ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8306 SENATE JUDICIARY

March 9, 1993

Mr. Dave Frank
Alaska State Legislature
P.O. Box V
Juneau, Alaska

Dear Mr. Frank,

I understand that you are going to introduce a landlord-tenant bill. As you know, Mr. Pourchot introduced SB-35 in the last session, which unfortunately died in the house in the last days of the session.

Landlords need help with the delinquent, disturbing, and destructive type of tenant, and we hope that your bill will pass. I would like to see a copy of your proposal.

Enclosed are two copies of newspaper articles pertaining to bad tenants.

Sincerely,

Charles Lippitt
2203 McKinley Ave.
Spenard, Alaska

March 22, 1993

RE. SB 155

Dear Senator Leman

SB 155 is a very important bill that will allow landlords some relief to the problems generated by individuals using business and rental property for illegal purposes. The changes to AS 09.50.170 are long over due. I have participated in attempts to close down numerous illegal businesses fronting for prostitution in Spenard using AS 9.50.170 and can provide you with some valuable information on the course the trial has taken. Some sections of this bill are very well written and will, if implemented, make the closure of illegal businesses a simpler task.

I would recommend the following changes and additions to SB 155

Page 5 line 5 **(1) prostitution; or**

Change to: **(1) prostitution, assignation; or**

Reason: prostitution is a much more difficult standard to prove, most arrests are made under the term assignation. If Anchorage police officers were required to physically engage in sexual contacts with a prostitute, very few if any arrests for "prostitution" would ever occur at any illegal business fronting for prostitution.

(From Chapter 8.14 MOA Definitions;

"Assignation" means the making of an appointment or engagement for prostitution or an act in furtherance of such appointment or engagement.

"Prostitution" means the giving or receiving of the body for sexual conduct for hire.

Page 5 line 16 - 17 In an action brought under AS 09.50.170 (a), the court may consider evidence of reputation within a community to prove the existence of a nuisance.

Change to: (1) In an action brought under AS 09.50.170 (1) (2a) the court may consider evidence of reputation within a community to prove the existence of a nuisance and;

(2) May consider hearsay evidence from the courts own records for previous complaints, arrests or convictions under Federal, State or Municipal laws pertaining to violations for prostitution, assignation or illegal activity involving alcoholic beverages.

Reason: This section provides for the court to consider not only the reputation of the establishment but for example in the on going case "Spenard Action Committee vs Lot 9 Blk 3" the case has dragged on for years in the courts. The fact no current arrests for prostitution have occurred at the properties in question for 3 to 4 years, (this does not mean prostitution no longer takes place at these businesses, simply stated is the fact, that for some reason the Anchorage Police Department has not attempted to make a case in over 4 years) and now makes proving to the court that a nuisance "exists" somewhat a difficult task for some judges. Perhaps adding additional language to line 20 page 5 to include the word **"existed"** and perhaps add some additional language.

The term "exists" has no definition as to length of intervening time from when the act of said assignation occurred on the property to when it no longer exists. (If the girl that was arrested for assignation is fired the next morning, does that purport to mean that prostitution no longer occurs on the property) Perhaps defining along with "existed" include "provided that, the nature or character of the business has not appreciably changed subsequently to the order seeking abatement under AS 09.50.170 was first initiated.

Page 9 line 31: involving alcoholic beverages, an illegal activity involving a controlled substance, or

Change to: involving prostitution, assignation, or an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance, or

Page 11 line 19: Add to Sec. 24 a definition under (22) "prostitution or assignation" means

Reason: By leaving out prostitution and assignation in this section assumes prostitution and assignation is not a problem, when in fact most if not all illegal prostitution operations are now setting up in residential apartment units.

Page 12 line 4: in an illegal activity involving alcoholic beverages, an illegal activity involving a

Change to: in an illegal activity involving prostitution or assignation, an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance,

Also add to Page 12 line 13: illegal activity involving prostitution, assignation changes if needed

In closing I would be interested in attending any hearings on SB 155. Please feel free to contact me at 243-7768 anytime or during days I can also be reached at 248-2828. The Spenard Action Committee has redefined AS 09.50.170 over the past 4 years through the Courts. It has been a long and costly experience. Well written laws that judges can understand and interpret saves the court valuable time and the litigants incredible sums of money in attorney fees and court costs. Thanks for your time and help with our concerns at the Spenard Community Council and the Spenard Community Patrol.

Sincerely,

Dave Erlich

Problem

Tenant fails to pay rent when due.

Current Procedure

1. Landlord gives notice of nonpayment & intention to terminate rental agreement if rent is not paid. See AS 34.03.220(b).

2. Tenant has 10 days to pay rent or vacate premises. See AS 34.03.220(b).

3. If rent is not paid, then tenancy terminates, the landlord may terminate the rental agreement, & immediately seek to recover possession of the rental unit; in addition, it becomes a case of unlawful holding. See AS 34.03.220(b). Also see AS 09.45.090(1).

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120. Also see Civil Rule 85, Alaska Rules of Court.

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

6. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

Proposed Procedure*

1. Landlord gives notice of nonpayment & intention to terminate rental agreement if rent is not paid.

2. Tenant has 5 days to pay rent or vacate premises. See bill sec. 2 & 21.

3. If rent is not paid, then tenancy terminates, the landlord may terminate the rental agreement, & immediately seek to recover possession of the rental unit; in addition, it becomes a case of unlawful holding.

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses. See bill sec. 6.

* Changes underlined.

LANDLORD / TENANT FLOWCHART

Problem

Tenant holds premises without written lease or agreement against landlord's wishes.

Current Procedure

1. Landlord serves tenant with notice to quit premises. See AS 09.45.100

2. Tenant has 10 days to vacate premises. See AS 09.45.110

3. If tenant remains after expiration of 10 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See AS 09.45.090 Also see AS 09.45.110

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

6. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

Proposed Procedure*

1. Landlord serves tenant with notice to quit premises. See AS 09.45.100

2. Tenant must vacate premises immediately. See bill sec. 2 & 5

3. If tenant remains, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See bill sec. 2 & 5.

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses. See bill section 6

* Changes underlined.

Problem

Tenant continues in possession of premises at expiration of lease against wishes of landlord.

Current Procedure

1. Landlord serves tenant with notice to quit premises. See AS 09.45.100

2. Tenant has 10 days to vacate premises. See AS 09.45.110

3. If tenant remains after expiration of 10 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See AS 09.45.090 Also see AS 09.45.110

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

6. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

Proposed Procedure*

1. Landlord serves tenant with notice to quit premises. See AS 09.45.100

2. Tenant has 5 days to vacate premises. See bill sec. 2 & 5

3. If tenant remains after expiration of 5 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See bill sec. 2 & 5

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses. See bill section 6.

* Changes underlined.

Problem

Tenant violates condition of lease or condition of AS 34.03.120(a).

Current Procedure

1. If the breach is one materially affecting health & safety, the landlord may give tenant written notice specifying both the details of the breach & that the rental agreement will terminate in 20 days. See AS 34.03.220

2. If breach is able to be remedied & tenant adequately does so, rental agreement will not terminate. See AS 34.03.220

3. If breach is not remedied in 10 days, rental agreement terminates as specified in notice. See AS 34.03.220

4. If tenant remains after expiration of 20 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See AS 09.45.090 Also see AS 09.45.110

5. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

6. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

7. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

8. If same breach occurs again within 6 mos., landlord may terminate tenancy at 10 days' notice. See AS 34.03.220

9. There is another process for breaches of this sort that is set out in AS 09.45, but AS 34.03.220 would probably have legal precedence as it was adopted at a later date.

Proposed Procedure*

1. Landlord serves tenant with notice to quit premises that specifies the details of the breach and that the rental agreement will terminate in 24 hours. See bill sec. 20

2. If breach is able to be remedied & tenant does so to the satisfaction of landlord, rental agreement will not terminate. See bill sec. 20

3. If breach is not remedied in 24 hrs., or is not able to be remedied, then the tenancy is terminated & the tenant must quit premises immediately. See bill sec. 20

4. If tenant remains after expiration of 24 hrs., it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See bill sec. 2 & 5

5. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.

6. See (6) & (7) above; court may do both at same time. See bill sec. 6

* Changes underlined.

Problem

Tenant engages in an illegal activity in rental unit (or knowingly permits others to do so) involving alcohol, controlled substances, imitation controlled substances, or prostitution.

Current Procedure

1. Current statutes do not specifically address the tenant's responsibility not to engage in illegal activity involving alcohol or controlled substances.

2. If tenant is suspected of engaging in prostitution, atty. general or a citizen may bring action in court to enjoin the nuisance & person(s) maintaining it. See AS 09.50.180

3. If court determines that tenant is engaging in prostitution, tenant is guilty of maintaining a nuisance, & court shall issue an order of abatement that closes the bldg. where nuisance took place for one year. See AS 09.50.170 and AS 09.50.210

4. If landlord was unaware of activity, court may release premises to him upon fulfillment of certain conditions. See AS 09.50.230

Proposed Procedure

1. If tenant engages at premises in illegal activity involving alcohol/controlled substances, landlord may deliver notice to quit. See bill sec. 2

2. Tenant has 5 days to vacate premises. See bill sec. 2

3. If tenant remains after expiration of 5 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See bill sec. 2

4. If tenant is accused of engaging in prostitution or illegal activity involving alcohol/controlled substances, court may consider evidence of reputation w/in a community to prove the existence of a nuisance. See bill sec. 10

5. If court determines that tenant did commit alleged violation, then tenant is guilty of maintaining a nuisance.* See bill sec. 8

(Continued on next page.)

* Changes underlined.

6. The court shall enter an order of abatement that terminates the rental agreement & closes the bldg./place where the activity took place.
See bill sec. 11

7. If landlord was unaware of illegal activity, court may release premises to him/her upon fulfillment of certain conditions.
See bill sec. 12

8. An order of abatement shall be presumptive evidence of an unlawful holding by force and it shall automatically terminate the rental agreement.
See bill sec. 7 & 22

9. If tenant fails to vacate premises after court issues order of abatement, landlord may obtain writ of assistance from the court.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB 155

Revision Date: 3/23/93 Dept. Affected: Public Safety

Title: "An act relating to landlords and tenants termination..." BRU: Alaska State Troopers

Component: Criminal Investigations Bureau

Sponsor: Senators Frank, Leman, Pearce

Requestor: Senator Frank COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	19.0	19.0	19.0	19.0	19.0	19.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.0	19.0	19.0	19.0	19.0	19.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.0	19.0	19.0	19.0	19.0	19.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	19.0	19.0	19.0	19.0	19.0	19.0

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 analysis.

Prepared By: Francis C. Allan Phone: 269-5691

Division: Alaska State Troopers Date: 3/23/93

3/23/93

Approved by Commissioner: Date: 3/23/93

Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTES

SB 155 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of peace officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the arrest either in person or at the last address listed on tax records and at any other address known to the peace officer(s).

The notice requirement found in Sec. 1 applies to alcohol violation arrests for sales from unlicensed premises where prohibited by local option; notice requirements found in Sec. 13 apply 1) to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; 2) to imitation drug violations involving the manufacture or distribution of imitation drugs, or 3) possession of certain precursor chemicals used in the manufacture of imitation drugs.

Although the Alaska State Troopers estimates approximately 130 arrests for violation of the "local option" laws annually, they find no arrests for violation of the statute AS 04.11.010(b) cited in Sec. 24. The Troopers make approximately 500 arrests annually for applicable drug offenses. It is expected that approximately 85% of the drug offenders reside in rented property.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately 425 property owners per year.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addressed known to police, and to prepare the written notice, will take approximately two (2) staff hours of research time per occurrence. There will be costs for materials, preparation time, and postage.

Since these offenses will be spread throughout the state, no one person would handle them all; the impact would be felt by the detachment personnel handling the cases. Overtime will be needed for this additional work.

<u>Overtime calculations</u>

425 Incidents x 2hrs x $22.31per hr.*= $18,963.50
*Clerk Typist III, Range 8/A overtime rate per PACS.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 155

Revision Date: March 16. 1993
Title: "...relating to landlords and tenants...termination of tenancies...recovery of rental premises..."
Sponsor: Senator Frank
Requestor: Senator Frank

Department Affected: Department of Law
BRU: Legal Services
Component: Fair Business Practices

COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard L. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: March 16. 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: March 16. 1993

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Alaska State Legislature

STEVE FRANK

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Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

SPONSOR STATEMENT FOR SB 155

TO: Senator Loren Leman, Chair
Senate State Affairs Committee

FROM: Senator Steve Frank, Co-Chair
Senate Finance Committee

DATE: March, 1993

SB 155, based in part on SB 35 from the 1992 session of the 17th Legislature, addresses several aspects of the landlord-tenant relationship. This bill was prepared in response to widespread concern that current law is excessive in its protection of the rights of abusive tenants.

SB 155 has three principal purposes. First, the bill amends the forcible entry and detainer statutes to expedite the landlord's ability to evict a tenant who has committed certain violations of the rental agreement (failing to pay rent when due, damaging the premises, or holding the premises without a rental agreement or upon expiration of the lease). Second, the bill makes the tenant's responsibility to maintain the dwelling unit more stringent and adds to the ability of a landlord to seek removal of an abusive tenant. Third, the bill amends the nuisance abatement statutes to include relief from criminal offenses involving alcohol or drugs and also to provide a landlord with the opportunity to recover possession of premises under the forcible entry and detainer remedy for such criminal activity by the tenant.

This bill would serve to protect landlords and responsible tenants from the damage caused by abusive tenants. I strongly urge you to support SB 155.

SPONSOR STATEMENT

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: CSSB 155(JUD)

Revision Date: 4/15/93 Dept. Affected: Public Safety
Title: "An act relating to landlords and tenants...termination..." BRU: Alaska State Troopers
Component: Criminal Investigations Bureau
Sponsor: Senator Frank
Requestor: Senate Judiciary COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	19.0	19.0	19.0	19.0	19.0	19.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.0	19.0	19.0	19.0	19.0	19.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.0	19.0	19.0	19.0	19.0	19.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	19.0	19.0	19.0	19.0	19.0	19.0

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 analysis.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 4/15/93
Approved by Commissioner: Date: 4/15/93
Agency: Richard J. Burton, Dept. of Public Safety

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CSSB 155(JUD) amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the arrest either in person or at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs.

The Alaska State Troopers estimates approximately 200 (two hundred) arrests for violation of the "local option" laws, and approximately 500 (five hundred) arrests for applicable drug offenses. It is expected that approximately 80% of the alcohol offenders and 60% of the drug offenders reside in rented property.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately 450 (four hundred fifty) property owners per year. We anticipate that in-person notice would be given in many cases.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addressed known to police, and to prepare the written notice, will take approximately 2-4 man hours of research time per occurrence. There will be costs for materials, preparation time, and postage.

Since these offenses will be spread throughout the state, no one person would handle them all; the impact would be felt by the detachment personnel handling the cases. It is difficult to quantify this impact, however, it will be absorbed within the existing workload. Notices will be mailed out in the normal course of business, as clerical staff finds time to process them.

BILL NO: SB 155

DATE: March 30, 1993

TITLE: "An Act relating to landlords and tenants. . ."

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

POSITION PAPER - Department of Public Safety

SB 155 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of peace officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the arrest either in person or at the last address listed on tax records and at any other address known to the peace officer(s).

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately 425 property owners per year.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other address known to police, and to prepare the written notice, will take approximately two man hours of research time per occurrence. There will be costs for materials, preparation time, and postage. Where tax roles are computerized, this research time will be less, but will be offset by the majority of cases that will have to be hand searched in person at the borough tax office.

Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would help neighborhoods take an active role in fighting the war on drug and alcohol abuse. This law gives property owners a tool to help clean up their rental properties.

Richard L. Burton
Commissioner

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM March 12, 1993

SUBJECT: Senate Bill 155, amending the state's landlord-tenant laws (AS 34.03) and the related civil remedy of forcible entry and detainer (AS 09.45.060 - 09.45.160), and making related changes (Work Order No. 8-LS0376\K)

TO: Senator Steve Frank
ATTN: David Skidmore

FROM: Jack Chenoweth
Legislative Counsel

Senate Bill 155 duplicates and extends changes proposed by the Senate-passed version of last session's Senate Bill 35 (CSSB 35 [Judiciary]).

This memo is by way of response to your request for a sectional analysis of the bill.

* * *

The bill has three principal purposes, all applicable to the landlord-tenant relationship:

First, the measure substantially amends statutes applicable to the forcible entry and detainer remedy (AS 09.45.060 - 09.45.160) to expedite a landlord's ability to evict a tenant for failure to pay rent when due and for a tenant's damage to the landlord's property.

Second, provisions of the bill revise the obligation of a tenant under the state's Uniform Residential Landlord and Tenant Act (AS 34.03) and add to the ability of a landlord to seek removal of an abusive tenant.

Third, the measure amends the state's nuisance abatement statutes (AS 09.50.170 - 09.50.240) expanding that remedy to cover the identified criminal offenses involving alcohol or drugs, allowing persons

LEGAL SECTIONAL

> to seek redress under the nuisance abatement law for criminal activity in premises that constitutes a nuisance. As a supplemental remedy, the measure amends statutes to give a landlord the opportunity to recover possession under the forcible entry and detainer remedy for that criminal activity by the tenant.

I propose to address the measure's provisions topically rather than sequentially.

EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 2 amends AS 09.45.090 in part as follows: The amendment to (1)(A) reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due. No notice separate from that required to be given under the Uniform Residential Landlord and Tenant Act (AS 34.03), as amended by bill section 21, is required.

Bill sections 3 and 4 make related changes. These sections, read together, carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to the tenant to quit is provided by mail.

Bill section 5 adds authority by which, at the end of a forcible entry and detainer action, the court may enter an order to vacate against the tenant and, at the same time, may provide a landlord who requests a writ of assistance to recover possession of the premises.

As has been previously noted, a related change is made in the Uniform Residential Landlord and Tenant Act (AS 34.03) by bill section 21. The change made to AS 34.03.220(b) conforms the number of days in which the tenant must pay rent after receiving written notice of rent nonpayment.

REVISION OF TENANT OBLIGATIONS:

I

Several bill sections are included to respond to your concern that a tenant be held "responsible for damage done by him/her or by his/her guests." Current law--AS 34.03.120--assigns certain responsibilities in the landlord-tenant relationship to the tenant. Among them are the duty to use facilities and appliances in a reasonable manner, and the duty not to deliberately or negligently abuse the premises or to knowingly allow others to do so. Changes to AS 34.03.120 made by bill section 18

make the tenant's obligations more stringent by eliminating the qualifying adjectives from AS 34.03.120.

Additionally, making the tenant's obligations more stringent implicates the definition of "damages" for purposes of ascertaining whether or not a tenant is due a refund of all or any portion of a security deposit. "Damages" is, in current law, a term whose definition is divided between AS 34.03.070(b) and AS 34.03.360(18). Bill section 15 reworks the definition of "damages," and bill section 26 repeals AS 34.03.360(18). As a result, if this bill passes in this form, no one need worry about whether a tenant acted intentionally or negligently. Rather, if the tenant caused any damage beyond wear and tear due to "normal, nonabusive living," the tenant may be held responsible for damages.

II

For instruction, the bill incorporates a checklist approach "that lists the items in the apartment and describes the condition of these items and of the apartment itself." It distinguishes between a premises condition statement and a contents inventory. Bill section 14 gives the landlord the right to require preparation of these documents and indicates how the documents may be made part of the rental agreement. Bill section 16 gives the landlord the right to require the tenant to execute a statement and inventory before making possession of the premises available. At the same time, the landlord is required to indicate to the tenant how the information on the statement/inventory may be used. Bill section 23 establishes the statement/inventory as "presumptive evidence of the condition of the premises and its contents at the commencement of the term of the period of occupancy" in order to support any later claim for damages. Bill section 17 addresses the status of a statement/inventory in the event a landlord sells to a purchaser leaving the tenant in residence.

III

As to the landlord's having the ability to seek summary eviction, see the revision of AS 34.03.220(a) in bill section 20 and the addition made to AS 09.45.110(2) in bill section 5. The changes to AS 34.03.220(a) made by bill section 20 reflect the toughening of the tenant obligation requirements of current AS 34.03.120--it becomes AS 34.03.120(a) by this bill--so that any noncompliance with an element of the rental agreement or of a requirement set down in AS 34.03.120(a) would allow the landlord to commence proceedings to recover tenancy on minimal notice, replacing the 20 day notice of current law. The tenant has an opportunity to take corrective action to remedy the breach but the remedies need not be just "adequate" but, instead, must "satisfy the landlord."

NUISANCE ABATEMENT:

Bill section 8 revises AS 09.50.170. It deletes in that section outdated references to "lewdness, assignation, . . . or any other immoral act"--currently part of the existing basis for nuisance abatement relief--retaining the reference in the current law to "prostitution" and adding an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance as grounds for relief under the nuisance abatement statutes.

Bill section 9 defines the three additional criminal activities that may trigger nuisance abatement relief, cross-referencing them to the meanings of those terms set out in the Uniform Residential Landlord and Tenant Act.

Following the California statutory model recommended to me while the bill was under consideration during the 17th Legislature, I have included bill section 10, a new section, AS 09.50.175, that would allow the court to consider evidence of reputation within a community if relief is sought under the expanded version of the nuisance abatement relief statute.

Bill section 11 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 12 adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently canceled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 22 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 24 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The measure uses reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to subparagraph (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to paragraph (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.-210(a), seek immediate relief.

A related provision, bill section 7, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 13, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant other than nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs.

Bill section 19 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

The measure's bill section 25 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a

basis for seeking relief through the nuisance abatement process and, as with bill section 22 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

* * *

JBC:pl
93-190.plm

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 155

ANALYSIS (Continued):

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020(b)(8).

The department therefore requests $10,000 to revise and republish the information pamphlet. Of this amount, $2,500 will be used to publish a pamphlet supplement in the state Bar Association's monthly newsletter, and $7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

The Accidental Landlord

These Anchorage homeowners didn't necessarily want strangers in their houses, but negative equity and a weak economy made the choice for them.

By WESLEY LOY
Daily News business reporter

Would somebody buy Frank Singleton's extra house? Please? He's tired of renting out the blasted thing.

Listen to this story. Once, after a long war with a bad tenant, Singleton was forced to hire a locksmith to help him get into the place, a duplex in South Anchorage. He knew he had big trouble when he cracked open the door and heard growling.

Mean, nasty, rip-your-face-off growling.

The tenant had abandoned a pair of pit bulls inside, and they'd been scrapping. They'd tried to kill each other, in fact, gnawing ears to bits and spattering blood all over the walls, the floors, everything.

As for the duplex, well, it was a wreck. The washing machine had been hurled down some steps into a wall. Trash was piled everywhere. The carpet was a matted mess. It took Singleton, a 39-year-old public-relations manager, almost a month of working nights and weekends to clean the place. He started the job with a leaf rake and a wheelbarrow.

"You didn't want to touch things in there," Singleton said. "It was just funky."

This all happened in 1987. Since then, other tenants have similarly misbehaved, balking on rent or slipping away after only a month or two.

Why does Singleton put up with this? He and lots of other people in Anchorage don't have much choice. They are reluctant landlords, people who own homes they would like to sell, but can't.

The sad plight of most reluctant landlords in Anchorage stems from an evil called "negative equity." That's the gap between what a home is worth today, and what the owner still owes on the mortgage.

For people who need to move because of a growing family, or a lost job, or marriage, the question then becomes: How can you sell the house if the gap's too big?

You can't, Singleton said, bitten hard by the negative equity bug. You just can't.

Please see Page F-3, RELUCTANT

Frank Singleton poses in front of his duplex rental property, where a series of unsavory tenants have lived.

So you want to be a landlord

Here's a rundown of agencies, businesses and other sources to help you do the job right.

U.S. Department of Housing and Urban Development — HUD can give you the rules on how to legally choose a tenant, as well as evict one. Basically, you must treat everyone the same. Screening based on race, religion, sex, disability, nationality or whether a person has children is not legal. For information or advice call (206) 220-5170 or write HUD, Seattle Federal Office Building, 909 First Ave., Suite 200 (10E), Seattle, WA 98104-1000.

Anchorage Equal Rights Commission — For further, local rules on housing discrimination, contained in Title 5 of the municipal code, call 343-4342 or write Equal Rights Commission, 620 E. 10th Ave., Anchorage 99501.

Alaska's Landlord Tenant Act — A copy of the act, with a straightforward booklet on items from rental agreements to damage deposits to privacy, available from the state Department of Law, 1031 W. Fourth Ave., Suite 200, Anchorage 99501.

Rental agreements — Forms good at least as a starting point are available at Arctic Office Products, 100 W. Fireweed Lane, or from Adams Stationers, 4200 Old Seward Highway.

Internal Revenue Service — For rules on reporting rental income, and writing off rental property expenses. Ask for Publication 527, "Residential Rental Property," or call the agency's toll-free Tele-Tax number, 800-829-4477, and follow the directions to hear topic 313 on rental income and expenses.

"Pacific Heights" — This movie about a "tenant from hell," and a landlord who makes lots of mistakes, is available from most any video store. Watch it at your own peril.

NEWS ARTICLE

RELUCTANT LANDLORDS: Negative equity is major culprit

Continued from Page F-1

THE BIG CRASH

Not too many years ago, negative equity ran rampant in Anchorage. It's still fairly widespread today, casting dozens if not hundreds of people into the unwanted role of landlord, real estate professionals say.

Here's what happened. In the early 1980s, when Singleton bought his duplex, Alaska's economy was booming. The state was flush with oil money, and builders were busy as could be. Houses, condominiums and other residential properties were much in demand, and property values were shooting up, up, up. People thought nothing of dropping big bucks for a nice place to live; they were sure it would be worth even more in a few years if they decided to sell and move to a roomier place, or leave town for a new job.

"Nothing could go wrong," said James Kuntz, general manager at Marston Property Management Inc.

Well, something did go wrong. Terribly wrong. In 1986, world oil prices crashed. The construction boom had, by then, left the town in a flood of housing space. Banks folded. Property values crumbled. Almost overnight, a $100,000 house wasn't worth anywhere near that. The same thing happened to commercial property.

One study at the time found that the average house fell 25 percent in value, the average condo 50 percent.

Lots of people just walked away, defaulting on their mortgage loans. The rest opted to salvage their credit ratings and cope with high mortgage payments, often stranded in houses too small for their growing families, Kuntz said.

But some, especially those forced to move because of kids, or because they lost a job in Alaska, turned landlord to make payments on their old places.

It was a growing family that drove Singleton into bigger digs in Eagle River in 1987. But he couldn't get anywhere near the $90,000 he paid for the duplex. So, he rents it out.

The good news is that the negative equity problem is dissipating. It's not nearly as bad as it was three or four years ago, Kuntz said. Many houses have fully recovered, meaning their market value today is equal to the balance of the mortgage, he said.

"Some reluctant landlords have been able to sell and get out from underneath," he said.

But for some the problem persists, especially those owning condos or duplexes or row houses. And just closing the gap between a property's worth and what's still owed on it isn't enough, noted real estate lawyer and radio talk show host Bill McNall.

"You have to cover the cost of sale," he said. That includes paying a real estate agent to handle the sale, title insurance, recording fees, and a few other items. Typically, it costs 10 percent of the sale price just to sell a place, McNall said.

NO LEISURE

Dr. Aron Wolf is a psychiatrist at the Langdon Psychiatric Clinic. It's probably a handy trade, self-help for the aggravation he sometimes feels as a reluctant landlord.

Wolf rents out two places — a ski cabin at Alyeska, and a small house downtown. He's tried to sell these places. And he probably could "If I was willing to take a real shellacking. And I'm not."

Some tenants have been kind to Wolf, like the ones he has now. Some have not, like the guy who stuck him with a $1,700 electricity bill on the cabin. Or the one who stayed less than two months in the house then disappeared, leaving the place in a shambles. The walls were nicked and dirty, dog feces all over.

"It was just like, whoa, how could anybody live like this?" Wolf recalled thinking at the time. He had to repaint and clean all the rugs before he could rent it out again.

The worst thing about being a landlord, though, Wolf said, has to be the nagging calls you get — the roof is leaking, the boiler's busted, the power's out. "Those are the things that are just real annoying," he said.

Not everyone reports a bad experience. Take Tom Walker, a retired Air Force colonel. He started out as a reluctant landlord and later discovered he actually liked it.

Walker found himself in a fix back in 1988. A costly divorce left him unable to make the payments on his four-bedroom house in east Anchorage. And he couldn't sell because of a serious negative equity problem — the gap was about $40,000.

So he rented the place, and then found an apartment for himself. Things went so well that he decided to invest in two bargain apartment houses and rent those, too. "Don't fight 'em, join 'em," he figured.

Not for everyone

Ever seen the movie "Pacific Heights"? If you haven't, and you're a landlord, beware: This film could give you nightmares.

Wise-cracking actor Michael Keaton takes on a decidedly nasty attitude here, playing a psychotic fraud who rents an apartment in a nice San Francisco couple's spacious house. The couple, living upstairs, spent $750,000 for the house, and they need renters to help them make the mortgage payments.

Keaton seems like a good tenant — dressed smartly in suits and driving a Porsche. The nice couple doesn't bother to check him out, though. And pretty soon, he's not paying rent. He hammers and saws all night. Roaches scurry out of his apartment in droves. Finally, landlord punches out tenant, tenant shoots landlord and, well, you get the picture.

"I WANT HIM OUT OF HERE!" screams the landlord, frustrated by strong tenant-protection laws.

An extreme case, for sure. A Hollywood melodrama. But there's some good lessons in there. Landlords can save themselves a lot of grief by thoroughly checking out prospective tenants. And understanding laws on how to properly handle problem tenants. And accepting one maxim of the rental market: "People don't take care of things that don't belong to them. They just don't," said Peggy Benkert, an instructor with the Commonwealth School of Real Estate in Anchorage.

Being a landlord, in fact, just isn't for everybody. Lots of people stuck in the rental game in Anchorage seek out a professional to do the often time-consuming job. For maybe a 10 percent cut of the rent, several companies in town will screen tenants. And keep the books. And troubleshoot plugged drains. And track the myriad of ever-changing landlord-tenant laws. And when necessary, be the bad guy.

"I've got at least half a dozen clients who fit the bill," said David Seal, president and broker at RCI Management Inc.

Among them is a man who isn't a reluctant landlord in the usual sense; he willingly owns a string of apartment buildings. He even does most of the maintenance on his buildings, too. And that's all the tenants think he is — a maintenance man, said Seal. He doesn't want the pressure of being landlord.

"His primary problem is he's got a heart as big as all outdoors," Seal said. "He doesn't have the heart to kick anybody out. All of his tenants were taking gross advantage of him, not paying rent, when I started managing his properties."

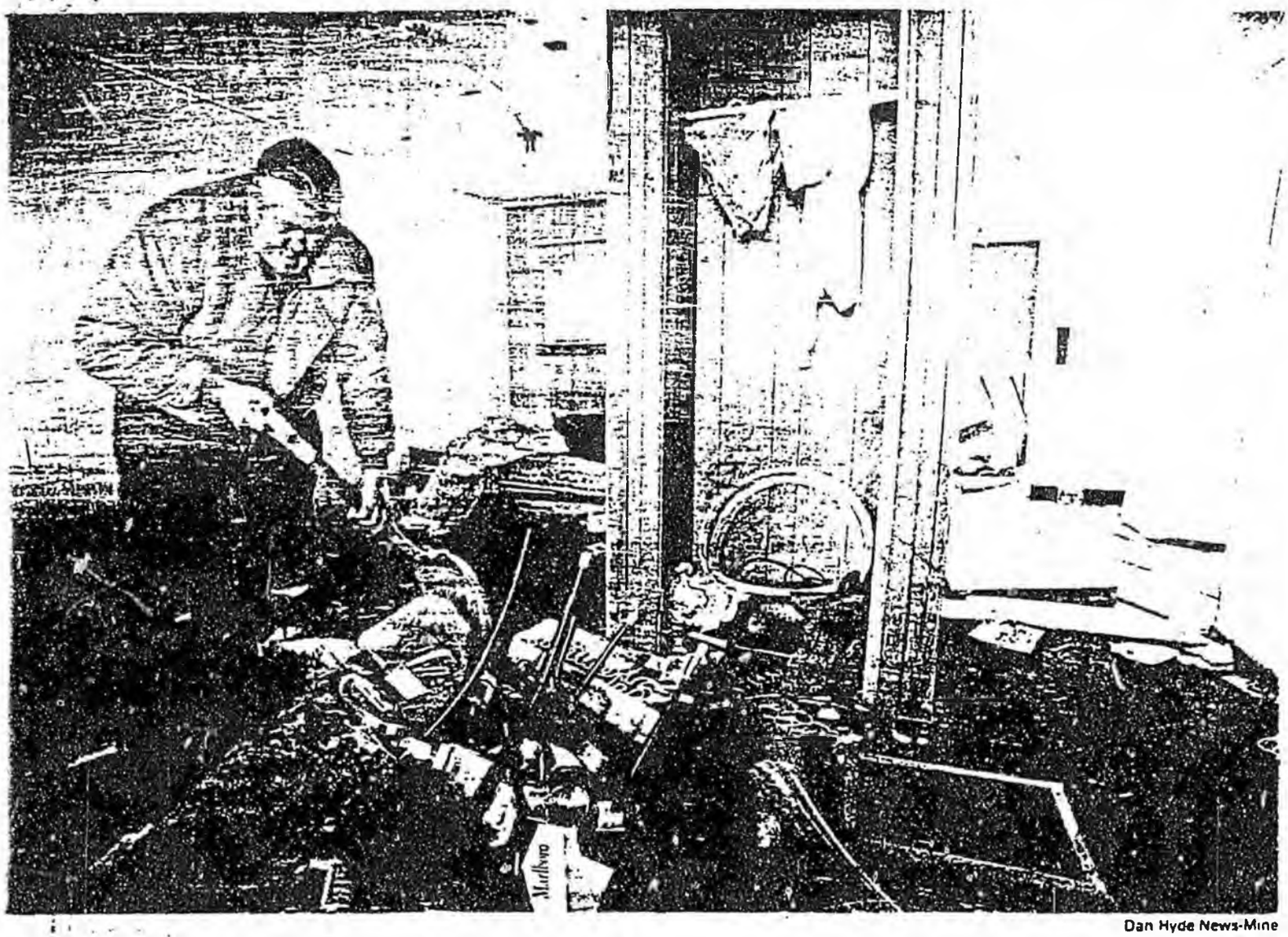
Frank Singleton, the PR man, doesn't want a management company. He just wants rid of his duplex, a first home he thought would turn him a nice profit but instead became a "millstone."

One time Singleton went on vacation. He had just reseeded the yard behind his duplex. His tenant had another idea. They dug up the yard and put in a garden.

"They promised to restore it," said Singleton, a Georgia native. "When they left, I was stuck with a big old wad of potato vines."

Within the next year, he figures, the duplex will be worth the balance of the mortgage, now about $60,000. He figures he'll sell, if he can manage the sale costs.

"No, I don't want to be a landlord," he said.



Dan Hyde News-Mine

TRASHED OUT—Landlord Sam Helms scoops up garbage n a house he rents out in South Fairbanks. Helms says a former tenant caused $10,000 damage to the home, but the renter denies any wrongdoing.

Landlord blames law for home's disorder

/ KATE RIPLEY
Writer

For 17 days Sam Helms atched as his tiny rental home 1536 Stacia St. was trashed. Helms claims unfair state ndlord-tenant laws rendered m helpless in the case against a 30-year-old renter, George ooper Jr.

Cooper moved into the rental me, one house down the street om Helms' own house, Oct. 15, lms said. The landlord pro- ted the $385 monthly rent and rged a $200 damage deposit. Parties with Cooper and an dless array of friends visit- g the home started almost im- diately, Helms alleged. The result is $10,000 in damaged property, he said.

"There were continuous parties . . . There was shooting, urinating in public, fighting. It was keeping the neighbors awake," said Helms, 57, the husband of former Borough Mayor Juanita Helms.

Police officers responded when Helms called, but told him it was a civil matter, Helms said. Five days after Cooper moved in, Helms gave the renter the required 20-days notice under state law for eviction.

Then it was a matter of waiting.

"As soon as I gave him (Cooper) the eviction notice, he had 20 days to destroy my place," Helms said.

Cooper, a convicted felon, eventually was arrested Nov. 6 for violating his probation and was removed from the house, according to probation officer Lou Anne Maxwell. The man is being held without bail at Fairbanks Correctional Center.

The felony conviction stemmed from a July 1990 second-degree forgery. Cooper also was convicted of fraudulent use of a credit card, a misdemeanor.

Maxwell said an anonymous caller told her Cooper and other under-aged youths were drinking at the Stacia Street home. He also allegedly was keeping company with another convicted felon—not allowed under terms of his probation, Maxwell said.

Cooper gained media attention two years ago after a tragic vehicle accident in the village of Ruby claimed both of his legs.

While the probation violation arrest removed Cooper from Helms' rental home, the landlord said Fairbanks police should have arrested him before it got to that point.

"The police call it a civil matter, when it's malicious destruction," Helms said.

But John Shover, Fairbanks public safety director, said claiming a renter destroyed

See LANDLORD on Back Page

LANDLORD

Continued from Page A-1

property is one thing, while proving it is another.

"If it's a landlord-tenant situation, those situations generally are totally civil" rather than criminally prosecuted, Shover said.

Under state law, if a tenant destroys a landlord's property on purpose, the tenant may be guilty of vandalism and face up to one year in prison and a $5,000 fine. The law also could require a tenant to pay for the damage.

Shover confirmed Fairbanks police responded to Helms' complaints at least four or five times. They interviewed Cooper, who denied any wrongdoing and placed the blame on friends, Shover said.

Without a confession or witnesses, Shover said the District Attorney's Office "won't touch it" and an arrest would have been pointless.

District Attorney Harry Davis said he is not intimately aware in the case. But he said the probation violation arrest was likely a speedier approach than arresting Cooper under the landlord-tenant act.

Cooper, meanwhile, maintains his innocence. In a hearing in Fairbanks Superior Court Thursday, the young man denied violating his probation. The case has not yet been scheduled for trial.

Regardless of who actually damaged Helms' rental, one look around the home tells a sad tale of destruction.

The white porcelain bathroom sink is smashed. Doors outside and inside the home are riddled with dents, perhaps made with a hammer. Ceiling tiles are either missing or punctured with holes. Empty liquor bottles, beer cans, food containers, old magazines and other debris are scattered across the floor.

The walls are filthy. Two bureaus are overturned, their drawers smashed. A TV screen is shattered, and a dinette set dismantled.

Insurance will cover most of the estimated $10,000 in structural damage, Helms said. But it will not replace the furniture.

Cooper has had a handful of runins with the law before, but several cases against him have been dismissed in the past.

He was asked to leave Southall Manor within days after he moved there May 31, 1991, according to an Alaska State Housing Authority memo.

His apartment "became a nest for street kids," the memo said.

"Teen-agers were on the roof of Southall Manor, throwing rocks into the street. In short, they had the building under seige," the memo said.

City Mayor Jim Hayes, a consumer investigator for the state attorney general's office, said his office receives about five calls daily on landlord-tenant disputes alone. Budget cuts leave his office ill-equipped to deal with the matter.

"This is a really serious problem in the Fairbanks area," Hayes said.

Hayes is a friend of Helms. He inspected the Stacia rental home as a personal favor. Helms requested help from the City Council but Hayes said there is little the city can do.

"The landlord-tenant act is a state act. The only thing we (the city) can do is just refer people to small claims court or a private attorney," he said.

Helms is bent on changing state law. He said he will organize landlords into an association for that purpose as his "winter project."

"I don't have any problem with the tenant having rights but the landlord should have equal rights," he said.

LANDLORDS!
Alaska Landlord & Property Managers Assn.
Organized 1972
10 Reasons Why You Should Join ALPMA:
- Credit report
- Promote favorable legislation
- Knowledgeable guest speakers (Accountants, Attorneys, etc.)
- Familiarization with Statutes
- Experience from others
- Enjoy forum of the Association
- Problems of other members
- Education
- Marketing skills
- Helps military interaction with civilian population

NEXT MEETING
OCTOBER 8, 1992
7:00 PM

FOR INFORMATION CONTACT
ALICE BREWER
(Exec. Secretary)
563-6734

Douglas W. Isaacson
Alaska Director

CREDIT SERVICES, INC.
Alaska's Trans Union Serviced Credit Bureau

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Fairbanks, Alaska 99707
(907) 456-1749
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100 W. International Airport Road
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Anchorage, Alaska 99518
(907) 561-7272
FAX (907) 561-7278

SB 157

STEVE FRANK

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Alaska State Legislature

While in Juneau
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Capitol Rm. 417

Senate

SPONSOR STATEMENT FOR CS SB 157

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Senator Steve Frank, Co-Chairman
Senate Finance Committee

DATE: 16 February, 1994

CS SB 157 (Transportation) would allow certain restricted exceptions to the State's limitations on outdoor advertising, thereby addressing the need for improved directional signage to accommodate the State's travelling public. These changes would facilitate efforts by roadside businesses to direct motorists to available services and products.

This Bill would allow one new exception to the State limitation on outdoor advertising signs, displays and devices; directional signs could be placed in zoned/unzoned commercial or industrial areas along a State highway, subject to stringent restrictions. The Bill would also codify two existing DOT/PF programs in statute: the airspace leasing program and the TODS Tourist Oriented Directional Signing) program.

The changes proposed by CS SB 157 would help many small business owners while not negatively impacting the scenery visible from Alaska's highways. I strongly encourage your support for this bill and respectfully request a hearing before your committee at the earliest possible date.

Department of Transportation and Public Facilities

POSITION PAPER

BILL NO: SB 157 APPROVED:

TITLE: Prohibited Highway Advertising DATE: February 9, 1994

This bill amends the prohibitions on off-premises, outdoor advertising, outside of the right-of-way, to the same degree as required by federal law. Alaska's current wholesale prohibition on off-premises, outdoor advertising would change in a number of ways:

Where Off-Premises Outdoor Advertising Would Be Permitted

Highway Characteristics	Interstate	Primary Roads	Secondary Roads
Urban Areas	Allowable, subject to local laws.	Allowable, subject to local laws.	Allowable, subject to local laws.
Rural, industrial or commercial areas.	Allowable, subject to local laws.	Allowable, subject to local laws.	Allowable, subject to local laws.
Rural, not industrial or commercial.	Not allowed.	Not allowed.	Allowable, subject to local laws.
Rural, designated Scenic Byway.	Not allowed.	Not allowed.	Allowable, subject to local laws.

In general, the department supports the proposed legislation as it would greatly reduce the pressure to place illegal advertising, which routinely taxes limited department resources to patrol and regulate. We do however, have a number of technical comments ar d suggestions to offer:

Advertising Within the Right-of-Way. There are currently two methods whereby business owners may place advertising within the state right-of-way. These are the TODS (Tourist Oriented Directional Signs) Program, and the air-space leasing program. The department believes the statute in question should be amended to specifically authorize these programs in order to establish them in a firmer legal foundation. We are working with staff of the bill's sponsors to accomplish this.

For Fur[redacted]son at 465-3904.

BILL NO: SB 157

TITLE: Prohibited Highway Advertising

DATE: February 9, 1994

Enforcement. Enforcement of outdoor advertising laws is a perennial duty, and one the department must continue or face federal sanctions on highway funding. Accordingly, we believe Section 4 should clarify that illegal outdoor advertising that constitutes a hazard to the traveling public be subject to instant removal, without notice by certified mail.

Regulations and Fees. The bill removes the department's authority to establish regulations defining the program. This could create difficulties, since the latitude in federal law is not clearly defined, leaving many details up to state policy. Without the authority to establish these details in regulations the department would have not the means to create rules that are binding on the public. This would be especially acute with regard to the industrial/commercial exemption, the TODS program and airspace leasing program — all of which have or will provide a significant benefit to the public. Without the ability to enforce the rules applicable to these programs and collect the applicable operational costs through fees, we may lose the ability to offer them.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NUMBER: SB 157

FISCAL NOTE

Revision Date:
Title: Prohibited Highway Advertising

Department Affected: DOT&PF
BRU:

Sponsor: Frank
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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
REVENUE FUND SOURCE	0	0	0	0	0	0

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 (FY94) impact: $

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Jeffrey C. Ottesen — Phone: 465-2951

Division: Engineering & Operations Standards — Date: February 8, 1994

Approved by Commissioner: for B.A. Campbell — Phone: 465-3900

Agency: Department of Transportation and Public Facilities — Date: February 9, 1994

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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 increase due to more signs placed along the highway system. Further, on Highways of National Significance, where off-premises outdoor advertising would remain illegal, there would 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.

ALASKA CAMPGROUND OWNERS ASSOCIATION

P.O. Box 84884 Fairbanks, Alaska 99708 (907) 474-0286

Board Officers

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Healy

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Tok

Secretary-Treasurer
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Tok

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Jeff Saxe
Eagle's Rest
Valdez

Southeast Region
Arnie Olsson
Port Chilkoot
Haines

Kenai Peninsula Region
Kathy Davidhizar
Edgewater RV Park
Soldotna

March 22, 1993

Senator Steve Frank
Attn: David

The Alaska Campground Owners Assoc. (ACOA) wants to extend our gratitude and support for SB157.

ACOA was established three years ago in an effort to create a more healthy environment for our growing private campground industry in the State of Alaska. Over the past three years, we have seen a number of new parks become established and join our organization. We originally were an organization of 13 campground members. Today, the ACOA has grown to include 56 campground owners state-wide, in addition to 43 associate members (supporting small businesses and organizations).

Our Association is one that is seriously impacted economically as a result of the State's restrictive statutes for outdoor advertising along our road system.

ACOA supports the relief that SB157 will give to our members in regards to outdoor advertising. As tourism facilities, we must be able to post signs for directional purposes in the same manner as the State Division of Parks. As you know, all State campgrounds are allowed highway roadsigns.

Sincerely,

Linda

Linda Jernigan
Secretary/Treasurer

SUPPORT LETTERS

P.01

ALASKA VISITORS ASSOCIATION

3201 C Street, Suite 403 • Anchorage, Alaska 99503

Tel: (907) 561-5733 • Fax: (907) 561-5727

1993-94

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Westmark Hotels
Anchorage, Alaska

1st Vice President
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Riverboat Discovery
Fairbanks, Alaska

2nd Vice President
Dean Brown
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Seattle, Washington

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Delta Air Lines

Gary Odle
Alaska Highway Cruises

Brad Phillips
Phillips Cruises & Tours

Tom Tougas
Kenai Fjords Tours

Brad Walker
Alaska Airlines

Andrew Wescott
Little El Dorado
Gold Camp

Karen Cowart
Executive Director

#93-9
A RESOLUTION REQUESTING MODIFICATION OF THE STATE'S HIGHWAY DIRECTIONAL SIGN STATUTES

WHEREAS, due to the strict prohibitions on roadside signage many visitor-oriented businesses encounter difficulties when attempting to make their presence known to highway travelers; and

WHEREAS, the State Tourism Oriented Directional Sign Program (TODS) has many valuable features, but should be improved to allow for advanced signing and trail blazing signs in urban as well as rural areas; and

WHEREAS, the current state law prohibits nearly all outdoor signage along Alaska's highways, setting restrictions on Alaska's private tourism businesses while allowing State tourism endeavors such as historical sites and state campgrounds to be well signed; and

WHEREAS, this is an inequity that needs to be remedied in order for the private sector to enjoy the same signage advantages utilized by the government sector.

NOW, THEREFORE BE IT RESOLVED that the Alaska Legislature and the Governor of Alaska modify the TODS program to include the urban areas.

BE IT FURTHER RESOLVED that legislation to allow directional signs for the use of tourism businesses be passed.

BE IT FURTHER RESOLVED that Alaska's statutes be modified to be no more restrictive than Federal law.

Adopted by the AVA Board of Directors
October 9, 1993

MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 93-___

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY IN SUPPORT OF HB 26 AND SB 157, RELATING TO THE CONTROL OF OUTDOOR ADVERTISING.

WHEREAS, highway travel is an important source of income for both on and off-highway businesses; and

WHEREAS, businesses with highway frontage may display on-premises signs under both Alaska and federal laws; and

WHEREAS, off-highway businesses are prohibited from using highway signs to advertise their businesses by Alaska law; and

WHEREAS, advertising of off-highway businesses in commercial or industrial areas is allowed by federal law; and

WHEREAS, House Bill 26 and Senate Bill 157 would each conform Alaska law to federal law, thus permitting controlled advertising by off-highway businesses in commercial and industrial areas, thus assisting highway travelers in locating needed services offered by local residents;

NOW, THEREFORE, BE IT RESOLVED that the Matanuska-Susitna Borough Assembly urges the legislature to speedily pass House Bill 26 or Senate Bill 157 in order that the needed changes may be implemented before the tourist and construction season arrives.

ADOPTED by the Matanuska-Susitna Borough Assembly this ____ day of _____, 19___.

_____
ERNEST W. BRANNON, Mayor

ATTEST:

_____
LINDA DAHL, Borough Clerk

TED SMITH

Matanuska-Susitna Borough Assembly
District 7

March 14, 1993

Senator Steve Frank
P. O. Box V
Juneau, AK. 00688

Dear Senator Frank:

I was pleased to see you file SB 157 "Prohibited Highway Advertising". Though this bill has limited impact its passage is very important to those in the tourism industry who will be affected by it. I hope you will be able to get either it or HB 26 through the legislature this season. I expect the DOT to continue its policy of tearing down non-conforming signs in advance of construction in the absence of this legislation.

I had hoped that control of political and other advertising in the right-of-way could be addressed in the same bill but I was told by DOT officials that the Federal Highway Administration would not permit use of the ROW without an "air-space" lease (which oddly enough includes the ground under the air by definition). State law (AS 19.25.200) allows issuance of a right-of-way encroachment permit and I felt that a temporary permit allowing placement of political signs with a bond to ensure removal would solve a long-standing problem. Again, I was told that FHA would not allow a permit.

When I researched Federal law, I found language that said the state could "permit or lease" right of way. Two weeks ago, I wrote Jeff Ottesen of DOT asking for a clarification of this apparent contradiction. I have received no answer to date. You might wish to pose the same question.

Please let me know if I can assist you in any way. I should add that I am not in the tourism business nor am I affected by the bill, but many of my constituents are.

Yours truly,

Ted Smith

cc: Sen. Halford
Sen. Kertulla
Rep. Menard

RECEIVED MAR 17 1993

Box 1026 • Willow, AK 99688 • 495-6637

NOT PRINTED AT BOROUGH EXPENSE

RITA'S POTPOURRI & CAMPGROUND
P.O. BOX 201
TOK, AK 99780

March 22, 1993

Senator Steve Frank
Attn: David

We are writing you in support of SB 157. We have waited many years for this kind of bill to be introduced. An outdoor advertising sign can make or break a business!

As pioneers of Alaska and the builder/owner of the first private campground in Alaska we have fought for many years to get reasonable outdoor advertising laws. Years ago our directional sign at the Tok Jct. was removed by the Alaska State Troopers. In those days there wasn't a radio or television station, therefore we were faced with virtually know advertisement. Needless to say we saw our business drop significantly. To be specific, our business dropped 50% and we had to lay off our employees.

Most recently we have applied and received an "air space" lease for our on premise sign and had to receive permission for flowers in front of our business in the highway right-of-way.

We support SB167 as it will enable businesses to properly advertise their services and hopefully we will not have to continue struggling.

Sincerely,

DOUG & RITA EUERS

TOK R.V. VILLAGE P.01

VILLAGE TEXACO
P.O. BOX 741
TOK, AK 99780

March 22, 1993

Senator Steve Frank
Attn: David

Subject: SB 157

Village Texaco support SB 157. As a new business we are encouraged by the flexibility the bill gives in regards to outdoor advertising along our road system.

It is important to inform the traveler of services available to them and equally important for businesses to properly advertise their business.

If the bill does not include the Alaska Highway please consider a revision to do so.

Thank you for your help.

Sincerely,

Linda Jernigan

Linda Jernigan

TOK R.V. VILLAGE P.02

TOK
RV
VILLAGE

P.O. Box 741
Tok, Alaska 99780
Phone (907) 883-5877
(800) 478-5878 In Alaska
Fax (907) 883-5878

March 22, 1993

Senator Steve Frank
Attn: David

Tok RV Village, Inc. wants to extend our support for SB 157. The relief that this bill will give in regards to outdoor advertising along our road system is very much encouraged.

Tok RV Village opened for business in 1986. From 1986 to 1991 we saw our highway traffic decline. Last year, we are happy to say that business increased and hope that it will continue in the years to come.

Now that the traffic is on the increase, it is equally important to properly inform the traveler of facilities they can find along the roadway. As a campground, we should be able to post signs for directional purposes in the same manner as the State Division of Parks. As you know, all State campgrounds are allowed highway roadsigns.

Can you please tell us if the Alaska Highway is included and if not may we ask that a provision be made to include the Alaska Highway?

Thank you for your help!

Sincerely,
Linda
Linda Jernigan

Eagle's Rest RV Park
P.O. Box 610
Valdez, Alaska 99686
(907)835-2373

March 23, 1993

Senater Steve Frank
Juneau, Alaska
attn. David

Dear Sirs,

It has come to our attention that the subject of outdoor advertising is being supported by you in Senate Bill 157.

We would like to take this opportunity to let you know of our **support of Senate Bill 157.** This is an important issue not only to us, but to all buisnesses in Alaska - we just wish everyone knew of your efforts! We are spreading the word in Valdez.

We are new to all this! Please just give us a call if there is anything we can do to help.
And, Thank-you for taking a moment of your time for us!

Sincerely,

JEFF SAXE
Pres. Eagle's Rest, Inc.

Alaska State Legislature

Please enter into the record my testimony to the senate transportation committee name

committee on SB 157 bill/subject, dated 3/23/93 at 3:30

I Support S.B. 157.

I Worked at Mom + Pops all summer of 90-91-92 2 had lots of R.V. Travelers stop and ask directions to MT View. R.V Park. There biggest Complaint was not enough signing for the traveling public. (No directions)

Signed: Carol Kingery
Testifier

Representing (Optional)

P.O. Box 3776
Address

Palmer Ak. 99645 746-4076
Phone No.

MAR 23 '93 10:06 LEG. AFFAIRS - WASILLA

Alaska State Legislature

Please enter into the record my testimony to the senate transportation committee name committee on SB 157 bill/subject, dated 3/23/93 at 3:30

I Support S.B. 157.

2 had lots of R.V. Travelers stop at desk directions to MT View. R.V Park. There biggest Complaint was not enough signing for the traveling Publics. (No directions)

MAR 23 1993

Signed: Carol Kringen
Testifier

Representing (Optional)

P.O. Box 3776
Address

Palmer AK. 99645 746-4076
Phone No.

MAR 23 '93 15:29 LEG. AFFAIRS - WASILLA

Alaska State Legislature

Please enter into the record my testimony to the senate transportation committee name committee on SB 157 bill/subject, dated 3/23/93 at 3:30

We support S.B. 157
The biggest complaint that MT. VIEW R.V. Park receives is that there isn't enough signs directing the traveling public to destinations that they are trying to locate. WE HAVE NO SIGNS AND CAN"T PUT ANY UP.
We have an investment of approximatley $1,000,000.00 that caters solely to the R.V. travaler. Our season is 90-120 days and we are faced with the dalima of not beging able to advercise our buisness with directional signs.

TODS TOURIST DIRECTIONAL SIGNING is a fairly basic experimental program that sounds like it has a lot of merit, it is self explanatory, it also sounded to us like it was written for us exclusively.

We applied for TODS signing and were rejected because of the intersection that we need to place our signs at. The TODS packet lists all intersections that are excluded for the placement of signs. The intersection that we asked to place our signs was not on the list but we were told that the intersection was not conducive to the placement of TODS signs.

I spoke with Bob Ruby (3-22-93) at approx. 4:30 P.M. and had quite a lengthy discussion with him.
Unless I misunderstood or misinterpeted what he explained to me, it appears that the state D.O.T.P.F. is going several steps beyond what they are being told by the Federal D.O.T. I understand Mr Ruby to say that the Fed. D.O.T. would not take any money away from the State of Ak. highway funds as long as we moved the signs out of the right of ways. Bob also said that signs could be placed on private property that did not have the actual buisness on it, if this property was a commercial use area and that no funds would be withheld for advertising of this type.

MAR 23 1993

Signed F. K. Stein
Testifier

MT. View R.V. Park Palmer, AK
Representing (Optional)

[illegible] Palmer, AK 99645
Address

907-745-5747 Fax 907-745-1700
Phone No.

9/96 Legislative Information Office

MAR 23 '93 10:06 LEG. AFFAIRS - WASILLA

Alaska State Legislature

Please enter into the record my testimony to the senate transportation committee name committee on SB 157 bill/subject, dated 3/23/93 at 3:30

I Support S.B. 157.

I Worked at Mom + Pops all summer of 90-91-92 & had lots of R.V. Travelers stop and ask directions to MT View. R.V Park. There biggest Complaint was not enough signing for the traveling public. (No directions)

Signed: Carol Kingery
Testifier

Representing (Optional)

P.O. Box 3776
Address

Palmer Ak. 99645 746-4076
Phone No.

MAR 23 '93 10:05 LEG. AFFAIRS - WASILLA

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421

Alaska State Legislature

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

MEMORANDUM

SUBJECT: Sectional Summary of CS SB 157

TO: Senator Steve Frank

FROM: David Skidmore

In conformity with federal law as found in 23 U.S.C. 131, Section 1 of the Bill amends AS 19.25.105(a) to allow one additional exception to the State prohibition on outdoor advertising **within 660 feet** of a highway right-of-way. This exception would allow directional signage to be placed in zoned/ unzoned industrial or commercial areas along a State highway if it meets the following criteria:

* It must be for an individual business entity that is of significant interest to the traveling public as evidenced by documentation that at least 75 percent of the entity's gross business receipts are from motorists residing more than 20 miles from the business;
* Each business is limited to four or fewer off-premises signs;
* Each sign must be located on private property;
* Each sign must provide directional information;
* Each sign must indicate the specific business entity;
* Each sign must be located within 50 miles of the physical location of the business entity; and
* Each sign must not exceed 8 feet by 12 feet in size.[1]

Section 2 of the Bill amends AS 19.25.105(d) to allow two additional exceptions to the State prohibition on outdoor advertising **within the right-of-way** of a State highway. Both of these new exceptions codify existing DOT/PF programs. The language added in Paragraph (2) establishes a statutory basis for the department's airspace leasing program. The language added in Paragraph (3) establishes a statutory basis for the federally designed TODS (Tourist Oriented Directional Signing) program.

Section 3 of the Bill repeals and reenacts AS 19.25.180 to provide for the right of a municipality to enact more restrictive ordinances to control outdoor advertising, notwithstanding AS 19.25.091 - 19.25.180, except that a

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1 By way of comparison, the maximum size allowed under the Federal-State Outdoor Advertising Agreement is a total area of 650 square feet with a maximum height of 20 feet and maximum length of 50 feet.

municipality may not further restrict directional signage allowed in zoned/ unzoned commercial or industrial areas.

Section 4 of the Bill amends AS 19.45.002 to exempt unlawful advertising from the penalty provisions pertaining to AS 19.05 - AS 19.25.

Section 5 of the Bill annuls 17 AAC 20.010 to allow for the operation of both the airspace leasing program and the TODS program.

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
Maintenance transferred to Office of the Chief Counsel
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).

U.S. HIGHWAY CODES

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

Sec.

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

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

Sec.

147. Priority primary routes.
148. Development of a national scenic and recreational highway.
149. Congestion mitigation and air quality improvement program.
150. Allocation of urban system funds.
151. National Bridge Inspection program.
152. Hazard elimination program.
153. Use of safety belts and motorcycle helmets.
154. National maximum speed limit.
155. Access highways to public recreation areas on certain lakes.
156. Income from airspace rights-of-way.
157. Minimum allocation.
158. Minimum drinking age.
159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
160. Reimbursement for segments of the Interstate System constructed without Federal assistance.

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 regula 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

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

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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

Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, was signed into law. Section 1046 of the ISTEA amended 23 U.S.C. 131 which deals with outdoor advertising control. This notice describes the impact of section 1046 on how States can provide for effective control of outdoor advertising in accord with regulations previously issued by the Federal Highway Administration (FHWA) in 23 CFR 750.705. This document is being issued to advise States that the ISTEA may require them to consider changes in their laws and administrative practices in order to remain eligible for full Federal-aid funding. The ISTEA itself provides no lead time for the States to come into compliance with these new provisions. A discussion of initiatives that will be considered in evaluating how "effective control" is maintained under the new requirements is a part of this notice.

Under section 1046, 23 U.S.C. 131 will continue to apply to the Interstate System and the Federal-aid primary system as they existed on June 1, 1991, and, when designated, all portions of the approved National Highway System. The three major amendments made to 23 U.S.C. 131 by section 1046 of ISTEA are: (1) An amendment prohibiting the erection of most new signs adjacent to an Interstate or Federal-aid primary designated a Scenic Byway under a State Program; (2) a specific requirement that illegal signs be removed; and (3) a provision authorizing for the first time the use of Federal-aid highway funding to purchase signs that do not conform to outdoor advertising controls.

DATES: The ISTEA was signed into law on December 18, 1991, with the provision of new sections 131(s) and 131(r)(1) of title 23, U.S.C., effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Marlin E. Meese, Chief, Special Programs and Evaluation Branch, Office of Right-of-Way, HRW-12, (202) 366-2017; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 131 is the implementing authority within title 23, U.S.C., for the Highway Beautification Act of 1965, as amended. The basic principles of outdoor advertising control are in section 131. The original Act provided specific controls on the erection and maintenance of outdoor advertising signs and devices along the Interstate and Federal-aid primary highway systems. The Interstate and primary highway systems comprise only 306,000 miles of the 3.9 million miles of public roads and streets in the United States. Therefore, the outdoor advertising controls apply to less than 8 percent of the total national public road mileage. Statutory controls in section 131(c) limit signs which a State can permit to directional and official signs, sale or lease signs, on-premise signs, landmark signs, and free coffee signs. In addition, under section 131(d), States can permit signs in zoned or unzoned commercial or industrial areas adjacent to the controlled systems. Section 131(d) provides for an agreement between each State and the Secretary of Transportation regarding size, lighting, and spacing standards of signs in commercial and industrial areas.

Scenic Byway Prohibition

The ISTEA in section 1046(c) amended title 23, U.S.C., by adding section 131(s). The new section limits the erection of new advertising displays to those permitted under section 131(c) along road segments that are designated Scenic Byways which are on the Interstate System, the Federal-aid primary system (as it existed on June 1, 1991), or on the National Highway System, when designated. These routes, collectively, are referred to as the controlled systems for Highway Beautification Act purposes. Thus new signs which would have been permitted in commercial and industrial areas under section 131(d) are no longer permitted on scenic byway portions of the controlled system.

Based on the 1990 Scenic Byways Study (U.S. DOT/FHWA Publication No. PD-91-010, January 1991), all but 15 States have some form of scenic byways program. About 35,000 miles of roads had been designated as scenic as of December 1990, when the study was conducted. The study projected that only about 50,000 total miles would be designated. Of the total projected mileage, about 50 percent is located on the Interstate and Federal-aid primary systems. Almost all of the mileage already designated as scenic along a controlled highway system is on two lane roadways. Most scenic byways are two lane roadways in rural areas where commercial and industrial areas are fewer in number. Thus, while the scope of this new control is limited to only about 25,000 miles, it complements the actions already taken by the States in determining that these routes have particular scenic importance.

Removal of Illegal Signs

The ISTEA in section 1046(b) also added section 131(r) to title 23, U.S.C. This new section requires all owners of illegal signs to remove their illegal signs within 90 days. The section further states that in the event owners do not remove their illegal signs, the State, to exercise effective control, shall remove the signs. The section provides that States recover removal costs of unremoved illegal signs from the sign owner. This cost recovery provision is not part of "effective control" for purposes of the sanction provisions of the Highway Beautification Act (23 U.S.C. 131(b)).

The FHWA recognizes that most States have already caused the removal of a substantial number of the illegal signs within their boundaries. Some States, however, have significant numbers of illegal signs remaining. Based on State reports, a total of about 22,000 remaining illegal signs have been identified. The law gives sign owners only 90 days from the effective date of ISTEA on December 18, 1991, to remove their illegal signs. The short period given to the owners is an indication of the emphasis to be applied to remove illegal signs. In consideration of the period granted to the owners, and the specific

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mandate to the States to conclude removals when the sign owner has not performed, the FHWA has set a goal of an additional 90 days through June 18, 1992, for the States to act on the removal of illegal signs as required by 23 U.S.C. 131(r)(2). The FHWA recognizes that State law or procedural impediments may have to be overcome before a State can fully comply with this objective. However, considering the short time frame stated in the legislation for the removal of illegal signs by the sign owners, and the specific tie of this action to effective control requirements, States must take immediate steps after March 18, 1992, to demonstrate reasonable progress in meeting the effective control responsibilities required by this amendment. Good faith efforts by a State, including efforts to seek legislative authority, to comply with the provisions quickly will be considered by the FHWA in deciding how to deal with a failure to achieve effective control. Cumbersome administrative or procedural requirements that do not provide for prompt removal of illegal signs are not consistent with the intent of this section.

Funding for Removal of Nonconforming Signs

A new funding source for outdoor advertising control was provided in section 1046(a) of the ISTEA. By amending 23 U.S.C. 131(m), highway trust funds apportioned under 23 U.S.C. 104 are now available for the removal of nonconforming signs (i.e., lawfully erected signs which do not conform to the control requirements of section 131 or stricter State laws). In addition, in section 1007 of the ISTEA, control and removal of outdoor advertising is identified as one of several eligible "transportation enhancement activities" under the new Surface Transportation Program (STP). This major new program requires that at least 10 percent of apportioned funds for the program must be directed toward "transportation enhancement activities."

Initially, Federal funds for the control of outdoor advertising came from the General Fund. Now, funds made available from the Highway Trust Fund for highway projects may be used for outdoor advertising control. This will have a profound impact on the ability and responsibility of States to remove outdoor advertising signs. Under section 131(n), the States are not required to remove nonconforming signs unless Federal funds are available to participate in the acquisition costs associated with their removal. In the years immediately following the passage of the Highway Beautification Act, considerable sums were made available to inventory and remove nonconforming signs. However, funding was never sufficient to complete the acquisition process and no General Funds have been appropriated since 1983.

With this amendment made by the ISTEA, the States should have sufficient funds to remove nonconforming signs much more expeditiously. The change in the funding provided by the ISTEA, making available significant funds for the Federal share of just compensation payments and other control costs, will enable States to complete the removal of nonconforming signs in order to maintain effective control under Section 131(b). The timely removal of nonconforming outdoor advertising signs has always been part of "effective control." Failure to exercise effective control subjects a State to a 10 percent reduction of its Federal-aid highway apportionment, pursuant to 23 U.S.C. 131(b).

The FHWA estimates that about 92,000 nonconforming signs remain to be acquired. Most of these signs have been in place for over 20 years. Removal has been delayed, but now with increased Federal funding available to complete acquisition activities and ensure effective control, the law requires expedient removal.

The ISTEA authorizes $121 billion over the next six years for highway programs, including the STP which is a block grant program designed to fund a wide range of transportation related projects. For Fiscal Year (FY) 1992 alone, over $11 billion in Federal-aid under 23 U.S.C. 104 is being distributed to the States for highway construction and maintenance, and other transportation activities, including removal of outdoor advertising signs. The estimated total Federal share of the cost to acquire the remaining nonconforming signs is $428 million. This amount represents just 4 percent of the total eligible Federal-aid funds available to the States in FY 1992. Thus, the FHWA considered requiring States to remove all nonconforming signs along controlled highways in the first year ISTEA funding is available.

However, the FHWA recognizes that while the ISTEA represents a dramatic increase in Federal-aid funding, the non-Federal share must come from State or local sources. Moreover, the impact on individual States in providing for immediate removal would vary. For example, a State with an inventory of just a few hundred nonconforming signs would have a more manageable acquisition task than a State with over 2,000 such signs.

In addition, the FHWA recognizes that other problems might hamper the immediate removal of all remaining nonconforming signs. First, many States have been inactive regarding a sign acquisition program, and might need to update their administrative tools and sign acquisition procedures. Second, we do not believe that the Congress intended that the removal of signs take precedence over all other title 23 projects and programs.

For these reasons, we believe the ISTEA requires States to begin immediate removal of nonconforming signs, and to make reasonable progress in completing their removal program expeditiously. The FHWA, however, has set a two year goal for complete removal of remaining nonconforming signs. The FHWA believes that 2 years provides States with adequate time to remove all nonconforming signs without unduly constricting Federally-funded highway construction and other projects. States should be prepared to justify any reason for concluding that this period would impose an undue hardship on their priorities and programs.

During the next two years period, more than $24 billion Federal-aid dollars can be expected to be made available to the States for 23 U.S.C. 104 programs and projects. Considering the number of nonconforming signs remaining in the various States, most States could conclude their removal program using less than 2 percent of their 23 U.S.C. 104 funds within the two year period. Therefore, full acquisition and removal of the remaining nonconforming signs over the next two years would seem to be an achievable goal. By meeting this goal States will have removed all nonconforming signs on controlled Federal-aid highways by December 18, 1993.

The elements of removal programs will necessarily vary from State to State, and States should confer with the FHWA as to how best structure a removal program. In implementing removal programs, the States will have to review their existing priorities and formulate programs and processes that will maintain effective control. The States may wish to involve interested parties and affected entities such as other state and local agencies, sign owners, environmental groups and the business community, and establish priorities for sign removal.

This notice provides States and other interested parties a discussion of FHWA's goals and objectives to assure effective control is maintained to achieve the full implementation of the objectives expressed in the 1965

Highway Beautification Act, as amended, and to prevent interruption of Federal-aid funding. Each State should advise the FHWA by June 18, 1992, of its process, program, and timetable to ensure effective control is achieved and maintained. The FHWA intends to monitor and evaluate each State's progress in providing for the prompt removal of illegal and nonconforming signs on controlled systems.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-5287 Filed 3-5-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) as amended by section 5(c) of Public Law 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Ramada Renaissance Hotel, 999 9th Street NW., Washington, DC, on April 28, 1992. The session is scheduled to begin at 7:30 a.m. and end at 6 p.m. The meeting will be for the purpose of reviewing the progress of one on-going cooperative study in immunization in the prevention of infection, and three new clinical trials, one in the treatment of alcoholic cirrhosis, one in diabetes mellitus, and one in unstable angina.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on the relevance and feasibility of studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room, from 7:30 a.m. to 8 a.m., to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202-535-7154), prior to April 14, 1992.

The meeting will be closed from 8 a.m. to 6 p.m., for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92-463, as amended by section 5(c) of Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 26, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-5217 Filed 3-5-92; 8:45 am]

BILLING CODE 8320-01-M

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Chapter 25. Protection and Use of State Highways and Roads.

Article 1. Utilities in Highways.

Sec. 19.25.010. Use of rights-of-way for utilities. A utility facility may be constructed, placed, or maintained across, along, over, under, or within a state right-of-way only in accordance with regulations adopted by the department and if authorized by a written permit issued by the department. (§ 8 art VII title II ch 152 SLA 1957; am § 3 ch 106 SLA 1977)

NOTES TO DECISIONS

A utility may construct a powerline on an unused section line easement reserved for highway purposes under AS 19.10.010. Fisher v. Golden Valley Elec. Ass'n, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

This section places Alaska among those states which permit powerline construction by a utility as an incidental and subordinate use of a highway easement. Fisher v. Golden Valley Elec. Ass'n, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

Maintenance. — Maintenance as defined in paragraph (9) of AS 19.45.001 refers to some type of active work undertaken to preserve the utility facility. Jonnson v. State, Sup. Ct. Op. No. 2434 (File Nos. 4866, 4871, 4894), 636 P.2d 47 (1981).

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 218-234.

40 C.J.S., Highways, §§ 232, 233.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway. 51 ALR4th 602.

Sec. 19.25.020. Relocation of utilities incident to highway projects. (a) If, incident to the construction of a highway project, the department determines and orders that a utility facility located across, along, over, under, or within a state right-of-way must be changed, relocated, or removed, the utility owning or maintaining the facility shall change, relocate, or remove it in accordance with the order. The order must provide a reasonable time period for compliance.

(b) If the utility facility is not changed, relocated, or removed in accordance with the order, the facility becomes an unauthorized encroachment and may be disposed of in accordance with AS 19.25.240 — 19.25.250. In addition, the owner of the facility shall indemnify the state for any amount for which the state may be liable to a contractor by reason of the encroachment.

(c) The cost of change, relocation, or removal necessitated by highway construction is a cost of highway construction to be paid in accordance with AS 19.45.001(4) as follows:

(1) by the department as a cost of highway construction, if the utility facility is installed or authorized under a utility permit or a regulation after June 11, 1986, and is installed in the location specified in the permit;

(2) by the department as a cost of highway construction, if the facility was installed before June 11, 1986, under a utility permit issued on or after July 1, 1960, and is in the location specified in the permit;

(3) by the department as a cost of highway construction, if the utility facility was installed before July 1, 1960, or before the road became part of the state highway system;

(4) by the department as a cost of highway construction, if the utility permit that requires the utility to pay the relocation cost was issued more than five years before the contract for the highway construction project was first advertised;

(5) by the utility in all other cases, unless the commissioner finds it is in the public interest for the cost to be paid by the department.

(d) If requested by a municipality, the department shall implement this chapter by requiring to the maximum extent possible location underground of electric power transmission lines within the municipality. (§§ 2, 3 ch 57 SLA 1961; am § 4 ch 106 SLA 1977; am § 3 ch 142 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (c) deleted "by the state" following "construction to be paid" and substituted the language beginning "as follows:" for "notwithstanding the terms or provisions of any existing permit, agreement, regulation or statute to the contrary."

Opinions of attorney general. — This section is constitutional. 1961 Op. Att'y Gen. No. 12.

Secs. 19.25.030 — 19.25.040. Damages and obstructions. [Repealed, § 5 ch 52 SLA 1988.]

Article 2. Outdoor Advertising.

Opinions of attorney general. — The safety of persons using the road is of overriding importance when weighed against the interest of a sign owner who has illegally placed a sign where it threatens public safety. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may summarily remove a sign or other object it determines to be a visual obstruction or a safety hazard; so long as it protects the sign or other object upon removal, the department is protecting the owner's only recognizable interest. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may not collect the cost of removal of a sign or other object unless the owner has had an opportunity to remove the object and save that cost. The department may use a fee payment schedule instead of figuring the actual removal cost in every case, as long as the schedule is based upon and reflects actual removal costs incurred by the department; and it may charge a reasonable fee for storing the sign. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.080. Purpose. The purposes of AS 25.080 — 19.25.180 are

(1) to protect the public safety and the welfare of persons using the highways of the state by having outdoor advertising signs, displays, and devices along the highways controlled;

(2) to prevent unreasonable distraction of operators of motor vehicles; to prevent confusion with regard to traffic lights, signs, or signals or other interference with the effectiveness of traffic regulations, and to promote the safety, convenience, and enjoyment of travel on, and protection of the public investment in, highways in this state; to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas; and to attract tourists;

(3) to regulate outdoor advertising signs, displays, and devices in areas adjacent to the rights-of-way of the interstate, primary, and secondary systems within this state in accordance with this chapter and the regulations adopted under this chapter;

(4) to provide that outdoor advertising signs, displays, and devices that are not in conformity with the requirements of this chapter are a public nuisance;

(5) to provide a statutory basis for regulation of outdoor advertising signs, displays, and devices consistent with the public policy declared by the Congress relating to areas within and adjacent to the right-of-way of a highway of the interstate, primary, or secondary systems. (§ 1 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am § 2 ch 233 SLA 1968; am § 1 ch 155 SLA 1970; am § 1 ch 158 SLA 1988)

Effect of amendments. — The 1988 amendment rewrote paragraph (5) to the extent that a detailed comparison is impracticable.

Legislative history reports. — For report on ch. 233, SLA 1968 (HCSCSSB 144 am FCC), see 1968 House Journal, p. 815.

Collateral references. — 40 Am. Jur. 2d, Highways, Streets and Bridges, §§ 273-336.

40 C.J.S., Highways, §§ 217, 232.

Billboards and other outdoor advertising signs as civil nuisance. 38 ALR3d 647.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk. 30 ALR3d 667.

Validity and construction of state or local regulation prohibiting off-premises advertising structures. 31 ALR3d 486.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way. 21 ALR4th 1309.

Sec. 19.25.090. Outdoor advertising prohibited. Except as provided in AS 19.25.105, all outdoor advertising is prohibited. (§ 3 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am § 2 ch 155 SLA 1970)

Sec. 19.25.100. Rural signs. [Repealed, § 14 ch 155 SLA 1970.]

Sec. 19.25.105. Limitations of outdoor advertising signs, displays and devices. (a) Outdoor advertising may not be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state except the following:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays, and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of this chapter;

(4) directional signs and notices pertaining to schools;

(5) advertising on bus benches or bus shelters if the state determines that the advertising conforms to local, state, and federal standards for interstate and primary highway systems.

(b) *[Repealed, § 21 ch 94 SLA 1980.]*

(c) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the main traveled way of the interstate primary or secondary highways in this state with the purpose of their message being read from that travel way except those outdoor advertising signs, displays, or devices allowed under (a) of this section.

(d) Outdoor advertising may not be erected or maintained within the right-of-way of an interstate, primary, or secondary highway except that outdoor advertising is allowed on bus benches and bus shelters located within the right-of-way under the authority of a permit issued under AS 19.25.200, if the bus benches or bus shelters are located within a borough or unified municipality and the buses that stop at that location operate during the entire year. (§ 3 ch 155 SLA 1970; am §§ 1, 2 ch 195 SLA 1975; am § 1 ch 30 SLA 1980; am § 21 ch 94 SLA 1980; am § 1 ch 6 SLA 1987; am § 2 ch 153 SLA 1988)

Effect of amendments. — The 1987 amendment in subsection (a) substituted "Outdoor advertising may not" for "No outdoor advertising may" at the beginning of the subsection and added paragraph (5).

The 1988 amendment added subsection (d).

Collateral references. — Classification and maintenance of advertising structure as nonconforming use. 80 ALR3d 630.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564.

Secs. 19.25.110 — 19.25.120. Removal of nonconforming advertising; neglect or refusal to obey removal order. [Repealed, § 43 ch 85 SLA 1988.]

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. (§ 7 ch 59 SLA 1949; added by § 1 ch 86 SLA 1953; am § 4 ch 233 SLA 1968)

Sec. 19.25.140. Compensation for removal of advertising. (a) The department is authorized to acquire by purchase, gift, or condemnation, all advertising devices and any property rights pertaining to them, when the advertising devices are required to be removed under AS 19.25.150.

(b) Damages resulting from a taking in eminent domain shall be ascertained in the manner provided by law. (§ 5 ch 233 SLA 1968; am § 45 ch 69 SLA 1970)

Sec. 19.25.150. Unlawful advertising. An advertising sign, display, or device which violates the provisions of this chapter is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the advertising sign, display or device is located, ordering its removal if it is prohibited by this chapter or ordering the owner to cause it to conform to regulations if it is authorized by this chapter. If the owner of the property fails to comply within 30 days as required in the notice, the department shall remove

the outdoor advertising sign, display, or device at the expense of the owner of the land or the person who erected it. (§ 5 ch 233 SLA 1968)

Sec. 19.25.160. Definitions. In AS 19.25.080 — 19.25.180

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

(2) "interstate system" means that portion of the National System of Interstate and Defense Highways located in this state, as officially designated, or as may hereafter be so designated, by the commissioner, and approved by the secretary of transportation (or by the secretary of commerce before the effective date of the transfer of functions under Public Law 89-670 [80 Stat. 931]), under the provisions of Title 23, United States Code, "Highways";

(3) "outdoor advertising" includes any outdoor sign, display, or device used to advertise, attract attention or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or whether by the use of figures or objects, or a combination of these, or any other thing designed, intended, or used to advertise, inform, or attract attention;

(4) "primary system" or "secondary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commissioner, and approved by the secretary of transportation (or by the secretary of commerce before the effective date of the transfer of functions under Public Law 89-670 [80 Stat. 931]), under the provisions of Title 23, United States Code, "Highways". (§ 5 ch 233 SLA 1968; am §§ 46, 47 ch 69 SLA 1970; am §§ 5, 6 ch 155 SLA 1970)

Revisor's notes. — Reorganized in 1988 to alphabetize the defined terms.

Sec. 19.25.170. Agreements with the United States; regulations. The department may enter into agreements in conformity with the provisions of this title with the United States Secretary of Transportation as provided by Title 23, United States Code, relating to the control of outdoor advertising signs, displays, and devices in areas adjacent to interstate and primary systems and to take action in the name of the state to comply with the terms of the agreements, and to adopt required regulations. (§ 5 ch 233 SLA 1968)

Sec. 19.25.180. Interpretation. AS 19.25.080 — 19.25.180 may not be construed to abrogate or affect any law, ordinance, regulation or resolution that is more restrictive than the provisions of AS 19.25.080 — 19.25.180. (§ 5 ch 233 SLA 1968)

Article 3. Encroachments In Highways.

Opinions of attorney general. — Encroachment under this article covers any intrusion into the highway right of way, including signs, or infringement of the limitations on use of the right of way. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may not collect the cost of removal of a sign or other object unless the owner has had an opportunity to remove the object and save the cost. The department may use a fee payment schedule instead of figuring the actual removal cost in every case, as long as the schedule is based upon and reflects actual removal costs incurred by the department; and it may charge a reasonable fee for storing the sign. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.200. Encroachment permits. (a) An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section. The commissioner of administration shall separately account for encroachment permit fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section.

(b) The provisions under (a) of this section do not apply to a mailbox or a newspaper box attached to a mailbox. (§ 2 ch 64 SLA 1971; am § 41 ch 138 SLA 1986; am § 4 ch 142 SLA 1986)

Effect of amendments. — The first 1986 amendment added the third, fourth and fifth sentences and made grammatical changes in the second sentence.

The second 1986 amendment designated the existing language as subsection (a), in the second sentence of subsection (a) deleted "duly" preceding "authorized" and added the language "unless the department provides otherwise by regulation" and added subsection (b).

Collateral references. — 3 Am. Jur. 2d, Advertising, §§ 2, 7, 11, 24-26. 39 Am. Jur. 2d, Highways, Streets and Bridges, § 298.

40 C.J.S., Highways, §§ 217-231.

Sec. 19.25.210. Relocation or removal of encroachment. If, incidental to the construction or maintenance of a state highway, the department determines and orders that an encroachment previously authorized by written permit must be changed, relocated, or removed, the owner of the encroachment shall change, relocate, or remove it at no expense to the state (except as provided in AS 19.25.020), within a

reasonable time set by the department. If the owner does not change, relocate, or remove an encroachment within the time set by the department, the encroachment shall be considered an unauthorized encroachment and subject to the provisions of AS 19.25.220 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.220. Unauthorized encroachments. If an unauthorized encroachment exists in, on, under, or over a state highway, the department may require the removal of the encroachment in the manner provided in AS 19.25.230 — 19.25.250. (§ 2 ch 64 SLA 1971)

Sec. 19.25.230. Notice of removal. Except as otherwise provided in AS 19.25.200, 19.25.210 and 19.25.240, notice shall be given the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving upon any of them a notice demanding the removal of the encroachment. The notice must describe the encroachment complained of with reasonable certainty as to its character and location. Service of the notice may be made by certified mail. (§ 2 ch 64 SLA 1971)

Sec. 19.25.240. Summary removal. The department may at any time remove from a state highway or road an encroachment that obstructs or prevents the use of the highway or road by the public. (§ 2 ch 64 SLA 1971)

Opinions of attorney general. — The safety of persons using the road is of overriding importance when weighed against the interest of a sign owner who has illegally placed a sign where it threatens public safety. January 3, 1984 Op. Att'y Gen.

An encroachment which obstructs anyone's view of the road is one which "obstructs ... the highway or road" and also presents a serious danger to the public. January 3, 1984 Op. Att'y Gen.

The Department of Transportation and Public Facilities may summarily remove a sign or other object it determines to be a visual obstruction or a safety hazard; so long as it protects the sign or other object upon removal, the department is protecting the owner's only recognizable interest. January 3, 1984 Op. Att'y Gen.

Sec. 19.25.250. Removal after noncompliance; removal expense. After a failure of the owner of an encroachment to comply with a notice or demand of the department under the provisions of AS 19.25.200, 19.25.210 and 19.25.240, the department may remove, or cause to be removed, the encroachment, and the owner of the encroachment shall pay to the department

(1) the expenses of the removal of the encroachment;

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

Article 2. Outdoor Advertising.

Sec. 19.25.105. Limitations of outdoor advertising signs, displays and devices. (a) Outdoor advertising may not be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state except the following:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays, and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of this chapter;

(4) directional signs and notices pertaining to schools;

(5) advertising on bus benches or bus shelters if the state determines that the advertising conforms to local, state, and federal standards for interstate and primary highway systems.

(b) *[Repealed, § 21 ch 94 SLA 1980.]*

(c) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the main traveled way of the interstate, primary, or secondary highways in this state with the purpose of their message being read from that travel way except those outdoor advertising signs, displays, or devices allowed under (a) of this section.

(d) Outdoor advertising may not be erected or maintained within the right-of-way of an interstate, primary, or secondary highway except that outdoor advertising is allowed on bus benches and bus shelters located within the right-of-way under the authority of a permit issued under AS 19.25.200, if the bus benches or bus shelters are located within a borough or unified municipality and the buses that stop at that location operate dur he entire year. (§ 3 ch 155 SLA 1970; am §§ 1, 2 ch 195 SLA 1975; am § 1 ch 30 SLA 1980; am § 21 ch 94 SLA 1980; am § 1 ch 6 SLA 1987; am § 2 ch 153 SLA 1988)

Editor's notes. — This section is set out above to correct minor errors in the main pamphlet.

Sec. 19.25.150. Unlawful advertising. An advertising sign, display, or device that violates the provisions of AS 19.25.080 — 19.25.180 is a public nuisance. The department shall give 30 days' notice, by certified mail, to the owner of the land on which the advertising sign, display, or device is located, ordering its removal if it is prohibited by AS 19.25.080 — 19.25.180 or ordering the owner to cause it to conform to regulations if it is authorized by AS 19.25.080 — 19.25.180. If the owner of the property fails to comply within 30 days as required in the notice, the department shall remove the outdoor advertising sign, display, or device at the expense of the owner of the land or the person who erected it. (§ 5 ch 233 SLA 1968; am § 19 ch 21 SLA 1991)

Effect of amendments. — The 1991 amendment, effective June 11, 1991, substituted Code section references for "this chapter" in three places.

Article 3. Encroachments in Highways.

Section
200. Encroachment permits

Sec. 19.25.200. Encroachment permits. (a) An encroachment may be constructed, placed, changed, or maintained across or along a highway, but only in accordance with regulations adopted by the department. An encroachment may not be constructed, placed, maintained, or changed until it is authorized by a written permit issued by the department, unless the department provides otherwise by regulation. The department may charge a fee for a permit issued under this section.

(b) The provisions under (a) of this section do not apply to a mailbox or a newspaper box attached to a mailbox. (§ 2 ch 64 SLA 1971; am § 41 ch 138 SLA 1986; am § 4 ch 142 SLA 1986; am § 10 ch 90 SLA 1991)

Effect of amendments. — The 1991 amendment, effective July 3, 1991, in subsection (a), deleted the former last two sentences.

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

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

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

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

(57) " wet-boring" means the method or process of boring with the use of jets of water or liquid slurry;

(58) "airport" has the same meaning as in AS 02.15.260(5);

(59) "public facility" has the same meaning as in AS 35.25.020(7).

(Eff. 5/23/82, Register 82; am 10/2/87, Register 103)

Authority: AS 02.15.020 AS 19.30.051
AS 02.15.102 AS 19.30.121
AS 02.15.106 AS 19.40.065
AS 19.05.020 AS 35.05.020
AS 19.05.040 AS 35.10.230

CHAPTER 20. MAINTENANCE

17 AAC 20.010. OUTDOOR ADVERTISING. It shall be unlawful to place, erect, or maintain any outdoor advertising sign within the right-of-way of any highway or highway lands, nor shall any permit be issued for the placement or erection of the sign. (Eff. 6/25/69, Register 30)

Authority: AS 19.05.020

Editor's notes. — The source of this section is former 14 AAC 2.391.2.

17 AAC 20.020. CLOSURE AND RESTRICTION. (a) The department may restrict the use of, or close, any highway whenever the department considers such closing or restriction of use necessary

(1) for the protection of the public; or

(2) for the protection of such highway from damage during storms, floods, thawing conditions or during construction or maintenance operations.

(b) The department will provide traffic guidance in case of restriction or provide suitable detour as soon as possible to minimize traffic delay.

(c) To notify the public that a highway is closed, or its use has been restricted, the department may

(1) erect suitable barriers or obstructions at such locations upon the highway as will best serve the purpose;

(2) post warnings or notices of the condition of any such highway;

(3) post signs for the direction of traffic upon it, or to or upon other highway or detour open to public travel;

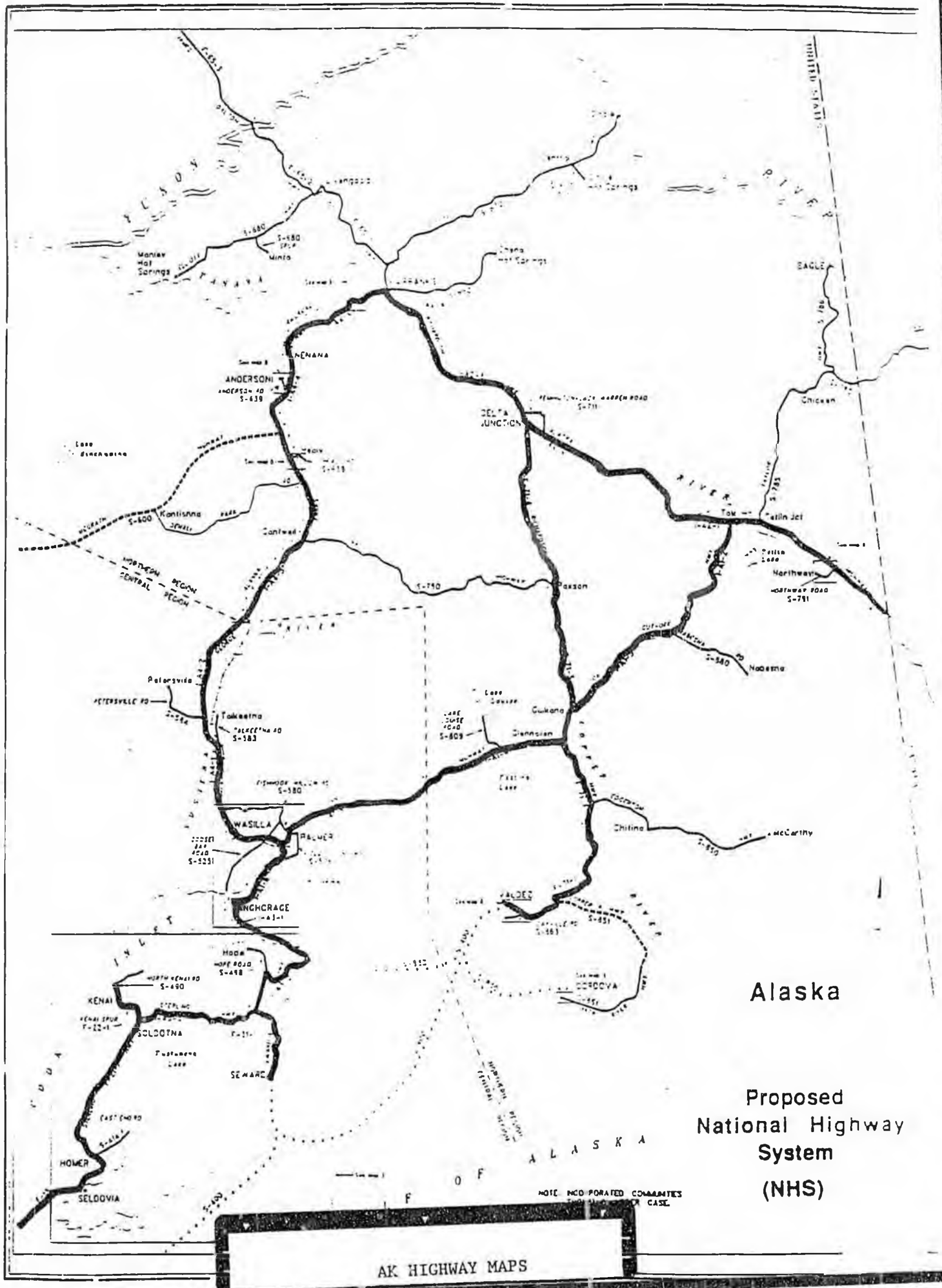
(4) place warning devices upon such highways;

(5) assign a flagman to warn, detour or direct traffic on such highway.

(d) Nothing within the above shall be construed to create any liability upon the state or any officer, employee, agent, or contractor of the state for failure to provide any or all of the above notices; however, willful failure or neglect to provide the notice shall be the subject of disciplinary action.

(e) Except in sudden emergencies, the department shall notify the nearest state police unit before closing or restricting the use of any highway, or before diverting traffic to any other highway or detour, in the manner provided in the preceding sections; whenever possible, such notice shall be in writing.

(f) Whenever required by sudden emergency, to protect the traveling public or to prevent or mitigate damage to public property, or to prevent or mitigate damage to private property for which the department might be held responsible, the department may, acting by or through its senior officer, or employee actually at the vicinity of the emergency, enter into contracts for the leasing or renting of tools or equipment needed for such highway emergency purposes. Such contracts shall be in writing, but shall be preceded by a memorandum of intent with a brief explanation of the nature of the sudden emergency, labor and equipment required, estimate of time required and the purpose for which labor, tools and equipment are needed. (Eff. 6/25/69, Register 30; am 11/16/83, Register 88)


Alaska
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Chitina
McCarthy
WASILLA
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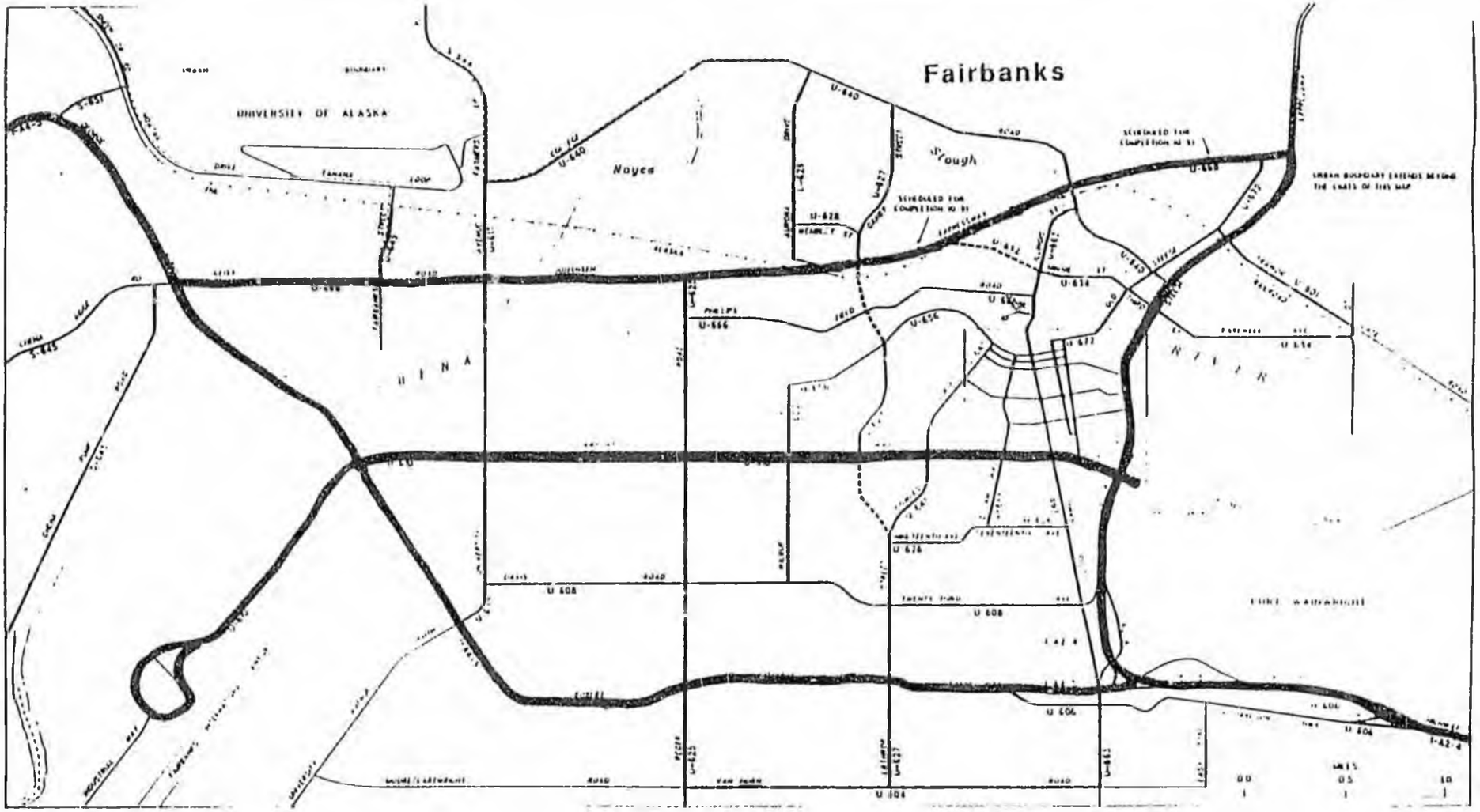
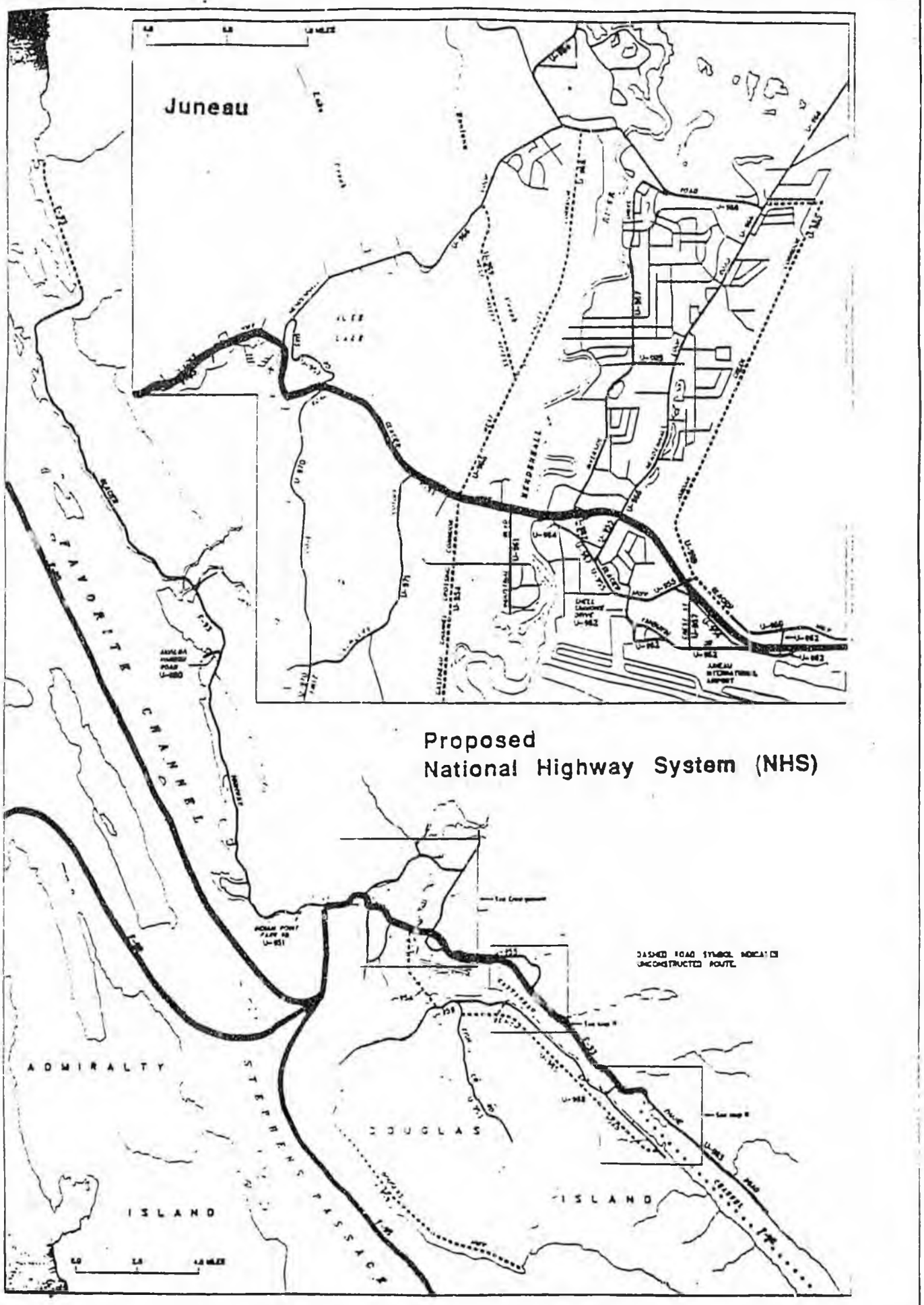
GULF OF ALASKA
AK HIGHWAY MAPS



Proposed National Highway System (NHS)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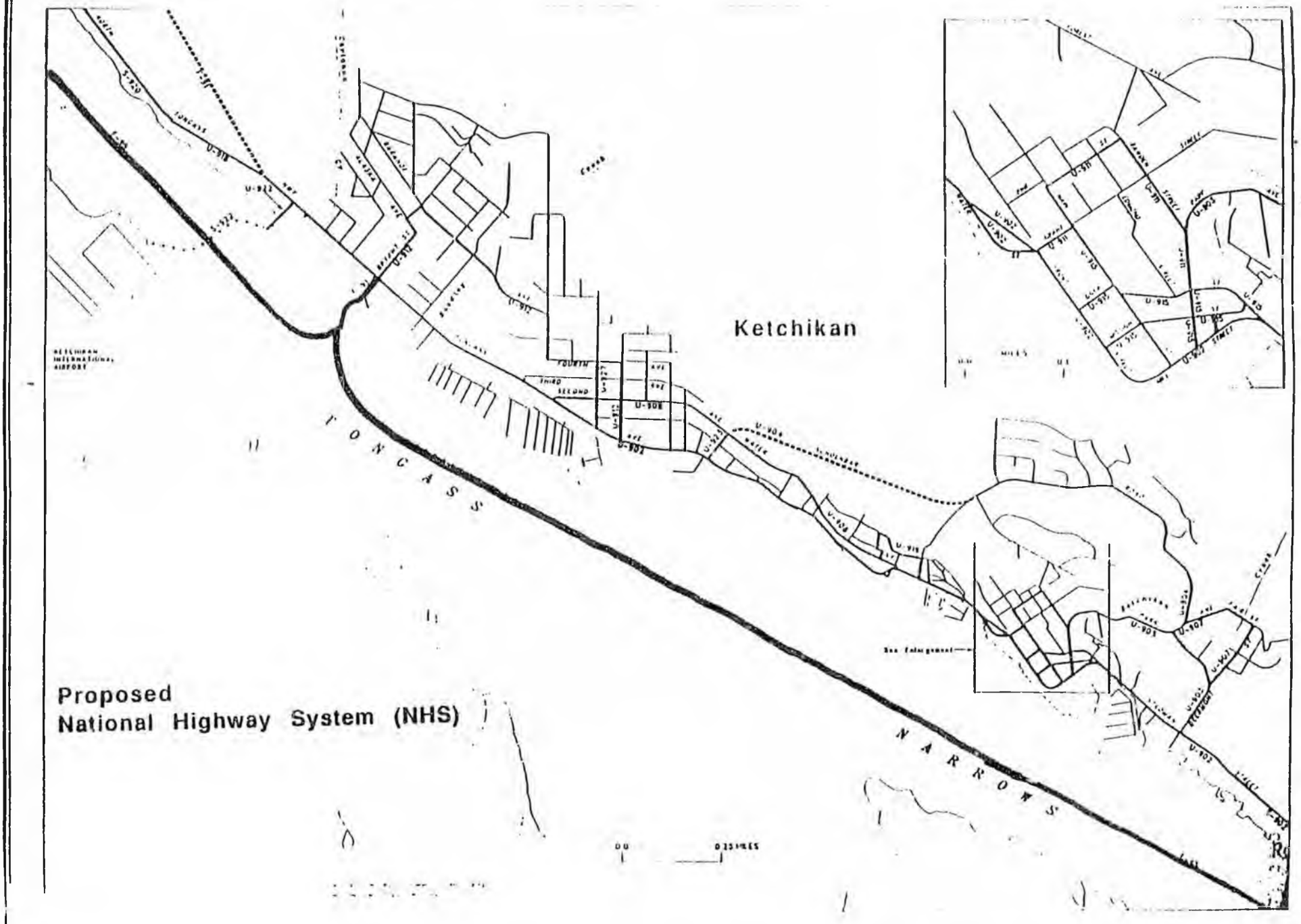
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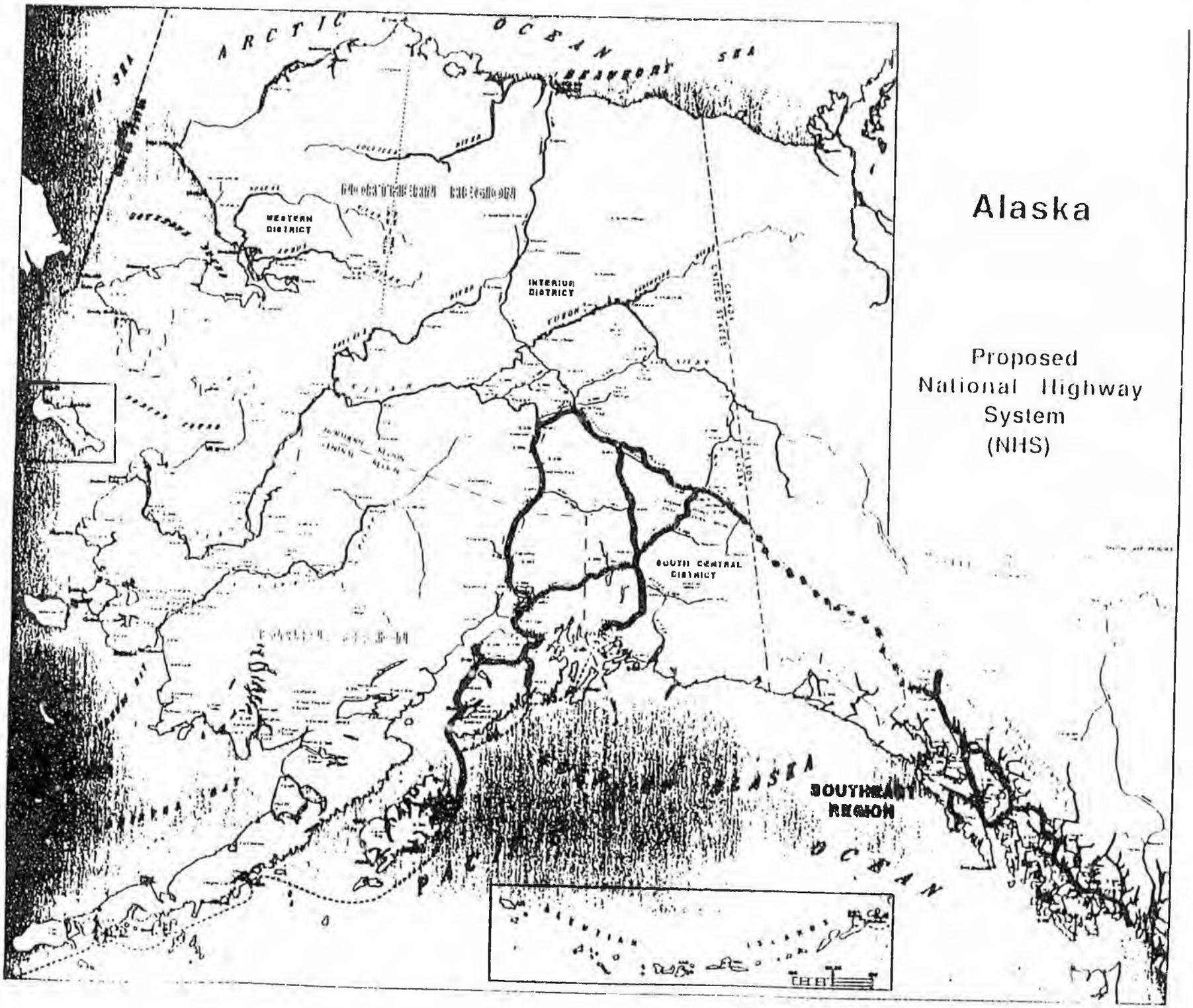

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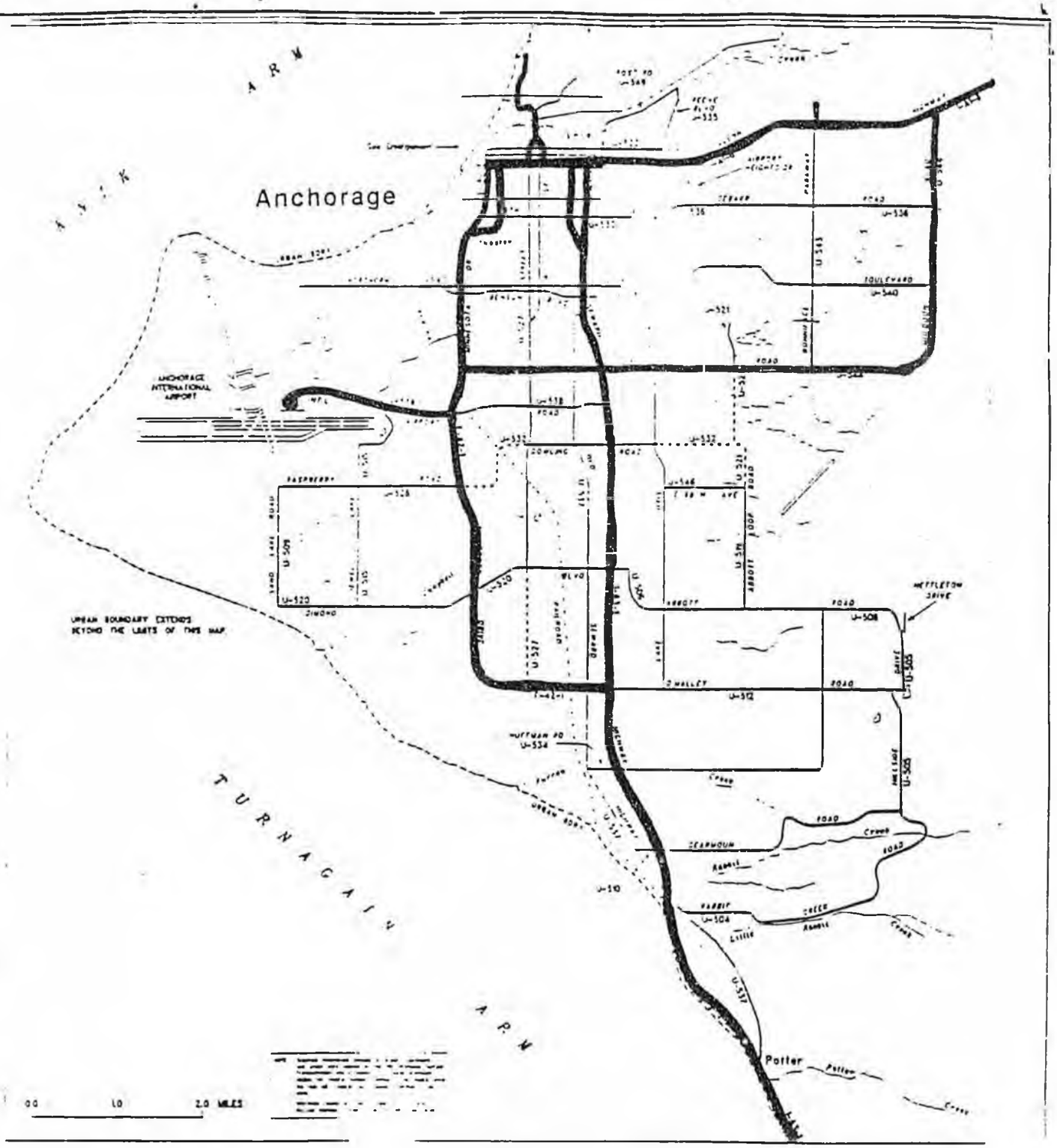
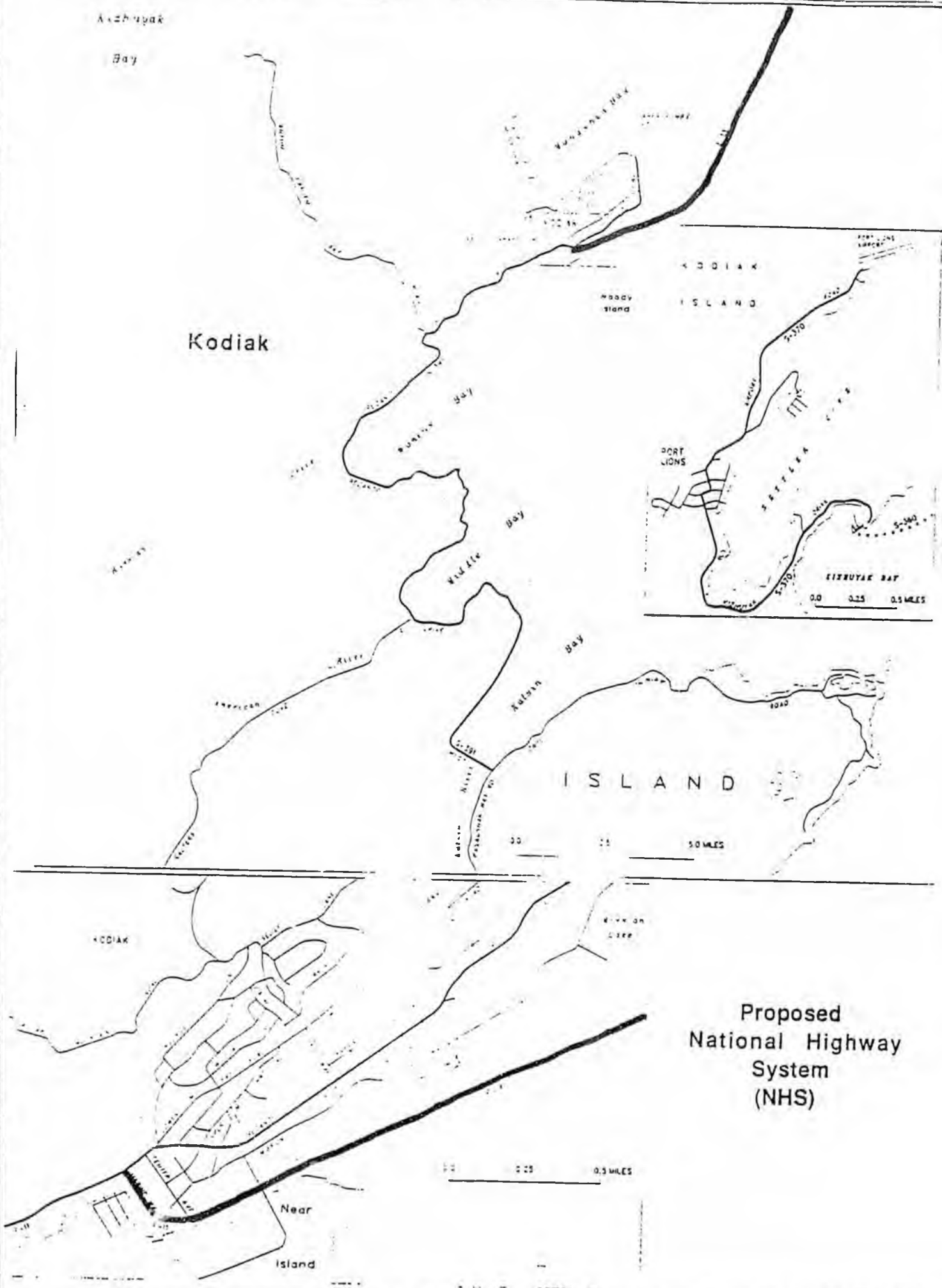


Proposed National Highway System (NHS)

DASHED ROAD SYMBOL INDICATES UNCONSTRUCTED ROUTE.



Proposed
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(NHS)