

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2900

the states must make the full payment. Partial payments may be possible in any one year, but anywhere from 70% to 90% of employers generally make the full actuarially required contribution. Illinois has a continuing appropriation: once the actuary decides on the rate, the state has to make that contribution. In several California counties, if the board of supervisors does not make the contribution set by the actuary, the county's independently elected auditor must take available county funds and place them in the pension trust fund.

"It's a pretty strong mechanism," Mr. Young said. "Omitting or reducing contributions may be a short-term budgetary fix, but it does not solve the unfunded liability problem."

■ The Pension Obligation Bond Solution

Another solution to funding pensions is for states to issue pension obligation bonds (POBs), the proceeds of which are used to fund the plan and reduce the liability.

"But you are left with a bond on your balance sheet," Mr. Young said. "The primary risk is that you do not achieve a high enough investment return to cover the POB debt service cost or the actuarial investment return assumption, in which case the shortfall results in new unfunded liabilities. Under this scenario, which has been the experience over the past several years, POB issuers are incurring new unfunded liabilities, and higher contribution rates related to that, on top of the additional expense of POB debt service," he added.

Over the long-term, a POB might still be a workable solution, but in the short-term, they may add to fiscal stress, according to Mr. Young. A number of California issuers that issued POBs in the 1990s experienced poor returns, enhanced benefits, and adverse legal decisions, have reached reduced funding levels to the point where they are issuing POBs again. Hundreds of millions of POBs have been sold since May 2002, mainly by California counties, along with more than \$15 billion during the 1990s. Several large POB issues are planned or have been completed, including one by Illinois for \$10 billion.

■ The Evolution of Pension Accounting

Pension accounting has been dormant for many years, but the weak economic conditions are bringing it to light again, according to Standard & Poor's Chief Accountant Nen Bukspan. Worldwide, accounting standard setters, including the Government Accounting Standards Board (GASB), the U.S. Financial Accounting Standards Board, the International Accounting Standards Board (IASB), and the U.K. Accounting Standards Board have all announced, or are in the process of declaring numerous standard-setting activities related to accounting for pension and OPEBs, including changes to the required disclosures.

For example, the IASB will decide whether "smoothing," a feature that makes it appear that a company is experiencing gains when they are actually recording losses, is acceptable. By 2005, all EU-listed companies are required to adopt International Accounting Standards, and expected to reflect pension and OPEB obligations and related assets.

The recently issued GASB OPEB Exposure is important because OPEB liabilities previously were not required to be reflected as an obligation by governmental equity. However, once the exposure draft is finalized, accounting for OPEBs will substantially conform to the accounting for pensions. Pension and OPEB obligations are difficult for analysts to monitor due to the inherent uncertainties associated with the estimation process, the complexity and inconsistency of the applicable accounting models, and the lack of sufficiently robust and timely disclosures.

To complicate matters, employers use an assortment of plans: defined benefit, defined contributions, insurance contracts, pay-as-you-go, single-employer and multiple-employer arrangements, or any combination of these programs.

The funding requirements also change; the government dictates some and local funding regulators dictate others. "Many times the actual funding to a plan could exceed the minimum funding rules, and different jurisdictions have different objectives

when establishing the minimum funding requirements," Mr. Bukspan said.

Unlike pensions, OPEBs are generally funded on a pay-as-you-go basis, which has a cash stream that is very different from a pre-funding cash stream. However, cash outlays, even in a pay-as-you-go program, can become extensive, particularly because of early retirement and downsizing.

Due to the changing economic circumstances, sponsors are revisiting their pension assumptions, curtailing benefits in many circumstances, and revisiting funding needs and policies. "There are near-term liquidity implications, as evidenced by pension obligation bond issuance, sale of noncore assets, and contributions of noncore assets to the pension plans," said Mr. Bukspan.

Although plan surpluses may be beneficial from a credit perspective, they cannot be viewed as cash equivalents, since the employer's practical ability to tap them directly is generally limited.

In its analysis, Standard & Poor's considers the ability of an entity to actually use the surplus, whether or not it is reflected in its financial statements. Depending on the local laws, when a surplus exists, the employer can curtail contributions, or may use a portion of the surplus to fund other benefits. An employer may also be able to enrich pension benefits in lieu of wage increases and fund downsizing through early retirement programs.

For public pension funds, any "excess" funding advantages flow to a sponsor through the pension contribution mechanism in the form of lower or temporarily omitted future contributions ("contribution holidays"). Laws and regulations do not allow sponsors to directly remove such excess funds from a pension trust fund.

■ The Future of Public Pension Plan Scrutiny

For Standard & Poor's, the challenge is — as it always has been — to collect the most accurate information possible about the potential implications of a benefit plan on an entity's financial position and cash flow to understand the potential exposure involved. Standard & Poor's will be paying close attention to actual and potential liabilities and cash flow requirements of state and local governments arising from pension and other post-employment benefits.

By Will Siss



Research: Pension Obligation Bonds: Were They A Good Bet?

Publication date: 08-Nov-2001

Credit Analyst: Parry Young, New York (1) 212-438-2120; Steven J Murphy, New York (1) 212-438-2066

What do the volatility in equity prices and the decline in market indices over the past year or two mean for the security of public pension investments and, further, what is their effect on the strategy, used by a number of governmental pension sponsors over the last decade, of selling pension obligation bonds to fund the unfunded liability of their pension funds? Specifically, given the current and expected market conditions, was the POB strategy a good idea and, if so, does it still have validity, and does this technique represent a viable opportunity for governmental sponsors who may find themselves wrestling with unfunded liabilities as a result of the declines in equity performance?

Brief History

While a few POBs were done in the 1980s, they really came into their own in the 1990s with more than \$10 billion being sold. Over the last two years, only a few, relatively small, POBs have been floated. The average principal amount for POBs ranged from \$100 million to \$300 million with a few exceeding \$1 billion or more. Most POBs issued to date have been general obligation or general fund secured, capitalizing on the credit quality of the pension system's sponsor.

The POB Experience Through 2000

With this kind of debt instrument, timing is very important and issuers of POBs in the early- to mid-1990s could not have had better timing. While public pension funds during the 1990s were boosting their average allocations in domestic equities from 33% to almost 50%, the returns on this asset class were sustained at levels well above the historical experience. The average annual increase in the S&P 500 index for the 10 fiscal years ended June 30, 2000 (most public pension funds have June fiscal years), was almost 16%, compared to a historical average of about 10%. The five-year total portfolio return for public funds has averaged more than 13%. These performances should be viewed in the context of average investment return assumptions for public pension systems of only about 8%.

Following the issuance of POBs to increase the funding status or to fully fund a system, this excess return phenomenon could easily result in funded ratios greatly exceeding 100%. However, in that actuarially funded pension systems tend to be self-balancing, this overfunding imbalance would have been corrected by actions taken to affect either the pension fund's assets or liabilities, or both. In these circumstances, pension fund sponsors would, upon the recommendation of their actuaries, decrease or temporarily eliminate pension contributions (contribution holiday), thus slowing the growth of assets. On the liability side, some sponsors made the decision to improve employee benefits, instantly increased liabilities but also balancing overfunding. Regardless of how the "problem" of overfunding was managed by sponsors or pension funds that used POBs prior to fiscal 2000, POBs produced, as promised, an economic benefit and in most cases it was substantial.

2001: Harbinger of Tough Times for POBs?

For the fiscal year ended June 30, 2001, the S&P 500 declined 15.8% (and fell a further 15% in the next quarter), which was its worst performance since fiscal 1982. This fiscal 2001 result followed the below-average performance of positive 6% for fiscal 2000. Following two decades of above-average equity returns, it is probable that these returns will approach the historical pattern going forward.

While a long-term environment of weak investment returns will lower pension funding levels, it may be premature for issuers of POBs and pension funds in general to adjust investment expectations based on the most recent results. As more data become available, if it is apparent that a trend is developing, some reactive changes made be needed. Regardless of the causes, any investment underperformance over an extended period of time will lead to actuarial losses and new unfunded liabilities, resulting in the need to increase contribution rates to bring the systems back into balance. It should be kept in mind that such a need would be in sharp contrast to recent years, when a decrease in the needed contribution rates actually provided budgetary flexibility for fund sponsors. Many funds now use smoothing methods for actuarial purposes in valuing assets to spread investment gains and losses over up to five years. This practice would temper the effects of the fiscal 2000 and 2001 investment return experience. With five-year smoothing, for example, only 20% of the fiscal 2001 losses would be included in the June 30, 2001 valuation, which would still be taking into account prior year gains as far back as 1997.

No matter how sponsors who utilize a POB strategy choose to manage their actuarial gains from the excess investment returns following POB sales (lower contributions or increased benefits), most are likely still fully funded, albeit with a lower cushion. In a long-term lower return environment with declining funding levels, those systems that have taken the bulk of their excess funding out of their POB structure may see trouble ahead.

For example, say a state sold POBs in 1985 with a 30-year amortization to fully fund its retirement system and had average annual investment returns of 12% against its investment assumption of 8%. However, instead of permitting the natural increase in the funded ratio that these conditions would have caused, the state managed its funding ratio, through contribution holidays and benefit improvements, to maintain the ratio at around 100%. If we are in fact heading into a lower return period (the average annual increase in the S&P 500 for the 16 years from 1966 to 1982 was a meager 2.7%, for example), the state may have already reaped all its gains from the transaction structure and be headed for losses. If actuarial losses start to be incurred, contributions will have to increase. If returns fall below the interest cost on its POB that will mean that the POB will have become a net financial drain. If investment yields fall below POB interest cost, total debt service, including that on the POB, plus normal and new unfunded actuarial accrued liability (due to low returns) contributions, will now be higher than if the POB had not been sold. To judge the full effect of a POB, however, any future losses have to be weighed against prior period gains. With a POB, its ultimate success, or failure, can only be judged at its final maturity is approached. The financial dynamics may be a winning formula for 25 years, for example, and then a losing one in the last five years (or vice versa).

POBs Going Forward

Standard & Poor's factors the effects of a pension obligation bond strategy into the long-term rating of the sponsor. Standard & Poor's has viewed POBs as a strategy for savings on carrying charges as long as the transaction was structured conservatively and the assumptions were reasonable and attainable. This requires a clear financing plan including reasonable assumptions and manageable leverage. Prudent expectations for investment returns and the cautious use of resultant savings help insure a POB's success. Another positive factor for a POB is, of course, to be fortunate enough to sell the bonds in a low interest rate environment, thereby increasing the spread between interest costs and investment return expectations and lowering the risk of underperformance. The long-term expectations for investment returns have not yet changed because of the recent return experience or current economic and political conditions and public funds will rely on diversification of investments to maintain necessary total returns. Thus, a sound POB plan today should be as viable as it was 10 years ago. The 2000 Public Pension Coordinating Council Survey of State and Local

City of Soldotna

177 North Birch • Soldotna, Alaska 99669 • Phone: (907) 262-9107

See
Soldotna



Representative Mike Chenault, Co-Chair, House Finance Committee
State Capitol, Room 502
Juneau, AK 99801

Re: HB 278 and Other PERS Unfunded Liability Bills

The City of Soldotna supports legislation allowing an option for pension obligation bonds as a tool in dealing with the PERS unfunded liability issue. But, we feel that there are some broader considerations that should be part of this or any bill dealing with this issue. We ask you to submit the following comments to the Finance Committee.

As the Alaska Legislature considers options for reduction of the unfunded liability for PERS and TERS, you should ensure that communities who have taken steps to reduce that liability are not penalized. The City of Soldotna has taken steps to reduce its unfunded liability and should receive credit for this in any plans adopted by the Legislature.

The City of Soldotna, like all other participants in PERS, received notice of an unfunded liability of approximately \$4 million. We were also advised that this liability would effectively accrue interest at 8.25%. That interest charge equaled \$330,000 annually, or \$25,000 a month. At that time, the City's total contribution rate set by the State was about 2.5% and was raised to about 4.5%. With the statutory limit on increases of only 5% of payroll annually, it would have taken until FY 2005-06, the current year, before the City's contribution even equaled the accruing interest.

Faced with this situation, the City Council determined a payment of \$1 million should be made to reduce the unfunded liability. This payment was made in November of 2004. So that you understand the impact of waiting, I want to tell you how the money was applied to the City's liability. Of the \$1 million, \$620,000 went to accrued interest back to the date our unfunded liability calculation was made. Our "principal" owed was only reduced by about \$380,000. The City also elected to apply the legislatively provided offset funding for the current year's 5% increase to be applied to the unfunded liability as well. We absorbed the actual increase in the contribution rate in the City's operating budget.

Many communities asked about our actions. While they saw some benefit, most were concerned that if the Legislature provided assistance, credit would not be given for payments made to reduce the unfunded liability. If the State elected to

pay off the unfunded liability balance in full and did not give credit for earlier efforts to reduce the liability, Soldotna would have paid \$1 million more than other participants. This fear makes it difficult for a community to consider being a good steward of its resources. The Legislature must recognize this and if any relief is given, make sure it is not based on just the unfunded liability on the date relief is given, but also considers the extra payments made prior to that date.

Sincerely,



Thomas R. Boedeker
City Manager

cc: Representative Kurt Olson
Senator Tom Wagoner

HB

279

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

4/27/05

adopted as amended

AMENDMENT
(amended)

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 279 (TRA)

1 Page 1, line 12, following "remain"

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

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

6 Delete all material

7 Insert

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

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

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

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

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

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

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

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

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

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

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

ALASKA STATE LEGISLATURE



HOUSE TRANSPORTATION COMMITTEE

House Bill 279

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

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

The provisions of HB 279:

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

CHUGIAK COMMUNITY COUNCIL

P.O. Box 671350
Chugiak, Alaska 99567

April 21, 2005

TO: Distribution

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

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

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

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

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

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

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

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

Sincerely,

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

Distribution

State of Alaska:

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

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

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"Place of Many Places"

Chugiak-Eagle River Chamber of Commerce

April 22, 2005

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

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

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

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

Respectfully submitted,

George Lochner
President

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

ALASKA STATE LEGISLATURE



HOUSE TRANSPORTATION COMMITTEE

House Bill 279

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FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

CHUGIAK COMMUNITY COUNCIL

P.O. Box 671350
Chugiak, Alaska 99567

April 21, 2005

TO: Distribution

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

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

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

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

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

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

Sincerely,

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

Distribution

State of Alaska:

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

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



Chugiak-Eagle River Chamber of Commerce

"Place of Many Places"

April 22, 2005

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

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

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

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

Respectfully submitted,

George Lochner
President

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

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 279

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

HB

279

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 8 2005

SENATE FINANCE
COMMITTEE

DATE: 5/5/05

FURTHER:

DATE TURNED
IN TO OFFICE: 8 May 2005

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

HB 279 OUTDOOR ADVERTISING; ENCROACHMENTS

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

and recommends:

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

CS Senate Bill:
 Same Title
 New Title

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

NEW FISCAL NOTE(S):

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

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

APPROPRIATION - no fiscal note

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

MAY 8 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	265.5	265.5	265.5	265.5	265.5	265.5
Travel	16.0	16.0	16.0	16.0	16.0	16.0
Contractual	8.0	8.0	8.0	8.0	8.0	8.0
Supplies	129.0	4.0	4.0	4.0	4.0	4.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	418.5	293.5	293.5	293.5	293.5	293.5

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

CHANGE IN REVENUES ()	50.0	50.0	50.0	50.0	50.0	50.0
-------------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

AMENDMENT

adopted

OFFERED IN THE HOUSE

TO: CS HB 279 (FIN)

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

SENATE FINANCE COMMITTEE
5 / 7 / 2005 COMMITTEE ACTION

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

SENATE FINANCE

COMMITTEE

Amendment Number: #2

Bill Number: HB 279

Sponsor: Green Date: 5/8/05

Logged In By: Mindy

AMENDMENT

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

adopted

Page 2, lines 10-11

Delete all material and insert:

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

Page 3, lines 9-12

Delete all material and insert a new section to read:

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



Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 8 May 2005 TIME: 7:30 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 3

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

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

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

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

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL
FOR AN ACT ENTITLED

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

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

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

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

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

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

#1

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

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

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

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

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

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

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

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

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

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

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

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

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

#2

ALASKA STATE LEGISLATURE



HOUSE TRANSPORTATION COMMITTEE

House Bill 279(FIN)

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

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

The provisions of HB 279:

- Inserts an exception into statute that will grandfather current encroachments in the right-of-way of a highway by obtaining a permit by the Department of Transportation & Public Facilities.
- The permit may be issued to a private person, a government agency acting in a business capacity, or an owner or lessee of land contiguous to the right-of-way.
- In order to qualify for the permit, the encroachment must:
 1. Not pose a risk to the traveling public.
 2. The encroachment occurred in good faith.
 3. The denial of the encroachment permit would pose a hardship on landowner.
 4. Not cause a break in access control for the highway.
 5. Not be necessary for a highway construction project during the initial term of the project.
 6. The issuance of a permit is consistent with federal requirements regarding encroachments on federal-aid highways.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



"Place of Many Places"

Chugiak-Eagle River Chamber of Commerce

April 22, 2005

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

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

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

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

Respectfully submitted,

George Lochner
President

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

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

CHUGIAK COMMUNITY COUNCIL

P.O. Box 671350
Chugiak, Alaska 99567

April 21, 2005

TO: Distribution

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

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

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

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

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

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

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

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

Sincerely,

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

Distribution

State of Alaska:

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

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

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

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

May 5, 2005

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

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

Dear Senators Green and Wilken:

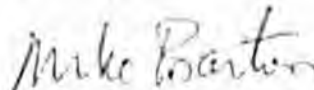
The Department of Transportation and Public Facilities (DOT&PF) is requesting three amendments to CSSB 183(TRA) "**An Act relating to encroachments in the right-of-way of a highway.**"

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

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

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

Sincerely,



Mike Barton
Commissioner

Enclosure

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

Proposed Changes to SB 183/HB 279 – Encroachment Permits

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

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

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

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

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

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

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

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

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

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

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

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

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

HB

280

HFIN

FILE

SB 179/HB280 Talking Points

It appears that SB 179/ HB 280 would do two primary things:

1. Requires mines in the Unorganized Borough to pay a 4 mills property tax to the State.
Acceptable: As the de facto assembly for the unorganized borough, the legislature has basically the same rights as any assembly.
2. However, if a borough forms, the state would still assess the mine and collect the property tax for the new borough up to 6 mills, but all other possible municipal taxes and fees, such as local sales taxes, would be prohibited for the expected life of the mine. **Unacceptable:** The bill would take away almost all taxing authority regarding mines from future local assemblies and make it unlikely that a borough could form if local taxpayers had to subsidize services to the mine due to the exemptions.

Key issues:

- ❑ Local taxes already have "fail-safes" to avoid inequitable treatment of one taxpayer:
 1. By law, all local taxpayers must pay the same property tax rate. If mines pay more, so does everyone else.
 2. If taxes are too high for a mine to exist, everybody loses. Unfair taxation of mines has not been identified as a problem in Alaska.
 3. If a borough formation petition appeared to treat one taxpayer unfairly the Local Boundary Commission has the authority to reject it, or refer it to the legislature.
- ❑ Local taxpayers subsidize mines. It would most likely make it financially impossible for a new borough to form because State law requires a borough to:
 1. Pay 4 mills of property tax as the minimum contribution to schools, plus
 2. Pay the local cost of building new schools necessitated by the mine, plus
 3. Pay any additional optional local contribution to schools to maintain an acceptable level of education, and provide adequate local services such as road maintenance and public safety.The allowable remaining 2 mills would almost certainly be insufficient to pay for schools, school bonds, and provide other services. Therefore, other local taxpayers would likely have to subsidize local public services used by the mine.
- ❑ No other industry gets virtually permanent tax breaks: No city, borough, or the state promises a permanent low tax rate for a single industry.
- ❑ If special industry tax breaks are given by the State, they should be financed by the State: If the State adopts policy to subsidize the mining industry it should be done at the State level, not by asking future local taxpayers to subsidize it.
- ❑ New mines get tax breaks, existing mines don't: Mines in boroughs formed after January 2005 would be taxed at inequitable compared to existing or new mines in existing boroughs. Besides being inequitable, this could jeopardize taxation for communities with existing mines.

Synopsis of Alaska Mining Industry- Local Revenues

Greens Creek Mine

Located in the City & Borough of Juneau:

Valuation:

Real Property \$63,054,400

Personal Property \$47,101,020

Total Value \$110,155,420

Local Revenue Generation:

Based on mill rate of 6.61 mills equals \$728,128 per year

Fort Knox Mine

Located in the Fairbanks North Star Borough

Valuation:

Real Property \$230,400,000

Personal Property \$ -0- (not assessed in FNSB)

Total Value \$230,400,000

Local Revenue Generation:

Based on mill rate of 15.224 mills equals \$3,507,610 per year

Red Dog Mine

Located in the Northwest Arctic Borough

Valuation:

Real Property \$263,801,940

Personal Property \$ included above

Total Value \$263,801,940

Local Revenue Generation:

PILT - \$5,000,000 to \$6,000,000 per year

20.8 mills @ 5.5 million

Healy Coal Mine

Located in the Denali Borough

Severance Tax on extraction of coal and gravel

Local Revenue Generation

\$56,000 per year

Pogo Mine

Currently located in the Unorganized Borough

Valuation:

Real Property	\$250,000,000
<u>Personal Property</u>	<u>\$ included above</u>
Total Value	\$250,000,000

Local Revenue Generation:

None

Donlin Creek

Currently located in the Unorganized Borough

Valuation:

Unknown

*\$1 Billion ?
possible
R-11 James
Fred*

Local Revenue Generation:

None

Nixon Fort

Currently located in the Unorganized Borough

Valuation:

Unknown

Local Revenue Generation:

None

Illinois Creek

Currently located in the Unorganized Borough

Valuation:

Unknown

Local Revenue Generation:

None

Pebble mine

Sec. 14.17.410. Public school funding.

(b) Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows:

(2) the required local contribution of a city or borough school district is the **equivalent of a four mill tax levy** on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection. (emphasis added)

Sec. 43.82.400. Preliminary findings and determination regarding the contract.

Statute text

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

(1) make preliminary findings and a determination that the proposed contract terms are in the long-term fiscal interests of the state and further the purposes of this chapter; and

(2) prepare a proposed contract that includes those terms and shall submit the contract to the governor.

(b) To make the preliminary findings and determination required by (a)(1) of this section, the commissioner shall compare the projected public revenue anticipated from the approved qualified project with the estimated operating and capital costs of the additional state and municipal services anticipated to arise from the construction and operation of the approved qualified project. The commissioner shall address the reasonably foreseeable effects of the proposed contract on the public revenue.

Sec. 43.82.410. Notice and comment regarding the contract.

Statute text

The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit

Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to the public and all members of the legislature; if the financial, technical, and market data that is to be provided must be kept confidential under AS 43.82.310, the commissioner may not release the confidential information during a public portion of a committee meeting; and (4) establish a period of at least 30 days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.420. Coordination of public and legislative review.

Statute text

To the extent practicable, the commissioner shall coordinate the public comment opportunity provided under AS 43.82.410(4) with a review by the Legislative Budget and Audit Committee under AS 43.82.410(3).

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.430. Final findings, determination, and proposed amendments; execution of the contract.

Statute text

(a) Within 30 days after the close of the public comment period under AS 43.82.410(4), the commissioner of revenue shall

(1) prepare a summary of the public comments received in response to the proposed contract and the preliminary findings and determination;

(2) after consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established under AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments;

(3) make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under (2) of this subsection meet the requirements and purposes of this chapter.

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner shall submit the contract to the governor.

(c) The commissioner's final findings and determination under (a) of this section are final agency decisions under this chapter.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.435. Legislative authorization.

Statute text

The governor may transmit a contract developed under this chapter to the legislature together with a request for authorization to execute the contract. A contract developed under this chapter is not binding upon or enforceable against the state or other parties to the contract unless the governor is authorized to execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.440. Judicial review.

Statute text

A person may not bring an action challenging the constitutionality of a law authorizing a contract enacted under AS 43.82.435 or the enforceability of a contract executed under a law authorizing a contract enacted under AS 43.82.435 unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.56.010. State Assessment Review Board.

Statute text

The State Assessment Review Board is created within the department. The board consists of five persons appointed by the governor to serve at the pleasure of the governor, each of whom must be knowledgeable of assessment procedures. Each board member is subject to confirmation by a majority of the members of the legislature in joint session.

History

(§ 1 ch 1 FSSLA 1973)

Annotations

Administrative Code. - For oil and gas exploration, production and pipeline transportation property tax, see 15 AAC 56.

Sec. 14.17.300. Public school account.

Statute text

(a) The public school account is established. The account consists of appropriations for distribution to school districts, the state boarding school, and for centralized correspondence study under this chapter.

(b) The money in the account may be used only in aid of public schools, including community school programs, and for centralized correspondence study programs under this chapter.

History

(§ 2 ch 83 SLA 1998)

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Jim Pound

From: Matt Davidson [matt@akvoice.org]
Sent: Monday, May 02, 2005 9:44 AM
To: Jim Pound; Henry Webb
Subject: HB 280 FDNM: Mining legislation irks Deltana group

For Committee packet on HB 280-
Mining legislation irks Deltana group

Thursday, April 21, 2005 - Less than a week after a bill advocating a tax on mines outside of Alaska's organized boroughs was introduced, the Deltana Borough Charter Commission voiced strong opposition to the legislation.

In a strongly worded letter to bill sponsor Sen. Gene Therriault, R-North Pole, the volunteer group drafting a charter to submit to the Local Boundary Commission said Senate Bill 179 would "have a highly destructive effect on the formation of new boroughs."

The bill calls for the state to collect a tax from mining companies in unorganized areas at a rate equal to what organized boroughs must contribute in local education funding. That amount currently stands at 4 mills.

The Deltana group opposes the legislation because it would place a limit on the amount of money the proposed borough could raise by taxing Pogo Mine, which would fall within its boundaries.

"(The bill) drastically limit(s) the taxing authority of a local government to 4 or 6 mills on mining property," said Mike Schultz, chair of the Deltana Borough Charter Commission, in a letter to the senator.

"Under this legislation, mining taxes would be higher in the existing Fairbanks North Star Borough than in the new Deltana Borough. This is constitutionally impermissible and will lead to litigation challenging this legislation."

After working more than a year on the draft charter, the Deltana group voted on April 6 to fund its proposed borough by imposing a 2 percent severance tax on the amount of gold removed from Pogo Mine.

Passage of the severance tax appears to have been a strategic maneuver on the part of the group as it has been negotiating with Pogo representatives since early this year for a payment in lieu of taxes arrangement in the event a borough is created.

However, the parties have yet to come to an agreement on a PILT dollar figure.

Karl Haneman, Alaska regional director for Teck-Pogo Inc. refused to comment on the severance tax at that meeting. Less than two weeks later, Senate Bill 179 was introduced.

Delta Library Board holds fund-raiser

The Delta Library Board is hosting its annual Open House and Baskets of Books Silent Auction on Saturday from 10 a.m. until 4 p.m. The event is the board's largest fund-raiser of the year and the group's goal is to surpass the \$5,000 mark with its efforts, said librarian Joyce McCombs.

The auction features more than 100 "Baskets of Books" filled with items from nearly every business in Delta Junction, McCombs said. The Forget Me Knot Quilters Guild, for example has donated two baskets of quilt squares in the Jacob's Ladder pattern, she explained. The baskets also hold books on quilting and sewing supplies needed to complete the quilts.

In addition, several Fairbanks vendors have complemented the local donations. This year the Alaska Railroad has donated two round-trip tickets from Fairbanks to Anchorage, valued at \$400, McCombs said, and Chena Hot Springs is offering passes to soak in their mineral water .

"We hope people will come early and bid often," she added.

The proceeds from the event are used to purchase items not covered by the money the library gets from the city. Past purchases have included encyclopedias, an outdoor book drop and books to give to each child participating in the library's summer reading program. With the move to a new facility earlier this year, the board is hoping to spend the money raised at this event on landscaping at the new structure.

Theme selected for Deltana Fair

"Farming in the Friendly Frontier" is the theme for the 2005 Deltana Fair. The winning theme and logo design were submitted by longtime Delta resident Ann Geise, who has created a number of winning Deltana Fair logos over the last 25 years.

This year's logo is loosely based on the painting "American Gothic" by Grant Wood showing a cow and bull moose with a pitchfork rather than the farmers as in the painting.

The competition for the winning design was fierce as 14 entries were received. The other designs were retained by the Deltana Fair Association for possible future use.

Geise received \$100 and a T-shirt with her winning design emblazoned upon it.

The 2005 Deltana Fair is scheduled for Aug. 19-21.

Janet Boyer's column about Delta Junction happenings appears weekly in the News-Miner.



The Kuskokwim Corporation

Senator Gene Therriault
State Capitol
Juneau, Alaska
99801-1182

April 25, 2005

RE: SB179

Dear Senator Therriault:

The Kuskokwim Corporation was formed in 1977 when ten Alaska Native Claims Settlement Act village corporations located along the middle region of the Kuskokwim River merged. These 10 villages are: Upper Kalskag, Lower Kalskag, Aniak, Chauthbaluk, Napaimiute, Crooked Creek, Georgetown, Red Devil, Sleetmute and Stony River.

Economic development in our region to date has been minimal. Our area suffers from a lack of jobs and high unemployment, with too many people having incomes in the poverty range. The Kuskokwim Corporation (TKC) supports economic development for our area and we want to encourage environmentally responsible mining in our area and throughout Alaska to benefit rural residents. Mining can provide needed jobs to our area and is a welcomed activity so long as our current and future subsistence needs are not adversely impacted. Your bill seeks to encourage this needed economic development by providing predictability regarding taxation on large mines. We understand this predictability would assure mine planners about a mine's feasibility and assist major mining companies when they seek financing for their projects.

TKC supports your efforts and this bill, SB179, so long as it does not discourage future local governments and potential borough formation, allowing local control to address the social and infrastructure requirements necessitated by the impacts of regional development.

TKC appreciates your efforts on behalf of Alaska's rural residents. Please don't hesitate to call us concerning our perspective and views on this and future legislation that may impact the middle Kuskokwim River region.

Sincerely,

Maver Carey, CEO
The Kuskokwim Corporation

Leo Morgan, Chairman
The Kuskokwim Corporation

CC: Stan Foo, Placer Dome Mining
James Fueg, Placer Dome Mining
Paul Fuhs, TKC Lobbyist

4300 B Street, Suite 207 Anchorage, AK 99503
P.O. Box 104460, Anchorage, AK 99510-4460
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217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

May 2, 2005

Honorable Representative Jay Ramras
House Resources,
State Capitol, Room 104
Juneau, Alaska 99801

Dear Representative Ramras,

This letter is to inform you as to the Alaska Municipal League's position on SB179 and HB280. After listening to testimony last week, it became apparent that AML must weigh in quickly. AML is opposed to SB179 and HB280.

Senator Therriault made reference to the fact that this bill had been introduced to bring "stability" to the mining industry. Yet, he also assured Senator Stedman that the six mill cap could be changed by a future legislature, should they deem it necessary. That, in itself, seems to undo the stability goal and thus makes the bill moot.

The legislature does have the right and/or responsibility to tax the unorganized borough. Therefore, a 4 mill property tax paid by a mine in the unorganized borough to the state is not something with which we have a problem. But if a borough is formed, having that same mine pay only 6 mills for a period of 15 years, while yet being exempt from all other municipal taxes is a decision that should be made by that potential borough. While we understand the mining industry's need to make an agreement with the Legislature with regards to the unorganized borough, we do not feel that agreement should carry on if and when a borough is organized.

We feel this bill is a disincentive to form boroughs; sets up an unequal taxing basis and takes away municipal taxing authority. We would encourage you to stop this bill in committee.

Sincerely,

Mike Catsi, Chairman
AML Land Use Legislative Committee

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB280(RES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Minerals Tax/Payments to Muni. RDU Comm Assist & Ec Dev (405)
Component Community Advocacy
Sponsor Resources
Requester House Finance Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	75.0	75.0	75.0	75.0	75.0	75.0
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual						
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	91.0	91.0	91.0	91.0	91.0	91.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	91.0	91.0	91.0	91.0	91.0	91.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	91.0	91.0	91.0	91.0	91.0	91.0

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation proposes to establish a statewide property tax for 15 years, not to exceed 4 mills, on mining property with a value in excess of \$10 million and located within the unorganized borough. If the area where the mining operation is located incorporates, the mill levy will be the same as on all other similarly situated property.

The bill removes the ability for municipalities to levy a severance tax on minerals, but requires mining operations to pay the same taxes levied on all other property owners within the municipality.

The department will need to hire an appraiser to appraise mining property in the unorganized borough.

Prepared by: Mike Black, Director Phone 907.269.4605
Division Community Advocacy Date/Time 5/4/05 12:11 PM
Approved by: Edgar Blatchford, Commissioner Date 5/4/2005
Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 280 (RES) Y
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title: Minerals Tax/Payments to Munis in Lieu RDU: Tax and Treasury
Component: Tax
Sponsor: Resources
Requester: (H) FIN Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	15.0	15.0	15.0	15.0	15.0	15.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	26.1	26.1	26.1	26.1	26.1	26.1
Supplies	0.3	0.3	0.3	0.3	0.3	0.3
Equipment	1.1	1.1	1.1	1.1	1.1	1.1
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	42.5	42.5	42.5	42.5	42.5	42.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	42.5	42.5	42.5	42.5	42.5	42.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	42.5	42.5	42.5	42.5	42.5	42.5

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time	1.4	1.4	1.4	1.4	1.4	1.4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill levies a tax rate equivalent to the mill rate "required to meet the local contribution [to schools] required of that municipality" on the full and true value of mining real and tangible personal property on land in the unorganized borough as of January 1, 2005. In general this is 4 mills or .4 percent. One exception is that the 4 mill levy on the taxable value cannot exceed 45% of the district's basic need. The tax rate does not go into effect until after production commences at the mine. We did not include an estimate for revenue because we cannot foresee if municipalities will be formed within the unorganized borough or if planned mines will actually materialize. This bill also precludes municipalities from imposing severance taxes on minerals produced or extracted in the municipality other than a tax imposed before January 1, 2006. We are requesting a fee of a tax technician to address our responsibilities under the bill and \$25,000 for increases in costs associated with the State Assessment Review Board.

Prepared by: Randy Hoffbeck & Brett Fried Phone: 465-3082
Division: Tax Division Date/Time: 5/4/05 9:20 AM
Approved by: Tom Boutin, Deputy Commissioner Date: 5/4/2005
Agency: Revenue

ALASKA STATE LEGISLATURE HOUSE RESOURCES COMMITTEE

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716 W. 4th Avenue
Anchorage, AK 99501

State Capitol, Juneau, Alaska 99801-1182

Sponsor Statement HB 280

“An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date.”

HB 280 is interestingly enough a bill requested of this body by the industry. Under its language, mines operating in the state would be taxed by the state on the true and real value of real and tangible property.

Precious metal exploration has continued in the state and several of the locations being developed are not located in organized boroughs. Without the language of HB 280 development companies are operating with an uncertain and potentially unstable set of rules for taxation. Using AS 14.17.410 (b) (2) as a tax base, mines in unorganized boroughs would be assessed a four-mill levy. Boroughs organizing after this year would be able to add two-mills to that tax rate with all of the funds being paid to the new borough.

Language in the bill also creates a special mining property tax account and allows the legislature to appropriate that money into the public education fund. Essentially this is an offer by the mining industry to assure funding for Alaska's Education System.

HB 280 is limited to large producers only. Mines producing less than \$10,000,000 are exempt from the tax formula. This keeps what is left of our once profitable mom and pop mines in operation.

In a world market, stability both politically and financially are critical to success for these companies that invest millions of dollars just searching for precious metals. Creating a stable tax base for an industry that creates hundreds of jobs in Alaskan communities makes sound fiscal sense. It also gives unorganized areas of the state a clear understanding of the income they will receive from a mine, once they become a borough and can receive the tax benefit.

ALASKA STATE LEGISLATURE HOUSE RESOURCES COMMITTEE



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State Capitol, Juneau, Alaska 99801-1182

CSHB 280(RES) Sectional

Section 2

Creates a property tax program for local municipalities either current or future should they incorporate a mine into their borough for the purposes of local taxation.

Section 3

Restricts a local municipality from imposing a severance tax on produced minerals unless it is imposed prior to January 6, 2005

Section 4

Establishes a state property tax on mines not located in an organized borough with a levy of four mills. Maintains the mill levy in existing boroughs at the same rate as is levied against other real and tangible personal property. There is also language regarding payments in lieu of taxes and how a contract may be negotiated.

.020 Clarifies a term 15 years for which only property taxes may be imposed on mines within a newly established borough or an existing borough that annexes the mine.

.030- .150 Directs the state assessor to assess the mine's property with details on what must be submitted when. Language also includes the investigation process and authority, notice requirements, objection process to the assessment including appeal. It allows for an assessment to be resubmitted following an appeal. The language in section 120 also includes collection and deposit and where the funds will go and a recommendation as to how the funds should be allocated. Further language in the reference paragraphs establishes penalties, remedies and regulation authority.

.160 Establishes facilities that are available for public use are exempt as is property used in production or transportation of minerals. The language also protects small miners from taxes.

.170 Definitions

Section 5

Allows the Department to begin promulgating regulations pending the effective date of the bill.

*Adopted
5-4-05*

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CS HB 280 (RES)

BY REPRESENTATIVE *Holm*

1 **Page 4, line 2**

2 Insert new subsection (c)

3 (c) Property tax imposed by a municipality under AS 29.45 is in place of the
4 tax levied under AS 43.67.010. In the case of a municipality incorporated after
5 January 1, 2005, the transition provisions of AS 29.05.140 govern the transition from
6 assessment by the department to assessment by the municipality.

7 **Re letter the remaining subsection accordingly**

8

9 **Page 5, line 20**

10 Following "after"

11 Delete "an assessment"

12 Insert "a determination"

13

14 **Page 6, line 26**

15 Insert new (2)

16 (2) "department" means the Department of Revenue or the Department of
17 Commerce, Community, and Economic Development;

18 **Re number the remaining paragraphs accordingly**

19

20 **Page 7, line 6**

21 Following "The Department of Revenue"

22 Insert "and the Department of Commerce, Community, and Economic Development"

23

24

AMENDMENT

2

filed

5/5/05

OFFERED IN THE
HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE HOLM

TO: CSHB280(RES)

Page 2, Lines 18-19

DELETE [other than a tax imposed before January 1, 2006]

HOUSE FINANCE
COMMITTEE

DATE: 5-5-05

Amendment: 2

MEMBER

Favor

Oppose

JOULE		✓
KELLY	✓	
MOSES		✓
STOLTZE		✓
WEYRAUCH		✓
CROFT		
FOSTER		✓
HAWKER		✓
HOLM	✓	
CHENAULT		✓
MEYER		✓

2



HOUSE FINANCE COMMITTEE

DATE: 5-5-05

move Amendment: HB 28

MEMBER

Favor

Oppose

MOSES		✓
STOLTZE	✓	
WEYRAUCH		✓
✓ CROFT		
FOSTER	✓	
HAWKER	✓	
HOLM		✓
JOULE	✓	
KELLY		✓
CHENAULT	✓	
MEYER	✓	

6

4

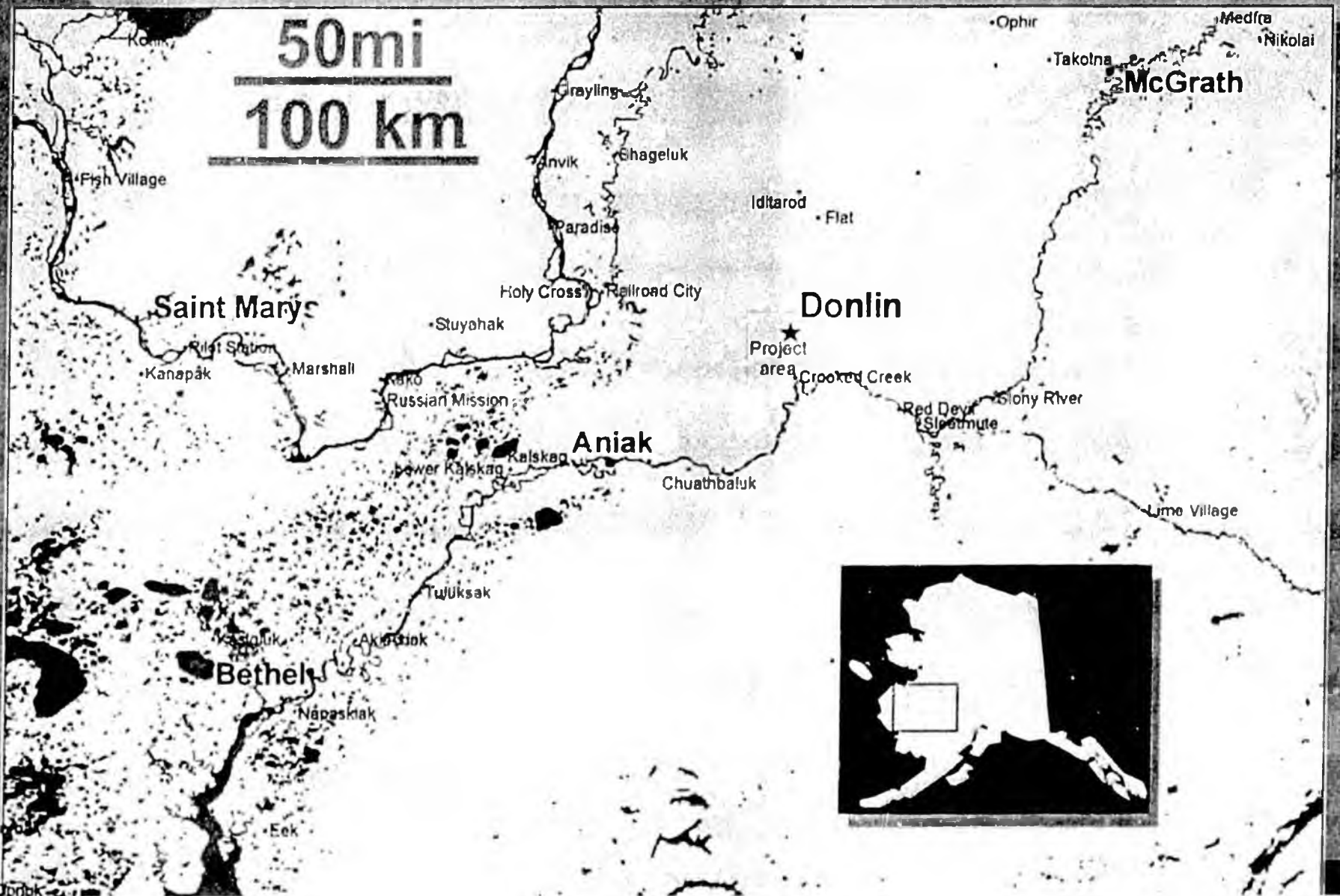
PDC

Donlin Creek Project Update

April 2005

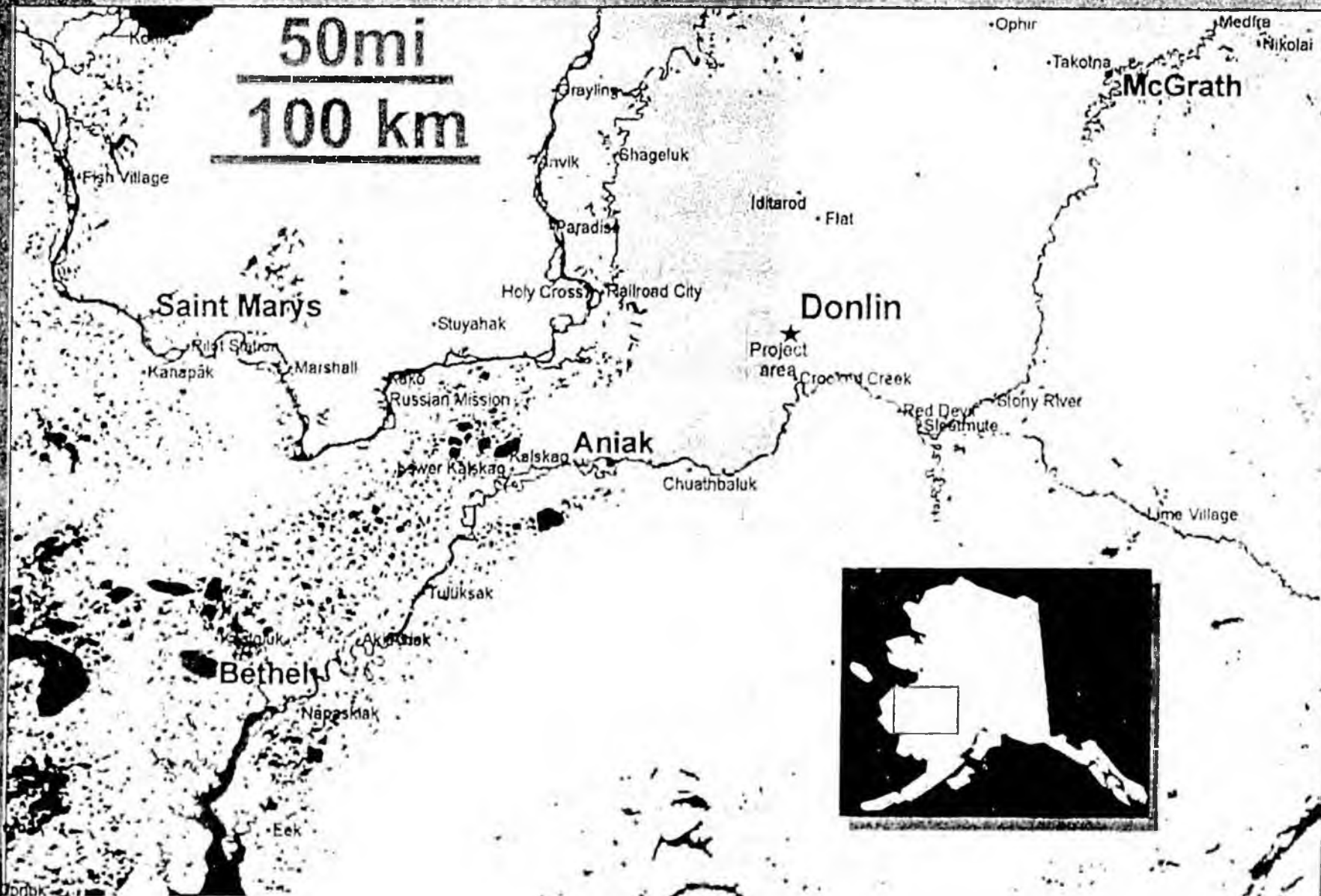


Project Location





Project Location





Mattie Donlin

- Placer Dome Managing JV Partner
- Novagold JV Partner
- Calista Regional Corporation is the subsurface estate owner
- The Kuskokwim Corporation is the surface estate owner

Donlin Creek Joint Venture





Property History

- 1974-88 Calista
 - identified potential for a major lode resource
- 1988-93 Westgold and Teck
 - Exploration and rotary drilling
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Recent Work

REMOST

• 2000 - 2002

- work focused on additional drilling and expansion of the total resource

• 2003 - 2004

- Worked on addressing key project drivers (infrastructure, power, lime)
- Baseline data collection, geotechnical studies and condemnation drilling
- Conducted a preliminary assessment of the project



Drilling

- No additional drilling or work on geological model since 2003
- Core drilling to date totals about 133 km, with additional 35 km of RC drilling
- 2005 work is focusing on infill drilling and updating and refining the geological model within the deposit
- ~ 20,000 m planned for 2005





PDA

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- Mineralization temporally and spatially associated with $\sim 70\text{Ma}$ rhyodacite dikes and sills intruded into sediments of the mid Cretaceous Kuskokwim Group
- Sediments are predominantly interbedded greywacke and shale
- Six intrusive phases recognized

Name	Code	Relative Age
Blue Porphyry	RDXB	Youngest
Aphanitic Flow-banded Porphyry	RDA	
Lathe-rich Porphyry	RDXL	
Crystalline Porphyry	RDX	
Fine-grained Porphyry	RDF	
Mafic Dykes	MD	Oldest

POG

Mineralization



- Mineralization occurs in NNE striking veins that fill extensional fractures in the intrusive and more competent sedimentary rocks
- Veins occur in NNE oriented corridors 100-350 meters thick, which can be broken into sub-corridors from 2-30 meters
- Four primary vein types in the deposit area, variably mineralized
- Ore is refractory, dominant sulfide mineral is pyrite, but the gold is found in the arsenopyrite



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