

LEG. FINANCE - BILLS 1985 - 1986 2351

CSHB 155 - HB 159 2351

COMMITTEE REPORT
SENATE

FURTHER:

5/9/85

Date 5/22/85

Mr. President

The Committee on FINANCE considered CSHB 155 (Jud)

notice requirements on the closure of mobile home parks and permitting the establishment of horizontal property regimes for mobile homes; cfd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for CSHB 155 (Jud)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

**MEMBERS SIGNING
DO PASS**

**MEMBERS HAVING
OTHER RECOMMENDATIONS**

[Signature]

[Signature]

[Signature]

[Signature]

Chairman

Chairman recommendation

Offered: 5/9/85
Referred: Finance

Original sponsors: Ringstad, Duncan,
Sund, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 155 (~~Judiciary~~) *Finance*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "~~An Act relating to notice requirements on the ele-~~
7 ~~sure of mobile home parks.~~" *(See new title)*

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

9 * Section 1. AS 34.03.225 is amended to read:

10 Sec. 34.03.225. LIMITATIONS ON MOBILE HOME PARK OPERATOR'S
11 RIGHT TO TERMINATE. A mobile home park operator may evict a mobile
12 home or a mobile home park dweller or tenant only for one of the
13 following reasons:

14 (1) the mobile home dweller or tenant has defaulted in the
15 payment of rent owed;

16 (2) the mobile home dweller or tenant has been convicted of
17 violating a federal or state law or local ordinance, and that viola-
18 tion is continuing and is detrimental to the health, safety or welfare
19 of other dwellers or tenants in the mobile home park;

20 (3) the mobile home dweller or tenant has violated a pro-
21 vision, enforceable under AS 34.03.130, of the rental agreement or
22 lease signed by both parties and not prohibited by law including rent
23 and the terms of agreement; and

24 (4) a change in the use of the land comprising the mobile
25 home park, or the portion of it on which the mobile home to be evicted
26 is located; however, all dwellers or tenants so affected by a change
27 in land use shall be given at least 180 days' [90 DAYS] notice, or
28 longer if a longer notice period is provided in a valid lease.

29 * Sec. 2. AS 34.03.225 is amended by adding a new subsection to read:

1 (b) A mobile home park operator may not evict a mobile home or a
2 mobile home park dweller or tenant because of the age of the mobile
3 home. This does not prohibit eviction for violation of a provision
4 enforceable under AS 34.03.130 that requires that a mobile home be in
5 a fit and habitable condition.

Add new sec. 3 (see attached)

1/23/86

New Sec. 3

AMENDMENT

Offered in the SENATE

By Sund

TO: SCS CSHB 155 (Judiciary)

Page 2, following line 5, add a new bill section to read:

"* Sec. 3. AS 34.08.620(b) is amended to read:

(b) For 90 days after delivery or mailing of the notice described in (a) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases or rents the unit. If a tenant fails to purchase the unit during the 90-day period, the offeror shall extend a right of first refusal to the tenant who leases or rents the unit. The offeror may not offer to dispose of an interest in the unit [DURING THE FOLLOWING 180 DAYS] at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. The tenant must exercise the right of first refusal within 90 days from the time of receiving the offer. This subsection does not apply to a unit in conversion property if the unit will be restricted to exclusively non-residential use or if the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion."

1/23/86

New Title

A M E N D M E N T

B

Offered in the SENATE

To: SCS CSHB 155 (Judiciary)

Page 1, lines 5 - 6, delete all material and insert:

"For an Act entitled: 'An Act relating to limitations on a mobile home park operator's right to terminate tenancy within the mobile home park and granting a tenant in property being converted to a common interest ownership under AS 34.08 a right of first refusal.'"

*If suggested
Rep. Sund CS
is adopted*

RB

STATE OF ALASKA, 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 155 (L&C)
 Title: "...notice requirements...
 mobile homes..."
 Sponsor: Repr. Ringstad
 Requestor: House Labor & Commerce
 Date of Request: March 15, 1985

FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 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

The committee substitute adds a provision for 180 day eviction notice for mobile home owners when any changes in land use is to be made. The CSHB 155 (L&C) also gives the tenant or subtenant first right of refusal on the land and provides that if the offer is not accepted the offerer may not offer the land at a better price or terms to others for 180 days. These changes will not cause a fiscal impact as they provide precise guidelines that will encourage compliance with both landlord and tenant rights.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: 3/15/85

Approved by Commissioner: Norman C. Gorsuch Date: 3/15/85
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1986

SUBJECT: SCS CSHB 155(Finance)

TO: Senator Jan Faiks
Senator John Sackett
Co-Chairmen, Senate Finance Committee

FROM: Richard A. Bradley
Legislative Counsel *RB*

I wish to remind the committee that the requested version of HB 155, as with the earlier version by the Senate Judiciary Committee, contains a change in the bill title and accordingly it violates Uniform Rule 41(b).

And, as the committee undoubtedly knows, SCR 26 was introduced last year to rectify the problem.

If I may be of further assistance, please advise.

RAB:mkr
M2:074

1/23/86
Technical changes (noted in yellow) which were not included in amendments furnished Leg's Legal Services were approved by Sen Faiks this date.

Original sponsors: Ringstad, Duncan,
Sund, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 155 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to limitations on a mobile home park
7 operator's right to terminate tenancy within the
8 mobile home park and granting a tenant in property
9 being converted to a common interest ownership under
10 AS 34.08 a right of first refusal."

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

12 * Section 1. AS 34.03.225 is amended to read:

13 Sec. 34.03.225. LIMITATIONS ON MOBILE HOME PARK OPERATOR'S
14 RIGHT TO TERMINATE. A mobile home park operator may evict a mobile
15 home or a mobile home park dweller or tenant only for one of the
16 following reasons:

17 (1) the mobile home dweller or tenant has defaulted in the
18 payment of rent owed;

19 (2) the mobile home dweller or tenant has been convicted of
20 violating a federal or state law or local ordinance, and that viola-
21 tion is continuing and is detrimental to the health, safety or welfare
22 of other dwellers or tenants in the mobile home park;

23 (3) the mobile home dweller or tenant has violated a pro-
24 vision, enforceable under AS 34.03.130, of the rental agreement or
25 lease signed by both parties and not prohibited by law including rent
26 and the terms of agreement; and

27 (4) a change in the use of the land comprising the mobile
28 home park, or the portion of it on which the mobile home to be evicted
29 is located; however, all dwellers or tenants so affected by a change

1 in land use shall be given at least 180 days' [90 DAYS] notice, or
2 longer if a longer notice period is provided in a valid lease.

3 * Sec. 2. AS 34.03.225 is amended by adding a new subsection to read:

4 (b) A mobile home park operator may not evict a mobile home or a
5 mobile home park dweller or tenant because of the age of the mobile
6 home. This does not prohibit eviction for violation of a provision
7 enforceable under AS 34.03.130 that requires that a mobile home be in
8 a fit and habitable condition.

9 * Sec. 3. AS 34.08.620(b) is amended to read:

10 (b) For 90 days after delivery or mailing of the notice des-
11 cribed in (a) of this section, the person required to give the notice
12 shall offer to convey each unit or proposed unit occupied for residen-
13 tial use to the tenant who leases or rents the unit. If a tenant fails
14 to purchase the unit during the 90-day period, the offeror shall
15 extend a right of first refusal to the tenant who is leasing or
16 renting the unit at the time of the conversion. The offeror may not
17 offer to dispose of an interest in the unit [DURING THE FOLLOWING 180
18 DAYS] at a price or on terms more favorable to the offeree than the
19 price or terms offered to the tenant while the tenant is in
20 possession. The tenant must exercise the right of first refusal
21 within 90 days from the receipt of the offer. This subsection does
22 not apply to a unit in conversion property if the unit will be
23 restricted exclusively to nonresidential use or if the boundaries of
24 the converted unit do not substantially conform to the dimensions of
25 the residential unit before conversion.

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1986

SUBJECT: SCS CSHB 155(Finance)

TO: Senator Jan Faiks
Senator John Sackett
Co-Chairmen, Senate Finance Committee

FROM: Richard A. Bradley
Legislative Counsel 

I wish to remind the committee that the requested version of HB 155, as with the earlier version by the Senate Judiciary Committee, contains a change in the bill title and accordingly it violates Uniform Rule 41(b).

And, as the committee undoubtedly knows, SCR 26 was introduced last year to rectify the problem.

If I may be of further assistance, please advise.

RAB:mkr
M2:074

ANALYSIS FOR SCS CS HOUSE BILL 155 (Judiciary)

An Act relating to notice requirements on the closure of mobile home parks

Section 1

This section amends the chapter in Title 34 having to do with the Limitations on Mobile Home Park Operators Right to Terminate. Under current law, a mobile home park operator must provide all dwellers or tenants 90 days eviction notice when the use of the land comprising the mobile home park is to be changed. This section would increase the required notice to 180 days.

Section 2

Adds a new subsection to Chapter 3 (Limitations on Mobile Home Park Operators Right to Terminate) which would prohibit a mobile home park operator from evicting a mobile home or its tenant because of the age of the mobile home. However, the mobile home must be in a fit and habitable condition, otherwise the above does not apply.

Comments

As passed by the House, this bill also contained a section that established horizontal property regimes for mobile homes. The passage of SB 44, the Uniform Common Interest Ownership Act, no longer made that section necessary and it was deleted in the Senate Judiciary Committee Substitute.

Deleting that section required changing the title of the House passed version which violates Rule 41(b) of the Uniform Rules. Therefore, the Senate Judiciary Committee introduced SCR 26 which would allow for this title change. That resolution is currently in the Senate Rules Committee.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

AD

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 155
Title: "An Act permitting...horizontal property regimes...manufactured housing..."
Sponsor: Repr. Ringstad
Requestor: House Labor & Commerce
Date of Request: 2/1/85

FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: _____
Public Protection
BRU, Program or Subprogram(s) Affected: _____
Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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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

This bill would amend AS 34.07 to permit condominium mobile homes. The Department of Law would only be involved to the extent that sales of some condominiums might result in complaints of Mobile Home Warranty Act. Such complaints are not expected to exceed the complaint rate for the mobile home industry as a whole and they do not warrant fiscal note costs.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: 2/4/85
Approved by Commissioner: Norman C. Gorsuch Date: 2/4/85
Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

A M E N D M E N T

A

Offered in the SENATE

To: SCS CSHB 155 (Judiciary)

Page 1, lines 5 - 6, delete all material and insert:

"For an Act entitled: 'An Act relating to limitations on a mobile home park operator's right to terminate tenancy within the mobile home park.'"

*IF suggested
Rep Sund CS
is not adopted.*

Offered: 4/4/85
Referred: Rules

Original sponsors: Ringstad, Duncan,
Sund, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 155 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to notice requirements on the clo-
7 sure of mobile home parks and permitting the estab-
8 lishment of horizontal property regimes for mobile
9 homes; and providing for an effective date."

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

11 * Section 1. AS 34.03.225 is amended to read:

12 Sec. 34.03.225. LIMITATIONS ON MOBILE HOME PARK OPERATOR'S
13 RIGHT TO TERMINATE. A mobile home park operator may evict a mobile
14 home or a mobile home park dweller or tenant only for one of the
15 following reasons:

16 (1) the mobile home dweller or tenant has defaulted in the
17 payment of rent owed;

18 (2) the mobile home dweller or tenant has been convicted of
19 violating a federal or state law or local ordinance, and that viola-
20 tion is continuing and is detrimental to the health, safety or welfare
21 of other dwellers or tenants in the mobile home park;

22 (3) the mobile home dweller or tenant has violated a pro-
23 vision, enforceable under AS 34.03.130, of the rental agreement or
24 lease signed by both parties and not prohibited by law including rent
25 and the terms of agreement; and

26 (4) a change in the use of the land comprising the mobile
27 home park, or the portion of it on which the mobile home to be evicted
28 is located; however, all dwellers or tenants so affected by a change
29 in land use shall be given at least 180 days' [90 DAYS] notice, or

1 longer if a longer notice period is provided in a valid lease.

2 * Sec. 2. AS 34.03.225 is amended by adding a new subsection to read:

3 (b) A mobile home park operator may not evict a mobile home or a
4 mobile home park dweller or tenant because of the age of the mobile
5 home. This does not prohibit eviction for violation of a provision
6 enforceable under AS 34.03.130 that requires that a mobile home be in
7 a fit and habitable condition.

8 * Sec. 3. AS 34.07 is amended by adding a new section to read:

9 ARTICLE 8. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

10 Sec. 34.07.500. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

11 (a) Notwithstanding the provisions of AS 34.07.010 - 34.07.460, a
12 horizontal property regime for mobile homes may be established as an
13 estate in real property consisting of an undivided interest in common
14 in a portion of the real property together with a separate interest in
15 space, the boundaries of which are described in a declaration filed by
16 the sole owner or all of the owners of the property and which complies
17 to the extent applicable with AS 34.07.020.

18 (b) The portion of the parcel of real property held in undivided
19 interest may be all of the real property of an existing parcel except
20 for the separate interests in space without regard to any three-dimen-
21 sional aspects of the real property if the purpose of the horizontal
22 property regime is the establishment of a horizontal property regime
23 for mobile homes.

24 (c) A person who intends to convert a mobile home park into a
25 horizontal property regime for mobile homes under this section shall
26 give each tenant and each subtenant in possession of a portion of the
27 conversion land notice of the conversion no later than 180 days before
28 the tenant and any subtenant in possession is required to vacate. The
29 notice must set out generally the rights of tenants and subtenants

1 under this section and must be hand delivered to the tenant or sub-
2 tenant in possession or mailed by certified mail, return receipt
3 requested, to the tenant and subtenant at the address of the unit or
4 any other mailing address provided by a tenant. A tenant or subtenant
5 may not be required to vacate upon less than 180 days' notice except
6 by reason of nonpayment of rent, waste, or conduct that constitutes a
7 continuing private nuisance, and the terms of the tenancy may not be
8 altered during the period. The failure to give notice as required by
9 this section is a defense to an action for possession.

10 (d) For 60 days after delivery or mailing of the notice des-
11 cribed in (c) of this section, the person required to give the notice
12 shall offer to convey the unit or proposed unit to the tenant. If a
13 tenant fails to purchase the unit during the 60-day period, the
14 offeror may not offer to dispose of an interest in the unit during the
15 following 180 days at a price or on terms more favorable to the
16 offeree than the price or terms offered to the tenant.

17 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

4/12/85

Date 5-9-85

Mr. President

The Committee on JUDICIARY considered CSHB 155(Jud)

relating to notice requirements on the closure of mobile home parks and permitting the establishment of horizontal property regimes for mobile homes; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

do pass

do pass with attached amendment(s)

replace with/or adopt SCS for CSHB 155 (Judiciary)

new title

same title and recommends _____

and attached a "LETTER OF INTENT" NEW FISCAL NOTE

reports it back without recommendation

recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

3 members

MEMBERS HAVING
OTHER RECOMMENDATIONS

Tim Kelly - No Rec


Chairman
DO PASS
Chairman recommendation

COMMITTEE REPORT

4/11

HOUSE

(7)

FURTHER FINANCE

2/22/85

Date: 09 April 1985

Mr. Speaker:

The Committee on TRANSPORTATION has had HB 159

"An Act relating to utilities and encroachments in state airports, public facilities, and highways; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 159 (TRSP) same title
- new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

Cato Bette Cato Marrou _____

Pignalberi Mo Sigaller _____

Furnace Walt Furnace _____

Davis Mike Davis _____

Shultz Dick Shultz _____

Andre M. NoREC.

Bette Cato
CHAIRMAN

COMMITTEE REPORT
HOUSE

2/22
TRANSPORTATION

(7)

FURTHER: FINANCE

2/1/85

Date: _____

The Committee on COMMUNITY & REGIONAL AFFAIRS has had HB 159

"An Act relating to utilities and encroachments in state airports, public facilities, and highways; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for NB 159 (C+RA) same title
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO-PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

GOLL Peter Jacc

GREENBERG W. J. Greenberg

WALLIS F. Ray Wallis

KOPPEL Arthur Koppen

FORBACE Walt Furnace Do Not Pass

PHILLIPS ROD E. PHILLIPS No R.

STARRON Starron A. DO NOT PASS

Peter Jacc
CHAIRMAN

Offered: 4/11/85
Referred: Finance

Moer

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility shall change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or re-
25 moved in accordance with the order, any permit authorizing the facil-
26 ity issued by the department under AS 02.15.102 becomes invalid and
27 the facility will be considered an unauthorized encroachment subject
28 to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260, ordered under (a) of this section is to be paid as
2 follows:

3 (1) by the department as a cost of airport construction, if
4 the utility facility is installed or authorized under a utility
5 permit, or a regulation after the effective date of this Act;

6 (2) by the department as a cost of highway construction if
7 the facility is installed before the effective date of this Act;

8 (3) by the utility in all other cases unless the commis-
9 sioner finds it is in the public interest for the cost to be paid by
10 the department.

11 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
12 constructed, placed, changed, or maintained across or within an air-
13 port, but only in accordance with regulations or procedures adopted by
14 the department. An encroachment may not be constructed, placed, main-
15 tained, or changed until it is authorized by a written permit issued
16 by the department, unless the department provides otherwise by regula-
17 tion.

18 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
19 incidental to the construction or maintenance of a state airport the
20 department determines and orders that an encroachment previously
21 authorized by written permit must be changed, relocated, or removed,
22 the owner of the encroachment shall change, relocate, or remove it
23 within a reasonable time set by the department in the order. The cost
24 of the change, relocation, or removal shall be paid as provided in
25 AS 02.15.104(c). If the owner does not change, relocate, or remove an
26 encroachment within the time set by the department, the encroachment
27 will be considered an unauthorized encroachment subject to the pro-
28 visions of AS 02.15.114.

29 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized

1 encroachment exists in, on, under, or over a state airport the depart-
2 ment may require the removal of the encroachment, at the expense of
3 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

4 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
5 Notice shall be given the owner, occupant, or person in possession of
6 an unauthorized encroachment, or to another person causing or per-
7 mitting the encroachment to exist, by serving upon any of them a
8 notice demanding the removal of the encroachment within a time limit
9 set by the department. The notice shall describe the encroachment
10 with reasonable certainty as to its character and location. Service
11 of the notice may be made by certified mail.

12 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
13 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
14 encroachment to comply with a notice or order of the department under
15 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
16 encroachment, or cause it to be removed. The owner of the unauthor-
17 ized encroachment shall pay to the department

18 (1) the expense of the removal of the encroachment;

19 (2) all costs and expenses paid by the state as a result of
20 a claim or claims filed against the state by third parties for damages
21 due to delays because the encroachment was not changed, removed, or
22 relocated according to the order of the department; and

23 (3) costs and expense of suit.

24 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

25 (15) "cost of change, relocation, or removal" means the
26 entire cost incurred by the utility properly attributed to the change,
27 relocation, or removal of a facility, less the costs for improvements
28 or upgrading over and above the cost of a functionally equal facility;
29 if a facility is to be relocated and replaced with new equipment,

1 there shall also be subtracted from the entire cost the salvage value
2 derived from the old facility;

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

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

23 (18) "utility facility" includes poles, plants, lines,
24 trenches, bridges, utilidors, tunnels, pipelines, and any other system
25 for furnishing, producing, generating, transmitting, or distributing
26 power, electricity, communications, telecommunications, water, gas,
27 oil, petroleum products, coal or other mineral slurry, steam, heat,
28 light, chemicals, air, sewage, drainage not connected with an airport
29 drainage system, irrigation, or another substance; "utility facility"

1 also includes a system for furnishing transportation of goods or
2 persons by means of a railway, tramway, cableway, conveyor, flume,
3 canal, tunnel, pipeline, or a similar means.

4 * Sec. 3. AS 19.25.200 is amended to read:

5 Sec. 19.25.200. ENCROACHMENT PERMITS. (a) An encroachment may
6 be constructed, placed, changed, or maintained across or along a
7 highway, but only in accordance with regulations adopted by the
8 department. An [NO] encroachment may not be constructed, placed,
9 maintained, or changed until it is [DULY] authorized by a written
10 permit issued by the department, unless the department provides
11 otherwise by regulation.

12 (b) The provisions under (a) of this section do not apply to a
13 mailbox or a newspaper box attached to a mailbox.

14 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

15 (12) "utility" includes a corporation, company, individual,
16 or association of individuals, or a lessee, trustee, or court-appointed
17 receiver, that owns, operates, manages, or controls a line, plant,
18 pipeline, or system for furnishing, producing, generating, transmit-
19 ting, or distributing power, electricity, communications, telecommu-
20 nications, water, gas, oil, petroleum products, coal or other mineral
21 slurry, steam, heat, light, chemicals, air, sewage, drainage not
22 connected with highway drainage, irrigation, or similar products
23 including publicly owned fire and police signal systems and street
24 lighting systems that directly or indirectly serve the public or a
25 segment of the public; "utility" also includes a corporation, company,
26 individual, or association of individuals, or a lessee, trustee, or
27 court-appointed receiver that owns, operates, manages, or controls a
28 system for furnishing transportation of goods or persons by means of a
29 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,

1 or a similar means;

2 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

3 (14) "utility facility" includes poles, plants, lines,
4 trenches, bridges, utilidors, tunnels, pipelines, and any other system
5 for furnishing, producing, generating, transmitting, or distributing
6 power, electricity, communications, telecommunications, water, gas,
7 oil, petroleum products, coal or other mineral slurry, steam, heat,
8 light, chemicals, air, sewage, drainage not connected with a highway
9 drainage system, irrigation, or another substance; "utility facility"
10 also includes a system for furnishing transportation of goods or
11 persons by means of railway, tramway, cableway, conveyor, flume,
12 canal, tunnel, pipeline, or a similar means.

13 * Sec. 6. AS 35.10 is amended by adding new sections to read:

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

15 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
16 utility facility may be constructed, placed, or maintained across,
17 along, over, under, or within a state public facility only in accor-
18 dance with regulations adopted or procedures prescribed by the depart-
19 ment and only if authorized by a written permit issued by the depart-
20 ment.

21 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
22 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
23 public facility project, the department determines and orders that a
24 utility facility located across, along, over, under, or within a state
25 public facility must be changed, relocated, or removed, the utility
26 owning or maintaining the facility shall change, relocate, or remove
27 it in accordance with the order, within a reasonable time set by the
28 department in the order.

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, a permit authorizing the utility
2 issued by the department under AS 35.10.210 becomes invalid and the
3 facility will be considered an unauthorized encroachment subject to
4 the provisions of AS 35.10.270.

5 (c) The cost of change, relocation, or removal, as defined in
6 AS 35.25.020, ordered under (a) of this section is to be paid as
7 follows:

8 (1) by the department as a cost of public facility con-
9 struction, if the utility facility is installed or authorized under a
10 utility permit or a regulation after the effective date of this Act;

11 (2) by the department as a cost of highway construction if
12 the facility is installed before the effective date of this Act;

13 (3) by the utility in all other cases unless the commis-
14 sioner finds it is in the public interest for the cost to be paid by
15 the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
17 constructed, placed, changed, or maintained across or within a public
18 facility, but only in accordance with regulations or procedures adopt-
19 ed by the department. An encroachment may not be constructed, placed,
20 maintained, or changed until it is authorized by a written permit
21 issued by the department, unless the department provides otherwise by
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
24 incidental to the construction or maintenance of a state public facil-
25 ity, the department determines and orders that an encroachment pre-
26 viously authorized by written permit must be changed, relocated, or
27 removed, the owner of the encroachment shall change, relocate, or
28 remove it within a reasonable time set by the department in the order.
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,
2 or remove an encroachment within the time set by the department, the
3 encroachment will be considered an unauthorized encroachment and
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
6 encroachment exists in, on, under, or over a state public facility,
7 the department may require the removal of the encroachment, at the
8 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-
9 270.

10 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
11 Notice shall be given the owner, occupant, or person in possession of
12 an unauthorized encroachment, or to another person causing or per-
13 mitting the encroachment to exist, by serving upon any of them a
14 notice demanding the removal of the encroachment within a time limit
15 set by the department. The notice shall describe the encroachment
16 with reasonable certainty as to its character and location. Service
17 of the notice may be made by certified mail.

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.
19 After a failure of the owner of an unauthorized encroachment to comply
20 with the notice or order of the department under AS 35.10.220, 35.10.-
21 240, or 35.10.260, the department may remove the encroachment, or
22 cause it to be removed. The owner of the unauthorized encroachment
23 shall pay to the department

24 (1) the expense of the removal of the encroachment;

25 (2) all costs and expenses paid by the state as a result of
26 a claim or claims filed against the state by third parties for damages
27 due to delays because the encroachment was not changed, removed, or
28 relocated according to the order of the department; and

29 (3) costs and expense of suit.

1 * Sec. 7. AS 35.25.020 is repealed and reenacted to read:

2 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
3 requires otherwise,

4 (1) "construction" or a derivative of the term "construc-
5 tion" means construction, reconstruction, alteration, improvement, or
6 major repair;

7 (2) "cost of change, relocation, or removal" means the
8 entire cost incurred by the utility properly attributed to the change,
9 relocation, or removal of a facility, less any costs for improvements
10 or upgrading over and above the cost of a functionally equal facility;
11 if a facility is to be relocated and replaced with new equipment,
12 there shall also be subtracted from the entire cost any salvage value
13 derived from the old facility;

14 (3) "department" means the Department of Transportation and
15 Public Facilities;

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

20 (5) "maintenance" means the preservation of each type of
21 facility as nearly as possible in its original condition as construct-
22 ed, or as improved;

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

25 (7) "public facility" or "public work" means a structure or
26 project constructed or maintained by the department except airports
27 and highways, and includes public buildings, boat harbors, port facil-
28 ities, dikes, jetties, and breakwaters;

29 (8) "utility" includes a corporation, company, individual,

1 or association of individuals, or a lessee, trustee, or court-appointed
2 ed receiver, that owns, operates, manages, or controls a line, plant,
3 pipeline, or system for furnishing, producing, generating, transmit-
4 ting, or distributing power, electricity, communications, telecommu-
5 nications, water, gas, oil, petroleum products, coal or other mineral
6 slurry, steam, heat, light, chemicals, air, sewage, drainage not
7 connected with public facility drainage, irrigation, or similar prod-
8 ucts including publicly owned fire and police signal systems and
9 street lighting systems that directly or indirectly serve the public
10 or a segment of the public; "utility" also includes a corporation,
11 company, individual, or association of individuals, or a lessee,
12 trustee, or court-appointed receiver that owns, operates, manages, or
13 controls any system for furnishing transportation of goods or persons
14 by means of a railway, tramway, cableway, conveyor, flume, canal,
15 tunnel, pipeline, or a similar means;

16 (9) "utility facility" includes poles, plants, lines,
17 trenches, bridges, utilidors, tunnels, pipelines, and any other system
18 for furnishing, producing, generating, transmitting, or distributing
19 power, electricity, communications, telecommunications, water, gas,
20 oil, petroleum products, coal or other mineral slurry, steam, heat,
21 light, chemicals, air, sewage, drainage not connected with a public
22 facility drainage system, irrigation, or another substance; "utility
23 facility" also includes a system for furnishing transportation of
24 goods or persons by means of a railway, tramway, cableway, conveyor,
25 flume, canal, tunnel, pipeline, or a similar means.

26 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).

Offered: 2/22/85
Referred: Transportation
and Finance

men

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility shall change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or re-
25 moved in accordance with the order, any permit authorizing the facil-
26 ity issued by the department under AS 02.15.102 becomes invalid and
27 the facility will be considered an unauthorized encroachment subject
28 to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260, ordered under (a) of this section is to be paid as
2 follows:

3 (1) by the department as a cost of airport construction,
4 provided that the utility facility is properly installed in accordance
5 with a permit, or in the absence of a permit, was installed before the
6 effective date of this Act in the proper location in accordance with
7 department regulations;

8 (2) by the utility in all other cases.

9 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
10 constructed, placed, changed, or maintained across or within an air-
11 port, but only in accordance with regulations or procedures adopted by
12 the department. An encroachment may not be constructed, placed, main-
13 tained, or changed until it is authorized by a written permit issued
14 by the department, unless the department provides otherwise by regula-
15 tion.

16 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
17 incidental to the construction or maintenance of a state airport the
18 department determines and orders that an encroachment previously
19 authorized by written permit must be changed, relocated, or removed,
20 the owner of the encroachment shall change, relocate, or remove it
21 within a reasonable time set by the department in the order. The cost
22 of the change, relocation, or removal shall be paid as provided in
23 AS 02.15.104(c). If the owner does not change, relocate, or remove an
24 encroachment within the time set by the department, the encroachment
25 will be considered an unauthorized encroachment subject to the pro-
26 visions of AS 02.15.114.

27 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
28 encroachment exists in, on, under, or over a state airport the depart-
29 ment may require the removal of the encroachment, at the expense of

1 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

2 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.

3 Notice shall be given the owner, occupant, or person in possession of
4 an unauthorized encroachment, or to another person causing or per-
5 mitting the encroachment to exist, by serving upon any of them a
6 notice demanding the removal of the encroachment within a time limit
7 set by the department. The notice shall describe the encroachment
8 with reasonable certainty as to its character and location. Service
9 of the notice may be made by certified mail.

10 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
11 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
12 encroachment to comply with a notice or order of the department under
13 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
14 encroachment, or cause it to be removed. The owner of the unauthor-
15 ized encroachment shall pay to the department

16 (1) the expense of the removal of the encroachment;

17 (2) all costs and expenses paid by the state as a result of
18 a claim or claims filed against the state by third parties for damages
19 due to delays because the encroachment was not changed, removed, or
20 relocated according to the order of the department; and

21 (3) costs and expense of suit.

22 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

23 (15) "cost of change, relocation, or removal" means the
24 entire cost incurred by the utility properly attributed to the change,
25 relocation, or removal of a facility, less the costs for improvements
26 or upgrading over and above the cost of a functionally equal facility;
27 if a facility is to be relocated and replaced with new equipment,
28 there shall also be subtracted from the entire cost the salvage value
29 derived from the old facility;

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

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

21 (18) "utility facility" includes poles, plants, lines,
22 trenches, bridges, utilidors, tunnels, pipelines, and any other system
23 for furnishing, producing, generating, transmitting, or distributing
24 power, electricity, communications, telecommunications, water, gas,
25 oil, petroleum products, coal or other mineral slurry, steam, heat,
26 light, chemicals, air, sewage, drainage not connected with an airport
27 drainage system, irrigation, or another substance; "utility facility"
28 also includes a system for furnishing transportation of goods or
29 persons by means of a railway, tramway, cableway, conveyor, flume,

1 canal, tunnel, pipeline, or a similar means.

2 * Sec. 3. AS 19.25.200 is amended to read:

3 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be
4 constructed, placed, changed, or maintained across or along a highway,
5 but only in accordance with regulations adopted by the department. An
6 [NO] encroachment may not be constructed, placed, maintained, or
7 changed until it is [DULY] authorized by a written permit issued by
8 the department, unless the department provides otherwise by regula-
9 tion.

10 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

11 (12) "utility" includes a corporation, company, individual,
12 or association of individuals, or a lessee, trustee, or court-appoint-
13 ed receiver, that owns, operates, manages, or controls a line, plant,
14 pipeline, or system for furnishing, producing, generating, transmit-
15 ting, or distributing power, electricity, communications, telecommu-
16 nications, water, gas, oil, petroleum products, coal or other mineral
17 slurry, steam, heat, light, chemicals, air, sewage, drainage not
18 connected with highway drainage, irrigation, or similar products
19 including publicly owned fire and police signal systems and street
20 lighting systems that directly or indirectly serve the public or a
21 segment of the public; "utility" also includes a corporation, company,
22 individual, or association of individuals, or a lessee, trustee, or
23 court-appointed receiver that owns, operates, manages, or controls a
24 system for furnishing transportation of goods or persons by means of a
25 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,
26 or a similar means;

27 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

28 (14) "utility facility" includes poles, plants, lines,
29 trenches, bridges, utilidors, tunnels, pipelines, and any other system

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

9 * Sec. 6. AS 35.10 is amended by adding new sections to read:

10 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

11 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
12 utility facility may be constructed, placed, or maintained across,
13 along, over, under, or within a state public facility only in accor-
14 dance with regulations adopted or procedures prescribed by the depart-
15 ment and only if authorized by a written permit issued by the depart-
16 ment.

17 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
19 public facility project, the department determines and orders that a
20 utility facility located across, along, over, under, or within a state
21 public facility must be changed, relocated, or removed, the utility
22 owning or maintaining the facility shall change, relocate, or remove
23 it in accordance with the order, within a reasonable time set by the
24 department in the order.

25 (b) If the utility facility is not changed, relocated, or re-
26 moved in accordance with the order, a permit authorizing the utility
27 issued by the department under AS 35.10.210 becomes invalid and the
28 facility will be considered an unauthorized encroachment subject to
29 the provisions of AS 35.10.270.

1 (c) The cost of change, relocation, or removal, as defined in
2 AS 35.25.020, ordered under (a) of this section is to be paid as
3 follows:

4 (1) by the department as a cost of public facility con-
5 struction, provided that the utility facility is properly installed in
6 accordance with a permit, or in the absence of a permit, was installed
7 before the effective date of this Act in the proper location in accor-
8 dance with department regulations;

9 (2) by the utility in all other cases.

10 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
11 constructed, placed, changed, or maintained across or within a public
12 facility, but only in accordance with regulations or procedures adopt-
13 ed by the department. An encroachment may not be constructed, placed,
14 maintained, or changed until it is authorized by a written permit
15 issued by the department, unless the department provides otherwise by
16 regulation.

17 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
18 incidental to the construction or maintenance of a state public facil-
19 ity, the department determines and orders that an encroachment pre-
20 viously authorized by written permit must be changed, relocated, or
21 removed, the owner of the encroachment shall change, relocate, or
22 remove it within a reasonable time set by the department in the order.
23 The cost of the change, relocation, or removal shall be paid as pro-
24 vided in AS 35.10.220(c). If the owner does not change, relocate, or
25 remove an encroachment within the time set by the department, the
26 encroachment will be considered an unauthorized encroachment and
27 subject to the provisions of AS 35.10.270.

28 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
29 encroachment exists in, on, under, or over a state public facility,

1 the department may require the removal of the encroachment, at the
2 expense of the owner, in the manner provided in AS 35.10.260 -
3 35.10.270.

4 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
5 Notice shall be given the owner, occupant, or person in possession of
6 an unauthorized encroachment, or to another person causing or per-
7 mitting the encroachment to exist, by serving upon any of them a
8 notice demanding the removal of the encroachment within a time limit
9 set by the department. The notice shall describe the encroachment
10 with reasonable certainty as to its character and location. Service
11 of the notice may be made by certified mail.

12 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.
13 After a failure of the owner of an unauthorized encroachment to comply
14 with the notice or order of the department under AS 35.10.220, 35.10.-
15 240, or 35.10.260, the department may remove the encroachment, or
16 cause it to be removed. The owner of the unauthorized encroachment
17 shall pay to the department

18 (1) the expense of the removal of the encroachment;

19 (2) all costs and expenses paid by the state as a result of
20 a claim or claims filed against the state by third parties for damages
21 due to delays because the encroachment was not changed, removed, or
22 relocated according to the order of the department; and

23 (3) costs and expense of suit.

24 * Sec. 7. AS 35.25.020 is repealed and reenacted to read:

25 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
26 requires otherwise,

27 (1) "construction" or a derivative of the term "construc-
28 tion" means construction, reconstruction, alteration, improvement, or
29 major repair;

1 (2) "cost of change, relocation, or removal" means the
2 entire cost incurred by the utility properly attributed to the change,
3 relocation, or removal of a facility, less any costs for improvements
4 or upgrading over and above the cost of a functionally equal facility;
5 if a facility is to be relocated and replaced with new equipment,
6 there shall also be subtracted from the entire cost any salvage value
7 derived from the old facility;

8 (3) "department" means the Department of Transportation and
9 Public Facilities;

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

14 (5) "maintenance" means the preservation of each type of
15 facility as nearly as possible in its original condition as construct-
16 ed, or as improved;

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

19 (7) "public facility" or "public work" means a structure or
20 project constructed or maintained by the department except airports
21 and highways, and includes public buildings, boat harbors, port facil-
22 ities, dikes, jetties, and breakwaters;

23 (8) "utility" includes a corporation, company, individual,
24 or association of individuals, or a lessee, trustee, or court-appointed
25 receiver, that owns, operates, manages, or controls a line, plant,
26 pipeline, or system for furnishing, producing, generating, transmit-
27 ting, or distributing power, electricity, communications, telecommu-
28 nications, water, gas, oil, petroleum products, coal or other mineral
29 slurry, steam, heat, light, chemicals, air, sewage, drainage not

1 connected with public facility drainage, irrigation, or similar prod-
2 ucts including publicly owned fire and police signal systems and
3 street lighting systems that directly or indirectly serve the public
4 or a segment of the public; "utility" also includes a corporation,
5 company, individual, or association of individuals, or a lessee,
6 trustee, or court-appointed receiver that owns, operates, manages, or
7 controls any system for furnishing transportation of goods or persons
8 by means of a railway, tramway, cableway, conveyor, flume, canal,
9 tunnel, pipeline, or a similar means;

10 (9) "utility facility" includes poles, plants, lines,
11 trenches, bridges, utilidors, tunnels, pipelines, and any other system
12 for furnishing, producing, generating, transmitting, or distributing
13 power, electricity, communications, telecommunications, water, gas,
14 oil, petroleum products, coal or other mineral slurry, steam, heat,
15 light, chemicals, air, sewage, drainage not connected with a public
16 facility drainage system, irrigation, or another substance; "utility
17 facility" also includes a system for furnishing transportation of
18 goods or persons by means of a railway, tramway, cableway, conveyor,
19 flume, canal, tunnel, pipeline, or a similar means.

20 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

Introduced: 2/1/85
Referred: Community & Regional
Affairs, Transportation and
Finance

How
01559

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 159

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility must change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or
25 removed in accordance with the order, any permit authorizing the
26 facility issued by the department under AS 02.15.102 becomes invalid
27 and the facility will be considered an unauthorized encroachment
28 subject to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260(15), ordered under (a) of this section is to be paid as
2 follows:

3 (1) by either the department as a cost of airport construc-
4 tion, or by the utility, depending on the terms of the utility permit;

5 (2) by the utility if there is no utility permit issued for
6 the utility facility;

7 (3) by the utility if the utility facility is not installed
8 in the location provided for in the utility permit, regardless of
9 whether the utility permit requires payment by the department.

10 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
11 constructed, placed, changed, or maintained across or within an air-
12 port, but only in accordance with regulations or procedures adopted by
13 the department. No encroachment may be constructed, placed, main-
14 tained, or changed until it is authorized by a written permit issued
15 by the department, unless the department provides otherwise by regula-
16 tion.

17 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
18 incidental to the construction or maintenance of a state airport the
19 department determines and orders that an encroachment previously
20 authorized by written permit must be changed, relocated, or removed,
21 the owner of the encroachment shall change, relocate, or remove it
22 within a reasonable time set by the department in the order. The cost
23 of the change, relocation, or removal shall be paid as provided in
24 AS 02.15.104(c). If the owner does not change, relocate, or remove an
25 encroachment within the time set by the department, the encroachment
26 will be considered an unauthorized encroachment and subject to the
27 provisions of AS 02.15.114.

28 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
29 encroachment exists in, on, under, or over a state airport the

1 department may require the removal of the encroachment, at the expense
2 of the owner, in the manner provided in AS 02.15.112 -- 02.15.114.

3 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.

4 Notice shall be given the owner, occupant, or person in possession of
5 an unauthorized encroachment, or to any other person causing or per-
6 mitting the encroachment to exist, by serving upon any of them a
7 notice demanding the removal of the encroachment within a time limit
8 set by the department. The notice shall describe the encroachment
9 with reasonable certainty as to its character and location. Service
10 of the notice may be made by certified mail.

11 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
12 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
13 encroachment to comply with a notice or order of the department under
14 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
15 encroachment, or cause it to be removed. The owner of the unauthor-
16 ized encroachment shall pay to the department

17 (1) the expense of the removal of the encroachment;

18 (2) all costs and expenses paid by the state as a result of
19 a claim or claims filed against the state by third parties for damages
20 due to delays because the encroachment was not changed, removed, or
21 relocated according to the order of the department; and

22 (3) costs and expense of suit.

23 Sec. 02.15.116. SUMMARY REMOVAL. The department may at any time
24 and without notice remove from a state airport an encroachment or
25 utility facility which obstructs or prevents the use of the airport by
26 the public, or interferes with the safe operation of the airport.

27 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

28 (15) "cost of change, relocation, or removal" means the
29 entire cost incurred by the utility properly attributed to the change,

1 relocation, or removal of a facility, less any costs for improvements
2 or upgrading over and above the cost of a functionally equal facility;
3 if a facility is to be relocated and replaced with new equipment,
4 there shall also be subtracted from the entire cost any salvage value
5 derived from the old facility;

6 (16) "encroachment" includes a tower, pole, poleline, pipe,
7 pipeline, driveway, private road, fence, billboard, stand or building,
8 or structure or object of any kind which is or has been placed in, on,
9 under, or over a portion of an airport;

10 (17) "utility" includes any corporation, company, individu-
11 al, or association of individuals, or any lessee, trustee, or court-
12 appointed receiver, that owns, operates, manages, or controls any
13 line, plant, pipeline, or system for furnishing, producing, generat-
14 ing, transmitting, or distributing power, electricity, communications,
15 telecommunications, water, gas, oil, petroleum products, coal or other
16 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage
17 not connected with airport drainage, irrigation, or similar products
18 including publicly owned fire and police signal systems and street
19 lighting systems which directly or indirectly serve the public or a
20 segment of the public; "utility" also includes any corporation, compa-
21 ny, individual, or association of individuals, or any lessee, trustee,
22 or court-appointed receiver that owns, operates, manages, or controls
23 any system for furnishing transportation of goods or persons by means
24 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,
25 pipeline, or a similar means;

26 (18) "utility facility" includes poles, plants, lines,
27 trenches, bridges, utilidors, tunnels, pipelines, and any other system
28 for furnishing, producing, generating, transmitting, or distributing
29 power, electricity, communications, telecommunications, water, gas,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,
2 light, chemicals, air, sewage, drainage not connected with an airport
3 drainage system, irrigation, or any other substance; "utility facili-
4 ty" also includes any system for furnishing transportation of goods or
5 persons by means of a railway, tramway, cableway, conveyor, flume,
6 canal, tunnel, pipeline, or a similar means.

7 * Sec. 3. AS 19.25.200 is amended to read:

8 Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be
9 constructed, placed, changed, or maintained across or along a highway,
10 but only in accordance with regulations adopted by the department. No
11 encroachment may be constructed, placed, maintained, or changed until
12 it is [DULY] authorized by a written permit issued by the department,
13 unless the department provides otherwise by regulation.

14 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

15 (12) "utility" includes any corporation, company, individu-
16 al, or association of individuals, or any lessee, trustee, or court-
17 appointed receiver, that owns, operates, manages, or controls any
18 line, plant, pipeline, or system for furnishing, producing, generat-
19 ing, transmitting, or distributing power, electricity, communications,
20 telecommunications, water, gas, oil, petroleum products, coal or other
21 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage
22 not connected with highway drainage, irrigation, or similar products
23 including publicly owned fire and police signal systems and street
24 lighting systems which directly or indirectly serve the public or a
25 segment of the public; "utility" also includes any corporation, compa-
26 ny, individual, or association of individuals, or any lessee, trustee,
27 or court-appointed receiver that owns, operates, manages, or controls
28 any system for furnishing transportation of goods or persons by means
29 of a railway, tramway, cableway, conveyor, flume, canal, tunnel,

1 pipeline, or a similar means;

2 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

3 (14) "utility facility" includes poles, plants, lines,
4 trenches, bridges, utilidors, tunnels, pipelines, and any other system
5 for furnishing, producing, generating, transmitting, or distributing
6 power, electricity, communications, telecommunications, water, gas,
7 oil, petroleum products, coal or other mineral slurry, steam, heat,
8 light, chemicals, air, sewage, drainage not connected with a highway
9 drainage system, irrigation, or any other substance; "utility facili-
10 ty" also includes any system for furnishing transportation of goods or
11 persons by means of railway, tramway, cableway, conveyor, flume,
12 canal, tunnel, pipeline, or a similar means.

13 * Sec. 6. AS 35.10 is amended by adding new sections to read:

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

15 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
16 utility facility may be constructed, placed, or maintained across,
17 along, over, under, or within a state public facility only in accor-
18 dance with regulations adopted or procedures prescribed by the depart-
19 ment and only if authorized by a written permit issued by the depart-
20 ment.

21 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
22 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
23 public facility project, the department determines and orders that a
24 utility facility located across, along, over, under, or within a state
25 public facility must be changed, relocated, or removed, the utility
26 owning or maintaining the facility must change, relocate, or remove it
27 in accordance with the order, within a reasonable time set by the
28 department in the order.

29 (b) If the utility facility is not changed, relocated, or

1 removed in accordance with the order, any permit authorizing the
2 utility issued by the department under AS 35.10.210 becomes invalid
3 and the facility will be considered an unauthorized encroachment
4 subject to the provisions of AS 35.10.270.

5 (c) The cost of change, relocation, or removal, as defined in
6 AS 35.25.020(2), ordered under (a) of this section is to be paid as
7 follows:

8 (1) by either the department as a cost of public facility
9 construction, or by the utility, depending on the terms of the utility
10 permit;

11 (2) by the utility if there is no utility permit issued for
12 the utility facility;

13 (3) by the utility if the utility facility is not installed
14 in the location provided for in the utility permit, regardless of
15 whether the utility permit requires payment by the department.

16 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
17 constructed, placed, changed, or maintained across or within a public
18 facility, but only in accordance with regulations or procedures adopt-
19 ed by the department. No encroachment may be constructed, placed,
20 maintained, or changed until it is authorized by a written permit
21 issued by the department, unless the department provides otherwise by
22 regulation.

23 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
24 incidental to the construction or maintenance of a state public facil-
25 ity, the department determines and orders that an encroachment pre-
26 viously authorized by written permit must be changed, relocated, or
27 removed, the owner of the encroachment shall change, relocate, or
28 remove it within a reasonable time set by the department in the order.
29 The cost of the change, relocation, or removal shall be paid as

1 provided in AS 35.10.220(c). If the owner does not change, relocate,
2 or remove an encroachment within the time set by the department, the
3 encroachment will be considered an unauthorized encroachment and
4 subject to the provisions of AS 35.10.270.

5 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
6 encroachment exists in, on, under, or over a state public facility,
7 the department may require the removal of the encroachment, at the
8 expense of the owner, in the manner provided in AS 35.10.260 --
9 35.10.270.

10 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
11 Notice shall be given the owner, occupant, or person in possession of
12 an unauthorized encroachment, or to any other person causing or per-
13 mitting the encroachment to exist, by serving upon any of them a
14 notice demanding the removal of the encroachment within a time limit
15 set by the department. The notice shall describe the encroachment
16 with reasonable certainty as to its character and location. Service
17 of the notice may be made by certified mail.

18 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.
19 After a failure of the owner of an unauthorized encroachment to comply
20 with the notice or order of the department under AS 35.10.220, 35.10.-
21 240, or 35.10.260, the department may remove the encroachment, or
22 cause it to be removed. The owner of the unauthorized encroachment
23 shall pay to the department

24 (1) the expense of the removal of the encroachment;

25 (2) all costs and expenses paid by the state as a result of
26 a claim or claims filed against the state by third parties for damages
27 due to delays because the encroachment was not changed, removed, or
28 relocated according to the order of the department; and

29 (3) costs and expense of suit.

1 Sec. 35.10.280. SUMMARY REMOVAL. The department may at any time
2 and without notice remove from a state public facility an encroachment
3 or a utility facility which obstructs or prevents the use of the
4 public facility by the public, or interferes with the safe operation
5 of the public facility.

6 * Sec. 7. AS 35.25.020 is repealed and reenacted to read:

7 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
8 requires otherwise,

9 (1) "construction" or any derivative of the term "con-
10 struction" means construction, reconstruction, alteration, improve-
11 ment, or major repair;

12 (2) "cost of change, relocation, or removal" means the
13 entire cost incurred by the utility properly attributed to the change,
14 relocation, or removal of a facility, less any costs for improvements
15 or upgrading over and above the cost of a functionally equal facility;
16 if a facility is to be relocated and replaced with new equipment,
17 there shall also be subtracted from the entire cost any salvage value
18 derived from the old facility;

19 (3) "department" means the Department of Transportation and
20 Public Facilities;

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

25 (5) "excess lands" means lands acquired for the state in
26 excess of land required for a public facility, when the remaining
27 portion of a parcel of land acquired is left in a shape or condition
28 as to be of little or no value to its owner, or to give rise to claims
29 or litigation concerning severance or other damage;

1 (6) "maintenance" means the preservation of each type of
2 facility as nearly as possible in its original condition as construct-
3 ed, or as improved;

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

6 (8) "public facility" or "public work" means any structure
7 or project constructed or maintained by the department except airports
8 and highways, and includes public buildings, boat harbors, port facil-
9 ities, dikes, jetties, and breakwaters;

10 (9) "utility" includes any corporation, company, individu-
11 al, or association of individuals, or any lessee, trustee, or court-
12 appointed receiver, that owns, operates, manages, or controls any
13 line, plant, pipeline, or system for furnishing, producing, generat-
14 ing, transmitting, or distributing power, electricity, communications,
15 telecommunications, water, gas, oil, petroleum products, coal or other
16 mineral slurry, steam, heat, light, chemicals, air, sewage, drainage
17 not connected with public facility drainage, irrigation, or similar
18 products including publicly owned fire and police signal systems and
19 street lighting systems which directly or indirectly serve the public
20 or a segment of the public; "utility" also includes any corporation,
21 company, individual, or association of individuals, or any lessee,
22 trustee, or court-appointed receiver that owns, operates, manages, or
23 controls any system for furnishing transportation of goods or persons
24 by means of a railway, tramway, cableway, conveyor, flume, canal,
25 tunnel, pipeline, or a similar means;

26 (10) "utility facility" includes poles, plants, lines,
27 trenches, bridges, utilidors, tunnels, pipelines, and any other system
28 for furnishing, producing, generating, transmitting, or distributing
29 power, electricity, communications, telecommunications, water, gas,

1 oil, petroleum products, coal or other mineral slurry, steam, heat,
2 light, chemicals, air, sewage, drainage not connected with a public
3 facility drainage system, irrigation, or any other substance; "utility
4 facility" also includes any system for furnishing transportation of
5 goods or persons by means of a railway, tramway, cableway, conveyor,
6 flume, canal, tunnel, pipeline, or a similar means.

7 * Sec. 8. This Act takes effect July 1, 1985.
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 159

February 1, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies authority of the Department of Transportation and Public Facilities (DOT/PF) to set up a permit system to authorize utilities and other encroachments in state airports and other public facilities. In addition, the bill amends AS 19.25.200 so that DOT/PF will have the statutory authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation. The bill also provides for dealing with the relocation or removal of utilities and encroachments in state airports and public facilities.

For the most part, the bill tracks existing statutory language that deals with utilities and encroachments in highway rights-of-way, (AS 19.25.010, 19.25.020, and 19.25.200 -- 19.25.250). A section-by-section analysis of the bill follows.

I urge your favorable action on this measure so that there is no doubt that DOT/PF has the authority to implement a utility and encroachment permit system for state airports and public facilities.

SECTION-BY-SECTION ANALYSIS

Section 1 amends art. 2 of AS 02.15 concerning state airports by adding eight new sections. A brief explanation of each of these new sections is set out below:

AS 02.15.102 authorizes utilities to be installed in state airports so long as they are installed under permit.

AS 02.15.104 sets out a procedure for relocating a utility if the relocation is required because of airport construction. The procedure requires that notice be given the utility. Subsection (b) authorizes the state to move the utility, at no cost to the state, if the notice to relocate is disregarded. Subsection (c) makes it clear that the cost of change or relocation in compliance with (a) of that section is to be determined by the language of the utility permit. Subsection (c) also makes it clear that the utility is required to pay for relocation costs if there is no utility permit issued for the utility facility, or if the utility facility is not installed in the location provided for in the utility permit.

AS 02.15.106 authorizes encroachments to be installed in state airports so long as they are installed under permit, unless the department provides otherwise by regulation.

AS 02.15.108 creates a procedure for relocating or removing encroachments when relocation or removal is required by construction or maintenance of a state airport. The procedure requires that notice be given to the owner of the encroachment.

AS 02.15.110 authorizes the state to require the removal of unauthorized encroachments.

AS 02.15.112 requires the state to give notice to owner of unauthorized encroachments in the event the state determines that the encroachment must be removed.

AS 02.15.114 gives the state the authority to remove an encroachment if the owner fails to comply with the notice given under AS 02.15.104 or 02.15.108, or - 02.15.112. This section also makes it clear that if the state removes an encroachment under these circumstances, the cost of removal is to be borne by the owner of the encroachment.

AS 02.15.116 gives the state the authority to summarily remove any encroachment that obstructs the use of a state airport by the public, or interferes with the safe operation of the airport.

Section 2 of the bill amends AS 02.15.260 by adding four new definitions. The new definitions added are: "cost of change, relocation or removal," "encroachment," "utility" and "utility facility."

Section 3 of the bill amends AS 19.25.200 by adding a clause that grants DOT/PF the authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation.

Section 4 of the bill repeals and reenacts AS 19.45.001(12), in the general definition section relating to highways, to make the definition of "utility" consistent with the definition of that term in the statute dealing with airports in sec. 1 of the bill and with public facilities in sec. 7 of the bill.

Section 5 of the bill amends AS 19.45.001 by adding a definition of "utility facility" that is consistent with the definition of that term in secs. 1 and 7 of the bill.

Section 6 of the bill amends AS 35.10 by adding a new article concerning utilities and encroachment in public facilities. This article is nearly identical to the eight new sections which sec. 1 of the bill would add to AS 02.15 concerning utilities and encroachment in state airports.

Section 7 of the bill repeals and reenacts AS 35.25.020, the general definition section for Title 35. The existing definition of "public works" is deleted. New definitions for "cost of change, relocation, or removal," "encroachment," "public facility" or "public work," "utility," and "utility facility" are added. Five of the existing definitions are retained.

Section 8 of the bill establishes an effective date of July 1, 1985.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 159
Title: Utility Relocation-Airport
& Pub. Fac. Construction

Sponsor: DOT&PF
Requestor: Commissioner
Date of Request: _____

FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: Utilities

BRU, Program or Subprogram(s) Affected:
N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars) N/A

GENERAL FUND					
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS: N/A

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: Attach a separate page if necessary

See attachment.

Prepared By: Bruce R. Freitag Phone: 465-2957
Division: Standards and Technical Services Date: 10/17/84
Approved by Commissioner: *[Signature]* Date: 10/15/84
Agency: DOT&PF

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Utility Relocation - Airports and Public Facilities Construction

Analysis

The need for this law is to provide statutory authority for the accommodation and relocation of utility facilities within State rights-of-way for the other Department modes - airports, harbors, and public buildings - similar to what AS 19.25.010 - 19.25.020 presently allows for State highways.

We don't anticipate any Department fiscal impact because we are presently reimbursing utility facility relocation costs for these modes if they meet code and are under permit. However, no statute authority for this reimbursement presently exists. In 1981, department policy evolved to allow for this reimbursement.

We don't anticipate any opposition to this proposal.

We don't anticipate any savings/costs differences from the present situation due to this proposal for either the Department or the Utility.

This law would provide statutory authority for the Department to permit utility facility accommodation/relocation reimbursement similar to that presently allowed within highway rights-of-way. Also, this Act is necessary for consistency with highway projects, and housekeeping for the Department operations.

SUMMARY/EXPLANATION OF INTENT

This legislation would provide the State a means to require proper utility installment, and to ensure that the utility companies are financially responsible for relocating utility facilities when they were illegally placed in State right-of-ways. It would also provide the State statutory authority to issue utility permits for proper utility facility installments in airports, public buildings and harbors, and reimburse utility companies for facility relocation due to State construction projects.

NB 157 - rise 47.5

Utilities And Encroachments Within State Rights-Of-Way At
Airports And Public Facilities

The need for this legislation is to provide statute authority for the accomodation and relocation of utility facilities within State Rights-Of-Way for other Departmental modes - airports, harbors, and public buildings. This addition would be similar to what AS 19.25.020 presently allows for State Highways. Statute authority presently doesn't exist to allow for relocation reimbursement.

Mailbox Permits - ANALYSIS

AS 19.25.200 requires written permits for all encroachments within the highway rights of way. Historically, no permits have been issued for mailboxes within the right-of-way. Recently the Ombudsman's office criticized the Department for not complying with statutory and regulatory laws concerning issuance of permits for encroachments, indicating a need to either issue permits for mailboxes or modify the law so permits are not required as a general rule.

If permits were to be issued in accordance with present law, substantial field and office work would be required with virtually no increase in either the safety or efficiency of our transportation system. First, a complete inventory of all rural roadways would be required to determine the location and addressee of each mailbox. Second, permits would have to be written and mailed to each mailbox owner. Based on the costs of our continuing photologging inventory, we estimate the mailbox inventory at \$200,000 over a three year period. (The photologging images alone do not provide sufficient information from which to compile a mailbox inventory). Assuming 10,000 mailboxes presently exist and each permit takes five minutes to complete, the cost of writing the initial permits equals approximately \$20,000 and the cost of mailing same equals \$2,000.00. Consequently, the total cost over a three year period to inventory and issue permits for 10,000 existing mailboxes would approximate \$222,000, or approximately \$22/box.

In addition to the initial expense there would be continuing expenses to maintain the permit system for mailboxes. Estimated cost to maintain the mailbox permit system is \$5,000/annum.

COMMITTEE COPY

ALASKA STATE LEGISLATURE
 14th Legislature FIRST Session
 HOUSE ... BILL NO. ..159..
 BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act relating to utilities and encroachments in state airports, and public facilities, and highways; and providing for an effective date."

Utilities/encroachment/public facilities

Introduced in the House 2/1, 19.85

19 85		HISTORY IN THE HOUSE																				
Feb.	1	Read first time and referred to Committee on C&RA, TRANSPORTATION AND FINANCE Reported back with recommendation that Read second time and Read third time and <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> <p>Reconsideration</p> <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> Reported correctly engrossed Signed by Speaker Sent to Senate	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date																					
Yeas	Yeas																					
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Absent	Absent																					
Excused	Excused																					
		CHIEF CLERK OF THE HOUSE																				

19		HISTORY IN THE SENATE																				
		Read first time and referred to Committee on Reported back with recommendation that Read second time and Read third time and <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> <p>Reconsideration</p> <table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table> Reported correctly engrossed Signed by President Returned to House	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date																					
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Excused	Excused																					
		SECRETARY OF THE SENATE																				

19		HISTORY IN THE HOUSE
		Received from Senate Concurred in Senate amendment thus adopting: VOTE Failed to concur in Senate amendment; asked Senate to recede VOTE Senate receded from amendment VOTE Senate failed to recede from amendment VOTE CC appointed by House CC appointed by Senate CC adopted by House VOTE CC adopted by Senate VOTE To enrolling Reported correctly enrolled Sent to Governor by Governor Filed with Lt. Governor Chapter No.

COMMITTEE COPY

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 3/6/86

REQUEST

Bill/Resolution No. : CSHB 159 (FIN)
 Title: Utility Relocation

 Sponsor: Governor
 Requestor: House Finance Committee
 Date of Request: 3/6/86

FISCAL DETAIL

Agency Affected: DOT/PF
 BRU: Engineering, Operations
and Standards

 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0

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

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Al Adams, Chair
 Division: House Finance Committee

Phone: 465-3706
 Date: 3/6/86

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

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

Cramer ✓
3/6/86

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility shall change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or re-
25 moved in accordance with the order, any permit authorizing the facil-
26 ity issued by the department under AS 02.15.102 becomes invalid and
27 the facility will be considered an unauthorized encroachment subject
28 to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260, ordered under (a) of this section is to be paid as
2 follows:

3 (1) by the department as a cost of airport construction, if
4 the utility facility is installed or authorized under a utility per-
5 mit, or a regulation after the effective date of this Act and is
6 installed in the location specified in the permit;

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

11 (3) by the department as a cost of airport construction, if
12 the utility facility was installed before the location became part of
13 a state airport;

14 (4) by the utility in all other cases unless the commis-
15 sioner finds it is in the public interest for the cost to be paid by
16 the department.

17 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
18 constructed, placed, changed, or maintained across or within an air-
19 port, but only in accordance with regulations or procedures adopted by
20 the department. An encroachment may not be constructed, placed, main-
21 tained, or changed until it is authorized by a written permit issued
22 by the department, unless the department provides otherwise by regula-
23 tion.

24 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
25 incidental to the construction or maintenance of a state airport the
26 department determines and orders that an encroachment previously
27 authorized by written permit must be changed, relocated, or removed,
28 the owner of the encroachment shall change, relocate, or remove it
29 within a reasonable time set by the department in the order. The cost

1 of the change, relocation, or removal shall be paid as provided in
2 AS 02.15.104(c). If the owner does not change, relocate, or remove an
3 encroachment within the time set by the department, the encroachment
4 will be considered an unauthorized encroachment subject to the pro-
5 visions of AS 02.15.114.

6 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
7 encroachment exists in, on, under, or over a state airport the depart-
8 ment may require the removal of the encroachment, at the expense of
9 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

10 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
11 Notice shall be given the owner, occupant, or person in possession of
12 an unauthorized encroachment, or to another person causing or per-
13 mitting the encroachment to exist, by serving upon any of them a
14 notice demanding the removal of the encroachment within a time limit
15 set by the department. The notice shall describe the encroachment
16 with reasonable certainty as to its character and location. Service
17 of the notice may be made by certified mail.

18 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
19 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
20 encroachment to comply with a notice or order of the department under
21 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
22 encroachment, or cause it to be removed. The owner of the unauthor-
23 ized encroachment shall pay to the department

24 (1) the expense of the removal of the encroachment;

25 (2) all costs and expenses paid by the state as a result of
26 a claim or claims filed against the state by third parties for damages
27 due to delays because the encroachment was not changed, removed, or
28 relocated according to the order of the department; and

29 (3) costs and expense of suit.

1 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

2 (15) "cost of change, relocation, or removal" means the
3 entire cost incurred by the utility properly attributed to the change,
4 relocation, or removal of a facility, less the costs for improvements
5 or upgrading over and above the cost of a functionally equal facility;
6 if a facility is to be relocated and replaced with new equipment,
7 there shall also be subtracted from the entire cost the salvage value
8 derived from the old facility;

9 (16) "encroachment" includes a tower, pole, poleline, pipe,
10 pipeline, driveway, private road, fence, billboard, stand or building,
11 or structure or object of any kind that is or has been placed in, on,
12 under, or over a portion of an airport;

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

29 (18) "utility facility" includes poles, plants, lines,

1 trenches, bridges, utilidors, tunnels, pipelines, and any other system
2 for furnishing, producing, generating, transmitting, or distributing
3 power, electricity, communications, telecommunications, water, gas,
4 oil, petroleum products, coal or other mineral slurry, steam, heat,
5 light, chemicals, air, sewage, drainage not connected with an airport
6 drainage system, irrigation, or another substance; "utility facility"
7 also includes a system for furnishing transportation of goods or
8 persons by means of a railway, tramway, cableway, conveyor, flume,
9 canal, tunnel, pipeline, or a similar means.

10 * Sec. 3. AS 19.25.200 is amended to read:

11 Sec. 19.25.200. ENCROACHMENT PERMITS. (a) An encroachment may
12 be constructed, placed, changed, or maintained across or along a
13 highway, but only in accordance with regulations adopted by the de-
14 partment. An [NO] encroachment may not be constructed, placed, main-
15 tained, or changed until it is [DULY] authorized by a written permit
16 issued by the department, unless the department provides otherwise by
17 regulation.

18 (b) The provisions under (a) of this section do not apply to a
19 mailbox or a newspaper box attached to a mailbox.

20 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

21 (12) "utility" includes a corporation, company, individual,
22 or association of individuals, or a lessee, trustee, or court-appoint-
23 ed receiver, that owns, operates, manages, or controls a line, plant,
24 pipeline, or system for furnishing, producing, generating, transmit-
25 ting, or distributing power, electricity, communications, telecommu-
26 nications, water, gas, oil, petroleum products, coal or other mineral
27 slurry, steam, heat, light, chemicals, air, sewage, drainage not
28 connected with highway drainage, irrigation, or similar products
29 including publicly owned fire and police signal systems and street

1 lighting systems that directly or indirectly serve the public or a
2 segment of the public; "utility" also includes a corporation, company,
3 individual, or association of individuals, or a lessee, trustee, or
4 court-appointed receiver that owns, operates, manages, or controls a
5 system for furnishing transportation of goods or persons by means of a
6 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,
7 or a similar means;

8 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

9 (14) "utility facility" includes poles, plants, lines,
10 trenches, bridges, utilidors, tunnels, pipelines, and any other system
11 for furnishing, producing, generating, transmitting, or distributing
12 power, electricity, communications, telecommunications, water, gas,
13 oil, petroleum products, coal or other mineral slurry, steam, heat,
14 light, chemicals, air, sewage, drainage not connected with a highway
15 drainage system, irrigation, or another substance; "utility facility"
16 also includes a system for furnishing transportation of goods or
17 persons by means of railway, tramway, cableway, conveyor, flume,
18 canal, tunnel, pipeline, or a similar means.

19 * Sec. 6. AS 35.10 is amended by adding new sections to read:

20 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

21 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
22 utility facility may be constructed, placed, or maintained across,
23 along, over, under, or within a state public facility only in accor-
24 dance with regulations adopted or procedures prescribed by the depart-
25 ment and only if authorized by a written permit issued by the depart-
26 ment.

27 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
28 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
29 public facility project, the department determines and orders that a

1 utility facility located across, along, over, under, or within a state
2 public facility must be changed, relocated, or removed, the utility
3 owning or maintaining the facility shall change, relocate, or remove
4 it in accordance with the order, within a reasonable time set by the
5 department in the order.

6 (b) If the utility facility is not changed, relocated, or re-
7 moved in accordance with the order, a permit authorizing the utility
8 issued by the department under AS 35.10.210 becomes invalid and the
9 facility will be considered an unauthorized encroachment subject to
10 the provisions of AS 35.10.270.

11 (c) The cost of change, relocation, or removal, as defined in
12 AS 35.25.020, ordered under (a) of this section is to be paid as
13 follows:

14 (1) by the department as a cost of public facility con-
15 struction, if the utility facility is installed or authorized under a
16 utility permit or a regulation after the effective date of this Act
17 and is installed in the location specified in the permit;

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

22 (3) by the department as a cost of public facility con-
23 struction, if the utility facility was installed before the location
24 became a state public facility;

25 (4) by the utility in all other cases unless the commis-
26 sioner finds it is in the public interest for the cost to be paid by
27 the department.

28 Sec. 35.10.230. ENCROACHMENT PERMITS. An encroachment may be
29 constructed, placed, changed, or maintained across or within a public

1 facility, but only in accordance with regulations or procedures adopt-
2 ed by the department. An encroachment may not be constructed, placed,
3 maintained, or changed until it is authorized by a written permit
4 issued by the department, unless the department provides otherwise by
5 regulation.

6 Sec. 35.10.240. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
7 incidental to the construction or maintenance of a state public facil-
8 ity, the department determines and orders that an encroachment pre-
9 viously authorized by written permit must be changed, relocated, or
10 removed, the owner of the encroachment shall change, relocate, or
11 remove it within a reasonable time set by the department in the order.
12 The cost of the change, relocation, or removal shall be paid as pro-
13 vided in AS 35.10.220(c). If the owner does not change, relocate, or
14 remove an encroachment within the time set by the department, the
15 encroachment will be considered an unauthorized encroachment and
16 subject to the provisions of AS 35.10.270.

17 Sec. 35.10.250. UNAUTHORIZED ENCROACHMENTS. If an unauthorized
18 encroachment exists in, on, under, or over a state public facility,
19 the department may require the removal of the encroachment, at the
20 expense of the owner, in the manner provided in AS 35.10.260 - 35.10.-
21 270.

22 Sec. 35.10.260. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
23 Notice shall be given the owner, occupant, or person in possession of
24 an unauthorized encroachment, or to another person causing or per-
25 mitting the encroachment to exist, by serving upon any of them a
26 notice demanding the removal of the encroachment within a time limit
27 set by the department. The notice shall describe the encroachment
28 with reasonable certainty as to its character and location. Service
29 of the notice may be made by certified mail.

1 Sec. 35.10.270. REMOVAL AFTER NONCOMPLIANCE; REMOVAL EXPENSE.

2 After a failure of the owner of an unauthorized encroachment to comply
3 with the notice or order of the department under AS 35.10.220, 35.10.-
4 240, or 35.10.260, the department may remove the encroachment, or
5 cause it to be removed. The owner of the unauthorized encroachment
6 shall pay to the department

7 (1) the expense of the removal of the encroachment;

8 (2) all costs and expenses paid by the state as a result of
9 a claim or claims filed against the state by third parties for damages
10 due to delays because the encroachment was not changed, removed, or
11 relocated according to the order of the department; and

12 (3) costs and expense of suit.

13 * Sec. 7. AS 35.25.020 is repealed and reenacted to read:

14 Sec. 35.25.020. DEFINITIONS. In this title, unless the context
15 requires otherwise,

16 (1) "construction" or a derivative of the term "construc-
17 tion" means construction, reconstruction, alteration, improvement, or
18 major repair;

19 (2) "cost of change, relocation, or removal" means the
20 entire cost incurred by the utility properly attributed to the change,
21 relocation, or removal of a facility, less any costs for improvements
22 or upgrading over and above the cost of a functionally equal facility;
23 if a facility is to be relocated and replaced with new equipment,
24 there shall also be subtracted from the entire cost any salvage value
25 derived from the old facility;

26 (3) "department" means the Department of Transportation and
27 Public Facilities;

28 (4) "encroachment" includes a tower, pole, poleline, pipe,
29 pipeline, driveway, private road, fence, billboard, stand or building,

1 or a structure or object of any kind that is or has been placed in,
2 on, under, or over a portion of a public facility;

3 (5) "maintenance" means the preservation of each type of
4 facility as nearly as possible in its original condition as construct-
5 ed, or as improved;

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

8 (7) "public facility" or "public work" means a structure or
9 project constructed or maintained by the department except airports
10 and highways, and includes public buildings, boat harbors, port facil-
11 ities, dikes, jetties, and breakwaters;

12 (8) "utility" includes a corporation, company, individual,
13 or association of individuals, or a lessee, trustee, or court-appoint-
14 ed receiver, that owns, operates, manages, or controls a line, plant,
15 pipeline, or system for furnishing, producing, generating, transmit-
16 ting, or distributing power, electricity, communications, telecommu-
17 nications, water, gas, oil, petroleum products, coal or other mineral
18 slurry, steam, heat, light, chemicals, air, sewage, drainage not
19 connected with public facility drainage, irrigation, or similar prod-
20 ucts including publicly owned fire and police signal systems and
21 street lighting systems that directly or indirectly serve the public
22 or a segment of the public; "utility" also includes a corporation,
23 company, individual, or association of individuals, or a lessee,
24 trustee, or court-appointed receiver that owns, operates, manages, or
25 controls any system for furnishing transportation of goods or persons
26 by means of a railway, tramway, cableway, conveyor, flume, canal,
27 tunnel, pipeline, or a similar means;

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

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

9 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).
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STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: CSHB 159 (Trans)
 Title: Utilities and Encroachment
 on State Airports, Public Faci-
 lities and Highways
 Sponsor: Governor/Rules Committee
 Requestor: DOT&PF
 Date of Request: _____

FISCAL DETAIL

Agency Affected: DOT&PF
 BRU: Engineering & Operations
 Standards
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attachment

John Johnson, Director

Prepared by: Bruce R. Freitag Phone: 465-2951
 Division: Engineering & Operations Standards Date: December 5, 1985

Approved by Commissioner: [Signature] Date: 12/31/85
 Agency: Transportation and Public Facilities

Distribution (by Agency preparing fiscal note):

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

R2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 159 (Trans)

Analysis

The need for this legislation is to provide statute authority for the accommodation and relocation of utility facilities within State Rights-Of-Way for other Departmental modes - airports, harbors and public hearings. This addition would be similar to what AS 19.25.020 presently allows for State Highways. Statute authority presently doesn't exist to allow for relocation reimbursement.

We don't anticipate any Department fiscal impact because we are presently reimbursing utility facility relocation costs for these modes if they meet code and are under permit. However, no statute authority for this reimbursement presently exists. In 1981, department policy evolved to allow for this reimbursement.

We don't anticipate any opposition to this proposal.

We don't anticipate any savings/costs differences from the present situation due to this proposal for either the Department or the Utility.

This law would provide statutory authority for the Department to permit utility facility accommodation/relocation reimbursement similar to that presently allowed within highway rights-of-way. Also, this Act is necessary for highway projects, and housekeeping for the Department operations.

SUMMARY/EXPLANATION OF INTENT

This legislation would provide the State a means to require proper utility installment, and to ensure that the utility companies are financially responsible for relocating utility facilities when they were illegally placed in State rights-of-ways. It would also provide the State statutory authority to issue utility permits for proper utility facility installments in airports, public buildings and harbors, and reimburse utility companies for facility relocation due to State construction projects.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 159 (Trans)

Mailbox Permits - ANALYSIS

AS 19.25.200 requires written permits for all encroachments within the highway rights of way. Historically, no permits have been issued for mailboxes within the right-of-way. Recently the Ombudsman's office criticized the Department for not complying with statutory and regulatory laws concerning issuance of permits for encroachments, indicating a need to either issue permits for mailboxes or notify the law so permits are not required as a general rule.

If permits were to be issued in accordance with present law, substantial field and office work would be required with virtually no increase in either the safety or efficiency of our transportation system. First, a complete inventory of all rural roadways would be required to determine the location and addresses of each mailbox. Second, permits would have to be written and mailed to each mailbox owner. Based on the costs of our continuing photologging inventory, we estimate the mailbox inventory at \$200,000 over a three year period. (The photologging inventory). Assuming 10,000 mailboxes presently exist and each permit takes five minutes to complete, the cost of writing the initial permits equals approximately \$20,000 and the cost of mailing some equals \$2,000.00. Consequently, the total cost over a three year period to inventory and issue permits for 10,000 existing mailboxes would approximate \$222,000. or approximately \$22/box.

In addition to the initial expense there would be continuing expenses to maintain the permit system for mailboxes. Estimated cost to maintain the mailbox permit system is \$5,000/annum.

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies authority of the Department of Transportation and Public Facilities (DOT/PF) to set up a permit system to authorize utilities and other encroachments in state airports and other public facilities. In addition, the bill amends AS 19.25.200 so that DOT/PF will have the statutory authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation. The bill also provides for dealing with the relocation or removal of utilities and encroachments in state airports and public facilities.

For the most part, the bill tracks existing statutory language that deals with utilities and encroachments in highway rights-of-way, (AS 19.25.010, 19.25.020, and 19.25.200 -- 19.25.250). A section-by-section analysis of the bill follows.

I urge your favorable action on this measure so that there is no doubt that DOT/PF has the authority to implement a utility and encroachment permit system for state airports and public facilities.

SECTION-BY-SECTION ANALYSIS

Section 1 amends art. 2 of AS 02.15 concerning state airports by adding eight new sections. A brief explanation of each of these new sections is set out below:

AS 02.15.102 authorizes utilities to be installed in state airports so long as they are installed under permit.

AS 02.15.104 sets out a procedure for relocating a utility if the relocation is required because of airport construction. The procedure requires that notice be given the utility. Subsection (b) authorizes the state to move the utility, at no cost to the state, if the notice to relocate is disregarded. Subsection (c) makes it clear that the cost of change or relocation in compliance with (a) of that section is to be determined by the language of the utility permit. Subsection (c) also makes it clear that the utility is required to pay for relocation costs if there is no utility permit issued for the utility facility, or if the utility facility is not installed in the location provided for in the utility permit.

AS 02.15.106 authorizes encroachments to be installed in state airports so long as they are installed under permit, unless the department provides otherwise by regulation.

AS 02.15.108 creates a procedure for relocating or removing encroachments when relocation or removal is required by construction or maintenance of a state airport. The procedure requires that notice be given to the owner of the encroachment.

AS 02.15.110 authorizes the state to require the removal of unauthorized encroachments.

AS 02.15.112 requires the state to give notice to owner of unauthorized encroachments in the event the state determines that the encroachment must be removed.

AS 02.15.114 gives the state the authority to remove an encroachment if the owner fails to comply with the notice given under AS 02.15.104 or 02.15.108, or - 02.15.112. This section also makes it clear that if the state removes an encroachment under these circumstances, the cost of removal is to be borne by the owner of the encroachment.

AS 02.15.116 gives the state the authority to summarily remove any encroachment that obstructs the use of a state airport by the public, or interferes with the safe operation of the airport.

Section 2 of the bill amends AS 02.15.260 by adding four new definitions. The new definitions added are: "cost of change, relocation or removal," "encroachment," "utility" and "utility facility."

Section 3 of the bill amends AS 19.25.200 by adding a clause that grants DOT/PF the authority to allow encroachments in highways without a permit so long as such exceptions are provided for by regulation.

Section 4 of the bill repeals and reenacts AS 19.45.001(12), in the general definition section relating to highways, to make the definition of "utility" consistent with the definition of that term in the statute dealing with airports in sec. 1 of the bill and with public facilities in sec. 7 of the bill.

Section 5 of the bill amends AS 19.45.001 by adding a definition of "utility facility" that is consistent with the definition of that term in secs. 1 and 7 of the bill.

Section 6 of the bill amends AS 35.10 by adding a new article concerning utilities and encroachment in public facilities. This article is nearly identical to the eight new sections which sec. 1 of the bill would add to AS 02.15 concerning utilities and encroachment in state airports.

Section 7 of the bill repeals and reenacts AS 35.25.020, the general definition section for Title 35. The existing definition of "public works" is deleted. New definitions for "cost of change, relocation, or removal," "encroachment," "public facility" or "public work," "utility," and "utility facility" are added. Five of the existing definitions are retained.

Section 8 of the bill establishes an effective date of July 1, 1985.

Sincerely,



Bill Sheffield
Governor

Offered: 4/11/85
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 CS FOR HOUSE BILL NO. 159 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to utilities and encroachments in
7 state airports, public facilities, and highways; and
8 providing for an effective date."

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

10 * Section 1. AS 02.15 is amended by adding new sections to article 2 to
11 read:

12 Sec. 02.15.102. USE OF AIRPORTS FOR UTILITIES. A utility facil-
13 ity may be constructed, placed, or maintained across, along, over,
14 under, or within a state airport only in accordance with regulations
15 adopted or procedures prescribed by the department and only if au-
16 thorized by a written permit issued by the department.

17 Sec. 02.15.104. RELOCATION OF UTILITY FACILITIES INCIDENT TO
18 AIRPORT PROJECTS. (a) If, incident to the construction of an airport
19 project, the department determines and orders that a utility facility
20 located across, along, over, under, or within a state airport must be
21 changed, relocated, or removed, the utility owning or maintaining the
22 facility shall change, relocate, or remove it in accordance with the
23 order, within a reasonable time set by the department in the order.

24 (b) If the utility facility is not changed, relocated, or re-
25 moved in accordance with the order, any permit authorizing the facil-
26 ity issued by the department under AS 02.15.102 becomes invalid and
27 the facility will be considered an unauthorized encroachment subject
28 to the provisions of AS 02.15.114.

29 (c) The cost of change, relocation, or removal, as defined in

1 AS 02.15.260, ordered under (a) of this section is to be paid as
2 follows:

3 (1) by the department as a cost of airport construction, if
4 the utility facility is installed or authorized under a utility
5 permit, or a regulation after the effective date of this Act;

6 (2) by the department as a cost of highway construction if
7 the facility is installed before the effective date of this Act;

8 (3) by the utility in all other cases unless the commis-
9 sioner finds it is in the public interest for the cost to be paid by
10 the department.

11 Sec. 02.15.106. ENCROACHMENT PERMITS. An encroachment may be
12 constructed, placed, changed, or maintained across or within an air-
13 port, but only in accordance with regulations or procedures adopted by
14 the department. An encroachment may not be constructed, placed, main-
15 tained, or changed until it is authorized by a written permit issued
16 by the department, unless the department provides otherwise by regula-
17 tion.

18 Sec. 02.15.108. RELOCATION OR REMOVAL OF ENCROACHMENT. If,
19 incidental to the construction or maintenance of a state airport the
20 department determines and orders that an encroachment previously
21 authorized by written permit must be changed, relocated, or removed,
22 the owner of the encroachment shall change, relocate, or remove it
23 within a reasonable time set by the department in the order. The cost
24 of the change, relocation, or removal shall be paid as provided in
25 AS 02.15.104(c). If the owner does not change, relocate, or remove an
26 encroachment within the time set by the department, the encroachment
27 will be considered an unauthorized encroachment subject to the pro-
28 visions of AS 02.15.114.

29 Sec. 02.15.110. UNAUTHORIZED ENCROACHMENTS. If an unauthorized

1 encroachment exists in, on, under, or over a state airport the depart-
2 ment may require the removal of the encroachment, at the expense of
3 the owner, in the manner provided in AS 02.15.112 - 02.15.114.

4 Sec. 02.15.112. NOTICE OF REMOVAL OF UNAUTHORIZED ENCROACHMENT.
5 Notice shall be given the owner, occupant, or person in possession of
6 an unauthorized encroachment, or to another person causing or per-
7 mitting the encroachment to exist, by serving upon any of them a
8 notice demanding the removal of the encroachment within a time limit
9 set by the department. The notice shall describe the encroachment
10 with reasonable certainty as to its character and location. Service
11 of the notice may be made by certified mail.

12 Sec. 02.15.114. REMOVAL AT OWNER'S EXPENSE AFTER NONCOMPLIANCE;
13 REMOVAL EXPENSE. After a failure of the owner of an unauthorized
14 encroachment to comply with a notice or order of the department under
15 AS 02.15.104, 02.15.108, or 02.15.112, the department may remove the
16 encroachment, or cause it to be removed. The owner of the unauthor-
17 ized encroachment shall pay to the department

18 (1) the expense of the removal of the encroachment;

19 (2) all costs and expenses paid by the state as a result of
20 a claim or claims filed against the state by third parties for damages
21 due to delays because the encroachment was not changed, removed, or
22 relocated according to the order of the department; and

23 (3) costs and expense of suit.

24 * Sec. 2. AS 02.15.260 is amended by adding new paragraphs to read:

25 (15) "cost of change, relocation, or removal" means the
26 entire cost incurred by the utility properly attributed to the change,
27 relocation, or removal of a facility, less the costs for improvements
28 or upgrading over and above the cost of a functionally equal facility;
29 if a facility is to be relocated and replaced with new equipment,

1 there shall also be subtracted from the entire cost the salvage value
2 derived from the old facility;

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

7 (17) "utility" includes a corporation, company, individual,
8 or association of individuals, or a lessee, trustee, or court-appoint-
9 ed receiver, that owns, operates, manages, or controls a line, plant,
10 pipeline, or system for furnishing, producing, generating, transmit-
11 ting, or distributing power, electricity, communications, telecommu-
12 nications, water, gas, oil, petroleum products, coal or other mineral
13 slurry, steam, heat, light, chemicals, air, sewage, drainage not
14 connected with airport drainage, irrigation, or similar products
15 including publicly owned fire and police signal systems and street
16 lighting systems that directly or indirectly serve the public or a
17 segment of the public; "utility" also includes a corporation, company,
18 individual, or association of individuals, or a lessee, trustee, or
19 court-appointed receiver that owns, operates, manages, or controls a
20 system for furnishing transportation of goods or persons by means of a
21 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,
22 or a similar means;

23 (18) "utility facility" includes poles, plants, lines,
24 trenches, bridges, utilidors, tunnels, pipelines, and any other system
25 for furnishing, producing, generating, transmitting, or distributing
26 power, electricity, communications, telecommunications, water, gas,
27 oil, petroleum products, coal or other mineral slurry, steam, heat,
28 light, chemicals, air, sewage, drainage not connected with an airport
29 drainage system, irrigation, or another substance; "utility facility"

1 also includes a system for furnishing transportation of goods or
2 persons by means of a railway, tramway, cableway, conveyor, flume,
3 canal, tunnel, pipeline, or a similar means.

4 * Sec. 3. AS 19.25.200 is amended to read:

5 Sec. 19.25.200. ENCROACHMENT PERMITS. (a) An encroachment may
6 be constructed, placed, changed, or maintained across or along a
7 highway, but only in accordance with regulations adopted by the
8 department. An [NO] encroachment may not be constructed, placed,
9 maintained, or changed until it is [DULY] authorized by a written
10 permit issued by the department, unless the department provides
11 otherwise by regulation.

12 (b) The provisions under (a) of this section do not apply to a
13 mailbox or a newspaper box attached to a mailbox.

14 * Sec. 4. AS 19.45.001(12) is repealed and reenacted to read:

15 (12) "utility" includes a corporation, company, individual,
16 or association of individuals, or a lessee, trustee, or court-appoint-
17 ed receiver, that owns, operates, manages, or controls a line, plant,
18 pipeline, or system for furnishing, producing, generating, transmit-
19 ting, or distributing power, electricity, communications, telecommu-
20 nications, water, gas, oil, petroleum products, coal or other mineral
21 slurry, steam, heat, light, chemicals, air, sewage, drainage not
22 connected with highway drainage, irrigation, or similar products
23 including publicly owned fire and police signal systems and street
24 lighting systems that directly or indirectly serve the public or a
25 segment of the public; "utility" also includes a corporation, company,
26 individual, or association of individuals, or a lessee, trustee, or
27 court-appointed receiver that owns, operates, manages, or controls a
28 system for furnishing transportation of goods or persons by means of a
29 railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline,

1 or a similar means;

2 * Sec. 5. AS 19.45.001 is amended by adding a new paragraph to read:

3 (14) "utility facility" includes poles, plants, lines,
4 trenches, bridges, utilidors, tunnels, pipelines, and any other system
5 for furnishing, producing, generating, transmitting, or distributing
6 power, electricity, communications, telecommunications, water, gas,
7 oil, petroleum products, coal or other mineral slurry, steam, heat,
8 light, chemicals, air, sewage, drainage not connected with a highway
9 drainage system, irrigation, or another substance; "utility facility"
10 also includes a system for furnishing transportation of goods or
11 persons by means of railway, tramway, cableway, conveyor, flume,
12 canal, tunnel, pipeline, or a similar means.

13 * Sec. 6. AS 35.10 is amended by adding new sections to read:

14 ARTICLE 6. UTILITIES AND ENCROACHMENTS IN PUBLIC FACILITIES.

15 Sec. 35.10.210. USE OF PUBLIC FACILITIES FOR UTILITIES. A
16 utility facility may be constructed, placed, or maintained across,
17 along, over, under, or within a state public facility only in accor-
18 dance with regulations adopted or procedures prescribed by the depart-
19 ment and only if authorized by a written permit issued by the depart-
20 ment.

21 Sec. 35.10.220. RELOCATION OF UTILITY FACILITIES INCIDENT TO
22 PUBLIC FACILITY PROJECTS. (a) If, incident to the construction of a
23 public facility project, the department determines and orders that a
24 utility facility located across, along, over, under, or within a state
25 public facility must be changed, relocated, or removed, the utility
26 owning or maintaining the facility shall change, relocate, or remove
27 it in accordance with the order, within a reasonable time set by the
28 department in the order.

29 (b) If the utility facility is not changed, relocated, or