

HCR

35

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to regulation of solid waste collection and disposal by APUC
 Sponsor: H. Labor & Commerce Committee
 Requestor: H. Labor & Commerce Committee

Agency Affected: Commerce & Economic Dev.
 BRU: Alaska Public Utilities Commission

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) No fiscal impact for FY 90.

Prepared by: Ted Moninski, Executive Director
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 3/19/90

Approved by Commissioner: Larry Mercurieff *[Signature]*
 Agency: Department of Commerce & Economic Development

Date: 3-19-90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
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- Impacted Agency(ies)

LW/dg16536D/ 31990a



Representative H. A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications

MEMORANDUM

April 4, 1989

TO: Rep. Dave Doniey

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.



*Draft LHC
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.



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.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 998

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 scribbles~~

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

Dear Mr. Chairman:

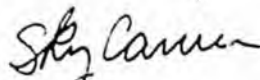
In addition to operating a refuse disposal utility on the Kenai Peninsula, I serve as President of the Alaska Refuse Utilities Association. Our Association is comprised of the state's major refuse utilities with membership in every major Alaska community.

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 docket. 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.

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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 our 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	4	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	4 1/2	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 Agi, 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
			<hr/>	<hr/>
		Subtotal:	28	37
		TOTAL:	<u>104</u>	<u>179</u>
			<hr/>	<hr/>

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. Tongard, 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

PROPOSED COMMITTEE LEGISLATION - HOUSE LABOR AND COMMERCE

HCR _____ - Relating to regulation of solid waste by

the A.P.U.C. (Draft prepared by HB 72
Subcommittee on Solid Waste -
Rep. Spohnholz, Chair)

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

WHEREAS, AS 42.05 requires that the furnishing of services to collect and dispose of garbage, refuse, trash or other waste material be regulated as a public utility for the purpose of accomplishing efficient, timely, safe, healthy, and environmentally sound handling of garbage and assuring that potentially hazardous garbage and waste is handled in a manner that promotes and protects the public health and environment;

WHEREAS the Legislature has not changed the statute regarding regulation of collection and disposal of garbage, waste, trash and other waste materials;

WHEREAS, without legislative authority, the Alaska Public Utility Commission's practice has tended to deregulate the collection and disposal of garbage, refuse, trash or other waste material and the Alaska Public Utilities Commission has decided that it is not in the public interest to regulate the number of providers of such service; and

WHEREAS, there are increasing environmental risks associated with the disposal of garbage, refuse, trash or waste material and there is only beginning to evolve a technology to adequately deal with the risks, and

WHEREAS, the Legislature believes that the Alaska Public Utilities Commission shall follow AS 42.05 with respect to the

regulation of the collection and disposal of garbage, refuse, trash or other waste material such regulation shall be carried out under traditional public utility standards.

BE IT RESOLVED by the Alaska State Legislature that it is in the public interest to continue the regulation of services for collection and disposal of garbage, refuse, trash and other waste materials, that the Alaska Public Utilities Commission shall regulate the collection and disposal of garbage, refuse, trash or other waste material as it regulates other traditional public utility services.