

HB

158

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE 586-7477

JUNEAU, ALASKA 99801

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WRANGELL ALASKA 16

STATE REPRESENTATIVE E J HAUGEN

JUNEAU

1030

THE CITY OF WRANGELL OPPOSES HOUSE BILL 158 AS IT IS NOT
IN OUR OPINION A BILL DESIGNED FOR GOOD LOCAL GOVERNMENT

D J HOUSE, MAYOR

158.

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

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WRANGELL ALASKA 16

STATE REPRESENTATIVE MIKE MILLER

JUNEAU

~~1088~~

THE CITY OF WRANGELL OPPOSES HOUSE BILL 158 AS IT IS NOT
IN OUR OPINION A BILL DESIGNED FOR GOOD LOCAL GOVERNMENT
D J HOUSE, MAYOR

158.

March 29, 1971

Mrs. Wilda Hudson
President,
Greater Anchorage Area
Borough Assembly
1542 E. 27th Ave.
Anchorage, Alaska 99504

Dear Wilda:

As I believe you understand, your letter regarding municipal garbage collection, House Bill 158, arrived here after the House completed action on it.

Accordingly, I am sending your letter to Senator Rader for consideration by the Senate Local Government Committee.

Best personal regards,

Mike Miller, Representative
Election District Four, (Juneau)

GREATER ANCHORAGE AREA BOROUGH

104 NORTHERN LIGHTS BOULEVARD
ANCHORAGE, ALASKA 99503



March 8, 1971

ASSEMBLY

1542 E. 27th Ave.
Anchorage, Alaska
99504

Honorable Mike Miller, Chairman
Local Government Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Miller;

Unsuccessfully, I attempted to reach you by telephone on Monday evening, March 1st and Tuesday, March 2nd, prior to the hearing by your Local Government Committee on HB 158 entitled "An Act relating to municipal garbage collection and disposal service in annexed areas". I am assuming that it is still timely to pass my thoughts on to you concerning this bill.

I see nothing objectionable to the amendments proposed in HB 158, however, it appears to me that the proposed revisions, dated February 19th, would be a bit more acceptable than HB 158 as originally written, which drops the proviso that cities not charge less than a common carrier holding a permit. I feel strongly that municipalities should have to play by the same rules as private enterprise for like services rendered. After all, if private enterprise has built up a public service business prior to municipal government desiring to, or being in a position to, offer that service than the government has no right to move in and provide it or duplicate that service without due consideration and compensation for the businessman that was there first.

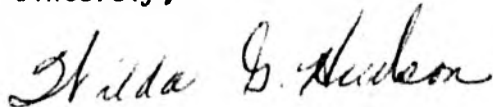
The question does come to my mind whether or not the same restrictions would apply to boroughs if a new service area is formed as now applies to newly annexed areas to the city. I am assuming that it would. Perhaps this would be worthy of note, for likewise the same rules should apply to boroughs that apply to cities in such cases.

Originally it was my thought that refuse collection might more properly be regulated as a utility under the Public Utility Commission rather than under the Alaska Transportation Commission. However, after discussing this matter with Mr. Don Hall, Executive Director of the Public Utility Commission, apparently there is good argument on both sides as to whether refuse collection should be regulated by the PUC or the ATC.

I would offer this comment for consideration by your Committee, that serious consideration be given to combining the functions of the PUC and the ATC into one regulatory body. It would appear to me that there is merit and justification to combining these two Commissions and continuing under the concepts set forth last legislative session in the passing of the strong PUC bill with full time commissioners. In this manner the need would be eliminated ~~to~~ continually having to amend sections of the general law municipal code to accommodate special needs and/or interests as is the case with HB 158. It has been brought to my attention that in those states where there is a public regulatory commission that only Alaska and three other states have separate regulatory bodies. All of the remaining states have a combined commission as a regulatory body.

I would point out that the opinions expressed in this letter are those of mine as an individual assembly member and not those of the Greater Anchorage Area Borough Assembly as a whole.

Sincerely,



Wilda G. Hudson
President,
Greater Anchorage Area Borough Assembly

WGH: mc

cc: Representative Eugene Guess,
Speaker of the House

P.S. Sorry this is even later but the typist has just not had time to transcribe my letters

Alaska State Legislature



House of Representatives

February 19, 1971

Mr. Robert Rocker
Chairman
Alaska Transportation Commission
74 McKay Building,
338 Denali Street,
Anchorage, Alaska 99501

Dear Mr. Rocker:

The House Local Government Committee has been considering the enclosed House Bill 158 which was introduced by the House Commerce Committee.

Following discussion with representatives of the refuse collection industry, the Local Government Committee is also considering the revised version which is enclosed.

We would appreciate your reviewing these proposals and submitting any suggestions that you may have before 9 a.m. Tuesday, March 2nd, at which time the Committee will again be taking up the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Miller".

Mike Miller, Representative
District 4, (Juneau)

Enclosures:

HB 158
HB 158 suggested revision

Same letter to: Mr. Don Berry, Executive Director, Alaska Municipal League; Mr. Chet Strohmeyer, Juneau; and Mr. Robert Rocker, Chairman, Alaska Transportation Commission, Anchorage.

REPRESENTATIVE MIKE MILLER

COMMITTEES
CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

Alaska State Legislature



House of Representatives

February 19, 1971

Mr. Jack J. Greene
Manager,
City of Homer
Box 335
Homer, Alaska 99603

Dear Mr. Greene:

The House Local Government Committee has been considering the enclosed House Bill 158 which was introduced by the House Commerce Committee.

Following discussion with representatives of the refuse collection industry, the Local Government Committee is also considering the revised version which is enclosed.

We would appreciate your reviewing these proposals and submitting any suggestion that you may have before 9 a.m. Tuesday, March 2nd, at which time the Committee will again be taking up the matter. Assuming you may be in Juneau for the City Manager's meeting, we would, of course, be pleased to hear personal testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Miller".

Mike Miller, Representative
District 4, (Juneau)

Enclosures:

HB 158
HB 158 suggested revision

Same letter to: Hon. Les, Shepard, Mayor, Sitka; Mr. Wm.E. Curtis, Manager, City of Palmer; Mr. Wallis C. Droz, Manager, City of Fairbanks; Mr. Robert E. Sharp, Manager, City of Anchorage; Mr. Ronald L. Usher, Manager, City and Borough of Juneau; Mr. James R. Eide, Manager, City of Ketchikan; and Mr. Jack J. Greene, Manager, City of Homer

REPRESENTATIVE MIKE MILLER

COMMITTEES

CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

F-100

Sitka, Alaska
March 4, 1971

Rep. Mike Miller
Alaska State Legislature
Juneau, Alaska 99801

Dear Rep. Miller

I am writing in regards to HB 158 and would like to go on record as endorsing and heartily supporting passage of this bill. I understand a petition supporting this bill has been presented to you and would like my name added to it through this letter. Thank you for your consideration and in closing I remain

Respectfully Yours

Herbert Martin Jr.

dba

Martin's Sitka Disposal Service
Box 865
Sitka, Alaska 99835

Pursued out

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to municipal garbage collection and disposal services in annexed areas."

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

*Section 1. AS 29.10.156(b) is amended to read:

(b) The council may not prohibit a person holding a valid permit from the Alaska Transportation Commission from collecting and disposing of Garbage and providing other related services in an area annexed by the city if the permit authorized the collection and disposal of garbage and the providing of other services in the area annexed by the city and the permit was originally issued before the area was annexed by the city. A city is prohibited from providing for a garbage collection and disposal system in an area annexed after the effective date of this Act, which is within the scope of operating authority of a person possessing a valid permit from the Alaska Transportation Commission authorizing him to provide for garbage collection and disposal services in the annexed area. This section does not prohibit the operation of a sanitary land fill by

the city within the annexed areas. If a city provides for a garbage collection and disposal system in an area annexed prior to the effective date of this Act wherein such services are offered by a person holding a valid permit from the Alaska Transportation Commission to provide such services, the city may not charge less than the rate set for garbage collection and disposal by the Alaska Transportation Commission for common carriers.

Sec. 2. AS 29.10.156(c) is amended to read:

(c) If the council determines that it is not in the public interest for the city to provide garbage collection and disposal and related services under the restrictions of part (b) of this section, it may negotiate for and purchase or exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services in the city. The "fair market value" shall be the amount a willing buyer would pay and a willing seller accept as the purchase price without threat of eminent domain or other compulsion with the premise that the refuse service would be continued for a reasonable period of time in the future. If an eminent domain proceeding is instituted, the person holding a valid permit may continue

operating under the authority of such permit until final judgment has been rendered and compensation has been paid to the person from whom the operating authority is to be acquired and the city shall not furnish service in such area until the compensation has been paid to the permit holder.

PETITION FOR NEW LEGISLATION

We, the undersigned, being State Certificated garbage collection and disposal operators with significant investments in routes and facilities in geographical areas adjacent to municipalities which have the power to annex these areas or which have already started to annex these areas, hereby petition the Legislature to adopt the proposed legislation attached hereto.

We believe that this legislation is essential in order to preserve the existing State certificated garbage collection and disposal industry from losing the value of the investment it has made through the years in areas adjacent to these municipalities, and even the destruction of the industry itself.

The purpose of the legislation is to permit us to continue to serve our customers as we have in the past when home rule cities and boroughs did not serve the general public in these areas.

NAME	COMPANY	LOCATION
<u>Sumner Lewis</u>	<u>Seward Service</u>	<u>Seward Alaska</u>
<u>Thomas W. Cushman</u>	<u>Anchorage Refuse</u>	<u>Anchorage</u>
<u>Byron A. Anderson</u>	<u>Anderson Garbage Service</u>	<u>Palmer</u>
<u>Bernard Kopf</u>	<u>Fun North Sanitation</u>	<u>Edka Ak.</u>
<u>Robert E. Cooper</u>	<u>Home Transfer Co.</u>	<u>Home</u>
<u>Cluster A. Stralinger</u>	<u>Acme Refuse Service</u>	<u>Duncan</u>

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE 588-7477

JUNEAU, ALASKA 99801

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ANCHORAGE ALASKA 1

HONORABLE MIKE MILLER, HOUSE OF REPRESENTATIVES

ALASKA LEGISLATURE JUN

THIS IS IN RESPONSE TO YOUR INQUIRY CONCERNING HB NO
158. THE CITY OF ANCHORAGE IS OPPOSED TO THIS BILL

IN OUR VIEW THE ALASKA TRANSPORTATION COMMISSION IS
NOT THE PROPER REGULATORY AGENCY TO CONTROL GARBAGE COLLECTION
AND DISPOSAL. WE FEEL THE REGULATION OF THIS SERVICE SHOULD
BE VESTED IN THE APPLICABLE LOCAL GOVERNMENT UNIT.
CERTAINLY IF THE STATE IS TO REGULATE IN THIS FIELD,
THE ALASKA PUBLIC UTILITY COMMISSION WOULD BE THE MORE
APPROPRIATE REGULATORY AGENCY.

IF THE CITY AND/OR BOROUGH IN THIS AREA DID NOT OPERATE
SANITARY LAND FILLS AND ALLOW USE BY SUCH PRIVATE GARBAGE
COLLECTION FIRMS, I DOUBT VERY SERIOUSLY AND OF THESE
FIRMS WOULD BE IN BUSINESS.

THE CITY OF ANCHORAGE RECOGNIZED THAT WHERE A PRIVATE
FIRM HAS A ROUTE IN A NEWLY ANNEXED AREA THAT A CITY SHOULD
BEFORE SERVING THE AREA, ACQUIRE THE EQUIPMENT AND
FACILITIES EMPLOYED BY THE PRIVATE FIRM IN SERVING THE
AREA. HOWEVER, WE FEEL STRONGLY THAT CITIES SHOULD NOT
BE PROHIBITED FROM PROVIDING GARBAGE COLLECTION AND
DISPOSAL SERVICE TO ANY OF ITS RESIDENTS

I PLAN TO BE IN JUNEAU LATER THIS WEEK AND HOPE WE MAY
FURTHER DISCUSS THIS BILL THEN.

ROBERT E SHARP, CITY MANAGER CITY OF ANCHORAGE

HE 158.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA

February 26, 1971

Mike Miller, Representative
District 4, (Juneau)
Alaska State Legislature
House of Representatives
Juneau, Alaska 99801

Subject: HB 158

Dear Mike:

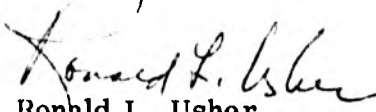
Thank you for inviting me to submit comments on House Bill 158 and the suggested revision.

In my view, both of these bills are undesirable. Although it is customary for municipalities to provide garbage collection and disposal services through contracts, these services nevertheless are basically public necessities. Any legislation which inhibits the ability of local government to provide a necessary public service is disadvantageous.

House Bill 158 restricts the ability of a city to provide garbage collection and disposal services in annexed areas. The suggested revision to House Bill 158 has the same effect of keeping the City from furnishing service pending settlement with the prior permittee. Additionally, the suggested revision provides for a disadvantageous use of Eminent Domain authority, in my opinion.

It seems to me that the basic consideration here is the purpose for which the garbage collection and disposal service is provided. Obviously, in urban areas it is deemed a public necessity for health and sanitation reasons. Therefore, service to the public by its responsible local government must be considered of primary concern, overriding the issue of protection of private businesses that contract to perform this work.

Very truly yours,



Ronald L. Usher
City-Borough Manager

RLU:pw

Introduced: 2/8/71
Referred: Local Government

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 HOUSE BILL NO. 158

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal garbage collection and
7 disposal services in annexed areas."

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

9 * Section 1. AS 29.10.156(b) is amended to read:

10 (b) The council may not prohibit a person holding a valid permit
11 from the Alaska Transportation Commission from continuing to collect
12 and dispose of garbage and provide other related services in an area
13 annexed by the city if the permit authorizes the collection and
14 disposal of garbage and the providing of other services in the area
15 annexed by the city and the permit was originally issued before the
16 area was annexed by the city. A city is prohibited from providing
17 for a garbage collection and disposal system in an annexed area which
18 is within the scope of operating authority of a person possessing
19 a valid permit from the Alaska Transportation Commission authorizing
20 him to provide for garbage collection and disposal services in the
21 annexed area. This section does not prohibit the operation of a
22 sanitary land fill by the city within the annexed areas [IF A CITY
23 PROVIDES FOR A GARBAGE COLLECTION AND DISPOSAL SYSTEM IN AN ANNEXED
24 AREA ALREADY SERVICED BY A PERSON ALLOWED TO CONTINUE UNDER THIS
25 SUBSECTION, THE CITY MAY NOT CHARGE LESS THAN THE RATE SET FOR GARBAGE
26 COLLECTION AND DISPOSAL BY THE ALASKA TRANSPORTATION COMMISSION FOR
27 COMMON CARRIERS].

28 * Sec. 2. AS 29.10.156(c) is amended to read:

29 (c) If the council determines that it is not in the public

*Permit by
A.T.C. →
in city.*

Rep. Whitaker

MEMORANDUM IN SUPPORT OF AMENDMENT
TO AS 10.29.156

Purpose of this Memorandum. This memorandum is prepared in support of an Amendment to AS 29.10.156. This statute presently provides for the acquisition of the business of a private refuse carrier through the exercise of eminent domain power. It would appear that in its present form, the statute is ambiguous in that it does not clearly provide for the fair measure of damages intended by the Legislature. It is submitted that this section can be amended in a manner that will more clearly effectuate the intention of the Legislature to adequately compensate a private carrier whose operating authority is condemned.

Background. In recent years the rapid growth of populated areas in Alaska has created a need for modern and effective refuse collection services. This need has been met by private carriers operating within the free enterprise system who now operate under permits issued in accordance with the Alaska Motor Freight Carrier Act (AS 42.10.010-430).

These private carriers have invested considerable amounts of capital and their own time and effort in developing an efficient refuse collection service designed to protect the public health and serve the public convenience. As in many other businesses, these men suffered considerable initial losses before becoming well established. This is particularly true because a private carrier must commit himself to serve an area and obtain a permit to serve it at an early point in its development. This means that trucks may be run over a large

area of underpopulated territory at an initial loss and that the operation only becomes profitable in ensuing years as the population increases.

The particular concern of these private businessmen in recent years has been the rapid growth, by annexation, of certain cities such as Anchorage and Fairbanks. In some cities refuse collection is for all practical purposes a municipal monopoly within the city limits. For example, in Anchorage there is a tie-in arrangement whereby residents within the city limits must subscribe to the city telephone, electricity, water system, sewerage and refuse system and must pay for all of these services in order to receive any of them. Therefore, once an area is annexed by a city, the private refuse collector is shut out and the business which he has developed at great expenditure of time, effort and capital is totally lost.

Present Statute and Applicable Case Law. In recognition of this injustice to the private businessman, the Alaska Legislature in its last session passed certain amendments to AS 29.10.156 which were intended to protect the private carrier. These amendments provided that a private carrier could continue to operate within the city limits and the city would have to charge the same rates as the private carrier and it further provided that if the city chose to exclude the private carrier then it could only do so by an exercise of the power of eminent domain which would provide just compensation to him. Unfortunately, the tie-in arrangement such as is practiced in Anchorage has meant that a private carrier cannot hope to compete with the city.

LAW OFFICES
HUGHES,
THORBNESS, LOWE,
GANZ & CLARK
807 G STREET
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ANCHORAGE,
ALASKA

It is, therefore, submitted that this competition provision be eliminated from the statute and that it simply be provided that if a city wishes to service an annexed area, then it must condemn the private carrier's operating authority and compensate him for his loss.

However, even if the city or other local authority is obliged to exercise the power of eminent domain, it would appear that the present statute is ambiguous in that it might not provide for an adequate measure of damages. It is clear that the legislature intended that the private carrier receive "the fair market value" of the operating authority taken from him. However, the peculiar nature of the applicable case law and the special situation of the refuse collection business makes it doubtful that a court would carry out the clear intent of the Legislature.

The special problem is that what the private carrier loses is his authority to operate within a given area. He does not lose, in most cases, his equipment or physical plant. Nevertheless, it is perfectly clear that the private carrier has a large investment of his personal time, effort and money in having developed his business within that area. Unfortunately, there are numerous judicial decisions which indicate that courts will not look to anything other than physical assets in determining the value of condemned property. For example, in a Nevada Case where a private businessman had a certificate to provide water to a particular area, he was held to be entitled to no compensation when the city forced him out of business despite the fact that he had made a large investment in developing business goodwill and lost considerable amounts of future profit.

Las Vegas Water Valley Dist. v. Michelas, 360 P.2d 1041.

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ALASKA

With very few exceptions, the case law supports the conclusion that the loss of an established business franchise or license is not compensable in an eminent domain proceeding. Knoxville Water Co. v. Knoxville, 200 U.S. 22; Volunteer Elec. Coop. v. TVA, 139 F.Supp. 27. See 68 A.L.R.2d 392 for summary of cases to similar effect. A few cases have taken a more enlightened view toward the businessman who has put vast effort and investment into developing a business route. For example, the U.S. Supreme Court held that a laundry company which had been condemned could include in its damages the value of the established laundry service route. Kimball Laundry Co. v. U.S. 338, U.S. 1. However, even in the Kimball Case, the value of the route was only used in computing the value of the physical assets taken.

As can be readily seen, the private refuse carriers of Alaska can take little comfort even in so enlightened an opinion as the Kimball Decision. Kimball merely used the value of the lost trade route to help compute the value of the physical laundry plant which was condemned. It is unlikely that any local government unit will ever exercise power of eminent domain over the physical assets of a refuse collection company, since such physical assets consist primarily of equipment such as trucks and compactors and perhaps a refuse disposal area. Nevertheless, it is obvious that such physical facilities and equipment are useless if the operating authority of the refuse collector is taken from him.

Proposed Amendment. The proposed amendment supported by this memorandum would merely clarify the statute so as to insure that the intent of the Legislature is realized. It would prohibit a local governmental unit from unfairly competing with a private carrier by annexing the areas served by him and require that

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adequate compensation be paid to the private carrier if his authority is condemned. In computing damages, the statute would require that the court explicitly consider such losses as goodwill, business relocation and future profits. These are the very areas which other courts under similar statutes have refused to recognize. Roberts v. New York, 295 U.S. 264; United States v. Boston C.C. & N.Y. Canal Co., 271 F. 877; Calcasieu Sanitation Serv., Inc. v. City of Lake Charles, 118 S.2d 179; Kennebec Water Dist. v. Waterville, 44 Atl. 6.

Such cases as those mentioned above are clearly wrong in that they do not permit a fair measure of damages to the condemned property owner. They have been widely criticized by the most distinguished commentators in this area of the law. See 48 Va. L.R. 437; 67 Yale L.J. 61. It would be hoped that even under the present statute the Alaska courts would not follow the restrictive and old-fashioned holdings of these cases. For example, the Alaska Supreme Court has apparently recognized that the operating authority of an electric company does have real value that should be recognized by the courts. City of Fairbanks v. Elec. Dist. Sys. 413 P.2d 166.

However, the considerable body of case law in other states and the fact that this would be a case of first impression in the State of Alaska raises unnecessary hazards for the private refuse collectors. These hazards can be readily eliminated by enacting the proposed amendment to AS 29.10.156.

The measure of damages established by the proposed amendment is in no way unfair or unreasonable from the point of view of the condemning authority. The clear intent of the statute is that such authority should pay the fair market value

of the condemned property. A consideration of future profits and business growth would be the primary criterion used by a private businessman who wished to purchase a refuse collection business. The fair market value, as between a willing buyer and seller, has been followed in a few states and should be explicitly adopted in Alaska. See City of Jackson v. Creston Hills, Inc., 1970 So.2d 2150. A capitalization of earnings, making due allowance for future growth of the business, is precisely the correct manner to evaluate a private business of this nature.

Obviously, future earnings must be discounted to present value and one would not expect the court simply to take present earnings and multiply by 20 or some other arbitrary figure. But a court seeking to determine the fair market value of the operating authority should consider present earnings and the likely future growth of those earnings with the probable increase in population and business for a considerable period into the future and then determine the fair present price of the operation. A period of 20 years has been suggested in order that there be some limit to the range of factors for the court to consider. However, it is believed that consideration of future profits and growth for a reasonable period would be satisfactory so long as the condemning authority considered the full worth of the operation as a private buyer would do. It should be clear that if a sparsely populated area with great growth potential is annexed, then the refuse carrier should be compensated for the lost future profits he could reasonably anticipate.

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ALASKA

It is, therefore, submitted that the statutory amendment proposed is completely fair to both local government units and to private carriers. To leave the statute in its present ambiguous state would simply add an unnecessary degree of risk and uncertainty to a business of considerable public importance, which is already highly risky. It would be contrary to the public interest and would discourage the continued development of sound refuse collection to leave the law in its present form. The ambiguities of the present statute also invite expensive and drawn out litigation which would have a detrimental effect on both private carriers and local government authorities. The Legislature is therefore urged to amend the statute to provide the maximum possible clarity and fairness.

Respectfully submitted,

HUGHES, THORSNESS, LOWE, GANTZ &
CLARK

By


Robert C. Lowe

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THORSNESS, LOWE,
GANTZ & CLARK
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PHONE 279-4822
ANCHORAGE,
ALASKA

EXPLANATION OF DRAFT LEGISLATION

The purpose of the legislation is to protect pre-existing state certificated garbage collection and disposal carriers from losing the value of the investment they have made in geographical areas adjacent to municipalities which may be or have been annexed by the municipality.

If large sections of the areas currently served by the State certificated carrier are annexed and municipal garbage disposal services are furnished in those annexed areas, the result is a continuing financial loss, perhaps a fatal financial loss, to the permit holder each time a new area is annexed.

Therefore, in order to avoid this problem which will lead inevitably to the eventual death of the State certificated carriers furnishing garbage collection and disposal services in these areas, the private State certificated garbage collection and disposal industry is submitting this proposed legislation to prohibit the annexing municipality from furnishing garbage collection and disposal services to the residents of the annexed areas.

This legislation would have no adverse effect on the service to the customers in those areas adjacent to the annexing municipality as the quality and quantity of service would not change but would continue to be provided by the State certificated carriers. In addition, the existing permit holders are regulated by the Alaska Transportation Commission as to the rates charged and the quality of their services. Therefore, adequate protection exists for the individuals and businesses requiring garbage collection and disposal services in these areas.

The private refuse collection industry cannot compete against a municipally operated refuse collection service because the municipal service is financed on a tax base and is exempt from income taxes, weight fees, license fees, excise taxes, and other costs of operation which the private refuse collectors must incur.

This legislation will also permit the private refuse collection industry to continue paying its fair share of State taxes.

2-19-71

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

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the city within the annexed areas. If a city provides for a garbage collection and disposal system in an area annexed prior to the effective date of this Act wherein such services are offered by a person holding a valid permit from the Alaska Transportation Commission to provide such services, the city may not charge less than the rate set for garbage collection and disposal by the Alaska Transportation Commission for common carriers.

Sec. 2. AS 29.10.156(c) is amended to read:

(c) If the council determines that it is not in the public interest for the city to provide garbage collection and disposal and related services under the restrictions of part (b) of this section, it may negotiate for and purchase or exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services in the city. The "fair market value" shall be the amount a willing buyer would pay and a willing seller accept as the purchase price without threat of eminent domain or other compulsion with the proviso that the refuse service would be continued for a reasonable period of time in the future. If an eminent domain proceeding is instituted, the person holding a valid permit may continue

operating under the authority of such permit until final judgment has been rendered and compensation has been paid to the person from whom the operating authority is to be acquired and shall not furnish service in such area until the compensation has been paid to the permit holder.

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTH LEGISLATURE - FIRST SESSION

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

*Section 1. AS 29.10.156(b) is amended to read:

(b) The council may not prohibit a person holding a valid permit from the Alaska Transportation Commission from collecting and disposing of garbage and providing other related services in an area annexed by the city if the permit authorizes the collection and disposal of garbage and the providing of other services in the area annexed by the city and the permit was originally issued before the area was annexed by the city. A city is prohibited from providing for a garbage collection and disposal system in an area annexed after the effective date of this Act, which is within the scope of operating authority of a person possessing a valid permit from the Alaska Transportation Commission authorizing him to provide for garbage collection and disposal services in the annexed area. This section does not prohibit the operation of a sanitary land

continues

fill by the city within the annexed areas. If a city provides for a garbage collection and disposal system in an area annexed prior to the effective date of this Act wherein such services are offered by a person holding a valid permit from the Alaska Transportation Commission to provide such services, the city may not charge less than the rate set for garbage collection and disposal by the Alaska Transportation Commission for common carriers.

Sec. 2. AS 29.10.156(c) is amended to read:

(c) If the council determines that it is not in the public interest for the city to provide garbage collection and disposal and related services under the restrictions of part (b) of this section, it may negotiate for and purchase or exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services in the city. ^{to determine} ~~The fair market value shall be based on the economic loss to the permit holder, including incidental losses such as goodwill, business relocation and future profits.~~ ^{shall be considered.} The estimate of future profits as an element of fair market value shall consider continuous operation by the permit holder and future growth of the business for a reasonable number of

*City Buyer
Aseller*

years after commencement of the eminent domain proceeding.

If an eminent domain proceeding is instituted, the person holding a valid permit may continue operating under the authority of such permit until final judgment has been rendered and compensation has been paid to the person from whom the operating authority is to be acquired and shall not furnish service in such area until the compensation has been paid to the permit holder.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to municipal garbage collection and disposal services in annexed areas."

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

*Section 1. AS 29.10.156(b) is amended to read:

(b) The council may not prohibit a person holding a valid permit from the Alaska Transportation Commission from collecting and disposing of Garbage and providing other related services in an area annexed by the city if the permit authorized the collection and disposal of garbage and the providing of other services in the area annexed by the city and the permit was originally issued before the area was annexed by the city. A city is prohibited from providing for a garbage collection and disposal system in an area annexed after the effective date of this Act, which is within the scope of operating authority of a person possessing a valid permit from the Alaska Transportation Commission authorizing him to provide for garbage collection and disposal services in the annexed area. This section does not prohibit the operation of a sanitary land fill by

the city within the annexed areas. If a city provides for a garbage collection and disposal system in an area annexed prior to the effective date of this Act wherein such services are offered by a person holding a valid permit from the Alaska Transportation Commission to provide such services, the city may not charge less than the rate set for garbage collection and disposal by the Alaska Transportation Commission for common carriers.

Sec. 2. AS 29.10.156(c) is amended to read:

(c) If the council determines that it is not in the public interest for the city to provide garbage collection and disposal and related services under the restrictions of part (b) of this section, it may negotiate for and purchase or exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services in the city. The "fair market value" shall be the amount a willing buyer would pay and a willing seller accept as the purchase price without threat of eminent domain or other compulsion with the premise that the refuse service would be continued for a reasonable period of time in the future. If an eminent domain proceeding is instituted, the person holding a valid permit may continue

operating under the authority of such permit until final judgment has been rendered and compensation has been paid to the person from whom the operating authority is to be acquired and the city shall not furnish service in such area until the compensation has been paid to the permit holder.

PROPOSED AMENDMENT TO ALASKA STATUTE

29.10.156(b)

Alaska Statute 29.10.156(b) is amended to read:

(b) Except as provided in (c) of this section, the Council may not prohibit a person holding a valid permit from the Alaska Transportation Commission from continuing to collect and dispose of garbage and provide other related services in an area annexed by the City if the permit authorizes the collection and disposal of garbage and the providing of other services in the area annexed by the City and the permit was originally issued before the area was annexed by the City. [If a City provides for a garbage collection and disposal system in an annexed area already serviced by a person allowed to continue under this subsection, the City may not charge less than the rates set for garbage collection and disposal by the Alaska Transportation Commission for common carriers.] A City is prohibited from providing for a garbage and disposal system in an annexed area which is within the scope of the operating authority of a person possessing a valid permit from the Alaska Transportation Commission authorizing him to provide for garbage collection and disposal services in the annexed area. A City shall terminate such services in any area annexed after the date of issuance of a valid permit even though the annexation occurred prior to the date of this statute. This section does not prohibit the operation of a sanitary land fill by the City within the annexed area.

PROPOSED AMENDMENT TO ALASKA STATUTE
29.10.156(c)

Alaska Statute 29.10.156(c) is amended to read:

(c) If the Council determines that it is [not] in the public interest [for the City to provide garbage collection and disposal and related services under the restrictions of (b) of this section] to prohibit a person otherwise protected by (b) of this section from servicing an annexed area, it may exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services in the City. The fair market value shall be based on the economic loss to the permit holder[.], including incidental losses such as good will, business relocation and future profits. The value of future profits shall be determined by assuming continuous operation by the permit holder and any potential for future growth of the business for a period of twenty years. If an eminent domain proceeding is instituted, the Council may [exercise the power through the filing of a declaration of taking with the complaint or at any time after the filing of the complaint but before judgment.] not exercise the power to take the operating authority through the filing of a declaration of taking with a complaint or at any time after the filing of a complaint, but only after judgment has been rendered and compensation has been paid to the person from whom the operating authority has been acquired. The furnishing of garbage collection, disposal and related services by the City in the annexed area is prohibited until compensation has been paid to the permit holder.

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