

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8310 SENATE JUDICIARY

FINDINGS AND RECOMMENDATIONS

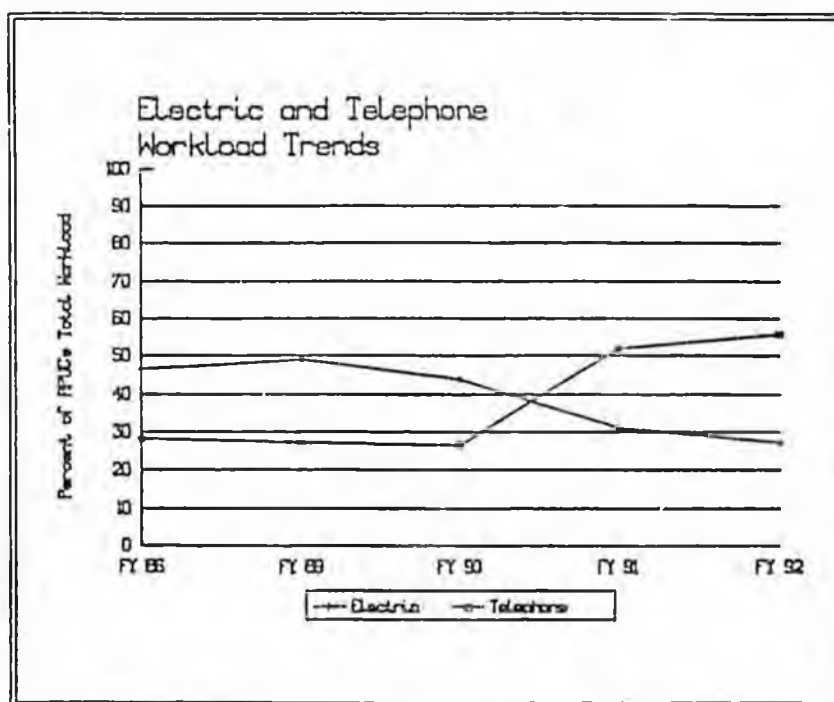
Recommendation No. 1

Alaska Statute 42.05.25j should be amended to require APUC to periodically adjust the regulatory cost charge (RCC) on an industry by industry basis. Further, the automatic repeal date of this statute should be deleted.

In our 1989 sunset audit report we recommended a program receipts budget for APUC, not because it was an alternative funding source but because of the potential benefits that this mechanism could provide. A user fee design can establish a basic fairness in that only those who benefit from the regulatory process bear its cost; it can also encourage consumers to recognize and eliminate unwarranted regulation through deregulation elections. However, these benefits will only be realized to the extent that the RCC program reasonably links the cost-causers with the cost-payers.

For FY 93, the legislature authorized a new RCC program which passes APUC's costs on to the consumers of regulated utilities. This program allocates costs based upon gross revenues. A single charge factor is used across-the-board for all utilities and all industries. Although we believe that a direct workload-based allocation program is preferable, as outlined in our 1989 report, we also continue to believe that a gross revenue based system could realize these benefits if the rates reflect the workload. However, the single RCC factor used in the current plan sacrifices some of program's potential benefit, in that the cost-payers are not necessarily the cost-causers.

We analyzed APUC's workload to evaluate the alignment of cost-causer to cost-payer. In the absence of verifiable data such as utility or industry codings on payroll time sheets, we were forced to approximate the workload by using rough estimates, which were provided on an unofficial basis by commission staff. They provided estimates of the average relative effort required to perform the ongoing APUC functions such as tariff filings, formal proceedings, certification proceedings, and formal and informal complaints. While we acknowledge that the weighting in these analyses is imperfect, we believe it provides an adequate indication of the



commission's workload. We found that the electric and telephone industries, on a combined basis, have represented approximately 79 percent of APUC's workload. The graph of these two industries illustrates the significance, variation, and trend that complicates setting of an RCC rate. The following table compares the commission's estimated FY 93 RCC receipts with the amount calculated based upon the workload over the past three years.

| Industry | Flat Rate Allocation | | | Workload Allocation | | Over (Under) Allocation |
|--------------|--------------------------|-------------|---------------------|---------------------|--------------------|-------------------------|
| | Estimated Gross Revenues | RCC Percent | Estimated FY 93 RCC | Percent of Workload | Allocation | |
| Electric | \$260,673,485 | .577% | \$1,504,086 | 34% | \$1,311,670 | \$192,416 |
| Telephone | 153,306,332 | .577% | 884,577 | 45% | 1,736,033 | (851,456) |
| Pipeline | 99,532,100 | .577% | 574,300 | 4% | 154,314 | 419,986 |
| Gas | 99,152,056 | .577% | 572,107 | 3% | 115,736 | 456,371 |
| Water | 22,955,320 | .577% | 132,452 | 4% | 154,314 | (21,862) |
| Sewer | 17,129,576 | .577% | 98,838 | 2% | 77,157 | 21,681 |
| Refuse | 15,856,758 | .577% | 91,493 | 4% | 154,314 | (62,821) |
| Cable | 0 | .577% | 0 | 3% | 115,736 | (115,736) |
| Other | 0 | .577% | 0 | 1% | 38,579 | (38,579) |
| Total | \$668,605,627 | | \$3,857,853 | 100% | \$3,857,853 | \$ 0 |

This table demonstrates that, based upon the workload over the past three years, the flat across-the-board rate significantly undercharges telephone and overcharges electric, pipeline, and gas utilities. Of course, the over or under allocation amount by industry varies depending on how many years of workload are considered. The use of an across-the-board rate incorrectly assumes that an industry's gross revenues are closely correlated to the workload that it creates. Given the significance of the electric and telephone workload, variation, and trend, we do not believe that the allocation methodology should assume that all workload cycles reverse themselves and that all industries create the same amount of workload in the long run. Therefore, we recommend that the legislature amend AS 42.05.253 to require APUC to periodically adjust the RCC factors to reflect workload on an industry by industry basis.

Notwithstanding the above, we support the current RCC program; we believe that it provides a measure of equity and responsiveness to unwarranted regulation that was lacking prior to the program. Our recommendation is intended to further the equity and regulatory responsiveness objective of this program.

The RCC program was established as a trial program utilizing an automatic repeal of December 31, 1994. As we consider this program to be effective, we recommend that this repeal provision be deleted.

Recommendation No. 2

Alaska Statute 42.05.711 should be amended to make it easier for utility consumers to opt in or opt out of economic regulation.

In the 1989 sunset audit report, we recommended the deregulation of several industries as well as the smaller utilities in each industry. We continue to believe that not all industries need to be regulated and that the cost of regulation may exceed its benefits, particularly for the smaller utilities. With the recent adoption of a user fee approach under the RCC program, the impetus exists to make state government more responsive; what is lacking is a reasonable mechanism to allow consumers to select whether or not they want their utility to be regulated.

Alaska Statute 42.05.711 exempts electric and telephone utilities with revenues less than \$50,000 and refuse utilities with revenues under \$200,000. However, customers can obtain economic regulation by petitioning APUC. Alaska Statute 42.05.711 presently requires 25% of an exempted utility's subscribers to sign the petition. We believe that this is too great an obstacle to overcome and recommend that an election be called if APUC receives a petition demonstrating significant consumer interest. We recommend that the petition and election requirements be modeled after the deregulation election procedures in AS 42.05.712. These procedures call for an election if the petition is signed by 10% of the first 5,000 subscribers and 3% of the subscribers in excess of 5,000. These elections may only be held once every two years for a given utility.

Alaska Statute 42.05.711 also allows deregulation elections to be held for electric and telephone utilities with revenues of less than \$325,000 and other utilities with revenues under \$100,000. We believe that more consumers should be given the option to deregulate by substantially raising the cut-off amount.

In combination, these two changes would allow APUC and the user fee approach of the new RCC program to be more responsive to the regulatory needs of the utility consumer. The regulatory cost/benefit decision should be made by the consumer.

Recommendation No. 3

APUC should establish a timekeeping system.

We initially recommended, in 1979, that the commission implement the time system they had purchased. As part of a 1978 management audit of APUC, Arthur Young & Co. developed a time management system to assist the commission in prioritizing, planning, scheduling, and

monitoring the workflow. In response to our recommendation, the commission concurred that a time management system is a useful administrative tool. They indicated that the time system would be implemented.

In our 1989 sunset audit report we recommended that APUC establish a timekeeping system as an integral part of a direct-allocation RCC program. As the legislature selected an RCC program that was not time based, APUC was not required to implement this recommendation. However, as costs to establish and operate a time system are minimal and the benefits are substantial, we continue to recommend it.

The costs of a timekeeping system are minimal.

- The commission should determine what management reports are needed. While we acknowledge that the 1978 time management system is likely outdated, we recommend that the commission review it to assist them in developing this needs definition.
- Purchase and install "canned" software. There is very inexpensive software on the market that should meet the commission's needs. APUC already has a programmer on staff that could handle the installation.
- The ongoing cost to record time would be insignificant. An employee would need only a few minutes a day to electronically enter their time.
- The time system would also require a small amount of computer and personnel time to accumulate the data and generate periodic management reports.

The benefits of a timekeeping system are substantial.

- A time system would give APUC management a greater ability to prioritize, plan, schedule, and monitor their workload. We believe this information would be invaluable to the commission.
- The legislature is often involved in regulatory matters. Using these management reports, APUC would be better able to estimate the full effect of any regulatory changes.
- There is a potential for increased staff efficiency as a result of time sheet accountability.
- Time sheets would provide a defensible basis for the RCC allocation discussed in Recommendation No. 1. However, regardless of the action taken on Recommendation No. 1, the benefits of implementing a timekeeping system far outweigh the costs.

The nature of the commission's business is very different from most state agencies; they deal with a relatively small number of companies and work on discrete projects. APUC's workload is similar to that in the Attorney General's Office and the Department of Transportation and Public Facilities' maintenance and construction divisions, all of which maintain project time systems.

Recommendation No. 4

APUC should consider how to best ensure commission member access to adequate staff support and advice.

The commission members are inundated with technical information and complex issues. These issues must be thoroughly explored and the commission's decisions must be fully documented. The legislature recognized this difficult task and appropriately established full-time commission members with six-year terms. Nevertheless, there remains a substantial need for staff support and professional advice.

We are concerned that in the instances when commission staff are named as a party in an adjudicatory proceeding, the commission members do not have full access to support staff, professional staff, or legal counsel. The judicial model requires adversarial parties to present the case. APUC staff is frequently designated as a party to a case to provide this necessary balance. The assistant attorney generals advise APUC staff and effectively become a party to the case. Under this judicial model, ex parte communication rules prevent the commission members from directly obtaining assistance or advice from their staff or attorneys; this can only be accomplished if the utility is also present. This may often be impractical.

We believe that the commission would benefit from greater access to their staff and attorneys. The commission should consider how to best ensure full access. We offer the following alternatives:

- A group could be assigned, on a rotational basis, to each case. These individuals would be the party to the case; all others would be available to the commission members.
- Several staff could be assigned, on a rotational basis, directly to the commission. The criteria for selection may vary. The team could include all the professional disciplines, it could target the disciplines currently needed, or it could be a team of executive assistants. The remaining staff would be the party of record.

Although the above approaches have certain drawbacks, we believe that some separation would be achieved thus diminishing the ex parte communication problem. We believe this will enhance the commission's overall efficiency and effectiveness.

Recommendation No. 5

The APUC member's terms of office should be staggered.

The Alaska Public Utilities Commission has five members who are appointed by the governor and confirmed by the legislature in joint session to serve six-year terms. On October 31, 1993 two commission seats become available. Because the potential for

disruption of commission activity would be high with two new members coming in at the same time, we recommend the terms be staggered.

Currently, the terms are scheduled to end as follows:

| | |
|-------------------------|------------------|
| Consumer seat (1) | October 31, 1993 |
| Engineering seat | October 31, 1993 |
| Legal seat | October 31, 1994 |
| Consumer seat (2) | October 31, 1996 |
| Finance seat | October 31, 1998 |

We propose this staggering be implemented by modifying the upcoming term of the engineering seat. We propose the following language be added to a temporary or special act:

The term of the Alaska Public Utilities Commission Engineering seat, which is scheduled to begin on November 1, 1993, shall end on October 31, 1995. This adjustment to the normal six-year term, as established under AS 42.05.030(a), is necessary to appropriately stagger commission membership.

Chairman Schröer's Remarks to the
Senate Labor & Commerce Committee Hearing
Juneau, Alaska, Tuesday, February 8, 1994 1:30 p.m.

Sunset Hearing Testimony

Introduction

I welcome the opportunity to speak to you as you mark up Sunset Legislation for our agency. The Commission supports SB 213 and has recommended several amendments to it.

I. General Commission Overview

The APUC is responsible for regulating Alaska's public utilities and pipeline carriers. Our mission statement says:

The Alaska Public Utilities Commission protects and promotes the public interest by certificating and economically regulating only qualified public utilities and pipeline carriers. It oversees the availability, affordability and quality of the utility services which are essential to Alaska's economic development.

It does this by making timely decisions that balance the competing interests of various parties.

The APUC issues certificates of public convenience & necessity to utility service providers and pipeline carriers who are fit, willing and able to provide service. We approve the rates, terms and conditions of service to the public. The Commission also does the rate-setting for the power cost equalization program, which helps out to cover a portion of the bill for high-cost electrical service to almost 69,000 customers.

The Commission consists of five members, each appointed by the Governor for a six-year term. We have a budget of \$3.6 million and a staff of 36. I am proud of the work of the Alaska Public

Page 2 of this testimony is unavailable

Utilities Commission.

II. Legislative Recommendations

A. Regulatory Cost Charge

The regulatory cost charge should be made permanent, rather than simply extending the repeal date by four years. I believe that this funding source is with us to stay. If problems occur in the future, the Commission sunset review is adequate to address them. If the Commission were zeroed out of the budget, the authority and the agency responsible to impose an RCC would both disappear.

Utilities have expressed concern about the possibility of overcollection of RCC beyond the amount of the Commission's. Currently the statute directs the Commission to change the rate as required to avoid overcollection. The problem is one of timing: by the time the fiscal year's results are known it is too late to adjust the rate. If the fourth quarter payment is split and only that amount required to balance the budget is applied to the fiscal year, the balance would apply to the subsequent fiscal year. The Commission would be required to reduce the RCC rate to take this balance into account.

The Commission has proposed language to ensure that overcollection of RCC and lapsing into the general fund does not happen. Section 52 of the Operating Budget will ensure that no RCC funds collected this fiscal year lapse into the general fund. I recommend similar permanent language in AS 42.05.253 and 42.06.285.

B. Power Cost Equalization

Traditionally the Commission has been responsible for setting the electric rates for PCE-eligible utilities. SB 106, the intertie bill, transferred the power cost equalization responsibilities formerly handled by the Alaska Energy Authority to the Dept. of Community & Regional Affairs. However, through a drafting error some references to the "Commission" were inadvertently changed to "department" (DCRA). The bill as passed transferred the PCE calculations to DCRA, but this was not the legislative intent. A revisor's bill has been prepared to correct this error. Meanwhile, the Commission will continue to carry out its assigned responsibilities under this program.

C. Cable Television Regulation

The Commission has received authority from the Federal Communications Commission to regulate the basic tier of cable utilities currently regulated by the Commission under state law. This would apply only the BC Cable Company in Juneau at this time. The City & Borough of Juneau has expressed interest in regulating cable companies, but state law does not allow this at this time. A change in statutes would be needed to allow local governments to regulate Cable TV.

D. Pipeline Legislative Recommendations

This is described in the annual report. In the interest of time I will not restate it.

E. Commission procurement of expert witnesses

The Commission recommends adding an exemption to the Procurement Act, 36.30.850 to allow it to hire its expert witnesses for cases in a timely manner.

The Commission has been unable to procure the professional services of expert witnesses in a timely fashion. The deadlines established in proceedings do not permit the procurement process to operate to produce a successful bidder in time for the contractor to properly prepare the case. Other parties to the proceedings utilizing private sector procurement procedures are able to hire their expert witnesses on a timely basis, the Commission is not. This either delays the processing of cases, or forces the Commission's witness to rush the preparation of a case, thus affecting the accuracy and credibility of the work, as well as costing the state more for overtime.

Next I would like to respond to each of the legislative changes suggested by the ARECA.

(1) **Liberalily Construed:** The phrase "liberalily construed" appears only once in AS 42.05. It is found in section 141, our powers & duties section:

SECTION 42.05.141. GENERAL POWERS AND DUTIES OF THE COMMISSION. (a) The Alaska Public Utilities Commission

may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;...

In HEA vs. City of Kenai the Supreme Court said:

In sum, we have construed AS 42.05.141(a)(1) to mean that the actual areas in which the APUC may exercise its adjudicatory authority are quite narrow. Within those narrow areas, however, the APUC's powers to adjudicate are plenary, as broad as the specific provisions of the act permit....

This provision presents two guiding principles for determining the extent of the APUC's jurisdiction under specific provisions of the Act. On the one hand, it includes a principle of limitation, restricting the APUC's power to the specific jurisdictional areas of its "stated purposes." On the other hand, it includes a principle of expansion, mandating that the APUC's power to act within its specific areas of jurisdiction "is to be liberally construed."

The Alaska Supreme Court has dealt with this provision eight times. In four of those cases the Court found the Commission lacked authority. (over Yellow page ads, borough regulation of rights-of-way, attorney cost allocation, and to refuse a rate increase required by bond covenant).

In another (Colville) Environmental Services vs North Slope Borough the Court concluded that the Commission's action "fell squarely within the adjudicatory authority granted the Commission by AS 42.05.271."

In these cases half the time utilities have used the "liberally

construed" as part of their own legal arguments and the courts have ruled in their favor about half the time.

The way I read it, this language does not confer upon the APUC any jurisdiction outside of its powers listed in the statute. If the APUC were a country, would do nothing to expand our borders. Instead, it operates only within the statutory powers granted. I do not support deletion of this provision.

The Commission has only discussed the issue of "liberally construed" nine times in all the orders we issued during our first 25 years on the job! In at least three of these cases the Commission acted to allow the intention of the utility or applicant for a certificate to be accomplished by waiving technical irregularities. In another the Commission found that it did not have statutory authority to recognize a doctrine of "retained rights" requested by a telephone utility requested under statute, despite "liberally construed".

(2) The second issue is Negotiated rulemaking. I think this is an interesting idea from the federal government that bears close examination. However, under the Constitution it cannot mean delegation of the rulemaking powers of the Commission to another body. The negotiating group must be treated as a state agency for purposes of the open meetings and public records acts. The process of developing regulations is terribly slow already, and I would not like to see it slowed further.

Also, it seems that this technique would work best with highly controversial issues. Many of the Commission's recent regulations have resulted from legislative mandates. This is true of simplified ratemaking, TRS (telephone service to the deaf Community), Intrastate phone service, and the regulatory cost charge. It is not clear to me how these regulatory proceedings would have benefitted from negotiated rulemaking. If this becomes an issue much more research will be necessary.

(3) Lower RCC rates for Electric Utilities:

The Commission responded to the Legislative Audit On March 1, 1993

Recommendation No. 1, in the Sunset Audit stated; Alaska Statute 42.05.253 should be amended to require APUC to periodically adjust the regulatory cost charge (RCC) on an industry by industry basis. Further, the automatic repeal date of this statute should be deleted.

The Commission agrees that the program should be made permanent by deleting the automatic repeal date for the Regulatory Cost Charge Program (RCC). Last year the legislature switched the funding source for the Commission from general funds to this regulatory assessment. The Commission expended significant resources in developing regulations and procedures to make the program work and to make compliance by affected

entities as straightforward as possible. The program is in place and running smoothly.

However, the Commission cannot support the recommendation to require itemization of the rates under the RCC program by utility/pipeline carrier type. Although in theory the recommendation has some merit, it is not at all clear to the Commission that it would be either practical or cost-effective to attempt to implement at this time.

Individual RCC rates would require full and direct allocation of the Commission's costs. The recommendation, if implemented as drafted, would substantially increase the cost of the RCC program. Full cost allocation would be expensive, especially during the year when it was implemented. A permanent increment to the Commission's budget would be required. The Commission would face a new administrative burden of setting individual RCC rates and handling protests to the rates.

One of the key principles guiding the development of the RCC was simplicity. This was true both for the utilities and carriers, their customers, as well for the efficient administration of the program. The Commission has been able to absorb the ongoing costs of the RCC program from its existing budget, because the program has been kept

simple and workable. The auditors' recommendation for further refinement of the RCC would require the statutory cap of .61% of adjusted gross revenues (AS 42.05.253(a)) to be substantially increased. Based on their estimates by utility type for purposes of discussion, the current authorized budget for the Commission would require increasing the cap to .85% for certain utility groups, at a minimum.

From the perspective of most utility customers facing a regulatory cost charge bill of less than \$20 per year, different rates for different utility types would not have a measurable effect on their total bill.

III. A.P.U.C.'s Response to the Recommendations of the Legislative Auditor

The Alaska Public Utilities Commission concurs with the legislative auditor's finding that the Commission is meeting its public purpose and supports extension of the sunset date at least four years.

A. Regulatory Cost Charge

The Commission opposes required readjustment of the RCC on an industry by industry basis. Keep it small. Keep it simple. And keep it uniform. The administrative expense of making this change would far exceed any value of individualization of rates.

As I stated in our response to the Legislative Audit recommendation:

From the perspective of most utility customers facing an RCC bill of less than \$20 per year, different rates for different utility types would not have a measurable effect on their total bill.

B .Easier Access for Utility Consumers to Opt In or Out of Regulations

I support increasing the cutoff from \$325,000 to either \$500,000 or \$1,000,000 for economically regulated electric utilities to be eligible to vote for deregulation. This 1 million dollar ceiling would mean that nine more electric utilities would be able to hold deregulation elections. Also one additional local telephone companies would qualify under this standard.

C. Timekeeping System

The Commission agrees that this recommendation is worthwhile to pursue. If accomplished for internal management purposes, the system could be designed relatively economically. However, if the system is required to serve as the basis for billings, such as those recommended in the auditors' first recommendation, it would be considerably more costly. In either case a fiscal note would be required to carry out this recommendation.

D. Commissioner's Access to Adequate Staff Support

I am proposing to beef up the staff support available to

Commissioners on regulatory policy issues. When Commission Staff is named as a party to a proceeding, the judicial ex parte rule prevent Commissioners from seeking their advice or research, except as formally presented in the case on the record. Specifically we are proposing to upgrade one position and create one new slot to serve as Commissioners' Policy Analysts. Details of this proposal will appear in the Commission's FY 95 budget request.

E. Stagger Commissioner's Terms

The Commission supported this one, but a statutory change would be needed to correct this time. Two Commissioners terms expired last year and the terms of the new appointees are scheduled to expire on the same day in 1999.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 8, 1994

SUBJECT: Federal and state regulation of cable television (CSSB 213 (JUD))

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked for an explanation of the interplay of state and federal rate regulation of cable television permitted under federal law.

Federal law concerning regulation of cable television is found at 47 U.S.C. §§521 - 559. Section 543, a copy of which is enclosed, addresses rate regulation. Definitions for the terms used are found at 47 U.S.C. §522, a copy of which is also enclosed.

Municipally owned cable systems. Under 47 U.S.C. §543(a)(1), if a cable system is owned or operated by a local government or franchising authority and is the only system within the jurisdiction, it is not subject to regulation at the federal or state level or by a franchising authority.¹

Systems subject to effective competition. Under 47 U.S.C. §543(a)(2), if a cable system is subject to effective competition, it is not subject to rate regulation at the federal, state, or local level. Subsection (1)(1) defines "effective competition" to mean that (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; or (B) the area is served by at least two distributors offering comparable video programming to at least half the households and the number of households subscribing to the distributors other than the largest distributor exceeds 15 percent of the households; or (C) a distributor operated by a franchising authority for that area offers video programming to at least half the households.

Systems not subject to effective competition. Under 47 U.S.C. §543(a)(2), if the Federal Communications Commission (FCC) finds that a cable system is not subject to effective competition, the rates for basic cable service² are subject to regulation

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by a franchising authority and the rates for cable programming services³ are subject to regulation by the FCC. However, the FCC can regulate basic cable service in place of a franchising authority if the FCC finds, under paragraph (a)(6), that the franchising authority has not properly requested authority to regulate rates or has acted inconsistently with the requirements of rate regulation.

Qualification of franchising authority. Under 47 U.S.C. §543(a)(3), a franchising authority that intends to regulate cable system rates must file with the FCC a written certification that the franchising authority (A) will adopt and administer regulations consistent with the FCC regulations; and (B) has legal authority to adopt the regulations and the personnel to administer them; and (C) will provide an opportunity for consideration of the views of interested parties in the procedural laws and regulations that apply to rate regulation. The certification is effective 30 days after filing unless the FCC finds that one or more of the criteria to which the franchising authority certified is not met. If the FCC disapproves the certification, it must notify the franchising authority of revisions or modifications that are necessary to obtain the FCC's approval. 47 U.S.C. §(a)(4).

FCC revocation of jurisdiction. Under 47 U.S.C. §543(a)(5), a cable operator or other interested party may petition the FCC to review the regulation of cable system rates by a franchising authority. The FCC must revoke the ability of a franchising authority to regulate cable system rates if it finds that state and local laws and regulations do not conform to the regulations required by the FCC under subsection (b). The FCC may grant appropriate relief if it finds that the franchising authority has acted inconsistently with the requirements of subsection (a).

Establishment of basic service tier rate regulations and regulation of unreasonable rates. The FCC is directed, under 47 U.S.C. §543(b), to adopt regulations to ensure that rates for the basic service tier are reasonable. The subsection sets out particulars that the FCC regulations must address.

Under subsection (c), the FCC must establish criteria for identifying unreasonable rates for cable programming services and procedures for resolving complaints from subscribers, franchising authorities, and other state or local governmental entities alleging that a rate for cable programming services charged by a cable operator is unreasonable.

This is a brief overview of the interplay of federal and state regulation of cable system rates. Please let me know if you have additional questions on this subject.

TC:pl
94-294.plm

Enclosure

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1. Under 47 U.S.C. §522(10), "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise. A franchise, defined in paragraph (9), is an authorization to construct or operate a cable system.
2. "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals. 47 U.S.C. §522(3). Under paragraph (16), a "service tier" is a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
3. "Cable programming services" is defined at 47 U.S.C. §543(1)(2) to mean video programming provided over a cable system other than (A) video programming carried on the basic service tier and (B) video programming offered on a per channel or per program basis.

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of basic cable service by hearing impaired individuals.

(g) Any State law in existence on the effective date of this title which provides for any limitation or preemption of regulation by any franchising authority (or the State or any political subdivision or agency thereof) of rates for cable service shall remain in effect during the 2-year period beginning on such effective date, to the extent such law provides for such limitation or preemption. As used in this section, the term "State" has the meaning given it in section 3(v) [47 USCS § 153(v)].

(h) Not later than 6 years after the date of the enactment of this title [enacted Oct. 30, 1984], the Commission shall prepare and submit to the Congress a report regarding rate regulation of cable services, including such legislative recommendations as the Commission considers appropriate. Such report and recommendations shall be based on a study of such regulation which the Commission shall conduct regarding the effect of competition in the marketplace.

(June 19, 1934, ch 652, Title VI, Part III, § 623, as added Oct. 30, 1984, P. L. 98-549, § 2 in part, 98 Stat. 2788.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The effective date of this title" and "such effective date", referred to in this section, is the effective date of § 2 of Act Oct. 30, 1984, P. L. 98-549, 98 Stat. 2780, which added 47 USCS §§ 521 et seq., and which became effective 60 days after enactment on Oct. 30, 1984, as provided by § 9(a) of such Act, which appears as 47 USCS § 521 note.

Prospective amendments:

April, 1993, prospective amendment of section. Act Oct. 5, 1992, P. L. 102-385, § 3(a), 106 Stat. 1464 (effective 180 days from enactment, except that the authority to prescribe regulations is effective on the date of enactment, as provided by § 3(b) of such Act, which appears as a note to this section), provides: "Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

" § 623. Regulation of rates

" (a) Competition preference; local and Federal regulation. (1) In general. No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612 [47 USCS § 532]. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

" (2) Preference for competition. If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

" (a) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

" (b) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

" (3) Qualification of franchising authority. A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

" (a) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

" (b) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

" (c) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

" (4) Approval by Commission. A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

" (A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

" (B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

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"If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

"(5) Revocation of jurisdiction. Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

"(6) Exercise of jurisdiction by Commission. If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

"(b) Establishment of basic service tier rate regulations. (1) Commission obligation to subscribers. The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

"(2) Commission regulations. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 [enacted Oct. 5, 1992], the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

"(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

"(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

"(C) shall take into account the following factors:

"(i) the rates for cable systems, if any, that are subject to effective competition;

"(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

"(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

"(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

"(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

"(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

"(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

"(3) Equipment. The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

"(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

"(B) installation and monthly use of connections for additional television receivers.

"(4) Costs of franchise requirements. The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(5) Implementation and enforcement. The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

"(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

"(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

"(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

"(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

"(6) Notice. The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

"(7) Components of basic tier subject to rate regulation.

"(A) Minimum contents. Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615 [47 USCS §§ 534, 535].

"(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

"(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

"(B) Permitted additions to basic tier. A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

"(8) Buy-through of other tiers prohibited. (A) Prohibition. A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

"(B) Exception; limitation. The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

"(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

"(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 [enacted Oct. 5, 1992], subject to subparagraph (C).

"(C) Waiver. If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

"(c) Regulation of unreasonable rates. (1) Commission regulations. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 [enacted Oct. 5, 1992], the Commission shall, by regulation, establish the following:

"(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

"(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

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- "(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable.
- "(2) Factors to be considered. In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—
- "(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;
- "(B) the rates for cable systems, if any, that are subject to effective competition;
- "(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;
- "(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;
- "(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and
- "(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.
- "(3) Limitation on complaints concerning existing rates. Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.
- "(d) Uniform rate structure required. A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.
- "(e) Discrimination; services for the hearing impaired. Nothing in this title [47 USCS §§ 521 et seq.] shall be construed as prohibiting any Federal agency, State, or a franchising authority from—
- "(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or
- "(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.
- "(f) Negative option billing prohibited. A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.
- "(g) Collection of information. The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 [enacted Oct. 5, 1992] and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.
- "(h) Prevention of evasions. Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 [enacted Oct. 5, 1992], the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.
- "(i) Small system burdens. In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.
- "(j) Rate regulation agreements. During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.
- "(k) Reports on average prices. The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—
- "(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with
- "(2) cable systems that the Commission has found are not subject to such effective competition.

"(l) Definitions. As used in this section—

"(1) The term 'effective competition' means that—

"(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

"(B) the franchise area is—

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

"(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

"(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis."

Effective date of section:

Act Oct. 30, 1984, P. L. 98-549, § 9(a), 98 Stat. 2806, which appears as 47 USCS § 521 note, provides that this section shall be effective 60 days after enactment on Oct. 30, 1984.

Other provisions:

Application of this section and 47 USCS § 544. Act Oct. 30, 1984, P. L. 98-549, Title VII, § 9(b), 98 Stat. 2806, provides: "Nothing in section 623 or 624 of the Communications Act of 1934 [this section and 47 USCS §§ 544] as added by this Act, shall be construed to allow a franchising authority, or a State or any political subdivision of a State, to require a cable operator to restore, retier, or reprice any cable service which was lawfully eliminated, retiered, or repriced as of September 26, 1984."

Effective date of 1992 amendment. Act Oct. 5, 1992, P. L. 102-385, § 3(b), provides: "The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment."

RESEARCH GUIDE

Law Review Articles:

Wadlow and Wellstein, *The Changing Regulatory Terrain of Cable Television*. 35 Cath U L Rev 705, Spring, 1986.

Hammond IV, *To Be or Not To Be: FCC Regulation of Video Subscription Technologies*. 35 Cath U L Rev 737, Spring, 1986.

INTERPRETIVE NOTES AND DECISIONS

In establishing pass-through rule allowing cable systems to automatically pass through rate increases attributable to provision of basic service, Federal Communications Commission exceeded authority granted to it under § 623 of Cable Communications Policy Act of 1984 (47 USCS § 543). *American Civil Liberties Union v FCC* (1987, App DC) 823 F2d 1554.

47 USCS § 543(a) does not pre-empt substantive power of state department of public utilities control to prohibit cable operator from charging contributions in aid of construction to residents of sparse areas, since such contributions are not rate for provision of cable service within meaning of § 543(a). *Housatonic Cable Vision Co. v Department of Public Utility Control* (1985, DC Conn) 622 F Supp 798.

Cable Communications Act of 1984 (47 USCS §§ 521 et seq.) preempts threatened action by town, as franchising authority, to "freeze" cable company's rates following notice of intention to raise rates, because (1) Act was clearly intended by Congress to prevent piecemeal local regulation of cable industry, (2) "freeze" constitutes regulation within meaning of statute and regulations, and (3) company did not waive statutory right to raise rates. *Nashoba Communications Ltd. Partnership No. 7 v Danvers* (1988, DC Mass) 703 F Supp 161.

amd, reconsideration den (DC Mass) 1989 US Dist LEXIS 3150.

§ 544. Regulation of services, facilities, and equipment

(a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title [47 USCS §§ 521 et seq.].

(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system—

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626 [47 USCS § 546]), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h), establish requirements for video programming or other information services; and

Purposes and thrust of Cable Communications Policy Act of 1984 (47 USCS §§ 521 et seq.) evinced congressional desire that franchise agreements be applied and modified so as to obtain realistic and flexible regulatory framework recognizing needs of both local governments and cable operators, but were primarily concerned with providing viable cable systems responsive to needs and interests of local communities they serve. *Tribune-United Cable of Montgomery County v Montgomery County* (1986, CA4 Md) 784 F2d 1227.

Cable Communications Policy Act (47 USCS §§ 521-559) was not intended to terminate Federal Communications Commission's policy of preempting local cable franchisors from enacting technical rules, except where Act explicitly or implicitly modifies provisions of policy. *New York v FCC* (1987, App DC) 814 F2d 720, 13 Media L R 2320.

State cable television programming decency act, which gives certain state officials authority to bring nuisance actions against anyone who continuously and knowingly distributes "indecent" material within state over any cable television system or pay-for-viewing television programming, has been preempted by Cable Communications Policy Act of 1984 (47 USCS §§ 521 et seq.), since state act is unconstitutionally overbroad and vague, and void on its face. *Community Television of Utah, Inc. v Wilkinson* (1985, DC Utah) 611 F Supp 1099, 11 Media L R 2217.

Action by town, as franchisor of cable television firm, seeking relief from cable television rate in-

crease did not arise under Cable Communications Policy Act of 1984 (47 USCS §§ 521 et seq.) and therefore did not come within original jurisdiction of Federal District Court; Act contains no language which either creates or expressly denies any cause of action to enforce cable television licensing agreement. *Norwood v Adams-Russell Co.* (1986, DC Mass) 627 F Supp 742.

Cable television operator does not have private right of action under Cable Communications Policy Act to seek to enjoin rival cable system which is unfranchised from constructing and operating cable TV service to apartment complex which is currently serviced by plaintiff. *Rollins Cablevue, Inc. v Sainni Enterprises* (1986, DC Del) 633 F Supp 1315.

Court is without jurisdiction over action seeking declaration that Communications Act of 1934 (47 USCS §§ 521 et seq.) preempts municipality's regulation of cable television rates, because preemption argument is only possible defense in earlier state action by municipality seeking to enforce ordinance and federal question must appear on face of well-pleaded complaint rather than by way of federal defense. *Cablevision of Boston Ltd. Partnership v Flynn* (1989, DC Mass) 710 F Supp 23.

General Accounting Office will not consider under its bid protest jurisdiction, allegations that agency has not complied with renewal provisions of Cable Communications Policy Act of 1984 (47 USCS §§ 521 et seq.) as Act expressly provides for judicial resolution of such disputes. (1986) 65 Op Compt Gen p 313.

§ 522. Definitions

For purposes of this title [47 USCS §§ 521 et seq.]—

- (1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;
- (2) the term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;
- (3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;
- (4) the term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);
- (5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;
- (6) the term "cable service" means—
 - (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and
 - (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service;
- (7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a

facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act [47 USCS §§ 201 et seq.], except that such facility shall be considered a cable system (other than for purposes of section 621(c)) [47 USCS § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems;

(8) the term "Federal agency" means any agency of the United States, including the Commission;

(9) the term "franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 [47 USCS § 546]), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(13) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(14) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(15) the term "public, educational, or governmental access facilities" means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(16) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(17) the term "State" means any State, or political subdivision, or agency thereof;

(18) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(19) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(June 19, 1934, ch 652, Title VI, Part I, § 602, as added Oct. 30, 1984, P. L. 98-549, § 2 in part, 98 Stat. 2780; Oct. 5, 1992, P. L. 102-385, § 2(c), 106 Stat. 1463.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior § 602 of Act June 19, 1934, ch 652, Title VI, was redesignated as § 702 of such Act by Act Oct. 30, 1984, P. L. 98-549, § 6(a), 98 Stat. 2804, and appears as 47 USCS § 602.

Effective date of section:

Act Oct. 30, 1984, P. L. 98-549, § 9(a), 98 Stat. 2806, which appears as 47 USCS § 521 note, provides that this section shall be effective 60 days after enactment on Oct. 30, 1984.

Amendments:

1992. Act Oct. 5, 1992 (effective 60 days from the date of enactment, as provided by § 28 of such Act, which appears as 47 USCS § 325 note), redesignated paras. (1)–(10) as paras. (2)–(11), respectively, redesignated paras. (11)–(15) as paras. (13)–(17), respectively, and redesignated para. (16) as para. (19), in para. (17) as redesignated, deleted "and" following the concluding semicolon, and added new paras. (1), (12), and (18).

INTERPRETIVE NOTES AND DECISIONS

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ARECA Resolution 94-3-2

APUC Extension

Whereas, the Alaska Public Utilities Commission provides a necessary and useful service;
and

Whereas, some problems have historically existed regarding the functioning of that
Commission;

Therefore Be It Resolved: ARECA supports CS SB 215 (L&C Work Draft) extending
the life of the APUC until 1998; however we request that it be amended (1) to provide
that all power costs be excluded from the formula for calculating the regulatory cost
charge, and (2) that the directive be removed from that statute that these laws be "liberally
construed."

RESOLUTION

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bur. Version: SB 213
(S) Publish Date: 3-16-94

Revision Date: 2/4/93
Title: Extending the Alaska Public Utilities Commission and the regulatory cost charge
Sponsor: Senator Keily
Requestor: Senate Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Alaska Public Utilities Commission
Component: _____

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

| OPERATING EXPENDITURES | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
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| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
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FUND SOURCE

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| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
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Estimate of current year (FY 94) cost: \$ 0

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| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

Changes in SSB 213 (L+C) have no fiscal impact. This fiscal note is appropriate.
3/15/94 date LOK Comptroller (initial)

Prepared by: Bob Lohr, Executive Director
Division: Alaska Public Utilities Commission

Phone: 276-6222
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 2-7-94

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(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) [Repealed, § 12 ch 136 SLA 1980.] (§ 6 ch 113 SLA 1970; am § 1 ch 76 SLA 1973; am § 12 ch 136 SLA 1980; am §§ 15, 16 ch 168 SLA 1990)

Effect of amendments. — The 1990 amendment, effective June 22, 1990, deleted "after January 1, 1971" following "commodity or service" in the first sen-

tence in subsection (e).
... made a series of minor stylistic changes in subsection (e).

NOTES TO DECISIONS

Quoted in Homer Elec. Ass'n v. City of Kenai, 816 P.2d 182 (Alaska 1991).

42.05.253 - PUBLIC UTILITY RC
42.06.285 - PIPELINE CARRIER RC
42.06.400 - SUSPENSION OF TARIFF FILING

Sec. 42.05.251. Use of streets in municipalities.

NOTES TO DECISIONS

Jurisdiction over disputes over municipal restrictions on utilities. — The commission has jurisdiction pursuant to this section to adjudicate a dispute over the reasonableness of fees, terms and con-

ditions imposed by a municipality on the use of its rights-of-way by a utility. Homer Elec. Ass'n v. City of Kenai, 816 P.2d 182 (Alaska 1991).

Sec. 42.05.253. Public utility regulatory cost charge. (a) A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed .61 percent of gross revenue derived from operations in the state, as modified under (c) of this section if appropriate. An exempt utility shall pay the actual cost of services provided to it by the commission.

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge for a public utility. If the amount the commission expects to collect under (a) of this section and under AS 42.06.285(a) exceeds the authorized budget of the commission, the commission shall, by order, reduce the percentages set out in (a) of this section so that the total amount of the fees collected approximately equals the authorized budget of the commission for the fiscal year.

(c) In determining the amount of the regulatory cost charge imposed under (a) of this section,

(1) a utility selling utility services at wholesale shall modify its gross revenue by deducting payments it receives for wholesale sales;

(2) a local exchange telephone utility shall modify its gross revenue by deducting payments received from other carriers for settlements or access charges.

(d) The commission shall calculate the total regulatory cost charges to be levied against all regulated electric utilities under this section. The commission shall allocate the total amount among the regulated electric utilities by using an equal charge per kilowatt hour sold at retail.

(e) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section.

(f) The commission shall allow a public utility to recover all payments made to the commission under this section. The commission may not require a public utility to file a rate case in order to be eligible to recover the regulatory cost charge.

(g) The commission may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments.

(h) In this section,

(1) "exempt utility" means a public utility that is certificated by the commission under AS 42.05.221 — 42.05.281 but, in accordance with AS 42.05.711, is exempt from other regulatory requirements of this chapter;

(2) "gross revenue" means the total operating revenue from intrastate services, as shown in a utility's annual report required by the commission by regulation;

(3) "regulated utility" means a public utility that is certificated by the commission under AS 42.05.221 — 42.05.281 and that is subject to the other regulatory requirements of this chapter;

(4) "wholesale sales" means sales to another utility for resale under circumstances that make revenue from the resale subject to the regulatory cost charge imposed under this section. (§ 20 ch 2 FSSLA 1992)

Delayed repeal of section. — Under § 36, ch. 2, FSSLA 1992, this section is repealed July 1, 1994.

Effective dates. — Section 40, ch. 2, FSSLA 1992 makes this section effective July 1, 1992.

Sec. 42.05.271. Modification, suspension or revocation of certificates.

NOTES TO DECISIONS

Deletion of condition from company's certificate authorized. — Order of the Alaska Public Utilities Commission which deleted a condition from company's certificate which barred company from of-

fering day-to-day collection services when such services were provided by a borough fell squarely within the adjudicatory authority granted the commission by this section. *Colville Envtl. Servs., Inc. v.*

Article 2. Certificate of Public Convenience and Necessity.

Section

285. Pipeline carrier regulatory cost charge

Sec. 42.06.245. Federally regulated carriers.

NOTES TO DECISIONS

Power to regulate intrastate rates. — Although the legislature recognized that federal regulators had jurisdiction over interstate commerce, the legislature intended to grant the Alaska Public Utili-

ties Commission full power to regulate intrastate rates. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n, Sup. Ct. Op. No. 3851 (File No. S-4144), P.2d (1992).*

Sec. 42.06.285. Pipeline carrier regulatory cost charge. (a) A pipeline carrier operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed .61 percent of gross revenue derived from operations in the state. A regulatory cost charge may not be assessed on pipeline carrier operations unless the operations are within the jurisdiction of the commission.

(b) The commission shall by regulation establish a method to determine annually the amount of the regulatory cost charge. If the amount the commission expects to collect under (a) of this section and under AS 42.05.253(a) exceeds the authorized budget of the commission, the commission shall, by order, reduce the percentage set out in (a) of this section so that the total amount of the fees collected approximately equals the authorized budget of the commission for the fiscal year.

(c) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section.

(d) The commission may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this section, including requirements and procedures for reporting information and making quarterly payments. The Department of Revenue may adopt regulations under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed information, and for collecting required payments.

(e) In this section, "gross revenue" means the total intrastate operating revenue as shown in a pipeline carrier's annual report required by the commission by regulation. (§ 24 ch 2 FSSLA 1992)

Delayed repeal of section. — Under § 36, ch. 2, FSSLA 1992, this section is repealed July 1, 1994.

Effective dates. — Section 40, ch. 2, FSSLA 1992 makes this section effective July 1, 1992.

(b) A pipeline carrier may not establish or place in effect any revised rates, charges, rules, regulations, conditions of service or practices except after 30 days' notice to the commission and to the public. Notice shall be given by filing with the commission and keeping open for public inspection any revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission may prescribe additional means of giving notice. The commission, for good cause shown, may allow changes to take effect on less than 30 days' notice under conditions the commission prescribes by order.

(c) Initial and revised tariffs shall be filed in the manner provided in AS 42.06.250. (§ 1 ch 139 SLA 1972; am § 1 ch 35 SLA 1977)

Collateral references. — Use of in-line rate as basis for initial price determination on issuance of certificate of public convenience and necessity under § 7 of

Natural Gas Act (15 USC § 717), where area rate has been established, 43 ALR Fed. 803.

Sec. 42.06.400. Suspension of tariff filing. (a) When a tariff filing is made containing an initial or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending a hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for an initial period not longer than six months beyond the time when it would otherwise go into effect. If good cause is shown, the commission may suspend the operation of the tariff filing for an additional period not to exceed one year following the end of the initial suspension period. If information on which to base a just and reasonable tariff is lacking or incomplete at the close of the second suspension period, the commission may, during the suspension period and for good cause shown, with or without a hearing, order a further suspension and in such instance shall order the filed rate to be collected, subject to refund of the difference between the filed rate and the final rate, until a final rate can be set. The commission may order the difference between the temporary rate established under this section and the filed rate to be placed in escrow or secured by bond pending establishment of the final rate.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying or modifying the suspended tariff in whole or in part. If an initial tariff is suspended, the commission shall establish a reasonable temporary tariff. The commission may allow the collection of the filed initial tariff, or it may require collection of the temporary tariff.

If the commission allows collection of the filed initial tariff, it shall require the pipeline carrier to place the revenue representing the difference between the filed tariff and the temporary tariff in escrow in a financial institution approved by the commission, and keep accurate accounts of all amounts received, specifying by whom and in whose behalf the amounts are paid. At the end or vacation of the suspension period the amount, if any, owing to the pipeline carrier from the difference between the temporary tariff and the permanent tariff shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the persons in whose behalf the amounts were paid into escrow. Funds may not be released from escrow without the commission's prior written consent and instructions to the escrow agent. The commission may allow the pipeline carrier, at the carrier's expense, to substitute a bond or letter of credit in lieu of the escrow requirement. If the commission requires collection of the temporary tariff, it shall require the shipper to place the revenue representing the difference between the filed initial tariff and the temporary tariff in escrow in a financial institution approved by the commission, and require that accurate accounts similar to those specified above in this section be kept by the carrier and the shipper. The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission order allowing or setting a permanent tariff. The amount, if any, by which the permanent tariff exceeds the temporary tariff shall be paid by the shipper to the carrier, or, if the temporary tariff exceeds the permanent tariff, the difference shall be paid by the shipper, and in either event such payment shall be made with interest calculated on the balance due at the end of each calendar month at the legal rate, as defined in AS 45.45.010(a). The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit in place of the escrow requirement.

(c) If a proposed increased rate is suspended, the commission shall establish a reasonable temporary tariff. The temporary tariff may be the same as the tariff the carrier is seeking to revise. The commission may allow the collection of the filed proposed increased rate, or it may require collection of the temporary rate. If the commission allows collection of the filed increased rate, it shall require the pipeline carrier to place the revenue representing the difference between the filed proposed increased rate and the temporary rate in escrow in a financial institution approved by the commission, and keep an accurate account of all amounts received, specifying by whom and on whose behalf the amounts are paid. At the end or vacation of the suspension period the amount, if any, owing to the pipeline carrier from the difference between the temporary rate and the permanent rate shall be paid to the pipeline carrier. The surplus, if any, shall be refunded to the persons on whose behalf the amounts were paid into escrow. Funds may not be released from escrow without the commission's

prior written consent and instructions to the escrow agent. The commission may allow the pipeline carrier, at the carrier's expense, to substitute a bond or letter of credit in place of the escrow requirement. If the commission requires collection of the temporary rate, it shall require the shipper to place the revenue representing the difference between the proposed increased rate and the temporary rate in escrow in a financial institution approved by the commission, and require that accurate accounts similar to those specified above in this subsection be kept by the carrier and the shipper. The person owing shall pay the person owed to the satisfaction of the commission within 30 days after the commission's order allowing or setting a permanent tariff. The commission may allow the shipper, at the shipper's expense, to substitute a bond or letter of credit instead of meeting the escrow requirement.

(d) One who initiates a change in existing tariffs bears the burden of proving the reasonableness of the change. (§ 1 ch 139 SLA 1972; am § 6 ch 35 SLA 1977; am §§ 1, 2 ch 22 SLA 1978; am § 1 ch 2 SLA 1979)

~~42.06.410. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, reserved, charged or collected by a pipeline carrier for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order.~~

~~(b) If an investigation is conducted in multiple phases, the commission may establish a rate at the end of a single phase. The rate established at the end of a single phase is to be considered a final rate under AS 42.06.400. If the rate established at the conclusion of the proceeding under (a) of this section or after judicial review is less than the rate established after a single phase of an investigation, a shipper is entitled to a refund of the difference between the amounts paid by the shipper and the amounts that would have been paid under the rate established at the conclusion of the proceeding or after judicial review. If the rate established at the conclusion of the proceeding under (a) of this section or after judicial review is more than the rate established after a single phase, a pipeline carrier is entitled to a payment of the difference between the amounts paid to the carrier and the amount that would have been paid under the rate established at the conclusion of the proceeding or after judicial review. (§ 1 ch 139 SLA 1972; am § 2 ch 27 SLA 1981)~~

jurisdiction - Error to hold jurisdiction real and lure to far N. (3796).

42.05.651(a)
Expenses of
INVESTIGATION
OR HEARINGS
OF PUBLIC
UTILITIES

Sec. 42.05.641. Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a municipality, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970; am § 18 ch 168 SLA 1990)

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.

NOTES TO DECISIONS

commission as a stated full price, may that public utility (90)

42.06.610(a)
Expenses of
INVESTIGATION
OR HEARINGS OF
A PIPELINE
CARRIER

Applied in Colville Envtl. Servs., Inc. v. North Slope Borough, Sup. Ct. Op. No. 3832 (File No. S-4069), P.2d (1992).

Sec. 42.05.651. Expenses of investigation or hearing. (a) During a hearing or investigation held under this chapter, the commission may allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid by a utility under AS 42.05.253 and may consider the results, ability to pay, evidence of good faith, other relevant factors, and mitigating circumstances. Notwithstanding an intervening party's ability to pay, if the commission determines that an intervening party has conducted its intervention in a frivolous manner, the commission shall allocate all costs associated with the intervention to that party. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

(b) [Repealed, § 28 ch 90 SLA 1991.] (§ 6 ch 113 SLA 1970; am § 63 ch 138 SLA 1986; am § 28 ch 90 SLA 1991; am § 21 ch 2 FSSLA 1992)

Delayed amendment of subsection (a). — Under § 22, ch. 2, FSSLA 1992, effective December 31, 1994, (a) of this section will read: "After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. Notwithstanding an intervening party's ability to pay, if the commission determines that an intervening party has conducted its intervention in a frivolous manner, the commission shall allocate all costs associated

with the intervention to that party. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final."

Effect of amendment. — The 1991 amendment, effective July 3, 1991, repealed subsection (b).

The 1992 amendment, effective July 1, 1992, in subsection (a), substituted "During a hearing" for "After completion of a hearing" and "may" for "shall" in the first sentence, inserted "shall consider the regulatory cost charge paid by a utility under AS 42.05.253 and" in the second sentence, and added the third sentence.

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee set by the commission by regulation that shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970; am § 23 ch 2 FSSLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "a fee set by the commission by regulation that" for "a fee of \$50 which."

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.

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Article 4. Rates and Rate Schedules.

NOTES TO DECISIONS

Rate regulation scheme not unconstitutional taking. — The institution of a rate regulation scheme by the Alaska Public Utilities Commission which resulted in lower tariff revenues for an oil pipeline did not constitute an unconstitutional taking of the pipeline's property where there was no showing that the scheme threatened the pipeline's financial integrity and the argument that the commission took property when it reduced the utilities rate base was without merit, as the pipeline's rate base does not constitute property. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n. Sup. Ct. Op. No. 3851 (File No. S-4144), P.2d (1992).*

Disparity between intrastate and interstate rates not necessarily unjust discrimination. — In the regulation of public utilities a disparity between interstate rates and intrastate rates does not, by itself, equate to unjust discrimination against interstate commerce. Rather, a finding of unjust discrimination must rest on specific findings based on substantial

evidence that demonstrates that the intrastate rates are less than compensatory or insufficient to cover the full cost of service or that they were abnormally low and failed to contribute a fair share of overall revenue. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n. Sup. Ct. Op. No. 3851 (File No. S-4144), P.2d (1992).*

Intrastate rates not governed by Interstate Commerce Act. — Since § 2 of the Interstate Commerce Act, 49 U.S.C. § 2, which prohibits unlawful discrimination by common carriers in the setting of utility rates, does not apply to intrastate rates, § 2 does not require the Alaska public utilities commission to allow the owners of a pipeline to get intrastate rates which match interstate rates. There are other provisions under federal law, not relied upon by the utility, which prohibit intrastate rate discrimination. *Cook Inlet Pipe Line Co. v. Alaska Pub. Utils. Comm'n. Sup. Ct. Op. No. 3851 (File No. S-4144), P.2d (1992).*

Article 7. General Provisions.

Section
600. (Renumbered)
610. Expenses of investigation or hearing

Sec. 42.06.600. (Renumbered as AS 42.06.230(b).)

Sec. 42.06.610. Expenses of investigation or hearing.
(a) During a proceeding held under this chapter, the commission may allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid directly or indirectly under AS 42.06.285. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

(b) After completion of a proceeding held under this chapter, the commission may reallocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The

costs which are reallocated may include the costs of time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to a reallocation to be heard before the reallocation becomes final.

(c) [Repealed, § 28 ch 90 SLA 1991.] (§ 1 ch 139 SLA 1972; am § 3 ch 27 SLA 1981; am § 64 ch 138 SLA 1986; am § 28 ch 90 SLA 1991; am § 25 ch 2 FSSLA 1992)

Delayed amendment of subsection (a). — Under § 26, ch. 2, FSSLA 1992, effective December 31, 1994, (a) of this section will read: "During a proceeding held under this chapter, the commission shall allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or

participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final."

Effect of amendments. — The 1991 amendment, effective July 3, 1991, repealed subsection (c).

The 1992 amendment, effective July 1, 1992, in subsection (a), substituted "may" for "shall" in the first sentence and added the second sentence.

Chapter 30. Miscellaneous Regulations Governing Public Utilities and Carriers.

Article

5. Responsibilities of Air Carriers (§ 42.30.225)

Article 5. Responsibilities of Air Carriers.

Section

225. Certification of compliance of air carriers

Sec. 42.30.225. Certification of compliance of air carriers.

(a) A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the department. The department may issue a certificate of compliance for one aircraft or a fleet of two or more aircraft. The department shall issue or renew a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;
(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) The annual fee for a certificate of compliance for one aircraft and for a fleet of two or more aircraft shall be set by the department by regulation. The certificate is valid for a calendar year. The certificate shall be visible to boarding passengers.

(c) [Repealed, § 11 ch 59 SLA 1987.]

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METHCATHINONE BY L.E. FISHER

DIALOG File #92: 01993 Phnx Newspapers Inc>
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CAT' ATTACK: U.S. EPIDEMIC OF NEW DRUG IS FEARED SIMPLE CONCOCTION SWEEPS N. MICHIGAN

Arizona Republic (AR) - SUNDAY, March 28, 1993
By: Jim Schaefer, Detroit Free Press
Edition: State Section: Valley And State Page: B13
Word Count: 714

TEXT:

MARQUETTE, Mich. - For 2 1/2 years, Vince Swenor sucked the seductive, off-white powder up his nose, and with each power-packed hit, the mysterious drug pulled him in tighter.

Swenor, seeking to spark up his life on Michigan's Upper Peninsula, had tried cocaine before. But this wasn't cocaine. This was something new, something more interesting, something that Swenor created at home with common chemicals, some jars and rubber tubes.

In mid-1990, two friends began making it at Swenor's house, and "like a good cookie recipe," Swenor said, the formula spread around the Marquette area. And it backed a wallop like no other drug that Swenor, 24, had tried.

"I thought it was the greatest thing in the world," said the soft-voiced Swenor, who is unemployed. "I could make it in my own house, never run out. I had it made."

But with frightening speed, the strange powder had Swenor helpless.

He called it by its street nickname, "cat," and by the time he learned what was used to make the drug, Swenor couldn't stop doing it even though he was shocked. Cat is made with battery acid, paint thinner, drain cleaner, muriatic acid, other assorted poisons and over-the-counter drugs.

SCIENTISTS PUZZLED

Police-laboratory scientists had no idea what cat was when it popped up on the Upper Peninsula a couple of years ago.

After police made the first seizure of the drug in early 1991, it took two weeks to identify it. The veteran chemist who finally rooted out cat's scientific name, methcathinone, had never heard of it.

Since police made that first puzzling contact, authorities say cat has blown into an epidemic on the Upper Peninsula, which they call the birthplace of illegal methcathinone in the United States. They still aren't sure why it has taken such hold in the area.

Cat has established a surprising link between the Upper Peninsula and Russia. Michigan authorities say Russia is the only other place in the world where illegal use of the drug has been known.

RECIPE'S SPREAD FEARED

METHCATHINONE BY L.E. FISHER

But cat now is seeping into northern Wisconsin and southern Michigan as police and doctors scramble to squash it on the Upper Peninsula. They fear that the drug may roar across the United States as the recipe spreads.

In January, a task force of federal, state and local police on the Upper Peninsula was formed to tackle the cat problem.

"We believe this is where the core of the problem is," Lt. Steve Herner of the Michigan State Police said recently.

No state law specifically prohibits methcathinone, although its use is a violation of federal law. The Michigan Legislature is considering a bill that would put methcathinone on the state's list of controlled substances.

There are several reasons for the concern that cat will continue its spread: The ingredients can be legally and easily purchased, production is cheap and profit potential high, and the chemical process is so simple that it can be done in the back of a mobile van or truck, making detection by police more difficult.

Very little is known about cat except that it is highly addictive and that there have been frightening effects on users. People have reported seizures, feelings of paranoia, heart palpitations, sleeplessness, hallucinations and an inability to eat, leading to massive weight loss.

One cat addict with an artificial leg and a glass eye lost so many pounds that his leg no longer fit and his eye dropped out when he bent over, police said.

A Russian doctor who is the only cat authority known to Michigan officials recently gave a five-hour lecture in Lansing to law-enforcement officials and doctors.

Methcathinone was patented in Britain in 1957 by a pharmaceutical company that planned to use it as a diet aid and anti-depressant. Plans were scrapped when it was found to be too addictive.

In the 1970s, the formula leaked out in Russia and spread like wildfire, said Dr. William Short, who studies addiction at Marquette General Hospital and who attended the Russian doctor's lecture.

Making cat is a simple process of mixing, washing and heating of the ingredients. The creator is left with a powder that is snorted, eaten, mixed with water, and injected or absorbed through a patch on the skin.

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<DIALOG File 496: (c) 1993 Sacramento Bee>
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POWERFUL NEW DRUG SWEEPING RURAL MIDWEST

Sacramento Bee (SB) - THURSDAY, June 24, 1993

By: Mike Nichols Milwaukee Journal

Edition: METRO FINAL Section: MAIN NEWS Page: A13

Word Count: 497

(cont. next page)

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METHCATHINONE BY L.E. FISHER

TEXT:

MILWAUKEE - Imagine a drug so powerful that one high lasts 20, maybe 25 times as long as the one you'd get from cocaine. And so addictive that people take it for days, even a week at a time, never eating or sleeping.

Then imagine that it's incredibly profitable -- just the kind of drug for which organized gangs would kill. And one more thing: It is almost as easy to make as a cake. Just order the ingredients through the mail, or stop by your local hardware store.

Well, it exists. It's a little-known stimulant is called methcathinone. On the country roads and small-town streets of northern Wisconsin and Michigan where it is most popular, they call it "cat."

Federal authorities have few doubts that cat will soon be making its way to northern Midwest cities. It hasn't already. Because a \$400 or \$500 investment can yield tens of thousands of dollars of profit, the migration seems inevitable.

"It's got all the flavor that the entrepreneurs are looking for," said Kelly Snyder, head of the federal Drug Enforcement Administration in Wisconsin.

The ingredients themselves are almost as common. The key is ephedrine, a drug commonly sold in tablet form and most often ingested by truckers trying to stay awake for the long haul.

One of the few minor impediments is that thousands of the tablets are needed to make just a few ounces of the drug, which is usually snorted. But ephedrine is readily and legally available from distributors through the mail.

With the exception of one other ingredient usually available only in chemical supply shops, everything else needed can be picked up at the local hardware store.

The process is so simple federal authorities are careful not to divulge the whole recipe. But they have little doubt that plenty of people have the ability to make it.

Drug enforcement investigators say two chemistry students at the University of Michigan first began making the drug a few years ago. Since then, use of cat has been spreading across the Upper Peninsula of Michigan and into Wisconsin.

Ed Panick, who has pleaded guilty to taking part in a conspiracy to distribute cat, has said that he first learned of cat last summer while visiting Iron River, Mich. Soon he was taking the drug two or three times a week, and within a few months he was manufacturing it himself.

While a cocaine high often lasts only 15 or 20 minutes, a cat high can last seven to 14 hours, said Robert Block, head of the Wisconsin Department of Justice's drug identification lab.

Users become hyperactive and paranoid and will not eat or go to bed. They become anorexic and, finally, often only when the drug runs out, fall asleep for days on end. As a result, they often experience severe weight loss.

(cont. next page)

METHCATHINONE BY L.E. FISHER

One informant told the federal drug agency that some people are already mixing cat with cocaine. They have a new name for the result: "Wildcat."

<DIALOG File 496: (c) 1993 Sacramento Bee>
06771064

NEW DRUG PACKS POTENT HIGH, HOOK STUDENTS' CREATION CALLED MORE ADDICTIVE THAN HEROIN, CRACK COCAINE

Sacramento Bee (SB) - SUNDAY, September 27, 1992

By: Scott Bowles Detroit News

Edition: METRO FINAL Section: MAIN NEWS Page: A10

Word Count: 587

TEXT:

DETROIT - It began last year as a chemical experiment in rural pockets of Michigan's western Upper Peninsula, an attempt by college students to duplicate the modest high of a chewable narcotic leaf known as krat.

But what emerged from their makeshift labs is a powdered drug so potent that it dwarfs crack cocaine and heroin in its addictive punch, authorities say.

Narcotics agents with the Detroit police and the Wayne County Sheriff's Department have been put on alert for methcathinone -- or "cat," as it was dubbed by the students who created it.

The synthetic stimulant, recently placed on the U.S. Drug Enforcement Agency's emergency list of controlled substances, can generate a high that lasts up to six days, agents say.

Cat marks the latest salvo from a new generation of drug dealers who are avoiding the risk of smuggling narcotics by producing their own. In addition to cat, college and street-level chemists have also recently introduced a synthetic version of heroin, police say.

"There seems to be a lot of young, bright chemists who are getting into the business," said Wayne County Sheriff Robert Ficano. "They've got no concern for what they are producing, and this time, I don't think they have any idea they're playing with fire."

"If you tried the purest stuff for the first time, there's a 99 percent chance you'd do it again, and again, until you're hooked. It's about as powerful as you can get."

A volatile elixir of pharmaceuticals and household cleansers, cat usually contains small doses of Drano or battery acid, which acts as a catalyst. The drug reportedly produces a "stimulant" high, creating feelings of exhilaration, heightened awareness and invincibility. Cat sells for about \$100 a gram and is typically inhaled, though some melt and inject it.

"You'd think people would be frightened to shoot up with drain cleaner," Ficano said. "But it's a high they'll do anything for."

Michigan state police say cat was first synthesized by college students, although they haven't traced its roots to a specific university. Other amateur
(cont. next page)

METHCATHINONE BY L.E. FISHER

chemists then began to copy the formula.

Cat's creators were trying to clone a relatively mild narcotic. The khat leaf, used for centuries in the Mideast, has been sold over the counter in some Detroit stores because it has gotten by U.S. customs officials who don't realize it is a controlled substance.

The leaf, which also produces a burst of energy, has the lowest rating for a controlled substance: A person caught with small amounts of the drug will receive only probation.

Federal penalties for its synthetic counterpart, however, are harsh. Depending on the quantity, penalties for trafficking cat range from 10 years to life in prison, and up to a \$1 million fine. Punishment for possession of the drug is up to one year in prison and a fine of \$1,000 to 250,000.

Synthetic drugs pose an unusual threat to police, who are trained to fight dope dealers, not manufacturers.

"They're becoming one of our biggest problems," said Detroit Police Comr. Rudy Thomas, head of the narcotic division. "If we could solve the crack and heroin problem tomorrow, we'd still have to deal with these chemists. They're like mad scientists."

Those scientists have recently developed Fentanyl, a synthetic form of heroin that is 20 to 30 times more potent than its predecessor. Thomas said the manufacturers tested Fentanyl by giving free samples to drug addicts, and monitoring the effects. If the addict suffered harmful effects -- or died -- the drug went back to the lab for revisions.

<DIALOG File #98: (c) 1993 Detroit Free Press, Inc.>
07011768

CLOSE A DRUG LOOPHOLE

Detroit Free Press (FP) - WEDNESDAY March 31, 1993
Edition: METRO FINAL Section: EDP Page: 8A
Word Count: 134

MEMO:
FROM OUR READERS

TEXT:

Your March 23 article "Cheap, potent drug spreads from UP" offered readers a compelling view of the methcathinone epidemic. I have sponsored legislation that would begin to address this problem.

The measure would add the highly addictive substance, also known as cat, to the list of drugs prohibited in Michigan. The recreational drug was placed on the federal list of controlled substances in 1992. Michigan law should be strengthened to echo the forceful federal regulations.

Under my bill, individuals convicted of making or delivering cat would be guilty of a felony, punishable by a maximum seven-year prison sentence and a \$5,000 fine. Possession also would be a felony, punishable by as much as two years' (cont. next page)

METHCATHINONE BY L.E. FISHER

imprisonment and a fine of as much as \$2,000.

Underground chemists have escaped prosecution by making small modifications in the chemical structure of a particular drug, so that the new compound was not covered by controlled substance statutes. By closing these loopholes, we would help police and prosecutors overcome clever attempts to circumvent the law.

Beverly A. Bodem

Michigan House of Representatives

106th District

Albena County

<DIALOG File 498: (c)1993 Detroit Free Press, Inc.>
07010606

CHEAP, POTENT DRUG SPREADS FROM UP IT'S HIGHLY ADDICTIVE, DANGEROUS

Detroit Free Press (FP) - TUESDAY March 23, 1993

By: JIM SCHAEFER Free Press Staff Writer

Edition: METRO FINAL Section: NWS Page: 3A

Word Count: 1,791

TEXT:

MARQUETTE - For two and a half years, Vince Swenor snorted the seductive, off-white powder up his nose, and with each power-packed hit the mysterious drug reeled him in tighter.

Swenor, seeking to spark up his life in the Upper Peninsula, had tried cocaine. But this wasn't cocaine. This was something new, something more interesting, something that Swenor created at home with common chemicals, some jars and rubber tubes.

In mid-1990, two friends began making the drug at Swenor's house and "like a good cookie recipe," he said, the formula spread around the Marquette area. It backed a wallop like no other drug that Swenor had tried.

"I thought it was the greatest thing in the world," Swenor, a soft-voiced, 24-year-old unemployed man, said last week. "I could make it in my own house, never run out. I had it made."

But with frightening speed, the strange powder had Swenor helpless.

He referred to it by its street name, cat, and by the time he learned what was used to make the drug, Swenor couldn't stop doing it even though he was shocked. Cat is made with battery acid, paint thinner, drain cleaner, muriatic acid, other assorted poisons and over-the-counter drugs.

Police laboratory scientists had no idea what cat was when it popped up in the UP a couple of years ago. After the first seizure of the drug in early 1991, it took two weeks of analysis to identify it. The veteran state police chemist who finally rooted out cat's scientific name -- methcathinone -- still had never heard of it.

(cont. next page)

CAT (METHCATHINONE)

5/5/1

03560037

93510102

Drug more powerful, addictive than cocaine emerges in Midwest
Nichols, Mike

Chicago Tribune (CT) Sec EVENING, p 2, col 5 Jun 24, 1993

ARTICLE TYPE: News

ARTICLE LENGTH: Medium (6-18 col inches)

AVAILABILITY: UMIACII CATALOG NO.: 60190.00

A drug called methcathinone, or cat, is more powerful than cocaine, highly addictive and can be made with easy-to-get ingredients. Use of the drug is spreading across Michigan's Upper Peninsula and into Wisconsin. There also has been some evidence of its use along the Illinois-Wisconsin line.

DESCRIPTORS: Drugs

GEOGRAPHIC NAME: Michigan; Wisconsin; Illinois

5/5/3

02905656

92718282

Scary Cat: New Drug Creeps in from U.P.
Bowles, Scott

Detroit News & Free Press (DNF) Sec A, p 1, col 1 Sep 27, 1992 ISSN:
1055-2758

ARTICLE TYPE: News

ARTICLE LENGTH: Long (18+ col inches)

AVAILABILITY: UMIACII CATALOG NO.: 60496.00

Narcotics agents with the Detroit Police and Wayne County MI Sheriff's Office have put on an alert for Methcathinone, or 'cat' as it has been dubbed. The synthetic stimulant was created in 1991 as a chemical experiment in pockets of the Upper Peninsula to duplicate the modest high of the chewable narcotic known as krat.

DESCRIPTORS: Drug trafficking; Drugs

GEOGRAPHIC NAME: Detroit Michigan; Upper Peninsula-Michigan; Wayne County Michigan

5/5/4

02869006

92681616

Cops Fear Speed-Like Drug

Detroit News (DN) Sec B, p 6W, col 4 Sep 2, 1992 ISSN: 1055-2715

ARTICLE TYPE: News

ARTICLE LENGTH: Medium (6-18 col inches)

AVAILABILITY: UMIACH CATALOG NO.: 60496.00

Authorities in Michigan's Upper Peninsula say the spread of the illegal drug methcathinone can be traced to an Ann Arbor man's pharmaceutical knowledge gone awry. Methcathinone, known as CAT, is chemically similar to methamphetamine or speed.

DESCRIPTORS: Drugs

GEOGRAPHIC NAME: Upper Peninsula-Michigan

Post-It brand fax transmittal memo 7671 # of pages 2

| | |
|---------|--------------------|
| To | Patricia |
| Co | Levy Assoc IL PA-2 |
| Dep | ALB-10/6/97 |
| Fax # | 708-255-1111 |
| From | KIM BRYAN |
| Cor | 505 E 11th |
| Phone # | |
| Fax # | |

2/7/1

13652934 DIALOG File 47: MAGAZINE INDEX THIS IS THE FULL TEXT

The new drug in town. (methcathinone abuse and sales in Michigan)

Glastris, Paul

U.S. News & World Report: 7:14 (2002) April 20, 1993

SOURCE FILE: MI File 47

ISSN: 0041-5537

Illustration: photograph

AVAILABILITY: FULL TEXT Online LINES COUNT: 00061

GEOGRAPHIC CODE: NNUSCM1

GEOGRAPHIC LOCATION: Michigan

ABSTRACT: Twenty-eight illegal methcathinone (cat) labs have been raided in Michigan since 1991. 'Cat' is an amphetamine similar to methamphetamine. Because the drug is easy and inexpensive to produce, police are concerned that sales could spread throughout the nation.

DESCRIPTORS: Amphetamines--Marketing; Michigan--Crime

MARQUETTE, MICH. - In the winter of 1991, a police informant left the second-floor apartment of a squat brick building in this college town, carrying a quarter gram of cracky off-white powder in a small paper pouch. The informant called the powder "cat" and claimed it was a brand-new drug, more potent than crack cocaine. Lt. Richard Killins of the Michigan State Police was skeptical: Drug fads start in California, he thought, not in Michigan's Upper Peninsula. Nevertheless, Killins's men sent the sample to the lab, unaware that it was the first sign of a devastating new drug scourge that federal officials now say could threaten the entire nation. And the sad part is that the spread of cat might have been prevented.

The substance was methcathinone, an obscure but powerful amphetamine never before seized in the United States but widely abused in, of all places, the former Soviet Union. Chemically, the drug is related to the feisty stimulant khat, chewed throughout Somalia. It is also similar to methamphetamine, a type of speed known on the street as "crystal meth."

Cat fight. Methcathinone was so new, however, that no law specifically forbade it. So the police, working with agents from the federal Drug Enforcement Administration, swarmed out the second-floor apartment and tried to gather evidence to bring charges under special umbrella federal drug laws. Meanwhile, inside the apartment, batch after batch of cat was being cooked up by several Northern Michigan University students, one of them a chemistry professor's son suspected of having gotten the recipe from an acquaintance in Ann Arbor.

After the students had moved to two separate locations, police and DEA agents raided the labs. But federal prosecutors declined to issue arrest warrants for six months, arguing that they needed more evidence plus clearance from the Justice Department in Washington. That may have been a strategic miscalculation. After the delays, says one officer, the students "had this arrogant attitude, like they'd beat the system." Not only were they still making cat but they continued to sell the recipe all over the Upper Peninsula. "Everyone thought it was legal," adds one of the students, now under indictment. Today, the use of cat has reached near epidemic proportions in Michigan, where 28 cat labs have been raided since 1991. This week, Gov. John Engler will sign a bill to outlaw cat in Michigan. Unfortunately, the drug has already spread to Wisconsin and Washington State.

derivatives of 1-(X-phenyl)-2-aminopropane, where X = 2,4-dimethoxy (2,4-DMA), 3,4-dimethoxy (3,4-DMA), 2,4,5-trimethoxy (2,4,5-TMA), and 2-methoxy-4,5-methylenedioxy (MMDA-2), did not produce amphetamine appropriate responding at the doses evaluated. However, the N-monomethyl derivative of cathinone (i.e., methcathinone), like cathinone, resulted in stimulus generalization. Further studies with this agent revealed that (a) in the amphetamine-trained animals, methcathinone (ED50 = 0.37 mg/kg) is more potent than racemic cathinone or racemic amphetamine (ED50 = 0.71 mg/kg in both cases), (b) methcathinone is capable of inducing release of radioactivity from [3H]dopamine-prelabeled slices of rat caudate nucleus in a manner similar to that observed with cathinone, amphetamine, and methamphetamine, and (c) methcathinone is more potent than cathinone as a locomotor stimulant in mice as determined by their effect on spontaneous activity. The results of the present study provides evidence for a structural analogy between the prototypic psychostimulants amphetamine/methamphetamine and cathinone/methcathinone, and lend further support to the concept that amphetamine and cathinone correspond in their pharmacological effects.

Tags: Animal; Male; Support, Non-U.S. Gov't; Support, U.S. Gov't, P.H.S.
Descriptors: *Amphetamines--Pharmacology--PD; *Discrimination Learning--Drug Effects--DE; *Motor Activity--Drug Effects--DE; *Propiophenones--Pharmacology--PD; Alkaloids--Pharmacology--PD; Caudate Nucleus--Drug Effects--DE; Caudate Nucleus--Metabolism--ME; Dopamine--Metabolism--ME; Dose-Response Relations; Drug; Methamphetamine--Pharmacology--PD; Mice, Inbred ICR

CAS Registry No.: 0 (Alkaloids); 0 (Amphetamines); 0 (Propiophenones); 51-51-6 (Dopamine); 5265-18-9 (cathinone); 537-46-2 (Methamphetamine); 5650-44-2 (monomethylpropion)

UPDATE ON METHCATHINONE OR "CAT"

They cook it in hotel rooms, cars, houses and sheds. The materials and chemicals needed to produce it are easy to obtain and legal to purchase and possess. Some recovering addicts claim to have been addicted to the drug within 48 hours. It's known as Cat on the streets, and it has law enforcement professionals on every level fighting to stop its spread across the country.

WHAT IS CAT?

Cat is the street name for the highly addictive illegal drug methcathinone. It is usually homemade from ingredients, including dangerous acids, obtained with little difficulty in most communities.

Users are drawn to Cat because it produces a burst of energy and a feeling of invincibility, accompanied by a state of well-being and euphoria. However, users experience a tremendous collapse or crash physically and psychologically, after binging on the drug.

Methcathinone is a chemical synthesis of cathinone, a central nervous stimulant. The drug produces amphetamine-like effects, much like methamphetamine. Because of its similarity to methamphetamine in chemical structure and metabolism, researchers believe that methcathinone has the same neurotoxicity.

The drug was patented in Great Britain in 1957 as a diet aid and antidepressant; however, it was never marketed because of its highly addictive qualities. The formula for methcathinone leaked out in the 1970s, and Cat kitchens sprung up across Russia. According to Russian doctors, 55 percent of all drug addicts in Russia have used methcathinone, known as "Jel" in their country.

The first instance of illegal manufac-

ture of Cat in the United States is believed to have occurred in Ann Arbor, Michigan, in the late 1980s or early 1990s. However, the drug is more frequently found in the Upper Peninsula (UP) of Michigan. It is from the UP that the drug has spread throughout Michigan and into northern Wisconsin.

PHYSICAL AND PSYCHOLOGICAL EFFECTS OF CAT

Users of Cat tend to "binge" when using this drug. One hit of the drug produces a high that can last up to three hours. Users quickly progress to the point where they binge on the drug for several days. During the initial euphoric burst of energy, Cat users can be quite hyperactive and talkative. However, longtime users have reported that binge usage also brings on paranoia, hallucinations and excruciating nervousness and anxiety. Appetite drops off or disappears entirely during the binge, often leading to long-term and massive weight loss. Users forget to sleep and to drink. As the body becomes dehydrated and fatigued, the user can also experience heart palpitations, headaches, stomachaches and seizures.

A binge will end usually because the supply of methcathinone has been exhausted. Users become depressed, irritable and sometimes violent.

When sleep finally comes, it may last 24 hours or more. Rest does not always restore a sense of well-being, however. Users may feel drained of energy for several weeks.

HOW IT IS USED

Cat is typically snorted, like cocaine, although injection by needle is preferred by some. It is also possible to take Cat orally, by mixing it with a beverage such as coffee or carbonated drinks.

THE INGREDIENTS AND APPEARANCE OF CAT

The recipe for methcathinone includes some relatively benign ingredients but also the following:

- Acetone, a paint solvent
- Lye, found in crystal drain cleaner
- Sodium dichromate, commonly used to refine petroleum
- Sulfuric acid, usually in the form of battery acid
- Sodium hydroxide, obtainable over the counter as lye-based granular drain cleaners
- Toluene, a paint thinner
- Muriatic acid, used by masons to scrub dried mortar off the face of bricks

The chemicals used to manufacture Cat pose another threat to the person cooking the drug. Both acetone and toluene are highly flammable and potassium dichromate, if inhaled, can be fatal. Users have experienced chemical burns on their arms and face from the acids used in production.

When properly made, the final product is a crystalline powder whose color may range from white to yellow. Homemade Cat has an inconsistent texture and can be chunky. Cat does not have a slight chemical smell.

THE RISK TO CHILDREN

While Cat appeals mainly to the young, their 20s and 30s, there have been reports as young as 15. Because the drug is relatively inexpensive, law enforcement authorities are concerned that it

ASSISTS LOCAL OFFICIALS IN ESTABLISHING THEIR DRUG ABUSE PREVENTION AND EDUCATION PROGRAMS

former trainers for the Alcohol who were in Cincinnati in April for the Parent Resource Institute for Drug Education (PRIDE) world conference. Dr. E. Don Nelson, Director of the Ohio Prevention & Education Resource Center (OPERC) and Associate Director of the Drug & Poison Information Center, traveled to Parana, Brazil, to talk with Department of Health professionals, the Parana Medical Association, Department of Education officials, government officials, community workers and others involved in the process of establishing alcohol and other drug prevention programs throughout that area. Over a two week period, Dr. Nelson gave numerous presentations on topics including the:

1. Results of local research on the education of intravenous drug addicts and their sexual partners regarding the risks of HIV (Human Immunodeficiency Virus) transmissions during intravenous drug-use practices and unprotected sex;
2. Operation and scope of all of the Ohio Prevention and Education Resource Centers, including a discussion of individual available resources, alcohol and other drug prevention curricula materials developed by OPERC;
3. Use of psychotherapeutic medications in the treatment of chemical dependency.

Dr. Nelson's visit was well received, with extensive local newspaper and television coverage of his presentations. The goal of those involved with substance abuse prevention and education in Parana is to establish an OPERC-type network in Brazil. Resource materials from the Cincinnati OPERC will form the core of an alcohol and other drug prevention and education collection at the Jaime Lerner Institute in Parana. ❖

* METHCATHINONE "CAT"

According to an article in the October, 1993 issue of *Emergency Medicine News*, methcathinone has made its way to the United States.¹ Appearing in the former Soviet Union as early as 1982, it is now one of that country's most popular drugs of abuse. Known as "cat," this illicit designer drug is easily made in clandestine laboratories.* To date, the use of cat has been reported in Wisconsin, Cleveland, Detroit, New York, Seattle, and is reported to be spreading. The effects are similar to methylenedioxymethamphetamine (also known as MDMA and "Ecstasy"), but central nervous system stimulation appears to be more dominant than the hallucinogenic effects at "normal" doses, estimated to be 80 to 250 mg.² People using the drug claim to experience a euphoric high, increased alertness and creativity, as well as increases in sexual arousal. As dosage or time of usage increases, the psychological symptoms become more prevalent and may include visual and auditory hallucinations, anxiety, disorientation, paranoia and aggression. Physical side effects can include tachycardia and hypertension, changing to bradycardia and hypotension, mydriasis, horizontal and rotary nystagmus, hyperthermia, seizures and rhabdomyolysis, occurring most commonly with high doses. Death due to ventricular fibrillation has occurred.

Binge use over several days is common, followed by a "crash" period. Long-term use of cat can lead to paranoid psychosis, decline in personal hygiene, muscle wasting, anorexia, abnormal liver functions and hepatomegaly, antisocial behavior and Parkinsonism. Since the preferred method of administration is snorting, sores around the nose may develop. (Cat can also be injected, smoked or ingested.) Additional toxicities can occur from the individual chemicals used to manufacture the drug, residues from incomplete reactions and the subsequent contaminants. Heavy metal poisoning, along with causticity problems, are relatively common. One such heavy metal is sodium dichromate, which causes the characteristic color in "Green Cat."

Withdrawal symptoms can be severe. Cardiovascular collapse with hypotension and bradycardia, lethargy, irritability, miosis, coryza, myalgias, muscle spasms and arthralgias are common. Treatment of both acute overdose and withdrawal consists primarily of symptomatic support. Benzodiazepines can be used for agitation, hallucinations, or seizures. Beta blockers should be avoided. In terms of toxicology screening, chronic use of methcathinone produces a urine screen that is negative for amphetamines but positive for both phenylpropanolamine and ephedrine. Acute use results in a negative urine screen for all three substances. ❖

* Cat was made a Schedule I controlled substance by the U.S. Drug Enforcement Agency in 1992. While chemically similar, "cat" should not be confused with "khat." (Other spellings for khat are Q'at, Chat and Gat.) Khat is a naturally occurring substance obtained from the *Catha Edulis* plant common to the East Africa and the Arabian Peninsula. The plant contains two amphetamine-like stimulant substances called cathine and cathinone that are released by chewing the twigs and leaves. It most recently gained media attention as a common substance of abuse in Somalia and other surrounding countries.

1. Carrell S. Methcathinone: The next drug epidemic? *Emergency Medicine News* 1993;15(10):1,18-19,24.

2. Emerson TS, Cisek JE. Methcathinone: A Russian designer amphetamine infiltrates the rural midwest. *Ann Emerg Med* 1993;22:1897-1903.

ENVIRONMENTAL EFFECTS

Illicit production of methcathinone produces a considerable toxic waste as a by-product. Although producers of the drug typically make it for use in a close-to-home market, they show little concern for the pollution they spread.

The toxic waste left after the finished product emerges is often dumped in waterways, contaminating fish, well-water and wildlife.

If instead it is poured down the drain, it contaminates the sewer systems. If simply dumped on vacant land, it contaminates the soil used for crops or grazing or land that may be built on by homeowners.

There is no safe way to dispose of the toxic waste except through legitimate toxic waste disposal facilities.

CAT AND THE LAW

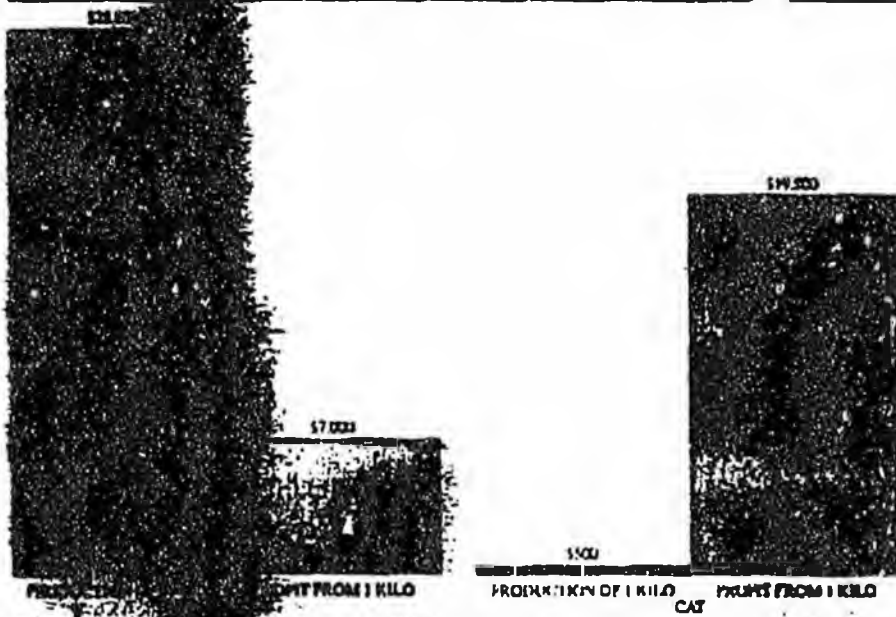
Persons who manufacture methcathinone or assist others in doing so, perhaps by serving as go-betweens to

buyers, are liable under a number of federal statutes. Manufacturing or possession with intent to distribute, for instance, is a violation of Section 841 (a)(1) of Title 21 of the United States Code and is punishable by a prison term of up to 20 years and a fine of up to \$1 million.

TREATING THE CAT ADDICT

Methcathinone is a very powerful stimulant and usage may produce paranoid psychosis, hyperactivity and depression. As a person undergoes withdrawal from Cat, medication must sometimes be given to offset these conditions. There have been cases of Cat-induced psychosis outside the United States and antipsychotic medications were prescribed during detoxification. If agitation and hyperactivity continue during the withdrawal process, benzodiazepines (a type of tranquilizer) have proved to be effective. Those who have treated Cat addicts recommend that the person enroll immediately in a comprehensive treatment program after detoxification.

THE HIGH PROFIT MARGIN OF CAT: A COMPARISON FOR LAW ENFORCEMENT



Law enforcement officials have voiced concern about the potential for high profit Cat offers. Because the ingredients needed to produce Cat are cheap and legal, a kilo of the drug can be made with a \$500 investment. If each gram were sold on the street for \$35, the dealer could net a \$19,500 profit. Compare that with the money needed to produce a kilo of crack: It takes a \$28,000 investment to make a kilo of crack. At the current street price of \$35 for a gram-size rock, a dealer could only expect to make a \$7,000 profit.

Source: The Michigan Substance Abuse and Traffic Safety Information Center and National Families in Action's Inner-City Project on Suburban Heroin, 1993.

THE LATEST INFORMATION ON CAT

The Drug Enforcement Administration (DEA) has recently published a pamphlet on Cat. To order, please write to:

Demand Reduction Section
Drug Enforcement Administration
Washington, DC 20537

THE DIFFERENCE BETWEEN KHAT AND CAT

When U.S. troops were deployed in Somalia, the world was reintroduced to an ancient drug popular in East Africa and Southern Arabia, khat. Khat, pronounced "cot," is a natural stimulant found in the *catha edulis* shrub. Fresh khat leaves are typically chewed like tobacco and produce a mild cocaine- or amphetamine-like euphoria. Used for hundreds of years as a recreational and religious drug, many Somalians chew the leaves which users claim sharpen thinking and lessen hunger.

Fresh khat leaves contain a psychoactive ingredient known as cathinone. Methcathinone or Cat is a synthetic form of cathinone. Just as the natural stimulants found in the coca leaf were synthesized to produce cocaine, the naturally occurring cathinone has been chemically-altered to create a much more powerful and addictive drug than that found in nature.

The information for this update was supplied by the U. S. Drug Enforcement Administration, the Michigan Substance Abuse and Traffic Safety Information Center, The National Institute on Drug Abuse, The National Clearinghouse for Alcohol and Drug Information, Western District of Wisconsin U.S. Attorneys' Office, *Journal of the American Medical Association*, Vol 269, No 19, p 2508, and *Pharmacology Biochemistry and Behavior*, Vol 26, 1987, pp 547-551.

UPDATE ON METHCATHINONE OR "CAT"



Alaskans for Drug-Free Youth South Central Affiliate

P. O. 243704, Anchorage, Alaska 99524-3704
Phone: 907-247-2273, 1-800-478-2273, fax 907-247-2232

March 5, 1994

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Senator Johnny Ellis
State Capital, Room #9
Juneau, Alaska 99801-1182

Dear Senator Ellis:

On behalf of the Alaskans for Drug Free Youth - South Central, Board of Directors I would like to offer our determined and persistent support for Senate Bill 220.

Methcathinone ("Cat") is such a serious threat to the youth and young adults of Alaska it should be considered for Schedule I, as it is in the Federal Statutes, but your legislation will provide the safeguards necessary to prevent needless suffering.

If we can provide further assistance to ensure passage of Senate Bill 220, please let us know.

Sincerely,

Peggy Beitia, President
Alaskans for Drug Free Youth



LETTERS OF SUPPORT

An A

ments for Drug-Free Youth

Alaska Association Chiefs of Police



February 7, 1994

Senator Johnny Ellis
State Capital, Room #9
Juneau, Alaska, 99801-1182

Dear Senator Ellis:

On behalf of the Alaska Association of Chiefs of Police I would like to offer our support for Senate Bill 220.

It is important that as new drugs are developed and marketed, they be properly classified and included on Alaska's schedules of controlled substances. Unfortunately, the use of illegal drugs and the illegal abuse of prescription drugs remain a significant problem throughout the state.

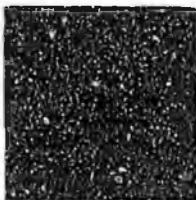
If we can provide any assistance in the passage of this bill please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald L. Otte", is written over a horizontal line.

Ronald L. Otte
President

RLO/lp



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

January 28, 1994

Senator Johnny Ellis
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, AK 99811

Dear Senator Ellis:

At a recent meeting of our Legislative Affairs Committee we discussed your Senate Bill 220 that would add the drug Methcathinone to schedule IIA of controlled substances. While this drug has not yet been an obvious problem in Alaska, it certainly has been elsewhere and we strongly favor this drug being controlled. If I can be of any assistance to you in passage of your bill, do not hesitate to contact me.

Sincerely yours,

Donald R. Lehmann, M.D.
Chairman, Legislative Affairs Committee
President, Alaska State Medical Association

CC: Byron Mallot

JOHNNY ELLIS
SENATOR



STATE CAPITOL, ROOM 9
JUNEAU, ALASKA 99801-1182
(907) 465-3704
FAX: (907) 465-2529

ALASKA STATE LEGISLATURE
SENATE

Sponsor Statement for
Senate Bill 220
Add "CAT" to Schedule IIA Drug List

SB 220 amends schedule IIA of the Control of Substances List to include the substance Methcathinone, also known as "cat". "Cat" is more addictive than Heroin, more powerful than Cocaine, and is easy, inexpensive, and profitable to produce. Furthermore, it is not currently illegal in the State of Alaska.

Patented in 1957 by a pharmaceutical company in Great Britain as a diet aid and antidepressant, it was not introduced to the market because of its highly addictive nature. In the 1970's it began to be illegally produced in Russia where its use quickly reached epidemic proportions. In mid 1991 police agencies of Michigan's Upper Peninsula were confronted with wide spread use of "cat" which soon permeated the southern portions of the State as well as Wisconsin.

Cat is easy to make. The ingredients can be purchased by anyone and the production can be accomplished in a kitchen or the back of a van. For an investment of \$500 dollars a profit of up to \$20,000 may be realized. These three factors make the drug very attractive to drug dealers and organized street gangs and very dangerous to Alaskans.

Currently Alaskan law does not specifically prohibit this new and powerful drug. Cat's highly addictive properties pose a serious threat to Alaskans. With the passage of this bill Alaskan law enforcement will have the authority to protect Alaska's citizens.

I urge your support of Senate Bill 220. Thank you for your consideration.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 2
Bill Version: SB 220
(S) Publish Date: 2-14-94

Revision Date: _____ Dept. Affected: Public Safety
Title: "An act amending schedule IIA of schedules
to add the drug methcathinone common as 'cat'" BRU: Alaska State Troopers
Sponsor: Senator Ellis Component: Detachments
Requestor: S. STA COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE FUND SOURCE: | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Changes in CSSB 220 (STA)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.
2/9/94 date RCB Comte Aide (initial)

Prepared By: Francis C. Allan Phone: (907) 269-5691
Division: Alaska State Troopers Date: 01/13/93
Approved by Commissioner: [Signature] Date: 01/19/20
Agency: Richard L. Burton, Dept. of Public Safety

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For further dis

JR'S LEGISLATIVE OFFICE
Legislative Office

FISCAL NOTE

No. 1

Bill Version: SB 220

(S) Publish Date: 2-14-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: January 13, 1994
Title: "...amending schedule IIA...controlled substances...to add...methcathinone..."
Sponsor: Senator Ellis
Requestor: Senator Ellis

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING:

| | | | | | | |
|-----------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

Changes in CSSB220 (STA)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.
2/9/94
date [Signature]
Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: January 13, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: January 13, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 220

ANALYSIS CONTINUATION:

This bill adds the drug methcathinone, commonly known as "cat", to schedule IIA of the schedules of controlled substances. Methcathinone is a powerful hallucinogen that can have devastating effects on drug users and can cause extreme aberrant behavior. Moreover, this drug can be manufactured easily and inexpensively. As a schedule IIA drug, the penalty for manufacture or delivery of "cat" would be a class B felony and the penalty for possession would be a class C felony. We do not expect a significant new caseload by the approval of this bill and, consequently, there should not be a fiscal impact for the Department of Law. And, although an additional caseload is not expected, including "cat" in schedule IIA is important because of the danger to users and the public, and because the ease of manufacture.

BILL NO: SB 220

DATE: January 19, 1994

TITLE: "An Act amending Schedule
IIA controlled substances. . .
'CAT' . . ."

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

SB 220 amends AS 11.71.050B adding a new paragraph to include methcathinone or "cat". This is becoming a commonly abused controlled substance nationwide. Alaska's controlled substance statutes would allow law enforcement to address this change in the illicit drug trade with this amendment.

Methcathinone is a synthetically derived stimulant that was first developed and tested by the Parke-Davis Company 37 years ago. Research by the drug company dissuaded them from continuing development of methcathinone. This drug is similar to cocaine in its effects only many times stronger and longer lasting. The drug effects the central nervous system and may be as much as one and a half times stronger than other amphetamines. The drug is typically snorted, injected, or sprinkled on marijuana cigarettes for ingestion. The drug was first seen being widely abused in 1989 in the state of Michigan, since then it has spread throughout the midwest and to Hawaii. This is an extremely easy drug to synthesize and takes a very simple rudimentary lab facility.

In section one of the bill, the technical chemical name for methcathinone is used and then the phrase "also known as methcathinone, ephedrone, and cat". Ephedrone is not a name for methcathinone but is actually a precursor used to make methcathinone. It is also a precursor to making methamphetamine and "ice". The Department suggests that ephedrone should be addressed separately as a precursor chemical and that it should be deleted from this bill as it is not a street name for methcathinone.

The Department supports this bill.


Richard L. Burton
Commissioner

Post-it brand fax transmittal memo 7071 # of pages 3

To: Marlene

From: Kimberly NMA

Subject: Legal Aves

Phone #: 258-8182

Fax #: 258-5571

Date: 4-5-2029

Act No. 25
 Public Acts of 1993
 Approved by the Governor
 April 20, 1993
 Filed with the Secretary of State
 April 20, 1993

**STATE OF MICHIGAN
 87TH LEGISLATURE
 REGULAR SESSION OF 1993**

Introduced by Reps. Bodam, Benzano, Jamian, Kukuk, Dalman, Dolan, Gnodtke, Hammerstrom, McCarryda, Stille, McNutt, Garnatt, McManus, Bandstra and Jayo
 Reps. Agee, Anthony, Baude, Bender, Brackenridge, Bullard, Byron, Crissman, DeMars, Dobb, Dobronski, Fitzgerald, Freeman, Gagliardi, Gire, Goscinka, Harrison, Horton, Johnson, Middaugh, Middleton, Murphy, Nye, Olshove, Potata, Profit, Randall, Rhead, Rivers, Shepich, Shugars, Varga, Voorhees, Vorva, Wallace and Wetters named co-sponsors

ENROLLED HOUSE BILL No. 4103

AN ACT to amend section 7212 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 352 of the Public Acts of 1982, being section 383.7212 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 7212 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 352 of the Public Acts of 1982, being section 383.7212 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 7212. (1) The following controlled substances are included in schedule 1:

(a) Any of the following opiates, including their isomers, esters, the ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, when the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

- | | | |
|----------------------|----------------------|----------------|
| Acetylmethadol | Difenoxin | Normymethadol |
| Allylprodine | Dimenoxadol | Norlevorphanol |
| Alpha-acetylmethadol | Dimheptanol | Normethadone |
| Alphameprodine | Dimethylthambutene | Norpipenoxol |
| Alphamethadol | Dioxaphetyl butyrate | Phenadoxone |

Benzethidine
 Betacetylmethadol
 Betaneprodina
 Betanestradol
 Betaprodine
 Clonitazene
 Dextromoramide
 Diampramide
 Diethylthiambutens

Dipiperone
 Ethylmethythiambutens
 Etomidate
 Etazetidine
 Furethidine
 Hydroxyethidine
 Ketobemidone
 Levomoramide
 Levophenacylmorphan
 Morphinidine

Phenazpramide
 Phenazprphan
 Phenoparidine
 Piritramide
 Proheptazine
 Propenidine
 Propiruan
 Racemoramide
 Trimeperidine

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designations:

Acetorphine
 Acetyldihydrocodeine
 Benzylmorphine
 Codeine methylbromide
 Codeine-N-Oxide
 Cyrenorphine
 Desororphine
 Dihydromorphine

Drotabrol
 Etorphine
 Heroin
 Hydromorphone
 Methyldesorphine
 Methylhydromorphine
 Morphine methylbromide
 Morphine methylosulfonate

Morphine-N-Oxide

Myrophine
 Nicocodaine
 Nicomorphine
 Pholcodine
 Thebacon

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

2-Methylamino-1-phenylpropan-1-one

Some trade and other names:

Meibenzthione

Cat

Ephedrone

3, 4-methylenedioxy amphetamine
 5-methoxy-3, 4-methylenedioxy
 amphetamines

3, 4, 5-trimethoxy amphetamines

Bufoamine

Some trade and other names:

3-(3-dimethylaminoethoxy)-5 hydroxyindole

3-(2-dimethylaminoethoxy)-5 indoleol

N,N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine

Mappine

2, 5-Dimethoxyamphetamine

Some trade or other names:

2, 5-Dimethoxy-3-methylphenethylamine; 2, 5-DMA

4-Bromo-2, 5-Dimethoxyamphetamine

Some trade or other names:

4-bromo-2, 5 dimethoxy-3-methylphenethylamine; 4-bromo

2, 5-DMA

Dimethyltryptamine

Some trade and other names:

N,N-Diethyltryptamine; DET

Dimethyltryptamine

Some trade or other names:

DMT

4-methyl-2, 5-dimethoxyamphetamine

Some trade and other names:

4-methyl-2, 5-dimethoxy-3-methyl-phenethylamine

DOM, STP

4-methoxyamphetamine

Some trade or other names:

4-methoxy-3-methylphenethylamine; paramethoxy amphetamines;

PMA

Ibogaine

Some trade and other names:

7-Ethyl-6,6a,7,8,9,10,12,13

Octahydro-2-methoxy-3,4-dihydro-5H-

pyridine (1, 2L, 3 acyl) b) indole

tabernanthe boga

Lycorpic acid diethylamide

Maribuma, except as otherwise provided in subsection (2)

Mecloqualone

Mescaline

Peyote

N-ethyl-8 piperidyl benzilate

N-methyl-8 piperidyl benzilate

Palloxylin

Palloxya

Thioprene analog of phenacyclidine

Some trade or other names:

1-(1-(2-chloro)cyclohexyl) piperidine)

3-thioxy analog of phenacyclidine; TPCP

(d) Except as provided in subsection (2), synthetic equivalents of the substances contained in the plants, or in the resinous extractives of cannabis and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity, or both, such as the following, are included in schedule 1:

(i) Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers.

(ii) Δ^8 cis or trans tetrahydrocannabinol, and their optical isomers.

(iii) $\Delta^{8,9}$ cis or trans tetrahydrocannabinol, and their optical isomers.

(e) Compounds of structures of substances referred to in subdivision (d), regardless of numerical designation of atomic positions, are included.

(2) Maribuma and the substances described in subsection (1) (d) and (e) in schedule 1 shall be regulated as provided in schedule 2, if they are dispensed in the manner provided in sections 7335 and 7336.

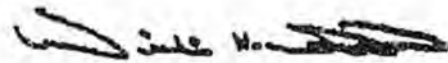
(3) For purposes of subsection (1), "isomer" includes the optical, position, and geometric isomers.

Section 2. This amendatory act shall take effect May 1, 1993.

This act is ordered to take immediate effect.



Co-Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.

SB

221

FISCAL NOTE

No. 34
 Bill Version: SB 221
 (S) Publish Date: 1-26-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol; and providing..." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Senator Taylor
 Requestor: (S) HFS COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY95 | FY96 | FY97 | FY98 | FY99 | FY00 |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year (FY94) cost: None

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

ANALYSIS: (Attach a separate page in necessary)

Prepared by: Brant McGee Phono: 274-1684
 Division: Office of Public Advocacy Date: _____
 Approved by Commissioner: Nancy Bear Usual Date: 1/26/94
 Agency: Administration
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FISCAL NOTE

No. 3

Bill Version: SB 221

(S) Publish Date: 1-26-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol..." BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Senator Taylor
 Requestor: (S) HES COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY95 | FY96 | FY97 | FY98 | FY99 | FY00 |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Director Phone: 264-4400
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Nancy Bear Usra Date: 1/24/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 221
(S) Publish Date: 1-26-94

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to the arrest of a person BRU: Alaska State Troopers
for illegal possession of alcohol Component: Detachments
 Sponsor: Senator Taylor
 Requestor: S. HES COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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- |
| CHANGE IN REVENUES () | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

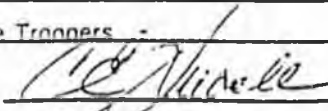
Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-6691
 Division: Alaska State Troopers Date: 01/17/94
 Approved by Commissioner:  Date: 01/17/94
 Agency: Richard I. Burton, Dept. of Public Safety

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FISCAL NOTE

No. 1 *N*
 Bill Version: SB 221
 (S) Publish Date: 1-26-94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: January 18, 1994
 Title: "...relating to arrest of a person for illegal possession, consumption or control of alcohol..."
 Sponsor: Senator Taylor
 Requestor: Senator Taylor

Department Affected: Department of Law
 BRU: Prosecution, Legal Services
 Component: Prosecution - All
Legal Services - Operations
 COMPONENT SERIAL NO. 0085 through 0090, 0093

EXPENDITURES/REVENUES:

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING:

| | | | | | | |
|-----------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: January 18, 1994
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law Date: January 18, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

ANALYSIS CONTINUATION:

SB 221 amends AS 12.25.030(b) to provide that a peace officer may arrest a person under the age of 21 without a warrant when the peace officer has reasonable cause to believe that the person unlawfully possessed, consumed, or controlled alcohol. This bill has the effect of overruling a recent superior court decision that held the person must be caught in the act unlawfully consuming alcohol before an arrest could be made. The bill will not have a fiscal impact because it returns the law to its former interpretation prior to the superior court's decision.

"An Act relating to arrest of a person for illegal possession, consumption, or control of alcohol; and providing for an effective date."

Background:

Section 1 amends the list of crimes for which a person can be arrested without a warrant to specifically include minor consuming.

Analysis:

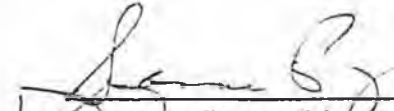
This bill is necessary because of a Juneau court ruling that a minor could not be arrested for consuming alcohol unless the police officer actually witnessed the consumption. The ruling prohibited the juvenile from being arrested even though the juvenile might be quite intoxicated and in danger. This left the police officer with the ability to write a citation and then leave the minor.

While this bill provides for arrest, in the case of minors who are consuming alcohol or other drugs, arrest may be a life saving action.

Although this bill has no direct affect on the operations or responsibilities of the Department of Health & Social Services or the Division of Alcoholism and Drug Abuse, it is consistent with the philosophy of the Division regarding the promotion of no use of alcohol and other drugs by minors.

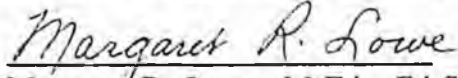
Position:

The Department of Health and Social Services, Division of Alcoholism and Drug Abuse is strongly supportive of SB 221.



Loren A. Jones, Director
Division of Alcoholism & Drug Abuse

Jan 21, 1994
Date



Margaret R. Lowe, M.Ed., Ed.S.
Commissioner

1-26-94
Date



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

| | | | |
|---|-------------------------------------|---|------------------------|
| DEPARTMENT Health & Soc. Services | DIVISION Alcoholism & Drug Abuse | BILL NUMBER SB221 | SPONSOR Sen. Taylor |
| SHORT TITLE OF BILL | | | |
| DEPARTMENT POSITION Support | | | |
| PREPARED BY Suzanne Perry <i>[Signature]</i> | DATE 1-21-94 | COMMISSIONER'S SIGNATURE <i>Margaret R. Lowe</i> Margaret R. Lowe, M.Ed., Ed.S. | DATE 1-26-94 |

SUMMARY

| | |
|---|---|
| OTHER AGENCIES AFFECTED BY BILL Dept. of Public Safety | CONSTITUENT GROUP(S) AFFECTED BY BILL Minors who consume alcohol |
| ORGANIZATIONAL SUPPORT FOR BILL Alaskans For Drug Free Youth AK Council on Prevention of Alcohol & Drug Abuse | ORGANIZATIONAL OPPOSITION TO BILL None known to the Division |

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill is necessary because of a Juneau court ruling that a minor could not be arrested for consuming alcohol unless the police officer actually witnessed the consumption. The ruling prohibited the juvenile from being arrested even though the juvenile might be quite intoxicated and in danger. This left the police officer with the ability to write a citation and then leave the minor. While this bill provides for arrest, in the case of minors who are consuming alcohol or other drugs, arrest may be a life saving action.

ANALYSIS OF BILL/PROGRAM EFFECTS

Although this bill has no direct effect on the operations or responsibilities of the Department of Health & Social Services or the Division of Alcoholism and Drug Abuse, it is consistent with the philosophy of the Division regarding the promotion of no use of alcohol and other drugs by minors.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB221

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An act relating to arrest of a person BRU: Alcohol & Drug Abuse
for illegal possession, consumption on control of alcohol Component: Administration
 Sponsor: Senator Taylor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 302

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING | FY95 | FY96 | FY97 | FY98 | FY99 | FY00 |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGES IN REVENUES | 0 | 0 | 0 | 0 | 0 | 0 |

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1006 GF/MHTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

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

Estimate of current year (FY94) cost \$ _____

ANALYSIS: (Attach a separate page if necessary)

An Act relating to arrest of a person for illegal possession, consumption or control of alcohol; and providing for an effective date.* This bill amends the list of crimes for which a person can be arrested without a warrant to specifically include minor consuming. SB 221 is necessary because of a Juneau court ruling that a minor could not be arrested for consuming alcohol unless the police officer actually witnessed the consumption. The ruling prohibited the juvenile from being arrested even though the juvenile might be quite intoxicated and in danger. This left the police officer with the ability to write a citation and then leave the minor. While this bill provides for arrest, in the case of minors who are consuming alcohol or other drugs, arrest may be a life saving action. Although this bill has no direct affect on the operations or responsibilities of the Dept. of Health & Social Services or the Div. of Alcoholism and Drug Abuse, it is consistent with the philosophy of the Div. regarding the promotion of no use alcohol and other drugs by minors.

Prepared by: Suzanne Perry
 Division: Alcohol & Drug Abuse
 Approved by Commissioner: Margaret R. Lowe
 Agency: Department of Health & Social Services

Phone: 465-2071
 Date: 01/24/94
 Date: 1-26-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 221

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to arrest of a person for BRU: Trial Courts
illegal possession, consumption or control of alcohol Components: _____
 Sponsor: Sen. Taylor
 Requestor: Judiciary COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MI/TIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 01/28/94

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*
 Agency: Alaska Court System Date: 01/28/94

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Regional Affairs

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Western States Legislative Forestry Task Force
Legislative Council



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Fax: 907-465-3422

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Ketchikan, Alaska 99901
907-225-8088
Fax: 907-225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT

SENATE BILL 221

I introduced Senate Bill 221 at the request of concerned parents, law enforcement agencies in the First Judicial District and Alaskans for Drug-Free Youth.

In May of last year, State Troopers and municipal police departments were directed not to arrest minors under the minor consuming statute unless the arresting officer actually sees the minor consume alcohol. The directive was issued after two judicial officers ruled that merely being under the influence in the officer's presence is not reason enough to make an arrest.

The District Attorney's directive stated that "officers who encounter minors under the influence should issue citations, rather than make arrests".

The court ruling left law enforcement officers in the position of either leaving such a minor on the street or taking the minor into protective custody. Past practise had been to arrest the minor and turn the youth over to parents or legal guardians.

SB 211 would add minor consuming to the list of crimes that allow for warrantless arrest. While the court ruling currently impacts only the First Judicial District, it could be extended to other jurisdictions.

My goal in sponsoring this bill is not to increase the number of minor consuming arrests or convictions. I don't believe the Legislature ever intended for a police officer to simply write a ticket and walk away from a minor who is under the influence. This bill is more about protecting our young people than prosecuting them.

SPONSOR STATEMENT

DISTRICT ATTORNEY, STATE OF ALASKA
P.O. Box 110300
Juneau, AK 99811
Phone: (907) 465-3620

To: AST
Municipal Police Departments, First Judicial District

From: Richard A. Svobodny
District Attorney

Date: May 26, 1993

Subject: Citations rather than arrests for Minor Consuming cases.

With certain exceptions (felonies, DWI cases, cases arising under AS 11.41, 11.46.330, 11.56.740, 11.61.120), AS 12.25.030 does not authorize arrests for crimes not committed or attempted in the presence of the person making the arrest. The crime of Minor Consuming is defined as follows in AS 04.16.050:

A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b).

Against arguments by our office that the word "possess", as it is used in that statute, should be interpreted to include possession by consumption, two judicial officers in the First Judicial District have now ruled that it does not, that an officer who contactss a minor under the influence of alcohol may not arrest the minor unless he or she actually sees the minor consume the alcohol, possess the alcohol outside of the minor's body, or control the alcohol. Merely being under the influence in the officer's presence is not enough.

For the above reasons, officers who encounter minors under the influence should issue citations, rather than make arrests, unless they see the minors possess, consume, or control the alcohol involved. Of course, a person may be taken into protective custody under the procedures of Title 47 if the person appears to be incapacitated by alcohol in a public place.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,
Plaintiff,

Filed In the Trial Courts
State of Alaska, First District
At Juneau

vs.

FEB 2 1992

IVAN SABON,
Defendant.

By *EW* Deputy

Case No. 1JU-S92-00053 CR

MEMORANDUM DECISION/ORDER

ON MOTION TO DISMISS

I. FACTUAL AND PROCEDURAL BACKGROUND

On 10 January 1992 , the Defendant, Ivan Sabon, was charged with having violated AS 04.16.050 on or about the same date. The allegation are that "Sabon was found extremely intoxicated on S. Franklin St., hardly able to stand up." The Uniform Summons and Complaint Form filed by police officer Steffel states that Mr. Sabon was "incarcerated." (Complaint, JPD case no. 92000455).

On 11 February 1992, Mr. Sabon, filed a Motion To Dismiss. The Defendant's statement of facts include the following:

that police officer Steffel approached Mr. Sabon as he was walking on the sidewalk along S. Franklin Street;
that the officer alleges she smelled alcohol on Mr. Sabon's person and observed Mr. Sabon's eyes to be bloodshot;

that officer Steffel seized Mr. Sabon, charged him with minor consuming, and transported him to the Juneau Police Department; and

that police officers conducted a search of Mr. Sabon's pockets, and confiscated a bus pass which did not appear to belong to Mr. Sabon.

1 Mr. Sabon asserts that his arrest was unlawful as the alleged
2 illegal in violation of due process of law under Alaska
3 Constitution, Art. I, Sec. 14. Mr. Sabon submits that he did not
4 "consume, possess, or control alcoholic beverages" under AS
5 04.16.050 in the "presence" of the arresting officer. As such, Mr.
6 Sabon contends his arrest without a warrant was contrary to the
7 relevant arrest statute AS 12.25.030. (Motion, pp. 1-6).

8 On 13 February 1992, the State of Alaska filed its Opposition
9 To Motion To Dismiss. The State declares even if this were an
10 illegal arrest "(and it isn't in the state's view)", such is not
11 a valid basis for dismissal of the action or suppression of the
12 evidence. The defendant's remedy, contends the State, rests with
13 the civil courts. (Opposition, p. 1).

14 On 13 February 1992, Mr. Sabon filed an Amended Memorandum In
15 Support Of Motion To Dismiss. This amended pleading submits
16 additional authority for Mr. Sabon's position. (Supp. p. 6-7).

17 It is noteworthy that the State's has not provided a statement
18 of facts which in any way contradicts the defendant's factual
19 statement. Also, the State has not explained their view that Mr.
20 Sabon's arrest was legal. The State merely states their belief
21 without support. In any event, the State seeks to minimize the
22 merits of Mr. Sabon's position by characterizing it to be a "waste
23 of time responding to the law school exam question posed by Sabon."
24 (Opposition, p. 1). Instead, the State declares it is "not opposed
25 to suppressing all evidence seized following Sabon's arrest."

(Opposition, p. 1-2).

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II. POINTS AND AUTHORITIES

The Alaska Constitution, Art. I, Sec. 14 provides:

[t]he right of the people to be secure in their person, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The offense with which Mr. Sabon stands charged in violation of AS 04.16.050 declares:

A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages....

The relevant arrest statute, AS 12.25.030, provides in pertinent part as follows:

(a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in the presence of the person making the arrest;....

"An arrest for a misdemeanor made by an officer without a warrant is valid if the offense is committed in his presence." Miller v. State, 462 P.2d 421, 425 (Alaska 1969). When a person is arrested on a misdemeanor, "the lawfulness of the arrest depends on whether the arresting officer was present at the commission of the offense." Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969). The Alaska Supreme Court has recognized "that the grounds for arresting a person without a warrant for a misdemeanor committed in the presence of an officer are considerably more

1 restricted than those which would constitute probable cause for a
2 felony arrest without a warrant." Miller v. State, 462 P.2d at 426,
3 fn.3.

4 Whether a seizure has occurred is a question of fact. In
5 Waring v. State, 670 P.2d 357, 364 (Alaska 1976), the test for
6 determining whether a seizure occurred was explained:

7 [W]e will employ an objective standard to determine
8 whether or not a seizure has occurred, i.e., whether or
9 not a reasonable person would believe that he or she was
10 free to go....Such a confrontation, therefore, will
11 amount to a seizure 'only if the officer added to those
12 inherent pressures by engaging in conduct which a
13 reasonable man would view as threatening or offensive
14 even if coming from another private citizen.' 3
15 W.LaFave, "Search and Seizure: A Treatise on the Fourth
16 Amendment," Sec.9.2, at 53, 54 (1978). The critical
17 inquiry would be whether the policeman, although perhaps
18 making inquiries which a private citizen would not be
19 expected to make, has otherwise conducted himself in a
20 manner consistent with what would be viewed as a
21 offensive contact if it occurred between two ordinary
22 citizens.

23 III. APPLICATION AND ANALYSIS

24 In the instant case, there seems to be little dispute over
25 the fact that Mr. Sabon was arrested. He was transported to the
Juneau Police Department. His pockets were searched by police
officers. He was incarcerated at Lemon Creek Correctional Center.
His arraignment was the next day. It is clear that a reasonable
man in Mr. Sabon's situation would view as threatening or offensive
the police conduct in this case. As such, the police had "seized"
Mr. Sabon who had been placed under "arrest."

The significance of Mr. Sabon's arrest is that under AS

12.25.030 the police were only authorized to make such a
1 misdemeanor arrest of Mr. Sabon if the alleged crime of minor
2 consuming had been committed or attempted in the police officer's
3 presence. The common understanding of the term "consume" is "to
4 eat or drink up." Webster's New World Dictionary 305 (2ed. 1982).
5 The statutory definition of the word "possess" is "having physical
6 possession or the exercise of dominion or control over property."
7 AS 11.81.900 (45). There is sufficient grounds for a misdemeanor
8 arrest when the alcohol is in the minor's immediate dominion and
9 control. see, Miller v. State, 462 P.2d 421, 427 (Alaska 1969)
10 (open case of beer on the floor behind the driver's seat).
11 Additionally, the power of a person to control or possess an
12 alcoholic beverage ends once the person swallows the alcohol. see,
13 State v. Thronsen, 809 P.2d 941, 943 (Alaska App. 1991) (affirming
14 the trial court's rationale that "mere presence in the body cannot
15 support a criminal conviction for possession).
16

17 On the present facts, officer Steffel did not actually see Mr.
18 Sabon drink any alcohol. Additionally, the officer did not report
19 observing any alcoholic beverages in Mr. Sabon's presence. Mr.
20 Sabon was not witnessed as having any dominion or control over
21 alcoholic beverages. The odor of alcohol on Mr. Sabon was
22 circumstantial evidence that Mr. Sabon in the past may have
23 consumed, possessed, or controlled alcohol. The mere smell of
24 alcohol, however, did not give the police officer sufficient reason
25 to believe that the crime of AS 04.16.050 was being committed in