

ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 8072
214.15 HCRA HB 159 - HB 177 13

Representative Gruenberg
February 19, 1985
page 3

consumer interests in lower airfares. I have also placed a research request with the National Conference of State Legislatures. If they have any pertinent information they will forward it to me.

Providing a credit for state airport fees might also have the effect of attracting additional air carriers into the market, with resulting increased competition and lower fares. The amount of the credit would need to be determined before any accurate effect on the market could be predicted.

The complexity of this project would seem to dictate that it will require considerable time to prepare legislation. The concept of a credit for airport charges based on existing airline levies has not to my knowledge been implemented in any other state. Please let me know if you wish to proceed with this idea, or if I can be of further assistance.

MFF:lmb
L4/051



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1985

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

Dear Representative Grussendorf:

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

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

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

SECTION-BY-SECTION ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

Bill Sheffield
Governor



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

MEMORANDUM

TO: Richard Knapp
Commissioner
Department of Transportation

FROM: Peter Goll
Chairman

A handwritten signature in black ink, appearing to be "PG", written over the printed name "Peter Goll".

SUBJECT: AMENDMENTS HOUSE BILLS 159/160

Commissioner, I am considering an immediate effective date.

Your comments will be appreciated.



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capital
Juneau, Alaska 99811
(907) 465-4833

MEMORANDUM

TO: Richard Knapp
Commissioner
Department of Transportation

FROM: Peter Goll
Chairman

Handwritten signature of Peter Goll in cursive.

SUBJECT: HB159 AMENDMENTS

IN HOUSE BILL 159:

ON PAGE 2, DELETE: Lines 3 through 9.

ON PAGE 2, INSERT NEW LANGUAGE:

(1) by the Department as a cost of airport construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

OK

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

ON PAGE 3, DELETE: Lines 23 through 26. OK

ON PAGE 7, DELETE Lines 8 through 15. OK

ON PAGE 7, INSERT NEW LANGUAGE:

(1) by the Department as a cost of public facility construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

OK

(2) by the utility in all other cases.

ON PAGE 9, DELETE Lines 1 through 5. OK



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

MEMORANDUM

TO: Richard Knapp
Commissioner
Department of Transportation

FROM: Peter Goll
Chairman

Handwritten signature of Peter Goll in cursive.

SUBJECT: HB160 AMENDMENTS

ON PAGE 1, DELETE From Beginning of Line 14 through "Department"
on Line 26.

ON PAGE 1, INSEFT

(1) by the Department as a cost of highway construction, provided that the utility facility is properly installed in accordance with a permit, or in the absence of a permit, was installed prior to the effective date of this act in the proper location in accordance with department regulations;

(2) by the utility in all other cases.

Handwritten initials "OK" in cursive.

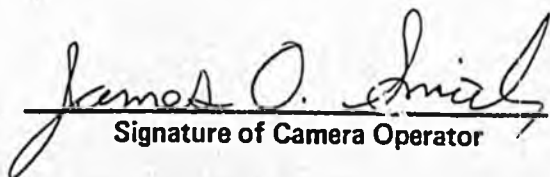
Handwritten initials "OK" in cursive.

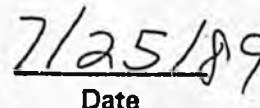


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

HB

160

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HC+RA	2-21-85	3:00 P.M.
	2-20-85	3:00 P.M.

Moen
2/21/85

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 60 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to relocation of utilities incident
7 to highway projects; and providing for an effective
8 date."

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

10 * Section 1. AS 19.25.020(c) is amended to read:

11 (c) The cost of change, relocation, or removal necessitated by
12 highway construction is a cost of highway construction to be paid [BY
13 THE STATE] in accordance with AS 19.45.001(4) as follows:

14 (1) by the department as a cost of highway construction,
15 provided that the utility facility is properly installed in accordance
16 with a permit, or in the absence of a permit, was installed before the
17 effective date of this subsection in the proper location in accordance
18 with department regulations;

19 (2) by the utility in all other cases [, NOTWITHSTANDING THE
20 TERMS OR PROVISIONS OF ANY EXISTING PERMIT, AGREEMENT, REGULATION OR
21 STATUTE TO THE CONTRARY].

22 * Sec. 2. This Act takes effect July 1, 1985.
23
24
25
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27
28
29



HB 160

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1985

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

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that clarifies who is responsible for the payment of relocation or removal costs when a utility facility is required to be changed, removed, or relocated as a result of highway construction. The bill addresses an ambiguity in AS 19.25.020(c) which presently leaves open the question of whether the state must pay for these costs even though a utility facility was not installed or authorized under the authority of a utility permit or, if a permit exists, even though the facility is not installed in the location provided for in the permit.

Some utility companies have expressed a concern over that part of paragraph (2) of sec. 1 of the bill which says that, for utility permits issued after July 1, 1960, the question of who is to pay for relocation costs is to be determined by the terms of the permit. These utility companies point out that utility permits issued between July 1, 1960 and July 1, 1977 require the utility to pick up these costs. (All permits issued after July 1, 1977 require the state to pay for relocation costs.) The utilities' concern is a legitimate one and, if this bill passes, DOT/PF is prepared to amend all those permits issued between July 1, 1960 and July 1, 1977 so that it is clear that the state will bear the costs of relocation. There is no need to amend these permits now because AS 19.25.020(c) presently requires the state to pay for these costs notwithstanding the terms of any existing permit. A draft copy of this proposed amendment is attached.

The bill also makes clear that the question of who pays for future relocation costs is to be a matter of negotiation between the state and the utility to be reflected in the language of the permit.

Section 1 amends AS 19.25.020(c) by creating four new paragraphs:

Paragraph (1) requires the state to pay for the costs of the change, removal, or relocation of any utility facility installed before July 1, 1960 regardless of whether the facility is authorized by a utility permit at the time the change, relocation, or removal of the facility is required. This is a matter of equity and fairness since there was no real uniform utility permit system in place before July 1, 1960.

Paragraph (2) requires either the state or the utility to pay for the costs of the change, removal, or relocation of the utility facility depending on the terms of the permit, provided the permit was issued after July 1, 1960. The effect of this paragraph is to make it clear that the question of who is to pay for relocation costs is a matter to be negotiated between the state and the utility. Presently, the state is required to pay for all relocation costs regardless of any agreement with the utility to the contrary.

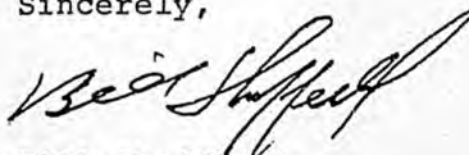
Paragraph (3) requires the utility to pay for relocation costs if their facility was installed after July 1, 1960 and is not under permit. Under existing law, it is ambiguous whether a utility has to pay relocation costs if it does not have a utility permit.

Paragraph (4) requires the utility to pay for relocation costs if their facility is not installed in the location provided for in a permit. Currently, it is unclear whether a utility must pay relocation costs even if its facility is not installed in the location set out in the utility permit.

Section 2 of the bill sets an effective date of July 1, 1985 for this bill.

I urge your favorable action on this measure so that the question of who pays for utility relocation costs under the various circumstances described in the bill is answered in clear statutory language.

Sincerely,



Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: October 17, 1984

Page 1 of 3
REQUEST
 Bill/Resolution No.: HB 160 No 1
 Title: Relocation Assistance
 Amendment Act - AS Title 34
 Sponsor: DOT&PF
 Requestor: _____
 Date of Request: October 10, 1984

FISCAL DETAIL Department of Transportation and
 Agency Affected: Public Facilities
 Program Category Affected: Right of Way and
Land Acquisition
 BRU, Program or Subprogram(s) Affected:
Relocation Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT			SEE ATTACHED			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL	-0-	83.5	83.5	83.5	83.5	83.5
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	83.5	83.5	83.5	83.5	83.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	83.5	83.5	83.5	83.5	83.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

NO NEW POSITIONS REQUIRED

ANALYSIS: Attach a separate page if necessary

Prepared By: Milton H. Lentz, Chief, Relocation Phone: 465-2985
 Division: Standards & Technical Svcs. Assistance Date: October 17, 1984
 Headquarters
 Approved by Commissioner: _____ Date: _____
 Agency: _____

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

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

ANALYSIS HB 160 Page 2 of 3

	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>
100 - Personal Services	12.5	12.5	12.5	12.5	12.5
200 - Travel	5.0	5.0	5.0	5.0	5.0
300 - Contractual	2.0	2.0	2.0	2.0	2.0
400-500 - Commodities and Equipment	1.0	1.0	1.0	1.0	1.0
600 - Land and Structures (Relocation Assistance)	60.0	60.0	60.0	60.0	60.0
 TOTAL	 83.5	 83.5	 83.5	 83.5	 83.5

100 - Based on 450 person-hours x \$28.00/hr.

200 - Project-oriented travel for reconnaissance, studies, project development and performance.

300 - Contract service for various estimates, such as moving cost, inventories, etc.

400-500 - Material and equipment required to perform job, such as booklets, signs, etc.

600 - Estimated cost of relocation assistance (15 parcels/yr. @ \$4,000/parcel average).

Note: Based on past experience with state-funded projects, there have been about 10-20 parcels per year that would be affected by this program. There would be no appreciable difference in years except that a change in philosophy may increase or decrease state-funded projects.

TITLE OF INCREMENT/DECREMENT: Relocation Assistance Amendment Act - A.S. Title 34	AGENCY CONTACT/PHONE NUMBER: Milton H. Lentz 465-2985	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;">CODE</th> <th style="width:75%;">EXPENDITURE BY OBJECT</th> <th style="width:10%;">AGENCY REQ.</th> <th style="width:10%;">COM'S REQ.</th> </tr> </thead> <tbody> <tr><td>100</td><td>Personal Services</td><td>12.5</td><td></td></tr> <tr><td>200</td><td>Travel</td><td>5.0</td><td></td></tr> <tr><td>300</td><td>Contractual Services</td><td>2.0</td><td></td></tr> <tr><td>400</td><td>Supplies</td><td>0.5</td><td></td></tr> <tr><td>500</td><td>Equipment</td><td>0.5</td><td></td></tr> <tr><td>600</td><td>Lands, Buildings, Etc.</td><td>60.0</td><td></td></tr> <tr><td>700</td><td>Grants, Claims, Etc.</td><td></td><td></td></tr> <tr><td>800</td><td>Miscellaneous</td><td></td><td></td></tr> <tr><td colspan="2" style="text-align: right;">TOTAL</td><td>83.5</td><td></td></tr> <tr><td colspan="4" style="text-align: center;">I-A Receipts for (NON-ADD)</td></tr> <tr><td>1002</td><td>Federal Receipts</td><td></td><td></td></tr> <tr><td>1003</td><td>General Fund Match</td><td></td><td></td></tr> <tr><td>1004</td><td>General Fund</td><td></td><td></td></tr> <tr><td>1005</td><td>I-A Receipts</td><td></td><td></td></tr> <tr><td>1028</td><td>Program Receipts</td><td></td><td></td></tr> <tr><td>1061</td><td>Other CIP Receipts</td><td>83.5</td><td></td></tr> <tr><td colspan="2" rowspan="4" style="vertical-align: middle;">POSITION INFORMATION</td><td>PFT</td><td></td></tr> <tr><td>PPT</td><td></td></tr> <tr><td>Non Permanent</td><td></td></tr> <tr><td>Staff Months</td><td></td></tr> </tbody> </table>	CODE	EXPENDITURE BY OBJECT	AGENCY REQ.	COM'S REQ.	100	Personal Services	12.5		200	Travel	5.0		300	Contractual Services	2.0		400	Supplies	0.5		500	Equipment	0.5		600	Lands, Buildings, Etc.	60.0		700	Grants, Claims, Etc.			800	Miscellaneous			TOTAL		83.5		I-A Receipts for (NON-ADD)				1002	Federal Receipts			1003	General Fund Match			1004	General Fund			1005	I-A Receipts			1028	Program Receipts			1061	Other CIP Receipts	83.5		POSITION INFORMATION		PFT		PPT		Non Permanent		Staff Months	
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DESCRIBE WHY THIS INCREMENT/DECREMENT IS NEEDED AND WHAT IT PURCHASES: Alaska Statute Title 34, Chapter 60, allows and requires this Department to administer a program which gives relocation assistance and makes payments to people and businesses that must move as a result of construction of capital improvements. The payments are in addition to the fair market value of property taken. They are confined to federally assisted activities in the existing law. This proposed legislation would expand the statute to include state-funded programs. All state activities would then be subject to the same relocation assistance whether they were funded with or without federal-aid, thus providing uniformity and equality throughout the state program. The need for this consistency is readily apparent when a state project and federal-aid project are located in the same area at the same time.		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%; vertical-align: top;"> <input type="checkbox"/> Enhance Existing Service Compared to FY 85 <input checked="" type="checkbox"/> New Service Compared to FY 85 <input type="checkbox"/> Continuation of FY 85 Service Level </td> <td style="width:30%; vertical-align: top;"> <input type="checkbox"/> Formula Program </td> </tr> </table>	<input type="checkbox"/> Enhance Existing Service Compared to FY 85 <input checked="" type="checkbox"/> New Service Compared to FY 85 <input type="checkbox"/> Continuation of FY 85 Service Level	<input type="checkbox"/> Formula Program																																																																												
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IMPACT FROM CAPITAL PROJECT (NAME) <hr/> Chapter _____ SLA _____ Page/Line _____																																																																																

C5 INCREMENT/DECREMENT REQUEST Agency Priority _____ of _____	AGENCY Department of Transportation & Public Facilities	HB 160	FY 85
	PROGRAM _____		
	BRU _____		
	COMPONENT _____	PAGE 3 OF 3	
	PROJECT _____	REVISED DATE _____	

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Page 1 of 2

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 160, No 2

Title: Utility Relocation/
Highway Encroachments

Sponsor: _____

Requestor: DOT&PF

Date of Request: October 22, 1984

FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: Utilities

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	(250.0)*	(250.0)*			
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

SEE ATTACHMENTS

* STATE FUNDS ONLY

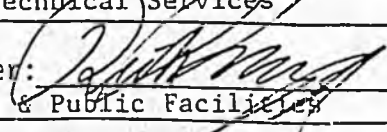
Federal funding agencies will not participate in relocation costs when a utility is not under permit or properly installed.

Prepared By: Bruce R. Freitag/Roger Allington

Division: Standards & Technical Services

Phone: 465-2957

Date: 10-22-84

Approved by Commissioner: 

Agency: Transportation & Public Facilities

Date: 11-15-84

Distribution (by Agency preparing fiscal note):

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

7/1/84

Relocation of Utilities Incident To Highway Projects

The need for this legislation is to revise statute authority such that Department reimbursement for utility relocation work incident to highway construction would only be allowed if the utility facility was properly permitted by the Department within State highway rights-of-way. The Department's permit also provides assurance that the utility facility is properly located and installed in accordance with established codes (ie electrical, safety, etc). Presently the law allows for utility relocation reimbursement even if the utility facility is not under permit or within code requirements.

A M E N D M E N T

Offered in the Community &
Regional Affairs Committee

By: Gruenberg
House Bill No. 159

1. Change Title as follows:

"An Act relating to the use of State Airports, Public Facilities and Highways for Utility Encroachment, and other purposes, and providing for an effective date."

2. AS 02.15.090 is amended by adding a new subsection as follows:

(c) In its proprietary capacity acting as agent for the state with respect to any airport facility, the department or any municipality acting in a similar capacity may calculate and grant a credit against fees charged under this section to any air carrier charging passenger tariffs between that airport facility and other destinations which cost no more per mile than the average per mile passenger tariff charged by all regularly scheduled air carriers between the ten most frequently traveled domestic air routes in the contiguous continental United States.

3. Renumber all succeeding sections.

Sec. 02.15.090. Operation and use privileges. (a) State operation. In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases and other arrangements covering periods not exceeding 55 years with a person or municipality or the United States, granting the privilege of using or improving an airport or air navigation facility or a portion of it or space in it for commercial or governmental purposes; or conferring the privilege of supplying goods, commodities, services or facilities at an airport or air navigation facility. The department may establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services, which are reasonable and uniform for the same class of privilege or service. These terms, conditions, charges, rentals and fees shall be established with due regard to the property and improvements used and the expense of operation to the state. In no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion thereof.

(b) Other operation. The department may by contract or other arrangement, upon a consideration fixed by it, grant to any qualified municipality or person for a reasonable period of time the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state. No municipality or person granted that privilege may operate the airport other than as a public airport or enter into any contract, lease or other arrangement in connection with the operation which the department may not have undertaken under (a) of this section. (§ 5 E ch 123 SLA 1949; added by § 1 ch 117 SLA 1959)

add new
sec. (5)

→ **Sec. 02.15.095. Ground transportation: "Courtesy cars."** Notwithstanding the provisions of AS 02.15.090(a), the department may not exclude from the streets, roads, highways, parking facilities or other portions of a state-operated airport designated for operation or parking of ground transportation vehicles, nor may the department prohibit from picking up and discharging passengers, those motor vehicles commonly known as "courtesy cars" owned or operated by hotels, motels or other similar places of public accommodation for the transportation of their guests to and from the airport at the request of the guest and for which service no charge is made to the guest. (§ 1 ch 9 SLA 1974)

Sec. 02.15.100. Liens. The department may enforce the payment of any charges for repairs, improvements, storage, or care of personal property made or furnished by the department or its agents, in connection with the operation of an airport or air navigation facility owned or operated by the state. The state has those lien rights generally allowed by law to secure payment for those services. (§ 5 E ch 123 SLA 1949; added by § 1 ch 117 SLA 1959)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1985

SUBJECT: Alaska's Airline Industry
(Work Order No. 14-0620)

TO: Representative Gruenberg
Chairman,
Health, Education, & Social Services Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have requested that I examine Alaska's airline industry to determine if there is any method by which the state could affect the prices being charged for travel between Alaska and the other States. The price of air travel is generally recognized as being higher per air mile between Alaska and points south, than between equivalent distances in the continental U.S..

Under the Airline Deregulation Act of 1978 (P.L. 95-504), the restrictions on raising or lowering fares for domestic travel were minimized. Other than a thirty day notice requirement, the airlines have been able to set fares as they wish. In some markets this has resulted in lower fares as competition has grown, in some markets such as Alaska, the deregulation has not appreciably lowered prices. The power of the state to affect interstate travel is limited by the doctrine of federal preemption. In essence the federal government's authority over this area preempts any efforts by the state to regulate or affect the prices charged by carriers for interstate travel.

This does not mean that the state cannot act at all, simply that it must act without intruding upon that area controlled by federal law. The Airline Deregulation Act (P.L. 95-504) addressed this question in section 4(a) and provided that no state could enact any law, regulation, or other provision having the force or effect of law relating to rates, routes, or services of any interstate air carrier. This prohibition

contains an exception however, as regards a State's proprietary powers and rights as the owner or operator of an airport. As an owner, the state exercises proprietary rights in charging the air carriers fees for landing, parking, terminal space and fuel. The two places in which Alaska exercises such rights are Anchorage and Fairbanks, through the Department of Transportation and Public Facilities. It is possible that the state could use it's proprietary powers to advance a consumer interest, such as lower airfares. Assuming that the state is legitimately charging for the use of it's facilities through the use of landing, parking, space and fuel fees, the state could give a credit against those charges to those air carriers who maintain a particular airfare. This would be intended to encourage lower airfares for customers, at no cost to the air carrier. To be a permissible law, it is important that the credit be a function of the State's proprietary powers, and not an effort to require air carriers to set specific airfares. Although an air carrier could still argue that the state is attempting to regulate air fares, and hence is violating federal law, this approach would appear to have a good chance of surviving a court challenge. Assuming that the credit would be entirely optional with the air carrier, it would seem difficult to argue that the state is imposing a burden on interstate commerce, or violating federal preemption of the control of airfares.

It is also possible that a close examination of the charges made for the use of Alaska's airports would reveal an additional tax or fee could legitimately be charged that is not being collected at present. If so, the state would not be losing any revenues currently going into the general fund. The amount of revenue that could be collected is governed by federal law, 49 U.S.C. 1513.

I have contacted the state D.O.T.P.F. and requested further information on the calculation of the particular fees being collected for the use of airport facilities. I have also spoken to the federal D.O.T. concerning calculation of airline tariffs. I will also be receiving information on the methodology of determining costs per airline mile. Assuming that a credit system is implemented, it will be necessary to develop a method for comparing costs between particular air routes.

All of the above also assumes that the state is willing to forego revenue from airport fees in order to promote

Representative Gruenberg
February 19, 1985
page 3

consumer interests in lower airfares. I have also placed a research request with the National Conference of State Legislatures. If they have any pertinent information they will forward it to me.

Providing a credit for state airport fees might also have the effect of attracting additional air carriers into the market, with resulting increased competition and lower fares. The amount of the credit would need to be determined before any accurate effect on the market could be predicted.

The complexity of this project would seem to dictate that it will require considerable time to prepare legislation. The concept of a credit for airport charges based on existing airline tariffs has not to my knowledge been implemented in any other state. Please let me know if you wish to proceed with this idea, or if I can be of further assistance.

MFF:lmb
L4/051

TITLE 17.
TRANSPORTATION AND PUBLIC FACILITIES

Chapter

- 5. Administration (17 AAC 05.010-17 AAC 05.020)
- 10. Engineering: Encroachments, Driveways, and Road Approaches (17 AAC 10.010-17 AAC 10.050)
- 15. Utility and Railroad Permits
(17 AAC 15.010-17 AAC 15.901)
- 20. Maintenance (17 AAC 20.010-17 AAC 20.040)
- 25. Operations, Wheeled Vehicles
(17 AAC 25.010-17 AAC 25.110)
- 30. North Road Operations
(17 AAC 30.010-17 AAC 30.070)
- 40. Aviation (17 AAC 40.010-17 AAC 40.550)
- 50. Buildings (17 AAC 50.010)
- 70. Marine Transportation
(17 AAC 70.010-17 AAC 70.230)
- 80. Water and Harbors
(17 AAC 80.010-17 AAC 80.110)

Editor's Note: To avoid undue printing expenses, individual page headings in this title will be changed from "HIGHWAYS" to "TRANSPORTATION AND PUBLIC FACILITIES" only when regulations in Title 17 are amended.

TITLE 17.
TRANSPORTATION
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- 80. Water and Harbors
(17 AAC 80.010-17 AAC 80.110)

CHAPTER 05.
ADMINISTRATION

Section

- 10. Alaska Highway System
- 20. Commissioner's deed

17 AAC 05.010. ALASKA HIGHWAY SYSTEM. (a) A highway system consisting of such facilities as the commissioner may designate shall be known as the "Alaska Highway System."

(b) The Alaska Highway System shall be compiled in a list and published for public information in a suitable manner and shall contain the following:

- (1) the name common to or designated for the facility;
- (2) its numerical designation, if any;
- (3) its beginning and terminal points; and
- (4) its general route by denoting principal settlements and landmarks along its course.

(c) Maps and other identifying documents may be inspected at district and headquarter offices located at Anchorage, Fairbanks, Juneau, Nome and Valdez.

(d) The Alaska Highway System shall become official upon a declaration of adoption by the commissioner, and no revision, addition, or deletion to it may become effective without a similar declaration, except by law; official maps of the system shall be made available at cost.

(e) The provisions of this section relating to the adoption of the Alaska Highway System do not apply to minor adjustments, revisions, or relocations to it so long as the general location, route, and termini remain substantially unchanged and the class of the highway is not altered.

(f) The Alaska Highway System may include both present and future routes, provided that the latter are suitably distinguished from the former upon all maps, and in all recommendations and declarations. (Eff. 6/25/69, Reg. 30; am 9/3/72, Reg. 43)

Authority: AS 19.05.020
AS 19.10.020

17 AAC 05.020. COMMISSIONER'S DEED. Whenever any real property, or interest therein, shall have been acquired by or transferred to the state through inadvertence or mistake in connection with highway purposes, the department shall prepare and submit a deed signed by the commissioner reconveying the right, title, or interest acquired. However, the reconveyance may not be executed until the state has been repaid the consideration, if any, for the acquisition or transfer. (Eff. 6/19/69, Reg. 30; am 9/3/72, Reg. 43)

Authority: AS 19.05.020
AS 19.05.040

CHAPTER 10.
ENGINEERING: ENROACHMENTS,
DRIVEWAYS, AND ROAD APPROACHES

Section

- 10. Encroachments
- 20. Driveways and road approaches
- 30. Driveway and road approach permits and utilities
- 40. Facility service roads and trails
- 50. Definitions

17 AAC 10.010. ENCROACHMENTS. Encroachments may be installed or permitted within highway lands, or rights-of-way, under certain conditions, when they have been the subject of a previously secured written authorization issued by the department and, in respect to all highways acquired or constructed in whole, or in part, with federal-aid funds, in accordance with the federal regulations governing the future use and occupation of such highways. (Eff. 6/25/69, Reg. 30)

Authority: AS 19.05.020

17 AAC 10.020. DRIVEWAYS AND ROAD APPROACHES. (a) All driveways or road approaches constructed under permit within any highway lands or rights-of-way shall be the property of the state, but all cost and liability in their connection or in connection with their maintenance shall be at the sole expense of those lands served.

(b) Such facilities shall be constructed and maintained in such a manner that the highway, and all its appurtenances or facilities including, but not limited to, all drainage facilities, pipes, culverts, and ditches, and their safety shall not be impaired or endangered in any way by the construction or maintenance; the permits shall contain express conditions which provide for the enforcement of (a) and (b) of this section.

(c) The permit forms, except the utility permits described in 17 AAC 15, shall contain a clause which provides that the permittee shall adjust or relocate such encroachments without cost or liability to the state if, at any time, or from time to time, the use or safety of the highway within which such encroachment exists requires that the encroachment be adjusted or relocated, and that the permittee shall save and keep harmless the

state, its officers, agents, employees, and contractors in any matters pertaining to the encroachment, and that the permittee shall assume all liability or cost in connection with the encroachment.

(d) Permits may be issued for driveways on any highway not converted to, or originally established as, a controlled access facility, if, in the opinion of the department, the driveways are proposed to be located in a manner which is compatible with the public safety and which will not interfere with the use of the highway; provided, however, that if the highway was financed in whole, or in part, with federal-aid funds, a stipulation in the permit shall provide that the driveway is a portion of the public facility; and further provide, that the permittee or his successors and assigns shall assume all cost and liability occasioned by either the construction or maintenance of the driveway.

(e) If a driveway constitutes the replacement of an existing means of access to privately owned lands, the department, at the time of the construction or reconstruction of the highway, shall cause such driveways to be constructed in a manner and location consistent with the engineering standards proper to the highway, in preference to replacing the existing means of access in kind, and any major improvement in the property thus effected shall be considered to be a special benefit to be offset against any severance damages to the land. Upon the completion of the construction of the highway, the owner of said lands shall be issued a standard encroachment permit containing the provisions described in (d) of this section.

(f) If no means of access, as described in (e) of this section, exist to serve any such private parcel of land, and provided that the owner is resident thereon, or has made improvements to the land, the department shall designate and construct such a driveway at a location which best serves the land, or at a location selected and designated by the owner of the land, to the extent that such driveway locations are consistent with good engineering practice and economy, the standards pertaining to such highway, and the full use and safety of such highway. Upon the completion of the construction of the highway, the owner of the

land shall be issued a standard encroachment permit which contains the provisions described in 17 AAC 10.010. The entire amount by which the driveway enhances the value of the land is a special benefit to be offset against any severance damages to the land.

(g) The burden and cost of maintaining a driveway within a highway right-of-way shall be upon the lands served by said driveway, and shall be maintained to conform to standards set forth by the department.

(h) In the event that a critical situation arises in connection with a driveway within a highway right-of-way, the state may correct said situation with state personnel or equipment, or both, in which the event the cost thereof shall become a charge against the lands served by said driveway. (Eff. 6/25/69, Reg. 30)

Authority: AS 19 05.020

Historical Note: 1. Source of (a)-(f) is former 14 AAC 2.361-.366.2. Source of (g) and (h) is former 14 AAC 2.390(g) and (k).

17 AAC 10.030. DRIVEWAY AND ROAD APPROACH PERMITS AND UTILITIES. The finished grade of a proposed driveway or road approach may not be less than the minimum vertical clearance requirements of 17 AAC 15.201 or the minimum depth-of-bury requirements of 17 AAC 15.211. The department will, in its discretion, grant a permit to an applicant who arranges with the owners of the affected utility facilities to adjust the facilities, at no cost to the department, to conform to the requirements of 17 AAC 15. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

17 AAC 10.040. FACILITY SERVICE ROADS AND TRAILS. Ingress or egress to highway rights-of-way for a service road or trail is subject to the provisions of 17 AAC 10.020 and the 1975 edition of the department's publication entitled "Driveway Regulations." (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

17 AAC 10.050. DEFINITIONS. In this chapter

(1) "driveway" and "road approach" mean that area of the right-of-way between the edge of the pavement or the edge of the traveled way and that part of the adjacent property line which is not encumbered by the right-of-way and which is used for the movement of traffic between the highway and the adjacent property;

(2) "service road or trail" means a road or trail that parallels a communication facility, electrical facility, pipeline, railroad, or other utility facility and is used to patrol and maintain the facility. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

CHAPTER 15.
UTILITY AND RAILROAD PERMITS

Article

1. Utility Permits
(17 AAC 15.010 – 17 AAC 15.111)
2. Utility Standards and Requirements
(17 AAC 15.120 – 17 AAC 15.301)
3. Utility Relocation and Installation
(17 AAC 15.310 – 17 AAC 15.461)
4. Railroads
(17 AAC 15.471–17 AAC 15.551)
5. General Provisions (17 AAC 15. 901)

ARTICLE 1.
UTILITY PERMITS

Section

10. (Repealed)
11. Utility permits
20. (Repealed)
21. Application for utility permit
30. (Repealed)
31. Application for utility permit on section-line rights-of-way
40. (Repealed)
41. Permit fees, charges and rentals
50. (Repealed)
51. Bond
60. (Repealed)
61. Indemnification
70. (Repealed)
71. Assignment and transfer of utility permit
80. (Repealed)
81. Joint-use facilities
90. (Repealed)
91. Revocation of utility permit
100. (Repealed)
101. Permits for utility service connections
110. (Repealed)
111. Utility facilities installed without permit

17 AAC 15.010. APPLICATION FOR UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.011. UTILITY PERMITS.
(a) Upon written application, the department will, in its discretion, issue a permit authorizing the applicant to construct or install utility facilities within a department right-of-way. Permits for railroad facilities will be issued under 17 AAC 15.471 – 17 AAC 15.551.

(b) A utility permit will authorize the activities reasonably required for the construction, maintenance, or operation of the utility facility described in an approved permit application.

(c) The department will, in its discretion, attach to the utility permit special provisions it considers necessary to protect the public interest.

(d) Utility permits expire if construction or installation of the facility has not started within one year after the date of approval, unless the applicant obtains an extension of time in writing from the department.

(e) This chapter applies only to those utility facilities that require utility permits. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	AS 44.42.030

17 AAC 15.020. UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.021. APPLICATION FOR UTILITY PERMIT. (a) Application for issuance of a utility permit must be made on a form prescribed by the department.

(b) The application must describe in detail the type of facility and its proposed location within the department right-of-way or other location. The application must include plans, specifications, and other pertinent data. A diagram or drawing showing the location of all known overhead, surface, and underground facilities existing in the vicinity of the proposed facility must also be included with the application.

(c) If a utility facility covered by an existing permit is to be reconstructed or modified substantially, the permittee shall apply for a new permit. If the proposed modifications are not substantial, the permittee need only apply for an amended permit. In either case the application must comply with (b) of this section.

(d) The applicant shall notify all known utilities in the immediate vicinity of the proposed installation.

(e) Permit applications for pipeline installations must describe the nature of the substance to be transmitted; the maximum working, test, and design pressures; and the design standards for the pipe. When it is anticipated that there will be a change in the nature of the substance that is transmitted, or an increase in maximum design pressure from that specified in the permit, the permittee shall obtain, in advance, written department approval for the change.

(f) If a utility proposes to locate a facility within a department highway right-of-way within a national forest, national park, military reservation, or other land of the federal government, the utility shall obtain written approval from the appropriate controlling federal agency.

(g) If a utility proposes to locate a facility within a department right-of-way that crosses navigable water, the utility shall obtain written approval from the U.S. Army Corps of Engineers or the U.S. Coast Guard.

(h) If a utility proposes to locate a facility within a department right-of-way which passes through restricted Native allotment land, the utility shall obtain written approval from the Bureau of Indian Affairs.

(i) If a utility proposes to locate a facility within a department right-of-way which passes through Bureau of Land Management land, the utility shall obtain written approval from the Bureau of Land Management.

(j) If a utility proposes to locate a facility within a department right-of-way that crosses a river, lake, or stream specified in the List of Waters Important to Anadromous Fish in 5 AAC 95, the utility shall obtain written approval from the Alaska Department of Fish and Game.

(k) If a utility proposes to locate an overhead facility within a department right-of-way located within two statute miles of any airport, airstrip, or private air facility, the utility shall obtain written approval from the Federal Aviation Administration or, if the airport or airstrip is under military control, from the appropriate military command.

(l) Applications not approved by the department will be returned to the applicant accom-

panied by a letter of explanation. (Eff. 5/23/82, Reg. 82)

Authority: AS 02.15.020	AS 19.25.200
AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.20.090	AS 19.40.065
AS 19.25.010	AS 44.42.030

17 AAC 15.030 BOND. Repealed 5/23/82.

17 AAC 15.031. APPLICATION FOR UTILITY PERMIT ON SECTION-LINE RIGHT-OF-WAY. (a) Utility permits are required only for section-line rights-of-way presently used or proposed for use by the department. A person seeking to install a utility facility within a section-line right-of-way shall check with the department to determine whether the department presently uses or proposes to use the affected portion of the section-line right-of-way.

(b) Before issuing a permit for the installation of a utility facility within a section-line right-of-way, the department must be satisfied that a section-line right-of-way exists at the location where the facility is proposed to be installed by the permit applicant. The permit applicant shall furnish proof of the existence of the section-line right-of-way.

(c) An applicant that is granted a permit for the installation of a utility facility within a department section-line right-of-way shall coordinate the installation of the facility with any proposed department project using the section-line right-of-way.

(d) The permittee shall provide one copy of each permit for the installation of any utility facility within a department-controlled section-line right-of-way to the Department of Natural Resources.

(e) The department will immediately submit written notice to the Department of Natural Resources if a section-line permit application is denied. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	

17 AAC 15.040. INSPECTION OF WORK AUTHORIZED BY UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.041. PERMIT FEES, CHARGES AND RENTALS. (a) The department will, in its discretion, establish a nonrefundable filing fee for each permit application.

(b) The department will, in its discretion, require a permittee to reimburse the department for the actual cost of inspection if the special provisions of the utility permit require an inspection.

(c) The department will, in its discretion, establish a schedule of annual rental fees for attachment of utility facilities to department-owned or -controlled structures. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.200 AS 19.40.065

17 AAC 15.050. FACILITY MAINTENANCE. Repealed 5/23/82.

17 AAC 15.051. BOND. The department will, in its discretion, require a bond or assurance to pay for damage to or repair of a highway or other state facility which may result from a permittee's construction along, in, over, or under a department right-of-way. The department will determine the amount and duration of the bond or assurance. The bond form must comply with requirements of the department. The department will, in its discretion, require the permittee's contractor to furnish an indemnification bond secured by cash or other security when it is determined to be in the public interest. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065

17 AAC 15.060. SAFETY AND PROTECTION. Repealed 5/23/82.

17 AAC 15.061. INDEMNIFICATION. The permittee shall indemnify and hold harmless the state from all liability for damage to property and injury or death of persons arising wholly or in part from any action taken by a permittee in relation to the permittee's facilities on depart-

ment rights-of-way or other permitted locations. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065

17 AAC 15.070. HIGHWAY POLICY FOR ACCOMMODATION OF UTILITIES. Repealed 5/23/82.

17 AAC 15.071. ASSIGNMENT AND TRANSFER OF UTILITY PERMIT. (a) A permittee may not assign or transfer any rights granted by the utility permit to another individual or other entity without prior written approval from the department.

(b) When a permittee sells out to another utility, or combines or merges with another utility, or otherwise changes identity, the new utility shall inform the department in writing within 30 days after the date of the transaction, and shall furnish the department with the names and addresses of the new officials responsible for the permittee's facilities. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200

17 AAC 15.080. BRIDGES. Repealed 5/23/82.

17 AAC 15.081. JOINT-USE FACILITIES. (a) The department will, in its discretion, require two or more utilities desiring to locate facilities on a department right-of-way to jointly use a single facility.

(b) Utilities jointly using utility facilities must enter into a formal agreement concerning the joint use. A copy of this agreement must be furnished to the department. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200 AS 42.05.311

17 AAC 15.090. JOINT USE. Repealed 5/23/82.

17 AAC 15.091. REVOCATION OF UTILITY PERMIT. (a) A utility permit may be revoked if

(1) the facilities were not constructed or installed in accordance with the terms of the utility permit;

(2) the facilities do not conform to the applicable federal, state, and local standards and requirements;

(3) the permittee fails to adequately maintain the facility after having been notified to do so in writing by the department;

(4) the permittee fails to provide safe and adequate detours, barricades, signs, flagmen, or other controls to protect the public as provided in 17 AAC 15.241;

(5) the permittee fails, after written notice from the department, to take corrective measures to comply with the department's instructions or requests;

(6) it is in the mutual interest of the department and the utility as provided in 17 AAC 15.451.

(b) The construction operations of a permittee or his contractor will, in the department's discretion, be suspended by the department for any of the conditions listed in (a) of this section until the conditions are corrected. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.25.220
AS 19.05.040	AS 19.30.051
AS 19.10.240	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	

17 AAC 15.100. MULTIPLE FACILITIES. Repealed 5/23/82.

17 AAC 15.101. PERMITS FOR UTILITY SERVICE CONNECTIONS. (a) The department will, in its discretion, require an amendment to an existing utility permit or new permit for all utility service connections.

(b) The department will, in its discretion, allow a permittee to install additional service connections across or within a department right-of-way where a longitudinal underground,

surface, or overhead distribution or feeder line has been installed under a utility permit. The utility permit will be amended by the department to include the additional service connections.

(c) New permits are required for underground utility service connections which cross a department right-of-way and which originate from distribution lines located outside the right-of-way. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	

17 AAC 15.110. DRIVEWAYS AND ROAD APPROACHES UTILITY CONFLICTS. Repealed 5/23/82.

17 AAC 15.111. UTILITY FACILITIES INSTALLED WITHOUT PERMIT. (a) Except for facilities installed before July 1, 1960, or installed under 17 AAC 15.031, any utility facility installation located within a department right-of-way without a utility permit is an unauthorized encroachment.

(b) The owner of a utility facility within a department right-of-way and which is an unauthorized encroachment shall submit an application for a utility permit to the department.

(c) The department will issue a utility permit for encroaching utility facilities meeting the requirements of this chapter.

(d) The owner of an encroaching utility facility shall relocate the facility in order to comply with the minimum requirements of this chapter. Any relocation will be at the owner's expense. If the owner does not take appropriate action within a reasonable time, the unauthorized encroachment is subject to removal under AS 19.25.220 - 19.25.250. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.210	

**ARTICLE 2.
UTILITY STANDARDS AND
REQUIREMENTS**

Section

- 120. (Repealed)
- 130. (Repealed)
- 131. Utility accommodation on controlled-access highways
- 140. (Repealed)
- 141. Utility accommodation on existing highways to be converted to controlled access
- 150. (Repealed)
- 151. Overhead crossings on controlled-access highways
- 160. (Repealed)
- 161. Underground crossings on controlled-access highways
- 170. (Repealed)
- 171. Utility accommodation on urban highways and streets
- 180. (Repealed)
- 181. Utility accommodation on rural highways and roads
- 190. (Repealed)
- 191. Utility accommodation in scenic areas
- 200. (Repealed)
- 201. Overhead clearances
- 210. (Repealed)
- 211. Underground facilities
- 220. (Repealed)
- 221. Irrigation and drainage facilities
- 230. (Repealed)
- 231. Highway structures
- 240. (Repealed)
- 241. Safety precautions to be taken by permittee
- 250. (Repealed)
- 251. Installation and inspection
- 260. (Repealed)
- 261. Errors in facility placement
- 270. (Repealed)
- 271. Right-of-way clearing and restoration
- 280. (Repealed)
- 281. Routine maintenance
- 290. (Repealed)
- 291. Emergency maintenance
- 300. (Repealed)
- 301. Utility codes and standards

17 AAC 15.120. UNDERGROUND FACILITIES. Repealed 5/23/82.

17 AAC 15.130. UTILITY STANDARDS OF THE DEPARTMENT OF HIGHWAYS. Repealed 5/23/82.

17 AAC 15.131. UTILITY ACCOMMODATION ON CONTROLLED-ACCESS HIGHWAYS. (a) No utility facility may be installed longitudinally within the controlled-access limits of a highway unless the utility demonstrates to the satisfaction of the department that there is no feasible alternative, and that the proposed utility facility will not adversely affect the design, construction, maintenance, safety, or operation of the highway.

(b) Access for maintenance of a utility facility located within controlled-access limits of a highway or from the entrance or exit ramp of a highway is prohibited.

(c) A facility located within the controlled-access limits of a highway as of the effective date of this section must be relocated or other provisions made so that it can be maintained without using access from the highway or from entrance or exit ramps of the highway. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.25.200
AS 19.05.040	AS 19.30.051
AS 19.20.030	AS 19.30.121
AS 19.20.070	AS 19.40.065
AS 19.25.010	

17 AAC 15.140. CODES OF GOVERNMENTAL AND STATE AGENCIES. Repealed 5/23/82.

17 AAC 15.141. UTILITY ACCOMMODATION ON EXISTING HIGHWAYS TO BE CONVERTED TO CONTROLLED ACCESS. (a) A facility located within the right-of-way limits of an existing highway which will be or has been converted to a controlled-access highway will, in the department's discretion, be permitted to remain in its existing location if the facility can be maintained without using access from the highway or its entrance or exit ramps.

(b) The department will relocate any existing facility that can be maintained only from the proposed controlled access of a highway or its entrance or exit ramps or make other provisions to maintain the facility without requiring access from the highway or its entrance or exit ramps.

The department will pay the cost of the relocation or other provisions.

(c) No utility facility installation is permitted within the controlled-access limits, except as provided in 17 AAC 15.131 (a) and (b). (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.25.200
AS 19.05.040 AS 19.30.051
AS 19.20.030 AS 19.30.121
AS 19.20.070 AS 19.40.065
AS 19.25.010

17 AAC 15.150. CLEARING FOR UTILITIES IN HIGHWAY RIGHT-OF-WAY. Repealed 5/23/82.

17 AAC 15.151. OVERHEAD CROSSINGS ON CONTROLLED-ACCESS HIGHWAYS.

(a) An existing overhead facility may not cross a controlled-access highway if it interferes with the design requirements of the highway, or if it can be maintained or serviced only from within the controlled-access limits.

(b) New or relocated overhead utility facilities or overhead utility facilities located within the right-of-way of an intersecting roadway which crosses a controlled-access highway may not be maintained or serviced from within the controlled-access limits.

(c) New or relocated overhead facility crossings of controlled-access highways must be designed and constructed as double dead-end structures where the transmission voltage is 33,000 volts or more. Where the transmission voltage is less than 33,000 volts, design and construction standards must equal or exceed standards of the 1981 edition of the National Electrical Safety Code. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.25.200
AS 19.05.040 AS 19.30.051
AS 19.20.030 AS 19.30.121
AS 19.20.070 AS 19.40.065
AS 19.25.010

17 AAC 15.160. AERIAL CLEARANCE, MINIMUM. Repealed 5/23/82.

17 AAC 15.161. UNDERGROUND CROSSINGS ON CONTROLLED-ACCESS HIGHWAYS.

(a) Underground facility crossings of a controlled-access highway, existing as of the

effective date of this section or proposed for construction after that date, may not be maintained from within the controlled-access limits.

(b) New underground crossings must be as nearly perpendicular to the highway centerline as practicable. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.25.200
AS 19.05.040 AS 19.30.051
AS 19.20.030 AS 19.30.121
AS 19.20.070 AS 19.40.065
AS 19.25.010

17 AAC 15.170. PRIOR RIGHTS. Repealed 5/23/82.

17 AAC 15.171. UTILITY ACCOMMODATION ON URBAN HIGHWAYS AND STREETS.

(a) The department will, in its discretion, allow utility facilities to be located within the right-of-way of urban highways and streets.

(b) Manholes for underground facilities must be located so that their maintenance may be accomplished with minimum interference to the roadway.

(c) Utility facilities that are proposed to be installed in the department rights-of-way of existing or proposed urban highways or other permitted locations, must be installed so that future expansion of the utility facility will avoid interference with the operation and maintenance of the existing or proposed highway and its related structures.

(d) The minimum distance between the nearest part of an above-ground utility facility and the edge of the traveled way of an urban highway or street without curbs must comply with the following table:

Minimum distance in feet	Posted Roadway Speed in Miles Per Hour			
	above 50	40 to 50	30 to 39	below 30
	30	20	10	5

(e) On urban highways with curbs, the minimum distances between the face of the curb and the nearest part of the facility may not be less than two feet.

(f) Facilities existing as of the effective date of this section may remain in their existing location, unless the facilities are determined to

be roadside hazards. Facilities that have been determined to be roadside hazards must be relocated to conform with this chapter. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200

17 AAC 15.180. FREQUENCY OF REQUESTED RELOCATION AND/OR ADJUSTMENTS. Repealed 5/23/82.

17 AAC 15.181. UTILITY ACCOMMODATION ON RURAL HIGHWAYS AND ROADS.

(a) Longitudinal utility facilities located within the rights-of-way of rural highways and roads must meet the following minimum offset requirements:

Minimum distance in feet	Posted Roadway Speed in Miles Per Hour			
	above 50	40 to 50	30 to 39	below 30
	30	20	10	5

(b) Existing longitudinal overhead facilities located within newly used highway rights-of-way may remain if the facilities meet the offset requirements of (a) of this section and are located at least three feet from the toe of fill or five feet from the top of cut. Facilities located within the rights-of-way of existing rural highways and roads may remain if they are at least three feet from the toe of fill or five feet from the top of cut and are not roadside hazards.

(c) Longitudinal overhead facilities to be constructed in highway rights-of-way must be located on a line not more than five feet from the highway right-of-way line or, when directed by the department, in accordance with the offset requirements of (a) of this section and at least 10 feet from the toe of fill or the top of cut.

(d) Existing overhead facilities crossing an existing or newly used highway right-of-way may remain if they are at least three feet from the toe of fill or five feet from the top of cut and are not roadside hazards.

(e) New overhead facilities crossing a highway right-of-way must be installed so that that part

of the facility nearest to the edge of the traveled way is located in accordance with the offset requirements of (a) of this section and is at least 10 feet from the toe of fill or the top of cut. These facilities must be as nearly perpendicular to the highway centerline as is practicable.

(f) New longitudinal surface-mounted facilities must be located not more than five feet from the right-of-way line or, when directed by the department, in accordance with the offset requirements of (a) of this section and at least 10 feet from the toe of fill or the top of cut.

(g) If the utility can demonstrate that adherence to the requirements of this section is impractical because of difficult topography, mountainous terrain, or other special conditions, the department will, in its discretion, modify the requirements.

(h) A facility determined by the department to be a roadside hazard must be relocated to conform to the requirements of this chapter.

(i) "Offset," as used in (a) of this section, is measured from the edge of the traveled way to the nearest surface of a surface-mounted facility. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.25.200
AS 19.05.040 AS 19.30.051
AS 19.20.010 AS 19.30.121
AS 19.25.010 AS 19.40.065

17 AAC 15.190. ERRORS IN FACILITY PLACEMENT BY PERMITTEE. Repealed 5/23/82.

17 AAC 15.191. UTILITY ACCOMMODATION IN SCENIC AREAS. (a) The department will, in its discretion, require utility facilities that are inconsistent with the values of scenic areas to be relocated.

(b) The installation, within scenic areas, of new utility facilities, including those required for department purposes, must be made in accordance with the directions of the department.

(c) "Scenic area," as used in (a) of this section, includes scenic strips, view points, rest areas, adjacent highway rights-of-way, and the portions of highway rights-of-way which pass through

public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200

17 AAC 15.200. SPECIAL PROVISIONS AND/OR STIPULATIONS. Repealed 5/23/82.

17 AAC 15.201. OVERHEAD CLEARANCES. The minimum vertical clearance between an overhead facility and a department right-of-way must comply with the requirements of the 1981 edition of the National Electrical Safety Code. New or relocated facilities should be installed with a minimum clearance of 20 feet. In no case may the minimum vertical clearance be less than 18 feet. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200

17 AAC 15.210. SPECIAL USE PERMITS FOR HIGHWAYS. Repealed 5/23/82.

17 AAC 15.211. UNDERGROUND FACILITIES. (a) Longitudinal underground facilities on a uniform alignment may not be located closer than five feet from a department right-of-way, unless otherwise directed by the department. Longitudinal underground facilities may not be closer than 10 feet from the toe of fill or the top of cut, unless the utility can demonstrate to the department's satisfaction that the 10-foot requirement is not feasible and that a closer location will not adversely affect the design, construction, maintenance, safety, or operation of the highway or other department structure. Surface facilities must comply with the minimum distances requirements of 17 AAC 15.171 (d).

(b) Underground facility crossings must be installed by boring, coring, or jacking through the roadway prism. Wet-boring is not permitted. The department will, in its discretion, allow trenched or open-cut construction where untrenched construction is not practical. Underground facility crossings must be as nearly perpendicular to the highway centerline as practicable. Underground facility crossings in

other department rights-of-way must conform to the specifications set out in the special provisions of the utility permit.

(c) Encasement of underground facilities is required for crossings under controlled-access highways or other department rights-of-way unless an alternate proposal by the utility is approved by the department. Underground pipelines carrying flammable, corrosive, or other hazardous materials must be encased if required by the department. The department will, in its discretion, permit a utility bridge, tunnel, utilidor, or other mechanical protection in place of encasement.

(d) The depth of burial for underground facilities construction or installed under pavement, roadway, or runway surfaces must be at least four feet measured from the surface of the pavement, roadway, or runway to the top of the cable, conduit, pipeline, or encasement. Underground facilities constructed or installed under other surfaces, including unlined ditches, must be buried at least three feet, measured from the surface to the top of the cable, conduit, pipeline, or encasement.

(e) In areas of seasonally frozen soil or permafrost, the depth of burial must be such that any liquid transmitted will not freeze and so that any underground structure will withstand the increased impact loads transmitted through the frozen soil. The department will, in its discretion, allow the depth of burial to be reduced by the use of adequate insulation and protective materials or methods.

(f) The department will, in its discretion, require underground facilities to be rerouted or protected with casing or other mechanical protection when it is impractical to achieve the minimum depth of burial.

(g) When a utility locate service is not available, reference markers must be installed and maintained at both ends of underground facility highway crossings, at angle points in the alignment of the underground facilities, and at designated points along longitudinal alignments as specified in the special provisions of the utility permit. (Eff 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.200

17 AAC 15.220. PERMITTEE'S NOTICE OF INTENTION OF COMMENCEMENT OF WORK. Repealed 5/23/82.

17 AAC 15.221. IRRIGATION AND DRAINAGE FACILITIES. (a) A longitudinal irrigation or drainage canal or ditch is not permitted within a department right-of-way unless the applicant can demonstrate to the department's satisfaction that an alternate location is not feasible and that the construction of the facility will not adversely affect the design, construction, maintenance, safety, and operation of the highway or other department structures.

(b) Flume, pipe, or siphon crossings must be installed in accordance with 17 AAC 15.211. Crossings of canals and ditches may be made with bridges or culverts. (Eff. 5/23/82, Reg. 82)
 Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.200 AS 19.40.065

17 AAC 15.230. INDEMNIFICATION CLAUSE. Repealed 5/23/82.

17 AAC 15.231. HIGHWAY STRUCTURES. (a) The department will, in its discretion, permit the attachment of utility facilities to a highway structure. The chief bridge engineer is responsible for exercising this discretion to grant permission.

(b) Attachments to a bridge must be located beneath the bridge structure's floor, between outer beams or within a cell of a box beam, and must be located above the lowest steel or masonry members. If the utility can demonstrate to the department's satisfaction that a location requirement is not feasible and that attachment at an alternate location will not adversely affect the design, construction, maintenance, safety, or operation of the structure, the department will, in its discretion, permit the attachment at an alternate location.

(c) Communication and electric power cables or conductors must be encased in an approved conduit supported by suitable hangers or brackets and must have appropriate expansion devices. Acceptable alternate methods of installation for communication cable will, in the department's discretion, be permitted.

(d) Where required by special provisions in the utility permit, pipelines carrying flammable, corrosive, or other hazardous materials must be encased and have sufficient venting. The facility must be provided with automatic shut-off valves or other safety devices at or near each end of the structure as specified in the special provisions of the permit. The department will, in its discretion, require cathodic protection.

(e) A utility shall restore or repair any portion of a bridge or highway that is damaged by the installation or the operation of a facility attached to a highway bridge structure or its appurtenances.

(f) The department will, in its discretion, require a utility to reimburse the department for any or all costs incurred by the department for engineering, design changes, or modifications of the highway bridge structure that are necessary to accommodate attachment of the utility facility. (Eff. 5/23/82, Reg. 82)
 Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.010 AS 19.40.065
 AS 19.25.200

17 AAC 15.240. WAIVER. Repealed 5/23/82.

17 AAC 15.241. SAFETY PRECAUTIONS TO BE TAKEN BY PERMITTEE. Each permittee shall protect the public and provide for the continued safe use of a highway or other state property during construction, modification, or maintenance of utility facilities. Closing off a highway or highway segment or creating a detour must be specifically authorized in the permit and must be done in a manner approved by the department. All traffic-control devices must comply with the 1978 edition of the Alaska Traffic Manual. (Eff. 5/23/82, Reg. 82)
 Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.200 AS 19.40.065

17 AAC 15.250. DEPARTMENT'S INTEREST IN PUBLIC HIGHWAY RIGHTS-OF-WAY. Repealed 5/23/82.

17 AAC 15.251. INSTALLATION AND INSPECTION. (a) Each permittee shall give the department written notice not less than 10 days before the start of construction on any utility facility.

(b) A copy of the permit must be at the work site during construction and installation operations and must be shown, upon request, to any department representative, Alaska State Trooper, or other enforcement officer of the state.

(c) The department will, in its discretion, require inspection of the facility during construction and installation operations. The inspection must be sufficient to ensure full compliance with the provisions of the permit. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.200	AS 19.40.065

17 AAC 15.260. REVOCATION OF UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.261. ERRORS IN FACILITY PLACEMENT. Errors by a permittee in construction or location of a facility must be corrected by the permittee at his expense as soon as he has knowledge of the error. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065

17 AAC 15.270. DISTRICT ADMINISTRATION OF UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.271. RIGHT-OF-WAY CLEARING AND RESTORATION. (a) Clearing for utility facility installations within department rights-of-way must be kept to the minimum that is necessary to accommodate the installation, construction, operation, and maintenance of the facility. Indiscriminate cutting of trees or the disfiguration of any feature of scenic value will not be permitted.

(b) A utility may use chemical sprays only in compliance with applicable federal and state statutes and regulations.

(c) Each utility shall dispose of trees, brush, debris, refuse or waste as specified in the utility permit.

(d) The department will, in its discretion, require the permittee to restore or replace, at his expense, trees or shrubbery damaged or

disturbed during the construction. Any damage to private property must be remedied as directed by the department.

(e) All excavated material in excess of the quantity required for backfill in a department right-of-way must be hauled by the permittee, at his cost and expense, and stockpiled as specified by the department. All unusable material must be disposed of at the permittee's expense and may not be placed within the limits of a department right-of-way unless approved by the department.

(f) Each utility shall maintain temporary pavement patches to provide a smooth all-weather surface at all times. Permanent replacement of the temporary patches must be made as soon as practicable after all other work under the permit is completed.

(g) The department will, in its discretion, require seeding or sodding of the construction area to prevent soil erosion or to replace the natural vegetative cover. Seeding and sodding operations must comply with the 1981 edition of the Alaska Standard Specifications for Highway Construction and the special provisions of the utility permit. Any area of right-of-way that is adjacent to private property and which has a protective vegetative cover must be fully restored.

(h) The department will notify the permittee of cleanup and restoration work that has not been satisfactorily performed in accordance with the provisions of the utility permit and will specify a date for completion of the corrective work. The department will, in its discretion, perform the cleanup and restoration work that has not been completed to the satisfaction of the department by the specified date. The permittee shall reimburse the department for all work done by the department. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	

17 AAC 15.280. AUTHORITY OF COMMISSIONER, DEPARTMENT OF HIGHWAYS. Repealed 5/23/82.

17 AAC 15.281. ROUTINE MAINTENANCE.

(a) Each permittee shall perform routine maintenance on the utility facility on a continuing basis. Maintenance work may not endanger any highway, airstrip, or other department property or create a hazard to the public.

(b) Each permittee shall secure authorization from the department before performing any maintenance which requires excavation, plowing, jacking, or boring within, or in areas immediately adjacent to, a department right-of-way. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.200	

17 AAC 15.290. CLEAR ROADSIDE POLICY.
Repealed 5/23/82.

17 AAC 15.291. EMERGENCY MAINTENANCE. If an accident, disaster, or other occurrence which damages a utility facility located within a department right-of-way, damages a highway structure or other state property, or places a utility facility in danger of damage, the permittee shall immediately act to safeguard the public and its facilities and shall immediately notify the department and the Alaska State Troopers of its action. Temporary repairs must be made permanent as soon as practicable. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.121
AS 19.05.040	AS 19.40.065
AS 19.30.051	

17 AAC 15.300. UTILITY SERVICE CONNECTIONS. Repealed 5/23/82.

17 AAC 15.301. UTILITY CODES AND STANDARDS. (a) Electric power and communication facilities installed within department rights-of-way must comply with the following codes and standards:

(1) the National Electrical Code (1981);

(2) the National Electrical Safety Code (American National Standards Institute, C2, 1981);

(3) the provisions of 3 AAC 52.110 – 3 AAC 52.340 (Electrical and Telephone Utilities); and

(4) the provisions of 8 AAC 61.010, Alaska Occupational Safety and Health Standards, subchapter 03, Electrical Code.

(b) Water line and sanitary sewer facilities installed within department rights-of-way must comply with the following codes and standards:

(1) the American Water Works Standards, as revised through 1981;

(2) the provisions of 18 AAC 72 (Wastewater Disposal); and

(3) the provisions of 18 AAC 80 (Drinking Water).

(c) Pressure pipelines for natural gas, petroleum, steam, or other hazardous materials installed within department rights-of-way must comply with the following codes and standards:

(1) the American National Standards Institute

(A) Power Piping (American National Standards Institute, B31.1, 1980);

(B) Fuel Gas Piping (American National Standards Institute, B31.2, 1968);

(C) Chemical Plant and Petroleum Refinery Piping (American National Standards Institute, B31.3, 1980);

(D) Liquid Petroleum Transportation Piping Systems (American National Standards Institute, B31.4, 1979);

(E) Refrigeration Piping (American National Standards Institute, B31.5, 1974);

(F) Gas Transmission and Distribution Piping Systems (American National Standards Institute, B31.8, 1975);

(2) the Code of Federal Regulations, Title 49, Transportation

(A) Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Standards;

(B) Part 195, Transportation of Liquids by Pipeline;

(3) the provisions of 3 AAC 52.010 – 3 AAC 52.080 (Gas utilities).

(d) Unless otherwise noted in the special provisions of the utility permit, all utility construction within department rights-of-way must comply with the following construction standards:

(1) Alaska Department of Transportation and Public Facilities Construction Manual, 1972 as revised through December 4, 1981;

(2) Alaska Standards Specifications for Highway Construction, 1981;

(3) Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 3, Subsection 2, Accommodation of Utilities (PPM 30-4.1), as revised through 1981;

(4) American Association of State Highway And Transportation Officials

(A) Construction Manual for Highway Construction, 1980;

(B) Construction Manual for Highway Bridges and Incidental Structures, 1973.

(e) Unless otherwise noted in the special provisions of the utility permit, all utility designs for facilities to be installed within department rights-of-way must comply with the following design standards:

(1) Alaska Department of Transportation and Public Facilities, Standard Drawings, as revised through 1981;

(2) Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 3, Subsection 2, Accommodation of Utilities (IPM 30-4.1);

(3) American Association of State Highway and Transportation Officials

(A) A Policy for Accommodation of Utilities on Freeway Rights-of-way, 1969;

(B) A Guide for Accommodating Utilities on Highway Rights-of-way, 1970;

(4) Utilities Manual of Alaska Department of Transportation and Public Facilities, 1981.

(f) Construction safety procedures must comply with the provisions of 8 AAC 61.010, Alaska Occupational Safety and Health Standards

(1) subchapter 01, General Safety Code;

(2) subchapter 05, Construction Code.

(g) Unless otherwise noted in the special provisions of the utility permit, traffic-control devices and procedures must comply with the provisions of the following codes and standards:

(1) Alaska Traffic Manual, 1978;

(2) Alaska Sign Design Specifications, 1981. (Eff. 5/23/82, Reg. 82)

Authority: AS 10.25.440	AS 19.25.200
AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.10.040	AS 19.40.065
AS 19.25.010	

ARTICLE 3. UTILITY RELOCATION AND INSTALLATION

Section

- 310. (Repealed)
- 320. (Repealed)
- 321. Eligibility
- 330. (Repealed)
- 331. Utility notification and cooperation
- 341. Relocation agreements
- 351. Estimates and costs
- 361. Plans
- 371. Scope-of-work statement
- 381. Utility change orders
- 391. Engineering consultants
- 401. Contract advertising and award
- 411. Utility relocation by state contract
- 421. Construction and inspection
- 431. Billing and audit
- 441. Utility installation agreements
- 451. Termination agreements
- 461. Emergency relocation

17 AAC 15.310. ASSIGNMENT AND TRANSFER OF UTILITY PERMIT. Repealed 5/23/82.

17 AAC 15.320. HORIZONTAL CLEARANCE BETWEEN HIGHWAY AND UTILITY FACILITIES. Repealed 5/23/82.

17 AAC 15.321. ELIGIBILITY. If utility facilities are ordered by the department, under AS 19.25.020, to be relocated in order to accommodate proposed highway or other construction, utilities that have facilities occupying department rights-of-way that were installed before July 1, 1960 or that were installed under the terms of a permit issued under this chapter are eligible for reimbursement for the cost of the relocation. (Eff. 5/23/82, Reg.82)

Authority: AS 19.05.020 AS 19.25.210
AS 19.05.040 AS 19.30.051
AS 19.25.010 AS 19.30.121
AS 19.25.020 AS 19.40.065
AS 19.25.200

17 AAC 15.330. UTILITY DEFINITION. Repealed 5/23/82.

17 AAC 15.331. UTILITY NOTIFICATION AND COOPERATION. (a) The department will notify each utility whose facilities are known by the department to be affected by a proposed department project as soon as possible after the location and scope of the project are known.

(b) The department will furnish preliminary project plans and related right-of-way maps to each utility within the proposed project limits. After receipt of these plans and maps, each utility with facilities located within the project limits shall notify the department in writing of the location of all these facilities.

(c) If there is a conflict between a proposed project and existing utility facilities, the department will, in its discretion, require the utility to relocate its facilities. The department will authorize the utility in writing to proceed with preliminary engineering for the required relocation of the facilities and will advise the utility of its eligibility to be reimbursed for the cost of relocation. The utility shall furnish the department with its proposal for accomplishing the relocation work. This proposal must include the estimated cost of the relocation work and the working schedule the utility intends to follow regarding the relocation work. The work described in the proposal must be the most economical method of accomplishing the relocation.

(d) The department will furnish the utility with all necessary construction plans and

relocation schedule forms so that the utility can coordinate its relocation plans, estimates, and agreements in accordance with 17 AAC 15.421.

(e) The department will furnish the utility with field information necessary for the utility to establish the location and grade for the relocation of its facilities. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.25.210
AS 19.05.040 AS 19.30.051
AS 19.05.080 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.020

17 AAC 15.341. RELOCATION AGREEMENTS. (a) When it is necessary to relocate utility facilities because of a proposed project by the department, the utility shall enter into an agreement with the department setting out the terms of the relocation work along with the terms of the reimbursement for the costs of the relocation work. The department will establish the general format of this agreement.

(b) If a utility facility located within a department right-of-way is required to be relocated due to highway or other construction, the department will modify the existing utility permit or will issue a new utility permit.

(c) The department will, in its discretion, elect to use a lump-sum reimbursement agreement.

(d) The department will, in its discretion, require that any utility relocation agreement between the department and a municipality include a certificate of authority or a resolution authorizing execution of the agreement by the appropriate governing body of the municipality.

(e) The department will return an executed copy of the relocation agreement to the utility along with a written authorization to proceed with the relocation work. (Eff. (5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.020

17 AAC 15.351. ESTIMATES AND COSTS. (a) The cost estimate referred to in 17 AAC

15.331(c) must reflect all the work shown on the plans and the scope-of-work statement referred to in 17 AAC 15.361 and 17 AAC 15.371, respectively. The estimate must set out the items of work to be performed in sufficient detail to provide a reasonable basis for analysis by the department. All factors included in the utility's general overhead account must be listed in the cost estimate.

(b) Preliminary engineering costs incurred after the date of the department's letter authorizing the utility to proceed with preliminary engineering will be reimbursable or chargeable to the utility's relocation-project work order or account. Preliminary engineering costs will continue to be chargeable to the utility's relocation-project work order or account until the date that the utility relocation agreement has been approved and signed by the department. Construction engineering costs, including engineering and inspection costs associated with the relocation of the utility facility, that are incurred after the date that the utility agreement is signed and approved by the department are reimbursable.

(c) Charges for engineering, inspection, equipment, transportation, materials handling, and labor included in the utility's general overhead account, need not be listed separately in the cost estimate.

(d) Charges incurred by the utility before the department's letter of authorization to proceed with preliminary engineering is sent will, in the discretion of the department, be ineligible for reimbursement.

(e) When the department determines that an existing facility must be removed by a utility, the actual cost of removal will, in the discretion of the department, be eligible for reimbursement. Where appropriate, the salvage value of the facility to be removed will be credited against the cost of removal.

(f) The department will have a credit against reimbursable costs set out in the relocation agreement equal to the value of any materials removed by the utility, unless the utility relocation work is being performed under a state contract or under a utility-let contract and the utility relocation agreement specifies that all

removed materials become the property of the contractor. The value of the department's credit is to be measured by whatever rate the utility uses in its normal operations and is to be equal to the salvage value of all materials removed less the cost of removal. All materials must be removed by the most economical method possible. Recovered materials which are not usable in the normal operations of the utility but which have a sale value as scrap must be included in the calculation of the credit granted to the department. The value of the recovered scrap materials is to be determined by their estimated scrap value. Temporary-use materials which are reusable must be credited to the utility relocation project at stock prices, less the utility's prescribed stock-handling charge.

(g) Where betterments are not required by the department's construction project, but are installed solely for the benefit of the utility company, all costs attributable to these betterments are not eligible for reimbursement.

(h) The utility shall show on its work order account all relocation costs specified by the relocation agreement, including reimbursable and non-reimbursable items. Separate work order accounts will, in the discretion of the department, be used where the reimbursable and non-reimbursable portions of work can be distinguished by location or type of facility. All work order accounts to be used by the utility must be shown in the relocation agreement.

(i) An eligibility ratio for reimbursement must be determined and set out in the relocation agreement when the relocation work includes both reimbursable and non-reimbursable items.

(j) The department has an expired service life credit against reimbursement costs when the length of the replacement facilities consists of a longitudinal segment of one mile or more in length or includes betterments not required by the department's construction project. If the utility can show that the service life of the replaced facility has not been extended, the department does not have an expired service life credit. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020

AS 19.05.040

AS 19.25.010

AS 19.25.020

AS 19.30.051

AS 19.30.121

AS 19.40.065

17 AAC 15.361. PLANS. (a) The plans, sketches, or drawings showing both existing and proposed facilities must be attached to each relocation agreement. If there is a combination of reimbursable and non-reimbursable work, the plans must clearly indicate which portion of the relocation work is reimbursable and which portion is non-reimbursable.

(b) The plans, sketches, or drawings must be sufficiently detailed to show all necessary work. In addition, the plans, sketches, or drawings must indicate that the planned relocation meets all construction design requirements of the department. Construction plans prepared by the utility must be approved by the department. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.010 AS 19.40.065
 AS 19.25.020

17 AAC 15.371. SCOPE-OF-WORK STATEMENT. (a) A scope-of-work statement describing the items of work set out in the plans in sufficient detail so that they may be correlated with the proper items of cost in the cost estimate must be attached to the relocation agreement. The scope-of-work statement must describe any special methods of construction that are required.

(b) The department will, in its discretion, require the utility to include staking sheets in the scope-of-work statement. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.010 AS 19.40.065
 AS 19.25.020

17 AAC 15.381. UTILITY CHANGE ORDERS.

(a) Changes in the plans, specifications, or quantities of work for relocating facilities must be authorized by a utility change order issued by the department.

(b) Modified cost estimates, plans, and a scope-of-work statement must be included in each utility change order. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.010 AS 19.40.065
 AS 19.25.020

17 AAC 15.391. ENGINEERING CONSULTANTS. (a) If a utility is not adequately staffed to perform the engineering for the relocation of its utility facilities, the department will, in its discretion, authorize the utility to retain an engineering consultant to perform the required engineering. The engineering proposal made by a consultant is subject to review and approval by the department.

(b) If a utility has a continuing contract with a consultant for engineering services, and if the consultant regularly performs the utility's engineering work at a reasonable cost, the utility may request approval for the use of the consultant by submitting a copy of the continuing contract to the department for review and approval. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.020 AS 19.40.065

17 AAC 15.401. CONTRACT ADVERTISING AND AWARD. (a) A utility may let a contract for the relocation of its facilities when it can show that the contract is necessary because it is not adequately staffed or equipped to perform the work itself. Bids must be requested through advertisement or solicited from qualified bidders, and the contract must be awarded to the lowest responsible bidder. The contract documents must be approved by the department before a contract is awarded.

(b) If a utility proposes to perform the work of relocation under an existing contract, the utility must furnish the department with a copy of the contract for review and approval. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
 AS 19.05.040 AS 19.30.121
 AS 19.25.020 AS 19.40.065

17 AAC 15.411. UTILITY RELOCATION BY STATE CONTRACT. (a) Utility relocation work may be performed under a construction contract or a utility relocation contract let by the department if the utility can demonstrate to the department that it is in the public interest to do so.

(b) When the utility relocation work that is to be included in a construction contract let by the department or in a utility relocation contract let

by the department includes non-reimbursable items, the utility and the department must enter into an agreement by which the utility agrees to repay the department for the costs of the non-reimbursable contract items and any engineering expenses associated with non-reimbursable items.

(c) The department will, in its discretion, require the utility to make periodic progress payments for the costs of the non-reimbursable contract items. Any requirement for progress payments must be included in the non-reimbursable agreement referred to in (b) of this section. The department will, in its discretion, use these payments to pay for the work done by its contractor. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.30.051
AS 19.05.040	AS 19.30.121
AS 19.25.010	AS 19.40.065
AS 19.25.020	

17 AAC 15.421. CONSTRUCTION AND INSPECTION. (a) Whenever practicable, a utility shall schedule the work of relocating its facilities so that the work can be completed before the department's construction work begins. When the utility relocation work is to be performed along with the department's construction work, the utility shall coordinate the work schedule of its own personnel or of its contractor with the work schedule of the department's contractor. The utility shall work with the department's project engineer in order to effect this coordination.

(b) The utility is responsible for identifying and locating its facilities. The utility is also responsible for extra costs resulting from delays to the department contractor's operations if the utility facilities are not relocated in accordance with the relocation agreement, except when the delays are beyond the control of the utility.

(c) Unless otherwise provided in the relocation agreement, the utility shall give the department written notice not less than 10 days before the utility intends to begin work on the relocation of its facilities.

(d) If required by the relocation agreement, the utility shall furnish the department with records of all work performed and all materials installed or removed.

(e) The utility shall stockpile all unusable materials removed from the project and shall notify the department when these materials are available for inspection. The department's inspector and a representative of the utility will inspect these materials and record their disposition in order to determine if any credit is due the department.

(f) When an unforeseen problem arises during utility relocation work, the department will confer with the utility or utilities involved and will endeavor to bring about a satisfactory resolution of the problem. If the problem cannot be resolved by the parties, it will be referred to the commissioner or his designee for consideration. The commissioner's decision is final. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.25.200
AS 19.05.040	AS 19.30.051
AS 19.25.010	AS 19.30.121
AS 19.25.020	AS 19.40.065

17 AAC 15.431. BILLING AND AUDIT. (a) Reimbursement for utility relocation work will be based upon the utility relocation agreement executed between the department and the utility described in 17 AAC 15.341.

(b) Reimbursement for railroad relocation work will be based upon the railroad relocation agreement executed between the department and the railroad as provided in 17 AAC 15.521.

(c) The utility shall furnish the department with its final and complete billing for all costs incurred in connection with the relocation of the facility within 120 days after the completion of the relocation work. The billing statement must disclose the cost of each item in the cost estimate that is attached to the utility relocation agreement described in 17 AAC 15.351(a).

(d) If the utility fails to submit a proper billing within the 120-day period specified in (c) of this section, the department will, in its discretion, audit the utility's records and make the final reimbursement payment to the utility based on the audit findings.

(e) Under a lump-sum agreement as provided by 17 AAC 15.341(c), a single and final billing must be submitted upon completion of the

work. This billing must be for the amount that is stipulated in the agreement. Upon certification by the department that the work was completed in compliance with the agreement, the utility will be paid the lump-sum amount.

(f) All cost records and accounts of the utility are subject to audit by the department. Except where a lump-sum agreement is used under 17 AAC 15.341(c), final payment will, in the department's discretion, be based on audit determinations made by the department. The department will, in its discretion, withhold a retainage from any billing. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.441. UTILITY INSTALLATION AGREEMENTS. When it is in the public interest to use utility personnel and equipment to install new facilities to serve a department purpose or to install new utility distribution facilities to serve department installations, and when the utility will retain ownership of the facility, the utility and the department shall enter into a utility installation agreement. This agreement must include cost estimates, plans, and a scope-of-work statement as required by 17 AAC 15.351 - 17 AAC 15.371. The utility is eligible for reimbursement for the costs of installing the new facilities. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

17 AAC 15.451. TERMINATION AGREEMENTS. When it is in the mutual interest of the department and the utility to terminate a previously executed utility agreement or utility permit, a utility termination agreement must be executed. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

17 AAC 15.461. EMERGENCY RELOCATION. Where unforeseen circumstances arise during construction on a department right-of-way that require an immediate relocation of a utility facility, the department will, in

its discretion, require the immediate relocation of the facility, notwithstanding the terms of any existing utility permit or relocation agreement. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

ARTICLE 4. RAILROADS

Section

- 471. Railroad permits
- 481. Railroad accommodation policy
- 491. Maintenance and repairs
- 501. Eligibility for relocation
- 511. Railroad relocation
- 521. Railroad relocation agreements
- 531. Engineering consultants
- 541. Railroad relocation contracts
- 551. Engineering standards

17 AAC 15.471. RAILROAD PERMITS.
(a) Upon written application, the department will, in its discretion, issue a permit authorizing the applicant to construct or install railroad facilities within a department right-of-way.

(b) No permit is required for the reconstruction of existing crossings, structures, or other facilities or for the construction of additional crossings, structures, or other facilities in areas where a railroad holds a fee title or an easement for a railroad right-of-way.

(c) An application for a railroad permit must specifically describe the proposed facility and its proposed location within the department's right-of-way. The application must include plans and specifications so that the department can evaluate the engineering design and proposed location.

(d) All railroad permits will be issued in accordance with this section and 17 AAC 15.011 - 17 AAC 15.111.

(e) Whether or not a railroad facility permit is required, the railroad shall notify the department in writing not less than 15 days before any construction or major maintenance activity

in an area bordering on, adjacent to, or crossing a department right-of-way. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.25.010
AS 19.05.040	AS 19.25.200
AS 19.10.010	AS 19.30.051
AS 19.10.020	AS 19.30.121
AS 19.20.030	AS 19.40.065
AS 19.20.050	

17 AAC 15.481. RAILROAD ACCOMMODATION POLICY. (a) Grade separation is required for all railroad crossings on controlled-access highways. At-grade railroad crossings on rural highways and roads, and urban highways and streets will normally be allowed. However, the department will, in its discretion, require grade separation where warranted by conditions of topography and traffic density.

(b) A railroad crossing on a highway with defined shoulders may not be less than the full width of the highway including its defined shoulders. A railroad crossing on a rural highway with undefined shoulders must extend a minimum of five feet beyond the traveled portion of the highway. The surface of the highway must be in the same plane as the top of the rails for a distance of two feet outside of the rails for either multiple- or single-track crossings.

(c) The intersection of the highway alignment and the railroad track must be as nearly perpendicular as practicable.

(d) A railroad/highway crossing sign (cross-buck) must be installed on the right-hand side of the roadway on each approach to any crossing, except when, in the discretion of the department, it is determined that local conditions require an alternate location. Where railroad/highway crossing signals are used, the crossbuck must be an integral part of the signal assembly. A supplemental sign indicating the number of tracks must be used where there are two or more sets of tracks at the crossing.

(e) The department will, in its discretion, require railroad crossing signals which indicate the approach or presence of trains to be installed at those railroad crossings where there is a need for protection beyond that provided by signs. On multiple-lane highways, cantilever-mounted signals will, in the discretion of the department,

be required. For railroad crossings at highway intersections, additional signal-light units may be used to supplement the normal complement of lights. At crossings where multiple train movements may occur simultaneously or at crossings in congested urban areas, the use of gates will, in the discretion of the department, be required.

(f) Supports for post-mounted signal heads at the side of a street with curbs must have a horizontal clearance of not less than two feet from the face of the vertical curb. Where there is no curb, supports for post-mounted signal heads must have a horizontal clearance of not less than two feet from the edge of the shoulder, and must have a minimum clearance of six feet from the edge of the traveled way. Where there is no curb or shoulder, the minimum horizontal clearance must be six feet from the edge of the traveled way. All portions of signals and supports which extend over the roadway must have a vertical clearance of not less than 17 feet above the roadway surface.

(g) The department's chief bridge engineer is responsible for approving clearances proposed for new grade separation structures or for modifications of existing grade separation structures.

(h) All railroad signs and signals must conform to the requirements of the 1978 edition of the Alaska Traffic Manual or the special provisions of a railroad permit issued under 17 AAC 15.471 relating to vertical clearances of signs and signals over highways or other other highway-related facilities such as bike paths, pathways, and sidewalks.

(i) Railroad communication, electric power, pipeline, and drainage facilities installed in the department rights-of-way must be installed in accordance with 17 AAC 15.120 - 17 AAC 15.301. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020	AS 19.25.010
AS 19.05.040	AS 19.25.200
AS 19.10.040	AS 19.30.051
AS 19.20.030	AS 19.30.121
AS 19.20.050	AS 19.40.065

17 AAC 15.491. MAINTENANCE AND REPAIRS. (a) Upon completion of a railroad crossing on a highway, the railroad is responsible for the maintenance and repair of all track

bed and rail components and any state property located within the width of the railway ties occupying the crossing area. The department is responsible for the maintenance and repair of all state property located outside the area within the railway ties. Allocation of the costs of all maintenance and repairs must be included in the railroad permit issued under 17 AAC 15.471.

(b) The railroad must operate and maintain all railroad crossing signals or other protective devices.

(c) Unless otherwise specified in the railroad permit, upon completion of a grade-separation structure, the department is responsible for the maintenance and repair of the structure and approaches and the railroad is responsible for the maintenance and repair of the track bed and rail components. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065

17 AAC 15.501. ELIGIBILITY FOR RELOCATION. If railroad facilities are ordered by the department, under AS 19.25.020, to be relocated in order to accommodate proposed highway or other construction, railroads that have railroad facilities occupying a department right-of-way are eligible for reimbursement for the cost of the relocation. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.020

17 AAC 15.511. RAILROAD RELOCATION.

(a) The department will notify each railroad whose railroad facilities are known by the department to be affected by a proposed department project as soon as possible after the location and scope of the project are known.

(b) The department will furnish preliminary project plans and related right-of-way maps to each railroad within the proposed project limits. After receipt of these plans and maps, each railroad with railroad facilities located within the project limits shall notify the department in writing of the location of all those facilities.

(c) If there is a conflict between a proposed project and existing railroad facilities, the department will, in its discretion, require the railroad to relocate its railroad facilities. The department will authorize the railroad in writing to proceed with preliminary engineering for the required relocation of the facilities and will advise the railroad of its eligibility to be reimbursed for the cost of relocation. The railroad shall furnish the department with its proposal for accomplishing the relocation work. This proposal must include the estimated cost of the relocation work and working schedule the railroad intends to follow regarding the relocation work. The work described in the proposal must be the most economical method of accomplishing the relocation.

(d) The department will furnish the railroad with all necessary construction plans and relocation schedule forms so that the railroad can prepare and coordinate its relocation plans in accordance with 17 AAC 15.421.

(e) The department will furnish the railroad with field information necessary for the railroad to establish the location and grade for the relocation of its facilities. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.010 AS 19.40.065
AS 19.25.020

17 AAC 15.521. RAILROAD RELOCATION AGREEMENTS.

(a) When it is necessary to relocate railroad facilities because of a proposed project, the railroad shall enter into an agreement with the department setting out the terms of the relocation work along with the terms of the reimbursement for the costs of the relocation work. This agreement will, in the department's discretion, provide for a lump-sum payment.

(b) The agreement mentioned in (a) of this section must contain a cost estimate, plans, and a scope-of-work statement as provided in 17 AAC 15.351, 17 AAC 15.361, and 17 AAC 15.371, respectively.

(c) If railroad facilities located within a department right-of-way are required to be relocated due to highway or other construction, the

department will modify the existing railroad permit or will issue a new railroad permit.

(d) Changes in the plans, specifications, or quantities of work for relocating railroad facilities must be authorized by a railroad change order issued under 17 AAC 15.381.

(e) The department will return an executed copy of the relocation agreement to the railroad along with a written authorization to proceed with the relocation work.

(f) Billing and audit of relocation costs must be in accordance with 17 AAC 15.431. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.531. ENGINEERING CONSULTANTS. (a) If a railroad is not adequately staffed to perform the engineering for the relocation of its railroad facilities, the department will, in its discretion, authorize the railroad to retain an engineering consultant to perform the required engineering. The engineering proposal made by an engineering consultant is subject to review and approval by the department.

(b) If a railroad has a continuing contract with a consultant for engineering services, and if the consultant regularly performs the railroad's engineering work at a reasonable cost, the railroad may request approval for the use of the consultant by submitting a copy of the continuing contract to the department for review and approval. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.541. RAILROAD RELOCATION CONTRACTS. (a) If a railroad is not adequately staffed or equipped to perform the relocation work with its own forces, the department will, in its discretion, authorize the railroad to contract the work of relocation in accordance with 17 AAC 15.411.

(b) Railroad relocation work may be performed under a construction contract or

railroad relocation contract let by the department in accordance with 17 AAC 15.411.

(c) Construction of railroad facilities performed by the railroad or the railroad's contractor must be done in accordance with 17 AAC 15.421. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.051
AS 19.05.040 AS 19.30.121
AS 19.25.020 AS 19.40.065

17 AAC 15.551. ENGINEERING STANDARDS. Railroad facilities installed across or within a department right-of-way must comply with 17 AAC 15.301 and with the following codes and standards:

(1) the American Railway Engineering Association

(A) Manual for Railway Engineering (Fixed Properties), 1981 - 1982;

(B) Portfolio of Trackwork Plans, 1981 - 1982;

(2) the Signal Manual, 1980, of the Association of American Railroads, Communication and Signal Section;

(3) Manual on Uniform Traffic Control Devices, Part 8, American National Standards Institute, D6.1, 1978;

(4) Federal-Aid Highway Program Manual (for federal-aid highway projects)

(A) Railroad-highway Projects, Vol. 6, Ch. 6, Sec. 2, Subsec. 1, as revised through 1981;

(B) Railroad-highway Insurance Protection Required of Contractors, Vol. 6, Ch. 6, Sec. 2, Subsec. 2, as revised through 1981;

(C) Railroad-highway Grade Crossing Surfaces, Vol. 6, Ch. 6, Sec. 2, Subsec. 3, as revised through 1981. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
AS 19.05.040 AS 19.40.065
AS 19.30.051

ARTICLE 5.
GENERAL PROVISIONS

Section

901. Definitions

17 AAC 15.901. DEFINITIONS. In this chapter

(1) "at-grade railroad crossing" means the place where a railroad track and a department right-of-way intersect at the same elevation or grade;

(2) "betterment" means any upgrading of a utility facility that is made solely for the benefit of the utility and is not required by the department to be made in order to accommodate construction by the department;

(3) "boring" means the method of installing underground conduit or pipe under a structure or through an embankment by use of a drilling auger;

(4) "cantilever-mounted signals" means railroad crossing signals that are mounted on an arm or a truss beam which extends over the roadway and is attached to a post or tower placed at the side of the roadway;

(5) "casing" means any pipe that encloses a pipeline;

(6) "cathodic protection" means a process or system used to control electrochemical corrosion of an underground metallic structure (such as a pipeline) by the application of an electric current;

(7) "commissioner" means the commissioner of the Department of Transportation and Public Facilities or his designee;

(8) "coring" means the method of installing underground conduit or pipe through hard material like rock or concrete by using a hollow-tube drilling instrument with cutting teeth on the end;

(9) "controlled-access highway" means a highway upon which the rights to access, light, view, and air by owners or occupants of abutting land or other persons are controlled by the department so as to facilitate through traffic;

(10) "controlled-access limits" means the area of the highway right-of-way in which highway access is controlled;

(11) "cost of relocation" means the cost incurred by a railroad or utility that is properly attributed to the relocation of a utility or railroad facility after the deduction of any increase in the value of the new facility and any salvage value attributable to the old facility;

(12) "depth of burial" means the depth to the top of the pipe, cable, or other underground structure as measured from the surface of a roadway, ditch, or natural ground;

(13) "department" means the Department of Transportation and Public Facilities;

(14) "double deadend structure" means an overhead wire safety device designed to prevent an overhead wire from falling onto a roadway;

(15) "eligibility ratio" means that ratio between utility or railroad relocation costs that are eligible for reimbursement and the total cost of the entire utility or railroad relocation work;

(16) "encroachment" means any structure or object which is in, on, under, or over a portion of a department right-of-way;

(17) "expired service life credit" is equal to the original cost of the existing facility multiplied by the number of years the facility has been in service divided by total life expectancy of the facility in years;

(18) "facility" or "facilities" or "utility facility" includes, but is not limited to, poles, lines, trenches, bridges, utilidors, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, steam, heat, light, chemicals, air, sewage, drainage not connected with highway drainage, irrigation, or any other substance;

(19) "frontage road" means a local street or road auxiliary to and located on the side of an arterial highway and used for service to abutting property and adjacent areas and for control of access;

(20) "grade separation" means the vertical separation by the use of a suitable structure of the grades of two intersecting roadways or the grades of a roadway and an intersecting railroad track;

(21) "grade-separation structure" means a bridge, culvert, tunnel, viaduct, or other similar structure;

(22) "highway" means a road, roadway, street, trail, walk, bridge, tunnel, road drainage structure, or other road-related structure or facility, including the entire area within a highway right-of-way;

(23) "highway structure" includes bridges, buildings, culverts, pedestrian overcrossings, pedestrian tunnels, retaining walls, utilidors, and tunnels;

(24) "jacking" means the method of installing underground conduit or pipe under a roadway or other state property or through an embankment by pushing or packing a liner or heavy-gauge pipe beneath the facility;

(25) "joint-use agreement" means an agreement between a utility owning poles, trenches, or other facilities and other utilities which sets forth the terms and conditions by which the poles, trenches, or other facilities, owned by the first facility, can be used by other utilities;

(26) "joint-use facility" includes a pole line, trench, bridge, utilidor conduit, or tunnel which is used by two or more utilities;

(27) "longitudinal utility facility" means a utility facility that runs relatively parallel to a highway or airstrip;

(28) "median" means the portion of a divided highway that separates the traveled ways for traffic;

(29) "non-pipe push" means the method of installing non-pipe materials under a roadway or other state property or through an embankment by using a pushing force;

(30) "plowing" means the installation of underground cable for electricity, telephone, or cable television by use of a mounted plow-

like instrument which digs and feeds out cable at the same time;

(31) "railroad" includes all rail carriers, whether publicly or privately owned, including steam, diesel, and electric railroads, interurban railways, interurban street railways, and every other type of street railway;

(32) "railroad crossing" includes the tracks, structures, crossing slabs, drainage structures, and crossing protection devices which are required to permit railroad trains to cross a department right-of-way either at-grade or by use of grade-separation structures;

(33) "railroad crossing signal" means a signal with flashing lights that is used to indicate the approach or presence of trains at railroad crossings;

(34) "railroad facility" means any structure or facility that is used for railroad purposes;

(35) "relocate" means adjust, change, remove, or reposition;

(36) "restoration" means replacing, repairing, or otherwise restoring a right-of-way or other area to the same condition that existed before any construction or relocation work took place;

(37) "right-of-way" and "department right-of-way" mean a highway easement, airport easement, section line easement, and any material site or borrow pit leased or owned by the state;

(38) "roadway" means that portion of the highway, including shoulders, intended for vehicular use;

(39) "roadway prism" means that portion of the highway right-of-way between the bottoms of the ditches on either side of the roadway, the toes of fills on either side of the roadway, or the backs of curbs on either side of the roadway, including the slope, shoulders, pavement, and median strips less than 60 feet wide;

(40) "routine maintenance" means the repair of any defective or damaged part of a facility or the replacement of that part at the same

location by another part of the same type, capacity, or design, and includes the routine clearing of the area immediately adjacent to pedestals, vents, pipes, marker signs, or other similar objects to ensure their visibility to the public and other users of department rights-of-way;

(41) "rural highway or road" means a road or highway without access controls that is located outside of an urban area;

(42) "siphon" means a conduit, pipe, or tunnel that is used to conduct water from an open waterway to a lower elevation and then return it to another open waterway at the elevation of the original waterway;

(43) "specifications" means all directions and requirements pertaining to and governing the performance of work;

(44) "state" means the State of Alaska;

(45) "department contract" means a contract for construction of a project which is advertised, awarded, and administered by the department and which may contain items relating to utility or railroad facilities work;

(46) "surface-mounted facility" means any utility or railroad facility extending above the surface of the ground, including poles, posts, and hydrants;

(47) "telecommunications" or "communications" means the transmission and reception of messages, impressions, pictures, and signals by means of electromagnetic waves, force variations, impulses, or any other kind of energy, whether conveyed through cable or wire, or whether radiated through space or transmitted through any other medium;

(48) "toe of fill" means the point where the slope of the roadway building foundation fill, or airport runway fill intersects with the natural ground;

(49) "top of cut" means the point where the back slope of a roadway cut section intersects with the natural ground;

(50) "traveled way" means that portion of the roadway intended for the movement of vehicles, exclusive of shoulders and parking lanes;

(51) "undefined shoulder" means the area adjacent to a traveled way where the roadway surface is on the same level as the natural ground and there is no longitudinal drainage ditch or roadway fill or cut;

(52) "urban highway or street" means any roadway or highway without access controls that is located within a first or second class city, or is located within the municipal center of a unified municipality or within a developed area that has a commercial, industrial, or residential character;

(53) "utilidor" means a structure containing one or more channels, usually prefabricated in units, including units that are fitted with a removable cover that may also be used as sidewalk or roadway surface;

(54) "utility" includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls any line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, steam, heat, light, chemicals, air, sewage, drainage not connected with highway drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems which directly or indirectly serve the public or a segment of the public; "utility" also includes any corporation, company, individual, or association of individuals, or any lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls any system for furnishing transportation of goods or persons by means of a railway, tramway, cableway, conveyer, flume, canal, tunnel, pipeline, or any other similar means;

(55) "utility locate service" means a service provided by a utility to locate its buried utility facilities;

(56) "utility service connection" means the cable, wire, or pipe that connects the utility distribution line to the premises served;

(57) "wet-boring" means the method or process of boring with the use of jets of water or liquid slurry. (Eff. 5/23/82, Reg. 82)

Authority: AS 19.05.020 AS 19.30.121
 AS 19.05.040 AS 19.40.065
 AS 19.30.051

1) PAGE 1 LINE 23 DELETE [WITHIN A REASONABLE TIME SET BY THE DEPARTMENT IN THE ORDER.]

ADD WITHIN 90 DAYS OR AS AGREED BY THE RESPECTIVE PARTIES

2) PAGE 1 LINE 24 - 28 DELETE SUBSECTION (b).

3) PAGE 2 LINE 15 DELETE [UNLESS THE DEPARTMENT PROVIDES OTHERWISE BY REGULATION]

PLACE A PERIOD (.) AFTER DEPARTMENT.

4) PAGE 2 LINE 22 DELETE [A REASONABLE TIME SET BY THE DEPARTMENT IN THE ORDER]

ADD WITHIN 90 DAYS OR AS AGREED BY THE RESPECTIVE PARTIES.

5) PAGE 2 LINE 24 - 27 DELETE [IF THE OWNER DOES NOT CHANGE, THROUGHPROVISIONS OF AS 02.15.114]

6) PAGE 3 LINES 7 - 8 DELETE [WITHIN A TIME LIMIT SET BY THE DEPARTMENT]

ADD WITHIN 90 DAYS OR AS AGREED BY THE RESPECTIVE PARTIES.

7) PAGE 3 LINE 10 DELETE [MAY] ADD SHALL

ADD. AFTER, BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

8) PAGE 3 DELETE LINES 23 - 26

HB

177

1 IN THE HOUSE

BY THOMPSON BY REQUEST

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 177

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Public Offices Commis-
7 sion and to recall of certain local elected
8 officials."

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

10 * Section 1. AS 15.13.010 is amended to read:

11 Sec. 15.13.010. APPLICABILITY. (a) This chapter applies in
12 every election for governor, lieutenant governor, a member of the
13 state legislature, a delegate to a constitutional convention, or judge
14 seeking electoral confirmation. It also applies to members of a
15 regional school board of a regional educational attendance area, and
16 to every candidate for election to a municipal office in a city or
17 borough with a population of more than 1,000 inhabitants according to
18 the latest United States census figures or estimates of population
19 certified as correct for administrative purposes by the Department of
20 Community and Regional Affairs. A municipality may exempt its elected
21 municipal officers from the requirements of this chapter if a majority
22 of the voters voting on the question at any regular election, as
23 defined by AS 29.78.010 [AS 29.78.010(14)], or a special municipality-
24 wide election called for that purpose, vote to exempt its elected
25 municipal officers from the requirements of this chapter. The ques-
26 tion of exemption from the requirements of this chapter may be submit-
27 ted by the city council or borough assembly by ordinance or by initia-
28 tive ordinance. A municipality that is exempt from this chapter is
29 still subject to AS 29.28.130 - 29.28.250. Nothing in this chapter

1 prohibits a municipality from regulating by ordinance campaign contri-
2 butions and expenditures.

3 (b) Except as otherwise provided, this chapter applies to con-
4 tributions, expenditures and communications made by a candidate,
5 group, municipality or individual for the purpose of influencing the
6 outcome of a ballot proposition or question as well as those made to
7 influence the nomination or election of a candidate or the recall of
8 an elected official.

9 * Sec. 2. AS 15.13.110(e) is amended to read:

10 (e) A group formed to sponsor an initiative, a referendum or a
11 recall shall report 30 days after its first filing with the lieutenant
12 governor or if sponsoring a municipal recall petition, the group shall
13 report immediately after its first filing with the municipal clerk.
14 Thereafter each group shall report within 10 days after the end of
15 each calendar quarter on the contributions received and expenditures
16 made during the preceding calendar quarter until reports are due under
17 (a) of this section.

18 * Sec. 3. AS 29.28.130 is amended to read:

19 Sec. 29.28.130. RECALL. An [ELECTED] official who is elected
20 or appointed to an elective municipal office [OF A HOME RULE OR
21 GENERAL LAW MUNICIPALITY] may be recalled by the voters after the
22 official has served the first 120 days of the term for which elected
23 or appointed [SIX MONTHS IN OFFICE].

24 * Sec. 4. AS 29.28.140 is amended to read:

25 Sec. 29.28.140. GROUNDS. Grounds for recall are misconduct in
26 office, incompetence, or failure to perform prescribed duties during
27 the term of office the official is presently serving. An official may
28 not be recalled for performance of or failure to perform a discretion-
29 ary act.

1 * Sec. 5. AS 29.28 is amended by adding new sections to read:

2 Sec. 29.28.144. APPLICATION FOR RECALL PETITION. (a) An appli-
3 cation for a recall petition shall be filed with the municipal clerk
4 and must contain

5 (1) the signatures and residence addresses of at least 10
6 municipal voters who will sponsor the petition;

7 (2) the address to which all correspondence relating to the
8 petition may be sent;

9 (3) a statement in 200 words or less of the grounds for
10 recall stated with particularity.

11 (b) An additional sponsor may be added at any time before the
12 petition is filed by submitting the name of the sponsor to the clerk.

13 (c) Each sponsor shall certify that the sponsor believes the
14 grounds for recall stated in the application are true. Knowingly
15 making a false statement on an application is a class A misdemeanor.

16 Sec. 29.28.146. REBUTTAL STATEMENTS. Upon receipt of an appli-
17 cation for recall petition that meets the requirements of AS 29.28.-
18 144, the clerk shall send by certified mail a copy of the application
19 to the official sought to be recalled with a notice that the official
20 may submit to the clerk a rebuttal statement of 200 words or less
21 within 10 days after receipt of the application.

22 * Sec. 6. AS 29.28.150 is repealed and reenacted to read:

23 Sec. 29.28.150. RECALL PETITION. (a) After the period during
24 which a rebuttal statement may be submitted has elapsed, the clerk
25 shall prepare a recall petition. All copies of the petition must
26 contain

27 (1) the name of the official sought to be recalled;

28 (2) the statement of the grounds for recall as set out in
29 the application for the petition;

1 (3) a rebuttal statement if one has been submitted under
2 AS 29.28.146;

3 (4) the date the petition is issued by the clerk;

4 (5) notice that signatures must be secured within 60 days
5 after the date the petition is issued;

6 (6) spaces for each signature, the printed name of each
7 signer, the date of each signature, and the residence and mailing
8 addresses of each signer;

9 (7) a statement, with space for the sponsor's sworn signa-
10 ture and date of signing, that the sponsor personally circulated the
11 petition, that all signatures were affixed in the presence of the
12 sponsor, and that the sponsor believes the signatures to be those of
13 the persons whose names they purport to be; and

14 (8) space for indicating the number of signatures on the
15 petition.

16 (b) Copies of the petition shall be provided to each sponsor by
17 the clerk.

18 * Sec. 7. AS 29.28 is amended by adding a new section to read:

19 Sec. 29.28.152. JUDICIAL REVIEW. (a) After a recall petition is
20 prepared by the municipal clerk it shall be promptly filed with the
21 superior court of the district in which the elected official resides,
22 and the municipal clerk shall petition the court to determine the
23 sufficiency of the charges. A copy of the petition shall be presented
24 to the official whose recall is demanded.

25 (b) Within 15 days after receiving the petition, the superior
26 court shall conduct a hearing, without cost to either party, to deter-
27 mine whether the petition satisfies the grounds for which a recall
28 petition may be filed. The court may not consider the truth of the
29 charges, but only their sufficiency. The decisions or findings of the

1 superior court are final and may not be appealed.

2 * Sec. 8. AS 29.28 is amended by adding a new section to read:

3 Sec. 29.28.155. SIGNATURES. (a) If a petition is found to be
4 sufficient as determined by the superior court under AS 29.28.152, it
5 shall be returned to the municipal clerk and may be used for the
6 purpose of gathering supporting signatures as provided by this sec-
7 tion.

8 (b) The signatures on a recall petition shall be secured within
9 60 days after the date the clerk issues the petition. The statement
10 required under AS 29.28.150(a)(7) shall be completed and signed by the
11 sponsor. Signatures shall be in ink or indelible pencil.

12 (c) The clerk shall determine the number of signatures required
13 on a petition and inform each sponsor. If a petition seeks to recall
14 an official who represents the municipality at large, the petition
15 shall be signed by a number of voters equal to 25 percent of the
16 number of votes cast in the election at which the official being
17 recalled was elected. If a petition seeks to recall an official who
18 represents a district, the petition shall be signed by a number of the
19 voters residing in the district equal to 25 percent of the number of
20 votes cast in the district in the election at which the official being
21 recalled was elected.

22 (d) Illegible signatures shall be rejected by the clerk unless
23 accompanied by a legible printed name. Signatures not accompanied by
24 a legible residence address shall be rejected.

25 (e) A petition signer may withdraw the signer's signature upon
26 written application to the clerk before certification of the petition.

27 * Sec. 9. AS 29.28 is amended by adding a new section to read:

28 Sec. 29.28.165. COMPLETION OF PETITION. (a) The copies of a
29 recall petition shall be assembled and filed as a single instrument.

1 A petition may not be filed within 180 days before the end of the term
2 of office of the official sought to be recalled. Within 10 days after
3 the date a petition is filed, the municipal clerk shall

4 (1) certify on the petition whether it is complete; and

5 (2) if the petition is incomplete, identify the deficiency
6 and notify the sponsors at the address provided under AS 29.28.-
7 144(a)(2) by certified mail.

8 (b) A petition that is incomplete may be supplemented with addi-
9 tional signatures obtained and filed within 10 days after the date on
10 which the petition is rejected if the supplementary petition is filed
11 more than 180 days before the end of the term of office of the offi-
12 cial sought to be recalled.

13 (c) A petition that is incomplete shall be rejected and filed as
14 a public record unless it is supplemented under (b) of this section.
15 Within 10 days after the supplementary filing the clerk shall recer-
16 tify the petition. If it is still incomplete, the petition is reject-
17 ed and filed as a public record.

18 * Sec. 10. AS 29.28.180 is repealed and reenacted to read:

19 Sec. 29.28.180. NEW RECALL PETITION APPLICATION. A new applica-
20 tion for a petition to recall the same official may not be filed
21 sooner than 180 days after a petition is rejected as incomplete.

22 * Sec. 11. AS 29.28.190 is amended to read:

23 Sec. 29.28.190. SUBMISSION. If a recall petition is complete,
24 the clerk shall [IMMEDIATELY] submit it to the assembly or council at
25 the next regular meeting.

26 * Sec. 12. AS 29.28.200 is amended to read:

27 Sec. 29.28.200. ELECTION. (a) If a regular election occurs
28 within 75 but not sooner than 45 days after [OF THE] submission of the
29 petition to the assembly or council, the assembly or council shall

1 submit the recall at that election.

2 (b) If no regular election occurs [WILL OCCUR] within 75 days,
3 the assembly or council shall hold a special election on the recall
4 question within 75 days but not sooner than 45 days after a petition
5 is submitted to the assembly or council [OF SUBMISSION].

6 (c) If a vacancy occurs in the office after a completed recall
7 petition is filed with the clerk, the recall question may [PETITION
8 SHALL] not be submitted to the voters. An official who resigns after a
9 completed recall petition is filed naming that official may not be ap-
10 pointed to the same office.

11 * Sec. 13. AS 29.28.210 is amended to read:

12 Sec. 29.28.210. FORM OF RECALL BALLOTS. A recall ballot must
13 contain [CONTAINS:]

14 (1) the grounds as stated in the recall petition;

15 (2) a [THE OFFICER'S] statement by the official named on
16 the recall petition of 200 words or less, if the statement is filed
17 with the clerk in accordance with AS 29.28.146 [FOR PUBLICATION AND
18 PUBLIC INSPECTION WITHIN 20 DAYS BEFORE THE ELECTION];

19 (3) the following question: "Shall (name of person) be
20 recalled from the office of (name of office)? Yes [] No []".

21 * Sec. 14. AS 29.28.240 is repealed and reenacted to read:

22 Sec. 29.28.240. EFFECT. (a) If a majority vote favors recall,
23 the office becomes vacant upon certification of the recall election.

24 (b) If an official is not recalled at the election, an applica-
25 tion for a petition to recall the same official may not be filed
26 sooner than 180 days after the election.

27 * Sec. 15. AS 29.28.250 is repealed and reenacted to read:

28 Sec. 29.28.250. SUCCESSORS. (a) If an official is recalled
29 from the assembly or council, the office of that official is filled in

1 accordance with AS 29.23.080 or 29.23.280. If all members of the
2 assembly or council are recalled, the governor shall appoint qualified
3 voters to fill the vacancies until the next regular election.

4 (b) If a member of the school board is recalled, the office of
5 that member is filled in accordance with AS 14.12.070. If all members
6 are recalled from a school board, the assembly or council shall ap-
7 point qualified voters to fill the vacancies until the next regular
8 election.

9 (c) A person appointed under (a) or (b) of this section serves
10 until a successor is elected and takes office.

11 (d) If an official other than a member of the assembly or coun-
12 cil or school board is recalled, a successor shall be elected to fill
13 the unexpired portion of the term. The election shall be held not
14 more than 60 days after the date the recall election is certified,
15 except that if a regular election occurs within 75 days after certi-
16 fication the successor shall be chosen at that election.

17 (e) Nominations for a successor may be filed until seven days
18 before the last date on which a first notice of the election must be
19 given. Nominations may not be filed before the certification of the
20 recall election.

21 * Sec. 16. AS 29.28 is amended by adding a new section to read:

22 Sec. 29.28.260. APPLICATION. AS 29.28.130 - 29.28.250 apply to
23 home rule and general law municipalities.

24 * Sec. 17. AS 29.28.160, 29.28.170, 29.28.220 and 29.28.230 are re-
25 pealed.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE: (907) 586-6181

POSITION PAPER
HOUSE BILL NO.177
March 19, 1985

The Division of Elections has reviewed House Bill No. 177, "An Act relating to the Alaska Public Offices Commission and to recall of an elected official of a home rule or general law municipality", and finds that primarily, the bill pertains to incorporated municipalities over which the division has no jurisdiction. However, AS 14.08.071 and AS 14.08.081 specify AS 29.28 as the body of law governing the division's administration of Rural Education Attendance Area School Board elections. It is therefore relative only to the bill's impact on these elections that the division submits this position paper.

Notwithstanding the few reservations described in this position paper, the division raises no major objections to the bill's overall intent. The major issue addressed in the bill is the (separation of the application process) and (preliminary review of a recall petition), from the actual circulation and subsequent submission of a petition subscribed to by qualified voters. The division supports this distinction. First, the addition of a preliminary review process prior to circulation is consistent with the provisions of Title 15, governing recall of state officials. While less restrictive than the recall provisions of Title 15, the addition of the preliminary review to Title 29, would allow the individuals seeking recall some assurance that their petition was on its face sufficient to be favorably certified, prior to their expending the energy to secure the required number of signatures.

The division supports the concept of judicial review, but cannot, however, offer any substantive opinion as to its feasibility with regard to timely processing. The division has no adverse opinion regarding the presentation of a copy of the petition being reviewed by the court to the official whose recall is demanded.

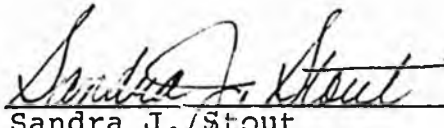
The division noted that the repeal and reenactment of AS 29.28.160, and the added section AS29.28.167, omitted any reference to a timeframe in which the court must return its findings to the municipal clerk, or that the municipal clerk must certify the petition's sufficiency for circulation. Such a timeframe should probably include reference to the

number of days in which the person sought to be recalled must submit his rebuttal statement, if the provisions of AS 29.28.167(b) were to be enacted.

While voter awareness, and fairness to the official sought to be recalled may be enhanced by the addition of AS 29.28.167(b), the division is concerned that the appearance of opposing points of view on the same petition may violate some basic assumptions inherent in any petition process. That is, that the specific point of view expressed in the petition language, and the subsequent action it commands is one that is concurred with uniformly by all the subscribers who affix their signatures. By providing conflicting positions on the same issue there may be some confusion as to which the signer subscribes.

With regard to the number of registered voter signatures required for certification of a recall petition, the division recognizes that the provision of 15% and 25% figures specified for communities of different size populations may have advantages in municipal recall elections. However, the division would find a uniform percentage requirement more convenient in qualifying REAA recall petitions.

Finally, the amendments relating to AS 15.13 suggested in this bill relate to the regulation of campaign contributions and expenditures, and reporting. As an administrative agency charged only with the conduct of elections, the division has no jurisdiction over these issues, and is not impacted by these provisions. The division, therefore, offers no opinion on these amendments.



Sandra J. Stout
Director

STATE OF ALASKA

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POSITION PAPER
HOUSE BILL NO. 270
March 19, 1985

The Division of Elections has reviewed House Bill No. 270, "An Act relating to municipal recalls, referendums, initiatives, and elections", and raises no major objections to its intent or content.

Most of the provisions of this bill relate specifically to incorporated communities over which the division has no jurisdiction, however, the division notes that the suggested amendments and additions concerning initiatives and referendum do make the provisions of Title 29 more consistent with Title 15 statutes governing statewide petitions and referendum procedures. The division supports the distinction outlined by the addition of AS 29.28.061 between the application for petition, and its actual circulation. The application process is helpful in assuring the sponsor, based on review by the clerk, and subject to judicial review, that the petition, is on its face, in proper form and sufficient to be favorably certified before energy is expended in securing the required number of signatures. Based on the division's experience in preparing and distributing petition booklets to sponsors supporting statewide petitions and referendum, we would suggest it advisable to require that for any type of petition, each sponsor's name be accompanied by that sponsor's signature to confirm their interest in circulating the petition. Periodically, sponsors' names have been submitted to the division who have not given their consent.

Pursuant to AS 14.08.071 and AS 14.08.081, the body of law governing the division's administration of Rural Education Attendance Area School Board elections is AS 29.28. Therefore, the amendments suggested by the bill regarding recall petitions are those that most greatly impact the division directly. Notwithstanding the reservations noted in this position paper, the division supports the provisions of this bill with regard to recall petitions.

The division favors the amendment to AS 29.28.130 clarifying the statutes by providing that elected as well as appointed officials are subject to recall. It is the division's

opinion that while this Section stipulates that an official may be recalled after the official has served the first 120 days of the term for which elected or appointed, it remains unclear as to the intended definition of "recalled" in this context. The statute is unclear as to whether the 120 day provision applies to the initiation of a petition, or to the actual election resulting from the successful certification of the circulated petition. Without clarification, there is some confusion as to whether or not a recall petition can be initiated before the official has served 120 days.

We support the changes suggested under AS 29.28.140 which specify that failure to perform prescribed duties as grounds for recall must relate to the term of office the official is presently serving. Confusion can occur when officials sought to be recalled have also served in previous terms.

As with the amendments included in this bill of initiatives and referendum, the division also supports the separation of the application process from actual circulation of recall petitions. These provisions again make the conditions involving local recalls more consistent with those in Title 15 impacting statewide recalls.

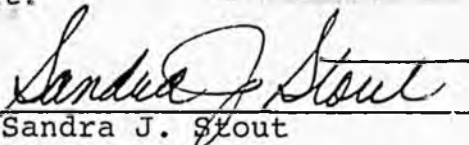
With regard to AS 29.28.150 (3), providing that a rebuttal statement shall be included in the prepared recall petition, we would express concern that the appearance of opposing points of view on the same petition may violate the basic assumptions inherent in the petition process. A petition is usually assumed to express a single point of view or command a subsequent action with which the sponsors and subscribers uniformly concur. By providing conflicting positions on the same issue, there may be some confusion as to which the signer subscribes. Under AS 29.28.210, provision is made that the rebuttal statement of the official will appear on the ballot which goes before the voters. The division suggests that this is a more appropriate placement of the rebuttal rather than on the sponsored petition. The division suggests that the deletion of the provision mandating that the ballot be made available 20 days before the election may be a detrimental deletion. While constricting timeframes frequently make it difficult to have the actual ballots published by that time, samples of the ballot language could be made available.

With regard to Sec. 29.28.242 providing for the appointment of successors to fill vacant seats resulting from the recall of an official, the division can offer no opinion as to the provision that the governor appoint municipal or other local officials in the event that entire councils or assemblies

are recalled. This amendment makes no reference to appointment authority under similar circumstances for school boards where there are no city councils or assemblies.

The division notes that the bill does not address the issue as to the recalled official's eligibility to run for re-election for the same office or for any other, and suggests that this clarification might be something the legislature may want to include in their review of this bill.

Finally, the division notes the amended definition of "voter" allowing municipalities by ordinance to require a voter to be registered in the precinct in which the persons seeks to vote in the municipal election. The division raises no objections to this amendment.



Sandra J. Stout
Director

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

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POSITION PAPER

RE: HB 177

SPONSOR: Representative Thompson, by Request

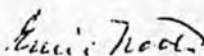
Program Effects of Bill

This bill would make municipal recalls subject to Alaska Public Offices Commission requirements. It would alter municipal recall petition procedures to require judicial scrutiny of the legal sufficiency of such petitions prior to circulation. It would not affect Departmental programs.

Comments

The Department does not oppose this bill. While municipal recalls are a part of the political process and arguably should be covered by APOC regulation, it is not clear why they should be treated differently from other municipal elections which may be exempted from such regulation at the option of the municipality.

The requirement of judicial review of the legal sufficiency of a recall petition prior to circulation makes sense from the point of view of municipal clerks who may not be qualified to make this determination. Clerks are also in the untenable position of making this decision about officials who may have hired them. Consequently, judicial review insulates the procedure to some extent from political pressures. The bill also provides for submission of a rebuttal statement from the official subjected to a recall petition to be included in the petition circulated for signatures. This provides an institutionalized manner of responding to charges prior to the recall election itself.



Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 177
 Title: Alaska Public Offices Commission and recall of elected officials
 Sponsor: Rep. Thompson
 Requestor: House C&RA
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

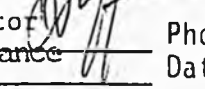
FUNDING: (Thousands of Dollars)

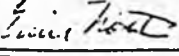
GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-		

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Doug Griffin, Deputy Director  Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/19/85

Approved by Commissioner: Emil Notti  Date: 3/19/85
 Agency: Community & Regional Affairs

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

DISTRICT 27:
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMEN'S BAY

Alaska State Legislature



House of Representatives

REPRESENTATIVE
DAVE THOMPSON
WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498
P.O. BOX 75
KODIAK, ALASKA 99615
(H)(907) 486-4899
(LIO)(907) 486-8116

DT: March 20, 1985

TO: House Community and Regional Affairs Committee
Chairman; Goll
Vice Chr; Wallis
Members; Koponen
Furnace
Gruenberg
Marrou
Phillips

FR: Thompson *DW*

RE: HB 177

The following information lists those major changes that Hb 177 would have on current AK Statute 29, dealing with recall of elected officials:

1. Requires immediate APOC filing by petitioners seeking recall. Sections 1 and 2 amend the existing APOC laws to prohibit municipalities from exempting themselves from APOC requirements, as regards recall; also requires immediate filing with APOC after a petition is filed with the clerk.
2. Clarifies the definition of the grounds for recall . The proposed change to existing statute would narrow the range of conduct that would constitute grounds for recall, but the terms, "misconduct, incompetence, and failure to perform", are unchanged. These are non-legal words for the traditional terms of malfeasance, misfeasance, and nonfeasance. These terms are clear and also quite broad.
3. Requires the superior court to rule on a petition before it is circulated.
Section 5 requires that the municipal clerk seek judicial review of the recall petition immediately after it is filed with the clerk. The court has 15 days to conduct its hearing. The State of Washington has proved that this can be done successfully.

4. Allows a rebuttal by the person being recalled.
Section 6 contains a new statute, AS 29.28.167(b), which allows a person being recalled to submit a 200 word statement to be included as part of any recall petition.

5. Bases required signatures on the last municipal, not general elections.

Section 6, AS 29.28.167(c), Requires that the number of signatures gathered in support of a petition be determined by municipal, not general elections.

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

January 2, 1985

Representative David W. Thompson
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Thompson:

Your research assistant, Helen Fisher, has shared with me your proposed draft of recall legislation. She indicated to me that you were aware of some proposed language put together by Richard Fossey of the law firm of Bankston and McCollum. I have attached all of his correspondence here.

I will also attempt to put together my views on the matter, based upon following the various legal actions of this past year. Here goes:

ISSUE NUMBER ONE

Current legislation requires that recall petitioners seek signatures in the amount of a percentage of the last general election.

PROBLEM

GENERAL ELECTION is language that refers to national elections and state wide elections. School boards get elected at MUNICIPAL elections, or at dates set by the division of elections (for REAA's). While the rationale for picking an election as the basis for determining the number of petitioners necessary to start a recall process is sound, in that it assumes that the same voters who elected the official should recall the official, it also has the weakness that there is really no direct relationship, in that a recall could conceivably be based upon a general election figure when the (probably lower) municipal election figure would be more accurate.

Aside from the purely flawed language, it would appear that a more systematic approach would be to base petition numbers on the number of REGISTERED VOTERS in the district as opposed to the actual voters. I am not, by this recommendation, suggesting a stiffer petition signing process. Please note that I did not recommend upping the requirement here. I will make that recommendation elsewhere here and attempt to justify it with documentation separate from this issue.

ISSUE NUMBER TWO

It appears that Alaska's process (chronology) of recall petitions is out of order. Presently, anyone may ask for a petition form from the local municipal clerk or from the state office of Elections. From the point of issuance, the petitioners have sixty days to gain the necessary signatures. At that point, when the petition is submitted with the signatures, it is scrutinized by the issuing office. The issuing office reviews for sufficient signatures and rules on sufficiency of compliance with reason for recall. It has happened, with increasing frequency, that the issuing office denies the recall petition at this point.

Representative David W. Thompson
January 2, 1985
Page two

In Washington State, recall petition are reviewed first by the municipal prosecutor AND THEN BY THE SUPERIOR COURT for sufficiency of meeting the definition of cause for recall, BEFORE THE PETITIONS CAN BE CIRCULATED FOR SIGNATURE.

I would suggest that Alaska examine the steps provided for in our statute. Washington has a good process, in that their chronology is correct in my view, and they automatically take the process to the Superior Court where Alaskan's do this at a time when the process is emotional and not reasoned.

Involving the Superior Court is also an expensive process to board members and possibly this item should be a responsibility of the state.

It should be noted that Washington's Supreme Court has just recently ruled that Superior Courts, in addition to reviewing recall petitions for sufficiency of meeting recall definitions, must review petitions for sufficiency of fact. In layman's terms, it was explained to me that the Superior Court must now rule on whether there is sufficient basis in fact for going forward with the recall, or is this an obvious trumped up charge. The court is not expected to rule on the "Truth" of the charges.

While I would hope that this would be a valuable precedent for Alaska, I recognize that there is considerable emotional reaction to limiting the cause for recall and politically wonder if attaining this step is possible.

ISSUE NUMBER THREE

More chronology. Under present conditions a petitioner may seek a petition on just about any grounds, circulate the petition for signatures, and then submit for election to the appropriate office. AT THAT TIME, the recallee gets to see the petition and IF THE RECALL GOES TO ELECTION gets to put a not to exceed 200 word recall rebuttal on the ballot.

I would recommend that there be a more formal filing process whereby the petition is reviewed for sufficiency, as per prior proposals, somewhat in the manner that Washington does it. I would further recommend that the process include a provision that any petition that is validated for circulation include the provision of the 200 word or less rebuttal by the recallee. I personally feel that a lot of damage can be done by the circulation process....culminating in failure or success of the petition process. The recallee should have rebuttal rights on a equal basis with the petitioner.

FURTHER: I would recommend that the petitioner be required to file with APOC immediately upon seeking the petition forms. Current statutes only require that the petitioner file with APOC when the petition goes to the recall election. My view is that the petitioner is effectively campaigning the minute the petitioner seeks the first signature.

Representative David W. Thompson
January 2, 1985
Page three

ISSUE NUMBER FOUR

Definition for cause for recall. This item is an extremely complex one and the legal folks have written reams on it. The Alaska Supreme Court, in its review of the Bering Strait case, did an extensive treatise on the history of the development of the scope of reasoning for recall as it is currently designed. Essentially some items came out that I do not argue with and they are:

1. Recall provisions should be sufficiently simple that the average citizen can make them work without the extensive aid of legal assistance.
2. The courts should not rule on the "Truth" of the charges.
3. Charges, as defined in legislation, should be relatively broad.

Having said this, I feel that the definition of charges needs to be worked on as the charges, as currently constructed, are too vague. Possibly this cannot be done, in which case I would again look to Washington's Supreme Court direction and ask that Superior Courts rule on sufficiency of definition and sufficiency of fact.

ISSUE NUMBER FIVE

The number of signatures required to initiate a recall election has been attacked as not sufficient to reflect public opinion.

I will merely indicate here that numerous recall elections have failed recently. Examples include an attempt to recall the mayor and some assembly members in Juneau because they advocated a time change. The recallees won the election and stayed in office by a vote margin approximating the original vote that put them in office.

In Craig, the school board was subjected to recall because "They were not in touch with what was going on in the schools." While all board members voted on all issues in the same manner, when the vote results were in, four of five board members were re-elected. The defeated candidate appeared to have community problems not in any related to school board actions.

In Bering Strait, the entire board was subjected to recall. Because court action prevented the election for approximately two years, the normal election process placed about six of the original board members before the voters. In these two local elections, all incumbents were re-elected. Finally, (two years later) the remaining three were subjected to recall. These three were defeated and turned out of office. The question here is, why did not the other six get dumped out at regular elections....if they were also the target of the process of recall?

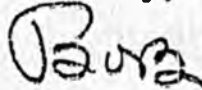
I can only assume here that public sentiment sometimes gets caught up in identifying with RECALL. Certainly there was nothing scientific about what happened, and lends credence to the notion that there is not a great deal of correlation between the numbers of signatures required for recall and the outcomes of the elections.

Representative David W. Thompson
January 2, 1985
Page four

Possibly the number should be increased.

Your comments on my views will be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Greene".

Robert C. Greene
Executive Director

RCG/sam

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL STEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
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949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

March 20, 1985

POSITION PAPER

RE: House Bill 270

SPONSOR: Representative Larson

Program Effects of Bill

This bill proposes changes in municipal initiative, referendum, and recall procedures. It would not affect Departmental programs.

Comments

The Department does not oppose this bill. It basically adopts language from the Governor's Municipal code revision bill (HB 72, SB 142) in regard to municipal initiative, referendum, and recall procedures. There are some substantive changes from HB 72 which would have the following effects:

- set out in greater detail the procedures and steps for municipal clerks to follow in the process, and
- establish more elaborate safeguards for officials subject to recall.



Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 270
 Title: Municipal recalls, referendums initiatives, & elections.
 Sponsor: Rep. Larson
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Doug Griffin, Deputy Director *Griffin* Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/19/85

Approved by Commissioner: Emil Notti *Notti* Date: 3/19/85
 Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

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

7/1/84

1 constitution.

2 (b) Voter registration by the municipality may not be required.
3 However, a municipality may by ordinance require that a person be
4 registered to vote in state elections in the precinct in which that
5 person seeks to vote in municipal elections.

6 (c) This section applies to home rule and general law municipal-
7 ities.

8 * Sec. 5. AS 29.28.040 is repealed and reenacted to read:

9 Sec. 29.28.040. RUNOFF ELECTIONS. (a) Unless otherwise pro-
10 vided by ordinance, a runoff election shall be held if no candidate
11 receives over 40 percent of the votes cast for the office of

12 (1) mayor; or

13 (2) member of the assembly, council, or school board if
14 candidates run for a designated seat.

15 (b) Unless otherwise provided by ordinance, if candidates for
16 the assembly, council, or school board run at large, a runoff election
17 for a seat shall be held if no candidate receives a number of votes
18 greater than 40 percent of the total votes cast for all candidates
19 divided by the number of seats to be filled.

20 (c) Unless otherwise provided by ordinance, a runoff election
21 shall be held within three weeks after the date of certification of
22 the election for which a runoff is required, and notice of the runoff
23 election shall be published at least five days before the election
24 date. The runoff election shall be between the two candidates receiv-
25 ing the greatest number of votes for the seat. The ballot may not
26 contain space for a voter to write in the name of another candidate.

27 * Sec. 6. AS 29.28 is amended by adding new sections to read:

28 Sec. 29.28.061. APPLICATION FOR PETITION. (a) An initiative or
29 referendum is proposed by filing an application with the municipal

1 (6) a statement, with space for the sponsor's sworn signa-
2 ture and date of signing, that the sponsor personally circulated the
3 petition, that all signatures were affixed in the presence of the
4 sponsor, and that the sponsor believes the signatures to be those of
5 the persons whose names they purport to be; and

6 (7) space for indicating the total number of signatures on
7 the petition.

8 (b) If a petition consists of more than one page, each page
9 shall contain the summary of the ordinance or resolution to be initi-
10 ated or the ordinance or resolution to be referred.

11 (c) Copies of the petition shall be provided to each sponsor by
12 the clerk.

13 * Sec. 7. AS 29.28.070 is amended to read:

14 Sec. 29.28.070. SIGNATURE REQUIREMENTS [REQUIRED SIGNATURES].

15 (a) The [NECESSARY] signatures on an initiative or referendum [A]
16 petition shall be secured within 60 [90] days after the clerk issues
17 [FROM THE DATE OF THE FIRST CIRCULATION OF] the petition. The state-
18 ment provided under AS 29.28.063(a)(6) shall be signed and dated by
19 the sponsor. The petition shall be signed in ink or indelible pencil.

20 (b) Every petition for either the initiative or referendum in
21 the government of a municipality shall be signed by a number of
22 [QUALIFIED] voters residing within the territorial limits of the
23 municipality, or, if the act sought to be initiated or referred per-
24 tains exclusively to the area outside cities or to a service area, by
25 a number of [QUALIFIED] voters residing within the area outside cities
26 or within the service area. The clerk shall determine the number of
27 signatures required on a petition and inform each sponsor. A petition
28 shall be signed by a number of voters based on the number of votes
29 cast at the last regular election held before the date the petition

C+RA WED 3/20/85

Introduced: 3/6/85
Referred: Community & Regional
Affairs and Judiciary

*Larson: re muni elections
same as Title 29 (HB 172)
changes: IDEA is if
HB 172 doesn't pass hope
this will pass.
Motsu Clerk will be there
by request
of Motsu Muni
Clerks*

BY LARSON

1 IN THE HOUSE

2

HOUSE BILL NO. 270

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to municipal recalls, referendums,
7 initiatives, and elections."

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

9 * Section 1. AS 29.13.100(8) is amended to read:

10 (8) AS 29.28.010, 29.28.022, 29.28.030 [29.28.020(b) -
11 29.28.030] (municipal election)

12 * Sec. 2. AS 29.28.020(b) is amended to read:

13 (b) The assembly or council may call a special election at any
14 time [UPON AT LEAST 20 DAYS NOTICE].

15 * Sec. 3. AS 29.28 is amended by adding a new section to read:

16 Sec. 29.28.022. NOTICE OF ELECTIONS. (a) Unless provided
17 otherwise by law, a municipality shall give at least 30 days notice of
18 an election.

19 (b) This section applies to home rule and general law municipal-
20 ities.

21 * Sec. 4. AS 29.28.030 is amended to read:

22 Sec. 29.28.030. VOTER QUALIFICATION. (a) A person may vote in
23 a municipal election only if the person

24 (1) is a United States citizen who is qualified to vote in
25 state elections; [AND]

26 (2) has been a resident of the municipality for 30 days
27 immediately preceding the election; [AND WHO]

28 (3) is registered to vote in state elections; and

29 (4) is not disqualified under art. V of the state

1 constitution.

2 (b) Voter registration by the municipality may not be required.
3 However, a municipality may by ordinance require that a person be
4 registered to vote in state elections in the precinct in which that
5 person seeks to vote in municipal elections.

6 (c) This section applies to home rule and general law municipal-
7 ties.

8 * Sec. 5. AS 29.28.04 is repealed and reenacted to read:

9 Sec. 29.28.040. RUNOFF ELECTIONS. (a) Unless otherwise pro-
10 vided by ordinance, a runoff election shall be held if no candidate
11 receives over 40 percent of the votes cast for the office of

12 (1) mayor; or

13 (2) member of the assembly, council, or school board if
14 candidates run for a designated seat.

15 (b) Unless otherwise provided by ordinance, if candidates for
16 the assembly, council, or school board run at large, a runoff election
17 for a seat shall be held if no candidate receives a number of votes
18 greater than 40 percent of the total votes cast for all candidates
19 divided by the number of seats to be filled.

20 (c) Unless otherwise provided by ordinance, a runoff election
21 shall be held within three weeks after the date of certification of
22 the election for which a runoff is required, and notice of the runoff
23 election shall be published at least five days before the election
24 date. The runoff election shall be between the two candidates receiv-
25 ing the greatest number of votes for the seat. The ballot may not
26 contain space for a voter to write in the name of another candidate.

27 * Sec. 6. AS 29.28 is amended by adding new sections to read:

28 Sec. 29.28.061. APPLICATION FOR PETITION. (a) An initiative or
29 referendum is proposed by filing an application with the municipal

1 clerk containing the ordinance or resolution to be initiated or the
2 ordinance or resolution to be referred and the address to which all
3 correspondence relating to the petition may be sent. An application
4 shall be signed by at least 10 voters who will sponsor the petition.
5 An additional sponsor may be added at any time before the petition is
6 filed by submitting the name of the sponsor to the clerk. Within two
7 weeks the clerk shall certify the application if the clerk finds that
8 it is in proper form and, for an initiative petition, that the matter

9 (1) is not restricted by AS 29.28.060;

10 (2) includes only a single subject;

11 (3) relates to a legislative rather than to an administra-
12 tive matter; and

13 (4) would be enforceable as a matter of law.

14 (b) A decision by the clerk on an application for petition is
15 subject to judicial review.

16 Sec. 29.28.063. CONTENTS OF PETITION. (a) Within two weeks
17 after certification of an application for an initiative or referendum
18 petition, a petition shall be prepared by the municipal clerk. Each
19 copy of the petition shall contain

20 (1) a summary of the ordinance or resolution to be initi-
21 ated or the ordinance or resolution to be referred;

22 (2) the complete ordinance or resolution sought to be ini-
23 tiated or referred as submitted by the sponsors;

24 (3) the date on which the petition is issued by the clerk;

25 (4) notice that signatures must be secured within 60 days
26 after the date the petition is issued;

27 (5) spaces for each signature, the printed name of each
28 signer, the date each signature is affixed, and the residence and
29 mailing addresses of each signer;

1 (6) a statement, with space for the sponsor's sworn signa-
2 ture and date of signing, that the sponsor personally circulated the
3 petition, that all signatures were affixed in the presence of the
4 sponsor, and that the sponsor believes the signatures to be those of
5 the persons whose names they purport to be; and

6 (7) space for indicating the total number of signatures on
7 the petition.

8 (b) If a petition consists of more than one page, each page
9 shall contain the summary of the ordinance or resolution to be initi-
10 ated or the ordinance or resolution to be referred.

11 (c) Copies of the petition shall be provided to each sponsor by
12 the clerk.

13 * Sec. 7. AS 29.28.070 is amended to read:

14 Sec. 29.28.070. SIGNATURE REQUIREMENTS [REQUIRED SIGNATURES].

15 (a) The [NECESSARY] signatures on an initiative or referendum [A]
16 petition shall be secured within 60 [90] days after the clerk issues
17 [FROM THE DATE OF THE FIRST CIRCULATION OF] the petition. The state-
18 ment provided under AS 29.28.063(a)(6) shall be signed and dated by
19 the sponsor. The petition shall be signed in ink or indelible pencil.

20 (b) Every petition for either the initiative or referendum in
21 the government of a municipality shall be signed by a number of
22 [QUALIFIED] voters residing within the territorial limits of the
23 municipality, or, if the act sought to be initiated or referred per-
24 tains exclusively to the area outside cities or to a service area, by
25 a number of [QUALIFIED] voters residing within the area outside cities
26 or within the service area. The clerk shall determine the number of
27 signatures required on a petition and inform each sponsor. A petition
28 shall be signed by a number of voters based on the number of votes
29 cast at the last regular election held before the date the petition

1 was issued equal to 25 percent of the votes cast in the area concerned
2 [, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING PER CENT OF THE TOTAL
3 NUMBER OF VOTES CAST AT THE LAST GENERAL ELECTION IN THE CITY OR
4 BOROUGH OR BOROUGH AREA CONCERNED, OR SPECIAL ELECTION CALLED FOR THE
5 PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:

6 (1) 25 PER CENT, WHEN A CITY OR BOROUGH HAS FEWER THAN
7 7,500 PERSONS, OR

8 (2) 15 PER CENT, WHEN A CITY OR BOROUGH HAS 7,500 PERSONS
9 OR MORE].

10 (c) When signing a petition each voter shall write or print
11 after the signature the date of signing the petition and the voter's
12 resident address.

13 (d) Illegible signatures shall be rejected by the clerk unless
14 accompanied by a legible printed name. Signatures not accompanied by
15 a legible residence address shall be rejected [MAY BE REJECTED BY THE
16 MUNICIPAL CLERK].

17 (e) A petition signer may withdraw the signer's signature upon
18 written application to the clerk before certification of the petition
19 [WITHIN SEVEN DAYS AFTER THE PETITION HAS BEEN FILED WITH THE CLERK].

20 * Sec. 8. AS 29.28.073 is repealed and reenacted to read:

21 Sec. 29.28.073. SUFFICIENCY OF PETITION. (a) All copies of an
22 initiative or referendum petition shall be assembled and filed as a
23 single instrument. Within 10 days after the date the petition is
24 filed, the municipal clerk shall

25 (1) certify on the petition whether it is sufficient; and

26 (2) if the petition is insufficient, identify the insuffi-
27 ciency and notify the sponsors at the address provided under AS 29.-
28 28.061(a) by certified mail.

29 (b) A petition that is insufficient may be supplemented with