

S B

155

# ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman  
Sen. John B. "Jack" Coghill, Vice Chairman  
Sen. Mitch Abood  
Sen. Bettye Fahrenkamp  
Sen. Tim Kelly



P.O. Box V  
Juneau, AK 99811  
907-465-4921

## Senate Transportation Committee

### MEMORANDUM

TO: Edward Stahla, General Counsel  
City of Wrangell

FROM: Ray Matiashowski, for  
Senator Lloyd Jones

DATE: January 29, 1988

SUBJECT: SB 155: Relating to Relocation of Utilities

As mentioned in our telephone conversation, I have enclosed a copy of SB 155. I would appreciate your review and opinion.

If questions arise during the course of your review, please don't hesitate to call us. I have access to the attorney that drafted the legislation and may be able to help clarify something. I would also like to reiterate that Senator Jones is interested in gathering information from the District at this point, and has not taken a position on the bill.

cc: Joyce Rasler, Manager  
City of Wrangell

# ALASKA STATE LEGISLATURE

Home Address  
3813 Denali Street  
Ketchikan, AK 99901  
907-225-9082



While in Juneau  
P.O. Box V  
Juneau, AK 99811  
907-465-3743

Senator Lloyd Jones

January 29, 1988

Joyce Rasler, Manager  
City of Wrangell  
Box 531  
Wrangell, Alaska 99929

Dear Joyce:

I apologize for the delay in answering your request. Your letter was apparently misfiled.

SB 155 attempts to clarify the financial responsibility involved between a Municipality and utility when the utility's property lies within a public right of way, and the Municipality deems it necessary for the property to be moved. Current law is vague in this area, and this often leads to disputes between a Municipality and utility.

Because Wrangell owns its utility poles and lines, questions of financial liability are limited to the telephone and cablevision equipment attached to these poles. It is only to this extent that SB 155 will impact Wrangell.

At this point I have not taken a position on SB 155. My staff continues to gather public input, and Mr. Stahla's comments will weigh heavily in my opinion of this legislator.

Thank you for your comments on this matter, I look forward to working with you as the issue develops.

Sincerely,

A handwritten signature in cursive script that reads "Lloyd".

Lloyd Jones  
Alaska State Senate



ADOPTED AUGUST 1972

# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

December 14, 1987

Senator Lloyd Jones  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

Several months ago I requested information regarding Senate Bill No. 155. To date, this information has not been received. Please refer to the attached copy of my previous letter.

We would appreciate any assistance you can give regarding this request. We are understandably concerned that enactment of this Bill would place Wrangell under a financial burden.

Very truly yours,

Joyce Rasler  
City Manager

JK:fv

Attachment



# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1905

BOX 531, 99929 (907) 874-2381

June 19, 1987

Senator Lloyd Jones  
P.O. Box V  
Juneau, AK 99811

Re: CSSB No. 155 (C&RA)

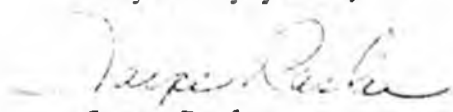
Dear Senator Jones:

The City of Wrangell strongly opposes Senate Bill No. 155 (identical to House Bill No. 155) which would require the City to pay all costs incurred by a utility certificated under AS 42.05 for changing, re-locating or removing their facility located in a municipal right-of-way, incident to construction of a road or other project. This Bill would also add yet another limitation of home rule powers.

Your aide advised me by phone on May 7, 1987, that this Bill would not affect Wrangell because we own and operate the electric distribution system that the telephone and cablevision utilities are now attached to. I am unable to locate any exclusion in the Bill and would like to receive information that provides the exemption.

Thank you for any assistance you can give.

Very truly yours,

  
Joyce Rasler  
City Manager

JR:fv

cc: Representative Sund  
Representative Taylor

# CITY OF PETERSBURG

P.O. Box 329 • PETERSBURG, ALASKA 99833 • PHONE (907) 772-4203

MUNICIPAL POWER  
AND LIGHT DEPT.

April 13, 1987

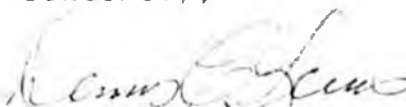
Senator Lloyd Jones  
Alaska State Senate  
Fouch V  
Juneau, Alaska 99811

Attn: Terry Otness

Dear Terry,

I've enclosed a copy of an article that I came across recently in the Utilities Telecommunication Council magazine, involving FCC authority to regulate pole attachment rates. I've sent it to you for your information. It was in the March 1987 issue of the magazine, Vol. 37, No. 2. Their address is Suite 1000, 1500 17th Street, N.W., Washington, D.C. 20036, phone: (202)956-5651.

Sincerely,

  
Dennis C. Lewis  
PMP&L Superintendent

cc: Robin Taylor

SUPREME COURT AFFIRMS FCC AUTHORITY  
TO REGULATE POLE ATTACHMENT RATES

The Supreme Court has ruled that the rates set by the FCC for cable TV attachments to utility poles do not constitute an unfair taking of property under the Fifth Amendment.

The FCC and several cable parties had appealed a ruling by the Eleventh Circuit Court of Appeals that the Pole Attachment Act, under which the FCC regulates rates for cable attachments, authorized a permanent physical occupation of property for which compensation must be paid under Loretto v. Teleprompter Manhattan CATV Corp. The lower court struck down the Act because it authorizes the FCC to make the initial determination of the amount of compensation to be paid, the court finding that "Congress has usurped what has long been held an exclusive judicial function."

In overturning the lower court's decision, the Supreme Court noted that while Loretto specifically required landlords to permit permanent occupation of their property by cable companies, "nothing in the Pole Attachments Act . . . gives cable companies any right to occupy space on utility poles, or prohibits utility companies from refusing to enter into attachment agreements with cable operators." Therefore, because the Court found there was no taking, it did not review the Eleventh Circuit's holding that Congress may not establish standards for the determination of just compensation.

The Court's decision will leave intact the FCC authority to regulate the rates charged by investor-owned utilities where state regulation is absent.

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NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections be made prior to permanent publication.

RECEIVED  
MAY 7 1987

File  
58155

THE SUPREME COURT OF THE STATE OF ALASKA **BALDWIN**

CITY OF KENAI, )

Appellant, )

v. )

STATE OF ALASKA, PUBLIC )  
UTILITIES COMMISSION, )

Appellee. )

File No. S-1337

O P I N I O N

[No. 3176 - May 8, 1987]

NOTICE TO COUNSEL: This opinion will be re-  
leased to the press and public at 12:30  
p.m. (Aest. time) on the date indicated.  
This copy is provided to counsel of record  
in advance. Prior to the release time,  
please do not inform persons other than your  
clients in this case of the outcome.

Clerk of the Appellate Courts

Appeal from the Superior Court of the State  
of Alaska, Third Judicial District, Kenai  
Peter A. Michalski, Judge.

Appearances: Timothy J. Rogers, City  
Attorney, Kenai, for Appellant. Mark L.  
Figura, Assistant Attorney General,  
Anchorage, Harold M. Brown, Attorney General,  
Juneau, for Appellee. Andrew E. Hoge, Hoge  
and Lekisch, Anchorage, for Intervenor  
Matanuska Telephone Association, Inc. ~~ACTRA~~  
~~Baldwin~~, Kenai, for Intervenor Homer Electric  
Association, Inc.

Before: Rabinowitz, Chief Justice, Burke,  
Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

This is an appeal by the City of Kenai from a decision  
of the superior court dismissing Kenai's appeal to that court  
from a decision of the Alaska Public Utilities Commission. The  
superior court found that Kenai was not a party to the

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Commission's proceedings, and therefore had no right to appeal. Homer Electric Association and Matanuska Telephone Association were parties to the Commission's proceedings, and both have been granted intervenor status in this appeal. Because Kenai has a legally recognized interest which was adversely affected by the Commission's action, and because Kenai sufficiently participated in the Commission's proceedings, we hold that Kenai has standing to obtain judicial review of the agency's action by means of an appeal. We therefore vacate the dismissal and remand the case to the superior court.

#### I. FACTS AND PROCEEDINGS

In 1971, Homer Electric Association, by contract with the City of Kenai, assumed control of certain municipal utility facilities located within the City. Subsequent street construction required Homer Electric to relocate those utility facilities, but the City refused to reimburse it for the relocation expense. Homer Electric sought declaratory relief before the Commission to resolve the dispute according to the contract terms. The Commission declined to hear the contract dispute on jurisdictional grounds, but encouraged Homer Electric to file for a special tariff before the Commission to recover the expense either through a surcharge or through general rates.

Homer Electric filed for a tariff revision which provided for a surcharge to recover all costs associated with the

relocation of "electric" facilities at a municipality's request when those costs are not paid by the municipality. The Commission issued a notice of utility tariff filing, and three individuals and the City responded as interested parties with letters opposing the tariff. In "adamantly oppos[ing]" the tariff filing, the City argued that under common law, a utility has the duty to relocate its facilities at its own expense when public convenience or necessity so requires.

The Commission suspended the operation of the proposed tariff and scheduled a public hearing in view of the City's strong opposition to the filing. The Commission also "concluded that the City met the standards for intervention set forth in 3 AAC 48.110," and determined "that full-party intervenor status should be granted to the City." In its order suspending the tariff filing, scheduling a public hearing, and granting intervenor status to the City, the Commission stated that "[the utility] and the City should be prepared to answer [five] questions" relating to Homer Electric's proposed tariff revision.<sup>1</sup> The Commission also stated that if the City did not

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1. The Commission directed the City to be prepared to answer the following questions:

- (1) What is the nature of the facilities relocation costs which are the subject of [this order]?

(Footnote Continued)

wish to be granted full-party intervenor status, it should notify the Commission.

In a letter to the Commission, the City formally declined the Commission's offer of full-party intervenor status. The letter stated:

While the City of Kenai declines the Commission's grant of full party intervenor status in this proceeding, it does not wish to convey an impression of disinterest or lack of importance in this matter by the City of Kenai.

The City's initial response . . . consisting of six pages plus attachments set forth at length not only the City's policy position in this matter, but provided citation of statute and case law authorities in support of its position.

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(Footnote Continued)

(2) If facilities are relocated at the request of municipalities and the municipalities do not directly pay the costs of the relocations, how should the utility allocate those costs to its ratepayers?

(3) Does the answer to the preceding question vary according to circumstances associated with individual relocations? If so, how should these variations be reflected in a tariff format?

(4) How should the proposed [Municipal Facilities Relocation Cost Adjustment] affect previously uncollected municipal facilities relocation costs?

(5) Are municipalities the only entities to which the proposed surcharge should apply?

The City further observed that the Commission had already apparently decided that a municipality had the discretion to require a utility to pay for relocation expense. The City quoted from the Commission's letter to Homer Electric, in which the Commission declined to decide the contract dispute:

The requirement to pay either a fee or relocation expense at the discretion of the municipality would seem to make a fee and relocation expense interchangeable concepts, so that the authority of a utility in AS 42.05.251 to recover fees from the customers in the municipality receiving the fees would seem to necessarily sanction the recovery of relocation expenses in the same manner.

Thus, in light of the earlier statement by the Commission to the utility, the City asserted that "[i]t would seem that the City's participation as a party in this matter may well be an unnecessary step for the Commission to formally order what has previously been decided."

On November 17, 1983, the Commission conducted a public hearing but the City did not appear or otherwise participate. The Commission issued its decision on January 11, 1985. The decision specifically considered the City's earlier arguments contained in the City's letter opposing the tariff revision.

Although the Commission recognized that the parties sought only an order from the Commission accepting or rejecting the proposed surcharge, the Commission found it necessary to preliminarily determine "the validity under AS 42.05 of the common law rule authorizing municipalities to compel without

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reimbursement relocation of utility facilities located within municipal rights-of-way." The Commission held that the practice of municipalities directing unreimbursed relocations of utility facilities was unreasonable, thereby making the City liable for the relocation costs incurred by Homer Electric. The Commission also denied Homer Electric's request for a surcharge.

The City appealed the Commission's decision to the superior court explicitly relying on AS 42.05.551,<sup>2</sup> AS 44.62.560,<sup>3</sup> and Alaska Rule of Appellate Procedure 602.<sup>4</sup> The Commission moved to dismiss the City's appeal on the grounds that the City was not a party to the administrative proceedings and therefore had no right to appeal. Homer Electric joined in the motion to dismiss, and Matanuska Telephone submitted a statement of position supporting the Commission and Homer Electric.

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2. AS 42.05.551, Review and enforcement, provides in part:

(a) All final orders of the commission [APUC] are subject to judicial review in accordance with AS 44.62.560 - 44.62.570 of the Administrative Procedure Act.

3. AS 44.62.560, Judicial review, provides in part:

(a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters.

(Footnote Continued)

The City opposed the motion to dismiss, and requested in the alternative declaratory relief pursuant to the Declaratory Judgment Act, AS 22.10.020(g),<sup>5</sup> and Ketchikan Retail Liquor Dealers Association v. State, Alcoholic Beverage Control Board, 602 P.2d 434, 440 n.21 (Alaska 1979).

The superior court entered an order dismissing the case on the grounds that the City had no right of appeal because it was not a party. The City's motion for reconsideration was also denied. This appeal followed.

II. KENAI'S STANDING TO APPEAL

Whether a party has standing to seek judicial review of an agency's decision following an evidentiary hearing, either by appeal or in a declaratory judgment action, is a question of law, reviewable de novo.

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(Footnote Continued)

4. Alaska Rule of Appellate Procedure 602 provides for time and notice of appeals, and for bonds on appeal.

5. The parties refer to Alaska's Declaratory Judgment Act as AS 22.10.020(b). In 1984, subsection .020(b) was redesignated as subsection .020(g). See AS 22.10.020 (Supp. 1986). AS 22.10.020(g) provides in part:

In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.

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The judicial review provisions of the Administrative Procedure Act, AS 44.62.560(a),<sup>6</sup> are made applicable to APUC proceedings by AS 42.05.551.<sup>7</sup> AS 44.62.560(a) does not specify who is qualified to obtain judicial review of administrative adjudications. Since the statute is silent on this point, the answer must be supplied by reference to other sources of law. This has already been accomplished in part in Ketchikan Retail Liquor Dealers Association v. State, Alcoholic Beverage Control Board, 602 P.2d 434 (Alaska 1979). In Ketchikan, we held that parties to an administrative hearing could appeal under AS 44.62.560(a), while expressly leaving open the question as to "whether a non-party may also have a right to appeal . . . ." 602 P.2d at 439 n.19. We referred to the statutory definition of party as "the agency, the respondent, and a person, other than an officer or an employee of the agency in his official capacity, who has been allowed to appear in the proceeding." AS 44.62.640(b)(4) (emphasis in text of quoted opinion, 602 P.2d at 440). It is evident that we construed the word "appear" to have the same general meaning as "participate" because we went on to quote with approval the following language from Application of Bank of Rhame, 231 N.W.2d 801, 808 (N.D. 1975):

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- 6. AS 44.62.560(a) is set out in note 3, supra.
  - 7. AS 42.05.551 is set out in note 2, supra.

[A]ny person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a "party" to any proceedings for the purposes of taking an appeal from the decision.

602 P.2d at 440.

The City of Kenai meets the test set out in Bank of Rhame, namely it (1) was directly interested in the proceedings, (2) was factually aggrieved by the decision, and (3) participated in the proceedings.

The City's participation is established by its opposition to the tariff filing of Homer Electric. This opposition fills more than fifty pages of the administrative record and contains citations to legal authorities and extensive arguments. Because of the City's opposition, the tariff was suspended and a public hearing was scheduled. Although the City declined formal party intervenor status and did not present witnesses or additional arguments at the hearing, it was understood, as stated by the Commission's presiding officer, to have "nonetheless stressed its opposition . . . and incorporated earlier written comments," which were in fact considered by the Commission. The issues presented by Kenai in its opposition constituted the focus of the public hearing and of the Commission's order that followed. This is sufficient participation to achieve "party"

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status for the purpose of standing to appeal from an administrative adjudication.<sup>8</sup>

We hold that the City of Kenai has standing to appeal the Commission's decision. We therefore vacate the superior court's dismissal of the City's appeal and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

**ORDER**

Pursuant to Appellate Rules 508(a) and (f) (1), attorney fees of \$750.00 are awarded to Appellants and the Appellants shall serve and file with this court an itemized and verified cost bill by 5-18-87. Entered by direction of Justice Mathews.  
 Dated: 5-6-87 Deputy: C. Johnson

8. See also Mahuiki v. Planning Comm'n, 654 P.2d 874, 880 (Ha. 1982) (standing upheld where a person whose legitimate interest is injured by agency action participates as an adversary - appellants had submitted letters against proposed agency action which were received as part of record); Alfred I. duPont School Dist. v. Delaware Alcoholic Beverage Control Commission, 343 A.2d 600, 604 (Del. 1975) (under Delaware statute, when one becomes a party to the record, either by protest received into evidence or formal appearance in person or by representative, that person becomes formal "party to hearing"); compare Model State Administrative Procedure Act § 5-106, 14 U.L.A. (Supp. 1986) (a person to whom agency action is specifically directed, a person who was a party to agency proceeding, or a person otherwise aggrieved or adversely affected has standing to obtain judicial review of agency action).

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1987

SUBJECT: Relocation of utility facilities (CSSB  
155(C&RA))

TO: Senator Lloyd Jones

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Here is the sectional analysis that you requested of CSSB 155(C&RA)).

Sec. 1. A reference to the new section contained in this bill is added to the list of home rule limitations, so that section applies to home rule municipalities.

Sec. 2. Permits a municipality to order a utility certificated under AS 42.05 to change, relocate, or remove a facility located across, along, over, under or within a right-of-way under the municipality's jurisdiction if, incident to a construction project this must be done. The order must provide a reasonable period of compliance. If the utility facility is not changed, relocated, or removed the facility may be disposed of or relocated by the municipality. The cost of change, relocation, or removal is allocated as provided in the permit, franchise, or other agreement with the municipality. If no allocation has been agreed to, the cost is borne by the municipality if the facility is placed in the municipal right-of-way (1) in accordance with a valid easement or permit that specifies the location of the facility or, (2) after June 30, 1987, in an area for which there is no system for granting easements or permits for utility facilities so long as the facility has been located in compliance with codes, regulations, and statutes applicable at the time of its installation. A definition of "cost of change, relocation, or removal" is provided.

TBC:mi  
wkmi1/058

- Sectional Analysis -

# Alaska MUNICIPAL League

TELEPHONE  
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301  
JUNEAU, ALASKA 99801

April 2, 1987

APR 2 1987

## MEMORANDUM

TO: Senator Arliss Sturgulewski, Chair  
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director *(Signature)*

SUBJECT: SB 155 - Relocation of Utility Facilities

The Alaska Municipal League is opposed to SB 155 and shifting the cost of relocating utility facilities in connection with municipal construction in rights-of-way from the utility company to the municipality. The AML has opposed this effort every year similar legislation has been introduced into the Legislature; most recently, SB 67 in the 13th Legislature. The legislation, if passed, would deviate from common and case law.

The AML's 1987 Policy Statement was most recently revised and adopted by the membership, representing 124 municipalities, at their annual meeting in Juneau last November. On page 17 of the Policy Statement, it states the following:

Utility Relocation Costs: 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.

As 12 McQuillan, Municipal Corporations, Section 34.74 on 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 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 common law rule referenced above can be modified by legislative action or contract agreement between the municipality and the utility company. The League urges the Legislature not to change common law and practice, and, instead, leave the matters addressed in this bill to local officials to work out with local utilities in the best interest of the local public.

Letter From Alaska

MEMBER OF

Municipal League

OF COUNTIES

Municipal rights-of-way are first and foremost for transportation and roads. As a secondary use, utility companies have a right to use the rights-of-way as utility corridors. Such use is in lieu of the utility having to purchase their own rights-of-way, and is usually free or with a minimum permit fee in the larger municipalities. However, the use of the right-of-way for little or no cost is with the understanding that the utility will relocate their facilities, if necessary, to accommodate road improvements, unless provided for differently in individual ordinances or franchise agreements between municipal and utility companies.

The proposed legislation does not distinguish between private, for-profit, investor-owned utilities and non-profit and REA utilities, nor between the regulated, essential utilities such as gas and electrical on one hand and the unregulated, unessential utilities such as cable television on the other. The potential cost of relocating utilities for the utility companies is just the cost of doing business, counter-balanced by the savings of not having to buy the rights-of-way from a land owner. Utility companies have always known upfront that they could potentially incur relocation costs in the event that road improvements are necessary. Any change in this by the Legislature is an intrusion into the local authority of the municipalities and their road powers.

Shifting the cost of utility relocation, as proposed in this bill, would shift the cost from the rate payer to the taxpayer. The additional cost may mean that necessary road improvements, necessary for public safety, may be delayed or simply not done given limited road construction dollars. This is especially true for local improvement districts and for boroughs with limited road powers and road service areas with limited dollars available.

The situation is also different than it is with state road construction. The State owns its rights-of-way in fee simple. They have complete control over their roads and can prohibit their use by utility companies. Municipalities cannot. The State Department of Transportation also operates with a large professional staff which is capable of supervising the permitting, planning, and installation of utilities in their roadways, including requiring "as-builts" of the facilities installed. Many municipalities do not require permits or fees or have tight controls over the utility companies and where and how they placed their utilities in the rights-of-way. And why should they build such expensive bureaucracies when it is common understanding that the utility will be responsible for relocating their facilities if necessary? Finally, the State of Alaska gets much of its highway improvement funds from the federal government. Therefore, it can build the cost of relocating utilities into the cost of the project and shift the costs to largely, third party, non-resident taxpayers.

In addition to the general argument that the legislation would inappropriately shift the cost of relocating utility facilities to the municipalities, the change from common law and past practice is made even more onerous in that such a change and the impact would be retroactive. Under Section 2 of the bill with the proposed added language of AS 29.35.075 (b) (2), the municipalities would be penalized for following the laws in place; i.e., many municipalities have allowed utilities to place

Senator Arliss Sturgulewski, Chair  
Members of the Senate Community and Regional Affairs Committee  
April 2, 1987  
Page 3

their facilities in the rights-of-way without charge or without permits because the understanding and law required the utility company to bear the responsibility and cost to move them if necessary. Under the language of this section, if there is no permit system, the municipality would pay the cost of relocation.

One final point is relevant, again, only if you accept the basic concept of the bill, and we do not. While the cost to the municipality for relocating the utility facilities is discounted for upgrades and salvage value in subsection (d) of the bill, "useful remain life" is not. If the municipality is required to pay for the cost of relocating the facility, it should have to pay for brand new equipment if it has limited remaining life left; e.g., the telephone pole is old and rotting and would have had to be replaced in a year even if the municipality were not making road improvements which require their removal.

Again, the AML is opposed to SB 155 and shifting the cost of utility relocation from the utility company to the municipality and the general taxpayers.

SAB:phl

# ★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907/452-4761

## M E M O R A N D U M

TO: Dick Jackson, Administrator Director

THROUGH: Neil Kersten, Public Works Director

FROM: Clark Milne, Manager, Civil Engineering Division *Clark Milne*

DATE: March 30, 1987

SUBJECT: NEED FOR MODIFICATIONS TO SB155, "RELOCATION OF UTILITIES  
IN RIGHT-OF-WAYS"

To validate my letter which suggested changes to SB155 concerning municipalities (such as the FNSB) being responsible for paying utilities to remove or relocate existing utility facilities within right-of-ways, I would like to submit to you the comments below.

My first and foremost concern is that our FNSB utility permit system is quite young, having only been instituted on July 1, 1985. Thus, the majority of all utilities installed in road rights-of-way in the FNSB have been put in before our utility permit system was in effect, and the language of Section 29.35.075.(b)2 will probably be in effect the majority of the time. Thus, we will consistently be responsible for the costs of moving utility facilities in our rights-of-way. I believe this is inappropriate and not in the public's best interests, at least so far as the unrestricted wording of (b)2 imposes these costs on us.

Our experience in the Civil Engineering Division has been that the majority of the time when we require the removal or relocation of a utility facility from our right-of-way, it is due to a past failure of the utility to install the service line or facility properly in the first place. This includes both aerial crossings that are too low, buried lines that are too shallow, and utility poles that intrude too closely to the existing road shoulders so that necessary road widening (within the right-of-way) requires the relocation of an existing pole. To require us to pay for these oversights, under-designs, and inappropriate installations by the utility firms seems unconscionable. Thus, my suggested revision in the SB155 language (as noted in my letters to Linda Anderson and McKie Campbell, see attached), item no. 4, which would require that the utility firm have installed the affected facility properly, i.e. to the standards of the applicable code or regulation, in the first place.

The most common and expensive instances of this type of facility that must be moved are aerial crossings above the roadway which are currently at less than the minimum 18 foot required by national electrical code. It is our practice, and is supported by the common law, that the utility firm is wholly responsible for the costs of raising these substandard lines crossing our right-of-way to an appropriate, code/standard elevation above the road surface.

*Letter From Fairbanks  
North Star Borough*

Memo to Dick Jackson  
March 30, 1987  
Page 2

Similarly, we have had significant problems and expenses due to the relocation of telephone or power lines below the road surface. We have found that all too often a utility placed a line too shallowly in the right-of-way and a new road project thus uncovers and interferes with it. Again, national electric code requires that any power or telephone line must be buried at least 30" under the ground surface. If only this were the common condition of buried utility lines in the FNSB our troubles would be nearly over! Unfortunately, there are many instances in our road projects where buried utility lines are very often found to be at anywhere from 4" to 24" below the ground surface--thus, the road interference with minor improvements to the roadway.

In both of the cases noted above, SB155 would automatically give the utility firm a "reprieve" from having to pay for their illegal and substandard utility placement. Without actually calculating the exact expenses generated by utility relocation for FNSB projects in the last few years, I believe that as a rough estimate approximately 10% of our capital improvement monies for road improvement projects would go to utility relocation were SB155 to be passed in the form submitted by Senator Josephson.

Other concerns I have tried to deal with in my revised language for SB155 are evidenced in the other items noted in my letters of March 30. The first item deals with my concern that utility firms should work with the municipalities before beginning work on utility removal or relocation to assure that their field activities are cost-effective and solely done in an effort to replace or relocate the facility which is interfering with the legitimate uses of the road right-of-way. I fear circumstances where the utility could indiscriminately overcharge the municipality for unnecessary expenses, as well as situations where the replacement facility is a superior and improved product to that which is being replaced. Neither of these two concerns is addressed in SB155 as originally submitted.

Item no. 2 would tend to assure that the costs as discussed and approved by the utility and municipality before beginning work are indeed those reached during construction. I foresee reasonable incidences where the initial cost estimate is exceeded, but believe that the municipalities can negotiate with the utilities in a timely manner to increase those agreed upon estimates for valid, discernable reasons.

Item no. 3 was requested because I do not know what a "municipal right-of-way" is. In the Borough we only have public rights-of-way, some of which are included within service areas and thus subject to municipal maintenance efforts.

Memo to Dick Jackson  
March 30, 1987  
Page 3

Item no. 4 addresses my concern that an often crucial dimension in the location of utility facilities is the exact depth or elevation of the line or pipe. I understand that many utility firms have extremely poor as-built records of the location of their facilities, but I believe this should be the utility's concern, problem and expense, not ours.

Item no. 5 deals with my concern that the existing FNSB utility permit system applies only to those rights-of-way within recognized road service areas. The revised language would read "before the municipality had a system for granting easements or permits in that right-of-way for utility facilities," which would eliminate the problem of us having to pay for facility relocations in rights-of-way not covered by a utility permit system such as ours because the permit system was restricted to rights-of-way within service areas. Thus, if a service area annexed new roads after the utility firm installed a facility (after July 1, 1985), and we later interfered with that facility with our transportation use of that road right-of-way, we would not be held responsible for the lack of our utility permit system, but rather the utility firm would be responsible for having to follow good practice and the "applicable codes, regulations and statutes" affecting that utility facility.

Finishing up with item no. 6 from my letter, I understand that it may be troublesome to do the research necessary to confirm what "codes, regulations and statutes" apply to the various situations we find in needing utility relocations in our rights-of-way, but it seemed to me to be the most just and fair dividing line when faced with paying for a utility relocation or not. I agree with the concept that if a utility firm acted within the applicable codes and standards of their industry and all applicable regulations and statutes within the State of Alaska, our dramatic modification of the use of a road right-of-way should include and require our payment for the relocation or removal of the affected utility facilities. It is interesting to note that I believe that I understand the utility's point of view of some of these costs and concerns. But I do not believe that they should be able to "end run" the existing common law and the common sense of justice inherent in having to pay for their own mistakes of the past.

For additional specifics or other questions, please feel free to contact me at ext. 351.

cm8-143

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: SB 155

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

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

Title: "An Act change, relocation, or  
removal of utility facilities..construction"

Agency Affected: Community & Regional Affairs

BRU: Local Government Assistance

Sponsor: Josephson

Components: Training & Development

Requestor: Senate C&RA

**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: Doug Griffin, Deputy Director

Phone: 465-4750

Division: Municipal & Regional Assistance

Date: 4/1/87

Approved by Commissioner: [Signature]

Date: 4-1-87

Agency: Community & Regional Affairs

Distribution (by preparer):

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

page \_\_\_\_\_ of \_\_\_\_\_

Fiscal note



# CITY OF PALMER



231 W EVERGREEN AVE  
PALMER, ALASKA 99645



Phone (907) 745-3271

A HOME RULE CITY

March 24, 1987

*RECEIVED After Packet  
was compiled. MCH*

The Honorable Mike Szymanski  
Senator  
State of Alaska  
Box V  
Juneau, Alaska 99811

RE: HB 155 Utility Relocation

Dear Senator Szymanski,

Like so many things, if you don't succeed at first, try, try again, and HB 155 Utility Relocation is a good example of this.

For the past two Legislative Sessions, the question of utility relocation responsibility has been presented to the legislators for consideration which if enacted would place an undue burden on the local political entities.

The problems which confront the City of Palmer are not unique to our city alone but other cities and boroughs within the State where the utilities are not municipally-owned.

Even though the City of Palmer has had a permitting system in effect since 1981, we find during reconstruction of streets and underground utilities, the permit allocation of right-of-way use has not been followed as specified. Naturally, the utility has to bear the relocation cost as a part of the agreement signed. However, our biggest problems are the utilities installed prior to our permitting system. Those utilities meander all over the right-of-way at varying depths. By grand-fathering ALL previously installed utilities gives the utilities a free ride for their errors at taxpayers expense. The utilities are not accountable for their mistakes which is wrong. Even worse is to allow a two (2) foot horizontal error in the utility placement. This is impossible to live with. Our utility permit requires the utility to be placed within a 0-5 foot area from the property line, no more, no less. If a utility cannot be placed in a five (5) foot area, then something is wrong.

Using our adopted design for a collector street, the width is 44 feet back-of-curb to back-of-curb without sidewalks. Using a 60 foot right-of-way, this utility corridor becomes very important if each utility uses their share properly and is considerate of their fellow utilities.

*Letter From City Magn.  
City of Palmer.*

The Honorable Mike Szymanski  
March 24, 1987  
Page 2

In my 26 years in the municipal field, ranging from a Sewer and Water Plant Operator to Director of Public Works to City Manager, I have found that the utilities are reluctant to spend the money or have on staff a qualified surveyor to lay out the exact location of the right-of-way. The employees assigned to the task are instructed to install the utility according to the work order which in many cases is vague or impossible to relate to actual field conditions. For example, if undergrowth has occurred in the right-of-way, rather than clear through this obstacle, the construction crews would install the utility further out in the right-of-way to avoid the undergrowth, further compounding the inevitable problem.

I have no problem with my sharing the burden of relocation if in fact the City of Palmer erred when the permit was issued or was issued in good faith with the population change requiring an entirely different or wider right-of-way to accommodate a higher volume street which was not forecasted in the Comprehensive Plan. An interesting point, not one mention is made of the Comprehensive Plan in this bill as a basis for relocation cost allocation.

We have a tendency to absolve the past errors here in Alaska which continues to haunt us no matter how good our intentions are, and this is another example. The City of Palmer urges you to vote against House Bill 155.

Should you have any questions, please contact me.

Yours truly,

---

David L. Soulak  
City Manager  
City of Palmer

DLS/cac

cc: Scott Burgess  
Mayor Carte'  
House Transportation & Finance Committee Members

*utilities  
want*

1 IN THE SENATE

BY JOSEPHSON

2

SENATE BILL NO. 155

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the change, relocation, or re-

7

moval of utility facilities incident to the construc-

8

tion of road or other projects by a municipality."

9

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

10

\* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

11

(49) AS 29.35.075 (relocation of utility facilities).

12

\* Sec. 2. AS 29.35 is amended by adding a new section to read:

13

Sec. 29.35.075. RELOCATION OF UTILITY FACILITIES. (a) If,

14

incident to the construction of a road or other project, a municipali-

15

ty determines and orders that a facility of a utility subject to

16

regulation under AS 42.05 that is located across, along, over, under,

17

or within a right-of-way under its jurisdiction must be changed,

18

relocated, or removed, the utility owning or maintaining the facility

19

shall change, relocate, or remove it in accordance with the order.

20

The order shall provide a reasonable time period for compliance. If

21

the utility facility is not changed, relocated, or removed under the

22

order, the facility becomes an unauthorized encroachment and may be

23

disposed of by the municipality.

24

(b) The cost of change, relocation, or removal of a facility of

25

a utility subject to regulation under AS 42.05 necessitated by municipi-

26

pal road or other project construction shall be allocated as provided

27

in the permit, franchise, or other agreement with the municipality.

28

If no specific allocation has been agreed to, the cost shall be borne

29

by the municipality only if the facility has been placed in the

1 municipal right-of-way

2 (1) under a valid easement or permit that specifies the  
3 location of the facility and the facility is within two horizontal  
4 feet of that location; or

5 (2) before the municipality had a system for granting  
6 easements or permits for utility facilities.

7 (c) In (b) of this section, "cost of change, relocation, or  
8 removal" means the entire cost incurred by a utility properly attri-  
9 buted to the change, relocation, or removal of a facility, less costs  
10 for improvements or upgrading not required by the change, relocation,  
11 or removal; if a facility is to be relocated and replaced with new  
12 equipment, there shall also be subtracted from the entire cost any  
13 salvage value derived from the old facility.

14 (d) This section applies to home rule and general law munici-  
15 palities.

Original sponsor: Josephson

1 IN THE SENATE  
2  
3 CS FOR SENATE BILL NO. 155 (C&RA)  
4 IN THE LEGISLATURE OF THE STATE OF ALASKA  
5 FIFTEENTH LEGISLATURE - FIRST SESSION

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

6 A BILL

7 For an Act entitled: "An Act relating to the change, relocation, or re-  
8 moval of utility facilities incident to the construc-  
9 tion of road or other projects by a municipality."

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14 Sec. 29.35.075. RELOCATION OF UTILITY FACILITIES. (a) If,  
15 incident to the construction of a road or other project, a municipali-  
16 ty determines and orders that a facility of a utility certificated  
17 under AS 42.05 that is located across, along, over, under, or within a  
18 right-of-way under its jurisdiction must be changed, relocated, or  
19 removed, the utility owning or maintaining the facility shall change,  
20 relocate, or remove it in accordance with the order. The order shall  
21 provide a reasonable time period for compliance. If the utility  
22 facility is not changed, relocated, or removed under the order, the  
23 facility becomes an unauthorized encroachment and may be disposed of  
24 or relocated by the municipality.

25 (b) The cost of change, relocation, or removal of a facility of  
26 a utility certificated under AS 42.05 necessitated by municipal road  
27 or other project construction shall be allocated as provided in the  
28 permit, franchise, or other agreement with the municipality. If no  
29 specific allocation has been agreed to, the cost shall be borne by the  
municipality only if the facility has been placed in the municipal

1 right-of-way

2 (1) in accordance with a valid easement or permit that  
3 specifies the location of the facility; or

4 (2) after June 30, 1987, in an area for which the munic-  
5 ipality does not have a system for granting easements or permits for  
6 utility facilities and if the facility has been located in compliance  
7 with codes, regulations, and statutes applicable at the time of its  
8 installation.

9 (c) In (b) of this section, "cost of change, relocation, or  
10 removal" means the entire cost incurred by a utility properly attri-  
11 buted to the change, relocation, or removal of a facility, less costs  
12 for improvements or upgrading not required by the change, relocation,  
13 or removal; if a facility is to be relocated and replaced with new  
14 equipment, there shall also be subtracted from the entire cost any  
15 salvage value derived from the old facility.

16 (d) This section applies to home rule and general law munici-  
17 palities.



# 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 means that if a municipal project causes the cost of relocating

HB 155  
State no. SB155

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

## Relocation of utilities on Municipal roads: Fact sheet

This legislation resolves the issue of who pays for relocation costs of utilities on municipal roads. This has been an unresolved issue for both municipalities and utilities for many years.

The legislation would track the states policy, which passed with considerable support and was non-controversial last session. The state pays for all relocation costs of utilities if they are placed in the correct right-of-way.

The issue is whether the cost causer is the cost payer. Both the state of Alaska and the federal government pays for the cost of relocation of utilities on state and federal roads if the utilities are located in the designated right-of-way. This legislation would go further and include municipalities.

Additionally this would clear up the defacto repeal of right-of-way on municipal roads which is an issue. The municipalities now give permits for right-of-way for utilities, however, without this legislation they can and do require utilities to be moved at the utilities expense. This denies the original intent of a right-of-way system.

This problem has been a burden to many utilities and has hindered their financial planning abilities. An unplanned expense of \$100,000 to a small utility for relocating utilities is a financial burden. This possibly could lead to the utilities request for higher rates.

SEC. 1 OF HB 155 ADDS TO THE LIST OF HOME RULE LIMITATIONS A REFERENCE TO THE NEW SECTION ADDED IN THIS BILL.

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. 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 MUNICIPLAITY ONLY IF THE FACITLY HAS BEEN PLACED IN A MUNICIPAL RIGHT-OF-WAY UNDER A VALID EASEMENT OF 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 DEFINAITION OF "COST OF CHANGE, RELOCATION, OR REMOVAL" IS PROVIDED. THE SECTION APPLIES TO HOME RULE AND GENERAL LAW MUNICIPALITIES.

Clark Milne



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Real Estate Acquisition Guide for Local Public Agencies

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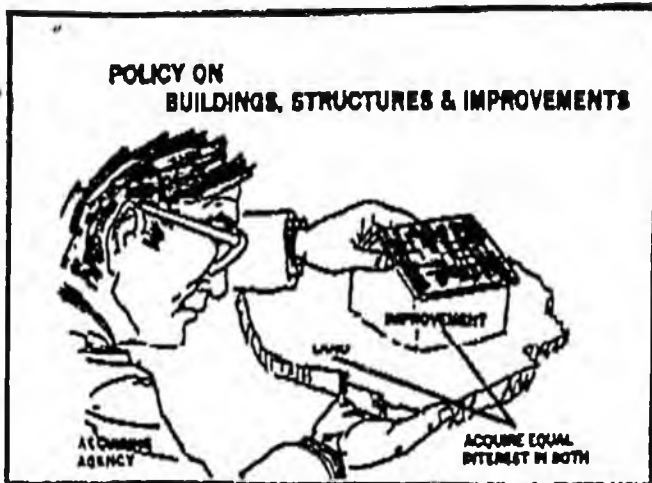
A Resource Manual for Use by:  
Local Public Agency and State  
Personnel Involved in the Acquisition  
of Real Property for Federally-Assisted  
Public Improvement Projects

Prepared by:  
Real Estate Division  
Office of Right-of-Way

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3/3/87

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other improvements. The Uniform Act requires that such tenant receive just compensation for any such buildings, structures, or improvements. The tenant is due this compensation even if the lease requires the tenant to remove any buildings, structures, or improvements at the end of the lease term.

Any building, structure, or other improvement which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for acquisition purposes. Acquisition from the tenant-owner shall follow the same procedures as for a fee owner.

Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its removal value, whichever is greater. Removal value is considered to be salvage value.

- a. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.
- b. The contributory value consists of:
  - 1. The value in place of a building, structure, or other improvement, the present use of which is the

highest and best use of the land to be acquired, for its remaining economic life or

- 2. The interim use value of a building, structure, or other improvement, the present use of which is not the projected highest and best use of the land to be acquired, for a specified interim time period longer than the remaining term of the lease (interim use value includes the present worth of the salvage value of the buildings, structures, or other improvements at the end of the interim time period); or
- 3. The value in place of a building, structure, or other improvement, the present use of which is not the highest and best use of the land to be acquired, for the remaining term of the lease plus the worth of its salvage value at the end of the lease term.

No payment shall be made to a tenant-owner for any improvements unless:

- a. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;
- b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- c. The payment does not result in the duplication of any compensation otherwise authorized by law.

This provision shall not be construed to deprive the tenant-owner of any rights to reject payment under this provision and to obtain payment for such property interests in accordance with other applicable law.

14.5 Utility Relocation and Accommodation

*contact State for explanation*

Historically, it has been in the public interest for public utility facilities to use and occupy the right-of-way of public roads and streets. This is especially the case on

local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formation of utility and highway transportation networks. Over many years, it has proven to offer the most feasible, economic, and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional right-of-way for utility purposes alone. This could have also resulted in significant added costs to be borne by the utility consumers through increased rates for utility services so provided.

Under the practice of jointly using a common right-of-way, there are two broad areas of concern to highway and utility officials alike. First is the cost of relocating, replacing, or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as utility relocations and adjustments. Second, is the installation of utility facilities along or across highway right-of-way and the manner in which they occupy and jointly use such right-of-way, commonly referred to as the Accommodation of Utilities.

Federal-aid funds may participate in relocating utilities displaced by a proposed highway project when certain conditions have been met.

First of all, you should check with the State highway department to be sure you are in compliance with the appropriate State procedures.

If the facilities are only serving the owner of the land and are not serving some aspect of the "public" then they would be treated under normal acquisition procedures for private property.

When it is determined that the utility is in fact serving the "public," the next step is to determine which of the utility adjustments are potentially eligible for Federal-aid funding. In general, Federal-aid funds may participate in the course of adjusting utilities where:

- \* the utility has a legal compensable interest in its

present location by reason of holding a fee or agreement to the real property; or

- \* the State is authorized by statute to pay for the utility adjustment; or
- \* the utility is owned by a governmental unit, is within public right-of-way, and the governmental unit is not required by law or agreement to relocate its facilities.

If, after the above is satisfied, it is determined that the new rights-of-way are required for the utility, there are two options available for obtaining the right-of-way. First, the utility may obtain the replacement right-of-way and be reimbursed for its costs. The second is for the highway agency to be the responsible party for obtaining the right-of-way. This needs to be covered as part of the utility relocation agreement between the highway agency and the public utility approved by the FHWA Division Office. Where the highway agency is obtaining the replacement rights-of-way, the provisions of the Uniform Act will apply. If the agreement calls for the utility to provide the right-of-way, the Uniform Act does not apply.

#### 14.6 Joint Development/Multiple Use

Highway joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the highway and its environment and to obtain maximum benefits from the use of increasingly scarce right-of-way.

Joint development/multiple use projects can have a major influence on highway location and design. Non-highway activities such as housing, business activities, parking, and recreation can be located in the airspace above or below the highway or on land adjacent to the highway. The designs for both the highway and the non-highway elements must be developed in close coordination and with a view toward achieving esthetic harmony, safety, overall economy, and compatibility with the adjoining neighborhood.

Joint development/multiple use applies not only to cooperative planning by the highway and the non-highway agencies, but also involves concern for land use beyond the immediate highway right-of-way. The intent is to



ALASKA RURAL ELECTRIC COOPERATIVE  
ASSOCIATION, INC.

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

March 30, 1984

TO: All House Members  
FROM: David Hutchens *Dave*  
SUBJECT: CS for CS for SB 67 (Rules) - *Very similar to SB155. M/E*

Eventually the House will get to its Daily Calendar for 3-29. When that time comes, please support SB67.

This bill provides for reimbursement by municipalities of the net cost of relocating utility facilities when municipal road projects force their relocation. Most municipalities have in fact paid these costs in the past just as the State Department of Transportation has done since 1973. Some municipalities are now refusing to participate in these relocation expenses, and we see a growing trend in that direction.

These relocation expenses should properly be paid for by the municipalities as a part of the road project. In some cases, the cost of utility relocations can be more than the cost of the road itself. This situation leads to distortions in decision making. The municipality considers all the benefits of the road project, but only part of its costs.

The problem to the utilities' consumers is very real. A distribution line will typically be financed for 35 years. If the utility is forced to replace that line without reimbursement after 5 years, the consumers then have to pay 65 years' worth of debt on that facility in 35 years.

In many cases, the utility lines were there first. Chugach Electric, for example, has between 100 and 200 miles of line which were installed before there were adjacent roads, before there was any formal permit or easement process, and in some cases before those areas were within municipal boundaries. It would be extremely unfair for them now to be required to move those facilities at their own expense to accommodate a new road project.

In total economic terms it would not really make much difference whether relocation costs are paid by utility ratepayers or municipal tax payers, but in many cases they are not the same

people. For example, the City of Kenai is one of those municipalities which refuses to pay. They are one of several communities within the service area of Homer Electric Association. When the city of Kenai refuses to pay, the result is to transfer part of the cost of City of Kenai road projects to residents of the other communities throughout the HEA service area.

In the interest of simple fairness, please vote for SB 67. The cost causer should be the cost payer.



# 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. - Same as SB 155 - MGI

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.

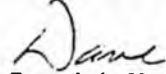
The effect of all this is to resolve a long-standing dispute by protecting the utility investment in existing facilities. It will require municipalities in some cases to include utility relocation costs in the cost of municipal construction projects which would otherwise be in dispute between the parties.

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

# ★ Fairbanks North Star Borough

809 Pioneer Road

P.O. Box 1267

Fairbanks, Alaska 99707

907/452-4761

March 30, 1987

Linda Anderson  
FNSB Liaison  
130 Seward St., Rm 304  
Juneau, AK 99801

Dear Ms. Anderson:

SUBJECT: SUGGESTED MODIFICATIONS TO LANGUAGE OF SB 155

Along the lines of our brief conversations in Juneau on Friday, March 27, I recommend the following language be considered as a substitute bill for SB 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."

1. Add to page 1, line 20, after the word "compliance.":  

"The utility shall prepare an estimate of the work required by the order for review and approval by the municipality before beginning work."
2. Add to page 1, line 27, after the word "municipality.":  

"The cost shall not exceed the approved estimate unless agreed to by the municipality."
3. Remove the word "municipal" from page 2, line 1.
4. Add to page 2, line 3, after the word "horizontal":  

"feet and one vertical"
5. Add to page 2, line 6, after the word "permits":  

"in that right-of-way"
6. Add to page 2, line 6, after the word "facilities.":  

and the facility <sup>was</sup> ~~to~~ located <sup>in compliance with M&E</sup> ~~such that it met~~ all applicable codes, regulations, and statutes at the time of its installation."

Ms. Linda Anderson  
March 30, 1987  
Page 2

I will immediately follow up these suggested wording changes in SB155 with a letter describing some of my concerns and the impetus for making these changes. Thank you for your attention to our suggestions in this matter.

Sincerely,

*Clark Milne*

Clark R. Milne  
Manager  
Division of Civil Engineering

cc: Pat Walsh, Special Assistant to the Mayor, FNSB

cm8-141

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/26/87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: TRANSPORTATION

\*\*FISCAL NOTE(S) ATTACHED X \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

3/3/87

DATE TURNED INTO OFFICE 4/10/87

Mr. President:

C&RA Committee considered SB 155

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

and recommended:

replace with CS for SB 155 (CMA)  same title  
 attached amendment(s) and  new title

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

Tim Kelly  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

Mike Dymowski  
Tim Stumpf  
Rick Stumpf  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Richard Stumpf, Do Pass  
Chairman signature and recommendation

Committee Backup Attached

230

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 155  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act change, relocation, or  
removal of utility facilities..construction"  
Sponsor: Josephson  
Requestor: Senate C&RA

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

[Empty box for analysis]

Prepared by: Doug Griffin, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 4/1/87

Approved by Commissioner: David C. Affm  
Agency: Community & Regional Affairs

Date: 4-1-87

Distribution (by preparer):

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