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Referred: Judiciary, Local  
Government and Finance

1 IN THE HOUSE

BY FINK

2 HOUSE BILL NO. 202

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of public utilities,  
7 defining the composition, powers and duties of the  
8 Public Service Commission; and providing for an  
9 effective date."

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

11 \* Section 1. AS 42.05.020 is amended to read:

12 Sec. 42.05.020. COMPOSITION OF PUBLIC SERVICE COMMISSION. (a)

13 The public service commission consists of three members, appointed by  
14 the governor and confirmed by the legislature in joint session assembled

15 (b) The governor shall designate one member of the commission as  
16 chairman of the commission. Such member shall serve as chairman for a  
17 term of two years, but may be appointed for successive terms.

18 \* Sec. 2. AS 42.05.030 is amended to read:

19 Sec. 42.05.030. TERM OF OFFICE, VACANCY. (a) The term of  
20 office of each member is six years [, OR UNTIL HIS SUCCESSOR IS  
21 APPOINTED AND QUALIFIES]. The [HOWEVER, THE] governor shall designate  
22 who [WHICH], among his initial appointees, shall serve, respectively,  
23 for terms of two years, four years and six years. A commissioner,  
24 upon the expiration of his term, shall continue to hold office until  
25 his successor is duly appointed and qualified.

26 (b) A vacancy arising in the office of commissioner shall be  
27 filled by appointment by the governor and confirmed by the legislature  
28 in joint session and an appointee selected to fill such vacancy shall  
29 hold office for the balance of the full term for which his predecessor

1 on the commission was appointed.

2 If the legislature is not in session when a vacancy is filled,  
3 the appointment made by the governor shall be subject to the approval  
4 of the legislature when next convened.

5 (c) A vacancy in the commission shall not impair the authority  
6 of a quorum of commissioners to exercise all the powers and perform  
7 all the duties of the commission.

8 \* Sec. 3. AS 42.05 is amended by adding a new section to read:

9 Sec. 42.05.035. REMOVAL OF COMMISSIONERS. (a) The governor  
10 may remove a commissioner from office by and with the consent of a  
11 majority of the legislature.

12 (b) The governor may remove a commissioner from office for  
13 cause including but not limited to incompetence, neglect of duty or  
14 misconduct in office. A commissioner, to be removed for cause, shall  
15 be given a copy of the charges against him and afforded an opportunity  
16 to be publicly heard in person or by counsel in his own defense upon  
17 not less than 10 days notice. If a commissioner is removed for cause,  
18 the governor shall file with the secretary of state a complete  
19 statement of all charges made against such commissioner and his  
20 finding thereon, together with a complete record of the proceedings.

21 (c) Subsections (a) and (b) of this section provide two  
22 separate and distinct methods for removal of a commissioner from  
23 office.

24 \* Sec. 4. AS 42.05 is amended by adding new sections to read:

25 Sec. 42.05.071. QUORUM. Two members of the commission shall  
26 constitute a quorum for the transaction of business, for the perform-  
27 ance of a duty, or for the exercise of a power of the commission.

28 Sec. 42.05.081. OATH OF OFFICE. Each commissioner and each  
29 person appointed to a civil executive office by the commission, before

1 entering upon the duties of his office shall take and subscribe to the  
2 oath prescribed for principal officers of the state.

3 Sec. 42.05.091. COMPENSATION OF MEMBERS OF COMMISSION. (a)  
4 Members of the commission are entitled to the per diem established  
5 by law for other boards and commissions and shall be paid for their  
6 necessary travel expense.

7 (b) The annual salary for each member of the commission is  
8 \$5,000 to be paid in approximately equal monthly payments. The  
9 chairman of the commission shall receive an additional \$300 a year  
10 during his tenure as chairman.

11 Sec. 42.05.101. PRINCIPAL OFFICE, SEAL. (a) The commission  
12 shall establish a principal office and such branch offices as may  
13 be necessary to efficiently discharge its business. For the con-  
14 venience of the public or of parties to a proceeding the commission  
15 may hold meetings, hearings or other proceedings at other locations.

16 (b) The commission shall have an official seal.

17 Sec. 42.05.111. LEGAL COUNSEL. (a) The attorney general is  
18 legal counsel for the commission. He shall advise the commission  
19 in legal matters arising in the discharge of its duties and represent  
20 the commission in suits to which it is a party. The attorney general  
21 may represent the public interest in any proceeding before the  
22 commission.

23 (b) The commission may employ temporary legal counsel from  
24 time to time in proceedings before the commission in which the  
25 attorney general is representing the public interest or a party  
26 before the commission.

27 Sec. 42.05.121. EMPLOYMENT AND COMPENSATION OF COMMISSION  
28 PERSONNEL. (a) The commission may employ an executive director who  
29 shall be an experienced administrator. The commission may employ

1 engineers, hearing officers, experts, clerks, accountants, and other  
2 agents and assistants as it considers necessary. The executive  
3 director and all other employees and agents of the commission, other  
4 than legal counsel, shall be appointed to their positions in accordance  
5 with AS 39.25.020(2) and shall be in the classified service under  
6 AS 39.25.

7 (b) In addition to its staff of regular employees the commission  
8 may contract for and engage the services of such consultants, experts  
9 and hearing officers as the commission considers necessary for the  
10 purpose of developing information or conducting studies, investigations,  
11 hearings or other proceedings.

12 Sec. 42.05.131. ANNUAL REPORT. The commission shall publish  
13 an annual report reviewing its work and submit it to the legislature  
14 by February 15 of each year. In addition, the report shall contain  
15 information and data which bears a significant relationship to the  
16 development and regulation of public utilities in the state.

17 ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION;  
18 ACTS DEEMED THOSE OF THE COMMISSION.

19 Sec. 42.05.141. GENERAL POWERS AND DUTIES OF THE COMMISSION.  
20 The Alaska Public Service Commission may

21 (1) supervise and regulate every public utility engaged  
22 or proposing to engage in such business within the State of Alaska  
23 except to the extent exempted by AS 42.05.641 and may do all things,  
24 whether specifically designated in this chapter or in addition thereto,  
25 which are necessary or convenient in the exercise of such power and  
26 jurisdiction;

27 (2) investigate, upon complaint or upon its own motion,  
28 the rates, classifications, rules regulations, practices, services  
29 and facilities of a public utility and hold hearings thereon;

1 (3) make, fix, alter and amend just, fair and reasonable  
2 rates, classifications, rules, regulations, practices, services and  
3 facilities for a public utility;

4 (4) prescribe and regulate the accounts, service and  
5 safety of operations of a public utility;

6 (5) require a public utility to file reports and other  
7 information and data;

8 (6) supervise and regulate a public utility in all other  
9 matters affecting its relationship with other public utilities, its  
10 customers and with the general public.

11 Sec. 42.05.151. ADMINISTRATIVE AUTHORITY OF COMMISSION;  
12 REGULATIONS AND HEARING PROCEDURES. (a) The commission may make  
13 such regulations, not inconsistent with the law, as may be necessary  
14 or proper in the exercise of its powers or for the performance of  
15 its duties under this chapter.

16 (b) The commission shall by regulation establish rules of  
17 practice and procedure, consistent with due process of law which  
18 shall govern the conduct of all investigations, hearings and pro-  
19 ceedings. Technical rules of evidence need not apply to investiga-  
20 tions, hearings and proceedings before the commission.

21 (c) The commission, each commissioner or an employee authorized  
22 by the commission may administer oaths, certify to all official acts,  
23 and issue subpoenas, subpoenas duces tecum and other process to compel  
24 the attendance of witnesses and the production of testimony, records,  
25 papers, accounts and documents in an inquiry, investigation, hearing,  
26 or proceeding before the commission in any part of the state. The  
27 commission may petition a court of this state to enforce its subpoenas,  
28 subpoenas duces tecum or other process.

29 Sec. 42.05.161. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

1 (a) The administrative adjudication procedures of the Administrative  
2 Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of  
3 the commission except that final administrative determinations by the  
4 commission are subject to judicial review as provided in AS 44.62.560 -  
5 44.62.570.

6 (b) The Administrative Procedure Act shall apply to regula-  
7 tions adopted by the commission except interpretative rules, general  
8 statements of policy, rules of agency organization, procedure, or  
9 practice or in a situation in which the agency for good cause finds  
10 (and incorporates the finding and a brief statement of the reasons  
11 therefor in the rules issued) that notice and public procedure thereon  
12 are impracticable, unnecessary, or contrary to the public interest.

13 Sec. 42.05.171. INVESTIGATIONS AND HEARINGS -- ACTIONS DEEMED  
14 THOSE OF THE COMMISSION. An investigation or hearing which the  
15 commission has power to undertake or to hold may be undertaken or  
16 held by or before any one or more commissioners designated for the  
17 purpose by the commission. The testimony and evidence in an inves-  
18 tigation or hearing may be taken by the commissioner or commissioners  
19 to whom such investigation or hearing has been assigned. All in-  
20 vestigations or hearings before or by a commissioner or commissioners,  
21 shall be and be deemed to be the investigations and hearings of the  
22 commission. A determination or order of a commissioner or com-  
23 missioners upon such an investigation or hearing, undertaken or held  
24 by him or them shall not be effective until approved and confirmed  
25 by at least a quorum of the commission. Upon confirmation, such  
26 determination or order shall be the determination or order of the  
27 commission.

28 Sec. 42.05.181. HEARING OFFICERS AND AGENTS. (a) In an  
29 investigation or hearing, the commission may appoint a hearing

1 officer or special agent who shall have the power to administer oaths  
2 and examine witnesses and receive evidence in any locality within the  
3 state which the commission may designate. The testimony and evidence  
4 so taken or received shall have the same force and effect as if taken  
5 or received by the commission, or any one or more of the commissioners,  
6 as provided in AS 42.05.171.

7 (b) The appointment of a hearing officer or special agent shall  
8 be by written order of the commission. The order shall prescribe  
9 the duties of the hearing officer or agent. The hearing officer or  
10 agent has the investigative powers specifically delegated to him by  
11 the commission. The commission may conduct any number of investi-  
12 gations or hearings contemporaneously through different hearing  
13 officers or agents, and may delegate to the hearing officer or agent  
14 the taking of all testimony. The decision of the commission shall  
15 be based upon all testimony and records. The recommendations made  
16 by a hearing officer or agent are advisory and do not preclude  
17 further investigation or the taking of further testimony if the  
18 commission so orders.

19 (c) A commissioner may serve as a hearing officer.

20 ARTICLE 3. CERTIFICATE OF PUBLIC  
21 CONVENIENCE AND NECESSITY.

22 Sec. 42.05.191. CERTIFICATES REQUIRED. (a) No public utility  
23 may operate and receive compensation for providing a commodity or  
24 service after January 1, 1970 without first having obtained from  
25 the commission under this chapter a certificate declaring that public  
26 convenience and necessity require or will require the service. Where  
27 a public utility provides more than one type of utility service, a  
28 separate certificate of convenience and necessity shall be required  
29 for each type. A certificate shall describe the nature and extent

1 of the authority granted therein, including as appropriate for the  
2 services involved, a description of the authorized area or areas and  
3 scope of operations of the public utility.

4 (b) All certificates of convenience and necessity issued to a  
5 public utility on or before the effective date of this Act shall  
6 remain in effect but they are subject to modification where there  
7 are areas of conflict with public utilities that have not previously  
8 been required to have a certificate.

9 (c) In an area where two or more public utilities are competing  
10 to furnish the same type of utility service, the commission shall take  
11 appropriate action to eliminate the competition and duplication of  
12 facilities by delineating the service area or areas of each utility,  
13 or otherwise identifying and defining the authorized scope of opera-  
14 tions of each utility.

15 Sec. 42.05.201. APPLICATION. Application for a certificate  
16 shall be in writing, verified, and be in the form and contain the  
17 information required by the commission by regulation.

18 Sec. 42.05.211. CONDITIONS OF ISSUANCE. No certificate may be  
19 issued unless the commission finds that the applicant is fit, willing  
20 and able to provide the utility services applied for and that such  
21 services are required for the convenience and necessity of the public.  
22 The commission may issue a certificate granting an application in  
23 whole or in part and attach to the grant thereof such terms and con-  
24 ditions as it deems necessary to protect and promote the public  
25 interest including the condition that the applicant may serve an area  
26 or provide a necessary service not contemplated by the applicant.  
27 The commission may, for good cause, deny an application with or  
28 without prejudice.

29 Sec. 42.05.221. DISCONTINUANCE OR ABANDONMENT OF CERTIFICATED

1 SERVICE; TEMPORARY SUSPENSION. (a) Except as otherwise provided in  
2 this section no public utility may discontinue or abandon a service  
3 for which a certificate has been issued by the commission unless upon  
4 the application of the public utility and if after notice and oppor-  
5 tunity for hearing, the commission finds that discontinuance or  
6 abandonment will not materially harm the public interest. Any  
7 interested person may file with the commission a protest or memorandum  
8 of opposition to or in support of discontinuance or abandonment. The  
9 commission may authorize temporary suspension of a service or of part  
10 of a service.

11 (b) Upon complaint or upon its own motion, the commission may  
12 reinvestigate a previously authorized discontinuance, abandonment or  
13 suspension of a service of a public utility. If, after providing  
14 notice and an opportunity for a hearing the commission finds that the  
15 public convenience and necessity require the service to be resumed, it  
16 may order the public utility to again provide such service.

17 Sec. 42.05.231. MODIFICATION, SUSPENSION OR REVOCATION OF  
18 CERTIFICATES. Upon complaint or upon its own motion the commission,  
19 after notice and opportunity for hearing and for good cause shown,  
20 may amend, modify, suspend, or revoke a certificate, in whole or in  
21 part. Good cause for amendment, modification, suspension or revoca-  
22 tion of a certificate includes but is not limited to

- 23 (1) as the public convenience and necessity may require;  
24 (2) misrepresentation of a material fact in obtaining the  
25 certificate;  
26 (3) unauthorized discontinuance or abandonment of all or  
27 part of a public utility's service;  
28 (4) failure to comply with the provisions of this chapter  
29 or the rules, regulations or orders of the commission; or

1 (5) failure to comply with a term, condition, or limitation  
2 of the certificate.

3 Sec. 42.05.241. TRANSFER OF CERTIFICATE. A certificate may not  
4 be transferred without the prior approval of the commission.

5 ARTICLE 4. SERVICES AND FACILITIES; JOINT USE.

6 Sec. 42.05.251. STANDARDS OF SERVICE AND FACILITIES. (a) Each  
7 public utility shall furnish and maintain adequate, efficient, safe  
8 and reasonable service and facilities. Such service shall be reasonably  
9 continuous and without unreasonable interruption or delay.

10 (b) Subject to the provisions of this chapter and the regulations  
11 or orders of the commission, a public utility may have reasonable rules  
12 and regulations governing the conditions under which it shall render  
13 service.

14 (c) The commission may, upon its own motion or upon complaint  
15 after providing reasonable notice and opportunity for hearing, pre-  
16 scribe as to service and facilities, including the crossing of faci-  
17 lities, just and reasonable standards, classifications, regulations,  
18 and practices to be furnished, imposed, observed, and followed by  
19 public utilities; prescribe adequate and reasonable standards for the  
20 measurement of quantity, quality, pressure, initial voltage, or other  
21 conditions pertaining to the supply of the service of public utilities;  
22 prescribe reasonable regulations for the examination and testing of  
23 such service, and for the measurement thereof; prescribe or approve  
24 reasonable rules, regulations, specifications, and standards to secure  
25 the accuracy of meters and appliances for measurement; and provide for  
26 the examination and testing of appliances used for the measurement of  
27 a service of a public utility.

28 (d) Whenever the commission, upon its own motion or upon com-  
29 plaint, after providing reasonable notice and opportunity for hearing

1 finds that the service or facilities of a public utility are  
2 unreasonable, unsafe, inadequate, insufficient, or unreasonably dis-  
3 criminatory, or otherwise in violation of this chapter, the commission  
4 shall determine and prescribe, by regulation or order, the reasonable,  
5 safe, adequate, sufficient service or facilities to be observed, fur-  
6 nished, enforced, or employed, including all such repairs, changes,  
7 alterations, extensions, substitutions, or improvements in facilities  
8 as shall be reasonably necessary and proper for the safety, accommo-  
9 dation, and convenience of the public, and shall fix the same by its  
10 order or regulation.

11 Sec. 42.05.261. DISCRIMINATION IN SERVICE. No public utility  
12 may, as to service, make or grant an unreasonable preference or  
13 advantage to any person or subject any person to an unreasonable  
14 prejudice or disadvantage. No public utility may establish or main-  
15 tain or provide an unreasonable difference as to service, either as  
16 between localities or as between classes of service, but nothing in  
17 this section shall be deemed to prohibit the establishment of  
18 reasonable classifications of service or to require unreasonable  
19 investment in facilities.

20 Sec. 42.05.271. JOINT USE AND INTERCONNECTION OF FACILITIES.

21 (a) A public utility having sewers, conduits, utilidors, poles,  
22 pole lines, pipes, pipelines, mains or other distribution or trans-  
23 mission facilities shall, for a reasonable compensation, permit  
24 another public utility to use them when public convenience and  
25 necessity require such use and the use will not result in substantial  
26 injury to the owner, or in substantial detriment to the service to  
27 the customers of the owner. The cost of modifications or additions  
28 necessary to a joint use shall be at the expense of the public  
29 utility requesting the use of the facilities. This section does

1 not authorize a public utility to share the use of the facilities  
2 of another public utility offering the same service when the joint  
3 use would result in violating the service area of the utility  
4 owning the facilities.

5 (b) A telephone utility shall permit connection to be made  
6 and telephone service to be furnished between a telephone system  
7 operated by it and the telephone system or toll facilities operated  
8 by another public utility, or between its toll facilities and the  
9 toll facilities of another public utility, whenever public con-  
10 venience and necessity require the connection and the connection  
11 will not result in substantial injury to the owner or other users  
12 of the facilities of either public utility or in substantial detri-  
13 ment to the service of either public utility. The term "connection"  
14 means the radio channels and circuit trunk lines or wire circuits  
15 and connections required to furnish reasonably adequate communication  
16 service between the telephone utilities.

17 (c) The tariff of a public utility shall include rules setting  
18 forth the terms and conditions under which it will construct, or  
19 permit its customers or subscribers to construct, and install lines  
20 cables, radio links, or pipes from its existing facilities to the  
21 premises of applicants for service. Such rules may require the  
22 prospective customers or subscribers to make contributions in aid  
23 of construction if necessary to equate the utility's investment in  
24 facilities to serve them with its average investment in facilities  
25 to serve existing customers or subscribers as of the effective date  
26 of the tariff filing. The utility's extension rule may include pro-  
27 visions whereby the customers or subscribers can furnish labor and/or  
28 facilities in lieu of cash, for their contribution in aid of construc-  
29 tion, and shall include provisions for payment of the customer

1 contributions over a period of three or more years or by means of a  
2 higher rate for service than would otherwise be applicable.

3 Sec. 42.05.281. FAILURE TO AGREE UPON JOINT USE OR INTERCON-  
4 NECTION. In case of failure to agree upon the joint use or inter-  
5 connection of facilities or the conditions or compensation for joint  
6 use or interconnections, the public utility or an interested person  
7 may apply to the commission for an order requiring the interconnec-  
8 tion. If, after investigation and opportunity for hearing, the  
9 commission finds that public convenience and necessity require the  
10 joint use or connection, and that the use or connection will not  
11 result in substantial injury to the owner utility or its customers,  
12 or in substantial detriment to the services furnished by the owner  
13 utility, or in the creation of safety hazards, it shall

- 14 (1) order that the use be permitted;
- 15 (2) prescribe reasonable conditions and compensation for  
16 the joint use;
- 17 (3) order the interconnection to be made;
- 18 (4) determine the time and manner of the interconnection;
- 19 (5) determine the apportionment of costs and responsibility  
20 for operation and maintenance of the interconnection.

21 Sec. 42.05.291. STANDARDS FOR MEASUREMENT. The commission shall  
22 fix by regulation adequate, fair and realistic standards for the  
23 measurement of quality, pressure, voltage or other conditions of  
24 utility services and shall prescribe reasonable regulations for  
25 examination and testing of the service and the accuracy of the devices  
26 used to measure it. In so doing, the commission shall conform to the  
27 standard practices of the industry.

28 Sec. 42.05.301. TESTING OF METER STANDARDS. (a) The commission  
29 shall provide by regulation for the periodic testing and certification

1 of meter standards by laboratories acceptable to the commission. The  
2 commission shall also provide regulations for the taking of appeals  
3 to the commission from the findings of a utility which tests its  
4 own meters or appliances for measurement.

5 Sec. 42.05.311. TESTING OF APPLIANCES. The commission shall  
6 provide for the examination and testing of appliances used for the  
7 measuring of a service of a public utility and may purchase equip-  
8 ment, apparatus, and standards required for this purpose. The com-  
9 missioner of commerce may assign the examination and testing function  
10 to the division of weights and measures. A consumer may use the  
11 equipment or apparatus upon the payment of a reasonable fee established  
12 by the commission. The commission shall establish by regulation  
13 allowable tolerances with respect to the functioning or operation of  
14 the equipment or apparatus. If the measuring equipment or apparatus  
15 of the utility performs within the tolerances, the person requesting  
16 the tests shall pay the costs of the tests; otherwise, the utility  
17 concerned shall pay the costs and any fee paid by the person  
18 requesting the test shall be refunded to him by the utility.

19 ARTICLE 5. RATES AND RATE SCHEDULES.

20 Sec. 42.05.321. TARIFFS; FILING AND INSPECTION. (a) Each  
21 public utility shall file its complete tariff with the commission at  
22 the time and in the form established by the commission by regulation.  
23 The tariff shall show all rates, classifications, rules, regulations  
24 and practices collected or enforced or to be collected or enforced  
25 by the public utility. The public utility shall clearly print, or  
26 type, its complete tariff and keep an up-to-date copy of it on file  
27 at its principal business office and at each station or office where  
28 payments for the utility's service are accepted. The tariffs shall  
29 be made available to, and subject to inspection by, the general public

1 on demand.

2 (b) The tariffs of a public utility which is also subject to  
3 the jurisdiction of a federal regulatory body shall correspond, so  
4 far as practicable, to the form of those prescribed by the federal  
5 regulatory body.

6 (c) The commission may reject all or part of a tariff which  
7 is not consistent with this chapter or the regulations of the com-  
8 mission. A tariff or provision so rejected is void.

9 Sec. 42.05.331. ADHERENCE TO TARIFFS. No public utility may,  
10 directly or indirectly, demand or receive a greater or less rate for  
11 a service provided or to be provided by it than that specified in its  
12 tariffs and filed in the manner provided in this chapter. The rates  
13 specified in its properly filed tariffs shall be the lawful rates of  
14 a public utility until changed in the manner provided under this  
15 chapter. If a public utility has more than one rate applicable to  
16 service furnished to a customer, it shall, upon demand by the  
17 customer or the commission, compute bills under the rate most  
18 advantageous to the customer.

19 Sec. 42.05.341. RATES TO BE JUST AND REASONABLE. All rates  
20 demanded or received by a public utility, or by any two or more  
21 public utilities jointly, for a service furnished or to be furnished  
22 shall be just and reasonable. Each unjust or unreasonable rate  
23 demanded or received for such service is unlawful.

24 Sec. 42.05.351. DISCRIMINATION IN RATES. (a) No public utility  
25 may, as to rates, grant an unreasonable preference or advantage to  
26 any of its customers or subject a customer to an unreasonable pre-  
27 judice or disadvantage. No public utility may establish or maintain  
28 an unreasonable difference as to rates, either as between localities  
29 or between classes of service.

1 (b) Unless specifically authorized by the commission, no public  
2 telephone utility may make, demand, or receive (1) a greater rate in  
3 the aggregate for the performance of an intrastate communication or  
4 service transmitted for a shorter than for a longer distance over the  
5 same line or route in the same direction, the shorter being included  
6 within the longer distance; or (2) a greater rate as a through intra-  
7 state rate than the aggregate of the intermediate intrastate rates.

8 (c) A rate charged by a municipality for a public utility ser-  
9 vice furnished beyond its corporate limits shall not be considered  
10 unjustly discriminatory solely by reason of the fact that a different  
11 rate is charged for a similar service within its corporate limits.

12 Sec. 42.05.361. APPORTIONMENT OF JOINT RATES. (a) If public  
13 utilities entitled to share in a joint rate are unable to agree upon  
14 how the receipts are to be apportioned or if the method of appor-  
15 tionment appears unjust or unreasonable, the commission may, after  
16 hearing, upon its own motion or upon complaint, fix the proportion  
17 to which each public utility shall be entitled.

18 (b) In the event a complaint is filed under this section, the  
19 commission may employ independent professional consultants to make  
20 the necessary investigation and the consultants' determination of  
21 the issue shall be binding on the utilities involved. As a condition  
22 precedent to acting on a complaint the commission may require that  
23 one or more of the utilities agree in advance to pay the fees and  
24 expenses of the consultants.

25 Sec. 42.05.371. TARIFF CHANGES. (a) Unless the commission  
26 otherwise orders, no change may be made by a public utility in its  
27 rates, classifications, rules, regulations or practices or in a con-  
28 tract or agreement relating to a rate, classification, rule, regula-  
29 tion or practice except after 30 days notice to the commission and

1 to the public. Notice shall be given by filing with the commission  
2 and keeping open for public inspection the revised tariff provisions  
3 which shall plainly indicate the changes to be made in the schedules  
4 then in force and the time when the changes will go into effect.  
5 The commission may prescribe additional means of giving notice. The  
6 commission, for good cause shown, may allow changes to take effect  
7 on less than 30 days' notice under such conditions as the commission  
8 may prescribe.

9 (b) Tariff changes shall be filed in the manner provided in  
10 sec. 321(a) of this chapter.

11 (c) Upon the filing of a contract or tariff change, the com-  
12 mission, upon complaint or upon its own motion, without notice, may  
13 initiate an investigation of the reasonableness and lawfulness of  
14 the change.

15 Sec. 42.05.381. SUSPENSION OF TARIFF FILING OR CONTRACT. (a)  
16 Whenever a contract or tariff is filed containing a new or revised  
17 rate, classification, rule, regulation, or practice, the commission  
18 may, upon complaint or upon its own motion, upon reasonable notice,  
19 order an investigation and a hearing concerning the lawfulness of  
20 the proposed change.

21 (b) Pending completion of the investigation and hearing and a  
22 decision thereon, the commission, by order stating the reasons for  
23 its action, may from time to time suspend the operation of the con-  
24 tract or tariff change and defer its effective date but not for a  
25 longer, aggregate period than seven months beyond the time when the  
26 change would otherwise go into effect.

27 (c) After hearing, whether completed before or after the rate,  
28 classification, rule, regulation or practice goes into effect, the  
29 commission may issue orders granting, denying or modifying the tariff

1 change in whole or in part.

2 (d) In the case of a proposed increased rate, the commission  
3 may by order require the interested public utility or utilities to  
4 place in escrow and keep accurate account of all amounts received by  
5 reason of the increase, specifying by whom and in whose behalf the  
6 amounts are paid. Upon completion of the hearing and decision the  
7 commission may by order require the public utility to refund, with  
8 simple interest not exceeding six per cent per annum, to the persons  
9 in whose behalf the amounts were paid, that portion of the increased  
10 rates which was found to be unlawful.

11 (e) At a hearing involving a proposed contract or tariff change,  
12 whether the change is suspended or not suspended, the burden of proof  
13 to show that the change is lawful shall be upon the public utility.  
14 The commission shall give to the hearing and decision of these  
15 questions priority over other questions pending before it and render  
16 its decision as speedily as possible.

17 Sec. 42.05.391. POWER OF COMMISSION TO FIX RATES. Whenever the  
18 commission, after an investigation and hearing finds that a rate,  
19 demanded, observed, charged or collected by a public utility for a  
20 service, subject to the jurisdiction of the commission, or that a  
21 classification, rule, regulation, practice, or contract affecting the  
22 rate, is unjust, unreasonable, unduly discriminatory or preferential,  
23 the commission shall determine a just and reasonable rate, classifi-  
24 cation, rule, regulation, practice, or contract to be thereafter  
25 observed and in force, and shall fix the same by order.

26 Sec. 42.05.401. REPARATIONS; ASSIGNMENT OF REPARATION CLAIMS.  
27 When complaint has been made to the commission concerning a rate for  
28 a service performed by a public utility, and the commission has found,  
29 after investigation and reasonable notice and opportunity to be heard,

1 that the public utility has charged an unreasonable, excessive, or  
2 discriminatory amount in violation of any of the provisions of this  
3 chapter, the commission may order the public utility to make due  
4 reparation to the complainant with interest from the date of collec-  
5 tion if no discrimination will result from such reparation. No order  
6 for the payment of reparation upon the ground of unreasonableness may  
7 be made by the commission in any instance where the rate in question  
8 has, by formal finding, been declared by the commission to be reason-  
9 able, and no assignment of a reparation claim may be recognized by  
10 the commission except assignments by operation of law as in cases of  
11 death, insanity, bankruptcy, receivership, or order of court.

12 Sec. 42.05.411. ACTION FOR RECOVERY OF REPARATION PAYMENTS:  
13 TIME AND PLACE FOR FILING COMPLAINTS. If the public utility does not  
14 comply with the order for the payment of reparation within the time  
15 specified in the order, suit may be instituted in any court of com-  
16 petent jurisdiction to recover the payment within one year from the  
17 date of the order. A complaint for damages resulting from a viola-  
18 tion of a provision of this chapter may be filed either with the  
19 commission or, where concurrent jurisdiction of the cause of action  
20 is vested in the courts, in any court of competent jurisdiction,  
21 within two years from the time the cause of action accrues.

22 Sec. 42.05.421. VALUATION OF PROPERTY OF A PUBLIC UTILITY. (a)  
23 The commission may, after providing reasonable notice and opportunity  
24 to be heard, ascertain and fix the fair value of the whole or any  
25 part of the property of a public utility, insofar as it is material  
26 to the exercise of the jurisdiction of the commission. The commission  
27 may make revaluations from time to time and ascertain the fair value  
28 of all new construction, extensions, and additions to the property  
29 of a public utility. If a public utility furnishes more than one

1 type of utility service, the commission shall segregate the property  
2 used and useful in furnishing each type of service, and it may not  
3 consider the property as a unit in determining the value for the  
4 purpose of fixing rates.

5 (b) In determining fair value of public utility property for  
6 rate making purposes, the commission shall be guided primarily by  
7 the element of original cost less accrued depreciation. Original  
8 cost is the cost of the property to the person first devoting it to  
9 the public service. A value for good will, going concern, natural  
10 resources and other intangibles may not be included as an element of  
11 fair value for rate making purposes.

12 ARTICLE 6. ACCOUNTS, RECORDS AND REPORTS.

13 Sec. 42.05.431. SYSTEM OF ACCOUNTS AND REPORTS. (a) Each  
14 public utility shall use and follow a system of public utility  
15 accounting prescribed by order of the commission.

16 (b) Each public utility shall maintain its accounts on a  
17 calendar year basis unless specifically authorized by the commission  
18 to maintain its accounts on a fiscal year basis. Within 75 days after  
19 the close of its authorized annual accounting period each public  
20 utility shall file with the commission a verified annual report of  
21 its operations during the period reported, on forms furnished by the  
22 commission, containing such financial, statistical and other informa-  
23 tion as the commission may, by regulation, require.

24 Sec. 42.05.441. CONTINUING PROPERTY RECORDS. The commission  
25 may require a public utility to establish, provide, and maintain as  
26 a part of its system of accounts, continuing property records,  
27 including a list or inventory of all the units of tangible property  
28 used or useful in the public service, showing the current location  
29 of the property units by definite reference to the specific land

1 parcels upon which the units are located or stored. The commission  
2 may require a public utility to keep accounts and records in such  
3 manner as to show, currently, the original cost of the property when  
4 first devoted to the public service, and the reserve accumulated to  
5 provide for its depreciation.

6 Sec. 42.05.451. DEPRECIATION RATES AND ACCOUNTS. (a) Each  
7 public utility shall carry a separate, proper and adequate depreciation  
8 account. From time to time the commission shall determine the proper  
9 and adequate rates of depreciation for each major class of property  
10 of a public utility. The commission shall accept rates of deprecia-  
11 tion and depreciation accounts prescribed and maintained under regula-  
12 tions of a federal agency or the terms of a bond ordinance. The com-  
13 mission shall determine allowable depreciation expense in fixing the  
14 rates, tolls and charges to be paid for the services of a public  
15 utility.

16 (b) The commission is not bound in rate proceedings to accept,  
17 as just and reasonable for rate-making purposes, estimates of annual  
18 or accrued depreciation established under the provisions of this  
19 section, but in such rate proceedings it may give consideration to  
20 statements of depreciation submitted in accordance with this section  
21 in addition to such other factors as may be relevant.

22 Sec. 42.05.461. SUBSIDIARY BUSINESS ACCOUNTS. A public utility  
23 engaged, directly or indirectly, in another business or a subsidiary  
24 business shall keep separate accounts relating to that business.  
25 Except as the commission provides, no property, expense or revenue  
26 utilized in or derived from that business may be considered in  
27 establishing the rates and charges of the utility for its public  
28 services.

29 Sec. 42.05.471. RECORDS AND ACCOUNTS TO BE KEPT IN STATE. A

1 public utility shall keep such books, accounts, papers, records, and  
2 memoranda, as required by the commission, in an office within this  
3 state, and may not remove them from the state, except upon such terms  
4 and conditions as may be prescribed by the commission. The provisions  
5 of this section do not apply to a public utility whose accounts are  
6 kept at its principal place of business outside the state, in the  
7 manner prescribed by a federal regulatory body; however, such public  
8 utility shall at its option, either furnish to the commission, within  
9 a reasonable time fixed by the commission, certified copies of its  
10 books, accounts, papers, records, and memoranda relating to the  
11 business done by the public utility within this state, or agree to  
12 pay the actual expenses incurred by the commission in sending  
13 personnel to examine the utility's books and records at the place  
14 where they are kept.

15 Sec. 42.05.481. INSPECTION OF BOOKS AND RECORDS BY COMMISSION.  
16 The commission shall at all times have access to, and may designate  
17 any of its employees to inspect and examine, the accounts, records,  
18 books, maps, inventories, appraisals, valuations, or other reports,  
19 documents, and memoranda kept by public utilities, or prepared or  
20 kept for them by others. The commission may require a public utility  
21 to file with the commission, copies of any or all of such accounts,  
22 records, books, maps, inventories, appraisals, valuations, or other  
23 reports, documents, and memoranda.

24 ARTICLE 7. FINANCIAL AND MANAGEMENT REGULATION.

25 Sec. 42.05.491. UNREASONABLE MANAGEMENT PRACTICES. (a) The  
26 commission may investigate the management of a public utility,  
27 including but not limited to staffing patterns, wage and salary  
28 scales and agreements, purchasing and payment arrangements with  
29 affiliated interests for the purpose of determining unreasonable

1 practices which adversely affect the cost or quality of service of  
2 the public utility.

3 (b) Where unreasonable practices are found to exist, the com-  
4 mission may, after providing reasonable notice and opportunity for  
5 hearing, order the public utility to take such corrective action as  
6 the commission may require.

7 Sec. 42.05.501. IMPAIRED CAPITAL. Whenever the commission  
8 finds that the capital of a public utility is impaired, it may after  
9 investigation and hearing, issue an order directing the public utility  
10 to cease paying dividends on its common stock until the impairment  
11 has been removed.

12 Sec. 42.05.511. DISTRIBUTION OF SURPLUS, PROFITS AND OPERATING  
13 MARGINS. The surplus, profits and operating margins of public  
14 utilities shall be distributed in accordance with the bylaws or  
15 ordinances controlling the utility. The commission may adopt regula-  
16 tions governing the distributions of surplus, profits, and operating  
17 margins by public utilities. The commission may upon investigation  
18 and hearing issue orders governing the distribution of surplus,  
19 profits or operating margins of a public utility.

20 ARTICLE 8. JUDICIAL REVIEW, PENALTIES AND ENFORCEMENT.

21 Sec. 42.05.521. EFFECT OF RULES, REGULATIONS AND ORDERS. Rules,  
22 regulations and orders adopted and issued by the commission in  
23 accordance with this chapter have the effect of law.

24 Sec. 42.05.531. REVIEW AND ENFORCEMENT. (a) All final orders  
25 of the commission are subject to judicial review in accordance with  
26 AS 44.62.560 - 44.62.570 of the Administrative Procedure Act.

27 (b) The commission may apply to the superior court for enforce-  
28 ment of this chapter, the rules and regulations adopted under it and  
29 the orders of the commission. If the court determines that the

1 statute, rules and regulations are valid and that the order was  
2 regularly and validly made and duly issued, it shall enforce the  
3 order by injunction and other process.

4 Sec. 42.05.541. VIOLATION A MISDEMEANOR. Any person (whether  
5 or not a public utility or an officer, agent, or employee of a public  
6 utility) who shall knowingly fail, omit, neglect or refuse to comply  
7 with a provision of this chapter or a rule, regulation, order or  
8 decision of the commission, or an order of the commission prescribing  
9 temporary rates in a rate proceeding, or a final order or decree of  
10 a court, or who shall knowingly procure, aid, or abet any such viola-  
11 tion, omission, failure, neglect, or refusal, shall be guilty of a  
12 misdemeanor, and upon conviction, shall be sentenced to pay the costs  
13 of prosecution and a fine of not more than \$500 for each offense.

14 Sec. 42.05.551. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE.  
15 In addition to all other penalties and remedies provided by law a  
16 public utility and each officer, director, agent, or employee of a  
17 public utility who violates (including failure to obey or comply with),  
18 or who procures, aids, or abets, a violation by a public utility of  
19 a provision of this chapter, an order, decision, rule, or regulation  
20 of the commission is subject to a civil penalty of not more than  
21 \$100 for each offense.

22 Sec. 42.05.561. EACH VIOLATION A SEPARATE OFFENSE. Each  
23 violation of the provisions of this chapter or of an order, decision,  
24 rule, or regulation of the commission by a utility, corporation or  
25 other person is a separate and distinct offense, and in case of a  
26 continuing violation each day's continuance is a separate and  
27 distinct offense.

28 Sec. 42.05.571. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY.  
29 When the commission finds, after providing notice and an opportunity

1 to be heard, that a public utility, its officers or agents has been  
2 in violation or procured, aided and abetted a public utility in a  
3 violation as defined in secs. 551 and 561 of this chapter, the com-  
4 mission shall determine the extent and duration of the violation, the  
5 circumstances under which it occurred and the amount of the civil  
6 penalty, if any, to be levied. A levy of penalty shall be made by  
7 written order of the commission.

8 Sec. 42.05.581. ACTIONS TO RECOVER PENALTIES AND FINES; DIS-  
9 POSITION. (a) Actions to recover penalties or impose fines under  
10 this chapter shall be brought by the attorney general in a court of  
11 competent jurisdiction.

12 (b) All fines imposed and all penalties recovered under the  
13 provisions of this Act shall be paid to the commission and deposited  
14 by it in the general fund of the state.

15 Sec. 42.05.591. PENALTIES, CUMULATIVE; NOT EXCLUSIVE. (a) All  
16 penalties occurring under this chapter shall be cumulative and a suit  
17 for the recovery of one penalty shall not be a bar to or affect the  
18 recovery of any other penalty or be a bar to any criminal prosecution  
19 and imposition of a fine against a public utility or an officer,  
20 director, agent or employee thereof or any other person.

21 (b) Neither a criminal prosecution nor an action to recover a  
22 penalty as provided in this chapter shall be a bar to an enforcement  
23 proceeding to require compliance, nor to any other remedy provided  
24 by this chapter.

25 Sec. 42.05.601. JOINDER OF ACTIONS. Under the applicable court  
26 rules, appeals from orders of the commission, applications for enforce-  
27 ment of commission orders and actions for recovery of a penalty may  
28 be joined. The court may in the interests of justice separate the  
29 actions.

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ARTICLE 9. GENERAL PROVISIONS.

Sec. 42.05.611. EMINENT DOMAIN. A public utility may exercise the power of eminent domain for public uses authorized by law. This section does not authorize the use of a declaration of taking.

Sec. 42.05.621. REGULATION BY MUNICIPALITY. (a) Nothing in this chapter authorizes a public utility during the remainder of the term of a grant or franchise under which it was acting on May 9, 1959, to charge for any service, in the grant or franchise contracted, exceeding the maximum rate for that service fixed in the grant or franchise.

(b) Except as otherwise provided in (a) of this section the commission's jurisdiction and authority extends to public utilities operating within a municipality or borough (whether home rule or otherwise) or a public utility district or any other local governmental entity. In the event of a conflict between a certificate, order, decision, rule or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such local governmental entity, the certificate, order, decision, rule or regulation of the commission shall prevail.

Sec. 42.05.631. EXPENSES OF INVESTIGATION AND HEARING. At the conclusion of any public hearing held under this chapter the commission shall determine the costs among the parties, including the commission, as it considers just. In assessing costs, the commission shall consider ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The commission may determine and allow a reasonable time in which costs shall be paid. An order of the commission that increases a rate of a public utility shall not take effect until the costs assessed against the public utility are paid. The costs shall be paid to the commission and deposited in

1 the general fund.

2 Sec. 42.05.641. REGULATORY FEES. (a) Each public utility  
3 shall, on or before the first day of April of each year, file with  
4 the commission a statement, under oath, showing its gross operating  
5 revenue from intrastate operations during the preceding calendar  
6 year and pay to the commission a fee equal to one-half of one per  
7 cent of its actual gross operating revenue from operations during  
8 the preceding calendar year.

9 (b) With each application filed with the commission pursuant  
10 to AS 42.05 the applicant shall pay the commission a fee of \$50.

11 (c) All fees collected under (a) and (b) of this section shall  
12 be deposited in the general fund of the State of Alaska.

13 Sec. 42.05.651. PUBLIC DISCLOSURE OF INFORMATION. Any person  
14 may make written objections to the public disclosure of information  
15 contained in an application, report or document filed under the pro-  
16 visions of this chapter or of information obtained by the commission  
17 under the provisions of this chapter, stating the grounds for the  
18 objection. When an objection is made, the commission shall order the  
19 information withheld from public disclosure if in its judgment a dis-  
20 closure of the information would adversely affect the interest of that  
21 person and is not required in the interest of the public.

22 Sec. 42.05.661. VALIDITY OF CERTAIN CERTIFICATES. No certifi-  
23 cate issued before July 29, 1968, to a public utility for the genera-  
24 tion, transmission, or distribution of electric energy and power, or  
25 for the furnishing of telephone or telegraph communications may be  
26 considered as terminated, or voided, for the sole reason that such  
27 utility did not or would not produce an annual gross income in excess  
28 of \$25,000.

29 Sec. 42.05.671. UTILITY CLASSES. The commission may by

1 regulation provide for the classification of public utilities based  
2 upon differences in annual revenue, assets, nature of ownership and  
3 other appropriate distinctions and as between such classifications,  
4 by regulation, provide for different reporting, accounting and other  
5 regulatory requirements.

6 Sec. 42.05.681. DEFINITIONS. In this chapter

7 (1) "commission" means the Alaska Public Service Commission;

8 (2) "public utility" or "utility" includes every corpora-  
9 tion (whether public, cooperative, or otherwise), company, individual,  
10 or association of individuals, their lessees, trustees, or receivers  
11 appointed by a court, that owns, operates, manages, or controls any  
12 plant, pipeline, or system for

13 (A) furnishing, by generation, transmission or dis-  
14 tribution, electrical service to the public for compensation;

15 (B) furnishing telephone, radio telephone, microwave,  
16 telegraph or other communications service to the public for  
17 compensation;

18 (C) furnishing water or sewer service to the public  
19 for compensation;

20 (D) furnishing by means of a transmission or distri-  
21 bution, system, natural or manufactured gas, petroleum or  
22 petroleum products to the public for compensation;

23 (3) "service" means (unless the context indicates otherwise)  
24 every commodity, product, use, facility, convenience or other form of  
25 service which is offered for and provided by a public utility for the  
26 convenience and necessity of the public;

27 (4) "rate" includes each rate, toll, fare, rental, charge,  
28 or other form of compensation demanded, observed, charged or collected  
29 by a public utility for its services;

1 (5) "public" or "general public" means the public generally,  
2 or any limited portion of the public, including but not limited to an  
3 individual, cooperative, corporation, society, public utility, muni-  
4 cipality, borough, or other political subdivision of the state or  
5 agency of the state or United States government for which the service  
6 is performed or to which the commodity is delivered;

7 (6) "affiliated interest" includes:

8 (A) a corporation or person owning or holding  
9 directly or indirectly five per cent or more of the voting  
10 securities of a public utility company engaged in intrastate  
11 business in this state;

12 (B) a corporation or person, other than those  
13 above specified, in a chain of successive ownership of five  
14 per cent or more of voting securities, the chain beginning with  
15 the holder of the voting securities of such public utility  
16 company;

17 (C) a corporation five per cent or more of whose  
18 voting securities are owned by a person or corporation owning  
19 five per cent or more of the voting securities of such public  
20 utility company or by a person or corporation in such chain  
21 of successive ownership of five per cent or more of voting  
22 securities;

23 (D) a corporation or person with which the public  
24 utility company has a management or service contract; and

25 (E) a person who is an officer or director of such  
26 public utility company or of a corporation in a chain of suc-  
27 cessive ownership of five per cent or more of voting securities.

28 Sec. 42.05.691. EXEMPTIONS. The provisions of this chapter  
29 do not apply to a person who furnishes water, gas or petroleum or

1 petroleum products by tank, wagon, or similar conveyance, unless the  
2 person is thereby supplying water, gas, petroleum or petroleum products  
3 to a public utility in which he has an "affiliated interest".

4 (b) Sections AS 42.05.491 - 42.05.511 concerning financial and  
5 management regulations do not apply to a municipally owned and  
6 operated public utility.

7 (c) Section AS 42.05.641 concerning regulatory fees does not  
8 apply to a municipally owned and operated public utility.

9 Sec. 42.05.701. SHORT TITLE. This chapter may be cited as the  
10 Alaska Public Service Commission Act.

11 \* Sec. 5. All litigations, hearings, investigations, and other pro-  
12 ceedings whatsoever, pending under any law repealed by this Act, shall con-  
13 tinue and remain in full force and effect, and may be continued and com-  
14 pleted under the provisions of this Act. All certificates, orders, rules,  
15 regulations, or tariffs made, issued, or filed under any law repealed by  
16 this Act, and in full force and effect upon the effective date of this Act,  
17 shall remain in full force and effect for the term issued, or until revoked,  
18 vacated, or modified under the provisions of this Act. All existing con-  
19 tracts and obligations of the commission, entered into or created under any  
20 law repealed by this Act, and in force and effect upon the effective date  
21 of this Act, shall remain in full force and effect and shall continue to  
22 be performed by the commission.

23 \* Sec. 6. AS 42.05.070 - 42.05.650 are repealed.

24 \* Sec. 7. This Act takes effect on the day after its passage and  
25 approval or on the day it becomes law without approval.  
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