

HB

279

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 the owner.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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
 Division: House Transportation Committee Aide
 Approved by: Rep Gatto
 Agency: Co-Chair (H) Transportation Committee

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

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



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

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 "fee"**
- 6 **Insert "not to exceed \$100"**

4/18
2:04 pm

George

24-LS0905VA
Utermohle
4/15/05

no change

HOUSE BILL NO. *Final Version*

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Introduced:
Referred:

*Try to
schedule
for next
week (Tues.)*

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to outdoor advertising and other encroachments in the right-of-way of
2 a highway." *→ deleted*

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

4 * Section 1. AS 19.25.105(d) is amended to read:

5 (d) Outdoor advertising may not be erected or maintained within the right-of-
6 way of an interstate, primary, or secondary highway except that outdoor advertising

7 (1) on [IS ALLOWED ON (1)] bus benches and bus shelters, and
8 adjacent trash receptacles, located within the right-of-way under the authority of a
9 permit issued under AS 19.25.200 is allowed [,] if the bus benches or bus shelters are
10 located within a borough or unified municipality and the buses that stop at that
11 location operate during the entire year; or

12 (2) present in the right-of-way on the effective date of this Act may
13 remain until or unless an encroachment permit for the outdoor advertising is
14 denied under AS 19.25.200(c) [REPEALED].

L

1 * **Sec. 2.** AS 19.25.200 is amended by adding a new subsection to read:

2 (c) The department shall issue an encroachment permit to a private person, a
3 government agency acting in a business capacity, or an owner or lessee of land
4 contiguous to the right-of-way who erected an encroachment that on the effective date
5 of this Act is present within the right-of-way of an interstate, primary, or secondary
6 highway and is not authorized by a written encroachment permit if the department
7 finds that the encroachment does not pose a risk to the traveling public, that the
8 erection of the encroachment occurred in good faith, and that the denial of the
9 encroachment permit would pose a hardship on the person, agency, owner, or lessee
10 who erected the encroachment. The department may not remove an encroachment
11 present within the right-of-way of an interstate, primary, or secondary highway that is
12 not authorized by a written encroachment permit on the effective date of this Act until
13 the department determines that the encroachment does not qualify for an
14 encroachment permit issued under this subsection. The department may charge a fee
15 for an encroachment permit issued under this subsection