

HB

300

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 8, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/21/90

The JUDICIARY Committee considered:

HB 300

HOUSE BILL NO. 300

PUBLIC UTILITY REGULATION

"An Act relating to certain property records maintained by public utilities; and defining 'public' for public utility regulation."

RECOMMENDATIONS:

- be replaced with CSHB 300 (JUD) the same title
 a new title
 have attached amendment(s)
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
 zero fiscal note _____ zero fiscal note(s) CEP 3/P/90
 zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
PASS
No Rec
Amend

Terry Masten
Robert G. ...
Mike Miller
Al Ellis

(Check approp. column)	Do Not PASS	No Rec	Amend
<u>Pete ...</u>		<input checked="" type="checkbox"/>	
<u>Mike ...</u>		<input checked="" type="checkbox"/>	

Chairman's Signature
Chairman's Signature

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 300 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to acquisition and ownership of
7 capital stock of a public utility by a political
8 subdivision; relating to certain property records
9 maintained by public utilities; and including the
10 customers of a public utility that has an annual
11 compensation in excess of \$50,000 in the definition
12 of 'public' for public utility regulation."

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

14 * Section 1. AS 37.10.085(a) is amended to read:

15 (a) Except as provided in (c) of this section, neither [NEITHER]
16 the state nor a political subdivision of the state may

17 (1) make a subscription to the capital stock of a corpora-
18 tion;

19 (2) lend its credit for the use of a corporation; or

20 (3) borrow money for the use of a corporation.

21 * Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

22 (c) To the extent that the political subdivision is authorized
23 to acquire, own, or operate a public utility, it may exercise that
24 power by acquiring and owning, in a manner consistent with law, all of
25 the capital stock of a corporation that owns or operates a public
26 utility. The political subdivision's authority with respect to lend-
27 ing its credit and borrowing money for the use of the corporation is
28 the same as if the political subdivision had acquired the assets of
29 the corporation.

1 * Sec. 3. AS 42.05.461 is amended to read:

2 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
3 require a public utility to establish, provide, and maintain as a part
4 of its system of accounts, continuing property records segregated by
5 the year of placement in service, including a list or inventory of all
6 the units of tangible property used or useful in the public service,
7 identifying the property by location and project [SHOWING THE CURRENT
8 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
9 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
10 sion may require a public utility to keep accounts and records in
11 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost
12 of the property when first devoted to the public service, and the
13 current related reserve for depreciation. Each public utility with
14 annual revenues exceeding \$100,000 shall keep continuing property
15 records.

16 * Sec. 4. AS 42.05.720(3) is amended to read:

17 (3) "public" or "general public" means

18 (A) a [ANY] group of 10 or more customers that pur-
19 chase the service or commodity furnished by a public utility; [AS
20 DEFINED IN (4) OF THIS SECTION; AND]

21 (B) one or more customers that purchase the service or
22 product furnished by a public utility if the total annual compen-
23 sation received by the utility from all sources exceeds \$50,000;
24 and

25 (C) a [ANY] utility purchasing the product or service
26 or paying for the transmission of electric energy, natural or
27 manufactured gas, or petroleum products that [WHICH] are re-sold
28 to a person or group included in (A) or (B) of this paragraph or
29 that [WHICH] are used to produce the service or commodity sold to

the public by the utility;

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A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. GOLL

TO: CSHB 300(L&C)

Page 1, line 6, after "Act":

Insert "relating to acquisition and ownership of capital stock of a public utility by a political subdivision;"

Page 1, after line 11:

Insert new bill sections to read:

** Section 1. AS 37.10.085(a) is amended to read:

(a) Except as provided in (c) of this section, neither [NEITHER] the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

* Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility. The political subdivision's authority with respect to lending its credit and borrowing money for the use of the corporation is the same as if the political subdivision had acquired the assets of the corporation."

Page 1, line 12:

Delete "Section 1"

Insert "Sec. 3"

Renumber the remaining bill section accordingly.

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 18, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/1/90

The LABOR & COMMERCE Committee considered:

HB 300

HOUSE BILL NO. 300

[PUBLIC UTILITY REGULATION]

"An Act relating to certain property records maintained by public utilities; and defining 'public' for public utility regulation."

RECOMMENDATIONS:

- [] be replaced with L+C CS 300 [] the same title
[] a new title
- [] have attached amendment(s)
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the Judiciary Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS

Paul J. ...

Mark ...

Steven A. ...

David ...

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Original ...</u>		<input checked="" type="checkbox"/>	

David ...

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to certain property records, etc.
 Sponsor: House Labor & Commerce Comm.
 Requestor: House Labor & Commerce Comm.

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached

Prepared by: T.S. Moninski II, Executive Director
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 3/5/90

Approved by Commissioner: Larry Mercurieff
 Agency: Department of Commerce & Economic Development

Date: 3/6/90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS - FISCAL NOTE FOR CSHB 300 (L&C)

The primary impact of the enactment CS for HB 300 is found in Section 2 of the bill which would expand the APUC's jurisdiction by bringing under regulation any utility which serves one or more customers if such service produces gross annual revenue in excess of \$50,000.

While this section has some potential for increasing the number of utilities subject to economic regulation, the projected increase is highly speculative. At this time, the APUC does not anticipate that the workload increase will be substantial and, accordingly, submits a zero fiscal note.

The commission may need to submit a budget request in the future if the actual result of the bill's enactment is to generate significant numbers of new jurisdictional utilities which require regulatory oversight.

6-1283E
Cramer
2/28/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE
 2 CS FOR HOUSE BILL NO. 300 (L&C)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to certain property records main-
 7 tained by public utilities; and including the custom-
 8 ers of a public utility that has an annual compensa-
 9 tion in excess of \$50,000 in the definition of 'pub-
 10 lic' for public utility regulation."

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

12 * Section 1. AS 42.05.461 is amended to read:

13 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
 14 require a public utility to establish, provide, and maintain as a part
 15 of its system of accounts, continuing property records segregated by
 16 the year of placement in service, including a list or inventory of all
 17 the units of tangible property used or useful in the public service,
 18 identifying the property by location and project [SHOWING THE CURRENT
 19 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
 20 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
 21 sion may require a public utility to keep accounts and records in
 22 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost
 23 of the property when first devoted to the public service, and the
 24 current related reserve for depreciation. Each public utility with
 25 annual revenues exceeding \$100,000 shall keep continuing property
 26 records.

27 * Sec. 2. AS 42.05.720(3) is amended to read:

28 (3) "public" or "general public" means

29 (A) a [ANY] group of 10 or more customers that

1 purchase the service or commodity furnished by a public utility;
2 [AS DEFINED IN (4) OF THIS SECTION; AND]

3 (B) one or more customers that purchase the service or
4 product furnished by a public utility if the total annual compen-
5 sation received by the utility from all sources exceeds \$50,000;
6 and

7 (C) a [ANY] utility purchasing the product or service
8 or paying for the transmission of electric energy, natural or
9 manufactured gas, or petroleum products that [WHICH] are re-sold
10 to a person or group included in (A) or (B) of this paragraph or
11 that [WHICH] are used to produce the service or commodity sold to
12 the public by the utility;

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 300

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to certain property records main-
7 tained by public utilities; and defining 'public' for
8 public utility regulation."

9

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

10

* Section 1. AS 42.05.461 is amended to read:

11

Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
12 require a public utility to establish, provide, and maintain as a part
13 of its system of accounts, continuing property records segregated by
14 the year of placement in service, including a list or inventory of all
15 the units of tangible property used or useful in the public service,
16 identifying the property by location or project [SHOWING THE CURRENT
17 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
18 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
19 sion may require a public utility to keep accounts and records in
20 [SUCH] a manner that shows [AS TO SHOW] ~~currently~~ the original cost
21 of the property when first devoted to the public service, and the
22 related reserve for depreciation. Each public utility with annual
23 revenues exceeding \$100,000 shall keep continuing property records.

24

* Sec. 2. AS 42.05.720(3) is amended to read:

25

(3) "public" or "general public" means

26

(A) a [ANY] group of 10 or more customers that pur-

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chase the service or commodity furnished by a public utility and

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that is located outside or makes the purchase outside the certifi-

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icated service area of the public utility; [AS DEFINED IN (4) OF

1 THIS SECTION; AND]

2 (B) a person who purchases a utility service or prod-
3 uct from a public utility and who is located in or makes the
4 purchase in ^{another} the certificated service area of the public utility;
5 and

6 (C) a [ANY] utility purchasing the product or service
7 or paying for the transmission of electric energy, natural or
8 manufactured gas, or petroleum products that [WHICH] are re-sold
9 to a person or group included in (A) or (B) of this paragraph or
10 that [WHICH] are used to produce the service or commodity sold to
11 the public by the utility;

ANALYSIS OF HB 300
(Including Amendments proposed by APUC)

Section 1. Continuing Property Records.

Present law requires utilities to maintain continuing property records identifying the inventory and value of all property used in the operation of the utility by "definite reference to the specific land parcels upon which the units are located or stored." Taken literally, the present law requires records on every bolt and crossarm in the system identified by the legal description of the land parcel on which it sits. This is essentially impossible to accomplish, and it serves no useful purpose to maintain such detailed records.

The proposed new language would require the utility to maintain continuing property records by location and project. As an example of how this would work, if a utility built a new 5-mile distribution line, it would record all of the materials purchased for the project as being part of "Inlet Road Distribution Project constructed from mile 15 to mile 20 of Inlet Road." This gives both the utility and the commission the records they need without complicating the system with unnecessary detail.

Section 2. Amending Definition of "Public."

This section changes the definition of "public utility" by changing the definition of "public."

Present law exempts from the definition of public utility an entity which provides service to fewer than 10 customers. It is now possible for an independent power producer to provide elec-

tric service to the largest one or two customers from the utility system. The utility would still have the investment it made to serve those large consumers which must now be paid for by the remaining customers. The large customers could experience a small savings while all other customers experience a large increase in rates. In extreme cases, a small utility could even lose its feasibility to maintain central station electric service.

This proposed amendment of AS 42.05.720(3) would maintain the exemption for service provided to fewer than 10 customers if they are located outside the service area certificated to an existing utility, but providing service to even one customer within a service area certificated to an existing utility would trigger APUC jurisdiction. However, under another section of existing law (AS 42.05.711(e)), such sales would have to exceed \$50,000 per year before they would be regulated by the commission. If these sales exceed \$50,000 in value, the commission would have to find that such service is in the public interest before it would be permitted. This would serve to protect the utility and its customers from hardship caused by a raid on its service area.

From: Peter Solkolw
Commissioner
APUC

ALASKA PUBLIC UTILITIES COMMISSION

RESPONSE TO COMMITTEE SUGGESTIONS

ON HB 300*

FEBRUARY 26, 1990

Section 1. AS 42.05.461

At the suggestion of Representative Gruenberg, the Commission reviewed the possibility of rephrasing this section in "less archaic language" and found it to be problematic. The Commission believes with the minor editorial changes that are attached, the existing section clearly states the intended provisions and addresses Representative Gruenberg's concerns.

Section 2. AS 42.05.720(3)

This section provides for the regulation of anyone providing utility services to one or more customers within the service area of another utility. If this is the intended policy of the Legislature, the bill should be redrafted to state this policy more frontally.

*Commissioner Daniel Patrick O'Tierney was out of State and did not participate in the public meeting in which the Commission discussed this legislation.

Alaska Public Utilities Commission
Comments on HB 300
February 26, 1990
Page 2 of 2

Should the Legislature desire an alternative approach that would be less intrusive to utilities who do not have the \$50,000 gross revenue exemption presently given to telephone and electric utilities in AS 42.05.711(c), the Commission suggests a provision that would regulate utilities grossing over \$50,000, regardless of the number of customers they serve. The Commission believes that this would address the "cherry picking" or "cream skimming" concerns of the Alaska Rural Electric Cooperative Association; would allow the Commission to continue regulating utilities other than telephone or electric that have a substantial number of customers, yet gross less than \$50,000; and would preserve the exemptions from economic regulation provided for in AS 42.05.711. To effect this provision, the Commission suggests that the attached statutory changes be enacted instead of those proposed in Section 2 of HB 300. This would preserve the status quo with respect to small water utilities. It would also establish a threshold of \$50,000 as the maximum that could be "cream skimmed" by any one skimmer.

ALASKA PUBLIC UTILITIES COMMISSION

SUGGESTED WORDING FOR HB 300

FEBRUARY 26, 1990

*Section 1:

Line 16: Change "or" to "and" in the proposed phrase "identifying the property by location or project." [This change was previously suggested by the Commission.]

Line 20: Delete ", currently,".

Line 22: Add "current" before "ated" at the beginning of the line.

With the foregoing changes, AS 42.05.461 would be amended to read:

Sec. 42.05.461 CONTINUING PROPERTY RECORDS. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, identifying the property by location and project [SHOWING THE CURRENT LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commission may require a

public utility to keep accounts and records in [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost of the property when first devoted to the public service, and the current related reserve for depreciation. Each public utility with annual revenues exceeding \$100,000 shall keep continuing property records.

*Section 2:

AS 42.05.720(3) is amended to read:

(3) "public" or "general public" means

(A) a [ANY] group of 10 or more customers that purchase the service or commodity furnished by a public utility [AS DEFINED IN IN (4) OF THIS SECTION]; [and]

(B) one or more customers that purchase the service or commodity furnished by a public utility for total compensation exceeding \$50,000 annually; and

[[B)] (C) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

HB300

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

February 8, 1990

Representative Dave Donley
Alaska State House Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

This is in response to your request that the Commission review HB300 and give its comments.

HB300, among other things, was the subject of a special Public Meeting held by the Commission on January 9, 1990, to allow the bill's advocate, the Alaska Rural Electric Cooperative Association to present its views. It was also discussed briefly at a Public Meeting on February 2, 1990.

The Commission has not taken a position on the legislation but does note several technical concerns regarding particular wording, content, and possible ramifications.

Section 1 of HB300 would eliminate from continuing property records (CPRs) certain details regarding the location of public utility property. This appears to be workable if the "or" in "identifying the property by location or project..." (line 16) is changed to "and." Requiring CPRs to be kept by location and project without reference to a "specific land parcel" should enable any auditor to locate the property.

Section 2 of the bill would change the definition of "public" so that any entity providing service to one or more customers would be subject to the jurisdiction of the Commission. (Under AS 42.05.711(e), entities providing electric or telephone service would also have to earn gross revenues in excess of \$50,000 per year to be regulated.) The Commission finds that the language used in sections (A) and (B) to effect this policy change is cumbersome and confusing. It would be helped, but not totally cured, by changing the last reference in each section from "the public utility" to "another public utility."

Representative Dave Donley
February 8, 1990
Page 2 of 2

The Commission notes several possible problems with the content of Section 2 and its perceived objectives. First, the bill appears to seek Commission jurisdiction over electric operations which are not currently regulated due to their number of customers. However, electric utilities with annual gross revenues of less than \$50,000 would still be exempt from regulation. Second, some thought should be given to the effect of this legislation on all other types of utilities and particularly on small water utilities operated by residential developers within certificated service areas of other larger utilities. Third, it is unknown how many entities may currently be operating which would come under Commission jurisdiction as a result of this bill. Absent a "grandfather clause," what would be the effect of this legislation on such entities?

Also, it should be noted that HB300 could have a significant fiscal impact, depending on the number of entities which would become regulated now or in the future.

If the Commission can be of further assistance to you in your deliberations on HB300, please do not hesitate to contact me.

Sincerely,

ALASKA PUBLIC UTILITIES COMMISSION



Peter Sokolov
Chairman

cc: David Hutchens
Executive Director
Alaska Rural Electric
Co-Operative Association
237 East Fireweed Lane
Anchorage, Alaska 99503

LAW OFFICES

HEDLAND, FLEISCHER, FRIEDMAN, BRENNAN & COOKE

A PROFESSIONAL CORPORATION

ANCHORAGE:

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BETHEL OFFICE:

251 SEVENTH AVENUE

P. O. BOX 588

BETHEL, ALASKA 99559

(907) 543-2744

March 8, 1990

BETHEL:

CHRISTOPHER R. COOKE

RECEIVED

MAR 12 1990

Mayor Larry Powell
CITY OF YAKUTAT
PO Box 6
Yakutat, AK 99689

CITY OF YAKUTAT
CITY CLERK

Re: Yakutat Power

Dear Larry:

Pursuant to our conversation of March 2, 1990, I am enclosing herewith a proposed amendment to AS 37.10.0.5 which, if enacted, would clear up any question about the ability of the City to continue operation of the utility company in the corporate form rather than dissolving the corporation.

According to John Parisena, dissolution of the corporation would result in a tax obligation of approximately \$137,000. Shelby Stastny has looked into the matter and concluded that the City could maintain the tax exempt status of the corporation under the Internal Revenue Code so long as the income accrues to the state or a political subdivision. Since all of the project revenues would be pledged to payment of the bonds or, to the extent of any excess, can be paid to the City, dissolution is not required to avoid taxation. Additionally, since the City, not the corporation, will be the issuer of the bonds, their tax exempt status is not in jeopardy according to the information from bond counsel for the bond bank.

I am also enclosing a memorandum which sets out the justification for the amendment, as well as an opinion that, whether the statute is amended or not, it is not violated by City ownership of the stock. However, bond

Mayor Larry Powell
CITY OF YAKUTAT
Page Two
March 8, 1990

counsel may be nervous absent a concrete opinion from
the court, and amendment of the statute would clear up
any doubt.

Please let me know if you have further questions.

Sincerely,



John S. Hedland

JSH:jp

MEMORANDUM

TO: Larry Powell
FROM: John S. Hedland
DATE: March 8, 1990

1. Proposed statutory change.

AS 37.10.085 is amended by the addition of subsection

(c) as follows:

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility, and the political subdivision's authority with respect to lending its credit and borrowing money for the use of said corporation shall be the same as if the political subdivision had acquired the assets of said corporation.

2. Justification.

AS 37.10.085 as currently written stated as follows:

Sec. 37.10.085. Financial aid to corporations by state or political subdivision. (a) Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

(b) This section does not apply to debt issued by a municipality or a municipal joint insurance arrangement under AS 21.76.120.

The purpose of the amendment is to make it clear that a municipality may exercise its power to own and operate a public utility by acquiring the stock in a corporation that owns and

operates a public utility, and is not restricted to acquiring the assets of the company, and that it may finance acquisition or operation of the company in the same manner as if it owned the assets directly. If a municipality is required to acquire the assets, rather than the stock, of a public utility company, the assets must be sold by the corporation or the corporation must be dissolved. In either case, assuming that the fair market value of the assets (presumptively the purchase price) exceeds the corporation's depreciated basis in the assets, a substantial tax liability will arise that must ultimately be borne by the municipality, either through payment of the tax or an increase in the purchase price. There is no justification for imposing this unnecessary expense upon the municipality, since municipal ownership of the stock, rather than the assets, of a public utility company does not contravene any policy under Alaska law relating to either municipalities or utilities.

I do not believe that enactment of the proposed amendment would change the substantive law of Alaska. AS 37.10.085 as presently written does not, in my view, prohibit a municipality from acquiring all of the capital stock of a public utility company. However, under the strictures applicable to the sale of municipal bonds, bond counsel for either the municipality or the Alaska Municipal Bond Bank may raise questions about the authority of the municipality to acquire the stock in a public utility company, with the consequence that the bonds may not be marketable. The proposed amendment is designed to eliminate that problem.

It is clear that the evil at which AS 37.10.085 is directed--diverting public funds to private purposes--is not present when a municipality acquires, through a stock acquisition, a public utility that it may lawfully acquire through an asset acquisition. In Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970), the court upheld the issuance of municipal bonds to be used to finance industrial sites to be leased to private companies. The court characterized the statute as one

which prohibits either the state or a political subdivision to lend its credit for the use of a private corporation, or to borrow money for the use of a private corporation. . . . We think that the question of whether the public credit is being pledged for a private purpose is also comprehended under the broader question of whether a public purpose is served by the bond issue and plan for its expenditure. . . . (Emphasis added). 468 P.2d at 328-29.

In State, ex rel. Johnson v. Consumers Public Power District, 10 N.W.2d 784 (Neb. 1943), the court was confronted with a Nebraska constitutional provision which provided that "no city, county, town, precinct, municipality, or other subdivision of the state, shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein of any railroad, or private corporation, or association." The case involved the legality of the public power district's acquisition of all of the common stock of an electric power company, for purposes of dissolving it and acquiring its assets. The court stated as follows:

Even if respondent is a political subdivision of the state . . . [the constitutional provision] has no application under the circumstances. This provision of our Constitution must be construed

with reference to the evils it was intended to correct or prevent. It was intended to prohibit any subdivision of the state from entering into private business by being associated as a stockholder, or being a partner, or a part owner, in a private business venture or enterprise. . . . [The constitutional provision] was never intended to prohibit a purchase by a subdivision of the state of all the capital stock of a corporation solely for the purpose of lawfully acquiring the physical property of such corporation for a public use, constitutionally defined and lawfully authorized by the legislature. 10 N.W.2d at 794.

It is clear that the Yakutat Power acquisition does not place the City in the position of investing in a private business venture or enterprise, and the same reasoning should apply here.

Acquisition of stock that has already been issued, from an existing shareholder, does not constitute making a "subscription" to the stock of the corporation. As the court noted in Sprague v. Straub, 451 P.2d 49, 52 (Ore. 1969):

The distinction between a subscription to stock and a purchase of stock is well established. The term subscription is ordinarily used to refer to an agreement to purchase stock in a prospective corporation to be organized in the future; it is to be contrasted with the purchase of the stock of an existing corporation.

The court cited Astoria & S.C.R. Co. v. Hill, 25 Pac. 379 (Ore. 1890); Commercial State Bank v. Eilers, 264 Pac. 452 (Ore. 1928). The Alaska statute must therefore be distinguished from statutes or constitutional provisions in other states which prohibit the state or municipality from 'becoming a stockholder in any . . . corporation'. (See, §9 Article XI, Oregon Constitution); being "directly or indirectly the owner of, any stock or bonds of any . . . corporation (New Jersey Constitution, Art. VIII, §III, ¶2), see,

Whelan v. N. J. Power & Light Co., 212 A.2d 136, 139-40 (N.J. 1965); "subscribe to, or be interested in the stock of any . . . corporation" (Oregon Constitution, Article XI, §6); "become a stockholder in any . . . corporation (original Ohio Constitution, see, Sprague v. Straub, supra, 451 P.2d at 54. Indeed, AS 37.13.120(g)(18) expressly authorizes the investment of permanent fund money in "preferred and common stock of corporations incorporated in the United States".

Since a corporation wholly owned by the municipality is not a "private corporation" within the court's interpretation of AS 37.10.085, municipal financing activities do not violate the prescription against lending credit or borrowing money in aid of a corporation. Even if such a corporation were treated as a private one, the issuance of revenue bonds to be repaid solely via a pledge of revenue earned through corporate operations would not amount to a pledge of public credit. Wright v. City of Palmer, supra, 468 P.2d at 329, n. 4; Miles v. City of Eugene, 451 P.2d 59, 62 (Oregon 1969); ("Likewise, the proposal in this case would not come within the constitutional prohibition against raising money or lending credit. Money coming from revenue bonds and not from tax money does not fall within the prohibition.")

6-2364A
Cramer
3/16/90

BY THE JUDICIARY COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to acquisition and ownership of
7 capital stock of a public utility by a political
8 subdivision."

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

10 * Section 1. AS 37.10.085(a) is amended to read:

11 (a) Except as provided in (c) of this section, neither [NEITHER]
12 the state nor a political subdivision of the state may

13 (1) make a subscription to the capital stock of a corpora-
14 tion;

15 (2) lend its credit for the use of a corporation; or

16 (3) borrow money for the use of a corporation.

17 * Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

18 (c) To the extent that the political subdivision is authorized
19 to acquire, own, or operate a public utility, it may exercise that
20 power by acquiring and owning, in a manner consistent with law, all of
21 the capital stock of a corporation that owns or operates a public
22 utility. The political subdivision's authority with respect to lend-
23 ing its credit and borrowing money for the use of the corporation is
24 the same as if the political subdivision had acquired the assets of
25 the corporation.
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29