

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672**

**9839 HOUSE JUDICIARY**

## **FY98 significant events (continued)**

### **Natural Gas Service**

#### **Commission Grants ENSTAR's Application to Serve In and Around Homer and Seward**

In response to an application filed by Alaska Intrastate Gas Company (AIGC), in October of 1996, ENSTAR Natural Gas Company (ENSTAR) filed an application to provide natural gas utility service to Seward, Homer, Anchor Point and Ninilchik. Also in October of 1996, Homer Gas, a division of Homer Electric Association, Inc. (HEA), filed an application to provide gas utility service to Homer. AIGC subsequently filed a notice of intent to withdraw its application to serve Seward and Homer.

On April 28, 1997, the Commission held a hearing to address the competing applications filed by ENSTAR and HEA to serve Homer and the uncontested application filed by ENSTAR to serve Seward. On November 3, 1997, the Commission issued an order granting ENSTAR's application for amendments to its certificate provided it begins providing service by December 31, 2000. (U-96-108/U-96-109)

#### **Natural Gas Public Utility Service to Small Alaskan Communities**

In August of 1995, Alaska Intrastate Gas Company (AIGC) filed an application for a Certificate of Public Convenience and Necessity (Certificate) to provide natural gas public utility service to all of Alaska, except for those areas certificated by other gas utilities. The scope of AIGC's application was subsequently reduced to Seward and Homer and 17 communities in Southeast and Southcentral Alaska. AIGC proposed to serve these communities by utilizing liquefied natural gas (LNG) manufactured at a proposed liquefaction plant in Whittier, transported to the communities by barge, and revaporized for distribution in underground piping systems at each community.

As indicated above in October of 1996, ENSTAR and Homer Gas filed competing applications to serve areas in and around Homer and Seward. AIGC subsequently filed a motion to bifurcate the uncontested areas of its application and for issuance of a conditional certificate to serve the uncontested communities. In March of 1997 the Commission issued an order which granted the bifurcation, denied the request for a conditional certificate, opened Docket U-97-46 to address the 17 uncontested communities and required that AIGC file an amended application. On March 19, 1997 AIGC filed a notice of intent to withdraw Seward and Homer from its service area.

In May of 1997, AIGC filed its amended application to serve the 17 uncontested communities and a request for a nine-month time extension to verify market conditions and determine the financial feasibility of its plans. In the amended application, AIGC proposes to utilize a different supplier of LNG which intends to construct an LNG plant in British Columbia, Canada, rather than in Whittier, for AIGC's LNG supply. The Commission granted AIGC's request for a nine-month time extension and required AIGC to file the results of the marketing and economic studies it intended to conduct to verify the viability of its proposed operations. AIGC timely filed its studies on February 19, 1998. At the Commission's Public Meeting of April 8, 1998, AIGC gave a presentation regarding its proposed plans to implement gas utility service. On April 13, 1998, AIGC filed the results of the marketing and economic studies conducted in support of its February 19, 1998, filing. A decision on AIGC's application is pending. (U-95-82/U-97-46)

#### **Natural Gas Public Utility Service in Fairbanks**

In September of 1997, the Commission approved the application of Fairbanks Natural Gas, LLC (FNG), a subsidiary of Northern Eclipse, LLC (NELLC), to provide natural gas public utility service to selected areas of Fairbanks. NELLC is a natural gas liquefaction and distri-

## **FY98 significant events (continued)**

bution company which operates a small LNG plant located across Knik Arm from Anchorage. NELLC purchases gas from Cook Inlet suppliers which is transported via ENSTAR Natural Gas Company's pipeline system to its LNG plant where the gas is liquefied. The LNG is transported to Fairbanks by truck and cryogenic trailer. In Fairbanks, ownership of the gas is transferred to FNG as it is offloaded into LNG storage tanks. From the storage tanks, FNG revaporizes the LNG and distributes the resulting gas to its service area through a conventional gas transmission and distribution system. (U-96-129)

### **Electric Service**

#### **Coordinate Energy Resource Conservation and Efficiency Program (CERCE) & Power Pool Study**

This proceeding was opened as a result of the findings in Docket R-94-6 which considered standards regarding Integrated Resource Planning, Investments in Conservation and Demand-Side Management, and Energy Efficiency Investments in Power Generation and Supply for Electric Utilities, as required by Section 111 of the Energy Policy Act of 1992 (EPAAct). In R-94-6(4), the Commission declined to adopt the standards as set forth in the EPAAct because the standards were not applicable to all Alaskan regulated electric utilities. The Commission determined that energy conservation practices would be addressed in Alaska through a more tailored program to address the unique needs of Alaska's regulated electric utilities, where applicable. For this investigation the Commission opened Docket R-96-1.

After holding a workshop and several briefings, in September of 1998, the Commission issued an order which directed a study of power pooling to be done within the railbelt. As the study was only applicable to the railbelt utilities and AEG&T indicated willingness to fund it, the study was moved into a new proceeding (U-97-140). The scope of work for the study and the engineering consulting firm Black and Veatch were agreed upon by the Railbelt utilities. To ensure that the study was conducted in a completely impartial manner, the Commission designated its staff as the project director for the study. Staff was charged with reviewing the materials prepared by the consultant and overseeing the preparation of the consultant's report on the power pool study. However, staff was prohibited from exercising financial oversight of the project; such oversight was AEG&T's responsibility. The Power Pool Study is expected to be completed in the fall of 1998. (R-96-1/U-97-140)

#### **Commission Upholds Exclusive Service Areas**

On October 13, 1997, the Municipality of Anchorage, d/b/a Municipal Light & Power (ML&P), filed a complaint alleging that Chugach Electric Association, Inc. (Chugach), offered to provide electric power to customers located in ML&P's service area. In its response, Chugach admitted that it offered to sell electric power to customers within ML&P's service area. However, Chugach contended that its sales to the customers are legal and that ML&P's refusal to wheel power over the latter's transmission and distribution systems on Chugach's behalf to customers located in ML&P's certificated service area violates federal antitrust law. Chugach requested that the Commission declare that neither Alaska law nor any of the Commission's previous orders clearly articulate a policy permitting ML&P to monopolize sales of electric power in ML&P's certificated service area. Chugach also requested that ML&P be required to establish a tariff by which Chugach could wheel power over ML&P's lines. In U-97-201(3) the Commission rejected Chugach's argument that federal antitrust law required ML&P to wheel power over its transmission and distribution systems so Chugach could serve customers located in ML&P's service area and affirmed that ML&P retains an exclusive right to sell power

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## **FY98 significant events (continued)**

to customers in its certificated service territory. (U-97-201)

### **Aurora Power Resources Files a Pilot Program**

In June of 1998, Aurora Power Resources, Inc. (Aurora Power) filed an application which proposes to establish a limited pilot program to permit the limited competitive sale of electric power by power marketers to consumers in the Chugach Electric Association, Inc. and ML&P service areas. Among other things, the application recommends minimum qualifications and requirements for the power marketer. The application also proposes the pilot program be limited to 35 megawatts of load, with 3.5 megawatts reserved for residential consumers for a two-year term.

Aurora Power indicates the pilot program will provide consumers the benefits of competitive choice and reduced electric costs. Aurora Power also indicates the pilot program will provide an opportunity for the Commission and its Staff to introduce competitive choice on a limited basis and thereby gain the knowledge necessary to consider the public interest in allowing full electric retail competition in Alaska. An investigation on the application by the Commission and its Staff is ongoing. (U-98-114)

### **Legislative Action**

The Legislature passed HCR 34 establishing a Joint Committee on Electric Utility Restructuring. The Commission will be following this proceeding.

### **Copper Valley Electric Association, Inc.**

During FY98, after a significant public input process through public meetings, Copper Valley Electric Association, Inc. (CVEA) requested a permanent 7.3 percent rate decrease and rate redesign. The Commission approved a staff report to which CVEA concurred, and granted CVEA a permanent rate decrease of 7.3 percent and redesigned rates. (U-98-24)

### **Homer Electric Association, Inc.**

Homer Electric Association, Inc. (HEA) files quarterly simplified rate filings pursuant to 3 AAC 48.700 - 3 AAC 48.790. During FY98, HEA requested and was granted a 0.48 percent rate reduction and a 1.77 percent rate reduction. HEA continues to file simplified rate filings quarterly.

### **Matanuska Electric Association, Inc.**

Matanuska Electric Association, Inc. (MEA) files quarterly simplified rate filings pursuant to 3 AAC 48.700 - 3 AAC 48.790. During FY98, MEA requested and was granted a 1.00 percent rate reduction. MEA continues to file simplified rate filings quarterly.

## **FY98 significant events (continued)**

### **Two Qualifying Facilities Debate PURPA Responsibilities Copper Valley Electric Association, Inc. v. Alaska Cogeneration Systems, Inc. and Matanuska Electric Association, Inc. v. South Fork Hydro, LLC**

Frank J. Bettine and Alaska Cogeneration Systems, Inc., collectively referred to as ACSI, filed a formal complaint against Copper Valley Electric Association, Inc. (CVEA) alleging among other things that CVEA failed to provide its firm and nonfirm avoided-cost information and that CVEA violated the Public Utility Regulatory Policies Act (PURPA). Early on in the proceeding the Commission determined that CVEA should enter into good-faith negotiations and report the results of those negotiations to the Commission. The Commission also determined that ACSI should provide CVEA with engineering and financial information. The Commission also granted the Petro Star Valdez Refinery intervention in the case.

As directed by the Commission, on August 29, 1997, CVEA filed its best estimate of an initial avoided cost. According to CVEA, its true avoided cost is highly dependent on the operating and cost characteristics of an actual qualifying facility (QF). In U-94-21(9)/U-95-3(6) dated April 30, 1998, the Commission determined that CVEA had provided enough data for ACSI to prepare the information needed to calculate the avoided cost factors addressed by the Commission's regulations. The Commission directed ACSI to provide the information by December 1, 1998, and for CVEA to update its avoided cost information 30 days hence.

In another case South Fork Hydro, LLC (South Fork), a QF, filed a complaint against Matanuska Electric Association, Inc. (MEA), to establish MEA's avoided firm cost of power. South Fork maintained that it proposed to sell the power from its hydroelectric project, located on the South Fork of the Eagle River, to MEA at the price it purchases power from Chugach Electric Association, Inc. (Chugach) over a period of fifteen or twenty years. South Fork also asserted that MEA had declined to negotiate with South Fork and had claimed that South Fork must negotiate with Chugach. South Fork requested that the Commission direct MEA to enter into good-faith negotiations with South Fork for the purchase of power based on MEA's current and future cost of power. MEA asserts among other things that it was complying with state law. MEA states that it, Chugach and Alaska Electric Generation and Transmission Cooperative, Inc. (AEG&T), have entered into an agreement, commonly referred to as the A Tripartite Agreement. MEA contends that the agreement, which was approved by the Commission, determines the method of dealing with PURPA resources which is to encourage them to negotiate with Chugach.

In U-96-93(4) dated November 14, 1997, the Commission named Chugach and AEG&T as parties to the proceeding and asked the parties how to apply the Tripartite Agreement, PURPA, and the Commission's regulations in this case. A decision is pending. (U-96-93)

### **Water/Sewer Service**

#### **Temporary Suspension of Water and Sewer Certificates in Haines**

In response to a formal complaint, the Commission temporarily suspended certificates of public convenience & necessity (Certificate) previously granted to the City of Haines (Haines) for the provision of water and sewer service. Haines was requiring new customers to be annexed into the Haines city limits as a condition of water and sewer service. The Commission determined that the annexation requirement was discriminatorily applied, particularly as it applied to several existing customers receiving service outside the Haines city limits. The Commission suspended Haines' certificates for that portion of its service territory for which it was not currently providing public utility service and/or has declined service without annexation. The Commission determined that suspension, rather than revocation, would protect potential consumers who reside within the service territory but outside the city limits. The

## **FY98 significant events (continued)**

Commission also determined that if another applicant can demonstrate that it meets the requirements for certification, and can provide water and sewer public utility service without discrimination, then Haines' certificate may be partially revoked for those areas the new applicant intends to serve. (U-95-87)

On October 30, 1995, Crystal Cathedrals Water System, Inc. (CCWS), filed an application for a certificate to operate as a water public utility in the Haines area and on September 3, 1996 CCWS filed a second application for a certificate to operate as a sewer public utility. The Commission reviewed the application of CCWS and Haines' and after a hearing issued U-95-79(3)/U-96-101(3)/U-95-87(9) dated March 26, 1998, which found CCWS to be more fit, willing, and able to provide the proposed service. The order approved CCWS' application with conditions. (U-95-79/U-96-101/U-95-87)

### **Dawn Development Corporation**

During FY98, Dawn Development Corporation requested a rate increase of 50 percent to its residential customers and a change from a flat rate to a metered rate for its bulk customer which resulted in an increase in excess of 50 percent for the bulk customer. The Commission approved interim rate increases of 25.23 percent for residential customers and 50 percent for bulk water customers. The Commission is considering the permanent rate increase. (U-98-19)

## **Refuse Service**

### **Mergers and Acquisitions**

USA Waste of Alaska (UWA), a subsidiary of Waste Management, Inc., has filed joint applications to acquire controlling interest in the following utilities in the communities served:

- Anchorage Refuse, Inc. (ARI): Anchorage, excluding areas served by the Municipality of Anchorage
- Arrow Refuse, Inc. (Arrow): Douglas and Juneau
- C&S - Cleanaway (C&S): Kalifonsky, Kasilof, Kenai, Salamatof, Soldotna and Sterling
- Drake's Sanitation, Inc. (Drake's): North Pole
- Hite Construction, Inc. (Hite): Fairbanks
- Eagle River Refuse, Inc. (ERRI): Chugiak, Eagle River and Peters Creek
- Peninsula Sanitation Company, Inc. (PSI): Anchor Point, Bird, Clam Gulch, Cooper Landing, Girdwood, Homer, Hope, Indian, Kachemak, Kalifonsky, Kasilof, Kenai, Moose Pass, Nikiski, Ninilchik, Salamatof, Soldotna and Sterling
- Star Sanitation, Inc. (STAR): Fairbanks
- Wasilla Refuse, Inc. (WRI): Provides service to Big Lake, Knik, Lake Louise, Palmer, Sutton, Talkeetna, Wasilla and Willow

The applications to transfer ARI/ERRI, Arrow, Star and WRI to UWA have been approved. The other applications are pending before the Commission.

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## **FY98 significant events (continued)**

### **Pipelines**

#### **New North Slope Pipelines**

The Commission granted certificates of public convenience and necessity to three new North Slope pipelines. In November 1997 the Commission issued certificates to two pipelines connected with the Badami oil field located 25 miles east of Prudhoe Bay: the Badami Oil Pipeline which transports oil to the Endicott Pipeline for further transportation to the Trans Alaska Pipeline System (TAPS) and the Badami Gas and Products Pipeline which transports gas and later will transport miscible injectant from the Endicott oil field to the Badami oil field for use in the Badami field. In February 1998 the Commission issued a certificate to the Alpine Pipeline which will transport oil from the Alpine field located 55 miles west of Prudhoe Bay to the Kuparuk Pipeline for further transportation to TAPS.

#### **Trans Alaska Pipeline System (TAPS)**

In December 1997, the Commission accepted an uncontested settlement resolving proceedings concerning the pumpability factors used to calculate differential rates for different types of petroleum shipped on TAPS based on the viscosity of those different types of petroleum. As a result of that settlement, all types of petroleum are now transported at the same rate on TAPS.

In January 1998, the Commission accepted a contested settlement resolving the way payments among shippers are calculated in the TAPS Quality Bank. The Quality Bank is the mechanism through which shippers of lower quality oil compensate shippers of higher quality oil for the diminution in value of that oil caused by commingling. The settlement the Commission accepted was entered into by nine parties in the Quality Bank proceeding and contested by two parties. Each of those two parties also submitted its own proposed settlement. Those proposed settlements were rejected by the Commission.

The Commission moved forward in its investigation of intrastate TAPS rates and TAPS connection rules. The issues being investigated were raised by Tesoro Alaska Petroleum Company in its protest of 1997 tariff filings made by the TAPS Carriers. The Commission also moved forward with a proceeding concerning discrimination issues raised by rate competition among the TAPS Carriers.

**Fully regulated utilities  
financial data (in dollars)**

Net plant	1994**	1995**	1996	1997
Electric	\$1,185,404,791	1,087,254,914	1,241,813,627	1,242,009,668
Gas	178,765,752	176,701,859	167,551,986	175,911,880
Refuse	5,688,489	8,273,960	9,376,672	5,917,998
Telephone*	653,711,730	742,100,233	1,045,897,056	567,861,977
Wastewater	70,907,688	80,236,556	80,780,311	71,855,340
Water	96,684,429	114,000,844	112,430,180	105,282,243
<b>Net plant</b>	<b>\$2,191,162,879</b>	<b>2,208,568,366</b>	<b>2,657,849,832</b>	<b>2,168,839,106</b>
<b>Total revenue</b>				
Electric	\$461,804,705	446,996,812	489,229,828	494,552,901
Gas	110,405,070	103,235,041	99,606,093	103,593,238
Refuse	23,939,549	26,379,115	25,492,105	27,406,533
Telephone*	596,908,329	665,980,007	706,224,262	364,155,676
Wastewater	24,112,695	24,222,602	24,969,771	23,261,062
Water	28,939,059	30,090,771	29,566,927	28,065,048
<b>Total revenue</b>	<b>\$1,246,109,407</b>	<b>1,296,904,348</b>	<b>1,375,088,986</b>	<b>1,041,034,458</b>
<b>Net income</b>				
Electric	\$43,345,392	53,378,158	41,391,624	34,172,311
Gas	11,250,565	13,852,565	13,246,267	15,225,745
Refuse	1,259,866	642,751	(1,062,177)	342,787
Telephone*	90,282,134	96,355,805	62,248,350	39,852,785
Wastewater	2,022,917	2,637,764	3,113,533	3,312,073
Water	1,653,414	3,056,754	3,704,882	3,770,571
<b>Net income</b>	<b>\$149,814,288</b>	<b>169,923,797</b>	<b>122,642,479</b>	<b>96,676,272</b>
<b>Customers</b>				
Electric	207,008	209,285	214,087	214,522
Gas	89,056	89,004	94,000	94,000
Refuse	45,278	48,438	47,407	49,904
Telephone*	315,709	335,163	390,438	140,293
Wastewater	48,395	47,704	46,212	48,782
Water	50,165	50,273	50,373	49,584
<b>Total customers</b>	<b>755,611</b>	<b>779,867</b>	<b>842,517</b>	<b>597,085</b>

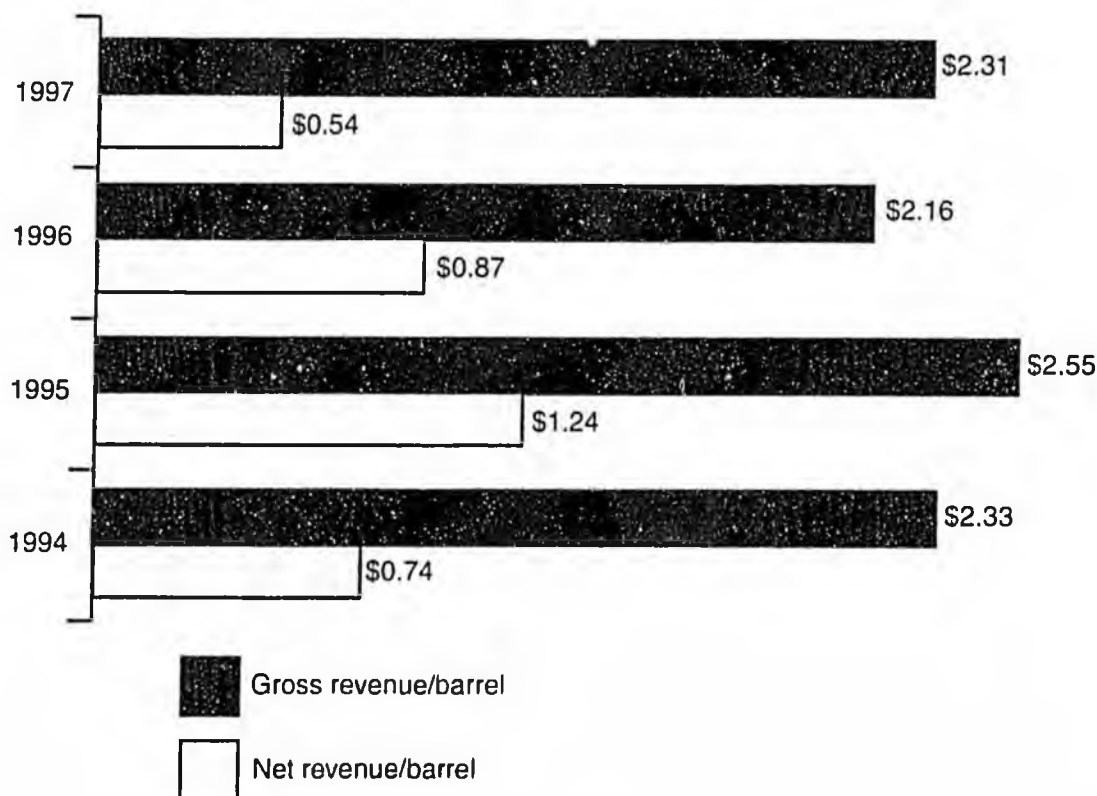
\* Excludes wholesale customers of intrastate interexchange carriers to prevent double-counting and telephone utilities that filed confidential information with the Commission

\*\* This information for FY94 and FY95 was incorrectly reported in previous APUC annual reports

## Oil pipeline carrier financial data

Carrier property	1994	1995*	1996	1997
Gross	\$10,441,538,277	10,627,632,031	10,452,246,680	10,870,626,467
Net	\$5,093,062,489	4,895,741,094	4,544,148,052	4,520,270,591
Revenue				
Gross	\$1,997,141,375	2,125,241,367	1,481,460,569	1,476,996,502
Net	\$635,693,701	1,031,800,539	593,844,066	347,415,918
Throughput (barrels)	855,944,950	833,059,460	684,494,293	638,076,891
Gross revenue (per barrel)	\$2.33	2.55	2.16	2.31
Net revenue (per barrel)	\$0.74	1.24	0.87	0.54

Figure 1  
Total revenue per barrel of oil



\* 1995 throughput (barrels), gross revenue/barrel and net revenue/barrel were incorrectly reported in 1996 and 1997 annual reports.

## **Consumer protection**

Utility customers with complaints about the way they are being treated as consumers have the right to seek relief from the APUC.

While the Commission first urges the public to resolve problems directly with their utility, customers may file an informal complaint with the APUC either by letter, phone or in person.

APUC Staff will contact the utility to determine its position. The Commission Staff will then review the complaint, the utility's tariff, APUC orders and governing statutes and regulations to determine the validity of the complaint as well as a course of action, if appropriate. The APUC can, for example, require the utility or pipeline carrier to conform to the minimum standards spelled out in the applicable tariff.

If, however, the complainant is not satisfied with Staff's decision, a formal complaint may be filed directly with the Commission through the appeal process.

Investigating and resolving complaints has become a vital element in the Commission's public protection role. Following are some examples of complaints handled by the Staff in FY98.

### **Refuse**

A refuse customer residing in Douglas, Alaska, wrote to the Commission on July 3, 1997, questioning the utility's billing cycle and finance charges. The customer complained that she was charged a finance charge even though the account was paid before the due date. On August 8, 1997, Staff requested that the utility respond directly to the customer and provide staff with a copy of its response. Staff requested that the utility's response include the customer's billing cycle, the reason for the finance charge on the bills in question and the circumstances under which the customer would be assessed a finance charge. In its response dated August 12, 1997, the utility admitted that the invoice was somewhat confusing because the finance charge reflected a year-to-date total which appeared on each monthly bill. However, the finance charge of .875 was only assessed when no payment or a partial payment was made. On August 25, 1997, Staff informed the customer that the finance charge had been appropriately applied. Staff's review revealed that the customer had only been charged during months when the bill was not paid in full. Staff also informed the customer that the utility would soon clarify its bills by eliminating the confusing year-to-date finance charge and show the finance charge applicable on each bill. The file was closed on August 25, 1997.

### **Telephone**

On February 9, 1998, the Commission received a complaint from the parents of a resident of Spring Creek Correctional Center. The parents complained about the secure telephone system that the Department of Corrections (DOC) had recently installed. Prior to installation of the secure telephone system, the parents had used an 800-number to accept calls from their son and they were billed for the calls by their local telephone company. However, since DOC installed the secure telephone system, they were billed by an agent for the new telephone service provider. Also, under the new system they could only receive collect calls which cost considerably more than 800-number calls. The parents sought a remedy that would allow them to continue to use their 800-number and to have the calls billed at the rate for 800-number calls. Staff requested that the service provider respond to the complainants and provide rate information and any other billing options that might be available.

The service provider responded on April 11, 1998 and provided information regarding its billing agent, rates and its billing procedures. The complainants were also informed that they

## Consumer protection (continued)

could not continue to use their 800-number. Staff rendered its opinion regarding the complaint on May 20, 1998 and verified that the rates charged were the rates approved by the Commission and the bills were correct as rendered. The file was closed.

### Electric

On May 26, 1998, a consumer complaint was forwarded to the Commission from the Department of Law, Attorney General's Office. The complaint outlined problems the customer encountered when her advance payment was misapplied and commingled with her son's account. The customer sent the electric company two payments with one invoice. The payment without an invoice was intended for her account, the payment with the invoice was intended for her son's account. The utility applied both payments to the son's account thus causing a delinquency on her account and late fees to be assessed. Eventually, the customer received a disconnect notice. After months of trying to get the accounts corrected, the problem persisted. Staff requested a response from the utility regarding the missing payment. Finally, the utility found the error and corrected the problem. The customer's account was credited for the late fees that had been assessed and she received a letter of apology from the general manager. The file was closed on June 20, 1998.

### Sewer

On June 15, 1998, the Commission received a letter from a water customer who requested Staff's assistance to get credit for his sewer bill because he had a leak in his water line. According to him, his 20 apartment units had a leak in the water line at the time he acquired the property in 1989. He believed that the leaks started about 20 years before. He became aware of the leaks around 1994. However, he did not repair the leak until 1997. He now sought credit for the sewer portion of his bill from 1989 forward. He was relying on a provision in the utility's tariff that allowed it to issue credit on the sewer portion of the bill if water was not actually used, if the date the leak began could be determined. Since the leak had existed for such a long period, a history of usage without leaks had to be established. The utility averaged his usage for a six-month period after the leak was repaired. The six-month average was compared to his usage during the period of 1995 to the time of repair. The utility had issued credit to his account for approximately one year of credit. However, the customer did not think the credit was sufficient, he wanted to receive credit for the last 10 years. Staff reviewed the usage history and determined that one year of credit was just and reasonable. Staff based its determination on two factors. First, the customer did not immediately make the repairs when the leak was detected. Second, no useful consumption history existed prior to the leak. The customer was informed of his right to appeal Staff's decision. The informal complaint was closed.

## **Informal complaints**

Utility customers and pipeline shippers with complaints about the way they are being treated have the right to seek relief from the Commission. If the Commission determines the complaint results from a violation of a tariff, then it can force the utility or pipeline carrier to conform to the minimum standards spelled out in the tariff.

Investigating and resolving complaints has become a vital element in the Commission's public protection role. In FY98, the Commission received 706 new complaints and resolved 664 cases, both old and new.

**Figure 2**  
**Informal complaints by category**

	FY95	FY96	FY97	FY98
Billing practices	150	197	336	300
Rates and charges	49	31	47	53
Quality of service	96	100	148	263
Service availability and line extensions	47	35	44	90
<b>Totals</b>	<b>342</b>	<b>363</b>	<b>575</b>	<b>706</b>
<b>FY percent change</b>	<b>+23%</b>	<b>+6%</b>	<b>+58%</b>	<b>+23%</b>

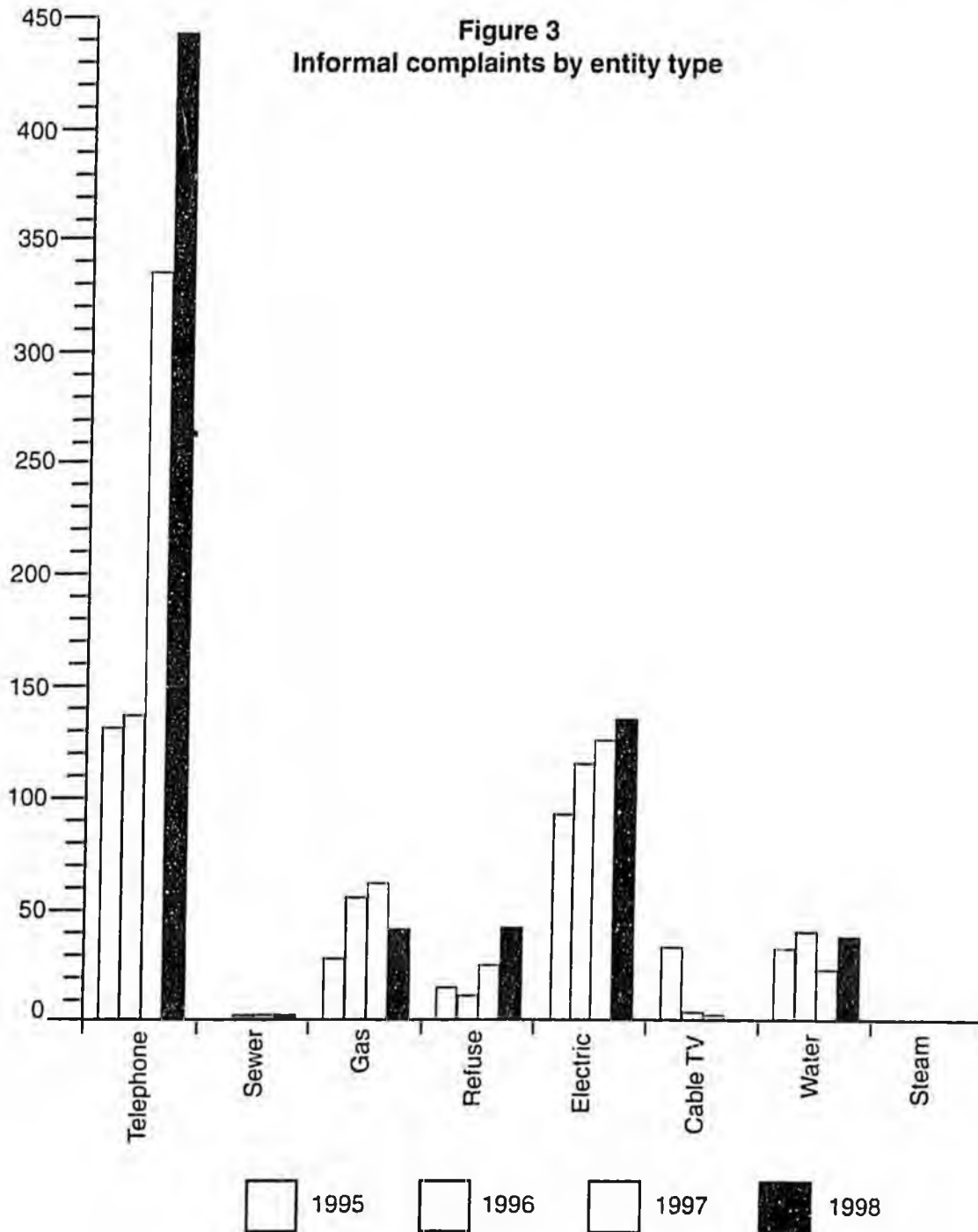


**Chief Consumer Protection and  
Information Officer Agnes Pitts**

## Informal complaints (continued)

As Figure 3 demonstrates, electric and telephone utilities continue to generate the majority of informal complaints received by the Commission. This is generally to be expected, because these utilities account for the greatest number of customers, the largest plant investment and the most frequent regulatory activities.

The dramatic increase in telephone complaints reflected in Figure 3 is the result of competition. During FY98, the Consumer Protection Section processed 449 telephone complaints. Of these, 194 concerned quality of service, 169 concerned billing practices, 65 concerned service availability and line extensions, and 21 concerned rates and charges.



## **Informal complaints (continued)**

The number of telephone contacts and personal conferences handled by the Commission's Consumer Protection and Public Information Section over the past four years is shown in Figure 4.

**Figure 4**  
**Consumer protection/public information contact summary**

<b>Category</b>	<b>FY95</b>	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>
Telephone contact (includes incoming & outgoing calls)	5.080	6.703	8.852	9.908
Conferences	260	276	461	397

Informal complaint activity by the Consumer Protection and Public Information Section over the past four years is summarized in Figure 5.

**Figure 5**  
**Informal complaint activity**

<b>File activity</b>	<b>FY95</b>	<b>FY96</b>	<b>FY97</b>	<b>FY98</b>
Pending complaints (beginning of year)	16	18	31	5
New complaints received	342	363	575	706
Complaints resolved	340	350	583	664
Pending complaints (end of year)	18	31	5	47

The vast majority of complaints are resolved through the informal complaint process. However, there are procedures for instituting a formal complaint or launching a formal complaint if an informal complaint is not satisfactorily resolved. If a formal complaint is accepted by the Commission for adjudication, it is assigned a docket number, and an investigation is instituted into the issues raised in the complaint. In FY98, two informal complaints appealed staff's decision and were docketed for adjudication.

## Certification proceedings

A certificate of public convenience and necessity must be obtained by virtually every utility (with limited exceptions) and pipeline carrier proposing to provide service to the public for compensation. In addition, the Commission must approve all amendments to, or transfers of, certificates as well as acquisitions of controlling interest in certificate holders.

The criteria for issuing certificates are prescribed by law. The service must be required for the public convenience and necessity, and the applicant must be fit, willing and able to provide the service. During FY98, the Commission processed 99 applications for certificates, depicted by entity and category in Figures 6 and 7.

**Figure 6**  
FY98 Certification dockets by entity type



**Figure 7**  
FY98 Certification dockets by category



## Certification proceedings (continued)

Most small electric utilities identified through the Power Cost Equalization program (PCE) applied for certificates prior to FY89. Several of these applications are still pending approval because of incomplete financial information or system safety considerations.

**Figure 8**  
**FY 95-98 Certification proceedings**

ENTITY TYPE	FY95	FY96	FY97	FY98
Cable TV	2	2	1	0
Electric	10	4	9	4
Refuse (garbage)	7	7	2	11
Gas	1	1	4	0
Pipeline	2	3	0	3
Wastewater (sewer)	2	2	4	3
Telecommunications	18	21	32	66
Water	5	3	6	11
Steam	0	0	1	1
<b>Totals</b>	<b>47</b>	<b>43</b>	<b>59</b>	<b>99</b>

CATEGORY	FY95	FY96	FY97	FY98
Temporary operating authority	1	0	0	0
New certificates	17	28	31	63
Amendments	17	6	13	13
Certificate transfers	6	5	7	9
Acquisitions	2	3	8	10
Exemption from certification	0	0	0	1
Discontinuation of service	1	0	0	1
Other	3	1	0	2
<b>Totals</b>	<b>47</b>	<b>43</b>	<b>59</b>	<b>99</b>

## Orders

The Commission issued 462 decisions or orders during the last fiscal year. They are categorized into two groups: substantive and procedural. Substantive orders reflect findings and conclusions based on evidence included in the formal record of the Commission. Procedural orders relate to the process and schedule used to handle a case. Figure 9 shows the orders issued by category for the last four years. Figure 10 shows the substantive and procedural orders issued by utility type during FY98.

**Figure 9**  
Orders issued  
FY95-FY98

	FY95	FY96	FY97	FY98
Substantive	268	294	317	412
Procedural	59	57	65	27
<b>Totals</b>	<b>327</b>	<b>351</b>	<b>382</b>	<b>462</b>

**Figure 10**  
Orders issued, substantive and procedural  
FY98

Total number of orders issued = 462

Utility Type	Substantive	Procedural
Telephone	264	13
Gas	6	0
Electric	47	5
Refuse (garbage)	21	2
Sewer	0	0
Water	17	1
Pipeline	43	1
Cable TV	0	0
Cellular	0	0
Generic <sup>1</sup>	34	8
<b>Totals</b>	<b>432</b>	<b>30</b>

<sup>1</sup> Generic count consists of Regulatory Dockets and Dockets which involved more than one type of entity.

## Tariff revisions

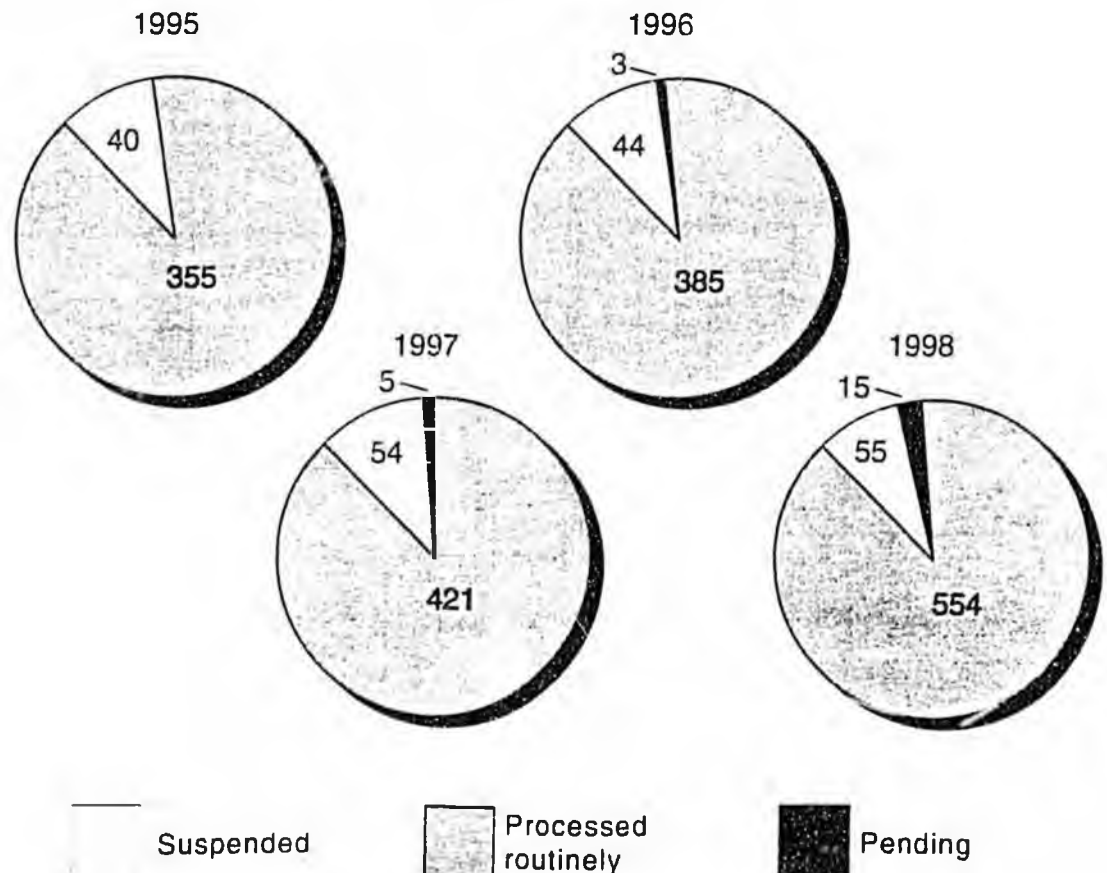
Tariffs are the terms, conditions, rules and rates governing an entity's conduct in providing public service, similar to the manner in which a corporation is governed by its bylaws. In approving a certificate of public convenience and necessity allowing a utility or pipeline carrier to operate, the Commission also reviews the tariff of the applicant. All economically regulated utilities and pipeline carriers are required to maintain a tariff and to operate under the terms of the tariff.

Regulated entities must notify the Commission of any proposed changes to their tariffs. In most cases, the Commission must approve the tariff revisions before the revisions can take effect. For certain kinds of utilities, however, the Commission now usually allows proposed tariff revisions to take effect automatically at the end of a 30 day period. The most common occurrence of tariff revisions taking effect automatically is with respect to interexchange telecommunications utilities. The Commission considers most tariff filings at "tariff action meetings" which are held in public twice monthly, generally on the second and fourth Fridays of each month.

Review, analysis and disposition of tariff filings are substantial elements of the Commission's workload. During FY98 there were 624 tariff filings submitted to the Commission. Of these, 554 were processed routinely (generally within 45 days of receipt). Of the remaining 70 filings, 55 were suspended for further investigation, and 15 were pending at year end.

A graphic indicator of the portion of tariff filings suspended, relative to the total received, is shown in Figure 11.

Figure 11  
Tariffs filed — Tariffs suspended



## Tariff revisions (continued)

In FY98 there were nineteen proposed general rate changes, three simplified rate change filings, and two general rate restructurings. The three simplified rate filings were from electric utilities and were all approved. Ten of the general rate changes were from pipeline carriers and nine were from utilities. Of the nineteen general rate changes, fourteen were suspended, two went into effect automatically, and one was pending at year end.

One of the two general rate restructuring filings was from a telecommunications utility, and it was suspended; the other filing was from an electric utility and it was pending at year end.

Figure 12 presents a statistical breakdown of requests for utility and pipeline carrier tariff changes by category. Each request is counted only once regardless of the number of proposed tariff changes it includes.

**Figure 12**  
**Utility and pipeline tariff revisions**

CATEGORY	FY95	FY96	FY97	FY98
General rate changes <sup>1</sup>	18	14	17	19
General rate restructurings	4	3	8	2
Simplified rate filings	6	8	4	3
New service/equipment offerings	25	55	79	183
Nonrecurring rates	10	14	5	20
Universal access surcharge	17	0	0	0
Regulatory cost charge	97	113	85	101
Contracts	21	18	12	12
Fuel, gas, and purchased power surcharges; power cost equalization filings; nonfirm power purchase rates	127	148	110	112
Rule changes	38	33	41	40
Miscellaneous	32	26	119	132
<b>Totals</b>	<b>395</b>	<b>432</b>	<b>480</b>	<b>624</b>
<b>FY percent change</b>	<b>-7%</b>	<b>+9%</b>	<b>+11%</b>	<b>+30%</b>

<sup>1</sup> In previous annual reports, some filings now shown in this category were classified as "miscellaneous." The "General Rate Changes Category" does not include simplified rate filings.

## Tariff revisions (continued)

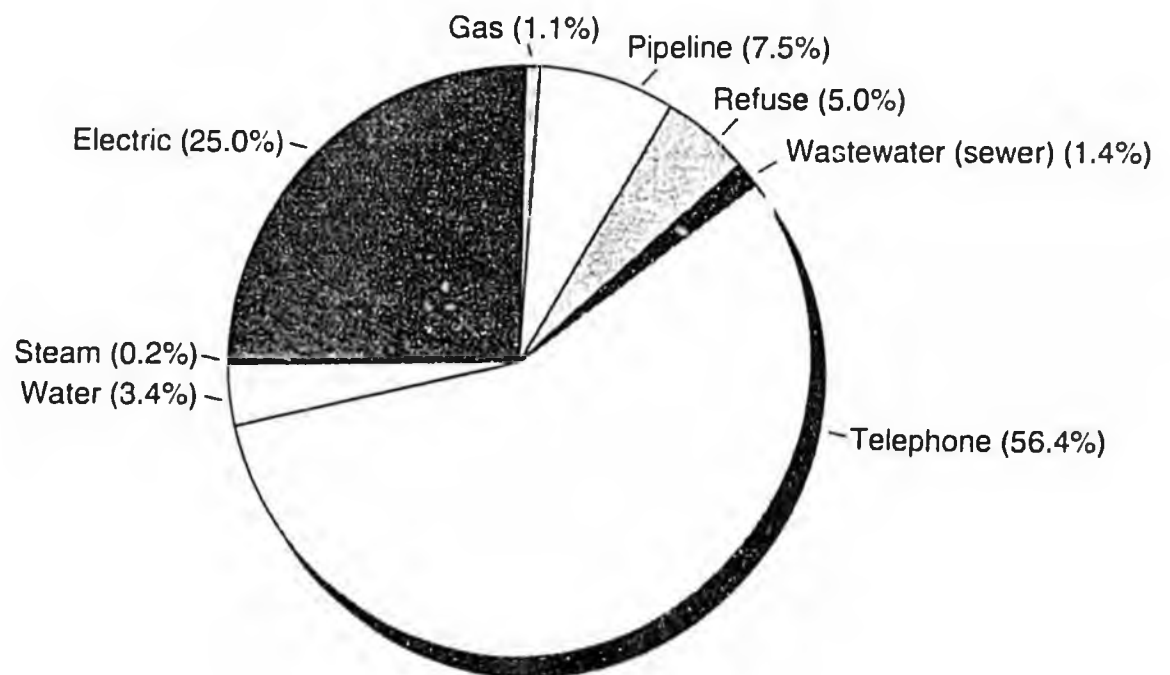
Figure 13 shows a summary of tariff filings used to generate the chart in Figure 14.

**Figure 13**  
FY98 — Tariff filings

Type	Number of filings
Cable TV	0
Electric	155
Gas	7
Pipeline	47
Refuse	31
Steam	1
Wastewater (sewer)	9
Telephone	352
Water	21

Figure 14 is a summary of the tariff filings received in FY98 classified according to utility type and pipeline carrier.

**Figure 14**  
FY98 — Tariff filings by type



## Formal proceedings (excluding certification)

In addition to the certification and tariff filings, the Commission institutes formal proceedings to consider a number of matters including rate changes, rule changes, special contracts, complaints against utilities and pipeline carriers, investigations of service quality or management practices, and regulations. Frequently, requests for general rate changes also include or necessitate a restructuring of rates.

Rate-related filings continue to be the dominant component of the Commission's formal proceedings, excluding certifications, as shown in Figures 15 and 16. This statistic is significant because these proceedings tend to have a long-term impact on the Commission's workload. Considerable time and resources are required for audit, investigation, prefiled testimony preparation, public hearings, determination and issuance of a decision, and processing any requests for reconsideration.

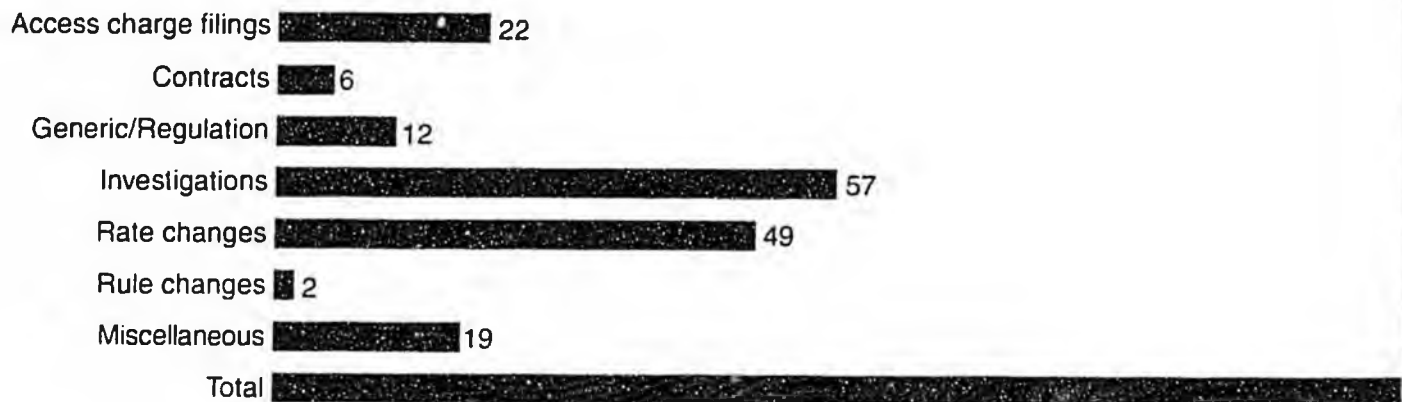
**Figure 15**  
**Formal proceedings**  
**(excluding certification)**  
**FY95-FY98**

CATEGORY	FY95	FY96	FY97	FY98
Access charge filings	0	20	42 <sup>1</sup>	22
Contracts	1	3	4	6
Generic and regulation proceedings	7	8	14	12
Investigations:				
Complaints	7	7	19	12
Management practices	1	2	4	3
Interconnection	0	0	4	5
Eligible carrier designation	0	0	0	32
Other	9	2	7	5
Rate changes:				
General rate changes	9	4	7	4
Rate restructurings	4	3	3	3
Service/equipment offerings	3	9	15	36
Rates - other	7	3	25	6
Rule changes	1	2	3	2
Miscellaneous	1	4	13	19
<b>Total</b>	<b>50</b>	<b>67</b>	<b>160</b>	<b>167</b>

<sup>1</sup> Includes access charge proceedings for a two-year period.

## Formal proceedings (excluding certification, continued)

Figure 16  
Composition of FY98 formal proceedings  
(excluding certification proceedings)



Administrative clerk Pamela Neale, administrative supervisor Barbara Miller and administrative clerks Ruthie Lee and Patricia Howard

## Open dockets

All formal proceedings before the Commission are administered through dockets, which are numbered to denote the type of proceeding, the year of its initiation and its numerical sequence in that year. "R" designates a regulatory docket, "P" a pipeline case, and "U" a utility proceeding. For example, P-94-3 is the third pipeline docket opened by the Commission in fiscal year 1994. The materials, legal pleadings and decisions relevant to a case are identified by this number and filed in the docket. After a case is decided and any necessary costs are allocated, the docket is formally closed.

For the statistical analysis of open dockets presented in Figure 17, active dockets are those in which substantive decisions were pending at the end of FY98. Dockets in which substantive decisions were rendered, but additional administrative or procedural action was still required as of June 30, 1998, are classified as inactive.

**Figure 17**  
**Status of all open dockets FY95-FY98**

	FY95	FY96	FY97	FY98
Suspended for investigation	32	48	129	173
Set for hearing	2	6	2	2
Awaiting filing	44	33	19	97
Substantive order in progress	34	32	37	91
Other / regulations	16	19	26	29
<b>Total</b>	<b>128</b>	<b>138</b>	<b>213</b>	<b>392</b>
<b>FY percent change</b>	<b>+3%</b>	<b>+8%</b>	<b>+54%</b>	<b>+84%</b>

### Inactive dockets (post-substantive order)

	FY95	FY96	FY97	FY98
Awaiting filings	9	19	23	51
Awaiting cost allocation closing order	52	59	112	89
Subsequent phase to be scheduled	2	2	19	6
Court appeals	16	11	6	6
Other / reconsideration	6	7	2	15
<b>Total</b>	<b>85</b>	<b>98</b>	<b>162</b>	<b>167</b>
<b>FY percent change</b>	<b>+55%</b>	<b>+15%</b>	<b>+65%</b>	<b>+3%</b>

## Open dockets (continued)

Figure 18 shows the change in the number of cases pending at the end of FY98. The Commission opened 266 new dockets in FY98, an 18 percent increase from FY97. This led to a 49.1 percent increase in dockets pending at the end of FY98.

**Figure 18**  
Change in caseload  
FY95-FY98

	FY95	FY96	FY97	FY98
Pending cases beginning of year	179	213	236	375
New dockets opened	97	110	219	266
Dockets closed	63	87	80	82
Pending cases end of year	213	236	375	559
Percent change in pending caseload at end of FY	+19.0%	+10.8%	+58.9%	+49.1%



Administrative clerk Rose Weaver, utility tariff analysts Jennifer Melwes, Dawn Bishop-Kleweno, Wendy Arnett and administrative clerk Mark Armstrong

## Summary of filings

Figure 19 summarizes the filings received by the Commission by type of utility or pipeline carrier and by type of filing. This illustrates the distribution of the Commission's workload in response to actions requested primarily by regulated entities. Responding to these filings could easily consume the resources of the agency.

The table does not include Commission obligations arising from government actions or from initiatives taken by the Commission. These activities are equally important to fulfill the APUC's regulatory responsibilities.

**Figure 19**  
Summary of filings by type of entity

	Tariff filings	Formal pro- ceedings	Informal complaints	Appli- cations
Generic <sup>1</sup>	0	2	0	0
Steam	1	0	0	1
Water	21	2	37	11
Pipeline	47	7	0	3
Cable TV	1	0	0	0
Electric	155	23	135	4
Refuse	31	6	42	11
Gas	7	1	41	0
Sewer	9	0	2	3
Telephone	352	125	449	66
Cellular	0	1	0	0
<b>Total</b>	<b>624</b>	<b>167</b>	<b>706</b>	<b>99</b>

<sup>1</sup> This act involved more than one type of utility.

## **APUC orders on appeal in the courts**

### **Appeals pending during Fiscal Year 1998**

**Anchorage Telephone Utility v. Alaska Public Utilities Commission.** ATU appealed Commission orders disallowing approximately \$20,000,000 in investment for excess cable, outside plant and line cards on the grounds that these investments were not "used and useful." The superior court, per J. Woodward, held that the APUC had the statutory authority under AS 42.05.441 to disallow investments that were not used and useful but found a lack of substantial evidence to support the amount disallowed. The case was remanded for further proceedings.

**The Quality Bank Price Index Appeals.** For the purpose of computing the TAPS quality bank adjustments, the Commission has adopted the use of substitute price indexes by the administrator of the quality bank. Both Exxon and Tesoro have filed appeals of these orders. The appeals have been stayed until further order of the superior court pending resolution of the issues before the Federal Energy Regulatory Commission and the federal courts.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** GCI filed a petition for review in the superior court seeking to modify the confidentiality provisions of a discovery order issued by the APUC in Docket U-97-34, which prevented GCI decision makers from having access to competitively sensitive information. The issue was pending before Judge Michalski at the end of the 1997 fiscal year. On July 18, 1997 Judge Michalski granted GCI's petition for review and remanded the matter to the APUC to delete the provision in the confidentiality order prohibiting the disclosure of confidential information to a competitor's decision makers and strategists. On August 7, 1997 the APUC filed a petition for review with the Alaska Supreme Court to review Judge Michalski's interlocutory order. On December 5, 1997, the Alaska Supreme Court denied the APUC's petition for review as moot in view of the APUC's approval of a stipulation resolving matters in Docket U-97-34.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** In January 1998, GCI filed three administrative appeals from APUC orders in Docket Nos. U-97-60, U-97-65, and U-97-66 challenging the APUC's decision in each of these dockets precluding GCI from further participation in these proceedings. Based on the documentary record, the Commission determined that GCI had violated the confidentiality order governing the exchange of confidential information in these dockets. The APUC opposed GCI's appeals however, and moved for a remand in view of its decision to grant GCI evidentiary hearings to reconsider whether GCI complied with the confidentiality orders, and to determine what sanctions, if any, are warranted. On February 20, 1998 Superior Court Judge Murphy granted APUC's motion for a remand but retained jurisdiction over the appeals pending the completion and outcome of the administrative hearings.

**GCI Communications Corporation v. Alaska Public Utilities Commission.** On January 8, 1998, the Commission issued three orders denying GCI's petition to terminate rural exemptions under Section 251 of Telecommunications Act of three PTI companies, Telephone Utilities of Alaska, Inc. (TUA), Telephone Utilities of the Northland, Inc. (TUNI) and PTI Communications of Alaska, Inc. (PTIC). The Commission found that the impact upon universal service could not be determined until a new support system compatible with competition was established. On March 20, 1998, GCI filed administrative appeals of the three

## APUC orders on appeal in the courts (continued)

orders. A group of rural telephone utilities, the Rural Coalition has been participating in the appeal. The appeals have been consolidated. GCI has raised issues concerning the burden of proof, due process and whether substantial evidence supported the findings of the Commission. The appeal is now being briefed.

**Tlingit-Haida Regional Electrical Authority (THREA) v. Alaska Public Utilities Commission, Alaska Power Company (APC), and City of Klawock.** This procedurally complicated litigation began following the APUC's decisions in Orders U-94-2(9) and U-94-2(10) revoking THREA's right to provide retail electric service to the City of Klawock and granting the exclusive right to provide such service to APC. THREA filed an administrative appeal challenging APUC's Orders U-94-2(9) and U-94-2(10). On April 24, 1995, Superior Court Judge Weeks upheld the APUC's authority to delineate the overlapping service territories of THREA and APC, but remanded the matter to the APUC to determine how Orders U-94-2(9) and U-94-2(10) would financially impact THREA and the ratepayers in THREA's service territory, and whether such impacts would frustrate the federal purpose of the Rural Electrification Act of 1936 (REAct). On remand, the APUC held evidentiary hearings to investigate the impact issues identified by the superior court. On July 3, 1997, the APUC issued Order U-94-2(19), in which it held that the decertification of THREA's right to serve Klawock would have only a de minimis impact on ratepayers in THREA's service territory, and that it would frustrate the REAct if THREA continued to serve Klawock. Order U-94-2(19) re-affirmed the decisions in Orders U-94-2(9) and U-94-2(10). THREA filed an administrative appeal challenging the APUC's decertification decision in Order U-94-2(19). On July 1, 1998, Superior Court Judge Weeks upheld the Commission's decertification decision and remanded the matter to the APUC for a determination of the fair value of THREA's property taken by the decertification decision. THREA has filed an appeal to the Alaska Supreme Court challenging Judge Weeks' decision. The City of Klawock and APC have jointly filed cross-appeals and the APUC has filed its own cross-appeal on portions of Judge Weeks' decision regarding the takings issue.



Assistant attorneys general Ron Zobel  
and Marty Weinstein

## Legal authority

### Statutes

Created in 1959, the Alaska Public Utilities Commission has, since 1970, been a full-time administrative agency under the Alaska Public Utilities Commission Act (AS 42.05) charged with the duty of regulating public utilities within the state. The jurisdiction of the Commission extends to electric, gas, refuse (garbage), sewer (wastewater), steam, telecommunications (cable television, interexchange, and local exchange service), and water public utilities as defined by the Act. In 1981 the Legislature amended the Alaska Pipeline Commission Act (AS 42.06) to merge the Alaska Pipeline Commission into the Alaska Public Utilities Commission, and the Commission's jurisdiction was extended to pipeline carriers and pipelines.

The Commission is comprised of five commissioners appointed by the Governor and confirmed by the Legislature for six-year terms of office. In addition to the business, engineering, and law members, there are two consumer members of the Commission. The Commission is authorized to employ additional personnel to assist in the performance of its duties.

The Commission is responsible for making or requiring just, fair, and reasonable rates, classifications, regulations, practices, services, and facilities for public utilities and pipeline carriers. The Commission has the authority to investigate, hold hearings, prescribe systems of accounts, determine depreciation rates, require the filing of reports, adopt regulations, and take other lawful actions necessary to accomplish the stated purposes of AS 42.05 and AS 42.06. The Commission also determines the eligibility of electric utilities for power cost equalization and the kilowatt-hour subsidy amount under the provisions of AS 42.45.100 — 42.45.190. The Commission is also authorized under AS 31.15.010 - 31.15.050 to determine if there has been unjust and unreasonable discrimination in the purchase of oil offered for purchase within Alaska.

Under AS 42.05.221, a public utility<sup>1</sup> providing service to customers for compensation is required to obtain a certificate of public convenience and necessity<sup>2</sup> from the Commission. A certificate describes the nature and extent of authority granted to a public utility, including a description of the authorized service area and the scope of operations of the utility. Under AS 42.05.241, no certificate may be issued unless the Commission finds that the service is required for the convenience and necessity of the public and that the applicant is fit, willing and able to provide the utility service requested. Similarly, pipeline carriers subject to the Commission's jurisdiction must secure a certificate of public convenience and necessity. A certificate for pipeline carriers generally includes the same information found in a public utility certificate.

---

<sup>1</sup> The terms "public" and "public utility" are defined in AS 42.05.990(3) and (4), respectively. Generally, a public utility is one that provides utility service for compensation to ten or more customers or that sells wholesale service to a utility that serves ten or more customers.

<sup>2</sup> Electric and telephone utilities grossing less than \$50 000 are not required to be certificated unless their customers petition the Commission for regulation under AS 42.05.712(h). AS 42.05.711 (e).

## Legal authority (continued)

A number of certificated utilities are statutorily exempt from economic regulation<sup>3</sup> by the Commission, including:

(1) public utilities owned and operated by a political subdivision of the state, none of whose utilities is in competition with any other utility, unless the political subdivision elects to be regulated by the Commission (AS 42.05.711(b));<sup>4</sup>

(2) refuse utilities with annual gross revenues of \$300,000 or less, unless the subscribers of the utility petition the commission for regulation under AS 42.05.712(h) or customers paying 25 percent of a utility's gross revenues have petitioned the Commission for regulation (AS 42.05.711(i));

(3) cable television utilities, unless the customers petition the Commission under AS 42.05.712(h) for regulation (AS 42.05.711(k)); and

(4) electric and telephone utilities with gross revenues of less than \$50,000 are exempt from both certification requirements and economic regulation, unless 25 percent of their customers petition for regulation under AS 42.05.712(h).

AS 42.05.711 also specifies other utilities that may, under terms specified in AS 42.05.712, elect to become economically deregulated by the Commission. Utilities that may elect to deregulate are:

(1) electric or telephone utilities with annual gross revenues of less than \$500,000 (AS 42.05.711(f));

(2) utilities, other than electric or telephone utilities, with annual gross revenues of less than \$150,000 (AS 42.05.711(g)); and

(3) cooperative utilities organized under AS 10.25 (AS 42.05.711(h)).

In a deregulation election at least 15 percent of a utility's customers must return ballots. If a majority of those returning ballots vote for deregulation, the utility is exempt from economic regulation by the Commission (AS 42.05.712(b)). The same election procedures apply to the reregulation of a utility that was deregulated by vote of its member/subscribers. For details on the elections held under AS 42.05.712, see *Results of Utility Regulation Elections* in the Statistical Information section of this annual report.

The Commission is also authorized under AS 42.05.711(d) to exempt a utility from all or a portion of AS 42.05 if such an exemption is in the public interest. Under this provision, the Commission has exempted a number of small utilities from ratemaking regulation. Competition in refuse collection services has also been introduced in a number of areas around the state.

<sup>3</sup> "Economic regulation" (defined in 3 AAC 48.820(43)) means that the Commission's jurisdiction extends to matters concerning rates and charges for public utility or pipeline carrier services, quality of service provided by a utility or pipeline carrier to its customers or shippers, management practices of a utility or pipeline carrier, and customer or shipper complaints concerning the services furnished by a utility or pipeline carrier. The foregoing matters comprise the principal regulatory activities of the Commission other than certification under AS 42.05.221 — 42.05.281, to which the indicated utilities remain subject under AS 42.05.711.

<sup>4</sup> The utilities of the Municipality of Anchorage are the only utilities operated by a political subdivision that are currently subject to economic regulation by the Commission.

## **Legal authority (continued)**

### **Regulations**

As authorized under AS 42.05.151 and other statutory provisions, the Commission has adopted regulations to carry out its statutory duties. The Commission's regulations are set out in the Alaska Administrative Code at Title 3, Part 5, Chapter 47 (Regulatory Cost Charge); Chapter 48 (Practice and Procedure); Chapter 49 (Deregulation); Chapter 50 (Energy Conservation); Chapter 51 (Telecommunications Relay Service); Chapter 52 (Operation of Public Utilities); and Chapter 53 (Telecommunications).



**Utility engineer analysts Brad Persson, Bill Marshall,  
Paul Morrison and Donald Baxter**

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2/17/99

HOUSE BILL NO. 62

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE THERRIAULT

Introduced: 1/22/99

Referred: House Special Committee on Utility Restructuring, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Public Utilities Commission; and providing for an  
2 effective date."

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

4 \* Section 1. AS 44.66.010(a)(4) is amended to read:

5 (4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 2003  
6 [1999];

7 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

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## House Of Representatives

**House Bill 62**

**"An Act relating to the Alaska Public Utilities Commission; and providing for an effective date."**

**Sponsor**

**Representative Gene Therriault**

A handwritten signature in black ink, appearing to read "Gene J.", written over the printed name of the sponsor.

### **Sponsor Statement**

---

Under AS 42.05 and 42.06, the Alaska Public Utilities Commission regulates public utilities by certifying qualified providers of public utility and pipeline services. It is designed to ensure that utilities provide safe and adequate services and facilities at reasonable rates. The five-member Commission also determines the eligibility and the per kilowatt-hour support for electric utilities under the Power Cost Equalization program (AS 42.45).

The Alaska Public Utilities Commission is set to expire June 30, 1999 under AS 44.66.010, Termination of state boards and commissions. If the Legislature does not act to extend the Commission, it would have one year, until June 30, 2000, to conclude its affairs. House Bill 62 will extend the Commission for another four years.

The title has intentionally been left broad enough to allow leeway for discussion of several issues of concern that have arisen during the past four years of the Commission's existence.

# Alaska Legislative Digest

*An Inside View of Alaska Policy*

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*Aurora Power pushes for pilot study; utilities resisting*

Feb. 12, 1999  
No. 5/99

## Knives sharpen on electrical competition

You could almost feel the knives being sharpened among the players in the upcoming fight over competition in electricity sales. The occasion was the Feb. 10 meeting of the House Special Utility Restructuring Committee during which utilities, represented by Alaska Rural Electric Co-Op and Anchorage's Municipal Light & Power, sparred with Aurora Power, the feisty natural gas (and possibly electricity) reseller in the Anchorage area market. *Aurora pitched the committee on its proposal for a two-year pilot project to allow limited competition in the southcentral Alaska electricity market. That proposal is before the Alaska Public Utilities Commission, but the Legislature may be encouraging (or requiring) a competition pilot as a part of possible legislation dealing with the broader question of electrical deregulation.* A consultant report on a pilot project is also due to the Legislature in March. CH2M Hill is doing the work, although that is not connected to the proposal by Aurora before the APUC.

Aurora is arguing for its pilot project allowing competition between generators of power in Southcentral, with business or residential consumers having the choice of power providers. Electricity would still flow over transmission lines of the local utilities. Power generators could sell spare capacity at a discount to *(Continued on page 8)*

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Spill readiness .....	Page 6

**\*\* See our special Rural, Schools, Municipal, Supplement for more.**

## Rokeberg seeks private sector immunity on "Y2K" problems

Small businesses in Alaska would receive blanket immunity from law suits relating to problems caused by "Y2K" (Year 2000 computer) problems and others would be sheltered if they used "due diligence" under HB-82. Rep. Norm Rokeberg introduced the bill. Its first hearing is scheduled for Friday Feb. 12 in the House Labor and Commerce Committee, which he chairs. Other Y2K bills under consideration in the House and Senate would protect state agencies and municipalities from Y2K suits.

HB-82 would allow no suits against individuals or very small businesses for problems relating to Y2K failure. For businesses with 11 or more employees the protection would hold unless "the person bringing the civil action shows by a preponderance of the evidence that the business failed to use due diligence or good faith efforts to avoid the damages claimed in the civil action." The bill also defines "employees" as persons working at least 20 weeks in the year in which a problem is alleged to have occurred.

## Sparring begins over electrical competition (Cont.)

*(Continued from page 1)* consumers, or sell to a reseller like Aurora. The competition would lead to lower prices. The same thing has happened in Anchorage natural gas markets where Aurora and now Marathon Oil, a major gas producer, sell gas directly to large commercial or institutional consumers. The gas moves through Enstar Natural Gas system, which charges its normal tariff on the volume. Aurora now has 800 customers in the Anchorage area, with about \$12 million a year in sales. The electricity experiment Aurora has proposed would involve about 10 percent of the Anchorage power requirement and is intended to provide real-life data for a study of a broadening of competition. *Significantly, there seems to be a broad consensus among the players in this issue that rural utilities present a special case and that competition, if not broader deregulation, should be limited to the more populous communities.*

Utilities say they don't object to competition in concept but argue that a pilot project allowing limited competition before important policy issues are decided could fuel enthusiasm for deregulation before the "homework" is done. Questions include how far deregulation should go, how much "cherry picking" will be allowed (raiding large customers, leaving a regulated utility with a smaller, higher-cost base), and "stranded" facility costs (a utility's sunk cost in facilities if the customer base shrinks).

### *Does regulated pricing structure leads to inefficiencies, higher costs?*

*The committee is intrigued in, and will pursue further, the argument by Aurora that the guaranteed rate of return allowed regulated utilities leads to inefficiencies and higher costs. For example, capital facility depreciation is often stretched so that utilities can put capital recovery costs in their rate base long after facilities are paid off, Aurora argues. "Market-based" pricing is superior and will lead to lower costs, Aurora argued. Electricity competition happens now on the wholesale level. Chugach Electric Assoc. sells as much power wholesale to other "railbelt" utilities as it supplies to its own retail customers. Buyers like Fairbanks' Golden Valley Electric Assoc. can buy from Chugach or generate more of their own power. Chugach sells power to others for less than it sells to its own customers.*

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2/17/99

# ALASKA

## PUBLIC

## UTILITIES

## COMMISSION

### About the APUC...

Utility rates and services affect every Alaskan. Utility customers deserve reasonable utility rates and reliable service. The Commission works to ensure just and reasonable rates and high quality, reliable service.

Reasonable rates and reliable service can enhance economic development and be determining factors in business decisions to start up operation in, or relocate to, Alaska.

### Who is the APUC?

The APUC has five commissioners, each appointed by the Governor and confirmed by the Legislature for a six year term. The current commissioners are:

Sam Cotten, Chairman

Alyce A. Hanley

Dwight D. Ornquist

Tim Cook

James M. Posey

Executive Director, Robert A. Lohr and a staff of 35 are responsible for providing professional staff support for Commission decisions and for carrying out the Commission's policies.

### What does the APUC do?

The Alaska Public Utilities Commission (AS 42.05, 42.06, and other statutes) regulates public utilities by certifying qualified providers of public utility and pipeline services; and ensuring that they provide safe and adequate services and facilities at just and reasonable rates, terms, and conditions. This keeps rates as low as possible while allowing the utility to earn a fair return. The commission also determines the eligibility and the per kilowatt-hour support for electric utilities under the Power Cost Equalization program (AS 42.45 ).

### Who is Regulated by the APUC?

Most companies providing telephone, electric, gas, water, sewer, garbage, or steam services to ten or more customers are required to have a certificate to operate. A public utility or pipeline carrier must obtain a

certificate of public convenience and necessity, which describes the authorized service area and scope of operations of the utility. A certificate may be issued only if the commission finds the applicant to be fit, willing, and able to provide the utility service requested.

The rates, services, and practices of many utilities are economically regulated by the Commission. Other utilities are not economically regulated. These include city-owned utilities, very small utilities, cable TV and cellular phone service, and cooperatives whose members have voted to de-regulate.

The Commission also regulates oil pipeline companies that operate within the State.

## When do we need the APUC?

In most cases, when utilities request changes in either their rates or types of services they provide, the APUC provides notice to the public and allows thirty days for comments. The Commission then acts to approve or disapprove the utility's proposal.

Public notice appears as an ad in the local newspaper or is posted in the local post office.

## Where is the APUC?

The APUC is located at 1016 West Sixth Avenue, Suites 300 and 400, Anchorage, Alaska. (907) 276-6222, (907) 276-0160 Fax, (907) 276-4533 TTY

The APUC holds most public meetings in Anchorage, although the Commission may hold hearings in affected communities throughout the state.

---

 [Back to APUC's Home Page](#)

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Last Update: December 24, 1998

**HB**

**65**

**FISCAL NOTE**

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 65

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Corrective Amendments to Title 47. BRU: Family & Youth Services Mgmt  
 Component: Family & Youth Services Mgmt  
 Sponsor: House Rules by Request COMPONENT SERIAL NO. 2306  
 Requestor: House (JUD) See also (SN#): \_\_\_\_\_

Expenditures/Revenues: \_\_\_\_\_ (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ( )						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<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>


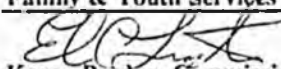
Estimate of any current year (FY1999) cost: \$0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill has no fiscal impact on the division.

  
 Prepared by: Theresa Tanoury Phone: 465-3191  
 Division: Family & Youth Services Date/Time: 1/29/99 4:44 PM  
  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/4/99  
 Agency: Department of Health & Social Services

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 16, 1999

Hon. Pete Kott  
Chair  
House Judiciary  
State Capital  
Juneau, AK 99801

Re: HB 65 - Supplemental revisor's bill  
regarding access to criminal justice  
information

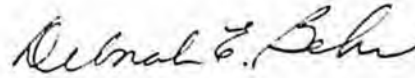
Dear Representative Kott:

The Department of Law has reviewed HB 65, the supplemental revisor's bill regarding access to criminal justice information. We find no legal problems with the bill. The bill makes appropriate changes to respond to the repeal of AS 12.62.035.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Deborah E. Behr  
Assistant Attorney General

DEB:jf

cc: James Crawford  
Assistant Revisor of Statutes

Anne Carpeneti  
Kristen Bomengen  
Shannon O'Fallon  
Assistant Attorneys General  
Juneau

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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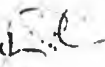
130 Seward Street, Suite 405  
Juneau, Alaska 99801-2195

## MEMORANDUM

February 12, 1999

**SUBJECT:** Sectional Summary of the Supplemental Revisor's Bill, HB 65 (Work Order No. 21-LS0342 A)

**TO:** Representative Pete Kott, Chair  
House Judiciary Committee

**FROM:** James P. Crawford   
Assistant Revisor

The following is a sectional analysis of HB 65, the supplemental revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of ... the statute law of this state.

The aim of all sections of the bill is to correct obsolete provisions and to improve the form or substance of the statute law.

### SECTIONAL ANALYSIS

The five substantive sections in this bill contain obsolete references to repealed AS 12.62.035, "Access to certain crime information," a problem brought to the attention of this office by the Department of Law. The problem arose from the fact that in the same year that chs. 45 and 124, SLA 1994 added these references to AS 12.62.035, another act, ch. 118, SLA 1994, repealed that statute.

A working assumption of this bill is that any revisor's bill solution for the obsolete references originating with chs. 45 and 124 should generally be consistent with the legislative intent connected with chs. 45 and 124. As it happens, the legislative intent of these two chapters is not identical; thus, the recommended solutions are not identical.

Section 1. AS 47.05.017(a) contains a reference to "records" under "AS 12.62.035(a)." Essentially the same reference is also found in AS 47.14.100(h), amended by sec. 2; AS 47.65.050(b), amended by sec. 4; and AS 47.65.100(e), amended by sec. 5. These references all originated in ch. 45, SLA 1994. In that chapter, the legislature conditioned the use of public money targeted for certain care providers upon a grantee, contractor, or sponsor making a criminal records request. Specifically, the request related to records for individuals hired to actually furnish care services to persons needing those services. At the time, the

information available to an appropriate requestor under AS 12.62.035 generally fell into three categories of "records" consisting of the following:

- (1) felony convictions;
- (2) convictions involving contributing to the delinquency of a minor; and
- (3) "sex crime" convictions, with "sex crime" being defined to include specific listed offenses.

The repeal of this section became effective on July 1, 1995.

To solve the problem caused by the repeal while staying within the confines of the legislative intent connected with ch. 45, an effort was made to determine what solution would be consistent with the intent in to add a records check requirement in ch. 45 in the first place. In other words, had the legislature known when it conditioned use of public funds on requesting records in 1994 that another bill repealing that records statute would also pass, what replacement would it have wanted? Based on the legislative history of ch. 45, it seems logical that the legislature would have wanted a solution that addressed the chief concerns that gave rise to ch. 45 and the records requirement in the first place.

The concerns driving ch. 45 were reflected in hearings held in the bill's six committees of referral: the House and Senate HESS committees, the House and Senate Judiciary committees, and the House and Senate Finance Committees.<sup>1</sup> Both the committee minutes and the committee tape recordings of the hearings reveal (1) a general concern to provide greater protection for those persons who, for one reason or another, were in need of home care or related services, and (2) a specific concern to provide protection for those people from fraud or theft. The latter concern arose in response to an elderly person having been defrauded of approximately five hundred thousand dollars by a home care provider who had gained control of the person's bank accounts.

The general concern to increase protection is illustrated by the following testimony excerpts:

Under this bill, the Commission would in fact require criminal checks on people doing in home services, and we think that's a very good idea because it would prevent exploitation of people who definitely need to be protected.

Fran Johnson, Associate Coordinator at the Older Alaskans Commission, testifying at the Senate Judiciary Committee Hearing on February 16, 1994, tape counter no. 504, side B.

The bill is, I guess, just straightforward, Mr. Chairman, requiring background checks so that we're not having people with criminal backgrounds that would and can prey on this vulnerable section of our society.

---

<sup>1</sup> Excerpts of the committee minutes are attached as appendix A.

THE  
FOLLOWING  
DOCUMENT(S)  
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Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the Senate Judiciary Committee Hearing on February 16, 1993, tape counter no. 140, side B.

This bill will provide some protection to elderly and disabled persons from those responsible for their care.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Judiciary Committee Hearing on March 27, 1993, tape counter no. 239, side A.

These groups are particularly vulnerable to abuse because of age, illness, disability, and the isolation of being alone in their home with a care giver.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House HCSS Committee Hearing on March 8, 1993, tape counter no. 426, side A.

It is important to take these steps now, while Alaska is on the brink of an explosion in home care services.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Finance Committee Hearing on May 5, 1993, tape counter no. 170, side A.

Of all background checks that are done, thirty percent of these people do have criminal histories, so I think it's important also to apply that aspect, especially to the home care provider industry.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House HCSS Committee Hearing on March 8, 1993, tape counter no. 469, side A.

The specific concern to protect from fraud is illustrated by the following testimony excerpt:

A home care provider is in court right now being charged with disposing of approximately a half a million dollars worth of assets of this elderly person, basically all the life savings, and so forth, and I felt and the department feels it's probably inappropriate for a home care provider that's being paid with state dollars to be able to have the ability to have power of attorney over somebody's money.

Representative Jerry Mackie, prime sponsor of HB 3 (ch. 45), testifying at the House Finance Committee Hearing on May 5, 1993, tape counter no. 386, side A.

This revisor's bill attempts to address the concerns set out above by recommending a solution that substitutes "criminal justice information" for noun or pronoun references to "records" and substitutes "AS 12.62.160" for "12.62.035(a)" in secs. 1, 2, 4, and 5. The same chapter that repealed AS 12.62.035 also added AS 12.62.160, "Release and use of criminal justice information; fees," which appears to have been intended as a replacement to AS 12.62.035, making it a logical starting point to solve the present problem. As could be expected, there are similarities between the sections.

However, a difference between repealed AS 12.62.035 and new AS 12.62.160 to be aware of is that instead of referring to "records" of convictions, new AS 12.62.160 section refers to "criminal justice information." This phrase is defined at AS 12.62.900, also added by ch. 118, and under new AS 12.62.160, a broader range of information is potentially available than was the case under the repealed section it replaced.

Despite this, some of the potential broadness is reduced by the fact that, as amended, these statutes would not allow access to national criminal justice information. According to Ms. Diane Schenker, an official with the Department of Public Safety, before national criminal justice information will be released, the FBI interprets federal law to require greater specificity in an authorizing statute than that which appears in these statutes. Consequently, the requestor is limited to state records.

The practical effect, according to Ms. Schenker, is that, basically, the records that a requestor will get are likely to be the sort of records that are available through an "interested person" request under AS 12.62.160(b)(10), which represents a subset of the broader term "criminal justice information."

This is significant because when it was enacted in 1994, AS 12.62.160(b)(10) information was essentially the same as AS 12.62.035 information -- an even match. Amendments since 1994 have broadened (b)(10) beyond repealed AS 12.62.035, but the main difference is that (b)(10) now also makes available records of crimes involving domestic violence punishable as misdemeanors. Thus, the general effect of the statutes as amended is that the much of the information that one will get is likely to be similar to the sort of information one got under the repealed records statute.

That said, it does remain possible that a requestor will receive more records under the statutes as amended by this bill than were available under the repealed statute. Note, however, that among the additional categories of records potentially available would be records of certain crimes involving theft or fraud punishable as misdemeanors. Given the legislature's concern in 1994 to increase protection, including protection from fraudulent acts, and given that the legislature connected the concept of protection to the concept of receipt of records, the potential for receiving a broader range of records appears to be consistent with the legislature's generally expressed intent to increase protection.

Section 2. See explanation for section 1.

Section 3. AS 47.35.130(a), like the other sections, contains a reference to AS 12.62.035, but the reference is distinct enough to warrant separate treatment. Rather than mentioning all "records" available under AS 12.62.035(a), this statute only mentions one of the three types of "records": "sex crime." Additionally, unlike the ch. 45 statutes, this statute does not involve a records request requirement. Instead, the reference in this statute originated in ch. 124, SLA 1994, where the legislature based revocation or declining to renew licenses of certain child care facilities on the commission of sex crimes by individuals connected to the facilities.

As with ch. 45, a revisor's bill solution for the obsolete reference originating with ch. 124 should be consistent with the legislative intent connected to ch. 124, to the extent that intent can be ascertained.

Representative Pete Kott, Chair  
House Judiciary Committee  
February 12, 1999  
Page 5

Unfortunately, neither the committee minutes nor the committee tape recordings of the hearings surrounding ch. 124 were particularly useful in ascertaining the legislature's intent.<sup>2</sup> What can be determined about legislative intent comes from the words of the statute itself. By restricting the category of information under discussion to "sex crime" only -- which was but one of the three categories of information available within the broader umbrella term "records" under AS 12.62.035 -- the statute suggests a legislative intent to keep the reference to the records statute relatively limited.

Consequently, the solution recommended here is simply to replace the reference to a "sex crime as defined in AS 12.62.035" with the specific list of offenses that constituted a "sex crime" under the repealed statute. Note that the portion of this statute that is not being amended already references felonies and offenses involving contributing to the delinquency of a minor. Thus, all categories of information available under repealed AS 12.62.035 are in the statute even though the reference to AS 12.62.035 remains limited to only crimes defined as "sex crimes."

Section 4. See explanation for sec. 1.

Section 5. See explanation for sec. 1.

Section 6. Effective date.

JPC:glc  
99-060.glc

---

<sup>2</sup> For what they are worth, excerpts of the minutes are attached as appendix B.

Appendix A

**Committee Minutes Excerpts  
HB 3 (Chapter 45, SLA 1994)**

**8 March 1993 House HESS Committee**

**27 March 1993 House JUD Committee**

**5 May 1993 House FIN Committee**

**21 April 1993 Senate HESS Committee**

**16 February 1994 Senate JUD Committee**

**17 March 1994 Senate FIN Committee**

8 March 1993 House HESS Committee

ACTION NARRATIVE

TAPE 93-30, SIDE A  
Number 000

CHAIR TOOHEY called the meeting to order at 3:07 p.m., noted members present, and announced the calendar.

\*\*\*

HB 3 - REGULATION OF HOME CARE PROVIDERS

Number 445

\*[Tape counter No. 426, Side A]

REP. JERRY MACKIE testified as PRIME SPONSOR of HB 3. He noted that similar bills passed through the Senate in 1992, but died in the session's final days. He read a sponsor statement, which is on file in the committee room. In summary, the statement said that HB 3 would protect elderly people by restricting public home care providers (HCPs) from assuming sole power of attorney for their clients, and by requiring background checks on home care providers paid under certain state programs. He referred to a case in which a health care provider took control of a client's finances through a power of attorney and spent \$500,000 of the client's money. He said he was not attacking the HCPs, but was trying to afford their clients' protection. He noted that 30 percent of state required background checks reveal criminal histories.

Number 496

REP. BUNDE asked whether a criminal record automatically barred a person from working as an HCP.

REP. MACKIE stated that this might be a question that would be addressed in regulations under the bill, not by the statutory language. He said the bill proposed in the previous legislative session required background checks to

be completed within 10 days of hiring and upon request, and that certain actions had to take place within five days of receipt of such reports. He said such provisions were in effect in HB 3.

Number 522

REP. BUNDE asked again whether a criminal record automatically barred a person from working as an HCP.

REP. MACKIE said it would depend on individual circumstances, and the issue would be addressed in regulations.

Number 522

REP. VEZEY observed that HB 3 would do little to deter a determined fraud.

REP. MACKIE said all legislation can do is provide penalties for crimes, but cannot order 100 percent compliance with law. He said the bill is a substantial improvement over current law. He stated that courts, which usually give powers of attorney, would have to determine an acceptable second person, most likely not a partner of the HCP, but a relative of the elderly person.

REP. VEZEY asked the need for two powers of attorney if an elderly person had a relative to whom such power could be given.

Number 546

REP. MACKIE said that would be a decision of the court. The bill would prevent the HCP from being sole power of attorney, he said.

REP. VEZEY asked whether HB 3 deprived elderly people of the right to bestow power of attorney of their own, and if it was directing the court to appoint people who would have power of attorney.

Number 552

CHAIR TOOHEY said lonely old people frequently become dependent on HCPs as surrogate families. She related a case in which one client granted power of attorney to the HCP, who then proceeded to wipe out the client's money. Chair Toohey said under the bill, the courts could bar an HCP from assuming the sole power of attorney for a client.

REP. VEZEY asked what was to bar an elderly person from signing over a second power of attorney to the HCP's partner in crime.

CHAIR TOOHEY answered that nothing prevented that.

REP. VEZEY said the bill therefore provided no protection.

CHAIR TOOHEY said she disagreed.

Number 565

REP. BUNDE said that, in his experience working with nonprofits, he had learned that it was best to share responsibility for financial expenditures between two people as a way to reduce the possibility of theft.

Number 572

REP. VEZEY said HB 3 provided very little protection against a determined fraud.

REP. MACKIE asked for suggestions on how to address that concern.

REP. VEZEY said he had none.

REP. MACKIE pointed out the limits of law to deter determined criminals.

Number 580

REP. VEZEY suggested amending HB 3 to bar HCPs from holding power of attorney for their clients.

REP. MACKIE said that in some cases it may be beneficial to grant an HCP the authority to act on a client's behalf, with oversight from a relative of the client's.

REP. VEZEY stated it was not necessary to have power of attorney in such cases.

Number 590

REP. MACKIE said it was beneficial not to give power of attorney to just one person. He referred to a situation in which an HCP in Haines had sole power of attorney and abused that power. He said some elderly people are being robbed of benefits through physical intimidation, with no legal protection.

CHAIR TOOHEY said nurse practitioners are state licensed and may lose their licenses for unethical actions, while most HCPs do not have licenses. She expressed support for HB 3 as a bill that would address the needs she has seen as a nurse.

Number 604

REP. G. DAVIS asked Rep. Mackie whether the section of the bill identified as Section 13.26.358 resulted from changes to the bill in the 1992 legislative session.

TAPE 93-30, SIDE B  
Number 000

REP. MACKIE said the bill was modified through much work by the committees and had been thoroughly considered.

Number 015

REP. BUNDE cautioned against barring an HCP from being granted power of attorney for a client. He said the bill might reduce the temptation to commit fraud on elderly people.

REP. MACKIE said it might be necessary to consider whether elderly people who had become state wards or subject to

governance by an estate might not need to have a second power of attorney appointed for them in addition to the state or estate.

Number 066

REP. BRICE noted that HB 3 dealt with publicly funded HCPs who were not necessarily invited into the client's home.

REP. MACKIE said section 2 of his bill bars the state from paying for an HCP without subjecting that person to a background check within 10 days of hire.

Number 100

CHAIR TOOHEY asked if Rep. Mackie was referring to Medicaid funding for HCPs.

REP. MACKIE answered that he meant any public funds, not just funds through the Medicaid program.

Number 106

REP. VEZEY said he had not interpreted HCPs as indicating solely a public employees.

REP. MACKIE said the bill referred to HCPs paid with state funds. He said the bill did not bar an elderly person from hiring and giving power of attorney to any private individual. He stated it was aimed at taking steps to prevent the state from paying for HCPs that might try to take advantage of their clients by obtaining powers of attorney.

Number 123

CHAIR TOOHEY said that caring for elderly people with home care providers was an alternative to institutionalizing the elderly.

REP. BUNDE asked what might happen if the state funded an HCP for a person with no living relatives, and therefore no one to whom a second power of attorney could be granted.

Number 140

REP. MACKIE said it would be in the elderly person's best interest to have another person other than the state, such as a minister or public official, with power to sign off on actions concerning that elderly person.

Number 143

REP. VEZEY said he believed that courts require bonds of those to whom they grant powers of attorney, usually members of the bar association.

REP. BUNDE noted that such people get paid for that service.

REP. VEZEY said they get paid fees from the elderly person's benefits.

REP. MACKIE said it only related to HCPs.

REP. VEZEY said a court would never grant power of attorney to a non-bonded person, to ensure accountability.

Number 156

REP. MACKIE said he wanted to make sure the courts did not appoint just an HCP as a person with power of attorney and not a second person.

REP. VEZEY said requiring bonds of HCPs would alleviate the problem.

Number 164

CHAIR TOOHEY noted that HCP jobs pay only about \$8 per hour, and few, if any, are bonded.

REP. BUNDE said the second person would probably be an attorney. He asked whether the attorney would be paid from the elderly person's estate.

Number 180

REP. MACKIE said that question dealt with a different area of state statutes than that addressed by HB 3. He repeated that the bill just dealt with what HCPs could and could not do; an HCP cannot have sole power of attorney for a client. He said it might cause problems if the client had no relatives, but he said that the abuses of powers of attorney by HCPs far outweighed any inconvenience the court may have in dealing with such possibilities.

REP. BUNDE said he was trying to visualize some of the demands that might come up.

Number 198

REP. ERICE moved passage of HB 3 with individual recommendations.

CHAIR TOOHEY, hearing no objections, declared HB 3 passed with individual recommendations. She then brought HB 4 to the table.

27 March 1993 House JUD Committee

ACTION NARRATIVE

TAPE 93-39, SIDE A  
Number 000

The House Judiciary Standing Committee meeting was called to order at 1:08 p.m., on March 22, 1993. A quorum was present. Chairman Porter announced that the committee would take up HB 4 first.

\*\*\*

[Tape counter No. 234, Side A]

HB 3: REGULATION OF HOME CARE PROVIDERS

Number 352

REPRESENTATIVE JERRY MACKIE, PRIME SPONSOR of HB 3, stated that his bill would restrict the ability of a home care provider to assume powers of attorney, and required criminal history background checks for home care providers being paid with public funds. He said that HB 3 would provide a measure of protection for elderly and disabled persons from those responsible for their care. He said that these people were particularly vulnerable to abuse, due to age, illness, disability, and the isolation of being alone in their home with a care giver.

REPRESENTATIVE MACKIE commented that Alaska was on the brink of an explosion in home care services. He mentioned the rapid expansion of Alaska's senior citizen population, and said that the state had just received approval for Medicaid waivers for home- and community-based services, as an alternative to institutionalization. He said that once the Medicaid waiver program was in effect, the home care services industry would see rapid growth.

REPRESENTATIVE MACKIE commented that HB 3 would also require criminal history records' checks for home care providers paid by Older Alaskans Commission (OAC) grants and respite

care providers paid by the Division of Family and Youth Services (DFYS). He noted that HB 3 would require the Department of Health and Social Services (DHSS) to implement regulations identifying actions to be taken upon receiving reports of harm by home care providers.

REPRESENTATIVE MACKIE mentioned an incident in his district which had given rise to the introduction of HB 3. He said that in that incident, a home care provider had walked off with approximately \$500,000 of an elderly person's money. He noted that similar situations had occurred across the state. He said that elderly persons, due to their vulnerability, were being targeted for exploitation. He mentioned that the state Pioneers Homes were full, with long waiting lists to get in.

REPRESENTATIVE MACKIE said that more and more elderly people would be cared for in their own homes, making it important for the state to regulate home care providers. He said that the Department of Public Safety (DPS) had informed him that 30% of criminal history background checks run on school teachers, day care providers, and others revealed criminal histories. He said that a bill similar to HB 3 had passed the House the year before.

Number 428

REPRESENTATIVE GREEN stated that HB 3 seemed like a very good bill. However, he did not see representatives of the senior citizen community present, and asked Representative Mackie if he had spoken with members of that community.

Number 433

REPRESENTATIVE MACKIE replied that the OAC was on record in support of the bill. He added that he was not aware of any opposition to either HB 3 or HB 4.

Number 453

WALTER MAJOROS testified on behalf of the OAC in support of HB 3. He noted that the OAC would like to see section 1, relating to powers of attorney, strengthened. He

recommended that powers of attorney for publicly-paid home care providers be prohibited, except in certain circumstances, or alternatively stipulating that the person with whom the power of attorney was shared could not be a person who had either a financial or a personal relationship with the home care worker.

Number 479

REPRESENTATIVE DAVIDSON asked what incentive a third party might have to become a partner in a power of attorney situation.

Number 485

MR. MAJOROS did not feel prepared to answer Representative Davidson's question.

Number 492

REPRESENTATIVE DAVIDSON said that when a person took a job as a home care provider, that person took on a certain amount of risk and liability. He expressed concern that a person could unknowingly become involved in a messy situation.

Number 507

CHAIRMAN PORTER asked Representative Davidson if he was referring to an additional signer, in addition to the home care provider, on the power of attorney. He thought of the third party as being a relative of the person receiving the home care, co-signing with the home care provider as a convenience.

MR. MAJOROS expressed the OAC's position that those two people should share the power of attorney to ensure there was no abuse.

Number 524

CHAIRMAN PORTER asked Mr. Majoros if he had any proposed language to offer.

MR. MAJOROS had no language to offer at this time.

Number 527

REPRESENTATIVE DAVIDSON commented that his question had been prompted by a situation in which an elderly person had no remaining relatives.

Number 531

CHAIRMAN PORTER mentioned that surviving relatives sometimes lived far away from an elderly person receiving home care services.

Number 539

REPRESENTATIVE MACKIE noted that home care providers were sometimes relatives of those for whom they cared. He commented that not every situation could be covered by statute. He said that the main purpose of HB 3 was to not allow a home care provider to also have sole power of attorney. He said that at least one other person should be involved in the relationship, to prevent a home care provider from abusing the position. He commented that HB 3 would only apply in cases where public funds were being used.

Number 567

REPRESENTATIVE JEANNETTE JAMES mentioned that the legislature could not solve every problem that existed through statute. Sometimes, she said, the legislature passed laws to solve one problem, and created even more problems in the process. She commented that the job of a home care provider was not an easy one. She supported criminal history background checks for home care providers. She was of the opinion that powers of attorney could affect more than just financial transactions. She did not see why a home care provider would need to have a power of attorney for a person in his or her care.

REPRESENTATIVE JAMES expressed concern that putting two

people on a power of attorney would create an impediment to making quick decisions. She preferred that a power of attorney be held by one individual, someone other than the home care provider.

Number 595

REPRESENTATIVE MACKIE said that in some instances, a home care provider was the only person caring for a particular individual. In that case, he said, the home care provider would do all of the shopping, banking, and bill paying transactions. In that situation, he said, it would be convenient for a home care provider to have a power of attorney. House Bill 3 would allow for that to happen, as long as a third party co-signed on the power of attorney. He noted that he had tried to focus HB 3 on those areas with the greatest potential for abuse.

Number 615

REPRESENTATIVE JAMES said that HB 3 only affected home care providers whose services were paid for by the state. She commented that if a person had a great deal of money to steal, that same person probably would not be eligible for a publicly-funded home care provider. She expressed her opinion that HB 3 should be expanded to include all home-care providers, not just those who received public funds.

Number 627

REPRESENTATIVE MACKIE said that Representative James had made a good point. However, he noted that there were constitutional problems involved in regulating privately-funded home care providers.

Number 643

REPRESENTATIVE PHILLIPS asked Representative Mackie why he chose to apply the provisions of HB 3 only to publicly-funded home care providers.

Number 647

REPRESENTATIVE MACKIE reiterated his point that people could spend their own money in any manner they saw fit. However, when public funds were involved, he did not feel that home care providers should be allowed to exercise a great deal of control over the affairs of elderly or disabled persons.

Number 666

PAT O'BRIEN, on behalf of the DHSS, commented that the year before, the DHSS had suggested language to tighten up who could have a power of attorney. She said that the House Health, Education, and Social Services (HESS) Committee had raised the issue of the cumbersomeness of requiring two signatures on every transaction. Also, she said that the HESS committee had mentioned the difficulty of finding home care providers in the first place, due to the heavy responsibility associated with the job. If too many restrictions were placed on the profession, she noted, it would become even harder to find people willing to serve as home care providers.

Number 680

MS. O'BRIEN said that although the HESS Committee had considered tightening up the requirements for powers of attorney, they had eventually agreed that that was not a good idea. The result was the language now contained in HB 3, she added.

Number 687

REPRESENTATIVE JAMES asked Ms. O'Brien if she saw HB 3 as being a burden on home care providers.

Number 702

MS. O'BRIEN replied in the negative. She said that a home care provider would not be required to accept a grant of power of attorney, and might choose not to accept such a designation.

Number 709

REPRESENTATIVE MACKIE noted that HB 3's provisions might help to weed out those home care providers with bad intentions. He said that powers of attorney could take many different forms. He admitted that the provision in question could not be easily enforced. The intent behind the provision was simply to create a condition of employment and a vehicle for disciplinary action or termination.

Number 726

REPRESENTATIVE GREEN made a MOTION to MOVE HB 3 out of committee with individual recommendations and an accompanying fiscal note. There being no objection, IT WAS SO ORDERED.

**5 May 1993 House FIN Committee**

TAPE HFC 93-93, Side 1, #000 - end.  
TAPE HFC 93-93, Side 2, #000 - 193.

**[Tape counter No. 161, Side A]**

REPRESENTATIVE MACKIE noted that HB 3, An Act relating to public home care providers, restricts the ability of a home care provider to assume power of attorney and requires criminal background checks on any individual providing home care services paid for by public funds for an elderly or disabled person.

Representative Mackie stressed that HB 3 will provide some protection to elderly and disabled persons from those responsible for their care. He asserted that these groups are particularly vulnerable to abuse because of age, illness, disability and the isolation of being alone in their home with a care giver.

Representative Mackie emphasized that it is important to take these steps now, while Alaska is on the brink of an explosion in home care services. He stressed that the state's senior citizen population is rapidly expanding and the state has just received approval for a Medicaid Waiver to provide home and community based services as an alternative to institutionalization. He maintained that once the Medicaid Waiver is effective, and there is a payment system available for expanded home based services, the home care services industry will see rapid growth. The bill also requires background checks on home care providers paid through Older Alaskans Commission grants, and respite care providers paid through the Division of Family and Youth Services.

Representative Mackie noted that the Department of Health and Social Services is required to implement regulations identifying actions to be taken upon reports of harm by a home care provider; it also protects the due process rights of the provider. The companion bill, HB 4, provides that conviction of a person licensed, certified or regulated by a

board or the Department of Commerce, for abuse of an elderly or disabled person may be considered ground for disciplinary proceedings or sanctions.

Representative Mackie pointed out that 30 percent of background checks made by the Department of Public Safety have a criminal history. He provided members with a letter citing abuses of elderly nursing patients (Attachment 1).

Representative Parnell asked if a family member can be a home care provider under state contract.

PAT O'BRIEN, FAMILY AND YOUTH SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES clarified that it would be unusual for a family member to be a contract care provider.

Representative Hanley asked if "held jointly" means that both powers of attorney would have to execute. Representative Mackie replied that they would. Representative Hanley noted that the spouse of the primary power of attorney could be the second power of attorney. He asserted that it would be easy for couples to abuse their charge. He suggested that the second power of attorney not be the spouse.

Representative Martin expressed concern with the fiscal cost. Representative Mackie clarified that no new programs would be created. He pointed out that the current program is funded through federal Medicaid funds. He noted that the legislation only changes employment requirements. Representative Martin stressed that background checks would be mandated. The funding source of background checks was

not specified.

Representative Parnell MOVED to report HB 3 out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 3 was reported out of Committee with a "do pass" recommendation and with a zero fiscal note by the Department of Administration, dated 3/10/93 and with a fiscal impact

note by the Department of Health and Social Services and  
with a zero fiscal note by the Department of Health and  
Social Services.

21 April 1993 Senate HESS Committee

ACTION NARRATIVE

TAPE 93-38, SIDE A  
Number 001

CHAIRMAN RIEGER called the Senate Health, Education and Social Services (HESS) Committee to order at 1:45 p.m. He introduced HB 3 (REGULATION OF HOME CARE PROVIDERS) and CSHB 4(JUD) (PROTECT ELDERLY AND DISABLED ADULTS) as the first order of business.

REPRESENTATIVE JERRY MACKIE, prime sponsor of HB 3 and HB 4, explained the legislation restricts the ability of a home care provider to assume power of attorney and requires criminal background checks on any individual providing home care services paid for with public funds for elderly or disabled persons. These groups are particularly vulnerable to abuse because of age, illness, disability and the isolation of being at home alone with a care giver.

The bill also requires background checks on home care providers paid through Older Alaskan Commission grants and respite care providers paid through the Division of Family & Youth Services.

An important aspect of HB 3 is that the Department of Health and Social Services is required to implement regulations identifying actions to be taken upon reports of harm by a home care provider. It also protects the due process rights of the provider.

Representative Mackie said CSHB 4(JUD) provides that conviction of a person licensed, certified or regulated by a board or the Department of Commerce for abuse of an elderly or disabled person may be considered grounds for disciplinary proceedings and sanctions.

There being no further testimony on HB 3 and CSHB 4(JUD), CHAIRMAN RIEGER asked for the pleasure of the committee.

SENATOR LEMAN moved that HB 3, along with the accompanying fiscal notes, be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

SENATOR MILLER moved that CSHB 4(JUD), along with the accompanying fiscal notes, be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.

Number 110

16 February 1994 Senate JUD Committee

ACTION NARRATIVE

TAPE 94-11, SIDE A  
Number 001

CHAIRMAN ROBIN TAYLOR called the Judiciary Committee meeting to order at 1:32 p.m. and introduced SB 252 (POSSESSION OF CHILD PORNOGRAPHY) as the first order of business before the committee.

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[Tape counter No. 400, Side B]

REPRESENTATIVE JERRY MACKIE stated that HB 3 (REGULATION OF HOME CARE PROVIDERS) would add protections for the elderly and disabled of Alaska. HB 3 would restrict the ability of a home care provider in obtaining power of attorney of the client they serve. HB 3 would require criminal background checks of persons providing home care services that are paid by state funds. He noted that grantees who contract with state agencies to provide these services would be required to order criminal background checks on their employees. HB 3 requires that the Department of Health and Social Services (DHSS) implement regulations on actions due to reports of harm by a home care provider while protecting the due process rights of that provider. He stated support of HB 3 by the Division of Family and Youth Services and the Older Alaskans Commission.

Representative Mackie urged the committee's positive consideration of HB 3 with a minor change. He suggested changing the dates on page 3, lines 26 and 27 from "1994" to "1995" which would be a technical change. He said that he had reintroduced this legislation due to circumstances in his district where a home care provider had assumed power of attorney over an elderly individual's bank accounts. The home care provider spent almost all of the elderly individual's life savings. He informed the committee that Pioneer Homes are full with increasingly longer waiting lists, while the senior population is rapidly growing. He expressed his personal belief that elderly individuals are more comfortable in their own homes. He also pointed out that HB 3 does not allow someone to have direct control of an elderly person's finances; there would have to be a third party involved.

SENATOR JACKO asked if there would be a charge for the background check. REPRESENTATIVE MACKIE said that Public Safety would do those. He referred to the attached fiscal notes. NANCY WELLER, staff to Representative Mackie, stated that the person who requests the background check would be charged. She did note the new situation with Adult Protective Services being transferred to the Division of Senior Services from the Division of Family and Youth Services (DFYS). Before this shift the DFYS had agreed to pay some of the background check while providing slightly less services in order to protect this population of individuals.

REPRESENTATIVE MACKIE said that perhaps DFYS felt that they could absorb that cost from within without requiring additional legislative appropriations. He stated that there had been strong administrative support of this legislation. He asked if there could be a user fee, the individual would pay, as a condition of employment since the division has the ability to regulate.

Number 203

CHAIRMAN TAYLOR stated that HB 3 seems to provide a request for records. REPRESENTATIVE MACKIE said that would be the criminal background check. In response to Chairman Taylor, Representative Mackie pointed out that HB 4, a companion bill to HB 3, does tie in some of the provisions not in HB 3.

CHAIRMAN TAYLOR expressed concern with setting up another bureaucracy to license people who take care of elder individuals. REPRESENTATIVE MACKIE said that HB 3 takes the basic essentials to do a better job from a public policy standpoint.

CHAIRMAN TAYLOR moved to amend lines 26 and 27 on page 3; deleting "1994" and inserting "1995" for an effective date. Hearing no objection, HB 3 was amended.

FRAN JAMESON, Associate Coordinator at the Older Alaskans Commission, noted their position paper and their support of HB 3. She said that criminal checks would protect the elderly and disabled from exploitation. The agency would require in the condition of grant award that community agencies do background checks. From the grant money the agency would pick up the cost, approximately \$75, with a reduction in overall services, about three fewer hours of service for each client. She felt that the

protection of the clients would be worth that reduction of service.

Number 145

CHAIRMAN TAYLOR asked why the applicant could not pay for the background check. FRAN JAMESON said that some individuals could not pay the fee. Ms. Jameson clarified for Senator Little that the background check would cost approximately \$75.

CHAIRMAN TAYLOR inquired about the wages of the employees. FRAN JAMESON informed the committee that Respite Care wages range from \$7 to \$9 per hour; however, there are others in home services that may be as expensive as \$15 per hour. She reiterated that the general cost of a criminal background check would be around \$75.

REPRESENTATIVE MACKIE suggested that perhaps the applicant should pay for the background check, especially due to the limited funding and the reduction of services.

CHAIRMAN TAYLOR discussed the various positions that require background checks. He expressed surprise that the cost was as high as \$75. He said that question could be addressed in finance.

FRAN JAMESON submitted a position paper to the committee.

SENATOR DONLEY moved HB 3 as amended out of committee with individual recommendations. Hearing no objections, it was so ordered.

17 March 1994 Senate FIN Committee

SFC-94, #43, Side 2 (200-000)

SFC-94, #44, Side 1 (000-120)

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SENATE CS FOR HOUSE BILL NO. 3(JUD):

An Act relating to public home care providers; and providing for an effective date.

Co-chair Pearce invited David Gray, aide to Representative Mackie, sponsor of HB 3 and HB 4, to join the members at the table and speak to the bill.

[Tape counter No. 394, Side B]

DAVID GRAY [aide to Representative Mackie] said HB 3 had been around for awhile and had not

changed too much. The bill originated after a senior passed away who had a health care provider and there was a complaint from the family that the estate had been misused. In response, Representative Mackie looked at the home health care provider situation and how dependent the senior could become on this person. It could involve handling a senior's money and other matters. The bill's main effect would prohibit home care providers to be the sole power of attorney, and anyone who was using public moneys was required to have a criminal background check. Representative Mackie also felt this bill was in tune with the administration's efforts to turn to more home health

care service for seniors.

Senator Kerttula stated this bill was related to his own personal concerns. He supported a system where more than one person would be involved, and also supported a background check.

In answer to Senator Rieger, Mr. Gray said the statutes defined when the state would pay for a home care provider.

Appendix B

**Committee Minutes Excerpts  
HB 412 (Chapter 124, SLA 1994)**

**14 March 1994 House HESS Committee**

**22 March 1994 Senate HESS Committee**

**4 May 1994 Senate FIN Committee**

14 March 1994 House HESS Committee

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CHAIR BUNDE then brought HB 412 to the table.

[Tape 94-48]

[Tape counter No. 474, Side A]

HB 412 - COMMUNITY CARE FACILITIES

CHAIR BUNDE asked PAT O'BRIEN to address HB 412.

Number 995

PAT O'BRIEN, Social Services Program Officer, Division of Family and Youth Services (DFYS), Department of Health and Social Services (DHSS), testified in support of HB 412. She stated that she has been involved in licensing for more than 20 years and that she was grateful to the co-chairs for scheduling a hearing on the legislation. She reminded the committee that among them was an expert in the area of licensing, Rep. Bettye Davis. She asserted that the licensing of programs for vulnerable populations is a vital public function and one that the state has had difficulty keeping up with in recent years. She said the focus of the bill is to work smarter by consolidating a number of licensing procedures into one particular place to make it easier for licensers.

MS. O'BRIEN explained that there are over 2000 licensing facilities and referred to the pie chart in the bill packet which shows that foster homes and child and child care facilities take up the majority of the chart. She indicated that the smaller sections of the chart are very complex sections. She explained that when the legislation is passed along with the assisted living bill (HB 377), adult licensing will be removed from DFYS. She further stated that if HB 377 fails to be passed, HB 412 contains provisions that would enable DFYS to continue adult licensing until an assisted living bill could pass.

MS. O'BRIEN said efficiency would be advanced by combining a

variety of regulations, thereby making it easier for those who work in a one person office in rural areas. She felt that consolidation would also make it easier for communication between private licensing agencies, of which the division works with approximately twelve.

MS. O'BRIEN pointed out another feature of the legislation as being a shared partnership with both parents and private agencies that would make it more clear to the parents that they have a shared responsibility with the state in monitoring the care of their children. She also indicated that private agencies have asked that liability protection be placed in the statute for them.

MS. O'BRIEN explained that the proposal does not constitute many changes in licensing. She reiterated that the thrust of the bill is to consolidate for purposes of efficiency by combining various processes into the bill. She continued testimony with a sectional analysis.

MS. O'BRIEN stated that Sections 1, 2 and 3 make no change at all except for numbering to make it compatible with child care laws, day care assistance programs, and child care grants. She explained that Section 4 makes a small change by allowing for a less onerous grievance procedure rather than a "full blown" administrative hearing. She said only the most serious enforcement steps taken will be an administrative hearing under the Administrative Procedures Act.

MS. O'BRIEN said that Section 5 is what licensing is all about. She said instead of the term "private institutions" a new title of Community Care Licensing would be used. She also said the section clarifies the role of licensing and their responsibility of informing parents of what their roles are. She said the provision includes voluntary licensure, which is done on a time available basis.

MS. O'BRIEN indicated that the ability to charge fees has been included in Section 6. She said she suspected that regulations would be promulgated that will provide for fees, but the department wanted it in statute as soon as possible.

TAPE 94-48. SIDE B

Number 000

\*[Tape counter No. 108, Side B]

MS. O'BRIEN further indicated that the division has contracted with agencies to perform licensing evaluations. She explained that with a village of 400 people there would be no agency there to perform an evaluation. She further indicated that the division would be able to enter into agreements with individuals as well as agencies to perform the evaluations. Ms. O'Brien said a subsection would delegate powers to municipalities, and indicated that currently Anchorage is the only municipality with the power to adopt state standards.

MS. O'BRIEN continued on to say, "Section 7 has to do with applicability and exemptions. This is an important section, and I know it's a long section in the bill, but it pretty much reflects current practice with the exceptions that I'll point out. The four exceptions are... there was an exception for occasionally placing a child for foster care or adoption, and we've removed that exception. As far as we know, attorneys no longer are doing that without going through placement agencies. So, there will be no impact. We think this is good for children.

"The exemption for governmentally operated programs has been removed. Only one local government, as I mentioned, the municipality of Anchorage, actually regulates day care centers and they do not operate any programs. The age of a child has been changed from 16 years to 18 years of age, and as far as we can tell, there will be no known impact or no programs impacted by that change. And, probably the most important change, there was a clause in there that allowed you to operate for ninety days without a license, which undercut the whole idea of licensing. The idea of licensing is to get in there before children are in care, reduce risk, check things out, and then have children come into care. So, we think that's an important amendment."

MS. O'BRIEN indicated that she was not going to go through Sections 8, 9 and 10 because they are current to what is in statute now. She did mention that Section 10, regarding

orientation and training, was made applicable to all facilities and indicated that only parents are currently included in current statute provision. She further indicated that it is very important that people know what is confidential and what is not. She explained that there has been much conflicting advice from attorneys. She said for the most part licensing records are "open" but there are a few things that should be confidential. She explained that potential foster parents give the division very personal background information that should remain confidential.

MS. O'BRIEN further stated that Section 11 encourages parents to participate in monitoring child care facilities. She also mentioned that there is a lot of support across the state for there to be inspections before every license is issued. She said Section 11 requires that there be an on-site inspection before any license is issued.

MS. O'BRIEN said Section 12 addresses complaints and investigation enforcement. She asserted that a complainant would get a copy of the report upon request and that retaliatory action is prohibited. She said often an employee is afraid to report a violation of regulation. She explained that enforcement actions which are currently in the licensing manual would be included in the legislation.

Number 197

REP. TOOHEY referred to the \$65,000 for fiscal year (FY) 1995 and \$35,000 for FY 1996. She said every new facility would have to be inspected and indicated that the financial impact is not reflected in any of the other fiscal notes. She asked if it should be reflected.

MS. O'BRIEN said no. She explained that current practice is not being changed within the bill and that there would be no increased cost in inspections. She said currently a number of licensers are experiencing an overload. She said badly needed relief will be afforded when adult licensing is removed from the division. Also, the consolidation of procedures will provide more relief. She maintained that the division would not be doing more than they are now, so a fiscal note was not attached to the activity of licensing.

Number 242

REP. TOOHEY asked if a questionnaire is sent to those who apply for a license.

MS. O'BRIEN explained that a questionnaire is sent out to applicants for foster home.

REP. TOOHEY asked how many pages are in the questionnaire.

MS. O'BRIEN replied that the application is one page; however, there are different attachments depending on the type of facility. She indicated that the application with a background questionnaire for foster care is about six pages, which includes criminal history background information.

REP. TOOHEY asked if police records are requested to verify the criminal histories of applicants.

MS. O'BRIEN explained that in a child foster home licensing situation the division receives a signed application, a personal history background statement, and child protection background or a criminal history background. All applicants must get their fingerprints rolled. She indicated that the state pays for the criminal history background checks.

Number 293

CHAIR BUNDE asked if the fiscal note reflects new money or a transfer.

MS. O'BRIEN responded that the fiscal note would cover the transition and would allow the division to be more creative in working with the providers and developing revised regulations. She said approximately six regulations would be changed and a task force would be formed of those who would be affected. She then said the division would promulgate the regulations, draft them, go through the public hearing process, and then conduct regional training.

Number 348

CHAIR BUNDE indicated that there was teleconference testimony from Anchorage and Fairbanks. He then referred to the statutory ability to charge fees and urged Ms. O'Brien to exercise that right to offset the fiscal note.

Number 365

MS. O'BRIEN continued on with the sectional analysis. She stated that Section 13 addresses the licensing of adult facilities and said if HB 377 does not pass, the division would not put the section into effect.

MS. O'BRIEN further stated that the remaining sections address liability and definitions. She then indicated that the DHSS had brought forward four amendments and that Rep. Kott also had submitted amendments. She asked Chair Bunde if she should address those or wait until after further testimony.

Number 390

CHAIR BUNDE said teleconference testimony would be heard and asked for testimony from Anchorage.

Number 392

LARE, President of the Alaska Association for the Education of Young Children (AK-EYC) testified via teleconference in support of HB 412. She stated the AK-EYC supports HB 412, provided that the fiscal note of \$100,000 for a statewide task force for implementation and training is also passed. She said that early childhood professionals welcome regulation that reduces risks to young children in out-of-home care. She then referred to the ability to charge fees and said she suspected that many Alaskans feel that they have not paid their fair share for a number of years; however, she felt that the area of community care facilities is one of the most vulnerable populations. She also stated that the people who care for and educate those children are paid much less than parking lot attendants or garbage collectors. She said she was concerned that if a fee is charged it would be passed on to the parents.

REP. VEZEY referred to Lare's statement that child care workers are paid less than garbage collectors and asked her which job she thought was more difficult to perform.

MS. O'BRIEN asserted that caring for a young child for eight to ten hours a day was a far more difficult task. She said it may appear to be a lot of fun, and in many ways it is, but it takes an extraordinarily high skill level to care for someone else's child.

REP. VEZEY said, "My question then would be, why don't those people get jobs as garbage collectors instead of working in child care facilities?"

MS. O'BRIEN responded, "Well, I guess it's because that there are some among us who find that our real talents are working with the very young child and their families. That's why we went to college, that's why we have the degrees that we have, and we choose to stay in that position."

Number 508

CHAIR BUNDE asked for teleconference testimony from Fairbanks.

Number 509

NANCY JOHNSON, Staff Person, Division of Family and Youth Services, Department of Health and Social Services, testified via teleconference in support of HB 412. She stated that she has worked in the area of licensing for 23 years. She said the licensing that she performs represents a valuable preventive function. She indicated that often licensers have to perform several different kinds of licensing, especially in rural areas. She asserted that the legislation is designed to simplify regulations and implementation. She said the proposal also includes concepts that other states are using and indicated that Alaska belongs to many national associations for regulatory administrators and has participated in projects that have allowed key personnel to stay current with national trends and recommendations. She further stated that the

legislation would make it easier for licensing to work with community groups for recruiting and evaluating service providers.

CHAIR BUNDE asked Ms. Johnson, if HB 412 was passed, would she be personally involved in setting up the study groups?

MS. JOHNSON said she expected to be.

REP. TOOHEY referred to the \$45,000 budget for travel and asked Ms. O'Brien if perhaps the questionnaires could be sent to local public health nurses or community health aids so they would be responsible for the procedure rather than spending \$45,000 on travel.

MS. O'BRIEN indicated that the travel budget is specifically for the task force. She said if the travel budget is not supported, the participants will not be able to meet face to face. She said she is hoping that there will be much involvement from Bush communities and Native organizations and that the only way to address those concerns is to meet face to face.

REP. VEZEY referred to the statement made by Ms. O'Brien regarding Section 7 which changes the age of children from 16 to 18 years of age. He said he was unable to find that provision.

MS. O'BRIEN indicated that the language is actually in definitions under Section 17. She said the definition of a child would be up to age 18 and would affect the application of the statute.

REP. VEZEY asked what page the definitions section was on.

MS. O'BRIEN said page 19.

Number 637

REP. VEZEY asked why the definition of child was being changed from 16 to 18 years of age.

MS. O'BRIEN explained that the division licenses a number of

programs that serve children ages 16 and 17 and over 17 years of age in foster homes. She said it only makes sense to include that age range because the division is regulating facilities with those age ranges anyway.

REP. VEZEY said the language is really referring to unemancipated minors.

REP. TOOHEY asked if developmentally disabled persons were also included.

MS. O'BRIEN replied yes. She said, "...and since adult licensing has been in our division, we have found that children move from a child foster home then and it becomes an adult foster home. And, I suspect if the assisted living bill passes, we will continue to collaborate with them to make sure that there's a smooth transition there."

Number 668

CHAIR BUNDE asked for further testimony from Fairbanks.

Number 669

MARY MATTHEWS, Family Support Coordinator, Fairbanks Resource Agency, testified via teleconference in support of HB 412. She stated that she was pleased to see the clarification of immunity from liability for private agencies provided for in the proposal.

Number 684

CHAIR BUNDE asked for testimony from JODY ENGELMAN.

Number 685

JODY ENGELMAN, Executive Director, Juneau Youth Services, testified in Juneau in support HB 412. She stated that the legislation would provide consistency among the various types of regulations and would ease up the job of licensers by making definitions consistent. She also felt that the regulations that she was currently working under were very old fashioned and cannot address the current or future

concerns and changing services. She further stated that she supports the attached fiscal note, as it will enable the division to be in contact with families and their needs.

CHAIR BUNDE indicated that to address the amendments that have been put forth, HB 412 must be adopted by the committee as a working draft.

REP. VEZEY concurred.

CHAIR BUNDE then asked for a member to move Amendment 1 so the department could discuss it.

REP. TOOHEY said so moved.

REP. KOTT asked if the committee was addressing his amendment.

CHAIR BUNDE indicated that Amendment 1 was from the DHSS. He asked if Rep. Kott felt it would be more productive to address his amendments first.

REP. KOTT said the decision was up to Chair Bunde.

CHAIR BUNDE indicated that DHSS Amendment 1 had been moved and asked Ms. O'Brien to speak to the amendment.

Number 743

MS. O'BRIEN indicated that there are a number of child care facilities on military bases in Anchorage and in Fairbanks and also the Kodiak Island Coast Guard facility. She explained that in those facilities there are one or more staff persons that perform evaluations and provide training to those facilities. Ms. O'Brien maintained that they are better staffed than the state is. She said the division stopped regulating the facilities a number of years ago. She said the purpose of the amendment is to clarify that military bases and Coast Guard facilities are not included in regulations. However, she said a side agreement was made with the Coast Guard relative to small communities like Sitka and Cordova that have a number of homes that provide family child care and have been previously licensed by the

division. The division will continue to do the licensing for those areas.

Number 774

CHAIR BUNDE asked for discussion or questions.

REP. VEZEY said he doesn't have a problem with the amendment, but felt the wording was unclear. He said it is not the ownership of the property that the division is interested in, it's the guidelines that the federal agencies operate under that the division is trying to not "reregulate."

MS. O'BRIEN responded that the wording was given to her by Commander Gary Palmer. She said he recommended that the language be included and she did not object.

CHAIR BUNDE asked for further discussion or objections. Hearing none, Chair Bunde announced that DHSS Amendment 1 was adopted. He then brought DHSS Amendment 2 to the table.

REP. B. DAVIS made a motion to adopt DHSS Amendment 2.

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN indicated that two mistakes were made in the drafting process and encouraged the committee to adopt the amendment to ensure that the relatives are exempted from becoming licensed. She further indicated that Rep. Kott had an amendment that would add a subsection 8, which the division would support because she felt the division amendment does not go far enough.

Number 823

CHAIR BUNDE asked for questions.

REP. KOTT said he would offer a friendly amendment to DHSS Amendment 2, which was his Amendment 1.

CHAIR BUNDE asked to see a copy of the amendment.

REP. KOTT stated that all members should have a copy and further explained that the amendment does go further in exempting relatives from being licensed. He said if a grandmother is caring for five grandchildren, she should be exempt. He also stated that great grand parents are included.

REP. TOOHEY asked if there is a limit on how many biological grandchildren a person can care for. She asked, if a woman is caring for four or more grandchildren, can she also care for four or more day care children?

MS. O'BRIEN explained that anyone can care for four children whether they are related or not without a license, as it is a total exemption. She asserted that the division does not want to license homes where there are relationships and said that is why the clause was added. She said, "Then you may care for up to eight children as a family child care home. And, those could all be related and shouldn't be licensed. But, in order for that to occur, Rep. Kott's amendment is also needed, amendment to my amendment."

Number 869

REP. TOOHEY asked if a person does not need a license to care for four children.

MS. O'BRIEN said, "Any related child or for four children related or not."

REP. TOOHEY said that a person could have eight children in the home without a license.

MS. O'BRIEN said, "You can have four children in the house, and you don't need a license. If there... you can have additional children. Four of them can't be related to you, but you could have as many related to you..."

REP. TOOHEY said, "And you don't need a license. I mean you can have eight children in the house, four of them can be your grandchildren and four you're caring for in the neighborhood. So, you have eight children of eight children. You do not need a license."