



COMMITTEE REPORT

4/11

HOUSE

(7)

FURTHER FINANCE

2/22/85

Date: 09 April 1985

Mr. Speaker:

The Committee on TRANSPORTATION 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 reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 159 (TRSP)  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

MEMBERS HAVING OTHER RECOMMENDATIONS:

Cato Bette Cato Marrou \_\_\_\_\_

Pignalberi Mo Sigaller \_\_\_\_\_

Furnace Walt Furnace \_\_\_\_\_

Davis Mike Davis \_\_\_\_\_

Shultz Dick Shultz \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Andre M. NoREC.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Bette Cato  
CHAIRMAN

COMMITTEE REPORT  
HOUSE

2/22  
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 (C+RA)  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

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

GOLL Peter Jacc

GREENBERG W. J. Greenberg

WALLIS F. Ray Wallis

KOPPEL Arthur Koppen

---

---

---

---

---

---

---

---

FORBACE Walt Furnace Do Not Pass

PHILLIPS ROD E. PHILLIPS No R.

SHARROW Arde H DO NOT PASS

---

---

---

---

---

---

---

---

Peter Jacc  
CHAIRMAN

Offered: 4/11/85  
Referred: Finance

*Moer*

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (Transportation)

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, if  
4 the utility facility is installed or authorized under a utility  
5 permit, or a regulation after the effective date of this Act;

6 (2) by the department as a cost of highway construction if  
7 the facility is installed before the effective date of this Act;

8 (3) by the utility in all other cases unless the commis-  
9 sioner finds it is in the public interest for the cost to be paid by  
10 the department.

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

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

29 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized

1 encroachment exists in, on, under, or over a state airport the depart-  
2 ment may require the removal of the encroachment, at the expense of  
3 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

4 Sec. 02.15.112. 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. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;  
13 REMOVAL EXPENSE. After a failure of the owner of an unauthorized  
14 encroachment to comply with a notice or order of the department under  
15 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the  
16 encroachment, or cause it to be removed. The owner of the unauthor-  
17 ized encroachment 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. 2. AS 02.15.260 is amended by adding new paragraphs to read:

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

1 there shall also be subtracted from the entire cost the salvage value  
2 derived from the old facility;

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

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

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

1 also includes a system for furnishing transportation of goods or  
2 persons by means of a railway, tramway, cableway, conveyor, flume,  
3 canal, tunnel, pipeline, or a similar means.

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

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

12 (b) The provisions under (a) of this section do not apply to a  
13 mailbox or a newspaper box attached to a mailbox.

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

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

1 or a similar means;

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

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

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

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

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

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, a permit authorizing the utility  
2 issued by the department under AS 35.10.210 becomes invalid and the  
3 facility will be considered an unauthorized encroachment subject to  
4 the provisions of AS 35.10.270.

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

8 (1) by the department as a cost of public facility con-  
9 struction, if the utility facility is installed or authorized under a  
10 utility permit or a regulation after the effective date of this Act;

11 (2) by the department as a cost of highway construction if  
12 the facility is installed before the effective date of this Act;

13 (3) by the utility in all other cases unless the commis-  
14 sioner finds it is in the public interest for the cost to be paid by  
15 the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
17 constructed, placed, changed, or maintained across or within a public  
18 facility, but only in accordance with regulations or procedures adopt-  
19 ed by the department. An encroachment may not be constructed, placed,  
20 maintained, or changed until it is authorized by a written permit  
21 issued by the department, unless the department provides otherwise by  
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
24 incidental to the construction or maintenance of a state public facil-  
25 ity, the department determines and orders that an encroachment pre-  
26 viously authorized by written permit must be changed, relocated, or  
27 removed, the owner of the encroachment shall change, relocate, or  
28 remove it within a reasonable time set by the department in the order.  
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,  
2 or remove an encroachment within the time set by the department, the  
3 encroachment will be considered an unauthorized encroachment and  
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
6 encroachment exists in, on, under, or over a state public facility,  
7 the department may require the removal of the encroachment, at the  
8 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-  
9 270.

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

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
19 After a failure of the owner of an unauthorized encroachment to comply  
20 with the notice or order of the department under AS 35.10.220, 35.10.-  
21 240, or 35.10.260, the department may remove the encroachment, or  
22 cause it to be removed. The owner of the unauthorized encroachment  
23 shall pay to the department

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

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

29 (3) costs and expense of suit.

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

2 Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
3 requires otherwise,

4 (1) "construction" or a derivative of the term "construc-  
5 tion" means construction, reconstruction, alteration, improvement, or  
6 major repair;

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

14 (3) "department" means the Department of Transportation and  
15 Public Facilities;

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

20 (5) "maintenance" means the preservation of each type of  
21 facility as nearly as possible in its original condition as construct-  
22 ed, or as improved;

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

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

29 (8) "utility" includes a corporation, company, individual,

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

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

26 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).

Offered: 2/22/85  
Referred: Transportation  
and Finance

*men*

Original sponsor: Rules/Governor

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-appointed  
7 receiver, that owns, operates, manages, or controls a line, plant,  
8 pipeline, or system for furnishing, producing, generating, transmitting,  
9 or distributing power, electricity, communications, telecommunications,  
10 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 construct-  
16 ed, 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-appointed  
25 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. 3. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

Introduced: 2/1/85  
Referred: Community & Regional  
Affairs, Transportation and  
Finance

How  
01554

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 159

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 must 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  
25 removed in accordance with the order, any permit authorizing the  
26 facility issued by the department under AS 02.15.102 becomes invalid  
27 and the facility will be considered an unauthorized encroachment  
28 subject 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(15), ordered under (a) of this section is to be paid as  
2 follows:

3 (1) by either the department as a cost of airport construc-  
4 tion, or by the utility, depending on the terms of the utility permit;

5 (2) by the utility if there is no utility permit issued for  
6 the utility facility;

7 (3) by the utility if the utility facility is not installed  
8 in the location provided for in the utility permit, regardless of  
9 whether the utility permit requires payment by the department.

10 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
11 constructed, placed, changed, or maintained across or within an air-  
12 port, but only in accordance with regulations or procedures adopted by  
13 the department. No encroachment may be constructed, placed, main-  
14 tained, or changed until it is authorized by a written permit issued  
15 by the department, unless the department provides otherwise by regula-  
16 tion.

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

28 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
29 encroachment exists in, on, under, or over a state airport the

1 department may require the removal of the encroachment, at the expense  
2 of the owner, in the manner provided in AS 02.15.112 -- 02.15.114.

3 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.

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

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

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

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

22 (3) costs and expense of suit.

23 Sec. 02.15.116. SUMMARY REMOVAL. The department may at any time  
24 and without notice remove from a state airport an encroachment or  
25 utility facility which obstructs or prevents the use of the airport by  
26 the public, or interferes with the safe operation of the airport.

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

28 (15) "cost of change, relocation, or removal" means the  
29 entire cost incurred by the utility properly attributed to the change,

1 relocation, or removal of a facility, less any costs for improvements  
2 or upgrading over and above the cost of a functionally equal facility;  
3 if a facility is to be relocated and replaced with new equipment,  
4 there shall also be subtracted from the entire cost any salvage value  
5 derived from the old facility;

6 (16) "encroachment" includes a tower, pole, poleline, pipe,  
7 pipeline, driveway, private road, fence, billboard, stand or building,  
8 or structure or object of any kind which is or has been placed in, on,  
9 under, or over a portion of an airport;

10 (17) "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 airport drainage, irrigation, or similar products  
18 including publicly owned fire and police signal systems and street  
19 lighting systems which directly or indirectly serve the public or a  
20 segment of the public; "utility" also includes any corporation, compa-  
21 ny, individual, or association of individuals, or any lessee, trustee,  
22 or court-appointed receiver that owns, operates, manages, or controls  
23 any system for furnishing transportation of goods or persons by means  
24 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,  
25 pipeline, or a similar means;

26 (18) "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,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,  
2 light, chemicals, air, sewage, drainage not connected with an airport  
3 drainage system, irrigation, or any other substance; "utility facili-  
4 ty" also includes any system for furnishing transportation of goods or  
5 persons by means of a railway, tramway, cableway, conveyor, flume,  
6 canal, tunnel, pipeline, or a similar means.

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

8 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be  
9 constructed, placed, changed, or maintained across or along a highway,  
10 but only in accordance with regulations adopted by the department. No  
11 encroachment may be constructed, placed, maintained, or changed until  
12 it is [DULY] authorized by a written permit issued by the department,  
13 unless the department provides otherwise by regulation.

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

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

1 pipeline, or a similar means;

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

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

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

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

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

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, any permit authorizing the  
2 utility issued by the department under AS 35.10.210 becomes invalid  
3 and the facility will be considered an unauthorized encroachment  
4 subject to the provisions of AS 35.10.270.

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

8 (1) by either the department as a cost of public facility  
9 construction, or by the utility, depending on the terms of the utility  
10 permit;

11 (2) by the utility if there is no utility permit issued for  
12 the utility facility;

13 (3) by the utility if the utility facility is not installed  
14 in the location provided for in the utility permit, regardless of  
15 whether the utility permit requires payment by the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
17 constructed, placed, changed, or maintained across or within a public  
18 facility, but only in accordance with regulations or procedures adopt-  
19 ed by the department. No encroachment may be constructed, placed,  
20 maintained, or changed until it is authorized by a written permit  
21 issued by the department, unless the department provides otherwise by  
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
24 incidental to the construction or maintenance of a state public facil-  
25 ity, the department determines and orders that an encroachment pre-  
26 viously authorized by written permit must be changed, relocated, or  
27 removed, the owner of the encroachment shall change, relocate, or  
28 remove it within a reasonable time set by the department in the order.  
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,  
2 or remove an encroachment within the time set by the department, the  
3 encroachment will be considered an unauthorized encroachment and  
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
6 encroachment exists in, on, under, or over a state public facility,  
7 the department may require the removal of the encroachment, at the  
8 expense of the owner, in the manner provided in AS 35.10.260 --  
9 35.10.270.

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

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
19 After a failure of the owner of an unauthorized encroachment to comply  
20 with the notice or order of the department under AS 35.10.220, 35.10.-  
21 240, or 35.10.260, the department may remove the encroachment, or  
22 cause it to be removed. The owner of the unauthorized encroachment  
23 shall pay to the department

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

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

29 (3) costs and expense of suit.

1           Sec. 35.10.280. SUMMARY REMOVAL. The department may at any time  
2 and without notice remove from a state public facility an encroachment  
3 or a utility facility which obstructs or prevents the use of the  
4 public facility by the public, or interferes with the safe operation  
5 of the public facility.

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

7           Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
8 requires otherwise,

9           (1) "construction" or any derivative of the term "con-  
10 struction" means construction, reconstruction, alteration, improve-  
11 ment, or major repair;

12           (2) "cost of change, relocation, or removal" means the  
13 entire cost incurred by the 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;

19           (3) "department" means the Department of Transportation and  
20 Public Facilities;

21           (4) "encroachment" includes a tower, pole, poleline, pipe,  
22 pipeline, driveway, private road, fence, billboard, stand or building,  
23 or a structure or object of any kind which is or has been placed in,  
24 on, under, or over a portion of a public facility;

25           (5) "excess lands" means lands acquired for the state in  
26 excess of land required for a public facility, when the remaining  
27 portion of a parcel of land acquired is left in a shape or condition  
28 as to be of little or no value to its owner, or to give rise to claims  
29 or litigation concerning severance or other damage;

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,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,  
2 light, chemicals, air, sewage, drainage not connected with a public  
3 facility drainage system, irrigation, or any other substance; "utility  
4 facility" also includes any system for furnishing transportation of  
5 goods or persons by means of a railway, tramway, cableway, conveyor,  
6 flume, canal, tunnel, pipeline, or a similar means.

7 \* Sec. 8. This Act takes effect July 1, 1985.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 159

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

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						
600 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					

ANALYSIS: 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: *[Signature]* 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 installments in airports, public buildings and harbors, and reimburse utility companies for facility relocation due to State construction projects.

NB 157 - rise 47.5

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.

**COMMITTEE COPY**

**ALASKA STATE LEGISLATURE**  
 ..... 14th Legislature FIRST Session  
 HOUSE ... BILL ..... NO. ..159..  
 THBy THE RULES COMMITTEE BY...  
 REQUEST OF THE GOVERNOR

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

Utilities/encroachment/public facilities

Introduced in the House ..... 2/1 ..... 19.85

**HISTORY IN THE HOUSE**

19	85	Read first time and referred to Committee on																												
Feb.	1	<b>C&amp;RA, TRANSPORTATION AND FINANCE</b> Reported back with recommendation that																												
		Read second time and																												
		Read third time and																												
		<table border="0"> <tr> <td><b>PASS</b></td> <td><b>Effective Date</b></td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td align="center" colspan="2"><b>Reconsideration</b></td> </tr> <tr> <td><b>PASS</b></td> <td><b>Effective Date</b></td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reported correctly engrossed</td> </tr> <tr> <td colspan="2">Signed by Speaker</td> </tr> <tr> <td colspan="2">Sent to Senate</td> </tr> </table>	<b>PASS</b>	<b>Effective Date</b>	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	<b>Reconsideration</b>		<b>PASS</b>	<b>Effective Date</b>	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reported correctly engrossed		Signed by Speaker		Sent to Senate	
<b>PASS</b>	<b>Effective Date</b>																													
Yeas	Yeas																													
Nays	Nays																													
Absent	Absent																													
Excused	Excused																													
<b>Reconsideration</b>																														
<b>PASS</b>	<b>Effective Date</b>																													
Yeas	Yeas																													
Nays	Nays																													
Absent	Absent																													
Excused	Excused																													
Reported correctly engrossed																														
Signed by Speaker																														
Sent to Senate																														
CHIEF CLERK OF THE HOUSE																														

**HISTORY IN THE SENATE**

19		Read first time and referred to Committee on																												
		Reported back with recommendation that																												
		Read second time and																												
		Read third time and																												
		<table border="0"> <tr> <td><b>PASS</b></td> <td><b>Effective Date</b></td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td align="center" colspan="2"><b>Reconsideration</b></td> </tr> <tr> <td><b>PASS</b></td> <td><b>Effective Date</b></td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reported correctly engrossed</td> </tr> <tr> <td colspan="2">Signed by President</td> </tr> <tr> <td colspan="2">Returned to House</td> </tr> </table>	<b>PASS</b>	<b>Effective Date</b>	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	<b>Reconsideration</b>		<b>PASS</b>	<b>Effective Date</b>	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reported correctly engrossed		Signed by President		Returned to House	
<b>PASS</b>	<b>Effective Date</b>																													
Yeas	Yeas																													
Nays	Nays																													
Absent	Absent																													
Excused	Excused																													
<b>Reconsideration</b>																														
<b>PASS</b>	<b>Effective Date</b>																													
Yeas	Yeas																													
Nays	Nays																													
Absent	Absent																													
Excused	Excused																													
Reported correctly engrossed																														
Signed by President																														
Returned to House																														
SECRETARY OF THE SENATE																														

**HISTORY IN THE HOUSE**

19		Received from Senate
		Concurred in Senate amendment thus adopting: <b>VOTE</b>
		Failed to concur in Senate amendment; asked Senate to recede <b>VOTE</b>
		Senate receded from amendment <b>VOTE</b>
		Senate failed to recede from amendment <b>VOTE</b>
		CC appointed by House
		CC appointed by Senate
		CC adopted by House <b>VOTE</b>
		CC adopted by Senate <b>VOTE</b>
		To enrolling Reported correctly enrolled Sent to Governor ..... by Governor
		Filed with Lt. Governor
		Chapter No. ....

**COMMITTEE COPY**

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: 3/6/86

**REQUEST**

Bill/Resolution No. : CSHB 159 (FIN)  
 Title: Utility Relocation  
 \_\_\_\_\_  
 Sponsor: Governor  
 Requestor: House Finance Committee  
 Date of Request: 3/6/86

**FISCAL DETAIL**

Agency Affected: DOT/PF  
 BRU: Engineering, Operations  
and Standards  
 \_\_\_\_\_  
 Components: \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
<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)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Al Adams, Chair  
 Division: House Finance Committee

Phone: 465-3706  
 Date: 3/6/86

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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

Distribution (by Agency preparing fiscal note):

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

Cramer ✓  
3/6/86

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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, if  
4 the utility facility is installed or authorized under a utility per-  
5 mit, or a regulation after the effective date of this Act and is  
6 installed in the location specified in the permit;

7 (2) by the department as a cost of highway construction, if  
8 the facility is installed before the effective date of this Act under  
9 a utility permit issued on or after July 1, 1960, and is in the loca-  
10 tion specified in the permit;

11 (3) by the department as a cost of airport construction, if  
12 the utility facility was installed before the location became part of  
13 a state airport;

14 (4) by the utility in all other cases unless the commis-  
15 sioner finds it is in the public interest for the cost to be paid by  
16 the department.

17 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
18 constructed, placed, changed, or maintained across or within an air-  
19 port, but only in accordance with regulations or procedures adopted by  
20 the department. An encroachment may not be constructed, placed, main-  
21 tained, or changed until it is authorized by a written permit issued  
22 by the department, unless the department provides otherwise by regula-  
23 tion.

24 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
25 incidental to the construction or maintenance of a state airport the  
26 department determines and orders that an encroachment previously  
27 authorized by written permit must be changed, relocated, or removed,  
28 the owner of the encroachment shall change, relocate, or remove it  
29 within a reasonable time set by the department in the order. The cost

1 of the change, relocation, or removal shall be paid as provided in  
2 AS 02.15.104(c). If the owner does not change, relocate, or remove an  
3 encroachment within the time set by the department, the encroachment  
4 will be considered an unauthorized encroachment subject to the pro-  
5 visions of AS 02.15.114.

6 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
7 encroachment exists in, on, under, or over a state airport the depart-  
8 ment may require the removal of the encroachment, at the expense of  
9 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

10 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
11 Notice shall be given the owner, occupant, or person in possession of  
12 an unauthorized encroachment, or to another person causing or per-  
13 mitting the encroachment to exist, by serving upon any of them a  
14 notice demanding the removal of the encroachment within a time limit  
15 set by the department. The notice shall describe the encroachment  
16 with reasonable certainty as to its character and location. Service  
17 of the notice may be made by certified mail.

18 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;  
19 REMOVAL EXPENSE. After a failure of the owner of an unauthorized  
20 encroachment to comply with a notice or order of the department under  
21 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the  
22 encroachment, or cause it to be removed. The owner of the unauthor-  
23 ized encroachment shall pay to the department

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

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

29 (3) costs and expense of suit.

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

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

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

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

29 (18) "utility facility" includes poles, plants, lines,

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

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

11 Sec. 19.25.200. ENCROACHMENT PERMITS. (a) An encroachment may  
12 be constructed, placed, changed, or maintained across or along a  
13 highway, but only in accordance with regulations adopted by the de-  
14 partment. An [NO] encroachment may not be constructed, placed, main-  
15 tained, or changed until it is [DULY] authorized by a written permit  
16 issued by the department, unless the department provides otherwise by  
17 regulation.

18 (b) The provisions under (a) of this section do not apply to a  
19 mailbox or a newspaper box attached to a mailbox.

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

21 (12) "utility" includes a corporation, company, individual,  
22 or association of individuals, or a lessee, trustee, or court-appoint-  
23 ed receiver, that owns, operates, manages, or controls a line, plant,  
24 pipeline, or system for furnishing, producing, generating, transmit-  
25 ting, or distributing power, electricity, communications, telecommu-  
26 nications, water, gas, oil, petroleum products, coal or other mineral  
27 slurry, steam, heat, light, chemicals, air, sewage, drainage not  
28 connected with highway drainage, irrigation, or similar products  
29 including publicly owned fire and police signal systems and street

1 lighting systems that directly or indirectly serve the public or a  
2 segment of the public; "utility" also includes a corporation, company,  
3 individual, or association of individuals, or a lessee, trustee, or  
4 court-appointed receiver that owns, operates, manages, or controls a  
5 system for furnishing transportation of goods or persons by means of a  
6 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,  
7 or a similar means;

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

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

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

20 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

21 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A  
22 utility facility may be constructed, placed, or maintained across,  
23 along, over, under, or within a state public facility only in accor-  
24 dance with regulations adopted or procedures prescribed by the depart-  
25 ment and only if authorized by a written permit issued by the depart-  
26 ment.

27 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO  
28 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a  
29 public facility project, the department determines and orders that a

1 utility facility located across, along, over, under, or within a state  
2 public facility must be changed, relocated, or removed, the utility  
3 owning or maintaining the facility shall change, relocate, or remove  
4 it in accordance with the order, within a reasonable time set by the  
5 department in the order.

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

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

14 (1) by the department as a cost of public facility con-  
15 struction, if the utility facility is installed or authorized under a  
16 utility permit or a regulation after the effective date of this Act  
17 and is installed in the location specified in the permit;

18 (2) by the department as a cost of highway construction, if  
19 the facility is installed before the effective date of this Act under  
20 a utility permit issued on or after July 1, 1960, and is in the lo-  
21 cation specified in the permit;

22 (3) by the department as a cost of public facility con-  
23 struction, if the utility facility was installed before the location  
24 became a state public facility;

25 (4) by the utility in all other cases unless the commis-  
26 sioner finds it is in the public interest for the cost to be paid by  
27 the department.

28 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
29 constructed, placed, changed, or maintained across or within a public

1 facility, but only in accordance with regulations or procedures adopt-  
2 ed by the department. An encroachment may not be constructed, placed,  
3 maintained, or changed until it is authorized by a written permit  
4 issued by the department, unless the department provides otherwise by  
5 regulation.

6 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
7 incidental to the construction or maintenance of a state public facil-  
8 ity, the department determines and orders that an encroachment pre-  
9 viously authorized by written permit must be changed, relocated, or  
10 removed, the owner of the encroachment shall change, relocate, or  
11 remove it within a reasonable time set by the department in the order.  
12 The cost of the change, relocation, or removal shall be paid as pro-  
13 vided in AS 35.10.220(c). If the owner does not change, relocate, or  
14 remove an encroachment within the time set by the department, the  
15 encroachment will be considered an unauthorized encroachment and  
16 subject to the provisions of AS 35.10.270.

17 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
18 encroachment exists in, on, under, or over a state public facility,  
19 the department may require the removal of the encroachment, at the  
20 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-  
21 270.

22 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.  
23 Notice shall be given the owner, occupant, or person in possession of  
24 an unauthorized encroachment, or to another person causing or per-  
25 mitting the encroachment to exist, by serving upon any of them a  
26 notice demanding the removal of the encroachment within a time limit  
27 set by the department. The notice shall describe the encroachment  
28 with reasonable certainty as to its character and location. Service  
29 of the notice may be made by certified mail.

1           Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.

2           After a failure of the owner of an unauthorized encroachment to comply  
3           with the notice or order of the department under AS 35.10.220, 35.10.-  
4           240, or 35.10.260, the department may remove the encroachment, or  
5           cause it to be removed. The owner of the unauthorized encroachment  
6           shall pay to the department

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

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

12                    (3) costs and expense of suit.

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

14                    Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
15          requires otherwise,

16                    (1) "construction" or a derivative of the term "construc-  
17          tion" means construction, reconstruction, alteration, improvement, or  
18          major repair;

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

26                    (3) "department" means the Department of Transportation and  
27          Public Facilities;

28                    (4) "encroachment" includes a tower, pole, poleline, pipe,  
29          pipeline, driveway, private road, fence, billboard, stand or building,

1 or a structure or object of any kind that is or has been placed in,  
2 on, under, or over a portion of a public facility;

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

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

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

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

28 (9) "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 public  
5 facility drainage system, irrigation, or another substance; "utility  
6 facility" also includes a system for furnishing transportation of  
7 goods or persons by means of a railway, tramway, cableway, conveyor,  
8 flume, canal, tunnel, pipeline, or a similar means.

9 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

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

**REQUEST**

Bill/Resolution No.: CSHB 159 (Trans)  
 Title: Utilities and Encroachment  
 on State Airports, Public Faci-  
 lities and Highways  
 Sponsor: Governor/Rules Committee  
 Requestor: DOT&PF  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: DOT&PF  
 BRU: Engineering & Operations  
 Standards  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

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

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

See attachment

*John Johnson, Director*

Prepared by: Bruce R. Freitag Phone: 465-2951  
 Division: Engineering & Operations Standards Date: December 5, 1985

Approved by Commissioner: [Signature] Date: 12/31/85  
 Agency: Transportation and Public Facilities

Distribution (by Agency preparing fiscal note) :

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

R2

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 159 (Trans)

## Analysis

The need for this legislation is to provide statute authority for the accommodation and relocation of utility facilities within State Rights-Of-Way for other Departmental modes - airports, harbors and public hearings. 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.

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 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 rights-of-ways. It would also provide the State statutory authority to issue utility permits for proper utility facility installments in airports, public buildings and harbors, and reimburse utility companies for facility relocation due to State construction projects.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 159 (Trans)

### 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 notify 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 addresses 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 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 some 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.

BILL SHEFFIELD  
GOVERNOR



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

Offered: 4/11/85  
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR HOUSE BILL NO. 159 (Transportation)  
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, if  
4 the utility facility is installed or authorized under a utility  
5 permit, or a regulation after the effective date of this Act;

6 (2) by the department as a cost of highway construction if  
7 the facility is installed before the effective date of this Act;

8 (3) by the utility in all other cases unless the commis-  
9 sioner finds it is in the public interest for the cost to be paid by  
10 the department.

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

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

29 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized

1 encroachment exists in, on, under, or over a state airport the depart-  
2 ment may require the removal of the encroachment, at the expense of  
3 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

4 Sec. 02.15.112. 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. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;  
13 REMOVAL EXPENSE. After a failure of the owner of an unauthorized  
14 encroachment to comply with a notice or order of the department under  
15 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the  
16 encroachment, or cause it to be removed. The owner of the unauthor-  
17 ized encroachment 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. 2. AS 02.15.260 is amended by adding new paragraphs to read:

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

1       there shall also be subtracted from the entire cost the salvage value  
2       derived from the old facility;

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

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

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

1 also includes a system for furnishing transportation of goods or  
2 persons by means of a railway, tramway, cableway, conveyor, flume,  
3 canal, tunnel, pipeline, or a similar means.

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

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

12 (b) The provisions under (a) of this section do not apply to a  
13 mailbox or a newspaper box attached to a mailbox.

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

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

1 or a similar means;

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

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

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

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

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

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, a permit authorizing the utility  
2 issued by the department under AS 35.10.210 becomes invalid and the  
3 facility will be considered an unauthorized encroachment subject to  
4 the provisions of AS 35.10.270.

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

8 (1) by the department as a cost of public facility con-  
9 struction, if the utility facility is installed or authorized under a  
10 utility permit or a regulation after the effective date of this Act;

11 (2) by the department as a cost of highway construction if  
12 the facility is installed before the effective date of this Act;

13 (3) by the utility in all other cases unless the commis-  
14 sioner finds it is in the public interest for the cost to be paid by  
15 the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
17 constructed, placed, changed, or maintained across or within a public  
18 facility, but only in accordance with regulations or procedures adopt-  
19 ed by the department. An encroachment may not be constructed, placed,  
20 maintained, or changed until it is authorized by a written permit  
21 issued by the department, unless the department provides otherwise by  
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
24 incidental to the construction or maintenance of a state public facil-  
25 ity, the department determines and orders that an encroachment pre-  
26 viously authorized by written permit must be changed, relocated, or  
27 removed, the owner of the encroachment shall change, relocate, or  
28 remove it within a reasonable time set by the department in the order.  
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,  
2 or remove an encroachment within the time set by the department, the  
3 encroachment will be considered an unauthorized encroachment and  
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
6 encroachment exists in, on, under, or over a state public facility,  
7 the department may require the removal of the encroachment, at the  
8 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-  
9 270.

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

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
19 After a failure of the owner of an unauthorized encroachment to comply  
20 with the notice or order of the department under AS 35.10.220, 35.10.-  
21 240, or 35.10.260, the department may remove the encroachment, or  
22 cause it to be removed. The owner of the unauthorized encroachment  
23 shall pay to the department

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

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

29 (3) costs and expense of suit.

1 \* Sec. 7. AS 35.25.020 is repealed and reenacted to read:  
2       Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
3 requires otherwise,  
4           (1) "construction" or a derivative of the term "construc-  
5 tion" means construction, reconstruction, alteration, improvement, or  
6 major repair;  
7           (2) "cost of change, relocation, or removal" means the  
8 entire cost incurred by the utility properly attributed to the change,  
9 relocation, or removal of a facility, less any costs for improvements  
10 or upgrading over and above the cost of a functionally equal facility;  
11 if a facility is to be relocated and replaced with new equipment,  
12 there shall also be subtracted from the entire cost any salvage value  
13 derived from the old facility;  
14           (3) "department" means the Department of Transportation and  
15 Public Facilities;  
16           (4) "encroachment" includes a tower, pole, poleline, pipe,  
17 pipeline, driveway, private road, fence, billboard, stand or building,  
18 or a structure or object of any kind that is or has been placed in,  
19 on, under, or over a portion of a public facility;  
20           (5) "maintenance" means the preservation of each type of  
21 facility as nearly as possible in its original condition as construct-  
22 ed, or as improved;  
23           (6) "public building" means a building owned or controlled  
24 and held by the state for government or public use;  
25           (7) "public facility" or "public work" means a structure or  
26 project constructed or maintained by the department except airports  
27 and highways, and includes public buildings, boat harbors, port facil-  
28 ities, dikes, jetties, and breakwaters;  
29           (8) "utility" includes a corporation, company, individual,

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

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

26 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).

Offered: 2/22/85  
Referred: Transportation  
and Finance

Original sponsor: Rules/Governor

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-appointed  
7 receiver, that owns, operates, manages, or controls a line, plant,  
8 pipeline, or system for furnishing, producing, generating, transmitting,  
9 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 construct-  
16          ed, 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 immediately in accordance with AS 01.-  
21 10.070(c).

Introduced: 2/1/85  
Referred: Community & Regional  
Affairs, Transportation and  
Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 159

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 thoriz d 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 must 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  
25 removed in accordance with the order, any permit authorizing the  
26 facility issued by the department under AS 02.15.102 becomes invalid  
27 and the facility will be considered an unauthorized encroachment  
28 subject 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(15), ordered under (a) of this section is to be paid as  
2 follows:

3 (1) by either the department as a cost of airport construc-  
4 tion, or by the utility, depending on the terms of the utility permit;

5 (2) by the utility if there is no utility permit issued for  
6 the utility facility;

7 (3) by the utility if the utility facility is not installed  
8 in the location provided for in the utility permit, regardless of  
9 whether the utility permit requires payment by the department.

10 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be  
11 constructed, placed, changed, or maintained across or within an air-  
12 port, but only in accordance with regulations or procedures adopted by  
13 the department. No encroachment may be constructed, placed, main-  
14 tained, or changed until it is authorized by a written permit issued  
15 by the department, unless the department provides otherwise by regula-  
16 tion.

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

28 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
29 encroachment exists in, on, under, or over a state airport the

1 department may require the removal of the encroachment, at the expense  
2 of the owner, in the manner provided in AS 02.15.112 -- 02.15.114.

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

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

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

23 Sec. 02.15.116. SUMMARY REMOVAL. The department may at any time  
24 and without notice remove from a state airport an encroachment or  
25 utility facility which obstructs or prevents the use of the airport by  
26 the public, or interferes with the safe operation of the airport.

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

- 28 (15) "cost of change, relocation, or removal" means the  
29 entire cost incurred by the utility properly attributed to the change,

1 relocation, or removal of a facility, less any costs for improvements  
2 or upgrading over and above the cost of a functionally equal facility;  
3 if a facility is to be relocated and replaced with new equipment,  
4 there shall also be subtracted from the entire cost any salvage value  
5 derived from the old facility;

6 (16) "encroachment" includes a tower, pole, poleline, pipe,  
7 pipeline, driveway, private road, fence, billboard, stand or building,  
8 or structure or object of any kind which is or has been placed in, on,  
9 under, or over a portion of an airport;

10 (17) "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 airport drainage, irrigation, or similar products  
18 including publicly owned fire and police signal systems and street  
19 lighting systems which directly or indirectly serve the public or a  
20 segment of the public; "utility" also includes any corporation, compa-  
21 ny, individual, or association of individuals, or any lessee, trustee,  
22 or court-appointed receiver that owns, operates, manages, or controls  
23 any system for furnishing transportation of goods or persons by means  
24 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,  
25 pipeline, or a similar means;

26 (18) "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,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,  
2 light, chemicals, air, sewage, drainage not connected with an airport  
3 drainage system, irrigation, or any other substance; "utility facili-  
4 ty" also includes any system for furnishing transportation of goods or  
5 persons by means of a railway, tramway, cableway, conveyor, flume,  
6 canal, tunnel, pipeline, or a similar means.

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

8 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be  
9 constructed, placed, changed, or maintained across or along a highway,  
10 but only in accordance with regulations adopted by the department. No  
11 encroachment may be constructed, placed, maintained, or changed until  
12 it is [DULY] authorized by a written permit issued by the department,  
13 unless the department provides otherwise by regulation.

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

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

1 pipeline, or a similar means;

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

3 (14) "utility facility" includes poles, plants, lines,  
4 trenches, bridges, utilidors, tunnels, pipelines, and any other system  
5 for furnishing, producing, generating, transmitting, or distributing  
6 power, electricity, communications, tele-ommunications, water, gas,  
7 oil, petroleum products, coal or other mineral slurry, steam, heat,  
8 light, chemicals, air, sewage, drainage not connected with a highway  
9 drainage system, irrigation, or any other substance; "utility facili-  
10 ty" also includes any system for furnishing transportation of goods or  
11 persons by means of railway, tramway, cableway, conveyor, flume,  
12 canal, tunnel, pipeline, or a similar means.

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

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

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

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

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, any permit authorizing the  
2 utility issued by the department under AS 35.10.210 becomes invalid  
3 and the facility will be considered an unauthorized encroachment  
4 subject to the provisions of AS 35.10.270.

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

8 (1) by either the department as a cost of public facility  
9 construction, or by the utility, depending on the terms of the utility  
10 permit;

11 (2) by the utility if there is no utility permit issued for  
12 the utility facility;

13 (3) by the utility if the utility facility is not installed  
14 in the location provided for in the utility permit, regardless of  
15 whether the utility permit requires payment by the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be  
17 constructed, placed, changed, or maintained across or within a public  
18 facility, but only in accordance with regulations or procedures adopt-  
19 ed by the department. No encroachment may be constructed, placed,  
20 maintained, or changed until it is authorized by a written permit  
21 issued by the department, unless the department provides otherwise by  
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,  
24 incidental to the construction or maintenance of a state public facil-  
25 ity, the department determines and orders that an encroachment pre-  
26 viously authorized by written permit must be changed, relocated, or  
27 removed, the owner of the encroachment shall change, relocate, or  
28 remove it within a reasonable time set by the department in the order.  
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,  
2 or remove an encroachment within the time set by the department, the  
3 encroachment will be considered an unauthorized encroachment and  
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized  
6 encroachment exists in, on, under, or over a state public facility,  
7 the department may require the removal of the encroachment, at the  
8 expense of the owner, in the manner provided in AS 35.10.260 --  
9 35.10.270.

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

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.  
19 After a failure of the owner of an unauthorized encroachment to comply  
20 with the notice or order of the department under AS 35.10.220, 35.10.-  
21 240, or 35.10.260, the department may remove the encroachment, or  
22 cause it to be removed. The owner of the unauthorized encroachment  
23 shall pay to the department

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

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

29 (3) costs and expense of suit.

1           Sec. 35.10.280. SUMMARY REMOVAL. The department may at any time  
2 and without notice remove from a state public facility an encroachment  
3 or a utility facility which obstructs or prevents the use of the  
4 public facility by the public, or interferes with the safe operation  
5 of the public facility.

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

7           Sec. 35.25.020. DEFINITIONS. In this title, unless the context  
8 requires otherwise,

9           (1) "construction" or any derivative of the term "con-  
10 struction" means construction, reconstruction, alteration, improve-  
11 ment, or major repair;

12           (2) "cost of change, relocation, or removal" means the  
13 entire cost incurred by the 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;

19           (3) "department" means the Department of Transportation and  
20 Public Facilities;

21           (4) "encroachment" includes a tower, pole, poleline, pipe,  
22 pipeline, driveway, private road, fence, billboard, stand or building,  
23 or a structure or object of any kind which is or has been placed in,  
24 on, under, or over a portion of a public facility;

25           (5) "excess lands" means lands acquired for the state in  
26 excess of land required for a public facility, when the remaining  
27 portion of a parcel of land acquired is left in a shape or condition  
28 as to be of little or no value to its owner, or to give rise to claims  
29 or litigation concerning severance or other damage;

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,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,  
2 light, chemicals, air, sewage, drainage not connected with a public  
3 facility drainage system, irrigation, or any other substance; "utility  
4 facility" also includes any system for furnishing transportation of  
5 goods or persons by means of a railway, tramway, cableway, conveyor,  
6 flume, canal, tunnel, pipeline, or a similar means.

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