

**HB**

**279**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 279(TRA)  
(H) Publish Date: 4/26/2005

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT  
Title: Outdoor Advertising; Encroachments RDU: Administration & Support  
Component: Commissioners Office  
Sponsor: House Transportation Committee  
Requester: House Transportation Committee Component No.: 530

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Jenney Yousey Phone: 465-3743  
Division: House Transportation Committee Aide Date/Time: 4/26/05 10:48 AM  
Approved by: Rep Gatto Date: 4/26/2005  
Agency: Co-Chair (H) Transportation Committee

4/27/05

adopted as amended

AMENDMENT  
(amended)

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 279 (TRA)

1 Page 1, line 12, following "remain"

2 Insert ", subject only to removals required by federal highway funding requirements  
3 imposed on the state by federal law,"

4  
5 Page 1, line 15 through page 2, line 13

6 Delete all material

7 Insert

8 "(c) Upon receipt of an application, the department shall issue an encroachment permit to a  
9 private person, a government agency acting in a business capacity, or an owner or lessee of land  
10 contiguous to the right-of-way for an encroachment that on the effective date of this Act is  
11 present within the right-of-way of an interstate, primary, or secondary highway and is not  
12 authorized by a written encroachment permit if the department finds that:

13 (1) the encroachment does not pose a risk to the traveling public and the integrity and safety  
14 of the highway is not compromised;

15 (2) the application has demonstrated the encroachment was erected in good faith;

16 (3) the denial of the encroachment permit would pose a hardship on the person, agency,  
17 owner, or lessee who applies for the permit;

18 (4) the issuance of an encroachment permit will not cause a break in access control for the  
19 highway;

20 (5) the land will not be necessary for a highway construction project during the initial term of  
21 the permit; and

22 (6) issuance of a permit is consistent with federal requirements regarding encroachments on  
23 federal aid highways.

24 (d) The department may not remove an encroachment present within the right-of-way of an  
25 interstate, primary, or secondary highway that is not authorized by a written encroachment  
26 permit on the effective date of this Act until the department determines that the encroachment

1 does not qualify for an encroachment permit issued under this section. The department may  
2 charge an application fee, not to exceed \$100, for a permit issued under this section. An  
3 encroachment permit issued under this section may contain reasonable conditions to protect the  
4 traveling public, the safety and integrity of a highway's design and the public interest.

5 (e) The land area described in an encroachment permit may not be used to meet minimum  
6 requirements for a contiguous land use under applicable municipal land use standards or under  
7 applicable regulations adopted by the Department of Environmental Conservation. The use of  
8 land contiguous to the land area described in the permit must satisfy the applicable municipal  
9 land use standards and applicable regulations adopted by the Department of Environmental  
10 Conservation without regard to the land area described in the permit.

11 (f) The issuance of an encroachment permit under AS 19.25.200 - 19.25.250 does not entitle  
12 the owner, occupant, or person in possession of the encroachment, or any other person to a  
13 payment of compensation or of relocation benefits under AS 34.60, if the encroachment permit is  
14 revoked or not renewed or if the encroachment must be changed, relocated, or removed under  
15 AS 19.25.200 - 19.25.250.

# ALASKA STATE LEGISLATURE



## HOUSE TRANSPORTATION COMMITTEE

### House Bill 279

*"An Act relating to encroachments in the right-of-way of a highway."*

Under the Department of Transportation & Public Facilities there are regulations that allow permits to be issued for encroachments in the right-of-way. However, when a construction project begins there is a federal law requiring all encroachments be removed from the right-of-way. Areas designated as part of the project may not even have any direct contact with the construction project but those encroachments are still required to be removed. House Bill 279 will, by statute, allow existing encroachments in the right-of-way to remain if they qualify for a permit granted to them by the Department of Transportation & Public Facilities.

The provisions of HB 279:

- Inserts an exception into statute that will grandfather current encroachments in the right-of-way of a highway by obtaining a permit by the Department of Transportation & Public Facilities.
- The permit may be issued to a private person, a government agency acting in a business capacity, or an owner or lessee of land contiguous to the right-of-way.
- In order to qualify for the permit, the encroachment must:
  1. Not pose a risk to the traveling public.
  2. The erection of the encroachment occurred in good faith.
  3. The denial of the encroachment permit would pose a hardship on landowner.

## CHUGIAK COMMUNITY COUNCIL

P.O. Box 671350  
Chugiak, Alaska 99567

April 21, 2005

TO: Distribution

SUBJECT: Chugiak Community Council Recommendations Regarding HB 279 and SB 183 - An Act Relating to Encroachments in the Right-of-Way of a Highway

At the monthly meeting of the Chugiak Community Council (Council), held on April 21, 2005, the Council discussed proposed House Bill 279 and proposed Senate Bill 183. These bills both propose that an encroachment permit be issued to a property owner who has a right-of-way (ROW) encroachment if the encroachment does not pose a risk to the traveling public, the encroachment was erected in good faith, and if denial of the encroachment permit would pose a hardship on the property owner. Furthermore, these bills propose that a ROW encroachment cannot be removed until it is determined that the encroachment does not qualify for an encroachment permit. Furthermore, these bills propose that a fee may be charged for an encroachment permit.

The Council voted unanimously to support this legislation as it would reduce negative impacts to many Chugiak property owners due to the proposed construction of the Old Glenn Highway Rehabilitation Project (ADOT&PF State Project No. 52515). The Old Glenn Highway is an arterial running between Eagle River and Peters Creek; and, this project will add shoulders, an adjacent trail, and additional lighting at the major intersections. The project is currently in the ROW acquisition phase with construction expected to commence in May 2007.

The Old Glenn Highway Rehabilitation Project is a federally-funded project; therefore, the Federal Highway Administration (FHWA) will require that the state certify there are no encroachments within the ROW before the state can be reimbursed for its share of expenses. Property owners who own residences and businesses adjacent to the Old Glenn Highway and who have ROW encroachments, through no fault of their own, will be impacted by the removal of their encroachments as a result of this project.

If enacted, this legislation would allow some ROW encroachments to remain provided the encroachments would not impact the above-ground road improvements, for example, water wells, lift-stations, septic fields, parking spaces, etc. If such ROW encroachments were permitted, this would greatly reduce potential personal and business impacts to the property owners. Allowing such encroachments to exist seems sensible especially if the encroachment is located within a ROW that is much wider than required for the planned roadway improvements. Please note that the Old Glenn Highway's ROW width varies between 60 and 300 feet.

This legislation might also reduce potential impacts to the Chugiak Volunteer Fire Department's Latimer Fire Station and parking lot as well as to the Chugiak Benefit Association's community center buildings, parking lot, basketball court, and fenced play area.

The Council encourages the public to continue to voice their opinions to their elected representatives about HB 279, SB 183, and the Old Glenn Highway Rehabilitation Project.

Please call me at 907-688-6575 if you have questions.

Sincerely,

Merten Bangemann-Johnson  
President  
Chugiak Community Council  
mertenbj@chugiakcouncil.org

## Distribution

State of Alaska:

The Honorable Con Bunde, Alaska Senator;  
The Honorable Fred Dyson, Alaska Senator;  
The Honorable Charlie Huggins, Alaska Senator;  
The Honorable Nancy Dahlstrom, Alaska Representative;  
The Honorable Mike Hawker, Alaska Representative;  
The Honorable Pete Kott, Alaska Representative;  
The Honorable Bill Stoltze, Alaska Representative

Cc. Michael Barton/Commissioner ADOT&PF;  
Gordon Keith/Central Region Director ADOT&PF;  
Carl Nelson/ADOT&PF;  
Kenneth W. Chapman/ADOT&PF;  
Al Burton/ADOT&PF;  
Dave Yanoshek/CRW Engineering Group, LLC;  
The Honorable Mark Begich, Mayor, MOA;  
The Honorable Municipality of Anchorage Assembly;  
Lance Wilber, Director, MOA Traffic;  
Craig Lyon/AMATS;  
CBERRRSA Board;  
CFSA Board;  
ERCPRSA Board;  
CBA Board;  
Birchwood Community Council;  
Eagle River Community Council;  
Eagle River Valley Community Council;  
Eklutna Valley Community Council;  
South Fork Community Council;  
Chugiak/Eagle River Chamber of Commerce

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ORIGINAL  
COPIES



## Chugiak-Eagle River Chamber of Commerce

"Place of Many Places"

April 22, 2005

Representative Bill Stoltze  
Representative Nancy Dahlstrom  
Representative Pete Kott  
Representative Mike Hawker  
Alaska State Legislature  
Juneau, AK 99801

RE: HB 279 / "An Act Relating to Encroachments in the right-of-way of a highway

At the April 22, 2005 Board meeting of the Chugiak-Eagle River Chamber of Commerce, the Board Members voted to support HB 279 "An Act Relating to Encroachments in the right-of-way of a highway." This legislation is essential in order to provide relief for road projects caught up in funding mandates under the Federal Highway Administration. These mandates require vacating right-of-ways when they are outside the footprint of the project in order to receive federal funding. With respect to the Old Glenn, right-of-way easements vary dramatically (from 60 to 300 feet) and the State is demanding vacating every ROW encroachment equally. Some of these required vacations will have a profound effect on property owners and important community organizations and yet do not impact the footprint of this project.

The Board supports this legislation and views it as a correcting mechanism allowing greater flexibility under the mandates of federal law as they relate to federal highway funding.

Respectfully submitted,

George Lochner  
President

(907) 694-4702 PHONE • (907) 694-1205 FAX

# ALASKA STATE LEGISLATURE



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2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 279  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT  
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Component Commissioners Office  
Sponsor House Transportation Committee  
Requester House Transportation Committee Component No. 530

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<b>CAPITAL EXPENDITURES</b>						
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Estimate of any current year (FY2005) cost: 0.0

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**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Jenney Yousey  
Division: House Transportation Committee Aide  
Approved by: Rep Gallo  
Agency: Co-Chair (H) Transportation Committee

Phone 465-3743  
Date/Time 4/25/05 3:26 PM  
Date 4/25/2005

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The Honorable Bill Stoltze, Alaska Representative

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Gordon Keith/Central Region Director ADOT&PF;  
Carl Nelson/ADOT&PF;  
Kenneth W. Chapman/ADOT&PF;  
Al Burton/ADOT&PF;  
Dave Yanoshek/CRW Engineering Group, LLC;  
The Honorable Mark Begich, Mayor, MOA;  
The Honorable Municipality of Anchorage Assembly;  
Lance Wilber, Director, MOA Traffic;  
Craig Lyon/AMATS;  
CBERRRSA Board;  
CFSA Board;  
ERCPRSA Board;  
CBA Board;  
Birchwood Community Council;  
Eagle River Community Council;  
Eagle River Valley Community Council;  
Eklutna Valley Community Council;  
South Fork Community Council;  
Chugiak/Eagle River Chamber of Commerce



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AMENDMENT

OFFERED IN THE HOUSE

TO: HB 279

- 1 Page 2, line 2, following "right-of-way"
- 2 Delete "who erected"
- 3 Insert "for"
- 4
- 5 Page 2, line 12, following "fec"
- 6 Insert "not to exceed \$100"