

HB

155

STATE OF ALASKA
THE LEGISLATURE

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

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May, 1988

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

Mary Van Nimwegen

House C+RA

3-9-87

3:00 p.m.

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

March 9, 1987

MEMORANDUM

TO: Representative Henry Springer, Chairman
Members of House Community & Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: HB 155 - Relocation of Utilities

The Alaska Municipal League is opposed to HB 155. The AML has long been opposed to legislative proposals to shift the cost of relocating utilities to municipalities as outlined in the 1987 Policy Statement. Part VI. UTILITIES, A. State Regulation, 3. Utility Relocation Costs on page 17 states "The League opposes any effort to shift to municipalities the cost of all non-municipal, utility relocation within existing rights-of-way associated with municipal street work."

I would respectfully request that the Committee hold HB 155 until I am able to present the AML's position. Due to prior commitments and having just returned from a National League of Cities meeting in Washington, D.C., I am unable to appear before the Committee today, and have had insufficient time to review the current legislation which appears to be similar to past legislation which the AML has opposed for good reasons.

I have attached sample copies of testimony on a similar piece of legislation, SB 67, introduced in the 13th Alaska State Legislature. I respect AML opposition to HB 155 and my request to delay Committee action to give me sufficient time to assess the legislation and its impacts on our members for your information prior to Committee action.

12-2 14B 155

Alaska MUNICIPAL League

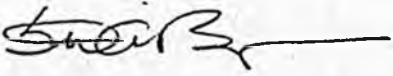


TELEPHONES
(907) 586-1325
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

February 7, 1984

To: House Labor and Commerce Committee

From: Scott A. Burgess, Executive Director 

Re: SB 67 - Utility Relocation Costs

The League opposes SB 67, as introduced, relating to the relocation of utility facilities incident to the construction of road or highway projects by a municipality.

The League opposes any effort to shift to municipalities the cost of all non-municipal utility relocation within existing rights-of-way associated with municipal street work.

Municipalities are already facing decreased revenues from reductions in Municipal Assistance and State Revenue Sharing Programs. The additional burden of paying utility relocation costs could only come from an increase in property taxes, unless the municipality owned the utility and could pass the cost on to the ratepayers directly. The problem is further exacerbated in municipalities with limited road powers. The cost of relocating utilities would reduce the amount of money available to the road service districts for road construction and maintenance. Road service districts rely heavily on state funds and their ability to levy taxes is limited.

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Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

March 29, 1983

To: Senate Community and Regional Affairs Committee
From: Ginny Chitwood, Executive Director *GC.*
Re: SB 67 - Utility Relocation Costs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4545

TONY KNOWLES,
MAYOR

12-4 HB155

OFFICE OF THE MUNICIPAL ATTORNEY

May 4, 1983

Don Clocksin
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

Re: SB67 and HB244

Dear Don:

As you may recall, I testified at a Community and Regional Affairs hearing last Friday via a teleconference from Anchorage. I explained that the Municipality of Anchorage objects to SB67 and HB244. The purpose of this letter is to set forth in a little more detail the Municipality's objections and to ask you to share this information with the other members of the Community and Regional Affairs Committee.

I would like to dispel the notion that the issue involved here is "The cost causer should be the cost payer". This is really an inaccurate statement. The real issue is whether the taxpayers as a whole or whether the rate-payers should bear utility relocation costs. The Municipality's philosophy and practice since 1969 has been that the rate-payer (i.e., the utility company) should pay for utility relocation costs in connection with the road improvement project in a public right-of-way. This rule follows the common law, case law, and the practice followed in the cities which the Municipality's Public Works Department recently surveyed regarding their approach to utility relocation costs. Let me explain these points in a little more detail.

Basically, a utility's use of a public right-of-way is free of charge. The only cost is a nominal permit fee. This permit lets the Municipality know that a utility is in the right-of-way

Don Clocksin
May 4, 1983
Page 2

and where it is located. No other charges are assessed against the utility company for the use of the public right-of-way. This is in contrast to the situation found in the Municipality's telephone survey. The cities contacted told us that the utilities in their area had franchises and part of the franchise included a percentage payment of the gross revenues of the utility annually to the local government for the use of the right-of-way.

The Municipality, and formally the GAAB, did not want to impose an annual charge upon utility companies for the use of public rights-of-way. Instead, utility companies were expected to pay for any relocations that may be required because of the government's improvement of the right-of-way. In short, the primary purpose of the right-of-way was for road use and utilities were considered secondary users. Please keep in mind that the utilities all along have had the option of purchasing private easements for the placement of their facilities. They did not do this in many cases. Instead, they used the public right-of-way free of charge. Accordingly, if SB67 and HB 244 are passed and signed into law, there will be a significant impact on the Municipality's road construction budget. Because road improvements are a local priority, we may be forced to greatly increase the annual permit fees that are charged utilities for the use of our rights-of-way.

In those situations where a utility company has been able to establish some prior right; that is, a right that existed before the right-of-way was dedicated to public use or before the local government came into existence, then the Municipality has traditionally paid for relocation costs. In every other case, the utility has paid for such costs pursuant to our local ordinance. This pattern and practice, which the Municipality of Anchorage wants to continue without interference by State statute, is the common law rule. As 12 McQuillan, Municipal Corporations, § 34.74a at page 183 states:

The fundamental common-law right applicable to franchises in streets is that the utility company must relocate its facilities in public streets when changes are required by public necessity. Accordingly, it is

Don Clocksin
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generally held that the municipality may require a change in the location of pipes or other underground facilities of the grantee of a franchise, where public convenience or security require it, even at the grantee's own expense, and even in the face of a protest by a consumer. It makes no difference whether the surface or subsurface of streets is involved.

The cases are legion which support this proposition. In an early case, New York Tunnel Authority v. Consolidated Edison Company of New York, Inc., 295 N.Y. 467, 474, 68 N.E. 445, 448 (1946) the Court stated:

Although authorized to lay its pipes in the public streets, the company takes the risk of their location and is bound to make such changes as the public convenience and security require, at its own cost and charge. (citations) All these cases are to the point, that these public service corporations maintain their rights in the streets, subject to reasonable regulation and control, and are bound to relocate their structures at their own expense whenever the public health, safety, or convenience require the change to be made.

And in the very recent case of Michigan Bell Tel. Company v. City of Detroit, 308 N.W.2d 608 (1981) the Court stated

The dispute in the present case is a simple one. Defendant contends that its police powers permit it to require plaintiff to move its facilities from one street to another for the purpose of making way for a public improvement. Plaintiff, on the other hand, contends that because its easements are vested, it may not be required to relocate its facilities without reimbursement from defendant as would be the case in any condemnation proceeding. . . .

On the facts before us then, we hold that the common-law rule requiring a utility to remove its facilities at its own expense where necessary to protect the public health or general welfare is applicable. At pages 610-611.

Don Clocksin
May 4, 1983
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Another recent case is Mountain States Tel. & Tel. Company v. Boise, etc., 607 P.2d 1084 (1980) where the Court said:

There is no taking of private property for public use in causing relocation of the utilities' facilities in any-wise violative of the eminent domain provisions of Idaho Constitution Article I § 14, the injury sustained, if any, being damnum asque injuria, since "uncompensated obedience to a regulation enacted for the public safety under the police power of the state was not taking property without due compensation." . . . At page 1086.

As you can see, then, it is certainly the rule that when local governments improve their streets, utilities located in those streets must move at their own expense. These cases stand for the proposition that a local government, under its police power, has this authority. The Municipality of Anchorage can see no valid reason why this rule should be changed as the proposed SB67 and HB244 intend to do.

Furthermore, there is a real question with reference to another aspect of what we do here in Anchorage. This involves specific franchise agreements that we have with various utilities. Specifically, we have written agreements (i.e., franchises or permits) with several oil companies and a local cable television company. These specific agreements clearly set forth the obligation of these private companies to pay their own relocation costs. Again, the philosophy behind this is that these companies are using public rights-of-way free of charge. Please note also that in some of our existing franchise agreements, such as our pole attachment agreement with MultiVisions, their promise to pay relocation costs is part of the "basis of the bargain" which, if disturbed, not only poses Constitutional problems, but may require termination and a complete renegotiation.

The adoption of the proposed legislation poses a Constitutional problem with respect to our existing franchises. Article I, Section 15 of the Alaska Constitution provides:

No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges shall

Don Clocksin
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Page 5

be passed. . . .

It is our position that SB67 and HB244 as presently written would be violative of this Constitutional provision because of our existing franchises.

Finally, it would appear that the Legislature should not be venturing into this field of control over local governments. The Municipality of Anchorage is a Home Rule municipality and believes that it has the authority and power to control this aspect of its business. We do own several utility companies ourselves and are perfectly capable of handling the situation with respect to our own utilities. The other private utilities that do business here in Anchorage really do not have a firm basis to request that this local government pay their tab when, in the first place, they began using public rights-of-way with the full knowledge that this method of doing business would require them to pay relocation costs when the Municipality exercised its police power. As has been emphasized in 12 McQuillan, Municipal Corporations § 34.74 at page 179:

The grant by a municipality to a public service company of the right to use streets does not divest the municipality of its police power over the grantee in relation to its use of such streets. Indeed, a municipality cannot grant away or limit the police powers conferred upon it by the Legislature.

Accordingly, Don, I would request that you share the view of the Municipality, as set forth in this letter, with the other members of the Community and Regional Affairs Committee and with any other Committee which may consider this legislation. As far as the Municipality is concerned, this is an extremely important and far reaching issue and we respectfully request that SB67 and HB244 be defeated. The Director of the Department of Public Works has already provided to your Committee a rather lengthy report of the telephone survey that was conducted last month. I believe that this survey conclusively establishes, along with the points raised in this letter, the validity of the Municipality's position.

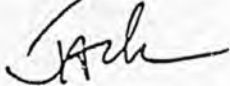
Don Clocksin
May 4, 1983
Page 6

If you have any further questions, or if the members of your Committee have any further questions with regard to the points that I have raised herein, I would be more than happy to address those concerns either over the telephone or in person.

As a personal note, I hope you and Betty are doing well these days.

Yours very truly,

DEPARTMENT OF LAW



John W. Coyne
Assistant Municipal Attorney

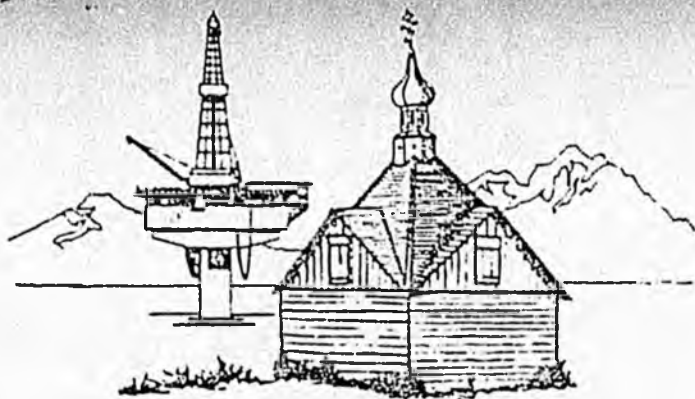
JWC:ld

cc: Mayor Tony Knowles
Jerry Wertzbaugher, Municipal Attorney
Patrick Anderson, Legislative Affairs
Everett P. Diener, Director, Public Works
Lee Browning, Municipal Engineer
Mike Bolinger, Program Manager, Engineering Div.

CITY OF KENAI

P. O. Box 580
KENAI, ALASKA 99611
PHONE (907) 283-7539

(12-5) HB 155



April 16, 1984

Honorable Mitch Abood
Representative, State of Alaska
Pouch V
Juneau, Alaska 99801

Dear Representative Abood:

I want to take this opportunity to congratulate you and thank you on behalf of the City of Kenai for your vote on SB 67 which is typically referred to as the Utility Relocation Bill.

On the basis of your "no" vote and the "no" votes of 26 other members of the Alaska House of Representatives, you have prevented legislation that would have cost local communities millions of dollars over the next few years, and at the same time, permitted additional construction throughout the municipalities of the State of Alaska that might not have taken place had this bill not been defeated.

The municipalities' main concerns with this legislation was that the utilities are provided easements by the municipalities at no cost and in most cases knowing full well that municipalities (providing money is available) will be upgrading and improving their road systems, and therefore, should be aware of the possible costs of having to relocate. The second major concern is that if the State forces local government to also absorb the costs for moving the "freebie" utility lines which are in municipalities' easements or right-of-way at the sufferance of the cities, this additional cost might persuade many municipalities to forego many road improvement projects which are sorely need in almost every community in the State of Alaska.

To my knowledge, I know of no elected local public officials or appointed local public officials who supported SB 67 in the first place. The only source of support that this bill had was from the utilities themselves and from the paid lobbyists that the utilities hire in order to accomplish their legislative goals.

Again, let me say on behalf of the City of Kenai, we appreciate your position on this particular bill, and feel it will be extremely beneficial to the people in municipalities throughout the State of Alaska.

Sincerely,


Wm. J. Brighton
City Manager

WJB/kh



THE HEART OF THE MATANUSKA VALLEY

12-6 HB 155

CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

March 21, 1984

The Honorable Jack Fuller
Chairman, House Rules Committee
Pouch V
Juneau, Alaska 99811

RE: CSSB 67 Utility Relocation

Dear Representative Fuller,

Through the past few legislative sessions this bill SB 67 and now CSSB67 and others have been proposed to shift the burden onto the local government for utility relocation that was not installed with proper easements, installed outside easements, installed contrary to local rules and regulations and adinfinitem.

The City of Palmer in the past two years has undertaken over \$1,750,000 in local street construction which included asphalt paving, curb, gutter and sidewalk in most instances.

It is the City of Palmer's policy that a residential street is twenty eight (28) feet wide back of curb to back of curb which is assessed to the abutting property owners and benefiting property owners. The cost distribution is made using the zone method similar to the City of Anchorage. From our master plan, any street which is designated collector or arterial and is upgraded to a forty-four (44) foot wide street back of curb to back of curb plus a four (4) foot sidewalk on each side, the City bears the additional cost.

During the course of construction, we have run into buried cables which have meandered through the right of way varying up to eighteen (18) feet from the property line. This was on North Alaska Street for which the City was billed \$19,329.06. On North Gulkana Street, the cables were buried up to ten feet from the property line for which we were billed \$22,248.45 or an additional seven (7%) percent and seven and four tenths (7.4%) percent respectively to each project.

To regress for a bit, the City of Palmer had and still has its ordinances that require utility companies to one, provide plans annually of the system layout; two, placement is to be one (1) foot off the property line and three, have a franchise with the City for the use of the right of way. Presently, Matanuska Electric Association has a non-exclusive franchise which was renewed in 1974 when the original franchise expired. Matanuska Telephone Association has chosen to this point not to enter into a non-exclusive franchise with the City of Palmer. (A sample copy is enclosed). Yet have continued to bury cable prior to 1982 without regard to local ordinances or charter provisions.

The Honorable Jack Fuller
March 21, 1984
Page 2

Since 1982, all utilities are required to obtain written city approval for all work done in our right of way. Still, a permit being issued stipulating placement of utilities within a corridor is not adhered to which has caused street construction delays this past summer.

To grandfather all existing utilities irregardless of when and how they were placed is unconscionable to say the least, but valorous on the part of the utility companies.

Utility corridor placement is something every community should be doing so that the street right of ways do not become a jungle, as is the case now. Problems of utility relocation outside is usually borne by the utility company.

I do not deny the utility company's right to enjoy the use of the right of way (according to State Statute) providing they have complied with all local rules and regulations; but this is not what has transpired in our case.

In my discussions with other city managers, some have the same type of problems as I do except with different players. Many communities own the utility company so this legislation has no effect upon them at this moment.

I therefore urge that CSSB 67 is not passed out of committee nor it be passed by the House. The financial ramification of this piece of legislation to all jurisdictions is mega-bucks each year.

Although I may not be in Juneau until April 12th and 13th, I would gladly sit down with the committee as a whole or individually to help reach an amiable solution.

Should you have any questions, please feel free to contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

Enclosures

cc: The Honorable Ramona Barnes
The Honorable John Liska
The Honorable Mae Tischer
The Honorable Randy Phillips
The Honorable Mike M. Miller
The Honorable Joe Hayes
AML

(12-7) #B 155

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

907-983-2297

March 5, 1984

Senator Richard Eliason
Pouch V
Juneau, Alaska 99811

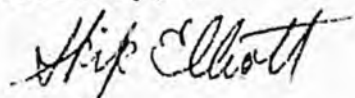
Dear Senator Eliason;

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

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

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

Sincerely,



Skip Elliott
City Manager

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

12-8 HB155



CITY OF CRAIG

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

February 27, 1984

Senator Dick Eliason
Pouch V
Juneau, Alaska 99811

Dear Dick:

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

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

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

To the bill:

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

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

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

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


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

1. Define highway construction as a grant-funded project for highways in excess of \$250,000.
2. Provide that this bill applies to all utility facilities installed after the effective date.
3. Provide that nothing in this bill precludes a municipality and utility company from mutually reaching some other agreement with regard to the allocation of relocation expenses.

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

Thank you for your time on this issue.

Sincerely,


David R. Palmer
City Administrator

DRP/hg
Enclosure

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



8 HB 155

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 155

TITLE: Utility Relocation on Municipal Projects

APPROVED: Mark Hickey *M&H*

DATE: 3/9/87 Commissioner

The Department of Transportation and Public Facilities supports HB 155.

The legislation would require municipalities to treat utility relocation, incident to municipal road and other project construction, in a manner similar to that currently required for utility relocation on State highway, airport and public facility construction. As the bill is written, it would apply only to utilities regulated under AS 42.05.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
Revision Date: _____
Title: Utility Relocation on
Municipal Projects
Sponsor: Cato
Requestor: _____

Bill Version : HB 155
Publish Date : 3/6/87

Agency Affected : DOT/PF
BRU : _____
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Does not impact DOT&PF.
Theron H. Bond 3/6/87

Prepared by : Theron H. Bond
Division : Engineering & Operations Standards

Phone : 465-2957
Date : 3/6/87

Approved by Commissioner : *Mark S. Nyberg*
Agency : _____

Date : 3/9/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

HOUSE COMMITTEE REPORT

HB 155

Date referred: 3/2/87

FURTHER REFERRALS: Transportation Finance

DATE: 03/09/87

The Community and Regional Affairs Committee has considered HB 155

"An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality."

RECOMMENDS:

- [] replace with [] the same title
[] attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the Committee

ADOPTS: [] letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [] fiscal impact [] same as previous fiscal note published
[X] zero fiscal note
[] zero with analysis [] same as previous zero fiscal note published

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Cato
Collins
Springer
Zawacki

Herrmann Adelheid Herrmann No Rec

Springer Heinrich Springer Chairman's signature



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

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

March 3, 1987

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

Thank you for introducing HB 155.

In regard to the relocation of utility facilities incident to a municipal construction project, this legislation would clarify the law as to when the utility pays and when the municipality pays. If there is a written agreement on these matters between the parties, that agreement would govern. If there is not a written agreement on allocation of costs, the municipality would pay if the utility facility is properly located under a permit or if the utility facility was installed before the municipality permit system applied to the construction of the facility in question in question.

The effect of all this is to resolve a long-standing dispute by protecting the utility investment in existing facilities. It will require municipalities in some cases to include utility relocation costs in the cost of municipal construction projects which would otherwise be in dispute between the parties.

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

In some cases the expense will be assumed by the municipality. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating

utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without HB 155, the municipality considers all of the benefits of a proposed project, but it only considers a part of the cost.

Sincerely,



David Hutchens
Executive Director

or appointed municipal official or employee;
(2) to combine two or more appointive or administrative offices;
(3) to establish and prescribe the functions of a municipal department, office, or agency!

AS29.35.070 DOCUMENT= 7 OF 46 PAGE = 1 OF 3

CHAPTER = 29.35
SECTION = 29.35.070
TITLE = 29
HEADINGS TITLE 29.
Municipal Government.
CHAPTER 35.
Municipal Powers and Duties.
ARTICLE 1.
General Powers.
CITATION Sec. 29.35.070.

CATCH LINE

PUBLIC UTILITIES.

TEXT (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) - (k).

(b) A municipality may provide for a reasonable deposit for

Add body of HB115 here

29.35.075 RELOCATION OF UTILITY FACIL

AS19.25.010 DOCUMENT= 1 OF 22 PAGE = 1 OF 2

CHAPTER = 19.25
SECTION = 19.25.010
TITLE = 19
HEADINGS TITLE 19.
Highways and Ferries.
CHAPTER 25.
Protection and Use of State Highways and Roads.
ARTICLE 1.
Utilities in Highways.
CITATION Sec. 19.25.010.

CATCH LINE

USE OF RIGHTS-OF-WAY FOR UTILITIES.

TEXT A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by a written permit issued by the department.

HISTORY (Sec. 8 art VII title II ch 152 SLA 1957; am sec. 3 ch 106 SLA 1977)

AMENDMENT NOTES

EFFECT OF AMENDMENTS The 1977 amendment rewrote this section.

AS19.25.020 DOCUMENT= 2 OF 22 PAGE = 2 OF 4

removed in accordance with the order, the facility becomes an unauthorized encroachment and may be disposed of in accordance with AS 19.25.240 - 19.25.250. In addition, the owner of the facility shall indemnify the state for any amount for which the state may be liable to a contractor by reason of the encroachment.

(c) The cost of change, relocation, or removal necessitated by highway construction is a cost of highway construction to be

AS29.10.200 DOCUMENT= 11 OF 11 PAGE = 1 OF 6

CHAPTER = 29.10
SECTION = 29.10.200
TITLE = 29

HEADINGS TITLE 29.
Municipal Government.
CHAPTER 10.
Home Rule Municipalities.
ARTICLE 2.
Home Rule Limitations.

CITATION Sec. 29.10.200.

CATCH LINE

LIMITATION OF HOME RULE POWERS.

TEXT Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

- (1) AS 29.05.140 (transition)
- (2) AS 29.06.010 (change of municipal name)
- (3) AS 29.06.040 - 29.06.060 (annexation and detachment)

ref. in 10. HB115

AS29.10.200 DOCUMENT= 11 OF 11 PAGE = 4 OF 6

- (38) AS 29.35.500 - 29.35.590 (hazardous materials and wastes)
- (39) AS 29.40.160(a) - (c) (title to vacated areas)
- (40) AS 29.40.200 (subdivisions of state land)
- (41) AS 29.45.010 - 29.45.570 (property taxes)
- (42) AS 29.45.650(c), (d), and (f) (sales and use tax)
- (43) AS 29.45.700(a) (power of levy)
- (44) AS 29.47.200(b) (security for bonds)
- (45) AS 29.47.260 (construction)
- (46) AS 29.60.050(a) (limitation on computation and use of payment)
- (47) AS 29.60.120(a) and (c) (state aid for health facilities and hospitals)
- (48) AS 29.65 (general grant land)

HISTORY (Sec. 6 ch 74 SLA 1985; am secs. 1, 2 ch 38 SLA 1986; am sec. 6 ch 70 SLA 1986; am sec. 12 ch 80 SLA 1986; am sec. 3 ch 108 SLA 1986)

ANNOTATIONS

(49) *New 29.35.075 ref. here.*
Revisor's notes. - Reorganized in 1986 to maintain the referenced provisions in numerical order.

AS29.35.010 DOCUMENT= 1 OF 46 PAGE = 1 OF 6

CHAPTER = 29.35
SECTION = 29.35.010
TITLE = 29

HEADINGS TITLE 29.
Municipal Government.
CHAPTER 35.
Municipal Powers and Duties.
ARTICLE 1.
General Powers.

CITATION Sec. 29.35.010.

CATCH LINE

GENERAL POWERS.

TEXT All municipalities have the following general powers, subject to other provisions of law:

- (1) to establish and prescribe a salary for an elected

by the department as a cost of highway construction, if the utility facility is installed or authorized under a ~~utility permit or a regulation after the effective date of this Act~~ and is installed in the location specified in the permit;

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

(3) by the department as a cost of highway

AS19.25.020 DOCUMENT= 2 OF 22 PAGE = 3 OF 4
construction, if the utility facility was installed before July 1, 1960, or before the road became part of the state highway system;

(4) by the department as a cost of highway construction, if the utility permit that requires the utility to pay the relocation cost was issued more than five years before the contract for the highway construction project was first advertised;

(5) by the utility in all other cases, unless the commissioner finds it is in the public interest for the cost to be paid by the department.

(d) If requested by a municipality, the department shall implement this chapter by requiring to the maximum extent possible location underground of electric power transmission lines within the municipality.

HISTORY (Secs. 2, 3 ch 57 SLA 1961; am sec. 4 ch 106 SLA 1977; am sec. 3 ch 142 SLA 1986)

ANNOTATIONS

REVISOR'S NOTES A reference to AS 19.45.001(4) was substituted for a reference to AS 19.05.130(4) in subsection (c) to conform

AS35.25.020 DOCUMENT= 2 OF 2 PAGE = 1 OF 5
CHAPTER = 35.25
SECTION = 35.25.020
TITLE = 35

HEADINGS TITLE 35.
Public Buildings, Works, and Improvements.
CHAPTER 25.
General Provisions.

CITATION Sec. 35.25.020.

CATCH LINE

DEFINITIONS.

TEXT In this title, unless the context requires otherwise,

(1) "construction" or a derivative of the term "construction" means construction, reconstruction, alteration, improvement, or major repair;

(2) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also

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

(3) "department" means the Department of

Transportation and Public Facilities;

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

(5) "maintenance" means the preservation of each type of facility as nearly as possible in its original condition as constructed, or as improved;

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

(7) "public facility" or "public work" means a structure or project constructed or maintained by the department except airports and highways, and includes public buildings, boat harbors, port facilities, dikes, jetties, and breakwaters;

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

(9) "utility facility" includes poles, plants, lines, trenches, bridges, utilidors, tunnels, pipelines, and any

AS35.25.020 DOCUMENT= 2 OF 2 PAGE = 4 OF 5

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

HISTORY (Sec. 3 art I title I ch 152 SLA 1957; am secs. 1, 2 ch 122 SLA 1960; am sec. 1 ch 96 SLA 1962; am Executive Order No. 39, sec. 11 (1977); am sec. 8 ch 142 SLA 1984)

ANNOTATIONS

CROSS REFERENCES For the responsibility and authority of the supreme court over state court facilities, see AS 22.05.025.

AMENDMENT NOTES

EFFECT OF AMENDMENTS The 1977 amendment substituted "Department of Transportation and Public Facilities" for "Department of Public Works" in paragraphs (2) and (6).

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 155
Publish Date: _____

Revision Date: _____
Title: An Act..change, relocation etc of utility facilities incident to construction

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance

Sponsor: Rep. Cato
Requestor: House C&RA

Components: Training & Development

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Barbara Stevenson, LGS
Division: Municipal & Regional Assistance

Phone: 465-4750
Date: 3/4/87

Approved by Commissioner: David G. Hoffman
Agency: Community & Regional Affairs

Date: 3-4-87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

④ HB 155
STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

March 6, 1987

POSITION PAPER

RE: HB 155 -- "An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality."

SPONSOR: Representative Cato

Effects of Bill:

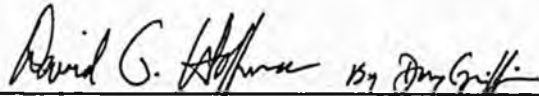
Section 1 of the bill simply adds another home rule limitation appropriate for this bill.

Section 2 of the bill designates to municipalities the power to order a utility within a municipal grants right-of-way to be changed, relocated, or removed and provides for the cost of the order to borne by the municipality if the facility is within the municipalities' jurisdiction.

Comments:

The majority of utility facilities are owned and operated by municipalities in rural areas. This bill will place the burden of all costs relating to movement of utilities on the entity requesting the movement.

Because of the costs associated with utility relocation, the Department believes that the proposed legislation would provide the means for municipalities to thoroughly review proposed changes before requiring the movement of utilities. The Department recognizes that this bill may place additional costs on governments, but since the cost is created by the local government, this is not unreasonable. The Department does not oppose this bill.



David G. Hoffman, Commissioner

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 6, 1987

SUBJECT: Sectional analysis of HB 155
TO: Representative Heinrich Springer, Chair
House Community and Regional Affairs
Committee
FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested of HB 155.

Sec. 1. Adds to the list of home rule limitations a reference to the new section added in this bill, so that home rule, as well as general law, municipalities are bound by that section.

Sec. 2. Permits a municipality to order a utility to change, relocate, or remove a facility if necessary as a result of a construction project. The order must give the utility a reasonable time for compliance. If the facility is not changed, it may be disposed of by the municipality. The cost of the change shall be allocated as provided in the permit, franchise, or agreement with the municipality. If no allocation has been agreed to, the cost is borne by the municipality only if the facility has been placed in a municipal right-of-way under a valid easement or permit that specifies the location of the facility and the facility is within two horizontal feet of that location, or if the facility was installed before the municipality had a system for granting easements or permits for utility facilities. A definition of "cost of change, relocation, or removal" is provided. The section applies to home rule and general law municipalities.

TBC:mkr
m9/110

BILL WORKSHEET

Bill #: HB 155
 Date Sched.: HCRA Committee, Monday, Mar. 9, 1987
 Title: "An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality"
 Sponsors: Rep. Cato

Info Attached: Copy of Bill
 Fiscal Note
 Existing statutes
 Sectional analysis
 Position paper from the Dept. of Comm. & Reg. Affairs

Sponsor's Briefing, Intent/purpose:

I have nothing to add here to what you probably have already heard from Ken Johnson and Sharon Macklin.

Effect of Bill:

- Section 1. Limitation of Home Rule Powers.
 - Adds another limitation to the powers of a home rule municipality. Relocation of utility facilities.
- Section 2. Relocation of Utility Facilities
 - subsection (a) provides for the change, relocation, or removal of utility facilities under the jurisdiction of municipal rights of way.
 - The utility is responsible for effecting the change
 - A "change order" shall provide for a period of compliance.
 - subsection (b) requires that the cost of the change shall be borne by the party specified in the utility permit. If no specific cost allocation has been specified the municipality would bear the cost:
 - if a valid easement for the location of the facility exists, or
 - if the facility was in place before an easement permitting system existed
 - this law applies to both Home Rule and general law municipalities.

Fiscal Impact:
 0 (Zero)

Proponents:
 Every utility in the state.

Opponents:
 None coming out of the bushes

Analysis of Bill's effect, by staff:
 This bill enacts for municipalities provisions already governing federal and state liabilities incident to construction. Generally speaking, the bill places the burden of all costs relating to movement of utilities on the entity requesting the movement.