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9578 SENATE JUDICIARY

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facility is bound to protect constitutional rights affected by the administration of the hospital.[12]

The elements that led us to conclude that the hospital in Storrs was quasi-public show that the hospital in this case is quasi-public; thus, the conduct of VHA qualifies as "state action," meaning that it "may be fairly treated as [the action] of the State itself." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974), quoted in United States Jaycees v. Richardet, 666 P.2d 1008, 1013 (Alaska 1983).

In order to determine whether the hospital operated by VHA is a quasi-public institution, we look to a number of factors, just as we did in Storrs. First, VHA has a special relationship with the State through the State's Certificate of Need program. Under this program, the State must review and approve expenditures of one million dollars or more for construction or alteration of a health care facility. AS 18.07.031. The Department of Health and Social Services determines whether to grant a Certificate of Need

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[12] VHA argues that constitutional due process was never at issue in Storrs because the hospital stipulated that Dr. Storrs was entitled to due process. We have stated, however, that Storrs was a constitutional due process case. Kiester v. Humana Hosp. Alaska, Inc., 843 P.2d 1219, 1223 n.2 (Alaska 1992); see also Amerada Hess Pipeline Corp. v. Alaska Pub. Util. Comm'n, 711 P.2d 1170, 1180 (Alaska 1986) (relying on Storrs to find the right to an impartial decision maker basic to a guarantee of due process). Furthermore, the Storrs court would not have needed to address whether Dr. Storrs received due process were he not entitled to it. The determination that due process applied was material to the holding.

based on health care demand and resources. AS 18.07.041.[13] This program creates in VHA a type of health care monopoly. Indeed, VHA is the only hospital serving the Mat-Su Valley, just as the hospital in Storrs was the only hospital serving the Fairbanks area. The public need for medical facilities makes this sort of regulation essential. However, such monopoly privileges may not be used by VHA to limit access to lawful medical procedures for moral or religious reasons.

Second, VHA has received construction funds, land, and operating funds from the State, local, and federal governments,[14] including more than ten million dollars for construction from the State and a grant of five acres of public land from the City of Palmer.[15] Money from the city and borough came from pass-through

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[13] AS 18.07.041 provides:

> The office shall grant a sponsor a certificate of need or modify a certificate of need if the availability and quality of existing health care resources or the accessibility to those resources is less than the current or projected requirement for health services required to maintain the good health of citizens of this state.

[14] VHA's assets totaled $31.7 million as of December 31, 1993. Between 1985 and 1993, VHA provided $37.5 million in unreimbursed care. In 1991, 14.71% and 5.98% of VHA's gross receipts were from Medicare and Medicaid respectively. VHA's April 1993 Certificate of Need application to the State showed that Medicare and Medicaid receipts total approximately $3.75 million to $5.1 million for the 1990, 1991, and 1992 fiscal years. This is approximately 25% of VHA's patient revenues for those three years.

[15] The Alaska State Hospital and Nursing Home Association argues that money received under the federal Hill-Burton Act cannot be used as a basis for requiring hospitals to perform abortions. 42 U.S.C. § 300a-7(b). The record does not show that any Hill-

(continued...)

grants from the State legislature.[16] VHA is required to operate as a "public facility" under State laws governing the pass-through grants from the State to the city and borough. AS 37.05.315(a) and (c). Finally, a significant portion of the operating funds VHA receives for hospital services comes from governmental sources. We also consider the fact that the hospital is a community hospital whose board is elected by a public membership. As the superior court noted, the public governance structure "strongly favors a finding that the hospital is 'quasi-public.'"

VHA argues that the Storrs quasi-public criteria are limited to determining whether a hospital must afford due process in staffing determinations and should not be extended to require hospitals to protect other constitutional rights. VHA relies on language in Kiester, which discusses limitations on judicial review to avoid intruding upon a hospital's recognized expertise in evaluating medical qualifications. Kiester v. Humana Hosp. Alaska,

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[15](...continued)
Burton money was used when the facilities were rebuilt in the early 1980s.

[16] The statute allowing pass-through grants requires the municipality to agree that the facilities and services provided by the grant will be available for the use of the general public, and that the municipality will operate and maintain the facility for the practical life of the facility. AS 37.05.315(a) and (c). This is an additional indication that VHA is a quasi-public institution. See 1986 Informal Op. Att'y Gen. 1 (Apr. 8, 1982) (stating that municipality accepting funds for construction of a public facility must ensure the operation and maintenance of the facility, even if the facility will be owned and operated by a private non-profit organization); see also 1991 Informal Op. Att'y Gen. 19 (Sept. 22, 1986) (indicating that the State may have a cause of action against a city that allows a facility funded by pass-through grants to be converted to private use).

Inc., 843 P.2d 1219, 1223 (Alaska 1992). However, no medical qualification or decision is at issue here. Neither the issue whether the hospital is quasi-public, nor the issue whether the abortion policy is invalid on constitutional grounds, involves intruding on a medical decision that is within the hospital's expertise. Likewise, VHA has acknowledged that its abortion policy is not a medical policy, but one founded on "sincere moral conscience." The scope and application of the Alaska Constitution to this kind of policy presents a question of law that is within this court's expertise.

Considering all factors similar to those found persuasive in Storrs, we conclude that the hospital operated by VHA is a quasi-public hospital. Its policy concerning abortion must comply with the Alaska Constitution.

D. VHA Has Not Demonstrated a Compelling State Interest Justifying Its Abortion Policy.

Since VHA is a quasi-public institution, its policies are subject to the limitations which the Alaska Constitution imposes on legislation and government regulations. Under Alaska's Constitution, there is a protected right to an abortion; and VHA's policy interferes with that right. Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest. Further, assuming the existence of such an interest, there also must be no less restrictive means by which the interest might be advanced.[17] In re A.B., 791 P.2d 615,

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[17] We have used both the compelling state interest/least (continued...)

621 (Alaska 1990) and Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1981). VHA has not demonstrated a compelling state interest justifying its policy. It has not advanced any medical, safety, or other public-welfare interest to justify precluding elective abortions. VHA has stated unequivocally that its policy is a matter of conscience, and not a medical, safety, or economic issue. As VHA cannot raise a free exercise claim,[18] this does not amount to a compelling state interest.

E. Alaska Statute 18.16.010(b) Is Unconstitutional to the Extent It Applies to Quasi-Public Institutions.

VHA argues that even if the Alaska Constitution encompasses the right to an abortion, and even if the hospital is a quasi-public institution, the legislature already has addressed the issue in AS 18.16.010(b),[19] and has determined that a "hospital

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[17](...continued)
restrictive means test and the legitimate state interest/close and substantial relationship test in the privacy context. See Jones v. Jennings, 788 P.2d 732, 737-38 (Alaska 1990); State v. Erickson, 574 P.2d 1 (Alaska 1978); Ravin, 537 P.2d at 504. However, "[w]here the right to privacy is manifested in terms of interests . . . squarely within personal autonomy," as here, we use the compelling state interest test. Erickson, 574 P.2d at 22, n.144.

[18] See infra note 20. Nothing said in this opinion should be taken to suggest that a quasi-public hospital could have a policy based on the religious tenets of its sponsors which could be a compelling state interest. Recognizing such a policy as "compelling" could violate the Establishment Clause of the First Amendment to the United States Constitution. As this point is not raised, we do not rule on it.

[19] AS 18.16.010(b) provides:

> Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion

(continued...)

may decline to offer abortions for reasons of moral conscience." VHA argues that "[c]onsistent with its previous approach to the highly-sensitive question of abortion, this Court should defer to the considered judgment of the legislature." However, we cannot defer to the legislature when infringement of a constitutional right results from legislative action. The issue before us includes the question whether AS 18.16.010(b) is a permissible limitation on a constitutional right.

VHA has a "sincere moral belief" that elective abortion is wrong.[20] However, constitutional rights "cannot be allowed to yield simply because of disagreement with them." Brown v. Board of Education, 349 U.S. 294, 300 (1955).

The Alaska Attorney General has concluded that AS 18.16.010(b) is invalid, unless construed to be applicable only to sectarian facilities. 1978 Formal Op. Att'y Gen. No. 8 (February 10, 1978). The New Jersey Supreme Court struck down an almost identical statute:

> To interpret this act to empower a non-sectarian non-profit hospital to refuse to permit its facilities to be used for elective abortions would clearly constitute state action . . . [f]or the state to frustrate [the constitutional right to a first trimester

---

[19](...continued)
under this section.

[20] VHA bases its argument in part on Frank v. State, 604 P.2d 1068 (Alaska 1979), a free exercise of religion case based on the First Amendment to the United States Constitution and article I, section 4 of the Alaska Constitution. See Frank, 604 P.2d at 1070 (killing of cow moose for funeral potlatch protected as free exercise of religion). VHA is not affiliated with any religion and cannot raise a free exercise claim.

> abortion] by its action would be violative of the constitutional guarantee.

Doe v. Bridgeton Hosp. Ass'n, 366 A.2d 641, 647 (N.J. 1976).

VHA argues that because the statute states that abortions may be performed only in certain situations, but that individuals and institutions may always refuse to participate in or provide them, "the legislature has determined that the ability to protect one's conscience outweighs the ability to procure an abortion." VHA has no constitutional right at issue; it has at most a statutory right. The legislature, however, may not balance statutory rights against constitutional ones, like the right to an abortion. Therefore, AS 18.16.010(b) is unconstitutional to the extent that it applies to VHA.

F. The Superior Court's Award of Attorney's Fees Was Not an Abuse of Discretion.

The superior court awarded full reasonable attorney's fees to the Coalition. The court based its decision on the factors articulated in Anchorage Daily News v. Anchorage School District, 803 P.2d 402, 404 (Alaska 1990). The superior court concluded that VHA was not a public interest litigant immune from having to pay an award of attorney's fees.[21]

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[21] A party qualifies as a public interest litigant if (1) the case effectuates a strong public policy, (2) numerous people will benefit from the litigation, (3) only a private party could be expected to bring the action, and (4) the party would not have sufficient economic incentive to bring the lawsuit even if the action involved only narrow issues lacking general importance. Eyak Traditional Elders Council v. Sherstone, Inc., 904 P.2d 420, 423 (Alaska 19[illegible]).

We review a trial court's determination of a litigant's public interest status under the abuse of discretion standard. Citizens Coalition for Tort Reform, Inc. v. McAlpine, 810 P.2d 162, 171 (Alaska 1991). "Such an abuse is regarded as present only where the trial court's decision appears to be manifestly unreasonable or motivated by an inappropriate purpose." Kenai Lumber Co., Inc. v. LeResche, 646 P.2d 215, 222 (Alaska 1982).

VHA asserts two arguments for challenging the fee award: (1) VHA is a public interest litigant;[22] and (2) VHA relied in good faith on a statute which authorized its policy.

A prevailing public interest plaintiff is normally entitled to full reasonable attorney's fees. Hunsicker v. Thompson, 717 P.2d 358, 359 (Alaska 1986). We have determined that "where both parties are individual, public interest litigants, neither should be made to bear the fees of the other, each should simply pay their own." McCormick v. Smith, 799 P.2d 287, 289 n.5 (Alaska 1990). However, VHA is not a public interest litigant. We

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[22] The Coalition argues that VHA did not challenge the superior court's determination that VHA is not a public interest litigant in its points on appeal and is barred from doing so now. Alaska Appellate Rule 204(e) provides that this court will consider only points included in the statement of points on appeal. See also Kalenka v. Taylor, 896 P.2d 222, 229 (Alaska 1995) (holding that where appellants failed to properly appeal a fee award and offered no mitigating circumstances to explain the failure, they cannot raise the issue). However, whether VHA is a public interest litigant is a legal issue that can be considered on the record before the court. See, e.g., Oceanview Homeowners Ass'n v. Quadrant Const., 680 P.2d 793, 797 (Alaska 1984). Additionally, although VHA's public interest status is not mentioned in the points on appeal, the issue of fees is raised. See Putnam v. State, 629 P.2d 35, 39 n.2 (Alaska 1980). There is no prejudice to the Coalition in considering the issue on appeal.

are not persuaded by VHA's assertion that its defense of its abortion policy is in the public interest simply because it raises constitutional issues.

We have decided one case where we determined that attorney's fees should not be awarded against a losing private party in public interest litigation, because an award might have the effect of deterring citizens from litigating issues of public concern. Whitson v. Anchorage, 632 P.2d 232, 233 (Alaska 1981). In Whitson, the defendant was an individual who had placed an initiative on the next municipal election ballot, and the plaintiff was the City of Anchorage, which had obtained a judgment finding the initiative illegal and ordering it removed from the ballot. We found it significant that Whitson would have been a traditional private party plaintiff seeking relief against the governmental entity had the city not "beat[en] him to the courthouse steps," making him the nominal defendant. Id. at 234. Had the city refused to place his initiative on the ballot, rather than doing so and then suing him to get it removed, Whitson would likely have sued the city and been the traditional private party plaintiff seeking relief against the governmental entity. Id. at 233-34. In this case VHA is not an individual raising a public interest defense against a governmental entity. Rather, VHA is a quasi-public institution whose policy has infringed a constitutional right.

VHA also cannot assert its good faith reliance on AS 18.16.010(b). As discussed above, that statute cannot

constitutionally be applied to a quasi-public hospital. See Part III.D. Because VHA is not a private defendant, as it asserts, it cannot escape liability for attorney's fees by arguing that it relied in good faith on AS 18.16.010(b).

The superior court did not abuse its discretion in awarding fees to the Coalition.

IV. CONCLUSION

The superior court's summary judgment and injunction are AFFIRMED. The superior court's award of attorney's fees was not an abuse of discretion and is AFFIRMED.

SB

355

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CS SB 355 (L&C)

Revision Date (Note if correction) _____ Dept. Affected Commerce
Title Provision of electric service BRU APUC
Component APUC
Sponsor S. Labor & Commerce
Requester (S) JUD Compone .t Serial No. 364

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	62.3	62.3	62.3	62.3	62.3	62.3
Travel	0.5	0.5	0.5	0.5	0.5	0.5
C ntractual	21.2	21.2	21.2	21.2	21.2	21.2
Supplies	0.9	0.9	0.9	0.9	0.9	0.9
Equipment	0.2	0.2	0.2	0.2	0.2	0.2
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	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	85.1	85.1	85.1	85.1	85.1	85.1
TOTAL	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**	**85.1**

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill would require the Commission to issue orders within 30 days of a request by an electric utility, power marketer, reseller or aggregators to use the transmission and distribution facilities of a certificated electric utility to provide retail electric service. The 30-day turnaround would require the Commission to waive the 30-day statutory notice period required by AS 42.05. 411. A Utility Finance Analyst II, Range 19 would be required to analyze these filings, along with the follow-up analysis of whether the interim rates were just and reasonable.

It is unclear from the language of the bill whether the Commission retains the authority to approve or disapprove these requests within 30 days, or whether they are required to be approved. Both interpretations were expressed at the April 21, 1998 hearing on the bill.

Prepared by Robert A. Lohr Phone 276-6222
Division Alaska Public Utilties Commission Date 4/29/98
Approved by Commissioner [signature] Date 4/30/98
Agency

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FISCAL NOTE(S)

Municipality of Anchorage
Rick Mystrom, Mayor

Municipal Light & Power
1200 East First Avenue
Anchorage, Alaska 99501-1685
Telephone: (907) 279-7671. Telecopiers: (907) 263-5804, 277-9272

April 24, 1998

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
The State Senate
Alaska State Legislature
Juneau, AK

Dear Senator Taylor:

There are various proposals currently being contemplated that would implement (or at least consider) competition in the retail electric market in Alaska. At least one major utility is strongly advocating immediate implementation of competition in the Anchorage Bowl.

ML&P and the Municipality of Anchorage strongly advocate the Legislature forming a committee to study the issues of competition and coming back to the next legislative session with their findings and recommendations. A very key part of this process will be a review of competition as it is being implemented in the Lower 48 states and the lessons to be learned there.

Only one state in the United States has actually begun to implement customer choice in the retail market - California. The January 1, 1998 date had to be pushed back three months despite several years of working toward the goal of retail electric choice. Three weeks later, Enron has given up on residential customers as evidenced by an article from the April 22, 1998 edition of the Wall Street Journal, which is attached.

Alaska is a large state with unique market conditions. Only a principled and suitably in-depth study of this complex subject will lead to fair competition and the promotion of consumer interests.

Sincerely,

Meera Kohler
General Manager

Attachment

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

February 1998

Chugach Electric

SB355

INTRODUCTION AND

METHODOLOGY

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

February 1998

Chugach Electric

SB 355

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INTRODUCTION AND

METHODOLOGY

INTRODUCTION AND METHODOLOGY

This project was conducted between February 9th and 15th, 1998. One thousand four hundred registered voters in the Municipality of Anchorage participated in the study. A sample size of 1,400 yields a maximum margin of error of ±2.62% at 95% confidence. In other words, we can be 95% sure that our results differ from their true population proportions by no more than 2.62% on either side.

Respondents were drawn randomly from registered voters lists generated to produce voter households that had voted in the General Election in 1996. The respondents were screened to ensure their status as utility decisionmaker in the household, and the ensure the household paid their own electric bills.

Fielding was conducted by telephone from our centralized facility in Anchorage. Collected data has been data entered, verified, checked for accuracy and coded, and processed using SPSS, a standard statistical package for survey research. The elements of this report include the questionnaire in its final form, collated with the frequency results for each question, and a crosstabulation section that breaks the sample down into core groups.

One hundred respondents were surveyed from each of the 14 Legislative House Districts in Anchorage, numbered 10 to 23. These House Districts paired into 8 Senate Districts, lettered E to L, with District 10 and District 23 not paired with other Anchorage districts.

Quality control measures were taken to ensure as high a response rate as possible for this study. These included supervision of interviewers, repeated callbacks, calling at various times of day and evening, over the course of the fielding period. As a result, we can be very confident of the accuracy of results within the statistical margin of error.

QUESTIONNAIRE AND

FREQUENCIES

ATTITUDES TOWARDS COMPETITION IN THE ELECTRIC INDUSTRY

IVAN MOORE RESEARCH
TEL: 278-4600

Hello, my name is _____ and I'm calling for Ivan Moore Research, an Anchorage marketing research firm. We are conducting an Anchorage area public opinion survey concerning your household's utility services that should take no more than a few minutes. Your opinions are important to us, and we'd really appreciate your participation. (PAUSE)

S1. Is this a residential telephone?

IF "YES", CONTINUE...
IF "NO", TERMINATE...

S2. I need to speak with the person in your household who pays your utility bills, or who makes decisions about utility services. Would that be you?

IF "YES", CONTINUE...
IF "NO", ASK FOR PERSON...

S3. Do you pay your own electric bill or do you have a landlord that pays it for you?

IF "YES", THEN PROCEED...
IF "DON'T PAY ELECTRIC BILL/LANDLORD PAYS", THEN TERMINATE...

1. Which company provides your household with its electric service, Chugach Electric or ML+P?

	FREQUENCY	PERCENT
CHUGACH	1016	72.6%
ML+P	384	27.4%

OK, across the country, efforts are underway to allow individual customers to choose their electric provider. In Alaska, both the Legislature and Public Utilities Commission are now reviewing this issue. I'd like to ask you a few questions to see how you feel about this topic.

2. First, do you think that customers should have the right to choose which company they buy their electric power from?

	FREQUENCY	PERCENT
YES	1272	90.9%
NO	76	5.4%
DON'T KNOW	52	3.7%

3. Do you think competition in the electric industry would result in lower electric prices?

	FREQUENCY	PERCENT
YES	1032	73.7%
NO	233	16.7%
DON'T KNOW	135	9.6%

4. Do you think competition in the electric industry would result in better services?

	FREQUENCY	PERCENT
YES	1017	72.7%
NO	247	17.7%
DON'T KNOW	135	9.7%

5. If you could get better services or lower prices from a different power provider, would you want to be able to switch?

	FREQUENCY	PERCENT
YES	1276	91.1%
NO	80	5.7%
DON'T KNOW	44	3.2%

6. If a legislator were to vote in favor of allowing customers to choose their power supplier, would that make you feel more positive or more negative toward that legislator?

	FREQUENCY	PERCENT
MORE POSITIVE	904	64.6%
MORE NEGATIVE	71	5.1%
NO DIFFERENCE	425	30.3%

The following questions are for statistical purposes only.

7. In what year were you born?

	FREQUENCY	PERCENT
18-39	445	31.8%
40-47	332	23.7%
48-57	327	23.4%
58+	296	21.2%

(Mean = 47.7 years)
(Median = 45.8 years)

8. Of the people currently living in your household, how many are children or adolescents aged 18 or under?

	FREQUENCY	PERCENT
None	766	54.7%
One	222	15.9%
Two	273	19.5%
Three or more	139	9.9%

(Mean = 0.89 children)

9. Are you married or single?

	FREQUENCY	PERCENT
MARRIED	1079	77.1%
SINGLE	321	22.9%

10. GENDER...

	FREQUENCY	PERCENT
MALE	700	50.0%
FEMALE	700	50.0%

Thankyou very much for your help. Goodbye.

THE FOLLOWING VARIABLE WAS RECORDED FROM THE VOTER LIST:

	FREQUENCY	PERCENT
House District 10	100	7.1%
House District 11	100	7.1%
House District 12	100	7.1%
House District 13	100	7.1%
House District 14	100	7.1%
House District 15	100	7.1%
House District 16	100	7.1%
House District 17	100	7.1%
House District 18	100	7.1%
House District 19	100	7.1%
House District 20	100	7.1%
House District 21	100	7.1%
House District 22	100	7.1%
House District 23	100	7.1%

THE FOLLOWING VARIABLE WAS COMPUTED FROM THE PREVIOUS VARIABLE:

	FREQUENCY	PERCENT
Senate District E	100	7.1%
Senate District F	200	14.3%
Senate District G	200	14.3%
Senate District H	200	14.3%
Senate District I	200	14.3%
Senate District J	200	14.3%
Senate District K	200	14.3%
Senate District L	100	7.1%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE GENDER AND MARITAL STATUS VARIABLES:

	FREQUENCY	PERCENT
Married Males	552	39.4%
Married Females	528	37.7%
Single Males	148	10.6%
Single Females	172	12.3%

THE FOLLOWING VARIABLE WAS CALCULATED FROM THE AGE, MARITAL STATUS AND CHILDREN VARIABLES:

	FREQUENCY	PERCENT
Young Singles	73	5.2%
Adult Singles	167	11.9%
Single Parent	80	5.7%
Young Couple	71	5.1%
Mature Couples	454	32.4%
Young Family	261	18.7%
Mature Family	292	20.9%

CROSSTABULATION TABLES

RIGHT TO CHOOSE?

Row Percents

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	91.3%	5.2%	3.5%	72.6%
ML+P	89.8%	6.1%	4.1%	27.4%
LOWER PRICES?				
Yes	96.3%	1.6%	2.1%	73.7%
No	68.7%	24.4%	6.9%	16.7%
Not sure	87.5%	2.2%	10.3%	9.6%
BETTER SERVICES?				
Yes	97.7%	1.2%	1.1%	72.7%
No	69.1%	22.8%	8.0%	17.7%
Not sure	79.2%	5.2%	15.5%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	94.3%	3.3%	2.4%	91.1%
No	47.6%	36.5%	15.9%	5.7%
Not sure	70.0%	10.8%	19.2%	3.2%
EFFECT ON LEGISLATOR:				
More positive	98.9%	1.1%		64.6%
More negative	35.4%	52.7%	11.9%	5.1%
No difference	83.2%	6.7%	10.2%	30.3%
AGE OF RESPONDENT:				
18-39	96.9%	1.7%	1.4%	31.8%
40-47	91.4%	4.3%	4.4%	23.7%
48-57	87.5%	7.8%	4.7%	23.4%
58+	85.0%	9.7%	5.3%	21.2%
NUMBER OF CHILDREN:				
None	88.3%	6.6%	5.1%	54.7%
One	93.4%	3.8%	2.7%	15.9%
Two	92.2%	5.7%	2.1%	19.5%
Three or more	98.4%	.8%	.8%	9.9%
MARITAL STATUS:				
Married	90.6%	5.9%	3.5%	77.1%
Single	91.7%	4.0%	4.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.2%	6.5%	2.3%	50.0%
Female	90.6%	4.3%	5.1%	50.0%
Total	90.9%	5.4%	3.7%	100.0%

	RIGHT TO CHOOSE?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.0%	7.1%	1.9%	39.4%
Married Females	90.2%	4.6%	5.2%	37.7%
Single Males	91.8%	4.5%	3.8%	10.6%
Single Females	91.6%	3.6%	4.8%	12.3%
FAMILY STATUS:				
Young Single	95.8%	1.5%	2.8%	5.2%
Adult Single	88.5%	4.5%	7.0%	11.9%
Single Parent	94.7%	5.3%		5.7%
Young Couple	100.0%			5.1%
Mature Couple	85.2%	9.3%	5.5%	32.4%
Young Family	96.0%	2.5%	1.6%	18.7%
Mature Family	92.1%	4.9%	3.0%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	84.1%	8.9%	7.0%	7.1%
House District 11	96.3%	3.7%		7.1%
House District 12	93.9%	2.3%	3.8%	7.1%
House District 13	85.3%	9.7%	5.0%	7.1%
House District 14	95.7%	2.1%	2.1%	7.1%
House District 15	92.8%	3.0%	4.2%	7.1%
House District 16	92.2%	5.9%	1.9%	7.1%
House District 17	92.9%	4.4%	2.7%	7.1%
House District 18	88.0%	7.5%	4.5%	7.1%
House District 19	90.7%	2.9%	6.4%	7.1%
House District 20	86.5%	7.2%	6.4%	7.1%
House District 21	91.0%	5.2%	3.8%	7.1%
House District 22	91.2%	4.9%	3.8%	7.1%
House District 23	91.7%	8.3%		7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	84.1%	8.9%	7.0%	7.1%
Senate District F	95.1%	3.0%	1.9%	14.3%
Senate District G	90.5%	5.9%	3.6%	14.3%
Senate District H	92.5%	4.4%	3.1%	14.3%
Senate District I	90.5%	6.0%	3.6%	14.3%
Senate District J	88.6%	5.0%	6.4%	14.3%
Senate District K	91.1%	5.1%	3.8%	14.3%
Senate District L	91.7%	8.3%		7.1%
Total	90.9%	5.4%	3.7%	100.0%

LOWER PRICES?

Row Percents

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	74.7%	16.2%	9.1%	72.6%
ML+P	71.1%	17.9%	11.0%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	12.6%	9.3%	90.9%
No	21.1%	74.9%	3.9%	5.4%
Not sure	42.1%	31.0%	27.0%	3.7%
BETTER SERVICES?				
Yes	84.9%	7.4%	7.8%	72.7%
No	35.7%	59.8%	4.5%	17.7%
Not sure	59.2%	7.8%	33.0%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	76.9%	13.8%	9.3%	91.1%
No	33.3%	55.0%	11.7%	5.7%
Not sure	53.5%	31.0%	15.5%	3.2%
EFFECT ON LEGISLATOR:				
More positive	86.0%	7.2%	6.8%	64.6%
More negative	23.6%	70.2%	6.2%	5.1%
No difference	56.0%	27.8%	16.1%	30.3%
AGE OF RESPONDENT:				
18-39	83.4%	10.9%	5.7%	31.8%
40-47	72.7%	13.3%	13.0%	23.7%
48-57	67.0%	20.7%	12.3%	23.4%
58+	66.5%	24.7%	8.7%	21.2%
NUMBER OF CHILDREN:				
None	69.4%	20.0%	10.6%	54.7%
One	76.5%	14.1%	9.4%	15.9%
Two	80.9%	10.6%	8.5%	19.5%
Three or more	78.8%	14.1%	7.0%	9.9%
MARITAL STATUS:				
Married	73.7%	16.9%	9.4%	77.1%
Single	73.7%	15.9%	10.4%	22.9%
GENDER OF RESPONDENT:				
Male	73.1%	17.8%	9.1%	50.0%
Female	74.3%	15.5%	10.2%	50.0%
Total	73.7%	16.7%	9.6%	100.0%

	LOWER PRICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	73.2%	18.3%	8.5%	39.4%
Married Females	74.2%	15.4%	10.4%	37.7%
Single Males	72.6%	16.0%	11.3%	10.6%
Single Females	74.5%	15.9%	9.6%	12.3%
FAMILY STATUS:				
Young Single	83.6%	12.4%	4.0%	5.2%
Adult Single	68.6%	19.0%	12.4%	11.9%
Single Parent	75.1%	12.7%	12.1%	5.7%
Young Couple	79.0%	12.6%	8.3%	5.1%
Mature Couple	65.9%	22.8%	11.3%	32.4%
Young Family	84.3%	10.2%	5.5%	18.7%
Mature Family	75.1%	14.7%	10.2%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	63.5%	23.2%	13.3%	7.1%
House District 11	75.3%	18.4%	6.4%	7.1%
House District 12	80.7%	10.3%	9.0%	7.1%
House District 13	67.0%	20.8%	12.2%	7.1%
House District 14	76.1%	13.7%	10.2%	7.1%
House District 15	72.5%	22.8%	4.6%	7.1%
House District 16	80.4%	14.5%	5.1%	7.1%
House District 17	77.3%	14.2%	8.5%	7.1%
House District 18	67.1%	25.9%	7.0%	7.1%
House District 19	76.9%	6.6%	16.5%	7.1%
House District 20	68.4%	16.8%	14.8%	7.1%
House District 21	70.3%	15.7%	14.0%	7.1%
House District 22	85.0%	8.9%	6.0%	7.1%
House District 23	71.6%	21.2%	7.2%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	63.5%	23.2%	13.3%	7.1%
Senate District F	78.0%	14.3%	7.7%	14.3%
Senate District G	71.5%	17.3%	11.2%	14.3%
Senate District H	76.5%	18.7%	4.8%	14.3%
Senate District I	72.2%	20.1%	7.7%	14.3%
Senate District J	72.6%	11.7%	15.7%	14.3%
Senate District K	77.7%	12.3%	10.0%	14.3%
Senate District L	71.6%	21.2%	7.2%	7.1%
Total	73.7%	16.7%	9.6%	100.0%

BETTER SERVICES?

Row Percents

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	73.5%	17.5%	9.0%	72.6%
ML+P	70.4%	18.2%	11.4%	27.4%
RIGHT TO CHOOSE?				
Yes	78.1%	13.4%	8.4%	90.9%
No	16.4%	74.3%	9.3%	5.4%
Not sure	20.8%	38.4%	40.8%	3.7%
LOWER PRICES?				
Yes	83.7%	8.5%	7.8%	73.7%
No	32.1%	63.4%	4.5%	16.7%
Not sure	58.6%	8.3%	33.1%	9.6%
WANT TO BE ABLE TO SWITCH?				
Yes	76.7%	14.3%	9.0%	91.1%
No	22.3%	63.4%	14.3%	5.7%
Not sure	48.4%	30.8%	20.8%	3.2%
EFFECT ON LEGISLATOR:				
More positive	84.6%	8.4%	6.9%	64.6%
More negative	19.4%	75.1%	5.5%	5.1%
No difference	56.3%	27.6%	16.2%	30.3%
AGE OF RESPONDENT:				
18-39	81.4%	11.1%	7.4%	31.8%
40-47	74.4%	14.7%	10.9%	23.7%
48-57	69.3%	21.1%	9.6%	23.4%
58+	61.3%	26.9%	11.8%	21.2%
NUMBER OF CHILDREN:				
None	67.8%	21.7%	10.5%	54.7%
One	75.9%	13.2%	10.9%	15.9%
Two	78.6%	14.2%	7.2%	19.5%
Three or more	82.9%	9.3%	7.8%	9.9%
MARITAL STATUS:				
Married	73.7%	17.5%	8.8%	77.1%
Single	69.3%	18.1%	12.6%	22.9%
GENDER OF RESPONDENT:				
Male	72.2%	19.2%	8.6%	50.0%
Female	73.1%	16.2%	10.7%	50.0%
Total	72.7%	17.7%	9.7%	100.0%

	BETTER SERVICES?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	72.2%	19.5%	8.3%	39.4%
Married Females	75.3%	15.5%	9.3%	37.7%
Single Males	72.4%	17.9%	9.7%	10.6%
Single Females	66.6%	18.3%	15.2%	12.3%
FAMILY STATUS:				
Young Single	79.8%	12.5%	7.7%	5.2%
Adult Single	63.1%	21.9%	15.0%	11.9%
Single Parent	72.5%	15.2%	12.3%	5.7%
Young Couple	81.2%	13.0%	5.8%	5.1%
Mature Couple	65.5%	24.5%	10.1%	32.4%
Young Family	81.1%	11.2%	7.7%	18.7%
Mature Family	78.0%	13.5%	8.5%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	58.9%	25.7%	15.4%	7.1%
House District 11	78.4%	18.4%	3.2%	7.1%
House District 12	73.7%	16.6%	9.7%	7.1%
House District 13	62.5%	24.7%	12.9%	7.1%
House District 14	72.5%	18.3%	9.2%	7.1%
House District 15	71.3%	19.0%	9.7%	7.1%
House District 16	80.2%	15.8%	4.0%	7.1%
House District 17	75.5%	13.8%	10.7%	7.1%
House District 18	73.3%	19.4%	7.3%	7.1%
House District 19	78.6%	10.4%	11.0%	7.1%
House District 20	63.3%	18.3%	18.3%	7.1%
House District 21	70.3%	18.6%	11.1%	7.1%
House District 22	84.2%	9.0%	6.8%	7.1%
House District 23	74.8%	19.2%	5.9%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	58.9%	25.7%	15.4%	7.1%
Senate District F	76.0%	17.5%	6.4%	14.3%
Senate District G	67.5%	21.5%	11.0%	14.3%
Senate District H	75.7%	17.4%	6.9%	14.3%
Senate District I	74.4%	16.6%	9.0%	14.3%
Senate District J	70.9%	14.4%	14.7%	14.3%
Senate District K	77.2%	13.8%	8.9%	14.3%
Senate District L	74.8%	19.2%	5.9%	7.1%
Total	72.7%	17.7%	9.7%	100.0%

WANT TO BE ABLE TO SWITCH?

Row Percents

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	92.0%	5.2%	2.8%	72.6%
ML+P	88.9%	7.0%	4.1%	27.4%
RIGHT TO CHOOSE?				
Yes	94.6%	3.0%	2.4%	90.9%
No	55.5%	38.2%	6.3%	5.4%
Not sure	58.9%	24.5%	16.5%	3.7%
LOWER PRICES?				
Yes	95.1%	2.6%	2.3%	73.7%
No	75.3%	18.8%	5.9%	16.7%
Not sure	88.0%	6.9%	5.1%	9.6%
BETTER SERVICES?				
Yes	96.1%	1.7%	2.1%	72.7%
No	74.0%	20.4%	5.5%	17.7%
Not sure	84.8%	8.4%	6.8%	9.7%
EFFECT ON LEGISLATOR:				
More positive	97.4%	.7%	1.8%	64.6%
More negative	45.5%	43.8%	10.7%	5.1%
No difference	85.4%	9.8%	4.8%	30.3%
AGE OF RESPONDENT:				
18-39	95.8%	1.9%	2.3%	31.8%
40-47	91.5%	5.1%	3.4%	23.7%
48-57	92.5%	4.9%	2.6%	23.4%
58+	82.3%	12.9%	4.9%	21.2%
NUMBER OF CHILDREN:				
None	88.8%	7.5%	3.7%	54.7%
One	90.8%	5.4%	3.8%	15.9%
Two	95.7%	2.6%	1.7%	19.5%
Three or more	95.7%	2.1%	2.2%	9.9%
MARITAL STATUS:				
Married	92.1%	5.3%	2.6%	77.1%
Single	87.8%	6.9%	5.3%	22.9%
GENDER OF RESPONDENT:				
Male	91.0%	5.9%	3.1%	50.0%
Female	91.2%	5.5%	3.3%	50.0%
Total	91.1%	5.7%	3.2%	100.0%

	WANT TO BE ABLE TO SWITCH?			Total
	Yes	No	Not sure	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	91.8%	5.8%	2.4%	39.4%
Married Females	92.5%	4.8%	2.7%	37.7%
Single Males	88.3%	6.0%	5.7%	10.6%
Single Females	87.4%	7.7%	4.9%	12.3%
FAMILY STATUS:				
Young Single	95.3%	3.1%	1.6%	5.2%
Adult Single	82.3%	10.4%	7.3%	11.9%
Single Parent	92.3%	3.2%	4.5%	5.7%
Young Couple	96.3%	3.7%		5.1%
Mature Couple	89.0%	7.8%	3.3%	32.4%
Young Family	95.9%	1.1%	3.0%	18.7%
Mature Family	92.7%	5.7%	1.7%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	95.0%	2.9%	2.1%	7.1%
House District 11	96.8%	2.4%	.8%	7.1%
House District 12	87.2%	10.8%	2.0%	7.1%
House District 13	88.3%	6.6%	5.0%	7.1%
House District 14	87.4%	4.0%	8.5%	7.1%
House District 15	87.7%	6.3%	5.9%	7.1%
House District 16	94.2%	2.8%	3.0%	7.1%
House District 17	95.1%	3.8%	1.1%	7.1%
House District 18	90.4%	8.3%	1.3%	7.1%
House District 19	90.2%	5.8%	4.0%	7.1%
House District 20	86.0%	7.4%	6.6%	7.1%
House District 21	87.8%	10.2%	2.0%	7.1%
House District 22	99.0%	1.0%		7.1%
House District 23	90.8%	7.2%	2.0%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	95.0%	2.9%	2.1%	7.1%
Senate District F	92.0%	6.6%	1.4%	14.3%
Senate District G	87.9%	5.3%	6.8%	14.3%
Senate District H	91.0%	4.6%	4.4%	14.3%
Senate District I	92.8%	6.0%	1.2%	14.3%
Senate District J	88.1%	6.6%	5.3%	14.3%
Senate District K	93.4%	5.6%	1.0%	14.3%
Senate District L	90.8%	7.2%	2.0%	7.1%
Total	91.1%	5.7%	3.2%	100.0%

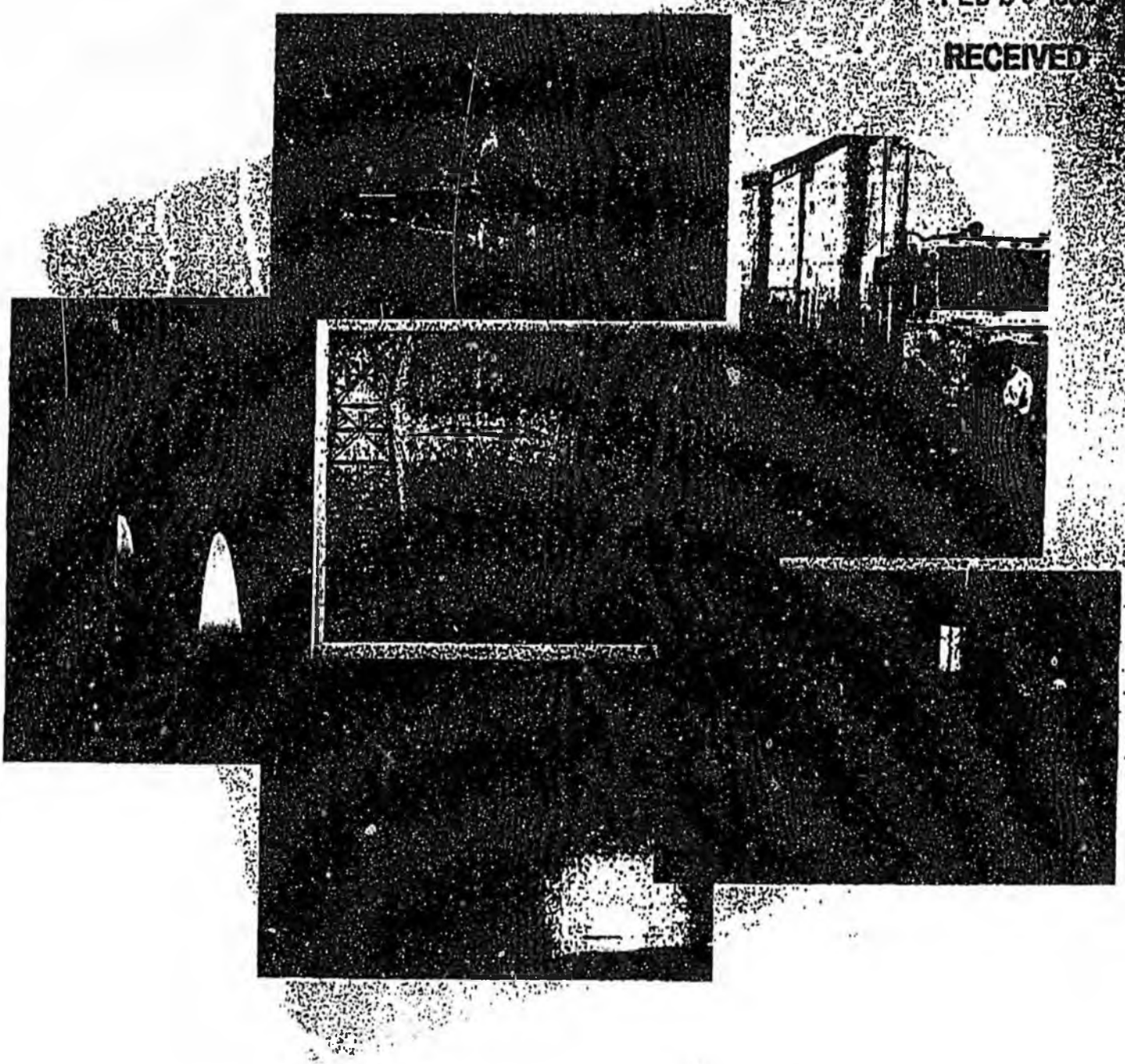
EFFECT ON LEGISLATOR

Row Percents

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
ELECTRIC PROVIDER:				
Chugach	65.8%	4.8%	29.4%	72.6%
ML+P	61.3%	5.9%	32.8%	27.4%
RIGHT TO CHOOSE?				
Yes	70.2%	2.0%	27.8%	90.9%
No	13.2%	49.6%	37.2%	5.4%
Not sure		16.4%	83.6%	3.7%
LOWER PRICES?				
Yes	75.3%	1.6%	23.1%	73.7%
No	27.9%	21.5%	50.6%	16.7%
Not sure	45.8%	3.3%	50.9%	9.6%
BETTER SERVICES?				
Yes	75.2%	1.4%	23.5%	72.7%
No	30.9%	21.7%	47.4%	17.7%
Not sure	46.4%	2.9%	50.7%	9.7%
WANT TO BE ABLE TO SWITCH?				
Yes	69.0%	2.5%	28.4%	91.1%
No	8.2%	39.4%	52.5%	5.7%
Not sure	37.2%	17.2%	45.6%	3.2%
AGE OF RESPONDENT:				
18-39	75.0%	2.2%	22.8%	31.8%
40-47	62.1%	4.6%	33.3%	23.7%
48-57	62.0%	5.4%	32.6%	23.4%
58+	54.5%	9.7%	35.8%	21.2%
NUMBER OF CHILDREN:				
None	59.7%	6.1%	34.2%	54.7%
One	70.4%	4.7%	24.9%	15.9%
Two	69.7%	4.0%	26.3%	19.5%
Three or more	72.0%	2.4%	25.6%	9.9%
MARITAL STATUS:				
Married	64.3%	4.9%	30.8%	77.1%
Single	65.6%	5.7%	28.8%	22.9%
GENDER OF RESPONDENT:				
Male	64.0%	6.7%	29.3%	50.0%
Female	65.1%	3.5%	31.4%	50.0%
Total	64.6%	5.1%	30.3%	100.0%

	EFFECT ON LEGISLATOR:			Total
	More positive	More negative	No difference	Col %
	Row %	Row %	Row %	
MARITAL STATUS BY GENDER:				
Married Males	62.5%	6.4%	31.1%	39.4%
Married Females	66.1%	3.4%	30.5%	37.7%
Single Males	69.8%	7.5%	22.6%	10.6%
Single Females	61.9%	4.0%	34.1%	12.3%
FAMILY STATUS:				
Young Single	68.5%	4.3%	27.2%	5.2%
Adult Single	59.3%	6.3%	34.4%	11.9%
Single Parent	76.1%	5.5%	18.5%	5.7%
Young Couple	74.0%		26.0%	5.1%
Mature Couple	56.2%	7.3%	36.6%	32.4%
Young Family	75.5%	2.6%	22.0%	18.7%
Mature Family	64.4%	4.7%	30.9%	20.9%
LEGISLATIVE HOUSE DISTRICT:				
House District 10	54.3%	8.5%	37.2%	7.1%
House District 11	66.8%	3.7%	29.5%	7.1%
House District 12	64.7%	.9%	34.4%	7.1%
House District 13	56.4%	6.9%	36.7%	7.1%
House District 14	72.8%	4.3%	23.0%	7.1%
House District 15	57.3%	3.0%	39.7%	7.1%
House District 16	69.9%	4.1%	26.0%	7.1%
House District 17	68.2%	4.2%	27.6%	7.1%
House District 18	60.6%	8.8%	30.6%	7.1%
House District 19	71.1%	3.2%	25.7%	7.1%
House District 20	59.0%	7.9%	33.2%	7.1%
House District 21	68.5%	6.7%	24.8%	7.1%
House District 22	68.3%	3.1%	28.6%	7.1%
House District 23	66.1%	6.2%	27.6%	7.1%
LEGISLATIVE SENATE DISTRICT:				
Senate District E	54.3%	8.5%	37.2%	7.1%
Senate District F	65.7%	2.3%	32.0%	14.3%
Senate District G	64.6%	5.6%	29.9%	14.3%
Senate District H	63.6%	3.6%	32.9%	14.3%
Senate District I	64.4%	6.5%	29.1%	14.3%
Senate District J	65.0%	5.5%	29.5%	14.3%
Senate District K	68.4%	4.9%	26.7%	14.3%
Senate District L	66.1%	6.2%	27.6%	7.1%
Total	64.6%	5.1%	30.3%	100.0%

Economic Deregulation and Customer Choice: Lessons for the Electric Industry



Robert Crandall
The Brookings Institution
Washington, DC

Jerry Ellig
Center for Market Processes
Fairfax, VA

Executive Summary

Policymakers and regulators are engaged in an ongoing debate about introducing customer choice in electric service. The most comprehensive legislative proposals envision a market in which all customers could choose their electricity suppliers. Electric utilities would no longer have monopoly rights to sell electricity to particular groups of customers. Instead, they would become transporters of electricity, and they could also compete in the generation marketplace. The price of the electricity would no longer be regulated, although the price of transportation still would be.

During the past two decades, numerous industries with many economic similarities to electricity have already undergone price and entry deregulation in at least part of the industry. The most significant include natural gas, telecommunications, airlines, trucking, and railroads. Like electricity, these are "network" industries. Suppliers and customers are connected via a network of pipes, wires, air routes, roads, or rails, and the decisions of one network user can affect the ability of others to use the network.[1] The experience of these five industries can therefore serve as a guide in the debate over customer choice in electricity.[2] A review of the evidence reveals several broad conclusions about the effects of deregulation, and each conclusion carries with it a policy implication.

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[1] Because of this fact, analysis of these five industries is more relevant to the electricity debate than that of nonnetwork industries that were deregulated at similar times, such as oil production, stock brokerage, or savings and loans.

[2] We are hardly the first to notice the similarities between electricity and other deregulated industries. In August 1996, the National Regulatory Research Institute released a report whose substantive findings largely agree with ours (Costello and Graniere 1996).

Summary of Trends Following Regulatory Change

Industry	% Real price reduction after... 2 years	5 years	10 years	Annual value of consumer benefits due to deregulation
Gas	10-38% (1984-86)	23-45% (1984-89)	27-57% (1984-94)	N.A.*
Long Distance Telecom	5-16% (1984-86)	23-41% (1984-89)	40-47% (1984-94)	$5 billion
Airlines	13% (1977-79)	12% (1977-82)	29% (1977-87)	$19.4 billion
Trucking	N.A.**	3-17% (1980-85)	28-58%*** (1977-87)	$19.6 billion
Railroads	4% (1980-82)	20% (1980-85)	44% (1980-90)	$9.10 billion

Note: All figures are real, in $1995. Consumer benefit figures in the last column measure *total* consumer benefits, including both price reductions and changes in service quality.

Source: For price reductions, see Appendix and/or text of study for data. Consumer benefit figures are from Crandall (1991), Morrison and Winston (1995), and Winston et. al. (1990).

N.A*: For natural gas, no controlled studies quantify the separate effect of deregulation on gas prices. Winston (1993, 1274-75) speculates that the consumer benefits exceeded economists' prederegulation predictions, which were in the range of $2-4 billion in 1995 dollars. If gas prices had remained at 1984 levels, consumers would have paid $50-60 billion more for gas in 1995.

N.A.**: For trucking, no studies have documented the effects for the first couple of years.

***No trucking figure is available for 1980-90; figure quoted is for 1977-87, from Corsi (1994). Because regulation made it difficult to cut trucking rates, the bulk of these rate reductions occurred after 1980.

- **Finding: Deregulation and customer choice lower prices.**

In each of the five industries, prices paid by customers fell significantly as a result of deregulatory reforms. Within the first two years of deregulation, prices had fallen by 4-15 percent, and sometimes more for certain groups of customers. Within 10 years, prices were at least 25 percent lower, and sometimes close to 50 percent lower. Of course, not all of these changes were due to changes in the regulatory regime, but scholarly studies consistently show that regulatory reform created billions of dollars worth of consumer benefits. Consumers gained substantially—not just because of rate reductions, but also because of improvements in the quality of service. All broad consumer groups shared in the price reductions, though some benefited more than others.

Policy implication: *Competition is desirable.*

Policymakers concerned about consumers should open electric service to competition, deregulate rates, and promote consumer choice as quickly as possible.

- **Finding: Deregulation and customer choice align service quality with customer desires.**

The only declines in service quality attributable to deregulation or regulatory reform occurred when regulation previously limited customer choice, forcing customers to pay premium prices for gold-plated service. Crucial social goals like airline safety, reliability of gas service, and reliability of the telecommunications network were maintained or improved by deregulation and customer choice.

Policy implication: *Service quality is no excuse for delay.*

Concerns about reliability and other aspects of service quality are reasons to expedite regulatory reform. Under deregulation, service quality choices will enable consumers to select the services that best meet their needs.

- **Finding: Consumers have experienced genuine benefits, not just reallocation of costs among customer classes.**

Regulatory reform is not a zero sum game; it has generated genuine gains for consumers and society as a whole. It is possible to find narrowly defined groups of customers in special circumstances who paid somewhat higher prices after deregulation, but the gains to the vast majority of consumers far outweighed the effects on these small groups.

Consumers gained for two reasons. First, deregulation or regulatory reform aligned prices more closely with costs, leading to a more efficient use of resources by both firms and customers. Second, firms faced greater incentives to adopt cost-reducing or quality-enhancing innovations in technology, marketing, and business strategy, which often were not predicted beforehand.

Policy implication: *Transition costs are no excuse for delay.*

Based on the experience in other industries, electricity regulatory reform should produce gains well in excess of the transition costs. Therefore, the presence of transition costs is no excuse for delaying or avoiding reform.

- **Finding: The lower the barriers to customer choice, the greater benefits customers receive.**

Rates fell faster in parts of the market where regulators permitted greater customer choice. In telecommunications, for example, long-distance rates fell faster in the interstate market than the intrastate market, because state regulators have been less tolerant of competition and price cutting. Similarly in the airline industry, during the 1970s proponents made a powerful case for deregulation by showing that tickets were less expensive on the less heavily regulated intrastate routes of Texas and California.

Policy implication: *Choice for* **all** *customers for all competitive services will provide the most benefits.*

The best way to let all customers reap the benefits of competitive electric service is to let all customers choose their electricity suppliers. Policy proposals that deregulate only the wholesale electricity market, or allow only large customers to choose their suppliers, are thus inferior from a consumer perspective. For similar reasons, states that refuse to allow competition from out-of-state suppliers do their own citizens a disservice.

- **Finding: Competitive markets continue to evolve in response to consumer needs.**

Although prices fell noticeably in response to deregulation, adjustment to the new, deregulated environment was far from immediate for incumbent firms. Regulation affects not just the structure of incentives facing a firm, but also its corporate culture—the shared assumptions about what types of activities generate business success. Regulation can change relatively quickly, but corporate culture often changes slowly, and so corporate strategies may also adjust slowly to the deregulated environment. For the five industries in this study, significant changes and adjustments are occurring even after 10 years. Benefits of regulatory reform continued to accrue long after the market was first opened.

Even if some firms adjust quickly to the deregulated environment, that environment changes much more quickly than the regulated environment. The industries in this study did not move from a "monopoly equilibrium" to a new "competitive equilibrium." Rather, they moved from a fairly stable regulated environment to an evolutionary environment in which competitive rivalry continually forces producers to improve their performance. Since it is unlikely that firms will ever stop learning, and consumers are never satisfied with the status quo, a stable equilibrium is extremely unlikely.

The five industries in this study present a plethora of examples of innovations that were not foreseen or planned beforehand. These include natural gas hubs, airline hub-and-spoke

systems, and a multitude of types of new services and customer-premises equipment in telecommunications. Such developments should give pause to anyone who claims to be able to predict either the likely or the optimal market structure.

Policy implication: ***Open and competitive markets should be allowed to evolve.***

Legislators and regulators should resist the temptation to elaborately plan either the structure of markets or the transition process. The temptation to overplan takes many forms, including mandates that power must be bought and sold through a central "POOLCO" and proposals that would restrict the range of contracts that generators can make with customers.

In any move toward greater reliance on markets, transition problems must be addressed. But the significant ones where government must play a role, such as those dealing with transition costs, involve the assignment or reassignment of property rights to various market participants. The proper role of policy is not to "design market mechanisms" but to create and protect a framework of property rights that allows market institutions to evolve on their own.

Electric Power Competition In Alaska

Testimony of Michael C. Dotten
Shareholder, Heller, Ehrman, White & McAuliffe

Before the
Senate Labor and Commerce Committee

Alaska Legislature

My name is Michael Dotten and I am a shareholder in the law firm of Heller, Ehrman, White & McAuliffe. For the last 20 years I have been involved in the electric power and natural gas industries, first as a regulator as an Assistant Attorney General assigned to the Idaho Public Utilities Commission and then, as lead rate counsel for Bonneville Power Administration, a large federally owned electric utility that sells 50 percent of the power in the Pacific Northwest and provides 80 percent of the region's bulk transmission. For the last 15 years, I have been in private practice representing large consumers of natural gas and electricity, utilities, independent power producers, and cogenerators. I recently represented Columbia Steel Casting Co., Inc. as plaintiff in a successful Federal antitrust lawsuit against Portland General Electric Company, its incumbent electric utility on grounds that the utility unlawfully monopolized sales of electric power in Portland, Oregon.

Portland General filed a Petition for Certiorari with the United States Supreme Court and we await a decision by the Supreme Court as to whether it will grant review.

My practice has included work in 16 states. Many of those states today permit competition in the sale of electric power in one manner or another. Electric power service consists of three parts: generation (or power), transmission (to move electric power to load centers at high voltage) and distribution (lines that take power from high voltage to stepped down voltage and then over wires to businesses and homes). In the west, the states of California, Nevada, Oregon, Washington, and Montana all have fairly extensive state-wide or pilot programs offering customers a choice in their electric power suppliers. Distribution utilities remain monopolies, but there is competition to provide electric power to all classes of consumers, and prices are dropping.

In other words, Alaska would not be alone in providing its consumers with a choice in allowing competitive access to electric power suppliers. If Alaska fails to do so, however, it will handicap itself from attracting new industry.

I come before you today to describe why I believe current Alaska law not only permits, but mandates competition in the sale of electric power. I am also here to reassure you that Alaska law permits the Alaska Public Utilities Commission to create monopoly electric power distribution territories where it concludes duplication of facilities would be harmful to the public interest.

Free enterprise is the foundation of our country's economic philosophy. In the words of the United States Supreme Court, "antitrust laws are the magna carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to our fundamental personal freedoms." [*US v. Topco,* 405 US 596, 610 (1972)].

Despite this country's historical commitment to free enterprise, the belief arose that some utilities are natural monopolies. Because of the tremendous capital investment that some utility systems require, and technological barriers to entry, it made no sense to have companies compete. Instead, some (but not all) states granted utilities a protected monopoly in return for regulated rates and services. However, as described below, this right to monopolize is not absolute and unfettered. The federal courts have increasingly held that, even in industries where monopolization has historically been permitted, as competition becomes

technologically and economically feasible, monopolization may become unlawful. In those circumstances the Courts will take a harder look at whether monopolization is sanctioned by the state.

Given the importance of the antitrust laws in preserving free enterprise, it is not surprising that the courts in this country that apply and interpret the antitrust laws are reluctant to create exceptions to those laws. The Court of Appeals for the Ninth Circuit (the Circuit in which Alaska is located) has held that immunity from the antitrust laws is "disfavored, much as are repeals [of the antitrust laws] by implication because of Congress's 'overarching and fundamental policies' protecting competition." *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*, 111 F.3d 1427, 1436 [1] This rule applies even in the electric power industry which many people previously consider to be a "natural monopoly."

As this body is aware, electric power is gradually undergoing the same deregulation and is subject to the same competitive forces that have reduced consumer costs in the airline, telecommunications, natural gas, railroad and trucking

[1] The Ninth Circuit cited for these fundamental propositions the cases *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992) and *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 398-99 (1978).

industries. As with many industries, the Federal courts are being used as vehicles by frustrated consumers to obtain competitive pricing from electric utility suppliers. To ward off these challenges to their monopolization and to defend themselves against claims for monopoly pricing, electric utilities seek to use a variety of exceptions to the normal application of the antitrust laws. Despite the courts' general reluctance to permit exceptions to the antitrust laws, some exceptions have arisen. One of those exceptions, called "the state action doctrine," arose, not from statutes, but from Federal court holdings. In the 1943 case of *Parker v. Brown*,[2] the Supreme Court determined that the antitrust laws were never intended to interfere with states implementing state policy. The Court recognized that states must have latitude to formulate regulatory policies that may be inherently anticompetitive. Accordingly, the Court ruled in *Parker v. Brown* that the states acting in their sovereign capacity are immune from the antitrust laws.

Subsequent decisions extended that immunity to private parties acting pursuant to expressly established state regulatory policies. Those decisions developed a test for state action immunity that balances state sovereignty against the judicial policy against implied immunities to the antitrust laws. That test was

[2] 317 U.S. 341 (1943).

formally articulated in the case of *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc. ("Midcal")* 445 U.S. 97 (1980). That decision holds that anticompetitive conduct is not immune from the antitrust laws unless that conduct is "clearly articulated and affirmatively expressed as state policy" to displace competition with regulation and "second, the policy must be actively supervised by the State itself." *Midcal*, 445 U.S. at 105. In other words, the state legislature acting in its sovereign capacity may sanction certain anticompetitive conduct on the part of state officials or private actors, but that sanction must be unmistakable. It cannot be implied in the statutes, nor can it arise *de facto* from the inaction of administrative agencies.

Even though municipalities are arms of the state, the Supreme Court has held that "before a municipality will be entitled to the protection of the state action exemption from the antitrust laws, it must demonstrate that it is engaging in the challenged activity pursuant to a clearly expressed state policy." *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985).

The question for the Legislature, in light of this background is: to what extent does Alaska law clearly articulate and affirmatively express a policy to displace competition for retail sales of electric energy with regulation? The answer makes

engineering, economic and policy sense and is based on a straightforward reading of Alaska law. AS 42.05.221 (d) reads as follows:

> In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:
>
> (1) delineate the service area boundaries in each of those areas of competition;
>
> (2) eliminate existing duplication and paralleling to the fullest reasonable extent;
>
> (3) preclude future duplication and paralleling;. . . .

Note that the foregoing approach does not "clearly articulate and affirmatively express" Alaska's intent to permit monopolization of electric power sales. It merely evidences the state's intent (after appropriate findings are made) to eliminate duplication and paralleling of distribution (and potentially transmission) facilities--the only facilities that could be "parallel."

Even if it can be said that a state public utility commission acquiesced in a utility's maintenance of monopoly electric sales, that is not sufficient to insulate the utility from private antitrust liability to consumers who seek access to competitive

markets. Federal Courts are willing to view antitrust immunity through the lens of an evolving technological and economic world. A monopoly insulated from liability when competition is technologically or economically impractical may find itself unprotected when competition becomes feasible. I offer the following real-world examples:

Do you recall the days when we all dialed our calls over black rotary telephones owned by the local exchange company? The local exchange companies claimed (correctly for years) that permitting phones produced by others to be connected to their lines would disrupt service. They claimed that the phone system needed to be a seamless web to assure adequate service. Gradually, however, alternative telephone handset and equipment providers convinced the federal courts and regulatory bodies that they could supply telephones that would be perfectly compatible with the local exchange companies' wires and switches.

Later, in the case of *MCI Communications Corp. v. AT&T Co.*, 708 F.2d 1081 (7th Cir.) *cert. denied,* 464 U.S. 891 (1983) and its progeny, the Federal courts concluded AT&T had misused its essential facility to eliminate competition, that long distance service did not need to be part of a vertically integrated monopoly and the Court ordered the breakup of AT&T. Today, we are seeing competition for

dial tone service. Why? Because each of these steps in breaking up a vertically-integrated monopoly became feasible from a technological and economic perspective. The Federal courts merely applied antitrust law to assure that monopolies were not needlessly perpetuated.

We have seen the beginnings of this evolution in the electric power industry as well. In *Cantor v. Detroit Edison Company*, 428 U.S. 579 (1976) the United States Supreme Court held that Detroit Edison was not insulated from antitrust liability for carrying out a program that allowed consumers to receive free replacement light bulbs from the utility. Suit was filed by a drug store owner who complained that the program constituted an unprotected restraint of trade. The Supreme Court found that the utility was not insulated under the state action doctrine from liability, even though the Michigan Public Service Commission had approved the tariffs that established the bulb replacements and thereby approved the program by implication. In effect, the free replacement of light bulbs, which had taken place since 1886, was part of a vertical monopoly that was no longer technologically or economically necessary.

Today, it is no longer technologically or economically required for electric utilities to provide vertically integrated monopoly generation, transmission and

distribution service--there are technologically and economically feasible alternatives. As the Supreme Court said of electric utilities in *Cantor*:

> There is no logical inconsistency between requiring such a [utility] firm to meet regulatory criteria insofar as it is exercising its natural monopoly powers and also to comply with antitrust standards to the extent it engages in business activity in competitive areas of the economy.

Cantor v. Detroit Edison Company, 428 U.S. at 596.

To the same effect, the Supreme Court held that insurance companies that might be insulated from antitrust liability under the federal McCarran-Ferguson Act are not immune from related activity that is subject to competition. *Group Life & Health Insurance Company et al. v Royal Drug Company*, 440 U.S. 205 (1979).

AS 42.05.221(d) does clearly articulate and affirmatively express the state's intent to permit monopolization of distribution facilities when necessary to prevent what the Alaska Public Utilities Commission finds to be harmful duplication of facilities. But that is as far as the Alaska statutes go. Whether the Alaska statutes would permit the vertically integrated monopolization of service when there was no technologically or economically feasible competition for the sale of electric power is now a moot question. Now that there are technologically and economically feasible alternatives to the sale of electric power over distribution lines that form a natural

monopoly, it is clear that neither federal nor state law will insulate a utility that seeks to monopolize sales of electric power over those lines from federal antitrust liability. As they have many times in the past, the federal courts will afford private litigants a remedy against monopolization that is not clearly articulated and affirmatively expressed as the state's own policy. Even if a state public utility commission has acquiesced in monopoly sales of electric power, that will not insulate the utilities. As the Ninth Circuit Court of Appeals recently said in *Columbia Steel Casting Co., Inc. v. Portland General Electric Company*:

> As a matter of law, then, neither the 1974 Order nor any other subsequent orders of the OPUC [Oregon Public Utilities Commission] amend the 1972 Order to clarify that Order as an expression of state policy to displace competition with regulation. At best, these orders recite that the utilities have stopped competing with each other within territories they have defined. As our court has said, mere "state authorization, approval, encouragement, or participation in restrictive private conduct confers no antitrust immunity." *Phonetele, Inc. v. American Tel. & Tel. Co.*, 664 F. 2d 716, 736 (9th Cir. 1981) (quoting *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 592-93, 96 S. Ct. 3110, 3118-19, 49 L.Ed. 2d 1141 (1976), cert denied, 459 U.S. 1145, 103 S.Ct. 785, 74 L.Ed.2d 992 (1983).

Columbia Steel Casting Co., Inc. v. Portland General Electric Company, 111 F.3d 1427, 1441-42 (9th Cir. 1997).

This opinion is not "out there" in isolation. A federal district court judge in Idaho recently reached a similar result in the case of *Snake River Valley Electric Association v. PacifiCorp*, (Civil No. 96-0308-E-BLW, April 25, 1997, District of

Idaho) (interlocutory review denied by the U.S. Court of Appeals for the Ninth Circuit). Although I am proud of the result in the *Columbia Steel* case, I believe it reflects a straightforward application of the Supreme Court's test in the *Midcal* case.

We are not here today to challenge the notion of natural monopolies. We agree that some utility service cannot reasonably be duplicated and AS 42.05.221(d) affords the Alaska Public Utilities Commission the authority to bar duplication and paralleling of distribution and transmission facilities. But the tremendous changes that have occurred in the past few years in the electric industry have now made it feasible for sales of electric power to be scheduled across lines owned by third parties. That is the essence of competition that is taking place in the lower 48. For the last couple of years utility pilot programs have proven that electric power sales can be decoupled (or "unbundled") from distribution and transmission service, and consumers can be afforded substantial savings from the resulting competition. Alaska's utility statutes are not a bar to competitive sales of electric power that are now technologically and economically feasible. Neither are they a defense to challenges under the federal antitrust laws of those utilities that seek to block access to competition. I can assure you from my own experience that larger consumers of electric power are willing to use the antitrust laws, where necessary, to challenge

anticompetitive conduct by utilities. Businesses that increasingly compete in the world economy have no tolerance for higher prices paid to utilities that seek to protect themselves from competition.

We are not here advocating that legislation is necessary to allow competition to proceed, either. Electric utilities in this state have no lawful alternative but to permit competition to proceed. If the legislature or the Alaska Public Utilities Commission do not act to define how competition is to proceed, then a Federal court judge (as in the *Columbia Steel* and *Snake River* cases) may define the manner in which competition must go forward. All it would take to put the resolution of this question before a federal judge is a plaintiff who believes they have a sufficient stake in encouraging competition in electric power sales.

In addition to private litigation, the United States Department of Justice, through its Antitrust Division has become increasingly more active in the electric power arena. In 1997 the Justice Department filed suit against Rochester Gas and Electric Corporation (RG&E) in the United States District Court for the Western District of New York challenging the anticompetitive aspects of a contract entered into between RG&E and the University of Rochester in which RG&E promised to provide electricity to the University in return for the University's promise not to use

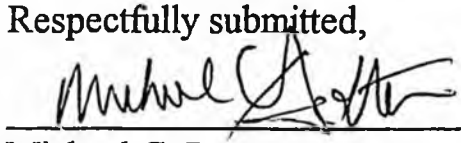
cogeneration to compete with RG&E. After a federal judge refused to dismiss the complaint, on February 20 of this year, RG&E and the Justice Department entered into a stipulation and submitted a consent judgment to the Court by which RG&E voluntarily surrendered the right to enforce the provisions eliminating competition in the sale of electric power from its agreement and prohibiting LG&E from "entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor."

Finally, I want to describe why competition is worth the effort. The Brookings Institution published, in 1997, a study entitled "*Economic Deregulation and Customer Choice: Lessons for the Electric Industry.*" The study reveals that in the natural gas, long distance telecom, airlines, trucking, and railroad industries, deregulation (and competition) resulted in real price reductions in the short term (2 years) the medium term (5 years) and the long term (10 years) with the price reductions getting larger over time. The study also reports that all classes of customers (not just large industrial customers) enjoyed substantial savings in each of these industries. A table, revealing the results is attached to this testimony.

I appreciate the opportunity to address you. The changes that will take place in the electric power industry in the next few years will create many new

opportunities. If Alaska does not impede market access and moves swiftly to encourage competition, it will enjoy a relative competitive advantage in attracting new business to the state as the savings resulting from competitive markets become available sooner, rather than later.

Respectfully submitted,



Michael C. Dotten
HELLER, EHRMAN, WHITE & McAULIFFE
200 S.W. Market Street, Suite 1750
Portland, Oregon 97201-5718

(503) 795-7420

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 355

Revision Date (Note if correction) _____ Dept. Affected Commerce
Title Provision of electric service BRU APUC
Component APUC
Sponsor S. Labor & Commerce
Requester S. Labor & Commerce Component Serial No. 364

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	79.1	79.1	79.1	79.1	79.1	79.1
Travel	0.6	0.6	0.6	0.6	0.6	0.6
Contractual	27.0	27.0	27.0	27.0	27.0	27.0
Supplies	1.1	1.1	1.1	1.1	1.1	1.1
Equipment	0.2	0.2	0.2	0.2	0.2	0.2
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	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	108.0	108.0	108.0	108.0	108.0	108.0
TOTAL	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**	**108.0**

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill would require the Commission to issue orders within 10 days of a request by a certificated electric utility. There is no precedent for expecting decisions this quickly. Even in competitive markets such as long distance telecommunications, the deadline for action on a utility filing is 30 days, and the Commission has the option to reject the application if it is incomplete, or to suspend the filing for further investigation. The ten-day turnaround would not allow for public notice of the fillings required by AS 42.05. 411.

A Utility Finance Analyst II, Range 19 and part-time Administrative Clerk (Range 8) would be required to handle the fast turnaround required for these filings, along with the follow-up analysis of whether the interim rates were just and reasonable. The Commission would be required to schedule special meetings to handle these filings, because regularly scheduled meetings would not meet the statutory deadline.

Division Alaska Public Utilities Commission Date 4/20/98
Approved by Commissioner _____ Date 4/21/98
Agency _____

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FISCAL NOTE(S)

SCR

1

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO.
BILL VERSION: SCR 1
PUBLISH DATE:

Revision Date:
Department Affected: Legislative Affairs Agency
Title: Proposing amendments to the Uniform Rules...relating to certain committee meetings held outside.....
BRU: Legislative Council
Sponsor: Senator Duncan
Component: Session Expenses
Requestor: Senate Judiciary

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	85.0	85.0	85.0	85.0	85.0	85.0
CONTRACTUAL	13.5	13.5	13.5	13.5	13.5	13.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	98.5	98.5	98.5	98.5	98.5	98.5
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	98.5	98.5	98.5	98.5	98.5	98.5
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	98.5	98.5	98.5	98.5	98.5	98.5

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 impact:

ANALYSIS: (Attach a separate page if necessary)

SCR 1 amends the Uniform Rules of the Alaska State Legislature. It requires that each standing committee hold a meeting at a location outside the Capital between the 61st and 70th day of a regular session. There are 18 standing committees.

This fiscal note assumes

(1) Only Legislators who are members of a standing committee would travel to the meeting.

(see next page)

Prepared By: Karla Schofield, Deputy Director — Karla Schofield — Phone: 465-3852
Division: Administrative Services — Date: 1/29/97

Approved By: Pamela A. Varni, Executive Director — Pamela A. Varni
Agency: Legislative Affairs Agency — Date: 1/29/97

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

FISCAL NOTE

(2) One staff person would travel to each committee meeting.

(3) Meeting schedules would be coordinated as much as possible to minimize travel costs.
For example: If four committee meetings were scheduled in Anchorage, the meetings would be scheduled within a two day period. This would require only one trip to Anchorage per Legislator for four meetings instead of four individual trips.

(4) Meeting places would be provided by Legislative Information Offices where available. If Legislative space is not large enough to accomodate a standing committee meeting, local communities will provide space.

Travel costs for 18 standing committees to conduct one meeting per committee in locations other than Juneau would be $85,000. Travel costs are based on coach airfare to various locations around the state and federal per diem rates. Legislators attending meetings in their place of permanent residence would not receive the federal per diem rate.

Travel costs could be as high as $108,026 if meetings could not be coordinated due to conflicts. If committees decided to have more than one meeting, the costs could be substantially higher.

Contractual

Advertising to announce committee meeting.

18 meetings X $750/meeting	13.5

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/13/97

FURTHER: Finance

Date of 5-Day Notice: 1/23/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 1/29/97

Judiciary Committee considered SENATE CONCURRENT RESOLUTION NO. 1

Proposing amendments to the Uniform Rules of the Alaska State Legislature relating to certain committee meetings held outside of the state capital and to recess of the legislature during the period the meetings are held; and providing for an effective date.

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Mike Miller		True Rogers		✓	not necessarily uniform rules already alla
H Ellis	✓				
		Alan K Parnell	✓		
CHAIR: Robin L. Taylor	—	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
LEGISLATIVE AFFAIRS AGENCY	1/29		X

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***Include fiscal notes accompanying Governor's bill**

SENATOR JIM DUNCAN

ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

SPONSOR STATEMENT

SCR 1
Requiring Legislative Committee Hearings to be Held Outside the State Capital during the 61st to 70th day of the Legislative Session.

SCR 1 requires that formal committee hearings be held in locations outside the state capital during the period beginning with the 61st day of each regular session up to and including the 70th day.

Allowing the Legislature to hold hearings in other parts of the state during the session will improve access to the Legislature.

A change to Uniform Rule 52 will require that before the 40th day of the session, each body consider the question of concurring in a recess in excess of three days for the purpose of holding committee meetings outside the state capital between the 61st and 70th day.

Uniform Rule 23A (new) will require these hearings at other locations within the state and that notice of such meetings be provided by the 50th day of the legislative session.

Committee members must actually be present physically to vote to report legislation out of committee, although members can attend by teleconference.

This resolution has the support of those who seek to make state government more accessible to its constituents.

It will take effect upon the convening of the Second Session of the Twentieth Alaska State Legislature in January 1998.

1/28/97

SENATOR JIM DUNCAN

ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

MEMORANDUM

DATE: January 15, 1997

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Jim Duncan
Minority Leader

SUBJECT: Hearing on SCR 1

I urge you to schedule a hearing on SCR 1, which proposes amendments to the Uniform Rules to allow the legislature to recess during the session to hold hearings outside of Juneau.

Allowing the legislature to hold hearings in other parts of the state during the legislative session will improve access to the legislature. The resolution has the support of those who seek to make state government more accessible to its constituents.

I am attaching SCR 1, which you will find to be self-explanatory.

Attachment

SCR

25

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/2/98 FURTHER:

Date of 5-Day Notice: 3-5-98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3-10-98

Judiciary Committee considered SENATE CONCURRENT RESOLUTION NO. 25

Urging an appeal and an expeditious decision on the appeal of a case concerning marriage.

and recommends:

[X] be **replaced** with ____ CS FOR SCR 25 (JUD)

[ ] adopt **previous** ____ CS ____ ( )

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ____ Committee

[ ] further referral to the ____ Committee

Senate Bill:
[✓] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR ____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Ken Rhodes	✓	J. Ellis		X	
Mike Miller	✓				
Pearce	✓				
CHAIR: Kevin L. Taylor	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
S (JUD) SCR & CS	3/10/98	0	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL Bill Version: CS SCR 25 (JUD)
(S) Publish Date: 3-10-98

Revision Date (Note if correction)
Title: APPEAL OF MARRIAGE DECISION
Sponsor: SENATE RLS
Requester:

Dept. Affected: DOA OF LAW
BRU: CIVIL DIVISION
Component:
Component Senal No.:

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: KIMBERLY A. BENNETT
Phone: 465-3717
Division: SENATE JUDICIARY COMMITTEE
Date: 3-9-98
Approved by: R L T
Agency:
Date:

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Page ____ of ____

LAUTERBACH
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CS FOR SENATE CONCURRENT RESOLUTION NO. 25(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A RESOLUTION

Urging an appeal and an expeditious decision on the appeal of a case concerning marriage.

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

WHEREAS marriage has been the foundation of civilization for thousands of years in cultures around the world, and it is the single most important social institution; and

WHEREAS marriage is defined in all 50 states as the legal union of a man and a woman, and two sexes must be present for it to be marriage; and

WHEREAS marriage connotes social, economic, and spiritual union; and

WHEREAS marriage is an independently quantifiable good for society; hence the state has an interest in preserving and protecting the special status of marriage; regardless of religious beliefs; and

WHEREAS the Alaska State Legislature in 1996, through passage of Senate Bill 308, confirmed the definition of marriage in Alaska as being the union of one man and one woman; and

WHEREAS a strong majority of Alaskans understand and agree with this definition of marriage; and

Alaska State Legislature

Senator Gary Wilken, Chairman
Senator Loren Leman, Vice Chairman
Senator Lyda Green
Senator Jerry Ward
Senator Johnny Ellis

State Capitol
Room 510
Juneau, Alaska 99801
(907) 465-3762

Senate Committee on
Health, Education and Social Services

Sponsor Statement - Senate Concurrent Resolution 25

"Urging an appeal and an expeditious decision on the appeal of a case concerning marriage."

SCR 25 expresses the Legislature's support for the traditional definition of marriage as a legal union of one man and one woman, and urges the Governor, through the Dept. of Law, to utilize all available resources to appeal Superior Court Judge Peter Michalski's Feb. 27 ruling in the case of *Brause and Dugan vs. State of Alaska.*

In his decision, Judge Michalski effectively ruled that the state's policy of issuing marriage licenses only to opposite-sex couples is unconstitutional unless the state can demonstrate a compelling governmental interest (the "strict scrutiny" test) for denying marriage licenses to same-sex couples.

The judge's decision to impose the strict scrutiny test is a logical extension of an illogical finding: namely, that the right to *privacy* found in Section 22 of Alaska's constitution demands that the state provide *public* recognition of an individual's *personal* choice of a life partner.

The legislative history of the privacy amendment approved by voters in 1972 clearly shows the amendment was not intended to legalize homosexual marriage. Judge Michalski's ruling is a capricious exercise in nihilism, ignoring both legislative intent and thousands of years of legal and cultural history informing our understanding of what marriage is.

The ruling was prompted by the case of a same-sex couple seeking a marriage license, but the judge's legal reasoning could invalidate other laws relating to marriage, including prohibitions on polygamy and restrictions based on age and consanguinity.

No state in the U.S. and no country in the world recognizes marriage between individuals of the same sex. Legalization of same-sex marriage in Alaska would place this state's laws in conflict with the laws of all 49 other states and also the laws of the federal government, which define marriage as a union that can be entered into only by one man and one woman.

SCR 25 reaffirms the clear public policy statement made by the Legislature in 1996 when it overwhelmingly approved SB 308, an act that clarified what has always been the legal practice in Alaska by defining marriage as a union of one man and one woman.

Prepared by Mike Pauley, Aide to Senator Loren Leman, Vice-Chair Senate HESS Committee (465-3841)
Last Updated: March 9, 1998

Alaska State Legislature

State Capitol
Room 423
Juneau, Alaska 99801-1182
907-465-3762

Senate Committee on Health, Education and Social Services

Sponsor Statement -- SB 308

An Act clarifying a statute relating to persons who may legally marry; relating to same-sex marriages; and providing for an effective date.

Senate Bill 308 amends the existing statute governing marriage in Alaska, to clarify that marriage is a civil contract entered into between "one man and one woman". The current statute uses the gender-neutral term "person". In light of recent litigation on the subject of same-sex marriages, including the case *Brause and Dugan v. State of Alaska*, the existence of such ambiguous language in statute is problematic.

In a March 31, 1995, written opinion the Department of Law expressed that only marriages between persons of the opposite sex would likely be recognized by the courts as authorized under current law, despite the gender-neutral language in the statute. This opinion is based on the fact that the original Alaska Marriage Code of 1963 specified that marriage is a contract entered into by a "man" and a "woman". The change to "person" in 1974 was the result of a revisor of statutes bill. There was no intent by the legislature to change the definition or requirements for marriage in a substantive way.

Nevertheless, the Department of Law acknowledged in its opinion that the existing language is problematic: "Using hindsight, we would have to say that the 1974 revisor's bill should not have amended AS 25.05.011 in the way that it did. First, the change to sex-neutral language *can be viewed as making a major substantive change in the law*, inappropriate for a revisor's bill." [emphasis added] In order to eliminate ambiguity, SB 308 restores the traditional language in the marriage definition.

SB 308 also adds new language to the marriage statute stating that same-sex marriages recognized by other states or foreign countries are void in Alaska. This language is in response to the 1993 decision of the Supreme Court of Hawaii in *Baehr v. Lewin*, in which the court ruled that it may be unconstitutional for Hawaii to disallow same-sex marriages, absent a compelling interest by the state.

SUPPORTING
DOCUMENTS

The case was remanded to the lower court which will rule on the case in July or August 1996.

The prospect of same-sex marriages being allowed in Hawaii or other states raises the possibility that Alaska would have to recognize such marriages if the "couples" moved to Alaska. Absent a strong legal policy in Alaska which excludes same-sex marriages, the courts could find that a marriage valid in one state is valid in all states. The people of Alaska have not chosen, either directly or through their elected representatives, to recognize same-sex marriages. The issue of same-sex marriages is one that should be decided by Alaskans, not by a court in Hawaii or any other state.

A third component of SB 308 states that a "same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage." This language precludes the state from recognizing same-sex "domestic partnerships" which are not legal marriages, but could be deemed to be entitled to the benefits of marriage, especially in the context of employee benefits.

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 6, 1996

The Honorable Drue Pearce
President of the Senate
State Capitol, Room 111
Juneau, AK 99801-1182

The Honorable Gail Phillips
Speaker of the House
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Drue and Gail,

Under the authority of art. II, sec. 17, of the Alaska Constitution, I have allowed the following bill to become law without my signature:

Senate Bill 308
"An act clarifying a statute relating to persons who may legally marry; relating to same-sex marriages; and providing for an effective date."

This bill, passed by an overwhelming bipartisan majority, merely restates present Alaska law regarding who may legally marry in this state. The Alaska Marriage Code allows marriage only between a man and a woman. The history of the statute makes it clear this is the law in Alaska. In addition, I have been advised by the attorney general this bill is not necessary to maintain the current nonrecognition in Alaska of a same-sex marriage lawfully performed in another state. There is no confusion about the current marriage code or my Administration's resolve to support it. At my direction, the state is currently defending this position in court.

Passage of this bill, however, does raise serious concerns. Since it does nothing to change current law, the primary motivation behind the bill apparently was to trigger a divisive and derogatory debate aimed at one segment of our society. This legislative exercise is little more than a thinly disguised ploy to pit Alaskans against one another for political advantage.

I believe it is my responsibility to call upon Alaskans to reject the manipulation and opportunism of those who would divide us through intolerance. I continue to believe our role as public servants is to raise the level of our horizons, to provide opportunities for all Alaskans, to treasure our diversity and to respect our differences as individuals.

Sincerely,

Tony Knowles
Governor

Alaska State Legislature

Senator Drue Pearce
President of the Senate

during session:
Juneau, AK 99801-1182
voice: (907) 465-4993
fax: (907) 465-3872

during interim:
716 West 4th Avenue, Suite 500
Anchorage, AK 99501-2133
voice: (907) 258-8185
fax: (907) 258-0226

Representative Gail Phillips
Speaker of the House

during session:
State Capitol
Juneau, AK 99801-1182
voice: (907) 465-2689
fax: (907) 465-3472

during interim:
716 West 4th Avenue, Suite 620
Anchorage, AK 99501-2133
voice: (907) 258-8164
fax: (907) 258-1642

Bill Defining Marriage as a Man/Woman Partnership Becomes Law

For Immediate Release: May 6, 1996

Contact: Senator Loren Leman (907) 465-2095
Senator Lyda Green (907) 465-6600
Rep. Norman Rokeberg (907) 465-4968

JUNEAU - Senate Bill 308 amending the Alaska marriage law to clarify marriage as a civil contract between "one man and one woman," became law Monday.

Senator Lyda Green, Chairman of the Senate Hess Committee, noted she was pleased this legislation has become law because it not only had strong support from both bodies in the Legislature, but it upholds the traditional Alaska family.

"This bill doesn't just restate present Alaska law regarding who may legally marry, as the Governor claimed in his transmittal notice," said Senator Green. "It clarifies the definition of marriage in State statute to eliminate future confusion as marriage laws are challenged in other states."

Senator Loren Leman (R-Anchorage), remarked that while he was pleased SB 308 became law, he was disappointed that the Governor did not exhibit stronger leadership by signing the bill.

"If the Governor cared enough about the bill to contact us, he would have found out that the true motivation behind the bill was not to trigger a divisive and derogatory debate, but to restore traditional language and add a full faith and credit provision so that same-sex marriages entered into in other states are void in Alaska.

"Full faith and credit means that laws passed in one state must be respected by another," said Senator Leman.

"A court decision expected later this year in Hawaii may legalize same sex marriages in that state and other states are revisiting their marriage laws in preparation for the court decision," said Senator Leman.

-more-