

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9788 HOUSE COMMUNITY & REGIONAL AFFAIRS

1998 Officers  
Pres. Bill Kuhlmann 694-2426  
V. Pres. Jim Yeargan 694-2571  
Sec. Barbara Ferrell 696-2570  
Treas. Floyd Gori 694-6088



1998 Directors  
Michelle Adams 696-1274  
Dr. Gregory Culbert 696-4878  
Jim Young 689-5200

EAGLE RIVER COMMUNITY COUNCIL  
PO BOX 773952  
EAGLE RIVER, ALASKA 99577

12 February, 1998

FEB 20 1998

Senator Sean Parnell  
State Capital  
Juneau, Alaska 99801-1182

Subject: Senate Bill 208

Dear Senator Parnell;

Eagle River Community Council supports the passage of Senate Bill 208. We agree that the abolishment or alteration of service areas within a borough or municipality should be prohibited without first requiring a vote of the people residing in or owning a business within that service area.

We appreciate your sponsorship of this bill and look forward to its passage.

Sincerely,

Bill Kuhlman, President  
Eagle River Community Council

cc: Senator Rick Halford  
Senator Randy Phillips  
Representative Fred Dyson  
Representative Vic Kohring  
Representative Pete Kott

Reused to support  
HB 133 with permission  
of Bill Kuhlman

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cc:Mail for: Senator Sean Parnell

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Subject: SB208

From: vhoeller@mosquitonet.com (Vaughan Hoefler) at CC2MHS1 1/28/98 11:18 AM

To: Senator Sean Parnell at LAA\_TRANS

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Dear Senator Parnell,

On behalf of the road service area commissioners for the Ester Lump Service Area located near Fairbanks, we support your effort to implement SB 208.

Voter approval for the formation, alteration, or abolishment of certain service areas would allow residents to more fairly decide on such changes. Our service area recently faced an annexation issue in which the Borough sought to add non-contiguous roads several miles distant to our road system. The condition of the roads proposed for annexation were significantly different than our own, built at different times, and subject to

slightly different weather conditions. Nevertheless, the North Star Borough

Rural Services Division presented this annexation issue as the only option to the residents of both areas. Many of our area's residents vented their frustration for not having any "say" in the ability to direct the future of our roads.

After two Assembly meetings, and following the testimony of many residents, the assembly moved for the creation of a separate service area.

Had AS 29.35.450 (voter approval of alteration or abolishment of service areas)

been in effect, our concerns would have been brought forth long before the Borough expended considerable time and funds developing this plan.

Thank you for taking the effort to make these changes, as they will provide service area residents the opportunity to more effectively govern the growth or change of their areas.

Carol Hoefler

This letter is  
being reused to  
support HB 133  
with permission of  
sender



Quality Services

(907) 274-1056

Date FEB 19 1998

CHUGIAK-EAGLE  
RIVER STAR

Client No. 610

# Assembly duels over service area legislation

150 610 640

By LEE JORDAN  
Alaska Star Editor

It will be the ballad of dueling resolutions Tuesday night as the Assembly considers opposing statements regarding a measure currently making headway in Juneau.

Sen. Sean Pamell and Rep. Con Bunde, both representing South Anchorage in the Legislature, have introduced identical bills dealing with service area votes. The measures specify that when a service area is created, altered or abolished, there must be separate votes within and outside the area where the service is to be provided. To become effective, it would require passage in both.

The measures respond to Assembly action which allowed voters throughout Anchorage to extend police service to the Hillside.

"It would not let the Hillside de-annex, but it would prevent something like that from happening again," said Assemblyman Dan Kendall of Chugiak about the proposed legislation.

Kendall last week submitted a resolution which, if approved, states that the Assembly supports the bills.

On Friday, Assemblywomen Cheryl Clementson and Faye VonGemmingen — who authored the successful Hillside annexation scheme — tossed their own reso-

lutions into the hopper. If adopted, theirs would state that the Assembly "strongly opposes" passage of the bills.

Kendall's resolution says, "For many years, there has been much debate on who should vote during the creation, alteration or abolishment of service areas." The proposed bills, he said, "resolve this issue by clearly identifying in state statutes who should vote."

The Clementson-VonGemmingen resolution states that the legislation would "severely restrict" the ability of home-rule municipalities such as Anchorage in managing their affairs. It would allow "a minority of voters" to block extension of services, they

wrote.

Kendall said he is not sure which version will end up being passed on Tuesday night, with present indications that the vote will be close.

The controversial Hillside police issue was ended by VonGemmingen's 1996 ballot measure which dissolved the existing police service area, then created a new, larger service area that included the Hillside. Hillside residents three times had voted down annexation, saying they preferred to form their own service area.

The successful annexation was voted on by all residents of the police service area. It was the first time since the Anchorage borough was

formed in 1964 that a dual majority was not required in a service area election. A court challenge by Hillside residents was not successful.

Anchorage's Home Rule Charter states that a service area cannot be created, altered or abolished without an affirmative vote of "a majority of voters within the area affected." It is the definition of "area affected" that is at the root of the conflict.

Until the Hillside police election, and in previous elections on that same issue, the area where the service was to be extended had veto power through the separate election.

Kendall said the legislation would assure that concept is continued.

# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to municipal service areas BRU: \_\_\_\_\_  
and providing for voter approval ... Component: \_\_\_\_\_  
 Sponsor: REPRESENTATIVES BUNDE, Halcro  
 Requestor: House CRA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

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

This legislation provides for voter approval of the formation, alteration, or abolishment of certain municipal service areas. This legislation would have no fiscal impact on the department.

Prepared by: Yvonne Chase, Acting Director *Yvonne Chase* Phone: 465-4709  
 Division: Division of Administrative Services / Date: 4/22/99  
 Approved by Commissioner: *Marta Dwin* Date: 4/22/99  
 Agency: Community & Regional Affairs

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**HB**

**137**



**Alaska Permanent Fund Corporation**


P.O. Box 25500 Juneau, Alaska 99802-5500

(907) 465-2047

**MEMORANDUM**

**DATE:** February 2, 2000

**TO:** Chris Phillips,  
Director of Finance

**FROM:** Jim Kelly   
Director of Communications

**SUBJECT:** House Bill 137

This is to provide commentary on the impacts of HB 137. If enacted, this bill would authorize a new, third statutory use for Fund income. Specifically, it would direct the Alaska Permanent Fund Corporation (APFC) to transfer, after the transfers required for dividends and inflation-proofing, "the balance of the earnings reserve account" to the newly created municipal dividend fund.

In terms of fiscal note, the impact would be zero. There would be no additional operational costs associated with this new transfer.

In terms of Fund balances, there are two important issues. First, it is unclear what is meant by "the balance of the earnings reserve account." In previous bills enacted by the legislature relating to the earnings reserve – such as the special appropriations to principal in 1986, 1996 and 1997 – what was transferred was only the realized portion of the earnings reserve.

Since 1998, however, the APFC has been required by a ruling of the Governmental Accounting Standards Board, (GASB 31), to expand the definition of the earnings reserve account in the financial statements to include unrealized income as well. As of June 30, 2001, the realized

portion is projected to total \$3.307 billion and the unrealized portion of the earnings reserve account is projected to total \$4.347 billion.

Second, it is important to note that drawing down the balance of the earnings reserve to zero is potentially detrimental to any and all future annual statutory transfers of Fund income. As reported to the Senate and House Finance Committees last year, in periods of poorly performing markets, the earnings reserve account acts as a reserve for future payments of dividends and inflation-proofing, and now with this legislation, the annual transfer to the municipal dividend fund.

In the view of the Corporation, it is prudent to maintain a healthy balance in the earnings reserve account in order to increase the stability and predictability of future distributions of Fund income for legislatively determined purposes.

The APFC would be pleased to provide additional analysis of the bill's impacts assuming transfer to the municipal divided fund in the first year of only the residual net income earned in that year after payment of dividends and inflation-proofing.



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

January 31, 2000

Representative Carl Moses  
Alaska State Legislature Room 500  
Juneau, AK 99811

Dear Representative Moses:


On behalf of the members of the AML and Alaska Conference of Mayors, we support **HB 137 - Municipal Dividend Program**. It is no surprise we agree with your position that many Alaskans have been hurt by state revenue sharing cuts, and communities desperately need a stable source of income. Critical public safety services have been slashed in the small communities, damage due to deferred maintenance is growing, and many communities have been forced to increase taxes just to maintain services. We believe that rising property taxes due to state cuts have strengthened support for the proposed property tax cap initiative. If the initiative passes it would add \$200 million to Alaska's budget deficit the first year.

While there is not yet broad public support use of some of the earnings of the Permanent Fund, this is an option that must be considered in any long-range fiscal planning effort. The *FY 2000 AML Policy Statement* says, "**Evaluate the Community Dividend concept as part of an overall fiscal plan to help develop Alaska's communities for citizens.**"

The number one legislative priority of the AML and Conference of Mayors is to assist the state in developing a long-range financial plan that considers both state and local impacts, because they are interdependent. HB 137 provides a means to support government closest to the people without further increasing local taxes or adding to the state budget deficit.

Thank you for introducing HB 137 and for your continued interest in the municipalities of Alaska. If we can provide you with any assistance, please let me know.

Sincerely,



Kevin C. Ritchie  
Executive Director

cc: AML Revenue & Finance Subcommittee

c:/jk/leg00/1gb137.doc

Alaska State Legislature  
Representative Carl E. Moses



Member  
House Finance Committee



SESSION  
State Capitol Building  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4451  
800-898-4451  
Fax: (907) 465-3445

INTERIM  
P.O. Box 730  
Unalaska, Alaska 99685  
Phone: (907) 581-2275  
Fax: (907) 581-4949

**SPONSOR STATEMENT / SECTIONAL ANALYSIS**

**HB 137 - Municipal Dividend Program**

I recommend establishment of a Municipal Dividend Program to provide Alaskan municipalities with a predictable and reliable source of income with which to address community needs not being met by the State of Alaska under current financing methods.

Given our inability to substantially cut the state operating budget, and given our unwillingness to raise new revenues, we will need to look at using the earnings reserve of the Permanent Fund in some effective way despite these two political realities.

The current rate of withdrawal from our cash reserves will not endure for many more years. Yet public service demands do not relent. Ask any municipal official around the state, and you'll be told that basic community needs are going unmet.

The idea which several experienced leaders have given some credence is a Municipal Dividend program, which would direct funds from the undistributed earnings reserve of the Permanent Fund through a setup much like the current individual dividend program, and into cities and towns around the state. A formula for distribution would be based upon strict useage criteria and population figures, and would come into play after inflation-proofing the Permanent Fund, and accounting for annual individual dividends.

In the space of the few years we have left to rely upon cash reserves, we need to develop and put into place a program like this which will serve needs and relieve demands upon the state. The value of a predictable and reliable income stream for our state's municipalities in the face of elimination of revenue sharing and municipal assistance from General Fund appropriations, is obvious.

The funds would be used for locally determined needs. Likely, most use of the funds would be for services being shorted or deferred currently by the state agencies. Local decision makers would prioritize from among transportation infrastructure, education and community facilities, and the like. In the ultimate, state programs could be cut commensurately after responsibility and funding are passed to communities.

This plan would integrate well into a scheme of operating budget cuts, new or increased taxation, or both, if given a chance. The individual dividend payout would remain intact, although it might be somewhat impacted over time. But the reality is that any plan advanced to address our budget shortfall will cost individuals in one way or another. Last fall's advisory vote told us what wasn't desired, but unfortunately, it didn't tell us what remedy to institute. I submit that the Municipal Dividend program will contribute greatly to creating a solution which can improve the future of state financing.

**BILL SECTION 1:** Adds a new section to Title 29 establishing the fund in the Department of Commerce and Community Development, and authorizes fund transfers from the earnings reserve account. It makes transfers subject to legislative appropriations, and also provides for full distribution to municipalities of the amount of transfers.

In addition, Section 1 provides for dividend calculation based upon population figures, and cites the U.S. Census Bureau as the chief source, but not the only source, of population information. This section also states that the population of cities within a borough will be deducted from the borough's overall population base, since cities may independently apply for distribution under this program.

**BILL SECTION 2:** Calls for transferring the balance of the earnings reserve account into the municipal dividend account after inflation-proofing the permanent fund, and after transferring the appropriate amount to pay individual dividends.

**BILL SECTION 3:** Establishes an effective date of July 1, 2000.

I-LS0591\ND  
Cook  
1/25/00



**CS FOR HOUSE BILL NO. 137( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE MOSES**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the municipal dividend program; and providing for an  
2 effective date."

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

4 \* Section 1. AS 29.60 is amended by adding new sections to read:

5 **Article 9. Municipal Dividend Program.**

6 **Sec. 29.60.660. Municipal dividend fund.** There is established in the  
7 department the municipal dividend fund consisting of money transferred to the fund  
8 under AS 37.13.145(e). Subject to appropriations for the purpose, the amount  
9 transferred to the fund shall be fully distributed by the department each year as  
10 dividends to municipalities.

11 **Sec. 29.60.670. Amount of dividends.** The department shall calculate the  
12 amount of a dividend for a municipality based on the population of the municipality.  
13 The population of each municipality shall be determined annually by the latest figures  
14 of the United States Bureau of the Census or other population data that in the

1 judgment of the department is reliable. In determining the population of a borough,  
2 the population of all cities in the borough shall be deducted from the total population  
3 of the borough.

4 \* Sec. 2. AS 37.13.145 is amended by adding a new subsection to read:

5 (e) After the transfers under (b) and (c) of this section, the corporation shall  
6 transfer the balance of the earnings reserve account to the municipal dividend fund  
7 established under AS 29.60.660.

8 \* Sec. 3. This Act takes effect July 1, 2000.

**HOUSE BILL NO. 137**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE MOSES**

Introduced: 3/15/99

Referred: Community and Regional Affairs, State Affairs, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the municipal dividend program; and providing for an  
2 effective date."

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

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14 of the United States Bureau of the Census or other population data that in the

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2 the population of all cities in the borough shall be deducted from the total population  
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5 (e) After the transfers under (b) and (c) of this section, the corporation shall  
6 transfer the balance of the earnings reserve account to the municipal dividend fund  
7 established under AS 29.60.670. *should be AS 29.60.660.*

8 \* Sec. 3. This Act takes effect July 1, 1999. *should be July 1, 2000.*

# Dividend plan could solve state money woes

By REP. CARL MOSES

The current state budget situation presents us with yet another chance to collectively review in detail the structure of our governmental financing customs and hopefully make some needed and beneficial changes.

Because we do not forward-fund our state budget, that is, basing next year's expenditures on this year's revenues, I see no alternative but to make substantial changes in the way we currently plan expenditures, given current low oil prices and the likelihood of continued declining production.



Moses

If we accept the fact that there is a genuine budget shortfall this year of approximately \$1.2 billion

(with likely more of the same in the foreseeable future), and if we acknowledge the fact that there exist several possible recommendations to solve the problem, then we can focus on solutions.

No potential solution or combination of remedies identified to date will suit everyone. However, it is incumbent upon interested parties to participate in the public discussion and ultimate legislative action to keep Alaska on a sound, fair and practical fiscal path into the new millennium.

Recognizing a budget shortfall and yet little public enthusiasm for taxes or changes in the Permanent Fund structure, but also rec-



ognizing the difficulty in making large and substantial cuts to the state operating budget, what are we to do?

There is at least one idea with merit that has not received its due attention in the debate over the past few years, and that idea is the concept of a Municipal Dividend program. It is a proposal that can address as many or as few of the budget problems as may be desired. The key characteristics of this program are equity and fiscal responsibility, because it confines itself to passing from the state to local government units, responsibility and funding for services we in the Legislature continually hear are not being adequately met by the state.

If you are familiar with the individual Permanent Fund Dividend program, then you have an idea of how the Municipal Dividend program would work. Based upon strict criteria and local population figures, undistributed earnings from the Alaska Permanent Fund would be available for appropriation to Alaska municipalities, large and small, after providing for inflation proofing the fund and for calculating individual Permanent Fund dividends.

There ultimately would be some impact on the size of the individual dividend. But any plan advanced to address our budget shortfall will cost individuals in one way or another.

That's why I emphasize that the time is upon us to make responsible, major changes in the way we devise our annual budget.

The focus of the idea is to provide municipalities funds with which to perform basic governmental services, some of which have been unfortunately reduced or eliminated in recent years by state government. Anyone who ever grumbled about the poor condition of local streets, lack of maintenance for schools or inadequate recreational facilities, for example, should embrace this plan as a way to address such problems with the focus of local prioritizing. Even the cynics who would frown upon the idea of giving more money to local politicians would not have to look twice to see the potential benefits of this plan for their cities and towns.

Another value of the Municipal Dividend program, and one addressing the immediate state fiscal shortfall, would be the reduction or elimination of some programs within the state operating budget funded with general fund dollars. Shifting responsibility away from state to local government, and shifting funding away from the general fund to the Permanent Fund's undistributed earnings, would reduce the fiscal gap and enhance local government objectives.

In the continual debate over what purpose to finally put earnings of the Alaska Permanent Fund to work, this proposal could give the fund a concrete objective, that of helping provide basic services to citizens of the state, through their local government.

I doubt there is a municipality in this state that would refuse a more stable and pre-

dictable stream of income such as the proposed Municipal Dividend program would provide.

The common perception of the fund was for it to eventually offset the decline of revenue from our oil resources. That time has certainly arrived. In addition, it is well known that the Internal Revenue Service will eventually look to tax the Permanent Fund directly if no clear public purpose is officially determined for the fund. With the individual PFD already being federally taxed via personal income taxes, this Municipal Dividend proposal could likely thwart any such proposal for taxation of the earnings of the fund.

Concerning the current fiscal challenge before us, a Municipal Dividend program could be part of a solution that may include some operating budget cuts, some new or increased taxation or a combination of both. It does offer the chance to reduce general fund spending and provide a more reliable way of funding many essential local government operations in a time when assistance to local governments has been haphazardly diminished.

It will not adversely impact the economy and can be managed in such a way as to avoid dramatic infusions of funding into local governments. I believe the time has come to simultaneously address several statewide fiscal issues in great need of being brought to reality, with a plan which could be a positive component of a long-range fiscal policy.

Rep. Carl Moses, D-Alaska, serves on the House Finance Committee.

Alaska State Legislature  
Representative Carl E. Moses



Member  
House Finance Committee

MEMORANDUM

**SESSION**  
State Capitol Building  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4451  
800-898-4451  
Fax: (907) 465-3445

**INTERIM**  
P.O. Box 730  
Unalaska, Alaska 99685  
Phone: (907) 581-2275  
Fax: (907) 581-4949

DATE: January 25, 2000

TO: Rps. John Harris and Carl Morgan  
Co-Chairmen, House Community and  
Regional Affairs Committee

FROM: Rp. Carl E. Moses *CEM*  
House District 40

SUBJ: Request For Committee Hearing

Please consider scheduling a hearing for HB 137, the measure to institute a municipal dividend program. This program would be funded from the undistributed income of the permanent fund's earnings reserve account, and would fill a need for adequate and reliable funding for community services, currently going unmet by the state.

Attached is a copy of the bill, a sponsor statement w/sectional analysis, and support material. If there are questions, please call Tim Benintendi of my office at 6591.

# FISCAL NOTE

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

**BILL NO. HB 137**

Revision Date/Time (Note if correction) 02/02/00 Dept. Affected Revenue  
 Title Municipal Dividend Program BRU Revenue Operations  
 Component Alaska Permanent Fund Cor  
 Sponsor Representative Moses  
 Requester House Community and Regional Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services					
Travel					
Contractual					
Supplies					
Equipment					
Land & Structures					
Grants & Claims					
Miscellaneous					
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>					
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<b>CHANGE IN REVENUES ( )</b>					
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time					
Part-time					
Temporary					

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

See attached

Prepared by: Chris Phillips  
 Division: Alaska Permanent Fund Corp.  
 Approved by Commissioner: Wilson Condon  
 Agency: Department of Revenue

Phone \_\_\_\_\_  
 Date/Time 2/2/00 4:32 PM  
 Date 2/2/00

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**Alaska Permanent Fund Corporation**

P.O. Box 25500 Juneau, Alaska 99802-5500  
(907) 465-2047

**MEMORANDUM**

**DATE:** February 2, 2000

**TO:** Chris Phillips,  
Director of Finance

**FROM:** Jim Kelly   
Director of Communications

**SUBJECT:** House Bill 137

This is to provide commentary on the impacts of HB 137. If enacted, this bill would authorize a new, third statutory use for Fund income. Specifically, it would direct the Alaska Permanent Fund Corporation (APFC) to transfer, after the transfers required for dividends and inflation-proofing, "the balance of the earnings reserve account" to the newly created municipal dividend fund.

In terms of fiscal note, the impact would be zero. There would be no additional operational costs associated with this new transfer.

In terms of Fund balances, there are two important issues. First, it is unclear what is meant by "the balance of the earnings reserve account." In previous bills enacted by the legislature relating to the earnings reserve – such as the special appropriations to principal in 1986, 1996 and 1997 – what was transferred was only the realized portion of the earnings reserve.

Since 1998, however, the APFC has been required by a ruling of the Governmental Accounting Standards Board, (GASB 31), to expand the definition of the earnings reserve account in the financial statements to include unrealized income as well. As of June 30, 2001, the realized

portion is projected to total \$3.307 billion and the unrealized portion of the earnings reserve account is projected to total \$4.347 billion.

Second, it is important to note that drawing down the balance of the earnings reserve to zero is potentially detrimental to any and all future annual statutory transfers of Fund income. As reported to the Senate and House Finance Committees last year, in periods of poorly performing markets, the earnings reserve account acts as a reserve for future payments of dividends and inflation-proofing, and now with this legislation, the annual transfer to the municipal dividend fund.

In the view of the Corporation, it is prudent to maintain a healthy balance in the earnings reserve account in order to increase the stability and predictability of future distributions of Fund income for legislatively determined purposes.

The APFC would be pleased to provide additional analysis of the bill's impacts assuming transfer to the municipal dividend fund in the first year of only the residual net income earned in that year after payment of dividends and inflation-proofing.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. HB 137

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected DCED  
 Title \_\_\_\_\_ BRU \_\_\_\_\_  
 An Act relating to the municipal dividend program; and ... Component \_\_\_\_\_  
 Sponsor Representative Moses  
 Requester HOUSE CRA Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This Legislation would have no fiscal impact on this department.

Prepared by: Jeff Bush, Deputy Commissioner Phone 465-2500  
 Division \_\_\_\_\_ Date/Time 02/01/00  
 Approved by Commissioner [Signature] Date 2/2/00  
 Agency \_\_\_\_\_

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**HB**

**155**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101

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

## MEMORANDUM

March 25, 1999

**SUBJECT:** Sectional Summary (HB 155)

**TO:** Representative Harold Smalley  
Attn: Katrina Matheny

**FROM:** Tamara Brandt Cook  
Director *TBC*

Please note at the outset that this bill amends sections of law that are home rule limitations, that is, the changes made in this bill would apply to home rule as well as general law boroughs. (AS 29.10.200(11))

**Sec. 1.** Requires a borough assembly to propose and submit to voters one or more forms of assembly representation not later than the first regular election that occurs after adoption of a final state redistricting plan. Under Art. VI, sec. 10(a) of the state constitution the final state redistricting plan must be adopted no later than 90 days after the board has been appointed and the official reporting of the decennial census of the United States. Existing law requires the assembly to act not later than the first regular election held after the report of a federal decennial census.

**Sec. 2.** Like the change in sec. 1, this ties the date the assembly must determine whether the existing apportionment of the assembly meets legal standards to the date a final state redistricting plan is adopted rather than the date of the federal decennial census report itself.

**Sec. 3.** This permits the assembly to provide for a change in an existing apportionment of the assembly whenever a final state redistricting plan is changed as a result of federal or court action.

**Sec. 4.** This is primarily a technical amendment to accommodate the change made in sec. 3. If an ordinance providing for reapportionment has not been approved by the voters by the time limit, and if the current apportionment does not meet the standards established by law, the commissioner of community and regional affairs reapportions the assembly.

TBC:jdr:glc  
99-158.jdr



## KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599  
BUSINESS (907) 262-8608 FAX (907) 262-8615  
EMAIL: assemblyclerk@borough.kenai.ak.us

LINDA MURPHY, CMC  
BOROUGH CLERK

March 5, 1999

The Honorable Hal Smalley  
Alaska House of Representatives  
State Capitol, Room 428  
Juneau, AK 99801-1182

Dear Representative Smalley:

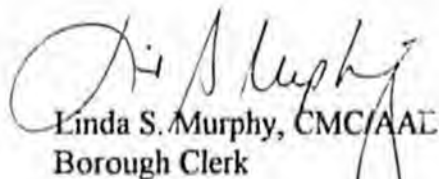
As we discussed in Juneau last month, I am requesting that you sponsor a bill to change the date when the borough assembly is required to present its reapportionment plan to the voters. Currently, AS 29.20.080 requires the assembly to determine whether its existing apportionment meets state standards **not later than two months after the official report of the federal decennial census**. If it is determined that the existing apportionment fails to meet the standards set forth in AS 29.20.060, the assembly must adopt an ordinance providing for reapportionment and **present it to the voters within 6 months of its determination under AS 29.20.080.**

As you know, this is some time prior to the date the state's reapportionment plan is completed and approved by the U. S. Department of Justice. It is, therefore, virtually impossible for the Kenai Peninsula Borough to develop and adopt a plan with districts that will follow state precinct lines since the new lines are unknown to us at the time we, by law, must put our plan in place. It would seem more appropriate to require the assembly to adopt its reapportionment plan and take it to the voters **after** the state's plan has been approved and put in place.

Any assistance you can provide to see that this issue is addressed this year will be very much appreciated. If you have any questions, please give me a call at your convenience.

Sincerely,

Kenai Peninsula Borough

  
Linda S. Murphy, CMC/AAL  
Borough Clerk

cc: Sandy Stout, Director, Division of Elections  
Kevin Richie, Executive Director, Alaska Municipal League



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

April 2, 1999

Representative Hal Smalley  
State Capitol, Room 428  
Juneau, AK 99801

Dear Representative Smalley:

On behalf of the members of the Alaska Municipal League, we are writing in support of HB 155, relating to municipal assembly forms or representation and apportionment. We appreciate your interest in trying to solve a problem for municipal governments. They will benefit greatly if they are able to adopt their reapportionment plan after the state has put theirs in place.

According to the 1999 AML Policy Statement adopted at the annual meeting in Fairbanks:

*B. Elections and Reapportionment. The League supports legislation that would allow for reapportionment after state districts have been reapportioned.*

Whatever we can do to eliminate the confusion of voters and encourage them to participate in elections will be better for the state.

Thank you for your continued support of Alaska's municipalities.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kevin Ritchie', written over a horizontal line.

Kevin C. Ritchie  
Executive Director

cc: AML Education and Local Government Subcommittee

# Alaska State Legislature

## Committees

State Affairs Committee  
Special Committee  
on Fisheries  
Special Committee  
on Oil and Gas



Representative Hal Smalley  
District 9

During Session  
Alaska State Capitol  
Juneau, Alaska 99801-1152

During Interim  
145 Main St. 1st. Ste. 221  
Kenai, Alaska 99541

## Memorandum

**To:** Representative Andrew Halero  
**From:** Representative Hal Smalley *HS*  
**Date:** March 24, 1999  
**Re:** HB 155

---

I would respectfully request that you hold a hearing on HB 155, "An act relating to municipal assembly forms of representation and apportionment", at your earliest convenience.

Thank you for your consideration of this request.

**HB**

**178**

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK. 99801-1182

### COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS

REPRESENTATIVE ANDREW HALCRO, REPRESENTATIVE JOHN HARRIS, CO-CHAIRMEN

STATE CAPITOL, ROOM 418

JUNEAU, ALASKA 99801-1182

(907) 465-3882

### AGENDA

APRIL 15, 1999

1. Call Meeting To Order
2. Call Roll
  - a. Morgan
  - b. Murkowski
  - c. Joule
  - d. Kookesh
  - e. Dyson
  - f. Harris
  - g. Halcro
3. HB 178 - Deregulation of Garbage Utilities
  - a. Representative Pete Kott - Sponsor  
(Staff - Pat Harman)
  - b. Public Testimony
4. Any announcements from other members of the Committee
5. Motion to Adjourn

Sec. 1.

(b)

(4) the property interests of private carriers that already provide solid waste collection and disposal service under a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission should be protected by requiring municipalities to either grant ~~[exclusiv :]~~ franchises to these carriers for a period of time or purchase the certificate, equipment, and facilities at fair market value.

Sec. 2.

(e) . . . .

(1) grant an exclusive franchise to the certificated utility to continue to provide the service for a term of at least five years from the later of the date that the franchise was granted or January 1, 2000; the franchise must contain an agreement that will allow the carrier to charge customers at the rates contained in the utility's tariff in effect on June 1, 1999, adjusted for inflation and any extraordinary increases in operating expenses; the term of the agreement and the rates charged are subject to amendment by agreement of the municipality and the franchisee; or

(2) Grant competing franchises. If the municipality grants more than one competing franchise, competitors' rates are price deregulated. One of the competing franchises holders must be the certificated utility that provides residential or commercial solid waste collection and disposal service under a certificate issued by the Alaska Public Utilities Commission in the service area in the municipality; or

~~[(2)]~~ (3) purchase, at fair market value, the utility's certificate, equipment, and facilities that are related to providing service in the municipality.

(g) If more than one public utility provides residential or commercial solid waste collection and disposal service under certificates issued by the Alaska Public Utilities Commission in a service area in a municipality, the municipality may establish an appropriate system of solid waste collection and disposal service as provided in (e) of this section. However, if a municipality deprives a public utility holding a certificate to provide service in the municipality of the right to provide any of its existing services [within] in any part of its existing service areas within the municipal boundaries between the effective date of this subsection and January 1, 2005, the municipality shall purchase at fair market value the portion of the utility's certificate, equipment, and facilities that are related to the services that the municipality will not allow the public utility to provide [providing service in the municipality].

Delete Section 2 (j) (2) Renumber the remaining. (Deletes definition of fair market vale)

New Text Underlined [DELETED TEXT BRACKETED]

Sec. 1.

(b)

(4) the property interests of private carriers that already provide solid waste collection and disposal service under a certificate of public convenience and necessity issued by the Alaska Public Utilities Commission should be protected by requiring municipalities to either grant [exclusive] franchises to these carriers for a period of time or purchase the certificate, equipment, and facilities at fair market value.

Sec. 2.

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(2) grant competing franchises. If the municipality grants more than one competing franchise, competitors' rates are price deregulated. One of the competing franchises holders must be the certificated utility that provides residential or commercial solid waste collection and disposal service under a certificate issued by the Alaska Public Utilities Commission in the service area in the municipality; or

[(2)] (3) purchase, at fair market value, the utility's certificate, equipment, and facilities that are related to providing service in the municipality.

(g) If more than one public utility provides residential or commercial solid waste collection and disposal service under certificates issued by the Alaska Public Utilities Commission in a service area in a municipality, the municipality may establish an appropriate system of solid waste collection and disposal service as provided in (e) of this section. However, if a municipality deprives a public utility holding a certificate to provide service in the municipality of the right to provide any of its existing services [within] in any part of its existing service areas within the municipal boundaries between the effective date of this subsection and January 1, 2005, the municipality shall purchase at fair market value the portion of the utility's certificate, equipment and facilities that are related to the services that the municipality will not allow the public utility to provide [providing service in the municipality].

New Text Underlined [DELETED TEXT BRACKETED]

pa 2, line 24

pa 3, line 18

pa 3, line 30  
pa 4, lines 1 & 2

# Alaska Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

David Fauske  
President

James Rowe  
Executive Director

April 14, 1999

Honorable Andrew Halcro, Co-Chair  
Honorable John Harris, Co-Chair  
House Community and Regional Affairs Committee  
Alaska State Legislature  
Juneau, Alaska 99801

RE: HB 178 - Removing waste management from regulation by the APUC

Dear Representatives Halcro and Harris:


The Alaska Telephone Association has reviewed HB 178, an act relating to removing solid waste collection from regulation by the APUC. Although having no particular interest in waste management, the association is enthusiastic with the thought that the workload of the APUC might be reduced by the removal of waste management from its agenda.

Since passage of The Telecommunications Act of 1996 the commission has seen its telecommunications workload increase tremendously. What was touted as deregulatory federal legislation has initiated a flurry of activity at the state level with access reform, state universal service funding, rate rebalancing, tariffs for new services, mergers, entry requests for local exchange competition and intrastate competition, new entries into the private payphone market, and service to rural health care providers. Certainly there are other issues and none of the pre-1996 telecommunications issues have gone away.

The APUC has nine new positions approved and desperately needed, but unfilled due to the state hiring freeze. Remember that the APUC is funded by a regulatory cost charge, not through the general fund. Though it might seem, on the surface, to be self-serving, the ATA would be happy to see the commission have more time to devote to telecommunications matters. The public would benefit by a speedier response time. The transfer of waste management regulation from state to the local level would allow the commission to focus more of its energy on telecommunications dockets.

I'd be happy to discuss this issue with you further.

Sincerely,



Jim Rowe

**VALLEY REFUSE, INC.  
PO BOX 879109  
WASILLA, ALASKA 99687  
(907) 892-6606**

April 15, 1999

Representative Andrew Halcro, Co-Chair  
Representative John Harris, Co-Chair  
House Community & Regional Affairs Committee  
State Capital, Juneau, Alaska 99811

RE: House Bill 178, 4/15/99 Hearing

Representatives Halcro and Harris, Fellow Committee Members;

I appreciated the opportunity, presented to me this morning, to express my views and opinions on HB 178. I would like to clarify some points made by the final participant, Heather Graham, outside council for Waste Management.

Ms. Graham alluded to the support for deregulation contained in APUC's Legislative Audit. I would like to point out that the most recent audit stating that position was in 1989. The 1993 and 1999 APUC Legislative Audit made no reference to refuse regulation.

I have enclosed four pages excerpted from the 1989 audit and the 1985 audit, the dates clearly marked at the top of the first page of each excerpt. As was brought out in today's hearing, the market in 1999 in no way resembles the 1989 or 1985 market.

Please note the marked line under Recommendation Number 1 of the 1985 audit. This line states "economic theory in transportation regulation promotes restricting competition to encourage capital investment in a growing industry, not eliminating competition as is the theory in capital intensive, fixed utility regulation." By virtue of its issuance of multiple certificates and overlapping service areas, while retaining its power of rate review, the APUC has followed this concept. As I stated earlier today, **COMPETITION ALREADY EXISTS.**

Ms. Graham also claimed that Waste Management's bill (her own words) does not seek to remove the company from the jurisdiction of the state attorney general in restriction of trade issues. I have no legal training, but it would seem to me that if jurisdiction is not clearly and expressly given by state statute, that jurisdiction does not exist. I have sent a letter to the state attorney general asking for his opinion on this.

In regards to the assumption that rates approved by the APUC are just and reasonable, that is a true statement. The APUC is entrusted with the responsibility of ensuring that rates, classifications, regulations, services and facilities of a public utility are indeed just and reasonable. However, at the time the APUC approved the currently tariffed rates, the makeup of the individual utilities was greatly different.

The Reader's Digest version of basic utility rate making theory states that when expenses are higher, higher rates can be justified. When the currently tariffed rates were approved, each utility had its own general manager, bookkeeping and office staff, costs of maintaining individual offices, and administrative costs such as billing. With Waste Management's ability to consolidate all of these offices and associated functions, thereby drastically reducing the associated expenses, their profit margin goes up tremendously. Given the lower expenses enjoyed by consolidated operations, are the original tariffed rates still justified?

April 15, 1999  
HB 178, Further Information  
Page 2

I also have some concerns with the authority this bill would grant to municipalities and local governments. Without oversight by another agency, the balance of power could swing greatly in favor of city or local government.

If a municipality decides to provide service themselves, this bill would allow for revenue enhancements through cross subsidization of refuse rates. In other words, a revenue shortfall in one area of government could be made up by increasing refuse rates. Is this fair to citizens, and what recourse would citizens have? To whom could they complain?

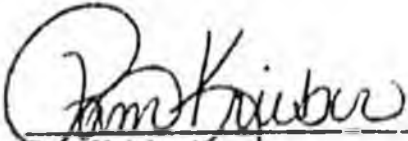
Currently, municipalities must hold an APUC certificate for EACH utility they operate, and be subject to APUC scrutiny in their rates. Due to rate review by a neutral agency, the APUC, cross subsidization is not possible. Allowing one governmental entity to administer franchises, self-regulate, and set rates (through agreement with a franchisee, or after five years, at their own discretion) is clearly a case of the coon dog guarding the chicken coop.

Another problem with this bill is it could put municipalities and local governments in competition with private enterprise. Should municipalities choose to provide their own refuse service, they can obtain financing for a lesser rate than a private individual or company by virtue of their access to bond money. This gives them an unfair advantage over small operators who must seek financing to expand their operations.

I was asked this morning if I knew what the Mat-Su Borough thought of this bill. I responded that I could not, and would not, speak for the Borough. I discovered this afternoon that a statement from the Mat-Su Borough Manager, Mike Scott, was sent to an incorrect FAX number and did not reach me as intended. I have received that FAX and forward it on to you. As you can see, the position of Mr. Scott is that the borough does not support an additional regulatory burden and sees no reason for the legislation (HB 178) at this time.

I want to thank the committee members for reviewing this bill with open minds and looking beyond the smoke and mirrors supplied by the true sponsors of this bill. Representatives, if I thought this bill was in the best interest of all Alaskans I would support it. I know in my heart that is not the case.

Sincerely,

  
Pam Krieger

# facsimile transmittal

<b>MSB</b>	<b>MATANUSKA-SUSITNA BOROUGH</b>
	<b>Borough Manager's Office</b> 350 E. Dahlia Avenue, Palmer, Alaska 99645

To: Pam Krieber	Fax: 892-6606 745-6070
From: Kathy Wolf, Administrative Secretary	Date: 03/31/99 <i>faxed 2:04 PM</i>
Phone: (907)745-9689	Fax: (907)745-9669
Re: Your fax dated 3/22/99	Pages: coversheet only

This is written in response to your fax of 3/22/99 addressed to the borough attorney, Michael Gatti. The borough manager, Michael Scott, has requested I advise you that we do not support additional regulatory burden on the borough and don't see any reason for the legislation at this time.

Thank you.

Excerpt from 1989 Legislative  
Audit of APUC, 08-1354-89-R

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation No. 2

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

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

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

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

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

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

Except, 1985 Legislative Audit  
of APUC 08-4230-86-5

### FINDINGS AND RECOMMENDATIONS

#### Recommendation No. 1

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

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

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

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

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

**VALLEY REFUSE, INC.  
PO BOX 879109  
WASILLA, ALASKA 99687  
(907) 892-6606**

April 9, 1999

House Community and Regional Affairs Committee  
Representative Andrew Halcro, Co-Chair  
Alaska State Legislature, State Capital  
Juneau, Alaska 99801-1182

RE: House Bill 178

Dear Representative Halcro:

I am strongly opposed to House Bill 178, an act which seeks to remove solid waste collection and disposal service from regulation by the Alaska Public Utilities Commission.

Conceptually, deregulation is generally good for the government and public on both a nationwide and statewide level. However, in the specific case of garbage hauling in the state of Alaska, 95% of the hauling companies in the state are owned by ONE COMPANY, USA Waste of Alaska, a wholly owned subsidiary of Waste Management, Inc.

Waste Management is the largest waste hauling conglomerate in the world. They have become a strong presence in Alaska in the last two years, beginning their takeover by purchasing Anchorage Refuse and Eagle River Refuse. They have purchased Peninsula Sanitation on the Kenai Peninsula, Wasilla Refuse in the Mat-Su Borough, Star Sanitation and Drake Sanitation in Fairbanks, Arrow Refuse in Juneau, Jason Enterprises in Seward, and operations in Kodiak, Dutch Harbor, and Ketchikan. Given that they own operations all over the state, and in some areas are the ONLY company in the area, it would definitely be in their best interest to remove state-wide oversight.

Waste Management has successfully achieved vertical integration in many areas of the country by purchasing landfills in addition to hauling companies. When they own everything from the ground up in the State of Alaska, competition will be effectively stifled. This legislation will make it easier for them to start their own landfill, requiring the approval of only one person.

If this happens, the Mat-Su Borough and Anchorage Municipal Landfills will each see a drastic reduction in revenue. Waste Management is the largest volume producer in the South Central Alaska region. As they divert their product to their own landfill, the revenue stream at the Anchorage and Mat-Su landfills will be reduced. Expenses are relatively fixed and will not be reduced at the same rate. Tipping fees for the other landfill users, both private and commercial, will increase to make up the deficit.

Waste Management may allow other haulers, if any are left in existence, to use their landfills at a premium price. Either way, others will be forced to charge higher rates to their customers in order to pay the higher landfill tipping fees. Please see enclosed news clipping from Refuse News dated March 1999 relating to recent landfill tipping fee increases in the Lower 48.

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Page 2  
House Bill 178

HB 178 proposes that municipalities and boroughs bear the burden of local control by either providing the collection and disposal service directly or by granting franchises to private carriers. There are several repercussions to this action which should be considered.

1. If a municipality or borough assumes the role of refuse hauler, this puts the government in direct competition with private enterprise. Higher taxes will be assessed to cover the costs.
2. A greater financial burden is placed on the municipality or borough by requiring the local government provide additional services, or APUC-like regulation, and most certainly an added level of administration to accommodate these additional responsibilities.
3. HB 178 proposes a "franchise fee" of not more than 2.5% of the gross revenue to cover these additional costs. However, there are absolutely no guarantees that 2.5% will adequately fund this program. The fee would be passed on to the customers, who would end up paying more money for exactly the same service. You may call it a "user fee" or a "franchise fee", but this fee is nothing more than a thinly-veiled tax.
4. Should the borough or municipality choose to franchise to only one entity, Waste Management would definitely have the advantage in negotiating contracts due to their greater financial assets. They would certainly benefit by having a large residential and commercial customer base locked into their revenue stream.

Local governments are currently strapped for funds to pay for necessary functions such as schools, roads and infrastructure improvements. The burden of providing additional governmental services, or APUC-like regulation, or an added level of administration could be cost prohibitive even with the revenue sources included in this legislation. It would definitely be in Waste Management's best interest if local governments should choose to not regulate refuse service at all. With no state or local regulation, Waste Management would have free rein to lower rates to a level which would squeeze out the few remaining competitors, then charge fees that would provide the greatest profit margin. They certainly have the resources to absorb any interim losses.

Their representatives will state that the industry will "self-correct". Unfair or exorbitantly high pricing will allow competitors to come into the market. However, garbage companies are not easy to start from scratch. They require a large investment in equipment, working capital and time to develop a viable customer list large enough to pay the bills. This is the reason major companies prefer to buy smaller ones.

As it stands now, Waste Management has NO major competitors in the State of Alaska. Other nationwide competitors are not inclined to invest capital resources to come into a limited, remote market where one huge company has already locked up the entire state. At this point in time, given the presence of only one major operator in Alaska, state-wide oversight of this industry is critical!

April 9, 1999  
Page 3  
House Bill 178

Continued state-wide regulation through the Alaska Public Utilities Commission will assure that the best interests of all people of the State of Alaska are served. The Commission has historically supported competition in refuse service. Where geographically appropriate, the Commission has taken steps to open areas of the state to competition. They have done so by issuing overlapping certificates, while retaining rate-setting oversight to ensure fairness among competitors.

We own Valley Refuse, Inc., one of the last privately owned refuse hauling companies in the state. Valley Refuse, Inc. is a small operation, but is the largest residential hauler in the Mat-Su Borough. We provide a necessary service to over 1,500 residences. Our rates are fair and competitive. By providing competition in the residential refuse market in the Mat-Su Borough, we have made refuse service affordable for all households.

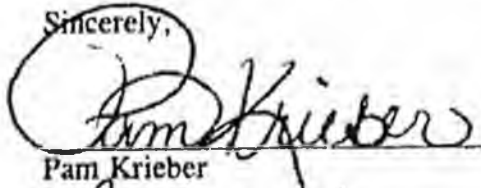
Wasilla Refuse (Waste Management), our competitor in the Mat-Su Valley, does not have even 250 residential customers. The profit in residential refuse collection is not as high, so they prefer to concentrate on areas of higher margins. They have offered to sell us their residential collections IF we sold them our container collections. We are not interested in any such deals.

We are active members of our local community. Our activities include serving on the board of United Way, membership in the local Rotary club, participation in the Chamber of Commerce, charter membership in the local community recycling movement and participation in local church programs. We have collected used clothing donations from our customers and have distributed them to local assistance agencies and to the Russian relief movement. We have assisted in spring community clean-ups for years. We support our local economy by purchasing our fuel, supplies, containers, and equipment from local vendors. We donate blood when the need arises.

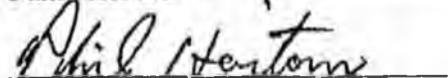
We believe in putting something back into our community. In general, large Outside corporations are not active at the local level; their donation decisions are made at the corporate level and benefit the community in which their corporate headquarters exist.

Please support competition in the refuse hauling industry by defeating this bill. Competition is in the best interests of the people of the State of Alaska. If competition ceases and Waste Management becomes the only company operating in the state, prices for service will climb, service options will be limited, all profits made will go directly Outside and very little will be put back into our communities, except for garbage deposited into the landfills owned by Waste Management.

Sincerely,



Pam Krieber



Phil Horton

THE  
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POOR  
ORIGINAL  
COPIES

B U S I

# EYEING THE COMPETITION

Corporate espionage is so pernicious that the U.S. passed a law to curb it. But in today's global economy, dirty tricks are all in a day's work

By DANIEL EISENBERG

**T**HE TITLE OF THE HAND-SCRIBBLED memo outlined Waste Management's goal in no uncertain terms: "Cadiz Kill." In 1995 Cadiz Inc., an agricultural firm based in Santa Monica, Calif., was leading opposition to Waste Management's proposal to build a mega-garbage dump near its property. So, like any other tactically thinking business, the country's largest trash hauler brought in a consultant to get things moving.

Joseph Lauricella, though, wasn't your typical McKinsey man. He set up a sham pro-dump grassroots organization. His duties, according to San Bernardino County grand jury indictments and his testimony, included swiping confidential data, sabotaging potential deals and spreading rumors that linked Cadiz to illegal dumping and drug trafficking—all in an attempt to drive down its stock price and cripple its lobbying efforts. Last fall Lauricella was sentenced to six years in prison for his consulting efforts. Waste Management and four of its executives, who claim that Lauricella was a renegade acting on his own, have pleaded not guilty to various charges, including stock fraud and wiretapping.

Waste Management may specialize in garbage, but it isn't the only outfit accused of playing dirty. Far from it. Just last week, Motorola sued Intel for allegedly hiring away key employees to obtain its microchip trade secrets. Minneapolis-based agribusiness giant Cargill recently acknowledged that a rogue employee may have lifted proprietary genetic material

from a competitor, an admission that effectively killed a \$650 million deal to sell its North American seed division to a German biotech venture.

Next week a Taiwanese father-and-daughter business team is scheduled to be tried for paying a U.S. research engineer to pilfer manufacturing secrets from label maker Avery Dennison. Another Taiwanese-based executive goes on trial in early April, charged with attempting to buy the secret formula for Bristol-Myers Squibb's cancer drug Taxol for \$400,000—just one of many alleged plots to fleece R. and D.-rich pharmaceutical firms. Last spring a Gillette consultant went to prison for trying to market secret designs of the company's Mach3 razor to competitors such as Bic. And a small Maryland soft-drink distributor claims that Coca-Cola Enterprises, the bottler partly owned by Coke, used wiretapping and other shady tactics to destroy his business. CCE denies all the charges.

Cheating in business, of course, is older than the wheel. But corporate spooks and saboteurs are especially busy in today's global, high-tech economy, where the most prized assets can be stored on a disk and surveillance equipment can fit on a shirt button. To help slow them down, Congress passed the Economic Espionage Act of 1996, which carries a long prison term for intellectual-property theft. The good guys haven't had much luck yet, though not for lack of effort. The FBI has nearly tripled its investigations into corporate espionage in the past year. But in 1997 at least \$25 billion in intellectual property was stolen from U.S. corporations, by a conservative estimate. And these aren't just cases of for-



# N E S S



LEWIS & CLARK PHOTOGRAPHY COURTESY

eign spies left over from the cold war working for new capitalist bosses. Increasingly, U.S. firms are turning to Dumpster divers or computer hackers to stay ahead of the competition, and disgruntled workers are walking off with classified material. One worrisome ploy, the FBI says, is to send in spies posing as tech consultants on the Y2K computer bug.

The first federal economic-espionage case to go to trial, however, is decidedly low-tech—in essence, it's all about glue. In Youngstown, Ohio, next week, Justice Department attorneys will argue that Pin Yen Yang, president of Taiwan-based Four Pillars Enterprise, and his daughter paid Avery Dennison engineer Ten Hong "Victor" Lee \$67,500 over a four-year period to steal the \$3 billion-a-year company's formulas for making adhesive labels and tape. Officials say China—already defending against charges of nuclear espionage in the Los Alamos case—and Taiwan are among the most notorious purloiners of business secrets, allegedly sending graduate students to infiltrate companies and bring data home.

But, as in any case of cloak-and-dagger, it's sometimes hard to tell exactly who's snookering whom. Four Pillars recently turned the tables and filed suit in China and Taiwan, charging that in the late '80s and early '90s, Avery lured the much smaller Four Pillars (annual sales: \$140 million) into discussion about a joint venture in China in order to steal manufacturing information so it could set up its own competing factory. Intriguingly, Four Pillars will argue that by luring the government into the case and helping the FBI set up a sting operation, Avery used the Economic Espionage Act as a competitive weapon. Avery Dennison, which denies those charges, says Four Pillars' suit is simply an attempt to "distract attention from its own criminal conduct."

In this era of downsizing and diminished corporate loyalty, close to two-thirds of all U.S. intellectual-property losses can be traced to insiders, according to Richard J. Heffernan, a Branford, Conn., security consultant and co-author of a biannual espionage survey by the American Society for Industrial Security. "People are always looking for somebody who looks different when a great deal of the theft is committed by insiders who walk and talk just like you and me," notes Heffernan.

Last fall Cargill was accused by Pioneer Hi-Bred International, a leading seed developer, of stealing its closely guarded genetic material. Initially, Cargill vehemently denied any wrongdoing, but during settlement talks it acknowledged uncovering "problem areas." Though it won't elaborate much, Cargill says an employee who previously worked for Pioneer and is the target of a lawsuit may have mixed some of Pioneer's breeding material into Cargill's seed corn products without the company's knowledge.

To protect themselves against employees who walk out for the next best offer, corporations have taken a harder line against talent raids, essentially equating them to espionage. That seems to be the case with Wal-Mart's trade-secret suit

## IT'S A DIRTY JOB, BUT ...



**WASTE MANAGEMENT** allegedly hired Joseph L. Ricella to sabotage CADIZ, which opposed its plans to build a meg-a-garbage dump



**CARGILL** recently admitted that a rogue worker may have lifted genetic seed material from **PIONEER HI-BRED**



**amazon.com**

**WAL-MART** claims online bookstore

**AMAZON.COM** hired away its top techies to copy its database, which has been a key competitive weapon



against Amazon.com. The nation's largest retailer contends that the Web's leading e-tailer lured 15 of its top techies out to Seattle from Wal-Mart's hometown of Bentonville, Ark., for the express purpose of duplicating its prized information database—a vast system that tracks customer shopping patterns and product flow. "There's a lot of computer talent out in the Valley," notes Wal-Mart spokeswoman Betsy Reithmeier. "If you're coming to Bentonville, you're looking for something specific." Amazon has filed a countersuit denying the accusations. The company says it was just looking for talented people.

Robert N. Friedman, CEO of discount retailer Loehmann's, has no such defense, at least according to a lawsuit filed by Forty Three Apparel, a New York City-based women's-fashion maker. In mid-1997, the suit contends, Friedman pressured Forty

## BUSINESS

Three Apparel president Mark Singer, who depended on Loehmann's for 80% of his business, into giving Friedman's wife Debbie a high-level job. Within a year, she left the firm, allegedly with clothing patterns and manufacturing processes, and started her own competing outfit. (Loehmann's says the suit has no merit.) It didn't take long, Singer argues, for Forty Three Apparel to lose its Loehmann's business to Debbie Friedman and sink into bankruptcy.

You don't necessarily need James Bond to pilfer corporate secrets. Amateur actors will do fine. Over the past few years, textile manufacturer Milliken & Co. allegedly stole information from a host of rivals without so much as a bug or a mole. Instead, according to a lawsuit filed last October by Johnston Industries, based in Columbus, Ga., one Milliken employee posed as a business-school student researching a paper, and another played a Swiss banker seeking investment opportunities. One alleged target, NRB Industries, has reportedly settled its case against Milliken. The \$2 billion-a-year titan has denied the charges, but Johnston, a \$330 million-a-year textile firm, claims it lost \$30 million to the alleged skullduggery. "It defies logic," says president D. Clark Ogle, "that a company 10 times our size would feel threatened [enough] to do that."

Since passage of the Economic Espionage Act, only 13 criminal cases have gone to indictment. In December two men were sentenced for scheming to sell Intel prototype microchips to rival Cyrix, and most recently a California man, David Kern, was charged with stealing engineering secrets from his former employer, Varian Associates, a leading Silicon Valley maker of radiotherapy systems used to treat cancer. For more than a year, a federal grand jury has reportedly been looking into whether a subsidiary of financial-information giant Reuters was involved in an attempt to steal data from rival Bloomberg (Reuters says it is cooperating and denies any wrongdoing).

Prosecuting such crimes is no easy matter. Many companies shy away from reporting incidents for fear of bad publicity or having to divulge their treasured secrets in court. That may be a small price to pay, though. For now, the underhanded tactics "are classics for one reason," says Alan Brill, of investigative firm Kroll Associates. "They still work." —With reporting by Elaine Shennen/Washington, Jackson Baker/Memphis, Marsha L. Gilbert/Greenville, Lonca Moteney/San Francisco, Dian Misonbeam/San Bernardino and other bureaus

## CRACKING THE CODE

**T**HE DRESS CODE IS BUSINESS CASUAL—NO JEANS ALLOWED, NOT TO MENTION pierced noses. It's the first day of class—hacking class—and the instructors, smartly attired in matching corporate polo shirts, point at screens full of code and step-by-step directions on how to hack a host computer. "Get this: No username, no password, and we're connected," says one. "I'm starting to get tingles. They're going to be toast pretty quick." Geekspeak, at least, is still de rigueur.

In the world of corporate espionage, a company's host computer is the mother lode, which means that protecting it is vital. That's the goal of Extreme Hacking, one of a growing number of counterhacking courses that teach perfectly respectable people the how-tos of cracking their own networks so they can better protect them. "We're kind of wearing the white and black hats at the same time," says Eric Schultze, the Ernst & Young instructor who gets tingles from an exposed password file.

How easy is it to hack? If those guys can teach a novice like me how to break



**BREAK-IN:** Corporate counterhackers learn just how vulnerable their company's servers are

through a firewall, I figure, then all our networks are in trouble. Guess what? All our networks—at least, the ones without encryption keys or extremely alert administrators—are in trouble. Why? Because this is the information age, and the average computer gives up far too much information about itself. Because a network is only as strong as its weakest user. And because the most common log-on password in the world, even in non-English speaking countries, is "password." With users like this, who needs enemies?

How big a problem is this in the real world? "Rarely is there a moment when a hacker isn't trying to get into our networks," says a senior Microsoft executive. "People go looking for that weak link." Recently hackers found a backdoor through a user in Europe—an administrator, no less—with a blank password. This allowed the hacker root access—the ability to change everyone else's password, jump onto other systems and mess up the payroll file.

In our first class, we have no problem rooting around in the Web servers of a top Internet company. We find three open ports on the firewall and a vulnerable mail server. "This network is a f---ing mess," says a classmate. "We need to have a word with these people."

Over the next few days, any faith I had in the security of the world around me crumbles. Think your password is safe because it isn't "password"? If it's in the dictionary, there is software that will solve it within minutes. If it's a complex combination of letters and numbers, that may take an hour or so. There is software that will hijack your desktop and cursor—and you won't even know about it. Hacking doesn't require much hardware; even a Palm Pilot can do it. What protection do you have? "Minimize enticements," say the teachers. If you don't want to be a victim of information rape, in other words, don't let your network give out so many details to strangers.

Old-school hackers scoff at the notion that businesses can stop them. "Corporations can't teach hacking," says Emmanuel Goldstein, editor of the hacker quarterly 2600. "It has to be in you." Perhaps. But if a few more firms learn to avoid becoming toast, that's no bad thing.

—By Chris Taylor

## **WMI raises fees at select sites**

HOUSTON-Waste Management Inc. announced an average tipping fee increase of two to three percent at selected landfill sites across the country in late February. Other major players in the landfill industry are expected to follow suit this month.

The WMI increases will be larger for customers that do not have contracts with the company, said Cherie Rice, vice president of investor relations.

Specific rate hikes at specific landfills and other disposal facilities owned by WMI would not be released by the company.

The rate increases were not greeted with applause, Rice noted, but reflect increased costs of operating modern, state-of-the-art landfills.

Indeed, in New York some independent haulers have complained to the city's Waste Trade Commission, which said it would investigate after tipping fees nearly doubled at WMI's Hunts Point recycling station.

Haulers complained the hike violates antitrust regulations or fair trade practices.

The largest increase so far came at WMI's American landfill in Ohio, which raised rates 138 percent.

**Municipality  
of  
Anchorage**



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*Rick Mystrom, Mayor*

OFFICE OF THE MAYOR

March 24, 1999

Representative Bill Hudson, Chair  
Utility Restructuring Committee  
Alaska State Legislature  
State Capital  
Juneau, AK 99801-1182

Fax: (907) 465-2273

Re: Waste Collection and Disposal Bill

Dear Chairman Hudson:

The Municipality of Anchorage has reviewed the current draft of the above legislation and believes the regulatory scheme contained therein raises difficult, if not potentially harmful, issues concerning local government functions, local government finances, and consumer protection.

Mixing regulation and local politics may prove to be bad public policy. As you know, under state statute local governments do not have or exercise general regulatory powers over industry. The exercise of such power would require expertise which local governmental personnel generally do not possess, meaning we would have to expend time and effort to acquire and maintain such expertise as part of the broader additional expense which this bill would impose. Even with the aid of such expertise, popularly elected local governmental bodies may not prove best suited to conduct the often complex quasi-judicial functions which rate-making and certification require.

Even if such bodies could perform regulatory functions effectively, the law they would be required to execute, as proposed in the bill, is both complex and uncertain. As an example, it is unclear to us exactly what options the Municipality would have or be required to exercise under the transitional provisions of sections 1(b) and 2, given the multi-company, multi-service area structure created and currently overseen by the Alaska Public Utilities Commission. Absence of clarity can lead to litigation and unanticipated burdens. Further, and although I believe that when government requirements necessitate

Representative Bill Hudson, Chair  
March 24, 1999  
Page 2

the taking of private property full compensation should be paid therefore, the bill's proposed buyout provisions appear unduly complex, rigid, and may be triggered under circumstances (such as litigation) creating unexpected and unwanted fiscal responsibility.

Most importantly, in the context of current and emerging ownership patterns within Alaska's waste industry, the elimination of comprehensive statewide regulatory oversight could permit the consolidation and exercise of market power within that industry. The evasion of statewide regulation could mean higher prices for all consumers. The inability of each local government to look beyond its own jurisdiction would permit such practices to flourish, resulting in discriminatory rate levels as between different locales. Only at a consolidated (rather than local) level of examination and review could predatory pricing and cross-subsidization practices be discerned and corrected.

To our knowledge, there is no groundswell among local governments to assume a regulatory role. As a matter of fact, we have taken the liberty of contacting the Alaska Municipal League which has confirmed our view.

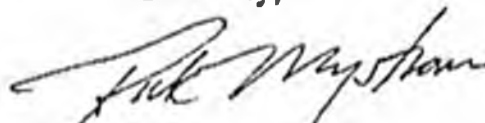
The Municipality's 1999 Legislative Program, approved unanimously by the Municipal Assembly, specifically addresses the issue of waste disposal services:

...a forfeiture of certificated areas of service and deregulation of the industry in its entirety is only possible if ratepayers, and taxpayers, are protected from monopolistic price fixing, cross-subsidization, and a loss of value of the taxpayers' investment.

Highest Priority Legislative Issues, 2-2. The draft bill contains no language upon which the Municipality of Anchorage can rely that the scheme of regulation proposed would provide the ratepayers and the taxpayers better service at a lower cost.

I am aware of your commitment both to Alaskan consumers and to open governmental processes, and appreciate this opportunity to comment on the proposed legislation prior to its introduction. For the reasons noted herein, this draft bill runs contrary to the best interests of the residents of Anchorage and the Municipality could not support it.

Sincerely,



Rick Mystrom  
Mayor

cc: Members of the Anchorage Municipal Assembly


**WASTE MANAGEMENT**

6301 Rosewood St.  
Anchorage, AK 99518  
(907) 563-3717  
(907) 279-2744 Fax

BY FACSIMILE

March 26, 1999

RESPONSE TO MAYOR  
MUSTON'S LETTER

Representative Bill Hudson, Chair  
Public Utility Restructuring Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Re: Refuse Collection and Disposal Legislation

Dear Chairman Hudson:

I would like to take this opportunity to thank you and your staff for reviewing the proposed refuse collection and disposal legislation. I very much appreciate your committee taking the time to consider the bill as this legislation approaches refuse collection and disposal from a new and fresh perspective.

This legislation is intended to eliminate unnecessary regulation, increase competition, and provide for local control of refuse collection and disposal services. It provides that local governments shall administer solid waste services using either local government officials and employees or by granting one or more franchises to private carriers. This is not an unfunded mandate. Rather, if the local government chooses to issue one or more franchises to private carriers, the legislation requires the franchisee(s) to pay franchise fees to the local government that will more than cover the costs of administering the services. And, allowing these services to be provided by franchise helps keep rates down. This is good for consumers. It is also good for competition because more carriers are likely to enter the market and seek to compete under a franchise system than under the system administered by the Alaska Public Utilities Commission (APUC), which is often inefficient and expensive.

I am aware that several members of the Anchorage Municipal Assembly have expressed support for this legislation, and that the Mayor of Anchorage has identified a number of concerns about it. I would like to take this opportunity to address the issues raised by the Mayor's letter. I believe that this legislation does not present the problems his letter suggests and I further believe that the legislation promotes the Municipality's 1999 Legislative Program.

His first concern is that local governments do not have the regulatory power, expertise or budget to administer refuse collection and disposal services. He is particularly

concerned that a local government is not best suited to conduct ratemaking and certification functions.

However, this legislation's purpose is not to duplicate at the local level the ratemaking and certification functions now handled by the APUC. The goal of this legislation is to make ratemaking proceedings, which are time-consuming and expensive, wholly unnecessary. This legislation calls for local governments to either provide the service themselves or to award one or more franchises for the provision of refuse collection and disposal service. No ratemaking decisions would be required. No certification battles would be waged.

In addition, I believe that local governmental personnel do have both the authority and expertise to administer such programs. Alaska law currently grants local governments with the authority to administer refuse collection and disposal services, which is why the Municipality of Anchorage can operate a refuse collection utility. I also believe that local governments have ample expertise to provide the service themselves: the City of Anchorage itself has an entire division (Solid Waste Services) that administers solid waste collection and disposal services. Local governments also have the ability to issue bids for selecting one or more franchisees. Local governments routinely issue requests for proposals for city services. Hardly a day goes by when the classifieds in the Anchorage Daily News do not include some competitive bid proceeding by the Municipality of Anchorage or other local government.

Although the Mayor's letter expresses concern about the additional expense that this bill would impose, the letter does not acknowledge the additional revenue the legislation provides to cover these expenses. Under the legislation, local governments that grant franchises to private carriers will be able to collect a franchise fee to cover the costs of establishing and administering the franchise system. Those revenues should be more than adequate to fund the local franchise system. Local governments such as the Municipality of Anchorage that use their own officials and employees to collect and dispose of solid waste will be able to pay for their systems through the rates they charge to customers.

The Mayor additionally expresses concern over the Municipality's options under the legislation because of the existing multi-company, multi-service area structure created and overseen by the Alaska Public Utilities Commission. I agree with the Mayor that the greater Anchorage area is currently subject to a confusing checkerboard of rules, regulations and authorities governing refuse collection and disposal services. One set of rules exist for the geographic area within the old City of Anchorage boundaries, and another set of rules exist for the geographic area outside of the old City boundaries but still within the City of Anchorage. Within the old City boundaries, the City of Anchorage controls the provision of residential and commercial refuse service. The City itself is the sole provider of residential and commercial service except for one category of commercial service that the Municipality does not provide and therefore allows several commercial carriers to provide. The APUC controls the provision of residential and commercial refuse service in the greater Anchorage area outside the old City of Anchorage boundaries. In these areas, commercial refuse is provided competitively and residential service is provided by a single commercial carrier.

The proposed legislation eliminates this checkerboard of differing governmental authorities and regulations because the City of Anchorage would have exclusive control over the entire area. This is good for competition, as competitors would have a single set of rules to follow under a single governmental authority. It is also good for the Municipality of Anchorage because it clarifies and confirms its authority over the entire area. Uncertainty exists now, but that uncertainty would be eliminated under this legislation.

The Mayor's letter then states that elimination of a comprehensive statewide regulatory authority could permit the consolidation and exercise of market power within the industry that could result in (1) price discrimination between different locales and (2) higher prices for consumers. The legislation actually has the opposite effect. In the near term, rates would be frozen at the current levels (other than increases reflecting inflation and extraordinary operating expenses). Therefore, rates would be maintained for the entire term of the initial franchise period (five years in most cases).

After five years, consumers would continue to be well served. Local governments would have the opportunity to request proposals or bids for refuse service and could grant one or more franchises to the lowest cost provider of high-quality service. The potential service providers would have an incentive to minimize costs in order to be the successful bidder.

And, I do not share the Mayor's concern about price discrimination between different locales. The rates for refuse collection and disposal service currently vary by community. I do not see how that would change under this legislation because the proposed legislation caps the rates of private carriers at their current levels for a period of at least five years subject only to adjustments for inflation and extraordinary operating expenses. Thereafter, in areas where services are provided by private carriers, rates would be set based on the award of one or more franchises. Therefore, I believe that any concern about price discrimination is unfounded.

While the Mayor of Anchorage's letter states that there is no strong support by local governments for this legislation, we believe that this is not the case. Many local governments already administer refuse collection and disposal services through contracts with private carriers, including the Kodiak Island Borough, the Fairbanks North Star Borough, the Mat-Su Borough, the Kenai Peninsula Borough and the City of Seward. These local governments administer refuse collection and disposal programs without the resources of the City of Anchorage, and I believe that these entities will support this legislation.

The Municipality of Anchorage's 1999 Legislative Program would be promoted by this legislation's enactment. This legislation completely protects the Municipality of Anchorage from the forfeiture of certificated areas of service and loss of value of taxpayers' investments. This legislation grants the Municipality of Anchorage complete authority over how refuse collection and disposal is carried out within the greater City of Anchorage boundaries, a right that the Municipality does not have at this time. In fact, the Municipality of Anchorage's

right to provide exclusive commercial refuse service within the old City of Anchorage boundaries was challenged recently in a proceeding before the APUC, and this legislation would protect the Municipality's investments by resolving that ambiguity completely in the Municipality's favor.

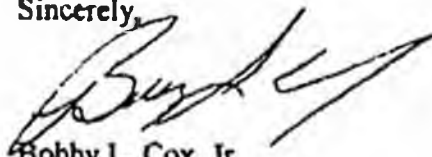
This legislation promotes the Municipality's Legislative Program in other ways. For example, this legislation protects ratepayers from monopolistic price fixing. Under current law, refuse providers are exempt from state antitrust laws. Under the proposed legislation, refuse providers that are in competition with other refuse providers would be subject to state antitrust laws.

The Mayor's letter ignores the fact that 47 out of the 50 states regulate refuse at the local level rather than at the state level. Over the past twenty years, the trend has been to go to local regulation, and it is plain that local regulation and control works better than state control as almost all jurisdictions have gone that way. Local control is better for Alaska because each community in Alaska is unique and has different requirements for solid waste collection and disposal service.

In short, this legislation simplifies government and enhances competition. Ratepayers' interests are well protected under this legislation. The Municipality of Anchorage's powers are clarified and enhanced. Local governments that choose to provide refuse collection and disposal services through one or more private carriers will have a revenue source to at least cover the costs of administering the program. Local governments can respond to the unique requirements of their communities.

Again, I appreciate your willingness and that of your staff to review this proposed legislation. Please do not hesitate to call me should you have any questions regarding the legislation or this letter.

Sincerely,



Bobby L. Cox, Jr.  
Division Vice President  
Alaska Division  
Waste Management

cc: Mayor Rick Mystrom  
Members of the Anchorage Municipal Assembly



April 13, 1999

Representative Andrew Halcro  
Alaska State Legislature  
Co-Chair, Community & Regional Affairs  
State Capitol  
Juneau, AK 99801-1182

Re: HB 178: An Act relating to removing solid waste collection and disposal service from regulation by the Alaska Public Utilities Commission; ...

Dear Representative Andrew Halcro,

I am the owner and President of Commercial Refuse, Inc. (CRI), an Alaskan owned and operated, regulated and certificated refuse utility in Anchorage. I am opposed to HB 178, a bill that will deregulate refuse. I have spoken with the other "remaining Alaskan owned independent refuse utilities" in this area and believe that their views, concerns and comments are the same as those in this letter.

CRI and the other independent refuse companies in this area are opposed to any such legislation that will specifically remove statewide oversight and regulatory powers from the Alaska Public Utilities Commission (APUC), and transfer the same to local municipalities and boroughs. If this legislation is allowed to become law, it would constitute a serious mistake.

This committee should be acutely aware that the refuse business in Alaska has been recently transformed by Waste Management, Inc. (WMI) into one large monopoly. WMI now controls over 95% of all refuse business in this state. If there was ever a time to recognize the need for continued statewide regulation, now is that time. In fact, this is the most improper moment to consider deregulation of refuse or transfer those regulatory burdens to local municipalities and boroughs.

The goal of WMI has been to control the market, from collection to disposal (landfills). Regulation is not in their best interest, for they require an unregulated market to achieve their goals. For the public, the lack of regulation in a market where one company (WMI) has such a dominant monopoly, such as Alaska, this can hardly be considered to be in the public's best interest. Unlike other states, Alaska does not possess comparably sized competitive refuse companies to assist in controlling market pricing and service. In fact, many communities here have only one company to receive service from. Localized control would be ineffective in regulating such a large statewide monopoly.

## Commercial Refuse

INCORPORATED

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Anchorage, AK 99518

PHONE (907) 362-3700  
FAX (907) 362-3750

Representative Andrew Halcro  
Alaska State Legislature  
Co-Chair, Community & Regional Affairs  
April 13, 1999

The Alaska Public Utilities Commission (APUC) has regulated refuse utilities for many years in Alaska. While there has been some discussion about deregulation, at this time such action would be ill advised. WMI's latest attempt to have legislation introduced that will deregulate the refuse industry here in Alaska is purely self-serving and will benefit only WMI. If we ever needed regulation, now is the time. The APUC is well equipped to handle this function and serves the industry well. However, the most important aspect is the protection of the public from monopolistic practices from an entity such as WMI.

Another aspect that should be considered is the fact that the regulated utility companies "pay their way" through the RCC (Regulatory Cost Charge). This is not necessarily a budgetary concern for the state since the services of the APUC are paid for. Since Alaska lacks a consumer protection agency at this time, what viable mechanism would exist for consumer problems if deregulation were to occur? At the present, most communities and municipalities are ill equipped to handle functions such as the APUC provides. In fact, many may not be able to.

I find it difficult to comprehend any valid reason at this time or the near future, for deregulation. The present status with the APUC maintaining statewide regulatory control is highly appropriate and recommended. The APUC does have all the needed functions to protect the public and provide a forum for consumer problem resolutions. For all the reasons mentioned, I am opposed to any attempt to deregulate refuse at this time.

Sincerely,

  
Jim A. Arnesen  
President

cc: Rep. John Harris, Vice Chair  
Rep. Fred Dyson  
Rep. Carl Morgan  
Rep. Lisa Murkowski  
Rep. Reggie Joule  
Rep. Albert Kookesh

# Municipality of Anchorage



5800 E. 142nd Avenue  
Anchorage, Alaska 99516  
Telephone: (907) 345-1333  
Fax: (907) 345-5438

~~Pat Abney, Vice Chair~~  
ANCHORAGE ASSEMBLY

April 13, 1999

Representative Bill Hudson  
Chair, Utility Restructuring Committee  
State Capitol Room 108  
Juneau, Alaska 99801-1182

SENT VIA FAX  
ORIGINAL BY MAIL

Dear Representative Hudson:

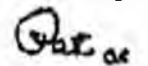
I'm writing in support of House Bill 178. This legislation would transfer the control of solid waste collection and disposal service from the Alaska Public Utilities Commission to cities, municipalities and boroughs.

I believe local control of these services is a better system for Alaska. It would allow each community to determine all aspects of solid waste collection and disposal, including issues such as the frequency of such services, charges and fees and the nature, location and extent of providing solid waste handling services.

As an Anchorage Assemblymember, I have worked hard to increase the amount of material we recycle in this community. We currently have a recycling task force that has been meeting for the past year, which will soon bring recommendations forth on how we can do better. This local control could be very beneficial to our recycling efforts because I believe we would be better able to respond to this interest through structuring rates in a way that encourages recycling. At the very least, we could test it with a pilot project.

Another benefit of local control is that it offers better opportunities for competition. It specifically allows for local governments to either provide the service themselves or to provide service through one or more franchisees with private carriers. My understanding is that nearly every state (except for Alaska) provides for local, rather than statewide control of solid waste collection and disposal. I encourage you to support House Bill 178. If you have any questions, please feel free to call.

Sincerely,

  
Pat Abney

**Municipality  
of  
Anchorage**



JOE MURDY

Anchorage Assembly  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

March 19, 1999

*Representative Bill Hudson  
Chair, Utility Restructuring Committee  
State Capitol Room 108  
Juneau, Alaska 99801-1182*

**SENT BY FAX  
ORIGINAL BY MAIL**

*Dear Bill Hudson:*

*The reason for this letter is to ask your support of the proposed house bill which would mandate local control over refuse collection and disposal services. Local control allows local governments to respond to local needs in a way that state government often cannot. Refuse collection and disposal is a service that should be administered at the local, rather than at the state level because some local governments want to provide the service themselves, while others prefer private carriers to provide the service.*

*I am aware that there is some degree of uncertainty from time to time regarding the extent of a Municipality's power to control refuse collection and disposal service, and that the Alaska Public Utilities Commission (APUC) has had to sort out these issues. I am also aware that the APUC has had to determine whether refuse collection and disposal service in communities throughout Alaska should be provided on a competitive basis and what the terms and parameters of that competition should be.*

*It would only make good sense that the State of Alaska follows the lead of the majority of states and place control of their refuse collection and disposal services at the local level. Local governments can then respond to the unique interests of their communities.*

*For these reasons, I urge your support. Thanks for your consideration and if you have any questions, please don't hesitate to call.*

*Sincerely,*

*Joe Murdy (alc)*

**Joe Murdy  
Anchorage Assemblymember**

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
TELEPHONE: (907) 343-4311

March 19, 1999

ANCHORAGE ASSEMBLY  
Assemblyman Kevin Meyer  
344-9374

Representative Bill Hudson  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Rep. Hudson:

I write this letter in support of the proposed legislation that would transfer the control of solid waste collection and disposal service from the Alaska Public Utilities Commission to cities, municipalities, and boroughs.

I believe local control of these services is a better system for Alaska. Local control of these services would allow each community to determine all aspects of solid waste collection and disposal, including issues such as the frequency of such services, charges and fees, and the nature, location and extent of providing solid waste handling services. This could be very beneficial to recycling efforts. As you know, parts of Anchorage are extremely interested in collection of recyclable materials. If there was local control of solid waste collection and disposal throughout the greater Anchorage area, we would be better able to respond to this interest through structuring rates in a way that encourages recycling, at least on a pilot project basis.

Another benefit of local control of these services is that it offers better opportunities for competition. Competition is restricted in Alaska because a new carrier must obtain a certificate from the Alaska Public Utilities Commission, which can be a time consuming process and, in some cases, an expensive one as well. In contrast, local control of solid waste collection and disposal could increase competition because, as but one example, local governments could issue one or more franchises to private carriers through a competitive bid process. In exchange for a franchise fee, carriers would compete for the ability to provide services and could be required to maintain rates at a specified level. Larger areas of Alaska and particularly Anchorage would be able to attract proposals from many carriers and, in so doing, promote competition. This legislation specifically allows for local governments to either provide the service themselves or to provide service through one or more franchises with private carriers.

My understanding is that nearly every state (except for Alaska) provides for local rather than statewide control of solid waste collection and disposal, probably for the reasons I support local control of these services.

Thank you.

Sincerely,

Kevin Meyer  
Anchorage Assemblymember

Dear George,

I have not introduced this legislation. I am reviewing the proposal by Waste Management and soliciting input from affected parties.

Thank you for your input.

Bill

george & brenda wuerch wrote:

Subject: Solid Waste

Date: Tue, 23 Mar 1999 11:21:27 -0900

From: george & brenda wuerch <wuerch@alaska.net>

To: Representative\_Bill\_Hudson@ligis.state.ak.us

Dear Bill,

Just a short note to thank you for sponsoring the bill to remove solid waste collection and disposal services from regulation by the Alaska Public Utilities Commission.

The more we can move regulatory decisions to the local governmental level the more likely local needs will be met in ways that users support. Your bill will help Anchorage citizens and enable the Municipality to adjust to competition more effectively.

Further, it seems a small benefit, but reducing the work load of the APUC should help in the state budget battle too.

Good luck and thanks again,

George Wuerch  
Anchorage Assemblyman

# Municipality of Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-4311  
Voice Mail: (907) 343-4114

ANCHORAGE ASSEMBLY  
Ted Carlson

March 19, 1999

*Representative Bill Hudson  
Chair, Utility Restructuring Committee  
State Capitol Room 108  
Juneau, Alaska 99801-1182*

**SENT VIA FAX**  
**ORIGINAL BY MAIL**

*Dear Representative Hudson:*

*I am writing and asking your support in the passage of the proposed legislation that provides local control of refuse collection and disposal services. As I understand it, the Alaska Public Utilities Commission ("APUC") currently regulates the provision of refuse collection and disposal services.*

*Refuse collection and disposal is unlike telecommunications or electric power, where the cost of building an infrastructure and providing service is high, and where specialized expertise at a state commission is necessary. The refuse industry is much easier for a new provider to enter, as a new provider needs, most importantly, a large truck with sufficient safety features to carry refuse. And, the state simply does not need to regulate refuse collection and disposal because high specialized expertise is not required.*

*The results of the current regulatory scheme is a complicated checkerboard of regulatory authority that impedes the efficient administration of refuse collection and disposal. For example, the Municipality of Anchorage has a certificate from the APUC that allows it to be the exclusive provider of residential and commercial service within the boundaries of the old City of Anchorage. However, outside the old City of Anchorage boundaries, but still within the City of Anchorage, private carriers provide competitive commercial service, and one private carrier provides residential service, all under the direction and jurisdiction of the APUC.*

*It would make far more sense to allow the City of Anchorage to administer all refuse collection and disposal programs within the greater City of Anchorage boundaries instead of having the APUC administer refuse collection in part of the City, and having the City administer refuse collection in the rest. Moreover, if the City controlled refuse collection and disposal outside the old City boundaries, the Municipality of Anchorage could consider issuing franchises to private carriers for the collection and disposal of refuse outside the old City of Anchorage boundaries in exchange for a franchise fee. I understand the Kodiak Borough administers refuse collection and disposal through a franchise, and is pleased with the results. Furthermore, I think this proposed legislation is good public policy.*

*Thanks in advance for your consideration.*

*Sincerely,*

*Ted Carlson*

*Ted Carlson  
Anchorage Assemblymember*

# Alaska Telephone Association

201 E. 56th, Suite 114  
Anchorage, AK 99518  
(907) 563-4000  
FAX (907) 562-3776

David Fauske  
President

James Rowe  
Executive Director

April 14, 1999

Honorable Andrew Halcro, Co-Chair  
Honorable John Harris, Co-Chair  
House Community and Regional Affairs Committee  
Alaska State Legislature  
Juneau, Alaska 99801

RE: HB 178 -- Removing waste management from regulation by the APUC

Dear Representatives Halcro and Harris:

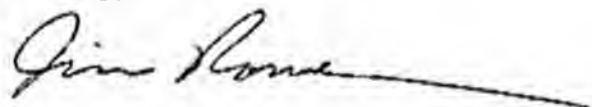
The Alaska Telephone Association has reviewed HB 178, an act relating to removing solid waste collection from regulation by the APUC. Although having no particular interest in waste management, the association is enthusiastic with the thought that the workload of the APUC might be reduced by the removal of waste management from its agenda.

Since passage of The Telecommunications Act of 1996 the commission has seen its telecommunications workload increase tremendously. What was touted as deregulatory federal legislation has initiated a flurry of activity at the state level with access reform, state universal service funding, rate rebalancing, tariffs for new services, mergers, entry requests for local exchange competition and intrastate competition, new entries into the private payphone market, and service to rural health care providers. Certainly there are other issues and none of the pre-1996 telecommunications issues have gone away.

The APUC has nine new positions approved and desperately needed, but unfilled due to the state hiring freeze. Remember that the APUC is funded by a regulatory cost charge, not through the general fund. Though it might seem, on the surface, to be self-serving, the ATA would be happy to see the commission have more time to devote to telecommunications matters. The public would benefit by a speedier response time. The transfer of waste management regulation from state to the local level would allow the commission to focus more of its energy on telecommunications dockets.

I'd be happy to discuss this issue with you further.

Sincerely,



Jim Rowe

All of 1998			
<b>Route &amp; Area</b>		<b>% of Income</b>	<b>% of Customer</b>
<b>Core Area Garbage Haul</b>			
Copper Center			
M100-M105.5 O'Rich		18.31%	26%
Glennallen & North Tazlina			
M173-M190 Glenn / M110-M123 Rich		26.76%	25%
Edgerton & South Tazlina			
M79-M110 Rich / M0-M19 Edgerton		8.36%	23%
Gakona			
M123-M129 Rich / M0-M5 Tok		25.28%	11%
<b>Extended Area Garbage Haul</b>			
North Richardson			
M130-M198 Richardson Hwy		3.17%	3%
Slana			
M6-M90 Tok Hwy		8.14%	8%
Nelchina			
M141-M173 Glenn Hwy		1.83%	1%
Chitina			
M19-M35 Edgerton Hwy		4.57%	2%
South Richardson			
M79-M110 Richardson Hwy		6.69%	1%

Landfill located @ Mile 122 Richardson Hwy.  
 15% of REVENUE = 60% of mileage TRAVELED  
 we maintain landfill - no state or federal aid.

Post-it® Fax Note	7671	Date	4/15	# of pages	1
To	DEED HARRIS	From	SU NEELEY		
Co./Dept	(H) CRA	Co.			
Phone #		Phone #			
Fax #		Fax #			

## Sponsor Statement

### HB 178

The issue of deregulating refuse has been around longer than I have been in the Legislature. The APUC historically has advocated deregulation, and legislation has been introduced recently in the Senate to deregulate refuse collection and disposal services.

I support efforts to relax the regulatory control over the refuse industry, but I want to make sure that we have a framework that promotes competition and is in the best interest of consumers. Refuse collection and disposal service must continue to be managed to some degree, and there is a better way than state regulation. The answer is local regulation.

Refuse collection and disposal in most states is regulated locally. I believe local control of these services is a better system for Alaska. Each community is unique and has different requirements for refuse services. Some communities want to provide the service themselves, and others want private carriers to provide the service. Some communities may want incentives for recycling built into rates. This legislation empowers local governments to handle these and other issues as their customers and leaders desire.

This is not an unfunded mandate. Should a local government wish to provide the refuse services itself, the costs would be paid for through rates. Should a local government want one or more private carriers to provide the services, this legislation allows local governments to establish franchises and to collect franchise fees, which would more than cover the costs of administering the franchises.

The legislation is also consumer oriented. It provides that in areas where a single private carrier provide exclusive service, rates would be frozen for five years at their current level adjusted for costs due to inflation and extraordinary expenses. In areas where there is competition, rates are deregulated and competitors can freely compete based on rates.

The legislation also promotes the benefits of competition. Competition is restricted in Alaska because a new carrier must obtain a certificate from the Alaska Public Utilities Commission, a process which I understand can be expensive and, given the overwhelming workload at the APUC, can also be extremely time-consuming. Local control should therefore reduce that barrier to entry.

Competition will also be encouraged by this legislation because it will simplify the regulatory environment. Geographic areas like Anchorage are a regulatory checkerboard because parts of Anchorage are subject to the jurisdiction of the APUC, and other parts are subject to the jurisdiction of the Municipality of Anchorage. We should simplify the regulatory environment and remove the guesswork. This bill does that by providing complete local control for refuse services.

This legislation will also promote the benefits of competition by expressly granting local governments the right to issue one or more franchises to private carriers for refuse collection and disposal service. If companies have to compete for a franchise, local governments are likely to have multiple bidders and consumers will benefit from that competition through lower prices and competitive service offerings.

It makes good sense for the State of Alaska to follow the lead of nearly every other state and place control of refuse collection and disposal services at the local level. This legislation is good public policy, is good for Alaska and is good for local governments.

I urge your support of HB 178.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 178

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Alaska Public Utilities Commission BRU AK Public Utilities Commi  
Deregulation of Garbage Utilities Component APUC Operations  
 Sponsor Rep. Kott  
 Requester H. C&RA Component Serial No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0			
Grants & Claims	0.0	0.0			
Miscellaneous	0.0	0.0			
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>					
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time	0	0	0	0	0
Part-time	0	0	0	0	0
Temporary	0	0	0	0	0

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

This bill removes refuse collection and disposal utilities from the definition of "public utility" under the Alaska Public Utilities Commission and assigns or authorizes responsibility for regulation of refuse utilities to local government. The resources freed up by this legislation would be used by the Commission to respond to the backlog of dockets from other regulated utilities.

Prepared by Robert A. Lohr Phone \_\_\_\_\_  
 Division APUC Date/Time \_\_\_\_\_  
 Approved by Commissioner Deborah O. Sedwick Date 4.14.99  
 Agency \_\_\_\_\_

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## Sectional Analysis

### HB 178

- Section 1 (a), (1), (2), (3) Provides an introduction for having municipalities regulate solid waste instead of the state.
- Section 1 (b), (1) Introduces local control of solid waste.  
(2) In municipalities that have no solid waste services on the effective date, allows for the future creation of a solid waste service. But does not require it.  
(3) Introduces a franchise fee option for municipalities to recover costs of implementing the act.  
(4) Protects existing holders of APUC solid waste certificates for a period of time by granting an exclusive franchise or by purchasing the certificate, equipment, and facilities at fair market value.
- Section 2 Adds six new sections to AS 29.35.050. Each new section is explained below.
- (e) Completely protects municipalities' ability to operate refuse collection and disposal services. Upon the bill's passage, where there is one or more private carriers operating with a certificate in the municipality, a municipality has three options. First, a municipality could continue to have the existing certificate holder continue to provide exclusive service for the 5 year transition period. During that 5-year transition period, the exclusive provider would be required to provide service at its existing tariffed rate, subject only to increases for inflation and extraordinary increases in operating expenses. Second, whether or not an area has competition, a municipality would have the right to issue multiple competing franchises. If an area already has competition, competitors would have a right to continue to provide service for the 5-year transition, and new competitors could be allowed at the municipality's election. If the municipality allows for competing franchises, rates would not be regulated and competitors could increase or decrease their prices. Third, a municipality could purchase some or all of an existing certificated utility's equipment, facilities and certificate.
- (f) Allows, but does not require, a municipality that currently has no solid waste collection service to either provide it, or to franchise it.
- (g) Requires a municipality to purchase at fair market value the proportional part of a utility's certificate and facilities if a municipality deprives a certificated utility from providing any of

its services in any part of its certificated service area during the 5-year transition period.

- (h) Allows municipalities to charge a franchise fee. The fee must be in the range of .5% to 2.5% of the franchisee's gross revenue.
- (i) Allows a municipality to require all persons, property owners, or occupants to use solid waste collection and disposal system. This is similar to AS 29.35.050 (2). Environmental and public health concerns require that solid waste be handled in an approved manner.
- (j) Provides for definitions of the following terms: commercial and residential service, defines a municipality, and defines fair market value.

- Section 3 Amends AS 29.35.070 to conform to this act. This is a house keeping section.
- Section 4 Amends AS 29.35.210 (a) (4) by removing garbage and solid waste powers from second class boroughs in this section. The authority to regulate solid waste is covered in the definition of municipality in section 2 (j) (3) of this bill. Second class boroughs will continue to be able to regulate solid waste.
- Section 5 Amends AS 38.05.810 (f) to conform to this act. This is a house keeping section.
- Section 6 Amends AS 42.05.711 (l) to conform to this act. This is a house keeping section.
- Section 7 Amends AS 42.05.712 (h) to conform to this act. This is a house keeping section.
- Section 8 Amends AS 45.50.572 (d) to conform to this act. It confirms that Alaska's antitrust laws apply to private refuse carriers, except where a municipality grants a private carrier an exclusive franchise to operate in an area. This is a house keeping section.
- Section 9 Repeals several statues required to conform to this act. This is a house keeping section.
- Section 10 Provides for an immediate effective date for sections 1,2,4,8, and 9(a) of this act.
- Section 11 Provides for an effective date for the remainder of the act as of January 1, 2000.

1  
Subject: HB 178

Date: Tue, 13 Apr 1999 17:01:48 -0800

From: "Jim Arnesen" <jarnesen@mail.alaskalife.net>

To: <Representative\_Andrew\_Halcro@legis.state.ak.us>

CC: <Representative\_Fred\_Dyson@legis.state.ak.us>,  
<Representative\_Lisa\_Murkowski@legis.state.ak.us>

April 13, 1999

Representative Andrew Halcro

Alaska State Legislature

Co-Chair, Community & Regional Affairs

State Capitol

Juneau, AK 99801-1182

Re: HB 178: An Act relating to removing solid waste collection and disposal service from regulation by the Alaska Public Utilities Commission; &hellip;

Dear Representative Andrew Halcro,

I am the owner and President of Commercial Refuse, Inc.(CRI), an Alaskan owned and operated, regulated and certificated refuse utility in Anchorage. I am opposed to HB 178, a bill that will deregulate refuse. I have spoken with the other "remaining Alaskan owned independent refuse utilities" in this area and believe that their views, concerns and comments are the same as those in this letter.

CRI and the other independent refuse companies in this area are opposed to any such legislation that will specifically remove statewide oversight and regulatory powers from the Alaska Public Utilities Commission (APUC), and transfer the same to local municipalities and boroughs. If this legislation is allowed to become law, it would constitute a serious mistake.

**This committee should be acutely aware that the refuse business in Alaska has been recently transformed by Waste Management, Inc. (WMI) into one large monopoly. WMI now controls over 95% of all refuse business in this state. If there was ever a time to recognize the need for continued statewide regulation, now is that time. In fact, this is the most improper moment to consider deregulation of refuse or transfer those regulatory burdens to local municipalities and boroughs.**

The goal of WMI has been to control the market, from collection to disposal (landfills). Regulation is not in their best interest, for they require an unregulated market to achieve their goals. For the public, the lack

of regulation in a market where one company (WMI) has such a dominant monopoly, such as Alaska, this can hardly be considered to be in the public's best interest. Unlike other states, Alaska does not possess comparably sized competitive refuse companies to assist in controlling market pricing and service. In fact, many communities here have only one company to receive service from. Localized control would be ineffective in regulating such a large statewide monopoly.

Representative Andrew Halcro

Alaska State Legislature

Co-Chair, Community & Regional Affairs

April 13, 1999

The Alaska Public Utilities Commission (APUC) has regulated refuse utilities for many years in Alaska. While there has been some discussion about deregulation, at this time such action would be ill advised. WMI's latest attempt to have legislation introduced that will deregulate the refuse industry here in Alaska is purely self-serving and will benefit only WMI. If we ever needed regulation, now is the time. The APUC is well equipped to handle this function and serves the industry well. However, the most important aspect is the protection of the public from monopolistic practices from an entity such as WMI.

Another aspect that should be considered is the fact that the regulated utility companies "pay their way" through the RCC (Regulatory Cost Charge). This is not necessarily a budgetary concern for the state since the services of the APUC are paid for. Since Alaska lacks a consumer protection agency at this time, what viable mechanism would exist for consumer problems if deregulation were to occur? At the present, most communities and municipalities are ill equipped to handle functions such as the APUC provides. In fact, many may not be able to.

I find it difficult to comprehend any valid reason at this time or the near future, for deregulation. The present status with the APUC maintaining statewide regulatory control is highly appropriate and recommended. The APUC does have all the needed functions to protect the public and provide a forum for consumer problem resolutions. For all the reasons mentioned, I am opposed to any attempt to deregulate refuse at this time.

Sincerely,

1

Jim A. Arnesen

President

cc: Rep. John Harris, Vice Chair

Rep. Fred Dyson

Rep. Carl Morgan

Rep. Lisa Murkowski

Rep. Reggie Joule

Rep. Albert Kookesh

the commission shall release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record will be used by the commission in the proceeding.

(c) A person may make written objection to the public disclosure of information contained in a record under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission may not order the information withheld from public disclosure unless the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public.

(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981)

#### NOTES TO DECISIONS

**Narrow construction.** — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. *City of Fairbanks v. Alaska Pub. Utils. Comm'n*, 611 P.2d 493 (Alaska 1980).

**Due process controls over section.** — The re-

quirement of this section that information not be withheld if "required in the interests of the public" will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. *City of Fairbanks v. Alaska Pub. Utils. Comm'n*, 611 P.2d 493 (Alaska 1980).

**Sec. 42.05.681. Validity of certain certificates.** A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated or voided for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000. (§ 6 ch 113 SLA 1970)

**Sec. 42.05.691. Utility classes.** The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership, and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting, and other regulatory requirements. (§ 6 ch 113 SLA 1970)

**Sec. 42.05.701. [Renumbered as AS 42.05.720.]**

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

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

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

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

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

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

42.05.711 (i)  $\frac{1}{3}$  (r)  
*are repealed*

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under AS 42.05.712(h).

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$500,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$150,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

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

(i) A utility that furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$300,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless the subscribers petition the commission for regulation under AS 42.05.712(h). Notwithstanding AS 42.05.712(b) and (g), if subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation, the utility is subject to the provisions of this chapter.

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

(k) A utility that furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712.

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

(m) The collection and disposal, under AS 29.35.050(c), by a municipality of waste material deposited at an intermediate transfer site is exempt from this chapter. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7 — 9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983; am § 68 ch 74 SLA 1985; am § 1 ch 80 SLA 1985; am § 2 ch 107 SLA 1986; § 5 ch 93 SLA 1990; am § 3 ch 176 SLA 1990; am §§ 4 — 8 ch 1 SLA 1995)

**Cross references.** — For limitations on these exemptions, see AS 42.05.254, AS 42.05.321(b), and AS 42.05.381(c).

**Effect of amendments.** — The 1995 amendment, effective June 26, 1995, in subsections (e) and (k), deleted "25 percent of" following "unless"; in subsection (e), added "under AS 42.05.712(h)" at the end; in subsection (f), substituted "\$500,000" for "\$325,000"; in subsection (g), substituted "\$150,000" for "\$100,000"; rewrote subsection (i); and, in subsection (k), added "under the procedure described in AS 42.05.712" at the end and made minor stylistic changes.

**Editor's notes.** — Section 4, ch. 176, SLA 1990 provides that subsection (m) does not apply to a

municipality with a population of less than 50,000 until July 1, 1991.

**Opinions of attorney general.** — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation under AS 10.20, June 7, 1976, Op. Att'y Gen.

When a deregulated utility exceeds the gross annual limit of \$325,000 (increased in 1995 to \$500,000) specified in subsection (f), and thus fails to be eligible for deregulation, the deregulation exemption ends

(c) Except as provided in (b) of this section, the commission may prohibit installation of facilities for origination or termination of long distance service in a given location only if it determines that installation of the facilities in that location is not in the public interest. (§ 2 ch 93 SLA 1990)

**Sec. 42.05.820. No municipal regulation.** A long distance telephone company that is exempted in whole or in part from complying with all or a portion of this chapter may not be regulated by a municipality under AS 29.35.060 and 29.35.070. (§ 2 ch 93 SLA 1990)

**Sec. 42.05.830. Exchange access charges.** In providing for competition under AS 42.05.800 — 42.05.890, the commission shall establish a system of access charges to be paid by long distance carriers to compensate local exchange carriers for the cost of originating and terminating long distance services. (§ 2 ch 93 SLA 1990)

**Sec. 42.05.840. Universal service fund.** The commission may establish a universal service fund or other mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service. (§ 2 ch 93 SLA 1990)

**Sec. 42.05.850. Exchange carrier association.** The commission may require the local exchange carriers to form an association to assist in administering the system of access charges and may require the association to file tariffs and to engage in pooling of exchange access costs and revenue if necessary to achieve the purposes of AS 42.05.800 — 42.05.890. (§ 2 ch 93 SLA 1990)

**Cross references.** — For legislative intent in enacting this section, see § 1(b), ch. 93, SLA 1990 in the Temporary and Special Acts.

**Sec. 42.05.860. Restrictions on resale of telecommunications services prohibited.** A telephone company may not prohibit or restrict the resale of telecommunications service. If an interexchange telecommunications service is resold, the reseller shall receive credit in an appropriate amount for an applicable exchange access charge if the credit is necessary to prevent double payment of the access charges. (§ 2 ch 93 SLA 1990)

**Sec. 42.05.890. Definitions.** In AS 42.05.800 — 42.05.890,

- (1) "local exchange carrier" means any carrier certificated to provide local telephone services;
- (2) "long distance carrier" or "long distance telephone company" means any carrier certificated to provide long distance telephone services;
- (3) "long distance telephone service" or "long distance service" means intrastate, interexchange telephone service. (§ 2 ch 93 SLA 1990)

**Revisor's notes.** — Enacted as AS 42.05.995. Renumbered in 1990.

## Article 11. General Provisions.

**Section**  
990. Definitions  
996. Short title

**Sec. 42.05.990. Definitions.** In this chapter

- (1) "affiliated interest" includes:
  - (A) a person owning or holding directly or indirectly five per cent or more of the voting

42.05.990 (+) (F)  
is repealed

securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five per cent or more of whose voting securities are owned by a person owning five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of the voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Alaska Public Utilities Commission;

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

(A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;

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

(C) a utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products that are re-sold to a person or group included in (A) or (B) of this paragraph that are used to produce the service or commodity sold to the public by the utility;

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

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

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

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

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

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

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

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

Anchorage, 579 P.2d 1071 (Alaska 1978).

**For discussion of imperfections in the escrow procedure.** — See Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough, 534 P.2d 549 (Alaska 1975).

**Denial of interim rate increase held arbitrary.** — Where the superior court found that the existing rate was confiscatory, where the borough was clearly operating the sewer utility at a great loss, where the period prior to a final hearing could be construed to be unreasonable and where the commission failed to provide any further justification for its decision, the denial of the interim rate increase was arbitrary, and the superior court's injunction voiding the commission's order did not constitute an abuse of its discretion. Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough, 534 P.2d 549 (Alaska 1975).

**Commission determination that proposed rates were reasonable was not supported by substantial evidence on the record as a whole.** Jager v. State, 537 P.2d 1100 (Alaska 1975).

**Procedure consistent with statutory allocation of burden of proof.** — Where the commission had first been satisfied by a public utility's evidence that the rates were reasonable and thereafter turned to complainant to show otherwise, this procedure, consistent with the statutory allocation of the burden of proof, is clearly reasonable. Jager v. State, 537 P.2d 1100 (Alaska 1975).

**Refund methods.** — See United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska

1979), overruled on other grounds, Owsichuk v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

**Commission did not err in suspending company's tariff revision filings five times,** constituting a 22-month suspension, given the complexities involved, including consideration of separated company versus total company's revenue requirements, and the availability of interim relief if warranted. The fact that interest rates dropped from the time the company filed the tariff to the time the commission made its final decision did not entitle the company to an analysis based on the higher rates. Glacier State Tel. Co. v. Alaska Pub. Utils. Comm'n, 724 P.2d 1187 (Alaska 1986).

**Powers of commission.** — The legislature intended to grant the commission broad powers to establish "fair and just" rates. Implied within that broad grant of powers is the authority for the commission to declare a rate interim and refundable, so long as the commission provides protection for the interests of both the utility and the public. Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

**Failure to hold hearing nonjurisdictional and subject to waiver.** — Error involving the commission's failure to hold a hearing before ordering an interim refundable rate was nonjurisdictional and subject to waiver by a party's failure to raise it before the commission. Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

42.05.431  
(F) §(9)  
are repealed

*Sec. 42.05.430. [Repealed, § 5 ch 113 SLA 1970.]*

**Sec. 42.05.431. Power of commission to fix rates.** (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

(b) A wholesale power agreement between public utilities is subject to advance approval of the commission. After a wholesale power agreement is in effect, the commission may not invalidate any purchase or sale obligation under the agreement. However, if the commission finds that rates set in accordance with the agreement are not just and reasonable, the commission may order the parties to negotiate an amendment to the agreement and if the parties fail to agree, to use the dispute resolution procedures contained in the contract.

(c) Notwithstanding (b) of this section,

(1) a wholesale agreement for the sale of power from a project licensed by the Federal Energy Regulatory Commission on or before January 1, 1987, and related contracts for

the wheeling, storage, regeneration, or wholesale repurchase of power purchased under the agreement, entered into between the Alaska Energy Authority and one or more other public utilities or among the utilities after October 31, 1987, and before January 1, 1988, and amendments to the wholesale agreement or related contract, are not subject to review or approval by the commission until all long-term debt incurred for the project is retired; and

(2) a wholesale agreement or related contract described in (1) of this subsection may contain a covenant for the public utility to establish, charge, and collect rates sufficient to meet its obligations under the contract; the rate covenant is valid and enforceable.

(d) Meetings between the Alaska Energy Authority and public utilities concerning a wholesale agreement for the sale of power or other matter exempted from review of the commission under (c) of this section must comply with AS 44.62.310.

(e) Validated costs incurred by a utility in connection with the related contracts described in (c)(1) of this section must be allowed in the rates charged by the utility. In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in (c) of this section, to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts.

(f) In the establishment of rates of a utility furnishing solid waste material collection and disposal service, the commission shall permit recovery of reasonable, net capital and operating costs relating to solid waste recovery and recycling services after considering the utility's recovery of revenue associated with the service.

(g) In the establishment of rates under this chapter, the commission shall promote cost-effective solid waste recovery and recycling services.

(h) When setting or reviewing rates for a public utility that sends or receives power over the power transmission interties between Fairbanks and Healy or between Anchorage and the Kenai Peninsula, the commission shall consider those costs that have not been directly assigned to other individual generating utilities by the utility responsible for the construction of the intertie to have been incurred for the system existing on August 11, 1993. (§ 6 ch 113 SLA 1970; am §§ 4, 5 ch 104 SLA 1986; am §§ 1, 2 ch 11 SLA 1988; am § 1 ch 46 SLA 1991; am § 4 ch 18 SLA 1993)

**Revisor's notes.** — Subsection (e) was enacted as AS 42.05.511(d). Renumbered in 1988.

**Cross references.** — For provisions governing the Alaska Energy Authority, see AS 44.83.

**Editor's notes.** — Section 8, ch. 104, SLA 1986 provides that (b) of this section "applies only to wholesale power agreements entered into on or after June 7, 1986."

Section 5, ch. 11, SLA 1988 provides that subsections (c) and (e) of this section are retroactive to November 1, 1987.

**Legislative history reports.** — For legislative letters of intent on the amendments to this section by ch. 11, SLA 1988 (SCS CSIB 356(R1a)), see 1988 House Journal, pp. 2233 — 2234 and 1988 Senate Journal, pp. 2483 — 2484.

**Opinions of attorney general.** — The Alaska Public Utility Commission was not authorized to review the Long-Term Power Sales Agreement 4 Dam Pool — Initial Project of the Alaska Power Authority, a wholesale power agreement signed by the Alaska Power Authority (now Alaska Energy Authority), two electric cooperatives, and three cities in southeast Alaska, since the agreement was signed prior to June 7, 1986. February 12, 1988, Op. Att'y Gen.

A power purchase contract between the Alaska Power Authority (now Alaska Energy Authority) and Municipal Light & Power is subject to approval by the Alaska Public Utilities Commission under subsection (b). February 18, 1987, Op. Att'y Gen. (Opinion rendered prior to the 1988 amendment of this section.)

#### NOTES TO DECISIONS

**History of section.** — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, 555 P.2d 262 (Alaska 1976).

**The commission may establish rates only after an investigation and hearing.** Far N. San., Inc. v. Alaska Pub. Utils. Comm'n, 825 P.2d 867 (Alaska 1992).

**Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's intrastate rates.** United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), overruled on other grounds, Owsichuk v. Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

(b) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985)

#### NOTES TO DECISIONS

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

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

**Collateral references.** — Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves. 35 ALR3d 1293.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property. 36 ALR3d 751.

Cost of substitute facilities as measure of compensation paid to state or municipality for condemnation of public property. 40 ALR3d 143.

Consideration of fact that land owner's remaining land will be subject to special assessment in fixing severance damages. 59 ALR3d 534.

**Sec. 29.35.040. Emergency disaster powers.** (a) A municipality that is wholly or partially in an area that is declared by the President or governor to be a disaster area may participate in and provide for housing, urban renewal, and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough shall be on a nonareawide basis, except a borough may exercise the powers transferred to it by a city as provided by AS 29.35.310.

(b) Powers granted by this section must be initiated within a period of not more than five years after the date of declaration of a natural disaster by the President or governor, but these powers may be extended for an additional period of not more than three years. (§ 10 ch 74 SLA 1985)

**Sec. 29.35.050. Garbage and solid waste services.** (a) Notwithstanding AS 29.35.200 — 29.35.220, a municipality may by ordinance

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

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

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

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

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

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

(7) provide penalties for violations of the ordinances.

(b) The governing body of a municipality may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, or other waste material, or provide other related services in an area in the municipality if the certificate authorizes the collection and disposal of garbage, refuse, trash, or other waste material and providing of other services in the area, and the certificate was originally issued before the municipality provided similar services. Except as provided in (c) of this section, a municipality may not provide

29.35.050 (a) & (b)  
are repealed

(c) & (d) are not

for a garbage, refuse, trash, or other waste material collection and disposal service in an area to the extent it lies in an area granted to a garbage, refuse, trash, or other waste material carrier by a certificate issued by the Alaska Public Utilities Commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier, or that portion of the certificate that would be affected, at fair market value. A municipality may exercise the right of eminent domain to acquire the certificate, equipment, and facilities of the carrier, or that portion of the certificate that would be affected.

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

(d) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985; am §§ 1, 2 ch 176 SLA 1990; am § 38 ch 21 SLA 1991)

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

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

**Editor's notes.** — Section 4, ch. 176, SLA 1990

NOTES TO DECISIONS

**"Provided similar services."** — The phrase "provided similar services" in subsection (b) refers only to lawfully performed services. *Colville Env'tl. Servs.,*

*Inc. v. North Slope Borough*, 331 P.2d 341 (Alaska 1992).

**Collateral references.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.

maintenance of sewer disposal plant as nuisance. 40 ALR2d 1198.

62 C.J.S., Municipal Corporations, §§ 279, 657.

Municipal liability for maintenance of public dump as nuisance. 52 ALR2d 1134.

Liability of municipal corporation for damages for

**Sec. 29.35.055. Local air quality control program.** A municipality may establish a local air quality control program as provided in AS 46.14.400 only if the municipality has obtained the consent of its governing body through an ordinance authorizing the participation. This section applies to home rule and general law municipalities. (§ 6 ch 74 SLA 1993)

**Sec. 29.35.060. Franchises and permits.** (a) The assembly acting for the area outside all cities in the borough and the council acting for the area in a city may grant franchises, including exclusive franchise privileges, to a person, corporation, organization, or utility not certificated by the Alaska Public Utilities Commission and may permit the use of streets and other public places by the franchise holder under regulations prescribed by ordinance.

(b) Unless the grant is made on a competitive basis, the grant of an exclusive right to use a public street or right-of-way for more than five years to a utility or a transportation system not certificated by the Alaska Public Utilities Commission shall be valid only if approved by a majority of the voters at an election.

(c) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985)

**Collateral references.** — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.

64 C.J.S., Municipal Corporations, § 1726. Municipality's liability in damages for refusal to grant franchise. 37 ALR2d 694.

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Rep. Andrew Halcro, Co-Chair  
Rep. John Harris, Co-Chair  
Rep. Carl Morgan  
Rep. Lisa Murkowski  
Rep. Fred Dyson  
Rep. Reggie Joule  
Rep. Al Kookesh



State Capitol, Room 418  
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### COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

UNLESS OTHERWISE INDICATED, MEETING TIME 8:00 AM, ROOM 124, CAPITOL BUILDING

TUESDAY, APRIL 13, 1999

BILLS PREVIOUSLY HEARD

THURSDAY, APRIL 15, 1999

HB 178+\* DEREGULATION OF GARBAGE UTILITIES

BILLS PREVIOUSLY HEARD

TUESDAY, APRIL 20, 1999

HB200+\* MUNICIPAL PROPERTY TAX EXEMPTIONS  
(PENDING INTRODUCTION AND REFERRAL)

HB 175+\* LICENSING OF FOSTER GROUP HOMES  
(PENDING REFERRAL)

HCR6+\* LOCAL GOVERNMENT IMPACT TASK FORCE

THURSDAY, APRIL 22, 1999

HB 193\* ADMIN COSTS OF VILLAGE PUBLIC SAFETY OFFICERS

BILLS PREVIOUSLY HEARD

\* FIRST PUBLIC HEARING  
+ TELECONFERENCE

CS FOR HOUSE BILL NO. 178( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to removing solid waste collection and disposal service from  
2 regulation by the Alaska Public Utilities Commission; requiring certain  
3 municipalities, and permitting other municipalities, to regulate solid waste collection  
4 and disposal service within the municipal boundaries; and providing for an  
5 effective date."

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

7 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

8 (1) in most states, solid waste collection and disposal service is not regulated  
9 at the state level; rather, if it is regulated at all, solid waste collection and disposal service is  
10 regulated at the county or city level;

11 (2) each community in Alaska is unique, and therefore local governments are  
12 better able to determine the level of service and the appropriate market structure for solid  
13 waste collection and disposal service within the community's boundaries than is a state

1 commission;

2 (3) local control of solid waste collection and disposal service would allow a  
3 municipality to establish a comprehensive solid waste management plan based on the size,  
4 nature, and population density of the area to respond to the unique needs of the community  
5 and to better serve customers within the municipal boundaries.

6 (b) It is the intent of the legislature to provide in this Act that

7 (1) when the Alaska Public Utilities Commission ceases to regulate solid waste  
8 collection and disposal service, a municipality in the state that owns and operates a solid waste  
9 collection and disposal service or that has within its boundaries a certificated public utility that  
10 is providing solid waste collection and disposal service should replace the commission's  
11 regulation with a system of local control either by continuing its ownership and operation of  
12 a solid waste collection and disposal service or by granting one or more franchises to private  
13 carriers to do so;

14 (2) a municipality that does not own or operate a solid waste collection and  
15 disposal service and that, on the effective date of this section, does not have within its  
16 boundaries a certificated public utility providing the service should be authorized but not  
17 required to establish a system of solid waste collection and disposal;

18 (3) a municipality should recover the cost of implementing this Act either  
19 through revenue earned from directly providing solid waste collection and disposal service or  
20 by the collection of franchise fees;

21 (4) the property interests of private carriers that already provide solid waste  
22 collection and disposal service under a certificate of public convenience and necessity issued  
23 by the Alaska Public Utilities Commission should be protected by requiring municipalities to  
24 either grant franchises to these carriers for a period of time or purchase the certificate,  
25 equipment, and facilities at fair market value.

26 \* Sec. 2. AS 29.35.050 is amended by adding new subsections to read:

27 (e) By January 1, 2000, a municipality that, on the effective date of this  
28 subsection, holds a certificate from the Alaska Public Utilities Commission to provide  
29 solid waste collection and disposal service or that has within its boundaries a public  
30 utility certificated by the Alaska Public Utilities Commission to provide solid waste  
31 collection and disposal service shall by ordinance provide for a system of residential

1 and commercial solid waste collection and disposal for the affected service areas. The  
2 municipality may satisfy the requirement of this subsection either by operating the  
3 service itself, with municipal officials and employees, or by granting one or more  
4 franchises to a private carrier to provide the service. Notwithstanding  
5 AS 29.35.250(b), a city that is inside a borough and that has established a system of  
6 solid waste collection and disposal before the effective date of this subsection may  
7 maintain that service. If, on the effective date of this subsection, a public utility  
8 provides residential or commercial solid waste collection and disposal service under  
9 a certificate issued by the Alaska Public Utilities Commission in a service area in a  
10 municipality, the municipality shall

11 (1) grant an exclusive franchise to the certificated utility to continue  
12 to provide the service for a term of at least five years from the later of the date that  
13 the franchise was granted or January 1, 2000; the franchise must contain an agreement  
14 that will allow the carrier to charge customers at the rates contained in the utility's  
15 tariff in effect on June 1, 1999, adjusted for inflation and any extraordinary increases  
16 in operating expenses; the term of the agreement and the rates charged are subject to  
17 amendment by agreement of the municipality and the franchisee;

18 (2) grant competing franchises; if a municipality grants more than one  
19 franchise in an area,

20 (A) the municipality may not regulate the rates for service  
21 within the area of competition; and

22 (B) one of the franchise holders in the area of competition must  
23 be the public utility that provided residential or commercial solid waste  
24 collection and disposal service in that service area on the day before the  
25 effective date of this section under a certificate issued by the Alaska Public  
26 Utilities Commission; or

27 (3) purchase, at fair market value, the utility's certificate, equipment,  
28 and facilities that are related to providing service in the municipality.

29 (4) A municipality that is not described in (e) of this section may by ordinance  
30 provide for a system of residential and commercial solid waste collection and disposal.  
31 The ordinance may provide either that the municipality will operate the service itself,

1 a home rule or first class city, a second class borough, or a unified home rule  
2 municipality;

3 (3) "residential solid waste collection and disposal" means the  
4 collection and disposal of solid waste, garbage, refuse, or trash from a container that  
5 has a capacity of less than one cubic yard, whether or not the property from which the  
6 material is collected is considered residential property.

7 \* Sec. 3. AS 29.35.070(a) is amended to read:

8 (a) The assembly acting for the area outside all cities in the borough and the  
9 council acting for the area in a city may regulate, fix, establish, and change the rates  
10 and charges imposed for a utility service provided to the municipality or its inhabitants  
11 by a utility that is not subject to regulation under AS 42.05 unless that utility is  
12 exempted from regulation under AS 42.05.711(a), [OR] (d) - (h), (i), or (k) or is  
13 exempted under regulations adopted under AS 42.05.810 from complying with all or  
14 part of AS 42.05.010 - 42.05.721.

15 \* Sec. 4. AS 29.35.210(a) is amended to read:

16 (a) A second class borough may by ordinance exercise the following powers  
17 on a nonareawide basis:

- 18 (1) provide transportation systems;
- 19 (2) regulate the offering for sale, exposure for sale, sale, use, or  
20 explosion of fireworks;
- 21 (3) license, impound, and dispose of animals;
- 22 (4) [SUBJECT TO AS 29.35.050,] provide [GARBAGE, SOLID  
23 WASTE, AND] septic waste collection and disposal;
- 24 (5) provide air pollution control under AS 46.14.400;
- 25 (6) provide water pollution control;
- 26 (7) participate in federal or state loan programs for housing  
27 rehabilitation and improvement for energy conservation;
- 28 (8) provide for economic development;
- 29 (9) provide for the acquisition and construction of local service roads  
30 and trails under AS 19.30.111 - 19.30.251;
- 31 (10) establish an emergency services communication center under