ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5201 SCRA SB 155

773

Municipal rights-of-way are first and foremost for transportation and roads. As a secondary use, utility companies have a right to use the rights-of-way as utility corridors. Such use is in lieu of the utility having to purchase their own rights-of-way, and is usually free or with a minimum permit fee in the larger municipalities. However, the use of the right-of-way for little or no cost is with the understanding that the utility will relocate their facilities, if necessary, to accommodate road improvements, unless provided for differently in individual ordinances or franchise agreements between municipal and utility companies.

The proposed legislation does not distinguish between private, for-profit, investor-owned utilities and non-profit and REA utilities, nor between the regulated, essential utilities such as gas and electrical on one hand and the unregulated, unessential utilities such as cable television on the other. The potential cost of relocating utilities for the utility companies is just the cost of doing business, counter- balanced by the savings of not having to buy the rights-of-way from a land owner. Utility companies have always known upfront that they could potentially incur relocation costs in the event that road improvements are necessary. Any change in this by the Legislature is an intrusion into the local authority of the municipalities and their road powers.

Shifting the cost of utility relocation, as proposed in this bill, would shift the cost from the rate payer to the taxpayer. The additional cost may mean that necessary road improvements, necessary for public safety, may be delayed or simply not done given limited road construction dollars. This is especially true for local improvement districts and for boroughs with limited road powers and road service areas with limited dollars available.

The situation is also different than it is with state road construction. The State owns its rights-of-way in fee simple. They have complete control over their roads and can prohibit their use by utility companies. Municipalities cannot. The State Department of Transportation also operates with a large professional staff which is capable of supervising the permitting, planning, and installation of utilities in their roadways, including requiring "as-builts" of the facilities installed. Many municipalities do not require permits or fees or have tight controls over the utility companies and where and how they placed their utilities in the rights-of-way. And why should they build such expensive bureaucracies when it is common understanding that the utility will be responsible for relocating their facilities if necessary? Finally, the State of Alaska gets much of its highway improvement funds from the federal government. Therefore, it can build the cost of relocating utilities into the cost of the project and shift the costs to largely, third party, non-resident taxpayers.

In addition to the general argument that the legislation would inappropriately shift the cost of relocating utility facilities to the municipalities, the change from common law and past practice is made even more onerous in that such a change and the impact would be retroactive. Under Section 2 of the bill with the proposed added language of AS 29.35.075 (b)(2), the municipalities would be penalized for following the laws in place; i.e., many municipalities have allowed utilities to place

their facilities in the rights-of-way without charge or without permits because the understanding and law required the utility company to bear the responsibility and cost to move them if necessary. Under the language of this section, if there is no permit system, the municipality would pay the cost of relocation.

One final point is relevant, again, only if you accept the basic concept of the bill, and we do not. While the cost to the municipality for relocating the utility facilities is discounted for upgrades and salvage value in subsection (d) of the bill, "useful remain life" is not. If the municipality is required to pay for the cost of relocating the facility, it should have have to pay for brand new equipment if it has limited remaining life left; e.g., the telephone pole is old and rotting and would have had to be replaced in a year even if the municipality were not making road improvements which require their removal.

Again, the AML is opposed to SB 155 and shifting the cost of utility relocation from the utility company to the municipality and the general taxpayers.

SAB:phl

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate
Community and Regional Affairs Committee

TO: Senate C&RA Members April 2, 1987

FROM: Senate C&RA Staff

RE: SB 155 - Relating to change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality

Various versions of this bill have been in the legislature for at least five years. In general utilities support the bill and municipalities oppose it. There will be representatives from both groups to testify at the hearing today.

It is not anticipated that SB 155 will pass out of committee today, but rather, after all testimony, staff will work with interested committee members and other parties and bring a committee substitute back to committee in the near future.

Included in this packet is a zero fiscal note from the Department of Community and Regional Affairs; a statement form the Alaska Municipal League; material, including suggested amendments, from the Fairbanks North Star Borough; and two letters from the Alaska Rural Electric Cooperative Association.

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

March 30, 1987

Linda Anderson
FNSB Liaison
130 Seward St., Rm 304
Juneau, AK 99801

Dear Ms. Anderson:

SUBJECT: SUGGESTED MODIFICATIONS TO LANGUAGE OF SB 155

Along the lines of our brief conversations in Juneau on Friday, March 27, I recommend the following language be considered as a substitute bill for SB 155, "An act relating to the change, relocation or removal of utility facilities incident to the construction of road or other projects by a municipality."

1. Add to page 1, line 20, after the word "compliance.":

   "The utility shall prepare an estimate of the work required by the order for review and approval by the municipality before beginning work."

2. Add to page 1, line 27, after the word "municipality.":

   "The cost shall not exceed the approved estimate unless agreed to by the municipality."

3. Remove the word "municipal" from page 2, line 1.

4. Add to page 2, line 3, after the word "horizontal":

   "feet and one vertical"

5. Add to page 2, line 6, after the word "permits":

   "in that right-of-way"

6. Add to page 2, line 6, after the word "facilities.":

   "and the facility ~~is~~ was located ~~such that it met~~ in compliance with all applicable codes, regulations, and statutes at the time of its installation."

I will immediately follow up these suggested wording changes in SB155 with a letter describing some of my concerns and the impetus for making these changes. Thank you for your attention to our suggestions in this matter.

Sincerely,

Clark Milne

Clark R. Milne
Manager
Division of Civil Engineering

cc: Pat Walsh, Special Assistant to the Mayor, FNSB

cm8-141

★ Fairbanks North Star Borough

309 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

M E M O R A N D U M

TO: Dick Jackson, Administrator Director

THROUGH: Neil Kersten, Public Works Director

FROM: Clark Milne, Manager, Civil Engineering Division Clark Milne

DATE: March 30, 1987

SUBJECT: NEED FOR MODIFICATIONS TO SB155, "RELOCATION OF UTILITIES IN RIGHT-OF-WAYS"

To validate my letter which suggested changes to SB155 concerning municipalities (such as the FNSB) being responsible for paying utilities to remove or relocate existing utility facilities within right-of-ways, I would like to submit to you the comments below.

My first and foremost concern is that our FNSB utility permit system is quite young, having only been instituted on July 1, 1985. Thus, the majority of all utilities installed in road rights-of-way in the FNSB have been put in before our utility permit system was in effect, and the language of Section 29.35.075.(b)2 will probably be in effect the majority of the time. Thus, we will consistently be responsible for the costs of moving utility facilities in our rights-of-way. I believe this is inappropriate and not in the public's best interests, at least so far as the unrestricted wording of (b)2 imposes these costs on us.

Our experience in the Civil Engineering Division has been that the majority of the time when we require the removal or relocation of a utility facility from our right-of-way, it is due to a past failure of the utility to install the service line or facility properly in the first place. This includes both aerial crossings that are too low, buried lines that are too shallow, and utility poles that intrude too closely to the existing road shoulders so that necessary road widening (within the right-of-way) requires the relocation of an existing pole. To require us to pay for these oversights, under-designs, and inappropriate installations by the utility firms seems unconscionable. Thus, my suggested revision in the SB155 language (as noted in my letters to Linda Anderson and McKie Campbell, see attached), item no. 4, which would require that the utility firm have installed the affected facility properly, i.e. to the standards of the applicable code or regulation, in the first place.

The most common and expensive instances of this type of facility that must be moved are aerial crossings above the roadway which are currently at less than the minimum 18 foot required by national electrical code. It is our practice, and is supported by the common law, that the utility firm is wholly responsible for the costs of raising these substandard lines crossing our right-of-way to an appropriate, code/standard elevation above the road surface.

Similarly, we have had significant problems and expenses due to the relocation of telephone or power lines below the road surface. We have found that all too often a utility placed a line too shallowly in the right-of-way and a new road project thus uncovers and interferes with it. Again, national electric code requires that any power or telephone line must be buried at least 30" under the ground surface. If only this were the common condition of buried utility lines in the FNSB our troubles would be nearly over! Unfortunately, there are many instances in our road projects where buried utility lines are very often found to be at anywhere from 4" to 24" below the ground surface--thus, the road interference with minor improvements to the roadway.

In both of the cases noted above, SB155 would automatically give the utility firm a "reprieve" from having to pay for their illegal and substandard utility placement. Without actually calculating the exact expenses generated by utility relocation for FNSB projects in the last few years, I believe that as a rough estimate approximately 10% of our capital improvement monies for road improvement projects would go to utility relocation were SB155 to be passed in the form submitted by Senator Josephson.

Other concerns I have tried to deal with in my revised language for SB155 are evidenced in the other items noted in my letters of March 30. The first item deals with my concern that utility firms should work with the municipalities before beginning work on utility removal or relocation to assure that their field activities are cost-effective and solely done in an effort to replace or relocate the facility which is interfering with the legitimate uses of the road right-of-way. I fear circumstances where the utility could indiscriminately overcharge the municipality for unnecessary expenses, as well as situations where the replacement facility is a superior and improved product to that which is being replaced. Neither of these two concerns is addressed in SB155 as originally submitted.

Item no. 2 would tend to assure that the costs as discussed and approved by the utility and municipality before beginning work are indeed those reached during construction. I foresee reasonable incidences where the initial cost estimate is exceeded, but believe that the municipalities can negotiate with the utilities in a timely manner to increase those agreed upon estimates for valid, discernable reasons.

Item no. 3 was requested because I do not know what a "municipal right-of-way" is. In the Borough we only have public rights-of-way, some of which are included within service areas and thus subject to municipal maintenance efforts.

Item no. 4 addresses my concern that an often crucial dimension in the location of utility facilities is the exact depth or elevation of the line or pipe. I understand that many utility firms have extremely poor as-built records of the location of their facilities, but I believe this should be the utility's concern, problem and expense, not ours.

Item no. 5 deals with my concern that the existing FNSB utility permit system applies only to those rights-of-way within recognized road service areas. The revised language would read "before the municipality had a system for granting easements or permits in that right-of-way for utility facilities," which would eliminate the problem of us having to pay for facility relocations in rights-of-way not covered by a utility permit system such as ours because the permit system was restricted to rights-of-way within service areas. Thus, if a service area annexed new roads after the utility firm installed a facility (after July 1, 1985), and we later interfered with that facility with our transportation use of that road right-of-way, we would not be held responsible for the lack of our utility permit system, but rather the utility firm would be responsible for having to follow good practice and the" applicable codes, regulations and statutes" affecting that utility facility.

Finishing up with item no. 6 from my letter, I understand that it may be troublesome to do the research necessary to confirm what "codes, regulations and statutes "apply to the various situations we find in needing utility relocations in our rights-of-way, but it seemed to me to be the most just and fair dividing line when faced with paying for a utility relocation or not. I agree with the concept that if a utility firm acted within the applicable codes and standards of their industry and all applicable regulations and statutes within the State of Alaska, our dramatic modification of the use of a road right-of-way should include and require our payment for the relocation or removal of the affected utility facilities. It is interesting to note that I believe that I understand the utility's point of view of some of these costs and concerns. But I do not believe that they should be able to "end run" the existing common law and the common sense of justice inherent in having to pay for their own mistakes of the past.

For additional specifics or other questions, please feel free to contact me at ext. 351.

cm8-143

Clark Milne

U.S. Department
of Transportation
Federal Highway
Administration

Real Estate Acquisition Guide for Local Public Agencies

A Resource Manual for Use by:
Local Public Agency and State
Personnel Involved in the Acquisition
of Real Property for Federally-Assisted
Public Improvement Projects

Prepared by:
Real Estate Division
Office of Right-of-Way

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3/3/87

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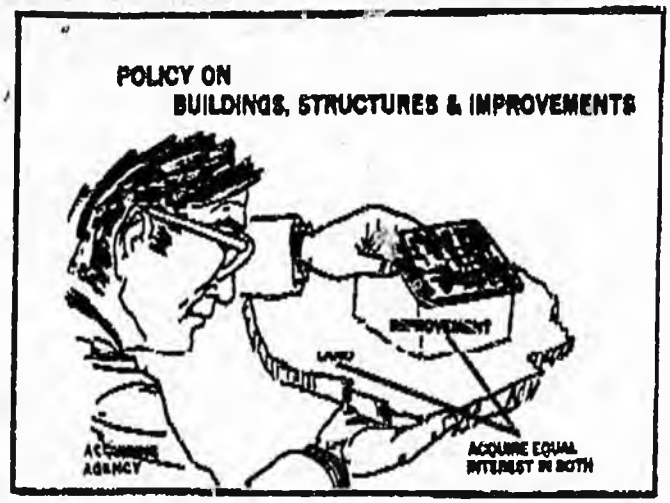

other improvements. The Uniform Act requires that such tenant receive just compensation for any such buildings, structures, or improvements. The tenant is due this compensation even if the lease requires the tenant to remove any buildings, structures, or improvements at the end of the lease term.

Any building, structure, or other improvement which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for acquisition purposes. Acquisition from the tenant-owner shall follow the same procedures as for a fee owner.

Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its removal value, whichever is greater. Removal value is considered to be salvage value.

a. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

b. The contributory value consists of:

1. The value in place of a building, structure, or other improvement, the present use of which is the highest and best use of the land to be acquired, for its remaining economic life; or

2. The interim use value of a building, structure, or other improvement, the present use of which is not the projected highest and best use of the land to be acquired, for a specified interim time period longer than the remaining term of the lease (interim use value includes the present worth of the salvage value of the buildings, structures, or other improvements at the end of the interim time period); or

3. The value in place of a building, structure, or other improvement, the present use of which is not the highest and best use of the land to be acquired, for the remaining term of the lease plus the worth of its salvage value at the end of the lease term.

No payment shall be made to a tenant-owner for any improvements unless:

a. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;

b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

c. The payment does not result in the duplication of any compensation otherwise authorized by law.

This provision shall not be construed to deprive the tenant-owner of any rights to reject payment under this provision and to obtain payment for such property interests in accordance with other applicable law.

14.5 Utility Relocation and Accommodation

contact State for explanation

Historically, it has been in the public interest for public utility facilities to use and occupy the right-of-way of public roads and streets. This is especially the case on

local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formation of utility and highway transportation networks. Over many years, it has proven to offer the most feasible, economic, and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional right-of-way for utility purposes alone. This could have also resulted in significant added costs to be borne by the utility consumers through increased rates for utility services so provided.

Under the practice of jointly using a common right-of-way, there are two broad areas of concern to highway and utility officials alike. First is the cost of relocating, replacing, or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as Utility Relocations and Adjustments. Second, is the installation of utility facilities along or across highway right-of-way and the manner in which they occupy and jointly use such right-of-way, commonly referred to as the Accommodation of Utilities.

Federal-aid funds may participate in relocating utilities displaced by a proposed highway project when certain conditions have been met.

First of all, you should check with the State highway department to be sure you are in compliance with the appropriate State procedures.

If the facilities are only serving the owner of the land and are not serving some aspect of the "public" then they would be treated under normal acquisition procedures for private property.

When it is determined that the utility is in fact serving the "public," the next step is to determine which of the utility adjustments are potentially eligible for federal-aid funding. In general, Federal-aid funds may participate in the costs of adjusting utilities where:

* the utility has a legal compensable interest in its present location by reason of holding a fee or easement to the real property; or

* the State is authorized by statute to pay for the utility adjustment; or

* the utility is owned by a governmental unit, is within public right-of-way, and the governmental unit is not required by law or agreement to relocate its facilities.

If, after the above is satisfied, it is determined that the new rights-of-way are required for the utility, there are two options available for obtaining the right-of-way. First, the utility may obtain the replacement right-of-way and be reimbursed for its costs. The second is for the highway agency to be the responsible party for obtaining the right-of-way. This needs to be covered as part of the utility relocation agreement between the highway agency and the public utility approved by the FHWA Division Office. Where the highway agency is obtaining the replacement rights-of-way, the provisions of the Uniform Act will apply. If the agreement calls for the utility to provide the rights-of-way, the Uniform Act does not apply.

14.6 Joint Development/Multiple Use

Highway joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the highway and its environment and to obtain maximum benefits from the use of increasingly scarce right-of-way.

Joint development/multiple use projects can have a major influence on highway location and design. Non-highway activities such as housing, business activities, parking, and recreation can be located in the airspace above or below the highway or on land adjacent to the highway. The designs for both the highway and the non-highway elements must be developed in close coordination and with a view toward achieving esthetic harmony, safety, overall economy, and compatibility with the adjoining neighborhood.

Joint development/multiple use applies not only to cooperative planning by the highway and the non-highway agencies, but also involves concern for land use beyond the immediate highway right-of-way. The intent is to

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 30, 1984

TO: All House Members

FROM: David Hutchens Dave

SUBJECT: CS for CS for SB 67 (Rules) - Very similar to SB155 MC

Eventually the House will get to its Daily Calendar for 3-29. When that time comes, please support SB67.

This bill provides for reimbursement by municipalities of the net cost of relocating utility facilities when municipal road projects force their relocation. Most municipalities have in fact paid these costs in the past just as the State Department of Transportation has done since 1973. Some municipalities are now refusing to participate in these relocation expenses, and we see a growing trend in that direction.

These relocation expenses should properly be paid for by the municipalities as a part of the road project. In some cases, the cost of utility relocations can be more than the cost of the road itself. This situation leads to distortions in decision making. The municipality considers all the benefits of the road project, but only part of its costs.

The problem to the utilities' consumers is very real. A distribution line will typically be financed for 35 years. If the utility is forced to replace that line without reimbursement after 5 years, the consumers then have to pay 65 years' worth of debt on that facility in 35 years.

In many cases, the utility lines were there first. Chugach Electric, for example, has between 100 and 200 miles of line which were installed before there were adjacent roads, before there was any formal permit or easement process, and in some cases before those areas were within municipal boundaries. It would be extremely unfair for them now to be required to move those facilities at their own expense to accommodate a new road project.

In total economic terms it would not really make much difference whether relocation costs are paid by utility ratepayers or municipal tax payers, but in many cases they are not the same

people. For example, the City of Kenai is one of those municipalities which refuses to pay. They are one of several communities within the service area of Homer Electric Association. When the city of Kenai refuses to pay, the result is to transfer part of the cost of City of Kenai road projects to residents of the other communities throughout the HEA service area.

In the interest of simple fairness, please vote for SB 67. The cost causer should be the cost payer.

people. For example, the City of Kenai is one of those municipalities which refuses to pay. They are one of several communities within the service area of Homer Electric Association. When the city of Kenai refuses to pay, the result is to transfer part of the cost of City of Kenai road projects to residents of the other communities throughout the HEA service area.

In the interest of simple fairness, please vote for SB 67. The cost causer should be the cost payer.

(10) HB 155

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 3, 1987

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

Thank you for introducing HB 155.- Same as SB 155- M&C

In regard to the relocation of utility facilities incident to a municipal construction project, this legislation would clarify the law as to when the utility pays and when the municipality pays. If there is a written agreement on these matters between the parties, that agreement would govern. If there is not a written agreement on allocation of costs, the municipality would pay if the utility facility is properly located under a permit or if the utility facility was installed before the municipality permit system applied to the construction of the facility in question in question.

The effect of all this is to resolve a long-standing dispute by protecting the utility investment in existing facilities. It will require municipalities in some cases to include utility relocation costs in the cost of municipal construction projects which would otherwise be in dispute between the parties.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State or federal grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the state or federal government.

In some cases the expense will be assumed by the municiaplity. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

March 24, 1987

RECEIVED After Packet was compiled. MC

The Honorable Mike Szymanski
Senator
State of Alaska
Box V
Juneau, Alaska 99811

RE: HB 155 Utility Relocation

Dear Senator Szymanski,

Like so many things, if you don't succeed at first, try, try again, and HB 155 Utility Relocation is a good example of this.

For the past two Legislative Sessions, the question of utility relocation responsibility has been presented to the legislators for consideration which if enacted would place an undue burden on the local political entities.

The problems which confront the City of Palmer are not unique to our city alone but other cities and boroughs within the State where the utilities are not municipally-owned.

Even though the City of Palmer has had a permitting system in effect since 1981, we find during reconstruction of streets and underground utilities, the permit allocation of right-of-way use has not been followed as specified. Naturally, the utility has to bear the relocation cost as a part of the agreement signed. However, our biggest problems are the utilities installed prior to our permitting system. Those utilities meander all over the right-of-way at varying depths. By grand-fathering ALL previously installed utilities gives the utilities a free ride for their errors at taxpayers expense. The utilities are not accountable for their mistakes which is wrong. Even worse is to allow a two (2) foot horizontal error in the utility placement. This is impossible to live with. Our utility permit requires the utility to be placed within a 0-5 foot area from the property line, no more, no less. If a utility cannot be placed in a five (5) foot area, then something is wrong.

Using our adopted design for a collector street, the width is 44 feet back-of-curb to back-of-curb without sidewalks. Using a 60 foot right-of-way, this utility corridor becomes very important if each utility uses their share properly and is considerate of their fellow utilities.

In my 26 years in the municipal field, ranging from a Sewer and Water Plant Operator to Director of Public Works to City Manager, I have found that the utilities are reluctant to spend the money or have on staff a qualified surveyor to lay out the exact location of the right-of-way. The employees assigned to the task are instructed to install the utility according to the work order which in many cases is vague or impossible to relate to actual field conditions. For example, if undergrowth has occurred in the right-of-way, rather than clear through this obstacle, the construction crews would install the utility further out in the right-of-way to avoid the undergrowth, further compounding the inevitable problem.

I have no problem with my sharing the burden of relocation if in fact the City of Palmer errored when the permit was issued or was issued in good faith with the population change requiring an entirely different or wider right-of-way to accommodate a higher volume street which was not forecasted in the Comprehensive Plan. An interesting point, not one mention is made of the Comprehensive Plan in this bill as a basis for relocation cost allocation.

We have a tendency to absolve the past errors here in Alaska which continues to haunt us no matter how good our intentions are, and this is another example. The City of Palmer urges you to vote against House Bill 155.

Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Scott Burgess
Mayor Carte'
House Transportation & Finance Committee Members

Alaska State Legislature

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate
Community and Regional Affairs Committee

TO: Senate C&RA Members April 2, 1987

FROM: Senate C&RA Staff

RE: SB 155 - Relating to change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality

Various versions of this bill have been in the legislature for at least five years. In general utilities support the bill and municipalities oppose it. There will be representatives from both groups to testify at the hearing today.

It is not anticipated that SB 155 will pass out of committee today, but rather, after all testimony, staff will work with interested committee members and other parties and bring a committee substitute back to committee in the near future.

Included in this packet is a zero fiscal note from the Department of Community and Regional Affairs; a statement form the Alaska Municipal League; material, including suggested amendments, from the Fairbanks North Star Borough; and two letters from the Alaska Rural Electric Cooperative Association.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 155
Publish Date :

REQUEST:

Revision Date:
Agency Affected : Community & Regional Affairs
Title : "An Act change, relocation, or removal of utility facilities..construction
BRU : Local Government Assistance
Sponsor : Josephson
Component : Training & Development
Requestor : Senate C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Doug Griffin, Deputy Director
Phone : 465-4750
Division : Municipal & Regional Assistance
Date : 4/1/87

Approved by Commissioner : Brent C. Allen
Date : 4-1-87
Agency : Community & Regional Affairs

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

page ____ of ____

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

April 2, 1987

APR 2 1987

MEMORANDUM

TO: Senator Arliss Sturgulewski, Chair
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: SB 155 - Relocation of Utility Facilities

The Alaska Municipal League is opposed to SB 155 and shifting the cost of relocating utility facilities in connection with municipal construction in rights-of-way from the utility company to the municipality. The AML has opposed this effort every year similar legislation has been introduced into the Legislature; most recently, SB 67 in the 13th Legislature. The legislation, if passed, would deviate from common and case law.

The AML's 1987 Policy Statement was most recently revised and adopted by the membership, representing 124 municipalities, at their annual meeting in Juneau last November. On page 17 of the Policy Statement, it states the following:

> Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of all non-municipal, utility relocation within existing rights-of-way associated with municipal street work.

As 12 McQuillan, Municipal Corporations, Section 34.74 on page 183 states:

> The fundamental common-law right applicable to franchises in streets is that the utility company must relocate its facilities in public streets when changes are required by public necessity. Accordingly, it is generally held that the municipality may require a change in the location of pipes or other underground facilities of the grantee of a franchise, where public convenience or security require it, even at the grantee's own expense, and even in the face of a protest by a consumer. It makes no difference whether the surface or subsurface of streets is involved.

The common law rule referenced above can be modified by legislative action or contract agreement between the municipality and the utility company. The League urges the Legislature not to change common law and practice, and, instead, leave the matters addressed in this bill to local officials to work out with local utilities in the best interest of the local public.

Municipal rights-of-way are first and foremost for transportation and roads. As a secondary use, utility companies have a right to use the rights-of-way as utility corridors. Such use is in lieu of the utility having to purchase their own rights-of-way, and is usually free or with a minimum permit fee in the larger municipalities. However, the use of the right-of-way for little or no cost is with the understanding that the utility will relocate their facilities, if necessary, to accommodate road improvements, unless provided for differently in individual ordinances or franchise agreements between municipal and utility companies.

The proposed legislation does not distinguish between private, for-profit, investor-owned utilities and non-profit and REA utilities, nor between the regulated, essential utilities such as gas and electrical on one hand and the unregulated, unessential utilities such as cable television on the other. The potential cost of relocating utilities for the utility companies is just the cost of doing business, counter- balanced by the savings of not having to buy the rights-of-way from a land owner. Utility companies have always known upfront that they could potentially incur relocation costs in the event that road improvements are necessary. Any change in this by the Legislature is an intrusion into the local authority of the municipalities and their road powers.

Shifting the cost of utility relocation, as proposed in this bill, would shift the cost from the rate payer to the taxpayer. The additional cost may mean that necessary road improvements, necessary for public safety, may be delayed or simply not done given limited road construction dollars. This is especially true for local improvement districts and for boroughs with limited road powers and road service areas with limited dollars available.

The situation is also different than it is with state road construction. The State owns its rights-of-way in fee simple. They have complete control over their roads and can prohibit their use by utility companies. Municipalities cannot. The State Department of Transportation also operates with a large professional staff which is capable of supervising the permitting, planning, and installation of utilities in their roadways, including requiring "as-builts" of the facilities installed. Many municipalities do not require permits or fees or have tight controls over the utility companies and where and how they placed their utilities in the rights-of-way. And why should they build such expensive bureaucracies when it is common understanding that the utility will be responsible for relocating their facilities if necessary? Finally, the State of Alaska gets much of its highway improvement funds from the federal government. Therefore, it can build the cost of relocating utilities into the cost of the project and shift the costs to largely, third party, non-resident taxpayers.

In addition to the general argument that the legislation would inappropriately shift the cost of relocating utility facilities to the municipalities, the change from common law and past practice is made even more onerous in that such a change and the impact would be retroactive. Under Section 2 of the bill with the proposed added language of AS 29.35.075 (b)(2), the municipalities would be penalized for following the laws in place; i.e., many municipalities have allowed utilities to place

their facilities in the rights-of-way without charge or without permits because the understanding and law required the utility company to bear the responsibility and cost to move them if necessary. Under the language of this section, if there is no permit system, the municipality would pay the cost of relocation.

One final point is relevant, again, only if you accept the basic concept of the bill, and we do not. While the cost to the municipality for relocating the utility facilities is discounted for upgrades and salvage value in subsection (d) of the bill, "useful remain life" is not. If the municipality is required to pay for the cost of relocating the facility, it should have have to pay for brand new equipment if it has limited remaining life left; e.g., the telephone pole is old and rotting and would have had to be replaced in a year even if the municipality were not making road improvements which require their removal.

Again, the AML is opposed to SB 155 and shifting the cost of utility relocation from the utility company to the municipality and the general taxpayers.

SAB:phl

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

March 30, 1987

Linda Anderson
FNSB Liaison
130 Seward St., Rm 304
Juneau, AK 99801

Dear Ms. Anderson:

SUBJECT: SUGGESTED MODIFICATIONS TO LANGUAGE OF SB 155

Along the lines of our brief conversations in Juneau on Friday, March 27, I recommend the following language be considered as a substitute bill for SB 155, "An act relating to the change, relocation or removal of utility facilities incident to the construction of road or other projects by a municipality."

1. Add to page 1, line 20, after the word "compliance.":

   "The utility shall prepare an estimate of the work required by the order for review and approval by the municipality before beginning work."

2. Add to page 1, line 27, after the word "municipality.":

   "The cost shall not exceed the approved estimate unless agreed to by the municipality."

3. Remove the word "municipal" from page 2, line 1.

4. Add to page 2, line 3, after the word "horizontal":

   "feet and one vertical"

5. Add to page 2, line 6, after the word "permits":

   "in that right-of-way"

6. Add to page 2, line 6, after the word "facilities.":

   "and the facility ~~is~~ was located ~~such that it met~~ in compliance with all applicable codes, regulations, and statutes at the time of its installation."

I will immediately follow up these suggested wording changes in SB155 with a letter describing some of my concerns and the impetus for making these changes. Thank you for your attention to our suggestions in this matter.

Sincerely,

Clark Milne

Clark R. Milne
Manager
Division of Civil Engineering

cc: Pat Walsh, Special Assistant to the Mayor, FNSB

cm8-141

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

M E M O R A N D U M

TO: Dick Jackson, Administrator Director

THROUGH: Neil Kersten, Public Works Director

FROM: Clark Milne, Manager, Civil Engineering Division Clark Milne

DATE: March 30, 1987

SUBJECT: NEED FOR MODIFICATIONS TO SB155, "RELOCATION OF UTILITIES IN RIGHT-OF-WAYS"

To validate my latter which suggested changes to SB155 concerning municipalities (such as the FNSB) being responsible for paying utilities to remove or relocate existing utility facilities within right-of-ways, I would like to submit to you the comments below.

My first and foremost concern is that our FNSB utility permit system is quite young, having only been instituted on July 1, 1985. Thus, the majority of all utilities installed in road rights-of-way in the FNSB have been put in before our utility permit system was in effect, and the language of Section 29.35.075.(b)2 will probably be in effect the majority of the time. Thus, we will consistently be responsible for the costs of moving utility facilities in our rights-of-way. I believe this is inappropriate and not in the public's best interests, at least so far as the unrestricted wording of (b)2 imposes these costs on us.

Our experience in the Civil Engineering Division has been that the majority of the time when we require the removal or relocation of a utility facility from our right-of-way, it is due to a past failure of the utility to install the service line or facility properly in the first place. This includes both aerial crossings that are too low, buried lines that are too shallow, and utility poles that intrude too closely to the existing road shoulders so that necessary road widening (within the right-of-way) requires the relocation of an existing pole. To require us to pay for these oversights, under-designs, and inappropriate installations by the utility firms seems unconscionable. Thus, my suggested revision in the SB155 language (as noted in my letters to Linda Anderson and McKie Campbell, see attached), item no. 4, which would require that the utility firm have installed the affected facility properly, i.e. to the standards of the applicable code or regulation, in the first place.

The most common and expensive instances of this type of facility that must be moved are aerial crossings above the roadway which are currently at less than the minimum 18 foot required by national electrical code. It is our practice, and is supported by the common law, that the utility firm is wholly responsible for the costs of raising these substandard lines crossing our right-of-way to an appropriate, code/standard elevation above the road surface.

Similarly, we have had significant problems and expenses due to the relocation of telephone or power lines below the road surface. We have found that all too often a utility placed a line too shallowly in the right-of-way and a new road project thus uncovers and interferes with it. Again, national electric code requires that any power or telephone line must be buried at least 30" under the ground surface. If only this were the common condition of buried utility lines in the FNSB our troubles would be nearly over! Unfortunately, there are many instances in our road projects where buried utility lines are very often found to be at anywhere from 4" to 24" below the ground surface--thus, the road interference with minor improvements to the roadway.

In both of the cases noted above, SB155 would automatically give the utility firm a "reprieve" from having to pay for their illegal and substandard utility placement. Without actually calculating the exact expenses generated by utility relocation for FNSB projects in the last few years, I believe that as a rough estimate approximately 10% of our capital improvement monies for road improvement projects would go to utility relocation were SB155 to be passed in the form submitted by Senator Josephson.

Other concerns I have tried to deal with in my revised language for SB155 are evidenced in the other items noted in my letters of March 30. The first item deals with my concern that utility firms should work with the municipalities before beginning work on utility removal or relocation to assure that their field activities are cost-effective and solely done in an effort to replace or relocate the facility which is interfering with the legitimate uses of the road right-of-way. I fear circumstances where the utility could indiscriminately overcharge the municipality for unnecessary expenses, as well as situations where the replacement facility is a superior and improved product to that which is being replaced. Neither of these two concerns is addressed in SB155 as originally submitted.

Item no. 2 would tend to assure that the costs as discussed and approved by the utility and municipality before beginning work are indeed those reached during construction. I foresee reasonable incidences where the initial cost estimate is exceeded, but believe that the municipalities can negotiate with the utilities in a timely manner to increase those agreed upon estimates for valid, discernable reasons.

Item no. 3 was requested because I do not know what a "municipal right-of-way" is. In the Borough we only have public rights-of-way, some of which are included within service areas and thus subject to municipal maintenance efforts.

Item no. 4 addresses my concern that an often crucial dimension in the location of utility facilities is the exact depth or elevation of the line or pipe. I understand that many utility firms have extremely poor as-built records of the location of their facilities, but I believe this should be the utility's concern, problem and expense, not ours.

Item no. 5 deals with my concern that the existing FNSB utility permit system applies only to those rights-of-way within recognized road service areas. The revised language would read "before the municipality had a system for granting easements or permits in that right-of-way for utility facilities," which would eliminate the problem of us having to pay for facility relocations in rights-of-way not covered by a utility permit system such as ours because the permit system was restricted to rights-of-way within service areas. Thus, if a service area annexed new roads after the utility firm installed a facility (after July 1, 1985), and we later interfered with that facility with our transportation use of that road right-of-way, we would not be held responsible for the lack of our utility permit system, but rather the utility firm would be responsible for having to follow good practice and the" applicable codes, regulations and statutes" affecting that utility facility.

Finishing up with item no. 6 from my letter, I understand that it may be troublesome to do the research necessary to confirm what "codes, regulations and statutes "apply to the various situations we find in needing utility relocations in our rights-of-way, but it seemed to me to be the most just and fair dividing line when faced with paying for a utility relocation or not. I agree with the concept that if a utility firm acted within the applicable codes and standards of their industry and all applicable regulations and statutes within the State of Alaska, our dramatic modification of the use of a road right-of-way should include and require our payment for the relocation or removal of the affected utility facilities. It is interesting to note that I believe that I understand the utility's point of view of some of these costs and concerns. But I do not believe that they should be able to "end run" the existing common law and the common sense of justice inherent in having to pay for their own mistakes of the past.

For additional specifics or other questions, please feel free to contact me at ext. 351.

cm8-143

Clark Milne

U.S. Department of Transportation
Federal Highway Administration

Real Estate Acquisition Guide for Local Public Agencies

A Resource Manual for Use by:
Local Public Agency and State Personnel Involved in the Acquisition of Real Property for Federally-Assisted Public Improvement Projects

Prepared by:
Real Estate Division
Office of Right-of-Way

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3/3/87

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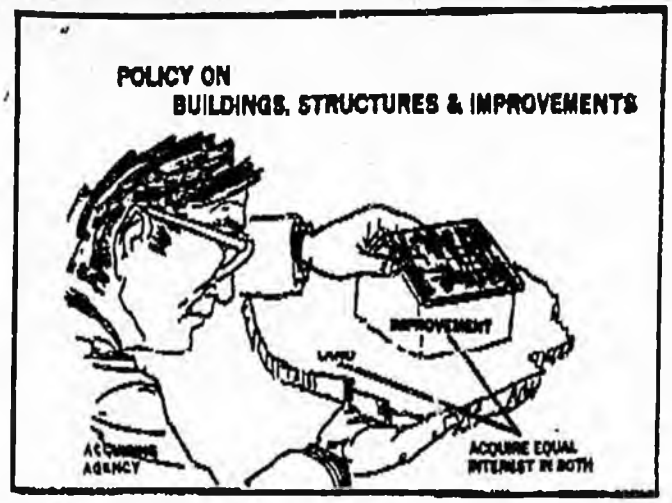

other improvements. The Uniform Act requires that such tenant receive just compensation for any such buildings, structures, or improvements. The tenant is due this compensation even if the lease requires the tenant to remove any buildings, structures, or improvements at the end of the lease term.

Any building, structure, or other improvement which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for acquisition purposes. Acquisition from the tenant-owner shall follow the same procedures as for a fee owner.

Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its removal value, whichever is greater. Removal value is considered to be salvage value.

a. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

b. The contributory value consists of:

1. The value in place of a building, structure, or other improvement, the present use of which is the highest and best use of the land to be acquired, for its remaining economic life; or

2. The interim use value of a building, structure, or other improvement, the present use of which is not the projected highest and best use of the land to be acquired, for a specified interim time period longer than the remaining term of the lease (interim use value includes the present worth of the salvage value of the buildings, structures, or other improvements at the end of the interim time period); or

3. The value in place of a building, structure, or other improvement, the present use of which is not the highest and best use of the land to be acquired, for the remaining term of the lease plus the worth of its salvage value at the end of the lease term.

No payment shall be made to a tenant-owner for any improvements unless:

a. The tenant-owner, in consideration for the payment, assigns, transfers and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;

b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

c. The payment does not result in the duplication of any compensation otherwise authorized by law.

This provision shall not be construed to deprive the tenant-owner of any rights to reject payment under this provision and to obtain payment for such property interests in accordance with other applicable law.

14.5 Utility Relocation and Accommodation

contact State for explanation

Historically, it has been in the public interest for public utility facilities to use and occupy the right-of-way of public roads and streets. This is especially the case on

local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formation of utility and highway transportation networks. Over many years, it has proven to offer the most feasible, economic, and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional right-of-way for utility purposes alone. This could have also resulted in significant added costs to be borne by the utility consumers through increased rates for utility services so provided.

Under the practice of jointly using a common right-of-way, there are two broad areas of concern to highway and utility officials alike. First is the cost of relocating, replacing, or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as Utility Relocations and Adjustments. Second, is the installation of utility facilities along or across highway right-of-way and the manner in which they occupy and jointly use such right-of-way, commonly referred to as the Accommodation of Utilities.

Federal-aid funds may participate in relocating utilities displaced by a proposed highway project when certain conditions have been met.

First of all, you should check with the State highway department to be sure you are in compliance with the appropriate State procedures.

If the facilities are only serving the owner of the land and are not serving some aspect of the "public" then they would be treated under normal acquisition procedures for private property.

When it is determined that the utility is in fact serving the "public," the next step is to determine which of the utility adjustments are potentially eligible for Federal-aid funding. In general, Federal-aid funds may participate in the costs of adjusting utilities where:

* the utility has a legal compensable interest in its present location by reason of holding a fee or easement to the real property; or
* the State is authorized by statute to pay for the utility adjustment; or
* the utility is owned by a governmental unit, is within public right-of-way, and the governmental unit is not required by law or agreement to relocate its facilities.

If, after the above is satisfied, it is determined that the new rights-of-way are required for the utility, there are two options available for obtaining the right-of-way. First, the utility may obtain the replacement right-of-way and be reimbursed for its costs. The second is for the highway agency to be the responsible party for obtaining the right-of-way. This needs to be covered as part of the utility relocation agreement between the highway agency and the public utility approved by the FHWA Division Office. Where the highway agency is obtaining the replacement rights-of-way, the provisions of the Uniform Act will apply. If the agreement calls for the utility to provide the rights-of-way, the Uniform Act does not apply.

14.6 Joint Development/Multiple Use

Highway joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the highway and its environment and to obtain maximum benefits from the use of increasingly scarce right-of-way.

Joint development/multiple use projects can have a major influence on highway location and design. Non-highway activities such as housing, business activities, parking, and recreation can be located in the airspace above or below the highway or on land adjacent to the highway. The designs for both the highway and the non-highway elements must be developed in close coordination and with a view toward achieving esthetic harmony, safety, overall economy, and compatibility with the adjoining neighborhood.

Joint development/multiple use applies not only to cooperative planning by the highway and the non-highway agencies, but also involves concern for land use beyond the immediate highway right-of-way. The intent is to

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 30, 1984

TO: All House Members

FROM: David Hutchens Dave

SUBJECT: CS for CS for SB 67 (Rules) - Very similar to SB155 MS/L

Eventually the House will get to its Daily Calendar for 3-29. When that time comes, please support SB67.

This bill provides for reimbursement by municipalities of the net cost of relocating utility facilities when municipal road projects force their relocation. Most municipalities have in fact paid these costs in the past just as the State Department of Transportation has done since 1973. Some municipalities are now refusing to participate in these relocation expenses, and we see a growing trend in that direction.

These relocation expenses should properly be paid for by the municipalities as a part of the road project. In some cases, the cost of utility relocations can be more than the cost of the road itself. This situation leads to distortions in decision making. The municipality considers all the benefits of the road project, but only part of its costs.

The problem to the utilities' consumers is very real. A distribution line will typically be financed for 35 years. If the utility is forced to replace that line without reimbursement after 5 years, the consumers then have to pay 65 years' worth of debt on that facility in 35 years.

In many cases, the utility lines were there first. Chugach Electric, for example, has between 100 and 200 miles of [illegible] which were installed before there were adjacent roads, before [illegible]e was any formal permit or easement process, and in some c[illegible]es before those areas were within municipal boundaries. It would be extremely unfair for them now to be required to move those facilities at their own expense to accommodate a new road project.

In total economic terms it would not really make much difference whether relocation costs are paid by utility ratepayers or municipal tax payers, but in many cases they are not the same

people. For example, the City of Kenai is one of those municipalities which refuses to pay. They are one of several communities within the service area of Homer Electric Association. When the city of Kenai refuses to pay, the result is to transfer part of the cost of City of Kenai road projects to residents of the other communities throughout the HEA service area.

In the interest of simple fairness, please vote for SB 67. The cost causer should be the cost payer.

(10) HB 155

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

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ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 3, 1987

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

Thank you for introducing HB 155.- Same as SB 155- MSU

In regard to the relocation of utility facilities incident to a municipal construction project, this legislation would clarify the law as to when the utility pays and when the municipality pays. If there is a written agreement on these matters between the parties, that agreement would govern. If there is not a written agreement on allocation of costs, the municipality would pay if the utility facility is properly located under a permit or if the utility facility was installed before the municipality permit system applied to the construction of the facility in quest.on in question.

The effect of all this is to resolve a long-standing dispute by protecting the utility investment in existing facilities. It will require municipalities in some cases to include utility relocation costs in the cost of municipal construction projects which would otherwise be in dispute between the parties.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State or federal grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the state or federal government.

In some cases the expense will be assumed by the municiaplity. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating

utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without HB 153 the municipality considers all of the benefits of a proposed project but it only considers a part of the cost.

Sincerely,

David Hutchens
Executive Director

CITY OF PALMER

231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

Phone (907) 745-3271

A HOME RULE CITY

March 24, 1987

RECEIVED After Packet was compiled. MC/

The Honorable Mike Szymanski
Senator
State of Alaska
Box V
Juneau, Alaska 99811

RE: HB 155 Utility Relocation

Dear Senator Szymanski,

Like so many things, if you don't succeed at first, try, try again, and HB 155 Utility Relocation is a good example of this.

For the past two Legislative Sessions, the question of utility relocation responsibility has been presented to the legislators for consideration which if enacted would place an undue burden on the local political entities.

The problems which confront the City of Palmer are not unique to our city alone but other cities and boroughs within the State where the utilities are not municipally-owned.

Even though the City of Palmer has had a permitting system in effect since 1981, we find during reconstruction of streets and underground utilities, the permit allocation of right-of-way use has not been followed as specified. Naturally, the utility has to bear the relocation cost as a part of the agreement signed. However, our biggest problems are the utilities installed prior to our permitting system. Those utilities meander all over the right-of-way at varying depths. By grand-fathering ALL previously installed utilities gives the utilities a free ride for their errors at taxpayers expense. The utilities are not accountable for their mistakes which is wrong. Even worse is to allow a two (2) foot horizontal error in the utility placement. This is impossible to live with. Our utility permit requires the utility to be placed within a 0-5 foot area from the property line, no more, no less. If a utility cannot be placed in a five (5) foot area, then something is wrong.

Using our adopted design for a collector street, the width is 44 feet back-of-curb to back-of-curb without sidewalks. Using a 60 foot right-of-way, this utility corridor becomes very important if each utility uses their share properly and is considerate of their fellow utilities.

In my 26 years in the municipal field, ranging from a Sewer and Water Plant Operator to Director of Public Works to City Manager, I have found that the utilities are reluctant to spend the money or have on staff a qualified surveyor to lay out the exact location of the right-of-way. The employees assigned to the task are instructed to install the utility according to the work order which in many cases is vague or impossible to relate to actual field conditions. For example, if undergrowth has occurred in the right-of-way, rather than clear through this obstacle, the construction crews would install the utility further out in the right-of-way to avoid the undergrowth, further compounding the inevitable problem.

I have no problem with my sharing the burden of relocation if in fact the City of Palmer errored when the permit was issued or was issued in good faith with the population change requiring an entirely different or wider right-of-way to accommodate a higher volume street which was not forecasted in the Comprehensive Plan. An interesting point, not one mention is made of the Comprehensive Plan in this bill as a basis for relocation cost allocation.

We have a tendency to absolve the past errors here in Alaska which continues to haunt us no matter how good our intentions are, and this is another example. The City of Palmer urges you to vote against House Bill 155.

Should you have any questions, please contact me.

Yours truly,

David L. Soulak
City Manager
City of Palmer

DLS/cac

cc: Scott Burgess
Mayor Carte'
House Transportation & Finance Committee Members

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 155

TITLE: Utility Relocation on Municipal Projects

APPROVED: Mark Hickey MH
Commissioner

DATE: 3/9/87

The Department of Transportation and Public Facilities supports HB 155.

The legislation would require municipalities to treat utility relocation, incident to municipal road and other project construction, in a manner similar to that currently required for utility relocation on State highway, airport and public facility construction. As the bill is written, it would apply only to utilities regulated under AS 42.05.

For further information call Susan Fleischhauer at 465-3900.

(4) HB 155

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- *P.O. BOX B*
  JUNEAU, ALASKA 99811-2100
  PHONE: (907) 465-4700
- *949 E. 36TH AVENUE, SUITE 400*
  ANCHORAGE, ALASKA 99508-4302
  PHONE: (907) 563-1073

March 6, 1987

POSITION PAPER

RE: HB 155 -- "An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality."

SPONSOR: Representative Cato

Effects of Bill:

Section 1 of the bill simply adds another home rule limitation appropriate for this bill.

Section 2 of the bill designates to municipalities the power to order a utility within a municipal grants right-of-way to be changed, relocated, or removed and provides for the cost of the order to borne by the municipality if the facility is within the municipalities' jurisdiction.

Comments:

The majority of utility facilities are owned and operated by municipalities in rural areas. This bill will place the burden of all costs relating to movement of utilities on the entity requesting the movement.

Because of the costs associated with utility relocation, the Department believes that the proposed legislation would provide the means for municipalities to thoroughly review proposed changes before requiring the movement of utilities. The Department recognizes that this bill may place additional costs on governments, but since the cost is created by the local government, this is not unreasonable. The Department does not oppose this bill.

David G. Hoffman By Doug Griffin

David G. Hoffman, Commissioner

21-P1LH

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 4, 1987

Representative Heinrich Springer, Chairman
House Community and Regional Affairs Committee
Pouch V
Juneau, AK 99811

Dear Representative Springer:

It will be impossible for me to be present on Monday, March 9 when your committee consi[illegible] HB 155. This letter is to express the strong support our a[illegible]ciation has for this legislation. We hope this bill will resolve the long-standing problems between a number of utilities and municipalities regarding the cost of utility relocation incident to a municipal construction project.

This particular legislation resulted from negotiations between an Anchorage area utility and the Municipality of Anchorage. When I met with both parties in January they expressed support for the approach taken by this bill. Our associaition, looking at it from a statewide perspective, believes it is an important step forward.

However, we do suggest that the phrase "subject to regulation" which appears on lines 15-16 and 25 should be amended to read "certificated." This would have the effect of applying the policy of this legislation uniformly across the state in relations between municipalities and utilities whether or not the utilities are economically regulated by the Alaska Public Utilities Commission (APUC). Other disputes between municipalities and utilities are subject to APUC jurisdiction whether or not the utility is regulated, and it is important that precedent be followed here.

Sincerely,

David Hutchens

David Hutchens
Executive Director

cc Representative Bette Cato

Introduced: 3/3/87
Referred: Community & Regional Affairs & Transportation

5-0704A

9.586-13 25

IN THE SENATE BY JOSEPHSON

SENATE BILL NO. 155

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality."

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

* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

(49) AS 29.35.075 (relocation of utility facilities).

* Sec. 2. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.075. RELOCATION OF UTILITY FACILITIES. (a) If, incident to the construction of a road or other project, a municipality determines and orders that a facility of a utility subject to regulation under AS 42.05 that is located across, along, over, under, or within a right-of-way under its jurisdiction must be changed, relocated, or removed, the utility owning or maintaining the facility shall change, relocate, or remove it in accordance with the order. The order shall provide a reasonable time period for compliance. If the utility facility is not changed, relocated, or removed under the order, the facility becomes an unauthorized encroachment and may be disposed of by the municipality.

(b) The cost of change, relocation, or removal of a facility of a utility subject to regulation under AS 42.05 necessitated by municipal road or other project construction shall be allocated as provided in the permit, franchise, or other agreement with the municipality. If no specific allocation has been agreed to, the cost shall be borne by the municipality only if the facility has been placed in the

municipal right-of-way

(1) under a valid easement or permit that specifies the location of the facility and the facility is within two horizontal feet of that location; or

(2) before the municipality had a system for granting easements or permits for utility facilities.

(c) In (b) of this section, "cost of change, relocation, or removal" means the entire cost incurred by a utility properly attributed to the change, relocation, or removal of a facility, less costs for improvements or upgrading not required by the change, relocation, or removal; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility.

(d) This section applies to home rule and general law municipalities.

5-0704B
Cook
4/9/87

Original sponsor: Josephson

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 155 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality."

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

* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

(49) AS 29.35.075 (relocation of utility facilities).

* Sec. 2. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.075. RELOCATION OF UTILITY FACILITIES. (a) If, incident to the construction of a road or other project, a municipality determines and orders that a facility of a utility ~~subject to regulation~~ certificated under AS 42.05 that is located across, along, over, under, or within a right-of-way under its jurisdiction must be changed, relocated, or removed, the utility owning or maintaining the facility shall change, relocate, or remove it in accordance with the order. The order shall provide a reasonable time period for compliance. If the utility facility is not changed, relocated, or removed under the order, the facility becomes an unauthorized encroachment and may be disposed of or relocated by the municipality.

(b) The cost of change, relocation, or removal of a facility of a utility ~~subject to regulation~~ certificated under AS 42.05 necessitated by municipal road or other project construction shall be allocated as provided in the permit, franchise, or other agreement with the municipality. If no specific allocation has been agreed to, the cost shall be borne by the municipality only if the facility has been placed in the

municipal right-of-way

(1) in accordance with a valid easement or permit that specifies the location of the facility; or

(2) after June 30, 1987, in an area for which the municipality does not have a system for granting easements or permits for utility facilities and if the facility has been located in compliance with codes, regulations, and statutes applicable at the time of its installation.

(c) In (b) of this section, "cost of change, relocation, or removal" means the entire cost incurred by a utility properly attributed to the change, relocation, or removal of a facility, less costs for improvements or upgrading not required by the change, relocation, or removal, if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility.

(d) This section applies to home rule and general law municipalities.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF

P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4929

Senate
Community and Regional Affairs Committee

TO: Senate C&RA Members April 2, 1987

FROM: Senate C&RA Staff

RE: SB 155 - Relating to change, relocation, or removal of utility facilities incident to the construction of road or other projects by a municipality

Various versions of this bill have been in the legislature for at least five years. In general utilities support the bill and municipalities oppose it. There will be representatives from both groups to testify at the hearing today.

It is not anticipated that SB 155 will pass out of committee today, but rather, after all testimony, staff will work with interested committee members and other parties and bring a committee substitute back to committee in the near future.

Included in this packet is a zero fiscal note from the Department of Community and Regional Affairs; a statement form the Alaska Municipal League; material, including suggested amendments, from the Fairbanks North Star Borough; and two letters from the Alaska Rural Electric Cooperative Association.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 155
Publish Date :

REQUEST:

Revision Date:
Title : "An Act change, relocation, or removal of utility facilities..construction
Sponsor : Josephson
Requestor : Senate C&RA

Agency Affected : Community & Regional Affairs
BRU : Local Government Assistance
Components : Training & Development

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Doug Griffin, Deputy Director
Phone : 465-4750
Division : Municipal & Regional Assistance
Date : 4/1/87

Approved by Commissioner : Brent C. Allen
Date : 4-1-87
Agency : Community & Regional Affairs

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

April 2, 1987

APR 2 1987

MEMORANDUM

TO: Senator Arliss Sturgulewski, Chair
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: SB 155 - Relocation of Utility Facilities

The Alaska Municipal League is opposed to SB 155 and shifting the cost of relocating utility facilities in connection with municipal construction in rights-of-way from the utility company to the municipality. The AML has opposed this effort every year similar legislation has been introduced into the Legislature; most recently, SB 67 in the 13th Legislature. The legislation, if passed, would deviate from common and case law.

The AML's 1987 Policy Statement was most recently revised and adopted by the membership, representing 124 municipalities, at their annual meeting in Juneau last November. On page 17 of the Policy Statement, it states the following:

> Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of all non-municipal, utility relocation within existing rights-of-way associated with municipal street work.

As 12 McQuillan, Municipal Corporations, Section 34.74 on page 183 states:

> The fundamental common-law right applicable to franchises in streets is that the utility company must relocate its facilities in public streets when changes are required by public necessity. Accordingly, it is generally held that the municipality may require a change in the location of pipes or other underground facilities of the grantee of a franchise, where public convenience or security require it, even at the grantee's own expense, and even in the face of a protest by a consumer. It makes no difference whether the surface or subsurface of streets is involved.

The common law rule referenced above can be modified by legislative action or contract agreement between the municipality and the utility company. The League urges the Legislature not to change common law and practice, and, instead, leave the matters addressed in this bill to local officials to work out with local utilities in the best interest of the local public.

Municipal rights-of-way are first and foremost for transportation and roads. As a secondary use, utility companies have a right to use the rights-of-way as utility corridors. Such use is in lieu of the utility having to purchase their own rights-of-way, and is usually free or with a minimum permit fee in the larger municipalities. However, the use of the right-of-way for little or no cost is with the understanding that the utility will relocate their facilities, if necessary, to accommodate road improvements, unless provided for differently in individual ordinances or franchise agreements between municipal and utility companies.

The proposed legislation does not distinguish between private, for-profit, investor-owned utilities and non-profit and REA utilities, nor between the regulated, essential utilities such as gas and electrical on one hand and the unregulated, unessential utilities such as cable television on the other. The potential cost of relocating utilities for the utility companies is just the cost of doing business, counter- balanced by the savings of not having to buy the rights-of-way from a land owner. Utility companies have always known upfront that they could potentially incur relocation costs in the event that road improvements are necessary. Any change in this by the Legislature is an intrusion into the local authority of the municipalities and their road powers.

Shifting the cost of utility relocation, as proposed in this bill, would shift the cost from the rate payer to the taxpayer. The additional cost may mean that necessary road improvements, necessary for public safety, may be delayed or simply not done given limited road construction dollars. This is especially true for local improvement districts and for boroughs with limited road powers and road service areas with limited dollars available.

The situation is also different than it is with state road construction. The State owns its rights-of-way in fee simple. They have complete control over their roads and can prohibit their use by utility companies. Municipalities cannot. The State Department of Transportation also operates with a large professional staff which is capable of supervising the permitting, planning, and installation of utilities in their roadways, including requiring "as-builts" of the facilities installed. Many municipalities do not require permits or fees or have tight controls over the utility companies and where and how they placed their utilities in the rights-of-way. And why should they build such expensive bureaucracies when it is common understanding that the utility will be responsible for relocating their facilities if necessary? Finally, the State of Alaska gets much of its highway improvement funds from the federal government. Therefore, it can build the cost of relocating utilities into the cost of the project and shift the costs to largely, third party, non-resident taxpayers.

In addition to the general argument that the legislation would inappropriately shift the cost of relocating utility facilities to the municipalities, the change from common law and past practice is made even more onerous in that such a change and the impact would be retroactive. Under Section 2 of the bill with the proposed added language of AS 29.35.075 (b)(2), the municipalities would be penalized for following the laws in place; i.e., many municipalities have allowed utilities to place

their facilities in the rights-of-way without charge or without permits because the understanding and law required the utility company to bear the responsibility and cost to move them if necessary. Under the language of this section, if there is no permit system, the municipality would pay the cost of relocation.

One final point is relevant, again, only if you accept the basic concept of the bill, and we do not. While the cost to the municipality for relocating the utility facilities is discounted for upgrades and salvage value in subsection (d) of the bill, "useful remain life" is not. If the municipality is required to pay for the cost of relocating the facility, it should have have to pay for brand new equipment if it has limited remaining life left; e.g., the telephone pole is old and rotting and would have had to be replaced in a year even if the municipality were not making road improvements which require their removal.

Again, the AML is opposed to SB 155 and shifting the cost of utility relocation from the utility company to the municipality and the general taxpayers.

SAB:phl

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

March 30, 1987

Linda Anderson
FNSB Liaison
130 Seward St., Rm 304
Juneau, AK 99801

Dear Ms. Anderson:

SUBJECT: SUGGESTED MODIFICATIONS TO LANGUAGE OF SB 155

Along the lines of our brief conversations in Juneau on Friday, March 27, I recommend the following language be considered as a substitute bill for SB 155, "An act relating to the change, relocation or removal of utility facilities incident to the construction of road or other projects by a municipality."

1. Add to page 1, line 20, after the word "compliance.":

   "The utility shall prepare an estimate of the work required by the order for review and approval by the municipality before beginning work."

2. Add to page 1, line 27, after the word "municipality.":

   "The cost shall not exceed the approved estimate unless agreed to by the municipality."

3. Remove the word "municipal" from page 2, line 1.

4. Add to page 2, line 3, after the word "horizontal":

   "feet and one vertical"

5. Add to page 2, line 6, after the word "permits":

   "in that right-of-way"

6. Add to page 2, line 6, after the word "facilities.":

   "and the facility ~~is~~ was located ~~such that it met~~ in compliance with all applicable codes, regulations, and statutes at the time of its installation."

I will immediately follow up these suggested wording changes in SB155 with a letter describing some of my concerns and the impetus for making these changes. Thank you for your attention to our suggestions in this matter.

Sincerely,

Clark Milne

Clark R. Milne
Manager
Division of Civil Engineering

cc: Pat Walsh, Special Assistant to the Mayor, FNSB

cm8-141

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · 907/452-4761

M E M O R A N D U M

TO: Dick Jackson, Administrator Director

THROUGH: Neil Kersten, Public Works Director

FROM: Clark Milne, Manager, Civil Engineering Division Clark Milne

DATE: March 30, 1987

SUBJECT: NEED FOR MODIFICATIONS TO SB155, "RELOCATION OF UTILITIES IN RIGHT-OF-WAYS"

To validate my letter which suggested changes to SB155 concerning municipalities (such as the FNSB) being responsible for paying utilities to remove or relocate existing utility facilities within right-of-ways, I would like to submit to you the comments below.

My first and foremost concern is that our FNSB utility permit system is quite young, having only been instituted on July 1, 1985. Thus, the majority of all utilities installed in road rights-of-way in the FNSB have been put in before our utility permit system was in effect, and the language of Section 29.35.075.(b)2 will probably be in effect the majority of the time. Thus, we will consistently be responsible for the costs of moving utility facilities in our rights-of-way. I believe this is inappropriate and not in the public's best interests, at least so far as the unrestricted wording of (b)2 imposes these costs on us.

Our experience in the Civil Engineering Division has been that the majority of the time when we require the removal or relocation of a utility facility from our right-of-way, it is due to a past failure of the utility to install the service line or facility properly in the first place. This includes both aerial crossings that are too low, buried lines that are too shallow, and utility poles that intrude too closely to the existing road shoulders so that necessary road widening (within the right-of-way) requires the relocation of an existing pole. To require us to pay for these oversights, under-designs, and inappropriate installations by the utility firms seems unconscionable. Thus, my suggested revision in the SB155 language (as noted in my letters to Linda Anderson and McKie Campbell, see attached), item no. 4, which would require that the utility firm have installed the affected facility properly, i.e. to the standards of the applicable code or regulation, in the first place.

The most common and expensive instances of this type of facility that must be moved are aerial crossings above the roadway which are currently at less than the minimum 18 foot required by national electrical code. It is our practice, and is supported by the common law, that the utility firm is wholly responsible for the costs of raising these substandard lines crossing our right-of-way to an appropriate, code/standard elevation above the road surface.

Similarly, we have had significant problems and expenses due to the relocation of telephone or power lines below the road surface. We have found that all too often a utility placed a line too shallowly in the right-of-way and a new road project thus uncovers and interferes with it. Again, national electric code requires that any power or telephone line must be buried at least 30" under the ground surface. If only this were the common condition of buried utility lines in the FNSB our troubles would be nearly over! Unfortunately, there are many instances in our road projects where buried utility lines are very often found to be at anywhere from 4" to 24" below the ground surface--thus, the road interference with minor improvements to the roadway.

In both of the cases noted above, SB155 would automatically give the utility firm a "reprieve" from having to pay for their illegal and substandard utility placement. Without actually calculating the exact expenses generated by utility relocation for FNSB projects in the last few years, I believe that as a rough estimate approximately 10% of our capital improvement monies for road improvement projects would go to utility relocation were SB155 to be passed in the form submitted by Senator Josephson.

Other concerns I have tried to deal with in my revised language for SB155 are evidenced in the other items noted in my letters of March 30. The first item deals with my concern that utility firms should work with the municipalities before beginning work on utility removal or relocation to assure that their field activities are cost-effective and solely done in an effort to replace or relocate the facility which is interfering with the legitimate uses of the road right-of-way. I fear circumstances where the utility could indiscriminately overcharge the municipality for unnecessary expenses, as well as situations where the replacement facility is a superior and improved product to that which is being replaced. Neither of these two concerns is addressed in SB155 as originally submitted.

Item no. 2 would tend to assure that the costs as discussed and approved by the utility and municipality before beginning work are indeed those reached during construction. I foresee reasonable incidences where the initial cost estimate is exceeded, but believe that the municipalities can negotiate with the utilities in a timely manner to increase those agreed upon estimates for valid, discernable reasons.

Item no. 3 was requested because I do not know what a "municipal right-of-way" is. In the Borough we only have public rights-of-way, some of which are included within service areas and thus subject to municipal maintenance efforts.

Item no. 4 addresses my concern that an often crucial dimension in the location of utility facilities is the exact depth or elevation of the line or pipe. I understand that many utility firms have extremely poor as-built records of the location of their facilities, but I believe this should be the utility's concern, problem and expense, not ours.

Item no. 5 deals with my concern that the existing FNSB utility permit system applies only to those rights-of-way within recognized road service areas. The revised language would read "before the municipality had a system for granting easements or permits in that right-of-way for utility facilities," which would eliminate the problem of us having to pay for facility relocations in rights-of-way not covered by a utility permit system such as ours because the permit system was restricted to rights-of-way within service areas. Thus, if a service area annexed new roads after the utility firm installed a facility (after July 1, 1985), and we later interfered with that facility with our transportation use of that road right-of-way, we would not be held responsible for the lack of our utility permit system, but rather the utility firm would be responsible for having to follow good practice and the" applicable codes, regulations and statutes" affecting that utility facility.

Finishing up with item no. 6 from my letter, I understand that it may be troublesome to do the research necessary to confirm what "codes, regulations and statutes "apply to the various situations we find in needing utility relocations in our rights-of-way, but it seemed to me to be the most just and fair dividing line when faced with paying for a utility relocation or not. I agree with the concept that if a utility firm acted within the applicable codes and standards of their industry and all applicable regulations and statutes within the State of Alaska, our dramatic modification of the use of a road right-of-way should include and require our payment for the relocation or removal of the affected utility facilities. It is interesting to note that I believe that I understand the utility's point of view of some of these costs and concerns. But I do not believe that they should be able to "end run" the existing common law and the common sense of justice inherent in having to pay for their own mistakes of the past.

For additional specifics or other questions, please feel free to contact me at ext. 351.

cm8-143

Clark Milne

U.S. Department of Transportation
Federal Highway Administration

Real Estate Acquisition Guide for Local Public Agencies

A Resource Manual for Use by:
Local Public Agency and State Personnel Involved in the Acquisition of Real Property for Federally-Assisted Public Improvement Projects

Prepared by:
Real Estate Division
Office of Right-of-Way

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3/3/87

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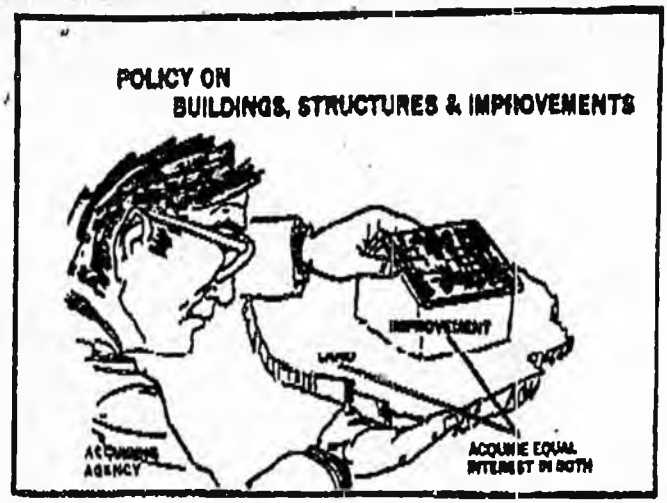

other improvements. The Uniform Act requires that such tenant receive just compensation for any such buildings, structures, or improvements. The tenant is due this compensation even if the lease requires the tenant to remove any buildings, structures, or improvements at the end of the lease term.

Any building, structure, or other improvement which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for acquisition purposes. Acquisition from the tenant-owner shall follow the same procedures as for a fee owner.

Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its removal value, whichever is greater. Removal value is considered to be salvage value.

a. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

b. The contributory value consists of:

1. The value in place of a building, structure, or other improvement, the present use of which is the highest and best use of the land to be acquired, for its remaining economic life; or

2. The interim use value of a building, structure, or other improvement, the present use of which is not the projected highest and best use of the land to be acquired, for a specified interim time period longer than the remaining term of the lease (interim use value includes the present worth of the salvage value of the buildings, structures, or other improvements at the end of the interim time period); or

3. The value in place of a building, structure, or other improvement, the present use of which is not the highest and best use of the land to be acquired, for the remaining term of the lease plus the worth of its salvage value at the end of the lease term.

No payment shall be made to a tenant-owner for any improvements unless:

a. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the acquiring agency all of the tenant-owner's right, title, and interest in the improvement;

b. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

c. The payment does not result in the duplication of any compensation otherwise authorized by law.

This provision shall not be construed to deprive the tenant-owner of any rights to reject payment under this provision and to obtain payment for such property interests in accordance with other applicable law.

14.5 Utility Relocation and Accommodation

contact State for explanation

Historically, it has been in the public interest for public utility facilities to use and occupy the right-of-way of public roads and streets. This is especially the case on

local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formation of utility and highway transportation networks. Over many years, it has proven to offer the most feasible, economic, and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional right-of-way for utility purposes alone. This could have also resulted in significant added costs to be borne by the utility consumers through increased rates for utility services so provided.

Under the practice of jointly using a common right-of-way, there are two broad areas of concern to highway and utility officials alike. First is the cost of relocating, replacing, or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as Utility Relocations and Adjustments. Second, is the installation of utility facilities along or across highway right-of-way and the manner in which they occupy and jointly use such right-of-way, commonly referred to as the Accommodation of Utilities.

Federal-aid funds may participate in relocating utilities displaced by a proposed highway project when certain conditions have been met.

First of all, you should check with the State highway department to be sure you are in compliance with the appropriate State procedures.

If the facilities are only serving the owner of the land and are not serving some aspect of the "public" then they would be treated under normal acquisition procedures for private property.

When it is determined that the utility is in fact serving the "public," the next step is to determine which of the utility adjustments are potentially eligible for Federal-aid funding. In general, Federal-aid funds may participate in the costs of adjusting utilities where:

* the utility has a legal compensable interest in present location by reason of holding a fee or easement to the real property; or
* the State is authorized by statute to pay for the utility adjustment; or
* the utility is owned by a governmental unit, is within public right-of-way, and the governmental unit is not required by law or agreement to relocate its facilities.

If, after the above is satisfied, it is determined that the new rights-of-way are required for the utility, there are two options available for obtaining the right-of-way. First, the utility may obtain the replacement right-of-way and be reimbursed for its costs. The second is for the highway agency to be the responsible party for obtaining the right-of-way. This needs to be covered as part of the utility relocation agreement between the highway agency and the public utility approved by the FHWA Division Office. Where the highway agency is obtaining the replacement rights-of-way, the provisions of the Uniform Act will apply. If the agreement calls for the utility to provide the rights-of-way, the Uniform Act does not apply.

14.6 Joint Development/Multiple Use

Highway joint development/multiple use projects have been carried out for many purposes, but the basic objectives have been to achieve better compatibility between the highway and its environment and to obtain maximum benefits from the use of increasingly scarce right-of-way.

Joint development/multiple use projects can have a major influence on highway location and design. Non-highway activities such as housing, business activities, parking, and recreation can be located in the airspace above or below the highway or on land adjacent to the highway. The designs for both the highway and the non-highway elements must be developed in close coordination and with a view toward achieving esthetic harmony, safety, overall economy, and compatibility with the adjoining neighborhood.

Joint development/multiple use applies not only to cooperative planning by the highway and the non-highway agencies, but also involves concern for land use beyond the immediate highway right-of-way. The intent is to

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 30, 1984

TO: All House Members

FROM: David Hutchens Dave

SUBJECT: CS for CS for SB 67 (Rules) - Very similar to SB155 MS/L

Eventually the House will get to its Daily Calendar for 3-29. When that time comes, please support SB67.

This bill provides for reimbursement by municipalities of the net cost of relocating utility facilities when municipal road projects force their relocation. Most municipalities have in fact paid these costs in the past just as the State Department of Transportation has done since 1973. Some municipalities are now refusing to participate in these relocation expenses, and we see a growing trend in that direction.

These relocation expenses should properly be paid for by the municipalities as a part of the road project. In some cases, the cost of utility relocations can be more than the cost of the road itself. This situation leads to distortions in decision making. The municipality considers all the benefits of the road project, but only part of its costs.

The problem to the utilities' consumers is very real. A distribution line will typically be financed for 35 years. If the utility is forced to replace that line without reimbursement after 5 years, the consumers then have to pay 65 years' worth of debt on that facility in 35 years.

In many cases, the utility lines were there first. Chugach Electric, for example, has between 100 and 200 miles of line which were installed before there were adjacent roads, before there was any formal permit or easement process, and in some cases before those areas were within municipal boundaries. It would be extremely unfair for them now to be required to move those facilities at their own expense to accommodate a new road project.

In total economic terms it would not really make much difference whether relocation costs are paid by utility ratepayers or municipal tax payers, but in many cases they are not the same

people. For example, the City of Kenai is one of those municipalities which refuses to pay. They are one of several communities within the service area of Homer Electric Association. When the city of Kenai refuses to pay, the result is to transfer part of the cost of City of Kenai road projects to residents of the other communities throughout the HEA service area.

In the interest of simple fairness, please vote for SB 67. The cost causer should be the cost payer.

(10) HB 155

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

March 3, 1987

Representative Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

Thank you for introducing HB 155.- Same as SB 155- MSG

In regard to the relocation of utility facilities incident to a municipal construction project, this legislation would clarify the law as to when the utility pays and when the municipality pays. If there is a written agreement on these matters between the parties, that agreement would govern. If there is not a written agreement on allocation of costs, the municipality would pay if the utility facility is properly located under a permit or if the utility facility was installed before the municipality permit system applied to the construction of the facility in question in question.

The effect of all this is to resolve a long-standing dispute by protecting the utility investment in existing facilities. It will require municipalities in some cases to include utility relocation costs in the cost of municipal construction projects which would otherwise be in dispute between the parties.

By making these utility relocation costs a part of the cost of the highway project, the local utility rate payer is relieved of this burden. In most cases a State or federal grant is the funding source for the road project. In those cases, these relocation costs would be transferred to the state or federal government.

In some cases the expense will be assumed by the municiaplity. When this expense is transferred from the local utility rate payer to the local municipal taxpayer, there is no net change for residents who are in both roles. However, a utility's consumers and the municipality's taxpayers are not always the same people. Fairness requires that if a municipal project causes the cost of relocating

utility facilities, then the municipality should be responsible for that cost. It is also important that all of the costs as well as all of the benefits of a proposed project be considered at the time a municipality decides to relocate or widen a highway. Without HB 155 the municipality considers all of the benefits of a proposed project but it only considers a part of the cost.

Sincerely,

David Hutchens
Executive Director