

HB

279

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 8 2005

SENATE FINANCE
COMMITTEE

DATE: 5/5/05

FURTHER:

DATE TURNED
IN TO OFFICE: 8 May 2005

Finance Committee considered CS FOR HOUSE BILL NO. 279(FIN)

HB 279 OUTDOOR ADVERTISING; ENCROACHMENTS

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

and recommends:

- be replaced with S CS CS HB 279 (FIN)
- adopt previous _____ CS CS forthcoming - (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DOT & PF	4/28/05	418.5			1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			

MAY 8 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CS HB279-DOT-CO-4-28
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title Outdoor Advertising; Encroachments RDU Design & Construction
Component Statewide Design & Eng. Svcs
Sponsor House Transportation
Requester House Rules Component No. 526

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	265.5	265.5	265.5	265.5	265.5	265.5
Travel	16.0	16.0	16.0	16.0	16.0	16.0
Contractual	8.0	8.0	8.0	8.0	8.0	8.0
Supplies	129.0	4.0	4.0	4.0	4.0	4.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	418.5	293.5	293.5	293.5	293.5	293.5

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

CHANGE IN REVENUES ()	50.0	50.0	50.0	50.0	50.0	50.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	199.0	74.0	74.0	74.0	74.0	74.0
1005 GF/Program Receipts	50.0	50.0	50.0	50.0	50.0	50.0
1037 GF/Mental Health						
1061 CIP Receipts	169.5	169.5	169.5	169.5	169.5	169.5
TOTAL	418.5	293.5	293.5	293.5	293.5	293.5

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	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The department estimates that approximately 500 right of way (ROW) encroachments will be permitted annually. The complexity of analysis and processing of the permits will vary depending on whether they are commercial or residential encroachments. This additional workload will require 4 new Right of Way Agents (2 in Anchorage, 1 in Fairbanks and 1 in Juneau). The first year of operation will require consultant services to implement the ROW encroachment module within the department's electronic permitting system. A \$100 application fee will annually generate \$50,000 in revenues. It is estimated that 25% of the permit activity will be unrelated to construction projects and must be funded from general funds. The remaining permit activity will be covered by fee collection and capital project funding.

Prepared by: Nona Wilson Phone 465-3904
Division: Legislative Liaison, DOT&PF Date/Time 4/28/05 3:26 PM
Approved by: John MacKinnon Date 4/28/2005
Agency: Deputy Commissioner, DOT&PF

AMENDMENT

adopted

OFFERED IN THE HOUSE

TO: CS HB 279 (FIN)

- 1 Page 1, line 12, following "right-of-way on"
- 2 Delete "the effective date of this Act"
- 3 Insert "January 1, 2005,"
- 4
- 5 Page 2, line 5, starting with "the"
- 6 Delete "the effective date of this Act, is"
- 7 Insert "January 1, 2005, was"
- 8
- 9 Page 2, line 21, following "highway on"
- 10 Delete "the effective date of this Act that is not authorized by a written encroachment
- 11 permit until the department determines that the encroachment does not qualify for
- 12 an enc. oachment permit issue ""
- 13
- 14 Insert "January 1, 2005, unless the owner, occupant, or person in possession of the
- 15 encroachment or any other person causing or permitting the encroachment to exist
- 16 receives the notice provided under AS 19.25.230 and is informed of the application
- 17 process for an encroachment permit"
- 18
- 19 Page 3, following line 8
- 20 Insert a new section to read:
- 21 "(g) Except for damage, injury, or death resulting from gross negligence or reckless or
- 22 intentional misconduct of the state or an agent or employee of the state, the state is not liable
- 23 for damage to, or damage, injury, or death resulting from the presence of, an encroachment in
- 24 the right-of-way of a state highway."

SENATE FINANCE COMMITTEE
5 / 7 / 2005 COMMITTEE ACTION

Bill Number	HB 279		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stedman			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
MOTION	Pass		

SENATE FINANCE
COMMITTEE

Amendment Number: #2
Bill Number: HB 279
Sponsor: Green Date: 5/8/05
Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: CS HB 279(FIN)

adopted

Page 2, lines 10-11

Delete all material and insert:

(2) The applicant has demonstrated the encroachment was erected with the good faith belief it was lawful to erect and maintain the encroachment in its location."

Page 3, lines 9-12

Delete all material and insert a new section to read:

"(g) The state is not liable for damage to, or damage or injury resulting from the presence of, an encroachment in the right-of-way of a state highway."



Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 8 May 2005 TIME: 7:30 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 3

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
SCS CS HB 279 (FIN) 24-LS0905\I
plus 2 amendments - attached
Thx
Mindy

Note: Amendment #2 (to subsection(g)) supercedes
Amendment #1

SENATE CS FOR CS FOR HOUSE BILL NO. 279(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

11 (2) present in the right-of-way on January 1, 2005, may remain,
12 subject only to removals required by federal highway funding requirements
13 imposed on the state by federal law, until or unless an encroachment permit for
14 the outdoor advertising is denied under AS 19.25.200(c) [REPEALED].

#1

15 * Sec. 2. AS 19.25.200 is amended by adding new subsections to read:

1 (c) Upon receipt of an application, the department shall issue an encroachment
 2 permit to a private person, a government agency acting in a business capacity, or an
 3 owner or lessee of land contiguous to the right-of-way for an encroachment that, on
 4 January 1, 2005, was present within the right-of-way of an interstate, primary, or
 5 secondary highway and is not authorized by a written encroachment permit if the
 6 department finds that

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

9 (2) the applicant has demonstrated the encroachment was erected with
 10 the good faith belief it was lawful to erect and maintain the encroachment in its
 11 location;

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

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

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

18 (6) issuance of a permit is consistent with federal requirements
 19 regarding encroachments on federal-aid highways.

20 (d) The department may not remove an encroachment present within the right-
 21 of-way of an interstate, primary, or secondary highway on January 1, 2005, unless the
 22 owner, occupant, or person in possession of the encroachment or any other person
 23 causing or permitting the encroachment to exist receives the notice provided under
 24 AS 19.25.230 and is informed of the application process for an encroachment permit
 25 under (c) of this section. The department may charge a fee, not to exceed \$100, for an
 26 encroachment permit issued under (c) of this section. An encroachment permit issued
 27 under (c) of this section may contain reasonable conditions to protect the traveling
 28 public, the safety and integrity of a highway's design, and the public interest.

29 (e) The land area described in an encroachment permit may not be used to
 30 meet minimum requirements for a contiguous land use under applicable municipal
 31 land use standards or under applicable regulations adopted by the Department of

1 Environmental Conservation. The use of land contiguous to the land area described in
2 the permit must satisfy the applicable municipal land use standards and applicable
3 regulations adopted by the Department of Environmental Conservation without regard
4 to the land area described in the permit.

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

10 (g) The state is not liable for damage to, or damage or injury resulting from
11 the presence of, an encroachment in the right-of-way of a state highway.

#2

ALASKA STATE LEGISLATURE



HOUSE TRANSPORTATION COMMITTEE

House Bill 279(FIN)

"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 encroachment occurred in good faith.
 3. The denial of the encroachment permit would pose a hardship on landowner.
 4. Not cause a break in access control for the highway.
 5. Not be necessary for a highway construction project during the initial term of the project.
 6. The issuance of a permit is consistent with federal requirements regarding encroachments on federal-aid highways.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



"Place of Many Places"

Chugiak-Eagle River Chamber of Commerce

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

PO BOX 770353 EAGLE RIVER ALASKA 99577 • 11401 OLD GLENN HIGHWAY, SUITE 106, EAGLE RIVER, ALASKA 99577
www.ccr.org • email: info@ccr.org

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

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

May 5, 2005

The Honorable Lyda Green
Co-Chair, Senate Finance
State Capitol, Room 516
Juneau, Alaska 99801

The Honorable Gary Wilken
Co-Chair, Senate Finance
State Capitol, Room 518
Juneau, Alaska 99801

Dear Senators Green and Wilken:

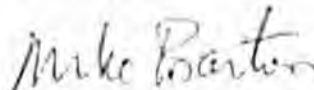
The Department of Transportation and Public Facilities (DOT&PF) is requesting three amendments to CSSB 183(TRA) "**An Act relating to encroachments in the right-of-way of a highway.**"

The Department supports the intent of the bill and has worked closely and cooperatively with the sponsors of both the Senate and House versions to ensure the final version addressed the issue at hand, did not expose the State to any undue liability and was within the parameter under which the Department operates.

The following two pages include specific amendments that we feel need to be included for purposes of clarification and to address a potentially significant liability issue.

If you have any questions or need further information, please contact Deputy Commissioner John MacKinnon, or Nona Wilson, Legislative Liaison at 465-3900.

Sincerely,



Mike Barton
Commissioner

Enclosure

cc: Senator Charlie Huggins
Representative Mike Hawker
Representative Bill Stoltze
Kevin Jardell, Legislative Liaison, Office of the Governor
Kris Knauss, Policy Director, Office of the Governor

Proposed Changes to SB 183/HB 279 – Encroachment Permits

1. Change “Fee” To “Application Fee” in Sec 2(d)

The department currently charges “economic rent” for the use of the right-of-way in which it is the fee owner. The existing language in AS 19.25.200(d) could be read to restrict the department to collection of \$100 total. We want to ensure that “fee” is not confused with “economic rent.” Where we own the underlying fee, we have an obligation to collect “economic rent”. Presently our regulations have a \$200 application fee, a requirement for “economic rent” or \$100 per year, whichever is greater, a five-year permit term, and a \$100 permit renewal fee.

The department estimates that its annual lost revenue would be in excess of \$100,000 if the department is restricted to a maximum \$100 per encroachment.

2. Correct the liability issue in Sec 2 (g)

SB 183 effectively opens up state ROW because of hardship to landowners. At the same time, the liability clause invites litigation against the State of Alaska. It makes no sense to increase state liability where the legislation directly benefits private landowners, and not the state. Since the department will be permitting the encroachments, plaintiffs could always argue that the state was somehow negligent in granting the permit to begin with.

The bill, as presently drafted, would effectively subject the state to liability for private citizen use of the state right-of-way, and could be read to place an obligation of on-going monitoring, maintenance, etc., in order to avoid charges of “reckless” or “grossly negligent” behavior. Obviously, the department does not have the resources to constantly monitor all of the right-of-way in the state. Nevertheless, that would not prevent plaintiffs from arguing that the department was “grossly negligent” not to perform at least yearly monitoring, or that it was grossly negligent not to notice that an encroachment had deteriorated in condition from the date of initial permitting. The existing language invites plaintiffs to make precisely these kind of arguments, and to embroil the department in ongoing litigation.

The original language in SB 183 should be adopted as follows:

(g) The state is not liable for damage to, or damage or injury resulting from the presence of, an encroachment in the right-of-way of a state highway.

If the foregoing language is not used, then language more closely approximating existing statutory language should be used, such as follows:

(g) The state is not liable for damage to the encroachment, or damage, injury, or death resulting from the presence of an encroachment in the right-of-way of a state highway. This section

does not apply to a civil action for damages as a result of a permitted encroachment resulting from intentional misconduct within the course and scope of employment or agency and with complete disregard for the safety and property of others.

3. Modify Good Faith Language Sec. 2 (c)(2)

The existing "good faith" requirement is too vague. There is no real way to determine "good faith." To clarify this ambiguity, the department suggests replacing (c)(2) with the following language: **"The applicant has demonstrated the encroachment was erected with the good faith belief it was lawful to erect and maintain the encroachment in its location."**