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COMMITTEE REPORT

SENATE

FURTHER:

3/4/83

Date: 3-28-83

Mr. President:

The Committee on C&RA has had SB 67 (210)

Relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; off date.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

CHAIRMAN

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

March 25, 1983

BILL ANALYSIS

RE: CSSB 67

SPONSOR: SENATE LABOR & COMMERCE COMMITTEE

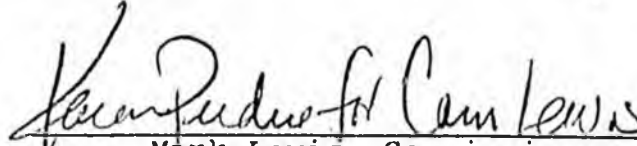
PROGRAM EFFECTS OF BILL

The current statute requires that if, as a result of a state highway construction project, utility facilities must be relocated the State may order the utility to relocate that facility and the State must also pay the cost of that relocation. This bill would also expand the statute to include Municipal highway construction. It also restricts the costs payable to utility facilities located as a result of valid easement or permits.

COMMENTS

It is reasonable to allow municipalities, which are responsible for construction of local roads and highways, this type of authority. We do, however, have some concern about relocation costs in instances where strict easement and right-of-way procedures have not been adhered to. Many of the smaller, older utilities do not have formal easements or right-of ways. It would seem that strict interpretation of new language could cause undue hardship for some of the smaller utility companies.

It would be our recommendation that some individual case by case discretion should be considered.



Mark Lewis, Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CS SB 67
 Title: relocation of utility facilities
 Sponsor: Labor & Commerce
 Requestor: Community & Regional Affairs

II. FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: development
 BRU, Program of Subprogram(s) Affected: Local Government Assistance

Committee
 EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Sponsor did not indicate.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Terry Earley Phone: 465-4730
 Division: Local Government Assistance Date: 3/25/83
 Approved by Commissioner: [Signature] Date: 3/25/83
 Department: Community & Regional Affairs

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

March 29, 1983

To: Senate Community and Regional Affairs Committee

From: Ginny Chitwood, Executive Director *GC.*

Re: SB 67 - Utility Relocation Costs

Municipalities oppose SB 67 because the issue is a local one and should be resolved at the local level. This bill would amend Title 29, Chapter 25 - Protection and Use of State Highways and Roads (emphasis added). The changes in SB 67, however, don't relate to state roads; they deal with local roads.

It is easy to understand why there is a provision in law for the state to pay the utility relocation costs since 95% of the funding is paid by the federal government. In municipal road projects, however, there is no way to shift 95% of the costs to a non-resident third party. The costs are paid by the local taxpayer unless the municipality receives a specific state grant for a specific project.

Since cost figures vary widely depending on the circumstances of each road project, I was not able to generate any average municipal cost per mile figures, but I do have general comments from several municipalities.

City of Palmer - Manager David Soulak estimates the provisions of SB 67, without section 5, would cause a 5% to 15% increase on three road projects currently being planned. In many cases, utilities are not where they're supposed to be. He doesn't think that municipalities should have to pay for utility mistakes, but does not oppose the municipality paying to relocate the utility if it is put in according to a permit.

Matanuska-Susitna Borough - Manager Gary Thurlow basically agrees with Soulak.

City and Borough of Sitka - Administrator Rocky Gutierrez believes that municipalities shouldn't be in state statutes except in Title 29. Sitka has worked out an agreement with the non-municipal utilities.

City of Kodiak - Manager Sam Gesko opposes section 3 of the bill, making the relocation costs a municipal responsibility.

City of Fairbanks - Manager Wally Droz says there would be no effect on

the City of Fairbanks because their policy is to pay relocation costs, although the utility pays for any upgrades.

Fairbanks North Star Borough - Public Works Director Don Moore reports that current borough practice is for the utility to pay relocation costs so shifting the cost to municipalities would cut down on the amount of road work that could be done with the available money.

City and Borough of Juneau - Public Works Director George Porter says that cost allocations are decided on a case by case basis, depending on whether the utility is where it was supposed to be, the age of the line, etc.

City of Ketchikan - City Manager Jim Van Altvorst estimates that the bill would cost the city an estimated \$50,000 this year.

Municipality of Anchorage - Public Works Director Paul Diener believes that this is a local issue. Anchorage has a new ordinance in the works that would require the municipality to pay the relocation costs if the utility has a permit and is at the location specified in the permit; in other cases, the utility would be required to pay.

City of Kenai - Paying relocation costs would cut down the amount of road work the city could do. Attorney Tim Rogers points out that common law indicates that "Rights in streets or highways....are at all times held in subordination to the superior rights of the public".



T HEART OF THE MATANU A VALLEY

CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT

P.O. BOX 1368 • PHONE (907) 745-3271

PALMER, ALASKA 99645

March 21, 1983

The Honorable Richard I. Eliason
State Capitol
Pouch V
Juneau, Alaska 99811

RE: CS for Senate Bill No. 67

Dear Senator Eliason,

During our discussion this past Saturday, March 19, 1983 in Anchorage, I pointed out a question of service life of a facility.

Since the majority of the state is under the Rural Electrification Administration rules, the service life of a facility is thirty-five (35) years. In a relocation that may be borne either by the State or Municipality, there is no credit allowed for the expanded service life of a facility.

I would recommend that your committee consider this service life in your bill so that this credit is included in the applicable relocation costs. Beyond the service life, there should be no relocation costs.

Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Senator Kerttula
Representatives Larson and Lacher
Alaska Municipal League

Suggested by: City Council

CITY OF KENAI

RESOLUTION NO. 83-32

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA REQUESTING THE THIRTEENTH LEGISLATURE OF THE STATE OF ALASKA NOT TO BURDEN LOCAL GOVERNMENT WITH ADDITIONAL AND UNNECESSARY COSTS IN BUILDING, MAINTAINING OR REPAIRING ROADS WHICH ARE THE RESPONSIBILITY OF LOCAL GOVERNMENT BY PASSING SB 67 WHICH FORCES MUNICIPALITIES TO PAY THE COSTS OF RELOCATING UTILITY POLES AND/OR LINES IN CONJUNCTION WITH ANY OF THE MUNICIPALITIES' ROAD PROJECTS.

WHEREAS, the common law in the State of Alaska has always been that when a municipality requested a utility to move its poles or lines in conjunction with a road project undertaken by said municipality, that cost has been borne by the utility company, and

WHEREAS, the passage of SB 67 will only burden local taxpayers with additional costs which in the past have not been borne by the local taxpayers, and

WHEREAS, electric utilities have been provided an easement along said roads by municipalities without any cost to the utility,

WHEREAS, the utility will be a major benefactor from SB 67 at the expense of the local taxpayers, and

WHEREAS, transferring the burden of the cost of relocating utility transmission lines and poles to the public sector is contrary to the public good and welfare of the taxpaying public, and

WHEREAS, there is a strong possibility that with the passage of SB 67 it would discourage municipalities in many cases from trying to make appropriate and adequate repairs to existing streets because of the additional burden and therefore be detrimental and perhaps even dangerous to the motoring public in many municipalities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that said Council go on record urging the Thirteenth Legislature of the State of Alaska to defeat SB 67 on the basis that it appears not to be in the best interests of the citizens of the State of Alaska, and further that immediately after the adoption of this resolution the Clerk of the City of

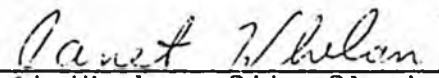
Kenai shall mail copies thereof to Governor William J. Sheffield, Senators Don Gilman and Paul Fischer, Representatives Hugh Malone, Milo Fritz, Bette Cato and Vern Hurlbert; in addition, the Chairman and Vice-Chairman of the House Labor and Commerce Committee, Representatives Walt Furnace and Rick Uehling and Chairman and Vice-Chairman of the Senate Labor and Commerce Committee, Senators Richard Eliason and Bob Mulcahy as well as the Alaska Municipal League.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA this 16th day of March, 1983.



Ronald A. Malston, Mayor

ATTEST:



Janet Whelan, City Clerk



CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 11, 1983

Honorable Richard Eliason, Chairman
Senate Labor and Commerce Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

In response to a request by you directed through the Alaska Municipal League in providing you with information on how much it will cost municipalities to pay for relocation of utilities in connection with municipal highway projects, please consider the following:

Homer Electric which is the provider of electrical power for the City of Kenai and the surrounding areas has indicated to the City that during the years 1980, 1981 and 1982, the cost for relocating their utility poles in conjunction with road projects undertaken by the City of Kenai cost in excess of \$300,000. In addition, for the last half of 1982, Homer Electric submitted a bill for \$60,000 for a particular road project that the City had under construction.

At this time, the City has refused to pay that bill and as a matter of fact, we now find ourselves in court with that utility over the dispute of whether or not the utility or the City is going to pay those costs. The City's contention is and will remain until directed otherwise that the utilities are in our right of ways at the sufferance of the public and therefore when the City undertakes a major road redesign or improvement project, the utility shall bear the cost for moving the poles to comply with the road design.

In addition to that, in 1982 the City had a downtown road project for which we were asphaltting almost a mile and a half of road, we requested that Homer Electric bury their lines in that area on the basis that it was downtown property. Homer Electric refused to bury those lines and we sat down and negotiated with Homer Electric and the City ended up paying for the burying of those lines and the cost to the City was \$75,000.

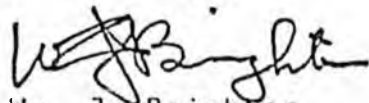
Now, as a matter of fact, we could have fixed two or three of our roads in this community that during breakup no-one can even drive down, citizens have to park their cars as far away as four or five city blocks from their home because the roads are in such condition during breakup they cannot be traversed.

It is for these reasons that the City opposes SB 67. The City's contention is that it always has been and should remain the utility's responsibility for relocating their utility lines when the City is improving the highway system from a safety standpoint and for a convenience standpoint for the traveling public in these communities.

At this point we have only talked about the electric utility, you must remember that if those costs are representative for the electric utility, most all of the telephone lines must be at the same time moved and on many occasions, the gas lines also have to be moved. If you multiply \$300,000+ then the City over the last three years was looking at a total expenditure of approximately \$1 million just to relocate the utilities in order to permit the City to repair and maintain the roads to benefit the traveling public.

It becomes obvious that a city of 5,000 people does not have the kind of money necessary in order to do the roadwork that we feel is our obligation and at the same time provide the money for all of the utilities which are private entrepreneurs and in the profit making business.

Sincerely,



Wm. J. Brighton
City Manager

WJB/dg

cc: Senator Don Gilman
Senator Paul Fischer
Representative Hugh Malone
Representative Milo Fritz
Alaska Municipal League



ANCHORAGE WATER & SEWER UTILITIES

3000 Arctic Boulevard
Anchorage, Alaska 99503
(907) 277-7622



Tony Knowles
Mayor

March 7, 1983

Owned by the Municipality
of Anchorage

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: SB-67

Dear Senator Eliason:

From the perspective of water and wastewater facilities, passage of the subject legislation should not have a significant impact on the cost of municipal road improvements.

In Anchorage for example, it is rare when a municipal road improvement impacts much more than the surface or above surface water and wastewater facilities. Generally this would include moving fire hydrants, adjusting sewer manhole elevations, adjusting water valve box elevations, etc. These type of relocations cost AWSU approximately \$100,000 in 1982, a year with significant road improvement activity.

An exception to the above would be a situation where a road improvement project necessitated relocating an entire stretch of water or sewer main. Generally this only occurs when the road grade is lowered so much that freezing becomes a potential problem for an existing facility. In these cases relocation could cost as much as \$100 per lineal foot of pipe, including appurtenances.

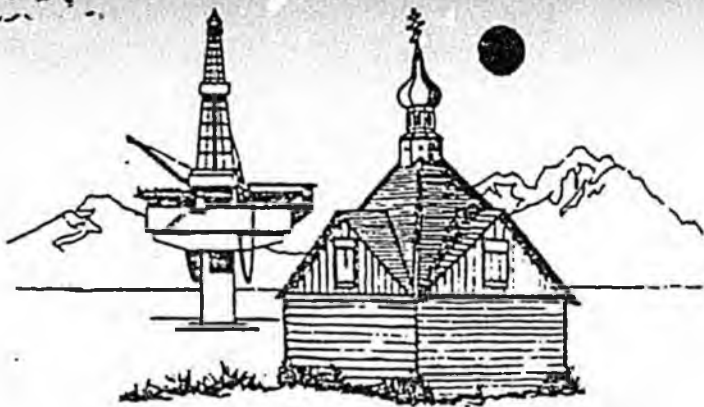
If the Anchorage Water and Wastewater Utility can provide any further information please contact either myself or Brian Crewdson at 265-5561.

Sincerely,

ROBERT E. SMITH
General Manager
Anchorage Water & Wastewater Utility

RES/BIC/slr
H/SE

cc: Alaska Municipal League ✓
Patrick Anderson
John Harshman



CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 3, 1983

Honorable Frank Ferguson
Chairman, Senate Community and
Regional Affairs Committee
Pouch V
Juneau, Alaska

RE: CSSB 67

Dear Senator Ferguson:

Our community is concerned regarding the present legislation to amend AS 19.25.020 in such a manner that the cost of changes for relocations of utilities caused by road construction would be paid by the municipalities.

As you will recall, Senate Bill No. 871 introduced March 22, 1982, proposing an amendment to AS 19.25.020 that would have imposed a financial burden of utility relocations on the municipalities was not passed. While the present bill differs, the primary thrust is the same in that it is an attempt at legislation in derogation of the common law principle set forth in the overwhelming weight of case law as summarized in Section 232 of of 39 Am Jur which states:

Rights in streets or highways granted to individuals or corporations are at all times held in subordination to the superior rights of the public. The Grantee takes them subject to the paramount right of the public authorities to grade and improve the way and to make such requirements and regulations as are necessary and reasonable in order to make it suitable and convenient for the use of the travelling public, and the Grantee may be required to abandon the use granted, or to remove or change the location of structures erected under the grant, when demanded by the public necessity, convenience, or welfare. This power of the public authority cannot be limited by contract.

Presently, under AS 42.05.251 a utility company is entitled to a permit to use of the streets, alleys and other public ways "upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions" required by the City. Absent a contractual relationship to the contrary the applicable law is stated at 12 McQuillim Municipal Corporations, Section 3472 in that "the Grantee of a franchise to use the streets takes it subject to the right of the municipality to make public improvements whenever and wherever the public interest demands, and if the improvement causes injury to the company, as by requiring it to relay or change the location of its pipes, tracts, or poles, or otherwise, the Grantee of the franchise cannot recover damages from a municipality therefor." McQuillim further maintains in Section 34.74 (a) that "the fundamental common-law right applicable to franchises and streets is that the utility company must relocate its facilities and public streets when changes are required by public necessity. Accordingly, it is generally held that the municipality may require a change in the location of pipes or other underground facilities of the Grantee of the franchise where public convenience or security requires it, even at the Grantee's own expense,....".

The recent success of the utility industry in the case of Chesapeak and Potomac Telephone Company of Virginia vs. Landrieu 674 Fed Second 298 (1982) wherein public utilities created under state law were found to qualify as "displaced persons" under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, so as to entitle them to reimbursement for relocation costs seems to have precipitated some sort of concerted activity on the utility industry's part to change the ingrained long standing common law rules of the game. The copy of the attached communication from the National Institute of Municipal Law Officers dated January 26, 1983, is indicative of a national concern regarding the potential economic impact of assessing municipalities for utility relocates.

We respectfully request that no legislation be passed which would burden municipalities with the cost of utility relocates. Thank you in advance for your assistance and cooperation in this matter.

Respectfully yours,



Tim Rogers
City Attorney

TR/dg

cc: Senator Don Gilman
Senator Paul Fischer
Representative Milo Fritz
Ginny Chitwood, Alaska Municipal League



CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT

P.O. BOX 1368 • PHONE (907) 745-3271

PALMER, ALASKA 99645

February 7, 1983

The Honorable Richard Eliason
Alaska State Senate
State Capitol
Pouch V
Juneau, Alaska 99811

RE: SB ~~69~~ 67

Dear Senator Eliason,

The City of Palmer opposes SB ~~69~~⁶⁷ in its entirety and for good reason.

Matanuska Telephone Association (MTA) has operated since 1972 without a franchise with the City of Palmer after the original franchise lapsed after twenty years. During the last ten years plus, MTA has embarked upon an underground burial program without obtaining permits or approval of the City for use of their right of way.

While Matanuska Electric Association has had a franchise since 1952 and renewed this in 1972. The MEA franchise stipulates that all relocations will be at their expense.

MTA's burial program may have not been too bad if they would have stayed adjacent to the property line as the municipal code spells out, but this was not the case.

Last September, we let contracts for paving of various streets using per capita money as seed money for special assessment districts. From the onset of construction we had problems. In one street, we had cable buried, from the left to right at 6'-0"±, 12'-0"± and 18'-0"± in a sixty (60) foot right of way. Since this street according to our Comprehensive Plan is designated as a residential collector street its design width is forty four (44) feet back of curb to back of curb. The bill MTA has sent to the City of Palmer for relocating approximately six hundred (600) feet in this situation is \$19,329.06.

In addition to this sum, we received a bill from the cable television installation company for damages too.

Now, this brings up another item. Prior to the cable television installation, we advised the contractor along with MTA representatives that the cable should be buried no more than six (6) feet from the property line and all street crossings to be a minimum three (3) feet deep. This was sent formally to MTA in the form of a letter. Since MTA hired a private contractor for this work, it was the private contractor's goal to bury as much as soon as possible. Even though every single parcel of land in the City has been surveyed at one time or the other, neither MTA nor the private contractor took the time to locate any property pins. There were instances we had them relocate cable since they were well beyond the six feet. Their reasoning was that they measured off the centerline of our dirt streets. Even so, the centerline of a street is not always the centerline of the right of way. This is especially true of non-permanent streets.

The Honorable Richard Eliason
February 7, 1983
Page 2

Further, the cable drop services to the residents which crossed the street were buried less than one (1) foot deep. MTA was advised of this fact and they said to cut the service as they are in the wrong.

On another street that was bid in the September street bid package, MTA has billed us \$22,248.55 for relocation expense when the cable meandered through the right of way up to twelve (12) feet into the right of way and was from six (6) inches to two (2) feet deep.

On another street, we were billed \$2,414.79 for cable relocation that varied from being on private property to ten (10) feet into the right of way to avoid bushes and branches. The reason for these costs being so small is that the street was not located in the center of the right of way and the shifting of the street did not cause as much relocation as normal, besides it was in an open area lacking of vegetation.

These costs will add between five and fifteen (5-15%) percent to the project cost depending upon street design. Each street will vary with the degree of encroachment.

We would agree that if utilities were placed in accordance with a permit issued by the City or Municipality and relocation was at our request, then we would be willing to pay for the costs. But to absolve the utilities, as in our case, Matanuska Telephone Association and Matanuska Electric Association, of prior helter skelter installation is inequitable and unjustified.

This naturally is a concern to the utility companies as they, in most cases, have gone about placing their utilities without care for proper placement.

Now with the possibility of natural gas being brought into many parts of the Matanuska Valley, utility corridor placement plays a larger role especially in the City of Palmer.

When the City of Palmer installs water, sewer or storm sewer, we engage the services of a professional engineer to design and stake out the construction to insure proper alignment and grade. It increases our costs marginally, but this is what all utilities should be required to do and we wouldn't have the conflicts that now exist. Anyone can draw lines on paper but the field installation is where it counts.

The problems and costs previously cited caused contractor delays which may or may not show up in the final construction costs since only the excavation and sub-base were completed last fall.

As City Manager of Palmer and Secretary-Treasurer of the Alaska Municipal Manager's Association, I urge you to vote against this bill in its present form.

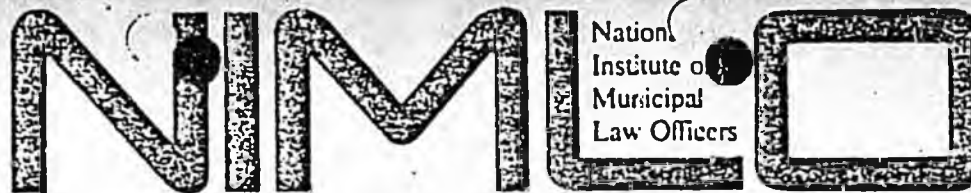
Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

cc: Senator Jalmar Kerttula
Representative Ron Larson

Representative Barbara Lacher
Ginny Chitwood, AML



1000 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036 (202) 466-5424

National Municipal Litigation Center of the National Municipal Legal Defense Fund

January 26, 1983

PRESIDENT
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City Attorney
Charlotte, North Carolina

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City Solicitor
Baltimore, Maryland

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San Francisco, California

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MARVA JONES BROOKS
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Oklahoma City, Oklahoma

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Corporation Counsel
New York, New York

WILLIAM H. TAUBE
Corporation Counsel
Kankakee, Illinois

WILLIAM Y THORNTON, JR.
City Attorney
Durham, North Carolina

MAX P. ZALL
City Attorney
Denver, Colorado

Dear NIMLO Member:

We are compiling information about the potential economic impact of a recent Fourth Circuit decision on municipalities nationwide. The decision in C&P Telephone Co. v. Landrieu, 674 F.2d 298 (4th Cir. 1982), if upheld, will mean that public utilities created under state law may qualify as "displaced persons" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, so as to entitle them to reimbursement for the cost of removing equipment from public rights-of-way to accommodate projects funded with federal monies. On January 17, 1983, the United States Supreme Court granted certiorari to review the Fourth Circuit ruling in this case (Norfolk Redevelopment and Housing Authority v. C&P Telephone Co. of Virginia, No. 81-2332).

There is concern about the potential impact of the decision on the availability of redevelopment funds if, contrary to state common law, utilities are to be reimbursed for the cost of relocating utility facilities from project areas. For example, in the NRHA v. C & P Tel. Co. case, projections are that the utility's claim could reach \$1 million with interest accrued since the mid-1970's.

In order to determine the implications of the Fourth Circuit ruling, we ask that all NIMLO members take time to answer, either affirmatively or negatively, the questions in the short survey on the back of this letter. The information gathered from your responses will be compiled for use either in any NIMLO amicus brief that may be approved and prepared or by the petitioner Authority or other amici involving in the case. BECAUSE THE BRIEFING SCHEDULE REQUIRES THAT ANY SUCH INFORMATION TO BE CONSIDERED BY THE COURT MUST BE PRESENTED BY MARCH 3, WE REQUEST THAT YOUR RESPONSES BE MAILED TO THE NIMLO WASHINGTON OFFICE AT THE ABOVE ADDRESS BY FEBRUARY 10 (postmark date).

While we realize that this is a short turnaround time, we hope that you will understand the circumstances and need for urgency. As in the past, the information provided to the court by NIMLO members may have significant persuasive value in this case.

Sincerely,

Charles S. Rhyne
General Counsel

CSR:crj

Mid-year Seminar, Washington, D.C., May 8-10, 1983
48th Annual Conference, Milwaukee, Wisconsin, August 17-20, 1983

1. Does state law provide that public utilities are responsible for the costs of removing their equipment from public rights-of-way at the request of the municipality? yes no don't know

a.) Are relocation costs considered by the state regulatory agency responsible for approving utility rates? yes no don't know

2. Does the grant of a franchise to a public utility by your municipality carry an express provision concerning liability for the cost of removing above ground utility equipment at the municipality's request? yes no don't know

If so,

a.) The utility must bear the cost. yes no don't know

b.) The municipality will reimburse the utility for relocation cost. yes no don't know

c.) Does the same provision apply to removal of underground equipment? yes no don't know

3. Has a public utility ever requested reimbursement of relocation costs from your municipality or any separate governmental entity serving part of your municipality? yes no don't know

If so, equipment above ground underground don't know

name of action _____

highest level of decision Presently before the the Alaska Public Utilities Commission

cite, if reported case _____

disposition, including any amounts awarded _____

4. Are any such claims (see #3) for relocation expenses currently pending? yes no

If so, equipment above ground underground don't know

a.) name of action _____
court or agency in which filed Alaska Public Utilities Commission
date claim filed _____

** AMOUNT OF CLAIM 50,000+

b.) Did the 4th Circuit decision in C&P Tel. Co. v. Landrieu served as a catalyst to encourage this claim? yes no don't know

5. Do you foresee a possibility of any such claims (see #3) being made in connection with specific projects? yes no don't know

If so, equipment above ground underground don't know

kind of project _____

category of federal funding _____

**potential amount of claim (will not be reported publicly with any specific reference as to origin) unknown

6. Comments or suggestions:

ENCLOSED PLEASE FIND A COPY OF SB 67 PRESENTLY BEFORE THE ALASKA LEGISLATURE

Signed: name Tim Rogers title City Attorney
municipality City of Kenai date 2/8/83

C. R. BALDWIN
ATTORNEY
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE (907) 283-7167

March 18, 1983

Senator Don Gilman
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Re: SB 67

Dear Don:

I note that the above bill is now in the Community and Regional Affairs Committee. Please give serious consideration to a favorable report to the bill. Homer Electric has gotten into a real bind with the City of Kenai due to the significant increase in road construction which has been funded primarily by the State. The City has not allocated any portion of those proceeds to the costs of relocating utilities and has called upon Homer Electric to move the utilities and to bear the costs. Obviously the costs don't go away they just spread over a larger rate base. Fortunately the rest of the cities on the Peninsula have not taken this position but just a quick review of the Common Law convinces me that they might be within their legal rights to do so.

At the present time the claim by HEA against the City is well over \$150,000.00, and the matter is being determined by the Public Utilities Commission which has jurisdiction over the purchase contract between HEA and the City. Any determination by the PUC will not affect the relationship of HEA with the other cities because basically the PUC is only being asked to interpret the contract under which HEA is purchasing the old KCL system.

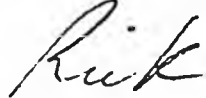
It makes more sense and will be less expensive in the long run if the cities will fund the costs of relocation up front instead of requiring the Utilities to do the work, advance the money, and then attempt at some later date to

Senator Don Gilman
March 18, 1983
Page Two

collect that money thru a rate increase.

Thanks for your attention to a subject which is a vital concern to Homer Electric.

Very truly yours

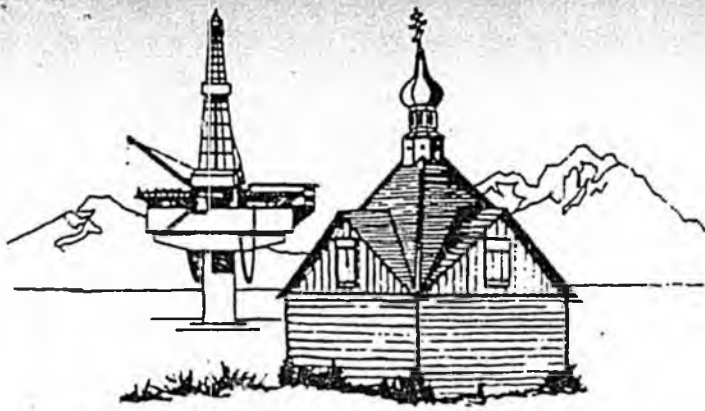


C. R. BALDWIN

CRB/hs

cc: B. Kent Wick, General Manager
Homer Electric Association, Inc.

Sen. Paul Fischer
Rep. Milo Fritz
Rep. Hugh Malone
Rep. Bette Cato



CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 21, 1983

Honorable Richard Eliason
Chairman, Senate Labor & Commerce Committee
Pouch V
Juneau, AK 99811

Dear Senator Eliason:

Per request of the Kenai City Council, I am forwarding to you
a copy of:

Resolution 83-32 - Requesting the Legislature not to
burden local government with additional and unnecessary costs
in building, maintaining or repairing roads which are the
responsibility of local government by passing SB 67 which
forces municipalities to pay the costs of relocating utility
poles and/or lines in conjunction with any of the
municipalities' road projects.

Sincerely,

Janet Whelan
Janet Whelan
City Clerk

jw

Suggested by: City Council

CITY OF KENAI

RESOLUTION NO: 83-32

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA REQUESTING THE THIRTEENTH LEGISLATURE OF THE STATE OF ALASKA NOT TO BURDEN LOCAL GOVERNMENT WITH ADDITIONAL AND UNNECESSARY COSTS IN BUILDING, MAINTAINING OR REPAIRING ROADS WHICH ARE THE RESPONSIBILITY OF LOCAL GOVERNMENT BY PASSING SB 67 WHICH FORCES MUNICIPALITIES TO PAY THE COSTS OF RELOCATING UTILITY POLES AND/OR LINES IN CONJUNCTION WITH ANY OF THE MUNICIPALITIES' ROAD PROJECTS.

WHEREAS, the common law in the State of Alaska has always been that when a municipality requested a utility to move its poles or lines in conjunction with a road project undertaken by said municipality, that cost has been borne by the utility company, and

WHEREAS, the passage of SB 67 will only burden local taxpayers with additional costs which in the past have not been borne by the local taxpayers, and

WHEREAS, electric utilities have been provided an easement along said roads by municipalities without any cost to the utility,

WHEREAS, the utility will be a major benefactor from SB 67 at the expense of the local taxpayers, and

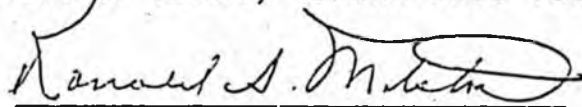
WHEREAS, transferring the burden of the cost of relocating utility transmission lines and poles to the public sector is contrary to the public good and welfare of the taxpaying public, and

WHEREAS, there is a strong possibility that with the passage of SB 67 it would discourage municipalities in many cases from trying to make appropriate and adequate repairs to existing streets because of the additional burden and therefore be detrimental and perhaps even dangerous to the motoring public in many municipalities.

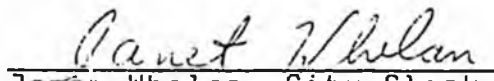
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that said Council go on record urging the Thirteenth Legislature of the State of Alaska to defeat SB 67 on the basis that it appears not to be in the best interests of the citizens of the State of Alaska, and further that immediately after the adoption of this resolution the Clerk of the City of

Kenai shall mail copies thereof to Governor William J. Sheffield, Senators Don Gilman and Paul Fischer, Representatives Hugh Malone, Milo Fritz, Bette Cato and Vern Hurlbert; in addition, the Chairman and Vice-Chairman of the House Labor and Commerce Committee, Representatives Walt Furnace and Rick Uehling and Chairman and Vice-Chairman of the Senate Labor and Commerce Committee, Senators Richard Eliason and Bob Mulcahy as well as the Alaska Municipal League.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA this 16th day of March, 1983.


Ronald A. Malston, Mayor

ATTEST:


Janet Whelan, City Clerk



Tony Knowles,
Mayor

Anchorage Telephone Utility

600 EAST 38TH AVENUE, ANCHORAGE, ALASKA 99503-6041

TELEPHONE (907) 564-1000

Telex 090-25-100

Facsimile (907) 561-1703



Owned by the
Municipality
of Anchorage

March 18, 1983

Senator Eliason
Chairman, Labor & Commerce
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SB-67

Dear Senator Eliason:

The passage of SB 67 will resolve a long standing disparity between the Federal and State laws on one hand, and local government policies on the other hand, as to reimbursements to utilities when they are required to relocate installed facilities to accommodate road and highway construction.

The Federal and State governments have historically reimbursed local utilities all reasonable costs associated with such relocation requests. The Municipality of Anchorage, for one, has refused such reimbursement.

Passage of SB 67 will be of significant, positive benefit to all Municipal utilities and their customers. No longer will the utilities have to bear unreasonable expenses incurred due to the failure of local governments to properly absorb relocation costs as a rightful part of their projects. Also rectified is the improper assignment of such relocation costs to all customers of a particular utility when only those living within a particular road improvement district or along a particular street may actually receive the benefits.

Cordially,

ANCHORAGE TELEPHONE UTILITY

A. C. Pistorius
General Manager

cc: Patrick Anderson, Legislative Affairs
Gary Tucker, Assistant Municipal Attorney
Executive Manager, Public Utilities
Alaska Municipal League

W10 AA1



THE HEART OF THE MATANUSKA VALLEY

CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT

P.O. BOX 1368 • PHONE (907) 745-3271

PALMER, ALASKA 99645

March 21, 1983

The Honorable Richard I. Eliason
State Capitol
Pouch V
Juneau, Alaska 99811

RE: CS for Senate Bill No. 67

Dear Senator Eliason,

During our discussion this past Saturday, March 19, 1983 in Anchorage, I pointed out a question of service life of a facility.

Since the majority of the state is under the Rural Electrification Administration rules, the service life of a facility is thirty-five (35) years. In a relocation that may be borne either by the State or Municipality, there is no credit allowed for the expanded service life of a facility.

I would recommend that your committee consider this service life in your bill so that this credit is included in the applicable relocation costs. Beyond the service life, there should be no relocation costs.

Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Senator Kerttula
Representatives Larson and Lacher
Alaska Municipal League

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

POUCH Z
JUNEAU, ALASKA 99811
(TELEX 45-328)

April 27, 1983

Re: CSSB 67 (L&C) am

The Honorable Frank R. Ferguson
Chairman, Community and Regional
Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

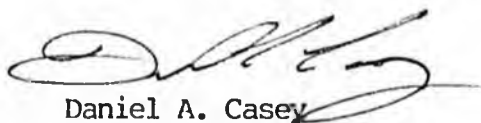
Dear Mr. Chairman:

Attached is the Department's position on CSSB 67 am relating to relocation of utility facilities due to municipality roadway construction.

This legislation would provide utility relocation standards in municipalities similar to those presently required for our Department's highway construction. This bill, however, does not affect this Department's current operations and construction procedures.

While we see a need for this bill and can support it as it is presently written, we recommend that contact be made with the Alaska Municipal League and the individual Alaska municipalities for their views.

Sincerely,



Daniel A. Casey
Commissioner

DAC/JJS/BRF/ps

Attachment

cc: Alaska Municipal League
Emil Notti, Legislative Assistant
Office of the Governor
Bruce R. Freitag, Stand. & Tech. Svs, Statewide
Fred J. Seeger, Deputy Commissioner
John J. Simpson, Acting Director,
Standards and Technical Services

POSITION PAPER OF DOT&PF ON CSSB 67 (L&C) am
(Utility Relocation)

This legislation in its present form (CSSB 67 (L&C) am) will not affect the current State Statutes regulating the procedures and operation of the Department of Transportation and Public Facilities.

It would require municipalities to treat utility relocation, incident to roadway construction, in a manner similar to that currently required for construction of State highways and should provide the following:

1. Faster project completion since the utility would be assured of relocation funds thus reducing potential delays caused if the utility is required to find its own funding to perform the required relocation work;
2. Protection for the utility consumer from rate increases that could be caused from utility relocation expenses; and
3. Better assurance that original utility facility installations would be made to proper standards and that the applicable utility permits/easements would be obtained for those facilities within roadway rights-of-way.

Since this legislation requires municipalities to pay the costs for any change, relocation, or removal of utility facilities necessitated by roadway construction, the Alaska Municipal League and the individual Alaska municipalities should be contacted for their views.

It should be noted that the Department has had trouble with the present wording of Sec. 4. AS 19.25.020 (c) as the phrase "...notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary." has been interpreted that no special condition regarding relocation costs on previously issued permits would be valid. This may also then affect municipalities which have allowed conditional utility installation permits within their rights-of-way to provide for certain rapid system expansions where code wasn't in all cases followed. If this situation exists within a municipality, they may, under the proposed statute, be liable for higher relocation costs than would normally be allowed. Therefore, it is recommended that the phrase in question be deleted from any new legislation .

SENATE AMENDMENT

By Senator Gilman

To: Committee Substitute for SENATE BILL No. 67 (L&C)

To: _____ HOUSE BILL No. _____

PAGE: 2 AFTER LINE: 11

Insert new section 5.

*Section 5. A.S. 19.45.001(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 subtracted from the entire cost any salvage value derived from the old facility; if a facility's service life is extended by the work done to change or relocate it, a percentage equal to the percentage of extension of the facility's service life shall be subtracted from the cost;

Renumber the following sections accordingly.

Chapter 45. Miscellaneous Provisions.

Section

01. Definitions

02. Penalties

15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;

(3) "controlled-access facility" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

(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 subtracted from the entire cost any salvage value derived from the old facility;

(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;

(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;