

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7338 SENATE COMMUNITY & REGIONAL AFFAIRS



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

*Jim Butler*

Signature of Camera Operator

*8/15/95*

Date

1991-1992

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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1991-1992

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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HB 451

HCR 17

SB

2

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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 1/21/91

FURTHER: L&C

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: \_\_\_\_\_

C&RA Committee considered Senate Bill No. 2

"An Act relating to deregulation of public utilities furnishing collection and disposal service of waste material."

and recommended:

replace with \_\_\_\_\_ CS \_\_\_\_\_  same title

attached amendment(s)  new title

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
Dept. of Env. Conservation  
Dept. of Commerce + Econ. Devel.  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

William Stungolter  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chair: Signature and Recommendation

Chair: Signature and Recommendation

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029


Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 5, 1991

**SUBJECT:** Is Deregulation of Public Utilities a "Taking"?

**TO:** Senator Steve Frank  
Chair, Senate Community and Regional Affairs  
Committee  
Attn: Rick Solie

**FROM:** Pam Finley   
Assistant Revisor

Question Presented: Does deregulation of a currently regulated class of utilities constitute a "taking" that requires current certificate holders to be compensated?

Short Answer: No.

Discussion. The issue here is whether deregulation violates the Due Process Clause of the Fourteenth Amendment of the federal constitution, the prohibition against impairment of contracts in art. I, sec. 10 of the federal constitution, the Due Process Clause of art. I, sec. 7, or the prohibition against impairment of contracts in art. I, sec. 15 of the state constitution.

In City of Paragould v. Arkansas Utilities Co., 70 F.2d 530 (8th Cir. 1934), cert. denied, 293 U.S. 586, 79 L.Ed. 682 (1934), the court rejected the claim by a previously regulated utility that it had a vested right protected by the federal constitution to continued exemption from competition. In that case the utility held a certificate of convenience and necessity from the state. The state then repealed the law that required such certificates. The utility claimed that the previous certificate constituted a contract or franchise and sought an order enjoining a competitor from building a power plant in its former area. The court rejected the utility's claim, noting that the previous requirement of a certificate "constituted nothing more than a barrier erected by the state...which barrier the state might raise, lower, or completely remove, provided that this was done through nondiscriminatory legislation." City of Paragould v. Arkansas Utilities, *supra*, 70 F.2d at 534. The court relied on a U.S. Supreme Court case, Frost v. Corporation Com'n. of Oklahoma, 278

U.S. 515, 73 L.Ed 483 (1929), in which the Court held that a state could not require certificates from a utility incorporated under one act, but not from those incorporated under another act, but also noted that there would be no constitutional problem if the law had abolished the requirement of certificates entirely. Therefore it appears that a state would not violate the federal constitution by repealing laws that required certificates of public convenience and necessity.

While Alaska's Supreme Court has not addressed this issue directly, two cases indicate that it would find no violation of the Due Process Clause of the state constitution. In Alaska Public Utilities Com'n. v. Chugach Electric Assn., 580 P.2d 687 (Alaska, 1978) a statute prohibited the APUC from allowing competition with an existing utility unless the existing utility was not providing or would not provide service. Chugach Electric Assn. held a certificate while the statute was in effect. After that statute was repealed, Chugach claimed that it had a vested right to avoid competition as long as it provided adequate service, which right was preserved by the general savings statute, AS 01.10.100. Because the new law dealt with competition with previously certificated utilities, the court decided that the repealed statute was not "saved", and therefore it did not have to decide whether Chugach had a "vested right". The court did, however, note that the failure to preserve Chugach's earlier right did not deny it due process. Chugach, supra, 580 P.2d at 693. In addition, in Herscher v. State. Dep't. of Commerce, 568 P.2d 996 at 1003 (Alaska 1977), the court noted the difference between the due process rights that must be accorded someone who has a license so long as the licensing system remains in effect, and the lack of such rights if the system is abolished:

The state's power over natural resources is such that it could entirely eliminate the role of hunting guides and no problem of due process would arise. However, when the state decides to permit the harvesting of its fish and game, and in doing so permits the issuance of hunting guide licenses, then problems of due process arise when the individual, rather than the group as a whole, is affected.

Therefore it appears that the due process clause of the state constitution does not prohibit the abolition of a licensing or certificate system, although holders have due process rights in those licenses or certificates so long as the system exists.

Finally, although there is no case law directly on point, I believe that the prohibition against impairment of contracts in the state constitution would not prevent deregulation of a utility. The court did not address this issue in Alaska Public Utilities Com'n v. Chugach Electric Ass'n., supra, 580 P.2d at 693, n. 9 because it was not adequately briefed. However, I see no reason why Alaska's court would not follow the rationale of City of Paragould, supra, especially since certificates are subject to revocation if they no longer serve "public convenience and necessity",

Senator Steve Frank

March 5, 1991

Page 3

AS 42.05.271(1), and competition is allowed unless the competition is "not in the public interest". AS 42.05.221(d). See Homer Electric Ass'n., Inc. v. City of Kenai, 423 P.2d 285, 289 (Alaska 1967)(Certificate not a grant of monopoly.) Therefore any "contract" that a utility might have had would have contained an implicit condition that it was subject to termination if required by the public interest.

PM:gc:pl  
91-115.glc

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

February 5, 1991

**SUBJECT:** Technical correction to SB 2 (Deregulation of garbage utilities)

**TO:** Senator Dick Eliason

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

In reviewing SB 2, I noticed that there is a technical correction that needs to be made to sec. 2 of the bill. That section repeals various statutes that relate to regulation of utilities providing garbage service. As presently drafted, the section repeals AS.35.050(d), which was enacted in ch. 176, SLA 1990. The revisor subsequently relettered the subsection to AS 29.35.050(c). The reference in SB 2 should therefore be changed to repeal AS 29.35.050(c). We will correct our diskette of the bill, and the next time that a version is prepared, the correction will be made. If you prefer, we will be happy to prepare a corrected version of SB 2.

If I may be of further assistance, please let me know.

TC:mi  
91-023.mai



# Alaska State Legislature

SENATE

Official Business

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

## MEMORANDUM

TO: Senator Drue Pearce, Chair  
Senate Labor & Commerce Committee

FROM: Senator Steve Frank, Chair  
Senate Community & Regional Affairs Committee

RE: SB 2 - Deregulation of Garbage Utilities

DATE: February 7, 1991

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The C&RA Committee passed SB 2 out of committee at our February 5 meeting. As the bill is now in your committee, there are two items that I would call to your attention:

1) There is a technical correction that Legal Services needs to make that the committee did not feel warranted a Committee Substitute (See attached memo from Teresa Cramer).

2) We requested a memo from Legal Services on whether deregulation of the garbage industry creates a "taking without compensation" by the state, since currently garbage haulers must be certificated by the Alaska Public Utilities Commission. With passage of this legislation certificates will not be necessary.

We will be happy to furnish you a copy of the response when we receive it from Teresa Cramer.

ARE THE CERTIFICATES OF PUBLIC USE AND NECESSITY  
HELD BY PUBLIC UTILITIES VALUABLE RIGHTS WHICH  
CANNOT BE ARBITRARILY TAKEN AWAY BY GOVERNMENT?

The Alaska Statutes recognize that the franchise granted a public utility by its certificate of public convenience and necessity is a valuable right. This right may not be arbitrarily revoked. AS 42.05.271. Revocation is proper only where the utility has discontinued service, is guilty of wrongdoing, or where public convenience and necessity demand it. *Id.* Even joint use and interconnection of utility lines require a specific finding that the joint servicing will not result in substantial injury to the original utility or its customers. AS 42.05.321. Thus, the Alaska Statutes reflect the State's public policy of protecting public utilities from competition where competition would be inefficient and oppressive.

In Chugach Electric Association v. City of Anchorage, the Alaska Supreme Court addressed, at the invitation of the legislature, competition between public utilities. In this case, both the legislature and the court were concerned with the effects of competition between public utilities and the "wasteful duplication of facilities." In this case, the Supreme Court found that where one utility had been required to have a certificate of public convenience and necessity and the other utility (a municipality) historically had not, the court could modify the certificates of the two utilities and award an exclusive service area to each utility. The Alaska Supreme Court has previously recognized that a certificate of public convenience and necessity is a property right and, as such, is entitled to protection. Homer Electric Association, Inc. v. City of Kenai. Alaska case law further recognizes that franchises such as those obtained through the grant of a certificate of public convenience and necessity hold the legal status of contracts which are binding upon both parties. City and Borough of Juneau v. Alaska Electric Light & Power Co.; B-C Cable Company, Inc. v. City and Borough of Juneau. The owner of a franchise has rights to the protection thereof under the constitution as does the owner of any other property. The fact that such franchises are conferred by grant from the government or may be forfeited due to misuse or non-use is immaterial. Where a public utility accepts its rights and obligations under a certificate of public convenience and necessity, and expends money in reliance on that certificate, a contract is created which should not later be impaired. The deregulation of such utilities, allowing the entry of competitors into what was previously an exclusive service area, would breach that contract and could constitute a taking for which just compensation might be due.

In addition to the "taking" issue, the courts have come down against indiscriminate interference with the franchise rights of public utilities. In Detroit & Cleveland Nav. Co. v. United States, the court held that new and competing carriers should not be authorized to enter a field already being adequately served unless a definite need for the new, competing service is demonstrated. Public utility commissions have held that one certificated utility should not be allowed to invade the service area of another unless the evidence clearly shows deficient service or a forfeiture of rights on the part of the original utility. Rawlins Electric Co. New certificates of public convenience and necessity should not be issued prior to a determination as to any prejudice which might be suffered thereby by existing carriers or utilities. Robbins. In order to justify issuance of a certificate of public convenience and necessity to a competitor utility allowing it to operate within another's service area, it must be determined that there is a public need for the new service, as opposed to a need on the part of the competitor/applicant to provide the new service. Traditionally, it has been held that in order to allow one utility to invade the service area of another, it must be clearly demonstrated that there has been a failure, breakdown, incompleteness, or inadequacy in the services provided by the existing utility.

The policy of the State of Alaska as reflected in existing statutes and case law protects utilities from disruptive competition so long as the utility is adequately fulfilling its duties to its customers and to its franchisor. Where a public utility is not in breach of its obligations to the public, its franchise rights may have some constitutional protection against infringement. Allowing another utility to invade the service area of the original utility, taking away its customers and decreasing its economies of scale, constitutes a significant interference with the utility's franchise rights. The deregulation of an established utility, allowing competitor access to already adequately served customers of an existing utility, would not be in the best interests of either the State, its people, or the utilities involved.

TELECONFERENCE PARTICIPATION

SPONSOR (S) C/PRA

DATE/TIME 2/5

SUBJECT SB2, SB35

*teleconference*  
*AGAINST IT HEALTH Do TO HEALTH REASONS*

LIO'S  
 (moderator)

TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ( ) Paula Trapp SB 2 NURSES Donald MA SB 2 Tom TURNER SB 2 FAVORS Recycling		PETERSBURG * ( )	
BARROW * ( ) Tom Brennan - Air letter Prevention - ACPAR		SITKA * ( )	
BETHEL ( )		SOLDOTNA ( )	
DELTA JUNCTION * ( )		VALDEZ * ( )	
DILLINGHAM * ( )		LTC'S	
FAIRBANKS ( ) Kelly McMullin SB 2 Bob Spencer SB 2 HEALTH & SAFETY INSPECTOR		HOMER	
GLENNALLEN * ( )		WRANGELL	
JUNEAU ( )		OFFNETS	
KETCHIKAN ( )		OFF1 Don Gillman - Kenai	
KODIAK ( )		OFF2	
KOTZEBUE ( )		OFF3	
MAT-SU ( ) Nick Carney SB 2 Ted Smith SB 2		OFF4	
NOME ( )		OFF5	
		OFF6	

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SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

T/C NO: 91-02-003  
DATE: 2/5/91  
SPONSOR: SENATE C&RA  
SUBJECT: SB 2 - DEREGULATION OF GARBAGE  
MODERATOR: MARY  
SITE: MATSU

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. NICK CARNEY <i>← AGAINST</i>	1101 W FISHHOOK WASIL	LA 99687	SB 2
2. TED SMITH <i>← MATSU</i>	1000 WILLOW	9968 8	SB 2
3. MIKE DOWNS <i>←</i>	BOX 872547, WASILLA	9 9687	SB 2
4.			
5.			

*RAI/AK ENTERPRISES  
FAVORS DEREGULATION*

\*\*\*\*\*  
OBSERVED

NAME/RERESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

\*\*\*\*\*

TESTIFIED: 3

UNABLE: 0  
OBSERVED: 0  
TOTAL: 3

START TIME: 3:30PM

END TIME:

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

BILL NO. SB 2

Revision Date: 2-5-91 Department Affected: Environmental Conservation  
 Title: Deregulation of Garbage Utilities BRU: Environmental Quality  
 Component: Hazardous and Solid Waste Management

Sponsor: Sen. Eliason

Requestor: Sen. Frank; Sen. C & RA

COMPONENT SERIAL NO.

1	0	1	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-2600  
 Division: Commissioner's Office Date: 2-5-91

Approved by Commissioner: Jan D. Serber  
 Agency: Department of Environmental Conservation Date: 2/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

TELECONFERENCE PARTICIPATION

SPONSOR (S) CTRA

DATE/TIME 2/5

SUBJECT SB 2, SB 35

*teleconference*  
*AGENTS IN HEALTH DO TO HEALTH REASONS*

LIO'S  
 (moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
<u>ANCHORAGE</u> ( )	Paula Trapp SB 2 Donald May SB 2 Tom Turner SB 2	SB 2 SB 2 FAVORS Recycling	PETERSBURG * ( )	
BARROW * ( )	Tom Brennan - At letter		SITKA * Prevention - ACTAR	
BETHEL ( )			SOLDOTNA ( )	
DELTA JUNCTION * ( )			VALDEZ * ( )	
DILLINGHAM * ( )			LTC'S	
<u>FAIRBANKS</u> ( )	Kelly McMullin SB 2 Bob Spencer SB 2		HOMER	
GLENNALLEN * ( )	HEALTH & SAFETY INSPECTOR		WRANGELL	
JUNEAU ( )			OFFNETS	
KETCHIKAN ( )			<u>OFF1</u> Don Gillman - Kenai	
KODIAK ( )			OFF2	
KOTZEBUE ( )			OFF3	
<u>MAT-SU</u> ( )	Nick Carney SB 2 Ted Smith SB 2		OFF4	
NOME ( )			OFF5	
			OFF6	

VTS'S ON BACK

\*SESSION ONLY

VOLUNTEER TELECONFERENCE SITES

AKK - Akhoik	AMB - Ambler
AND - Anderson	ANG - Angoon
BUC - Buckland	CAN - Cantwell
CHE - Chenega Bay	CHG - Chignik
CHL - Chignik Lake	CHN - Chiniak
CHS - Chistochina	CHI - Chitina
COP - Copper Center	COR - Cordova
CRA - Craig	DEE - Deering
DOT - Dot Lake	EAG - Eagle
ELF - Elfin Cove	FTY - Fort Yukon
GAK - Gakona	GAL - Galena
GAM - Gambell	HNS - Haines
HEA - Healy	HOO - Hoonah
HPB - Hooper Bay	HYD - Hydaburg
HYR - Hyder	KAK - Kake
KAT - Kaktovik	KAU - Karluk
KAS - Kasaan	KEN - Kenny Lake
KIA - Kiana	KIV - Kivalina
KLA - Klawock	KOB - Kobuk
LAB - Larsen Bay	MES - Mentasta Lodge
MET - Metlakatla	MOS - Mosquito Lake
NAK - Naknek	NEN - Nenana
NEW - Newhalen	NIK - Nikiski
NOA - Noatak	NOO - Noorvik
NPT - North Pole	NOW - Northway
NUI - Nuiqsut	OUZ - Ouzinkie
PEL - Pelican	PTA - Port Alexander
PTH - Point Hope	PTL - Port Lions
PTP - Port Protection	STP - Saint Paul
SAV - Savoonga	SLW - Selawik
SEW - Seward	SHS - Shishmaref
SHU - Shungnak	SKG - Skagway
SLA - Slana	TAT - Tatitlek
TKS - Tenakee Springs	TNB - Thorne Bay
TOG - Togiak	TOK - Tok
TSK - Toksook Bay	UNK - Unalakleet
UAK - Unalaska	WAI - Wainwright
WHT - Whittier	YAK - Yakutat

\*\*\*\*\*

SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

T/C NO: 91-02-003  
DATE: 2/5/91  
SPONSOR: SENATE C&RA  
SUBJECT: SB 2 - DEREGULATION OF GARBAGE  
MODERATOR: MARY  
SITE: MATSU

PARTICIPANT LIST

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TESTIFIED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
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2. TED SMITH	12010 105TH, WILLOW	9968 8	SB 2
3. MIKE DOWNS	BOX 872547, WASILLA	9 9687	SB 2
4.			
5.			

*AGAINST*  
*MAT-SU*  
*RII/AIC ENTERPRISES*  
*FAVORS DEREGULATION*

\*\*\*\*\*  
OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

\*\*\*\*\*

TESTIFIED: 3

UNABLE: 0  
OBSERVED: 0  
TOTAL: 3

START TIME: 3:30PM

END TIME:

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 2

Revision Date: 2-5-91 Department Affected: Environmental Conservation  
Title: Deregulation of Garbage Utilities BRU: Environmental Quality  
Component: Hazardous and Solid Waste Management

Sponsor: Sen. Eliason  
Requestor: Sen. Frank; Sen. C & RA

COMPONENT SERIAL NO. 

1	0	1	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair *Janice Adair* Phone: 465-2600

Division: Commissioner's Office Date: 2-5-91

Approved by Commissioner: *Jan A. Serles*

Agency: Department of Environmental Conservation Date: 2/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

BILL VERSION: SB 2  
 PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: Deregulation of refuse  
utilities  
 Sponsor: Comm. & Reg. Affrs.  
 Requestor: Comm. & Reg. Affrs.

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 91.

Prepared by: Ray Hipperman, Acting Exec. Dir  
 Division: Alaska Public Utilities Commission

Phone: 276-6222  
 Date: 2/5/91

Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development

Date: 2-5-91

Distribution (by preparer):  
 Legislative Finance

of vessel traffic control and monitoring systems for oil barges and tank vessels carrying oil operating in or near the waters of the state. (§ 10 ch 74 SLA 1985; am § 1 ch 191 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 27, 1990, added subsection (d).

**Sec. 29.35.030. Eminent domain.**

**NOTES TO DECISIONS**

Municipal assembly's designation of land as a potential school site gave the owner of the land no right to compel a sale of the land, because the local school district had management authority over its budget as well as district operations, and the assembly could not force the district to spend money to acquire a particular site. *Homeward Bound, Inc. v. Anchorage School Dist.*, 791 P.2d 610 (Alaska 1990).

Municipal assembly's designation of property as a potential school site was not a taking for which the property owner could recover just compensation, where the assembly's mere designation was not a concrete indication that the municipality intended to condemn the property. *Homeward Bound, Inc. v. Anchorage School Dist.*, 791 P.2d 610 (Alaska 1990).

**Sec. 29.35.050. Garbage and solid waste services.** (a) A municipality may by ordinance

(1) provide for the establishment, maintenance, and operation of a system of garbage and solid waste collection and disposal for the entire municipality, or for districts or portions of it;

(2) require all persons in the municipality or district to use the system and to dispose of their garbage and solid waste as provided in the ordinance;

(3) award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees;

(4) pay for garbage and solid waste collection and disposal from available money;

(5) require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality;

(6) fix charges against the property owners or occupants of premises for the collection and disposal; and

(7) provide penalties for violations of the ordinances.

(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 waste material, or provide other related services in an area in the municipality if the certificate authorizes the collection and disposal of garbage, refuse, trash, or other waste material and providing of other services in the area, and the certificate was originally issued

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(d) This se  
ties. (§ 10 c

Revisor's no  
enacted as subs  
1990, at which  
was relettered

Effect of an  
amendment, eff  
subsection (b),  
"waste materia  
added the exce

**Sec. 29.35**  
area outside  
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its inhabitan  
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before the municipality provided similar services. Except as provided in (d) of this section, a municipality may not provide for a garbage, refuse, trash, or other 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 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.

(c) A municipality may establish an intermediate transfer site for the collection and disposal of garbage, refuse, trash, or other waste material without purchasing the certificate, equipment, or facilities of a waste material carrier certificated by the Alaska Public Utilities Commission. The municipality may, without compensating a certificated waste carrier operating in the area, provide for or contract with a certificated or noncertificated entity to provide for the collection and disposal of waste material left at the intermediate transfer site.

(d) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985; am §§ 1, 2 ch 176 SLA 1990)

Revisor's notes. — Subsection (c) was enacted as subsection (d) and relettered in 1990, at which time former subsection (c) was relettered as subsection (d).

Effect of amendments. — The 1990 amendment, effective June 22, 1990, in subsection (b), inserted "or other" before "waste material" in the first sentence, added the exception at the beginning of

the second sentence, and made a punctuation change in the third sentence; and added present subsection (c).

Editor's notes. — Section 4, ch. 176, SLA 1990 provides that the amendments made to this section by §§ 1 and 2, ch. 176, SLA 1990 do not apply to a municipality with a population of less than 50,000 until July 1, 1991.

**Sec. 29.35.070. Public utilities.** (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may regulate, fix, establish, and change the rates and charges imposed for a utility service provided to the municipality or its inhabitants by a utility that is not subject to regulation under AS 42.05 unless that utility is exempted from regulation under AS 42.05.711(a) or (d) — (k) or is exempted under regulations adopted under AS 42.05.810 from complying with all or part of AS 42.05.010 — 42.05.721.

(b) A municipality may provide for a reasonable deposit for meters and service to be given if interest is paid on the deposit.

(c) Unless the utility is owned by the municipality, all rates, charges, and regulations established under this section shall be established by ordinance and shall be reasonable and permit a fair return on invested capital.

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(4) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages or controls any plant, pipeline or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash or other waste material;

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(6) "service" means, unless the context indicates otherwise, every commodity, product, use, facility, convenience or other form of service that is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973)

Revisor's notes. — Formerly AS 42.05.701. Renumbered in 1983 and reorganized to alphabetize the defined terms.  
Cross references. — For legislative

purpose of subparagraph (4)(E) of this section, see § 1, ch. 36, SLA 1971 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment, effective June 22, 1990, substituted "municipality" for "city or borough" in the first sentence and made a series of minor punctuation changes in the second sentence.

Sec. 42.05.711. Exemptions. (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."

(b) Except as otherwise provided in this subsection, public utilities owned and operated by a political subdivision of the state, or electric operating entities established as the instrumentality of two or more public utilities owned and operated by political subdivisions of the state, are exempt from this chapter, other than AS 42.05.221 — 42.05.281 and 42.05.385. However,

(1) the governing body of a political subdivision may elect to be subject to this chapter; and

(2) a utility or electric operating entity that is owned and operated by a political subdivision and that directly competes with another utility or electric operating entity is subject to this chapter and any other utility or electric operating entity owned and operated by the political subdivision is also subject to this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission may exempt a utility, a class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 —

42.05.281, unless 25 percent commission for regulation.

(j) The provision of gifts of energy to waste heat, electric product of an industry is certificated for sale may be provided to area. A contract for this subsection does not transfer the regulated utility to another area.

(k) A utility which elects to be exempt from the provisions of this chapter unless 25 percent commission for regulation.

(l) A person, utility or municipality under (a) or (d) — municipality under (a) or (d) —

(m) The collection of waste material is exempt from this chapter unless 25 percent commission for regulation. 1973; am § 8 ch 83 ch 59 SLA 1982; ar § 1 ch 80 SLA 1984; § 3 ch 176 SLA 1985.

Effect of amendments. — The 1990 amendment, effective June 22, 1990, rewrote subsection (d). The second 1990 amendment, effective June 22, 1990, added

Article 10. Commission

- Section
- 800. Findings
- 810. Competition
- 820. No municipal regulation
- 830. Exchange access
- 840. Universal service

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sented 25 percent of the gross revenue of the utility petition the  
commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or  
gifts of energy to an electric utility certificated under this chapter  
when the energy which is the subject of the sale, exchange or gift is  
waste heat, electricity, or other energy which is surplus or the by-  
product of an industrial process. In an area in which no electric utility  
is certificated for service, energy provided by sale, exchange or gift  
may be provided to any utility which is certificated for service to that  
area. A contract for the sale, exchange or gift of energy exempt under  
this subsection does not make the supplier a public utility, and does  
not transfer the responsibility to provide utility services from a certifi-  
cated utility to any other person.

(k) A utility which furnishes cable television service is exempt from  
the provisions of this chapter other than AS 42.05.221 — 42.05.281,  
unless 25 percent of the subscribers petition the commission for regu-  
lation.

(l) A person, utility, or cooperative that is exempt from regulation  
under (a) or (d) — (k) of this section is not subject to regulation by a  
municipality under AS 29.35.060 and 29.35.070.

(m) The collection and disposal, under AS 29.35.050(c), by a municipi-  
pality of waste material deposited at an intermediate transfer site is  
exempt from this chapter. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA  
1973; am § 8 ch 83 SLA 1980; am §§ 7 — 9 ch 136 SLA 1980; am § 89  
ch 59 SLA 1982; am § 1 ch 30 SLA 1983; am § 68 ch 74 SLA 1985; am  
§ 1 ch 80 SLA 1985; am § 2 ch 107 SLA 1986; § 5 ch 93 SLA 1990; am  
§ 3 ch 176 SLA 1990)

Effect of amendments. — The first  
1990 amendment, effective June 7, 1990,  
rewrote subsection (d).

The second 1990 amendment, effective  
June 22, 1990, added subsection (m).

Editor's notes. — Section 4, ch. 176,  
SLA 1990 provides that subsection (m)  
does not apply to a municipality with a  
population of less than 50,000 until July  
1, 1991.

### Article 10. Competitive Intrastate Long Distance Telephone Service.

Section

- 800. Findings
- 810. Competition
- 820. No municipal regulation
- 830. Exchange access charges
- 840. Universal service fund

Section

- 850. Exchange carrier association
- 860. Restrictions on resale of telecommu-  
nications services prohibited
- 890. Definitions

**Article 3. Water Pollution Control and Waste Disposal.**

**Section**

100. Waste disposal permit

**Sec. 46.03.090. Plans for pollution disposal.**

**NOTES TO DECISIONS**

Quoted in *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

**Sec. 46.03.100. Waste disposal permit.** (a) A person who conducts an operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) A permit for disposal of a hazardous waste may not be issued under this section unless the applicant for the permit has furnished proof to the commissioner of financial ability to control the hazardous waste. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations adopted by the department. Acceptance of proof of financial responsibility under this subsection expires

- (1) one year from its issuance for self-insurance;
- (2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or
- (3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

(c) This section does not apply to a person discharging only domestic sewage into a sewerage system.

(d) This section does not apply to injection projects permitted under AS 31.05.030(h).

(e) A person who applies for a solid waste permit under this section shall demonstrate to the satisfaction of the commissioner that the applicant has reasonably considered all solid waste management options and that the permit would be consistent with the practices and priorities established under AS 46.06.021. (§ 3 ch 120 SLA 1971; am § 3 ch 220 SLA 1976; am § 9 ch 93 SLA 1981; am § 4 ch 91 SLA 1984; am § 3 ch 88 SLA 1990)

**Effect of amendments.** — The 1990 amendment added subsection (e).

**Article 5**

**Section**

299. Regulation of  
316. [Repealed]

**Sec. 46.03.299.** ment shall add (AS 44.62) for as defined by waste that ex nogenicity.

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(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms. (§ 1 ch 129 SLA 1977; am §§ 1-3 ch 128 SLA 1978; am § 110 ch 59 SLA 1982; am § 19 ch 59 SLA 1986)

Revisor's notes. — In 1987, a reference in paragraph (b)(1) to "(3) of this subsection" was changed to "(2) of this subsection" to correct a manifest error.

Cross references. — For provision that actions brought under this section may be brought directly against insurers or other persons providing evidence of financial responsibility, see AS 46.04.040(e).

For schedule of civil penalties under (b) of this section, see 18 AAC 75.510 — 18 AAC 75.600.

Effect of amendments. — The 1986 amendment repealed subsection (k), concerning the "oil spill mitigation account."

Editor's notes. — The effective date (referred to in (e) of this section) of the regulation adopting the schedules is April 19, 1978.

**Sec. 46.03.760. Civil action for pollution; damages.** (a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 — 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Except as determined by the court under (f)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisi-

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son who violates or  
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sion of AS 46.03.740  
— 46.03.750 is liable  
to the state, in a civil  
action brought under  
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tion, siting, construction, installation and operation of facilities neces-  
sary to effect compliance with the standard violated.

(e) In addition to liability under (a) — (d) of this section, a person  
who violates or causes or permits to be violated a provision of AS  
46.03.740 — 46.03.750 is liable to the state, in a civil action brought  
under AS 46.03.822, for the full amount of actual damages caused to  
the state by the violation, including direct and indirect costs associ-  
ated with the abatement, containment or removal of the pollutant,  
restoration of the environment to its former state, and all incidental  
administrative costs.

(f) A person who violates or causes or permits to be violated a provi-  
sion of AS 46.03.250 — 46.03.314, or a regulation, a lawful order of  
the department, or a permit, approval, or acceptance, or term or condi-  
tion of a permit, approval, or acceptance issued under AS 46.03.250 —  
46.03.314 is liable, in a civil action, to the state for a sum to be as-  
sessed by the court of not less than \$500 nor more than \$100,000 for  
the initial violation, nor more than \$10,000 for each day after that on  
which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages  
for any adverse environmental effects caused by the violation, that  
shall be determined by the court according to the toxicity,  
degradability and dispersal characteristics of the substance dis-  
charged, the sensitivity of the receiving environment, and the degree  
to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investiga-  
tion, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying  
with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncom-  
pliance. (§ 3 ch 120 SLA 1971; am § 9 ch 220 SLA 1976; am § 5 ch  
266 SLA 1976; am §§ 5, 6 ch 116 SLA 1980; am §§ 5 — 7 ch 77 SLA  
1984; am § 9 ch 59 SLA 1986)

Cross references. — For oil pollution  
control, see AS 46.04. For provision that  
actions brought under (a) and (e) of this  
section may be brought direct against  
insurers or other persons providing evi-  
dence of financial responsibility, see AS  
46.04.040(e).

Effect of amendments. The 1984  
amendment substituted "other than AS  
46.03.250 — 46.03.314, or a provision of"

for "or" in the introductory language of  
subsection (a) and made a series of techni-  
cal changes through the rest of this sub-  
section, added "Except as determined by  
the court under (f)(4) of this section" at  
the beginning of subsection (b), and added  
subsection (f).

The 1986 amendment in the introduc-  
tory language of subsection (a) inserted  
"or AS 46.09" in two places.

ch 164 SLA 1984; r § 5 ch 149 SLA 1980, § 9 ch 164 SLA 1984; am § 3 ch 37 SLA 1987)

**Revisor's notes.** — Enacted as AS 41.21.060. Renumbered in 1980.

**Effect of amendments.** — The 1984 amendment deleted "biodegradable" preceding "litter bag" in the first sentence, substituted "a" for "his" and "the person's" for "his" in the third sentence and "vehicle" for "automobile" in the last sentence, and rewrote the next-to-last sen-

tence, which formerly read "The department shall make litter bags available to all vessel owners and persons entering the state by automobile."

The 1987 amendment substituted "The" for "To the greatest extent practicable, the" at the beginning of the third sentence and substituted "may" for "shall" throughout the section.

**Sec. 46.06.070. Litter patrol.** (a) The department may establish a youth litter patrol program for the employment of young people on a seasonal basis. The department shall cooperate with federal, state or municipal programs that either employ young people or encourage their employment. The department may contract with other state agencies to provide administration and other support for the youth litter patrol established by this section.

(b) [*Repealed, § 6 ch 37 SLA 1987.*] (§ 2 ch 149 SLA 1980; am § 4 ch 164 SLA 1984; r § 5 ch 149 SLA 1980, § 9 ch 164 SLA 1984; am § 6 ch 37 SLA 1987)

**Revisor's notes.** — Enacted as AS 41.21.070. Renumbered in 1980.

**Effect of amendments.** — The 1984 amendment substituted "may" for "shall" in the first sentence in subsection (a).

The 1987 amendment repealed subsection (b), which read "The department may adopt regulations under the Administrative Procedure Act (AS 44.62) which are necessary to implement this section."

**Sec. 46.06.080. Littering prohibited.** (a) A person may not throw, drop, deposit, discard or otherwise dispose of litter from a vehicle or otherwise, on public or private property in the state or in waters in the state or under state jurisdiction unless

(1) the property is designated by a state agency or municipality as a site for the sanitary disposal of garbage or refuse, and the person is authorized to use the site for that purpose; or

(2) litter is placed in a litter receptacle so that the litter is prevented from being carried away or deposited by the elements upon public or private property or water in the state or under state jurisdiction.

(b) A vehicle may not be driven or moved on a public highway or right-of-way unless it is constructed, loaded or covered to prevent its load from dropping, sifting, leaking or otherwise escaping from the vehicle. This subsection does not apply to a vehicle used (1) to deposit salt or sand to secure traction, (2) by a public agency to clean or maintain highways, or (3) to transport agricultural, mining or timber products. A person who operates a vehicle from which an object has fallen or escaped which obstructs or endangers travel upon a public

highway or right-of-way shall immediately remove the object at the person's own expense or pay the cost of removal incurred by the state or by another person.

(c) A person who violates this section is guilty of a violation, and may be sentenced to pay a fine of not more than \$1,000. In addition, the court may order the person to gather and dispose of litter in an area and for a length of time determined by the court.

(d) A peace officer shall issue a citation as provided in AS 12.25.180 to a person who violates this section. If a citation is for a minor littering violation, then the person to whom the citation is issued may, within 15 days, mail or personally deliver to the clerk of the court in which the citation is filed

(1) a fine of \$50; and

(2) a copy of the citation indicating that the right to an appearance is waived and a plea of no contest is entered.

(e) If a \$50 fine has been paid under (d) of this section, then the court shall enter a judgment of conviction. Payment of the fine is a complete satisfaction for the violation.

(f) If a person cited under this section fails to pay the fine or to appear in court as required, the citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant.

(g) Notwithstanding other provisions of law, if a person cited for a minor littering violation under this section appears in court and is found guilty, the penalty that is imposed for the violation may not exceed \$50.

(h) In this section "a minor littering violation" means a violation of (a) or (b) of this section involving littering having an aggregate weight of five pounds or less. (§ 2 ch 149 SLA 1980; am §§ 4, 5 ch 37 SLA 1987)

Revisor's notes. — Enacted as AS 41.21.080. Renumbered in 1980.

Effect of amendments. — The 1987 amendment in subsection (c) substituted "violation, and may be sentenced to pay a fine of not more than \$1,000. In addition" for "class B misdemeanor, and in addition to the punishment imposed by AS 12.55.035(b)(4) and 12.55.135(b)"; and added subsections (d) — (h).

**Sec. 46.06.090. Prohibited beverage containers; packaging requirements.** (a) Beginning October 1, 1981, a person may not sell or offer to sell a nonglass beverage container that is designed and constructed so that the container is opened by detaching a metal ring or tab. This section does not apply to a beverage container that is opened by a detachable piece of tape, foil, or other soft material.

(b) Beginning January 1, 1985, a person may not sell or offer to sell in this state beverage containers that are held together by plastic rings or similar plastic devices unless the rings or devices are degradable and bear a distinguishing mark furnished to the department by

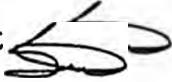


217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

February 5, 1991

MEMORANDUM

TO: Senator Steve Frank, Chairman  
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: SB 2 - Deregulation of waste collection and disposal services

On behalf of the Alaska Municipal League and its 126 member municipalities, I support the concept of SB 2 and the provisions which would in effect deregulate waste collection and disposal services by the Alaska Public Utilities Commission (APUC) within municipal boundaries.

The collection and disposal of waste is a traditional municipal service, and municipalities have the power to provide garbage and solid waste services under AS 29.35.050. However, current law prevents a municipality from providing garbage and solid waste services in an area which is served by a person holding a current license without buying that person out directly or by through the power of eminent domain. The problem is that the community through its elected officials cannot define and require adequate service, APUC cannot or has not adequately enforced adequate service, there can be no private competition, and the municipality cannot provide the service, directly or by contract, without unnecessary cost. Other general provisions of Title 29, including providing for an elected governing body and public hearing, also make regulation by the APUC to protect the public from a monopoly unnecessary.

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

The AML supports SB<sup>A</sup> 5.

cc: Senator Eliason

sab3:sb5.waste

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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

## ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON SB 298 - SB298 was  
similar to SB2

April 26, 1989

The Commission supports SB 298. This legislation would deregulate garbage utilities in conformance with the recommendations in the 1979, 1985, and 1989 performance reviews (Sunset Audits) of the Commission by the Division of Legislative Audit. The Commission has consistently endorsed this recommendation both in its formal responses to these Sunset Audits and in its FY1988 Annual Report to the Legislature.

1 IN THE SENATE

2 SENATE BILL NO. 298

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 FOR AN ACT ENTITLED: "AN ACT RELATING TO DEREGULATION OF PUBLIC UTILITIES  
7 FURNISHING COLLECTION AND DISPOSAL SERVICE OF WASTE  
8 MATERIAL."

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

10 \* SECTION 1. AS 38.05.810(F) IS AMENDED TO READ:

11 (F) THE COMMISSIONER SHALL LEASE STATE LAND FOR TELEPHONE OR  
12 ELECTRIC TRANSMISSION AND DISTRIBUTION LINES FOR LESS THAN THE AP-  
13 PRAISED VALUE OF THE LAND IF THE LESSEE IS A NONPROFIT COOPERATIVE  
14 ASSOCIATION ORGANIZED UNDER AS 10.25. THE COMMISSIONER MAY LEASE  
15 STATE LAND THAT IS NOT LOCATED WITHIN THE BOUNDARY OF A MUNICIPALITY  
16 FOR THE DISPOSAL OF GARBAGE, REFUSE, TRASH, OR OTHER WASTE MATERIAL  
17 FOR LESS THAN THE APPRAISED VALUE OF THE LAND IF THE LESSEE IS AP-  
18 PROVED BY THE COMMISSIONER AND COLLECTS AND DISPOSES [A LICENSED  
19 PUBLIC UTILITY AUTHORIZED TO COLLECT AND DISPOSE] OF GARBAGE, REFUSE,  
20 TRASH, OR OTHER WASTE MATERIAL OUTSIDE THE BOUNDARIES OF A MUNICIPAL-  
21 ITY. BEFORE DETERMINING THE ANNUAL RENTAL, THE COMMISSIONER SHALL  
22 CONSIDER THE NATURE OF THE PUBLIC SERVICE RENDERED BY THE NONPROFIT  
23 COOPERATIVE ASSOCIATION OR APPROVED LESSEE [LICENSED PUBLIC UTILITY]  
24 AND THE TERMS OF THE GRANT UNDER WHICH THE LAND WAS ACQUIRED BY THE  
25 STATE. A NONPROFIT COOPERATIVE ASSOCIATION MAY NOT CONSTRUCT IMPROVE-  
26 MENTS OTHER THAN TRANSMISSION OR DISTRIBUTION LINES AND SUBSTATIONS ON  
27 LAND LEASED UNDER THIS SUBSECTION. AN APPROVED LESSEE [A LICENSED  
28 PUBLIC UTILITY] MAY NOT CONSTRUCT PERMANENT IMPROVEMENTS ON LAND  
29 LEASED UNDER THIS SUBSECTION THAT ARE NOT RELATED TO THE PURPOSE OF  
1 THE LEASE.

2 \* SEC. 2. AS 29.35.050(B) AND AS 42.05.711(I) AND 42.05.720(4)(F) ARE  
3 REPEALED.

Excerpts

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

Commissioner, Department of  
Commerce and Economic Development      Larry Mercurieff

Deputy Commissioner, Department of  
Commerce and Economic Development      Jeffrey W. Bush

Members of the  
Alaska Public Utilities Commission

Chairperson	Susan M. Knowles
Member	Carolyn S. Guess
Member	Peter Sokolov
Member	Louis E. Agi
Member	Kathleen L. Whiteaker

Further, overriding all the above considerations, the public interest being addressed must represent a substantial portion of the State's population; unique situations should be addressed at the local level.

While we acknowledge that not everyone will subscribe to this theory of regulation, we believe it to be fundamentally sound. Utilizing these principles, we analyzed APUC's jurisdiction and determined that governmental control in the following areas was unwarranted.

- A. Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

Whether an individual considers refuse collection to be an essential service for modern living depends primarily on where they reside in the State. However, even essential services should generally not be regulated unless they are natural monopolies. For example, we do not believe that essentials such as food and clothing should be regulated.

Refuse collection, as with most enterprises, has certain economies of scale that affect its operations. However, these economies of scale are not such that one company can obviously provide the area-wide services for a significantly lower total cost than could several competitors. Relative to traditionally-regulated industries, refuse collection requires less capital, and thus they have a higher percentage of variable costs and less significant economies of scale. Further, the competition within service areas in several locations defeats the natural monopoly premise in the larger markets. We believe that a natural monopoly could occur in this industry in only the very small markets and that these do not warrant regulation due to the cost to benefit relationship.

Therefore, refuse collection should not be regulated unless there are overwhelming negative side effects present under competition in this industry. We acknowledge the possible negative effects of increased truck traffic, refuse pickup scheduled throughout the week in individual neighborhoods, and consistency problems as companies adjust to the economic realities of competition. However, these problems did not overwhelm the residents of the Mat-Su Borough as a result of the residential competition which began in 1985. Further, the Alaska Municipal League has adopted a resolution asking that refuse collection be de-regulated.

In response to our previous sunset audit recommendations to deregulate this industry, APUC expressed concern over the health and sanitation problems that could occur if these companies were removed from their jurisdiction. These health and sanitation issues are presently under the jurisdiction of local communities and also the Department of Environmental Conservation.

There are presently forty-three certificated refuse companies; nine of these are economically regulated under AS 42.05.711, as they have annual gross revenues of greater than \$200,000. Although APUC has no time sheet data upon which to estimate the cost to regulate these forty-three companies, the commission states in their FY 88 Annual Report that the time dedicated to refuse is excessive relative to agency resources and the resultant public benefit, and they recommend that this industry be deregulated.

B. Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

There are currently ten certificated radio common carriers in Alaska. Radio Common Carrier (RCC) services include radio paging, mobile radiotelephone, and improved mobile telephone public utility services.

The commission opened an investigative docket on the subject of deregulation of RCCs in 1981 which resulted in a 1982 decision to cease economic regulation of this industry. The commission cited as justification, among other things, that RCC service was not an essential service. As RCC service is not essential to the average Alaskan, we concur with the commission that it should not be economically regulated. We further contend that services that are not essential should not be certificated.

In that 1982 decision, APUC stated that the certification process should be continued to monitor the interconnection to the telecommunications network and to prevent cross-subsidization of non-monopoly RCC services by monopoly local exchange telephone services. However, both these concerns can be monitored through the continuing processes of certification and economic regulation of local exchange services.

Cellular phones are relatively new to Alaska, and APUC has not yet decided if or how they should be regulated. We understand these phones provide a higher sound quality at a higher cost than conventional radio phones and over a shorter range; as such, they may be even less of an essential service to the average Alaskan.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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

MAR 10 1989

March 7, 1989

Mr. Randy Welker  
Legislative Auditor  
Division of Legislative Audit  
State of Alaska  
P. O. Box W  
Juneau, Alaska 99811-3300

Re. Response to Preliminary Audit Report

Dear Mr. Welker:

The following is the response of the Commission to the preliminary audit report and recommendations submitted by the Division of Legislative Audit on February 14, 1989, as a result of its performance review of the Commission.

The Commission concurs with the fundamental conclusion of the report that the

Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. (Page 5.)

The Commission does not agree with all of the statements of regulatory theory and philosophy in the preliminary audit report but has focused its comments on the actual recommendations.

Recommendation No. 1A

Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

The Commission supports this recommendation as it did the identical recommendation made in the 1979 and 1985 Sunset Audits. The auditor's statement that the public health and sanitation aspects of this service are monitored by local governments and the Department of Environmental Conservation addresses the Commission's previous reservation on deregulation.

Recommendation No. 1B

Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

The Commission concurs with this recommendation based on the character of radio common carrier (RCC) services and the current regulatory status of RCCs operating in the state. However, as noted in the Commission's response to the same recommendation in the 1985 Sunset Audit, future developments in the telecommunications industry may require reimposition of RCC regulation at some later time.

The Commission also believes that its authority to partially or fully deregulate a particular utility industry in response to current circumstances is a desirable and appropriate supplement to the legislative action advocated by the auditor. Accordingly, the Commission requests legislative guidance on the validity of its decision to economically deregulate the RCC industry in the event this recommendation is not implemented by statute.

Excerpts

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

October 18, 1985

Audit Control Number

08-4230-86-S

Commissioner, Department of  
Commerce and Economic Development

Loren H. Lounsbury

Deputy Commissioners, Department of  
Commerce and Economic Development

Greg Baker  
Terry Elder

Members of the  
Alaska Public Utilities Commission

Chairperson  
Member  
Member  
Member  
Member

Carolyn S. Guess  
Marvin R. Weatherly  
Susan M. Knowles  
Louis E. Agi  
Kathleen L. Whiteaker

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Alaska Statute 42.05 should be amended to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash, and other waste material.

Responsibility for certificating and regulating utilities furnishing collection and disposal service of garbage, refuse, trash, and other waste material was added to the Alaska Public Utilities Commission Act by a 1973 amendment. Prior to that time those utilities were under the jurisdiction of the Alaska Transportation Commission. There are currently 34 certificated refuse utilities, of which nine are economically regulated.

The recommendation to deregulate refuse utilities was made in a prior APUC sunset audit report dated August 1, 1979 with the following economic justification. The refuse industry is not capital intensive as are the fixed utility industries regulated by the APUC. Net plant investment per customer is significantly lower than for traditional fixed utilities. The majority of capital is mobile and there is no permanent physical connection of customer to utility. Refuse collection and disposal, therefore, more closely resembles a transportation service than a fixed utility. Economic theory in transportation regulation promotes restricting competition to encourage capital investment in a growing industry, not eliminating competition as is the theory in capital intensive, fixed utility regulation.

That economic justification is still valid. Additionally, several events have occurred since 1979 which further strengthen the argument for State deregulation at this time. The first event is the initiation of an investigation in 1983 by the APUC to determine whether public utility refuse collection services in the Matanuska-Susitna Borough should be deregulated. Commission staff supported the concept, but the Commission has been unable to reach a consensus of opinion on the question. This has resulted in no action being taken on a number of applications for certificates to provide service within the Matanuska-Susitna Borough during this time.

The second event, of much greater significance, was the termination of the Alaska Transportation Commission by public ballot in 1984. This resulted in de facto deregulation of all other transportation services in the State of Alaska.

We recommend that in densely populated regions where a potential public health hazard would occur from the interruption or cessation of refuse service, that local governments provide the necessary regulation to mitigate those problems. That authority is already provided at AS 29.48.033, but is currently superseded by the APUC.

Recommendation No. 2

Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

There are currently seven certificated radio common carriers in Alaska. Radio common carriers (RCCs) are defined at 3 AAC 48.820(39) as a radio paging, mobile radiotelephone, or improved mobile telephone public utility services.

Regulation of radio common carriers has evolved substantially since the certification of the first RCC service in Alaska in 1965. The first evolutionary step came in 1976 when the Commission allowed competition between two radio common carriers in Fairbanks. During that hearing the following testimony was given by the area sales manager, Radio Common Carrier Market, Motorola Communications.

It has been my experience that competition per se in the area of radio communications has been beneficial, both to the public and to the common carriers themselves. Specifically, competition tends to expand the services offered to the public, and increases the public awareness of the radio common carrier paging services. In many cases, reduction of costs to the public in the form of lower service rates is as a result of competitive influences.

The Commission opened an investigative docket on the subject of deregulation of radio common carriers in 1981 which resulted in a 1982 decision to cease economic regulation in the industry. Cited by the Commission as major justification was:

- (1) RCC service is not an essential or necessary service.
- (2) Customer needs may be satisfied by competing firms since there is no physical connection between company and consumer.
- (3) A sufficient number of firms offer various types of RCC service and, because of the availability of close substitutes, elasticity of demand is high, thereby preventing unreasonable rates.

Excerpts  
A PERFORMANCE REVIEW  
OF THE  
ALASKA PUBLIC UTILITIES COMMISSION

August 1, 1979

Commissioner of the Department  
of Commerce and Economic Development  
Deputy Commissioner of the Department  
of Commerce and Economic Development

Charles Webber

Bertram L. Wagnon

Members of the  
Alaska Public Utilities Commission

Chairman  
Commissioner  
Commissioner  
Commissioner  
Commissioner

Gordon J. Zerbetz  
Marvin R. Weatherly  
Carolyn S. Guess  
Susan M. Knowles  
Stuart C. Hall

The FCC deleted the requirement of franchisor approval of rates for subscriber service effective September 1976, thereby removing all requirements of the franchisor for rate regulation. From a report of the Connecticut Cable Television Association we learned that "...as soon as the notice of the FCC action was publicized, many communities throughout the country dropped their own rate setting requirements." We feel that Alaska should also restrict its activity in this area.

A commonly accepted definition among economists of what distinguishes public utilities from other sectors of business is that public utilities are natural monopolies (operating with government approval as such), and supply a service which is indispensable to modern living. Cable television is an entertainment service, not a monopoly or a necessity. If subscribers are charged more than they feel services are worth they may disconnect and seek an alternative form of entertainment such as radio, movies, newspapers or books.

Deregulation of CATV in Alaska could possibly result in increased development of cable television in rural Alaska. The 1974 FCC pronouncement quoted earlier also stated:

After considerable study of the emerging cable industry and its prospects for introducing new and innovative communications services, we have concluded that, at this time, there should be no regulation of rates for such services at all by any governmental level. Attempting to impose rate regulation on specialized services that have not yet developed would not only be premature but would in all likelihood have a chilling effect on the anticipated development.

It does not appear that deregulation of this industry would have a detrimental impact on the Alaskan public and could, in fact, provide an incentive for development in rural Alaska and allow the Alaska Public Utilities Commission to devote its limited time and resources towards more important issues.

#### Recommendation No. 3

AS 42.05 should be amended to allow the Public Utilities Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash and other waste material.

Responsibility for certificating and regulating utilities furnishing collection and disposal service of garbage, refuse, trash and other waste material was added to the Alaska Public Utilities Commission Act by a 1973 amendment. Prior to that time those utilities fell under the jurisdiction of the Alaska Transportation Commission. There are currently 29 private refuse utilities certificated and regulated by the APUC and one municipal system certificated but not regulated.

Considering the Public Utilities Commission's heavy workload and limited resources, the public interest would be best served by allowing the Commission to cease certification and regulation of this industry. The economic justification for this action is twofold.

- (1) The refuse industry is not capital intensive as are the fixed utilities regulated by the APUC. The largest capital expense is in the vehicles and this expense is lessened since, as staff of the APUC has indicated, a majority of refuse utilities lease, rather than purchase, those vehicles. Sanitary landfills (dumps) are not allowed into the rate base, and therefore are not considered part of the capital investment of the utility.
- (2) Competition in this industry would not be as detrimental to the public's interest as competition among more capital intensive industries. Refuse collection and disposal is a transportation utility not a fixed utility. The economic theory and practice of transportation regulation originally was to restrict competition to encourage capital investment in a growing industry and provide a healthy utility to serve the public's needs not to eliminate competition entirely as is the theory in the fixed utility regulation by the APUC.

The results of a review of refuse collection and disposal service regulation in other states also support this recommendation. From our questionnaire to regulatory commissions in the other forty-nine states and the District of Columbia we learned the following:

Number of states responding:	32
Number of states not regulating refuse utilities:	29
Percentage of respondents not regulating:	91%

We were unable to determine in how many states this service is regulated at the local government level but are aware that it is in some states. AS 29.48.033 provides municipalities in Alaska the authority to regulate at the local level but this authority is superseded by the APUC.

Local governments in Alaska already exercise a great deal of control over the level and quality of service and rates charged by the private utilities through special contracts with those utilities. Therefore, the impact of deregulation would be felt primarily by those consumers residing outside municipal boundaries, a small percentage of the total number of consumers currently receiving these services.

# Certificated Refuse and Garbage Utilities

- \*All Alaska Enterprises,  
Mike Downs d/b/a<sup>1</sup>
- \*Alma Corporation
- \*Anchorage, Municipality of  
Anchorage Refuse, Inc.  
Andersen, Incorporated
- \*Aniak Disposal Service,  
Ronald N. Choate d/b/a
- \*Beluga Environmental Services, Inc.
- \*Bob's Disposal Service,  
Bobby C. Pate d/b/a
- \*C & S Enterprises<sup>2</sup>  
Channel Sanitation Corporation<sup>3</sup>
- \*Colville Environmental Services
- \*Copper Valley Construction Company<sup>4</sup>
- \*Cordova, City of
- \*Delta Sanitation,  
Joe Peters d/b/a
- \*Dillingham Refuse, Inc.  
Drake's Sanitation, Inc.

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<sup>1</sup>All Alaska Enterprises provides service to Lake Louise, Sutton, and Talkeetna.

<sup>2</sup>C & S Enterprises provides service to Kalifonsky, Kasilof, Kenai, Salamatof, Soldotna, and Sterling.

<sup>3</sup>Channel Sanitation Corporation provides service to Douglas, and Juneau.

<sup>4</sup>Copper Valley Construction Company provides service to Copper Center, Glennallen, and Lake Louise.

\*Not regulated by Alaska Public Utilities Commission as to rates and services.

## Certificated Refuse and Garbage Utilities (Cont.)

- Eagle River Refuse, Inc.<sup>5</sup>
- \*Fairbanks, City of
  - Department of Public Works
- Far North Sanitation Service, Inc.<sup>6</sup>
- \*Haines Sanitation,
  - Frank E. & Arla L. Shull d/b/a
- Interior Services,
  - Ralph E. Bartlett d/b/a
- \*Irwin's Garbage Disposal,
  - Jennie Irwin d/b/a<sup>7</sup>
- \*J. D. Refuse Service,
  - Delores R. Burnham d/b/a
- \*Juneau Sanitation Corporation
- \*Ketchikan, City of
- \*Kodiak Island Borough
- \*MacKenzie Refuse<sup>8</sup>
- \*March Disposal,
  - Robert Marlow & George Chapman d/b/a
- \*Matanuska-Susitna Borough
- \*McGrath Trash and Refuse
- \*Naabia Niign, Ltd.
- \*North Slope Borough
- \*Palmer, City of
- \*Patterson Sanitation & Refuse Service, Inc., Earl

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<sup>5</sup>Eagle River Refuse, Inc., provides service to Chugiak, Eagle River, and Peters Creek.

<sup>6</sup>Far North Sanitation Service, Inc., provides service to College and Fairbanks.

<sup>7</sup>Irwin's Garbage Disposal provides service to McKinley Park, Nenana, and Usibelli.

<sup>8</sup>MacKenzie Refuse provides service to Big Lake, Point MacKenzie, and Wasilla.

\*Not regulated by Alaska Public Utilities Commission as to rates and services.

## Certificated Refuse and Garbage Utilities (Cont.)

Peninsula Sanitation Company, Inc.<sup>9</sup>

\*Petersburg, City of

\*Seward Service,

Herman E. Leirer d/b/a

\*Skagway, City of

\*Sitka, City and Borough of

\*Sutton Sanitation Services<sup>10</sup>

\*Thorne Bay, City of

Tongass Sanitation, -

Wallace A. & Diana L. Crowe d/b/a

\*Valdez Alaska Terminals, Inc.

\*Valley Refuse, a General Partnership

Consisting of Timothy L. Atwood and

Michael D. Nosko<sup>11</sup>

Wasilla Refuse, Inc.<sup>12</sup>

Williwaw Services, Inc.

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<sup>9</sup>Peninsula Sanitation Company, Inc., provides service to Anchor Point, Bird/Indian, Clam Gulch, Cooper Landing, Girdwood, Homer, Hope, Kachemak, Kalifonsky, Kasilof, Kenai, Moose Pass, Nikiski, Portage, Salamatof, Soldotna, Sterling, and Sunrise.

<sup>10</sup>Sutton Sanitation Services provides service to Chikaloon, Sutton, and Wasilla.

<sup>11</sup>Valley Refuse provides service to Big Lake, Houston, Knik, and Wasilla.

<sup>12</sup>Wasilla Refuse, Inc., provides service to Lake Louise, Palmer, Sutton, Talkeetna, Wasilla, and Willow.

\*Not regulated by Alaska Public Utilities Commission as to rates and services.

**REFUSE AND GARBAGE UTILITIES**  
(1989 Calendar Year)

Utility	Net Plant	Revenues		Customers
		Total Revenues	Net Income	
<b>(Gross Operating Revenue Greater Than \$200,000)</b>				
Anchorage Refuse, Inc.	\$2,723,306	\$10,690,689	\$382,791	24,183
Channel Sanitation Corporation	164,036	2,616,399	(277,102)	5,100
Drake's Sanitation, Inc. <sup>1</sup>	31,558	577,962	23,662	199
Eagle River Refuse, Inc.	139,029	1,069,221	27,636	3,853
Far North Sanitation, Inc.	1,584,716	877,255	1,973	714
Interior Services, Ralph E. Bartlett d/b/a	659,689	630,294	(46,416)	235
Peninsula Sanitation Company, Inc. <sup>2</sup>		Not	Reported	
Tongass Sanitation, Wallace A. & Diana L. Crowe d/b/a	122,482	546,339	49,173	622
Wasilla Refuse, Inc. <sup>2</sup>	65,899	543,583	24,847	828
Williwaw Services, Inc. <sup>2</sup>	40,261	271,693	(46,903)	122
<b>TOTAL</b>	<b>\$5,530,976</b>	<b>\$17,823,435</b>	<b>\$139,661</b>	<b>35,856</b>

<sup>1</sup>Information presented for year ending 4/30/90.

<sup>2</sup>Information presented for year ending 3/31/90.

**SAMPLE MONTHLY RESIDENTIAL REFUSE RATES**  
(As of June 30, 1990)

COMMUNITY	1 RECEPTACLE 1 PICK-UP/ WEEK	2 RECEPTACLES 1 PICK-UP/ WEEK	UTILITY
Anchorage	\$ 14.04	\$ 14.04	Anchorage Refuse, Inc.
Eagle River	14.37	14.37	Eagle River Refuse, Inc.
Fairbanks	9.25	9.25	Far North Sanitation Service, Inc.
Fairbanks	12.00	12.00	Drake's Sanitation, Inc.
Fairbanks	8.05	8.05	Interior Services, Ralph E. Bartlett d/b/a
Girdwood/Alyeska	13.51	13.51	Peninsula Sanitation Company, Inc.
Homer	10.35	10.35	Peninsula Sanitation Company, Inc.
Hope-Turnagain Arm	13.51	13.51	Peninsula Sanitation Company, Inc.
Juneau	23.45	23.45	Channel Sanitation Corporation
Kenai	10.13	10.13	Peninsula Sanitation Company, Inc.
Kodiak	5.50	5.50	Kodiak Sanitation, Inc.
Mat-Su Valley	20.00	20.00	Wasilla Refuse, Inc.
Nome	15.00	15.00	Andersen, Inc.
Soldotna	10.13	10.13	Peninsula Sanitation Company, Inc.
Unalaska	15.00	30.00	Williwaw Services, Inc.

# Alaska Municipal League

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## Policy Statement 1991

Adopted at the Business Meeting  
of the 40th Anniversary Local Government Conference  
of the  
Alaska Municipal League  
Anchorage, Alaska  
November 16, 1990



## PART VI

### UTILITIES AND ENVIRONMENT

#### A. UTILITY REGULATION

1. Alaska Public Utilities Commission: The League supports the current statutory exemptions that allow municipal utilities to operate in the best interest of the consumer public without regulation by the Alaska Public Utilities Commission (APUC).

2. Acquisition: In order to eliminate service area conflicts between municipalities and utilities, the League supports legislation that would allow municipalities to acquire the facilities of a utility under specific terms that would fairly compensate the utility.

3. Utility Relocation Costs: The League opposes any effort to shift to municipalities the cost of utility relocations associated with municipal public works projects.

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

Solid waste collection and transport are essentially freight hauling issues and there is no need for APUC regulation. If regulation is needed, local government can focus on the needs at a local level. AS 29.35.060(b) should be repealed to make this deregulation complete and effective.

5. Waste Disposal Sites: The League encourages the State to hold local area public hearings concerning waste disposal sites and their locations.



# Fairbanks North Star Borough Silver Anniversary

February 1, 1991

Honorable Dick Eliason  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Dear Senator Eliason:

I would like to thank you again for your support of the garbage deregulation bill of last year. I understand you were somewhat frustrated by our willingness to compromise. For the record, the Fairbanks North Star Borough is still interested in total deregulation. The bill last year helped quite a bit, but there is still a need for further deregulation.

From the point of view of the state regulators, certificated haulers are a headache. As long as there are no problems, it doesn't create too much of a workload. When there are problems, such as with one of our haulers, the time spent is counterproductive. They are placed in a position of attempting to be contract managers at a distance, without the staffing or the hands-on information needed to adequately perform.

In our case, we are grappling with getting control of a service that has the potential of creating a great deal of liability to the borough taxpayers. With hazardous materials and other noxious wastes getting dumped in our dumpsters, we are forced to assume more control and accountability over our system. To do this cost effectively there are some areas outside our cities that could reasonably receive front door service. That is still a regulated service. The certificated hauler for most of those urban-like areas is unwilling to discuss a solution. Without his cooperation, we are unable to rationally and reasonably deal with a real solution to a major problem.

I understand you are sponsoring SB2 which asks for full deregulation. Please let the Fairbanks North Star Borough know what we can do to assist. SB2 has our support.

Good luck this year. It should prove to be a very interesting session.

Sincerely,

Juanita Helms  
Borough Mayor

JH:rlf

cc: Senate CRA Committee

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

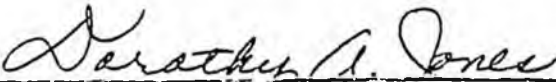
WHEREAS, SB 298 repeals a subsection of Title 29 which requires municipalities to purchase all or a portion of a Certificate of Public Convenience and Necessity of a utility

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)

Introduced by: Mayor  
Date: March 6, 1990  
Action: Adopted  
Vote: Unanimous

## KENAI PENINSULA BOROUGH

### RESOLUTION 90-18

#### URGING THE STATE TO DEREGULATE THE TRANSPORTATION OF MUNICIPAL SOLID WASTE TRANSFER SITES

WHEREAS, refuse haulers with a gross annual income greater than \$220,000 are regulated by the Alaska Public Utilities Commission; and

WHEREAS, in the 1970's the Kenai Peninsula Borough asserted that after refuse was placed in the "green boxes" or transfer stations 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; and

WHEREAS, 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; and

WHEREAS, because of provisions of 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; and

WHEREAS, through a commission decision, the rate structure for hauling in the central Kenai Peninsula area is exempt from PUC review, but obtaining a permit is still subject to PUC determination of public convenience and necessity; and

WHEREAS, these circumstances cause the creation of a monopoly in many communities that is not subject to regulation of rate; and

WHEREAS, this prevents the borough from entering into a contract with competitive bids which would ensure the lowest possible cost to the taxpayers; and

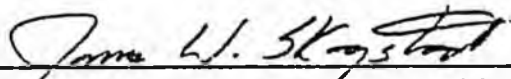
WHEREAS, legislation is before the Alaska State Legislature, which, if passed, would deregulate municipal transfer sites thus allowing the municipalities to competitively bid contracts for those hauling services;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

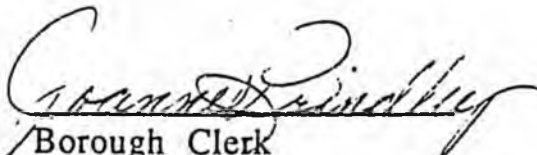
Section 1. That the Kenai Peninsula Borough supports legislation that would deregulate hauling of municipal "green boxes" or transfer site containers.

Section 2. That the clerk shall provided copies of this resolution to Senator Eliason, Chairman of the State Labor and Commerce Committee; Representative Donley, Chairman of the House Labor and Commerce Committee; Senators Binkley, Fischer, Kerttula and Szymanski; and Representatives Kubina, Navarre, Swackhammer, Wallis and Zawacki.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 6th DAY OF March, 1990.

  
James W. Skogstad, Assembly President

ATTEST:

  
Borough Clerk

UTILITIES

- \*All Alaska Enterprises,  
Mike Downs d/b/a<sup>1</sup>
- \*Alma Corporation
- \*Anchorage, Municipality of  
Anchorage Refuse, Inc.
- \*Aniak Disposal Service,  
Ronald N. Choate d/b/a
- \*Beluga Environmental Services, Inc.
- \*Bob's Disposal Service,  
Bobby C. Pate d/b/a
- \*C & S Enterprises<sup>2</sup>  
Channel Sanitation Corporation<sup>3</sup>
- \*Colville Environmental Services
- \*Copper Valley Construction Company<sup>4</sup>
- \*Delta Sanitation,  
Joe Peters d/b/a
- \*Dillingham Refuse, Inc.  
Drake's Sanitation, Inc.  
Eagle River Refuse, Inc.<sup>5</sup>
- \*Fairbanks, City of  
Department of Public Works  
Far North Sanitation Service, Inc.<sup>6</sup>
- \*Haines Sanitation,  
Frank E. & Arla L. Shull d/b/a  
Interior Services,  
Ralph E. Bartlett d/b/a
- \*Irwin's Garbage Disposal,  
Jennie Irwin d/b/a<sup>7</sup>

---

\*Not regulated by Alaska Public Utilities Commission as to rates and services.

<sup>1</sup>All Alaska Enterprises provides service to Lake Louise, Sutton, and Talkeetna.

<sup>2</sup>C & S Enterprises provides service to Kallifonsky, Kasilof, Kenai, Sakanatof, Soldotna, and Sterling.

<sup>3</sup>Channel Sanitation Corporation provides service to Douglas, Juneau, and Sterling.

<sup>4</sup>Copper Valley Construction Company provides service to Copper Center, Glennallen, and Lake Louise.

<sup>5</sup>Eagle River Refuse, Inc., provides service to Chugiak, Eagle River, and Peters Creek.

<sup>6</sup>Far North Sanitation Service, Inc., provides service to College and Fairbanks.

<sup>7</sup>Irwin's Garbage Disposal provides service to McKinley Park, Menana, and Usibelli.

CERTIFICATED REFUSE AND GARBAGE UTILITIES (CONT.)

- \*J. D. Refuse Service,  
Delores R. Burnham d/b/a
- \*Juneau Sanitation Corporation
- \*Ketchikan, City of  
Kodiak Sanitation, Inc.
- \*MacKenzie Refuse<sup>8</sup>
- \*March Disposal,  
Robert Marlow & George Chapman d/b/a
- \*Matanuska-Susitna Borough
- \*McGrath Trash and Refuse
- \*Nabla Wign, Ltd.
- \*North Slope Borough
- \*Palmer, City of
- \*Paterson Sanitation & Refuse  
Service, Inc., Earl  
Peninsula Sanitation Company, Inc.<sup>9</sup>
- \*Petersburg, City of
- \*Seward Service,  
Herman E. Leirer d/b/a
- \*Skagway, City of
- \*Sitka, City and Borough of
- \*Sutton Sanitation Services<sup>10</sup>
- \*Thorne Bay, City of  
Tongass Sanitation,  
Wallace A. & Diana L. Crowe d/b/a
- \*Valdez Alaska Terminals, Inc.
- \*Valley Refuse, Paul B. Robinson and  
Shonda Robinson d, b/a<sup>11</sup>  
Wasilla Refuse, Inc.<sup>12</sup>  
Williwaw Services, Inc.

---

\*Not regulated by Alaska Public Utilities Commission as to rates and services.

<sup>8</sup>MacKenzie Refuse provides service to Big Lake, Point MacKenzie, and Wasilla.

<sup>9</sup>Peninsula Sanitation Company, Inc., provides service to Anchor Point, Bird, Clam Gulch, Cooper Landing, Girdwood, Homer, Hope, Indian, Kachemak, Kolifonsky, Kasilof, Kenai, Moose Pass, Nikiski, Nikoliski, Portage, Seward, Soldotna, Sterling, and Sunrise.

<sup>10</sup>Sutton Sanitation Services provides service to Chikilcon, Sutton, and Wasilla.

<sup>11</sup>Valley Refuse provides service to Big Lake, Houston, Knik, and Wasilla.

<sup>12</sup>Wasilla Refuse, Inc., provides service to Lake Louise, Palmer, Sutton, Talkeetna, Wasilla, and Willow.

REFUSE AND GARBAGE UTILITIES  
(1988 Calendar Year)

Utility	Net Plant	Revenues		Customers
		Total Revenues	Net Income	
<u>(Gross Operating Revenue Greater Than \$200,000)</u>				
Anchorage Refuse, Inc.	\$2,587,932	\$ 9,990,365	\$925,355	25,283
Channel Sanitation Corporation	178,594	2,192,113	<538,207>	5,197
Drake's Sanitation, Inc. <sup>1</sup>	68,162	451,548	16,949	169
Eagle River Refuse, Inc.	152,613	1,907,437	<30,294>	4,074
Far North Sanitation, Inc.	1,471,763	881,540	155,525	654
Interior Services, Ralph E. Hartlett d/b/a	755,822	544,881	<144,663>	245
Kodiak Sanitation, Inc.		(Not Reported)		
Peninsula Sanitation Company, Inc. <sup>2</sup>	49,650	1,300,312	<155,558>	1,359
Tongass Sanitation, Wallace A. & Diana L. Crowe d/b/a	58,334	525,940	67,041	516
Wasilla Refuse, Inc. <sup>3</sup>	57,876	530,270	<31,076>	702
Williwaw Services, Inc. <sup>4</sup>	20,295	341,732	2,519	67
<b>TOTAL</b>	<b>\$5,411,141</b>	<b>\$17,565,938</b>	<b>\$167,591</b>	<b>33,466</b>

<sup>1</sup>Information presented for year ending 4/30/88.

<sup>2</sup>Information presented for year ending 3/31/89.

<sup>3</sup>See n. 2.

<sup>4</sup>See n. 2.

SAMPLE MONTHLY RESIDENTIAL REFUSE RATES  
(As of June 30, 1988)

COMMUNITY	1 RECEPTACLE	2 RECEPTACLES	UTILITY
	1 PICK-UP/ WEEK	1 PICK-UP/ WEEK	
Anchorage	\$ 14.04	\$ 14.04	Anchorage Refuse, Inc.
Eagle River	14.37	14.37	Eagle River Refuse, Inc.
Fairbanks	9.25	9.25	Far North Sanitation Service, Inc.
Fairbanks	12.00	12.00	Drake's Sanitation, Inc.
Fairbanks	8.05	9.05	Interior Services, Ralph E. Bartlett d/b/a
Girdwood/Alyeska	13.23	13.23	Peninsula Sanitation Company, Inc.
Homer	10.28	10.28	Peninsula Sanitation Company, Inc.
Hope-Turnagain Arm	13.23	13.23	Peninsula Sanitation Company, Inc.
Juneau	21.85	21.85	Channel Sanitation Corporation
Kenai	10.13	10.13	Peninsula Sanitation Company, Inc.
Ketchikan	15.00	15.00	Tongass Sanitation, Wallace A. & Diana L. Crowe d/b/a
Kodiak	5.50	5.50	Kodiak Sanitation, Inc.
Mat-Su Valley	20.00	20.00	Wasilla Refuse, Inc.
Unalaska	15.00	15.00	Williwaw Services, Inc.

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 499<sup>1</sup>

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.

---

<sup>1</sup>Commissioner Daniel Patrick O'Tierney was out of State and did not participate in the public meeting in which the Commission discussed this legislation.

\*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.

BY REP. BOYER, Swackhammer, Koponen, H.Davis, Sharp

1 IN THE HOUSE

2

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."

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

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

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

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

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

HBO499A

-1-

HB 499

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

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

9 (2) generated by the municipal government or by the municipi-  
10 pal school district.

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

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

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

7 (m) The collection and disposal, under AS 29.35.050(d), by a  
municipality of waste material deposited at an intermediate transfer  
site and of waste material generated by the municipality itself or by  
the municipal school district is exempt from this chapter.

*why 'municipal' is present  
oppose - limits 'S'  
Commission  
The request utility  
to our house (2/28) has been  
an adequate  
from our house*

*In writing, the  
policy statement  
for request utilities*

*your copy of AS 42.05.711  
- abstract -*

ALASKA REFUSE UTILITIES ASSOCIATION

Suggested amendments to H.B. 499:

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

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

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

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

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

"Sec. 5. AS 42.05.221 is amended by adding a new section to read:

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

4. Page 2, line \_\_, add the following:

"Sec. 6. Sections 1, 2 and 4 of this act take effect on January 1, 1994."

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

Commissioner, Department of  
Commerce and Economic Development

Larry Mercurieff

Deputy Commissioner, Department of  
Commerce and Economic Development

Jeffrey W. Bush

Members of the  
Alaska Public Utilities Commission

Chairperson  
Member  
Member  
Member  
Member

Susan M. Knowles  
Carolyn S. Guess  
Peter Sokolov  
Louis E. Agi  
Kathleen L. Whiteaker

# STATE OF ALASKA

AUDIT DIVISION  
P.O. BOX W  
JUNEAU, ALASKA 99811-3300

**THE LEGISLATURE**  
BUDGET AND AUDIT COMMITTEE

February 21, 1989

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

The objectives of this audit were to examine the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology are discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.


  
Randy S. Welker, CPA  
Legislative Auditor  
Division of Legislative Audit

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## REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have examined the activities of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the commission) to determine if there is a demonstrated public need for its continued existence and if the commission has operated in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether APUC should be reestablished. The law now specifies that the commission will terminate June 30, 1989 and have one year from that date to conclude its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made, and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Discussion of the objectives, scope, and methodology of our review follows.

### Objectives

APUC was created to regulate public utilities so that citizens could enjoy adequate service at the lowest reasonable rates. The primary objective of this audit, therefore, was to determine whether the public need for the commission continues to exist.

The secondary objective was to review the commission's major functions, namely certification of utilities, tariff actions, investigations, and complaint follow-up for effectiveness in meeting the public need. The tertiary objective was to evaluate these functions in particular, and the APUC's operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

## ORGANIZATION AND FUNCTION

Public utility regulation in Alaska has evolved substantially since the creation of the Public Services Commission (PSC) in 1959. That three-member body had jurisdiction over electric power, heat, water, gas, oil or other petroleum products (except by pipeline), telephone or telegraph communications, and community sewer services. In 1960 PSC gained responsibility for transportation utilities which it regulated until the creation of the Alaska Transportation Commission in 1966.

PSC was replaced by a three-member Alaska Public Utilities Commission in 1970. Regulated industries then included electrical, telecommunications, water, steam, sewer, gas, and petroleum when no competition existed. A 1973 amendment added garbage, refuse, trash or other waste to the list. Amendments passed in 1980 provided exemptions from economic regulation for cable television services and other utilities with low annual gross revenues as well as establishing a provision allowing economic deregulation by consumer vote for certain utility groups. With abolition of the Alaska Pipeline Commission in 1981, jurisdiction over pipelines passed to APUC.

In addition to jurisdictional changes, composition of APUC also changed. Alaska Statute 42.05.040 originally required one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting, or business administration. Two additional positions were added to the commission in 1975 for which no special qualifications were established. All members are appointed by the Governor and confirmed by the Legislature for six-year terms.

Under AS 42.05 and AS 42.06, APUC is charged with the responsibility to ensure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests of both the public and the utility. Statutory provisions direct the commission, after determining an applicant is fit, willing, and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity. After issuance of this certificate the commission then regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility, unless it is exempted or deregulated. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

## REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

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Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

## Scope and Methodology

The primary emphasis of our audit was on the factors outlined in the Analysis of Public Need section of this report. Alaska Statute 44.66.050 requires that these factors be considered in the determination of the commission's continued existence. To address these areas, we analyzed the need for regulation of the various industries, reviewed pertinent academic literature, considered the regulatory status and trends nationwide, interviewed commissioners and staff, reviewed APUC's statutes and regulations, contacted the State Ombudsman and the Equal Employment Opportunity offices, analyzed consumer complaints against utilities filed with the commission, and reviewed decisions made by the commission.

The effectiveness and efficiency of the commission was addressed through the above procedures and also by contacting and requesting assistance from all certificated utilities and by reviewing individual files.

Our review of decisions, complaints, tariff actions, hearings, investigations, and certifications was performed primarily on a sample of FY 88 items. These were selected on a judgmental basis to allow us to focus on certain activities and industries.

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The staff of APUC is divided into six major functions: administration, engineering, communications carriers, consumer protection, finance, and tariffs. In total, APUC employs 40 people with an operating budget for FY 89 of \$3,884,100. A brief description of the services provided by those functions follows:

Administration. An executive director, hired by the commission, is responsible for directing all staff functions and acts as a liaison between staff and commissioners and between the commission and legislature. He is responsible for records and document management, fiscal and personnel administration, and budget preparation and is assisted in these duties by an administrative assistant, document processing personnel, and other clerical support staff.

Engineering. This section is responsible for the investigation of utility procedures and practices affecting quality of service, review of legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. Their evaluations are presented in proceedings before the commission.

Communications Carriers. This section was established by 1976 legislation to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio and space satellites.

Consumer Protection and Information. Major responsibilities for this section include investigation and resolution of consumer complaints, public relations, and information dissemination.

Finance. Activities carried out by this section include the examination, analysis, and evaluation of financial statements submitted for rate cases, audits of financial records of utilities, examination of financial information comprising historical operating year and pro forma adjustments, and the presentation of these analyses at proceedings before the commission.

Tariff. This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, as well as meeting all public notice requirements on tariff filings and maintenance of current master tariffs for all utilities.

## REPORT CONCLUSIONS

### Policy Issues

This review contains policy issues raised as a result of our evaluation of various commission practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report to assist them in evaluating the potential impact of any policy changes.

### Report Conclusions

In our opinion, the Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated by APUC. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

Although this economic justification is valid for the majority of utilities regulated by APUC, we evaluated their jurisdiction for potential areas of deregulation for several major reasons: (1) to comply with the intent of sunset legislation which attributed public disenchantment with state government to a proliferation of that government; (2) in recognition of the fact that the cost of regulation may exceed its benefits; (3) the increased demands being placed on commission resources; and (4) the State's ability to provide those resources.

Our analyses revealed several industries where regulation could be eliminated with minimum negative public impact. Our initial criteria was whether the service was essential for modern living to the average Alaskan and, if so, whether the industry operated as a natural monopoly. Although it is uncertain whether rates under deregulation would be higher or lower, deregulation should provide benefits such as competitive alternatives to existing services and more innovative services and rate designs. Additionally, services may be provided in areas not previously served as a result of eliminating the barrier to entry into the marketplace that has been erected by certification and the cost of regulation. While refuse collection services may be considered essential by many, this industry is not a natural

monopoly and should not be regulated (See Recommendation No. 1A). Radio communication carriers do not provide an essential service and also should not be regulated (See Recommendation No. 1B). Cable television may be considered essential by many and may also be a natural monopoly in the small and medium size towns. However, the statutes have created state sanctioned monopolies without the companion public protection against unreasonable and discriminatory rates and services. Further, federal law prohibits full economic regulation. The State should cease cable certification (See Recommendation No. 1C).

We are also convinced that small utilities should be exempted from economic regulation on the basis that the cost of regulation likely exceeds its benefits to consumers. We further recommend that the consumers of these exempted utilities be allowed a reasonable opportunity to elect economic regulation (See Recommendation No. 1D).

We recommend that the utilities owned by the Municipality of Anchorage be exempted from economic regulation. This exemption and the companion opportunity to elect economic regulation should be available to Anchorage as it is to all other municipal governments in the State (See Recommendation No. 1E).

We believe that the commission's costs should be fully allocated to consumers, but only to those consumers of utilities who continue to be regulated. We consider this regulatory funding approach to be most equitable to all the State's citizens. It should also encourage the elimination of any unwarranted economic regulation when combined with consumer regulatory elections (See Recommendation No. 2).

We recommend that APUC develop a topical reference system for commission orders and court decisions (See Recommendation No. 3).

A review of commissioner appointments showed that appointment terms expire on the same date for the two consumer members. As this situation could cause a significant disruption of commission activity, we recommend that the statute be changed to require the staggering of these appointments (See Recommendation No. 4).

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Alaska Statute 42.05 should be amended to eliminate certain unnecessary regulatory functions of APUC.

Public convenience and necessity require certain services to be provided. Such services have traditionally included electric, telephone, gas, water, and sewer. The nature of these businesses do not lend themselves to competition; they are capital intensive and have permanent physical connections to their customers. The economies of scale of these industries are such that one company may be able to serve an entire market at a lower cost than could two or more companies; therefore, competition could not decrease prices to consumers in the long run and would only result in wasted capital resources through duplicate facilities. Note that this "natural monopoly" relates not only to the relationship between fixed and variable costs but also to the characteristics of the market. As these services are considered essential and as the long-run cost is lowest if only one company is allowed to serve, a monopoly is awarded in the form of a Certificate of Public Convenience and Necessity to a company that is determined to be fit, willing, and able.

As these services are essential, the demand for them is relatively inelastic in terms of service price or available funds. A monopoly coupled with inelastic demand can result in excessively high prices as well as price and service discrimination between consumers. Uncontrolled economic power has been considered economically, politically, and socially unacceptable in a democratic society. The alternatives are to nationalize the utilities or to regulate their services as a substitute for effective competition, with regulation being the preferred method. Regulated public utilities are required to make specified service levels available at approved rates to all consumers in their designated service areas.

In addition to the concerns over economic power, the public interest may also serve to extend regulation into situations where competition would have significant undesirable side effects on the quality of life in the area. For example, competition could create a black forest of utility poles or the continual digging to bury cables or pipe.

However, it may not be appropriate to economically regulate all certificated utility companies. For example, the cost of regulation may outweigh its potential benefits or the consumer's control over service and rates that already theoretically exists in that the company is a member-owned cooperative or it is owned by a political subdivision.

Further, overriding all the above considerations, the public interest being addressed must represent a substantial portion of the State's population; unique situations should be addressed at the local level.

While we acknowledge that not everyone will subscribe to this theory of regulation, we believe it to be fundamentally sound. Utilizing these principles, we analyzed APUC's jurisdiction and determined that governmental control in the following areas was unwarranted.

- A. Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

Whether an individual considers refuse collection to be an essential service for modern living depends primarily on where they reside in the State. However, even essential services should generally not be regulated unless they are natural monopolies. For example, we do not believe that essentials such as food and clothing should be regulated.

Refuse collection, as with most enterprises, has certain economies of scale that affect its operations. However, these economies of scale are not such that one company can obviously provide the area-wide services for a significantly lower total cost than could several competitors. Relative to traditionally-regulated industries, refuse collection requires less capital, and thus they have a higher percentage of variable costs and less significant economies of scale. Further, the competition within service areas in several locations defeats the natural monopoly premise in the larger markets. We believe that a natural monopoly could occur in this industry in only the very small markets and that these do not warrant regulation due to the cost to benefit relationship.

Therefore, refuse collection should not be regulated unless there are overwhelming negative side effects present under competition in this industry. We acknowledge the possible negative effects of increased truck traffic, refuse pickup scheduled throughout the week in individual neighborhoods, and consistency problems as companies adjust to the economic realities of competition. However, these problems did not overwhelm the residents of the Mat-Su Borough as a result of the residential competition which began in 1985. Further, the Alaska Municipal League has adopted a resolution asking that refuse collection be de-regulated.

In response to our previous sunset audit recommendations to deregulate this industry, APUC expressed concern over the health and sanitation problems that could occur if these companies were removed from their jurisdiction. These health and sanitation issues are presently under the jurisdiction of local communities and also the Department of Environmental Conservation.

There are presently forty-three certificated refuse companies; nine of these are economically regulated under AS 42.05.711, as they have annual gross revenues of greater than \$200,000. Although APUC has no time sheet data upon which to estimate the cost to regulate these forty-three companies, the commission states in their FY 88 Annual Report that the time dedicated to refuse is excessive relative to agency resources and the resultant public benefit, and they recommend that this industry be deregulated.

B. Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

There are currently ten certificated radio common carriers in Alaska. Radio Common Carrier (RCC) services include radio paging, mobile radiotelephone, and improved mobile telephone public utility services.

The commission opened an investigative docket on the subject of deregulation of RCCs in 1981 which resulted in a 1982 decision to cease economic regulation of this industry. The commission cited as justification, among other things, that RCC service was not an essential service. As RCC service is not essential to the average Alaskan, we concur with the commission that it should not be economically regulated. We further contend that services that are not essential should not be certificated.

In that 1982 decision, APUC stated that the certification process should be continued to monitor the interconnection to the telecommunications network and to prevent cross-subsidization of non-monopoly RCC services by monopoly local exchange telephone services. However, both these concerns can be monitored through the continuing processes of certification and economic regulation of local exchange services.

Cellular phones are relatively new to Alaska, and APUC has not yet decided if or how they should be regulated. We understand these phones provide a higher sound quality at a higher cost than conventional radio phones and over a shorter range; as such, they may be even less of an essential service to the average Alaskan.

Alaska Statute 42.05.711(d) reads as follows: "The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter." [Emphasis added.] As the 1982 decision categorically deregulated an entire industry, not an individual utility, this order may be illegal. We are not recommending that this statute be amended to allow categorical deregulation, as this power should be retained by the Legislature. Rather, we are recommending that the statute be amended to specifically deregulate RCC services; this would incidentally resolve the question.

C. Alaska Statute 42.05 should be amended to cease certification of cable television.

We do not consider cable television an essential service, particularly in view of the large number of Alaskans who receive off-the-air network television or broadcasts from the Rural Alaska Television Network. The premise of "essential" is also defeated by a review of the cable television service in Anchorage in which large sections of the service area are not yet cabled 9 years after the certification was awarded. The 1988 service expansion added only 1 mile of cable for 83 homes and businesses. While we acknowledge that it takes years for a new utility to cover a service area, we submit that this standstill, even in consideration of the economic decline, indicates that this service has a higher elasticity of demand than would an "essential" service.

As it is not an essential service, it should not be regulated as a public utility. Although the statutes do not allow economic regulation, they do require certification of the companies. APUC has responded by issuing certifications for exclusive service areas. This has created state-sanctioned monopolies with legally protected service areas, yet the statutes do not provide the companion public protection against unreasonable and discriminatory rates and services. The statute should, therefore, be amended to remove the certification requirement.

However, there are many who believe that cable television is essential to modern living or that it is essential so that we may fully realize our First Amendment right of freedom of speech. If it is first decided that cable television is essential, then the natural monopoly issue must also be considered in the regulatory determination.

We believe that cable television may be a natural monopoly in the small and medium-sized towns. As such, these may be candidates for economic regulation. However, the cost of regulation may outweigh the benefits for these small markets. The economic regulation that is available is also limited to basic services, as the federal Cable Communications Policy Act of 1984 prohibits price regulation of the premium packages. In the largest cities, the competitive environment indicates that there is not a natural monopoly present for cable television, thus certification and economic regulation is inappropriate.

The federal Cable Act was designed to promote the expansion of cable television systems by promoting local franchising and limiting rate regulation. This law would not allow any rate regulation in Anchorage or Fairbanks but would allow basic service rates to be regulated in other areas such as Juneau or Homer. It does, however, appear to allow us control over the possible competitive side effect of duplicate cabling. By statute we could require the segregation of cable distribution companies and these could be fully regulated. The cable programming could then be opened to competition.

In summary, regardless as to whether or not cable television is viewed as essential, we recommended that the present certification requirement be deleted from the statute. To the extent that this service is deemed essential, municipal franchising or certification and regulation of distribution-only companies should be considered.

We also must point out a potential liability to the State under the Cable Act if this recommendation is implemented. The Cable Act outlines specific criteria which must be shown to deny a franchise and the proposed statute amendment would categorically retract the certificates (franchise) without this showing. However, the Attorney General's Office indicated to us that the State would prevail in court. We recommend that a formal opinion on this potential liability be obtained from the Attorney General before this statute is amended.

- D. Alaska Statute 42.05 should be amended to exempt the smaller utilities from economic regulation.

Electric, telephone, gas, water, and sewer utilities have traditionally been considered essential services and are often natural monopolies. Nevertheless, we should refrain from economic regulation if its cost

exceeds the benefits. However, this information is not available nor can it be reasonably generated. "Cost" would include incremental APUC and utility time and materials as well as the effect of project delays on long-term rates; this component of the equation could be studied and estimated. The "benefits" of regulation include a financially stable utility providing consistent service uniformly to customers who are assured of equitable rates and services now and in the future; this cannot be quantified.

Nevertheless, in consideration of the State's dwindling resources and the public's disenchantment with the proliferation of state government, we believe that it is appropriate for us to presume that the cost of regulation presently exceeds its benefits for many smaller utilities and that the gross revenue exemption levels provided in the statutes should be raised.

Alaska Statute 42.05.711 exempts electric and telephone utilities with gross revenues under \$50,000 from certification and economic regulation. It also allows a utility's consumers to elect economic deregulation for cooperatives, electric or telephone utilities with less than \$325,000 in annual gross revenues, and for any utility which does not gross \$100,000 annually. We propose that an across-the-board gross revenue-based exemption from economic regulation be established. Three options are presented in the following table. It was prepared based upon APUC's FY 88 Annual Report and represents all utilities that are currently economically regulated with the exclusion of the industries we have recommended for categorical deregulation.

Number of affected utilities and customers, based upon gross revenues:

Type	Under \$500,000		Under \$750,000		Under \$1,000,000	
	Util.	Customers	Util.	Customers	Util.	Customers
Electric	10	819	15	1,990	18	2,691
Telephone	-0-	-0-	1	343	2	863
Gas	-0-	-0-	-0-	-0-	1	908
Water	22	3,715	22	3,715	22	3,715
Sewer	2	15	3	382	3	382
<b>Total</b>	<u>34</u>	<u>4,549</u>	<u>41</u>	<u>6,430</u>	<u>46</u>	<u>8,559</u>
<b>Percent</b>	<u>40.5%</u>	<u>.8%</u>	<u>48.8%</u>	<u>1.1%</u>	<u>54.8%</u>	<u>1.5%</u>

The above percent calculations represent the reduction in the coverage of economic regulation under each revenue scenario; however, we caution the inference from the table that APUC's workload would decrease