

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7740 HOUSE • COMMUNITY & REGIONAL AFFAIRS •

BILL NO: HB 18

DATE: March 17, 1993

TITLE: "An Act relating to police protection service areas in municipalities"

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

HB 18 allows residents of a municipality to form a police protection service area in which the Department of Public Safety will provide a specified level of police protection funded by assessments upon the residents.

It has been the position of the Governor and the Commissioner of Public Safety to withdraw Troopers from urban areas which are authorized to provide police protection on their own, and to concentrate the Department's resources in rural and unorganized areas of the State. This bill runs counter to that position, allowing residents of organized municipalities to require police protection from Troopers. Those areas forming service areas would have a contractual right to a certain level of service from Troopers that rural citizens would not share. Many rural communities have never had a local Trooper, and other communities have lost their Trooper Posts as budget cuts have forced the Department to reduce services.

The Department is concerned about potential problems raised by HB 18 including:

The process for establishing a service district, including the requirements that such contracts may impose on the Department to hire (or layoff) employees bypasses the Legislature;

The bill does not provide any information on what happens if the assessment accepted by the voters is insufficient to fund the level of service contracted, (who makes up the difference?);

There would be a loss of local control over police protection as there would be no local setting of policies, and no enforcement of local ordinances;

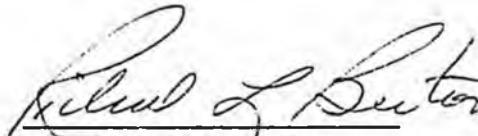
The Department could experience a highly variable demand for Troopers as municipalities adopt and reject service areas, requiring hiring and training efforts in some years and layoffs in others;

Individual Troopers could find that employment with the Department was less predictable, less stable, and therefore less desirable due to the uncertainty that any given service area contract would be extended; and,

Because of the long lag time in selecting, hiring, and training Troopers, adoption of service area contracts could mean reduced services to the rest of the citizens served by the Department.

The Task Force on Governmental Roles, formed under SCS CS HCR 17 (CRA) by the 17th Legislature, examined the functions of state, federal, and local governments and made recommendations as to the appropriate roles and relationships of the different levels of government with respect to several governmental functions. The Task Force was composed of House and Senate members, representatives of the executive branch, representatives from the Municipal League, and a representative from the unorganized borough. In their final report the Task Force made the following recommendation: "...To encourage and facilitate the implementation of police protection and to generate economies of scale, the Task Force advocates a change in Title 29 to permit assemblies of unified municipalities and home rule boroughs to establish service areas for police protection, notwithstanding charter provisions that place restrictions on the service area formation process. Authority to form service areas for police protection should also be given to general law boroughs. This would resolve the Hillside problem and prevent similar situations in other municipalities. ..." The Department feels that the approach recommended by the Task Force is better public policy, as it avoids several of the potential problems raised by HB 18.

The Department of Public Safety opposes the bill.



Richard L. Burton
Commissioner

LETRO

ANCHORAGE DAILY NEWS

SECTION B



BILL ROTH / Anchorage Daily News

...nes farther north. This one landed recently at Westchester.

Troopers trim duty in Wasilla

Cutbacks force move

By PAMELA DOTO
Daily News reporter

Alaska State Troopers will stop patrolling Wasilla next month — a move that has some residents skittish about the city's vulnerability to crime.

Trooper administrators, who have been planning the move since January, say budget cutbacks will force them to direct their attention elsewhere. Besides, the town of 4,400 should have its own police force like neighboring Palmer, said trooper director Col. John Murphy.

"As far as we're concerned, it's time for Wasilla to start paying its own way," Murphy said.

Troopers now patrol the city limits and respond to routine calls, like thefts, car accidents and burglaries. They even arrest an average of 30 drunken drivers in the city each month.

But that will stop May 1. Troopers will still be able to arrest some drunken drivers while they're patrolling the highways, but not as many. And they won't respond to any more thefts, minor accidents and burglaries.

Wasilla residents can do the paperwork themselves and mail a report to troopers if they want them to investigate, troopers said.

If the situation is life-threatening or a major crime, however, troopers will still respond, Murphy said.

But, "It's our belief that they should have their own police department," he said.

Murphy said the cutbacks will be similar to how the troopers now handle the Hillside area, which they stopped patrolling early last winter.

There are only three troopers and one sergeant for each shift to patrol an area

se tuition rates will undergo reorganization

11-time resident
nester, up from

or below the
parable institu-
said.

discussed raising
to \$65 per

dent, criticized wasteful university spending and said it was time for regents to begin finding other ways to cut the budget.

"The students are serious," he said. "It's time to roll up our sleeves and get to work."

Students have also lobbied legislators, regents and Gov. Wally Hickel for additional building maintenance funding.

Peninsula prison may see job cuts

The Associated Press

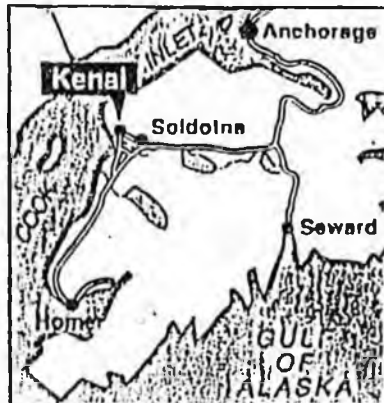
KENAI — The Department of Corrections says it could meet more than half its goal of \$7.5 million in budget cuts by closing most of the Wildwood medium-security prison.

The move would eliminate 60 area jobs.

Frank Prewitt, deputy commissioner of the Department of Corrections, said the prison would operate with 50 or fewer inmates while renovations were made to enlarge the institution for eventual reopening later.

Wildwood Correctional Center houses about 200 prisoners.

Although about 150 corrections jobs are headed for layoffs statewide, the Ke-



KEVIN POWELL / Anchorage Daily News

na's Wildwood prison will be hardest hit, Prewitt said.

Ken Brown, Wildwood superintendent, said workers found out Wednesday they may be out of a job.

"They're demoralized and

angry," Brown said. "They feel as though it's politics, and politics is an unseemly business."

Prewitt said Wildwood workers with seniority might move to other state prisons if they want to relocate. Some of the staff cuts may be accomplished through an early retirement program, he added.

The proposal has upset local politicians who say it's a state Senate attempt to keep jails open in the Matanuska and Susitna valleys and Anchorage.

Wildwood expansion would use prison labor. The project is part of a five- to 10-year plan being pursued separate from the budget-cutting exercise.

"In the short haul, it is a tough hit for the Kenai community," Prewitt said.

Wildwood Pre-Trial Facility, which employs 40 people and houses offenders before they are sentenced, would remain open during prison renovations.

Sentenced inmates serving time at the medium-security prison would be housed elsewhere in the state.

Prewitt said space would open up perhaps as soon as July when minimum-security prisoners are released to halfway houses, electronic monitoring programs or other community programs.

"We're getting to the point where we're about settled on this plan," Prewitt said.



Murder suspect Ch...

Lawyer seeks v

By GAIL RANDALL
Daily News reporter

A lawyer for Ch worker accused of last summer, said moved somewhere rural community. "I think it w Glennallen," said Smithart's case la Dieni withdrew. " Smithart's trial Lemaire disapp

WASILLA: Troopers to stop patrolling Valley town

Continued from Page B-1

their efforts in areas that cannot support a police force, like Big Lake. That community has had a spree of burglaries and other crimes.

"We haven't been able to give it enough attention," Trooper Capt. Pat Kasnick said.

Wasilla residents have twice voted down a proposal to establish their own police force.

But Mayor John Stein said support for a police

department is growing because Wasilla is maturing into a family-oriented community.

"Residents are beginning to feel a little insecure," Stein said.

Still, Stein said not everyone wants Wasilla to have its own police, and the support he's seen so far isn't enough to get a proposal on the table.

Some residents have a frontier attitude toward public safety, he said.

"There are a lot of people that arm themselves and

their homes," he said.

A police force would cost the city anywhere from \$500,000 to \$900,000 a year and would double residents' property tax rate, Stein said.

The city's business community — made up of about 700 stores and shops — is receptive to having their own police protection. Many merchants, however, can't even vote on the issue because they don't live in Wasilla, said Cheryl Riggs, vice president of the city's chamber of commerce.

"I think the city of Wasilla is pretty volatile," Riggs said. "It doesn't have the protection it really needs for a first-class city."

Murphy said there may be a lot of changes statewide in the areas troopers will actively patrol because of the budget cuts. And if residents don't like it, they should let state lawmakers know, he said.

"The citizens of this state have to make a decision on what's important to them," Murphy said. "We're going to do what we can with what we have."

AMENDMENT

SECTION 2 (a)

Page 1, Line 8 after area insert For services to be provided by the Alaska Department of Public Safety.

FISCAL NOTE

Revision Date: _____
Title: Motor Vehicle Recycling Grant Fund & Fee

Department Affected: DOT&PF
BRU: E&OS Division

Sponsor: Phillips
Requestor: Olberg

Component: _____
Component Serial Number: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	11.5	23.0	23.0	23.0	23.0	23.0
TRAVEL	2.0	3.5	3.5	3.5	3.5	3.5
CONTRACTUAL	8.0	16.0	16.0	16.0	16.0	16.0
SUPPLIES	1.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	22.5	44.5	44.5	44.5	44.5	44.5

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

1002 FEDERAK RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	22.5	44.5	44.5	44.5	44.5	44.5
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

The bill would require initial expenditures to adopt the implementing regulations. Thereafter, the management of the grant program would require on-going coordination and outreach to numerous municipal entities. See page 2 for details.

Prepared by: Jeffery C. Ottesen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: March 18, 1993

Approved by Commissioner: W.K. Genken

Phone: 465-3901

FR Frank G. Turpin

Agency: Department of Transportation and Public Facilities

Date: March 18, 1993

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2	RICHARD WEINIG		T 01 HB 18
	800 E. DIMOND STE 3-620 ANCHORAGE	AK 99515	(907)349-1900
3	PAT ABNEY		T 01 HB 18
	5800 E. 142ND AVE. ANCHORAGE	AK 99516	(907)345-1335
4	RICHARD MITCHELLS		T 02 HB 20
	P.O. BOX 102095 ANCHORAGE	AK 99510	(907)373-7718
5	DIANNE HOLMES		T 01 HB 18
	15140 MESA ANCHORAGE	AK 99516	(907)345-1514
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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

Revision Date: Department Affected: DOT&PF
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 Sponsor: Phillips Component:
 Requestor: Olberg Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$0

ANALYSIS: (Attach a separate page if necessary)

The bill would require initial expenditures to adopt the implementing regulations. Thereafter, the management of the grant program would require on-going coordination and outreach to numerous municipal entities. See page 2 for details.

Prepared by: Jeffery C. Ottesen Phone: 465-2951
 Division: Engineering & Operations Standards Date: March 18, 1993
 Approved by Commissioner: W.K. Genken Phone: 465-3901
 FOR Frank G. Turpin
 Agency: Department of Transportation and Public Facilities Date: March 18, 1993

ANALYSIS (cont. from page 1):

NOTE: This fiscal note assumes the per vehicle charge will be \$2 per vehicle, and that a total of 445,000 or more vehicles will be subject to the annual fee. Based on this assumption, the program will generate approximately \$890,000, of which we propose allocating approximately 5% to grant administration and oversight. If the fee were increased to \$5 per vehicle, the administrative cost could be reduced to about 3%.

The funding requested in FY 1994 is lower based upon the mid-year effective date. As the program got underway, the staff time would be used administer the grant, including soliciting then reviewing applications, discussing issues with municipal officials, and allocating grants on periodic basis during the fiscal year. We would envision two grant cycles per year, one allocated in late winter to allow municipalities to marshal their resources for a spring removal effort, and a second grant cycle in early summer, for additional efforts in later summer and early fall.

In the interest of the public we believe some nominal level of auditing in the field would be beneficial as this program would be allocating over \$2.5 million per year. Our first level of reviews would involve asking maintenance superintendents how the cleanup was going in a given community. If their observations don't confirm what the grantee is indicating, we would follow-up with a field visit and/or audit of the grantee's records. The need for periodic audits and or legal involvement from the Dept. of Law is the basis for the continuing level of contractual services.

In some areas of the state, it may be beneficial if the program coordinator created a multi-jurisdiction contract with a crusher/hauler which they could utilize under a term contract arrangement. This would be particularly beneficial in coastal communities and river communities of the state, but would have statewide applicability. Such an approach would provide economy-of-scale benefits, thereby increasing the effectiveness of the overall program.

No new positions are requested to administer this program. An existing PCN, which has historically administered the federal-aid vehicle clean-up program, would be used to manage the program.

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2	REP. CON	BUNDE		T 01 HB 18
				(907) 000-0000
3	REP. JOHN	DAVIES		T 01 HB 18
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4	REP. CYNTHIA	TOOHEY		T 01 HB 18
				(907) 000-0000
5	REP. JERRY	SANDERS		T 01 HB 18
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2	REP. CON	BUNDE		T 01 HB 18
				(907) 000-0000

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1 MR. HUGH DOOGAN SELF T 01 HB 18
359 SLATER ST. FAIRBANKS AK 99701 (907)456-1869

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BOX 877123		WASILLA	AK 99687	(907)373-7516
2 MR	TOMMY	THOMPSON		O 02 HB 20
BOX 870145		WASILLA	AK 99687	(907)376-7387
3 MS	RACHEL R	SMITH		O 02 HB 20
BOX 877289		WASILLA	AK 99687	(907)373-3002
4 MR	HERBERT C	UPTON IV		O 02 HB 20
BOX 877549		WASILLA	AK 99687	(907)373-5137
5 MR	DAN A	WIGGERS		O 02 HB 20
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1 MR	JOHN R	MAHONEY		T 02 HB 20
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HOUSE COMMUNITY AND REGIONAL AFFAIRS

DATE: 3/19/93

PLACE: Rm 124

SUBJECT OF MEETING:
 HB 1 HB 18
 HB 180 HB 32
 HB 20

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
Kent Swisher	AML	Juneau			586-1325	<input checked="" type="radio"/>	N	HB 18
SUSAN MILLER	DOE	JUNEAU			465-8666	Y	N	HERE TO ANSWER HB 32 QUESTIONS
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HB

20

HOUSE COMMITTEE REPORT

(5) Date Referred: January 11, 1993 FURTHER REFERRALS: Labor & Commerce
 Finance

Date of Committee Action: 3-23-93

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 20

HOUSE BILL NO. 20 ELECTRICAL SERVICE EXTENSION FUND GRANTS

"An Act relating to the electrical service extension fund."

RECOMMENDATIONS: the same title
 be replaced with _____ a new title

have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____ fiscal note(s) _____

zero fiscal note CED zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<i>E. J. Willis</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>John N. Davis</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Signature]
 CHAIRMAN'S SIGNATURE



Alaska State Legislature

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Juneau, AK 99801-1182

SPONSOR STATEMENT
BY REPRESENTATIVE CURT MENARD
FOR HB 20, ELECTRICAL SERVICE EXTENSION FUND

I introduced HB 20 to help ensure that the Electrical Service Extension Fund is used for the purpose the sponsor (of the enabling legislation) intended, which is to help provide service to private residences and small businesses not currently served by an electric utility.

In 1991 the Legislature established an electrical service extension fund as a separate fund in the AEA (AS44.83.370). The authority makes grants from the fund, first, for the costs of site preparation and construction for the extension of service to private residences and small businesses not yet served by an electric utility. If the fund is not exhausted by these grants, then the Alaska Energy Authority (AEA) may make grants for improvements to existing utilities. AEA adopted emergency regulations to implement the statute in September, 1991 and the regulations became permanent in April, 1992.

In 1992 the Legislature appropriated \$1.85 million to the Fund during its first special session (1992 SLA).

AEA awarded \$1.1 million to GVEA for extending electrical service to McKinley Village. While 21 grant applications had been received in 1992, only four of them were received at the time the GVEA grant award was made.

In my view, the decision to award the grant to McKinley Village was inappropriate because management made the decision to earmark \$1.1 million for GVEA. Since the statute did not address a specific grant application period, AEA could make the award to GVEA (and because there were only three other applicants at the time and there were sufficient funds to award all four grants).

HB 20 would accomplish several things.

First, it changes who makes the final decision for grant awards. Currently, the executive director makes the decisions. Under the bill the AEA directors would make the decision after receiving recommendations from the executive director. It would also require the directors to state, in writing, the reasons for awarding or denying applications.

Secondly, the bill would establish a grant application period and can only consider applications received within the established period. Lastly, the bill requires the executive director to perform a cost benefit ratio and to prioritize applications that extend service to existing residences or small businesses at the lowest cost per new customer, thereby giving highest priority for

Page two
Sponsor Statement
Rep. Curt Menard

grants that provide new electric hookups to as many small businesses and residents as possible.

The Department of Commerce indicates they will be revising the regulations for the Electric Service Extension Fund Program and intend to accomplish in regulation the statutory changes in HB 20. Passage of HB 20 would simply assure that the regulatory changes occur.

HB 20: "An Act relating to the Electrical Service Extension Fund."

Over the next four months, Alaska Energy Authority will be redrafting and seeking public comment on changes to existing regulations for the Electric Service Extension Fund (ESEF) Program. The regulations will be revised to more clearly define procedures for awarding grants and to clarify the selection criteria described in the existing ESEF regulations. The Energy Authority intends to make changes to the ESEF regulations in a full public forum. Copies of draft regulations will be directly mailed to electric utilities in Alaska for public comment, and notice of the draft regulations' availability for public review will be published in statewide newspapers.

Proposed revisions to the regulations include many of the items addressed in the proposed HB 20. For example, the Energy Authority will be making an offer of Electric Service Extension Fund grant money using a public Request for Proposals (RFP) process. As is customary with the state's RFP process, there will be opening and closing dates for electric utility applications and no applications will be accepted prior to or following RFP application dates. A standard application form, including specific requests for information and describing program terms and conditions, will be included in the RFP. An evaluation committee will verify the eligibility of project costs and evaluate applications as to technical and financial feasibility and other factors described in the current regulations. Proposals will then be ranked based on a cost-benefit ratio and the evaluation committee will prepare its consolidated comments on evaluation results. This information will be available for public review after a formal Notice of Grant Awards.

The Energy Authority has no objection to HB 20's proposed changes to the program's regulations. If this bill is approved by the Legislature, the Energy Authority will incorporate the bill's language into the regulations.


Paul Fuhs, Commissioner2-1-93
Date

dgl/026pp.co

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 20

Revision Date: _____
 Title: An Act relating to the Electrical Service Extension Fund

 Sponsor: Menard
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: _____
 Component: _____

COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
FUND SOURCE:	0	0	0	0	0	0

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY 93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
SEE ATTACHED POSITION PAPER

Prepared by: Ronald A. Garzini, Executive Director
 Division: Alaska Energy Authority

Phone: 261-7233
 Date: 2/1/93

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 2-1-93

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(g) Money in the rural electrification revolving loan fund may be used by the legislature to make appropriations for costs of administering the fund.

(h) On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund. (§ 1 ch 118 SLA 1981; am §§ 10 — 13 ch 89 SLA 1983; am § 68 ch 36 SLA 1990)

Effect of amendments. — The 1990 amendment, effective May 12, 1990, added subsections (g) and (h).

Article 8A. Electrical Service Extension Grant Program.

Section

370. Electrical service extension fund established

Sec. 44.83.370. Electrical service extension fund established.

(a) The electrical service extension fund is established as a separate fund in the authority. The fund consists only of money appropriated to it by the legislature.

(b) The authority may make grants from the electrical service extension fund to certificated electric utilities and to electric utilities exempt from certification under AS 42.05.711, as a first priority, to pay for costs of site preparation and construction for the extension of electrical service to private residences and small businesses not currently served by an electric utility and, as a second priority, for making improvements to existing utilities. The amount of a grant made under this section may not exceed 60 percent of the total cost of construction of the project. The costs considered in making a grant may not include costs of planning, feasibility studies, or design.

(c) An electric utility that has received a grant under this section may charge a connection fee for initial connection to the electrical service made available because of the construction. The connection fee for each residential or commercial structure shall conform to the line extension policy of the utility.

(d) The authority shall adopt regulations under the Administrative Procedure Act (AS 44.62) to implement this section.

(e) In this section, "certificated" means holding a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission under AS 42.05. (§ 1 ch 38 SLA 1991)

Effective dates. — Section 1, ch. 38, SLA 1991, which enacted this section, took effect on September 10, 1991.

Alaska Energy Authority

Electrical Service Line Extension Fund

Information Sheet

(August 6, 1992)

Program Description:

The electrical service line extension fund, ESEF, was established by the Alaska Legislature in 1991 to provide matching funds to electric utilities to help defray the high cost of extending electrical service to residences and small businesses (less than \$10 million in annual gross sales). The fund provides for grants up to 80% of site preparation and construction costs for qualifying line extension projects. Matching funding for at least 40% of these costs must be contributed by the applicant. Costs of project planning, feasibility studies and design are not eligible. Projects to improve existing distribution facilities are also eligible, but are given lower priority.

The Alaska Energy Authority (AEA) has approximately \$700,000 in the fund, and is accepting applications for qualified projects through 5:00 pm, September 15, 1992. Applications received in the AEA Tudor road office after the deadline will not be considered. AEA will not be held responsible for delays in delivery of applications resulting from weather, lost mail or other causes beyond AEA's control.

Certified electric utilities and electric utilities exempt from certification under AS 42.05.711 may apply for cost sharing grants under the ESEF program.

Grant Schedule

AEA intends to notify applicants of grant awards by October 1. Grantees will be required to meet the following deadlines, or their awards will be subject to termination.

- Obtain necessary rights of way and permits and begin construction no later than June 1, 1993.
- Complete construction no later than November 30, 1993.

Qualification Review

AEA will evaluate grant proposals to determine a project's qualification under the program. The following requirements must be met for projects to qualify:

1. Project will meet area needs by serving private residences and/or small businesses who have agreed to terms and fees for the utility connection. AEA will require applicants to verify customers willingness to connect to service from the project by providing letters of intent, power sales agreements or other written verification of the customers willingness to connect to the new service.
2. The project is technically feasible. Plans submitted will be evaluated by AEA to ensure they are:
 - within accepted industry standards for design and construction (REA, NESC)
 - permits and rights of way are obtainable within project schedule
 - project start up and completion dates as proposed are realistic
 - proposed project start-up date is no later than June 1, 1993
 - proposed completion date is no later than November 30, 1993
3. The project is financially feasible.
 - Grant request does not exceed 60% of allowed (site preparation and construction) costs.
 - Utility demonstrates it has available funds to pay 40% of the site preparation and construction costs and 100% of all non-eligible costs of planning, feasibility and design.
 - The project budget is within industry norms for construction conditions.

Project Selection

Qualifying proposals for extending new electrical service to private residences and small businesses not currently served by an electric utility will be given priority over project proposals to improve existing facilities.

For proposals to extend service to new customers, qualifying projects will be ranked by the dollar amount of eligible project costs per existing residence and small business connected as a result of the project. Those projects with lower eligible project costs per connection will be given priority.

If funds are available after all qualifying line extension projects extending service to new customers have been considered, remaining funds may be awarded to applicants with proposals to upgrade existing distribution systems. These projects will be ranked based on an assessment of benefit to utility customers.

Application Procedure

An application form is provided with this packet. Applicants are responsible for ensuring that AEA has adequate information to effectively review and evaluate proposals. During the review period, AEA may request additional information as necessary to evaluate proposals.

Applications and supporting documentation should be submitted in a sealed manila envelope addressed as follows:

Electrical Service Extension Fund Grant Program
Alaska Energy Authority
PO Box 190869
Anchorage, Alaska 99519-0869

Alternatively, applications may be hand delivered from 8 am to 5 pm Monday through Friday to The Alaska Energy Authority, 701 East Tudor Road, Anchorage.

AEA is accepting applications for qualified projects through 5:00 pm, September 15, 1992. Applications received in the AEA Tudor road office after the deadline will not be considered. AEA will not be held responsible for delays in delivery of applications resulting from weather, lost mail or other causes beyond AEA's control.

Grant Agreements

Upon final selection of project proposals, AEA will enter into grant agreements with the successful applicants. Grantees will have 60 days from the date of grant award to submit project plans for AEA review and approval. The grant agreements will be performance based. In the event of project cost over-runs, AEA will not pay more than its budgeted share. The grant agreements will require applicants to invoice for grant payments based on actual project costs. AEA will not pay in excess of 75% of its share of project costs until the project is energized, inspected and verified to be in conformance with design as submitted in project plans, applicable codes and acceptable workmanship. Agreements will also set some limits on eligible costs for payroll, non-payroll and overhead, and require applicants to maintain certain levels of general liability and property damage insurance.

Program Contact

Further questions concerning the application process should be directed to Rick Rogers, Development Specialist at 261-7227.

Alaska Energy Authority

Electrical Service Extension Fund Grants Application

**Legal Authority under which
Applicant Organization Created**

Date of Application

Legal Name of Applicant

Is your organization a certificated electric utility under Alaska Statute _____
42.05.7117 **yes** **no**

If not, why is it exempt from certification?

Applicant's official correspondent or representative for purposes of this application:

(Name)

(Telephone Number)

(Title)

(FAX Number)

Address:

Principal Officers and Titles (Chief Executive Officer, General Manager, etc)

Advisors and Consultants

State names and addresses of engineer, legal council, financial advisor or consultant, design, economic or other advisors or consultants

_____	_____
_____	_____
_____	_____
_____	_____

Project Cost and Number of Hook-ups

Total amount of grant requested:	_____
Total amount of site preparation and construction costs to be contributed by your organization:	_____
Total non-qualifying costs (feasibility, design, planning)	_____
Total project cost:	_____
Total number of existing private residences and qualifying small businesses that will be connected as a result of this project (line extension projects only).	_____

Project Description

In a brief, separate report, describe how state grant funds distributed under this program will be used for your organization's proposed project. The following information must be included:

1. Physical location of the line extension or facilities improvements. Include a description of how the proposed project meets the needs of the area to be served and how the project will benefit the area.
2. A description of the physical components (hardware) and electrical characteristics (voltage, phases, standards and specifications, other information that accurately describes the project). Information provided must be sufficient to allow project evaluators to determine technical feasibility of project.
3. A project budget showing how state grant and applicant matching funds will be spent for the project. An estimate of the startup and completion dates for each phase/activity (in months from date of grant award).

4. Whether state grant funds will be used to extend service to private residences or small business, or to make improvements to existing electric utility facilities.

5. The number of existing residences and small businesses that will be served by the project. "Small business" means a commercial enterprise operated for profit and engaged in lawful business activity with not more than \$10,000,000 in annual gross sales, and does not include a business that is a division or subsidiary of a large parent company that does not qualify as a small business.

6. A description of permits and rights-of-way required for construction of the project and a schedule for their acquisition that will allow for construction to proceed prior to June 1, 1993.

7. Copy of proposed/actual power sales agreements or other documentation verifying customer commitments to hook up and purchase power under your organization's current fee schedule (line extension projects only). This documentation is critical for prioritizing grant awards.

8. A description of your organization's capability to contribute 40% of the total cost of project construction and site preparation. This should include funding sources (state, federal, applicant operating revenues, etc). If the utility's 40% share of project cost comes from outside source funds, identify whether funds are in the form of a loan, grant or other form of payment. *(Do not include planning, feasibility studies or design costs in calculating state-contributed or applicant share of total project costs. These costs are ineligible under this program).*

9. A description or examples of what type of accounting reports will be used to document 60% state grant share and 40% applicant share of eligible project costs.

10. A certified copy of a resolution or other official action of your organization's governing body authorizing application for state funds under the Electrical Service Extension Fund Grant Program.

NOTE

(a) The Energy Authority reserves the right to request additional information in evaluating the applicant's project proposal. This information must be provided by the date indicated at the time of the request. An Application may be deemed ineligible if deadlines are not met.

(b) Applications must be received by the Energy Authority no later than September 15, 1992, at 6:00 p.m. Applications must be sealed in a manila envelope and addressed as follows:

Electrical Service Extension Fund Grant Program
Alaska Energy Authority
P.O. Box 190869
Anchorage, Alaska 99519-0869

AEA 1992q3 :xtenapp.doc\p1w

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

September 29, 1992

TO: Representative Ron Larson, Chairman
Legislative Budget & Audit Committee

FROM: Mike Greany 
Legislative Fiscal Analyst

RE: Senator Menard's Letter/Electrical Service Extension Fund

The attached memorandum and information packet was prepared by Dave Tonkovich of our staff in response to Senator Menard's letter forwarded from your office.

It appears that the Alaska Energy Authority is following their understanding of the intent of the legislature by its actions this past session.

Please advise if anything further is needed on this.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

MEMORANDUM

DATE: September 28, 1992

TO: Mike Greany, Director
Division of Legislative Finance

FROM: David Tonkovich, Revenue Analyst ^{ORT}
Legislative Finance Division

SUBJ: Electrical Service Extension Fund Appropriations

This memo provides information on the Electrical Service Extension Fund (ESEF). The statutory reference for this fund is AS 44.83.370. An initial review examines purposes and appropriations to the fund and well as regulations for grants from the fund. With that background, the award to Golden Valley Electrical Association for the McKinley Village Line Extension Project will then be discussed.

The electrical service extension fund was established by the Alaska Legislature in 1991. The purpose is to provide matching funds to electric utilities to help defray the high cost of extending electrical service to residences and small businesses (less than \$10 million in annual gross sales). The fund provides grants for up to 60% of site preparation and construction costs for qualifying extension projects. Matching funding for at least 40% of these costs must be contributed by the applicant. Costs of project planning, feasibility studies and design are not eligible. Projects to improve existing distribution facilities are also eligible but are given lower priority.

Appropriations were made to the Electrical Service Extension Fund in both FY92 and 93. The citations for these appropriations follow:

CH 96. SLA 91. Sec. 81 appropriated \$1,000,000 from the general fund.

CH 5, SLA 92, Sec. 152 (p. 38) appropriated \$1,850,000 from the general fund.

Two appropriations from the fund went to the Alaska Energy Authority to defray costs directly associated with the implementation of administrative regulations and administration of grants for the program. Both are found in CH 5, SLA 92.

Sec. 83 \$33,000 was appropriated for the fiscal year ending June 30, 1992.

Sec. 84 \$37,500 was appropriated for the fiscal year ending June 30, 1993.

Regulations for this program are found in 3 AAC 94.600-690. A copy of those regulations is attached. A good source of information on the program is found in an attached information sheet developed by the Alaska Energy Authority, dated August 6, 1992. That sheet describes the program and presents information on the grant schedule, project qualification requirements, project selection criteria, application procedures and grant agreements. Allocations of monies currently in the fund will be made by October 1.

This background provides the necessary framework for a review of the grant to McKinley Village. Most of this information is based on a conversation with Brent Petrie, Manager of Agency Operations for the Authority.

The Governor's original capital budget contained general fund requests of \$1,500,000 for McKinley Village electrification and \$750,000 for the ESEF. Apparently, the McKinley project was in and out of the capital budget at various stages of the deliberations. According to Mr. Petrie, Senator Pourchot met with members of the governor's staff who were advocating the McKinley Village project. The Electrical Service Extension Fund was proposed as an option but could not be used for the entire project because of the 40% match requirement. The decision was ultimately made to add \$1,100,000 in general funds to the \$750,000 originally planned for the Electrical Service Extension Fund. A separate appropriation of \$400,000 provided the necessary match and was made in CH 5, SLA 92, Sec. 141. That appropriation was made to the Energy Authority for electric line extension projects within the Denali Borough.

In summary, the McKinley village extension will be funded out of the ESEF (\$1,100,000) and from the Denali Borough appropriation (\$400,000). After the appropriations for administrative expenses about \$700,000 remains in the fund.

Applications for the remaining funds are proceeding according to rules laid out in the attached information sheet. Those awards will be made by October 1, 1992. Golden Valley Electrical had submitted an application for grant funds prior to the institution of this application process. This was done on the expectation that they would receive a direct general fund appropriation for the McKinley Village project.

According to Mr. Petrie, the project meets technical, population, and other criteria for use of ESEF funds. The area is currently unserved by central electricity, has between 50-65 customers, and can be readily tied into the Anchorage-Fairbanks intertie at Cantwell. At the present time the grant agreement is under review and the utility will have to submit drawings and plans for the project. Mr. Petrie was unsure of the payment format but expected that installments would be paid as work progressed.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2456
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

October 14, 1992

SUBJECT: Electrical service extension fund

TO: Senator Curt Menard
ATTN: Bill Siedler

FROM: Teresa B. Cramer *TPC*
Legislative Counsel

You have asked for an opinion concerning the grant priorities established for the electrical service extension fund and the ability of the Alaska Energy Authority to use money appropriated to the electrical service extension fund (AS 44.83.370) without considering whether the project meets the grant priorities set out in that statute and in 3 AAC 94.640.

Grant criteria for the electrical service extension fund

The electrical service extension fund is established in AS 44.83.370. Subsection (b) provides for grants from the fund:

(b) The authority may make grants from the electrical service extension fund to certificated electric utilities and to electric utilities exempt from certification under AS 42.05.711, as a first priority, to pay for costs of site preparation and construction for the extension of electrical service to private residences and small businesses not currently served by an electric utility and, as a second priority, for making improvements to existing utilities. The amount of a grant made under this section may not exceed 60 percent of the total cost of construction of the project. The costs considered in making a grant may not include costs of planning, feasibility studies, or design.

The statute creates two categories of grants. First priority is to be given to applications for grants to pay the costs of site preparation and construction for the extension of electrical service. As a second priority, the AEA may award grants for improving existing utilities.

Senator Curt Menard
October 14, 1992
Page 2

The statute does not set out what standards the agency should apply in making decisions when there is insufficient money to fund all of the applications for grants that fall within the first priority. The regulations, adopted under AS 44.83.470(d), do establish a standard. Under 3 AAC 94.640(c),

[i]f two or more applicants are otherwise equally qualified to receive a grant, the grant will be awarded for the project that will serve the greatest number of existing residences or small businesses based on the dollar amount spent to extend the electrical service.

It is not entirely clear what the regulation means by "equally qualified." The regulations establish requirements that projects must meet. Under 3 AAC 94.620(b), the AEA is required to review applications and state whether the project meets the needs of the area, is technically and financially feasible, and whether the applicant has secured the necessary permits and certificates. It is possible that under 3 AAC 94.640(c), the AEA is intended to rank applications on these qualifications and then, among those that receive equal ratings, select on the basis stated in that subsection. On the other hand, the qualifications stated in statute and in 3 AAC 94.640(b) concern whether the project is for site preparation and construction for the extension of electrical service or for improving existing utilities. If this is the intended criterion then the AEA would group all of those properly completed applications for grants for the extension of electrical service and then, among those, apply the standard set out in 3 AAC 94.640(c).

Use of appropriation

In my opinion, the AEA is bound by the stated purpose of the appropriation and may not change the purpose except by amendment to the appropriation.

As I understand the information Bill Siedler of your staff has provided, the appropriation item in question was to the electrical service extension fund. Under art. 9, sec. 13 of the state constitution, state money may not be spent except as authorized by law. The section states:

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

The Alaska Attorney General has said that this section gives the legislature total and absolute power over the expenditure of state funds. Op. Alaska Atty Gen., February 28, 1977. The legislature has implemented this constitutional provision through the Executive Budget Act (AS 37.07). The only specific reference to the power of the executive to make transfers is contained in AS 37.07.080(e) which provides

Senator Curt Menard
October 14, 1992
Page 3

Transfers or changes between objects of expenditures or between allocations may be made by the head of a state agency upon approval of the [Office [of Management and Budget]. Transfers may not be made between appropriations except as provided in an act making the transfers between appropriations.

}*

Under this statute, the AEA may not use money appropriated to the electrical service extension fund for a purpose other than the fund. As discussed earlier in this memorandum, the fund sets out purposes for which grants may be made. In my opinion, unless the AEA secures an amendment to the appropriation to the electrical service extension fund, it may only spend an appropriation to the fund in accordance with the statute establishing the fund and regulations adopted under the statute.

}*

If I can be of further assistance, please let me know.

TC:lmb:gc
92-172.lmb

MEMORANDUM.

State of Alaska

Department of Law

TO Senator Curt Menard
Alaska Legislature

Ron Garzini
Executive Director
Alaska Energy Authority

DATE October 22, 1992 RECEIVED
FILE NO 661-93-0224 OCT 23 1992
TEL NO 259-5161 ALASKA ENERGY AUTHORITY
SUBJECT Alaska Energy Authority
Electrical Service
Extension Fund

FROM: Carolyn E. Jones *cef*
Assistant Attorney General
Transportation Section, Anchorage

SUMMARY

This memorandum responds to your separate but related requests for legal advice regarding the Electrical Service Extension Fund ("the Fund") administered by the Alaska Energy Authority (AEA).¹ We conclude that the AEA is required to evaluate applications for grants from the Fund based on the date they are received. If there is insufficient money in the Fund to award grants to all the contemporaneous applications, then the applications must be evaluated competitively on a cost/benefit analysis. The application for a \$1.1 million grant from the Electrical Service Extension Fund to Golden Valley Electric Association (GVEA) for the extension of electrical service to McKinley Village was one of four applications filed in May and June, 1992. Because there was sufficient money in the Fund to award all four grants if the applicants were otherwise eligible, the applications did not have to be evaluated on a cost/benefit analysis.

The money remaining in the Fund would be available for any subsequent applications. Applications received in July, 1992 should be evaluated in the order received. Those applications submitted in response to the August 3, 1992 solicitation will all have to compete for the remaining money in the Fund. Those applications that are otherwise eligible but not funded because the

¹ We understand that Senator Menard also requested and received advice from the Division of Legal Services regarding expenditures from the Fund. We have reviewed the October 14, 1992 memorandum by Teresa Cramer. None of the opinions in the Cramer memorandum are inconsistent with or contradict the opinions here. The Cramer memorandum did not consider the relevance of 3 AAC 94.640(a) to the advice requested of our office nor did that memorandum address the factual background regarding the actual applications on file with the AEA. Those issues are fully addressed in this memorandum.

Fund is exhausted will be eligible for priority consideration for next year's appropriation to the Fund.

Despite the size of the grant for McKinley Village, nothing in the legislation, appropriations bill or AEA regulations prohibits the grant award. GVEA may also meet the matching fund requirement of 44.83.370(b) with a separate appropriation not related to the Fund.

ANALYSIS

A. Establishing Priority Between Competing Applications

In 1991 the Alaska Legislature established an electrical service extension fund as a separate fund in the AEA. AS 44.83.370. The authority may make grants from the fund, first, for the costs of site preparation and construction for the extension of service to private residences and small businesses not then served by an electric utility. AS 44.83.370(b). If the fund is not exhausted by these grants, then the AEA may make grants for improvements to existing utilities.

The AEA adopted emergency regulations to implement the statute in September, 1991 and the regulations became permanent in April, 1992. The regulations set out how the grants may be used; the information required in the grant application; the standards for review of the application by the AEA; the requirement for inspection of the applicant's records and facilities, and the establishment of a grant priority in case of competing applications. 3 AAC 94.600 -- 94.640.

?! { Of particular relevance here are those provisions which describe the relative priority of competing grant applications. 3 AAC 94.640 specifically provides that "applications for a grant under AS 44.83.370 will be reviewed in the order received by the authority." This provision should be read as establishing a threshold priority for evaluating the applications and awarding limited funds based upon the order of receipt of the grant applications. While not a model of clarity, this priority is a reasonable effort to address the concern that at some point, there has to be a cutoff date and the grants awarded.² }

² In light of the serious problems noted here, we urge the AEA to consider amending its regulations if the agency is dissatisfied with the current evaluation procedure.

Senator Curt Menard
Alaska Energy Authority
Electrical Service Extension Fund

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If competing applications were filed contemporaneously, then applications for new line extensions take priority over applications for improvements to existing lines. Finally, competing applications for new service or competing applications for improvements are evaluated on a cost/benefit analysis.

Both requests for advice concern the AEA's authority to give McKinley Village a \$1.1 million grant from the fund. As we understand the facts, the 1992 Legislature appropriated \$1.85 million to the Electrical Service Extension Fund on May 16, 1992 during the First Special Session. 1992 SLA chap. 5 (1st SS) sec 152, p. 38, line 4. The Governor signed the bill on July 16, 1992 with an effective date of July 1, 1992 for sections 141 and 152 of the bill. CSSB 483, Sec. 201 at p. 128, line 10.

When Mr. Garzini became executive director of AEA on July 6, 1992, these four applications were already on file for grants from the Fund:

Bean Creek: \$99,224, filed on 5/29/92;

Willow Lake: \$106,470, filed on 6/4/92;

Copper Center: \$58,449, filed on 6/4/92;

McKinley Village \$1.1 mill., filed on 6/30/92.

Mr. Garzini understood that his predecessor had made a prior commitment to grant \$1.1 million to GVEA for the McKinley Village grant but that no priority existed as to the other three applications. In a letter dated August 3, 1992, he then invited eligible utilities to submit applications for the approximately \$750,000 remaining in the fund no later than September 15, 1992. The three applicants who had previously filed for grants would compete with the applicants who responded to the August letter while the McKinley Village application would not compete with any other application.

These assumptions were incorrect. Notwithstanding any informal agreements made by Mr. Garzini's predecessor, each of the four applications named above should have been evaluated for a grant according to the terms of 3 AAC 94.600 -- 94.640. The application for Bean Creek was the first filed and the first in priority. 3 AAC 94.640(a). If the application met the criteria for a grant, then the AEA should have awarded the applicant \$99,224. The remaining three applicants should have been similarly evaluated in the order received. Since the requests for the four grants did not exceed the entire Fund balance, the applications

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were not competing and did not have to meet the cost/benefit criteria of 3 AAC 94.640(c).

Assuming the four applicants all qualified for grants from the Fund, the amount allocated would be \$1,364,193.00. The balance remaining in the Fund would be \$485,807. This is the only money available for grants to subsequent applicants.

The AEA has two additional pools of applicants. Three applications were received in July after Mr. Garzini became the AEA's Executive Director:

S. Big Lake, filed on 7/8/92;

Yakutat, filed on 7/9/92;

Emswiler, filed on 7/29/92.

These applications should also be evaluated in the order received.

The third pool of applicants responded to a solicitation sent out by the AEA on August 3, 1992. In that letter, Mr. Garzini invited interested utilities to submit applications no later than September 15, 1992 for the unallocated moneys in the Fund. By the September 15th deadline, the AEA had received 12 new requests for money to extend service to residences and businesses not currently served.

The intent of the solicitation was to find a fair method to allocate a finite amount of money in the fund. Thus, the September 15th filing date created a single filing date for all applicants regardless of whether an application was received, for example, on August 4th or September 15th. All the applicants would then compete with each other and be evaluated on a cost/benefit analysis under 3 AAC 94.640(c).

Unfortunately the creation of a single filing date for the applicants -- regardless of when the application was filed -- violated the provisions of 3 AAC 94.640(a) which provides that applications will be evaluated in the order received.

It would be pointless and fundamentally unfair, however, to require the AEA to reject the 12 applications and start the process all over. Since the applications are already prepared, it is likely that most of them would arrive in the AEA office on or about the same date and would still have to be evaluated as competing applications. It would also be unfair to now evaluate these 12 applications on the basis of which one was received first.

The solicitation was quite specific that applicants had until September 15th to file the application. There was no indication that filing before that deadline would give an application filed in August a priority over an application filed, for example, on September 15th. Therefore we recommend that the AEA evaluate the 12 remaining applications as if they were all filed on September 15, 1992 and award the grants to the applications that have the best cost to benefit ratio under 3 AAC 94.640(c).

B. Determining the Size of the Grant

Assuming that the McKinley Village application meets the criteria described above, the amount of the grant would be \$1.1 million -- about 61% of the entire appropriation. Nothing in the language of the enabling legislation, the appropriations bill or in the AEA's regulations restricts the size of the grant.³

In these circumstances, legislative intent is resolved by looking at the authority's enabling language. 1984 Inf. Op. Att'y Gen. (May 30; 661-84-0476). We have previously concluded that the AEA has broad powers to accomplish its statutory purposes. "In the absence of legislative expression of a preference as to how the authority should accomplish its objectives, we believe that the authority has the discretion to choose the means that will best serve the public interest." *Id.* at 4. Since neither the statutes nor the regulations limit the amount of the fund that may be granted for any one electrical service extension project, we believe that the authority may grant 61% of the fund or \$1.1 million to GVEA for the McKinley Village project.

C. Meeting the Requirement for Matching Funds

Senator Menard also asked whether GVEA meets the 40%

³ The only legislative history found in this regard actually supports the size of this grant as well as its allocation to McKinley Village. The Governor's capital projects bill provided for \$1,500,000 for McKinley Village electrification -- the total amount represented by the grant and the appropriation for matching funds. See HB 561, p. 7, line 5; SB 450, p. 7, line 5. An excerpt from the minutes of the Senate Finance Committee reports that the proposed appropriation to the Fund was increased by \$1.1 million contemporaneously with an appropriation of \$400,000 to be the AEA "to be used as matching funds for electric line extension projects within the Denali Borough." Co-chairman Pat Pourchot noted his understanding that the increase in the appropriation was a high priority of the Governor.

Senator Curt Menard
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matching fund requirement of AS 44.83.370(b) where part of the matching funds comes from a separate legislative appropriation of \$400,000. See 1992 SLA chap. 5 (1st SS), Sec. 141 at p. 29, lines 2 - 3 ("The sum of \$400,000 is appropriated from the general fund to the Alaska Energy Authority to be used as matching funds for electric line extension projects within the Denali Borough.")

AS 44.83.370(b) provides only that the grant may not exceed 60% of the total cost of extending electrical service. It does not stipulate the source of the remaining 40% nor does it specifically prohibit the use of other appropriations to provide the matching funds. On the other hand, the language appropriating the \$400,000 to McKinley Village is quite specific that the money is to be used as matching funds for electric line extension projects within the Denali Borough. Given the general language of AS 44.83.370(b) and the specific appropriations language that the \$400,000 be used as matching funds, the Energy Authority may appropriately conclude that GVEA has supplied the necessary matching funds to qualify for the grant.

CONCLUSION

Notwithstanding any informal agreements to award \$1.1 million of the fund to the McKinley Village application, the grant must comply with the AEA's current regulations. The AEA's regulations require applications for grants from the Electrical Service Line Extension Fund to be reviewed in the order received. Competing contemporaneous applications that request more money than is available in the fund are subjected to a cost/benefit analysis. The Bean Creek, Willow Lake, Copper Center and McKinley Village application must be reviewed in the order received. If eligible, there is enough money in the Fund for these four grants. Similarly, the July applications should be evaluated in the order received. Any applications received in response to the August 3, 1992 solicitation would be reviewed only after the original four applicants and the July applications, and must be evaluated according to a cost/benefit analysis.

The AEA may award an electrical service extension grant to McKinley Village even where the grant would use 61% of the moneys in the fund. Furthermore, GVEA may meet the 40% matching fund requirement with separate moneys appropriated by the legislature for electric line extension projects within the Denali Borough.

CEJ:bb

CC: Dale DC



GOLDEN VALLEY ELECTRIC ASSOCIATION INC.

To: Bill	From: Rick Rogers
Co: Senator Munnard's	Co: ASA
Dept: Office	Phone #: 261-7227
Fax #: 376-6180	Fax #: 561-8584

* As Requested

June 26, 1992

RECEIVED

JUN 30 1992

ALASKA ENERGY AUTHORITY

Mr. Charlie Bussell
 Executive Director
 Alaska Energy Authority
 P O Box 190869
 Anchorage AK 99519-0869

Dear Mr. Bussell:

Enclosed is Golden Valley Electric Association's Electrical Service Extension Fund Grant Application for the Cantwell to McKinley Village distribution powerline extension. The acceptance of the grant by Golden Valley Electric Association is contingent on the receipt of the \$400,000 grant in the capital budget for additional powerline extensions in the Denali Borough.

If you have any questions, please contact Dave Johnson at 452-1151, ext. 206.

Sincerely,

Michael P. Kelly
 General Manager

kag

enc.

(SB483)



		ALLOCATIONS	ITEMS	GENERAL FUND	OTHER FUNDS
1	DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT (CONT.)				
2					
3					
4	ELECTRICAL SERVICE EXTENSION FUND (ED 99)		1,850,000	1,850,000	
5	KING COVE HYDROELECTRIC PROJECT CONSTRUCTION (ED 26)		2,500,000	2,500,000	
6		*****	*****		
7		***** DEPARTMENT OF MILITARY & VETERANS AFFAIRS	*****		
8		*****	*****		
9	PUBLIC PROTECTION				
10	ARMY GUARD FACILITIES				
11	SCHEDULED RENEWAL/REPLACEMENT/CODE UPGRADE (ED 99)		250,000	250,000	
12	CONSTRUCTION/CONTINGENCY/PLANNING (ED 99)		2,000,000		
13		*****	*****		
14		***** DEPARTMENT OF NATURAL RESOURCES	*****		
15		*****	*****		
16	HEALTH				
17	MENTAL HEALTH TRUST LAND SETTLEMENT IMPLEMENTATION (ED 99)		1,500,000	1,500,000	
18	NATURAL RESOURCE MANAGEMENT				
19	STATE LAND STATUS GEOGRAPHIC INFORMATION SYSTEM PROJECT (ED 99)		300,000	300,000	
20	RECORDER'S OFFICE/UCC RECORDS PROTECTION AND ACCESS PROJECT (ED 99)		50,000	50,000	
21	OIL AND GAS ROYALTY ACCOUNTING SYSTEM HARDWARE AND SOFTWARE UPGRADES (ED 99)		50,000	50,000	
22	LAND AND WATER MANAGEMENT				
23	STATEHOOD ENTITLEMENT SELECTIONS (ED 99)		1,500,000	1,500,000	

1 Regional Electrical Authority for the Chilkat Valley electrification project.

2 * Sec. 141. The sum of \$400,000 is appropriated from the general fund to the Alaska Energy
3 Authority to be used as matching funds for electric line extension projects within the Denali Borough.

4 * Sec. 142. Section 49, ch. 130, SLA 1986, as amended by sec. 42, ch. 3, FSSLA 1987, is amended
5 to read:

6 Sec. 49. The unexpended and unobligated balance of the appropriation made in sec. 2,
7 ch. 24, SLA 1984, page 20, line 8 (Tanana Valley Community College Student Housing
8 Purchase/Bidder Designed Construction - \$1,000,000) is repealed and reappropriated to the
9 University of Alaska, Tanana Valley Community College, for lease and renovation of a new
10 campus facility and for deferred maintenance projects.

11 * Sec. 143. Section 158, ch. 3, FSSLA 1987, page 55, line 15 is amended to read:

	APPROPRIATION	GENERAL
	ITEMS	FUND
14 [MUSEUM BUILDING] life safety		
15 renovations <u>and deferred maintenance</u>		
16 <u>projects</u> (ED 20)	50,000	50,000

17 * Sec. 144. Section 139, ch. 208, SLA 1990, page 79, line 11 is amended to read:

	APPROPRIATION	GENERAL
	ITEMS	FUND
20 Fairbanks campus, <u>land</u> [GOLD HILL CLIFFS]		
21 acquisition <u>and deferred maintenance projects</u>		
22 [(: CLIMATIC CHANGE PROJECT)] (ED 19-21)	85,200	85,200

23 * Sec. 145. Section 139, ch. 208, SLA 1990, page 79, line 15 is amended to read:

	APPROPRIATION	GENERAL
	ITEMS	FUND
26 Elvey building code corrections <u>and</u>		
27 <u>deferred maintenance projects</u>		
28 (ED 19-21)	2,210,000	2,210,000

29 * Sec. 146. Section 141, ch. 208, SLA 1990, page 111, line 19 is amended to read:

	ALLOCATIONS
31 Fairbanks campus, upper dorm	

A Fax From The Alaska Energy Authority



A Public Corporation of the State of Alaska
Walter J. Hickel, Governor
Ronald A. Garzini, Executive Director

Mailing Address:
Alaska Energy Authority
P.O. Box 190869
Anchorage, AK 99519-0869

Physical Address:
Alaska Energy Authority
701 East Tudor Road, 2nd Floor
Anchorage, AK 99503

Main Telephone Number (907) 561-7877

Fax Number: (907) 561-8584

Deliver Fax to: Nancy Memenway

Company Name: Per. Menard's

Company Address: _____

Fax Phone #: 465-2864 or 463-5661

Sender: DAVID DENIG - CHAKROFF

Sender's Phone #: 561-7877

of Pages Sent: 8

Date Fax Sent: 2/5/93 (Including this cover sheet)

If you don't receive all of this fax, please call:
Anchorage: (907) 261-7263

SPECIAL INSTRUCTIONS TO FAX RECIPIENT: Per your request
I am sending the portion of GUEA's
APPLICATION PACKET THAT DESCRIBES THE
MCKINLEY VILLAGE PROJECT. LET ME KNOW
IF I CAN BE OF FURTHER ASSISTANCE.

[Handwritten signature]

ALASKA ENERGY AUTHORITY GRANT APPLICATION
ELECTRICAL SERVICE EXTENSION FUND
CANTWELL TO MCKINLEY VILLAGE

1. State the legal name of the applicant and the legal authority under which it was created.

Golden Valley Electric Association, Inc. (hereafter "GVEA")

Certificate of Incorporation attached (Exhibit A)

2. State that it is a certified electric utility.

GVEA holds a certificate of Public Convenience and Necessity issued by the Alaska Public Utilities Commission, Certificate #13 (Attached - Exhibit B) (List of inclusive service areas also attached)

3. Include a certified copy of the resolution or other official action by the governing body authorizing the application for a grant.

Attached is the GVEA Board of Directors' Resolution authorizing the General Manager, Michael P. Kelly, to submit a grant application for the Cantwell to McKinley Village line extension (Exhibit C).

4. State the name, title and address of the correspondent or representative of the applicant for the purpose of the application.

David Johnson
New Service Coordinator
Golden Valley Electric Association, Inc.
P O Box 71249
Fairbanks AK 99707-1249
Phone: (907) 452-1151, ext. 206

5. State the names and titles of the principal officers, including the chief executive officer or general manager, of the applicant.

7
General Manager - Michael P. Kelly
Board President - Ronald Bergh
Board Vice President - Rick Schikora
Board Secretary - Bill Digan
Board Treasurer - Dan Osborne
Board Member - Dwight Nissen
Board Member - June James
Board Member - Ivan Fosheim

AEA Grant Application - Cantwell to McKinley Village

Page 7

6. State the name and address of the engineer, legal counsel, financial advisor, and any management, engineering, design, economic, or other advisors or consultants which the applicant may have for the project.

Golden Valley Electric Association, Inc. - Administrative Services Department, Member Services Department, Engineering Services Department, and Administration.

Legal Counsel - Cory Borgeson
Association Attorney
Birch Morton Bittner
100 Cushman Street, Suite 311
Fairbanks AK 99701

7. State the total amount of grant requested.

TOTAL AMOUNT OF GRANT REQUEST \$1,100,000.00

(Refer to Exhibit D)

8. Describe the use to which the grant funds will be applied.

- a. The location of the line extension: The line extension will be made from the village of Cantwell along the Parks Highway corridor to McKinley Village. The approximate length of the extension is 23 miles including 1.5 miles of taps to extend electrical service to residents who are a distance off the Parks Highway. (See Exhibit E)
- b. The physical components and the electrical characteristic of the project: The line extension will be constructed to the standard overhead distribution specifications set forth by the Rural Electrification Act. The line will be constructed three phase along the Parks Highway; the local taps will be constructed single phase. Pressure treated wood poles and cross arms will be utilized and the conductor will be 336 MCM ASSR to minimize voltage drop and accommodate future additional load.
- c. The proposed allocation of grant funds to each purpose or to each phase of a project and the expected date of start-up and completion of each phase: Design of the new line will commence immediately upon award of the grant funds with tentative completion of construction early in 1994. The various segments of the project will be scheduled as shown on Exhibit F.
- d. Whether the grant will be used to extend service to private residences or small businesses, or to make improvements to existing facilities: The grant would be used to extend electrical distribution lines to a projected 100 new electrical connections over the next ten years. Of this number, it is estimated that 70 connects will be residential and 30 will be small businesses. Presently, 58 applications have been received including one community center/fire hall.

AEA Grant Application - Cantwell to McKinley Village

Page 3

- a. The number of existing residences and small businesses that will be served by the project: The following applicants have committed to receiving electrical service from the project immediately:

Tommy D. and Joan Adams
*Alascom Inc.
Lawrence and Lois Alice
Jane Anderson
Margie Anton
*Baker Investments Inc., DBA McKinley Wilderness Lodge
Loran W. and Marion Benham
Lloyd D. Selvill
Jane K. Bryant
Michael L. Bugbee
Robert Butterfield
*Carlo Creek Lodge
*James W. Caswell
Patrick & Ursula Condran
Ken & Mary Clair Curtis
*D & D Leasing/Donald Peterson
Lois Dellemolle
Ronald C. Dane
*Denali Cabins, Inc. (Danae R. Kroll) (2 meters)
*Denali Foundation
*Denali Grizzly Bear
*Denali Wilderness
Harold and Claire Eastwood
Bradley W. Ebel
John W. Esala
Bruce and Joan Foote
Todd R. Franson
Martin W. Grosnick
Raisis G. James
*Jere-A-tad Lodge Inc.
Stephen E. Jones
Stephen E. Jones
Jeff King
Dennis R. Kogl
*Gary Kroll/AK Raft Adventures
Gary Kroll
*Katanuska Telephone Association
*McKinley Village Lodge (2 meters)
Linda Wellman
*William and Astrid Nancarrow
William and Astrid Nancarrow
William and Astrid Nancarrow
William and Astrid Nancarrow
Patrick & Ariety O'Connor
*Gerald and Elaine Pollock
James Raisis
Jack Reiland
Vivian P. Spurgin
Otto A. and Billie Stoepler, Jr.
Otto A. and Billie Stoepler, Jr.

AEA Grant Application - Cantwell to McKinley Village

Page 4

*McKinley Community Center
Bryant J. Swift
Timothy F. Taylor
Ralph Tingey
Charles M. Travers
Randy and Amanda Vanderwood
Joseph R. Welna
Kenneth B. Wilbert

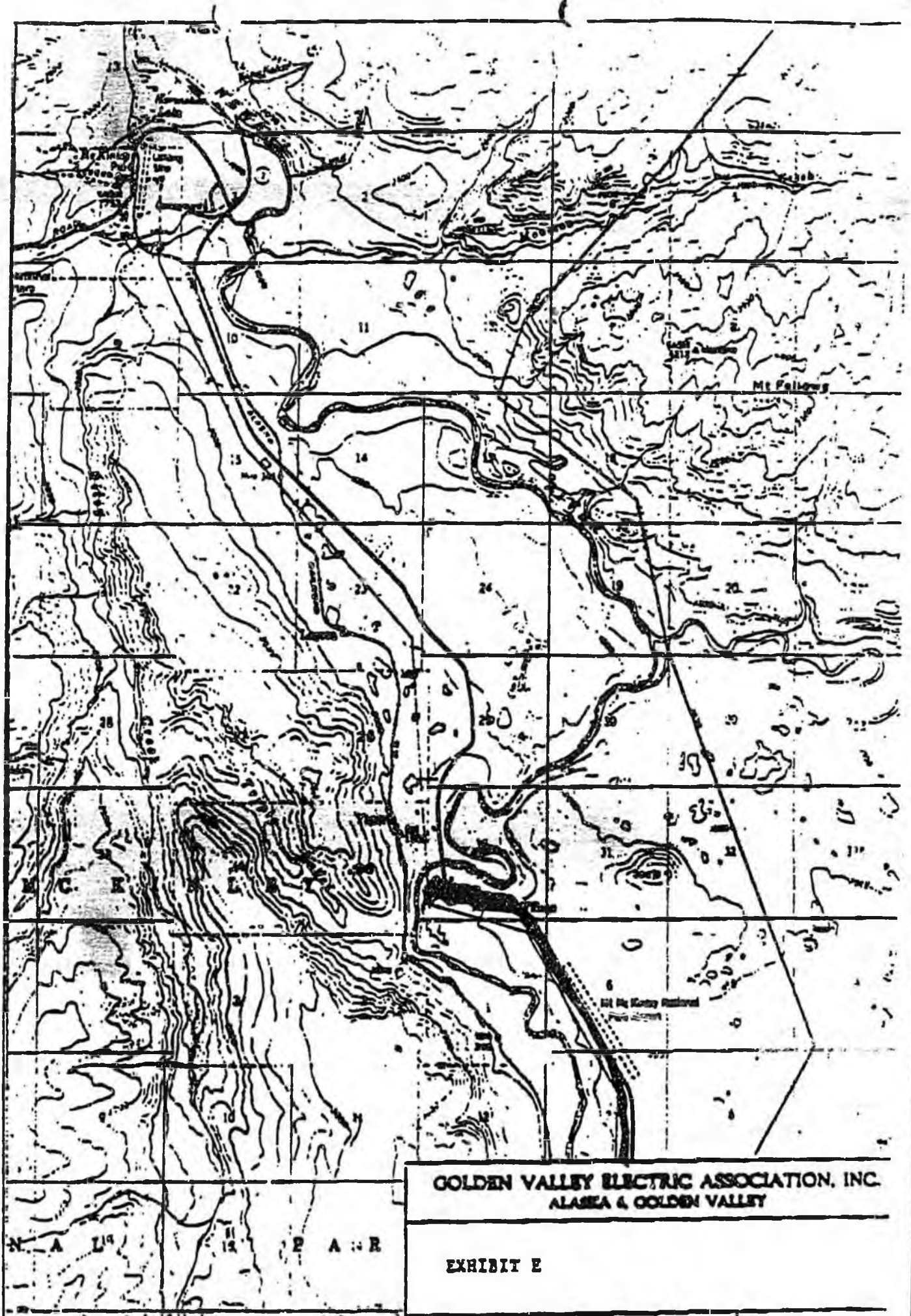
*Small businesses

9. Provide evidence that all permits and rights-of-way needed for the construction of the project can be secured in time to allow construction to proceed on the schedule provided under subsection 355(8) (c).

The proposed routing is adjacent to the existing Parks Highway. Although GVEA has not officially applied for a permit to construct a powerline in the road right-of-way, we did ask the Department of Transportation and Public Facilities to issue an opinion on the feasibility of obtaining a permit. Attached as Exhibit G is a letter from the Department of Transportation and Public Facilities stating their non-objection. Permits are usually issued within one week of submittal. A portion of the extension may be constructed in the Alaska Energy Authority's Fairbanks to Anchorage intertie right-of-way.

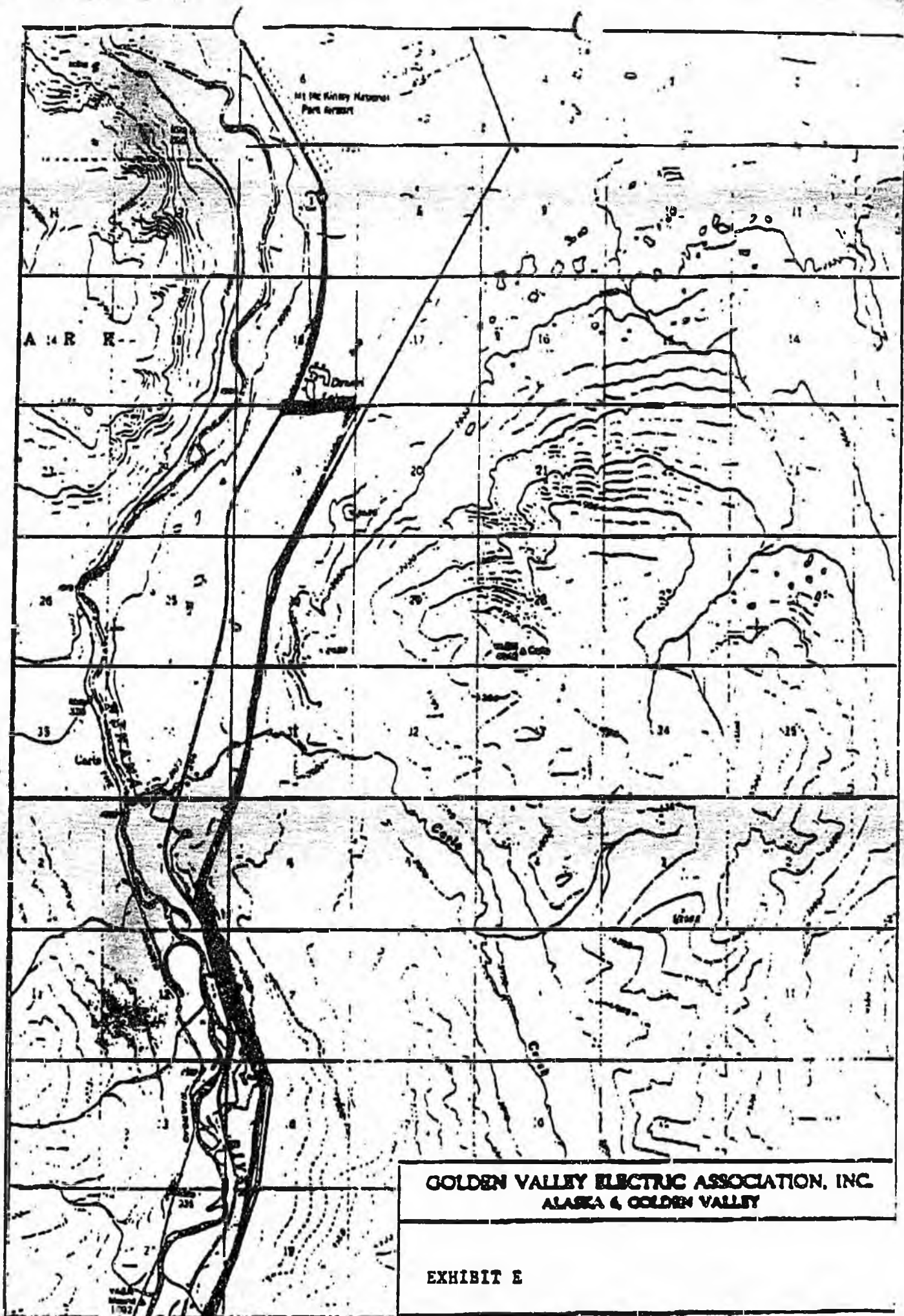
10. Provide evidence that the utility is capable of contributing 40% of the total cost of construction of the project, exclusive of the costs of planning, feasibility studies, or design.

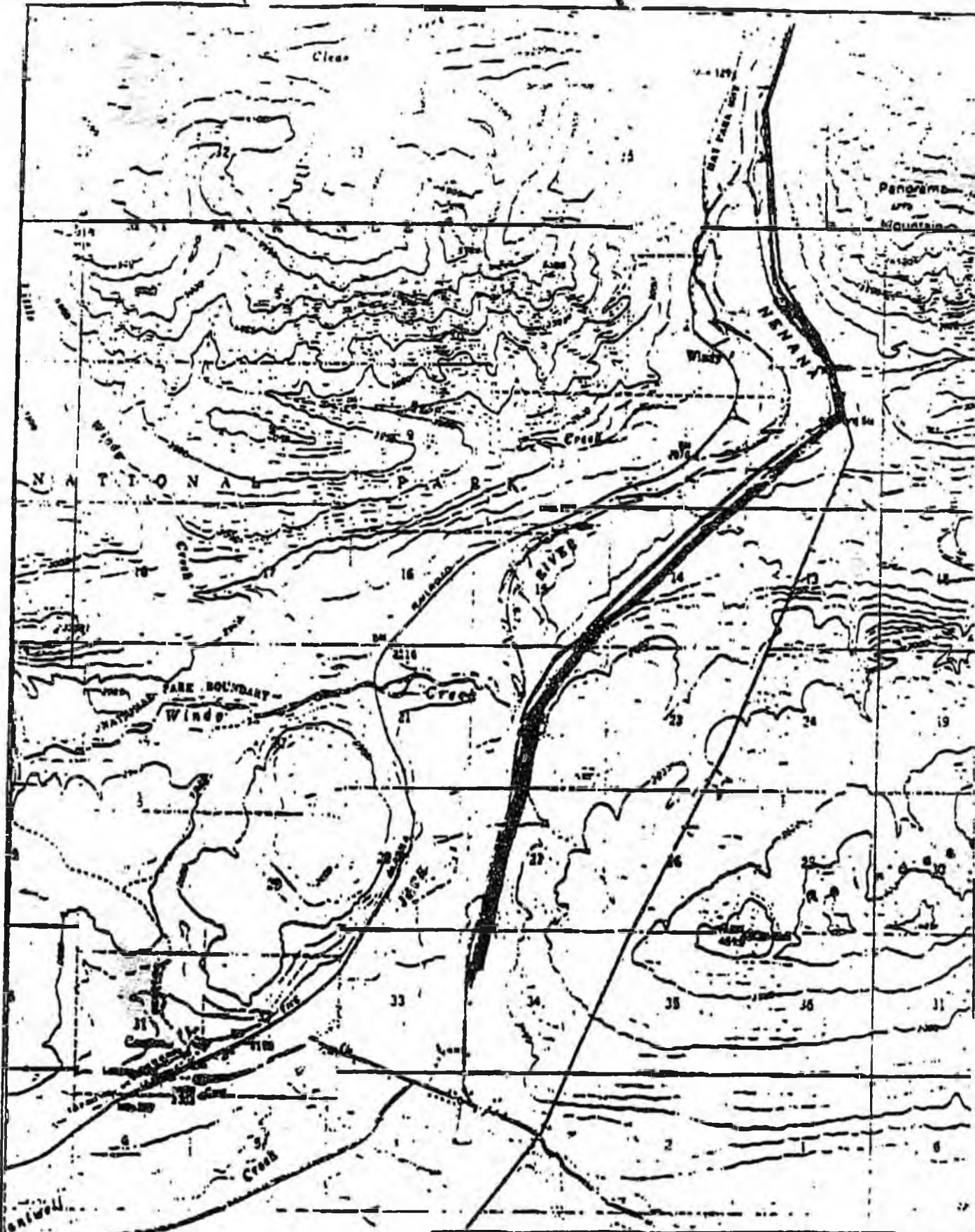
Attached is a letter from GVEA's Chief Financial Officer, Robert Hansen, (Exhibit H) stating that the Association has sufficient funds to cover the appropriate share of the cost of the line extension in excess of the grant as provided in our tariffed line extension policy (Exhibit I). In addition to the Association's line extension funds, each prospective member has committed to pay a \$2400 contribution in aid of construction. The Association will invest an additional amount to cover the cost of the larger wire size to limit voltage drop and accommodate future load.



GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.
ALASKA & GOLDEN VALLEY

EXHIBIT E





GOLDEN VALLEY ELECTRIC ASSOCIATION, INC.
ALASKA & GOLDEN VALLEY

EXHIBIT E

PROJECT TITLE: Electrical Service Extension Grant Program				
LOCATION: Statewide		COMPLETION DATE: Continuous		ELECTION DISTRICT: 99
PROGRAM: Energy Development			TYPE: New Construction	
FUNDING:				
		CAPITAL REQUEST	OPERATING COSTS	NEW POSITIONS (PFT):
1002	FEDERAL RECEIPTS			
1003	GENERAL FUND MATCH			
1004	GENERAL FUND	5,000.0		
1007	INTER-AGENCY RECEIPTS			
TOTALS:		5,000.0		

PROJECT DESCRIPTION AND JUSTIFICATION:

This is a matching grant program that provides up to 60% of the cost of eligible projects proposed by utilities for extending electrical service to private residences and small businesses not currently served by an electrical utility and, as a second priority, for making improvements to existing utilities.

During the 1991 legislative session, House Bill 226 was adopted by the Legislature and subsequently signed into law, creating the Electrical Service Extension Grant Program and establishing the Electrical Service Extension Fund (AS 44.83.370) in the Alaska Energy Authority (AEA). The Fund consists only of money appropriated to it by the Legislature. Funding of \$2,850,000 was appropriated for line extension matching grants during fiscal years 1992 and 1993. Grants from the fund are awarded to certified utilities under the following statutory criteria: 1) the amount of a grant made from the Fund may not exceed 60% of the total cost of construction of the project and, 2) the costs considered in making a grant may not include costs of planning, feasibility studies, or design. In addition, the utility receiving a grant may charge an initial connection fee for the new electrical service being made available.

AEA awarded FY93 grants from the fund during October, 1992. Based on approximately \$4 million in grant requests from eligible utilities and potential public to be serviced, we anticipate no remaining FY93 grant monies to carry over into FY94.

The following grant applications could not be approved in FY93 due to lack of funds: City of False Pass, False Pass Harbor (\$45,929); City of Wrangell, South Wrangell (\$300,000); Cordova Electric Coop., Whittished Road (\$178,692); Copper Valley Electric Coop., Copper Center (\$58,449); Homer Electric Association, Dolina (\$205,800), Gume (\$19,644); Tingit-Haida Rural Electric Association, Yakutat (\$107,160); Thome Bay Utility (\$742,420); Kotzebue Electric (\$96,899); and McGrath Light & Power (\$150,000).

In addition to the applications received in FY93 for which no funds are available, a survey of Alaskan utilities reflects potential FY94 applications of \$3,865,879.

CAPITAL PROJECTS	
CP1	DESCRIPTION
PRIORITY	12 OF 21

AGENCY Commerce and Economic Development
 BRU Alaska Energy Authority

Page	1	of	1
Revised Date:			

FY84



HOUSE COMMUNITY AND REGIONAL AFFAIRS

DATE: 2/23/93

PLACE: Rm 124

SUBJECT OF MEETING:
 * SSHB 1
 * SJR 20

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
Kent Swisher	AML	217 Second St Juneau	99501		586-1325	<input checked="" type="radio"/>	<input type="radio"/>	SSHB 1
Russell Heath	AEL	POB 22151 Juneau	99502		963-3366	<input checked="" type="radio"/>	<input type="radio"/>	HR1
Jim Rowler	SE CONFEDER	124 W. 5 Juneau	99801		463-5445	<input checked="" type="radio"/>	<input type="radio"/>	NS1
Jeff Otteson	DOTPK	3132 Channel Dr. Juneau	99501		465-6954	<input checked="" type="radio"/>	<input type="radio"/>	HR1
Juanita Hensley	DPS/DMU	PO Box 20120	99702		465-4335	<input type="radio"/>	<input type="radio"/>	HR1 - questions only
Janice Adair	DEC					<input checked="" type="radio"/>	<input type="radio"/>	
Bruce Geraghty	DCRA	Juneau		4700		<input type="radio"/>	<input type="radio"/>	SJR 20
Wm A. Wyatt	THE ETAK CORP.	THE ETAK CORP. 4792-S BUSINESS PARK BLVD. ANCHORAGE AK 99503	99503		501-7101	<input checked="" type="radio"/>	<input type="radio"/>	-
Shirley Armstrong	Red R. Phillips	Cap. 103			4949	<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

HB

26



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

March 9, 1993

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT REPRESENTATIVE CURT MENARD FOR HB 26, CONTROL OF OUTDOOR ADVERTISING

HB 26 would conform Alaska state law to federal laws that affect outdoor advertising. Current state law prohibits outdoor advertising on interstate, primary and secondary highways, with exceptions including on premise advertising, official signs and bus bench advertising. Federal law applies only to interstate and primary roads but allows for agreements to be formed between states and the Federal Highway Administration (FHWA).

There have been hundreds of illegal signs along Alaska's highways. Many signs encroached the right-of-way (ROW) or were off-premise signs which are not allowed by federal law. Passage of the federal Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA), allowed states to use federal funds to remove illegal signs. The Alaska Department of Transportation and Public Facilities (DOT/PF) has actively pursued sign removal by notifying property owners that their signs are illegal.

For property owners along the primary system, such as the Parks Highway, on-premise signs are frequently not visible because the ROW is very wide and vegetation obscures the sign. The DOT/PF developed a policy in conjunction with the FHWA, the airspace leasing program, which allow for signs to encroach the ROW. New regulations were not promulgated and the public did not participate in the formation of the program. Instead, the property owner received a letter and 30 days notice to remove the sign or apply for an airspace lease. The costs for application include a \$100 application fee, a \$200 issuance fee, and a fair market annual fee (which runs about \$100 per year in my district). If it is necessary for the department to conduct a survey, those costs would be passed on the property owner. While the issue remains as to the legality of the program (until regulations are promulgated), if DOT/PF doesn't continue with the program, no signs will be allowed to encroach in the ROW.

Some businesses, such as the Willow Trading Post, located 1/2 mile off the Parks Highway, had a directional informative sign on the Parks Highway. The only sign off-premise businesses qualify for is the Tourist Oriented Directional Sign (TODS). That sign is 18x90 inches, blue and white, generic sign. The application fee is \$100 and the signs cost about \$1000. This business believes that their sign is lost in the midst of the many signs at the intersection and their business suffers.

Page two
March 9, 1993
Representative Curt Menard

HB 26 could help some businesses along the primary road system since the federal law allows for the State and the FHWA to enter into agreements in certain areas. That provision, Sec. 131 (d), Title 23, would allow for agreements between the State and the FHWA in areas that are unzoned commercial or industrial in nature. Since local government has the authority for zoning, I envision they will play a significant role in determining areas to assert agreements between DOT/PF and the FHWA.

Under the bill, secondary roads would not have advertising restrictions. The DOT/PF and others have expressed concern that the bill could open up our secondary roads to billboard advertising. Because my intent is to help small businesses advertise along our highways, I have also enclosed an amendment for your committee to consider. The amendment would allow only "service advertising" along the highway system. I don't want to prevent our local entrepreneurs from advertising locally grown produce or handmade gifts.

This bill will provide many small businesses with some flexibility in signage.

I've provided the committee with some federal and state laws and information on the TODS and airspace leasing program to better help members understand the outdoor advertising laws and programs.

The House Transportation Committee had some questions about the penalty provisions in AS 19. HB 26 is not a comprehensive rewrite of Title 19 and only provides technical changes to some penalty provisions, necessary to conform section 1 of the bill to AS 19. I have enclosed a memorandum dated March 4, 1993 from the legislative counsel discussing the penalty provisions in AS 19.

I urge you to support the bill and will answer any questions you may have.



(Official Business)

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

Sectional Analysis for HB 26, Control of Outdoor Advertising

Section 1. Adds a new section, AS 19.25.091 which amends AS 19.25 to allow outdoor advertising outside of the right-of-way unless prohibited by federal law.

Adds a new section, AS 19.25.093 which prohibits outdoor advertising not permitted by AS 19.25.091.

Section 2. Replaces interstate, primary or secondary designations with state highway, which is a technical change.

Section 3 and Section 4. Adds in the new section numbers to the penalty for violation and unlawful advertising section, again, a technical change.

Section 5. Replaces "any" with "an", "which" with "that", and "interstate, primary or secondary systems in this state" with "state highway", all are technical changes.

Section 6. Technical change. Removes reference to interstate and primary systems. Conforming amendment to authority the state has to adopt regulations.

Section 7. Technical change. Rewords AS 19.25.180. States in clearer language that a municipality may enact more restrictive ordinances that regulate outdoor advertising.

Section 8. Adds in the two new sections, AS 19.25.091 and AS 19.25.093 into the penalty provision.

Section 9. Repeals AS 19.25.080, 19.25.090, 19.25.105 (a), and 19.25.105(c).

Section 10. Repeals 17 AAC 20.010. The regulation is too encompassing; the department will have to promulgate new regulations that would apply.

DIVISION OF LEGAL SERVICES

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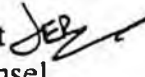
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 4, 1993

SUBJECT: Penalty Provisions in AS 19 (Work Order No. 8-LS0216E)

TO: Representative Curt Menard
Attn: Nancy

FROM: Jerry Luckhaupt 
Legislative Counsel

You have requested a memorandum exploring the different penalty provisions contained in AS 19 and how those provisions are changed by HB 26.

I have discovered five criminal penalty provisions in AS 19. Those provisions are:

Sec. 19.10.250. PENALTY FOR FAILURE TO ERECT WARNING SIGNS. A contractor, foreman, or person in charge of work or repairs on a highway who fails or neglects to erect and maintain suitable warning signs as provided in AS 19.10.240 is punishable by a fine of not less than \$10 nor more than \$50, or by imprisonment in jail for not more than 60 days, or by both.

Sec. 19.25.130. PENALTY FOR VIOLATION. A person who violates AS 19.25.080 - 19.25.180, or a regulation adopted under them, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$1,000.

Sec. 19.27.120. PENALTY FOR VIOLATION. A person who violates this chapter, or a regulation adopted under it, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$1,000.

Sec. 19.40.065. REGULATIONS AND PENALTIES. All departments and agencies of the state are given the specific authority to adopt under the Administrative Procedure Act (AS 44.62) emergency, temporary, and permanent regulations necessary to accomplish the purposes of AS 19.40.020 - 19.40.050. The violation of any regulation

Representative Curt Menard
March 4, 1993
Page 2

adopted under AS 19.40.020 - 19.40.050 is a misdemeanor and upon conviction the person is punishable by a fine of not more than \$10,000 for each offense.

Sec. 19.45.002. PENALTIES. A person who violates any provision of AS 19.05 - AS 19.25 is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500, or by imprisonment in jail for a period not to exceed one year, or by both.

AS 19.10.250 only applies to a person who violates AS 19.10.240. AS 19.25.130 only applies to a person who violates AS 19.25.080 - 19.25.180. AS 19.27.120 only applies to a person who violates AS 19.27. AS 19.40.065 only applies to a person who violates a regulation adopted under AS 19.40.020 - 19.40.050. AS 19.45.002 provides a general penalty provision that is available in the case of any person that violates AS 19.05 - 19.25. This general provision would presumably only apply when the legislature has not set a specific penalty provision as provided in AS 19.10.250 and 19.25.130.

HB 26 only affects AS 19.25.130 and AS 19.45.002. In section 3 of HB 26, AS 19.25.130 is amended to conform with the change that is being made in section 1 of the bill and to eliminate the spanned reference. In section 8 of the bill, AS 19.45.002 is being amended to clarify that this general penalty provision does not apply to violations of the statutes regulating outdoor advertising, AS 19.25.091 - 19.25.180.

If you have any questions, please contact me at your convenience.

GPL:gc
93-196.glc



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: HB 26

APPROVED:

A handwritten signature in dark ink, appearing to read "Katy McHugh".

TITLE: Prohibited Highway Advertising DATE: February 3, 1993

The proposed legislation would eliminate state prohibitions on outdoor advertising leaving only federal prohibitions. This would have the effect of allowing for outdoor advertising along highways which are not ultimately categorized as highways of national significance (HNS). Briefly, HNS-category roads are some (but not all) major arterials of the state such as Egan Drive, Seward Highway and the Alaska Highway.


This means that most lesser roads and some major highways would be unregulated with regard to outdoor advertising and that, subject to the property owner's approval, outdoor advertising in any form (off-site business advertising, bill boards, product advertising) would be permissible. Municipal zoning restrictions, if any, would still apply.

This bill will likely have both strong supporters and opponents. Having dealt with the enforcement of outdoor advertising for many years, the department is familiar with the many interest groups with a stake in this issue. Arguments can be made pro and con: "It makes it easier for business, but it blights Alaska; it improves the flow of information for traveler's but brings Alaska scenic standards down to those of ordinary states".

The issue of visual pollution from billboards should not be taken lightly. According to a *Sixty Minutes* program on outdoor advertising, Alaska is only one of four states which has not allowed billboards to encroach upon its scenic beauty. The Alaska Division of Tourism considers the highway system to be the single largest attraction for visitors to the state, based on the number of people who drive our highways just to see the grand majesty of Alaska.

One possible consequence will be that businesses on similar highway settings (depending upon the HNS classification) are treated differently under the law. The Seward Highway, south of the Sterling Highway, may contain outdoor advertising; the remainder will not. Most of the Richardson Highway will be eligible for outdoor advertising, but that portion north of Delta Junction will not. These "inequities" will create hard feelings and some difficulties in administering the law.

As a department charged with operating the state highway system, we are neutral toward the bill. It will bring both relief and additional work for our crews with little net change.

 Katy McHugh at 465-3900.

On one hand we must still ensure that signs are not placed within the right-of-way, and that HNS -category roads contain no outdoor advertising. Where permissible, the bill would relieve the pressure for illegal advertising, directing it to lawful locations.

However, as a department which is striving to emphasize the positive aspects of our highway system as a feature of national and international tourism, the environmental sensitivity of the new national transportation policy and marketing the uniqueness of Alaska through the new STEP program, we believe that this bill may have negative public relations consequences far outweighing any business advantages.

FISCAL NOTE

Revision Date:
Title: Prohibited Highway Advertising

Department Affected: DOT&PF
BRU:

Sponsor: Menard
Requestor: Menard

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

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

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

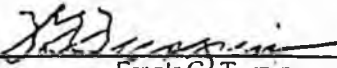
See attached page 2.

Prepared by: Jeffrey C. Ottesen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: February 5, 1993

Approved by Commissioner: 
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: February 5, 1993

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Fiscal Note

ANALYSIS (cont. from page 1):

The proposed changes would not materially alter the work required to enforce outdoor advertising laws. Efforts to verify that signs are not located within the right-of-way would likely increase as there would likely be more signs placed along the highway system. Further, on Highways of National Significance, where off-premises outdoor advertising would remain illegal, there is likely to be an increase in illegal signs as businesses try to "equalize" their visibility with businesses located along highways where the relaxed advertising standards would apply. These increases would be offset by the fact that many businesses could install legal outdoor advertising, reducing some enforcement activity.

In the long term, outdoor advertising signs may have to be acquired as property for highway expansion projects. Nationally, outdoor advertising signs can be worth substantial sums, which could cause some construction projects to be more expensive. These future costs are not estimable at this time.

**FEDERAL HIGHWAY ADMINISTRATION
400 SEVENTH ST., SW
ROOM 4223, HCC-10
WASHINGTON, D.C. 20590**

**TITLE 23 -- UNITED STATES CODE
HIGHWAYS**

Originally Compiled from GPO tapes by HNG-12 in Nov. 1987
with updates through 1988

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in January 1990

Please notify HCC-10 (202)366-1388, Sherie Abbasi
if errors are encountered in text

[text in WordPerfect 5.1]
[electronic file available on FEBBS for FHWA Staff]

UPDATED: 5/10/91: Pub. L. 101-427 (10/15/90).
 Secs. 333 and 336 of Pub. L. 101-516 (11/5/90).
1/8/92: Pub. L. 102-143 (10/28/91), Sec. 333.
 Pub. L. 102-240 (ISTEA of 1991, 12/18/91).

TITLE 23-UNITED STATES CODE
HIGHWAYS
CHAPTER 1.-FEDERAL-AID HIGHWAYS

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Sec. 101. Definitions and declaration of policy

- (a) As used in this title, unless the context requires otherwise-

The term "apportionment" in accordance with section 104 of this title includes unexpended apportionments made under prior acts.

The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration in the Department of Commerce) resurfacing, restoration, and rehabilitation, acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, elimination of roadside obstacles, acquisition of replacement housing sites, acquisition and rehabilitation, relocation, and construction of replacement housing, and improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas. The term also includes capital improvements which directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses and also includes costs incurred by the State in performing Federal-aid project related audits which directly benefit the Federal-aid highway program.

The term "county" includes corresponding units of government under any other name in States which do not have county organizations, and likewise in those States in which the county government does not have jurisdiction over highways it may be construed to mean any local government unit vested with jurisdiction over local highways.

The term "Federal lands highways" means forest highways, public

and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) Survey and Schedule of Projects.- Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

(e) Special Rules.-

(1) Funds for Protective Devices.- At least 1/2 of the funds authorized and expended under this section shall be available for the installation of protective devices at railway-highway crossings.

(2) Set Aside for Public Information Programs.- \$250,000 of the amounts available for expenditure under this section in each fiscal year shall be expended for a public information program-

(A) which the Secretary determines will be effective in educating the public as to the hazards posed at

railway-highway crossings and the importance of heeding warning signals at such crossings; and

(B) which the Secretary determines will provide information necessary to diminish railway-highway crossing accidents.

(3) Procedures.- Sums authorized to be appropriated by this subsection shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(f) Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums authorized to be appropriated under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums authorized to be appropriated under section 104(b)(6) of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) Annual Report.- Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the house of Representatives not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d), and include recommendation for future implementation of the railroad highway crossings program.

(h) Use of Funds for Matching.- Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railway-highway crossings.

Sec. 131. Control of outdoor advertising

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in

areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State subject to the

246 13

approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are ~~zoned~~ ~~industrial or commercial under authority of State law, or in~~ ~~unzoned commercial or industrial areas~~ as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such

compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this

Sec 3

section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the state may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United states. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, not to exceed \$20,000,000 for the fiscal year ending June 30, 1967, not to exceed \$2,000,000 for the fiscal year ending June 30, 1970, not to exceed \$27,000,000 for the fiscal year ending June 30, 1971, not to exceed \$20,500,000 for the fiscal year ending June 30, 1972, not to exceed \$50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation

to be paid upon removal of such sign, display, or device is not available to make such payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q) (1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and aesthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) REMOVAL OF ILLEGAL SIGNS.--

(1) BY OWNERS.--Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) BY STATES.--If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs

of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) SCENIC BYWAY PROHIBITION.--If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section.

(t) PRIMARY SYSTEM DEFINED.--For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

Sec. 132. Payments on Federal-aid projects undertaken by a Federal agency

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

Sec. 133. Surface transportation program

(a) ESTABLISHMENT.--The Secretary shall establish a surface transportation program in accordance with this section.

(b) ELIGIBLE PROJECTS.--A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction

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which the Secretary determines are inconsistent with this section, shall apply to any highway designated under this section which is not a part of the Federal-aid system when so designated.

(d) For the purpose of this section the term "lake" means any lake, reservoir, pool, or other body of water resulting from the construction of any lock, dam, or similar structure by the Corps of Engineers, Department of the Army, or the Bureau of Reclamation, Department of the Interior, or the Tennessee Valley Authority, and any multipurpose lake resulting from construction assistance of the Soil Conservation Service, Department of Agriculture. This section shall apply to lakes heretofore or hereafter constructed or authorized for construction.

(e) There is authorized to be appropriated not to exceed \$25,000,000 for the fiscal year 1976 to carry out this section. Amounts authorized by this subsection for a fiscal year shall be available for that fiscal year and for the two succeeding fiscal years.

Sec. 156. Income from airspace rights-of-way

Subject to section 142(f), States shall charge, as a minimum, fair market value, with exceptions granted at the discretion of the Secretary for social, environmental, and economic mitigation purposes, for the sale, use, lease, or lease renewals (other than for utility use and occupancy or for transportation projects eligible for assistance under this title) of right-of-way airspace acquired as a result of a project funded in whole or in part with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). This section applies to new airspace usage proposals, renewals of prior agreements, arrangements, or leases entered into by the State after the date of the enactment of the Federal-Aid Highway Act of 1987. The Federal share of net income from the revenues obtained by the State for sales, uses, or leases (including lease renewals) under this section shall be used by the State for projects eligible under title.

Sec. 157. Minimum allocation

(a) General Rules.-

(1) Fiscal Years 1984-1987.- In the fiscal year ending September 30, 1983, as soon as practicable after the date of enactment of this Act, and in each of the fiscal years ending September 30, 1984, September 30, 1985, and September 30, 1986, on October 1, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title amounts sufficient to insure that a State's percentage of the total apportionments in each such fiscal year of Interstate highway substitute, primary, secondary, Interstate, urban, bridge replacement and rehabilitation, hazard elimination, and rail-highway crossings funds under sections 103(e)(4), 104(b), 144, and 152 of this title and section 203

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

Subpart A—Property Management

Sec.

- 713.101 Purpose.
713.102 Applicability.
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- 713.201 Purpose.
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Authority: 23 U.S.C. 101(a), 142(g), 156, and 315, 42 U.S.C. 4833 and 4851, 23 CFR 1.32, 49 (PR 1.48(b)) and parts 21 and 24.

Source: 30 FR 34651, Sept. 27, 1974, unless otherwise noted.

Subpart A—Property Management

§ 713.101 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

150 FR 34093, Aug. 23, 1985

§ 713.103 Policies and procedures.

(a) The State highway department (SHD) shall establish property management policies and procedures that will assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

(1) Property records showing:

- (i) An inventory of all improvements acquired as a part of the right-of-way;
- (ii) An accounting of the property management expenses and the rental payments received; and
- (iii) An accounting of the disposition of improvements and the recovery payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rodent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) [Reserved]

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of volume 8, chapter 4, of the Federal-Aid Highway Program Manual¹ shall

¹The Federal Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Federal Highway Administration, DOT

Subpart B—Management of Airspace

§ 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for non-highway purposes.

§ 713.202 Applicability.

(a) The provisions of this subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under subparts B and E of part 140 of this chapter; joint development and multiple use of highway rights-of-way as covered in volume 7, chapter 7, section 8 of the Federal Aid Highway Program Manual;² and bikeways and pedestrian walkways as covered in part 652 of this

§ 713.203 Definition.

Air space, as used in this subpart, is that space located above, at, or below the highway's established grade line, lying within the approved right-of-way limits.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to permit the use of certain airspace for nonhighway purposes, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.

be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.³

(2) A construction item within the provisions of volume 8, chapter 4, of the Federal-Aid Highway Program Manual⁴ when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedures shall assure that the acquiring agency:

(1) Determines and documents the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

(1) The FHWA has approved temporary right-of-way limits within the overall right-of-way;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

(29 FR 34261, Sept. 27, 1974, as amended at 30 FR 34093, Aug. 23, 1965)

³The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

²The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of subpart A of this part, relating to property management.

(c) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway system to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green strips, small parks, play areas, parking or other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands but could enter into agreements with local political subdivisions relative thereto.

(e) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.

(f) All nonhighway use of airspace shall be covered by a properly executed airspace agreement. The agreement shall contain the following:

(1) The party responsible for developing and operating the airspace.

(2) A general statement of the proposed use.

(3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.

(4) A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description.

(5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD subject to concurrence by the FHWA.

(6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD subject to concurrence by the FHWA.

(7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible

party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches

above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp.

(k) The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from nonhighway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways, unless the plans there

*Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

for contain adequate provisions, acceptable to the SHD and the FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

(o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be ad-

versely affected by fumes, vapors,

(p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.

(r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exception to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund, nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual,* relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

*The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

§ 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

(b) Identification of the authorized user of the airspace.

(c) A three-dimensional description or a metes and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

Subpart C—Disposal of Rights-of-Way

§ 713.301 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

§ 713.302 Applicability.

(a) The provisions of this subpart apply to disposals of rights-of-way where Federal-aid highway funds have

participated in the design or physical construction costs of a project.

(b) The provisions of this subpart do not apply to the matters covered in part 620, subpart D of this chapter.

(1) Where a section of highway including the right of way is abandoned;

(2) Where only changes in access control are involved; and

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

129 FR 34661, Sept. 27, 1974, as amended at 80 FR 3767, Jan. 14, 1975; 41 FR 8321, Mar. 4, 1976)

§ 713.303 Definitions.

For purposes of this subpart the following definitions apply:

(a) *Disposal*. The conveyance for uses other than for highways of unneeded portions of highway rights-of-way (in contrast to relinquishment, which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD)) to another government agency for highway use).

(b) *Final acceptance*. (1) On Federal aid construction projects, the date of acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA determines to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.