

Original Sponsor: Rules Committee
By Request of the Governor

Offered: 3/16/65
Referred: Finance

1 IN THE HOUSE

BY THE SPECIAL COMMITTEE
ON HOUSE BILL NO. 138

2 CS FOR HOUSE BILL NO. 138

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Public
7 Service Commission, defining its powers and
8 duties; and providing for an effective
9 date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 42.05 is repealed and re-enacted to read:

12 CHAPTER 5. ALASKA PUBLIC SERVICE COMMISSION ACT

13 ARTICLE 1. ESTABLISHMENT OF PUBLIC SERVICE COMMISSION

14 Sec. 42.05.005. CREATION AND COMPOSITION. There is
15 created the Public Service Commission consisting of five
16 members appointed by the governor and confirmed by the
17 legislature in joint session.

18 Sec. 42.05.025. TERM OF OFFICE. The term of office of
19 each member is five years or until his successor is appointed
20 and qualifies. The term of the members shall begin on Febru-
21 ary 1 and is subject to all provisions of AS 39.05.060.

22 Sec. 42.05.035. QUALIFICATIONS OF MEMBERS. (a) The
23 members of the commission shall be appointed with due regard
24 to their fitness to exercise the powers and duties of the
25 commission, based on their qualifications and experience.

26 (b) Each member shall be a citizen of the United
27 States and a resident of the State of Alaska.

28 Sec. 42.05.045. CHAIRMAN OF THE COMMISSION. The com-
29 mission shall elect one of its members as chairman.

1 Sec. 42.05.055. RESTRICTIONS ON MEMBERS AND EMPLOYEES.

2 No member of the commission nor an employee of the commis-
3 sion shall have any official relation or connection with,
4 or hold stock or securities, or have a pecuniary interest in
5 any public utility within the state. Membership in a co-
6 operative association is not a "pecuniary interest" within
7 the meaning of this section. No member or employee shall
8 act in any matter in which his relationship or affiliation
9 with any organization, company or otherwise creates a con-
10 flict of interest or unfair advantage between the member or
11 employee and those subject to regulation by the commission.

12 Sec. 42.05.065. OATH OF OFFICE. Each member of the
13 commission shall take and subscribe to the oath of office
14 prescribed for principal officers of the state.

15 Sec. 42.05.075. QUORUM, PRINCIPAL OFFICE, SEAL. (a)
16 Three of the members of the commission shall constitute a
17 quorum for the transaction of business.

18 (b) The commission shall establish a principal office.
19 Whenever the convenience of the public or of the parties may
20 be promoted, or delay or expense may be prevented, the com-
21 mission may hold hearings or other proceedings at any other
22 place.

23 (c) The commission shall have an official seal which
24 shall be preserved in the custody of the executive director.

25 Sec. 42.05.085. COMPENSATION OF MEMBERS. Each member
26 of the commission is entitled to the per diem established by
27 law for other boards and commissions and shall be paid for
28 his necessary travel expense, and \$2,500 a year.

29 Sec. 42.05.095. EXECUTIVE DIRECTOR. After February 15,

1 1967, the commission shall employ an executive director of
2 the commission who shall be charged with the performance and
3 supervision of all administrative functions of the commis-
4 sion. Before February 15, 1967, the commissioner of commerce
5 shall employ the executive director. The executive director
6 shall be in the partially exempt service under AS 39.25.

7 Sec. 42.05.105. LEGAL COUNSEL AND HEARING OFFICERS.

8 The commission may employ legal counsel and hearing officers
9 from time to time as needed and at such times as the Depart-
10 ment of Law is representing the public interest or any other
11 party before the commission. The Department of Law shall
12 furnish legal counsel on a continuing basis. The attorney
13 general shall at the request of the commission represent the
14 commission in suits in which it is a party, and may represent
15 the public interest in any proceeding before the commission.

16 Sec. 42.05.115. EMPLOYMENT OF PERSONNEL. Officers,
17 employees and agents of the commission, other than the
18 executive director, legal counsel and hearing officers,
19 are appointed to their positions in accordance with AS 39.-
20 25.020(2) and they shall be in the classified service under
21 AS 39.25.

22 Sec. 42.05.125. DELEGATION OF FUNCTIONS. The commis-
23 sion may delegate the performance of any function under this
24 chapter to any of its officers, employees, agents or admin-
25 istrative units, except as to the promulgation of rules and
26 regulations, and the determination of controversies.

27 Sec. 42.05.135. GENERAL POWERS OF COMMISSION. The
28 commission is empowered to perform acts, conduct investiga-
29 tions, issue, amend, and rescind orders, and to make, amend,

1 and rescind general or special rules, regulations, and pro-
2 cedure under this chapter and the Alaska Administrative Pro-
3 cedure Act (AS 44.62) which the commission considers necessary
4 to carry out the provisions of this chapter.

5 Sec. 42.05.145. ANNUAL REPORT. The commission shall pub-
6 lish an annual report reviewing its work and submit it to the
7 legislature by February 15 of each year. In addition the re-
8 port shall contain information and data which bears a signifi-
9 cant relationship to the development and regulation of public
10 utilities, carriers and others under the jurisdiction of the
11 commission.

12 Sec. 42.05.155. PUBLICATION OF COMMISSION DOCUMENTS.
13 The commission shall provide for the publication of its reports,
14 orders, decisions, rules and regulations. Publication shall be
15 in a manner and form best adapted to public information and use.

16 Sec. 42.05.165. PAYMENT OF UTILITY TAX BY PUBLIC
17 UTILITIES. Beginning January 1, 1966, an annual tax equal to
18 one-half of one per cent of gross operating revenues from
19 intrastate operations is levied on each public utility certifi-
20 cated under this chapter. The tax shall be paid to the com-
21 mission and shall be deposited in the general fund. The
22 commission shall determine the tax for each public utility and
23 shall permit a reasonable time for its payment. For purposes
24 of this section gross operating revenues do not include
25 revenues derived from the sale of commodities.

26 ARTICLE 2. JURISDICTION AND GENERAL
27 AUTHORITY OF THE COMMISSION

28 Sec. 42.05.175. JURISDICTION. The jurisdiction of the
29 commission extends to all public utilities in the state, as

1 defined in sec. 595 of this chapter.

2 Sec. 42.05.185. INFORMAL INVESTIGATION. (a) The
3 commission may, upon giving five days written notice to a
4 public utility, enter its premises during business hours, and
5 inspect its books, accounts, papers, records and memoranda,
6 and test its equipment. The commission may delegate in
7 writing to any of its employees its authority to conduct an
8 informal investigation under this section.

9 (b) The commission may by order or subpoena served on
10 a public utility in the same manner as a summons in the
11 superior court, or served by certified mail, require a public
12 utility to produce original or verified copies of its books,
13 accounts, papers, or records on any matter investigated
14 under this section.

15 Sec. 42.05.195. FORMAL INVESTIGATION. The commission
16 may institute a formal investigation by issuing an order of
17 investigation. The order of investigation shall state the
18 reasons for the formal investigation, designate information
19 required to be produced by the public utility and the time
20 and place of its production.

21 Sec. 42.05.205. HEARINGS. (a) Hearings shall be
22 initiated by the commission upon issuance and service of an
23 order of hearing upon a public utility.

24 (b) Hearings shall be conducted pursuant to AS 44.62.-
25 410 - 44.62.480 of the Alaska Administrative Procedure Act.

26 Sec. 42.05.215. REPORTS. The commission shall make
27 reports in writing on all proceedings under this chapter in
28 which hearings are held. Each report shall state the com-
29 mission's findings, and the basis for the findings, and

1 conclusions together with its decision and order. The
2 recommended decision of a hearing officer may be adopted as
3 the report of the commission. All reports shall be entered
4 of record and copies shall be furnished to all the parties
5 to the proceeding.

6 Sec. 42.05.225. FINAL ORDERS OF THE COMMISSION. No
7 final order of the commission compelling affirmative action,
8 denying a right or privilege, or granting a right or privilege
9 over protest of an interested party may be entered by the
10 commission without giving opportunity to be heard, including,
11 if requested by the public utility or any interested party,
12 a public hearing.

13 ARTICLE 3. CERTIFICATE OF PUBLIC
14 CONVENIENCE AND NECESSITY

15 Sec. 42.05.245. CERTIFICATES OF CONVENIENCE AND NECES-
16 SITY. No public utility shall operate after January 1, 1966,
17 without first having obtained from the commission under this
18 chapter a certificate declaring that public convenience and
19 necessity require or will require the operation and delineat-
20 ing the area where service is to be provided. All certifi-
21 cates of convenience and necessity now issued to a utility
22 shall remain in effect but they are subject to modification
23 where there are areas of conflict with utilities that have
24 not previously been required to have a certificate.

25 Sec. 42.05.255. APPLICATION. Application for a certi-
26 ficate shall be in writing, verified, and in such form and
27 contain such information as the commission shall by regula-
28 tion require.

29 Sec. 42.05.265. ISSUANCE. The commission shall issue

1 a certificate authorizing the whole or any part of the
2 service covered by the application, if it finds that the
3 applicant is fit, willing and able to provide the services
4 of a public utility, and that such services are required by
5 the public convenience and necessity or it may issue a
6 certificate conditioned upon the applicant serving an area
7 not included in the application; otherwise such application
8 shall be denied.

9 ARTICLE 4. COMMISSION REGULATION OF
10 RATES AND SERVICE

11 Sec. 42.05.295. ESTABLISHMENT OF REASONABLE RATES. All
12 rates and charges made, demanded, or received by any public
13 utility for the sale of any service in the state, and all
14 rules and regulations affecting or pertaining to such rates
15 or charges shall be just and reasonable.

16 Sec. 42.05.305. PREFERENCE AND DISCRIMINATION PRO-
17 HIBITED. No public utility shall with respect to any trans-
18 mission or sale subject to the jurisdiction of the commission

19 (1) make or grant any unreasonable preference or
20 advantage to any person or subject any person to any un-
21 reasonable prejudice or disadvantage, or

22 (2) maintain any unreasonable difference in
23 rates, charges, service, facilities, or in any other respect,
24 either as between localities or as between classes of
25 service, except that municipally owned utilities may add
26 charges to persons situated within the municipal boundaries
27 which charges shall be separately stated for billing or
28 invoice purposes.

29 Sec. 42.05.315. COMPLIANCE WITH RATE SCHEDULES. No

1 a certificate authorizing the whole or any part of the
2 service covered by the application, if it finds that the
3 applicant is fit, willing and able to provide the services
4 of a public utility, and that such services are required by
5 the public convenience and necessity or it may issue a
6 certificate conditioned upon the applicant serving an area
7 not included in the application; otherwise such application
8 shall be denied.

9 ARTICLE 4. COMMISSION REGULATION OF
10 RATES AND SERVICE

11 Sec. 42.05.295. ESTABLISHMENT OF REASONABLE RATES. All
12 rates and charges made, demanded, or received by any public
13 utility for the sale of any service in the state, and all
14 rules and regulations affecting or pertaining to such rates
15 or charges shall be just and reasonable.

16 Sec. 42.05.305. PREFERENCE AND DISCRIMINATION PRO-
17 HIBITED. No public utility shall with respect to any trans-
18 mission or sale subject to the jurisdiction of the commission

19 (1) make or grant any unreasonable preference or
20 advantage to any person or subject any person to any un-
21 reasonable prejudice or disadvantage, or

22 (2) maintain any unreasonable difference in
23 rates, charges, service, facilities, or in any other respect,
24 either as between localities or as between classes of
25 service, except that municipally owned utilities may add
26 charges to persons situated within the municipal boundaries
27 which charges shall be separately stated for billing or
28 invoice purposes.

29 Sec. 42.05.315. COMPLIANCE WITH RATE SCHEDULES. No

1 public utility shall charge, demand, collect or receive a
2 greater or lesser compensation for services furnished by it
3 within the state, or for service in connection therewith,
4 than is specified in its effective published schedule, nor
5 shall the utility collect or receive tolls or charges not
6 specified in its schedule. A public utility may charge
7 consumers an amount not exceeding the cost for extraordinary
8 service provided, including the repair of damages to its
9 facilities.

10 Sec. 42.05.325. FILING OF SCHEDULES. Under rules and
11 regulations prescribed by the commission, each public utility
12 shall file schedules with the commission. Schedules shall
13 show all rates and charges for any sale of services, the
14 classifications, practices, and regulations directly affect-
15 ing the rates and charges, and all contracts which affect
16 the rates, charges, classifications, and services. Each
17 public utility shall keep its schedules open to inspection
18 in a form and at times and places convenient to the public.

19 Sec. 42.05.335. CHANGES IN RATES. Unless the commis-
20 sion otherwise orders, no change shall be made by any public
21 utility in any rate, charge, classification, or service, or
22 in any rules, regulations, or contract relating thereto, ex-
23 cept after 30 days notice to the commission and to the
24 public. Such notice shall be given by filing with the com-
25 mission and keeping open for public inspection new schedules
26 stating plainly the change or changes to be made in the
27 schedule or schedules then in force and the time when the
28 change or changes will go into effect. The commission may
29 prescribe additional means of giving notice. The commission,

1 for good cause shown, may allow changes to take effect with-
2 out requiring 30 days notice by issuing an order specifying
3 the changes to be made, the time they shall take effect and
4 the manner in which they shall be filed and published.

5 Sec. 42.05.345. SUSPENSION BY COMMISSION OF NEW RATE
6 SCHEDULES. Whenever a new schedule is filed, the commission
7 may, either upon complaint or upon its own initiative with-
8 out complaint, at once, or if it so orders, upon reasonable
9 notice, enter upon an investigation and hearing on the law-
10 fulness of such rate, charge, classification or service.
11 Pending the investigation, hearing and decision, the commis-
12 sion may suspend the operation of a new schedule and defer
13 use of its rates, charges, classifications, or services, by
14 filing a written statement in the commission records of its
15 reasons for the suspension together with the suspended
16 schedule and by delivering a copy of the statement to the
17 public utility. A new schedule shall not be suspended for
18 more than five months beyond the time it would otherwise go
19 into effect. After full hearings, either completed before or
20 after the rate, charge, classification or service goes into
21 effect, the commission may issue orders granting, denying or
22 modifying in whole or in part the new schedule. If the pro-
23 ceeding has not been concluded and an order issued at the
24 expiration of five months, the proposed change of rate,
25 charge, classifications, or service shall go into effect at
26 the end of such period. In the case of a proposed increased
27 rate or charge, the commission may by order require the
28 interested public utility or public utilities to keep accurate
29 account in detail of all amounts received by reason of such

1 increase, specifying by whom and in whose behalf such amounts
2 are paid. Upon completion of the hearing and decision the
3 commission may by order require the public utility to refund
4 with interest, not exceeding six per cent a year, to the
5 persons in whose behalf such amounts were paid, that portion
6 of the increased rates or charges which by its decision was
7 found not to be justified. At any hearing involving a rate
8 or charge sought to be increased the burden of proof to
9 show that the increased rate or charge is just and reasonable
10 shall be upon the public utility. The commission shall give
11 to the hearing and decision of such questions preference over
12 other questions pending before it and decide them as speedily
13 as possible.

14 Sec. 42.05.355. POWER OF COMMISSION TO FIX RATES.

15 Whenever the commission, after an investigation and hearing
16 upon its own motion or upon complaint, finds that any rate,
17 charge or classification, demanded, observed, charged or
18 collected by any public utility for any sale of a service
19 subject to the jurisdiction of the commission, or that any
20 rule, regulation, practice, or contract affecting such rate,
21 charge, or classification is unjust, unreasonable, unduly
22 discriminatory or preferential, the commission shall deter-
23 mine the just and reasonable rate, charge, classification,
24 rule, regulation, practice, or contract to be thereafter
25 observed and in force, and shall fix the same by order. A
26 municipality may covenant with bondholders with regard to
27 rates of a municipally owned utility and such covenant shall
28 be valid and enforceable, any order of the commission under
29 this section and any other provision of this article notwith-

1 standing, and such covenant shall be deemed to be a contract
2 with the holders, from time to time, of the bonds.

3 Sec. 42.05.365. SERVICE. (a) Wherever the commission
4 upon investigation and after opportunity for hearing, shall
5 find that any practice or service of any public utility is
6 inadequate, insufficient, unjust, unreasonable, unsafe,
7 preferential or unjustly discriminatory, the commission shall
8 determine the proper, adequate, or sufficient practice or
9 service to be furnished and shall fix the same by its order,
10 rule or regulation.

11 (b) The commission may examine the management of a
12 public utility, including staffing patterns and wage and
13 salary scales. The commission, after opportunity for hear-
14 ing, may order the correction of abuses found which adversely
15 affect the cost or quality of the product or service of the
16 public utility.

17 Sec. 42.05.375. JOINT USE AND INTERCONNECTION OF
18 FACILITIES. (a) Every public utility having sewers, tracks,
19 conduits, subways, utilidors, poles, pole lines, pipes, pipe
20 lines, mains or other distribution or transmission media shall
21 for a reasonable compensation permit the use thereof by any
22 other public utility whenever public convenience and necessity
23 require this use and the use will not result in substantial
24 injury to the owner, or in substantial detriment to the service
25 to the customers or consumers of the owner. The cost of
26 modifications or additions necessary to a joint use shall be at
27 the expense of the public utility requesting the use of the
28 media. This section does not authorize a public utility to
29 contract or share the use of the media of another public

1 utility offering the same service when the purpose of the
2 joint use is to violate the service area of the utility own-
3 ing the media.

4 (b) Every public utility for the transmission of tele-
5 phone messages shall permit physical connection to be made
6 and telephone service to be furnished between a telephone
7 system operated by it and the telephone system or toll line
8 operated by another public utility, or between its toll line
9 and the toll line of another public utility, whenever public
10 convenience and necessity require the physical connection and
11 the physical connection will not result in substantial injury
12 to the owner or other users of the facilities of either public
13 utility or in substantial detriment to the service of either
14 public utility. The term "physical connection" means such
15 trunk lines or complete wire circuits and connections as are
16 required to furnish reasonably adequate telephone service
17 between the public utilities.

18 (c) If any prospective consumers or patrons are situ-
19 ated within a reasonable distance of the distribution facili-
20 ties of a public utility which generates, transmits, delivers,
21 or furnishes electric energy and power and the prospective
22 consumer constructs and installs the necessary facilities in
23 compliance with plans and specifications furnished by the
24 utility, the utility shall permit the physical connection to
25 be made and service to be furnished to that person. The
26 utility may deny the connection if it would result in sub-
27 stantial detriment to other consumers of the utility, or if
28 safety hazards would be created thereby. This section shall
29 not be interpreted to require a utility to assume maintenance

1 or other responsibility for facilities which it does not own.

2 Sec. 42.05.385. APPLICATION TO COMMISSION IN CASE OF
3 FAILURE TO AGREE UPON JOINT USE OR INTERCONNECTION. In case
4 of failure to agree upon the joint use or interconnection of
5 media or the conditions or compensation for joint use or
6 interconnections, the public utility or an interested person
7 may apply to the commission. If, after investigation, the
8 commission finds that public convenience and necessity require
9 the joint use or physical connection, and that the use or
10 physical connection does not result in substantial injury to
11 the owner or users of the media, nor in substantial detriment
12 to the services furnished by the owner or users thereof, nor
13 in the creation of safety hazards, it shall

14 (1) order that the use be permitted;

15 (2) prescribe reasonable conditions and compensa-
16 tion for the use;

17 (3) order that the physical connection be made;

18 (4) determine the time and manner of connection;

19 (5) determine the party who shall pay the expense
20 of making and maintaining the connection.

21 Sec. 42.05.405. STANDARD UNITS AND EXPENSES PER UNIT.
22 For each kind of public utility, the commission shall pre-
23 scribe suitable and convenient standard commercial units of
24 product or service. These units are lawful units for pur-
25 poses of this chapter. Each public utility shall furnish the
26 commission with such accounts, reports and information based
27 upon the prescribed units as the commission requires.

28 Sec. 42.05.415. STANDARDS FOR MEASUREMENT. The commis-
29 sion shall fix by regulation adequate and serviceable stand-

1 ards for the measurement of quality, pressure, voltage or
2 other conditions, including, but not limited to, quantity
3 and quality of service pertaining to the supply of the
4 product or service furnished by a public utility and shall
5 prescribe reasonable regulations for examinations and test-
6 ing of the product or service and for the measurement of it.
7 In doing so, the commission shall conform to the standard
8 practices of the industry or activity regulated.

9 Sec. 42.05.425. TESTING OF METER STANDARDS. The com-
10 mission shall provide by regulation for the periodic testing
11 and certification of meter standards by laboratories accept-
12 able to the commission. The commission shall also provide
13 regulations for the taking of appeals to the commission from
14 the findings of a utility which tests its own meters or
15 appliances for measurement.

16 Sec. 42.05.445. CLASSES OF SERVICE. The commission
17 shall provide for a comprehensive classification of services
18 for each public utility. The classification shall take into
19 account the quantity used, the time when used, the purpose
20 for which used and other reasonable factors. Each public
21 utility shall conform its schedules of rates, tolls and
22 charges to the classification.

23 ARTICLE 5. VALUATION AND ACCOUNTING PROCEDURES.

24 Sec. 42.05.455. VALUATION OF PUBLIC UTILITY PROPERTIES.
25 The commission may, when necessary for rate-making purposes,
26 investigate and ascertain the actual legitimate costs of the
27 property used or useful of every public utility, the depreci-
28 ation therein, and when found necessary for rate-making
29 purposes, other facts which bear on the determination of such

1 cost or depreciation, and the fair value in fact of such
2 property. No consideration shall be given to good will,
3 going value, or natural resources. Every public utility,
4 upon request, shall file with the commission an inventory of
5 all or any part of its property and a statement of the
6 original cost thereof, and shall keep the commission informed
7 regarding the cost of all additions, improvements, extensions
8 and new construction.

9 Sec. 42.05.465. SYSTEMS OF ACCOUNTS AND REPORTS. (a)
10 Every public utility, including municipally-owned utilities
11 which are otherwise exempt from this chapter, shall use and
12 follow generally recognized systems of public utility account-
13 ing, and shall furnish the commission with a copy of its
14 annual audit report. If a public utility does not adopt
15 generally recognized systems of public utility accounting,
16 the commission shall prescribe the accounting system which
17 the utility shall adopt. However, the commission may waive
18 this requirement if the public utility does a gross annual
19 business of less than \$100,000. Each public utility,
20 excepting municipally-owned utilities which are otherwise
21 exempt from this chapter, shall submit reports which the com-
22 mission requires on forms furnished by the commission.

23 (b) Every public utility engaged, directly or indirect-
24 ly, in any other business or a subsidiary business shall keep
25 separate accounts relating to that business. Except as the
26 commission provides, no property, expense or revenue utilized
27 in or derived from that business shall be considered in
28 establishing the rates and charges of the utility for its
29 public services.

1 ARTICLE 6. SECURITIES AND DISTRIBUTION OF
2 SURPLUS PROFITS.

3 Sec. 42.05.505. STATEMENT OF ISSUANCE OF SECURITIES.

4 Any public utility, except a municipally or consumer owned
5 utility, before issuing securities shall file with the com-
6 mission a statement setting out:

- 7 (1) the amount and character of the proposed
8 securities;
- 9 (2) the purposes for which they are to be issued;
- 10 (3) the terms on which securities are to be
11 issued, including a detailed description and a detailed
12 statement of the value of any property or services that are
13 to be received in full or partial payment therefor, and of
14 any property or services already received by the public
15 utility, the cost of which is to be paid by the public
16 utility with securities; and
- 17 (4) a statement of the assets and liabilities of
18 the utility as of the most recent available date, together
19 with such other financial information as the commission may
20 require.

21 Sec. 42.05.525. IMPAIRED CAPITAL. Whenever the com-
22 mission finds that the capital of a public utility is impaired,
23 it may after investigation and hearing, issue an order
24 directing the public utility to cease paying dividends on
25 its common stock until such impairment has been removed.

26 Sec. 42.05.535. DISTRIBUTION OF SURPLUS, PROFITS AND
27 OPERATING MARGINS. The surplus, profits and operating
28 margins of public utilities shall be distributed in accord-
29 ance with the bylaws or ordinances controlling the utility.

1 The commission may adopt regulations governing the distribu-
2 tion of surplus, profits, and operating margins by public
3 utilities. The commission may upon investigation and hearing
4 issue orders governing the distribution of surplus, profits
5 or operating margins of a public utility or may amend or
6 rescind its orders.

7 Sec. 42.05.540. SHORT-TERM FINANCING. The provisions of
8 42.05.505 - 42.05.535 shall not apply to short-term financing
9 of less than three years provided such short-term financing
10 shall not exceed ten per cent (10%) of the total debt of the
11 utility.

12 ARTICLE 7. ENFORCEMENT, JUDICIAL
13 REVIEW AND PENALTIES.

14 Sec. 42.05.545. EFFECT OF RULES, REGULATIONS AND ORDERS.
15 Rules, regulations and orders adopted and issued by the
16 commission in accordance with this chapter and the Admin-
17 istrative Procedure Act (AS 44.62) have the effect of law.

18 Sec. 42.05.555. REVIEW AND ENFORCEMENT. (a) All final
19 orders of the commission are subject to judicial review in
20 accordance with the Alaska Administrative Procedure Act
21 (AS 44.62).

22 (b) The commission may apply to the superior court
23 for enforcement of this chapter, the rules and regulations
24 adopted under it and the orders of the commission. If after
25 a hearing the court determines that the statute, rules and
26 regulations are valid and that the order was regularly and
27 validly made and duly issued, it shall enforce the order by
28 injunction and other proper process.

29 Sec. 42.05.565. PENALTIES. Whoever knowingly violates

1 any valid written rule, regulation or order of the commission
2 shall be fined not more than \$500 by the superior court for
3 each day such violation continues.

4 Sec. 42.05.575. JOINDER OF ACTIONS. Pursuant to ap-
5 plicable court rules, appeals from orders of the commission,
6 applications for enforcement of commission orders and actions
7 for recovery of a penalty may be joined, provided, however,
8 that the court may in the interests of justice separate the
9 actions.

10 ARTICLE 8. GENERAL PROVISIONS.

11 Sec. 42.05.585. EMINENT DOMAIN. A public utility may
12 exercise the power of eminent domain for public uses
13 authorized by law. This section does not authorize the use
14 of a declaration of taking by any public utility which does
15 not have that power under another law.

16 Sec. 42.05.587. REGULATION BY MUNICIPALITY. If there
17 is a conflict between a rule, regulation, order or ordinance
18 of a municipality and a rule, regulation or order of the
19 commission, the latter shall prevail.

20 Sec. 42.05.590. DISCRIMINATION BY EXEMPT UTILITIES.
21 On a complaint from a consumer of a municipally-owned
22 utility, otherwise exempt from regulation under this chapter,
23 alleging discrimination prohibited by sec. 305 of this
24 chapter, the commission may conduct a formal or informal
25 investigation and hearing and enter such nondiscrimination
26 order as it considers just and reasonable and the order may be
27 enforced in the same manner as any other order of the com-
28 mission under this chapter.

29 Sec. 42.05.593. VIOLATION OF CHAPTER. Home rule cities

1 and boroughs, as well as other municipalities, may not
2 violate the provisions of this chapter.

3 Sec. 42.05.595. DEFINITIONS. In this chapter

4 (1) "commission" means the Public Service Com-
5 mission;

6 (2) "public utility" or "utility" includes every
7 corporation, whether municipal, public, cooperative or
8 otherwise, company, individual, or association of individuals,
9 their lessees, trustees, or receivers appointed by a court,
10 that owns, operates, manages or controls any plant or system
11 for the generation, transmission, or distribution of electric
12 energy and power, for the furnishing of telephone or tele-
13 graph communications, for the transmission or distribution of
14 heat, natural or manufactured gas, or water, for the furnish-
15 ing of sewer services, and the plant and facilities used for
16 any of the foregoing purposes; but this chapter does not
17 apply to

18 (A) municipally owned utilities (except with
19 their consent to all provisions of this chapter) if no
20 other utility certificated and regulated under this
21 chapter provides a like utility service to consumers
22 situated within an integrated economic area; or

23 (B) services provided by the owners of
24 improved or unimproved land solely for themselves or
25 the tenants or occupants or to community water or sewer
26 system agreements among not more than 150 parties; or

27 (C) a person who furnishes water or oil or
28 other petroleum products by tank, wagon, or similar
29 conveyance; or

1 (D) a person, as defined in AS 01.10.060(7),
2 who generated, transmits or distributes the products or
3 services of a public utility solely for his own use,
4 or for the use of his subcontractors, employees and
5 their dependents; or

6 (E) the furnishing of television broadcasts,
7 including closed circuit television.

8 (3) "integrated economic area" means an area that
9 has met the standards for incorporation as a borough under
10 AS 07.10.030. or for mandatory incorporation as a borough
11 under Sec. 3. Ch. 52, SLA 1963;

12 (4) "municipality" means a home rule or general
13 law city or a home rule borough or a first or second class
14 borough.

15 * Sec. 2. The Legislative Council shall make a report to the
16 first session of the fifth legislature covering such matters as
17 its administrative functions and hearing procedures and what
18 problems, if any, have arisen in these areas and make its recom-
19 mendations regarding the legal relationship of the commission
20 to the executive and alternative relationships authorized by
21 Article III of the Constitution of the State of Alaska. The com-
22 mission and the Department of Health and Welfare shall make a
23 report to the first session of the fifth legislature regarding
24 the exemption provided in AS 42.05.595(2)(B) of this Act.

25 * Sec. 3. This Act takes effect on the day after its passage
26 and approval or on the day it becomes law without such approval.
27
28
29

A M E N D M E N T S

1
2 Offered in the HOUSE

To accompany minority report
of the special committee on
HB 138.

3 To: CS FOR HOUSE BILL NO. 138

4 Amendment 1:

5 Page 1, line 6. Beginning on line 6 after the colon delete
6 all material through line 8 and insert the following:

7 "An Act relating to public and municipally owned utilities;
8 and providing for an effective date."

9 Amendment 2:

10 Page 1, line 10. Beginning with line 10 delete all material
11 on pages 1 - 20 and insert the following:

12 * Section 1. AS 42.05 is amended by adding a new section to
13 Article 7 to read:

14 Sec. 42.05.615. JUDICIAL HEARINGS. A municipally
15 owned utility or a public utility holding a certificate of
16 public convenience and necessity issued under this chapter
17 may petition the superior court to

18 (1) resolve a conflict between the petitioner
19 and a person, firm, corporation or political subdivision
20 regarding areas served by either party;

21 (2) enjoin a utility from engaging in unfair
22 competition which consists of offering customers of a
23 competing utility more favorable rates or services than
24 those offered to its own customers.

25 * Sec. 2. AS 42.05 is amended by adding new sections to
26 Article 8 to read:

27 Sec. 42.05.622. REGULATION OF MUNICIPALLY OWNED
28 UTILITIES. The jurisdiction and authority of the commission
29 over a municipally owned utility includes only the power to

1 (1) review the rates charged by a municipally
2 owned utility for service provided to areas outside the
3 municipal boundaries;

4 (2) investigate the quality of service provided
5 by a municipally owned utility to areas outside the municipal
6 boundaries;

7 (3) upon giving notice and an opportunity to be
8 heard to the utility, determine reasonable rates and estab-
9 lish reasonable standards for services provided by a munici-
10 pally owned utility to areas outside the municipal boundaries;

11 (4) order and prescribe terms and conditions for
12 the joint use or physical connection of transmission and
13 distribution facilities of a municipally owned utility when
14 necessary to eliminate duplication of facilities or prevent
15 violation of existing service areas if the use or physical
16 connection does not result in substantial injury to the
17 owner or users of the facilities, nor in substantial detri-
18 ment to the services furnished by the owner.

19 Sec. 42.05.625. CHALLENGE OF RATES OF MUNICIPALLY
20 OWNED UTILITIES. (a) The Attorney General may, upon request
21 of the commission or upon request of 10 per cent of the
22 customers of a municipally owned utility residing outside
23 its municipality, petition the superior court to

24 (1) order the municipally owned utility to cease
25 and desist from imposing unreasonable rates or charges upon
26 customers residing outside the boundaries of the munic-
27 pality;

28 (2) order the municipally owned utility to cease
29 and desist from any unreasonable difference in the standard

1 of service provided non-resident customers of the utility.

2 (b) The inclusion of a municipal tax in any rate or
3 charge in the billing or invoice of a non-resident customer
4 of a municipally owned utility shall be prima facie evidence
5 of unreasonable rates. The municipally owned utility may
6 overcome such prima facie evidence by proving that the
7 customer enjoys the advantages of other facilities or serv-
8 ices supported by resident taxpayers of the municipality
9 and that the tax is reasonably calculated to compensate
10 the municipality for the use of these services or facilities.

11 * Sec. 3. AS 42.05.640 is amended by adding new subsections
12 to read:

13 (5) "municipality" means a home rule or general
14 law city or borough;

15 (6) "municipally owned utility" means a utility
16 which is owned, operated, managed or controlled by a
17 municipality;

18 (7) "municipal tax" includes any charge or por-
19 tion of a charge levied by a municipally owned utility which
20 is in excess of that necessary to reimburse the utility for
21 the cost of furnishing the service and provide it with a
22 reasonable reserve for replacement and modernization.

23 * Sec. 4. This Act takes effect on the day after its passage
24 and approval or on the day it becomes law without such approval.

25
26
27
28
29