

**ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS
STANDING COMMITTEE**

March 4, 2004
9:05 a.m.

MEMBERS PRESENT

Representative Carl Morgan, Chair
Representative Kelly Wolf, Vice Chair
Representative Pete Kott
Representative Tom Anderson
Representative Ralph Samuels
Representative Sharon Cissna

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 515

"An Act relating to the regulation of municipal water and sewer utilities not in competition with other water and sewer utilities."

- MOVED HB 515 OUT OF COMMITTEE

HOUSE BILL NO. 308

"An Act related to exchanging public land for privately held riverbank and stream bank lands."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 515

SHORT TITLE: MUNICIPAL WATER AND SEWER UTILITIES

SPONSOR(S): LABOR & COMMERCE

02/18/04	(H)	READ THE FIRST TIME - REFERRALS
02/18/04	(H)	CRA, L&C
03/04/04	(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HB 308

SHORT TITLE: EXCHANGE PUBLIC LAND FOR STREAM BANK LAND

SPONSOR(S): REPRESENTATIVE(S) GARA

05/08/03 (H) READ THE FIRST TIME - REFERRALS
05/08/03 (H) CRA, RES
03/04/04 (H) CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

MARK PREMO, General Manager
Anchorage Water and Wastewater Utility (AWWU)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 515.

MARK JOHNSON, Commissioner, Chair
Regulatory Commission of Alaska (RCA)
Department of Community & Economic Development (DCED)
Anchorage, Alaska
POSITION STATEMENT: Characterized HB 515 as legislation that represents a fundamental policy call on the part of the legislature.

CRAIG GOODRICH, Deputy Fire Chief
Anchorage Fire Department
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 515.

ROBERT LOHR
Office of Management & Budget
Municipality of Anchorage
POSITION STATEMENT: Testified on HB 515.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as the sponsor of HB 308.

DOUG VINCENT-LANG, Assistant Director
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: Answered a question, during discussion of HB 308.

ACTION NARRATIVE

TAPE 04-9, SIDE A
Number 0001

CHAIR CARL MORGAN called the House Community and Regional Affairs Standing Committee meeting to order at 9:05 a.m. Representatives Morgan, Wolf, Kott, Anderson, and Samuels were present at the call to order. Representative Cissna arrived as the meeting was in progress.

HB 515-MUNICIPAL WATER AND SEWER UTILITIES

CHAIR MORGAN announced that the first order of business would be HOUSE BILL NO. 515, "An Act relating to the regulation of municipal water and sewer utilities not in competition with other water and sewer utilities."

REPRESENTATIVE ANDERSON, as chair of the House Labor and Commerce Standing Committee, sponsor of HB 515, explained that HB 515 would exempt the Anchorage Water and Wastewater Utility (AWWU) from regulation by the Regulatory Commission of Alaska (RCA). In Alaska, no other municipally owned water or wastewater utility is regulated by the RCA, save Pelican. He noted that Pelican requested regulation of its wastewater utility by the RCA. Representative Anderson related that the Municipality of Anchorage (MOA) believes that current RCA regulation processes are cumbersome, slow, expensive, and nonresponsive to Anchorage's needs. The ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on the ratepayer's monthly bill, regardless of whether the ratepayer's utility has a case pending. For example, from 1993-2003 AWWU didn't have a rate increase before the RCA or its predecessor, the Alaska Public Utilities Commission (APUC). However, AWWU ratepayers have paid a regulatory assessment to the RCA as a part of every bill. In 2004, AWWU ratepayers are projected to pay about \$500,000 to the RCA, which would cover the costs of regulation, or lack thereof. Representative Anderson pointed out that the greatest costs appear in the form of regulatory delay in obtaining approval of a requested change.

REPRESENTATIVE ANDERSON highlighted that MOA is directly accountable to the ratepayers served by its utilities. He noted that MOA has experienced successful regulation of enterprise activities, such as the Port of Anchorage. Representative Anderson pointed out that municipal public hearings are held on any proposed rate increase. In this case HB 515 changes existing law by adding lines 5-8, on page 2. He noted that MOA supports this [legislation].

Number 0419

MARK PREMO, General Manager, Anchorage Water and Wastewater Utility (AWWU), began by noting that he has held his position as general manager since 1990. Mr. Premo provided the following testimony:

I am testifying this morning in support of House Bill 515. This bill would exempt AWWU from regulation by the RCA and place it in the same status as every other municipally owned water and wastewater utility in Alaska, except one.

First, some background: AWWU is two separate utilities, both subject to economic and surface area regulations by the RCA. The water utility, a former City of Anchorage utility, has been under RCA regulation since inception of the APUC in 1970. The Anchorage Sewer Utility, which was formerly owned by the greater Anchorage-area borough, was voluntarily submitted to the APUC for regulation in 1971. An umbrella organization, AWWU, was formed in 1975 following unification of the Municipality of Anchorage. The Municipality of Anchorage in 1991 petitioned the then-APUC to exempt AWWU and its electric utility from regulation. The commission is split evenly by a 2 to 2 vote on the question of exempting the electric utility and AWWU. The opinion by the commissioners opposing self-regulation at that time site competition by the municipality's electric utility and telephone utility with other utilities as the primary reason why AWWU should remain regulated by the state. No commissioner suggested then or has since suggested that competition between the water and wastewater was present. Nor is there any competition there today.

The municipality decided its exemption from RCA regulation for two broad reasons. First, the current RCA regulation process and procedures are slow and expensive. From 1993 to 2003, AWWU never requested a rate increase. Yet, in fact, AWWU ratepayers have paid approximately \$2.8 million to regulatory assessments to the RCA during this period (indisc.) every monthly bill, and are projected to pay \$485,000 in 2004 ... to cover the cost of regulation. However, the greater cost to AWWU and its customers is in the form of the cost preparing filings and regulatory (indisc.). History shows that local regulation is

faster, less structured, and more economical. Our second reason is that current RCA regulations and procedures are nonresponsive to local needs. The RCA process is very structured. The RCA process was designed for public utilities and it's not entirely appropriate for municipal utilities. The municipality is more responsive to local needs and is directly accountable to the ratepayers who are served by the utility. These customers are also municipal voters. Public hearings are held by the municipality on all rate matters. I ask the committee's support of House Bill 515, self-regulation has worked effectively across the nation and in other Alaska communities and in Anchorage. Actually, Anchorage has regulated its own public utilities for many more years than the state regulators. The Municipality of Anchorage has a proven track record of successfully regulating the Port of Anchorage, Merrill Field, and Solid Waste Services. All are financially strong, highly reputable enterprises that provide excellent customer service. AWWU has provided its customers excellent service; low, stable rates; and sound finances. Over the years the mayor and assembly have made sound decisions in their oversight of AWWU and other municipally owned utilities. In conclusion, with the passage of House Bill 515, municipal regulation of AWWU will balance customer protection with financial soundness and AWWU will continue to operate on a sound business basis.

Number 0824

MARK JOHNSON, Commissioner, Chair, Regulatory Commission of Alaska (RCA), Department of Community & Economic Development (DCED), noted that he worked with Mr. Premo [for the City of Anchorage] about 15 years ago. Mr. Johnson characterized HB 515 as legislation that represents a fundamental policy call on the part of the legislature. Obviously, there are policy and political dimensions to this legislation. He said that he would address the policy issues today. Mr. Johnson mentioned that there may be some dispute with regard to the amount of regulatory cost charge (RCC) payments from AWWU to the RCA because the RCA places [AWWU's] payments from last year at a little less than what Mr. Premo suggested. However, he said he didn't want to get bogged down in a discussion of who pays what.

MR. JOHNSON related the RCA's perspective that there are benefits to RCA jurisdiction over [AWWU]. The primary benefit has been relative rate stability over time. There has been a suggestion that AWWU has paid for services that it hasn't received. However, Mr. Johnson pointed out that the true beneficiary of the process isn't the utility but rather the consumers. As a result of the RCA's composite regulatory approach, the consumers of water and sewer services in Anchorage have benefited significantly from having stable rates over an extended period time. Although Mr. Johnson opined that AWWU is a relatively well-run utility, he emphasized that removing RCA jurisdiction would result in a fundamentally different framework for the consideration of rates for a significant portion of the state's population. He suggested that the benefits [of removing RCA's jurisdiction] may be unclear. For example, under municipal regulations rate changes would occur with a simple adoption of an ordinance by the Anchorage Assembly. The aforementioned is a fundamentally different process than that of the RCA, which bases its decisions on considerable detail, a written record, and impartial commissioners who sit independent of one another.

MR. JOHNSON commented that the alternative regulation process [proposed in HB 515] isn't particularly well suited to address some complex issues such as rate discrimination, whereas the RCA is well suited and constituted to conduct inquiries on such a basis. Furthermore, the RCA believes it does a good job with such [inquiries] and is probably prepared to deal with problems inherent in municipal operations, such as assessing the reasonableness of payments in lieu of taxes. Recently, the municipality instituted a major change in its approach to [payments in lieu of taxes]. He indicated that some of the resulting questions will be regarding when an exaction is a payment from a municipally owned utility. Further questions will be regarding the amount of the fee and whether it's reasonable. Under municipal regulations, the RCA believes the aforementioned questions, that is the line between municipal taxes [and utility expenses], will be blurry.

MR. JOHNSON opined that the RCA has special expertise and is uniquely situated to address issues that pertain to service area disputes. Within MOA there are entities that provide water and sewer service, but aren't part of AWWU, he noted. He further opined that the RCA is in a good position to address consolidation issues. The RCA, he related, believes that its regulation of AWWU has generally been beneficial to consumers, which the RCA believes is where the legislature should focus its

attention. Mr. Johnson acknowledged that Anchorage is the largest municipal water and sewer entity subject to regulation. However, the vast majority of water and sewer customers in Alaska are subject to RCA jurisdiction.

Number 1355

REPRESENTATIVE CISSNA inquired as to situations in which the RCA has utilized its regulatory authority.

MR. JOHNSON informed the committee that the RCA serves as the appropriate contact for public complaints regarding water and sewer services by AWWU customers. Over the last couple of years, the RCA has received 18 complaints of various types. Since 1989, there have been 69 filings, including tariff issues, made by AWWU before the RCA. These matters take time, he said. Mr. Johnson mentioned that the RCA has just considered a rate increase that is in connection with the [municipal payment in lieu of taxes]. The RCA has allowed the rates in this case to go into effect on a temporary basis, although the permanent rates are suspended pending an investigation by the RCA. Mr. Johnson clarified, "Certainly, ... it's not been intensive relative to this utility [AWWU] over the last decade, but certainly the activity, in our estimation, is going to be picking up."

REPRESENTATIVE CISSNA related her understanding that if a utility has any change at all, it has to approach the RCA. She inquired as to what the 18 complaints and 69 filings look like.

MR. JOHNSON said that he could forward [the committee] the list of tariff filings. The most recent filing from AWWU was very well prepared. However, these are detailed issues addressing the revision of services to particular customers; how people hook up to the utility; the rates charged for hooking up to the utility. The filings are quite varied, he stated.

Number 1703

REPRESENTATIVE SAMUELS turned to a situation in which AWWU wanted a rate increase or decrease, and inquired as to the mechanism or process the municipality would have to address that.

MR. PREMO, with regard to the type of filing, answered that from 1992 [to present] AWWU could account for three different type of filings based on the workload for the RCA. One type of filing,

such as for a rate increase, would require detailed work. There are also filings that require low to moderate work, such as minor service area questions, tariff rule questions, or miscellaneous fee questions. Furthermore, there are the annual filings, such as the annual RCC rate increases. From 1992 [to present] there were five in-depth filings regarding rate cases and the cost of service. In the low to moderate work level, there were 13 filings. However, there were 48 filings in the category of routine, annual work. Therefore, since 1992 there were 129 filings, with only five being classified as requiring in-depth work.

MR. PREMO turned to the process for rate setting envisioned in Anchorage. There have been extensive conversations with the mayor and the chair of the Anchorage Assembly on this matter. The aforementioned parties are in agreement that a better way to do business needs to be established. He expressed the need to create a structure that [allows] full engagement with the customers and runs as a business enterprise with a long-term, healthy organization. This points to a strong board of governance. He likened the structure to the ATU [Anchorage Telephone Utility] board in the late 1990s. He specified that he envisioned a board with rate-setting powers along with three to four steps that would require concurrence of the administration and the assembly through an ordinance process. [Those steps] would specifically discuss [AWWU's] long-range financial plan and annual budget. Mr. Premo clarified that the strong board governance model would go through the rate process similar to the RCA, including holding public hearings regarding the rate case. Additionally, the standard accounting principles that apply in [AWWU's] filings with RCA will remain the same with the board.

REPRESENTATIVE SAMUELS asked whether AWWU is self-sufficient, or receives state or municipal money. He asked if AWWU pays a dividend to the municipality.

MR. PREMO replied that AWWU does receive money from the state, but he pointed out that it's related to the capital program. With regard to operating dollars, AWWU is 100 percent self-sufficient. The rates cover the operating expenses. At this time AWWU doesn't pay a dividend to the general government, although AWWU does pay money to the general government through the "IGC" formula for services it provides. Additionally, AWWU pays a payment in lieu of taxes.

Number 2019

CRAIG GOODRICH, Deputy Fire Chief, Anchorage Fire Department, testified in support of HB 515 and AWWU. Mr. Goodrich opined that no one has a "bone to pick" with the RCA, rather it's merely a matter of philosophy. He noted that the Anchorage Fire Department works hand-in-hand with AWWU as water is the department's primary source of extinguishing fires. Mr. Goodrich pointed out that the Anchorage Fire Department has a direct and constant interface with the water utility. He opined that [AWWU] has exercised exemplary service and primarily focuses on customer service. Therefore, he reiterated support for HB 515.

Number 2108

ROBERT LOHR, Office of Management & Budget, Municipality of Anchorage, informed the committee that he was the executive director of the APUC from 1991-1999 and now is advising the mayor of Anchorage on utility regulatory issues. Mr. Lohr opined that there is real value in what the RCA does. However, the legislature has essentially, on balance, decided that municipally owned utilities are exempt from rate service and practice regulation, that is economic regulation by the state. He noted that there are exceptions to that rule in cases in which any one utility directly competes with another utility. For example, if Municipal Light & Power sold wholesale power to Fairbanks and Chugach Electric, a cooperative, and also wants to sell power to Fairbanks, then one could argue that is competition. Under AS 42.05.711(b) all municipally owned utilities of Anchorage are required to be regulated, simply because of the competition on the power end. However, this legislation would change the aforementioned standard to specify that the exemption applies as long as the utility itself doesn't directly compete with another water or sewer utility. This legislation would have the effect of exempting one additional water and sewer utility from economic regulation by the RCA. Mr. Lohr turned to the power of the commissioner to set boundaries, and noted that the service area boundaries for all utilities would be retained. Therefore, the exemption wouldn't speak to certificate boundaries, which the RCA would continue to regulate as it would interconnection disputes.

REPRESENTATIVE ANDERSON highlighted that no other [water and sewer] utilities are regulated by RCA, other than the City of Pelican, which requested RCA regulation. Furthermore, AWWU is a political subdivision and if the rates were increased by a couple of dollars, there could be a public outcry.

Representative Anderson applauded the job the RCA does, but noted that the RCA process can be intimidating. Moreover, the accessibility of the hearing process is a bit more difficult than a hearing process in Anchorage. Representative Anderson opined that it's easier [to keep the regulation of AWWU] in the city, where it would be uniform.

Number 2371

REPRESENTATIVE ANDERSON moved to report HB 515 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 515 was reported from the House Community and Regional Affairs Standing Committee.

HB 308-EXCHANGE PUBLIC LAND FOR STREAM BANK LAND

CHAIR MORGAN announced that the final order of business would be HOUSE BILL NO. 308, "An Act related to exchanging public land for privately held riverbank and stream bank lands."

Number 2436

REPRESENTATIVE LES GARA, Alaska State Legislature, sponsor of HB 308, explained that this legislation was spurred in part by his interest in fishing and also in part from his realization that many of the riverbanks are privately owned, although they appear to be public. For those familiar with the Matanuska Susitna Valley and the Kenai Peninsula, popular streams such as Montana Creek, Willow Creek, and Anchor River are privately held. Among the land that Alaskan outdoors people cherish the most are the riverbanks. The moment those are sold and public access along the state's rivers are lost, a large part of Alaska is lost. He pointed out that this situation exists throughout Alaska. Therefore, the fishing community has held discussions regarding what to do to preserve public access along the state's riverbanks. If these lands are developed, the [state] will never get them back. For example, Montana devotes about \$300,000 a year toward repurchasing private land. Something proactive should be done before the problem occurs, he said. However, it should be voluntary so that it doesn't impact the rights of property owners and it also keeps the cost down. Therefore, the thought was to allow the Department of Natural Resources (DNR) and Alaska Department of Fish & Game (ADF&G) to offer land trades. The departments could identify important fishing areas with private parcels that are undeveloped and offer those property owners land trades of other state land.

REPRESENTATIVE GARA noted that the fiscal notes from DNR and ADF&G are much higher than he thought they would be. Therefore, he said that he would like to work with the agencies so that the statute could be reworked. He noted that he has requested a ranking of different areas of the state and different fishing streams in order of priority with the top priority being those streams for which the public would want unfettered public access. The prioritization process would be expensive, and therefore he opined that such an approach would have to be dumped. Therefore, Representative Gara proposed working with the departments to develop legislation with a minor or zero fiscal note while maintaining the concept.

REPRESENTATIVE GARA acknowledged that HB 308 and its large fiscal note can't pass out of committee. To the extent the committee likes the legislation, there are two options. One option is for the committee to report the legislation out of committee and leave it to the sponsor to do it without a large fiscal note. The other option is for the committee to hold the legislation. In either case, Representative Gara announced that he would work with both departments in order to accomplish the same goal.

Number 2717

REPRESENTATIVE WOLF pointed out that the Kenai River Center has been doing much work with regard to mapping and categorizing all the wetlands surrounding the anadromous systems. He specified that the Kenai River Center and Kenai Peninsula Borough has a database [of property owners]. Representative Wolf expressed concern with regard to the fiscal note and other aspects of the legislation for which he wanted to work on an amendment.

REPRESENTATIVE SAMUELS asked, "Are you talking public lands anywhere, ... you [are] telling the commissioner to ... make a deal, don't make a bad deal."

REPRESENTATIVE GARA replied yes, noting that if it isn't a good deal, there won't be a trade. He noted that he had been thinking of allowing a trade for property that is valued at up to 10 percent more. Representative Gara specified that this legislation isn't talking about taking a lot of property out of the private domain because the department could just negotiate for easements, which the state already does. Currently, when the state gives away property, it preserves an excess of 50 feet to and along a fishing stream. However, that wasn't the case prior to 1976. Additionally, for much federal land and certain

state land conveyances [the 50 foot easement] was not preserved. Therefore, there is much land along rivers [and streams] that are purely private property and will some day be privately developed.

REPRESENTATIVE SAMUELS inquired as to how much of the land [surrounding streams/rivers in Southcentral Alaska] is in private hands.

REPRESENTATIVE GARA pointed out that the state doesn't have a good land title system outside the municipality, and therefore each time there is a question of ownership research is required. For example, Montana Creek [in Southcentral Alaska] has very large sections of private land and people aren't aware of it because there is almost no development along the creek. He estimated that 25-30 percent of the land surrounding the Salcha and Anchor Rivers is private property. Representative Gara confirmed that he was referring to land above the high water mark.

REPRESENTATIVE WOLF noted that on the Kenai Peninsula there is a 50-foot setback for habitat protection, which means no structures or development in that area.

CHAIR MORGAN highlighted that most of the property on the riverbank is more valuable than that farther from the river. He asked if the trade would be dollar for dollar or acreage for acreage.

REPRESENTATIVE GARA answered that the trade is based on the value of the land.

TAPE 04-9, SIDE B

REPRESENTATIVE GARA said that he is intrigued by a trade in which the property owner could trade for land that is of equal value [or] up to 10 percent more in value.

REPRESENTATIVE SAMUELS commented that the down side of such is the negotiating position because if up to 10 percent more in value is allowed, then that will be given.

Number 2957

REPRESENTATIVE KOTT inquired as to the location of the language that requires the land exchange to be of equal value. It seems that the state shouldn't restrict the commissioner from making a

determination of what has to be negotiated. Representative Kott related his dislike of including "up to 10 percent" language because he would prefer to leave it up to the commissioner. However, he opined that it would take more than an equal exchange to entice him, if he were an owner of riverbank land, to trade.

REPRESENTATIVE GARA clarified [that the up to 10 percent value of the trade] is an assumption. He pointed out that the land trade language is located in Section 2 on page 2. Section 2 provides the commissioner of [ADF&G] the power to exchange. Although the language doesn't specify that the land being exchanged has to be of equal value, the property owner will probably only trade if the land is of equal value. Representative Gara acknowledged that under this language the commissioner would probably have the ability to trade something more valuable for something less valuable. If the desire is to allow the aforementioned, then language to that effect should be added.

Number 2857

REPRESENTATIVE WOLF inquired as to the percentage of land that is part of the flood plain on the Anchor River.

DOUG VINCENT-LANG, Assistant Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), replied that he would get an answer for the committee.

REPRESENTATIVE GARA said that he has a map of the lower section of the Anchor River that specifies where there is public easement and where there isn't.

Number 2807

CHAIR MORGAN announced that he would hold HB 308 to allow the sponsor to work with the Department of Natural Resources and the Alaska Department of Fish & Game on the fiscal note.

REPRESENTATIVE KOTT expressed his hope that Representative Wolf would also work with Representative Gara. He also expressed the need for the sponsor to work to reduce the rather hefty fiscal note of HB 308.

CHAIR MORGAN announced that he ultimately intends to move HB 308 from committee, but is going to provide the sponsor time to work on the fiscal note.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 10:58 a.m.