

HB

159

STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HC+RA	2-21-85	3:00 P.M.
	2-20-85	3:00 P.M.
	2-18-85	3:00 P.M.

# COMMITTEE REPORT

## HOUSE

TRANSPORTATION

( 7 )

FURTHER: FINANCE

2/1/85

Date: \_\_\_\_\_

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 159

"An Act relating to utilities and encroachments in state airports, public facilities, and highways; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 159 (CRA)  same title  
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

### MEMBERS SIGNING DO PASS

[Signature]  
[Signature]  
[Signature]  
[Signature]  
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 \_\_\_\_\_  
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 \_\_\_\_\_

### MEMBERS HAVING OTHER RECOMMENDATIONS:

Vote for HB 159  
Vote for HB 159  
Vote for HB 159  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
 \_\_\_\_\_  
 CHAIRMAN



1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in  
7 state airports, public facilities, and highways; and  
8 providing for an effective date."

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

10 \* Section 1. AS 02.15 is amended by adding new sections to article 2 to  
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-  
13 ity may be constructed, placed, or maintained across, along, over,  
14 under, or within a state airport only in accordance with regulations  
15 adopted or procedures prescribed by the department and only if au-  
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO  
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport  
19 project, the department determines and orders that a utility facility  
20 located across, along, over, under, or within a state airport must be  
21 changed, relocated, or removed, the utility owning or maintaining the  
22 facility shall change, relocate, or remove it in accordance with the  
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or re-  
25 moved in accordance with the order, any permit authorizing the facil-  
26 ity issued by the department under AS 02.15.102 becomes invalid and  
27 the facility will be considered an unauthorized encroachment subject  
28 to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260, ordered under (a) of this section is to be paid as  
2 follows:

3 (1) by the department as a cost of airport construction,  
4 provided that the utility facility is properly installed in accordance  
5 with a permit, or in the absence of a permit, was installed before the  
6 effective date of this Act in the proper location in accordance with  
7 department regulations;

8 (2) by the utility in all other cases.

9 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
10 constructed, placed, changed, or maintained across or within an air-  
11 port, but only in accordance with regulations or procedures adopted by  
12 the department. An encroachment may not be constructed, placed, main-  
13 tained, or changed until it is authorized by a written permit issued  
14 by the department, unless the department provides otherwise by regula-  
15 tion.

16 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
17 incidental to the construction or maintenance of a state airport the  
18 department determines and orders that an encroachment previously  
19 authorized by written permit must be changed, relocated, or removed,  
20 the owner of the encroachment shall change, relocate, or remove it  
21 within a reasonable time set by the department in the order. The cost  
22 of the change, relocation, or removal shall be paid as provided in  
23 AS 02.15.104(c). If the owner does not change, relocate, or remove an  
24 encroachment within the time set by the department, the encroachment  
25 will be considered an unauthorized encroachment subject to the pro-  
26 visions of AS 02.15.114.

27 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
28 encroachment exists in, on, under, or over a state airport the depart-  
29 ment may require the removal of the encroachment, at the expense of

1 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

2 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
3 Notice shall be given the owner, occupant, or person in possession of  
4 an unauthorized encroachment, or to another person causing or per-  
5 mitting the encroachment to exist, by serving upon any of them a  
6 notice demanding the removal of the encroachment within a time limit  
7 set by the department. The notice shall describe the encroachment  
8 with reasonable certainty as to its character and location. Service  
9 of the notice may be made by certified mail.

10 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;  
11 REMOVAL EXPENSE. After a failure of the owner of an unauthorized  
12 encroachment to comply with a notice or order of the department under  
13 AS 02.15.104, 02.15.108. or 02.15.112, the department may remove the  
14 encroachment, or cause it to be removed. The owner of the unauthor-  
15 ized encroachment shall pay to the department

16 (1) the expense of the removal of the encroachment;

17 (2) all costs and expenses paid by the state as a result of  
18 a claim or claims filed against the state by third parties for damages  
19 due to delays because the encroachment was not changed, removed, or  
20 relocated according to the order of the department; and

21 (3) costs and expense of suit.

22 \* Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

23 (15) "cost of change, relocation, or removal" means the  
24 entire cost incurred by the utility properly attributed to the change,  
25 relocation, or removal of a facility, less the costs for improvements  
26 or upgrading over and above the cost of a functionally equal facility;  
27 if a facility is to be relocated and replaced with new equipment,  
28 there shall also be subtracted from the entire cost the salvage value  
29 derived from the old facility;

1 (16) "encroachment" includes a tower, pole, poleline, pipe,  
2 pipeline, driveway, private road, fence, billboard, stand or building,  
3 or structure or object of any kind that is or has been placed in, on,  
4 under, or over a portion of an airport;

5 (17) "utility" includes a corporation, company, individual,  
6 or association of individuals, or a lessee, trustee, or court-appoint-  
7 ed receiver, that owns, operates, manages, or controls a line, plant,  
8 pipeline, or system for furnishing, producing, generating, transmit-  
9 ting, or distributing power, electricity, communications, telecommu-  
10 nications, water, gas, oil, petroleum products, coal or other mineral  
11 slurry, steam, heat, light, chemicals, air, sewage, drainage not  
12 connected with airport drainage, irrigation, or similar products  
13 including publicly owned fire and police signal systems and street  
14 lighting systems that directly or indirectly serve the public or a  
15 segment of the public; "utility" also includes a corporation, company,  
16 individual, or association of individuals, or a lessee, trustee, or  
17 court-appointed receiver that owns, operates, manages, or controls a  
18 system for furnishing transportation of goods or persons by means of a  
19 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,  
20 or a similar means;

21 (18) "utility facility" includes poles, plants, lines,  
22 trenches, bridges, utilidors, tunnels, pipelines, and any other system  
23 for furnishing, producing, generating, transmitting, or distributing  
24 power, electricity, communications, telecommunications, water, gas,  
25 oil, petroleum products, coal or other mineral slurry, steam, heat,  
26 light, chemicals, air, sewage, drainage not connected with an airport  
27 drainage system, irrigation, or another substance; "utility facility"  
28 also includes a system for furnishing transportation of goods or  
29 persons by means of a railway, tramway, cableway, conveyor, flume,

1 canal, tunnel, pipeline, or a similar means.

2 \* Sec. 3. AS 19.25.200 is amended to read:

3 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be  
4 constructed, placed, changed, or maintained across or along a highway,  
5 but only in accordance with regulations adopted by the department. An  
6 [NO] encroachment may not be constructed, placed, maintained, or  
7 changed until it is [DULY] authorized by a written permit issued by  
8 the department, unless the department provides otherwise by regula-  
9 tion.

10 \* Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

11 (12) "utility" includes a corporation, company, individual,  
12 or association of individuals, or a lessee, trustee, or court-appoint-  
13 ed receiver, that owns, operates, manages, or controls a line, plant,  
14 pipeline, or system for furnishing, producing, generating, transmit-  
15 ting, or distributing power, electricity, communications, telecommu-  
16 nications, water, gas, oil, petroleum products, coal or other mineral  
17 slurry, steam, heat, light, chemicals, air, sewage, drainage not  
18 connected with highway drainage, irrigation, or similar products  
19 including publicly owned fire and police signal systems and street  
20 lighting systems that directly or indirectly serve the public or a  
21 segment of the public; "utility" also includes a corporation, company,  
22 individual, or association of individuals, or a lessee, trustee, or  
23 court-appointed receiver that owns, operates, manages, or controls a  
24 system for furnishing transportation of goods or persons by means of a  
25 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,  
26 or a similar means;

27 \* Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

28 (14) "utility facility" includes poles, plants, lines,  
29 trenches, bridges, utilidors, tunnels, pipelines, and any other system

1 for furnishing, producing, generating, transmitting, or distributing  
2 power, electricity, communications, telecommunications, water, gas,  
3 oil, petroleum products, coal or other mineral slurry, steam, heat,  
4 light, chemicals, air, sewage, drainage not connected with a highway  
5 drainage system, irrigation, or another substance; "utility facility"  
6 also includes a system for furnishing transportation of goods or  
7 persons by means of railway, tramway, cableway, conveyor, flume,  
8 canal, tunnel, pipeline, or a similar means.

9 \* Sec. 6. AS 35.10 is amended by adding new sections to read:

10 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

11 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A  
12 utility facility may be constructed, placed, or maintained across,  
13 along, over, under, or within a state public facility only in accor-  
14 dance with regulations adopted or procedures prescribed by the depart-  
15 ment and only if authorized by a written permit issued by the depart-  
16 ment.

17 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO  
18 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a  
19 public facility project, the department determines and orders that a  
20 utility facility located across, along, over, under, or within a state  
21 public facility must be changed, relocated, or removed, the utility  
22 owning or maintaining the facility shall change, relocate, or remove  
23 it in accordance with the order, within a reasonable time set by the  
24 department in the order.

25 (b) If the utility facility is not changed, relocated, or re-  
26 moved in accordance with the order, a permit authorizing the utility  
27 issued by the department under AS 35.10.210 becomes invalid and the  
28 facility will be considered an unauthorized encroachment subject to  
29 the provisions of AS 35.10.270.

1 (c) The cost of change, relocation, or removal, as defined in  
2 AS 35.25.020, ordered under (a) of this section is to be paid as  
3 follows:

4 (1) by the department as a cost of public facility con-  
5 struction, provided that the utility facility is properly installed in  
6 accordance with a permit, or in the absence of a permit, was installed  
7 before the effective date of this Act in the proper location in accor-  
8 dance with department regulations;

9 (2) by the utility in all other cases.

10 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
11 constructed, placed, changed, or maintained across or within a public  
12 facility, but only in accordance with regulations or procedures adopt-  
13 ed by the department. An encroachment may not be constructed, placed,  
14 maintained, or changed until it is authorized by a written permit  
15 issued by the department, unless the department provides otherwise by  
16 regulation.

17 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
18 incidental to the construction or maintenance of a state public facil-  
19 ity, the department determines and orders that an encroachment pre-  
20 viously authorized by written permit must be changed, relocated, or  
21 removed, the owner of the encroachment shall change, relocate, or  
22 remove it within a reasonable time set by the department in the order.  
23 The cost of the change, relocation, or removal shall be paid as pro-  
24 vided in AS 35.10.220(c). If the owner does not change, relocate, or  
25 remove an encroachment within the time set by the department, the  
26 encroachment will be considered an unauthorized encroachment and  
27 subject to the provisions of AS 35.10.270.

28 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
29 encroachment exists in, on, under, or over a state public facility,

1 the department may require the removal of the encroachment, at the  
2 expense of the owner, in the manner provided in AS 35.10.260 -  
3 35.10.270.

4 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
5 Notice shall be given the owner, occupant, or person in possession of  
6 an unauthorized encroachment, or to another person causing or per-  
7 mitting the encroachment to exist, by serving upon any of them a  
8 notice demanding the removal of the encroachment within a time limit  
9 set by the department. The notice shall describe the encroachment  
10 with reasonable certainty as to its character and location. Service  
11 of the notice may be made by certified mail.

12 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
13 After a failure of the owner of an unauthorized encroachment to comply  
14 with the notice or order of the department under AS 35.10.220, 35.10.-  
15 240, or 35.10.260, the department may remove the encroachment, or  
16 cause it to be removed. The owner of the unauthorized encroachment  
17 shall pay to the department

18 (1) the expense of the removal of the encroachment;

19 (2) all costs and expenses paid by the state as a result of  
20 a claim or claims filed against the state by third parties for damages  
21 due to delays because the encroachment was not changed, removed, or  
22 relocated according to the order of the department; and

23 (3) costs and expense of suit.

24 \* Sec. 7. AS 35.25.020 is repealed and reenacted to read:

25 Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
26 requires otherwise,

27 (1) "construction" or a derivative of the term "construc-  
28 tion" means construction, reconstruction, alteration, improvement, or  
29 major repair;

1 (2) "cost of change, relocation, or removal" means the  
2 entire cost incurred by the utility properly attributed to the change,  
3 relocation, or removal of a facility, less any costs for improvements  
4 or upgrading over and above the cost of a functionally equal facility;  
5 if a facility is to be relocated and replaced with new equipment,  
6 there shall also be subtracted from the entire cost any salvage value  
7 derived from the old facility;

8 (3) "department" means the Department of Transportation and  
9 Public Facilities;

10 (4) "encroachment" includes a tower, pole, poleline, pipe,  
11 pipeline, driveway, private road, fence, billboard, stand or building,  
12 or a structure or object of any kind that is or has been placed in,  
13 on, under, or over a portion of a public facility;

14 (5) "maintenance" means the preservation of each type of  
15 facility as nearly as possible in its original condition as con-  
16 structed, or as improved;

17 (6) "public building" means a building owned or controlled  
18 and held by the state for government or public use;

19 (7) "public facility" or "public work" means a structure or  
20 project constructed or maintained by the department except airports  
21 and highways, and includes public buildings, boat harbors, port facil-  
22 ities, dikes, jetties, and breakwaters;

23 (8) "utility" includes a corporation, company, individual,  
24 or association of individuals, or a lessee, trustee, or court-appoint-  
25 ed receiver, that owns, operates, manages, or controls a line, plant,  
26 pipeline, or system for furnishing, producing, generating, transmit-  
27 ting, or distributing power, electricity, communications, telecommu-  
28 nications, water, gas, oil, petroleum products, coal or other mineral  
29 slurry, steam, heat, light, chemicals, air, sewage, drainage not

1 connected with public facility drainage, irrigation, or similar prod-  
2 ucts including publicly owned fire and police signal systems and  
3 street lighting systems that directly or indirectly serve the public  
4 or a segment of the public; "utility" also includes a corporation,  
5 company, individual, or association of individuals, or a lessee,  
6 trustee, or court-appointed receiver that owns, operates, manages, or  
7 controls any system for furnishing transportation of goods or persons  
8 by means of a railway, tramway, cableway, conveyor, flume, canal,  
9 tunnel, pipeline, or a similar means;

10 (9) "utility facility" includes poles, plants, lines,  
11 trenches, bridges, utilidors, tunnels, pipelines, and any other system  
12 for furnishing, producing, generating, transmitting, or distributing  
13 power, electricity, communications, telecommunications, water, gas,  
14 oil, petroleum products, coal or other mineral slurry, steam, heat,  
15 light, chemicals, air, sewage, drainage not connected with a public  
16 facility drainage system, irrigation, or another substance; "utility  
17 facility" also includes a system for furnishing transportation of  
18 goods or persons by means of a railway, tramway, cableway, conveyor,  
19 flume, canal, tunnel, pipeline, or a similar means.

20 \* Sec. 8. This Act takes effect July 1, 1985.  
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29

A M E N D M E N T

Offered in the Community &  
Regional Affairs Committee

By: Gruenberg  
House Bill No. 159

1. Change Title as follows:

"An Act relating to the use of State Airports, Public Facilities and Highways for Utility Encroachment, and other purposes, and providing for an effective date."

2. AS 07.15.090 is amended by adding a new subsection as follows:

(c) In its proprietary capacity acting as agent for the state with respect to any airport facility, the department or any municipality acting in a similar capacity may calculate and grant a credit against fees charged under this section to any air carrier charging passenger tariffs between that airport facility and other destinations which cost no more per mile than the average per mile passenger tariff charged by all regularly scheduled air carriers between the ten most frequently traveled domestic air routes in the contiguous continental United States.

3. Renumber all succeeding sections.

**Sec. 02.15.090. Operation and use privileges.** (a) State operation. In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases and other arrangements covering periods not exceeding 55 years with a person or municipality or the United States, granting the privilege of using or improving an airport or air navigation facility or a portion of it or space in it for commercial or governmental purposes; or conferring the privilege of supplying goods, commodities, services or facilities at an airport or air navigation facility. The department may establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services, which are reasonable and uniform for the same class of privilege or service. These terms, conditions, charges, rentals and fees shall be established with due regard to the property and improvements used and the expense of operation to the state. In no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility or portion thereof.

(b) Other operation. The department may by contract or other arrangement, upon a consideration fixed by it, grant to any qualified municipality or person for a reasonable period of time the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state. No municipality or person granted that privilege may operate the airport other than as a public airport or enter into any contract, lease or other arrangement in connection with the operation which the department may not have undertaken under (a) of this section. (§ 5 E ch 123 SLA 1949; added by § 1 ch 117 SLA 1959)

add new  
sec. (c) →

**Sec. 02.15.095. Ground transportation: "Courtesy cars."** Notwithstanding the provisions of AS 02.15.090(a), the department may not exclude from the streets, roads, highways, parking facilities or other portions of a state-operated airport designated for operation or parking of ground transportation vehicles, nor may the department prohibit from picking up and discharging passengers, those motor vehicles commonly known as "courtesy cars" owned or operated by hotels, motels or other similar places of public accommodation for the transportation of their guests to and from the airport at the request of the guest and for which service no charge is made to the guest. (§ 1 ch 9 SLA 1974)

**Sec. 02.15.100. Liens.** The department may enforce the payment of any charges for repairs, improvements, storage, or care of personal property made or furnished by the department or its agents, in connection with the operation of an airport or air navigation facility owned or operated by the state. The state has those lien rights generally allowed by law to secure payment for those services. (§ 5 E ch 123 SLA 1949; added by § 1 ch 117 SLA 1959)



# COMMITTEE REPORT

## HOUSE

TRANSPORTATION

( 7 )

FURTHER: FINANCE

2/1/85

Date: \_\_\_\_\_

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 160

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

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for NB 160 (C+RA)  same title
- and recommends it do pass  new title
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

### MEMBERS SIGNING DO PASS

[Signature]

[Signature]

[Signature]

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### MEMBERS HAVING OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

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\_\_\_\_\_

\_\_\_\_\_

[Signature]

\_\_\_\_\_

CHAIRMAN

1           (6) "maintenance" means the preservation of each type of  
2 facility as nearly as possible in its original condition as construct-  
3 ed, or as improved;

4           (7) "public building" means a building owned or controlled  
5 and held by the state for government or public use;

6           (8) "public facility" or "public work" means any structure  
7 or project constructed or maintained by the department except airports  
8 and highways, and includes public buildings, boat harbors, port facil-  
9 ities, dikes, jetties, and breakwaters;

10          (9) "utility" includes any corporation, company, individu-  
11 al, or association of individuals, or any lessee, trustee, or court-  
12 appointed receiver, that owns, operates, manages, or controls any  
13 line, plant, pipeline, or system for furnishing, producing, generat-  
14 ing, transmitting, or distributing power, electricity, communications,  
15 telecommunications, water, gas, oil, petroleum products, coal or other  
16 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage  
17 not connected with public facility drainage, irrigation, or similar  
18 products including publicly owned fire and police signal systems and  
19 street lighting systems which directly or indirectly serve the public  
20 or a segment of the public; "utility" also includes any corporation,  
21 company, individual, or association of individuals, or any lessee,  
22 trustee, or court-appointed receiver that owns, operates, manages, or  
23 controls any system for furnishing transportation of goods or persons  
24 by means of a railway, tramway, cableway, conveyor, flume, canal,  
25 tunnel, pipeline, or a similar means;

26          (10) "utility facility" includes poles, plants, lines,  
27 trenches, bridges, utilidors, tunnels, pipelines, and any other system  
28 for furnishing, producing, generating, transmitting, or distributing  
29 power, electricity, communications, telecommunications, water, gas,

House Bill 159

Letter of Intent:

[ It is the policy of the state that the Department of Transportation shall accommodate the safe placement of utility facilities in state airport ~~rights of way~~ and public facility rights of way.

House Bill ~~159~~ 160

Letter of Intent

It is the policy of the state that the Department of Transportation shall accommodate the safe placement of utility facilities in state highway rights of way.

HB160  
as follows:

by the department as a cost of highway construction if the utility facility is properly installed in accordance with a permit issued under regulations adopted by the department;

by the department or by the utility where installation is made without permit, but under departmental authorization made under regulation; or

by the utility in all other cases.

JUST  
a  
DRAFT

1 IN THE HOUSE

2 HOUSE BILL NO. 160

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

10 ~~\* Section 1 AS 19.25.020(c) is amended to read~~

\* Section 1 AS 19.25.010 is amended to read:

Sec. 19.25.010 Use of rights-of-way for utilities. It is the policy of the Department to accomodate the safe placement of utility facilities in state highway rights-of-way.

\* Section 2 AS 19.25.020(c) is amended to read:

11 (c) The cost of change, relocation, or removal necessitated by  
12 highway construction is [A COST OF HIGHWAY CONSTRUCTION] to be paid  
13 [BY THE STATE] in accordance with AS 19.45.001(4) as follows:

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

18 (2) by either the department as a cost of highway con-  
19 struction or by the utility, depending on the terms of the utility  
20 permit if the facility was installed or authorized under the authority  
21 of a utility permit issued after July 1, 1960;

22 (3) by the utility if the facility was installed after July  
23 1, 1960, and there is no utility permit for the facility;

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

(1) by the Department as a cost of Highway construction, provided that the utility facility is properly installed in accordance with

a permit or in the absence of a permit was installed in accordance with Department Regulations effective July 1, 1985; 17 AAC 10 & 15;

(2) by the Utility in all other cases.

[, NOTWITHSTANDING

27 THE TERMS OR PROVISIONS OF ANY EXISTING PERMIT, AGREEMENT, REGULATION  
28 OR STATUTE TO THE CONTRARY].

29 \* Sec. 2. This Act takes effect July 1, 1985.

\* Sec 3.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
AMENDMENT TO UTILITY PERMIT FOR PLACEMENT  
OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY

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

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

"Cost of change, relocation, or removal" as used here means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility.

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

This amendment becomes effective as of the date of the Department representative's signature.

Approval:

UTILITY

DEPARTMENT

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 159  
 Title: Utility Relocation-Airport  
& Pub. Fac. Construction  
 Sponsor: DOT&PF  
 Requestor: Commissioner  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>		-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars) N/A

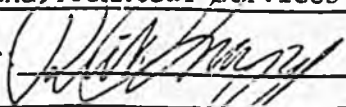
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSTS: Attach a separate page if necessary

See attachment.

Prepared By: Bruce R. Freitag Phone: 465-2957  
 Division: Standards and Technical Services Date: 10/17/84  
 Approved by Commissioner:  Date: 10/15/84  
 Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

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

7/1/84

## Utility Relocation - Airports and Public Facilities Construction

### Analysis

The need for this law is to provide statutory authority for the accommodation and relocation of utility facilities within State rights-of-way for the other Department modes - airports, harbors, and public buildings - similar to what AS 19.25.010 - 19.25.020 presently allows for State highways.

We don't anticipate any Department fiscal impact because we are presently reimbursing utility facility relocation costs for these modes if they meet code and are under permit. However, no statute authority for this reimbursement presently exists. In 1981, department policy evolved to allow for this reimbursement.

We don't anticipate any opposition to this proposal.

We don't anticipate any savings/costs differences from the present situation due to this proposal for either the Department or the Utility.

This law would provide statutory authority for the Department to permit utility facility accommodation/relocation reimbursement similar to that presently allowed within highway rights-of-way. Also, this Act is necessary for consistency with highway projects, and housekeeping for the Department operations.

SUMMARY/EXPLANATION OF INTENT

This legislation would provide the State a means to require proper utility installment, and to ensure that the utility companies are financially responsible for relocating utility facilities when they were illegally placed in State right-of-ways. It would also provide the State statutory authority to issue utility permits for proper utility facility installations in airports, public buildings and harbors, and reimburse utility companies for facility relocation due to State construction projects.

Utilities And Encroachments Within State Rights-Of-Way At  
Airports And Public Facilities

The need for this legislation is to provide statute authority for the accomodation and relocation of utility facilities within State Rights-Of-Way for other Departmental modes - airports, harbors, and public buildings. This addition would be similar to what AS 19.25.020 presently allows for State Highways. Statute authority presently doesn't exist to allow for relocation reimbursement.

## Mailbox Permits - ANALYSIS

AS 19.25.200 requires written permits for all encroachments within the highway rights of way. Historically, no permits have been issued for mailboxes within the right-of-way. Recently the Ombudsman's office criticized the Department for not complying with statutory and regulatory laws concerning issuance of permits for encroachments, indicating a need to either issue permits for mailboxes or modify the law so permits are not required as a general rule.

If permits were to be issued in accordance with present law, substantial field and office work would be required with virtually no increase in either the safety or efficiency of our transportation system. First, a complete inventory of all rural roadways would be required to determine the location and addressee of each mailbox. Second, permits would have to be written and mailed to each mailbox owner. Based on the costs of our continuing photologging inventory, we estimate the mailbox inventory at \$200,000 over a three year period. (The photologging images alone do not provide sufficient information from which to compile a mailbox inventory). Assuming 10,000 mailboxes presently exist and each permit takes five minutes to complete, the cost of writing the initial permits equals approximately \$20,000 and the cost of mailing same equals \$2,000.00. Consequently, the total cost over a three year period to inventory and issue permits for 10,000 existing mailboxes would approximate \$222,000, or approximately \$22/box.

In addition to the initial expense there would be continuing expenses to maintain the permit system for mailboxes. Estimated cost to maintain the mailbox permit system is \$5,000/annum.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1985

SUBJECT: Alaska's Airline Industry  
(Work Order No. 14-0620)

TO: Representative Gruenberg  
Chairman,  
Health, Education, & Social Services Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You have requested that I examine Alaska's airline industry to determine if there is any method by which the state could affect the prices being charged for travel between Alaska and the other States. The price of air travel is generally recognized as being higher per air mile between Alaska and points south, than between equivalent distances in the continental U.S..

Under the Airline Deregulation Act of 1978 (P.L. 95-504), the restrictions on raising or lowering fares for domestic travel were minimized. Other than a thirty day notice requirement, the airlines have been able to set fares as they wish. In some markets this has resulted in lower fares as competition has grown, in some markets such as Alaska, the deregulation has not appreciably lowered prices. The power of the state to affect interstate travel is limited by the doctrine of federal preemption. In essence the federal government's authority over this area preempts any efforts by the state to regulate or affect the prices charged by carriers for interstate travel.

This does not mean that the state cannot act at all, simply that it must act without intruding upon that area controlled by federal law. The Airline Deregulation Act (P.L. 95-504) addressed this question in section 4(a) and provided that no state could enact any law, regulation, or other provision having the force or effect of law relating to rates, routes, or services of any interstate air carrier. This prohibition

contains an exception however, as regards a State's proprietary powers and rights as the owner or operator of an airport. As an owner, the state exercises proprietary rights in charging the air carriers fees for landing, parking, terminal space and fuel. The two places in which Alaska exercises such rights are Anchorage and Fairbanks, through the Department of Transportation and Public Facilities.

It is possible that the state could use it's proprietary powers to advance a consumer interest, such as lower airfares. Assuming that the state is legitimately charging for the use of it's facilities through the use of landing, parking, space and fuel fees, the state could give a credit against those charges to those air carriers who maintain a particular airfare. This would be intended to encourage lower airfares for customers, at no cost to the air carrier. To be a permissible law, it is important that the credit be a function of the State's proprietary powers, and not an effort to require air carriers to set specific airfares. Although an air carrier could still argue that the state is attempting to regulate air fares, and hence is violating federal law, this approach would appear to have a good chance of surviving a court challenge. Assuming that the credit would be entirely optional with the air carrier, it would seem difficult to argue that the state is imposing a burden on interstate commerce, or violating federal pre-emption of the control of airfares.

It is also possible that a close examination of the charges made for the use of Alaska's airports would reveal an additional tax or fee could legitimately be charged that is not being collected at present. If so, the state would not be losing any revenues currently going into the general fund. The amount of revenue that could be collected is governed by federal law, 49 U.S.C. 1513.

I have contacted the state D.O.T.P.F. and requested further information on the calculation of the particular fees being collected for the use of airport facilities. I have also spoken to the federal D.O.T. concerning calculation of airline tariffs. I will also be receiving information on the methodology of determining costs per airline mile. Assuming that a credit system is implemented, it will be necessary to develop a method for comparing costs between particular air routes.

All of the above also assumes that the state is willing to forego revenue from airport fees in order to promote

Representative Gruenberg  
February 19, 1985  
page 3

consumer interests in lower airfares. I have also placed a research request with the National Conference of State Legislatures. If they have any pertinent information they will forward it to me.

Providing a credit for state airport fees might also have the effect of attracting additional air carriers into the market, with resulting increased competition and lower fares. The amount of the credit would need to be determined before any accurate effect on the market could be predicted.

The complexity of this project would seem to dictate that it will require considerable time to prepare legislation. The concept of a credit for airport charges based on existing airline levies has not to my knowledge been implemented in any other state. Please let me know if you wish to proceed with this idea, or if I can be of further assistance.

MFF:lmb  
L4/051



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 1, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies authority of the Department of Transportation and Public Facilities (DOT/PF) to set up a permit system to authorize utilities and other encroachments in state airports and other public facilities. In addition, the bill amends AS 19.25.200 so that DOT/PF will have the statutory authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation. The bill also provides for dealing with the relocation or removal of utilities and encroachments in state airports and public facilities.

For the most part, the bill tracks existing statutory language that deals with utilities and encroachments in highway rights-of-way, (AS 19.25.010, 19.25.020, and 19.25.200 -- 19.25.250). A section-by-section analysis of the bill follows.

I urge your favorable action on this measure so that there is no doubt that DOT/PF has the authority to implement a utility and encroachment permit system for state airports and public facilities.

SECTION-BY-SECTION ANALYSIS

Section 1 amends art. 2 of AS 02.15 concerning state airports by adding eight new sections. A brief explanation of each of these new sections is set out below:

AS 02.15.102 authorizes utilities to be installed in state airports so long as they are installed under permit.

AS 02.15.104 sets out a procedure for relocating a utility if the relocation is required because of airport construction. The procedure requires that notice be given the utility. Subsection (b) authorizes the state to move the utility, at no cost to the state, if the notice to relocate is disregarded. Subsection (c) makes it clear that the cost of change or relocation in compliance with (a) of that section is to be determined by the language of the utility permit. Subsection (c) also makes it clear that the utility is required to pay for relocation costs if there is no utility permit issued for the utility facility, or if the utility facility is not installed in the location provided for in the utility permit.

AS 02.15.106 authorizes encroachments to be installed in state airports so long as they are installed under permit, unless the department provides otherwise by regulation.

AS 02.15.108 creates a procedure for relocating or removing encroachments when relocation or removal is required by construction or maintenance of a state airport. The procedure requires that notice be given to the owner of the encroachment.

AS 02.15.110 authorizes the state to require the removal of unauthorized encroachments.

AS 02.15.112 requires the state to give notice to owner of unauthorized encroachments in the event the state determines that the encroachment must be removed.

AS 02.15.114 gives the state the authority to remove an encroachment if the owner fails to comply with the notice given under AS 02.15.104 or 02.15.108, or 02.15.112. This section also makes it clear that if the state removes an encroachment under these circumstances, the cost of removal is to be borne by the owner of the encroachment.

AS 02.15.116 gives the state the authority to summarily remove any encroachment that obstructs the use of a state airport by the public, or interferes with the safe operation of the airport.

Section 2 of the bill amends AS 02.15.260 by adding four new definitions. The new definitions added are: "cost of change, relocation or removal," "encroachment," "utility" and "utility facility."

Section 3 of the bill amends AS 19.25.200 by adding a clause that grants DOT/PF the authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation.

Section 4 of the bill repeals and reenacts AS 19.45.001(12), in the general definition section relating to highways, to make the definition of "utility" consistent with the definition of that term in the statute dealing with airports in sec. 1 of the bill and with public facilities in sec. 7 of the bill.

Section 5 of the bill amends AS 19.45.001 by adding a definition of "utility facility" that is consistent with the definition of that term in secs. 1 and 7 of the bill.

Section 6 of the bill amends AS 35.10 by adding a new article concerning utilities and encroachment in public facilities. This article is nearly identical to the eight new sections which sec. 1 of the bill would add to AS 02.15 concerning utilities and encroachment in state airports.

Section 7 of the bill repeals and reenacts AS 35.25.020, the general definition section for Title 35. The existing definition of "public works" is deleted. New definitions for "cost of change, relocation, or removal," "encroachment," "public facility" or "public work," "utility," and "utility facility" are added. Five of the existing definitions are retained.

Section 8 of the bill establishes an effective date of July 1, 1985.

Sincerely,

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

Bill Sheffield  
Governor



# Alaska State Legislature

## House of Representatives

### Committee on Community & Regional Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4833

#### MEMORANDUM

TO: Richard Knapp  
Commissioner  
Department of Transportation

FROM: Peter Goll  
Chairman

A handwritten signature in black ink, appearing to be "PG", written over the printed name "Peter Goll".

SUBJECT: AMENDMENTS HOUSE BILLS 159/160

Commissioner, I am considering an immediate effective date.

Your comments will be appreciated.



# Alaska State Legislature

## House of Representatives

### Committee on Community & Regional Affairs

Pouch V  
State Capital  
Juneau, Alaska 99811  
(907) 465-4833

#### MEMORANDUM

TO: Richard Knapp  
Commissioner  
Department of Transportation

FROM: Peter Goll  
Chairman

Handwritten signature of Peter Goll in cursive.

SUBJECT: HB159 AMENDMENTS

IN HOUSE BILL 159:

ON PAGE 2, DELETE: Lines 3 through 9.

ON PAGE 2, INSERT NEW LANGUAGE:

(1) by the Department as a cost of airport construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

OK

(2) by the utility in all other cases. OK

ON PAGE 3, DELETE: Lines 23 through 26. OK

ON PAGE 7, DELETE Lines 8 through 15. OK

ON PAGE 7, INSERT NEW LANGUAGE:

(1) by the Department as a cost of public facility construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

OK

(2) by the utility in all other cases.

ON PAGE 9, DELETE Lines 1 through 5. OK



# Alaska State Legislature

## House of Representatives

### Committee on Community & Regional Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4833

#### MEMORANDUM

TO: Richard Knapp  
Commissioner  
Department of Transportation

FROM: Peter Goll  
Chairman *Peter Goll*

SUBJECT: HB160 AMENDMENTS

ON PAGE 1, DELETE From Beginning of Line 14 through "Department"  
on Line 26.

ON PAGE 1, INSERT

(1) by the Department as a cost of highway construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

(2) by the utility in all other cases.

*OK*

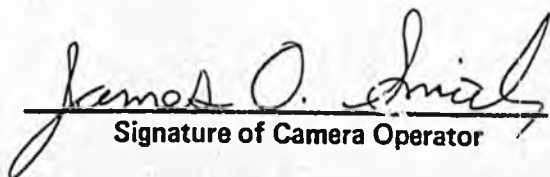
*OK*

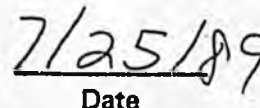


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date