

HOUSE BILL NO. 178

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOTT, Kohring

Introduced: 4/7/99

Referred: Community and Regional Affairs, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to removing solid waste collection and disposal service from
2 regulation by the Alaska Public Utilities Commission; requiring certain
3 municipalities, and permitting other municipalities, to regulate solid waste collection
4 and disposal service within the municipal boundaries; and providing for an
5 effective date."

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

7 * **Section 1.** LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that
8 (1) in most states, solid waste collection and disposal service is not regulated
9 at the state level; rather, if it is regulated at all, solid waste collection and disposal service is
10 regulated at the county or city level;
11 (2) each community in Alaska is unique, and therefore local governments are
12 better able to determine the level of service and the appropriate market structure for solid
13 waste collection and disposal service within the community's boundaries than is a state

1 commission;

2 (3) local control of solid waste collection and disposal service would allow a
3 municipality to establish a comprehensive solid waste management plan based on the size,
4 nature, and population density of the area to respond to the unique needs of the community
5 and to better serve customers within the municipal boundaries.

6 (b) It is the intent of the legislature to provide in this Act that

7 (1) when the Alaska Public Utilities Commission ceases to regulate solid waste
8 collection and disposal service, a municipality in the state that owns and operates a solid waste
9 collection and disposal service or that has within its boundaries a certificated public utility that
10 is providing solid waste collection and disposal service should replace the commission's
11 regulation with a system of local control either by continuing its ownership and operation of
12 a solid waste collection and disposal service or by granting one or more franchises to private
13 carriers to do so;

14 (2) a municipality that does not own or operate a solid waste collection and
15 disposal service and that, on the effective date of this section, does not have within its
16 boundaries a certificated public utility providing the service should be authorized but not
17 required to establish a system of solid waste collection and disposal;

18 (3) a municipality should recover the cost of implementing this Act either
19 through revenue earned from directly providing solid waste collection and disposal service or
20 by the collection of franchise fees;

21 (4) the property interests of private carriers that already provide solid waste
22 collection and disposal service under a certificate of public convenience and necessity issued
23 by the Alaska Public Utilities Commission should be protected by requiring municipalities to
24 either grant exclusive franchises to these carriers for a period of time or purchase the
25 certificate, equipment, and facilities at fair market value.

26 * **Sec. 2.** AS 29.35.050 is amended by adding new subsections to read:

27 (e) By January 1, 2000, a municipality that, on the effective date of this
28 subsection, holds a certificate from the Alaska Public Utilities Commission to provide
29 solid waste collection and disposal service or that has within its boundaries a public
30 utility certificated by the Alaska Public Utilities Commission to provide solid waste
31 collection and disposal service shall by ordinance provide for a system of residential

1 and commercial solid waste collection and disposal for the affected service areas. The
2 municipality may satisfy the requirement of this subsection either by operating the
3 service itself, with municipal officials and employees, or by granting one or more
4 franchises to a private carrier to provide the service. Notwithstanding
5 AS 29.35.250(b), a city that is inside a borough and that has established a system of
6 solid waste collection and disposal before the effective date of this subsection may
7 maintain that service. If, on the effective date of this subsection, a public utility
8 provides residential or commercial solid waste collection and disposal service under
9 a certificate issued by the Alaska Public Utilities Commission in a service area in a
10 municipality, the municipality shall either

11 (1) grant an exclusive franchise to the certificated utility to continue
12 to provide the service for a term of at least five years from the later of the date that
13 the franchise was granted or January 1, 2000; the franchise must contain an agreement
14 that will allow the carrier to charge customers at the rates contained in the utility's
15 tariff in effect on June 1, 1999, adjusted for inflation and any extraordinary increases
16 in operating expenses; the term of the agreement and the rates charged are subject to
17 amendment by agreement of the municipality and the franchisee; or

18 (2) purchase, at fair market value, the utility's certificate, equipment,
19 and facilities that are related to providing service in the municipality.

20 (f) A municipality that is not described in (e) of this section may by ordinance
21 provide for a system of residential and commercial solid waste collection and disposal.
22 The ordinance may provide either that the municipality will operate the service itself,
23 with municipal officials and employees, or that the municipality may grant a franchise
24 to a private carrier to provide for the service.

25 (g) If more than one public utility provides residential or commercial solid
26 waste collection and disposal service under certificates issued by the Alaska Public
27 Utilities Commission in a service area in a municipality, the municipality may establish
28 an appropriate system of solid waste collection and disposal service as provided in (e)
29 of this section. However, if a municipality deprives a public utility holding a
30 certificate to provide service in the municipality of the right to provide service within
31 municipal boundaries between the effective date of this subsection and January 1,

1 2005, the municipality shall purchase at fair market value the utility's certificate,
2 equipment, and facilities that are related to providing service in the municipality.

3 (h) As part of a franchise agreement under this section, a municipality may
4 collect a fee from the franchisee to cover the cost of establishing and administering the
5 franchise agreement. The amount of the fee may not be less than one-half of one
6 percent and may not exceed two and one-half percent of the franchisee's gross
7 revenue. The amount of the fee may be considered in determining the rates charged
8 under the franchise agreement and may be charged as part of the rates paid by
9 customers for the solid waste collection and disposal service.

10 (i) A municipality may by ordinance require all persons, property owners, or
11 occupants of premises in the municipality to use the solid waste collection and disposal
12 system and to dispose of solid waste as provided in the ordinance.

13 (j) In this section,

14 (1) "commercial solid waste collection and disposal" means the
15 collection and disposal of solid waste, garbage, refuse, or trash from a container that
16 has a capacity of one cubic yard or more, whether or not the property from which the
17 solid waste, garbage, refuse, or trash is collected is considered commercial property;

18 (2) "fair market value" is the net present value of future projected
19 revenue less associated expenses over a 10-year period; in this paragraph, "future
20 projected revenue" is the historic revenue based on the number of customers on the
21 date of acquisition, the levels of service for each customer, and the existing rate
22 structure, with a pro forma adjustment over a 10-year period using a projected growth
23 rate; an appropriate rate in the range of eight - 10 percent shall then be applied to
24 reduce the future projected revenue to present value;

25 (3) "municipality" means, notwithstanding the definition in
26 AS 29.71.800, a political subdivision incorporated under the laws of the state that is
27 a home rule or first class city, a second class borough, or a unified home rule
28 municipality;

29 (4) "residential solid waste collection and disposal" means the
30 collection and disposal of solid waste, garbage, refuse, or trash from a container that
31 has a capacity of less than one cubic yard, whether or not the property from which the

1 material is collected is considered residential property.

2 * **Sec. 3.** AS 29.35.070(a) is amended to read:

3 (a) The assembly acting for the area outside all cities in the borough and the
4 council acting for the area in a city may regulate, fix, establish, and change the rates
5 and charges imposed for a utility service provided to the municipality or its inhabitants
6 by a utility that is not subject to regulation under AS 42.05 unless that utility is
7 exempted from regulation under AS 42.05.711(a), [OR] (d) - (h), (j), or (k) or is
8 exempted under regulations adopted under AS 42.05.810 from complying with all or
9 part of AS 42.05.010 - 42.05.721.

10 * **Sec. 4.** AS 29.35.210(a) is amended to read:

11 (a) A second class borough may by ordinance exercise the following powers
12 on a nonareawide basis:

- 13 (1) provide transportation systems;
- 14 (2) regulate the offering for sale, exposure for sale, sale, use, or
15 explosion of fireworks;
- 16 (3) license, impound, and dispose of animals;
- 17 (4) [SUBJECT TO AS 29.35.050,] provide [GARBAGE, SOLID
18 WASTE, AND] septic waste collection and disposal;
- 19 (5) provide air pollution control under AS 46.14.400;
- 20 (6) provide water pollution control;
- 21 (7) participate in federal or state loan programs for housing
22 rehabilitation and improvement for energy conservation;
- 23 (8) provide for economic development;
- 24 (9) provide for the acquisition and construction of local service roads
25 and trails under AS 19.30.111 - 19.30.251;
- 26 (10) establish an emergency services communication center under
27 AS 29.35.130;
- 28 (11) subject to AS 28.01.010, regulate the licensing and operation of
29 motor vehicles and operators;
- 30 (12) engage in activities authorized under AS 29.47.460;
- 31 (13) contain, clean up, or prevent a release or threatened release of oil

1 or a hazardous substance, and exercise a power granted to a municipality under
 2 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
 3 paragraph in a manner that is consistent with a regional master plan prepared by the
 4 Department of Environmental Conservation under AS 46.04.210.

5 * **Sec. 5.** AS 38.05.810(f) is amended to read:

6 (f) The commissioner shall lease state land for telephone or electric
 7 transmission and distribution lines for less than the appraised value of the land if the
 8 lessee is a nonprofit cooperative association organized under AS 10.25. The
 9 commissioner may lease state land that is not located within the boundary of a
 10 municipality for the disposal of garbage, refuse, trash, or other waste material for less
 11 than the appraised value of the land if the lessee is **approved by the commissioner**
 12 **and collects and disposes** [A LICENSED PUBLIC UTILITY AUTHORIZED TO
 13 COLLECT AND DISPOSE] of garbage, refuse, trash, or other waste material outside
 14 the boundaries of a municipality. Before determining the annual rental, the
 15 commissioner shall consider the nature of the public service rendered by the nonprofit
 16 cooperative association or **approved lessee** [LICENSED PUBLIC UTILITY] and the
 17 terms of the grant under which the land was acquired by the state. A nonprofit
 18 cooperative association may not construct improvements other than transmission or
 19 distribution lines and substations on land leased under this subsection. **An approved**
 20 **lessee** [A LICENSED PUBLIC UTILITY] may not construct permanent improvements
 21 on land leased under this subsection that are not related to the purpose of the lease.

22 * **Sec. 6.** AS 42.05.711(l) is amended to read:

23 (l) A person, utility, or cooperative that is exempt from regulation under (a),
 24 [OR] (d) - **(h), (j), or** (k) of this section is not subject to regulation by a municipality
 25 under AS 29.35.060 and 29.35.070.

26 * **Sec. 7.** AS 42.05.712(h) is amended to read:

27 (h) A utility or cooperative that is already exempt from regulation under this
 28 section or that is exempt from regulation under AS 42.05.711(e) [, (i),] or (k) may
 29 elect to terminate its exemption in the same manner.

30 * **Sec. 8.** AS 45.50.572(d) is amended to read:

31 (d) AS 45.50.562 - 45.50.596

1 (1) apply to long distance telecommunications services provided by
2 public utilities;

3 (2) [. AS 45.50.562 - 45.50.596] do not apply to

4 (A) other services provided by public utilities that have been
5 issued a certificate of public convenience and necessity under AS 42.05; or

6 (B) **solid waste collection and disposal that is regulated by**
7 **a municipality under AS 29.35.050 where the municipality has granted the**
8 **private carrier an exclusive franchise to operate in an area.**

9 * **Sec. 9.** REPEAL OF STATUTES. (a) AS 29.35.050(a) and 29.35.050(b) are repealed.

10 (b) AS 42.05.431(f), 42.05.431(g), 42.05.711(i), 42.05.711(m), and 42.05.990(4)(F)
11 are repealed.

12 * **Sec. 10.** Sections 1, 2, 4, 8, and 9(a) of this Act take effect immediately under
13 AS 01.10.070(c).

14 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2000.