HB

549

HOUSE COMMITTEE REPORT

(5)
Date Referred: February 12, 1990

FURTHER REFERRALS:
LABOR & COMMERCE

Date of Committee Action: 4/20/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: HB 549

HOUSE BILL NO. 549 MUNICIPAL UTILITIES EXEMPT FROM APUC

"An Act relating to the exemption from regulation by the Alaska Public Utilities Commission of public utilities owned and operated by political subdivisions."

RECOMMENDATIONS:
[ ] be replaced with CSHB 549 (C&RA) [X] the same title [ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact Commerce & Econ Dev.
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s)
[ ] zero fiscal note(s)
[ ] zero fn/analysis

SIGNING DO PASS:
Richard Foley
Cheri Davis
Eugene G. Kubina
Fritz Rieger

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
Eileen P. Macleon	✓		

Eileen P. Macleon
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 549 (C&RA)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Relating to the exemption of municipal utilities from APUC
Sponsor: Rep. Zawacki
Requestor: House C&RA

Agency Affected: Commerce & Economic Dev.
BRU: APUC
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)	(47.1)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME	(2.0)	(2.0)	(2.0)	(2.0)	(2.0)	(2.0)
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: T.S. Moninski II, Executive Director
Division: Alaska Public Utilities Commission
Phone: 276-6222
Date:

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development
Date: 7-17-90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

6386D-3/041790b

ANALYSIS - FISCAL NOTE FOR CSSB 549 (C&RA)

CSHB 549 (C&RA) eliminates the "catch-all" provision in current statute which requires the economic regulation of all utilities owned by a political subdivision if only one of them is found to be in direct competition with another utility. The bill serves to deregulate noncompeting utilities. The CS leaves Anchorage Telephone Utility and Municipal Light & Power Company (ML&P) fully jurisdictional but has the effect of deregulating Anchorage Waste and Waste Water Utility.

This fiscal note assumes the elimination of .5 Utility Financial Analyst (Range 19A, $27.2) and .5 Consumer Protection and Information Officer (Range 14A, $19.9).

6386D-2/041790d

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

STEVE COWPER, GOVERNOR

1016 WEST 6TH AVENUE
SUITE 400
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON CS HB549

April 16, 1990

The Commission believes that the CS for HB549 represents a reasonable approach to the regulation of municipal utilities when one or more of those utilities compete with other utilities. The CS eliminates the "catch-all" provision in the current statutes which requires the economic regulation of all utilities owned by a political subdivision if only one of them is found to be in direct competition with another utility. At the same time, the CS allows the Commission to prevent potential cross-subsidies and reasonably assures that competition is fair.

The proposed CS avoids the substantial difficulties that are inherent in the latest version of SB 514 which the Commission is on record as opposing.

The Commission believes that it is good public policy to regulate all portions of the integrated statewide telecommunications network and, thus, supports AS 42.05.711(b)(3).

ALASKA PUBLIC UTILITIES COMMISSION
COMMENTS ON CS FOR SB 514
APRIL 9, 1990

The Commission reiterates its previous position that it does not oppose the elimination of the "catch-all" provision in the current statutes which requires the economic regulation of all utilities owned by a political subdivision if any one of them is found to be in direct competition with another utility. The Commission believes that unfair competition could be prevented if regulation were limited to just those utilities owned by a political subdivision that directly compete with other utilities.

To further limit the regulation of a competing utility to just the service in which it directly competes, however, is fraught with practical complications. Utility plant and personnel are usually shared to provide many services; consequently, it would not be possible to examine a portion of the utility's costs without examining the whole utility. Additional difficulties would arise in trying to isolate the service that would be subject to regulation, particularly when the competing service is integrated with other services. In any event, (at best) the exercise of regulating single services would be almost as costly as regulating the entire utility and be frustrating for all participants.

The Commission believes that it is good public policy to regulate the integrated statewide telecommunications network and thus supports AS 42.05.711(b)(3).

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 549
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Relating to the exemption of municipal utilities from APUC
Sponsor: Rep. Zawacki
Requestor: C & RA

Agency Affected: Commerce & Economic Dev.
BRU: APUC
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: T.S. Moninski II, Executive Director
Phone: 276-6222
Division: Alaska Public Utilities Commission
Date: 2/26/90

Approved by Commissioner: Larry Merculief Larry Bell for
Date: 2/27/90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

6386D-1/22690a

ANALYSIS - FISCAL NOTE FOR HB 549

If enacted, HB 549 would operate to immediately deregulate the utilities owned by the Municipality of Anchorage (MOA) which are currently regulated by the APUC. Although only 4 of 119 regulated entities (3.4%), given their size and complexity, the MOA utilities constitute a much larger work load component. Even when factoring out those areas which will continue to be jurisdictional under other sections of AS 42.05 (i.e., certifications, interconnections, wholesale power agreements, access charges, etc.), the APUC estimates that its work load will be decreased by approximately 10% if HB 549 becomes law.

A 10% reduction in the Personal Services line item, commensurate with the anticipated work load decrease, equates to 4.0 FTE positions. The distribution of impact results in staffing reductions per the following probable scenario: 1.5 Utility Financial Analysts; .5 Utility Tariff Analyst; .5 Utility Engineer; .5 Consumer Protection and Information Officer; and 1.0 support position.

6386D/22790a

The Commission believes that the changes proposed by HB 549 are contrary to sound public policy and therefore opposes its enactment. As currently written, AS 42.05.711(b) sets out the presumption that utilities owned and operated by political subdivisions are exempt from Commission regulation as to rates and quality of service. Paragraph (2) of this subsection creates an exception in cases where such utilities directly compete with another utility. In that instance, the competing utility as well as all other utilities owned by the political subdivision become subject to regulation.

The Commission believes that the existence of the current statutory language provides for a level of public protection which extends beyond the mere resolution of utility "turf wars." Subsection .711(b)(2) also protects the public from the possibility of a municipality (or other political subdivision) subsidizing its utility to thwart competition.

---

*Commissioner D.P.O'Tierney was out of State and did not participate in the Public Meeting where the Commission discussed this legislation.

Under regulation, the Commission provides reasonable assurance that the competitive playing field remains level. In the absence of regulation, the potential for uneconomic competition is real. Consequently, the Commission supports the continuation of subsection .711(b)(2) as sound public policy but offers the modification described below.

As noted, the current statutory language requires the regulation of all utilities owned and operated by a political subdivision even if only one of them is found to be in direct competition with another utility. This provision assists the monitoring of transactions and cost allocations between utilities to ensure that cross-subsidization does not occur. The Commission is satisfied, however, that its ability to investigate such issues would not be substantially impaired if non-competing utilities owned or operated by political subdivisions were not regulated as to rates and quality of service. Since this "catch-all" provision seems to have been the most objectionable, the Commission would not oppose substitute language which still required the regulation of a competing utility but did not require the regulation of all other utilities owned by the political subdivision. A proposed committee substitute is provided for your consideration.

PROPOSED COMMITTEE SUBSTITUTE FOR HB 549

* Section 1. AS 42.05.711(b) is amended to read:

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

(1) The governing body of a political subdivision may elect to be subject to this chapter; and

(2) A utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter [AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER].

DRAFT

LIO Meeting

Tuesday, February 27, 1990
1:30 p.m.

1. Rick Besse

2. Tom Stahr

3. Joel Grunwaldt

Theme

- Not a consumer issue
- Issue is Home Rule
- Economic Deregulation - service areas still under APUC
- Border dispute changed the statute
- MOA should be exempt - as other municipalities

Comments

1. MOA should be exempt
   - Delete 42.05.711(b)(2) -- "all in one in" and "directly competes"
   - Other municipalities are exempt
   - One government overseeing another government (paternalism)
     - State over MOA
     - Home Rule
2. Border dispute started in the 196[illegible]'s between ML&P and CEA
   - Was resolved by APUC action
   - APUC would continue to manage service areas
   - Border dispute was a wasteful duplication of assets. APUC regulating the city is also a wasteful duplication.
3. MOA manages SWS on a waiver
   - Consumers are protected
   - Costs are competitive

- MOA managed since 1980
- Simplified rate filings
- Cost effective vs. APUC regulation
- MOA is/has been capable of managing utilities
- Other municipalities aren't under APUC

4. MOA ordinance on self-regulation, AR 89-51 (S-3) and rules of procedure, AR 89-242 (S)

- Passed August 15, 1989
- Several public hearings
- * - APUC did not comment at any public hearings
- * - Assembly unanimously supports economic self-regulation
- * - Mayor and administration support self-regulation
- Public friendly process
  - Public Hearing Process
    - A. Advisory Commissions - 4
    - B. Regulatory Commission
    - C. Assembly
- Expanded commissions from 5 members to 7 members each for more public involvement
- * - 31 commissioners from the public
- * - Assembly has 11 members voted into office who make the final rate determination
- Notice to public 30 days before a hearing
- Notice to public 7 days before a meeting
- Procedures specify justification required for rate changes
- Process is very public oriented patterned after Planning and Zoning Commission

- Commissioners are dedicated, [illegible]ned, knowledgeable, interested parties

5. Legislative Audit and Budget Committee report

   - Supports MOA economic regulation

   - APUC responded in kind

   - APUC process clearly costs lots of money

   - Rate payers pay for these costs

   - MOA will try to minimize regulatory costs to keep rates low for rate payers

   - Regulatory lag occurs by APUC - rates given do not fit current financial condition

   - MOA goes through a process for rate changes to the Assembly then to APUC

6. Municipal League's support

7. Sunset APUC legislation

8. Attach package

9 Attach copies of commission

BH41

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 886-89

Meeting Date: September 12, 1989

From: Mayor

Subject: Assembly Resolution No. AR 89-152(S) Amending the Code of Regulations and Adopting Municipal Regulations 4.70 and 4.80 Relating to Rules of Procedure for the Anchorage Utility Advisory Commissions and Anchorage Utility Regulatory Commission, Respectively

The subject resolution has been resubmitted for Anchorage Assembly approval pursuant to Anchorage Municipal Code 3.40.040 and in conjunction with the Assembly approving AR No. 89-113 and AO No. 89-51(S-3) pertaining to economic self-regulation of municipal public utilities. Recognizing that effective self-regulation requires the implementation of certain uniform rules of procedure by the advisory and regulatory commissions, the subject resolution and associated rules of procedure are submitted for Assembly consideration and approval.

Regulation 4.70 sets forth procedures applicable to regular and special meetings conducted by the municipal advisory commissions at which ongoing utility matters are systematically addressed, and procedures applicable to public hearings on matters of permanent rate increases and customer complaints per AMC 3.40 and 3.60, respectively, and on other matters as provided for per AMC 4.70.010. Particular consideration is given the public in permanent rate and complaint matters due to the direct effect decisions made in these areas have on the utilities' customers. Such consideration in matters of permanent rates is reflected in the public notice provisions of 4.70.404 and throughout Articles III, IV and V which specifically address the public hearing process, including filing requirements and public participation in the permanent rate and associated cost-of-service and rate design processes. Special provision is made for abbreviated filings, where applicable and special contracts to ensure appropriate review within shorter and specific timeframes. As indicated in 4.70.402, applications for review of complaint matters shall be reviewed in accordance with the administrative adjudication procedures in AMC 3.60.

Regulation 4.80 sets forth procedures applicable to meetings conducted by the regulatory commission at which primarily rate matters would be addressed, and procedures for reviewing recommendations received from the advisory commissions on rate matters. Discretion is afforded the regulatory commission to make its own recommendation, accompanied by draft ordinance,

based solely on the review of the record as developed before the advisory commissions and made available to it, or upon a public hearing conducted by the regulatory commission itself. The same consideration given the public in the advisory commission regulations apply to, and appears throughout the regulatory commission regulations, particularly with respect to noticing and participatory provisions and throughout Articles III, IV and V.

Municipal Regulations 4.70 and 4.80 are designed to provide a framework within which the respective advisory and regulatory commissions can be relied upon to function both responsibly and effectively in assisting the Municipal Assembly in regulating municipal public utilities.

Municipal Regulations 4.70 and 4.80 reflect the coordination and cooperative efforts of the administration, municipal utilities, and the utility commissions. The Administration recommends approval of AR No. 89-152(S) adopting Municipal Regulations 4.70 and 4.80 relating to advisory and regulatory commissions rules of procedure.

Concur:

Larry D. Crawford
Municipal Manager

Prepared by:

Lee R. Nunn, Executive Manager
Enterprise Activities

Respectfully submitted,

Tom Fink
Mayor

6/comm

Submitted by: Mayor Tom Fink
Prepared by: Enterprise Activities
For Reading: September 12, 1989

APPROVED
Date: 9-12-89

ANCHORAGE, ALASKA
AR NO. 89-242(S)

1st and Last pages ONLY

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE, ALASKA, AMENDING THE CODE OF REGULATIONS AND ADOPTING REGULATION 4.70 RELATING TO THE ANCHORAGE UTILITY ADVISORY COMMISSIONS' RULES OF PROCEDURE AND REGULATION 4.80 RELATING TO THE ANCHORAGE UTILITY REGULATORY COMMISSION'S RULES OF PROCEDURE.

THE ANCHORAGE MUNICIPAL ASSEMBLY RESOLVES:

WHEREAS, the Municipality of Anchorage adopted Assembly Resolution No. 89-113 on August 15, 1989 exempting itself, pursuant to Alaska Statute 42.05.711(b), from economic regulation by the Alaska Public Utilities Commission; and

WHEREAS, the Anchorage Municipal Code 3.40.040 requires that regulations adopted by municipal commissions for purposes of governing its procedures be approved by resolution of the Assembly to be effective.

NOW THEREFORE, BE IT RESOLVED by the Assembly of the Municipality of Anchorage, Alaska, as follows:

Section 1. The Assembly hereby finds and concludes that it would best serve the interests of the citizens of Anchorage and the customers of the Anchorage municipal public utilities if uniform rules of procedure were adopted and approved for the Anchorage Utility Advisory Commissions and the Anchorage Utility Regulatory Commission.

Section 2. Based on its findings, the Assembly hereby amends the Code of Municipal Regulations to read as follows:

Regulation 4.70

ANCHORAGE UTILITY ADVISORY COMMISSIONS

RULES OF PROCEDURE

Sections:

ARTICLE I -- OFFICERS

4.70.101 Chair and vice-chair.
4.70.102 Secretary.

ARTICLE II -- MEETINGS

4.80.506 Rate design.

Each municipal public utility shall submit appropriate justification for and analysis of changes to the rate structure as such relate to its pricing objectives.

Section 3. This resolution shall become effective immediately upon passage and approval by the Anchorage Municipal Assembly.

PASSED and APPROVED by the Anchorage Assembly this 12th day of September, 1989.

Chairman

ATTEST:

Municipal Clerk

P/DENNIS-DENNIS12/cis

ANCHORAGE WATER & WASTEWATER COMMISSION
Rick Besse, Staff Support
786-5506

Murphy,99508,06,900214,20
Ms. Laurel A. Murphy
4014 Reka, H-6
Anchorage, Alaska 99508
276-7474
6/3/86

Redmond,99509,06,910214
Ms. Pat Redmond
P.O. Box 90079
Anchorage, Alaska 99509-0079
265-0433
3/22/88

Neuser,99502,06,910214,10
Mr. David Neuser
7501 Cranberry Road
Anchorage, Alaska 99502
243-5651
03/08/88

Crowder,99577,06,910214,10
Mr. Del Crowder
10736 High Bluff Drive
Eagle River, Alaska 99577
694-8989(h)/745-3211(w)
11/12/89

Lawrence,99507,06,920214,10
Mr. William B. Lawrence
8631 Jupiter Dr.
Anchorage, Alaska 99507
257-2648
5/21/85

Nichols,99503,920214,10
Melvin Nichols
4040 B Street
Anchorage, Alaska 99503
562-2000
2/28/89

Schroer,99508,920214
Don Schroer
1035 W. Fireweed Lane
Anchorage, Alaska 99503
272-5668(H)/279-2522(W)
3/7/89

SOLID WASTE ADVISORY COMMISSION
Joel Grunwaldt, Staff Support
561-1906

Miller,99508, 04,900214,10
Mr. Robert Miller
University of Alaska, Anchorage
3221 Providence Drive
Anchorage, Alaska 99508
786-1900
7/26/88

AndersonJ,99503,04,900214,10 CPA
Mr. James C. Anderson, C.P.A.
2525 Blueberry, Suite 202
Anchorage, Alaska 99503
258-7713
10/08/85

Coyne,99504,04,910214,10 Attorney
Mr. Jack Coyne
4006 Hampton Drive
Anchorage, Alaska 99504
276-4557
9/15/87

Burrows,99508,04,910214,20 Recycling interest
Niki Burrows
608 North Klevin
Anchorage, Alaska 99508-1438
274-1179
5/24/88

Huber,99503,04,920214,10
Mr. Francis J. Huber
501 W. 20th Avenue
Anchorage, Alaska 99503
272-4747
10/88

Lee,99501,930214
Harry R. Lee, P.E.
810 Whitney Road
Anchorage, Alaska 99501
279-3148(H)/276-8234(W)
9/12/89

Harmon,99515,930214
Carl Harmon
11811 Hilltop Drive
Anchorage, Alaska 99515
564-0739
9/12/89

Parisena,99503,930214
John Parisena
3301 C Street, Suite 520
Anchorage, Alaska 99503
243-3879(H)/563-4547(W)

ANCHORAGE UTILITY REGULATORY COMMISSION
343-4906

Smith,99508,900214
Harold Smith
3147 Cottonwood
Anchorage, Alaska 99508
274-6205
9/12/89

Telephone Commission

Nichols,99503,920214
Melvin Nichols
Anchorage, Alaska 99503
562-2000
9/12/89

Water/Wastewater Commission

Huber,99503,920214
Francis Huber
501 W. 20th Avenue
Anchorage, Alaska 99503
272-4747
9/12/89

Solid Waste Service Comm.

Shipley,99515,920214
Robert Shipley
9600 Albatross Drive
Anchorage, Alaska 99515
243-0850
9/12/89

Light & Power Commission

Retherford,99515,910214
Robert Retherford, P.E.
6728 W. Dimond Boulevard
Anchorage, Alaska 99515
243-5466 (H)/243-4639 (W)
9/12/89

Citizen Member

Rees,99516,930214
Lane C. Rees
2430 Nancy Circle
Anchorage, Alaska 99516
345-6507
9/12/89

Citizen Member

Bagoy,99501,950214
John P. Bagoy
611 West 11th Avenue
Anchorage, Alaska 99501
272-9364
9/12/89

Citizen Member

MUNICIPAL LIGHT & POWER COMMISSION
Tom Stahr, Staff Support
279-7671 x5201

Shaw,99501,29,900214,10
Mr. Roger C. Shaw
6431 Regent Dr.
Anchorage, Alaska 99504
274-1089
02/14/78

Harman,99577,29,910214
Mr. Patrick Harman
17224 Teklanika
Eagle River, Alaska 99577
271-3847
3/1/88

Cattanach,99516,29,910214
Mr. Richard Cattanach
12621 Lupine Road
Anchorage, Alaska 99516
345-2287
3/8/88

Shipley,99515,29,920214,10
Mr. Robert H. Shipley
9600 Albatross Drive
Anchorage, Alaska 99515
243-0850
10-21-86

Phillips,99510,920214
Brad Phillips
P. O. Box 100034
Anchorage, Alaska 99510
276-8023
3/7/89

Shake,99501,930214
Robert L. Shake
923 W. 74th Avenue
Anchorage, Alaska 99501
248-5544(H)/265-2014(W)
9/12/89

Henri,99504,930214
Joseph Henri
9921 Near Point Drive
Anchorage, Alaska 99504
333-7505(H)/338-0880(W)
9/12/89

TELEPHONE COMMISSION
Dale Merrell, Staff Support
564-1415

Glaser,99501,05,900214,10
Mr. Gordon M. Glaser
1201 Denali, #210
Anchorage, Alaska 99501
258-7267
02/17/87

Smith,99508,05,900214,10
Mr. Harold D. Smith
3147 Cottonwood Street
Anchorage, Alaska 99508
274-6205
02/17/87

Rodriguez,99504,05,910214,10
Mr. John Rodriguez
3220 Shamrock Street
Anchorage, Alaska 99504
552-2601/552-4588
12/6/88

Morgan,99508,920214
Michael Morgan
4240 Abbott Road
Anchorage, Alaska 99508
272-3332/346-1514
5/23/89

Snider,99517,920214
Robert K. Snider
2122 Forest Park Drive
Anchorage, Alaska 99517
277-5306
6/20/89

Crosley,99517,930214
Britton E. Crosley
2105 Belair Drive
Anchorage, Alaska 99517
276-0796
9/12/89

Harmon,99515,930214
Carl Harmon
11811 Hilltop Drive
Anchorage, Alaska 99515
564-0739
9/12/89

Anchorage Telephone Utility

600 TELEPHONE AVENUE, ANCHORAGE, ALASKA 99503-6091
TELEPHONE (907) 561-3000
Telex 090-26-532
Facsimile (907) 561-1703

Tom Fink,
Mayor

Owned by the
Municipality
of Anchorage

January 26, 1990

The Honorable Jim Zawacki
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Zawacki:

In 1989 the Municipality of Anchorage Assembly and Administration reviewed its position relative to its regulatory posture with the Alaska Public Utilities Commission. After weeks of consideration and study the Administration and the Assembly adopted a new regulatory policy which involved removing the Municipal utilities from the jurisdicion of the APUC. This resulted in an ordinance creating a regulatory body for review of rate and operation matters which was followed by an ordinance adopting a regulatory process.

It has now been determined that the existing regulatory statute (42.05.711b2) needs amending to exempt the Municipality of Anchorage utilities from regulation, to correspond with the regulatory exemption of the utilities owned by the cities of Fairbanks and Ketchikan.

We strongly support this legislation, because we believe the existing regulatory process is unnecessarily costly, time consuming and cumbersome, and because we believe that the criteria for the regulation of Anchorage owned utilities are no longer valid. We areattaching the draft of the legislation for your review and comment.

If you should have further comment or questions concerning this legislation, please let me know. Again, we sincerely hope that you will support legislation that exempts Municipality of Anchorage utilities from APUC regulation.

Sincerely,

ANCHORAGE TELEPHONE UTILITY ADVISORY COMMISSION

Harold D. Smith
Chairman

HDS:DRM:ls

Attachment
(265-4416)

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SUMMARY

Current statutes allow municipal public utilities to be exempt from economic regulation by the Alaska Public Utilities Commission (APUC). Due to the border dispute between Municipal Light and Power (ML&P) and Chugach Electric Association (CEA) the utilities of the Municipality of Anchorage (MOA) were subject to regulation. The border dispute and competition between ML&P and CEA has been resolved and there is no need for economic regulation by APUC since the Municipality can regulate the utilities. The current statute does not make it clear as to how the municipal public utilities become exempt.

The proposed bill would allow municipal public utilities to be exempt from APUC regulation unless the Municipality allowed a utility to be regulated.

- The proposed changes have no effect on the regulation of rural electric association's or investor-owned utilities.
- Legislative audit found in February 1989 that municipal public utilities should not be regulated by the APUC.
- Anchorage's municipal public utilities are the only ones in the state now regulated.
- APUC regulation would still exist for service areas, joint use and interconnection.
- Additional regulation above the Administration and the Assembly is unnecessary and a wasteful resource.
- A significant cost savings for the State and the Municipality would be achieved.
- The MOA has an ordinance and rules of procedure to self-regulate its municipal public utilities that involves the public and exceeds the level of APUC/public review.

SELF-REGULATION PROCESS OF THE MUNICIPALITY OF ANCHORAGE

Economic regulation of utilities by the Municipality of Anchorage requires the utilities to prepare justification for presentation to the public at hearings held by the citizen commissions established to advise and another regulatory commission to review recommendation by the utilities. The regulatory commission includes a member from the four advisory commissions and three members drawn from the general public. The Assembly has the final authority over economic regulation and rate changes require a public hearing by the Assembly.

The Administration and the Assembly will regulate the utilities quicker and at less cost than the lengthy and costly proceedings before the APUC.

(See attached chart)

MUNICIPALITY OF ANCHORAGE

Economic Self-Regulation Flow Chart

Proposals From Utilities

- Revenue Requirements Study
- Revenue Deficiencies
- Cost of Service Study
- New Tariff Offerings
- Special Contracts

Determinations by Commissions

- Public Hearings
- Review and Recommendations of Rates, Regulations and Policies
- Findings and Conclusions
- Complaints

Approval by Assembly

- Public Hearings
- Ordinance Submitted by Mayor
- Assembly Approval of Rates, Contracts and Regulations

Anchorage Utilities

Anchorage Telephone Utility
Anchorage Sewer Utility
Anchorage Water Utility
Municipal Light and Power
Anchorage Refuse Collection Utility
Anchorage Solid Waste Disposal Utility

Anchorage Commissions

Advisory:

Anchorage Telephone Commission
Anchorage Water and Wastewater Commission
Municipal Light and Power Commission
Anchorage Solid Waste Services Commission

Regulatory:

Anchorage Utility Regulatory Commission

BH201

TITLE: Municipal Utility Self-Regulation

SPECIAL LEGISLATIVE REQUEST:

Revisions to the state statutes limiting the power of the APUC to regulate rates and clarifying Anchorage's right to exempt its municipal utilities from economic regulation by the APUC.

BACKGROUND/JUSTIFICATION:

Alaska Statute 42.05.711 currently provides that public utilities owned and operated by municipalities are exempt from economic regulation by the Alaska Public Utilities Commission unless they choose to be regulated or direct competition is found to exist between a municipally-owned public utility and another public utility. If direct competition is found to exist, AS 42.05.711 directs that all of the municipally-owned public utilities are subject to economic regulation by the APUC. The Municipality of Anchorage believes that AS 42.05.711 should be amended to eliminate the "direct competition" exception to economic deregulation, thereby limiting APUC rate regulation to those municipal utilities who specifically choose to be regulated.

1. The Municipal Light and Power Department/Chugach Electric Association boundary dispute, which precipitated the onset of AS 42.05.711, has been resolved.

2. Whether or not a municipal public utility is subject to economic regulation by the APUC, the APUC retains jurisdiction per AS 42.05.221, over such matters as wasteful duplication of facilities where direct competition within the same service area occurs (as was the case before the ML&P/Chugach Electric boundary settlement dispute).

3. Concerns over the potential for cross-subsidization between municipally-owned utilities are unnecessary because (a) the Anchorage owned public utilities are independently operated and by Charter must have separate books of accounts, (b) the Mayor and Assembly are directly accountable to the voting public, (c) the public and its consumer representatives have the right to participate in the ratemaking process under economic self-regulation, and (d) all rate decisions are eligible for judicial review in the Alaska Court System.

A legislative priority is to remove the "direct competition" exception from the statute, thereby allowing Anchorage, absent its consent, to regulate the rates of its utilities and allow for adequate rates of return for its respective utilities.

STAFF CONTACT: Will Gay, Acting Executive Manager,
Enterprise Activities, 343-4906

12/18/89

Offered:
Referred:

Original sponsors:

IN THE SENATE

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act related to municipal utility self-regulation."

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

Article 10. General Provisions.

Section	Section:
711. Exemptions	720. Definitions
712. Deregulation ballot	721. short title

Sec. 42.05.711. Exemptions.(a) The provisions of this chapter do not apply to a person who furnished water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter. [; AND]

[(2) A UTILITY OR ELECTRIC OPERATING ENTITY THAT IS OWNED AND OPERATED BY A

POLITICAL SUBDIVISION AND THAT DIRECTLY COMPETES WITH ANOTHER UTILITY OR ELECTRIC OPERATING ENTITY IS SUBJECT TO THIS CHAPTER AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER.]

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross $50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross $325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS. 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross $100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 - 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnished collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of $200,000

or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 - 42.05.281, unless 25 percent of the subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 unless 25 percent of the subscribers petition the commission for regulation.

(l) A person, utility, or cooperative that is exempt from regulation under (a) or (d) - (k) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1975; am § 8 ch 83 SLA 1980; am §§ 7 - 9d 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983; am § 68 ch 74 SLA 1985; am § 1 ch 80 SLA 1985; am § 2 ch 107 SLA 1986).

Offered:
Referred:

Original sponsors:

IN THE HOUSE

HOUSE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act related to municipal utility self-regulation."

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

Article 10. General Provisions.

Section	Section:
711. Exemptions	720. Definitions
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(1) the governing body of a political subdivision may elect to be subject to this chapter. [; AND]

[(2) A UTILITY OR ELECTRIC OPERATING ENTITY THAT IS OWNED AND OPERATED BY A

POLITICAL SUBDIVISION AND THAT DIRECTLY COMPETES WITH ANOTHER UTILITY OR ELECTRIC OPERATING ENTITY IS SUBJECT TO THIS CHAPTER AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER.]

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(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

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(l) A person, utility, or cooperative that is exempt from regulation under (a) or (d) - (k) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7 - 9d 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983; am § 68 ch 74 SLA 1985; am § 1 ch 80 SLA 1985; am § 2 ch 107 SLA 1986).

Alaska Municipal League

Policy Statement

1990

Alaska MUNICIPAL League

Adopted at the Business Meeting
of the 39th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Juneau, Alaska
November 17, 1989

PART VI

UTILITIES AND ENVIRONMENT

A. UTILITY REGULATION

1. Alaska Public Utilities Commission: The League supports the current statutory exemptions that allow municipal utilities to operate in the best interest of the consumer public without regulation by the APUC.

2. Acquisition: In order to eliminate service area conflicts between municipalities and utilities, the League supports legislation that would allow municipalities to acquire the facilities of a utility under specific terms that would fairly compensate the utility.

3. Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of utility relocations associated with municipal public works projects.

4. Deregulation of Solid Waste: The League supports statutory changes to eliminate APUC regulation of solid waste collection and disposal.

Solid waste collection and transport are essentially freight hauling issues and there is no need for APUC regulation. If regulation is needed, local government can focus on the needs at a local level. AS 29.35.060(b) should be repealed to make this deregulation complete and effective.

5. Waste Disposal Sites: The League encourages the State to hold local area public hearings concerning waste disposal sites and their locations.

B. FUNDING ASSISTANCE FOR UTILITIES

1. Construction Grant Program: The League strongly endorses the concept of the State's paying at least 50 percent of the cost of sewage systems, auxiliary equipment, solid waste facilities, and water systems constructed by municipalities under

Jeff Kayhatton [illegible]

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

Commissioner, Department of Commerce and Economic Development	Larry Merculieff
Deputy Commissioner, Department of Commerce and Economic Development	Jeffrey W. Bush

Members of the
Alaska Public Utilities Commission

Chairperson	Susan M. Knowles
Member	Carolyn S. Guess
Member	Peter Sokolov
Member	Louis E. Agi
Member	Kathleen L. Whiteaker

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
PO. BOX W
JUNEAU, ALASKA 99811-3300

February 21, 1989

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

The objectives of this audit were to examine the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology are discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.

Randy S. Welker

Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

We believe that cable television may be a natural monopoly in the small and medium-sized towns. As such, these may be candidates for economic regulation. However, the cost of regulation may outweigh the benefits for these small markets. The economic regulation that is available is also limited to basic services, as the federal Cable Communications Policy Act of 1984 prohibits price regulation of the premium packages. In the largest cities, the competitive environment indicates that there is not a natural monopoly present for cable television, thus certification and economic regulation is inappropriate.

The federal Cable Act was designed to promote the expansion of cable television systems by promoting local franchising and limiting rate regulation. This law would not allow any rate regulation in Anchorage or Fairbanks but would allow basic service rates to be regulated in other areas such as Juneau or Homer. It does, however, appear to allow us control over the possible competitive side effect of duplicate cabling. By statute we could require the segregation of cable distribution companies and these could be fully regulated. The cable programming could then be opened to competition.

In summary, regardless as to whether or not cable television is viewed as essential, we recommended that the present certification requirement be deleted from the statute. To the extent that this service is deemed essential, municipal franchising or certification and regulation of distribution-only companies should be considered.

We also must point out a potential liability to the State under the Cable Act if this recommendation is implemented. The Cable Act outlines specific criteria which must be shown to deny a franchise and the proposed statute amendment would categorically retract the certificates (franchise) without this showing. However, the Attorney General's Office indicated to us that the State would prevail in court. We recommend that a formal opinion on this potential liability be obtained from the Attorney General before this statute is amended.

D. <u>Alaska Statute 42.05 should be amended to exempt the smaller utilities from economic regulation.</u>

Electric, telephone, gas, water, and sewer utilities have traditionally been considered essential services and are often natural monopolies. Nevertheless, we should refrain from economic regulation if its cost

exceeds the benefits. However, this information is not available nor can it be reasonably generated. "Cost" would include incremental APUC and utility time and materials as well as the effect of project delays on long-term rates; this component of the equation could be studied and estimated. The "benefits" of regulation include a financially stable utility providing consistent service uniformly to customers who are assured of equitable rates and services now and in the future; this cannot be quantified.

Nevertheless, in consideration of the State's dwindling resources and the public's disenchantment with the proliferation of state government, we believe that it is appropriate for us to presume that the cost of regulation presently exceeds its benefits for many smaller utilities and that the gross revenue exemption levels provided in the statutes should be raised.

Alaska Statute 42.05.711 exempts electric and telephone utilities with gross revenues under $50,000 from certification and economic regulation. It also allows a utility's consumers to elect economic deregulation for cooperatives, electric or telephone utilities with less than $325,000 in annual gross revenues, and for any utility which does not gross $100,000 annually. We propose that an across-the-board gross revenue-based exemption from economic regulation be established. Three options are presented in the following table. It was prepared based upon APUC's FY 88 Annual Report and represents all utilities that are currently economically regulated with the exclusion of the industries we have recommended for categorical deregulation.

Number of affected utilities and customers, based upon gross revenues:

	Under $500,000		Under $750,000		Under $1,000,000	
Type	Util.	Customers	Util.	Customers	Util.	Customers
Electric	10	819	15	1,990	18	2,691
Telephone	-0-	-0-	1	343	2	863
Gas	-0-	-0-	-0-	-0-	1	908
Water	22	3,715	22	3,715	22	3,715
Sewer	2	15	3	382	3	382
Total	34	4,549	41	6,430	46	8,559
Percent	40.5%	.8%	48.8%	1.1%	54.8%	1.5%

The above percent calculations represent the reduction in the coverage of economic regulation under each revenue scenario; however, we caution the inference from the table that APUC's workload would decrease

proportionate to the decrease in the number of utilities. While there certainly should be some relationship, the commission has no time sheet data available to correlate these factors.

In concert with an amendment to exempt these smaller utilities, the following areas should also be addressed:

1. The petition provision which allows customers to request economic regulation of exempted utilities should be amended. Alaska Statute 42.05.711 presently requires 25% of an exempted utility's subscribers to sign the petition. We believe that this is much too great an obstacle to overcome and recommend that an election be called if APUC receives a petition demonstrating significant consumer interest. For example, the petition requirement could be set at the lesser of 5% or 500 customers.

2. This proposed gross revenue exemption statute should not take effect for 6 months to allow utility customers who wish to retain regulation to do so without interruption.

3. The results of past deregulation elections should be honored, thus not requiring a new vote on failed deregulation elections.

4. The customers who continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service (See Recommendation No. 2).

E. <u>Alaska Statute 42.05 should be amended to cease mandatory economic regulation of certain utilities owned by political subdivisions</u>.

Alaska Statute 42.05.711(b) generally exempts utilities owned by political subdivisions from economic regulation, unless they so elect. However, it also provides that if any of a subdivision's utilities directly competes with any other certificated utility then all the subdivision's utilities shall be economically regulated. We presume the intent of this provision was to eliminate the wasting of resources from facility duplication resulting from the then ongoing electric service area dispute as well as preventing the cross-subsidization of rates which might accompany such a dispute. The only utilities falling under this provision, at present, are owned by the Municipality of Anchorage.

The Anchorage service area dispute has been resolved and the present day competition is in the form of economy energy sales of electricity and perhaps telephone communication systems. This type of competition does not encourage the massive facility duplication or the cross-subsidization of rates that a service area dispute might. Service area concerns can be adequately addressed through the certification process without economic regulation.

In conjunction with an amendment to delete this mandatory economic regulation, the following areas should also be addressed:

1. The utilities previously regulated by APUC due to competition should continue to be so regulated unless rejected by the governing body.

2. A governing body should be allowed to withdraw a previous election.

3. The consumers who, through their local government, have chosen to continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service. Specifically, the Municipality of Anchorage Assembly should decide whether their utilities should be regulated locally or by APUC. If they choose to "hire" APUC to perform this regulatory function in their behalf, citizens from all across the State should not be forced to pay for that service with General Funds (See Recommendation No. 2).

Recommendation No. 2

Alaska Statute 42.05 and Alaska Statute 42.06 should be amended to more fully allocate the costs of regulation.

APUC is currently being funded primarily by General Funds with a program receipts supplement from partial direct allocations of cost. The statutes require the cost of investigations and hearings to be allocated among the parties, including the commission, as is just under the circumstances. The commission has traditionally not allocated costs to itself and has allocated only the hired consultant fees, attorney general services, and other incremental out-of-pocket costs. In a 1988 decision, the Alaska Supreme Court interpreted the present statutes on cost allocations to disallow attorney general services. The court also remanded the case back to the commission to determine what portion of the cost allocation they should absorb.

Basic fairness prescribes that only the consumers who benefit from the regulatory services provided by APUC should pay the cost of this service. This is the "user fee" concept of funding. A funding method should also be designed to allow responsive adjustments to be made in the level of regulation as desired by consumers. With these criteria in mind, we have briefly commented on three predominate alternatives.

To the extent of its general funding, any approach fails to equitably match the regulatory cost to the consumers who benefit. General funding may be viewed as a payment by all citizens all across the State, while the benefit may accrue primarily to consumers in Anchorage. The utilities owned by the Municipality of Anchorage have contributed greatly to the commission's workload, yet a significant portion of the total cost of the proceedings is paid out of General Funds.

General funding is also less responsive to appropriate regulatory levels; in fact, it probably wastes some of the State's dwindling resources. Given that there is a regulatory cost/benefit break-even point and that certain consumers are given the opportunity to elect full economic regulation, general funding will likely be perceived as payment by "someone else" with the result that regulation will always be extended past this break-even point. Thus, government is providing an unnecessary service.

Funding of APUC through a gross receipts tax levied against the utilities and pipelines that is passed through to consumers could provide a reasonable matching of costs to beneficiaries. This assumes tax rates were established by utility size, by industry, and by level of regulation. However, there would always be inequities.

This tax approach would be responsive to regulatory needs only to the extent that the matching is accurate. However, taxation has traditionally focused on ability to bear rather than resource utilization and, thus, such a funding approach may not be responsive. For example, if a tax was designed which levied 100% of the commission's costs against the pipeline companies and none to the utilities, this approach would do nothing to reduce unnecessary regulation of the utilities.

Full and direct allocation of the commission's costs provides the most accurate and defensible matching among the three alternatives. As such, it would not only be an effective method in eliminating unwarranted government regulation but it could also make the regulatory process more efficient by encouraging adequate and appropriate filings.

To administer this full allocation program would require time sheets for commission staff and attorney general

services, and the use of account codes to share docket proceeding costs among the parties and to allow recovery of general overhead. The administrative cost of this program should be less than with the tax approach but, of course, greater than with the General Fund design. These costs could potentially be offset by increased staff efficiency through time sheet accountability. We believe the benefits of a full-cost allocation program would far outweigh a slightly higher administrative cost.

Based upon the above, we recommend that the statutes be amended to establish a full-cost allocation funding approach for APUC. In conjunction with this shift toward program receipts funding, AS 42.05.651 and AS 42.06.610 should be amended, as follows:

1. These statutes should be amended to specify that all costs of the commission may be allocated.

2. Alaska Statute 42.05.651 should be changed to require interim allocation, rather than awaiting completion of a proceeding. The commission has estimated their unbilled utility allocations at $1.6 million with an average age of 3.0 years. We note that the related pipeline statute, at AS 42.06.610, already requires interim billings. However, APUC does not appear to be in compliance, with their estimated unbilled pipeline allocations at $2.1 million with an average of 4.7 years. Further, APUC should amend their regulation at 3 AAC 48.157 which provides for cost allocations after pipeline hearings rather than on the required interim basis.

3. These statutes presently require allocation to the parties of a proceeding <u>including</u> the commission; these should be modified to <u>exclude</u> the commission. However, the provisions allowing the commission to allocate among the parties as is reasonable and just should be retained, thus the commission may occasionally absorb some costs indirectly and have a need for minimal General Fund monies.

4. For economically regulated companies, on a case-by-case basis, the commission should be allowed to determine whether the costs being allocated are to be passed through to the consumers.

<u>Recommendation No. 3</u>

<u>APUC should develop a topical reference system for commission orders and court decisions.</u>

The commission is a quasi-judicial agency which issues decisions based upon finding of fact and conclusions of law.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 L STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

RECEIVED
MAR - 2 1989

March 7, 1989

Mr. Randy Walker
Legislative Auditor
Division of Legislative Audit
State of Alaska
P. O. Box W
Juneau, Alaska 99811-3300

Re. Response to Preliminary Audit Report

Dear Mr. Walker:

The following is the response of the Commission to the preliminary audit report and recommendations submitted by the Division of Legislative Audit on February 14, 1989, as a result of its performance review of the Commission.

The Commission concurs with the fundamental conclusion of the report that the

> Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. (Page 5.)

The Commission does not agree with all of the statements of regulatory theory and philosophy in the preliminary audit report but has focused its comments on the actual recommendations.

Recommendation No. 1A

Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

The Commission supports this recommendation as it did the identical recommendation made in the 1979 and 1985 Sunset Audits. The auditor's statement that the public health and sanitation aspects of this service are monitored by local governments and the Department of Environmental Conservation addresses the Commission's previous reservation on deregulation.

Recommendation No. 1B

Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

The Commission concurs with this recommendation based on the character of radio common carrier (RCC) services and the current regulatory status of RCCs operating in the state. However, as noted in the Commission's response to the same recommendation in the 1985 Sunset Audit, future developments in the telecommunications industry may require reimposition of RCC regulation at some later time.

The Commission also believes that its authority to partially or fully deregulate a particular utility industry in response to current circumstances is a desirable and appropriate supplement to the legislative action advocated by the auditor. Accordingly, the Commission requests legislative guidance on the validity of its decision to economically deregulate the RCC industry in the event this recommendation is not implemented by statute.

Recommendation No. 1C

Alaska Statute 42.05 should be amended to cease certification of cable television.

The Commission concurs with this recommendation with some qualifications, as it did with the same recommendation in the 1985 Sunset Audit. The recommendation appropriately eliminates the anomaly in the current regulatory scheme for cable television (CATV) service whereby CATV providers hold monopoly certificates but are economically deregulated. However, the Commission would encourage the Legislature to use its legal and research staffs to examine the implications of the following on full CATV deregulation: (1) the Cable Communications Policy Act of 1984, (2) the Federal Communications Commission's recent initiatives to eliminate the existing ban on cross-ownership of CATV and telephone companies, (3) the availability and status of local government oversight, (4) shared use of rights-of-way, (5) community access and institutional network use of CATV systems, and (6) disposition of certificates held by existing CATV providers. In any event, as noted in response to the 1985 Sunset Audit recommendation, CATV certification is not a large element of the Commission's workload.

Recommendation No. 1D

Alaska Statute 42.05 should be amended to exempt smaller utilities from economic regulation.

The Commission opposes this recommendation because it disagrees with the auditor's unsupported presumption that the cost of economic regulation presently exceeds its benefits for smaller utilities. Rather, the Commission concludes from its experience

that regulation of small utilities is at the core of its public protection function, especially given the geographic and demographic characteristics of Alaska. The Commission also believes that the burden and cost of regulation on smaller utilities can and should be reduced administratively, and it is currently addressing this issue.

As the auditor points out, it is extremely difficult to quantify the cost of regulation, both to the regulated and to the regulator. At the same time, it is relatively easy to inflate or deflate cost figures to support a given predisposition for or against regulation. Regardless of amount, costs are relatively meaningless unless they are compared to benefits.

The Commission agrees with the auditor that the primary benefits of regulation are a financially stable utility which provides reliable, safe service to all customers at reasonable, non-discriminatory rates. With the exception of 22 water companies, the utilities affected by this recommendation are providing service in rural Alaska and are predominantly electric utilities. It has been the Commission's experience that the need for regulation and the potential benefits provided by regulation are frequently greater for smaller utilities than for larger utilities for many reasons, including, the logistical challenge of operating in remote locations; inexperienced personnel; unsafe facilities as a result of non-compliance with the National Electric Safety Code; lack of familiarity with utility management, maintenance, and accounting procedures; discriminatory actions by utility management; failure to request rate increases when needed; and procurement of wrong equipment. In addition, it can be argued that the consumers in rural Alaska are even more captive than those in the urban areas, and, therefore, are particularly dependant on a high level of protection.

Although the reduction in workload would be approximately commensurate with the loss of Commission staff over the past three years if this recommendation were enacted, and from that standpoint may be appealing, the Commission does not believe that the public interest would be served by wholesale deregulation of utilities serving perhaps the most (or one of the more) vulnerable segment(s) of the ratepaying public.

The Commission believes that the concern about the cost of regulation that has been voiced by the auditor as well as others, for the most part, is directed at the expense (both in time and dollars) associated with regulatory requirements when a utility desires or needs to change its rates. The Commission has recognized for some time that the regulatory scheme that exists and has been applied to both large and small utilities should be examined. To that end on February 3, 1989, the Commission has issued a Notice of Inquiry. The purpose of the Inquiry is to receive information which would assist the Commission in proposing regulations to simplify rate and other regulatory proceedings for smaller utilities. A copy of this order is attached. (See Appendix A.)

In summary, the Commission believes that the issue of the cost of regulation as it relates to the smaller-sized utilities can be substantially mitigated through administrative procedures rather than legislation which would eliminate the important public protection function today provided by economic regulation.

However, if the Legislature believes public policy is better served by deregulating smaller utilities, the Commission would propose, as it did in response to the 1985 Sunset Audit, the following amendment to AS 42.05.711 to expand the deregulation election process found in AS 42.05.712 which would replace the provisions of AS 42.05.711(e), (f), (g), and (i):

All utilities which have gross revenues of $500,000 or less may elect to be exempt from the provisions of AS 42.05, other than AS 42.05.221-42.05.281, under the procedures described in AS 42.05.712.

This approach conforms with the Commission's position that regulation for utilities that heretofore have been regulated should be continued unless the people most affected, the consumers, vote to become deregulated.

The Commission also concurs with the auditor's suggestion that consideration be given to reducing the number of customers required to petition for regulation under AS 42.05.711.

Recommendation No. 18

<u>Alaska Statute 42.05 should be amended to cease mandatory economic regulation of certain utilities owned by political subdivisions.</u>

The Commission supports the philosophy underlying this recommendation. However, the Commission does not believe that elimination of AS 42.05.711(b)(2) is necessary to achieve the auditor's objective and has proposed an alternative legislative approach and language.

It is reasonable that if regulation is elected at one time by a governing body as currently provided under AS 42.05.711(b)(1), then a future governing body should have similar authority to vote to revoke that election. If such revocation is exercised, it is presumed that the public protection function provided by the Commission will be assumed by the governing body of the

political subdivision, thus giving affected consumers a forum and recourse for concerns and complaints.

The Commission recognizes that this recommendation presently affects only the Municipality of Anchorage. It is pertinent to consideration of this recommendation that, at the present time, there are a number of outstanding issues before and outstanding requirements by, the Commission for the Anchorage Water and Wastewater Utility (sewer), the Anchorage Telephone Utility, and the Anchorage Municipal Light and Power Department.[1] It is reasonable to assume that the Anchorage Assembly would take into consideration the status and results of proceedings before the Commission at such time as it considers any decision to end economic regulation by the Commission.

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[1]Docket U-87-47 is an investigation into the general management practices of Anchorage's sewer utility. In Dockets U-88-18 and U-87-61 the Anchorage Telephone Utility is before the Commission requesting a 54.83% rate increase and responding to an investigation into the general and financial management practices of the utility. Commission decisions are currently pending in these sewer and telephone cases. At the present time, the Municipal Light and Power Department is required to provide an equity management plan and obtain Commission approval before further debt refunding is issued because of its poor financial condition.

Rather than eliminating AS 42.05.711(b)(2), as the auditor appears to suggest, AS 42.05.711(b) should be expanded to provide for deregulation of a municipal entity if its governing body so elects, once competition no longer exists between it and other utilities, and to allow the governing body of a political subdivision to revoke a previous election. The Commission believes it is desirable to continue a protective mechanism for regulated utilities in the event a future situation arises involving competition with a municipal utility. Proposed language is attached. (See Appendix B.)

Recommendation No. 2

Alaska Statute 42.05 and 42.06 should be amended to more fully allocate the costs of regulation.

The Commission concurs in part, and opposes in part, this recommendation. The Commission agrees with the auditor's suggestion that, in light of the current economic climate as well as a recent court decision, discussion should be focused on the appropriate method to fund this agency. Clearly, the time is ripe to evaluate funding options; however, the Commission disagrees with the method of funding advocated by the auditor. Regardless of the outcome of the broader funding discussion, the Commission concurs that AS 42.05.651(a) should be amended to allow interim allocations during a proceeding and to exclude the Commission from bearing any costs of a hearing or investigation.

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects - Utilities

AO Number: 89-51 Title: Municipal Regulation of Utilities

Sponsor: Enterprise Activities

Preparing Agency: Municipal Light & Power/OMB Others Affected: ATU-AWWU-SWS

CHANGES IN REVENUES AND EXPENSES (Thousands of Dollars)

	FY 6mo. 89	FY 90	FY 91	FY 92	FY 93
Operating Expenses:					
ATU - Regulation Expense (Net)	(154)	(306)	(306)	(306)	(306)
ML&P - Regulation Expense (Net)	(123)	(245)	(245)	(245)	(245)
AWWU - Regulation Expense (Net)	(68)	(137)	(137)	(137)	(137)
SWS - Regulation Expense	8	15	15	15	15

Expense Recap: (1989-6 months only)

	ATU	ML&P	AWWU	SWS
APUC Regulation Expense Savings	(168)	(133)	(100)	-0-
New Municipal Regulation Expense	14	10	32	8
Net change in Expense	(154)	(123)	(68)	8

Expense Recap (1990 and outyears)

	ATU	ML&P	AWWU	SWS
APUC Regulation Expense Savings	(335)	(265)	(200)	-0-
New Municipal Regulation Expense	29	20	63	15
Net Change in Expense	(306)	(245)	(137)	15

Impact on General Government (Yes or No) No

Public Sector Economic Effects: $3,029,000 savings over the next 4 years 6 months.The public sector effect of Municipal regulation by commissions as an alternative to the current requirement to be regulated by the APUC would be to reduce Utility operating expenses. The avoided costs above are comprised of attorney fees, consulting contracts, expert witness cost and some reduction in internal cost created by an assumed simplification of the rate making process. New expenses include increased compensation for commissioners, supplies, advertising and court reporting. Under self regulation the utilities will continue to incur some level of professional service expenses. However, the reductions noted result from more abbreviated and less protracted rate hearings. Costs were derived using a three year average and assuming six (6) months in 1989. No allowance has been made in succeeding years for inflation.

During past legislative sessions the APUC has proposed bills requesting a .55% charge on gross revenues on all regulated utilities and a .14% gross revenue charge for all utilities exempt from their jurisdiction. If such a bill were to pass it would result in an immediate extra cost to the utilities of approximately $725,000 per year based on 1987 gross revenues, if regulated.

SUMMARY OF ECONOMIC EFFECTS

Page

Private Sector Economic Effects:

The private sector effects of regulation by Municipal commissions would be a reduction in utility operating cost which may alter the timing of rate increases.

If further explanation is necessary, a separate page may be attached.

Coordinated by: Fred Traber

~~Prepared~~ by: _____ Telephone: 343-4462

(Name, Title)

Validated by OMB: _____ Date: _____

Approved by: _____ Date: _____

Director, Preparing Agency

Concurred by: _____ Date: _____

Director, Affected Agency:

Approved by: _____ Date: _____

Executive Manager

Form

UTILITY COMMISSION EXPENSE DETAIL

AWWU

26 Regular meetings @ $210	$ 5,460
28 Special meetings for rates, tariffs, & budget @ $280	7,840
16 Hearings for rates and tariffs @ $700	11,200
12 Hearings for complaints @ $700	8,400
Supplies	1,000
Court Reporter for 54 meetings @ $300	16,200
Advertising for 54 meetings @ $200	10,800
Rental space for 16 hearings @ $100	1,600
	$62,500

ATU

24 Regular meetings @ $210	$ 5,040
10 Special meetings @ $280	2,800
4 Hearings for rates & tariffs @ $700	2,800
2 Hearings for complaints @ $700	1,400
Supplies	1,000
Court Reporter for 30 meetings @ $300	9,000
Advertising for 30 meetings @ $200	6,000
Rental space for 6 hearings @ $100	600
	$28,640

SWS

12 Regular meetings @ $350	$ 4,200
2 Special meetings @ $280	560
3 Hearings for budget & rates @ $700	2,100
Supplies	500
Court Reporter for 15 meetings @ $300	4,500
Advertising for 15 meetings @ $200	3,000
	$14,860

ML&P

12 Regular meetings @ $210	$2,520
6 Special meetings @ $280	1,680
2 Hearings for rates @ $700	1,400
6 Complaint hearings @ $700	4,200
Supplies	500
Court Reporter for 20 meetings @ $300	6,000
Advertising for 20 meetings @ $200	4,000
	$20,300

JP11/FT3

ALASKA PUBLIC UTILITIES COMMISSION
COMMENTS ON HB 549*
FEBRUARY 26, 1990
PAGE 1 OF

The Commission believes that the changes proposed by HB 549 are contrary to sound public policy and therefore opposes its enactment. As currently written, AS 42.05.711(b) sets out the presumption that utilities owned and operated by political subdivisions are exempt from Commission regulation as to rates and quality of service. Paragraph (2) of this subsection creates an exception in cases where such utilities directly compete with another utility. In that instance, the competing utility as well as all other utilities owned by the political subdivision become subject to regulation.

The Commission believes that the existence of the current statutory language provides for a level of public protection which extends beyond the mere resolution of utility "turf wars." Subsection .711(b)(2) also protects the public from the possibility of a municipality (or other political subdivision) subsidizing its utility to thwart competition.

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*Commissioner D.P.O'Tierney was out of State and did not participate in the Public Meeting where the Commission discussed this legislation.

Under regulation, the Commission provides reasonable assurance that the competitive playing field remains level. In the absence of regulation, the potential for uneconomic competition is real. Consequently, the Commission supports the continuation of subsection .711(b)(2) as sound public policy but offers the modification described below.

As noted, the current statutory language requires the regulation of all utilities owned and operated by a political subdivision even if only one of them is found to be in direct competition with another utility. This provision assists the monitoring of transactions and cost allocations between utilities to ensure that cross-subsidization does not occur. The Commission is satisfied, however, that its ability to investigate such issues would not be substantially impaired if non-competing utilities owned or operated by political subdivisions were not regulated as to rates and quality of service. Since this "catch-all" provision seems to have been the most objectionable, the Commission would not oppose substitute language which still required the regulation of a competing utility but did not require the regulation of all other utilities owned by the political subdivision. A proposed committee substitute is provided for your consideration.

PROPOSED COMMITTEE SUBSTITUTE FOR HB 549

* Section 1. AS 42.05.711(b) is amended to read:

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 - 42.05.281 and 42.05.385. However,

(1) The governing body of a political subdivision may elect to be subject to this chapter; and

(2) A utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter [AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER].

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: _____
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: relating to the exemption of Municipal utilities from APUC
Sponsor: _____
Requestor: _____

Agency Affected: APUC
BRU: APUC
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: T. S. Moninski, II, Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 2/26/90

Approved by Commissioner: _____ Date: _____
Agency: Dept. of Commerce & Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ___ of ___

Analysis: Fiscal Note for HB549

If enacted, HB549 would operate to immediately deregulate the utilities owned by the Municipality of Anchorage (MOA) which are currently regulated by the APUC. Although only 4 of 119 regulated entities (3.4%), given their size and complexity, the MOA utilities constitute a much larger workload component. Even when factoring out those areas which will continue to be jurisdictional under other sections of AS 42.05 (i.e. certifications, interconnections, wholesale power agreements, access charges, etc.), the APUC estimates that its workload will be decreased by approximately 10% if HB549 becomes law.

A 10% reduction in the Personal Services line item, commensurate with the anticipated workload decrease, equates to 4.0 FTE positions. The distribution of impact results in staffing reductions per the following probable scenario: 1.5 Utility Financial Analysts, .5 Utility Tariff Analyst, .5 Utility Engineer, .5 Consumer Protection and Information Officer, and 1.0 support position.

Original sponsor(s): REP. ZAWACKI, Collins

IN THE HOUSE BY THE C&RA COMMITTEE

CS FOR HOUSE BILL NO. 549 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the exemption from regulation by the Alaska Public Utilities Commission of public utilities owned and operated by political subdivisions."

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

* Section 1. AS 42.05.711(b) is amended to read:

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established a the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.-05.221 - 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter; [AND]

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter <u>with respect to the service for which there is direct competition; and</u>

<u>(3) a utility furnishing telecommunications service that is owned and operated by a political subdivision that has a population of more than 150,000 is subject to this chapter</u> [AND ANY OTHER UTILITY OR ELECTRIC OPERATING ENTITY OWNED AND OPERATED BY THE POLITICAL SUBDIVISION IS ALSO SUBJECT TO THIS CHAPTER].