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By SL & COMMERCIAL
CDM U.

For an Act entitled: "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality."

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

* Sec. 1. AS 19.25.020(a) is amended to read:

(a) If, incident to the construction of a highway project, the department or a municipality determines and orders that a utility facility located across, along, over, under, or within a [STATE] right-of-way under its jurisdiction 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 period of time for compliance.

* Sec. 2. AS 19.25.020(b) is amended to read:

(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 AS 19.25.240-19.25.250. In addition, the owner of the facility shall indemnify the state or municipality for any amount for which the state or municipality may be liable to a contractor by reason of the encroachment.

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

(c) The cost of change, relocation or removal (defined by AS 19.45.001(4)) necessitated by highway construction is a cost of highway construction to be paid by the state or municipality [IN ACCORDANCE WITH AS 19.45.001(4)], notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary.

* Sec. 4. AS 19.25.020 is amended by adding a new subsection (e) to read:

(e) Municipalities shall not be obligated for utility facility relocation costs associated with those highway projects for which general obligation bonds have been approved or for which ^{state} general fund appropriations have been ^{received} ~~made~~ before July 1, 1983.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSSB67 Date on Bill: 3/2/83
 Title: Relating to relocation of utilities incident to Construction of highways by a
 Sponsor: municipality. Labor & Commerce Committee
 Requestor: Labor & Commerce Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-			

b. Revenues:

Revenue			-0-	-0-	-0-			
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2. Source of funds to offset fiscal impact of bill:

N/A

3. Assumptions: The Department of Transportation and Public Facilities currently has the authority to relocate utilities that are located in highway rights-of way. Current State Statutes also requires the State to pay the cost of any change, relocation or removal of utilities necessitated by highway construction.

CSSB 67 would give the municipalities the same authority and responsibility for highways and streets under their jurisdiction.

CSSB 67 would have no effect on highways constructed by DOT/PF, however, if municipalities receive grants from the State for highway purposes, these grants would need to be adjusted to compensate for added costs of utility relocation.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Jonathan W. Scribner Phone: 465-3905
 Division: Design & Construction *OK/JS 3/3* Date: 3/3/83
 Approved by Commissioner: *J. S. [Signature]* Date: 3/3/83
 Department: DOT/PF

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 67 Date on Bill: 1/25/83
 Title: Relating to relocation of utilities incident to Construction of highways by a
 Sponsor: municipality. Labor & Commerce Committee
 Requestor: Labor & Commerce Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating				
Total	-0-	-0-	-0-	

b. Revenues:

Revenue	-0-	-0-	-0-	
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2. Source of funds to offset fiscal impact of bill:

N/A

3. Assumptions: The Department of Transportation and Public Facilities currently has the authority to relocate utilities that are located in highway rights-of-way. Current State Statutes also requires the State to pay the cost of any change, relocation or removal of utilities necessitated by highway construction.

SB 67 would give the municipalities the same authority and responsibility for highways and streets under their jurisdiction.

SB 67 would have no effect on highways constructed by DOT/PF, however, if municipalities receive grants from the State for highway purposes, these grants would need to be adjusted to compensate for added costs of utility relocation.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Jonathan W. Scribner Phone: 465-3905
 Division: Design & Construction Date: 2/24/83
 Approved by Commissioner: *JWS* Date: 2/24/83
 Department: _____

5. Distribution:

Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

2/15/83

lations prescribed by the department and if authorized by a written permit issued by the department. (§ 8 art VII title II ch 152 SLA 1957; am § 3 ch 106 SLA 1977)

Effect of amendments. — The 1977 amendment rewrote this section. Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 218-234. 40 C.J.S., Highways, §§ 232, 233.

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 AS 19.25.240 — 19.25.250. 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 19.45.001(4), notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary.

(d) If requested by a municipality, the department shall implement this chapter by requiring to the maximum extent possible location underground of electric power transmission lines within the municipality. (§§ 2, 3 ch 57 SLA 1961; am § 4 ch 106 SLA 1977)

Revisor's notes. — A reference to AS 19.45.001(4) was substituted for a reference to AS 19.05.130(4) in subsection (c) to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1977 amendment rewrote this section.

Opinions of attorney general. — This section is constitutional. 1961 Op. Att'y Gen., No. 12.

Article 2. Damages and Obstructions.

Section

30. Damages to obstructions, signs, and construction

Sec. 19.25.030. Damages to obstructions, signs, and construction. The driver or owner, or both, of a vehicle, self-propelling or otherwise, which passes through, over or around an obstruction placed under authority of AS 19.10.100, or a person who opens, removes or defaces an obstruction or warning sign without written permission

from the highway, of the work under title II ch 1

Collateral 2d, Highwa §§ 604-610. 40 C.J.S., 60 C.J.S., Liability

Section

- 80. Purpose
90. Outdoor
100. [Repeal
105. Limita signs,
110. [Obsole
120. [Obsole
130. Penalt

Sec. 19 19.25.180

- (1) to p highways devices a
(2) to p cles; to p or otherw to promo protection serve and the high
(3) to areas ad ondry s the regu
(4) to which a a public
(5) to signs, di areas a declared ch 59 SL § 1 ch 1

Sec. 19.25.240. Summary removal. The department may at any time remove from a state highway or road an encroachment which obstructs or prevents the use of the highway or road by the public. (§ 2 ch 64 SLA 1971)

Sec. 19.25.250. Removal after noncompliance; removal expense. After a failure of the owner of an encroachment to comply with a notice or demand of the department under the provisions of AS 19.25.200, 19.25.210 and 19.25.230, the department may remove, or cause to be removed, the encroachment, and the owner of the encroachment shall pay to the department:

- (1) the expenses of the removal of the encroachment;
- (2) all costs and expenses paid by the state as a result of a claim or claims filed against the state by third parties for damages due to delays because the encroachment was not changed, removed, or relocated according to the order of the department; and
- (3) costs and expenses of suit. (§ 2 ch 64 SLA 1971)

Chapter 27. Junk Yards.

Section	Section
10. Purpose	70. [Repealed]
20. Limitations of junk yards	80. Injunction
30. Junk yard's lawfully in existence	90. Interpretation
35. Screening by department; lien	100. Agreements with the United States
40. Requirements as to screening	110. Definitions
50. Authority to acquire property interests for removal or screening of junk yards	120. Penalty for violation
60. Violating junk yard a nuisance	130. Additional requirements
	140. Short title

Sec. 19.27.010. Purpose. For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways and other roads maintained by the state, and to preserve and enhance the scenic beauty of lands bordering public highways and other roads maintained by the state, it is declared to be in the public interest to regulate and restrict junk yards in areas adjacent to the interstate, primary and secondary systems within this state and other roads maintained by the state. The legislature finds and declares that junk yards which do not conform to the requirements of this chapter are public nuisances. (§ 1 ch 233 SLA 1968; am § 7 ch 155 SLA 1970; am § 1 ch 179 SLA 1976)

Legislative history reports. — For report on ch. 233, SLA 1968 (HCSCSSB 144 am FCC), see 1968 House Journal, p. 815.

Collateral references. — 58 Am. Jur. 2d, Occupations, Trades and Professions, §§ 1, 4, 5, 15.

Sec. 19.27.020. Limitations of junk yards. No person may establish, operate, or maintain a junk yard, any portion of which is within

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;

January 31, 1983

REPORT NO. 2INTRODUCTION OF BILLS (Senate)

Workers'
Compensation
(municipal
self
insurance)

SENATE BILL NO. 65, by the Rules Committee by request of the Governor. Would allow two or more municipalities to enter into an agreement to organize a self-insurance group in order to cover their liability for Workers' Compensation insurance under AS 23.30.

Sec. 1 amends AS 23.30.075, "Employer's liability to pay," by adding new (b) which authorizes municipalities to organize into self-insurance groups. Also amends confusing language in subsequent paragraph of 23.30.075 (see Governor's letter, below). Sec. 2 amends the definition of "self-insurer" contained in AS 23.30.265(19) to include members of municipal self-insurance groups.

Introduced January 24 and referred to Labor & Commerce and Finance.

In his message transmitting the bill to the Senate for consideration, Governor Sheffield stated:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to workers' compensation. This bill authorizes municipalities to establish self-insurance groups, under Workers' Compensation Board regulations, in order to cover their liability for workers' compensation insurance under AS 23.30.

The essence of this bill is in the new AS 23.30.075(b) in sec. 1. It would give municipalities an alternative form of insuring their workers' compensation liabilities. Instead of purchasing insurance policies to cover their workers' compensation liabilities, two or more municipalities will be able to pool their resources and become self-insurers.

Other states which have enacted similar legislation have found that group self-insurance funds are able to provide at least equal benefits and service to its injured workers and usually more efficiently and at less cost to the employer.

The amendment to newly designated AS 23.30.075(c) is intended to clear up some awkward and confusing language. In doing so, one of the changes removes the reference to "the person actively in charge of the business of said corporation." If that person has authority to insure the corporation, he is already covered by the preceding clause of that sentence. If he does not, he should not be subjected to this kind of personal liability. Section 2's amendment of AS 23.30.265(19) merely recognizes the new AS 23.30.075(b).

Utility
Facilities
(relocation of
by munic.)

SENATE BILL NO. 67, by the Labor & Commerce Committee. Would grant municipalities the authority to order a utility to relocate its facility if necessary for construction of a highway project. Would allow a municipality to order reloca-

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 67 (cont'd)

tion of utility facilities that are located "across, along, over, under, or within a right-of-way under its jurisdiction." The order must provide a reasonable time for compliance. Costs of relocation would be considered a cost of highway construction to be paid by the municipality.

The state is granted the power to relocate utility facilities under AS 19.25.020 (Relocation of utilities incident to highway projects). That section is amended by the bill to include municipalities.

Also amends AS 19.25.240 (Summary Removal) to allow municipalities to remove at any time from a highway or road under its jurisdiction an encroachment that obstructs or prevents the use of the highway or road by the public. Currently the section only grants that power to the state.

Sec. 5 of the bill states that a municipality is not obligated for utility facility relocation costs associated with a highway project for which general obligation bonds have been approved or for which state general fund appropriations have been received before the effective date of the bill.

Effective July 1, 1983.

Introduced January 25 and referred to Labor & Commerce and Community & Regional Affairs.

Susitna Hydro
(advisory vote
on financing)

SENATE BILL NO. 68, by Senator Kerttula. Would authorize an advisory vote on a method of financing the Susitna River Hydroelectric Project. The question, to be placed on the ballot for a special statewide election in October 1983, would be in substantially the following form: "Shall the Legislature . . . adopt a resolution placing an amendment to the constitution of the state before the qualified voters of the state providing for annual dedications of state revenue for 10 years beginning in the state fiscal year that commences on July 1, 1984, in an amount that totals \$2,300,000,000 to a fund established for the construction of the Susitna River Hydroelectric Project and providing for increases in the total amount for inflation and providing for interim investment of the dedicated amounts?" Provides for an immediate effective date. Identical to HB 121.

Introduced January 25 and referred to State Affairs, Resources and Finance.

Susitna Hydro
(authorizing &
approving)

SENATE BILL NO. 69, by Senator Kerttula. Would approve and authorize construction of the Susitna River Hydroelectric Project. Approves the feasibility study and finance plan submitted by law, and approves construction costs of \$5.4 billion, adjusted for inflation from January, 1983. Also approves, for the purposes of AS 44.83.325, the preliminary report for the project that was required to be prepared and submitted under AS 44.83.320(b).

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
February 8, 1983

Members Present: Senator Dick Eliason, Chair
Senator Bob Mulcahy
Senator Pat Rodey

Members Absent: Senator Don Bennett
Senator John Sackett

COMMITTEE CALENDAR

Senate Bill 67 - "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

WITNESS REGISTER

Dave Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.
237 East Fireweed Lane
Anchorage, Alaska 99503
586-2660
Position Statement: Supports SB 67, proposed amendment.

Ginny Chitwood, Executive Director
Alaska Municipal League
204 North Franklin St.
Juneau, Alaska 99801
586-1325
Position Statement: Opposes SB 67, issue should be determined on local level, placement should be in Title 29.

Patrick Anderson
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502
264-4431
Position Statement: Voiced objection to specific portions of bill, and will provide specific recommendations by Friday.

Gordon Parker
Alaska Telephone Association
3201 C Street, Suite 601
Anchorage, Alaska 99501
276-3293
Position Statement: Supports measure.

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #3
Recording
Number 004

Senator Eliason, Chair, called the meeting of the Labor and Commerce Committee to order at 1:35 pm with members Senator Mulcahy and Senator Rodey in attendance.

Number 020

Dave Hutchens, Executive Director of Alaska Rural Electric Cooperative Association, Inc., provided the first testimony on SB 67. He expressed support for the measure and offered an amendment to the bill. Several years ago, he stated, the legislature made a policy; whenever a state highway was being constructed utility relocation would be part of the construction cost. Presently the utility bears the cost when municipal road projects are in construction and a utility facility needs to be relocated. SB 67 will make the cost of the project include utility relocation. Last year the same measure passed the Senate late, and did not get through the House. The objections voiced last year included one concern with language (line 15, "under its jurisdiction" rather than "within its jurisdiction") and one concern dealt with by SB 67: for projects for which funding is in place (such as projects financed by bonding) and for which a municipality would not have adequate funds to cover utility relocation costs, an exemption is made. One of the major points stressed by Mr. Hutchens was that the utility does not cause the cost, but still pays. Dave Hutchens proposed an amendment prepared by Gary Thurlow of the Mat-Su Borough (Matanuska-Sustina); it amends Section 5 to read that "a municipality is not obligated for costs for relocating utility facilities which are not located in a municipal right of way pursuant to a valid easement or permit nor for costs for relocating utility facilities associated with a highway project for which general obligation bonds have been approved or for which state or federal grants have been received before the effective date of this act."

Number 300

Ginny Chitwood, Executive Director of the

Alaska Municipal League, provided testimony in opposition to SB 67. She stated that the measure did not belong in Title 19, Chapter 25, a section of the statutes concerned with state highways and roads. She further stated that the issue is a municipal one, and should be locally determined. In Anchorage a city ordinance is about to be adopted addressing the subject. Local determination more readily permits case by case determination. Ms. Chitwood stated that in the case of state grants going to a municipality for road construction it would be appropriate for the legislature to impose conditions. In the case of roads funded with federal dollars (state/federal) the cost is passed on to the feds.

Senator Rodey commented that the question is one of fairness. (Taxpayers end up paying...)

Number 380

Ms. Chitwood noted that most municipal officials are chiefly concerned about the proper placement of utilities.

Sen. Mulcahy commented that he didn't know why the measure wasn't placed in Title 29-- that it seemed to be "sneaking in the back door".

Sen. Eliason commented that the measure seems to spread the cost, assigning some of it to the municipality rather than concentrating the burden on the users (utility users).

Number 428

Pat Anderson, representing the Municipality of Anchorage, stated that the cost to the Municipality (of paying for utility facility relocation) would be \$1-2 million for what is on the street today. One objection of the Municipality not handled by Dave Hutchens' proposed amendment concerns the upgrading of utilities, and another concerns the question of general depreciation and whether the municipality bears the cost of replacement, thereby subsidizing the consumer. On a philosophical note, the Municipality of Anchorage maintains that the decision is best made at a local level. Mr. Anderson stated that he would submit the figures the committee had requested and would submit specific recommendations by Friday.

Number 505

Gordon Parker, representing the Alaska Tele-

phone Association (20 telephone companies) testified in support of the bill. He pointed out that although it is true that some communities do negotiate with the utility, but they are not compelled to do so under current law. He also clarified that there is not an intent to have municipalities fund expansion.

Number 538

There being no further testimony or questions, Sen. Eliason adjourned the meeting.

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
March 3, 1983
1:35 p.m.

Members Present: Sen. Dick Eliason, Chair
Sen. Bob Mulcahy
Sen. Pat Rodey

Members Absent: Sen. Don Bennett
* Sen. John Sackett

*Sen. Sackett arrived later in the meeting; see below.

COMMITTEE CALENDAR

SB 67 "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

WITNESS REGISTER

Marilyn Dimmick, Kenai Peninsula Borough
Box 850
Soldotna, Alaska 99669
262-4441, ext. 221
Position statement: Unalterably opposed to SB 67.

Dave Hutchens, Alaska Rural Electrification Cooperative Association
237 Fireweed, #301
Anchorage, Alaska 99503
276-3235
Position statement: Proposed committee substitute for SB 67 is a reasonable approach.

PREVIOUS ACTION

Please refer to Senate Labor and Commerce Committee minutes dated 2/8/83.

ACTION NARRATIVE

Tape #8
Number 004

Senator Eliason, Chair, called the meeting to order and brought a proposed Committee Substitute for SB 67 before the committee for consideration. The proposed CS has additional language in Section 3 provides that a municipality is not obligated to pay the cost of relocation of utility facilities that are not located in a municipal right-of-way under the conditions of a valid easement or permit.

Number 010

Marilyn Dimmick, representing the Kenai Peninsula City and Borough, and the City of Kenai, testified against SB 67. She stated that the Borough feels that all portions of the bill relating to a municipality are unnecessary, and would force a city to pay costs unjustifiably. She further stated that Kenai's utilities "are not performing well" and that Kenai would prefer to make determinations on a case-by-case basis. She is opposed to taking away local control. Case law, she said, has, for the most part, placed the financial burden on the utilities.

Number 096

Sen. Eliason drew Marilyn Dimmick's attention to the added language in the proposed CS, on page 2, line 3, Section 3, and asked her to restate her remarks relative to the change.

Marilyn Dimmick asserted that "this would work against us more than for us". If the state provides funds for roads, she assumes the state has the responsibility (for utility relocation costs). Sen. Eliason stated that such is not necessarily the case, that there is state funding through grants to municipalities, and asked if Marilyn Dimmick would prefer no state intrusion at all.

Ms. Dimmick stated that so far, the matter has not been a serious problem---when they should pay, they pay, when they shouldn't, they don't. Senator Mulcahy asked under what circumstances the municipality "shouldn't" pay, to which she responded that when utilities are incorrectly placed "or do something they shouldn't". Sen. Mulcahy asked if that were not what the amendment (CS) addresses, and Sen. Eliason confirmed that the amendment addresses that specific problem. Marilyn Dimmick stated that Kenai understands that, that they would follow such a guideline anyway and don't feel that they need a state statute, as they could adopt the measure by ordinance if they wished.

Sen. Sackett arrived, and his presence was noted for the record.

Number 190

Dave Hutchens, representing ARECA, testified briefly on the measure. ARECA, which serves also the Homer cooperative providing service to the Kenai Peninsula Borough, stated that the utilities do feel that there are problems. The cost causer should be the cost payer, Dave Hutchens contended, stating that is is a matter of principle. For example, if the municipality is widening the road, the cost of utility relocation should be borne by the municipality, rather than the utility. He stated that the proposed Committee Substitute is a "reasonable approach" which addresses a legitimate concern. The CS handles the concern expressed by municipalities in reference to the original bill by providing that the municipality need not pay for a utility not located according to an easement or permit.

Number 244

Sen. Sackett asked if the fiscal note would be changed if the CS were adopted, to which the Chair responded that he did not think so.

Senator Rodey moved that the Committee Substitute for SB 67 be adopted and moved from committee. He recommends "do pass".

Number 260

Meeting adjourned.

Offered: 3/28/84
Referred: Rules

AS Compared
to C+RA

Original sponsor: Labor and Commerce
Committee

1 IN THE SENATE

BY THE RULES COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 67 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

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

11 * Section 1. AS 29.48 is amended by adding new sections to read:

12

Sec. 29.48.052. RELOCATION OF UTILITY FACILITIES. (a) If,

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incident to the construction of a road or highway project, a municipality determines and orders that a utility facility that is located across, along, over, under, or within a right-of-way under its jurisdiction 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.

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(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 by the municipality. In addition, the owner of the facility shall indemnify the municipality for any amount for which the municipality may be liable to a contractor by reason of the encroachment.

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(c) The cost of change, relocation, or removal necessitated by municipal road or highway construction is a cost of road or highway construction to be paid by the municipality, notwithstanding the terms or provisions of any existing permit, agreement, regulation, or

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29

different wording

HCS CSSB 67(Rls)

1 statute to the contrary if

2 (1) the facilities have been placed in the municipal right-
3 of-way under a valid easement or permit; or

4 (2) the facilities were placed in the municipal right-of-
5 way before the municipality had a system for granting easements or
6 permits for utility facilities.

7 Sec. 29.48.054. SUMMARY REMOVAL. A municipality may at any time
8 remove from a road or highway under its jurisdiction an encroachment
9 that obstructs or prevents the use of the road or highway by the
10 public.

11 Sec. 29.48.056. DEFINITIONS. In AS 29.48.052 - 29.48.056

12 (1) "cost of change, relocation, or removal" means the
13 entire cost incurred by a utility properly attributed to the change,
14 relocation, or removal of a facility, less any costs for improvements
15 or upgrading over and above the cost of a functionally equal facility;
16 if a facility is to be relocated and replaced with new equipment,
17 there shall also be subtracted from the entire cost any salvage value
18 derived from the old facility; if the service life of a facility is
19 extended by the work done to change or relocate it, a percentage equal
20 to the percentage of extension of the facility's service life shall be
21 subtracted from the cost;

22 (2) "encroachment" means and includes a tower, pole, pole
23 line, pipe, pipeline, driveway, private road, fence, billboard, stand
24 or building, or a structure or object of any kind that is or has been
25 placed in, on, under, or over a portion of a road or highway;

26 (3) "utility" includes railroads and all publicly, pri-
27 vately, or cooperatively owned lines, facilities, and systems for
28 producing, transmitting, or distributing communications, telecommuni-
29 cations, power, electricity, light, heat, gas, oil, crude products,

deleted the service life of a facility may be determined
by the municipality + may be based on the utility
depreciation schedule for taxation or rate-setting purposes

1 water, steam, waste, storm water not connected with highway drainage,
2 and other similar commodities, including publicly owned fire and
3 police signal systems and street lighting systems.

4 * Sec. 2. A municipality is not obligated for utility facility reloca-
5 tion costs associated with a highway project for which general obligation
6 bonds have been approved or for which state general fund appropriations
7 have been received before the effective date of this Act.

8 * Sec. 3. This Act takes effect July 1, 1984.

Offered: 2/22/84
Referred: Rules

AS compared

Original sponsor: Labor and Commerce
Committee

to CSSB 67(L&C)

am

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 67 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

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

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

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(a) If, incident to the construction of a highway project, the department or a municipality determines and orders that a utility facility that is located across, along, over, under, or within a [STATE] right-of-way under its jurisdiction 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.

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* Sec. 2. AS 19.25.020(b) is amended to read:

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(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 AS 19.25.240 - 19.25.250. In addition, the owner of the facility shall indemnify the state or municipality for any amount for which the state or municipality may be liable to a contractor by reason of the encroachment.

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

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(c) The cost of change, relocation, or removal, as defined in AS 19.45.001(4), necessitated by highway construction, is a cost of highway construction to be paid by the state or municipality [IN

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1 ACCORDANCE WITH AS 19.45.001(4)], notwithstanding the terms or pro-
2 visions of any existing permit, agreement, regulation or statute to
3 the contrary, except that a municipality is not obligated to pay the
4 cost of relocation of utility facilities that are located in a municipi-
5 pal right-of-way unless:

6 (1) the facilities have been placed in the municipal
7 right-of-way under a valid easement or permit; or

8 (2) the facilities were placed in the municipal
9 right-of-way before the municipality had a system for granting
10 easements or permits for utility facilities.

11 * Sec. 4. AS 19.25.240 is amended to read:

12 Sec. 19.25.240. SUMMARY REMOVAL. The department or a municipal-
13 ity may at any time remove from a [STATE] highway or road under its
14 jurisdiction an encroachment that [WHICH] obstructs or prevents the
15 use of the highway or road by the public.

16 * Sec. 5. AS 19.45.001(4) is amended to read:

17 (4) "cost of change, relocation, or removal" means the
18 entire cost incurred by the utility properly attributed to the change,
19 relocation, or removal of a facility, less any costs for improvements
20 or upgrading over and above the cost of a functionally equal facility;
21 if a facility is to be relocated and replaced with new equipment,
22 there shall also be subtracted from the entire cost any salvage value
23 derived from the old facility; if a facility's service life is extend-
24 ed by the work done to change or relocate it, a percentage equal to
25 the percentage of extension of the facility's service life shall be
26 subtracted from the cost;

27 * Sec. 6. A municipality is not obligated for utility facility reloca-
28 tion costs associated with a highway project for which general obligation
29 bonds have been approved or for which state general fund appropriations

1 have been received before the effective date of this Act.

2 * Sec. 7. This Act takes effect July 1, 1984.

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

907-983-2297

March 5, 1984

Senator Richard Eliason
Pouch V
Juneau, Alaska 99811

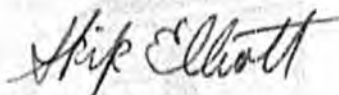
Dear Senator Eliason;

You recently received a letter from Dave Palmer, City Administrator of Craig, regarding House CS for CS for Senate Bill 67 (L&C). In it he discusses some of the serious problems connected with this new version of the utility relocation bill. I have discussed this matter with the Skagway City Council and they are strongly opposed to this bill as it stands.

Skagway's strongest objection is that this bill negates existing mutually-agreeable relocation contracts. Last year for instance, the City of Skagway finally signed a franchise agreement with Alaska Power & Telephone Company regarding right-of-way usage. This concluded a year of heated arguments regarding, among other things, quality of service, possible condemnation, and power pole relocation. The two final points of contention were the term of the agreement and the cost of utility relocation as a consequence of public construction. The final result was a twenty year franchise in return for Alaska Power & Telephone Company's agreement to pay all relocation costs. If the current House version of SB67 passes then the City would be saddled with a 20 year franchise which no longer contains the major provision fought for and won by the City of Skagway.

The City Council has consequently asked me to write you on this matter and request that you vigorously oppose passage of any version of this bill that does not allow municipalities and utilities to mutually agree upon allocation of relocation expenses.

Sincerely,



Skip Elliott
City Manager

CC Representative Peter Goll
Alaska Municipal League
Dave Palmer, City of Craig

Comments on House CS for CS for SB 67 (L&C)

by

Dave Palmer, City Administrator
City of Craig, Alaska
P.O. Box 23
Craig, Ak. 99921

I want to start by mentioning some specific problems with the bill, and follow with some general comment.

The first section (AS 19.25.020 [a]) adds "municipality" as an entity with the authority to order the relocation of a utility within a right of way under its jurisdiction.

COMMENT: The municipal authority to regulate activity within rights of way already exists and is found in AS 29.48.035. This amendment duplicates existing authority.

AS 19.25.020 (c) references the definition of "cost" as in AS 19.45.001(4) a copy is attached.

COMMENT: No definition of "highway construction" is given. However, "highway" is defined at AS 19.45.001(8) and reads:

"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 of 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;"

This is an overly broad definition including minor activities such as the relocation of utilities for drainage culverts, driveways, and minor street improvements. The provisions of this bill extend beyond the transfer of cost of the relocation of utilities in major grant funded projects. Apparently, the relocation cost for any "highway" project is transferred to the municipality.

AS 19.25.020(c) in the bill contains several exclusions and exceptions, primarily battle scars of several committee hearings and it is difficult to understand.

First, relocation cost is identified as an allowable cost of construction and that cost is to be borne by the municipality...there is no discretion allowed, the bill states the cost is TO BE PAID by the state or municipality EXCEPT

(notwithstanding a valid permit system) a municipality is relieved of the relocation cost UNLESS

1. The facilities have been placed in the municipal right of way under a valid easement or permit; or
2. The facilities were placed BEFORE a system of permits existed.

Comments on CS for CSSB67 (L&C)
Dave Palmer
page 2

In other words, the municipality pays if placement falls under a permit or agreement and the municipality pays if the placement occurred absent a permit process.

So: the municipality pays both when a process exists and when a process does not exist.

It appears that the bill would prohibit the municipality and a utility company from negotiating an agreement that would provide for the utility to assume the cost of relocation [from the mandatory language of 19.25.020(c)].

It appears that for facilities placed under a former (but now expired) agreement, the municipality would pay, regardless of the terms of the agreement, since the permit is not currently valid.

It appears that facilities placed without permission and without authority (absent a permit process) must be relocated at municipality expense, as well. I question the equity of requiring a municipality or any government to pay for actions taken by a utility company without permission or authority.

This bill reaches back in time and makes the municipality responsible to pay to move existing utilities, regardless of the authority--or lack of authority, granted to the utility. The bill places a burden on the municipality for actions taken in the past. It also commits the municipality for future costs.

DISCUSSION ON THE MERITS OF THE BILL:

The granting of permission to use rights of way is just that, a discretionary grant of permission to use land a utility does not own. There is a substantial benefit to a utility company for private use of public property. Acceptance of the cost to move utilities when necessary for the public good is a very reasonable cost of operation compared to the option of negotiating or purchasing easements privately. The use by the private sector of publically owned land is, in effect, a subsidy to that operation. To require the public, the owners of that land, to pay the cost incident to the use of public land is not a fair division of costs. The transfer of relocation costs from the private sector to the public sector does not benefit the public. It benefits the private utility company and the utility company's profit and loss picture. Further, this transfer removes from local control a legitimate negotiable item that can be and is dealt with at the local level. In exchange for a long term authority to operate in public rights of way, utility companies have not found the assumption of relocation costs unacceptable.

The City of Craig is served by Alaska Power and Telephone Company of Port Townsend, Washington. They serve Skagway, Hydaburg, Tok-Dot Lake and Craig. Their agreement with Skagway provides that the company will move utilities when necessary at their expense. In exchange, they are assured of a 20 year commitment to use the right of way and other aspects of their operation are clarified.

Comments on HC for HC SB67 (L & C)
Dave Palmer
page 3

The 20 year permit in Craig expired about 2 years ago. Therefore, under the terms of the bill, Craig is liable for relocation expenses for all past installations (done under the then valid system) as well as current installations (placed before a system is put into place).

Alaska Power and Telephone officials ;have indicated to me that a permit system similar to Skagway's would be acceptable to them. This bill would obviously change the terms of our negotiation.

Basically, we believe the authority of a municipality to exercise its regulatory authority over rights of way pursuant to AS 29.48.035 should not be transferred by the state to private utility companies. Requiring a municipality to assume direct costs when it exercises its discretionary authority reduces the municipality's ability to properly protect the public interest (because some negotiating points with the utility have already been given away).

This is a local control issue. There is a satisfactory process in place to deal with this issue now. In this case, the old saying applies: "If it's not broke, don't fix it".

§ 19.40.210

by industrial or commercial
to maintain the highway and keep
it throughout the year.

means
resource exploration and
development, if the individual engaged
in it; or
by local residents to their

which are common carriers
under the Transportation Commis-
sion (AS 19.40.30)

ion of the highway. The
highway between the
shall keep that section of the
on June 1 and September 1
(AS 19.40.120)

revised by the revisor of statutes pur-
suant to AS 01.05.031.

to traffic. The provisions
of the highway by the department.

revised by the revisor of statutes pur-
suant to AS 01.05.031.

of land within five
years to dispose of state land under
the right-of-way of the highway.

for attorney general's opinion
of the governor that the house and
did not pass the same bill, see Op.
n. July 1, 1980.

d vehicles. Off-road vehi-
cles of the right-of-way of the
shall not apply to a person who
owns the highway and who must use
the highway to gain access
(AS 19.40.200(b))

§ 19.45.001

AND FERRIES

§ 19.45.001

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) "unimproved" means

#1

File

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.

Municipally Owned Utilities

Anchorage - water, electricity, telephone

Juneau - water, sewer

North Slope - water, electricity

Sitka - electricity, water, sewer

Akhiok - water, sewer, electricity

Akiak - telephone

Akutan - water, sewer, electricity

Alakanuk - water, sewer

Allakaket - electricity

Ambler - water, sewer

Angoon - water, sewer

Atmautluak - water, sewer, electricity, telephone

Bethel - water, sewer,

Buckland - water, electricity

Chefornak - electricity

Chetvik - water

Craig - water, sewer

Deering - water

Eagle - water

Eek - water

Elim - water, sewer

Emmonak - water, sewer

Fairbanks - water, sewer, electricity, telephone

Fortuna Ledge - water, sewer

Galena - water, sewer

Gambell - water

Golovin - electricity

Goodnews Bay - water, sewer, electricity

Gambell - water

Golovin - electricity

Goodnews Bay - water, sewer, electricity, telephone

Haines - water, sewer

Hughes - water, electricity

Huslia - water, sewer

Hydaburg - water, sewer

Kaltaq - water, sewer

Kasaan - water

Kenai - water, sewer

Ketchikan - water, sewer, electricity, telephone

Kiana - water, sewer

King Cove - water, sewer, telephone, electricity

Klawock - water, sewer

Kodiak - water, sewer

Kotlik - water, electricity

Kotzebue - water, sewer

Koyuk - water

Larsen Bay - water, sewer, telephone

Lower Kalskag - water, sewer

Manokotak - water, sewer, telephone

Napakiat - water

Nenana - water

Nightmute - electricity, telephone

Nikolai - electricity, telephone

Nome - water, sewer, electricity
Noorvik - water, sewer
North Pole - water, sewer
Nuisqsut - water, sewer, electricity, telephone
Nulato - water, sewer
Palmer - water, sewer
Petersburg - water, sewer
Pilot Station - water, sewer
Platinum - electricity
Port Lions - water, sewer
Ruby - electricity
St. Mary's - water, sewer
St. Michael - electricity, telephone
St. Paul - water
Sand Point - water, sewer
Saxman - water, sewer
Scammon Bay - water, sewer
Seldovia - water, sewer
Seward - water, electricity
Shageluk - water, telephone
Sheldon Point - water, telephone
Shishmaref - water
Skagway - water,
Soledotna - water, sewer
Stebbins - water, electricity
Tanana - water, sewer
Tenakee Springs - electricity

Thorne Bay - water, sewer, electricity

Togiak - water, sewer

Tuluksak - water, telephone

Unalakleet - water, sewer

Unalaska - water, electricity

Valdez - water, sewer

Wasilla - water

Wrangell - water, sewer, electricity

Yakutat - water, sewer

CITY OF CRAIG



P.O. Box 23
Craig, Alaska 99921
(907) 826-3275

February 27, 1984

Senator Dick Eliason
Pouch V
Juneau, Alaska 99811

Dear Dick:

I am writing with comments on what's left of SB67 - now House CS for CS for SB 67 (L&C).

I have an objection to the bill on public policy issues as well as technical objections. Policy first.

A utility that is a private, for profit enterprise (like AP&T) uses the public Right of Way in the exercise of their business. The public is entitled to compensation for such private use of public property. The only compensation requested of AP&T has been that their utilities "be located at such places as will not unreasonably interfere with travel or public use of such streets..." SB 67 now places burden on the municipality to move utilities when necessary for public good. In otherwords, the public is required to pay to move private facilities located within public Right of Way when the public Right of Way is needed for public uses. Use of the public Right of Way by a private company is not a right, and such use should not become a burden on the very same entity that grants permission to use the Right of Way.

To the bill:

1. If the intent of the bill is to allow relocation costs to be part of grant funding, it should just say so. There is no definition of "highway construction" but "highway" is defined in AS 19.45.001(8) and it includes everything from trails to culverts. In Craig, any action in the Right of Way, culvert installation, driveways, retaining walls and the like, would be "highway construction". I'd like to see minor projects excluded. Say, define "highway construction" as a grant funded project exceeding a value of \$250,000.00. This would avoid small, day to day relocation expenses for guy wires and individual poles.

Continued 2-27-84 City of Craig to Senator Eliason

2. The exclusions in (1) and (2) of Section 3 of the bill mean that the city will pay to relocate utilities placed in the past, since we had a franchise. Or, since the word franchise is not included, does this exclude all utilities placed from 1962 to 1982 under the Craig-AP&T franchise? Certainly, since the franchise expired in 1982, anything placed now, would be Craig's responsibility. I would sincerely request that the bill apply only to facilities placed after its effective date. That is only fair. Don't let the bill change the rules now that we've allowed utilities in the Right of Way for 22 years.

3. The bill should not preclude a municipality and a utility from mutually agreeing to a different allocation of relocation costs if they want. Leave the local parties some room to work out their own problems. The solution for Kenai may not work in Craig.

I am sending this to you because as chair of Senate Labor and Commerce committee, you are familiar with the bill. You are also familiar with Craig and AP&T. Since the bill is now on the way to House Rules, I don't know what opportunity exists to correct problems before it gets to the House Floor. By copy of this letter to Peter Goll, I am asking him to consider the amendments suggested here and to introduce them on the floor if that seems appropriate. These amendments, again:

1. Define highway construction as a grant-funded project for highways in excess of \$250,000.


2. Provide that this bill applies to all utility facilities installed after the effective date.

3. Provide that nothing in this bill precludes a municipality and utility company from mutually reaching some other agreement with regard to the allocation of relocation expenses.

I am enclosing a copy of my testimony before the House Labor & Commerce committee on this bill for your information.

Thank you for your time on this issue.

Sincerely,


David R. Palmer
City Administrator

DRP/hg

Enclosure

CC: Rep. Peter Goll
Sen. Don Gilman
AML
SKip Elliott - Skagway



CITY OF CRAIG

P.O. Box 23
Craig, Alaska 99921
(907) 826-3275

February 27, 1984

Robert Grimm
Alaska Power & Telephone
Box 222
Port Townsend, Washington 98368

Dear Bob:

We discussed the need to negotiate a permit process for the location of utility facilities within the Right of way in Craig. An example of the Skagway permit was used.

A bill has passed the Senate and is on it's way to the House floor that will negate the existing permit with Skagway and will change the rules by which we will manage the city's Rights of way. The bill is House CS for CS for SB67 (L&C) and it is being pushed by the utility companies. On the face of it, the bill seems to be a good deal for utility companies and seems to set forth a commendable policy of "cost-causer is the cost-payer". In fact, I think the utility companies are being short-sighted. I know the bill will cause friction between Craig and AP&T and our citizens and your customers will be the losers.

The bill, in Section 3, states that relocation of utility facilities necessitated by highway construction will be paid by the municipality. There is no definition of "highway construction" but "highway" is defined in AS19.45.001(8) and it is very general.

The section goes on to negate existing permits with the term "notwithstanding the terms... of any existing permit..." There are some exceptions, but if you read it several times, it becomes clear that for utilities located when a permit process was in effect (for the past 20 years here) or for utility facilities located before a process existed, the city pays the cost to relocate.

From a utility perspective, that probably sounds fine, it means that regardless of the agreement in effect when the poles were installed, now the city pays. This retroactive aspect of the bill is part that is most objectionable to me, since it changes the responsibilities among us, contrary to any prior agreement.

Continued 2-27-84 City of Craig to AP&T - House CS for SB67

If the bill passes, and if the city is given the responsibility to pay to relocate utilities when necessary to move them for the public good, a new permit system will have to be implemented immediately. We will no longer be able to offer blanket authority to use the Right of Way, but we will have to grant individual permits for each installation. To assure that our liability will be held to a minimum, I expect to require surveys of the Right-of Way and I suppose all utilities will be required to be located at the edge of the Right of Way, regardless of topography, timber, geology, and so forth. In other words, we will both lose the flexibility to design utility installations in a cost effective manner if, by allowing a utility to locate other than on the edge of a Right of Way, the city assumes the liability to move it in the future.

I hate to see another item for us to battle over, as I believe we can negotiate a satisfactory agreement without additional legislative interference. I would appreciate your comments on this issue. Hopefully it's not too late to stop this bad legislation.

Sincerely,



David R. Palmer
City Administrator

DRP/hg

CC: Representative Peter Goll
Senator Richard Eliason
Elizabeth Cuadra, Attorney

Comments on House CS for CS for SB 67 (L&C).

by
Dave Palmer, City Administrator
City of Craig, Alaska
P.O. Box 23
Craig, Ak. 99921

I want to start by mentioning some specific problems with the bill, and follow with some general comment.

The first section (AS 19.25.020 [a] adds "municipality" as an entity with the authority to order the relocation of a utility within a right of way under its jurisdiction.

COMMENT: The municipal authority to regulate activity within rights of way already exists and is found in AS 29.48.035. This amendment duplicates existing authority.

AS 19.25.020 (c) references the definition of "cost" as in AS 19.45.001(4) a copy is attached.

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This is an overly broad definition including minor activities such as the relocation of utilities for drainage culverts, driveways, and minor street improvements. The provisions of this bill extend beyond the transfer of cost of the relocation of utilities in major grant funded projects. Apparently, the relocation cost for any "highway" project is transferred to the municipality.

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First, relocation cost is identified as an allowable cost of construction and that cost is to be borne by the municipality...there is no discretion allowed, the bill states the cost is TO BE PAID by the state or municipality EXCEPT

(notwithstanding a valid permit system) a municipality is relieved of the relocation cost UNLESS

1. The facilities have been placed in the municipal right of way under a valid easement or permit; or
2. The facilities were placed BEFORE a system of permits existed.

Comments on CS for CSSB67 (L&C)
Dave Palmer
page 2

In other words, the municipality pays if placement falls under a permit or agreement and the municipality pays if the placement occurred absent a permit process.

So: the municipality pays both when a process exists and when a process does not exist.

It appears that the bill would prohibit the municipality and a utility company from negotiating an agreement that would provide for the utility to assume the cost of relocation [from the mandatory language of 19.25.020(c)].

It appears that for facilities placed under a former (but now expired) agreement, the municipality would pay, regardless of the terms of the agreement, since the permit is not currently valid.

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This bill reaches back in time and makes the municipality responsible to pay to move existing utilities, regardless of the authority--or lack of authority, granted to the utility. The bill places a burden on the municipality for actions taken in the past. It also commits the municipality for future costs.

DISCUSSION ON THE MERITS OF THE BILL:

The granting of permission to use rights of way is just that, a discretionary grant of permission to use land a utility does not own*. There is a substantial benefit to a utility company for private use of public property. Acceptance of the cost to move utilities when necessary for the public good is a very reasonable cost of operation compared to the option of negotiating or purchasing easements privately. The use by the private sector of publically owned land is, in effect, a subsidy to that operation. To require the public, the owners of that land, to pay the cost incident to the use of public land is not a fair division of costs. The transfer of relocation costs from the private sector to the public sector does not benefit the public. It benefits the private utility company and the utility company's profit and loss picture. Further, this transfer removes from local control a legitimate negotiable item that can be and is dealt with at the local level. In exchange for a long term authority to operate in public rights of way, utility companies have not found the assumption of relocation costs unacceptable.

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Comments on HC for HC SB67 (L & C)
Dave Palmer
page 3

The 20 year permit in Craig expired about 2 years ago. Therefore, under the terms of the bill, Craig is liable for relocation expenses for all past installations (done under the then valid system) as well as current installations (placed before a system is put into place).

Alaska Power and Telephone officials ;have indicated to me that a permit system similar to Skagway's would be acceptable to them. This bill would obviously change the terms of our negotiation.

Basically, we believe the authority of a municipality to exercise its regulatory authority over rights of way pursuant to AS 29.48.035 should not be transferred by the state to private utility companies. Requiring a municipality to assume direct costs when it exercises its discretionary authority reduces the municipality's ability to properly protect the public interest (because some negotiating points with the utility have already been given away).

This is a local control issue. There is a satisfactory process in place to deal with this issue now. In this case, the old saying applies: "If it's not broke, don't fix it".

* APPARENTLY TITLE 45 REQUIRES A MUNICIPALITY TO
ALLOW USE OF R/W FOR UTILITY PURPOSES, BUT THE M.
MAY CHARGE REASONABLE FEES, ETC...

§ 19.40.210

by industrial or commercial means to maintain the highway and keep it open throughout the year.

means resource exploration and development, if the individual engaged in the activity; or activities by local residents to their

which are common carriers as defined by the Transportation Commission.

ion of the highway. The provisions of this section shall apply to the highway between the points specified in June 1 and September 1 of each year. (AS 19.40.210)

revised by the revisor of statutes pursuant to AS 01.05.031.

to traffic. The provisions of this section shall apply to the highway by the department.

revised by the revisor of statutes pursuant to AS 01.05.031.

use of land within five miles of the highway to dispose of state land under the right-of-way of the highway.

for attorney general's opinion that the governor, the house and the senate should not pass the same bill, see Op. Atty. Gen. July 1, 1980.

and vehicles. Off-road vehicles on the right-of-way of the highway shall not apply to a person who is using the highway and who must use the highway to gain access to the highway. (AS 19.40.200(b))

§ 19.45.001

HIGHWAYS AND FERRIES

§ 19.45.001

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) "maintenance"

FLOOR COMMENTS ON SB 67

CSSB 67 MAKES THE COST OF RELOCATING UTILITY FACILITIES INCIDENT TO A MUNICIPAL HIGHWAY PROJECT A COST OF THE HIGHWAY PROJECT. THIS WOULD ALLOW ALL OF THE COSTS, AS WELL AS ALL THE BENEFITS, OF A PROPOSED PROJECT TO BE CONSIDERED AT THE TIME A MUNICIPALITY DECIDES TO RELOCATE OR WIDEN A ~~HIGHWAY~~ ^{STREET}.

UNDER CURRENT STATUTES, A MUNICIPAL GOVERNMENT MAY ORDER A UTILITY TO RELOCATE ITS FACILITIES AT ITS OWN EXPENSE. IT SEEMS ONLY FAIR THAT IF A MUNICIPAL PROJECT CAUSES THE COST OF UTILITY RELOCATION, THEN THAT MUNICIPALITY SHOULD BE RESPONSIBLE FOR THAT COST. CSSB 67 WOULD ALLOW THIS TO HAPPEN.

HOWEVER, IF UTILITY FACILITIES ARE NOT LOCATED IN A MUNICIPAL RIGHT-OF-WAY UNDER THE CONDITIONS OF A VALID EASEMENT OR PERMIT, A MUNICIPALITY WOULD NOT BE OBLIGATED TO PAY THE COST OF THE RELOCATION.

CSSB 67 IS A FAIR RESPONSE TO THE QUESTION OF WHO WILL BEAR THE COST OF UTILITY RELOCATION AND I URGE YOUR SUPPORT TO THIS LEGISLATION.

ANSWER TO POSSIBLE CONCERN:

1) A MUNICIPALITY IS NOT OBLIGATED FOR UTILITY FACILITY RELOCATION COSTS ASSOCIATED WITH A HIGHWAY PROJECT FOR WHICH GENERAL OBLIGATION BONDS HAVE BEEN APPROVED OR FOR WHICH STATE GENERAL FUND APPROPRIATIONS HAVE BEEN RECEIVED BEFORE THE EFFECTIVE DATE OF THE BILL.

2) CURRENTLY STATE AND FEDERAL HIGHWAY PROJECTS RECOGNIZE UTILITY RELOCATION AS AN ALLOWABLE EXPENSE.

19.40.100. Use of the highway by industrial or commercial. (a) The department shall maintain the highway and keep industrial or commercial traffic throughout the year.

Industrial or commercial travel" means

travel necessary and related to resource exploration and development or to support of those activities, if the individual engaged in those activities has all necessary permits; or

travel necessary and related to access by local residents to their property

or carriers engaged in commerce which are common carriers

or carriers regulated by the Alaska Transportation Commission AS 42.10. (§ 3 ch 177 SLA 1980)

19.40.110. Public use of a portion of the highway. The

department shall maintain the section of the highway between the

Ver and Dietrich Camp and shall keep that section of the

highway open to use by the public between June 1 and September 1

(§ 4 ch 177 SLA 1980; AS 19.40.120)

notes. — This section was renumbered by the revisor of statutes pursuant to AS 19.40.120 but was pursuant to AS 01.05.031.

19.40.120. Closure of the highway to traffic. The provisions

of 19.40.100 apply to the closure of the highway by the department.

(§ 7, SLA 1980; AS 19.40.110)

notes. — This section was renumbered by the revisor of statutes pursuant to AS 19.40.110 but was pursuant to AS 01.05.031.

19.40.200. Prohibition on disposal of land within five

miles of the highway. The state may not dispose of state land under

which is within five miles of the right-of-way of the highway.

(§ 7 SLA 1980)

For history reports. — For 1978. For attorney general's opinion after returning SCS HB am S (date) see 1980 House Journal and 1980 Senate Journal, p. 1781. For attorney general's opinion advising the governor that the house and senate did not pass the same bill, see Op. Atty. Gen. July 1, 1980.

19.40.210. Prohibition of off-road vehicles. Off-road vehicles

are prohibited on land within five miles of the right-of-way of the

highway. However, this prohibition does not apply to a person who

has a mining claim in the vicinity of the highway and who must use

the highway within five miles of the right-of-way of the highway to gain access

to his mining claim. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

notes. — This section was renumbered by the revisor of statutes pursuant to AS 19.40.200(b) but was pursuant to AS 01.05.031.

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;

SENATE AMENDMENT

#1

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.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

ANCHORAGE WATER & SEWER UTILITIES



Tony Knowles
Mayor

March 7, 1983

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



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 AWWU 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

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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

March 25, 1983

BILL ANALYSIS

RE: CSSE 67

SPONSOR: SENATE LABOR & COMMERCE COMMITTEE

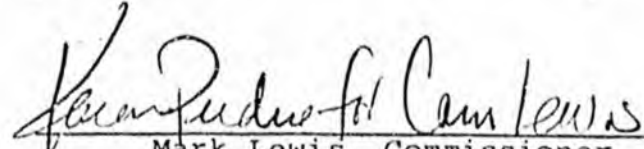
PROGRAM EFFECTS OF BILL

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
 Division: Local Government Assistance
 Approved by Commissioner: [Signature]
 Department: Community & Regional Affairs

Phone: 465-4730
 Date: 3/25/83
 Date: 3/25/83

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 RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

April 7, 1983

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

RE: CSSB 67

Dear Senator Eliason:

The Committee Substitute for Senate Bill 67 makes the cost of relocating utility facilities incident to a municipal highway project a cost of the highway project. This practice in regard to municipal highway projects would then be identical to the practice relating to State highway projects.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the State government.

In some cases the expense will be assumed by the municipality. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without Senate Bill 67, the municipality considers all of the benefits of a proposed project, but it only considers a part of the cost.

Sincerely,

David Hutchens
Executive Director

AMENDED TITLE: HCSCSSB 67(RLS)AM H(FLD H)
AN ACT RELAYING TO THE RELOCATION OF UTILITY FACILITIES
INCIDENT TO THE CONSTRUCTION OF HIGHWAY PROJECTS BY A
MUNICIPALITY; AND PROVIDING FOR AN EFFECTIVE DATE
PRIME SPONSOR: SENATE LABOR&COMM COMMITTEE.

CO-SPONSORS:
CURRENT STATUS: 4/05/84 RET (H) RULES

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/25/83	01	0062	FIRST READING -- COMMITTEE REPORTS
03/04/83	02	0314	L&C -- CS04
03/30/83	03	0537	C&RA -- DNP01, NR02
04/11/83	04	0652	RLS -- L&C CS04, OTHER04 TAKEN UP IMMEDIATELY
04/11/83	05	0657	SECOND READING
04/11/83	06	0657	L&C CS ADOPTED BY UNAN CONSENT
04/11/83	07	0658	AM01 ADOPTED BY DIV 17-01-02
04/11/83	08	0658	ADVANCED TO 3RD READING BY UNAN CONSENT
04/11/83	09	0658	THIRD READING
04/11/83	10	0659	PASSED BY DIV 17-01-02
04/11/83	11	0659	EFFECTIVE DATE VOTE SAME AS PASSAGE

*** ** ** *** ** **

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/12/83	12	0817	FIRST READING -- COMMITTEE REPORTS
05/11/83	13	1277	C&RA -- DNP03, CS01, NR02, OTHER01
05/11/83	14	1278	CHAIRMAN'S REPORT
02/22/84	15	2662	L&C -- CS04, NR01
02/22/84	16	2662	L&C F/NOTE EQUALS ZERO
03/28/84	17	3083	RLS -- DNP02, CS05 RULES
03/30/84	18	3146	POSTPONED UNTIL 04/03/84 BY UNAN CONSENT
04/03/84	19	3190	SECOND READING
04/03/84	20	3190	RLS CS ADOPTED BY DIV 24-16-00
04/03/84	21	3191	POSTPONED UNTIL 04/04/84 BY UNAN CONSENT
04/04/84	22	3205	SECOND READING
04/04/84	23	3205	AM01 ADOPTED BY UNAN CONSENT
04/04/84	24	3206	AM02 NOT ADOPTED BY DIV 14-23-03
04/04/84	25	3206	ADVANCED TO 3RD READING BY UNAN CONSENT
04/04/84	26	3206	THIRD READING
04/04/84	27	3206	FAILED BY DIV 11-27-02
04/04/84	28	3207	NOTICE OF RECONSIDERATION GIVEN
04/05/84	29	3226	RECOMMITTED TO RLS BY DIV 21-15-04

COMMITTEE REPORT

SENATE

FURTHER COMMUNITY & REGIONAL AFFAIRS

1/25/83

Date: 2-3-83

Mr. President:

The Committee on LABOR & COMMERCE has had SENATE BILL NO. 67

An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and eff. 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 5000 (1-1) same title
 new title
- and recommends depon
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

Proposed Amendment to Senate Bill 67

Amend Section 5 to read:

*Sec. 5. A municipality is not obligated for costs for relocating utility facilities which are not located in a municipal right of way pursuant to a valid easement or permit nor for costs for relocating utility facilities associated with a highway project for which general obligation bonds have been approved or for which state or federal grants have been received before the effective date of this act.

Submitted by
Dave Hutchens
ARECA

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
March 3, 1983
1:35 p.m.

Members Present: Sen. Dick Eliason, Chair
Sen. Bob Mulcahy
Sen. Pat Rodey

Members Absent: Sen. Don Bennett
* Sen. John Sackett

*Sen. Sackett arrived later in the meeting; see below.

COMMITTEE CALENDAR

SB 67 "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

WITNESS REGISTER

Marilyn Dimmick, Kenai Peninsula Borough
Box 850
Soldotna, Alaska 99669
262-4441, ext. 221
Position statement: Unalterably opposed to SB 67.

Dave Hutchens, Alaska Rural Electrification Cooperative Association
237 Fireweed, #301
Anchorage, Alaska 99503
276-3235
Position statement: Proposed committee substit. for SB 67 is a reasonable approach.

PREVIOUS ACTION

Please refer to Senate Labor and Commerce Committee minutes dated 2/8/83.

ACTION NARRATIVE

Tape #8
Number 004

Senator Eliason, Chair, called the meeting to order and brought a proposed Committee Substitute for SB 67 before the committee for consideration. The proposed CS has additional language in Section 3 provides that a municipality is not obligated to pay the cost of relocation of utility facilities that are not located in a municipal right-of-way under the conditions of a valid easement or permit.

Number 010

Marilyn Dimmick, representing the Kenai Peninsula City and Borough, and the City of Kenai, testified against SB 67. She stated that the Borough feels that all portions of the bill relating to a municipality are unnecessary, and would force a city to pay costs unjustifiably. She further stated that Kenai's utilities "are not performing well" and that Kenai would prefer to make determinations on a case-by-case basis. She is opposed to taking away local control. Case law, she said, has, for the most part, placed the financial burden on the utilities.

Number 096

Sen. Eliason drew Marilyn Dimmick's attention to the added language in the proposed CS, on page 2, line 3, Section 3, and asked her to restate her remarks relative to the change.

Marilyn Dimmick asserted that "this would work against us more than for us". If the state provides funds for roads, she assumes the state has the responsibility (for utility relocation costs). Sen. Eliason stated that such is not necessarily the case, that there is state funding through grants to municipalities, and asked if Marilyn Dimmick would prefer no state intrusion at all.

Ms. Dimmick stated that so far, the matter has not been a serious problem---when they should pay, they pay, when they shouldn't, they don't. Senator Mulcahy asked under what circumstances the municipality "shouldn't" pay, to which she responded that when utilities are incorrectly placed "or do something they shouldn't". Sen. Mulcahy asked if that were not what the amendment (CS) addresses, and Sen. Eliason confirmed that the amendment addresses that specific problem. Marilyn Dimmick stated that Kenai understands that, that they would follow such a guideline anyway and don't feel that they need a state statute, as they could adopt the measure by ordinance if they wished.

Sen. Sackett arrived, and his presence was noted for the record.

Number 190

Dave Hutchens, representing ARECA, testified briefly on the measure. ARECA, which serves also the Homer cooperative providing service to the Kenai Peninsula Borough, stated that the utilities do feel that there are problems. The cost causer should be the cost payer, Dave Hutchens contended, stating that is is a matter of principle. For example, if the municipality is widening the road, the cost of utility relocation should be borne by the municipality, rather than the utility. He stated that the proposed Committee Substitute is a "reasonable approach" which addresses a legitimate concern. The CS handles the concern expressed by municipalities in reference to the original bill by providing that the municipality need not pay for a utility not located according to an easement or permit.

Number 244

Sen. Sackett asked if the fiscal note would be changed if the CS were adopted, to which the Chair responded that he did not think so.

Senator Rodey moved that the Committee Substitute for SB 67 be adopted and moved from committee. He recommends "do pass".

Number 260

Meeting adjourned.

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
February 8, 1983

Members Present: Senator Dick Eliason, Chair
Senator Bob Mulcahy
Senator Pat Rodey

Members Absent: Senator Don Bennett
Senator John Sackett

COMMITTEE CALENDAR

Senate Bill 67 - "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality; and providing for an effective date."

WITNESS REGISTER

Dave Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.
237 East Fireweed Lane
Anchorage, Alaska 99503
586-2660
Position Statement: Supports SB 67, proposed amendment.

Ginny Chitwood, Executive Director
Alaska Municipal League
204 North Franklin St.
Juneau, Alaska 99801
536-1325
Position Statement: Opposes SB 67, issue should be determined on local level, placement should be in Title 29.

Patrick Anderson
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502
264-4431
Position Statement: Voiced objection to specific portions of bill, and will provide specific recommendations by Friday.

Gordon Farker
Alaska Telephone Association
3201 C Street, Suite 601
Anchorage, Alaska 99501
276-3293
Position Statement: Supports measure.

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #3
Recording
Number 004

Senator Eliason, Chair, called the meeting of the Labor and Commerce Committee to order at 1:35 pm with members Senator Mulcahy and Senator Rodey in attendance.

Number 020

Dave Hutchens, Executive Director of Alaska Rural Electric Cooperative Association, Inc., provided the first testimony on SB 67. He expressed support for the measure and offered an amendment to the bill. Several years ago, he stated, the legislature made a policy; whenever a state highway was being constructed utility relocation would be part of the construction cost. Presently the utility bears the cost when municipal road projects are in construction and a utility facility needs to be relocated. SB 67 will make the cost of the project include utility relocation. Last year the same measure passed the Senate late, and did not get through the House. The objections voiced last year included one concern with language (line 15, "under its jurisdiction" rather than "within its jurisdiction") and one concern dealt with by SB 67: for projects for which funding is in place (such as projects financed by bonding) and for which a municipality would not have adequate funds to cover utility relocation costs, an exemption is made. One of the major points stressed by Mr. Hutchens was that the utility does not cause the cost, but still pays. Dave Hutchens proposed an amendment prepared by Gary Thurlow of the Mat-Su Borough (Matanuska-Sustina); it amends Section 5 to read that "a municipality is not obligated for costs for relocating utility facilities which are not located in a municipal right of way pursuant to a valid easement or permit nor for costs for relocating utility facilities associated with a highway project for which general obligation bonds have been approved or for which state or federal grants have been received before the effective date of this act."

Number 300

Ginny Chitwood, Executive Director of the

Alaska Municipal League, provided testimony in opposition to SB 67. She stated that the measure did not belong in Title 19, Chapter 25, a section of the statutes concerned with state highways and roads. She further stated that the issue is a municipal one, and should be locally determined. In Anchorage a city ordinance is about to be adopted addressing the subject. Local determination more readily permits case by case determination. Ms. Chitwood stated that in the case of state grants going to a municipality for road construction it would be appropriate for the legislature to impose conditions. In the case of roads funded with federal dollars (state/federal) the cost is passed on to the feds.

Senator Rodey commented that the question is one of fairness. (Taxpayers end up paying...)

Number 380

Ms. Chitwood noted that most municipal officials are chiefly concerned about the proper placement of utilities.

Sen. Mulcahy commented that he didn't know why the measure wasn't placed in Title 29-- that it seemed to be "sneaking in the back door".

Sen. Eliason commented that the measure seems to spread the cost, assigning some of it to the municipality rather than concentrating the burden on the users (utility users).

Number 428

Pat Anderson, representing the Municipality of Anchorage, stated that the cost to the Municipality (of paying for utility facility relocation) would be \$1-2 million for what is on the street today. One objection of the Municipality not handled by Dave Hutchens' proposed amendment concerns the upgrading of utilities, and another concerns the question of general depreciation and whether the municipality bears the cost of replacement, thereby subsidizing the consumer. On a philosophical note, the Municipality of Anchorage maintains that the decision is best made at a local level. Mr. Anderson stated that he would submit the figures the committee had requested and would submit specific recommendations by Friday.

Number 505

Gordon Parker, representing the Alaska Tele-

phone Association (20 telephone companies) testified in support of the bill. He pointed out that although it is true that some communities do negotiate with the utility, but they are not compelled to do so under current law. He also clarified that there is not an intent to have municipalities fund expansion.

Number 538

There being no further testimony or questions, Sen. Eliason adjourned the meeting.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Sen. John Sackett
Senate Committee on Labor and Commerce

FROM: Sen. Dick Eliason, Chair *Dick Eliason*
Senate Committee on Labor and Commerce

DATE: Feb. 4, 1983

RE: SB 67 - "An Act relating to the relocation of utility facilities incident to the construction of highway projects by a municipality."

Senate Bill 67 will be discussed by the Committee on Labor and Commerce during a hearing scheduled for Feb. 8, at 1:30 pm. This bill would grant municipalities the authority to order a utility to relocate its facility if necessary for the construction of a highway project. This legislation would allow a municipality to order relocation of utility facilities located "across, along, over, under, or within a right-of-way under its jurisdiction." The order must provide a reasonable time for compliance. Costs of relocation would be considered a cost of highway construction to be paid by the municipality.

The bill also states that a municipality is not obligated for utility facility relocation costs associated with a highway project for which G. O. bonds have been approved or for which state general fund appropriations have been received before the effective date of the bill.

Pertinent back-up material will be provided at the time of the hearing, however, if you would like to preview the material please contact Annela Peterson of my staff at 465-4916. Thank you.



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

8000 C STREET • SUITE C • ANCHORAGE, ALASKA 99502 • (907) 278-3235

January 26, 1983

Senate Labor and Commerce Committee
Alaska State Legislature
Capitol Building
Pouch V
Juneau, Alaska 99811

RE: Senate Bill 67

Gentlemen:

Senate Bill 67 makes the cost of relocating utility facilities incident to a municipal highway project a cost of the highway project. This practice in regard to municipal highway projects would then be identical to the practice relating to State highway projects.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State or federal grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the State or federal government.

In some cases the expense will be assumed by the municipality. When this expense is transferred from the local utility rate payer to the local municipality taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without Senate Bill 67, the municipality considers all of the benefits of a proposed project, but it only considers a part of the cost.

Sincerely,

David Hutchens
Executive Director

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

February 8, 1983

to: Senate Labor & Commerce Committee
from: Ginny Chitwood, AML Executive Director
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 19, 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, paid for by local funds.

It is easy to understand why there is a provision in law for the state to pay the utility relocation costs since much 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 Dave Soulak estimates the provisions of SB 67, without section 5, would cause a 5 to 15% increase on 3 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 & 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 & 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 - Jim Van Altvorst, city manager, 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.

Alaska Telephone Association

3201 C Street / Suite 601
Anchorage, Alaska 99503
(907) 276-3293

A.C. Pistorius
President

Gordon Parker
Executive Director

February 4, 1983

Committee on Labor & Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Gentlemen:

I am writing in support of SB67, relating to the relocation of utility facilities. In doing so, the telecommunications industry joins the other utilities in our state in asking for passage.

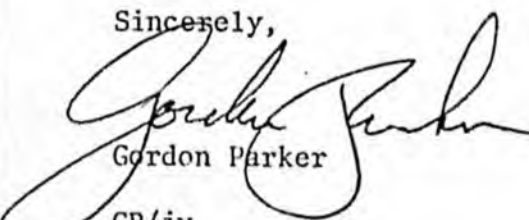
SB67 asks fair treatment in paying the costs of relocating facilities required by a municipal government. It asks, simply, that the entity which causes the cost pay the cost. This is a responsibility already recognized by the federal and state governments in existing statutes.

Under current statutes, a municipal government may order a utility to relocate its facilities at its own expense. Since ratepayers aren't necessarily the same as taxpayers in a given situation, this places an unnecessary burden on the ratepayer.

Many communities have recognized their responsibility to reimburse the utility for costs resulting from relocations required by the municipal government. However, they are under no obligation to do so. Consequently, utilities are at a disadvantage in recovering costs.

I would be happy to answer any questions you may have. I ask your support for the bill.

Sincerely,



Gordon Parker

GP/jv

January 31, 1983

REPORT NO. 2INTRODUCTION OF BILLS (Senate)

Workers' Compensation
(municipal self insurance)

SENATE BILL NO. 66, by the Rules Committee by request of the Governor. Would allow two or more municipalities to enter into an agreement to organize a self-insurance group in order to cover their liability for Workers' Compensation insurance under AS 23.30.

Sec. 1 amends AS 23.30.075, "Employer's Liability to Pay," by adding new (b) which authorizes municipalities to organize into self-insurance groups. Also amends confusing language in subsequent paragraph of 23.30.075 (see Governor's letter, below). Sec. 2 amends the definition of "self-insurer" contained in AS 23.30.265(19) to include members of municipal self-insurance groups.

Introduced January 24 and referred to Labor & Commerce and Finance

In his message transmitting the bill to the Senate for consideration, Governor Sheffield stated:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to workers' compensation. This bill authorizes municipalities to establish self-insurance groups, under Workers' Compensation Board regulations, in order to cover their liability for workers' compensation insurance under AS 23.30.

The essence of this bill is in the new AS 23.30.075(b) in sec. 1. It would give municipalities an alternative form of insuring their workers' compensation liabilities. Instead of purchasing insurance policies to cover their workers' compensation liabilities, two or more municipalities will be able to pool their resources and become self-insurers.

Other states which have enacted similar legislation have found that group self-insurance funds are able to provide at least equal benefits and service to its injured workers and usually more efficiently and at less cost to the employer.

The amendment to newly designated AS 23.30.075(c) is intended to clear up some awkward and confusing language. In doing so, one of the changes removes the reference to "the person actively in charge of the business of said corporation." If that person has authority to insure the corporation, he is already covered by the preceding clause of that sentence. If he does not, he should not be subjected to this kind of personal liability. Section 2's amendment of AS 23.30.265(19) merely recognizes the new AS 23.30.075(b).

Utility Facilities
(relocation of by munic.)

SENATE BILL NO. 67, by the Labor & Commerce Committee. Would grant municipalities the authority to order a utility to relocate its facility if necessary for construction of a highway project. Would allow a municipality to order reloca-

SB 67 (cont'd)

tion of utility facilities that are located "across, along, over, under, or within a right-of-way under its jurisdiction." The order must provide a reasonable time for compliance. Costs of relocation would be considered a cost of highway construction to be paid by the municipality.

The state is granted the power to relocate utility facilities under AS 19.25.020 (Relocation of utilities incident to highway projects). That section is amended by the bill to include municipalities.

Also amends AS 19.25.240 (Summary Removal) to allow municipalities to remove at any time from a highway or road under its jurisdiction an encroachment that obstructs or prevents the use of the highway or road by the public. Currently the section only grants that power to the state.

Sec. 5 of the bill states that a municipality is not obligated for utility facility relocation costs associated with a highway project for which general obligation bonds have been approved or for which state general fund appropriations have been received before the effective date of the bill.

Effective July 1, 1983.

Introduced January 25 and referred to Labor & Commerce and Community & Regional Affairs.

Susitna Hydro
(advisory vote
on financing)

SENATE BILL NO. 68, by Senator Kerttula. Would authorize an advisory vote on a method of financing the Susitna River Hydroelectric Project. The question, to be placed on the ballot for a special statewide election in October 1983, would be in substantially the following form: "Shall the Legislature . . . adopt a resolution placing an amendment to the constitution of the state before the qualified voters of the state providing for annual dedications of state revenue for 10 years beginning in the state fiscal year that commences on July 1, 1984, in an amount that totals \$2,300,000,000 to a fund established for the construction of the Susitna River Hydroelectric Project and providing for increases in the total amount for inflation and providing for interim investment of the dedicated amounts?" Provides for an immediate effective date. Identical to HB 121.

Introduced January 25 and referred to State Affairs, Resources and Finance.

Susitna Hydro
(authorizing &
approving)

SENATE BILL NO. 69, by Senator Kerttula. Would approve and authorize construction of the Susitna River Hydroelectric Project. Approves the feasibility study and finance plan submitted by law, and approves construction costs of \$5.4 billion, adjusted for inflation from January, 1983. Also approves, for the purposes of AS 44.83.325, the preliminary report for the project that was required to be prepared and submitted under AS 44.83.320(b).



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



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



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.

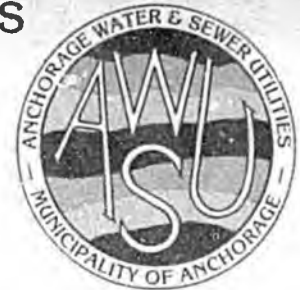
At this time, the City has refused to pay that bill and as a matter of fact, we now find ourselves in court with that utility over the dispute of whether or not the utility or the City is going to pay those costs. The City's contention is and will remain until directed otherwise that the utilities are 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.



ANCHORAGE WATER & SEWER UTILITIES

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



Tony Knowles
Mayor

Owred by the Municipality
of Anchorage

March 7, 1983

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 AWWU 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,

A handwritten signature in cursive script, appearing to read "Robert E. Smith".

ROBERT E. SMITH
General Manager
Anchorage Water & Wastewater Utility

RES/BIC/slr
H/SE

cc: Alaska Municipal League
Patrick Anderson
John Harshman

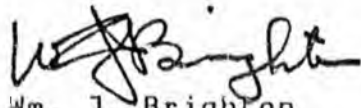
Now, as a matter of fact, we could have fixed two or three of our roads in this community that during breakup no-one can even drive down, citizens have to park their cars as far away as four or five city blocks from their home because the roads are in such condition during breakup they cannot be traversed.

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

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ORIGINAL.



THE HEART OF THE MATANUSKA VALLEY
Rep. Lacher, Rep. Larson
CITY OF PALMER

COUNCIL MANAGER GOVERNMENT
P.O. BOX 1000 PALMER, ALASKA 99757
PALMER, ALASKA 99742

February 7, 1983

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

RE: SB 69

Dear Senator Eliason,

The City of Palmer opposes SB 69 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.

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, Itatanaska Telephone Association and Itatanaska 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 Itatanaska 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. Soutab
City Manager
City of Palmer

cc: Senator James Vertula
Representative Ron Larson

Representative Barbara Lachar
Siney Chitwood, MHA

THE PRECEDING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

**Municipality
of
Anchorage**



POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4431

TONY KNOWLES,
MAYOR

OFFICE OF THE MAYOR

March 3, 1983

Senator Dick Eliason, Chair
Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

I apologize for the written comments apparently not reaching your office. I thought they had been mailed. Here is a copy of the original memo I drafted concerning SB 67 which is based totally upon comments from our Department of Public Works.

Very Truly Yours,

Patrick M. Anderson
Patrick M. Anderson

Municipality of Anchorage



POUCH 6-650
ANCHORAGE ALASKA 99502-0650
(907) 264-4431
TOWNSHIP
MAYOR

OFFICE OF THE MAYOR

February 11, 1983

TO: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

FROM: Patrick Anderson
Office of Legislative Affairs
Municipality of Anchorage

RE: SB 67 - Utility Relocation Costs

The Municipality of Anchorage's Departments of Public Works and Utilities have had an opportunity to review SB 67 and the amendment proposed by Dave Hutchens of ARECA. Based on their comments, our official position is:

1. We agree with the first two paragraphs of the Alaska Municipal League's statement dated February 8, 1983.
2. We currently have under consideration and are pushing for an amendment to our Municipal Ordinances, in cooperation with the Anchorage Area Utility Association, that would cause utility relocation costs to be paid by the Municipality if the utility was placed pursuant to permit and in the approved location. This will protect utility companies from changes in plans for street routing and widths. It will also encourage utilities to coordinate their work with others and to place utilities in conformance with approved plans.
3. Section 3 of the bill would cause municipalities to pay utility relocation costs necessitated by road construction "notwithstanding the terms of provisions of any existing permit, agreement, regulation or statute to the contrary." A utility installation which, under any other rule or law would have been made illegally, would thus be an eligible as any other facility. This section would eliminate any need for coordination with other users of the right-of-way, conformance to local laws dealing with control of the right-of-way or, in effect, any sort of responsible behavior.
4. If the committee feels the bill is necessary, then the proposed amendment to Section 5, coupled with deletion of the phrase, "notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary." would be requested as an amendment by the Municipality.
5. We feel that the situation being addressed by SB 67 is being adequately addressed on a local level and that SB 67 should not be approved.

Sincerely,

Patrick M. Anderson
Patrick M. Anderson

PMA:lc

Alaska Telephone Association

3201 C Street / Suite 601
Anchorage, Alaska 99503
(907) 276-3293

A.C. Pistorius
President

Gordon Parker
Executive Director

February 4, 1983

Committee on Labor & Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Gentlemen:

I am writing in support of SB67, relating to the relocation of utility facilities. In doing so, the telecommunications industry joins the other utilities in our state in asking for passage.

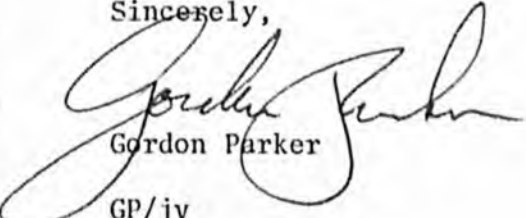
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Under current statutes, a municipal government may order a utility to relocate its facilities at its own expense. Since ratepayers aren't necessarily the same as taxpayers in a given situation, this places an unnecessary burden on the ratepayer.

Many communities have recognized their responsibility to reimburse the utility for costs resulting from relocations required by the municipal government. However, they are under no obligation to do so. Consequently, utilities are at a disadvantage in recovering costs.

I would be happy to answer any questions you may have. I ask your support for the bill.

Sincerely,



Gordon Parker

GP/jv

Date Received 1/25/83

Bill Number ^{SB} 67 Title Relocation/Utility/Municipal

* Fiscal Note - Date Requested 1/26 Of Whom John Scribner

Position Paper - Date Requested 1/26 Of Whom "

People Contacted

- Dave Hutchens - Ak Rural Electric Coop Assn.
- John Scribner - DOT - 3905 - w
- Ginny Chitwood - Municipal League -
- Gordon Parker - Telephone Company - 276-3293

People Who Expressed Interest

Follow-up

People Contacted for Hearing - ^{1st} 2/8/83 - ^{2nd} 3/3/83

- Gordon Parker - Telephone Co - 276-3293 (2/2) 3/2/83
- David Hutchens - ARECA - 276-3235 (2/2) 3/2/83 (left message)
- Ginny Chitwood - 2/2/83 - 3/2/83
- John Scribner - 2/2/83 - saw no direct impact - DOT
- APUC - 276-6222
- Doug Bechtel - 424-2131 (Cordova)
- Patrick Anderson - 3/2/83 (left msge)

* Requested fiscal note (again) 2/2/83 - stated it would be zero

Passed 3/3/83