

HB

499

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: relating to municipally owned
refuse transfer sites
 Sponsor: Rep. Boyer
 Requestor: Labor & Commerce

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
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REVENUE	0	0	0	0	0	0
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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) Enactment of HB 499 operates to deregulate a very small component of the refuse industry involving transfer sites owned and operated by municipalities. While some APUC participation in the determination of what constitutes a "transfer site" can be anticipated, existing resources should be adequate to absorb this work load. The APUC offers a zero fiscal note for this bill.

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

Approved by Commissioner: Larry Merculieff 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)

HB499

G
FYI

M E M O R A N D U M

March 5, 1990

TO: Peter Sokolov, Chairman
FROM: Ray Wipperman, CPIO
SUBJECT: Fairbanks North Star Borough

This is in response to your request for information concerning regulatory activities involving Ralph Bartlett d/b/a Interior Services (Interior) and the Fairbanks North Star Borough (FNSB). To the best of my knowledge the Commission has not failed to respond to any complaint or motion filed by the FNSB. This has been confirmed in a telephone conversation with Mark Andrews, Assistant Borough Attorney. Nonetheless, the following is a brief chronology of events regarding Interior:

In early summer of 1987 FNSB informed Staff that it had a critical problem with Interior which created a hazard to the public health. Staff assisted FNSB in seeking and obtaining temporary authority to operate as a garbage and refuse for a period of 90 days, effective July 23, 1987. Docket U-87-54. At this time Interior was considered to be exempt from the Commission's full regulatory jurisdiction under AS 42.05.711(i) in that the utility reported revenues of less than \$200,000 annually. The Commission's action allowed FNSB to directly take whatever steps it deemed necessary to alleviate the problem since the Commission's jurisdiction was doubtful.

During this period the FNSB provided Staff with information which documented that Interior received over \$200,000 in annual revenues. On July 30, 1987, Commission Staff filed a formal complain with the Commission regarding Interior's failure to file a tariff, and failure to provide cost justification for the rates it was charging. Staff sought to make Interior's rates interim and refundable and to show cause why civil sanctions should not be imposed. The Commission opened Docket U-87-64.

The FNSB also filed a complaint regarding the reasonableness and propriety of the rates charged by Drake Sanitation, Inc., and Interior. The Commission opened Docket U-87-66 to consider FNSB's complaint regarding Interior on August 27, 1987.

On September 23, 1987, FNSB, requested and received an extension of the temporary authority because it was concerned that the Commission's activity in U-87-64 might jeopardize the viability of Interior and create another health emergency. On December 28, 1987, FNSB withdrew its request for an extension. It stated that it was negotiating a contractual agreement with Interior which would clearly define the responsibilities of both entities and that the contract would be filed with the Commission in the future for its approval. On these assertions of FNSB, the Commis-

9. 'sion closed the docket. The contract was never finalized.

During the pendency of these proceedings Interior filed a request to implement a tipping fee and a late charge Docket U-88-17 and for a permanent rate increase in Docket U-88-39. These proceedings were adjudicated, the substantive issue in U-87-64 and U-87-66 resolved and the Dockets closed on September 19, 1989. While the FNSB did not prevail on a refund it had sought, it did express its satisfaction with the Commission's determination of Interior's rate base.

Now pending before the Commission in Docket U-90-07, is FNSB's application for a certificate of public convenience and necessity to furnish refuse collection and disposal service within the Borough, including areas certificated to Interior and part of the certificated service area of the City of Fairbanks.

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

STEVE COWPER, GOVERNOR

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

G
FYF
Island
tell to
comm

March 13, 1990

Representative Dave Donley, Chair
House Labor and Commerce Committee
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

This is in response to your Committee's request to clarify the Commission's role in dealing with the overfilled solid waste transfer sites in the Fairbanks area. The Committee also requested that the Commission respond to the Fairbanks North Star Borough's (FNSB) testimony that the Commission did not react to FNSB's request for a show cause hearing as to why the certificate of Interior Services (Interior) should not be revoked.

Enclosed is a memorandum from the Commission's Consumer Protection Information officer outlining the Commission's activities regarding Interior. In summary, until 1987 Interior consistently reported annual revenues of less than \$200,000 which exempted them from rate and quality of service regulations. Upon FNSB's complaint, it became evident that the reported revenues were understated. Consequently, the Commission opened an investigation into the rates Interior charges and the quality of service it provides.

To the best of the Commission's knowledge, it has not failed to respond to any complaint or motion of the FNSB. I surmise that with the recent turnover of personnel at the FNSB, misunderstandings have arisen as to the Borough's past participation in Commission proceedings regarding Interior. To the Commission's knowledge, there never was a formal request for a show cause hearing. This was confirmed by Mark Andrews, Assistant Borough Attorney. Ms. Anderson, who testified at the Committee's hearing alluding that the FNSB requested the APUC to hold a show cause hearing, later told me that she misunderstood what a show cause hearing was.

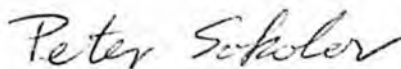
Representative Dave Donley
March 13, 1990
Page 2 of 2

In response to Representative Collins' concerns that the APUC does not have regulations on solid waste collection, I would like to inform the Committee that health and sanitation aspects of solid waste collection are addressed in the regulations of the Department of Environmental Conservation. For example, 18 AAC 60.025(b) provides:

A person who spills solid waste during collection or transport shall promptly pick up the waste and clean the affected area.

If you or the Committee's staff have additional questions, please call me at 263-2102.

Sincerely,



Peter Sokolov
Chairman

Enclosure

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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

Facsimile No: [907] 276-0160

FACSIMILE COVER SHEET

Date: 3/14/90

Time: 10:20 am

Docket Number: _____ [submit cover sheet to C. Thompson]

Transmittal Telephone Number: []

DELIVER TO: LINDA WILD / Guy Bell

COMPANY: DC&ED

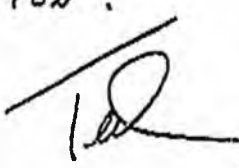
FROM: TED MONINSKI

BY [if applicable]: APUC

COMMENTS:

Here is the letter to Donley re
REFUSE REGULATION PER OUR CONVERSATION.

TOTAL PAGES: 5 [Transmittal cover sheet + document(s)]



Transmittal problems? Please call [907] 276-6222

HOUSE COMMITTEE REPORT

Donley

(7)

Date Referred: February 9, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/6/90

The LABOR & COMMERCE Committee considered:

HB 499

HOUSE BILL NO. 499

MUNICIPAL WASTE COLLECTION

"An Act relating to waste collection."

RECOMMENDATIONS:

- be replaced with CSHB499 (L+C) the same title
- have attached amendment(s) a new title
- 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 _____
- zero fiscal note C+ED
- zero with analysis _____

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

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not
Pass
No Rec
Amend

Donley Donley
Boyer Boyer
Boucher Boucher
Greenberg Greenberg

	Do Not Pass	No Rec	Amend
<u>Laman</u>			X

Donley
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to municipally owned refuse transfer sites
 Sponsor: Representative Boyer
 Requestor: Labor & Commerce

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
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REVENUE	0	0	0	0	0	0
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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) No fiscal impact for FY 90.

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

Phone: 276-6222
 Date: 3/7/90

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

Date: 3/7/90

Distribution (by preparer):

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

6-2144E
Cramer
2/26/90

Original sponsor(s): REP. BOYER, Swackhammer, Koponen, M.Davis, Sharp

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 499 ()

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 waste collection and disposal."

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

8 * Section 1. AS 29.35.050(b) is amended to read:

9 (b) The governing body of a municipality may not prohibit a
0 person holding a valid certificate from the Alaska Public Utilities
1 Commission from continuing to collect and dispose of garbage, refuse,
2 trash, waste material, or provide other related services in an area in
3 the municipality if the certificate authorizes the collection and
4 disposal of [GARBAGE, REFUSE, TRASH, OR OTHER] waste material and
5 providing of other services in the area, and the certificate was
6 originally issued before the municipality provided similar services.
7 Except as provided in (d) of this section, a [A] municipality may not
8 provide for a garbage, refuse, trash, or other waste material collec-
9 tion and disposal service in an area to the extent it lies in an area
10 granted to a garbage, refuse, trash, or other waste material carrier
11 by a certificate issued by the Alaska Public Utilities Commission to
12 the carrier until it has purchased the certificate, equipment and
13 facilities of the carrier, or that portion of the certificate that
14 would be affected, at fair market value. A municipality may exercise
15 the right of eminent domain to acquire the certificate, equipment, and
16 facilities of the carrier, or that portion of the certificate that
17 would be affected.

18 * Sec. 2. AS 29.35.050 is amended by adding a new subsection to read:

19 (d) A municipality may establish an intermediate transfer site

1 for the collection and disposal of waste material without purchasing
2 the certificate, equipment, or facilities of a waste material carrier
3 certificated by the Alaska Public Utilities Commission. The municipi-
4 pality may, without compensating a certificated waste carrier operat-
5 ing in the area, provide for or contract with a certificated or non-
6 certificated entity to provide for the collection and disposal of
7 waste material

8 (1) left at the intermediate transfer site; or

9 (2) generated by the municipal government.

10 * Sec. 3. AS 42.05.711(d) is amended to read:

11 (d) The commission, on a finding that no legitimate public
12 interest will be served, may exempt a utility from all or any portion
13 of this chapter. However, the commission may not exempt a refuse
14 utility from AS 42.05.221 - 42.05.281.

15 * Sec. 4. AS 42.05.711 is amended by adding a new subsection to read:

16 (m) The collection and disposal, under AS 29.35.050(d), by a
17 municipality of waste material deposited at an intermediate transfer
18 site and of waste material generated by the municipal government is
19 exempt from this chapter.
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A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. DONLEY

TO: CSHB 499()

Page 1, line 6:

Delete "waste collection and disposal"

Insert "collection and disposal of waste at an intermediate transfer site established by a municipality and to collection and disposal of waste material generated by a municipality itself; and prohibiting the Alaska Public Utilities Commission from exempting refuse utilities from certification requirements"

ALASKA REFUSE UTILITIES ASSOCIATION

Suggested amendments to H.B. 499:

1. Page 2, line 9--delete the following:

"(2) generated by the municipal government, [OR BY THE MUNICIPAL SCHOOL DISTRICT.]"

2. Page 2, line 19--delete the following:

"site and of waste material generated by the municipality, [OR BY THE MUNICIPAL SCHOOL DISTRICT IS EXEMPT FROM THIS CHAPTER.]"

3. Page 2, line 21--add the following:

"Sec. 5. AS 42.05.____ is amended by adding a new section to read:

The legislature finds that authorizing competing public utilities for the collection and disposal of garbage, refuse, trash, and other waste materials may be injurious to the progress of waste recovery and recycling of materials and is a policy matter reserved for the legislature. The Alaska Public Utilities Commission is instructed to not issue competing certificates for the collection and disposal of garbage, refuse, trash, or other waste materials until the legislature finds that competition in this service is in the public interest."

4. Page 2, line __, add the following:

"Sec. 6. Sections 1, 2 and 4 of this act take effect on January 1, 1994 . Except that this act takes affect immediately for all municipalities that have adopted a cap on their property taxes."



Fairbanks North Star Borough

Silver Anniversary

February 27, 1990

Members of the House and Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

RE: HB 499 and SB 298 - Waste Collection Deregulation

Dear Legislators:

I would like to speak in favor of HB 499 and SB 298.

First, I want to make it clear that the Fairbanks North Star Borough is not interested in operating a waste collection department. We want to contract with the private sector for that service. What we do want is competition and the ability to manage our contractors. Given the regulation by APUC of the collection of solid waste, the Borough cannot continue to operate that service. APUC regulates only fees, not the delivery of service.

Under the present system, the haulers are given a certificate (monopoly) for a given area, and no one else may haul solid waste in that area. We were contracting with those haulers to service our dumpster system. That contract allowed us to dictate performance standards. One hauler discovered that if he refused to sign the contract, we still could not do business with anyone else, so he couldn't be held to any performance standards. Repeated complaints to APUC regarding lack of service, filth at dumpster sites, and failure to perform netted no result.

I have been Mayor for four plus years, and have tried to operate under the present rules. Believe me, it works fine with the good haulers. It does not work at all with the bad. When irate citizens complain about dirty dumpsters they do not go to the state, they come to me. When I tell them I have no control over the hauler since the state certifies them but doesn't regulate their quality of service, it sounds like a lame excuse, and the citizens are not satisfied. Neither am I.

Without legislation that returns the management ability to the Borough, the present system is unworkable. All we are now is a bill collector for the hauler. If the state continues to regulate the hauling thorough exclusive certificates which precludes local management of contracts, I am ready to get out of the way and let the state do it all.

Finally, I would like to remind you that last year the Fairbanks North Star Borough began pushing for full deregulation, and the present legislation before you is a drastic compromise from that position. I support this legislation which protects the haulers' property rights, while returning the management ability to the local service provider.

Sincerely,

Juanita Helms
Juanita Helms
Borough Mayor

By: Chris Birch
Introduced: 03/30/89
Adopted: 03/30/89

RESOLUTION NO. 89-035

A RESOLUTION SUPPORTING DEREGULATION OF
GARBAGE AND SOLID WASTE

WHEREAS, under current Alaska law the Alaska Public Utilities Commission regulates the operation of garbage and solid waste disposal through its certification process, and

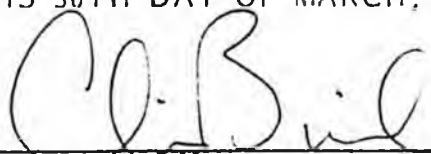
WHEREAS, the certification process results in needless expenditure of municipal funds in the procurement of garbage and solid waste collection and disposal, and

WHEREAS, if the collection and disposal of garbage and solid waste were deregulated municipalities could procure these services for the taxpayers of Alaska at a much lower cost than is currently the case, and

WHEREAS, it has been the experience in other industries that have been deregulated that costs immediately go down as market competition influences the industry that has been deregulated.


NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough urges the Alaska legislature to deregulate the collection and disposal of garbage and solid waste.

PASSED AND APPROVED THIS 30TH DAY OF MARCH, 1989.



Presiding Officer

ATTEST:



Clerk of the Assembly



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

TESTIMONY ON HB 499 REFUSE HAULING DEREGULATION

The Kenai Peninsula Borough supports HB 499 and the issue of deregulation of the refuse hauling industry in general. This bill represents a compromise between municipalities and the refuse haulers. HB 499, as introduced, would provide for the deregulation of municipal transfer sites, thereby allowing municipalities to haul or contract for the hauling of waste left at an intermediate disposal site.

The Kenai Peninsula Borough has sought deregulation of hauling of municipal transfer sites since the 1970's when the borough asserted that after refuse was placed in these transfer sites, it became the property of the borough and did not fall under the jurisdiction of the hauler's permit, thus allowing the borough to haul, or contract for hauling, the refuse to the landfill. The court rejected that position and determined that hauling of transfer boxes was within the scope of an existing hauler's permit and was a service already provided by that hauler. Because of provisions in Title 29 of the Alaska Statutes, a municipality cannot initiate its own hauling if the area is already served by a certified hauler, unless the municipality "buys out" that carrier.

Through a commission decision, the rate structure for hauling in the central Kenai Peninsula area is exempt from the normal PUC rate filing procedure, but obtaining a permit is still subject to PUC determination of public convenience and necessity. These circumstances cause the creation of a monopoly in many communities, that is not subject to regulation of rate. This prevents the borough from entering into a contract with competitive bids which would ensure the lowest possible cost to the taxpayers.

In 1989, the certificated hauler in the borough requested a 25% rate increase in the two areas that still have regulated rates. The APUC denied the 25% increase but granted rate increases of 17.45% in the

east peninsula area and 15.8% in the southern peninsula area. While the central peninsula area is not regulated, the hauler set those rates to reflect the 17.45% increase awarded for the east peninsula area. In reaction to these rate increases, and in an effort to contain the costs of the solid waste budget, the borough made a decision to remove five transfer sites which resulted in reduction of service to the public. Given this situation of a state agency determining the cost of doing business for a municipality, the ability of a local government to control its costs is lost.

Due to pending EPA regulations requiring strict environmental controls on solid waste disposal, the borough is now strongly considering the concept of a central disposal site, which would require waste generated in Seward, Kenai and Nikiski to be hauled to a site in Soldotna. With this increase in hauling, it is imperative that the borough be able to control the costs in this portion of the solid waste budget by being allowed to enter into a competitive bid situation, resulting in a contractual relationship with the hauler. Because only one hauler is now permitted to provide this service to the borough, this method of controlling costs is not available.

The Kenai Peninsula Borough appreciates your consideration of this legislation and urges you to pass HB 499 from committee.

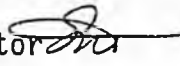
Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

February 27, 1990

TO: Representative Dave Donley, Chairman
Members of the House Labor and Commerce Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: HB 499 - Relating to waste collection

The Alaska Municipal League supports HB 499 to the extent that it moves in the direction of deregulating solid waste services.

The Alaska Municipal League's 1990 Policy Statement states on page 38:

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

I understand from representatives of several of our member municipalities that have been working on this issue that HB 499 represents a compromise to complete deregulation acceptable to representatives of private haulers and those municipalities with current and specific problems. If complete deregulation is not possible through this or other legislation this year, then AML supports HB 499 as introduced as a compromise, recognizing that all compromises are not completely acceptable to all parties.

The collection and disposal of solid waste is a traditional municipal service and Title 29 grants the authority for this function to municipalities. However, Title 29 (AS 29.35.050 (b) also restricts a municipality from providing this service if a private provider holds a certificate. A municipality wishing to enter the solid waste collection and disposal business can purchase the certificate or acquire it under its powers of eminent domain. HB 499 makes an exception to current law for the collection and disposal of waste material left at a transfer site or generated by the municipal government or by a school district.

Solid waste is a growing environmental concern replete with increasing federal and state regulation and increasing potential costs to municipalities and private operators. A municipality must have adequate control over solid waste collection and disposal in order to meet its, in many cases mandated, responsibility to protect the public health and welfare, specifically, protecting the health of its citizens and the environment and to keep costs at the lowest possible level.

Again, AML supports the complete deregulation of solid waste collection and disposal but also supports HB 499 as introduced as an acceptable compromise to deal now with specific problems in several of our member municipalities. Thank you.

sab3:hb499

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 499¹

February 26, 1990

The Commission reiterates its position in support of deregulation of the refuse industry and believes that local governments can adequately oversee this aspect of public health and sanitation.

Nonetheless, the Commission will offer the following notes on HB 499:

*Section 1, amendment to AS 29.35.050(b) - It is not clear to the Commission why the words "GARBAGE, REFUSE, TRASH, OR OTHER" are deleted on line 14 but not the three other times they appear within the same subsection.

*Section 2, amendment to AS 29.35.050 - The Commission believes that this section would have an impact on the existing market structure of the current industry. Undoubtedly the utilities and the local governments will argue about the merits of this proposed section. The Commission will be glad to provide an independent assessment of these arguments.

¹Commissioner 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 499
February 26, 1990
Page 2 of 2

*Section 3, amendment to AS 42.05.711(d) - The Commission opposes this amendment because it limits the flexibility of the exemption and hence, the Commission. To the Commission's knowledge, no refuse utility has ever been exempted from AS 42.05.221 - 281. Further, the Commission questions, as a matter of policy, why such a requirement should be placed only on the refuse industry.

*Section 4, amendment to AS 42.05.711 - To the extent that a regulated entity could contract with a municipal government, that portion of its business would be deregulated. Consequently, there would be a cost allocation issue between the regulated and nonregulated activities of the regulated entity, including the potential for cross-subsidization. There are further policy implications in allowing a municipality to service school districts. This would deprive some regulated entities of considerable revenues and thus impact the rates other customers pay.



*Draft L+C
Resolution*

Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

March 23, 1989

TO: Rep. Dave Donley
Chairman, Committee on Labor and Commerce

FM: Rep. H.A. "Red" Boucher
Rep. Loren Leman
Rep. Ann Spohnholz

RE: Subcommittee on Solid Waste Utilities

The Subcommittee on Solid Waste Utilities has met to consider two questions.

- I. Should solid waste utilities be deregulated by the APUC.
- II. Should the Committee introduce legislation regulating recovery and recycling of solid waste.

Regarding Question I, the subcommittee has reviewed the past and current record on the issue of deregulating refuse utilities. Appendix One to this memorandum contains the legislative history of bills introduced in the eleventh legislature. There is no bill in the current legislature concerning deregulation of refuse utilities.

In addition, the subcommittee members met with representatives of the refuse industry, and also with Susan Knowles of the APUC, to ascertain their views on this issue.

The subcommittee has concluded that current statute requires the APUC to regulate refuse utilities (A.S. 42.05.720(F)). The fact that the legislature has considered and declined to change the statute affirms the prescribed public policy for APUC to follow.

The subcommittee is disconcerted by information from the refuse utilities that the APUC is de facto deregulating refuse utilities by encouraging applicants to apply for "certificates of public convenience

and necessity" in areas where existing refuse utilities are operating. This practice is not in conformance with the statute and should be changed in favor of stricter regulation.

The subcommittee's conclusion in favor of strict regulation is based on traditional economic theory of regulation that holds that the public interest is best served by allowing economies of scale to accumulate for capital and operational cost recovery. In exchange for the preferred monopolistic position enjoyed by most utilities, they are regulated in order to prevent public abuse in the form of excessive profits and substandard or discriminatory service. The practice of regulation saves the public from inconstancy that is the by-product of competitive markets. Regulation of utilities is especially applicable in thin markets, like most Alaskan communities, that need reliable service from fundamental utilities.

In addition, the subcommittee is persuaded that regulation of refuse utilities is necessary to protect public health and the environment. The commonplace occurrence of hazardous waste and toxic substances in our communities requires, in the opinion of this subcommittee, a measure of control and planning that can be achieved only by regulation. Issues regarding waste products and disposal methods are of increasing urgency in communities throughout the country. These issues deserve to be scrutinized more rather than less in order to preserve public health and the aesthetic values cherished in most Alaskan communities.

For the aforementioned reasons the subcommittee recommends that a letter of legislative intent be attached to HB 72 (APUC sunset bill) that reaffirms APUC's statutory mandate to regulate refuse utilities until the legislature chooses to change the statute. Suggested language follows:

The legislature finds that the APUC's practice of regulation of refuse utilities as required under A.S. 42.05.720 is inconsistent with that statute. It is the intent of the legislature that APUC should strictly regulate refuse utilities consistent with A.S. 42.05. 720.

Regarding the second question, i. e., should the Committee sponsor legislation requiring regulation of solid waste recovery and/or recycling. The subcommittee is of the opinion that the merits of the proposed legislation, Appendix Two, cannot be satisfactorily determined without public hearings. Consequently, the subcommittee supports introduction of the legislation so that public process will be available to determine its viability.



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications

March 29, 1989

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

Dear Dave,

In the process of researching the workload of APUC, I found out that there is no record of "aging" for the dockets under consideration. In other words, the Commission doesn't make available to the public, the length of time each case has been under consideration.

I suggest that intent language would be appropriate in the sunset bill as follows:

"The Commission shall publish in their annual report the filing date for each matter pending before them for action."

Sincerely,

A handwritten signature in cursive script that reads "Red".

H.A. "Red" Boucher
Representative



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications

MEMORANDUM

April 4, 1989

TO: Rep. Dave Donley

FM) Rep. Red Boucher
Chairman, Subcommittee on Solid Waste Utilities

RE: Comments on Minority Report of March 30, 1989

This is a critique of the three points raised in the Minority Report that purport to rebutt the Majority Report of March 23, 1989.

The first point deals with whether or not A.S. 42.05.720 (4)(F) is intended to include solid waste utilities within the APUC's regulatory scheme. The minority report suggests that the APUC should be left to its own determination of legislative intent despite the clear language in the statute:

"utility includes every corporation...that owns, operates, manages or controls any plant or system for (F) furnishing collection and disposal service for garbage, refuse, trash or other waste material;

Despite this unambiguous citation (which should be read in conjunction with AS 42.05.221(a)) the minority report would have us believe that regulation of waste utilities is somehow a new twist of interpretation. The objective situation testifies that waste utilities have been regulated since the statute went into effect... regulation is the status quo. To contend that deregulation is the intent of the statute when deregulation is the result of having no statute at all is ridiculous.

As to whether or not a legal opinion should be sought as to the intent of the statute, the legislature is its own and the ultimate arbiter of legislative intent. Also, the language and facts are too clear to ask for a legal opinion when there is no purpose other than fishing for obtuse angles for debate.

The second point of rebuttal in the minority report involves whether or not prospective competitors in a deregulated market are concerned about economies of scale. The minority misses the point. It is not whether prospective competitors are concerned about economies of scale; the point is that the advantages of scale are good for the public because the public pays less for a utility service that is a compulsory cost to citizens about which they do not have a choice to spend or not to spend. Our society deems it prudent not to have competition and redundant investment in utility services where costs are mandated to the public. That is the rationale for regulation.

The third point in the minority report is that public health and environment are not the concerns of APUC. The reality of the situation is that protection of public health, safety and environment costs money and requires investment in expensive trucks, incinerators and a related equipment. Utilities are deserving of a return on their investment which must be part of their rate base and tariff structure approved by the APUC. Public and environmental health are an integral part of the "Standards of Service and Facilities" requirements of the APUC statute (A.S. 42.05.291). To suggest that inspections by OSHA, Health and Social Services or DEC are a substitute for regulatory, economic incentives that have worked in the U.S. for more than a hundred years is a misreading of regulatory powers.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE LOREN LEMAN
465-2095

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Representative Dave Donley
Chairman, House Labor and Commerce Committee

FROM: Representative Loren Leman *Loren*

DATE: March 30, 1989

SUBJ: COMPETITION IN WASTE COLLECTION/DISPOSAL

After consideration of the presentation made by the subcommittee chairman, representatives of the monopoly providers, and meeting with the Chairman of the Alaska Public Utilities Commission (APUC), I find that I do not concur with the recommendation made by a majority of the subcommittee.

There are five principal reasons for this divergence in opinion.

(1) The APUC has reviewed the situation and has come to the conclusion that this is an industry that does not require monopoly to serve the public interest.

AS 42.05.720(4F) notwithstanding, the APUC believes they have the authority to initiate the limited competition they have authorized. I agree.

(2) Allowing citizens the economic freedom to compete does not repeal or restrict health and safety regulations. I am not aware of evidence to support the contention that monopolies have a better compliance record with health and safety regulations than do competing businesses.

(3) The current monopolists largely began as "Mom & Pop" operations collecting refuse. The gate should not be shut for the "Mom & Pops" of the 1990s--those who are willing to accept the challenges of free competition.

(4) The public is better served by having the freedom to choose. With competition, the businesses will have to take the consumers into account in ways a monopolist may be able to ignore.

(5) Remote areas will be better served by competition. Competing firms have an incentive to innovate. A protected monopolist has little incentive to innovate. The presumption should be to allow the competing enterprise an opportunity to provide the service. If some areas remain unserved that the Legislature believes should be served, corrective action could be taken. The right of Alaskans to compete should be honored.



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CONSIDERATION OF THE MAJORITY REPORT

POINT #1: "The subcommittee has concluded that current statute requires the APUC to regulate refuse utilities (AS 42.05.720(4F)). The fact that the legislature has considered and declined to change the statute affirms the prescribed public policy for the APUC to follow."

REBUTTAL: The APUC is proceeding with a form of deregulation they believe they are authorized to implement. In fact, the failure of the Legislature to pass legislation prohibiting the APUC from pursuing deregulation may actually represent tacit approval of the APUC's actions. Additionally, no legal opinions were presented that substantiated the subcommittee's interpretation of AS 42.05.720(4F).

In fact, the majority report of the subcommittee suggests the need for additional intent language.

POINT #2: "The subcommittee's conclusion in favor of strict regulation is based on traditional economic theory of regulation that holds that the public interest is best served by allowing economies of scale to accumulate for capital and operational cost recovery."

REBUTTAL: The fact that others desire to compete indicates they do not share the monopolists concerns with respect to economies of scale. The situation is that those already largely capitalized and who enjoy monopoly are asking for protection, while those seeking entry into the market without guarantees are not dissuaded by traditional economic theory.

POINT #3: "The subcommittee is persuaded that regulation of refuse utilities is necessary to protect public health and the environment."

REBUTTAL: APUC is responsible for economic and service regulation. APUC deregulation should have no effect on health and safety concerns monitored by other agencies of the state.

I concur with the recommendation of the subcommittee with respect to the second question, i.e., should the Committee sponsor legislation requiring solid waste recovery and/or recycling.



H.B.72
FILE

February 3, 1989

~~Handwritten scribble~~

The Honorable Dave Donley
Chairman
Labor and Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

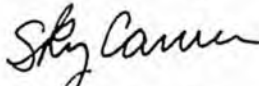
In addition to operating a refuse disposal utility on the Kenai Peninsula, I serve as President of the Alaska Refuse Utilities Association. Our Association is comprised of the state's major refuse utilities with membership in every major Alaska community.

We anticipate that the issue of deregulating refuse may come before your Committee in the near future, particularly if the sunset audit report prepared by the Division of Legislative Audit follows previous recommendations made by the Division's staff. However, until the Division's report is finalized and brought before your Committee--and the Division's recommendations are made public--it is the association's position that it is premature to take any legislative action on the refuse issue. For that reason we have not requested the Committee to address some of the legislative proposals the Association would like to see enacted into law.

We would, however, like to let you know of our interest in discussing several of the Association's legislative proposals

with either the full Committee, or a Subcommittee which has been given the responsibility of reviewing the full spectrum of public policy concerns regarding refuse disposal. We believe there are compelling policy reasons for leaving APUC regulation of refuse in place. However, we also believe there are improvements which can be made to the present statutory framework which will provide continued protection to the ratepaying consumer and to the environment, while at the same time lifting much of the current self-inflicted workload which has developed at the APUC regarding refuse dockets. Therefore, we request the opportunity to appear before the Committee to discuss refuse deregulation whenever you believe it would be appropriate. Thank you for your consideration of this request.

Sincerely,



Sky Carver
President

Alaska Refuse utilities Association

Law Offices of
B. RICHARD EDWARDS
550 WEST 7TH AVENUE
SUITE 1230
ANCHORAGE, ALASKA 99501-3564
TELEPHONE (907) 276-5552

January 16, 1989

Members

Alaska Refuse Utilities Assn., Inc.
c/o Sky Carver, President
Peninsula Sanitation Co., Inc.
P.O. Box 1209
Soldotna, AK 99669

Dear Members:

Attached to this letter is a synopsis of the hearing time expended by the Alaska Public Utility Commission on refuse matters between January 1, 1983 and December 31, 1988. These numbers were calculated using transcript times, estimations of time on matters that this office was involved in and estimating the number of Commissioners at each proceeding. Our few estimates are conservative.

An evaluation of the attached analysis shows that the Commissioners spend a total of 76 hours of hearing time on certification matters and 28 hours of hearing time on rate matters. When computing the actual number of hours spent in total by members of the commission it is necessary to multiple the number of hearing hour times the number of commission participants at the hearing. This results in 142 hearing hours total spent by all Commissioners and the Hearing Officer on certification matters and 37 hearing hours total spent by all Commissioners and the Hearing Officer on rate matters.

Left out of this analysis is the number of hours spent by staff on refuse matters, and Commissioners and Hearing Officers hearing preparation time, travel time and post hearing activity time. It is my belief that the staff has not spent much time with respect to certification matters except for the initial Mat-Su Docket U-83-8 and writing of some recommendations on other dockets. I do not believe they actually participated with counsel in any certification matter except U-83-8. The staff spends considerable time analyzing rate filings. We have not yet found a way to determine the amount of time spent by staff on rate matters. We do know that staff apparently had one person assigned to rate matters for refuse cases but we do not believe that all of his time was or should have been spent on refuse rate matters. Further analysis of this subject may be necessary to complete the picture of the time spent by the Commission on rate matters in refuse proceedings.

Law Offices of

B. RICHARD EDWARDS

Alaska Refuse Utilities Assn., Inc.

Page 2

January 16, 1989

Please note that the enclosed analysis is subject to your input. Many of you participated at these hearings and your file will indicate the accuracy of cur numbers. Thus each of you should review your files and determine whether or not our numbers are accurate.

If any of you should have any questions on this, please feel free to bring them to my attention.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "B. Edwards", written in dark ink.

B. Richard Edwards

ALASKA PUBLIC UTILITIES COMMISSION
Hearings, 1983-1988:
Collection and Disposal of Garbage, Refuse, and Trash

I. Hearings Pertaining to Certification Matters.

<u>Docket(s)</u>	<u>Date(s) of Hearing(s)</u>	<u>Off'rs or Comm'rs Present</u>	<u>Hearing Hours</u>	<u>Off'r-Hours/Comm'r-Hours</u>
U-83-8, Valley Refuse, et al.	10/17, 19, 31/83 11/1/83 12/6, 7/83 2/1/84	Comm'rs Agi, Weatherly	49	98
U-83-60, Drake Sanitation; U-84-70, North Pole Trash Serv.; U-85-24, North Pole Trash Serv.	6/18/85	Off'r Jackson	2	2
U-88-75, Mat-Su Borough	2/24/87	Comm'rs Agi, Guess	2	4
U-86-97, Juneau Sanitation Corporation	9/15/87	Off'r Jackson	7	7
U-87-21, C & S Enterprises	5/23-24/88	Off'r Jackson	11	11
U-88-22, Alma Corporation	7/20/88	Off'r Jackson Comm'rs Agi, Sokolov, Whiteaker	½	2
U-88-22, Alma Corporation; U-88-45, All-Alaska Enterprises; U-88-56, Sutton Sanitation	10/24/88	Off'r Jackson Comm'rs Agi, Knowles, Sokolov	4½	18
		Subtotals	76	142

II. Hearings Pertaining to Rate Matters.

<u>Docket(s)</u>	<u>Date(s) of Hearing(s)</u>	<u>Off'rs or Comm'rs Present</u>	<u>Hours</u>	<u>Off'r-Hours/Comm'r-Hours</u>
U-85-36, Anchorage Refuse;	11/1/85	Off'r Jackson	5	5
U-85-44, Eagle River Refuse	11/4/85	Off'r Jackson	2	2
U-87-58, Far North Sanitation	2/29/88	Off'r Jackson	1	1
	3/1/88	Off'r Jackson	4	4
	3/1-2/88	Off'r Jackson	4	4
U-88-2, Anchorage Refuse;	6/6/88	Off'r Jackson	3	12
U-88-3, Eagle River Refuse		Comm'rs Aqi, Knowles, Sokolov		
U-88-17, Interior Services;	11/1/88	Off'r Jackson	5	5
U-88-39, Interior Services;				
U-87-64, Interior Services	11/2/88	Off'r Jackson	4	4
		Subtotal:	28	37
		TOTAL:	<u>104</u>	<u>179</u>

CHANNEL CORPORATIONS

CHANNEL SANITATION CORPORATION
CHANNEL EQUIPMENT RENTAL INCORPORATED
CHANNEL LANDFILL, INC.

March 30, 1989

Representative Dave Donley
Chairman House Labor and Commerce Committee
PO Box V
Juneau, AK 99811

Dear Representative Donley:

The APUC is attempting to get through the Legislature a Bill to deregulate the garbage business. As a member of the Alaska Refuse Haulers Association, we are opposed to deregulation for several reasons.

Financially, deregulation would drastically effect the quality of service. Operators would not be able to afford to buy quality equipment nor would they be able to obtain financing for decent equipment without any guarantee of income. There certainly wouldn't be any incentive to make an investment like Channel Sanitation has made.

There would be less incentive to recycle because the market would be so divided there would be no real volumes to make it economically feasible to recycle.

As it stands now, DEC and EPA know who the haulers of all waste material are including hazardous wastes. If there were three to four times the number of haulers, they would have less control of how these wastes were being handled. More seriously, the location of where they were being dumped. Deregulation would cause a lot more illegal dumping and litter as the haulers would be trying to cut all expenses in order to compete. The litter problem would increase because there would be companies hauling in all types of vehicles that wouldn't have the capacity to contain the garbage.

-Letter to Rep. Donley
March 30, 1989
Page 2

This issue is a financial and environmental problem. If you agree, please let your opinion be known by writing to Jerry Reinwand.

Very truly,



W.R. Tonggard, Jr.
Chairman of the Board

WRT/jak

cc: House Labor & Commerce Committee Members

Rep. H. Boucher
Rep. M. Boyer
Rep. V. Collins
Rep. M. Gruenberg, Jr.
Rep. L. Leman
Rep. A. Spohnholz
File



Alaska State Legislature

✓ 8

Official Business

F.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Representative D. Donnelly
Chairman, Labor and Commerce Committee

From: Representative Boyer *[Signature]*

Date: February 9, 1990

Subject: Request for Committee hearing on HB499

I am writing to formally ask for a hearing in the House Labor and Commerce Committee on HB499 " An Act relating to waste collection". I believe we will have very little controversy over this bill as over the past few weeks we have narrowed the scope to include only municipal intermediate transfer stations. The certificated haulers have agreed to the proposed language with perhaps the addition of a policy plank that legislatively restricts issuance of additional certificates. I feel we can deal with that quite easily in committee. Municipalities are supportive of the proposed deregulation.

I look forward to your scheduling this bill in the very near future.

