

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 16, 2005

3:22 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Pete Kott
Representative Gabrielle LeDoux
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 108

"An Act relating to the regulation of water and sewer utilities of political subdivisions that are not in competition with other water and sewer utilities."

- MOVED HB 108 OUT OF COMMITTEE

HOUSE BILL NO. 33

"An Act relating to the effect of regulations on small businesses; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 108

SHORT TITLE: WATER & SEWER UTILITIES OF POLIT. SUBDIV.

SPONSOR(s): LABOR & COMMERCE

01/26/05	(H)	READ THE FIRST TIME - REFERRALS
01/26/05	(H)	CRA, L&C
02/10/05	(H)	CRA AT 8:00 AM CAPITOL 124
02/10/05	(H)	Moved Out of Committee
02/10/05	(H)	MINUTE(CRA)
02/11/05	(H)	CRA RPT 2DP 3NR 1AM
02/11/05	(H)	DP: CISSNA, THOMAS;

02/11/05 (H) NR: LEDOUX, SALMON, NEUMAN;
02/11/05 (H) AM: KOTT
02/14/05 (H) FIN REFERRAL ADDED AFTER L&C
02/16/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 33

SHORT TITLE: EFFECT OF REGULATIONS ON SMALL BUSINESSES
SPONSOR(S): REPRESENTATIVE(S) MEYER

01/10/05 (H) PREFILE RELEASED 12/30/04
01/10/05 (H) READ THE FIRST TIME - REFERRALS
01/10/05 (H) L&C, JUD
02/16/05 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

MARK PREMO, General Manager
Anchorage Water and Wastewater Utility (AWWU)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 108.

KATE GIARD, Chair
Regulatory Commission of Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified that HB 108 should not go into effect until the Municipality of Anchorage and the AWWU have shown they are ready to take on regulatory authority.

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 33 on behalf of Representative Meyer, sponsor.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [3:23:52 PM](#). Representatives Guttenberg, Lynn, LeDoux, and Anderson were present at the call to order. Representatives Crawford, Rokeberg, and Kott arrived while the meeting was in progress.

HB 108-WATER & SEWER UTILITIES OF POLIT. SUBDIV.

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 108 "An Act relating to the regulation of

water and sewer utilities of political subdivisions that are not in competition with other water and sewer utilities."

CHAIR ANDERSON said a similar bill, HB 515, died last session due to time. The bill is designed to exempt the Anchorage Water and Wastewater Utility (AWWU) from the regulatory purview of the Regulatory Commission of Alaska (RCA). He said local control is the issue, and in his opinion there is no evidence showing that state oversight is better for the consumer. He added that he has worked with the Mayor of Anchorage, the AWWU, and the Anchorage Assembly to develop a plan for a local oversight authority for the utility, which will maintain the level of consumer protection while encouraging stronger local government and local ownership.

MARK PREMO, General Manager, Anchorage Water and Wastewater Utility, said he supports HB 108, which specifically exempts AWWU from economic regulation by the RCA, and places it in the same status as every other municipally-owned water utility except one--Pelican. He said AWWU is two separate utilities: water utility and sewer utility. AWWU was formed in 1975 after the unification of the municipality of Anchorage. In 1991, the municipality petitioned for an exemption from regulation, and the commission split on a two to two vote. The opinion of the opposing commissioners was that AWWU should be regulated because of competition.

[3:29:36 PM](#)

MR. PREMO said that during the last session HB 515 was passed by the House, but time ran out for the Senate to act. Current RCA regulation procedures are slow and expensive, he said, and he estimates that the AWWU will pay over \$500,000 in regulatory costs in 2005. He said the greater cost to AWWU and its customers is in preparing filings and the regulatory delay. The RCA scheduled public hearings 15 months after AWWU filed for rate increases, which substantially increases the jeopardy for customers in the event that a portion of the requested rates have to be refunded, he said. He stated that local regulations are faster, less structured, more economical, and more responsive to local needs. The RCA process was designed for private utilities, and it is not accountable to Anchorage residents. The municipality is accountable because ratepayers are voters. He asked for support of HB 108 and said that self-regulation has worked effectively across the nation and the state. Anchorage has a proven track record of managing other utilities. Ratepayers have benefited from AWWU's efficiencies

and upgrades, which have been done without assistance from the RCA, he noted.

[3:33:02 PM](#)

MR. PREMO said Anchorage's mayor and assembly have made sound decisions in the oversight of AWWU. The water and wastewater advisory commission is currently meeting to develop an authority structure that will include strong consumer protections and a ratemaking process similar to standard industry practices. Mr. Premo concluded that municipal regulation of AWWU will balance consumer protection with financial soundness.

CHAIR ANDERSON asked him if AWWU is the only municipally owned water utility that is regulated by the RCA.

MR. PREMO said, "Short of Pelican."

CHAIR ANDERSON asked how many wastewater utilities are in the state.

MR. PREMO replied that all cities have municipally-owned water and waste water utilities except Fairbanks, which is privately owned and under the RCA structure.

CHAIR ANDERSON asked what will be the process when HB 108 passes.

MR. PREMO replied that the process would be the same as in Juneau, Sitka, Ketchikan, Kenai, Homer, and the vast majority of cities in Alaska, and it is direct oversight by the local elected officials.

[3:36:29 PM](#)

MR. PREMO said that once the authority is established, the overview of the utility, less items that are vested in the charter of Anchorage to the assembly, would be passed on to the authority.

CHAIR ANDERSON asked if the advisory commission would establish the authority and then there would be a new group that would serve as commissioners on that authority.

MR. PREMO answered that Chair Anderson is generally correct. Right now AWWU is in discussions with the advisory commission, municipal administration, and the assembly to implement that

authority, he said. He added that the advisory commission would be empowered to a higher level of responsibility for oversight of the daily operations of the utility. "It is envisioned that that authority would have involvement of both the administration and the assembly in the appointment of the members," he said.

CHAIR ANDERSON asked about the assembly increasing utility rates without control from outside.

MR. PREMO said AWWU concurs with that concern about the control mechanism. Currently the rates are determined by a long series of comparisons and equity questions. The assembly will use a similar ratemaking methodology, with principles that are standard in the industry. Comparing the ability of the assembly to make rates with RCA's ability, he said: "I believe 11 elected local officials are much more accountable to the rate payers who are also voters in Anchorage, than a series of five state-appointed officials from Juneau."

REPRESENTATIVE CRAWFORD said he got lost during the explanation of the ratemaking process.

MR. PREMO said that the process used today will be the same after HB 108.

REPRESENTATIVE CRAWFORD asked if the assembly is the one that makes the rate decision.

MR. PREMO said the utility staff does the rate analysis, the board approves it, and then the assembly has ultimate approval.

CHAIR ANDERSON said isn't it more complicated, and thus more intimidating, to go through the RCA hearing process than a local process.

[3:42:56 PM](#)

MR. PREMO said he agrees, and, as an example, the current rate case has over 530 questions of discovery, and it is very time-consuming and formal--almost like a trial with lawyers.

REPRESENTATIVE LYNN asked about financial savings for the municipality.

MR. PREMO said he thinks it will vary from year to year. He said that the \$500,000 that is to go to the RCA "would

immediately go away." Mr. Premo said he believes the cost of self-regulation is one quarter the cost of RCA regulation.

REPRESENTATIVE LYNN asked if that means a decrease in his constituents' water bills.

MR. PREMO said barring inflation, that is correct.

REPRESENTATIVE CRAWFORD said he is concerned that the assembly is faced with a tax-cap and budget shortfalls, and it might "try to backfill with revenues from AWWU."

MR. PREMO replied that local accountability is the strongest there is. The assembly would be accountable to their voters. Additionally, the authority structure will prevent that, he said.

[3:47:11 PM](#)

CHAIR ANDERSON said that Mayor Begich claimed that this was a partisan effort, but this is evolving every year even as mayors and the assembly changes.

MR. PREMO said he agrees that this is more about local control than partisanship, and Anchorage is sophisticated enough to oversee its own utilities.

REPRESENTATIVE GUTTENBERG pointed out that taking a utility from under the RCA removes the consumer protection aspect, or the public advocacy section, not in relation to rate paying. How would the assembly address those issues? he asked.

MR. PREMO said AWWU has discussed it with the advisory commission at length. He suggested Representative Guttenberg's question is: "What is his accountability to the customers?" He said complaints about him now would be more difficult for a customer to get resolution on than if he is directly accountable at the local level.

[3:49:37 PM](#)

MR. PREMO added that under HB 108, he will not have the ability to say to a customer, "Go see the regulatory commission and see if we're following our rules."

[3:50:46 PM](#)

REPRESENTATIVE GUTTENBERG asked how many non-rate-based consumer complaints have there been in the RCA for the AWWU.

KATE GIARD, Chair, Regulatory Commission of Alaska, said there were 29 complaints between 2001 and 2004, and 7 complaints so far in 2005. As the former chief fiscal officer for the Municipality of Anchorage, she assures that the water and wastewater utility is a finely run organization. She has the utmost respect for Mr. Premo and his leadership in bringing the utility to the good position it is in today. RCA is constructed in a formalized manner, and it offers the public the opportunity to come in and complain, she noted. The RCA becomes a judge at that point and listens to the case created by the complaint. Alaska's attorney general is looking at the current AWWU-proposed rate increase of about 20 percent, because the state is concerned about the hike and wants to investigate. It is a court-like event on a 15-month timeline, which is long, she said. She noted that the RCA is going to fix its reputation for poor timeliness, but in this particular case Mr. Premo's comments trouble her because the parties established the schedule. She said it is of great concern to the attorney general that customers throughout Anchorage will have a 20 percent increase in rates.

[3:55:29 PM](#)

MS. GIARD said she thinks local control is a fine idea, and as long as there are processes in place, the RCA can be mimicked, but she wonders "why you want to go through the cost of mimicking it." But she said, "They're not really ready yet. They have a rate case going on; they haven't really provided you with a sufficient degree of comfort in what the form of the oversight agency is going to be; what powers does it hold? How are you going to assure your rate payers--voters--that they won't increase their rates again, year to year to year to year?"

MS. GIARD said that when she worked for Anchorage, she looked to the AWWU for money, but she could not access it. The local government still cannot access that money, but it raised the property taxes on the AWWU three times in two years by 300 percent. "That's the basis of this particular rate case," she said; the utility's tax bill went up by \$6.4 million, and that is the essence of a lot of the struggle. Looking at the value RCA provides, she believes the municipality can mimic it, but she warns the committee to ask for it to be:

a little bit more defined so you can say to your ratepayers, yes, you're going to have a specific amount of increase in 2005 in your bills, but I can assure you--because I know what's going to happen in the structure and the set up--it's defined, the assembly has passed it. They have given us some kind of assurance that this is the structure. We've looked at it. We're comfortable with it. We feel that we've done our fiduciary responsibility to you in letting regulation go.

MS. GIARD added that "they can do it," but she doesn't feel that they are ready to.

CHAIR ANDERSON said he has seen an onslaught of entities wanting to get outside of the RCA, and sometimes there may be merit and sometimes not. He said there is a need for the RCA, and he complemented Ms. Giard for her diligent and hard work. He said this case is a good one to be withdrawn from RCA regulation because no other similar utility is under the RCA. He said if the legislature passes this regulation, it will expedite an authority being created.

MS. GIARD said anytime the legislature feels comfortable that the municipality of Anchorage will protect the ratepayers from paying for more than just a water bill, there is no reason that the RCA can't stand down. She said the RCA does not need to regulate AWWU when there are competent means at the municipal level, and there are a lot of reasons to let it go. She cautioned that Fairbanks used its utility as a funding source for the city and the utility value went down.

[4:03:51 PM](#)

MS. GIARD told the committee the AWWU is in the middle of a rate case. She said recommended the legislature allow that to finish before moving forward, and she suggested bill language to that effect. She thinks there is momentum and that in the end HB 108 will probably be a good thing for the water utility and the city.

REPRESENTATIVE GUTTENBERG asked for a timeline for the rate case.

MS. GIARD said there is a hearing date for June 14, 2005, and the RCA issue order date is July 30, 2005.

REPRESENTATIVE GUTTENBERG said if this legislation passed before then, it could void the rate case.

MS. GIARD said the rate case would just fall away.

REPRESENTATIVE GUTTENBERG asked if she recommends language that the bill take effect after the rate case decision.

MS. GIARD said she thinks allowing the RCA to continue the process is a good way of passing the baton of control.

MR. PREMO said he has not requested a legal opinion regarding such language, and he might look at that. He said he would not have filed the rate case in June if it hadn't met all the structural integrity issues required for expenses. He said the big issue is when the legislature would be comfortable with self-regulation by the city of Anchorage, and he believes the House spoke loudly last year that it is comfortable. He said the board is forming now and expects it to be formalized conceptually in the next 30 to 45 days. But even without that, he said, the municipality of Anchorage has proven that they know how to run an enterprise fund. Tying the legislation to a defined date based on the rate case could get lengthy, and he said that would be his biggest concern.

[4:08:44 PM](#)

CHAIR ANDERSON said that last year's legislation wasn't tied to the rate case. "Is that correct?"

MR. PREMO said, exactly; it is an ongoing issue.

REPRESENTATIVE ROKEBERG stated that he is concerned about the effect of the bill on the current rate case and thinks it would be wasting money to go through with the case. He asked Mr. Premo if he is satisfied with the interim rate increase that has been granted.

MR. PREMO replied no because the rate case filed in early 2004 requested a two-stage rate increase. One stage would be for the 2004 interim refundables, and the second stage would happen in January 2005, he said. "At the time we filed our 2004 request, we were under the opinion that we could move through 2004 and get to a permanent rate hearing and review the interim rate requests for 2004 and make permanent the rates for 2005." He said the rate case hearing has been moved back, and the AWWU has

not been granted the request for interim refundable rates for the portion associated with the 2005 cost increases.

REPRESENTATIVE ROKEBERG asked if Mr. Premo was not satisfied with the interim rates and if the AWWU would like refunds back to the consumers.

MR. PREMO said it is the other way around. He said the AWWU has not received the rate increases associated with 2005. "We're operating without that."

CHAIR ANDERSON said there isn't going to be rebate, but that Mr. Premo's point has been that there will be increased efficiency, local control, and a simplified process. He said that Mr. Premo has never said on record that there is an easy way to reduce rates, but that is what he prefers to do if possible.

MR. PREMO said the issue is of local control, and the rate case should not be brought into the discussion.

[4:14:09 PM](#)

REPRESENTATIVE ROKEBERG wants to figure out if the effective date of the bill should be now or wait until the rate case is over. He noted the lag time of the rate increase and speculated that if the utility were under local control there could be incremental, periodic adjustments in rates. He said he thinks it is bad policy to have a large jump in rates.

MR. PREMO said between 1992 and 2004 there was not a rate increase because it wasn't needed, but the Anchorage assembly recently increased the utility's taxes by 40 percent, and that is the driving factor in the rate increase.

REPRESENTATIVE ROKEBERG said that the legislature did not cause the tariff increase, the municipality did.

MR. PREMO said the mill rate has stayed the same but it is now applied to the entire AWWU plant, unlike before.

[4:17:50 PM](#)

REPRESENTATIVE CRAWFORD asked for a definition of an interim refundable rate.

MR. PREMO said it is a temporary rate increase. The RCA can approve a rate before it fully analyzes the increase, and it

will give the approval for an interim refundable rate which allows for a refund to the consumer if that rate is not ultimately approved.

REPRESENTATIVE GUTTENBERG asked how the assembly or other authority would have the expertise to assess a proposed rate increase, and if there would be an increased cost to the municipality.

MR. PREMO said all rate filings go to the assembly for approval now.

[4:20:34 PM](#)

REPRESENTATIVE ROKEBERG asked at what stage the development of the new authority is, and how quickly it will be in place.

MR. PREMO replied that Anchorage's mayor and senior administrators agree that the authority is the proper form of governance for the utility. He added there is an advisory commission that the AWWU is working with, and in late March there will be a recommendation on what the authority will look like and the controlling principles that are embodied in their bylaws.

[4:22:39 PM](#)

CHAIR ANDERSON said he thinks there can be a compromise and then he closed public testimony.

REPRESENTATIVE GUTTENBERG said the committee has not heard from the public, and he wonders what kind of public process there is.

CHAIR ANDERSON said there is a toll-free number, email access, and Gavel to Gavel, which allows the public to call in now. He asked for a motion to move the bill and said that Mr. Premo will get documentation on how the bill will affect the rate case.

REPRESENTATIVE ROKEBERG said there must be some reference to the rate case.

CHAIR ANDERSON said Mr. Premo will get documentation before the first hearing in house finance.

[4:26:28 PM](#)

REPRESENTATIVE ROKEBERG said he would like a message from the Anchorage Assembly, because it will be picking up the baton. He said he thinks that it's ludicrous that Anchorage and Pelican are the only water utilities under the RCA, and it needs to be resolved.

REPRESENTATIVE ROKEBERG moved to report HB 108 out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objection, it was so moved.

The committee took an at-ease from 4:27 p.m. to 4:28 p.m.

HB 33-EFFECT OF REGULATIONS ON SMALL BUSINESSES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 33 "An Act relating to the effect of regulations on small businesses; and providing for an effective date."

CHAIR ANDERSON moved to adopt CS HB 33, 24-LS0239\G, Bannister, 2/9/05 as a work draft. Seeing no objection, version G was before the committee.

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, said that in 1980 the federal government enacted the Regulatory Flexibility Act (RFA), which directed regulatory agencies to consider the impact of regulations on small businesses and to study the effect they have on the economy while looking at alternative means to effect the regulatory goal. In 1996 the Small Business Regulatory Enforcement Fairness Act was passed, and that added a judicial review provision to the RFA. The Office of Advocacy was created in the Small Business Administration, and it estimated that in 2002 the new statutes saved small businesses \$21.1 billion in compliance costs with federal regulations. Based on the success of the federal program, the Office of Advocacy drafted model legislation for states, which is incorporated into HB 33. He added that versions of this bill have passed in 37 states.

MR. PAWLOWSKI said HB 33 requires regulatory agencies to consider the impacts of regulations on small businesses, and it gives them the freedom and encouragement to look at alternate methods for meeting the same regulatory goals. HB 33 has been changed for the committee substitute (CS). The CS limits the scope of the studies that are called for by adding "using available information and without conducting new studies that are extensive." The reason for adding that language is that

Alaskans are "sadly intimately familiar" with the environmental impact statement process. Agencies were afraid such studies would take a few years, he said, and it is not the intent of the sponsor "to hire scores of economists to conduct studies" on regulations that might cost businesses a few thousand dollars a year. He said HB 33 is about giving agencies the flexibility to use available information and common sense.

MR. PAWLOWSKI noted the second change for the CS excludes regulations promulgated by the boards of fish and game because the boards make allocation decisions and automatically have an adverse impact on small business. The board process is very open and public, and "can't really be subject to the provisions of HB 33." The third change removes the judicial review process from the bill, because opening this up to the courts is burdensome and "not appropriate to the level of discussion we were having."

[4:34:36 PM](#)

REPRESENTATIVE LYNN asked for a definition of "extensive" regarding the language, "without conducting new studies that are extensive."

MR. PAWLOWSKI said that when agencies are promulgating regulations they have access to a lot of information, but "we don't want them to be conducting economic analysis to any significant detail--that being language we need to work on."

REPRESENTATIVE LYNN said that language is like finding a grey ghost in the fog.

MR. PAWLOWSKI agreed.

REPRESENTATIVE LEDOUX said the intent of the bill is laudable, but she doesn't like the phrase "may have an adverse effect on small businesses," since almost any regulation may have an adverse affect on somebody. So would all regulations have to have this type of study? she asked.

[4:37:46 PM](#)

MR. PAWLOWSKI said probably yes--it provides a new focus for agencies. Many who start small businesses don't have resources or experience, and they react to regulations once they have been passed, he stated. "It has a wide-ranging effect, and in other

states that have had the judicial review process--it is amazing to see some of the regulations that have been challenged in court."

REPRESENTATIVE LEDOUX asked if there is a fiscal note.

MR. PAWLOWSKI said the administration is still working on it.

REPRESENTATIVE CRAWFORD said that it seems that the bill changes the definition of small businesses from 50 employees to 100 employees. He said he is concerned that there will need to be a fiscal statement for each new regulation on how it affects small businesses.

MR. PAWLOWSKI said, "You are absolutely correct." It is a broad policy decision at the federal level, he added, and it is a question of how responsive and considerate the regulatory process should be on small businesses. He said the definition of a small business is still being worked on.

[4:40:09 PM](#)

REPRESENTATIVE GUTTENBERG noted that regulations are often directed at businesses, and this bill might completely undermine the purpose of the regulation. The restriction on only using current information may preclude agencies from finding out what they need to know. "You're hampering yourself,"

REPRESENTATIVE ROKEBERG asked if people in small business have read this.

MR. PAWLOWSKI said he is getting letters of support from small businesses and would be happy to provide them.

REPRESENTATIVE ROKEBERG asked about occupational licensing, which must be self-supported. "I see absolutely no net benefit to small businesses if their licensures and costs of doing business is going to be increased substantially because of more regulation--this is more regulation, not de-regulation."

MR. PAWLOWSKI said that is a very important point because the fiscal impact is outside of the general fund spectrum, and it is being worked on. He added that the administration will testify later on that issue.

CHAIR ANDERSON said he thinks people are privy to the meetings going on, and it is a work in process.

REPRESENTATIVE ROKEBERG said he has been in small business for 40 years and this scares him.

[HB 33 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [4:45:01 PM](#).