

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6446 SENATE LABOR & COMMERCE

35

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TO SENATOR DICK ELIASON
SENATE LABOR & COMMERCE COMMITTEE

FROM DON SMITH

RE RE - HB 442

Attached are TWO checks which show the
ATMC Revenue for FY 89-90 & 91 Plus
the expenditures for 1989 & 90

I will be attending the Teleconference
in Anchorage today at 3:30 pm.

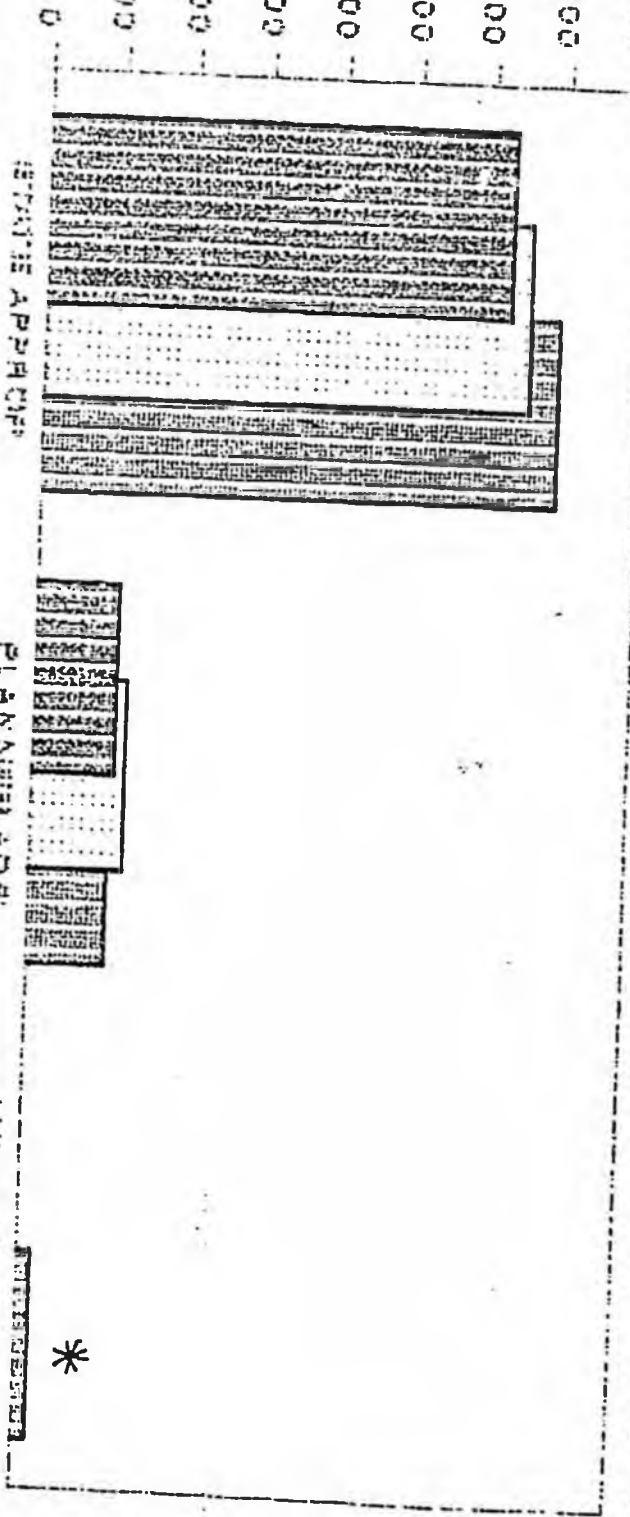
FAX TRANSMISSION

PAGES TO FOLLOW 2

IF FAX IS NOT CLEARLY RECEIVED PLEASE CALL

ATMCO BUDGETS BY 91

15,000,000
 7,000,000
 13,000,000
 5,000,000
 4,000,000
 3,000,000
 2,000,000
 1,000,000
 0



SERVICES APPROX

PLAN REVENUE

Projected & Estimated

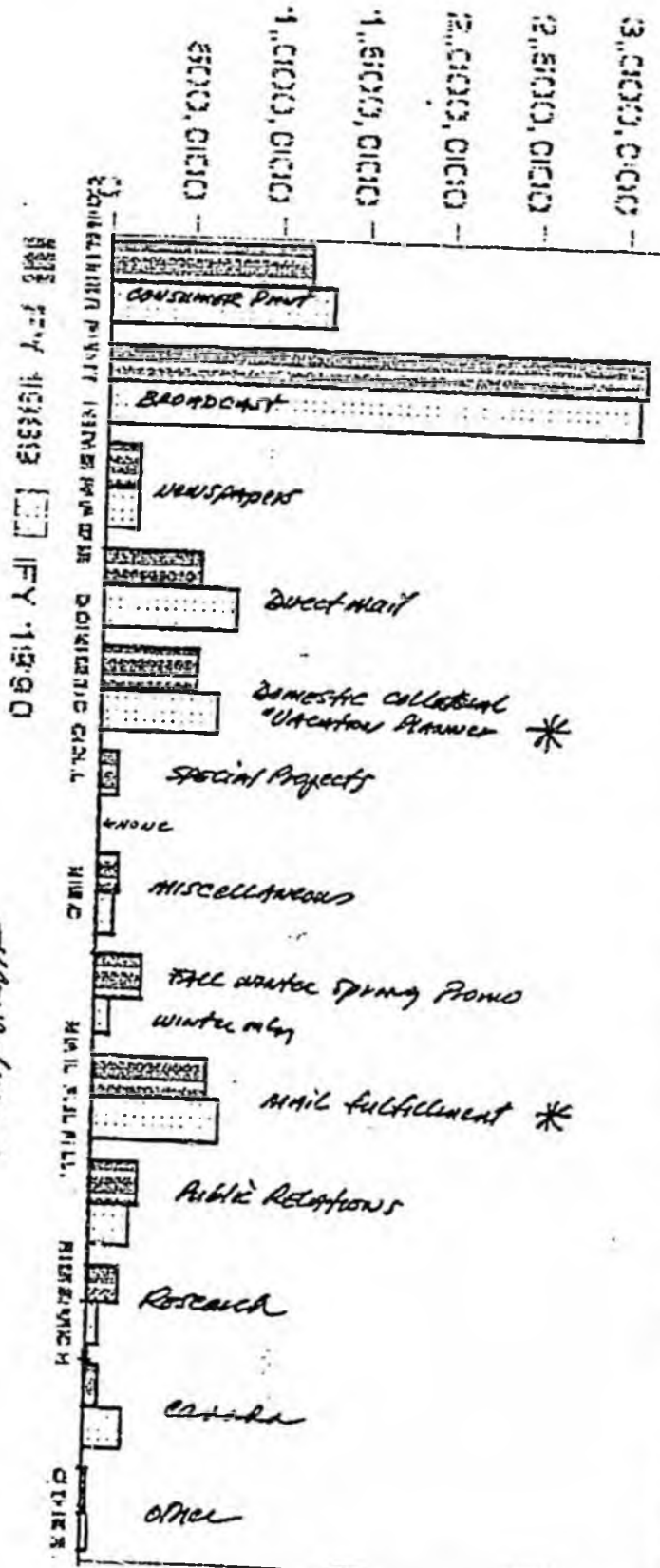
Revenue

VISIT COFF LABS

By Doug Smith

1

ALK TOLL PHSIM MKT COUNCIL BUDGETS



EXHIBITURES

By Bob Dr. 1977

April 6, 1990

To: Senator Mike Szymanski

From: Clark Gruening

Re; Senate SC for CS for House Bill No. 442(L&C) an Act relating to the Alaska Tourism Marketing Council

Mike, the main purpose of this bill is to allow the ATMC to continue to work with the statewide trade association to conduct cooperative marketing of Alaska tourism in the same successful way it has in the past and in the way the legislature envisioned when it established the ATMC two years ago.

Both Legislative Legal Counsel(Terry Bannister) and The AG(Jeff Bush) have signed off on the constitutional issue of dedicated funds which was raised briefly in the House. The bill has had three hearings - two in the House and L&C in the Senate. All were teleconferenced and the only testimony in opposition was that of Don Smith who has a subcontract with AVA to produce tourism mailing list labels from computer tapes. The bill passed the House on reconsideration 38-0 (Ulmer and Shultz absent). Don would like to get the labels cheap and resell them for a profit as part of a package printing deal for businesses.

Under the present arrangement, money from the sale of tourism mailing labels or lists goes back into the cooperative marketing program as a substantial part of the industry match. This is consistent with what the legislature intended in establishing the ATMC- it is away smaller businesses can contribute to the program and it encourages private participation and funding. Presently, and by law if this bill passes, no business has to be a member of AVA in order to get the labels at the rate of \$150 per thousand for sorted labels. This rate, while not as cheap as Don would like, is not expensive and constitutes a relatively small part of the total cost of a tourism business mail out. Small businesses can and do use this program for marketing. Without this legislation the Legislature's original intent is frustrated and the cooperative marketing program itself cannot be carried out.

Thank you for your continuing support of tourism.

A M E N D M E N T #1

OFFERED IN THE SENATE

BY SEN. FAIKS

TO: SCS CSHB 442(L&C)

Page 3, line 5, following "AS 44.33.705(b)":

Insert "; the amount for which the qualified trade association may sell or lease the tourism mailing lists is

(A) a maximum \$50 for each 1,000 listings, if the listings are provided as labels; fewer than 1,000 listings may be sold or leased under this subparagraph, but the minimum charge is \$50;

(B) a maximum \$30 for each 1,000 listings, if the listings are not provided as labels; fewer than 1,000 listings may be sold or leased under this subparagraph, but the minimum charge is \$30"

Dick,
This amendment would gut the bill it would reduce by $\frac{2}{3}$; The money available from the label sales and reduce the money from the source which goes towards the 15% mandatory match. approx 40% of the 15% match is raised from label sales. The remaining 60% is raised from ad sales in the ^{AK} travel planner. This is a Don Smith amendment - the present rate is reasonable - the ATMC has the authority to keep the rates at a reasonable level.

Smith Enterprises, Inc.

Donald H. Smith
President

Kollette Schroeder
Secretary/Treasurer

The Pentam' Place
Impressions
Smith Computer Services
The Old Anchorage Salmon Bake

April 7, 1990

The Honorable Dick Eliason
Alaska State Senate
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Dick,

I am writing to express my concern over CSHB 442 which I believe will be on the floor for consideration this coming week.

I have attached to this letter my views on this bill. While I would prefer that the bill be killed, I understand the pressure that is being brought by the AVA and would suggest that you consider amending the bill.

You could amend HB 442 on page 2 - line 26 by stipulating that the names could not be re-sold by the contractor (AVA) for more than:

\$50.00 per M on labels with a minimum order of 1,000, or
\$30.00 per M on computer tape when 10,000 or more names
are purchased

This amendment would assure that ALL Alaskan Tourism firms would have access to the State produced list at a fair price. Please remember that NO ONE has ever purchased names from the tourism mailing list at the \$300.00 per M rate or now at the \$150.00 per M rate.

Finally the amendment on line 7 of page 3 offered by Rep. Rieger during floor debate eliminates the list from being purchased by anyone that doesn't promote an Alaskan product or service.

I appreciate your taking the time to consider my views.

Sincerely,


Don Smith

Enclosure

APRIL 7, 1990

SUBJECT: CSHB 442 (L&C) am

ON JANUARY 10TH OF THIS YEAR THE ATTORNEY GENERAL, IN RESPONDING TO A LEGISLATIVE REQUEST, MADE A RULING THAT THE ALASKA TOURISM MAILING LIST IS A PUBLIC RECORD OF THE STATE AND AS SUCH MUST BE MADE AVAILABLE TO THE PUBLIC AT COST. FOLLOWING THAT RULING, I REQUESTED UNDER FREEDOM OF INFORMATION, A COPY OF THE TOURISM MAILING LIST ON COMPUTER TAPE FROM BOB MILLER OF THE ALASKA TOURISM MARKETING COUNCIL.

TWO THINGS IMMEDIATELY HAPPENED:

1ST. THE AVA STARTED HAVING HEART PALPITATIONS AND IMMEDIATELY GOT OUT THEIR HIRED GUNS AND HAD HB 442 INTRODUCED.

2ND. THE SAME ATTORNEY GENERAL, THAT RULED ON JANUARY 10TH, SPOKE OUT OF THE OTHER SIDE OF HIS MOUTH AND MADE AN ABSOLUTELY MIND BOGGLING ANALYSIS OF MY FREEDOM OF INFORMATION REQUEST. HE SURMISED THAT SINCE HIS RULING OF JAN 10TH THAT A BILL RELATED TO THE ISSUE HAD BEEN INTRODUCED AND THEREFORE RECOMMENDED DENIAL OF MY REQUEST UNTIL THE LEGISLATURE ACTED ON THE BILL.

IN PASSING, DOES THAT MEAN IF A LEGISLATOR INTRODUCES A BILL TO OUTLAW ABORTIONS OR MARIJUANA IN ALASKA THAT THOSE

ACTIVITIES WOULD HAVE TO CEASE UNTIL THE LEGISLATURE FINISHES
IT'S DELIBERATIONS ON THE BILLS?

THE ALASKA TOURISM MAILING LIST IS NO DIFFERENT THAN THE LIST
OF ALASKA VOTERS OR THE ALASKA BUSINESS LICENSE LIST OR ANY
OTHER DATA BASE CREATED BY STATE AGENCIES.

I CAN UNDERSTAND THE PANIC SHOWN BY MY FRIENDS IN THE RULING
CLIQUE OF THE ALASKA TOURISM INDUSTRY. THEIR COZY
ARRANGEMENT, ONE THEY CREATED A FEW YEARS AGO THAT FAVORS A
HANDFUL OF MAJOR OUTSIDE TOUR COMPANIES, IS GOING TO HAVE TO
BE CHANGED.

FOR YEARS THE AVA HAS PLACED AN UNREALISTIC VALUE ON THE
TOURISM LIST. UP UNTIL OCTOBER OF LAST YEAR WHEN I FIRST
STARTED MY PUSH TO ACQUIRE THE LIST THEY CHARGED \$300.00 PER
THOUSAND OR 30 CENTS PER NAME! COMMERCIAL MAILING LISTS
GENERALLY SELL FROM \$30.00 PER THOUSAND TO A HIGH OF AROUND
\$110.00 PER M. THE \$100.00 PER M LISTS ARE GENERALLY LISTS
OF PROVEN RESPONSE OR ARE LISTS LIKE CORPORATE PRESIDENTS
WITH HOME ADDRESSES AND PHONE NUMBERS. FOR THE PAST TWO
YEARS THE ALASKA TOURISM ADVERTISING CAMPAIGN HAS PURCHASED
OVER 500,000 NAMES EACH YEAR FOR THEIR DIRECT MAIL PROMOTION.
THEY PAID ANYWHERE FROM \$59.00 TO \$89.00 PER M FOR THOSE
LISTS.

THE AVA BOARD IN OCTOBER, REALIZING THAT THEIR OUTRAGEOUS

POLICY WAS GOING TO COME DOWN AROUND THEIR EARS, DECIDED TO CUT THE LIST RATE IN HALF TO \$150.00 PER M OR 15 CENTS PER NAME.

THAT NEW PRICE HAS BEEN IN EFFECT SINCE OCTOBER AND NO ONE - NOT ONE COMPANY HAS YET BOUGHT A LABEL AT \$150.00 PER THOUSAND AND THE 1990 TOURISM SEASON IS JUST FIVE WEEKS AWAY. THE ONLY TOURISM COMPANIES THAT ARE USING LABELS ARE THOSE SAME COMPANIES WHO GET FREE LABELS FOR ADVERTISING IN THE ALASKA TRAVEL PLANNER. IT'S CLEAR TO ME THAT THE PLAN TO KEEP THE LISTS FOR THE USE OF A SELECT FEEL IS STILL WORKING!

NEXT YEAR THE AVA POLICY WILL BE TO SELL THE PLANNER ADS SEPARATELY FROM THE MAILING LIST. THEY HAVE REDUCED THE AD RATE BY APPROXIMATELY 14% FROM THE RATE CHARGED THIS YEAR AND I GUESS ARE EXPECTING TO MAKE UP THE DIFFERENCE FROM LABEL SALES. MY PREDICTION IS THAT VERY FEW LABELS WILL BE SOLD IF COMPANIES ARE STILL REQUIRED TO PAY THE \$150.00 PER M RATE. UNFORTUNATELY, ONLY TIME WILL TELL HOW THIS WORKS OUT.

THERE IS NO COMPELLING REASON FOR THE LEGISLATURE TO BE MADE A PARTY TO THIS GAME THAT THE AVA WANTS PLAYED. YOU ARE BEING ASKED BY THE AVA TO MAKE LEGITIMATE A PROCEDURE THAT IS CLEARLY ILLEGAL AND WILL BE JUDGED BY THE ALASKA COURT SYSTEM AS ILLEGAL IF THIS BILL IS PASSED AND SIGNED BY THE GOVERNOR. THE ALASKA TOURISM MAILING LIST IS NOT A EXTRA ORDINARY LIST. NO STATE SECRETS ARE BEING GIVEN AWAY. ALL THE ATTORNEY GENERAL HAS RULED IS THAT THESE NAMES ARE LIKE ANY OTHER

STATE DATA BASE AND SHOULD BE AVAILABLE TO THE PUBLIC AT COST.

THE STATE TOURISM EFFORT WILL NOT BE HARMED IF THESE LISTS ARE MADE AVAILABLE TO THE PUBLIC AT THE COST OF REPRODUCTION.

AS OF TODAY THERE ARE ONLY 189 TOURISM COMPANIES THAT HAVE PARTICIPATED IN THE COOPERATIVE MARKETING PROGRAM. WHEN YOU CONSIDER THAT THERE ARE OVER 5,000 BUSINESSES IN ALASKA THAT ARE INVOLVED IN THE TOURISM INDUSTRY IT MAKES YOU WONDER IF MAYBE THE AVA APPROACH' IS WRONG OR VERY WELL CALCULATED!

LET ME BRING THESE FIGURES CLOSER TO HOME. FOR EXAMPLE, MY DATA BASES SHOW THAT THERE ARE 94 BUSINESSES IN SITKA THAT ARE INVOLVED IN TOURISM. THERE ARE:

13 BED & BREAKFASTS

31 BARS & RESTAURANTS

11 CHARTER BOAT OPERATORS

4 LODGES OR HOTELS

4 TOUR OR TRAVEL COMPANIES

3 AIR OPERATORS, AND

28 MISC. TOURISM RELATED FIRMS.

THESE 94 TOURISM BUSINESSES ARE 8% OF THE 1,145 BUSINESS LICENSED IN SITKA.

I DIDN'T HAVE TIME TO CALCULATE THE NUMBERS IN ANCHORAGE, FAIRBANKS, SOUTHEASTERN AND OTHER AREAS OF ALASKA BUT IT'S

OBVIOUS TO ME THAT TOURISM BUSINESSES ARE A LARGE SEGMENT OF EACH TOWN IN ALASKA.

WHY DO THESE 5,000 ALASKAN BUSINESSES HAVE TO FIGHT FOR USE OF A STATE PUBLIC RECORD. LOOK AT THE MAKEUP OF THE LIST OF THE 189 TOURISM BUSINESSES THAT MAKE UP THE AVA MARKETING PARTNERS. HOW MANY OF THOSE COMPANIES ARE HEADQUARTERED IN SEATTLE AND POINTS SOUTH AND EAST! I UNDERSTAND WHY THEY ARE FIGHTING SO HARD BUT IS IT FAIR TO THE 4,800 PLUS OTHER ALASKAN FIRMS WHO ARE TRYING TO MAKE A LIVING AND EXPAND THEIR BUSINESSES IN THE TOURISM INDUSTRY. WE ALL LIVE HERE YEAR ROUND AND MANY HAVE ONLY THE REVENUE FROM TOURISM TO MAKE IT THROUGH THE YEAR. MOST OF THESE SMALL ALASKAN TOURISM FIRMS DO NOT HAVE LARGE ADVERTISING BUDGETS TO PROMOTE THEIR BUSINESSES.

PLEASE DO NOT PARTICIPATE IN THIS EFFORT BY THE MAJOR SEATTLE TOUR OPERATORS TO LOCK OUT LEGITIMATE ALASKAN TOURISM FIRMS! MY TOURISM BUSINESSES WANT TO HOPEFULLY MAIL TO OVER 100,000 POTENTIAL VISITORS THIS SPRING. I'M WORKING WITH OTHER SMALL ALASKAN TOURISM FIRMS TO HELP THEM MAIL THEIR PROMOTIONAL LITERATURE TO OUR PROSPECTIVE VISITORS. MY VISITOR COOP BROCHURE WILL HOPEFULLY SELL MY ALASKAN MADE PRODUCTS PLUS BRING A FEW PEOPLE TO MY "OLD ANCHORAGE SALMON BAKE". BOTTOM LINE IS THAT A FEW MORE ALASKANS WILL HAVE JOBS.

I BELIEVE THAT IF THE ALASKA TOURISM MAILING LIST WERE ALLOWED TO BE FREELY USED THAT HUNDREDS OF ALASKAN TOURISM

COMPANIES WOULD MAIL OUT THEIR FLYERS AND BROCHURES. RIGHT NOW OUR POTENTIAL VISITORS ONLY RECEIVE FROM 1 TO 6 MAILERS FROM ALASKA AND THAT'S A SHAME.

CONVERSIONS ARE DOWN FROM PAST YEARS AND I BELIEVE IT'S BECAUSE FEWER MAILERS ARE GOING OUT TO OUR POTENTIAL VISITORS. WE NEED TO "MINE" THE VISITOR LIST - NOT HIDE IT AWAY FOR A SELECT FEW TO USE. CONVERSIONS BY THE WAY ARE THE NUMBER OF PEOPLE WHO RESPOND TO THE ALASKA ADVERTISING CAMPAIGN THAT ACTUALLY COME UP TO ALASKA ON A VISIT.

I'M NOT A MATH EXPERT BUT I BELIEVE THAT THE TOURISM LIST WOULD PROBABLY GENERATE A MUCH LARGER RETURN TO THE STATE IF IT WERE SOLD FOR \$25.00 TO \$30.00 PER THOUSAND. IF 8 MILLION LABELS WERE SOLD AT \$25.00 PER M THE REVENUE GENERATED WOULD BE \$200,000.00.

THE PLAN FOR NEXT YEAR CALLS FOR LABELS TO GENERATE 14% OF THE INDUSTRY MATCH TO THE ATMC PROGRAM. AT TODAY'S MATCH THAT MEANS THE LABELS WOULD HAVE TO GENERATE \$173,000.00. AT \$150.00 PER M THAT MEANS THAT 1,153,000 LABELS MUST BE SOLD. SINCE THE AVA HAS NEVER SOLD A LABEL AT THE \$300.00 OR \$150.00 PER THOUSAND RATE, I WONDER JUST HOW MUCH MONEY WILL BE RAISED?

THE LOWER AD RATE IN THE PLANNER NEXT YEAR WILL PROBABLY ENCOURAGE A FEW NEW ADVERTISERS PLUS THE SIGNATURE ADS IN THE

PLANNER WILL COST \$150.00 PER AD NEXT YEAR. THIS YEAR THERE ARE APPROXIMATELY 1,800 FREE SIGNATURE ADS IN THE PLANNER. IF ONLY 1,200 TOURISM FIRMS PAY THEIR \$150.00 THERE WILL BE \$180,000.00 OF NEW MONEY GENERATED.

PLEASE LET THE LAW PREVAIL! AMEND THIS BILL SO IT SIMPLY REQUIRES THAT LISTS BE MADE AVAILABLE TO ALASKAN TOURISM BUSINESSES OR JUST ALASKAN BUSINESSES. THAT WILL ELIMINATE THE WORRY OR EXCUSE USED BY THE AVA THAT HAWAII OR SOME OTHER TRAVEL DESTINATION WILL TRY AND USE "OUR" VISITOR NAMES.

LEAVE THE REST OF THE LAW ALONE. I WOULD RECOMMEND THAT YOU AMEND HB 442 BY DOING THE FOLLOWING:

- A. 1. DELETE PARAGRAPH 14 IN SECTION 2
2. DELETE SECTION 3
3. ELIMINATE THE TOURISM MAILING LISTS FROM SEC. 44.33.727 AS PART OF THE ASSOCIATION'S REQUIRED CONTRIBUTION.
4. AMEND THE BILL TO REQUIRE A 12% INDUSTRY MATCH INSTEAD OF THE CURRENT 15% REQUIREMENT. ~~-OR-~~
- B. 1. AMEND THE BILL TO FIX THE RATE THAT THE AVA CAN CHARGE ALASKAN TOURISM FIRMS. I WOULD SUGGEST A RATE OF NO MORE THAN \$50.00 PER M FOR SMALL LIST ORDERS OF 1,000 NAMES OR MORE ON LABEL AND \$30.00 PER M ON ORDERS OF 10,000 NAMES ON COMPUTER TAPE.

IN CONCLUSION, THE ANCHORAGE DAILY NEWS IN IT'S EDITORIAL OF FEBRUARY 21, 1990, ENTITLED "SELL'EM CHEAP" URGED THAT THE

VISITOR LISTS BE OFFERED AT A TOKEN PRICE. I QUOTE FROM THE EDITORIAL, "THE STATE ACTS MORE LIKE A BUSINESS JEALOUSLY GUARDING TRADE SECRETS THAN A FRIENDLY PARTNER WILLING TO SHARE VALUABLE DATA". THE EDITORIAL GOES ON TO SAY THAT "LAWMAKERS SHOULD CONSIDER THE VISITOR LIST AN INVESTMENT IN "INFORMATION INFRASTRUCTURE." "SELLING THE LIST AT NOMINAL COST IS ONE CONCRETE WAY THE STATE CAN HELP ALMOST ANY TOURIST BUSINESS, BIG OR SMALL"

WHILE I SELDOM AGREE WITH THE "NEWS" AND IT'S EDITORIAL POLICY, THEY ARE 100% CORRECT ON THIS ISSUE!

I UNDERSTAND THAT WHEN THIS BILL WAS ORIGINALLY DRAFTED THERE WAS A LETTER FROM THE DRAFTER THAT EXPRESSED CONCERN AS TO THE CONSTITUTIONALITY OF THE ISSUE. THIS ISSUE SHOULD BE LOOKED AT.

THIS BILL ALSO HAS FINANCIAL IMPLICATIONS TO THE STATE AND HAS NOT BEEN GIVEN A PROPER FINANCIAL REVIEW. IT REALLY SHOULD BE SENT TO THE FINANCE COMMITTEE FOR CONSIDERATION!

PLEASE PROVE THAT LOGIC, COMMON SENSE AND FAIRNESS WILL PREVAIL.

I APPRECIATE YOUR TAKING THE TIME TO REVIEW MY CONCERNS.

Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Managing Editor

Michael Carey, Editorial Page Editor

Katherine Fenning, Editor and Publisher 1977 to 1983
Lawrence Fenning, Editor and Publisher 1967 to 1977

Founded in 1948 by Norman C.

Sell 'em cheap

Visitor lists should be offered at a token price. The state of Alaska does many things to promote tourism. It spends millions of dollars to run the ever-popular state ferries. It spends millions more to convince the world Alaska is not a wasteland of glaciers and igloos. It spends thousands of dollars to help compile names of people who are interested in visiting Alaska. But one thing the state doesn't do is allow cheap, easy access to those names.

That list is a tourist marketer's dream. It can be broken down by where in Alaska visitors might come, when, and what they'd like to do. It's invaluable to any Alaska tourist business, but especially those that can't afford to develop their own lists.

But the state allows the list to be treated as a hot commodity. Buyers must pay \$150 per 1,000 names, or 15 cents each. (Big advertisers in the state travel planner qualify for discounts.) And that price, high as it is, was only recently cut by 50 percent. By comparison, other non-proprietary state lists, such as registered voters, can be purchased for a few cents a name from commercial vendors.

In other words, the state acts more like a business jealously guarding trade secrets than a friendly partner willing to share valuable data.

The visitor list needn't be treated as public information, available to any comer. The state can properly decide to sell the list only to firms promoting Alaska tourism — as the House of Representatives recently voted to do.

But the House measure says nothing about what buyers must pay for the list. Lawmakers should consider the visitor list an investment in "information infrastructure." Selling the list at nominal cost is one concrete way the state can help almost any tourist business, big or small.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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ANCHORAGE, ALASKA 99501-1593
PHONE: (907) 276-3550
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FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-3600
FAX: (907) 463-5295

January 10, 1990

Hon. H. A. "Red" Boucher
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Tourism mailing lists
Our file: 663-90-0214

Dear Representative Boucher:

You have asked for our comments on certain practices of the Alaska Tourism Marketing Council (ATMC) and the Alaska Visitors Association (AVA) related to the distribution of mailing lists, or labels, generated through the ATMC's cooperative marketing program. We conclude that the lists are public records and must be produced to those who request them, for cost.

Pursuant to AS 44.33.705(b), the commissioner of the Department of Commerce and Economic Development (DCED) has entered into a contract with the AVA to jointly manage the ATMC. As required under AS 44.33.705(b) and the contract, the AVA contributes to the state 15 percent of the total operating expenses of the ATMC. These contributions are received by the state, deposited in the general fund, and then appropriated back each year by the legislature to the ATMC for operations. See AS 44.33.730 and secs. 27 & 29, ch. 116, SLA 1989, at 49, 108.

The primary responsibility of the ATMC is to manage the state's multi-million dollar cooperative tourism marketing program. AS 44.33.720. As part of this program, the ATMC places advertisements in various magazines and newspapers and on television. With respect to the print media ads, business reply cards (BRCs) are also placed in the ads, and a potential tourist may then clip out the BRC and mail it back to the state. A respondent also can provide certain information and demographic data on the BRC, such as age, probable mode of travel (RV, cruise ship, etc.), and interests (sport fishing, hiking, photography, etc.).

The ATMC has entered into a contract with a private company to handle BRC responses. When a BRC or a general request for tourism information is received by the state, it is forwarded

Hon. H. A. "Red" Boucher
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to the contractor. The contractor first inputs onto computer tape all the information provided by the person who sent in the BRC or information request -- name, address, interests, and demographic information. The contractor sends to the person a copy of the ATMC's principal publication, the official state Vacation Planner. The computer tape is then used to produce mailing labels identifying potential tourists by demography or stated areas of interest.

The Vacation Planner is produced by the ATMC. The ATMC sells space in the Planner to the AVA at cost, which in turn the AVA sells to its marketing partners at a premium in order to raise money for its required 15 percent contribution to the program. As a further incentive to encourage marketing partners to participate in the program, the AVA offers each partner a certain number of "free" mailing labels based upon the size of the ad purchased. 1/ With the contractor's ability to sort labels based upon the potential tourists' stated interests, a purchaser may request and receive labels for potential tourists who have expressed an interest in the purchaser's particular business (i.e., a lodge owner may request 1000 labels of persons who expressed an interest in fishing or hunting), or profile (i.e., a cruise ship operator may request persons over age 50). If a purchaser wants more labels than the "free" number offered as part of its ad purchase, or if a nonpurchaser wants labels, these may be bought for a fee significantly more expensive than the actual cost of producing the labels. 2/ All funds generated from these label sales are sent

1/ The ATMC has voted to purportedly grant to the AVA the exclusive distribution rights for these mailing lists. See AS 44.33.715(a)(2). This distribution, however, is provided and paid for pursuant to the ATMC's contract with the private contractor. For a number of reasons not relevant to this discussion, we do not believe this grant is binding on the state.

2/ In general, we have held that distribution of state records to private parties that wish to use the information to produce mailing lists may violate the privacy rights of the persons whose names and addresses are released. 1979 Inf. Op. Att'y Gen. (April 17; J66-642-79); 1987 Inf. Op. Att'y Gen. (663-87-0598). In this case, however, where those submitting the information do so for the purpose of obtaining tourism information, and where the use of these records for mailing lists is well-established and will benefit the public through increased tourism, we do not believe that there is an expectation of privacy sufficient to protect the information.

Hon. H. A. "Red" Boucher
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to the AVA and are also used by the AVA to make up part of its required 15 percent contribution to the program.

You have asked whether these practices with respect to the mailing lists comport with Alaska law. Specifically, you have asked whether it is permissible for the AVA to sell these mailing labels at a premium, or if the information must be treated as public records and distributed to whomever requests it at cost.

As indicated above, the data used to compile the computer tapes, and the actual labels themselves, are in the possession and control of the ATMC's private contractor. These tapes and labels are not directly controlled by any state agency.

Not all records in the possession of a private contractor are public records. For example, the general business records of a corporation do not become subject to the same rules as a state agency's records merely because the corporation is a successful bidder on a state contract.

We conclude, however, that where a contractor is essentially performing a state function, all records produced as a result of that performance are public documents. ^{3/} Although we are aware of no Alaska cases discussing this issue, other jurisdictions that have looked at the question have held that, when a state contracts with a corporation to perform a public function, records related to that particular contract or function are treated as public records. Fox v. News-Press Publishing Co., 545 So. 2d 941 (Fla. App. 1989); Fritz v. Norflor Construction Co., 386 So. 2d 899 (Fla. App. 1980); Westchester Rockland Newspapers v. Kimball, 408 N.E.2d 904 (N.Y. 1980). This is also consistent with language contained in the state's standard contract form, which was used by the parties in this case. Article 10 of the standard contract provides, in relevant part:

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the Contractor. The Contractor agrees not to assert any rights and not to

^{3/} To the extent that this conclusion is inconsistent with our earlier advice, contained in 1988 Inf. Op. Atty. Gen (Aug. 8; 663-88-0464), we overrule that opinion at this time.

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establish any claim under the design patent or copyright laws.

Thus, we conclude that the data tapes, mailing labels and other documents created as a result of the state's contract for handling BRC responses are subject to the state's public disclosure laws, AS 09.25.110--09.25.120 and 6 AAC 95. 4/

Because the computer tapes are public documents, they must be produced at cost for anyone who requests them (6 AAC 95.130). Since these records are presently kept in computer tape form, they must be produced in that form. Szikszay v. Buelow, 436 N.Y.S.2d 558, 563 (N.Y. Super. 1981); State v. Harder, 641 P.2d 366, 374 (Kan. 1982). Also, to the extent that the agency chooses to make available these records in some other form, such as hard copy or sorted mailing labels, it must do so for all members of the public. We presume that the ATMC will want to continue making mailing labels available to tourism businesses, and if so, such labels must be available for all.

Further, because these are state records, any costs recovered from the distribution of these records by the ATMC through label sales are state program receipts and should be deposited directly into the general fund. These cost recovery receipts should not be credited to the AVA as part of its required contribution to the cooperative marketing program. See 1987 Inf. Op. Att'y Gen. (Sept. 15; 663-88-0080).

We caution that this opinion is based solely on our analysis of the applicable law in this area. We know there are significant arguments that can be made that distribution of these labels to the general public at cost may be detrimental to either the cooperative marketing effort (since these lists will now be available to competitor destinations) or the contractual arrangement between DCED and the AVA that created the ATMC (because the AVA may find it more difficult to raise its required contribution to the program). On the other side are arguments that the easy, wide-spread distribution and availability of these labels can only enhance Alaska's overall tourism efforts, by allowing more businesses to distribute their tourism fliers. It will be up to the legislature and the governor to weigh these competing arguments and decide if a statutory exception to the general open-records policy and laws is appropriate for these public records.

4/ These records are also subject, of course, to otherwise generally recognized exceptions to those laws.

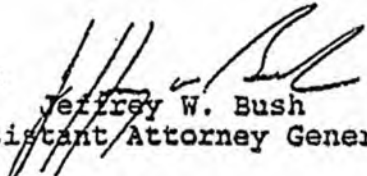
Hon. H. A. "Red" Boucher
House of Representatives
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We hope this answers your questions. If this office can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Jeffrey W. Bush
Assistant Attorney General

JWB:jf

cc: Larry Mercurieff, Commissioner, DCED
Jane Angvik,, Assistant Commissioner, DCED
Dana Brockway, Director, Division of Tourism and Chair, ATMC
Bob Miller, Executive Director, ATMC
Bob Dindinger, President, AVA

HB

466

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Senator Dick Eliason
Chair, Senate Labor & Commerce

FROM: Representative Max Gruenberg *MG*

DATE: May 6, 1990

RE: Scheduling CSHB 466 (Judiciary), "An Act relating to tobacco"

I would very much appreciate it if you would waive HB 466, the anti-tobacco sample bill, or schedule the bill for a hearing in the Senate Labor & Commerce Committee as soon as possible.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

HB 466 prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

HB 466 passed the House by a vote of 29 - 4.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 4968.

Thank you.

TOBACCO-FREE AMERICA

Legislative Clearinghouse
1726 M Street, N.W., Suite 902
Washington, D.C. 20036
(202) 452-1184

Angela T. Mickel
Director

John H. Madigan
American Cancer Society

Scott D. Ballin
American Heart Association

Fran Du Melle
American Lung Association

TOBACCO SAMPLING: THERE IS NO FREE LUNCH

APRIL 1990

A Public Policy Project Sponsored by



THE DISTRIBUTION OF TOBACCO PRODUCT SAMPLES:
THERE IS NO FREE LUNCH

OVERVIEW

Cigarette smoking is the number one preventable cause of death and disease in the United States. Scientific studies have proved that there is no known safe human use of tobacco products. Clearly, the way to substantially improve the overall health of this country is to drastically reduce or totally eliminate tobacco consumption. Yet, each year nearly 400,000 Americans die from cigarettes and tobacco-induced disease. To what may this alarming statistic be attributed? A simple answer would be "advertising and promotion."

Cigarettes are this nation's most heavily advertised consumer product. In 1987, the tobacco industry spent approximately \$2.6 billion on advertising and promotion, which includes the free distribution of product samples, to attract new smokers, retain current smokers, and to increase consumption. Advertising experts have testified that advertising and promotional practices used by the tobacco industry are specifically designed to attract and influence the behavior of the most vulnerable group in society: youth.

According to the National Institute on Drug Abuse 60 percent of all new smokers are 14 years of age or younger; 90 percent of all smokers start by age 19; and, very few people begin to smoke after the age of 21. Coupled with the fact that the younger one starts to smoke, the more likely one will:

- remain a smoker;
- smoke more heavily; and,
- die prematurely.

These statistics should not be ignored.

Through the association of tobacco use with youthful vigor, independence, social and athletic success, and with individuals and activities most likely to be admired by young people, tobacco advertising and promotion influences the attitudes of teenagers and their perceptions about cigarette smoking and the use of other tobacco products. Although the tobacco industry denies any purposeful attempt to recruit young users, increased distribution of tobacco product samples at industry-sponsored sports events and rock concerts attended by large numbers of teenagers make such claims untenable.

SAMPLING PRACTICE BECOMES WIDESPREAD

Since the early Seventies, the practice of distributing samples of tobacco products in public places or at public events, commonly referred to as "sampling," has become a vital marketing tool for tobacco manufacturers. The widespread use of sampling was prompted when the federal ban on cigarette advertising through the television and radio mediums, which would serve to greatly reduce the advertising capacity of the tobacco industry, took effect in 1970. Consequently, the tobacco industry was forced to find other ways to promote the sale of its products. In contrast to advertising, which communicates and identifies a product, promotional activities lead directly to consumer action, such as trying or buying the product. Thus, it was only natural for the tobacco industry to step up its promotional activities, and distributing samples of its products became a viable alternative.

Cigarette sampling is not new to our society. During World War II, packages of cigarettes became a staple ingredient in field rations sent to the men fighting in Europe. Soldiers quickly began associating cigarettes with such positive images as relaxation, safety, and home. Unfortunately, they continued smoking cigarettes after they returned to the States.

Today, cigarette manufacturers in the United States spend more money on promotional activities than they do on media advertising. For example, promotional expenditures grew from under 10 percent of their total advertising and promotional expenditures in 1963, to over one-half of total expenditures in 1983, to 66 percent in 1987. Of those totals, sampling expenditures increased from almost \$13 million in 1963 to over \$125 million in 1983. Although that figure decreased to over \$55 million in 1987, it is still way above the 1963 total.

Moreover, tobacco companies do not limit their sampling practices to cigarettes alone. With the increasing prevalence of smokeless tobacco use, especially among children, and the federal law banning the advertising of smokeless tobacco on both television and radio in 1986, sampling of smokeless tobacco products has been exercised on a greater scale.

OBJECTIONS TO SAMPLING RAISED

This explosion of the tobacco industry's use of non-media methods of promotion has alarmed consumer groups, health organizations, such as the American Cancer Society, the American Heart Association, and the American Lung Association, and private citizens. Consequently, the American Cancer Society, the American Heart Association, and the American Lung Association, through a joint venture -- Tobacco-Free America -- support the total elimination of tobacco product sampling. Rather than limit the distribution of tobacco products to those above the legal age, they believe it is more effective to ban the practice

entirely.

Several objections to the sampling of cigarette and smokeless tobacco products are:

- A. Tobacco product giveaways inevitably fall into the hands of minors. The tobacco industry has developed its own "Code of Cigarette Sampling Practices," which details certain standards that are to be observed in order to avoid distributing cigarette samples to under-age children. (Appendix A) According to the code, a distributor is required to ask a person's age and whether or not they are a smoker. Reports of random spot-checking of sampling distribution points have proved that no such restrictions are being observed. Moreover, the tobacco industry claims that its promotional activities are designed to induce existing smokers to switch brands, and not to attract new smokers. Yet, if they were not trying to enlist new smokers, their markets would disappear after one generation. Obviously, this is not the case. The tobacco industry sees children as future customers and acts accordingly.

In addition, minors can easily obtain samples discarded by adults. Although most states, including the District of Columbia, prohibit the sale and furnishing of tobacco products to minors, laws prohibiting the distribution of tobacco product samples to minors would do nothing to limit a child's access to discarded samples. Sampling provides another source for children to obtain tobacco products. The danger of samples getting into the hands of minors is demonstrated in studies that show that each year approximately one million adolescents who smoke even a few cigarettes become regular users.

- B. Persons who are trying to curtail their use of tobacco or who have already "kicked the habit" are confronted with the temptation to try these products. Usually, people will try anything that is free. Even a nonsmoker may attempt to smoke a cigarette, if there is no "risk" (loss of money) associated with smoking that cigarette.

Consequently, the size of the sample plays an important role. Most samples are packaged in smaller quantities in order to keep the cost of the promotion lower. However, tobacco companies are using larger samples (a full pack or even a carton) to increase the period of time in which the product may be sampled. A longer time-span gives consumers the opportunity to modify their preferences and to permanently adopt the use of the product. It also allows for the addictive substances contained in tobacco, primarily nicotine, to take effect. In the long run, it is to the tobacco companies' economic advantage to distribute larger samples when the result is increased sales of their product.

- C. A substantial portion of the public interprets sampling as an official endorsement of the products' use, even a dangerous and addictive substance like tobacco. Public confusion regarding a local government's position on tobacco use may encourage minors to risk trying it. In addition, already-addicted adults are provided with the rationale for not curtailing the use of the substance.
- D. The distribution of tobacco products on sidewalks and street corners and at entrances to sporting and cultural events creates congestion of pedestrian traffic and litter. Traffic tie-ups and littered sidewalks are a nuisance to pedestrians and to taxpayers who must bear the burden of the clean-up costs.

LEGISLATIVE ACTION

Whereas, in the past, significant legislative and regulatory limits were placed on tobacco advertising, attention has now shifted to restricting the promotional activities of tobacco manufacturers. Local governments have taken the lead in curbing the tobacco industry's sampling practices. Since 1979, 16 cities across the country have banned the distribution of cigarette samples. (Appendix B)

With regard to state legislation, the focus has been on limiting the accessibility of tobacco products solely to minors. Forty-four states and the District of Columbia restrict the sale of tobacco products to minors. Six states--Kentucky, Louisiana, Missouri, Montana, New Mexico, and Wyoming--have not yet acted to prohibit the sales of tobacco products to young persons. (Appendix C)

While many limit access of tobacco products to minors by prohibiting sales or furnishing, only 12 states have taken action to restrict the distribution of samples. Minnesota and Utah totally ban the distribution of cigarettes, smokeless tobacco products, cigars, pipe tobacco, or other tobacco products suitable for smoking. Kansas prohibits the distribution of sample cigarettes. Nebraska prohibits the distribution of sample smokeless tobacco products. Georgia, Indiana, Louisiana, Maine, New Hampshire, Oregon, Rhode Island, and Wisconsin ban the distribution of tobacco product samples to minors only. (Appendix B)

PREEMPTION ISSUE ADDRESSED

The question of whether the previous federal laws that banned radio and television advertising of cigarettes and smokeless tobacco products took away the authority of states to outlaw such sampling may be an obstacle that is preventing states from tackling this issue full-force. There are actually three laws that are referred to in the discussion of the preemption

issue for cigarettes: the Federal Cigarette Labeling and Advertising Act (1965), the Public Health Cigarette Smoking Act (1969), and the Little Cigar Act (1973). In short, the federal preemption pertains only to state regulations based on "smoking and health." It is limited entirely to state requirements or prohibitions in the advertising of cigarettes, and does not apply to:

- a) purely intrastate commerce;
- b) proper exercise by states of police and other powers in the interest of public health and safety; and,
- c) topics other than smoking or health.

Thus, states still retain the authority to restrict cigarette sampling when the legislative intent is to facilitate enforcement of existing laws that prohibit the sale and furnishing of tobacco products to minors and to control commercial activity on the public right-of-way.

With regard to smokeless tobacco, the Smokeless Tobacco Education Act (1986) clearly does not prohibit states from outlawing smokeless tobacco sampling in public areas. Under the Smokeless Tobacco Education Act, states were also given the authority to regulate how smokeless tobacco is advertised.

While representatives of the tobacco industry argue that any ban on the distribution of cigarette and other tobacco product samples, or "sampling," by state or local governments is preempted by federal law, a careful reading of the applicable laws and legal principles leads to the conclusion that the enactment of such a ban is permissible and is not preempted by federal law. (Appendix D)

CONCLUSION

Although the tobacco industry argues otherwise, states indeed have the legal authority to ban sampling. It has become a question of whether states have the political desire to regulate the tobacco industry in this manner. Enactment of such legislation would lead to more effective enforcement of already existing laws designed to prevent minors' access to a deadly product. It would also shield the public from the insidious practices of the tobacco industry. Given that the costs associated with tobacco use in the United States are estimated at nearly \$65 billion annually, including health care expenditures and loss productivity, the tobacco industry's promotional strategies of giving away samples lends credence to the old economic adage that "there is no such thing as a free lunch."

REFERENCES

- American Cancer Society, "Briefing Book: 100th Congress, 1st Session--1987," Public Affairs, Public Issues, 1987.
- American Lung Association, "Countering Tobacco Tactics, Briefing Paper #1, Cigarette Sampling (The Distribution of Free Cigarette Samples)," October 1985.
- Daynard, R.A., "Draft Report: Case Study of Successful Community Efforts to Ban Cigarette Sampling," A Report to the Office of Smoking and Health for presentation to the Interagency Committee on Smoking and Health, May 15, 1986.
- Garner, D.W., "Tobacco Sampling, Public Policy, and the Law," A paper presented to the Interagency Committee on Smoking and Health, June 4, 1986.
- Kirkwood, J.L., Comments before the Interagency Committee on Smoking and Health, June 4, 1986.
- Minnesota Statutes 1986, section 325F.77, subdivision 3 and amended subdivision 4 (1987).
- Popper, E.T., "Sampling and Couponing Promotional Activity in the Domestic Cigarette Market," A Report to the Office of Smoking and Health for presentation to the Interagency Committee on Smoking and Health, May 15, 1986.
- Tobacco-Free America, Legislative Clearinghouse, State Legislated Actions on Tobacco Issues, October 1989.
- U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute on Drug Abuse, Drug Use Among American High School Students, College Students, and Other Young Adults, 1987.
- U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health, Smoking and Health: A National Status Report. A Report to Congress, 1990.



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STATEMENT OF PURPOSE

Cigarette sampling is a form of cigarette advertising conducted through the free distribution of sample packages of cigarettes directly to adult smokers. The purpose of this Code is to ensure that certain standards are observed in connection with cigarette sampling, particularly avoiding the distribution of cigarettes to minors and the disruption of pedestrian or vehicular traffic, and to provide a means whereby compliance with those standards can be monitored and enforced.

Code of Cigarette Sampling Practices

ARTICLE I

DEFINITIONS

1. "Sampling" means giving or distributing without charge packages of cigarettes in a public place for commercial advertising purposes ("cigarette samples"), but does not include isolated offerings of complimentary packages or the distribution of such packages to wholesale or retail customers or to company shareholders or employees in the normal course of business.
2. "Public place" includes any street, sidewalk, park, plaza, public mall, and the public areas of shopping centers and office buildings.

ARTICLE II

RESTRICTIONS ON CIGARETTE SAMPLING

1. Persons who engage in sampling shall refuse to give a sample to any person whom they know to be under 21 years of age or who, without reasonable identification to the contrary, appears to be less than 21 years of age.
2. Sampling shall not be conducted in any public place within two blocks of any centers of youth activities, such as playgrounds, schools, college campuses, or fraternity or sorority houses.
3. The mails shall not be used to distribute unsolicited cigarette samples.
4. Persons who engage in sampling shall not urge any adult 21 years of age or over to accept a sample if the adult declines or refuses to accept such sample.
5. No cigarette samples shall be distributed by a sampler in a public place to any person in a vehicle.
6. Persons distributing cigarette samples shall secure their stocks of samples in safe locations to avoid inadvertent distribution of samples contrary to the provisions of this Article.
7. Persons distributing cigarette samples shall avoid blocking or otherwise significantly impairing the flow of pedestrian traffic.
8. In the event that circumstances arise at a particular location that make it unlikely that sampling can be conducted in a manner consistent with the provisions of this Article, sampling shall be stopped at that location until such circumstances abate.
9. Persons distributing samples shall promptly dispose of empty sample boxes and shall take reasonable steps to ensure that no litter remains in the immediate area of sampling as a result of sampling activities.

ARTICLE III

COMPLIANCE AND ENFORCEMENT PROVISIONS

1. Each cigarette manufacturer that subscribes to this Code shall impose by contract on all independent contractors who conduct cigarette sampling on the manufacturer's behalf a set of sampling standards no less stringent than those contained in this Code. In addition, each cigarette manufacturer shall require such sampling contractors to inform all personnel employed by the contractor who engage in sampling activities of the provisions of this Code, both orally and in writing.
2. Persons who engage in sampling shall be monitored on a periodic basis by supervisory personnel of the cigarette manufacturer and/or independent contractor for whom the sampling activities are being conducted to ensure compliance with the provisions of this Code.
3. Each cigarette manufacturer that subscribes to this Code shall take all reasonable steps to ensure that any person who engages in sampling and knowingly violates any of the provisions of Article II of this Code shall be discharged from employment as a cigarette sampler.

APPENDIX B

RESTRICTIONS ON DISTRIBUTION OF TOBACCO PRODUCT SAMPLES

STATES WITH LAWS RESTRICTING (13):

MINNESOTA (1986, 1987) -- TOTAL BAN
UTAH (1983, 1986, 1989) -- TOTAL BAN

GEORGIA (1987) -- MINORS ONLY
ILLINOIS (1988) -- MINORS ONLY
INDIANA (1987) -- MINORS ONLY
KANSAS (1984) -- BAN APPLIES TO CIGARETTES AND
MINORS ONLY
LOUISIANA (1988) -- MINORS ONLY
MAINE (1983) -- MINORS ONLY
NEW HAMPSHIRE (1987) -- MINORS ONLY
OREGON (1989) -- MINORS ONLY
RHODE ISLAND (1988) -- MINORS ONLY
WISCONSIN (1989) -- MINORS ONLY

NEBRASKA (1989) -- SMOKELESS TOBACCO PRODUCTS ONLY

CITIES WITH ORDINANCES PROHIBITING (16)

ALBERT LEA, MN (1986)
AMHERST, MA (1987)
ATLANTA, GA (1986)
AUSTIN, TX (1988)
BOSTON, MA (1984)
BOWIE, MD (1986)
CAMBRIDGE, MA (1982)
CINCINNATI, OH (1988)
LEOMINSTER (1990)
MINNEAPOLIS, MN (1979)
NEW BEDFORD, MA (1989)
NEW ORLEANS, LA (1988) -- MINORS ONLY
NEWTON, MA (1982)
ST. PAUL, MN (1979)
SOMERVILLE, MA (1983)
WEYMOUTH, MA (1989)
WORCESTER, MA (1984)

APRIL

APPENDIX C

STATE AGE RESTRICTIONS
FOR SALES OF TOBACCO PRODUCTS

STATE	MINIMUM AGE FOR:		STATE	MINIMUM AGE FOR:	
	CIGARETTES	SMOKELESS		CIGARETTES	SMOKELESS
AL	19	19	MO	--	--
AK	19	19	MT	--	--
AZ	18	18	NE	18	18
AR	18	18	NV	18	18
CA	18	18	NH	18	18
CO	18	18	NJ	18	18
CT	18	18	NM	--	--
DE	17	17	NY	18	18
DC	16	16	NC	17	17
FL	18	18	ND	18	18
GA	17	17	OH	18	18
HI	18	18	OK	18	18
ID	18	18	OR	18	18
IL	18	18	PA	16	16
IN	18	18	RI	18	18
IA	18	18	SC	18	18
KS	18	18	SD	18*	18
KY	--	--	TN	18	18
LA	--	--	TX	18**	18**
ME	18*	18*	UT	19	19
MD	18*	18	VT	17	17
MA	18	18	VA	16	16
MI	18	18	WA	18	18
MN	18	18	WV	18	18
MS	18	18	WI	18*	18*
			WY	--	--

-- No statewide age limit
 * Effective July 1, 1989
 ** Effective September 1, 1989

SOURCES:

State departments of health, 1989.

"Tobacco-Free America State Component Survey," data received from state offices of the American Cancer Society, American Heart Association, and the American Lung Association, September 1988.

APRIL

APPENDIX D

ARE STATE AND LOCAL GOVERNMENTS PREEMPTED
FROM BANNING THE FREE DISTRIBUTION OR
SAMPLING OF TOBACCO PRODUCTS?

1. What are the federal laws that must be examined to determine whether a state or local government may lawfully ban the free distribution or sampling of tobacco products?

There are only two federal laws that address these issues. They are the Federal Cigarette Labeling and Advertising Act, as amended by the Comprehensive Smoking Education Act of 1984, 15 U.S.C. Sections 1331-1340, and the Comprehensive Smokeless Tobacco Education Act of 1986, 15 U.S.C. Sections 4401-4406.

The text of the relevant provisions of these acts is as follows:

The Federal Cigarette Labeling and Advertising Act: 15 U.S.C. Section 1334

- (a) No statement relating to smoking and health, other than the statement required by Section 1331 of the Title, shall be required on any cigarette package.
- (b) No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Chapter.

The Comprehensive Smokeless Tobacco Education Act: 15 U.S.C. Section 4406

- (b) No statement relating to the use of smokeless tobacco products and health, other than the statement required by Section 4402 of this Title, shall be required by any state or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

2. Why doesn't the Federal Cigarette Labeling and Advertising Act prohibit a state or local government from banning the free distribution of cigarette products?

There are three sound reasons why the Federal statute does not preempt state or local action in this area. They are:

- A. A ban on free sampling is a restriction on the distribution, not the promotion of cigarettes. While the Federal Cigarette Labeling and Advertising Act preempts efforts to restrict "the promotion" of cigarettes, it does not preempt state or local efforts to limit or restrict the "distribution" of cigarettes.

A state or local government remains free to restrict when and where and to whom cigarettes may be sold. A ban on the free sampling or free distribution of cigarettes is a restriction on the "distribution" of cigarettes, not on the "promotion" of cigarettes. This conclusion is confirmed by Section 1332 of the Act, which defines the terms "sale or distribution" as including "sampling or other distribution not for sale." Thus, just as a state or local government remains free to restrict the sale of cigarettes to minors or to prohibit the sale of cigarettes in schools or other facilities populated largely by minors, a state or local government remains free to limit the "distribution" of cigarettes by banning their free distribution and sampling.

- B. A ban on free sampling is consistent with the goals and purposes of the Federal Act. The preemption provision in the Federal Cigarette Labeling and Advertising Act must be examined in the context of the declared Congressional policy and purpose of the Act. The preemption provision was enacted to insure that state and local governments did not take actions which were inconsistent with the purposes of the Act.

15 U.S.C. Section 1331 states that Congress had two goals in the enactment of the Federal Cigarette Labeling and Advertising Act. First, Congress wished to inform the public about the hazards of cigarettes. Second, Congress did not want to unnecessarily impede the cigarette manufacturer's ability to sell cigarettes "by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. Section 1331(2).

A ban on the free sampling and free distribution of cigarette products is not inconsistent with the policy and purposes of the Federal Cigarette Labeling and Advertising Act, nor does it set up conflicting and confusing requirements that will otherwise impede the ability of cigarette manufacturers to market their products. The preemption provision was enacted to prohibit state and local restrictions on advertising and promotion that would make it difficult or impossible for a manufacturer to conduct a national advertising and promotional campaign. A ban on the free distribution of cigarette products within a particular jurisdiction does not conflict with this goal.

C. A ban on free sampling may be enacted for reasons other than smoking and health. Even if the federal statute is considered to preempt an effort to ban the free sampling of cigarettes when such a prohibition is "based on smoking and health" considerations, a state and local government is free to enact such a ban if it does so to avoid congestion on its streets, to control or reduce litter, to protect pedestrians from annoyance and invasion of their privacy, or to avoid facilitating the availability of cigarettes and other tobacco products to minors. The preemption provision is limited to laws enacted based on "smoking and health" considerations only.

3. Does the Federal Cigarette Labeling and Advertising Act provision that says "No Requirement or Prohibition Based on Smoking or Health Shall be Imposed Under State Law with Respect to the Advertising and Promotion" of cigarettes preempt a state or local government from banning the free distribution of cigarettes?

Probably not. The tobacco industry argues that a ban on the free distribution of cigarettes amounts to a prohibition on its promotional efforts and, therefore, is preempted by the federal statute. No court has explicitly addressed this issue yet. Nonetheless, there are sound reasons for concluding that the Federal Cigarette Labeling and Advertising Act does not preempt a state or local government from banning the free distribution, or sampling, of cigarettes.

4. Does the Comprehensive Smokeless Tobacco Health Education Act of 1986 preempt state or local governments from banning the free distribution, or sampling, of smokeless tobacco products?

No. The preemption provision in the Smokeless Tobacco Act is careful and narrowly limited. It only prevents a state or local government from enacting a statute that requires a different warning label required by the federal statute. State and local governments remain free otherwise to limit or restrict the advertisement of these products and to limit or prohibit any promotional efforts for smokeless tobacco products that take place within their jurisdiction.

Compiled by the Coalition on Smoking or Health, a public policy project supported by the American Cancer Society, the American Heart Association, and the American Lung Association, Washington, D.C.

H B

499

SENATE COMMITTEE REPORT

DATE: 4/18/90

FURTHER: C & R A

DATE TURNED INTO OFFICE: 5/6/90

L & C

Committee considered CSHB 499 (L&C) (title am)

"An Act relating to waste collection and disposal."

and recommended:

replace with SCS CS HB 499 (L+C)
 or adopt _____ CS _____
 attached amendment(s)
 _____ letter of intent adopted

same title
 new title
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) Dept of Commerce 3/7/90

appropriation-no fiscal note

SIGNING DO PASS:

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) Dept of Commerce 3/7/90

Governor's bill w/fiscal note

OTHER RECOMMENDATIONS:

[Signature] No Rec
[Signature] No Rec
Pat Rodley no rec
[Signature] NO Rec
[Signature] no Rec

[Signature]

Chair: Signature and Recommendation

HB 499 - Deregulation of Municipal Transfer Sites

House Bill 499 will exempt municipal transfer sites from APUC regulation. In effect, it will allow municipalities to competitively bid the hauling services for dumpsters and greenboxes. This legislation represents a compromise between the haulers and municipalities.

HB 499 represents a compromise between the haulers and municipalities. The bill was introduced to address problems in the Fairbanks North Star Borough, the Kenai Peninsula Borough, and Mat-su Borough. Because of the restricted use of certificated haulers, municipalities do not currently have the management tools necessary to execute a contract. Therefore, municipalities do not have control over the costs and the performance of the services provided. APUC sets the rates for each certificate holder, and is responsible for performance standards, leaving municipalities simply to pay the bill. HB 499 allows municipalities to competitively bid for these services.

HB 499 is supported by all parties concerned and will go a long way in solving some of the problems that face the Fairbanks, Mat-su, and Kenai municipalities.

SCS CSHB 499 (L&C)

HB 499 WILL EXEMPT MUNICIPAL TRANSFER SITES, (DUMPSTERS, GREEN BOXES, ETC) FROM APUC REGULATION. IN EFFECT, IT WILL ALLOW MUNICIPALITIES TO COMPETITIVELY BID THE HAULING SERVICES FOR THESE SITES. EXISTING LAW PROVIDES FOR APUC REGULATION OF THE HAULING INDUSTRY, RESTRICTING THIS SERVICE TO CERTIFICATED HAULERS ONLY.

THIS BILL REPRESENTS A COMPROMISE BETWEEN THE HAULERS AND MUNICIPALITIES. THE BILL WAS INTRODUCED TO ADDRESS PROBLEMS IN THE FAIRBANKS NORTH STAR BOROUGH, THE KENAI PENINSULA BOROUGH, AND THE MAT-SU BOROUGH. BECAUSE OF THE RESTRICTED USE OF CERTIFICATED HAULERS, MUNICIPALITIES DO NOT CURRENTLY HAVE THE MANAGEMENT TOOLS NECESSARY TO EXECUTE A CONTRACT. THEREFORE, MUNICIPALITIES DO NOT HAVE CONTROL OVER THE COSTS AND PERFORMANCE OF THE SERVICES PROVIDED. APUC SETS THE RATES FOR EACH CERTIFICATE HOLDER, AND IS RESPONSIBLE FOR PERFORMANCE STANDARDS, LEAVING MUNICIPALITIES SIMPLY TO PAY THE BILL. HB 499 ALLOWS MUNICIPALITIES TO COMPETITIVELY BID FOR THESE SERVICES.

IN THE CASE OF THE FAIRBANKS NORTHSTAR BOROUGH, THERE ARE THREE CERTIFICATED HAULERS, EACH WITH THEIR SEPARATE AREAS. IN SPITE OF SEVERE PERFORMANCE PROBLEMS, LAST SPRING THE APUC GRANTED A 30% RATE INCREASE. SINCE THE INCREASE HAD NOT BEEN BUDGETED FOR, THIS RESULTED IN THE CLOSURE OF A NUMBER OF THE BOROUGH TRANSFER SITES. DUE TO THE LACK OF CONTROL OVER INCREASING COSTS, THE BOROUGH HAS BEEN FORCED TO CONSIDER REMOVING THE TRANSFER SITES ALTOGETHER.

Page Two
HB 499

IN THE KENAI PENINSULA BOROUGH, THE SAME SITUATION OCCURRED. WHILE THERE ARE NOT PERFORMANCE PROBLEMS WITH THE HAULER, A 17% RATE INCREASE WAS APPROVED, DRAMATICALLY INCREASING THE BUDGET, AND CAUSING THE ASSEMBLY TO ELIMINATE A NUMBER OF TRANSFER SITES. CONSIDERATION IS BEING GIVEN TO ESTABLISHING USER FEES AND AN AGGRESSIVE RECYCLING PROGRAM, BOTH OF WHICH MAY REQUIRE MANNING THE TRANSFER SITES. THIS TYPE OF PROGRAM WOULD NOT BE FEASIBLE IF THE BOROUGH DOES NOT HAVE THE ABILITY TO COMPETITIVELY BID FOR THE MANAGEMENT AND HAULING OF THESE SITES.

I URGE YOUR SUPPORT OF THIS BILL.

SCS CSHB 499(L&C) IS A COMPROMISE DEREGULATION PACKAGE THAT ADDRESSES PROBLEMS THAT CERTAIN MUNICIPALITIES HAVE BEEN HAVING WITH A VERY SMALL SEGMENT OF CERTIFICATED WASTE CARRIERS. THIS BILL ALLOWS MUNICIPALITIES WITH POPULATIONS GREATER THAN 50,000 TO IMMEDIATELY CONTRACT WITH CERTIFICATED OR NON-CERTIFICATED HAULERS FOR HAULING OF WASTE FROM INTERMEDIATE TRANSFER SITES (BETTER KNOWN AS DUMPSTERS). THE BILL REMOVES THE CURRENT STIPULATION THAT THE MUNICIPALITY "BUY-OUT" THE HAULER BEFORE THEY PROVIDE DUMPSTER SERVICE IN A CERTIFICATED AREA.

THE BENEFITS OF THIS LEGISLATION ARE NUMEROUS. COMPETITIVE BIDDING CAN SUBSTANTIOALLY LOWER THE RATES AND MUNICIPALITIES WILL BE ABLE TO ENTER INTO CONTRACTUAL AGREEMENTS AND DEMAND SPECIFIC PERFORMANCE ON ALL ASPECTS OF DUMPSTER SERVICE.

HB499 IS SUPPORTED BY ALL PARTIES CONCERNED AND WILL GO A LONG WAY IN SOLVING SOME OF THE PROBLEMS THAT FACE THE FAIRBANKS, MAT-SU AND KENAI MUNICIPALITIES.

FISCAL NOTE

REQUEST:

Revision Dates: _____
 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
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: T.S. Moninski II, Executive Director Phone: 276-6222
 Division: Alaska Public Utilities Commission Date: 3/7/90

Approved by Commissioner: Larry Mercurieff SIM Date: 3/7/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

ALASKA STATE SENATE



SENATOR DICK ELIASON
SITKA
CHAIRMAN

SENATOR PAT RODEY
ANCHORAGE
VICE-CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR JAN FAIKS
ANCHORAGE

SENATOR JACK COGHILL
NENANA

SENATOR JALMAR KERTTULA
PALMER

April 25, 1990

The Honorable Dorothy A. Jones, Mayor
Matanuska-Susitna Borough
350 East Dahlia St.
Palmer, Alaska 99645

Dear Ms. Jones:

Proposed legislation regarding waste collection and disposal has been the focus of considerable attention in the Legislature this year, and I know that the Matanuska-Susitna Borough is very interested in the issue.

As Chairman of the Senate Labor and Commerce Committee, I have had occasion to work quite closely with this legislation (specifically, House Bill 499) and with the people lobbying for clients interested in waste collection and disposal.

As with most issues, there is disagreement over what provisions HB 499 should include, and I have been earnestly seeking a resolution to the conflicts of opinion in an effort to move the legislation. However, it seems that around each corner a road block is waiting.

Few things are more frustrating when trying to negotiate a compromise than someone giving mixed signals. I have encountered this problem in working with lobbyist Jerry Reinwand on waste disposal legislation. Jerry Reinwand's clients include the Mat-Su Borough and the Alaska Refuse Utilities Association (ARUA). It is difficult for me to understand how he can hope to represent both clients fairly on this issue. He may feel that he can, however in my view the representation he has provided ARUA on this issue may be a little more fair than the representation he has provided to the Borough.

In any case, I felt obliged to share with both the Mayor and Assembly Members of the Matanuska-Susitna Borough the nature of my frustration as I continue to strive for a reasonable compromise on legislation relating to waste collection and disposal.

Sincerely,

A handwritten signature in cursive script that reads "Dick Eliason".

Senator Dick Eliason

MATANUSKA-SUSITNA BOROUGH

Resolution Serial No. 90-027 AM

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH
SUPPORTING THE DEREGULATION OF SOLID WASTE COLLECTION AND DISPOSAL.

WHEREAS, the collection and disposal of municipal solid waste is a traditional police power function exercised to promote the public health, safety and welfare; and

WHEREAS, Alaska statutes currently require municipalities wishing to engage in solid waste collection and disposal to obtain a Certificate of Public Convenience and Necessity from the Alaska Public Utilities Commission (APUC); and

WHEREAS, the Alaska Public Utilities Commission has issued confusing orders regarding the regulatory scheme for solid waste collection and disposal; and

WHEREAS, the APUC statutes and its regulatory scheme for solid waste collection and disposal place an onerous burden on municipalities since it requires them to obtain special permission and to face legal challenges when attempting to implement the traditional police power function of solid waste collection and disposal; and

WHEREAS, SB 298 deregulates solid waste collection and disposal thereby eliminating the requirement that the Alaska Public Utilities Commission oversee municipal solid waste collection disposal; and

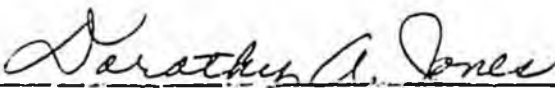
WHEREAS, SB 298 repeals a subsection of Title 29 which requires municipalities to purchase all or a portion of a Certificate of Public Convenience and Necessity of a utility

hauler if such certificate is affected by the municipality refuse collection and disposal services.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Matanuska-Susitna Borough supports the passage of legislation deregulating solid waste collection and disposal and repealing the onerous provisions of Title 29.


BE IT FURTHER RESOLVED that copies of this resolution be forwarded to Senator Eliason, Chairman of the State Labor and Commerce Committee; Representative Larson, Co-chairman of the Finance Committee; Representative Donley, Chairman of the House Labor and Commerce Committee; Senators Binkley, Fischer, Kerttula and Szymanski; and Representatives Menard, Kubina, Navarre, Swackhammer, Wallis and Zawacki; and all other members of the Alaska Legislature, and the Governor of the state of Alaska.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 6 day of March, 1990.



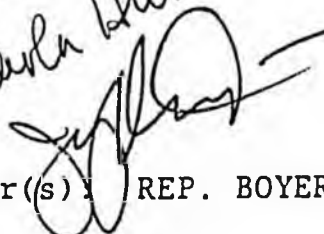
Dorothy A. Jones, Mayor

ATTEST:



Linda Dahl, Borough Clerk

(SEAL)

OK
hate Anders
Marta Huss
KR...


6-2144D
Cramer
5/2/90

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

1 IN THE HOUSE

2 SENATE CS FOR 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 and providing for an effective date."

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

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

10 (b) The governing body of a municipality may not prohibit a
11 person holding a valid certificate from the Alaska Public Utilities
12 Commission from continuing to collect and dispose of garbage, refuse,
13 trash, or other waste material, or provide other related services in
14 an area in the municipality if the certificate authorizes the col-
15 lection and disposal of garbage, refuse, trash, or other waste materi-
16 al and providing of other services in the area, and the certificate
17 was originally issued before the municipality provided similar services.
18 Except as provided in (d) of this section, a [A] municipality may not
19 provide for a garbage, refuse, trash, or other waste material collec-
20 tion and disposal service in an area to the extent it lies in an area
21 granted to a garbage, refuse, trash, or other waste material carrier
22 by a certificate issued by the Alaska Public Utilities Commission to
23 the carrier until it has purchased the certificate, equipment and
24 facilities of the carrier, or that portion of the certificate that
25 would be affected, at fair market value. A municipality may exercise
26 the right of eminent domain to acquire the certificate, equipment, and
27 facilities of the carrier, or that portion of the certificate that
28 would be affected.

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

1 (d) A municipality may establish an intermediate transfer site
2 for the collection and disposal of garbage, refuse, trash, or other
3 waste material without purchasing the certificate, equipment, or
4 facilities of a waste material carrier certificated by the Alaska
5 Public Utilities Commission. The municipality may, without compensat-
6 ing a certificated waste carrier operating in the area, provide for or
7 contract with a certificated or noncertificated entity to provide for
8 the collection and disposal of waste material left at the intermediate
9 transfer site.

10 * Sec. 3. AS 42.05.711 is amended by adding a new subsection to read:

11 (m) The collection and disposal, under AS 29.35.050(d), by a
12 municipality of waste material deposited at an intermediate transfer
13 site is exempt from this chapter.

14 * Sec. 4. APPLICABILITY TO CERTAIN MUNICIPALITIES. The changes made in
15 this Act do not apply to a municipality with a population of less than
16 50,000 until July 1, 1991.

17 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor(s): REP. BOYER, Swackhammer, Koponen, M.Davis, Sharp

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 499 (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 waste collection and disposal;
7 and providing for an effective date."

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

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

10 (b) The governing body of a municipality may not prohibit a
11 person holding a valid certificate from the Alaska Public Utilities
12 Commission from continuing to collect and dispose of garbage, refuse,
13 trash, or other solid waste material, or provide other related ser-
14 vices in an area in the municipality if the certificate authorizes the
15 collection and disposal of solid [GARBAGE, REFUSE, TRASH, OR OTHER]
16 waste material and providing of other services in the area, and the
17 certificate was originally issued before the municipality provided
18 similar services. Except as provided in (d) of this section, a [A]
19 municipality may not provide for a garbage, refuse, trash, or other
20 solid waste material collection and disposal service in an area to the
21 extent it lies in an area granted to a garbage, refuse, trash, or
22 other solid waste material carrier by a certificate issued by the
23 Alaska Public Utilities Commission to the carrier until it has pur-
24 chased the certificate, equipment and facilities of the carrier, or
25 that portion of the certificate that would be affected, at fair market
26 value. A municipality may exercise the right of eminent domain to
27 acquire the certificate, equipment, and facilities of the carrier, or
28 that portion of the certificate that would be affected.

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

1 (d) A municipality may establish an intermediate transfer site
2 for the collection and disposal of solid waste material without pur-
3 chasing the certificate, equipment, or facilities of a solid waste
4 material carrier certificated by the Alaska Public Utilities Commis-
5 sion. The municipality may, without compensating a certificated solid
6 waste carrier operating in the area, provide for or contract with a
7 certificated or noncertificated entity to provide for the collection
8 and disposal of solid waste material left at the intermediate transfer
9 site.

10 * Sec. 3. AS 42.05.711 is amended by adding a new subsection to read:

11 (m) The collection and disposal, under AS 29.35.050(d), by a
12 municipality of solid waste material deposited at an intermediate
13 transfer site is exempt from this chapter.

14 * Sec. 4. APPLICABILITY TO CERTAIN MUNICIPALITIES. The changes made in
15 this Act do not apply to a municipality with a population of less than
16 50,000 until July 1, 1991.

17 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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6-2144J ✓
Cramer
4/24/90

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

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 499 (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 waste collection and disposal;
7 and providing for an effective date."

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

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

10 (b) The governing body of a municipality may not prohibit a
11 person holding a valid certificate from the Alaska Public Utilities
12 Commission from continuing to collect and dispose of garbage, refuse,
13 trash, or other solid waste material, or provide other related ser-
14 vices in an area in the municipality if the certificate authorizes the
15 collection and disposal of solid [GARBAGE, REFUSE, TRASH, OR OTHER]
16 waste material and providing of other services in the area, and the
17 certificate was originally issued before the municipality provided
18 similar services. Except as provided in (d) of this section, a [A]
19 municipality may not provide for a garbage, refuse, trash, or other
20 solid waste material collection and disposal service in an area to the
21 extent it lies in an area granted to a garbage, refuse, trash, or
22 other solid waste material carrier by a certificate issued by the
23 Alaska Public Utilities Commission to the carrier until it has pur-
24 chased the certificate, equipment and facilities of the carrier, or
25 that portion of the certificate that would be affected, at fair market
26 value. A municipality may exercise the right of eminent domain to
27 acquire the certificate, equipment, and facilities of the carrier, or
28 that portion of the certificate that would be affected.

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

1 (d) A municipality may establish an intermediate transfer site
2 for the collection and disposal of solid waste material without pur-
3 chasing the certificate, equipment, or facilities of a solid waste
4 material carrier certificated by the Alaska Public Utilities Commis-
5 sion. The municipality may, without compensating a certificated solid
6 waste carrier operating in the area, provide for or contract with a
7 certificated or noncertificated entity to provide for the collection
8 and disposal of solid waste material left at the intermediate transfer
9 site.

10 * Sec. 3. AS 42.05.711 is amended by adding a new subsection to read:

11 (m) The collection and disposal, under AS 29.35.050(d), by a
12 municipality of solid waste material deposited at an intermediate
13 transfer site and of solid waste material generated by the municipal
14 government is exempt from this chapter.

15 * Sec. 4. APPLICABILITY TO CERTAIN MUNICIPALITIES. The changes made in
16 this Act do not apply to a municipality with a population of less than
17 50,000 until July 1, 1991.

18 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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Offered: 3/13/90
Referred: Rules

07-1994

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

IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 499 (L&C)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to waste collection and disposal."

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

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

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

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

(d) A municipality may establish an intermediate transfer site

1 for the collection and disposal of solid waste material without pur-
2 chasing the certificate, equipment, or facilities of a solid waste
3 material carrier certificated by the Alaska Public Utilities Commis-
4 sion. The municipality may, without compensating a certificated solid
5 waste carrier operating in the area, provide for or contract with a
6 certificated or noncertificated entity to provide for the collection
7 and disposal of solid 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 solid waste material deposited at an intermediate
18 transfer site, and of solid waste material generated by the municipal
19 government is exempt from this chapter.

20 - 1 yr effective date with population
21 above 50, effective immediately

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. BOYER

TO: CSHB 499(L&C)(title am)

Page 1, line 6, after "disposal":

Insert "; and providing for an effective date"

Page 2, after line 19:

Insert new bill sections to read:

"* Sec. 5. APPLICABILITY TO CERTAIN MUNICIPALITIES. The changes made in this Act do not apply to a municipality with a population of less than 50,000 until July 1, 1991.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c)."

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.



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.



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 results.

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 stinky 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 through 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

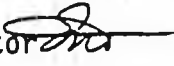
Alaska
MUNICIPAL
League

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

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

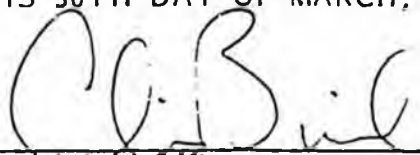
WHEREAS, the certification process results in needless expenditure of municipal funds in the procurement of garbage and solid waste collection and disposal, and

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

PRESS RELEASE

FOR IMMEDIATE RELEASE

February 12, 1990

FOR INFORMATION CONTACT:

Representative Mark Boyer 465-3466

Municipal Dumpster Service Deregulation

On February 9th Representative Mark Boyer introduced legislation that would deregulate "dumpsters" in the state. The act would allow municipalities to contract with anyone in the private sector for dumpster service. At the present time only certificated haulers who are regulated by the Alaska Public Utilities Commission are allowed to perform this task. The present system has led to a breakdown in any competitive system with resulting higher cost of service, no control of costs, no contractual agreements between parties, and poor complaint response. Representative Boyer said, "this legislation will remove the barriers to competition and will go a long way in providing the Fairbanks' area with less expensive and higher quality dumpster service." Deregulation has long been sought by the Fairbanks North Star Borough

as a way to improve the quality of service. "I am hopeful that the compromise language of HB499 will be enacted early," Boyer said. The only remaining issue between haulers and municipalities is over the effective date, Boyer indicated. "That is an issue which can be more properly addressed by the Labor and Commerce Committee, the only committee of referral for the bill. Representative Boyer is a member of the House Labor and Commerce Committee.

HB499

On February 14th, 1989 Legislative Audit issued its findings on APUC and concluded that it should continue to regulate public utilities and pipelines. APUC was created to regulate public utilities so that the citizens could enjoy adequate service at the lowest reasonable rates. The audit's analysis did reveal several industries where regulation could be eliminated with negative public impact. The refuse collection industry was one which was recommended to be no longer regulated for four main reasons:

1. The APUC did not have the funds or personnel to regulate these utilities.
2. The refuse industry is not as capital intensive as fixed utilities.
3. Competition would not be detrimental to the public interest.
4. 91% of the states returning questionnaires to the auditors did not regulate refuse utilities.

Without going into great detail about the legislative and court proceedings following the commission recommendation to deregulate the refuse industry, the industry is still regulated. The haulers believe that through the issuance of competing certificates in the same area however the APUC is in fact still trying to deregulate them. Although this may be true, it has also proved (at least in the Mat-Su Borough) that this deregulation is good for the consumers. "...one result has been an increase in the number of residential customers who utilize the residential pick-up option."

The specific problems of regulation in the FNSB are:

1. Not able to use competitive bidding process to select contractor to haul public dumpsters or operate transfer stations. The cost of refuse disposal has increased 12-18% each year since the beginning of the program 14 years ago. Deregulation could result in a cost savings of 30-35%.
2. Lack of APUC staff in Fairbanks lead to inadequate monitoring and control of certificated haulers. There has been

much higher costs for inadequate service with no complaint response.

3. The FNSB can't force the haulers into a contract if they don't want to sign one. Consequently there is no ability to specify standard equipment or assure quality service.

4. The FNSB with the burdens of a tax cap, ^{has} ~~have~~ no leeway on nonarea-wide expenditures. With a proposed tariff increase the borough's only alternative to cancelling dumpster service would be to cut emergency medical services in order to pay for waste collection.

The final argument to deregulation of solid waste collection is just pointing out the difference between collection and disposal. Disposal is regulated at the state level by the dept of Environmental Conservation.

Haulers of refuse cannot claim to have great impact on public health and safety or the environment except when they don't perform properly. This is the problem in Fairbanks. Lack of adequate dumpster service has led to overflowing dumpsters with subsequent pollution and pest problems. Collection is almost entirely a transportation issue and is really no different than the transport of any other freight commodity and should be treated as such. Once the waste is transported then it is disposed of and that is regulated by a host of agencies. Arguments to the effect that regulation of haulers benefits recycling efforts is again erroneous because one is again mixing collection with disposal.

H B

523

... relating to certification of real estate appraisers; and providing for an effective date."

and recommended:

- replace with _____ CS _____ same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: Dept of Commerce 2/23/90

zero fiscal note(s) _____

Governor's bill w/fiscal note

SIGNING DO PASS:

Patricia Rodery

OTHER RECOMMENDATIONS:

John Smith No Rec
Jan Smith No Rec

Richard Do Pass
Chair: Signature and Recommendation

(2) adopt rules of professional conduct to establish and maintain a high standard of integrity in the real estate appraisal profession; and

(3) adopt regulations necessary to carry out the purposes

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to certification of real estate appraisers; . . .
Sponsor: Representative Navarre
Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.5	17.5	17.5	17.5	17.5	17.5
TRAVEL	18.4	14.7	10.4	10.4	10.4	10.4
CONTRACTUAL	25.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	1.3	1.3	1.3	1.3	1.3	1.3
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	62.2	48.5	44.2	44.2	44.2	44.2

CAPITAL	0	0	0	0	0	0
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REVENUE	60.0	0	60.0	0	60.0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	62.2	48.5	44.2	44.2	44.2	44.2
TOTAL	62.2	48.5	44.2	44.2	44.2	44.2

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary) The bill establishes a five-member Board of Real Estate Appraisers to establish examination and continuing education requirements for certification of general real estate appraisers and residential real estate appraisers. The division has received information that approximately 200 individuals may apply and seek certification upon passage of this legislation. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: 2/23/90

Approved by Commissioner: Larry Mercuri Date: 2-23-90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE ANALYSIS - HB 523

This fiscal note represents the cost of certifying real estate appraisers with a three-member board and using an estimate of 200 individuals who may qualify for certification. Costs of the program are projected based on the number of individuals certified. Therefore, using 200 individuals as a base, the real estate appraiser certification program will be responsible to cover less than one percent (.076) of the division's operating costs, in addition to funds required to carry out specific mandates of the bill. A breakdown of these costs is as follows:

Personal Services:

One Seasonal Occupational Licensing Examiner I Six months, GGU, Range 12A	\$17.5
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Travel:	\$18.4
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In FY 91, this funding will provide for four face-to-face meetings: two in Anchorage, one in Juneau, and one in Fairbanks; assuming two members are appointed from Anchorage, two from Juneau, and one from Fairbanks, and three division staff to attend each meeting. This funding will also provide travel to administer the examination in various locations throughout the state.

In FY 92, board meetings are reduced to three with travel provided to administer the examination in various locations.

FY 93 and forward, board meetings are reduced to two each year and travel funds to administer the examination in various locations throughout the state.

Contractual:	\$25.0
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This fiscal note provides \$10.0 for development of a professional certification examination in the first year. Currently, there are testing agencies with real estate appraiser examinations and, therefore, only those questions specific to Alaska will need to be developed. An additional \$15.0 will fund printing, advertising, postage and communication costs.

Supplies:	\$ 1.3
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Funding will provide standard office supplies.

TOTAL:	<u>\$62.2</u>
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REVENUE:

The revenues are based on 200 individuals paying a certification fee of \$150 per year. Because certifications are issued for a two-year period, revenues are doubled every other year. As indicated, certification fees of 200 certified individuals will not cover program costs and, therefore, the program will have to be covered by other licensing areas renewing in those years or supplemented with general funds.

House Bill 523: "An Act relating to certification of real estate appraisers; and providing for an effective date."

The need for regulating appraisers has been considered intermittently for a number of years. However, when the Federal Savings & Loan Bailout bill was signed into law last August, the time for action became immediate, because Title XI of that bill specifies that, by July of 1991, the appraisal for any federally related transaction must be completed by a state certified appraiser in order to qualify for funding with federal money.

Title XI further provides that states may establish a state appraiser certifying and licensing agency to assure availability of appraisers for federally related transactions, and to assure effective supervision of those appraisers. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) also established an Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Appraisal Subcommittee, among other things, has been charged with monitoring the appraiser certifying agencies created by the states, and has been instructed by Title XI not to recognize state appraiser agencies whose appraisal policies, practices, or procedures are found to be inconsistent with Title XI.

To assist states in the adoption of acceptable legislation, the Appraisal Subcommittee recently released guidelines regarding state certification and licensing of appraisers. These guidelines indicate that it will be necessary to regulate appraisers under a separate board in order to satisfy federal requirements that the appraisal regulatory function be independent of realty related activities.

HB 523 was introduced to address the issue of appraiser licensing in Alaska. The bill would create a five-member appraiser board within the Division of Occupational Licensing and give responsibility to the Board of Certified Real Estate Appraisers for the regulation of the appraiser profession in Alaska.

The department supports the intent of this legislation, but has a number of concerns regarding specific provisions of the proposed legislation. Our first concern deals with the voluntary nature of the proposed certification plan outlined in HB 523. Proposed section AS 08.87.300 (see page 7, line 6), permits appraisals by uncertified appraisers. Given that some appraisal work may not be tied directly to federally related transactions, HB 523 provides that appraisers who may be involved in such transactions need not seek certification by the Board of Certified Real Estate Appraisers.

We believe creating two different classes of real estate appraisers in this state will confuse the consumer. We are also concerned that it will leave the consumer unprotected from the unscrupulous. We foresee such a loophole allowing uncertified appraisers to receive payment for appraisal services and the consumer only later discovering that the appraisal is not acceptable to a bank or other entity because it was not performed by a state certified appraiser.

If appraisers are to be regulated in a manner that compares with other professions currently licensed in Alaska and if our primary objective in requiring such licensure is protection of the public from unscrupulous or incompetent practitioners, then we believe all persons seeking to provide appraisal services in Alaska should be subject to the same set of standards.

HB 523 would impose those standards only on appraisers who wish to do work for those projects anticipating the use of federal monies. In our opinion, the vast majority of mortgage financing related to real estate sales and highway projects rely on at least some federal money. And funding for rural projects is frequently tied to BIA dollars. Since most appraisals will have to be done by an appraiser who is subject to the regulatory standards established by this proposed legislation, we believe this section should be deleted.

Our second concern involves the Appraisal Subcommittee's policy requiring states to "ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements." Without statutory provision for the adoption of such a code, the state risks the Subcommittee's disapproval of its plan for appraiser certification. We recommend that proposed AS 08.87.020 (page 1, line 23) be amended by adding a new paragraph to read: "(3) adopt rules of professional conduct to establish and maintain a high standard of integrity in the appraisal profession." This language would then allow the board to establish through regulation the appropriate code of professional responsibility.

As stated before, there is an urgent need to enact appraiser certification legislation this year. All appraisals performed after July of 1991 must be done by state certified appraisers. Legislation must pass this year if the state is to have the time necessary to begin testing and admitting qualified appraisers. We support the intent of HB 523, but request that consideration be given to the suggestions for amendment described above. With the changes suggested, the department would support passage of HB 523.



Larry Merculieff, Commissioner

Date: 2-23-90

STATE OF ALASKA
THE LEGISLATURE

GOUGH • STATE CAPITOL
SHELDON BLANKENHORN
1977-1985

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1990

SUBJECT: Sectional analysis of CSHB 523(L&C)
(Work Order No. 6-2165)

TO: Representative Mike Navarre

FROM: John B. Gaguine *JG*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill enacts a new chapter, AS 08.87, to the occupational licensing title. AS 08.87 would provide for the certification of real estate appraisers.

Article 1 establishes a Board of Certified Real Estate Appraisers. The board would consist of four members appointed by the governor - two appraisers, one mortgage banker, and one public member - and the executive director of the Alaska Housing Finance Corporation (or the director's designee). The board would, in addition to the powers it has under AS 08.01 (the centralized licensing statute), establish the examination specifications for certification as a general real estate appraiser and as a residential real estate appraiser (a person who is only certified as an appraiser for residential property of up to four, or in some cases twelve, units), and adopt rules of professional conduct for appraisers.

Article 2, AS 08.87.100 makes it a misdemeanor for a person to hold out as a certified appraiser if the person is not appropriately certified. AS 08.87.110 prescribes the requirements for certification, including the education and experience necessary; subsection (c) provides for Alaska certification of persons certified by other states if those states have requirements equivalent to Alaska's and if those states would recognize Alaska certification. AS 08.87.120

provides that applicants for renewal of certification must meet continuing education requirements, and sets out those requirements.

In Article 3, AS 08.87.200 prohibits certain practices, such as acting negligently, violating AS 08.87, failing to comply with the Uniform Standards of Professional Appraisal Practice, accepting a contingent fee, making false statements in connection with an application for certification, and violating confidential records. AS 08.87.210 provides that an appraiser may lose certification if the person violates AS 08.87 or a board regulation, is convicted of a crime involving moral turpitude, or commits a fraudulent act as an appraiser.

Article 4 contains general provisions. AS 08.87.300 requires certified appraisers to retain records for at least three years. AS 08.87.310 creates the category of registered trainees, who must work under certified appraisers. AS 08.87.320 forbids a person for suing in Alaska for fees for work done as a certified appraiser if the person was not certified.

AS 08.87.330 excludes from the coverage of the chapter persons appraising real estate as part of the tax assessment process of a municipality. Finally, AS 08.87.900 defines several terms used in AS 08.87; it excludes from the definition of "real estate" subsurface natural resource values.

Section 2 makes the Board of Certified Real Estate Appraisers subject to AS 08.01, the centralized licensing chapter.

Section 3 creates a sunset date for the board of June 30, 1994.

Section 4 provides that the board is subject to the administrative adjudication provisions of the Administrative Procedure Act, AS 44.62.

Section 5 prescribes the qualifications of the initial appraiser appointees to the board.

Sections 6 and 7 provide for effective dates. The Act would take effect on July 1, 1990, except for the provision making it a crime for an uncertified person to hold out as certified, which takes effect on July 1, 1991.

this session will likely require hiring certified appraisers from the "lower 48" on federally funded projects.

Significant points necessary for Alaska to conform to Federal requirements

- 1) An independent regulatory agency that answers to the Governor.
- 2) Appraiser certification/ licensing activities should not be conducted by the same officials that are responsible for real estate regulation.
- 3) Certified appraisers must satisfy criteria established by the Appraisal Qualification Board of the Appraisal Foundation and must pass a state examination consistent with the Appraiser Foundation guidelines.
- 4) "Grandfathering" is not allowed.
- 5) The Legislature, by enacting the proper law during this session, would allow sufficient time for those now engaged in appraisal work the necessary time to become certified.

Amendments made in Labor & Commerce Committee (CSHB 523)

- * Page 1, Sec. 08.87.020 (2) Adopt rules of professional conduct
- * Page 7, Art. 4 deleted in total. This deletion makes appraiser certification mandatory.
- * Page 8, Sec. 08.87.330 Exempts municipal tax assessors.
- * Page 9, Sec. 08.87.900 (8) Excluding subsurface natural resource values.

Amendments made in the Finance Committee

- * Page 1, line 14 change four to five, on lines 15 & 16 delete executive director of Alaska Housing Finance Corporation.
- * Page 4, following line 18. This new section allows for a limited certification, when certain conditions are met.

* Page 8, following line 15. Appraisals By Uncertified Appraisers Permitted. This is a reinstatement of Article 4 that was deleted in Labor & Commerce. The purpose of the reinstatement was to insure that in-house appraisals conducted by insurance companies, banks, or other institutions would be allowed, so long as the appraisal is not held out to be a certified appraisal.

* Page 9, line 9, energy efficiency was inserted.

Current Status of HB 523

* HB 523 passed out of the House Labor & Commerce Committee on March 6th.

* HB 523 passed out of House Finance Committee on March 29th.

* HB 523 passed the House of Representatives on March 6th. The House vote was 35 to 3.

* HB 523 has no known opposition. The bill is supported by the state realtors association, the appraisers association, and the Department of Commerce.

* HB 523 is scheduled to be heard by the Senate Labor & Commerce Committee on April 25th.

For Additional Information: Contact Tom Ackerly (3779) / Capitol 24.

ALASKA MORTGAGE BANKERS ASSOCIATION

P.O. BOX 9-2691 / ANCHORAGE, ALASKA 99509-2691

April 16, 1990

Senator Dick Eliason
Chairman, Labor & Commerce
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

RE: CSHB 523

Dear Senator Eliason:

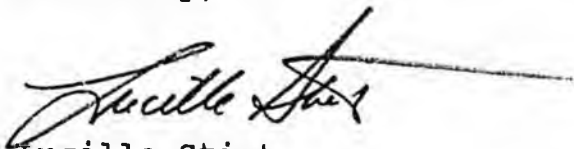
The Alaska Mortgage Bankers Association supports passage of HB523 in the form passed by the House on April 5, 1990.

Federal regulation requires that states pass legislation to comply with the requirements of FIRREA. It is important that legislation be passed this session, to allow for orderly formation of a Board and promulgation and implementation of regulations prior to the federally mandated date of July 1, 1991.

We understand there is some question as to the acceptability of section 08.87.110(e) at the federal level. While Alaska is geographically large, its population is small and concentrated. Provision should be made so that financing in sparsely settled, remote areas of the state continues to be available without the burden of additional appraisal costs which are unreasonable in relation to the value of the property being appraised. We support inclusion of this section in the bill, and will be happy to assist in continued efforts to resolve this question at the federal level. Perhaps a section could be added to the bill to make clear that if any provisions in the bill are found to be outside the federal regulations, the remainder of the legislation would stand.

Please contact the undersigned or members of the Board if you have any questions.

Sincerely,



Lucille Stietz
Chair, Legislative Committee
257-3442

Supporters of House Bill 523

1. Ken Gain MAI appraiser/realtor, a spokesman for both groups.
2. Joe Hayes representing the Alaska Association of Realtors
3. Department of Commerce
4. Grayce Oakley, Executive Secretary of the State Real Estate Commission
5. The Kenai Realtors
6. The two Alaska appraiser associations are in agreement with the need for the bill.
7. Alaska Association of Assessing Officers
8. Alaska Banking Association
9. The Appraisal Foundation/ Appraisers Qualification Board, Washington, D.C., evaluated HB 523 and gave the bill a good evaluation.

This list is current as of April 23, 1990.

James W. Klopfenstein
Chairman

Miles M. Etter
Vice Chairman

Raymond A. Leshner

James H. Pritchett

Otis L. Thorpe

Appraiser Qualifications Board of The Appraisal Foundation

1029 Vermont Ave. N.W. • Suite 900 • Washington, DC 20005 • (202) 347-7722 • FAX: (202) 347-7727

April 10, 1990

Mr. Tom Ackerly
P.O. Box V
Juneau, AK 99811

Dear Mr. Ackerly:

We are pleased to respond to your request of April 4, 1990 relative to Alaska House Bill No. 523, Chapter 87, Real Estate Appraisers.

The Appraiser Qualifications Board can only offer comments with respect to qualification requirements contained within the proposed Bill. We are unable to provide comments on the composition of the Board of Certified Real Estate Appraisers, Prohibited Practices and Disciplinary Proceedings, and sections of the General Provisions.

A review of the proposed Bill indicates that there will be two classifications of real estate appraiser certification, being General and Residential.

The requirements, contained in the Bill, necessary to obtain either a General or Residential Real Estate Appraiser Certificate meet and/or exceed the Qualifications Criteria established by the Appraiser Qualifications Board of The Appraisal Foundation.

It is noted that some of the language utilized in the Bill differs somewhat from that developed by the AQB, particularly as it applies to the Education and Experience requirements; however, the overall requirements contained in the proposed Bill would meet the AQB criteria.

It should be understood that the AQB has no provisions nor criteria for registered trainees, nor is there any provision for Exemptions as indicated in Sections 08.87.310 and 0.8.87.330 respectively of the proposed Alaska Bill.

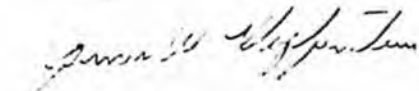
April 10, 1990

Please realize that the comments contained herein are those of the Appraiser Qualifications Board, and not the Appraisal Subcommittee. You will need to submit a copy of your Bill to the Appraisal Subcommittee for their review and consideration.

We are enclosing the Outline Qualification Criteria for the Residential and General Appraiser Classifications. This criteria has been developed and adopted by the Appraiser Qualifications Board.

We appreciate your interest in The Appraisal Foundation and ask that you contact us if additional information is needed, or if we can be of further assistance.

Respectfully submitted,



James W. Klopfenstein, Chairman
Appraiser Qualifications Board

JWK:jj

Enclosures

cc: Kathy Edmonson
Business Manager

Mike Navarre
P.O. Box 169
Kenai, AK 99611