of course, that these two regulations are invalid by dint of this opinion. It is only to say that it is the opinion of the author of this memorandum that the regulations are inconsistent with the statute, that they would not be enforceable in court, and that an action commenced by a utility to obtain payment for a second relocation would be successful.

RCP:snp

Attachments

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1977

Attn: Senator Joseph Orsini
Community & Regional Affairs
Committee

The attached comments from the Alaska Public Utilities Commission on SB 50 are submitted for your information.

Francis Ulmer
Legislative Assistant
to the Governor

av

2-001B

STATE of ALASKA

MEMORANDUM

ALASKA PUBLIC UTILITIES COMMISSION
1100 MacKay Building - 338 Denali Street
Anchorage, Alaska 99501

TO: Frances A. Ulmer
Legislative Assistant
Office of the Governor
Pouch A, State Capitol
Juneau, Alaska 99811

DATE : January 12, 1977

FROM: Stuart C. Hall, Commissioner

SUBJECT: Legislation Relating to Utilities and State Rights Of Way

In our telephone conversation prior to the Christmas holidays, I indicated to you that the Commission continued to support legislation authored by the Governor relating to utilities and state rights of way. This was a bill introduced during the 1976 session as House Bill 557 and proposed for reintroduction at the 1977 session. I believe that it is C-16 among the administration's proposals if it doesn't already have a bill number for the current session. Your draft was submitted to our professional staff for further comment, and I am including herewith their observations and comments. (I would note, parenthetically, that the Commission continues to support the legislation.)

On page 1, line 15 I assume that someone has caught the typographical error in the word "subtracted." On page 1, lines 21 and 22 Chairman Zerbetz and Executive Director Jensen inquire whether it might not be appropriate to define the word "telecommunications" by referring to the definition contained in AS 42.05.701(8). They wish specifically to include cable television systems within the definition of telecommunications; and the definition of telecommunications as it appears in the Public Utilities Act at the section cited does include that type of utility system. Page 1, line 23 the word "waste" is employed, among others, to define the word "utility." We would note in passing that waste usually includes both solid and liquid waste; and the professional staff wants to make very certain that incorporated in that concept of waste "sewage" is included; it is the usual type of waste product transported by pipeline. The bill should perhaps be made more specific in this area. On page 2, line 2 the staff expressed some concern as to whether the phrase "along, over, under, or within a state right of way" also included the concept of the system adjacent to or parallel to a state right of way. The draftsman may want to consider that concept as well. On page 2, line 14 the draft employs the term "reasonable" to describe the time period for compliance. Some doubt is expressed as to what constitutes reasonableness, and the staff suggests that perhaps a period not less than 30 days might be employed.

With these suggestions and possible modifications we once again note our endorsement of this particular legislation. I regret very much that the staff comments have been delayed to this extent and hope that this does not inconvenience the Governor's office in any way in preparing the legislation for introduction. If you have any questions, please do not hesitate to contact me.

SCH:McP
Enclosure

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

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

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

Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility facility [AN ELECTRIC TRANSMISSION, TELEPHONE, OR TELEGRAPH LINE, POLE 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 HIGHWAY BY A PERSON OR POLITICAL SUBDIVISION MAY BE MAINTAINED OR CONTRUCTED] only in accordance with regulations prescribed by the department and [. NO UTILITY PROJECT OF THIS NATURE MAY BE UNDERTAKEN UNTIL I 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 PROJECTS. (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 shal change, relocate or remove it in accordance with the order. The order shall provide a reasonable time period for compliance.

(b) If the utility facility is not changed, relocated or removed in accordance with the order, the facility becomes an unauthorized 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 encroachment exists. In addition, the owner of the facility shall indemnify the sta 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 th state in accordance with AS 19.05.130(4), notwithstanding the terms or provisions of any existing permit, agreement regulation or statute to the contrary.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

Alaska Gas and Service Company

GENERAL OFFICES LOCATED AT 3000 SPENARD ROAD
P. O. BOX 6288 ANCHORAGE, ALASKA 99502 / PHONE (907) 277-5551
TELEX 25-187

February 7, 1977

Senator Joe Orsini
Chairman, Community and Regional Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

The purpose of this letter is to express our interest and support in and for Senate Bill Number 50 relating to utility rights of way.

We feel that the bill merits favorable and timely action since it works to protect the various utility rate payers from the burden of highway project occasioned utility relocation expenses for which the rate payer receives no additional utility value. In effect these expenses become a part of the highway project which we feel is a proper allocation.

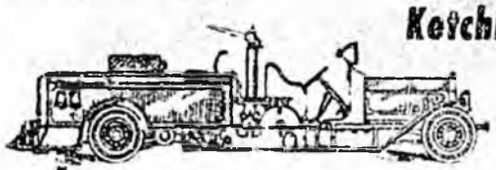
The measure passed the House of Representatives last year (HB-557), but failed to clear the Senate due to lack of time. I am not aware of any opposition to the measure. Your interest will be greatly appreciated.

Very truly yours,

Harold F. Schmidt
Senior Vice President

ph

Ketchikan Volunteer Fire Department
319 MAIN STREET
KETCHIKAN, ALASKA 99901



Member of Alaska
State Firefighter's Association

January 31, 1977

Senate Community & Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Senate Bill #50, relating to Utilities and State rights-of-way, was brought to our attention by Mr. Don Bowey, Assistant Utilities Manager for the City of Ketchikan.

Any legislation that will restrict or hinder the placement or installation of fire alarm boxes or transmission lines or legislation that would necessitate the issuance of permits to install, relocate or maintain such fire alarm equipment would be most undesirable to this Department. At present, there is no utility control on fire alarm devices in this area; it is the responsibility of the Fire Department to install, operate and maintain all emergency fire alarm equipment and we would like to see it remain under our control.

Very respectfully yours,
KETCHIKAN FIRE DEPARTMENT

Walter A. Winston, Fire Chief

WAW/rw

cc: City Manager
Assistant K.P.U. Manager

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 27, 1977

Senator Joseph L. Orsini
Chairman, Community & Regional Affairs Committee
Alaska State Senate
Pouch V, M/S 3100
Juneau, Alaska 99811

Dear Senator Orsini:

The City and Borough of Sitka requests your support for the passage of Senate Bill No. 50.

Very truly yours,

Fermin Gutierrez
Administrator

FG:mm

CITY OF ANCHORAGE
TELEPHONE UTILITY

600 EAST 38th AVENUE ANCHORAGE, ALASKA 99503
TELEPHONE (907) 277-7561
Telex 090-25-100

February 8, 1977

Senator Joe Orsini
Alaska State Legislature
Community and Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

The Anchorage Telephone Utility strongly supports Senate Bill #50 as prepared and submitted to the 1977 Legislature.

The passage of this bill can do nothing but eliminate problems and expedite State highway construction in our State.

We will make every effort to convey our desires to have this bill passed to all members of the House and Senate.

Cordially,

A. C. Pistorius

A. C. Pistorius
Manager
ANCHORAGE TELEPHONE UTILITY

ACP/RLM/m

Matanuska Telephone Association, Inc.

P.O. BOX 1388 PALMER, ALASKA 99645 PHONE 745-3211 (907)

MAX CLEMENTS
Manager

January 28, 1977

Senate Community and
Regional Affairs Committee
Pouch V
Juneau, Alaska 99811

REF: Senate Bill #50

Att: Senator J. Orsini

Dear Senator Orsini:

Matanuska Telephone Association desires to make the following comments regarding Senate Bill #50. We feel the proposed Bill is a milestone of legislation for Alaska utility consumers. In the past Title 19 has allowed utilities only limited participation in available Federal Relocation and Accomodation funds, causing burdensome costs to utility consumers. In passing the Federal Highway Act of 1956, 23 U.S.C.A. 162, Congress recognized that relocation of utility facilities is a necessary part of highway construction, and specifically authorized the use of Federal funds to reimburse states for amounts paid to utilities for nonbetterment cost of such relocation. Congress did provide, however, that such funds were not to be apportioned to any state where reimbursement of such costs would violate the law of the state. In a report of the Senate Committee on Public Works, reported as Senate Report #1407, 85th Congress 195 U.S. Congressional and Administrative News, Vol. 2, 1958 Legislative Histories Page 2399, the following appears:

"Public right-of-ways are not soley for transportation of vehicles, but to provide the public with all needed services and commodities as roads have always done."

Expenditures for reimbursement purposes serves a public purpose, because the public has an interest in receiving utility services. There is a public interest to be served by authorizing utility companies to use streets and highways to make such services available.

We respectfully request your support of Senate Bill #50. Further, we also desire your continued support of our intent to establish a more equitable basis from which utility organizations may extend services not only in our area, but throughout Alaska. Thanking you in advance for your consideration.

Very truly yours,

A. J. Moreland
Chief Engineer

pm

TO: Senator Orsini DATE: Feb. 15, 1977

FROM: Paul Conger RE: SB 50

Ted Burns called from Anchorage to inquire if we were going to get SB50 out of committee today or were we just going to hear testimony? The reason he is inquiring is because it will take them approximately one more week to acquire necessary technical data to present their position on SB50. He said he is flying down today and will expound on this further.

Also Bill Berrier called and said he will participate in the hearing today to answer any questions regarding SB50.

PC/js

ALASKA UTILITIES ASSOCIATION

2700 E. TUDOR ROAD • Anchorage, Alaska • Phone 277-6591

ROBERT B. SMITH
President

NORMAN C. BANFIELD
First Vice President

WILLIAM CORBUS
Second Vice President

THOMAS M. PEETZ
Secretary-Treasurer

February 4, 1977

The Honorable Joe Orsini
Alaska State Senate
Pouch V
Juneau, AK 99118

Dear Senator Orsini.

There is a bill of vital interest to the utilities which was pre-filed at the request of the Governor and is as I understand presently in the Community and Regional Affairs Committee.

Senate Bill No. 50 entitled, "An Act Relating to Utility and State Rights-of-Way: and providing for an effective date", is of vital interest to the utilities around the state. This bill could, under certain circumstances, vitally affect the utility consumer rates and its passage is being supported strongly by the Association and the individual utilities.

In the past, any utilities located in state highway rights-of-way were subject to the full cost of relocation in the event it was deemed necessary by the Department of Highways. Relocation generally came about because of reconstruction, widening, or new construction of state highways and affects such utilities as water, sewer, gas, telephone, and electric. All of these utilities normally, by virtue of their public service, must at various times be installed along or across state highways in order to interconnect service areas. Without these connecting lines adequate service to many areas would be impossible. We also feel that such joint use is the best use for a transportation corridor, which is essential for the movement of these vital commodities as well as vehicles.

As the law now stands, federal highway monies may not be used for reimbursement for the cost of relocation. Passage of legislation such as Senate Bill 50 will, however, clarify such expenses for participation and federal funding would enable that cost to be included in the total project cost as an area benefit where it belongs. Ninety-five percent participation by federal funds could then be applied to utility relocation costs as well as the cost of construction of the highway itself.

We feel that this is an extremely important piece of legislation, and is certainly worthy of your support. On behalf of the Utility Association and the thousands of people which we serve we ask your assistance in the passage of this bill.

Yours very truly,

Robert B. Smith
President

mb

SB 50

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MAYOR

To: Anchorage and Fairbanks Legislators

From: Sam Coxson, Legislative Liaison

Subject: Joint Fairbanks-Anchorage Meeting, Feb. 18, 1977

Enclosed is a list of elected officials which attended the meeting and the Action they took on certain legislative proposals.

City of Fairbanks

Mayor Harold Gillam
Bob Parsons
Jim Rolle
Ralph Migliaccio
Earnest Carter

Fairbanks-North Star Borough

Mayor John Carlson
Bill Stringer
Phil Younker
Andy Karella
Mike Cornelius

Anchorage Municipality

Chairman Dave Rose
Bill Besser
Ben Marsh
Arliss Sturgulewski
Dave Walsh
Don Smith

CB

FAIRBANKS-ANCHORAGE MEETING

ACTION ON LEGISLATIVE PROPOSALS

Bill	SHORT TITLE	ACTION
SB 35	Tax in the Unorganized Borough	No concensus; each body would act on its own
HB 101	Deductions for Telephone Nonservice	General concensus for opposition
HB 102	Prohibition of Surcharge	General concensus for opposition
HB 87	Grants to Service Areas	No position by joint group
SB/SB 37	Procedures Tax-foreclosed Prop.	No concensus; no action recommended
HB 75	Municipal Net Income Tax	No concensus; each body would act on its own
SB 50	Utilities and States Right-of-way	Unanimous support
Municipal Tort Liability		Unanimous support
HB 34	Workmen's Compensation	General Support
	Offset Provisions	General consensus for support
HB 89	State Aid--School Construction	Unanimous support
HB 70	Municipal Revenue Sharing	General support
Joint Resolution on All-Alaska Gas Line		Unanimous Support

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

P.O. BOX 1249, FAIRBANKS, ALASKA 99707

February 14, 1977

Senator Joseph L. Orsini
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

I have enclosed copies of the Alaska Rural Cooperative Association Resolutions unanimously passed at our recent meeting in Juneau on February 8, 1977. Accordingly, we urge your support of these resolutions.

Very truly yours,

R. L. HUFMAN
Secretary-Treasurer

RLH:es
Enclosures

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

P.O. BOX 1249, FAIRBANKS, ALASKA 99707

RESOLUTION NO. 1

WHEREAS, the State of Alaska has now or will have substantial quantities of Royalty Oil and Gas, and

WHEREAS, said oil and gas should be utilized within the State of Alaska to satisfy continuing requirements prior to sale and export outside of the State,

NOW THEREFORE BE IT RESOLVED that ARECA urge the Legislature to support commitments of these resources on present and future production.

Further, that a Model Public Non-Profit Utility contract be developed and approved that will assure said utilities of first call on these resources payable at the lowest price received by the State in their sales to others during any 90-day transaction period closest to the actual utility purchase date.

CERTIFICATION

I, R. L. Hufman, do hereby certify that I am Secretary of Alaska Rural Electric Cooperative Association, Inc., a nonprofit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of the resolution adopted at the Interim Meeting of the Members of this corporation duly and properly called and held on the 7th and 8th days of February, 1977, in Juneau, Alaska; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 8th day of February, 1977.

R. L. HUFMAN, SECRETARY
Alaska Rural Electric
Cooperative Association, Inc.

(SEAL)

DEMOCRACY IN ACTION . . . of the people . . . by the people . . . for the people

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

P.O. BOX 1249, FAIRBANKS, ALASKA 99707

RESOLUTION NO. 2

WHEREAS, the State of Alaska has now or will have substantial quantities or royalty oil and gas, and

WHEREAS, said oil and gas should be utilized within the State of Alaska to satisfy continuing requirements prior to sale and export outside of the State of Alaska,

NOW THEREFORE BE IT RESOLVED, that the ARECA urge the Legislature to exempt Non-Profit Alaskan Utilities from the oil and gas severance tax on all crude oil and gas that they purchase, process and utilize within the State.

CERTIFICATION

I, R. L. Huffman, do hereby certify that I am Secretary of Alaska Rural Electric Cooperative Association, Inc., a nonprofit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of the resolution adopted at the Interim Meeting of the Members of this corporation duly and properly called and held on the 7th and 8th days of February, 1977, in Juneau, Alaska; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 8th day of February, 1977.

R. L. HUFFMAN, SECRETARY
Alaska Rural Electric
Cooperative Association, Inc.

(SEAL)

SB 50

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

P. O. BOX 1249, FAIRBANKS, ALASKA 99707

RESOLUTION NO. 3

WHEREAS, the Alaska Rural Electric Cooperative Association, Inc., at its Interim Meeting held in Juneau, Alaska, February 7 and 8, 1977, has reviewed pending legislation in the Legislature affecting Rural Electric Cooperatives,

NOW THEREFORE, BE IT RESOLVED, That ARECA support Senate Bill No. 50, "An Act relating to utilities and state rights-of-way; and providing for an effective date.", for the reason that it clarifies the position of the State in relocation and reimbursement for rights-of-way.

BE IT FURTHER RESOLVED, That we support House Bill No. 82, "An Act relating to sale of state royalty oil and to the oil and gas properties production tax," for the reason that it gives instate preference to State royalty oil and gas.

CERTIFICATION

I, R. L. Hufman, do hereby certify that I am Secretary of Alaska Rural Electric Cooperative Association, Inc., a nonprofit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of the resolution adopted at the Interim Meeting of the Members of this corporation duly and properly called and held on the 7th and 8th days of February, 1977, in Juneau, Alaska; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 8th day of February, 1977.

R. L. HUFMAN, SECRETARY
Alaska Rural Electric
Cooperative Association, Inc.

(SEAL)

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

P.O. BOX 1249, FAIRBANKS, ALASKA 99707

RESOLUTION NO. 4

WHEREAS, the Alaska Rural Electric Cooperative Association, Inc., at its Interim meeting held in Juneau, Alaska, February 7 and 8, 1977 has reviewed pending legislation in the Legislature, affecting Rural Electric Cooperatives;

NOW THEREFORE BE IT RESOLVED, that we oppose House Bill No. 101 "An Act relating to telephone utilities." for the reason this legislation usurps the power of the Alaska Public Utilities Commission.

BE IT FURTHER RESOLVED, that we oppose House Bill No. 102, "An Act relating to public utility rates.", for the reason this legislation usurps the power of the Alaska Public Utilities Commission.

CERTIFICATION

I, R. L. Hufman, do hereby certify that I am Secretary of Alaska Rural Electric Cooperative Association, Inc., a nonprofit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of the resolution adopted at the Interim Meeting of the Members of this corporation duly and properly called and held on the 7th and 8th days of February, 1977, in Juneau, Alaska; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 8th day of February, 1977.

R. L. HUFMAN, SECRETARY
Alaska Rural Electric
Cooperative Association, Inc.

(SEAL)

MEMBERSHIP LIST FOR ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

Mr. Ralph Eddison
General Manager
Alaska Village Electric Cooperative, Inc.
999 Tudor Road
Anchorage, Alaska 99503

Mr. S. D. Wolfe
General Manager
Barrow Utilities & Electric
Coopecative, Inc.
P. O. Box 499
Barrow, Alaska 99723

Mr. L. J. Schultz
General Manager
Chugach Electric Association, Inc.
Box 3518
Anchorage, Alaska 99501

Mr. James F. Palin
General Manager
Copper Valley Electric Association, Inc.
P. O. Box 45
Glennallen, Alaska 99588

Mr. Charles E. Maxwell
General Manager
Cordova Public Utilities
P. O. Box 20
Cordova, Alaska 99574

Mr. David S. Mease, Jr., Manager
Glacier Highway Electric Association
Box 115
Auke Bay, Alaska 99821

Mr. Robert L. Hufman
General Manager
Golden Valley Electric Association, Inc.
P. O. Box 1249
Fairbanks, Alaska 99707

Mr. W. C. Rhodes
General Manager
Homer Electric Association, Inc.
P. O. Box ~~255~~ 429
Homer, Alaska 99603

Mr. Leon H. Johnson, Manager
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Box 787
Kodiak, Alaska 99615

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General Manager
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P. O. Box 44
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Mr. Willard H. Johnson, P.E.
General Manager
Matanuska Electric Association, Inc.
P. O. Box 1148
Palmer, Alaska 99645

Mr. Edward W. Callen
General Manager
Metlakatla Power & Light
Box 346
Metlakatla, Alaska 99926

Mr. J. C. Lindblom, Manager
Naknek Electric Association, Inc.
P. O. Box 118
Naknek, Alaska 99633

Mr. David F. Bouker, Manager
Nushagak Electric Cooperative, Inc.
P. O. Box 197
Dillingham, Alaska 99576

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET P. O. BOX 1019 KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECTRIC WATER PHONE

February 10, 1977

Senator Joe Orsini, Chairman
Community and Regional Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Your letter of January 24, 1977,
re: Senate Bill No. 50

Dear Senator:

The City of Ketchikan d/b/a Ketchikan Public Utilities owns and operates three Utilities: Electric, Telephone, and Water. We are always most interested not only in legislation affecting utilities, but rules, regulations and administrative codes as well. Our observations on Senate Bill No. 50 are as follows:

Section 1. AS 19.05.130(4) - No adverse comment. Amending serves to clarify.

Section 2. AS 19.05.130(12) - No adverse comment through the word "STEAM".

We realize that (12) must be an attempt to clarify and identify what a Utility is and will be under the law.

The word "WASTE" has many meanings. If the Bill intends it should mean sewage, then it should be spelled out. Does it mean sanitary landfills? Waste land such as a desert?? I believe that the single word "waste" would eventually be the means whereby an agency of the State would place their own interpretation on the single word to the detriment of the Utilities and Public.

"Storm water not connected with Highway drainage,". We all know what "storm water" is. Do we interpret that any "storm water" that is not connected with Highway drainage is automatically a Utility. What about the storm drain systems of city streets and secondary roads? Does Senate Bill No. 50 mean that towns and cities street drainage systems are to be classified as Utilities?? Or, does it mean "storm waters" within the confines of a Highway R.O.W. only? If so, it should be stated.

"Publically owned Fire and Police signal systems." I have taken the liberty of submitting copies of your letter and Senate Bill No. 50 to the City of Ketchikan Public Works Director, Chief of Police, and Fire Chief. They express concern that Senate Bill No. 50 classifies them as a Utility. You will no doubt be addressed by them on an individual basis.

Section 3. AS 19.25.010 - No adverse comment. Amending tends to clarify if (12) is amended as set forth.

Section 4. AS 19.25.020 -

(a) (last line)- "The order shall provide a reasonable time period for compliance."

As existing, the statute reads that the Utility owning or in charge of the facility shall change, relocate, or remove it as soon as possible in accordance with the order.

There is a great difference. As existing, it requires mutual cooperation and understanding by the Utility and State. As proposed, it puts the Utility at the mercy of an arbitrary act.

We would suggest that if the word "reasonable" is desired that the wording be; "The order shall provide a reasonable time period for compliance. Such time period being mutually agreeable to the Utility and the State."

The State knows what they want accomplished, but only the Utility knows the problems a move, or relocation, creates for them and has the knowledge of the how, when and wherefore for compliance.

(b) We do not agree with the proposed version. It places more leverage and larger clubs in the hands of a State agency to use on a Utility. Neither do we agree on the merit of this clause in the existing statute.

The State of Alaska highway system can not be compared with those in older States. The State of Alaska acquired a great deal of todays highways upon Statehood in 1959. Many utility facilities were in existance.

It should matter not whether a facility was constructed prior to, or after July 1, 1960. If the Utility is occupying State Highway R.O.W. under a valid and legal agr-ement between the State and the Utility, and the State decides to perform highway work necessitating relocation, move, or whatever that would be a cost item to the Utility, then it should be the moral and legal responsibility of the State to participate in such cost with the Utility.

Speaking for our own Utilities, we have never failed to cooperate with the State and have had, and hope to continue to have excellent working relationship and cooperation with the Utility section of the State Highway Department.

As we have mentioned to the State before, even when we have had mutual participation in cost, there are times when we had to scrape the bottom of the barrel to raise our share and drop budgeted items to do so. What do you think will happen when the time comes, and it will, when we are told to move or relocate completely at our cost and we do not have the funds??

(c) AS 19.05.130(4) is associated with the costs to a Utility mentioned in item (b) above and we feel also has inequities.

Time does not permit to put in writing all the remarks which could, and perhaps should be made concerning the contents of proposed Senate Bill No. 50 in necessary detail.

I would close this letter with an observation that I would consider germane to the question.

Several years ago the State of Alaska Highway Department initiated meetings with Utilities. These meetings were held in Anchorage, Alaska, and the two meetings I attended seemed very well accepted by the Utilities. The meetings provided the opportunity for the State and Utilities to get to the nitty-gritty of matters and to expound each others problems, viewpoints, and gripes. Had such meetings continued to be held, it is possible that the proposed Senate Bill No. 50 would not have reached you in its present form.

I would strongly urge that you, as chairman, and the community and regional affairs committee, cause such meetings between the State of Alaska Highway Department in general and the Utilities section in particular, and affected Utilities, to be reinstated, if within your scope of authority.

Should you not be familiar with the aforementioned meetings, I would suggest that you or staff contact:

Mr. Charles E. Thompson
Chief Utilities Engineer
Alaska Department of Highways
P. O. Box 589
Douglas, Alaska 99824

who I believe is most knowledgeable on the matter.

I would also bring to your attention the State Highway Department's plan to completely revise the Alaska Administrative code, and most specifically the present Title 17, Chapter 15, Engineering Utility permits. Stated purpose to clear up ambiguities in the present law concerning Utility permits and reimbursements for Utility relocation.

The commissioner, H.D. Scougal, urges the Utilities to submit their written views and ideas as they relate to the regulations and that such written comments be in by January 20, 1977. This means that the Commissioner's staff will review, pass judgment, formulate the regulations, and not have to face up to a single Utility and defend their position.

I again say that true workshop, State-Utility meetings are the best answer. An eyeball to eyeball confrontation is always superior to one way communications in writing for resolving problems and having mutual understandings.

Senator, we thank you for your time and interest and the opportunity to put forth a portion of our views.

Very truly yours,

Donald D. Bowey

Donald D. Bowey
Assistant Utilities Manager

DDB:mem

cc: N. L. Teague, City-Utilities Manager
Senator Robert Zeigler
Representative Oral Freeman
Representative Terry Gardiner
Mr. Charles E. Thompson

Alaska State Legislature

Senate

JUNEAU, ALASKA

January 24, 1977

Ketchikan Public Utilities
P.O. Box 7300
Ketchikan, Alaska 99901

Gentlemen:

Enclosed please find a copy of Senate Bill # 50 . Since this is a matter of interest to you, your comments or recommendations would be appreciated, as we intend to give this proposed legislation our consideration in the near future.

Please write to the Senate Community and Regional Affairs Committee, Pouch V, Juneau, Alaska 99811; or call 465-3712.

Very truly yours,

Joe Orsini

Senator Joe Orsini
Chairman
Community and Regional
Affairs Committee

JO/js

Enclosure: As stated

Introduced: 1/17/77
Referred: Community & Regional Affairs and Commerce

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 50

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

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

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

Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility facility [AN ELECTRIC TRANSMISSION, TELEPHONE, OR TELEGRAPH LINE, POLE 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 HIGHWAY BY A PERSON OR POLITICAL SUBDIVISION MAY BE MAINTAINED OR CONTRUCTED] only in accordance with regulations prescribed by the department and [. NO UTILITY PROJECT OF THIS NATURE MAY BE UNDERTAKEN UNTIL 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 PROJECTS. (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.

(b) If the utility facility is not changed, relocated or removed in accordance with the order, the facility becomes an unauthorized 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 encroachment 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), notwithstanding the terms or provisions of any existing permit, agreement regulation or statute to the contrary.

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