

HB

300

SENATE COMMITTEE REPORT

DATE: 4/15/90

FURTHER:

DATE TURNED INTO OFFICE: 5/4/90

Labor & Commerce Committee considered CSHB 300 (Judiciary) am Acquisition/ownership of capital stock of a public utility by political subdivision; certain property records maintained by public utilities; customers of a public utility that has an annual compensation in excess of \$50,000 in the definition of 'public' for public utility regulation."

and recommended:

- [x] replace with SCS CS HB 300 (L+C)
[] or adopt
[] attached amendment(s)
[] letter of intent adopted
[] same title
[] new title
[x] technical title change (HB only)

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

[] fiscal note(s)

[x] zero fiscal note(s) Dept of Commerce, 3/6/90 (for SCS CS HB 300 (L+C))

[] appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

[] fiscal note(s)

[x] zero fiscal note(s) Dept of Commerce 3/6/90

[] Governor's bill w/fiscal note

SIGNING DO PASS:

Signatures of committee members: Pat Bradley, etc.

OTHER RECOMMENDATIONS:

Signature: No Rec -

Chair: Signature and Recommendation

SCS for CS for HB 300 (L&C)

House Bill 300 will allow a city to acquire ownership of a public utility by purchasing corporate stock. This method of purchasing a utility is an alternative to buying the physical plant and other assets of the utility.

In addition, HB 300 will prevent raids on the larger customers of the utilities without a finding by the Alaska Public Utilities Commission that such dual service is in the public interest. Currently an independent power producer can come into a small community and begin service for up to nine of the larger commercial and industrial customers. The utility loses the revenue from those customers, but it still must recover its costs incurred to be able to serve them. This means substantial rate increases for everybody else. The APUC should have the authority to examine these situations on a case-by-case basis and determine if they are in the public interest. Passage of HB 300 will accomplish this.

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.

FISCAL NOTE

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property records, etc.
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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)

Please see attached

Prepared by: T.S. Moninski II, Executive Director Phone: 276-6222
 Division: Alaska Public Utilities Commission Date: 3/5/90
 Approved by Commissioner: Larry Mercurieff *Guy Bellor* Date: 3/6/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
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ANALYSIS - FISCAL NOTE FOR CSHB 300 (L&C)

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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.

MEMORANDUM

TO: ALASKA SENATE

FROM: DAVID HUTCHENS, ARECA *Dave*

SUBJECT: SENATE CS FOR CS FOR HB 300 (L&C)

DATE: MAY 6, 1990

Our Association urges your support for HB 300 and offers the following explanation for its provisions.

Section 1 and 2 were added in House Judiciary to assist the City of Yakutat. The intent is that by buying the stock and keeping the corporate structure intact rather than buying the assets of Yakutat Power, the city would be able to continue to defer federal income taxes thereby saving on the purchase price.

Section 3 simplifies the record keeping requirements for the continuing property records required of all regulated utilities. Without this amendment, we are literally required to inventory every cross arm and bolt in the system by the legal description of the land on which it sits. Because the lines extend across great distances rather than being concentrated in a few locations, compliance is virtually impossible. This section substitutes a workable system and has the support of the APUC.

Section 4 is by far the most important part of the bill in our view. It has the effect of preventing raids on the larger customers of the electric utilities unless there is a finding by the Alaska Public Utilities Commission that such dual service is in the public interest. Without this amendment to existing law, an independent power producer can come into a small community and begin service for up to nine of the larger commercial and industrial customers. The utility loses the revenue from those customers, but it still must recover its costs incurred to be able to serve them. This means

the authority to examine these situations on a case-by-case basis and determine if they are in the public interest. That is what this section accomplishes if the consumer is already served by the certificated utility.

PROPOSED AMENDMENT We are aware that an amendment has been prepared which would have the effect of providing that Section 4 not apply to Prudhoe Bay. We have no position on this amendment.

Section 5 would "grandfather" those existing situations in which someone other than the certificated utility sells electricity to a customer.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 300(C&RA)

Page 2, lines 21 - 26:

Delete all material.

Insert "(B) one or more customers that purchase electrical service
for use within an area that is certificated to, ^{and presently or formerly served by} an electric utility ~~that~~
~~provides electrical service to residential consumers~~ if the total annual
compensation that the electrical utility receives for sales of electricity
exceeds \$50,000; and"

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 300(C&RA)

Page 2, lines 21 - 26:

Delete all material.

Insert "(B) one or more customers that purchase electrical service for use within an area that is certificated to an electric utility that provides electrical service to residential consumers if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000; and"

6-1283M-
Cramer
5/4/90

Changes on Page 3

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 SENATE CS FOR 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 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; and pro-
13 viding for an effective date."

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

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

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

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

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

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

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

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

1 the corporation.

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

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

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

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

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

22 (B) one or more customers that purchase or use a
23 utility service or product in the service area of a public util-
24 ity, but that purchase the product or service from an entity
25 other than the public utility certificated for the service area,
26 if the total annual compensation received by the entity from the
27 sale of utility products and services exceeds \$50,000; and

28 (C) a [ANY] utility purchasing the product or service
29 or paying for the transmission of electric energy, natural or

1 manufactured gas, or petroleum products that [WHICH] are re-sold
2 to a person or group included in (A) or (B) of this paragraph or
3 that [WHICH] are used to produce the service or commodity sold to
4 the public by the utility;

5 * Sec. 5. The amendment made to AS 42.05.720(3) by sec. 4 of this Act
6 does not apply to an entity that was selling a product or service to cus-
7 tomers before the effective date of this Act.

8 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

-MEMORANDUM-

TO: Senate Labor and Commerce Committee

FROM: David Hutchens, Executive Director

SUBJECT: Senate CS for CS for HB 300 (C&RA)

DATE: April 27, 1990

Our Association urges your support for HB 300 and offers the following explanation for its provisions.

Section 1 and 2 were added in House Judiciary by Representative Peter Goll to assist the City of Yakutat. The intent is that by buying the stock and keeping the corporate structure intact rather than buying the assets of Yakutat Power, the city would be able to continue to defer federal income taxes thereby saving on the purchase price.

Section 3 simplifies the record keeping requirements for the continuing property records required of all regulated utilities. Without this amendment, we are literally required to inventory every cross arm and bolt in the system by the legal description of the land on which it sits. Because the lines extend across great distances rather than being concentrated in a few locations, compliance is virtually impossible. This section substitutes a workable system and has the support of the APUC.

Section 4 is by far the most important part of the bill in our view. It has the effect of preventing raids on the larger customers of the utilities without a finding by the Alaska Public Utilities Commission that such dual service is in the public interest. Without this amendment to existing law, an independent power producer can come into a small community and begin service for up to nine of the larger commercial and industrial customers. The utility loses the revenue from those customers, but it still must recover its costs incurred to be able to serve them. This means substantial rate increases for everybody else. The APUC should have the authority to examine these situations on a case-by-case basis and determine if they are in the public interest. That is what this section accomplishes.

LAW OFFICES

HEDLAND, FLEISCHER, FRIEDMAN, BRENNAN & COOKE

A PROFESSIONAL CORPORATION

ANCHORAGE:

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HUGH W. FLEISCHER
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251 SEVENTH AVENUE

P. O. BOX 555

BETHEL, ALASKA 99559

(907) 543-2744

March 8, 1990

BETHEL:

CHRISTOPHER H. 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 37.10.085 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.

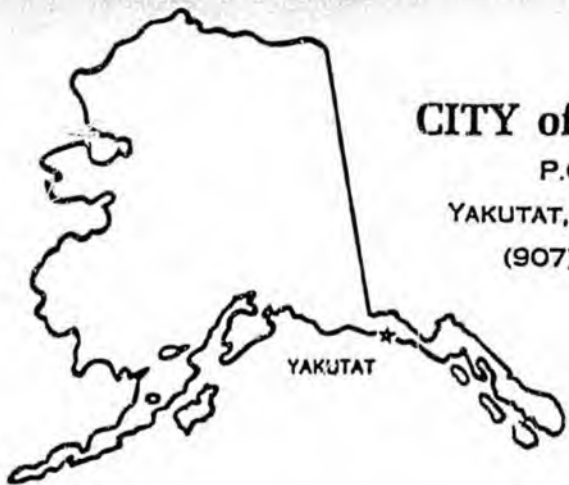
Please let me know if you have further questions.

Sincerely,



John S. Hedland

JSH:jp



CITY of YAKUTAT

P.O. Box 6

YAKUTAT, ALASKA 99689

(907) 784-3323

March 13, 1990

The Honorable Richard Eliason
Rm. 417, Capitol
P.O. Box V
Juneau, AK. 99811

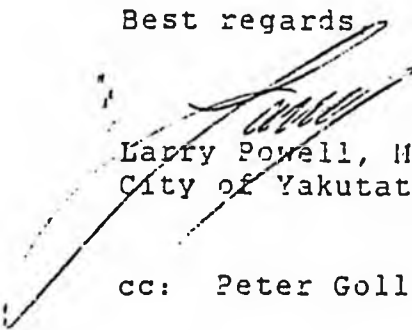
Dear Dick:

Please review the enclosed letter citing the necessity for introducing legislation to remedy a situation that is presently working adversely against the City of Yakutat in our efforts to purchase the Yakutat Power Co. It may also create problems for other public entities in similar situations.

Our request is that a very basic bill (suggested language is included in the attachment) be introduced at the earliest possible time for the Legislature's consideration.

Call at your earliest convenience should additional information or justification be required.

Best regards



Larry Powell, Mayor
City of Yakutat

cc: Peter Goll, Representative

enclosure



CITY of YAKUTAT

P.O. Box 6

YAKUTAT, ALASKA 99889

(907) 784-3323

April 10, 1990

Honorable Richard Eliason
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Senator *Dick* Eliason:

First let me thank you for moving ahead with Legislation (SB#532) which will be extremely helpful to the community of Yakutat and probably others as well.

The local power utility (Yakutat Power Co.) in Yakutat is being sold. Most Yakutat residents feel that local ownership is highly desirable in keeping power rates at the lowest possible rate (presently avg. 21 cents/kw.) for the long term. It appears that the municipality is the only party capable of such a proposition.

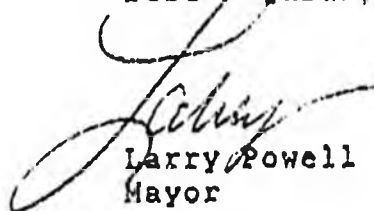
However, again in the interest of keeping the rates at the lowest possible level, it is highly desirable to maintain the corporation and avoid the arena of taxation associated with the dissolution of a "company". Since this is technically contrary to state law and we hesitate to create any apprehension on the part of the Alaska Bond Bank Authority or the City's bond counsel, it seems logical that amendment of the statute would clear up any doubt.

We feel that stable power rates are a key to a healthy local economy and you can help supporting this Legislative amendment.

Please review the attached letter which goes into detail on the justification for our request.

The City of Yakutat presently has an application before the Bond Bank Authority and the A.P.U.C. in this matter.

Best Regards,



Larry Powell
Mayor

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.")

ALASKA PUBLIC UTILITIES COMMISSIONCOMMENTS ON SB 532

April 9, 1990

The Alaska Public Utilities Commission supports enactment of SB 532. As drafted, this bill will allow municipalities to acquire the capital stock of a utility and should result in essentially the same ownership structure as the more routinely used method of utility asset purchase. The APUC does not perceive any difference in its consideration of a transaction pursuant to SB 532 and that of the typical asset acquisitions which are presented for Commission review.

RECEIVED

APR 09 1990

OFFICE OF THE
COMMISSIONER

STEVE GOWEN GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1401 J. STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 261-0222

March 16, 1990

File: HB 300

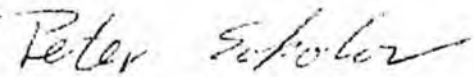
David Hutchens, Executive Director
Alaska Rural Electric
Cooperative Association, Inc.
237 E. Fireweed Lane, Suite 301
Anchorage, Alaska 99503

Dear Mr. Hutchens:

With reference to your inquiry regarding House Bill No. 300, the the February 28, 1990, committee substitute version of that bill includes the suggestions and wording proposed by the Commission on February 26, 1990. As to the Commission's endorsement of the bill, the Commission supports Section 1 of the revised bill regarding the changes to continuing property record requirements.

As to Section 2, the Commission certainly appreciates the proponents' rationale for regulating entities with fewer than 10 customers but earning gross revenues of more than \$50,000 annually. Regulation would control the activities of potential competitors that may divert lucrative customers from established utilities. However, the Commission believes that the policy of whether such regulation should be effected and whether it should apply to all utilities is best left to the discretion of the Legislature. Therefore, the Commission has no position on Section 2 of CS HB300.

Sincerely,



Peter Sokolov
Chairman

ARCTIC UTILITIES, INC.
4706 HARDING DRIVE
ANCHORAGE, ALASKA 99517
(907) 248-3030

May 7, 1990

Senator Richard I. Eliason
Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

I am writing again regarding HB 300. I understand that an amendment has been offered on the floor which would limit the effects of HB 300 to electric utilities serving "RESIDENTIAL" customers.

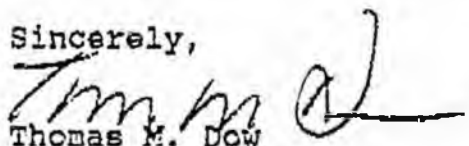
This amendment would serve to exclude one utility in the state from the legislation, Arctic Utilities, Inc., since our certificated area at Prudhoe Bay has only commercial customers at this time.

As I testified earlier, to single out Arctic Utilities is basically unfair. The same potential threat of an unregulated business coming in to a certificated, regulated utilities area and picking off large commercial customers. In fact, it is obvious from the testimony before your committee last Friday, that such a plan has been devised by the local gas utility at Prudhoe Bay and an entity that recently purchased a surplus camp.

This approach of "high grading" a few large commercial customers by offering cut rates, which cannot be met by the regulated utility could devastate the only business in the state which would be left unprotected by the proposed amendment. I believe, as you indicated at the Friday hearing, that such an exception to the laws governing utilities in Alaska would be more properly handled by the APUC, which is set up to weigh the economic, safety, customer service, and public necessity of various approaches to providing reliable electric service in specific areas of Alaska.

Thank you very much for considering Arctic Utilities' position.

Sincerely,


Thomas M. Dow

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 20, 1990

SUBJECT: Political subdivision ownership of
capital stock in a public utility
(Work Order No. 6-2371)

TO: Senator Dick Eliason, Chair
Labor & Commerce Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for a brief explanation of the effect of W.O.
6-2371.

Section 2 of the bill allows a city or other political sub-
division to buy the stock of a public utility in order to
acquire ownership of the utility if the political subdivi-
sion is authorized by other law to own or operate a utility.
This is an alternative to buying the utility by buying the
physical plant and other assets of the utility. The bill
does not address what the city does with the corporate
structure of the public utility after acquiring the stock.

If I may be of further assistance, please advise.

TBC:gc
G14/002



NORGASCO, INC.

8740 Hartzell Rd. Anchorage, Alaska 99507 (907)344-6742

April 25, 1990

Senator Richard I. Eliason
Alaska State Legislature
PO Box V (MS 3100)
Juneau, Alaska 99811

Dear Senator Eliason,

I am writing to express my concern about CS HB 300. This bill, if it becomes law, may have substantial and detrimental ramifications for Norgasco.

For this reason, I request that you hold public hearings on the bill and advise me of the schedule so I may make plans to attend.

Sincerely,

NORGASCO, INC.

Raymond R. Latchem
President



NORGASCO, INC.

8740 Hartzell Rd. Anchorage, Alaska 99507 (907)344-6742

April 30, 1990

Senator Richard I. Eliason
HAND DELIVERED

Dear Senator Eliason,

I have been in contact with the proponents of the C&RA substitute for HB 300 and we have reached a compromise.


Our basic problem with the CS is that it effects existing and planned operations in the Prudhoe Bay area. This was not the intent of the proponents.

I urge you not to let the bill out of committee without the following language incorporated;

(B) one or more customers that purchase electrical service for use within an area south of the 68th parallel which is certificated to an electric utility, provided that the total annual compensation received for such sales exceed \$50,000; and

I intend to testify on the bill by teleconference from Anchorage today at 3:30 pm and if needed, we can have others testify as well. Please let me know as soon as possible if you feel we should have others testify.

Sincerely,



Raymond R. Latchem
President

Senate CS for CS for HB 300 (CRA)

Amend Section 4, lines 21 through 26, by deleting all of the language and replacing it with the following:

(B) one or more customers that purchase electrical service for use within an area south of the 68th parallel which is certificated to an electric utility, provided that the total annual compensation received for such sales exceed \$50,000; and

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
BUREAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1990

SUBJECT: Proposed amendment to SCS CSHB 300 (C&RA)
(Definition of customer for public utility
regulation)

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked whether an amendment proposed for the above-referenced committee substitute raises constitutional issues. The amendment treats public utilities differently depending on whether the utility is located north or south of the 68th parallel. In my opinion, the amendment is probably vulnerable to challenge under the equal protection clause.

In Barber v. Anchorage, 776 P.2d 1035, (Alaska 1989), the state supreme court set out the standard of review under the state equal protection clause. Under the minimum level of constitutional review, appropriate for this kind of business regulation, there must be a substantial relationship between legitimate legislative goals and the means chosen to achieve those goals. Id. at 1039. The state's interest in using the division of utilities according to whether they are located north or south of the 68th parallel must outweigh a utility's interest in being exempt from APUC regulation.

It seems possible that the evidence would show that this means of dividing utilities fails to include many utilities south of the 68th parallel that face comparable difficulties in providing service to those faced by utilities north of that parallel. If this is the case, the division of utilities into classes could be held to fail to meet the substantial relationship test because it was underinclusive and therefore to violate the equal protection clause.

If I may be of further assistance, please advise.

TC:lmb
L10/095

HOUSE BILL 300

"Acquisition of capital stock of a public utility"

Sections 1 and 2 of HB 300 will allow a city to acquire ownership of a public utility by purchasing corporate stock. This method of purchasing a utility is an alternative to buying the physical plant and other assets of the utility.

Currently the City of Yakutat is in the process of obtaining the Yakutat Power Co., an investor-owned utility. If Yakutat is required to purchase the assets, rather than the stock, the assets must be sold by the corporation or the corporation must be dissolved. In either case, a substantial tax liability will arise that must ultimately be borne by the Yakutat rate payers. Sections 1 and 2 of HB 300 will correct this situation.

The Alaska Public Utilities Commission supports this legislation and does not perceive the Commission's interaction with a utility acquired by a city purchasing stock any different than if the utility were acquired by asset acquisition.

HB 300 will allow municipalities some flexibility when purchasing a utility and I strongly support this legislation.

ADDITIONAL INFORMATION

1. If the Yakutat Power corporation had to be dissolved, the City of Yakutat would assume a tax obligation of approximately \$137,000.
2. The City could maintain the tax exempt status of the corporation under the Internal Revenue Code so long as the income accrues to the City.
3. The problem of purchasing the assets occurs IF the fair market value exceeds what the corporate value of the assets is after depreciation.
4. APUC is not aware of any other municipality interested in acquiring a utility, but it is certainly possible that SB 532 will apply to others in the future.
5. Yakutat's attorney feels that current statutes PROBABLY doesn't prohibit a municipality from acquiring all of the capital stock of a public utility company. BUT, the City is concerned that the Alaska Municipal Bond Bank may decide otherwise. SB 532 clarifies the situation.

ARCTIC UTILITIES, INC.
4706 HARDING DRIVE
ANCHORAGE, ALASKA 99517
(907) 248 3030

May 1, 1990

Senator Richard L. Eliason
Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason,

This is in reference to SENATE CS for CS for HOUSE BILL NO. 300. Arctic Utilities, Inc. (which is owned by NANA Development Corp.) has provided utility electricity to oilfield contractors at Deadhorse/Prudhoe Bay since 1975, when NANA acquired the business.

Arctic Utilities holds a Certificate of Public Convenience and Necessity from the Alaska Public Utilities Commission, comes under APUC regulation for both rates and service policies, and files annual reports with the APUC.

It is our understanding that a late amendment to HB300, specifically to SECTION 4, would allow unregulated individual businesses to sell utility electricity within our certificated area. This amendment would only affect the area of our certification. The result would be that Arctic Utilities would be regulated as far as rates and safety/service policies, while other contractors could sell surplus electricity to customers within our certificated service area without regulation.

We feel that this is basically unfair to a utility which has complied with all existing regulations in good faith, invested millions of dollars in plant and equipment, and does comply with safety and service standards designed to insure reliable service to the public.

Senator Eliason
May 1, 1990
Page 2

If the legislature should wish to deregulate certain classes of utilities, then it would be appropriate to consider this subject separately. Any such consideration might include differentiation between rate regulation and safety/service regulation.

As to the specific situation at Deadhorse/Prudhoe Bay, many oil field contractors presently choose to generate their own electricity. They do this for different reasons, including utilization of waste heat. Any contractor can presently sell surplus electricity to Arctic Utilities as a co generator. Our APUC tariff provides for this and is similar to other electric utilities co-generation purchase policies.

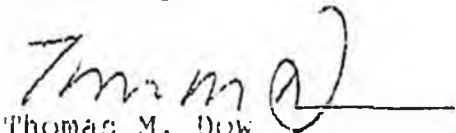
Should a contractor wish to sell power to a neighbor they could petition the APUC for permission to do so. None of this requires an amendment to legislation designed to deal with the unrelated concerns of COOP utilities in Alaskan villages.

Not passing this amendment would not disrupt any existing operations. In fact, it appears that this amendment is an attempt by the operator of a gas utility at Deadhorse to solicit potential customers by encouraging them to purchase excessive generating capacity so that they can compete without regulation with a regulated utility.

This single, narrow purpose is totally unrelated to the underlying purpose of HB 300. Unless you want to treat all entities in this market equally by deregulating utilities at Prudhoe Bay, I urge you to pass the original Bill without the special treatment of "Commercial Electric Utilities north of the 68th parallel. Such an amendment would unfairly target a single business.

Thank you for considering these comments.

Sincerely,



Thomas M. Dow
Vice President
ARCTIC UTILITIES, INC.

Brief on CSHB 300 Labor and Commerce

Section 1 & 2 of the bill will enable the City of Yakutat to purchase the privately owned electric utility by buying all of the corporations stock instead of the assets, thus allowing them to take the benefits of some existing tax benefits.

Senator Eliason wants this section.

Section 3 deals with continuing property for utilities and is a house keeping measure.

Section 4 (B) deals with re-defining the "public" or "general public". This is important because it determines who has to go through an APUC certification process and who does not. Currently the public is defined as "10 or more". With the addition of this language, a single user that purchases \$50,000 worth of electricity would be classified as "public" and whoever is selling the power would have to go to the APUC for a certificate. This process usually costs at least \$100,000 with no guarantee of a favorable ruling. This only applies to consumers that are located in a certificated service area for an electric utility.

This, in effect, will prohibit a large consumer from contracting with an Independent Power Producer for more competitive rates if the consumer is located in an established utility district.

This could discourage new development in these districts.

There is language in (B) that addresses the area of Prudhoe Bay that is in NANA's service area but is not served by NANA.

The C&RA language applied to all utilities and would have upset the GCI/Alascom deal. Instead of excluding telecommunication utilities, current language restricts this added protection from

competition to only electric utilities, not gas, sewer, water, etc. If we are going to pass restraint of trade type legislation, why not have it apply to all utilities that are regulated monopolies? Electric are concerned with "Cherry Pickers"(Independent Power Producers) and Gas utilities have concerns about the By-Pass issue, where a large customer builds their own pipeline to by-pass the local gas utility, this has the same impact.

Section 5 is a grandfather clause for all existing deals, and was probably put in for the folks in Prudhoe. The problem here is that this will give existing operators an unfair advantage over new operators in the future who will have higher utility cost.

RECOMMENDATIONS:

Section 4(B) is protectionist and restraint of trade legislation pure and simple and should be removed from the bill.

Failing to remove it, it should be amended to include gas utilities. Without equality with respect to energy type utilities, you will give the electric an unfair statutory advantage over the gas utilities. This will breed inefficiencies in the Prudhoe Bay area.

Comment: This bill creates additional work load for the APUC and will cost the State money even though the bill has a zero fiscal note, this is wrong and the bill should have a Finance referral.

ARCTIC UTILITIES, INC.
4706 HARDING DRIVE
ANCHORAGE, ALASKA 99517
(907) 248 3030

May 1, 1990

Senator Richard I. Eliason
Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

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Senator Eliason
May 1, 1990
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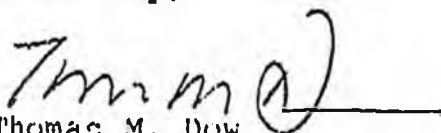
Should a contractor wish to sell power to a neighbor they could petition the APUC for permission to do so. None of this requires an amendment to legislation designed to deal with the unrelated concerns of COOP utilities in Alaskan villages.

Not passing this amendment would not disrupt any existing operations. In fact, it appears that this amendment is an attempt by the operator of a gas utility at Deadhorse to solicit potential customers by encouraging them to purchase excessive generating capacity so that they can compete without regulation with a regulated utility.

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Thank you for considering these comments.

Sincerely,


Thomas M. Dow
Vice President
ARCTIC UTILITIES, INC.

JOHN HERRING

I'm with a central Alaska company, a mechanical engineer and a special engineer, speaking against HB 300, specifically opposing the verbiage in Sec. B on line 21-28, and specifically the reason is, it clearly imparts greater restraints to facilities without eliminating any responsibility of competition from the same [indescr] you described by the opponent. Hundreds of groups of 10 exist where \$50,000 worth of business exist, and may be so in the future.

For a beginning, to challenge the public utilities in these areas is very expensive, there are several things these utilities are unable to keep track of, of course, and that is advancing technology. As new technology is developed and greater a field as they are developed, and of course if you propose Sec. B, you'll eliminate any possibility of anybody improving on the field, bringing a better field and creating less field too, less carbon monoxide, carbon dioxide and NOx's, plus waste heat.

The utilities, traditionally, are wasting their waste heat. They eliminate their waste heat to the atmosphere and to water surrounding the facilities. Where a local group of ten or so could in fact, retain this waste heat. If the bill stands, it eliminates any possibility of groups getting together and operating an efficient utility where up to 80% of all the useful energy is recovered.

At present, the existing utilities operate, wasting 60-80% of the existing, recoverable heat. They're only using between 20 and 35% of the energy available. We're proposing that you do not include this verbiage in 21-28, because you would eliminate to this group of people from joining together and establishing a more efficient facility, in fact, eliminate large quantities of dioxide, carbon monoxide, NOx, and waste heat from contaminating the environment.

The economics of electricity production favor wasting this energy in large plants. That's why large plants will always be in a position to not be able to utilize any waste, if you will, and remember we're talking 40% of the energy being burned, being wasted by these utilities. If you establish local utilities, even though they may be inside a management district, utility district, they may in fact, may recover the waste heat, and therefore they would have a competitive advantage over the local utilities.

The point is that the utilities and environment are at opposite ends of this spectrum. The utility is going to always tend to produce more carbon dioxide per unit of fuel burned, it will always produce greater amount of NOx wherever you wasted heat, per small thermally [indescr]. That summarizes my statement, I'm opposed to it.

BARRY YATES

I work for Milparks Drilling Fluids, we sell drilling chemicals to the oil industry, and one of our facilities is based

at Prudhoe Bay. Currently, we are opposed to this bill as it stands. We currently purchase electric from one of our neighbors on the North Slope, we have a fairly small facility there. We purchase our electricity from Western Atlas, who has excess generating capacity and can supply us at a very reasonable rate. [lost transmission] it the grid - that area, but they do not service our facilities up there, but if we are there to supply us with electricity, it will cost us something in the neighborhood of \$200,000 then to bring electricity to our facilities, which is really a tremendous economic burden.

The alternative would be to put our own generating equipment in place, that would cost probably in the neighborhood of \$75,000 - \$100,000, from what estimates I've received so far, the attendant problems would be obviously environmental problems. We'd have to have fuel storage on location, as well as the increased maintenance and the cost of burning the fuel, and personnel to keep track of all this, and for a small companies like ours, it would be a tremendous economic burden that we have to make the change from what we have now. It's a very good system right now, and we see no reason to change it, except to benefit NANA, and we just can't compete if we have to do something like that.

SCOTT TURNER

I'm the manager for Wetherford Alaska, we're a service company that provides services up on the North Slope. We're pretty much in the same boat as Yates, in the fact that we have a small

business up there. We currently receive our electricity from a neighbor that supplies it to us, very convenient, and very cost effective. If we were forced to put in our own generator system, we face the same things mentioned earlier: the fact that for storage capacity, we would have a lot of waste; the fact that we only use electricity when we're there, other than to keep our heaters running, so that would be a problem. A good system would create quite a burden for our company, we would be forced to go to other means. That's all I have to say.

RAY LATCHEM

I'm with Norgasco, we operate the natural gas utility in Prudhoe Bay, and I have been in contact with Mr. Hutchens on the bill, and as the members of the committee are aware, I did send you a letter with some language that we could probably live with. I think that there is another change to that now that would exclude the area south of the 68th parallel, and instead would add something to the effect to that of providing electrical service to residential customers. We could probably work with Dave Hutchens there, he can speak the language a little bit better.

I think our concerns are pretty well stated that the basic problem in Prudhoe - that is unique to Prudhoe as far as I know - we have an electric utility that is certificated for a particular service area, which is much larger than the area it actually serves, and the area that it actually serves, only serves roughly half the customers; the other half tend to generate their power on

site. We don't particularly care for coastal generator sites in Prudhoe. We have some environmental concerns up there now, these stem from waste oil, diesel fuels and things that are associated with power generators on site. These are big concerns for companies that don't operate a manned facility, a company where they house their people somewhere else at night, it's the fire hazards that go along with the power generation.

We speaking in empathy of the current language in Section B, and would like you to exclude [lost transmission] for stated reasons, and I think it can be done and still address the other companies' concerns, and I also think it should probably be restricted to just electric utilities. For various reasons there, when you have something as broad as this is, it's hard to tell just who it will effect and what areas, but you heard from Wetherford Oil Tools, and Milpark - there are several other companies up there that are in the same boat. If this does pass as currently stated, you'll make certain operations illegal. There are some other operations that are planned, that have been on the drawing board for some time, also, this would prohibit that. That's basically all I have.

BART HELMRICK

I'm President of Colville Inc, a service company in Prudhoe Bay. We heard some of the concerns from other companies, who are currently buying their power from their neighbors. I'm in the position of having to generate my own power and it's uneconomical

and it's an environmental and operational burden, and I have plans to purchase power from some other companies, which are considering starting operations that are nearby. This is necessitated by the fact that NANA, which operates the electrical grid up here, doesn't run a grid into our area, even though we're relatively close to their generating plant, and my concern with HB 300 is that it would prohibit the type of operation which we're considering.

I believe that the amendment proposed by Ray Latchem, Norgasco, is a reasonable protection for people in Prudhoe Bay, which find ourselves in the situation like Colville, or Milpark, or Weatherford. I know the comment was made that the utilities wanted to stop cherry-picking their large industrial accounts, I think the committee should consider that what is a cherry for an outside contractor, should be a cherry for the utility, and what this bill is attempting to do is turn the large industrial customer into milk cows and then treating them as their clients to be given a good competitive service.

I know that the exemption for ten customers, or fewer than 10 customers has been law in Alaska for a long time and a great deal of infrastructure has grown up around that. I would urge the committee to move very cautiously and carefully before introducing or passing out any legislation which would change that. There is a great deal of infrastructure that will be impacted in a wide variety of industry, something not to be taken lightly at all, and I would urge that the whole section here [lost transmission]. I have not further comments.

BERNIE CARL

I'm President of K&K Recycling, a Director of [indescr], to go into operation here on the North Slope on June 1. We just installed 3.5 MW of power, and a 600 man hotel to service the oil industry, which will put some \$15,000 a day into the Alaska economy of new money and 32 new jobs on a year-round basis, 365 days a year. I too object strongly to Section 4, and I believe that all of Section 4 should be taken away from this bill. Primarily, I think it does two things, not only have you heard testimony of what it does for the small business in Prudhoe Bay, but I think that you have the more serious problem, in that it breeds inefficiency into the power houses that are running it today.

It takes young and new, aggressive ideas to be implemented to keep the old ideas on the straight and narrow. Presently, our generation, to soon, will be taking in and utilizing the waste heat from the generators, we've already placed orders for new, fuel efficient natural gas generators to come from Caterpillar in October, 1991, to supplement what we already have. Now this is the private sector putting their money up, we presently have \$2.5 million invested in this project. I think that you would be doing a tremendous disservice and a tremendous restraint of trade and tremendous disservice to the Prudhoe Bay area if you let this pass the way it is. That's all I have to say.

PHONE NUMBER for person in Prudhoe Bay: 659-3198 (not sure who)