

HOUSE FINANCE COMMITTEE  
May 17, 2022  
1:36 p.m.

1:36:39 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative Bryce Edgmon  
Representative DeLena Johnson  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen  
Representative Adam Wool

MEMBERS ABSENT

Representative Steve Thompson

ALSO PRESENT

Senator Robert Myers, Sponsor; Theresa Woldstad, Staff, Senator Robert Meyers; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Representative Zack Fields, Chair, House Labor and Commerce Committee.

PRESENT VIA TELECONFERENCE

Keith Kurber, Commissioner, Regulatory Commission of Alaska, Fairbanks; Stuart Goering, Assistant Attorney General, Department of Law; Kristin Schubert, Commission Section Manager, Regulatory Commission of Alaska, Anchorage; Kurt Froening, Alaska Waste, Anchorage.

SUMMARY

HB 66 ELECTIONS, VOTING, BALLOTS

HB 66 was SCHEDULED but not HEARD.

HB 259 PERMANENT FUND DIVIDEND; 25/75 POMV SPLIT

HB 259 was SCHEDULED but not HEARD.

CSSB 190 (FIN)

REGULATORY COMMISSION AK/REFUSE UTILITIES

CSSB 190 (FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the meeting.

#sb190

CS FOR SENATE BILL NO. 190 (FIN)

"An Act extending the termination date of the Regulatory Commission of Alaska; relating to Regulatory Commission of Alaska regulations regarding refuse utilities; relating to the powers and duties of the legislative audit division; and providing for an effective date."

1:37:13 PM

Co-Chair Foster listed individuals available to speak to the bill. He invited the bill sponsor to begin.

SENATOR ROBERT MYERS, SPONSOR, introduced the bill with prepared remarks on the sponsor statement:

At its core, SB 190 started out as a relatively simple bill to extend the termination date of the Regulatory Commission of Alaska (RCA) until June 30, 2030, in alignment of the recommendations of the legislative auditor. The RCA is an independent, quasi-judicial regulatory body that was formed by the legislature in 1999 to replace the Alaska Public Utilities Commission (APUC). The RCA monitors active certificates for public utilities and pipeline. These certificates cover a broad range of activities from provisional certificates for small village wastewater to fully regulated telecom, electric, and natural gas monopolies.

Changes made in the Senate Finance Committee were simple housekeeping that addressed the refuse utility backlog by adding them to the simplified rate filing procedure and removing an extraneous RCA annual report review process on the advice of the legislative auditor.

Changes made in the House Labor and Commerce Committee are more extensive, obligating the RCA to explicitly include municipal refuse utilities amongst other obligations.

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THERESA WOLDSTAD, STAFF, SENATOR ROBERT MEYERS, reviewed the sectional analysis (copy on file):

Section 1:

Page 1, Lines 6-14, Page 2, Line 1

This section adds intent language that the Regulatory Commission of Alaska shall adopt regulations specific to refuse utilities to provide for sufficient public notice and time for ratepayers to meaningfully comment on rate filings. Additionally adds intent language relating to information in the decision-making process of the Regulatory Commission of Alaska and outlining that it is not the intent of the changes in section 4 to interfere with normal rate-making methodologies.

Section 2:

AS 42.05.381(e) Page 2, Lines 2-12

This section amends AS 42.05.381(e) to include refuse utilities. AS 42.05.381(e) is the section of law that provides for a simplified rate filing procedure.

Section 3:

AS 42.05.641 Page 2, Lines 13-20

This section increases the Regulatory Commission of Alaska's regulatory obligations to explicitly include municipal refuse utilities.

Section 4: AS 42.05.641 Page 2, Lines 21-31, Page 3 Lines 1-14

This section obligates the Regulatory Commission of Alaska to oversee the privatization of a municipal refuse utility and review privatization proposals. This new section also outlines the contents required in the proposals including consideration of consumers' rates, a business plan that lists perspective vendors, projected cost of privatization compared to continued municipal operations for 10 years, and potential conflicts of interest by municipal officers. The proposals also must include proposed methods for evaluating the utilities performance to avoid diminished service quality, interruption, or stoppage of work by the contactor, ways to encouraging completion, monitoring contactor issues relating to contract renewals, and address municipal employee displacement.

This section also provides a definition of privatize.

Section 5: AS 42.05.990(6) Page 3, Lines 15-31, Page 4, Lines 1-14

This section adds municipal refuse utilities to the definition of "public utility" or "utility" found in AS 42.05.990(6).

Section 6: AS 44.66.010(a)(3) Page 4, Lines 13-15

This section extends the termination date for the Regulatory Commission of Alaska until June 30, 2030.

Section 7: AS 24.20.271(11) Page 4, Line 16

This section repeals AS 24.20.271(11), a requirement for the legislative audit division to conduct an audit every two years of information found in the annual reports regarding compliance by the Regulatory Commission of Alaska.

Section 8: Page 4, Line 17

This section establishes an immediate effective date.

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Co-Chair Foster indicated the committee would hear from three invited testifiers. He hoped to move the bill out of

committee. He noted the RCA was set to expire in June of 2022; the bill would extend the RCA eight years. He invited Ms. Curtis to provide testimony.

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Co-Chair Foster indicated Representative Josephson and Representative Wool had joined the meeting.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, highlighted the sunset audit report dated September 2021 in members' packets (copy on file). The audit concluded the RCA was operating effectively and serving the public's interest. The report recommended an eight-year extension and had one recommendation shown on page 9. She explained the recommendation was administrative in nature and pertained to the RCA's monthly meetings. She explained that RCA's regulations required the commission to meet twice a month. She detailed that in instances when there were no agenda items, the RCA had been canceling the meetings. The audit had found that 25 of 88 scheduled meetings had been canceled, including 6 consecutive meetings. She elaborated that according to RCA management their regulations allowed them to waive a requirement by their own motion. The audit agreed and noted the motion had to be official. She expounded that an official motion had not been made; therefore, it was essentially a technicality. She agreed it was reasonable to cancel a meeting when there were no agenda items. The audit recommended the RCA clarify its regulations. She concluded the audit was very clean overall and an eight-year extension was recommended.

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Representative Wool asked Ms. Curtis to comment on the refuse portion of the bill.

Ms. Curtis responded that she did not have a comment on the issue, which had not been part of the audit.

Representative Wool asked when the last time another area of regulation had been added to the RCA similar to refuse. He asked what rates the RCA regulated.

Ms. Curtis replied that the RCA would have the most knowledge of what it regulated. She stated the organization

and functions section addressed what the organization did at a high level. She noted that pages 6 and 7 addressed what regulation and statutory changes happened during the audit period at a high level.

Representative Wool commented that people associated with the RCA with utilities. He surmised that refuse was counting as a utility. He wondered about the last time something was added.

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Co-Chair Foster invited testimony from the RCA.

KEITH KURBER, COMMISSIONER, REGULATORY COMMISSION OF ALASKA, FAIRBANKS (via teleconference), introduced himself and shared he had been the RCA commissioner for the previous 14 months. He was available for questions.

Representative Wool asked what utilities the RCA currently regulated and when the last utility had been added.

Mr. Kurber responded that the commission regulated waste utilities presently. He detailed there were unregulated waste utilities. He stated it was effectuated by amount of gross income on a yearly basis. He explained the initial amendment been introduced in the Senate to allow for a simplified rate filing for the RCA for waste utilities that were rate regulated by the RCA. He offered that the amendment passed in the House Labor and Commerce Committee related to municipal utilities.

Representative Wool referenced Mr. Kurber's testimony that the RCA currently regulated a certain kind of waste. He stated his understanding that municipal waste collection had been added in the House Labor and Commerce Committee. He did not understand the difference.

Mr. Kurber clarified that two amendments were adopted outside of the clean RCA extension bill. The first amendment had been adopted by the Senate that included a simplified rate filing opportunity for rate regulated waste utilities. He explained it was typical in Alaska that utilities were not rate regulated by the RCA. Under the amendment added by the House Labor and Commerce Committee, filing reviews made by a municipality would be moved from the municipality's control to an independent entity or

contractor. He noted that an assistant attorney general was available online for more detailed information.

1:49:30 PM

STUART GOERING, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), addressed Representative Wool's question about whether the RCA currently regulated refuse utilities owned by municipalities. He explained they were currently defined as public utilities under AS 42.05.990(6)(f). The definition covered refuse utilities owned by municipalities and privately owned refuse utilities. The amendment in the House Labor and Commerce Committee did not change the definition but included municipally owned utilities under the definition. He relayed there was currently no ambiguity about the issue in existing law. He stated that as far back as 1992, the Alaska Supreme Court ruled that municipally owned refuse utilities were required to have certificates from the APUC at the time [later renamed the RCA]. He clarified that the amendment did not add anything to the definition of public utility, and it did not change the way the commission would relate to municipally owned refuse utilities generally in terms of their having a certificate and so forth.

Co-Chair Foster heard the bells announcing House floor session. He relayed the committee would have to wrap up soon.

Representative Wool paraphrased his understanding of Mr. Goering's statements. He surmised the provision was somewhat redundant.

Mr. Goering agreed. He explained that municipally owned public utilities that furnish refuse collection and disposal were already covered by the Public Utilities Act; therefore, the addition of the definition was redundant.

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AT EASE

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RECONVENED

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Co-Chair Foster OPENED public testimony.

KRISTIN SCHUBERT, COMMISSION SECTION MANAGER, REGULATORY COMMISSION OF ALASKA, ANCHORAGE (via teleconference), was available for questions.

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KURT FROENING, ALASKA WASTE, ANCHORAGE (via teleconference), addressed the amendments that had been included in the bill. He indicated that refuse utilities were excited about the simplified rate filings process. The change would shorten the amount of time it took to get rates approved. He did not like the amendment adopted in the House Labor and Commerce Committee, which was different and addressed municipal waste utilities. He explained there was a difference between the way a municipal trash utility was regulated and the way Alaska Waste was regulated. He remarked that much of the issue had to do with accounting. He highlighted that one of the provisions was to make sure that if a municipality wanted to privatize its refuse utility there were costs that would be looked at to make sure what the rates would be for a 10-year window. He elaborated that the accounting practices Alaska Waste had to go through to get its rates approved with the RCA were very different than what a municipality had to do. Alaska Waste was concerned that the cost comparisons may not be a true apples-to-apples comparison. He stated that municipal refuse utilities did not have the same accounting system. He could not speak to what the municipal accounting systems were, but the rate setting system for Alaska Waste was intricate and in depth.

Mr. Froening expounded that often times when a municipality wanted to privatize something they were looking for a different level or type of service from what they provided in the past. He stated it was unclear who would decide how to value that in a "go forward" situation. He stated it appeared that the amendment was put in at the last minute, and more discussion and clarification was needed.

Co-Chair Foster CLOSED public testimony.

Co-Chair Foster he asked if Representative Zach Fields wanted to explain the rationale behind the amendment made in the House Labor and Commerce Committee.

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REPRESENTATIVE ZACK FIELDS, CHAIR, HOUSE LABOR and COMMERCE COMMITTEE explained the amendment adopted in the House Labor and Commerce Committee. He detailed that when the bill had arrived in committee it already included the addition of refuse collection utilities. He elaborated that the committee had received a request from the Alaska Public Interest Research Group (AKPIRG) to add language including a review so that in the event a municipality wanted to sell or outsource management of refuse collection services, the RCA would do a review to ensure consumers would not be adversely impacted under a privatization scenario compared to a scenario in which there continued to be public management. He highlighted that over the last 40 years many jurisdictions had privatized public services. He elaborated that some jurisdictions had gone back and insourced the public services because they found privatization was more expensive to consumers. He represented Anchorage and shared that Anchorage had very economical services provided by Solid Waste Services; the employees were treated well and had good wages, benefits, and a pension.

Representative Fields explained that the amendment added by the House Labor and Commerce Committee had been drafted in consultation with the Department of Law and RCA and required that RCA review a proposed privatization, look at the business model, and ensure that consumers would not be adversely impacted. He clarified that the amendment did not prevent privatization, but he believed it ensured that if privatization occurred, consumers would be held harmless.

Co-Chair Foster indicated that Representative Carpenter, Representative Rasmussen, Vice-Chair Ortiz, and Co-Chair Merrick had joined the meeting.

Representative Wool understood some of the motivation behind the amendment in wanting to keep good paying jobs for services provided by the city. He knew there was substantial movement towards privatization over the last couple of decades of various services the municipalities and companies provided. He asked if the RCA evaluated the move from public to private and assessed the service, rate, transition, and impact.

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Mr. Kurber thought Mr. Goering could answer the question.

Mr. Goering responded that if any public utility, including a certificated municipal public utility, wanted to transfer ownership, the RCA had to approve the transfer in advance under AS 42.05.281. The review that the commission did was to ensure that the new owner of the utility was financially, managerially, technically fit, willing, and able to perform the public utility services and that the public convenience and necessity still required the service offered under the certificate. He explained it included a very wide range of considerations. The certificate transfers were noticed to the public, so the public had the opportunity to make comments if there were unique aspects of the transfer that were of interest to the public including organizations like AKPIRG.

Mr. Goering noted that organizations and consumers frequently commented on certificate transfer applications. The RCA did not currently make any attempt to project future rate impacts of the acquisition of a certificate because utilities were entitled to set their rates and the commission reviewed the rates to determine whether they were just and reasonable. He stated that what constituted a just and reasonable rate for one owner may differ from what was just and reasonable for another owner based on the rate of return they would be able to earn.

Representative Wool stated his understanding that if a public utility wanted to go private, the RCA reviewed the process to ensure it was fair and equal. He asked whether the utility was beyond regulation once it became private. For example, he asked if the RCA had any input if a private contractor took over waste management in Anchorage and doubled its rates two years later. Alternatively, he wondered if it was out of the RCA's hands at that point. He provided another scenario where the private contractor doubled the rates because they were paying employees substantially more money. He wondered if that would be a justification for the increase.

Mr. Goering replied that there was a distinction being lost in the current discussion. He clarified that the term public utility referred to the service being offered, not to the ownership of the utility. He expounded that there were privately owned public utilities such as Alaska Waste, and publicly owned public utilities such as Solid Waste Services. He explained that privately owned and publicly

owned public utilities were required to have the same kind of certificate from the RCA and had to go through the same certificate transfer process if the utility was sold (whether it was from a public owner to a private owner or a private owner to a public owner). The primary difference was that currently all municipally owned public refuse utilities were exempt from economic regulations. He elaborated that municipally owned public refuse utilities did not have to maintain their books and records in a particular format and did not have to seek approval from the RCA for their rates. The municipalities did not currently have any economic supervision by the RCA. Whereas privately owned public utilities like Alaska Waste had to receive approval by the RCA for rate increases or rate changes. He clarified that if a municipality were to sell a refuse utility to a private entity there would be more oversight over the private owner's rates than the public owner's rates.

Co-Chair Foster indicated Representative LeBon had joined the meeting. He provided a recap of the bill for legislators who were just joining the meeting. The committee was currently discussing the addition of refuse utilities by the House Labor and Commerce Committee.

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Representative Johnson had significant experience with the topic, and she understood refuse was a lucrative business. She asked if there was an opinion [on the change made by the House Labor and Commerce Committee] by the Alaska Municipal League or any municipal governments. She looked at Section 3 of the bill and remarked it was a significant shift if the RCA started overseeing everyone with one garbage truck in Alaska.

Representative Fields responded that the House Labor and Commerce Committee did not add the section including refuse utilities under the RCA extension. He noted the particular section had been added in the Senate. He deferred to the bill sponsor on that topic. He explained that the Labor and Commerce Committee had added the review of privatization. He noted there were two methods of privatization. First, an entity could just sell. Second, an entity could outsource provision of services while maintaining municipal ownership. He stated that the Labor and Commerce Committee language provided some consumer protections under the

latter scenario where the certificate was not sold but services were contracted out.

Representative Johnson asked if Representative Fields was familiar with pre-statehood and post-statehood types of services within the municipalities.

Representative Fields replied, "No."

Representative Johnson asked if Representative Fields was suggesting that a municipality established before statehood should now be overseen by the RCA.

Representative Fields clarified that the House Labor and Commerce Committee did not add the language including refuse utilities under the RCA purview. He deferred to the bill sponsor on the nature of that debate. He stated that the Labor and Commerce Committee took on a much smaller issue of looking at review of proposed privatization.

Representative Johnson thought there was a significant amount to unpack in a short period of time. She stated she had some real challenges with the language. She detailed that the City of Palmer had spent thousands of dollars in attorney fees dealing with the refuse. She relayed it gave her pause when starting to get into municipal business. She heard what Representative Fields was saying but remarked there was a lot more going on than what she could see right off.

Representative Fields replied that the Labor and Commerce Committee had not taken a position on the underlying issue of adding refuse collection utilities under RCA jurisdiction. The committee had taken the bill as it was given to the committee and made what he viewed to be one small change.

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Senator Myers clarified that Section 3 was added in House Labor and Commerce and Section 2 was added in the Senate Finance Committee. He explained that the inclusion of the language in Section 3 adding the municipal refuse utilities in total to the RCA's purview had been added in the Labor and Commerce Committee.

Representative Johnson was hearing Senator Meyers say that the provision had been added in the Labor and Commerce Committee.

Senator Myers responded affirmatively.

Co-Chair Foster indicated that Representative Edgmon had joined the meeting.

Senator Meyers added that his office was still trying to work through all of the policy and legal implications of the amendment inserted in the Labor and Commerce Committee. He stated the amendment was much wider ranging and he would prefer to see it in a separate bill. He elaborated it was a large policy call compared to the initial bill and the version passed by the Senate. His office was still working to understand all of the details in consultation with the RCA. He relayed the amendment had been brought relatively late in the game in the Labor and Commerce Committee and the RCA did not have a chance to do a thorough review before it had been passed out of committee.

Co-Chair Foster indicated that Conference Committee [on the operating budget] would be meeting shortly, and members would need to leave. He suggested it would be an opportunity for the committee to determine what direction to move.

Representative Rasmussen asked if there was any concern with considering returning to the prior version of the bill given the large policy call in the [House Labor and Commerce Committee] version currently before the committee.

Senator Myers indicated he would be amenable to returning to the previous version of the bill.

Co-Chair Foster thought it was best for members to contemplate what they wanted to do with the bill. The committee would recess to a call of the chair.

CSSB 190(FIN) was HEARD and HELD in committee for further consideration.

[Note: the meeting never reconvened.]

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ADJOURNMENT

2:21:19 PM

The meeting was adjourned at 2:21 p.m.