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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

396

January 31, 1984

The Honorable Jalmar Kerttula
President of the Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies who is responsible for the payment of relocation or removal costs when a utility facility is required to be changed, removed, or relocated as a result of highway construction. The bill addresses an ambiguity in AS 19.25.020(c) which presently leaves open the question of whether the state must pay for these costs even though a utility facility was not installed or authorized under the authority of a utility permit or, if a permit exists, even though the facility is not installed in the location provided for in the permit. The bill also makes clear that the question of who pays for future relocation costs is to be a matter of negotiation between the state and the utility to be reflected in the language of the permit.

Section 1 amends AS 19.25.020(c) by creating four new paragraphs:

Paragraph (1) requires the state to pay for the costs of the change, removal, or relocation of any utility facility installed before July 1, 1960 regardless of whether the facility is authorized by a utility permit at the time the change, relocation, or removal of the facility is required. There is a matter of equity and fairness, since there was no real uniform utility permit system in place before July 1, 1960.

Paragraph (2) requires either the state or the utility to pay for the costs of the change, removal, or relocation of the utility facility depending on the terms of the permit, provided the permit was issued after July 1, 1960. The effect of this paragraph is to make it clear that the question of who is to pay for relocation costs is a matter to be negotiated between the state and the utility. Presently, the state is required to pay for all relocation costs regardless of any agreement with the utility to the contrary.

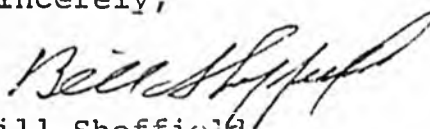
Paragraph (3) requires the utility to pay for relocation costs if their facility was installed after July 1, 1960 and is not under permit. Under existing law, it is ambiguous whether a utility has to pay relocation costs if it does not have a utility permit.

Paragraph (4) requires the utility to pay for relocation costs if their facility is not installed in the location provided for in a permit. Currently, it is unclear whether a utility must pay relocation costs even if its facility is not installed in the location set out in the utility permit.

Section 2 of the bill sets an effective date of July 1, 1984 for this bill.

I urge your favorable action on this measure so that the question of who pays for utility relocation costs under the various circumstances described in the bill is answered in clear statutory language.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: 391
Title: Utility Relocation - Hwy. Construction
Sponsor: DOT&PF
Requestor: Commissioner
Date of Request: _____

FISCAL DETAIL
Agency Affected: DOT&PF
Program Category Affected: Utilities
BRU, Program or Subprogram(s) Affected: N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	(200.0)	(300.0)				
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars) N/A

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Bruce R. Freitag *BRF* Phone: 789-6237
Division: Standards and Technical Services Date: 01-04-84
Approved by Commissioner: [Signature] Date: 1/11/84
Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note: Utility Relocation - Highway Construction

Analysis

SUMMARY/EXPLANATION OF INTENT:

To change existing statute AS 19.25.020(c) such that reimbursement for utility change, relocation, or removal costs necessitated by highway construction may only be paid by the State if the utility facility was properly permitted (strike out "...notwithstanding the terms...contrary." and add in its place "...if the facility was previously permitted in accordance with Department regulations.")

ESTIMATED FISCAL IMPACT:

Capital: Up to \$1 million savings to the Department annually dependent upon amount of Highway construction contracts involving utility relocation work.

Operating: \$0

Of major concern:

- A) Utilities may oppose item 2 because some existing permits (those issued between 1960 and 1977) contain clause that requires utility to pay for relocation. The 1977 law effectively wiped that clause out by the "notwithstanding" phrase which allows for relocation participation regardless what the existing permit states, or even if no permit exists. We propose to take care of that problem by issuing a standard letter from this office to all utility companies that states we will reimburse relocation costs for any facility under permit after 1960 unless special provision was identified in the permit that purposely required relocation to be borne by the utility. (This may have occurred because the utility needed our right-of-way even though we knew a major reconstruction was already scheduled.)
- B) Regional Utility Engineers were worried about not showing the 1977 date. As explained above, Jack McGhee thought it best if only the 1960 date was shown. They were concerned that many permits were issued between 1960 and 1977, and they didn't want to have to change the relocation payment clause to assure the utility they would receive facility relocation reimbursement. Our letter mentioned in "A)" above will allieviate RUE concern.

Positive Aspects:

- 1) All utilities would desire to have their facilities under permit to assure relocation reimbursement.
- 2) All utilities under permit assures they meet all codes and regulations, and that they are placed in accordance with Department direction.

- 3) Provides assurance that Department will obtain as-built of utility construction.
- 4) Assures that all utility facilities within our R/W "mesh" together so one does not conflict with another.

Payment of utility relocation costs by the utility would not result in a direct cost to the consumers, regardless of whether the reason for payment was due to the terms of a permit, location other than that described in the permit, or location in R/W without a permit.

Any construction costs (new and relocation) can only be passed on to the consumers through the rate-making process, according to Mark Figura, Asst. Attorney General with the Alaska Public Utility Commission (APUC). Glacier Highway Electric Assn. (GHEA) (an unregulated utility) would treat utility relocation due to highway construction as any other plant addition, according to Charles Y. Walls, General Manager.

With the regulated REA's, all rates must be approved by APUC in a rate hearing. With unregulated REA's, the cooperative's board of directors establish the rates and the rates must be approved by the members (consumers). With GHEA, when 5% or more of the members object, a rate hearing similar to an APUC hearing is held.

Fact Sheet:

"Relocation of Utilities Incident To Highway Projects - AS 19.25.020(c)"

The need for this change is to revise statute authority such that reimbursement for utility relocation incident to highway construction would only be allowed if the utility facility was properly permitted by the Department within highway rights-of-way. With the utility facility being properly permitted, it also provides assurance that the facility is located properly and is installed in accordance within established coding (i.e. electrical, safety, etc.). Presently, utility relocations are generally reimbursed even if the facilities are not under permit or within code requirements.

In summary, then, this revision would:

- (1) Provide that the State participate in all utility relocation costs for those utilities placed in highway rights-of-way without a permit prior to July 1, 1960 and for the utilities that were installed by permit between July 1, 1960 and July 1, 1977 regardless of whether or not the permit provided for State relocation costs.
- (2) Provide that the State or utility participate in the relocation costs under permits issued after July 1, 1977, depending on the prescribed terms written in the permit. This allows the State to write a permit on new utility facilities that either requires the utility to pay or the State to pay on existing facilities not covered by a permit that are located properly and can be covered by a permit.
- (3) Provide that the utility participate in the utility relocation cost if the facility was not located in accordance with the permit regardless of when the permit was issued.

The 1960 date is significant due to Statehood and 1977 is significant as that is the effective date of the present law we are proposing to revise.

The estimated fiscal impact will vary from year to year and from \$0 to a considerable amount dependent upon the number of projects, primarily bush/village, where utility facility conflicts occur due to highway construction. Recently, an approximate \$200,000 conflict occurred on the Palmer-Wasilla project with Matanuska Telephone Association facilities.

Other proposed projects with possible similar conflicts beside bush/village projects are Boniface, DeArmour Road, Raspberry Road, and the Old Seward Highway - all in the Anchorage Area. Further, under the present law, the Department is unable to write a permit to a utility to allow that company to pay for its own relocation should future conflicts occur.

We believe that the utility industry would be in favor of this amendment because it (1) clarifies that their facilities installed without a permit prior to July 1, 1960 are to be relocated at State cost and (2) it allows them to install a facility on future highway projects and pay for the relocation costs instead of being denied a permit.

As explained above, this proposed change would provide Department protection by assuring that:

- 1) All utility facilities within highway rights-of-way are properly permitted;
- 2) All facilities installed within highway rights-of-way meet proper State and national codes; and
- 3) Both the state project and the utility participate fairly in any necessary relocation costs.

DRAFT

AMENDED BY DOT&PF 3-15-84

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE SENATE

SENATE BILL NO. 396

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to relocation of utilities incident to highway projects; and providing for an effective date."

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

*Section 1. AS 19.25.020(c) is amended to read:

(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 19.45.001(4) as follows:

(1) by the department as a cost of highway construction if the facility was installed before July 1, 1960, regardless of whether the facility is authorized by a permit at the time the change, relocation, or removal of the facility is required;

(2) by the department as a cost of highway construction if the facility was authorized or installed under the terms of a department utility permit issued after July 1, 1960;

(3) by the utility if the facility was installed after July 1, 1960, and there is no utility permit for the facility;

(4) by the utility if the facility is not installed in the location provided for in the utility permit, regardless of whether the utility permit requires payment by the department;

(5) by the utility if the facility was authorized under a temporary permit that specifies placement of the facility in the permitted location is authorized only for a temporary period of time and specifies that the utility will pay for any change, relocation or removal [NOTWITHSTANDING THE TERMS OR PROVISIONS OF ANY EXISTING PERMIT, AGREEMENT, REGULATION OR STATUTE TO THE CONTRARY].

*Sec. 2. This Act takes effect July 1, 1984.

Provided by DOT/PF

DRAFT

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

• AMENDMENT TO UTILITY PERMIT FOR PLACEMENT
OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY

This agreement between the Department of Transportation and Public Facilities (hereinafter referred to as the DEPARTMENT) and _____ (hereinafter referred to as the UTILITY) amends those provisions of all existing utility permit agreements between the DEPARTMENT and the UTILITY that relate to the question of who shall bear the cost of change, relocation, adjustment, or removal of utility facilities located within highway rights-of-way when such change, relocation, adjustment or removal is necessitated by highway construction. Notwithstanding any existing language to the contrary, the cost of change, relocation, adjustment, or removal of utility facilities located within highway rights-of-way shall be apportioned as follows:

If the utility facilities have been installed in accordance with the provisions of the existing permit, then the cost of change, relocation, adjustment, or removal of these facilities necessitated by highway construction is a cost of that highway construction to be paid by the State in accordance with AS 19.45.001(4).

"Cost of change, relocation, or removal" as used here 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 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.

DRAFT

The intent of this Amendment is to provide assurance that the UTILITY will not be required to bear the cost of any change, relocation, adjustment or removal of its facilities as a result of highway construction provided that the facilities were installed under the authority of a valid existing permit and have been properly located according to the terms of that permit.

Approval:

UTILITY

DEPARTMENT

Authorized Representative

Authorized Representative

Position

Position

Date

Date

SB 396 TITLE & SPONSOR SUMMARY

14:28 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO RELOCATION OF UTILITIES INCIDENT TO HIGHWAY PROJECTS; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 1/31/84 IN (S) LABOR & COM REFERRAL: TRANSPORTATION

SB 396 SENATE ACTION

14:28 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
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01/31/84	01	1896	FIRST READING -- COMMITTEE REPORTS
01/31/84	02	1896	F/NOTE SEN SUPPL #47
01/31/84	03	1896	GOV TRANSMITTAL LETTER LABOR & COMMERCE TRANSPORTATION FINANCE RULES

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

April 30, 1984

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

Dear Senator Eliason:

The following information is provided in response to your request concerning the impact on DOT&PF should the Department's utility legislation fail enactment this year.

Senate Bill 396

"An act relating to relocation of utilities incident to highway projects; and providing for an effective date."

The objective of this legislation is to provide better control on permitting utility use of Department rights-of-way and on allowing Department reimbursement for relocation/adjustment costs of utility facilities due to highway construction.

If SB 396 is not passed, considerable funds may be spent by the Department to relocate or adjust utility facilities which have been placed in highway rights-of-way illegally. Without this legislation, the Department of Transportation and Public Facilities does not have a means to ensure a utility company will install its facilities in conformance with proper codes and in approved locations within highway rights-of-way. Further, with this legislation the Department will have statutory authority to issue a Temporary Permit for locating utility facilities in highway rights-of-way when known reconstruction is planned for a highway segment the utility wishes to use.

With passage of SB 396, the State stands to save \$50,000 to \$200,000 per year from cost reimbursements to utilities as well as experiencing fewer instances of faulty code compliance or improper location.

Senate Bill 398

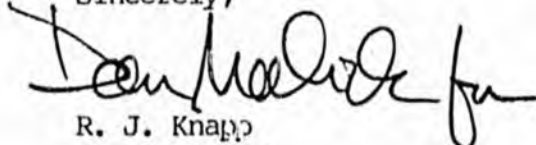
"An act relating to utilities and encroachments in rights-of-way for State Airports and Public Facilities; and providing for an effective date."

The objective of this legislation is to provide statutory authority to the Department of Transportation and Public Facilities to issue permits for utility facilities within State rights-of-way for airports, harbors, marine transportation areas, and State public buildings similar to the existing permit ability the Department has for highway rights-of-way. The State would also then have statute authority to reimburse utility companies for required relocation/adjustment of utility facilities due to State construction.

If SB 398 does not pass, DOT&PF will continue to lack statutory authority to permit location of utility facilities in State rights-of-way other than highways. Therefore, utility companies may have to pay to locate their facilities in private rights-of-way which would ultimately result in higher costs and rates to their consumers.

The department strongly supports the passage of SB 396 and SB 398. Should you require additional information, please contact our legislative liaison office at 465-3900.

Sincerely,



R. J. Knapp
Commissioner

cc: Susan Fleischhauer, Administrative Assistant
Ray Gillespie, Director of Legislative Relations
Office of the Governor
John J. Simpson, Director, Standards and Technical Services



City and Borough of Sitka

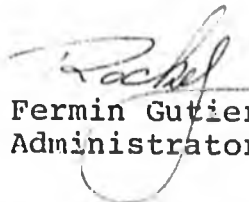
~~PO BOX 79~~ · SITKA, ALASKA · 99835
304 La're Street
Room 104

Senator Richard Eliason
Alaska State Legislature
Pouch V M/S 3100
Juneau, Alaska 99811

Dear Dick:

Please be advised that the City and Borough of Sitka opposes the passage of SB-396 and SB-398 which if enacted would not be in our best interest.

Sincerely,


Fermin Gutierrez
Administrator