

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9929 HOUSE LABOR & COMMERCE

**HB**

**167**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 31, 1999

FURTHER REFERRALS:

Finance

Date of Committee Action: 26 APRIL 1999

The LABOR AND COMMERCE Committee considered:

HB 167

HOUSE BILL NO. 167

REGULATION OF MOBILE HOME DEALERS

"An Act relating to mobile home dealers."

recommends it be replaced with the following committee substitute CS HB 167 (L+C)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

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

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

zero fiscal note(s) DCED

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Ann Rokeby</i>				<input checked="" type="checkbox"/>
<i>(L+C)</i>				<input checked="" type="checkbox"/>
<i>Lamm</i>			<input checked="" type="checkbox"/>	
<i>John L. Harris</i>	<input checked="" type="checkbox"/>			
<i>BAMM (N/A)</i>			<input checked="" type="checkbox"/>	
<i>Jim Sanders</i>			<input checked="" type="checkbox"/>	
<i>John Buel</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Ann Rokeby* 4-26-99



From the office of . . . Representative John J. Cowdery

State Capitol, Suite 204

Juneau, AK 99801

907-465-3879 phone

907-465-2069 fax

## MEMORANDUM

To: Representative Rokeberg, Chair, House Labor & Commerce Committee

From: Representative Cowdery *feh*

Date: March 31, 1999

RE: House Bill 167

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Notes:

House Bill 167, "An Act Relating to Mobile Home Dealers", has recently be referred to the Labor and Commerce Committee. I would respectfully request that HB 167 be heard at your earliest convenience.

APR 01 1999

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB 167**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Commerce & Econ Dev.  
 Title An Act relating to mobile home dealers. BRU Occupational Licensing  
 Component Occupational Licensing  
 Sponsor Rep. Cowdery by Request  
 Requester House Labor and Commerce Component Serial No. 2360

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

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<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 (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 New funds are not required to implement this bill.

Prepared by Jennifer Strickler, Administrative Manager Phone 465-2144  
 Division Occupational Licensing Date/Time 4/16/99 10:28 AM  
 Approved by Commissioner Deborah B. Sedwick Date 4/16/99  
 Agency Commerce & Economic Development

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## Sponsor Statement for House Bill 167

House Bill 167 redefines the group of people classified as mobile home "dealers". Currently any person who buys, sells or deals in mobile homes is required to pay a \$510 licensing fee to the Department of Commerce and must maintain a \$50,000 bond, in favor of the State. The costs of licensing and bonding can be in excess of \$2,000. This is in addition to the costs of maintaining an Alaska Business License.

Used mobile homes are offered as-is, where-is with no warranty. There is no need for bonding. I believe it is an undue burden to require a used mobile home dealer to pay the bonding and additional mobile home licensing costs. My office has obtained blank mobile home sale contract packets. The buyer is notified in no fewer than five binding documents that there is no warranty on the product they are purchasing. Why should the dealer be required to pay significant bonding and licensing costs when, as a practical matter, the buyer has no legal grounds for a claim against the seller? Incidentally, since the mobile home licensing law was enacted, there has not been a single claim against a dealer.

There are currently 14 licensed mobile home dealers statewide. Because the language in House Bill 167 continues to define "dealer" as anyone who sells both new and used mobile homes, it is unclear exactly how many operators will no longer need to be licensed should HB 167 become law. Our best estimate at this time is that 10 current dealers will no longer need to be licensed.

From a financial perspective, this puts almost \$5,000 back into the private sector economy in saved licensing fees alone, in addition to the reduction in bonding expense currently mandated. This \$5,000 reduction will be realized by the Division of Occupational Licensing in reduced program receipts, and will thus reduce the Division's allowable expenditures by an equal amount. One fiscal caveat -- because each group of licensees must pay for the funds used to administer their program, an unforeseen administrative action regarding mobile home dealers may result in a fee increase to the remaining licensees.

Blank sample contracts attached.

1 **CONDITIONAL SALES CONTRACT**  
2 **FOR SALE OF MOBILE HOME**  
3  
4

5 This Conditional Sales Contract is entered into by and between the Sellers **XXXXXXXX** and  
6 **XXXXXXXX** whose address is **XXXXXXXX**, Anchorage, AK. 995\_\_\_\_ (hereinafter "Seller"(S)),  
7 and the Buyers, **XXXXX** and **XXXXX**. whose address is **XXXX**, Anchorage, AK. 995\_\_\_\_ is  
8 (hereinafter "Buyer"(S))  
9

10 **WITNESSETH:**  
11

12 1. Conditional Sale of Mobile Home. Seller hereby sells to Buyer and Buyer hereby accepts from  
13 Seller the mobile home described as follows:  
14

15 **YEAR: 19 MAKE: XXX MODEL: -BEDROOM**  
16

17 **SERIAL OR IDENTIFICATION NUMBER: XXXX**  
18

19 **EQUIPMENT INCLUDED:** Range, Refer., Carpet, Drapes, Washer & Dryer, Shed, and any  
20 substitutions and replacements therefor.  
21

22 2. **Price.** The total purchase price for the mobile home is **XXXXX DOLLARS** and No/100  
23 (**\$XXXX.00**), to be paid in cash at the office of Seller as stated above, payment to be as follows:  
24 **XXXXX** and No\100 (**\$XXXX.00**) dollars upon the execution of this Conditional Sales Contract, receipt  
25 of which is hereby acknowledged by Seller; and **XXX DOLLARS** and No/100 (**\$XXX,000.00**) Dollars  
26 plus interest at Twelve percent (12%) per annum, in equal monthly installments commencing on 1<sup>st</sup> day  
27 of **XXXX** and on the **First day** of each and every month thereafter as evidenced by a promissory note  
28 executed by Buyer in favor of Seller dated of even date contemporaneously herewith.  
29

30 3. **Retention of Title.** Title to the mobile home shall not pass to Buyer but shall remain in Seller  
31 until such time as all payments hereunder have been made and all other conditions fully performed. When  
32 all payments have been made and all conditions performed, Seller shall execute and deliver to Buyer an  
33 absolute good and sufficient Bill of Sale of the mobile home or title certificate if such is created, and the  
34 obligations imposed upon Buyer by this contract shall be void and of no further force or effect.  
35

36 4. **Location of Mobile Home; Prohibition on Removal.** Buyer shall at all times keep the mobile  
37 home at the following location:  
38

39 **XXXXXXXX, Anchorage, AK 99**  
40

41 Buyer shall not remove the mobile home or sell, mortgage, pledge or otherwise dispose of  
42 Buyer's interest in or part with possession of the mobile home or permit any lien to be acquired thereon,  
43 without written consent of Seller.  
44

45 5. **Prepayment of Promissory Note.** Notwithstanding anything to the contrary herein, Buyer may  
46 at any time prepay the promissory note, including all accrued interest, and thereby obtain title to the  
47 mobile home all without penalty or charge.  
48

WE HAVE READ THIS CONTRACT \_\_\_\_\_

49           **6. Character as Personality.** The mobile home shall remain personal property and nothing shall  
50 prevent Seller from removing same from any premises on which it may be located or found upon any  
51 breach of this contract.  
52

53           **7. Risk of Loss.** The risk of loss of the mobile home for any cause whatsoever shall be upon Buyer.  
54 The loss, injury or destruction of the mobile home for any reason whatsoever, including but not limited to,  
55 fire, earthquake, windstorm, Acts of God, theft, shall not release Buyer from full performance of all  
56 obligations hereunder including payment of purchase price.  
57

58           **8. Insurance.** Buyer shall keep the goods insured against loss, injury, or destruction by fire  
59 (including extended coverage) theft and other risks that Seller shall from time to time require of Buyer in  
60 writing, for no less than the total amount owing hereunder until such purchase price is fully paid. Buyer  
61 will provide Seller proof of such insurance which will name Seller as an additional insured. In the event  
62 Buyer fails to place insurance or the same is void or cancelled, Seller may at Seller's option, but is not  
63 required, to place such insurance to protect Seller's interest, the same being at Buyer's expense. Buyer will  
64 reimburse Seller for any such insurance expense upon demand. The proceeds of any insurance recovered  
65 shall be payable to Seller up to the outstanding purchase price owed at that time or may be applied toward  
66 the replacement or repair of the mobile home, at the option of the Seller.  
67

68           **9. Taxes.** Buyer shall pay all taxes and assessments of every kind and nature which may be  
69 assessed in connection with the mobile home. Any sum of money paid by Seller in discharge of taxes,  
70 assessments, liens or encumbrances on the mobile home shall be immediately paid by Buyer to Seller in  
71 the event Seller chooses to make any such payments.  
72

73           **10. Expenses.** Buyer shall promptly pay all charges for repair, utilities, rent or any other expenses  
74 which may accrue regarding the mobile home including any space rent charges from a mobile home park  
75 in which the mobile home is located, and in the event of any default or failure by Buyer to pay such  
76 expenses, Seller may discharge and pay such expenses, Seller having no obligation to do so. In such  
77 event, Buyer will immediately repay to Seller all such expenses.  
78

79           **11. Mobile Home Park.** Buyer agrees to follow the rules and regulations set forth between Buyer  
80 and any mobile home park in which the mobile home is located. Buyer covenants and agrees to pay all  
81 space rent and expenses in a timely fashion and not to do anything which would jeopardize the privilege  
82 of occupying space in the mobile home park. In the event Buyer fails to pay such obligations or receives  
83 an eviction notice during the term of this agreement, such shall constitute a default under this Conditional  
84 Sales Contract and shall entitle the Seller to accelerate all payments and to repossess the mobile home as  
85 provided for herein. In the event Seller pays any space rent on behalf of Buyer, Buyer will immediately  
86 reimburse Seller for any such payment.  
87

88           **12. Condition of Mobile Home.** Buyer agrees to keep the mobile home in a condition of repair the  
89 same as when delivered to Buyer pursuant to this Conditional Sales Contract, reasonable wear and tear  
90 accepted. The mobile home will be maintained in good order and repair in any event and will not be  
91 damaged or destroyed by Buyer. Buyer will not use the mobile home in any manner that is a violation of  
92 any Federal or state law or ordinance of the Municipality of Anchorage. Buyer hereby grants to Seller a  
93 right, upon reasonable verbal or written notice, to inspect the mobile home to determine whether it is in  
94 good order and repair and whether it is being used in violation of law or ordinance.  
95

96           **13. Rental of Mobile Home.** Buyer covenants and agrees that Buyer will not during the period of  
97 this agreement, endeavor to rent out or allow other persons other than the signatories to this agreement  
98 and the immediate family to reside in the mobile home, without the prior written notice to Seller.  
99

00           **14. Acceleration.** It is hereby agreed that if Buyer fails or neglects to comply with any term or  
01 condition of this contract, or to make any payment provided for herein, when the same is due or payable,  
02 or violate any of the provisions hereof, or if Seller should reasonably deem the goods in danger of  
03 confiscation or loss cause of damage or misuse in violation of law, or if it should be determined that  
04 Buyer has made any misrepresentation regarding the essential terms and conditions of this contract or in  
05 any application or representation to Seller regarding Buyer's credit worthiness, Seller at Seller's option  
06 and without notice to Buyer may declare the whole amount under this contract unpaid hereunder to be  
07 immediately due and payable. Specific grounds for such acceleration and default include, but are not  
08 limited to, the following:  
09

10           A. Failure to pay any installment or payment due under this contract within thirty (30) days of its  
11 due date.  
12

13           B. Allowing any insurance to become void or be cancelled.  
14

15           C. Buyer becoming insolvent, failing in any business, or if the collateral is levied upon or seized  
16 by a creditor.  
17

18           D. If the mobile home is damaged or destroyed in any manner, or if any portion thereof is so  
19 destroyed or damaged.  
20

21           E. If Buyer receives any notice which constitutes a breach of Buyer's agreement with a mobile  
22 home park regarding the privilege of occupying space in said mobile home park, to include  
23 payment of space rent or violation of any rules and regulations of the mobile home park.  
24

25           F. If Buyer allows any liens to attach to the mobile home.  
26

27           G. If Buyer fails to perform any covenant or agreement stated in this Conditional Sales Contract.  
28

29           H. Buyer fails in any manner to perform the obligations set forth under the promissory note  
30 executed contemporaneously herewith.  
31

32           **15. Repossession.** In the event of any default by Buyer and/or grounds for acceleration under  
33 paragraph 14 hereinabove, Seller may, without notice to the Buyer, declare all of the Buyer's rights under  
34 this contract terminated and, without demand first made, and with or without legal process, immediately  
35 take possession of the mobile home together with all additions, equipment and accessories thereto,  
36 wherever the same may be found, using reasonable force if necessary, and to hold the same as property of  
37 Seller, together with title thereto. Buyer hereby waives all claims for damages due to or arising from or  
38 connected with any such repossession. In the event Seller is unable to repossess the goods peaceably,  
39 Buyer and Seller hereby covenant and agree that an action in Forcible Entry and Detainer will lie in favor  
40 of Seller against Buyer for an order of this court directing a peace officer to deliver possession of the  
41 mobile home to Seller, and Buyer hereby consents to the jurisdiction of a court of law in the state of  
42 Alaska to such action.  
43

44 16. **Termination of Contract.** If Seller takes possession of the mobile home all rights of Buyer  
45 under this contract shall immediately terminate, and all payments heretofore made shall belong absolutely  
46 to Seller, and Buyer shall pay to Seller all installments then delinquent upon this contract.  
47

48 17. **Sale.** If this contract is terminated by Seller repossessing the goods, Seller may, if desired, sell  
49 the goods at public or private sale, with or without notice to Buyer (if notice is given, notice by mail to  
50 Buyer's address as shown on this contract is sufficient), with or without having the mobile home at the  
51 place of sale, and upon such terms and in such manner as Seller may determine. Seller or Seller's assigns  
52 may bid at any such sale.  
53

54 18. **Proceeds of Sale.** The net proceeds of any such sale shall be the remainder after deducting  
55 from the selling price all expenses for retaking and conditioning, keeping and selling the mobile home,  
56 including Seller's attorney's fees and costs or any other reasonable expenses involved in retaking, holding,  
57 preparation for sale, selling or repossessing the mobile home. In case the net proceeds from such sale,  
58 added to the payments heretofore made, do not cover the total payments required to be made by Buyer  
59 hereunder, then Buyer agrees to pay to Seller, on demand, such difference, with interest thereon from the  
60 date of sale at the legal rate specified by the state of Alaska.  
61

62 19. **Attorney's Fees.** In the event any default shall occur in the performance of this contract, and  
63 the nondefaulting party is required to employ the services of an attorney, then all of the reasonable costs  
64 and expenses of said attorney, including court costs, shall be reimbursed in total to the nondefaulting  
65 prevailing party in any such dispute regarding the performance of this contract.  
66

67 20. **Security Agreement.** Buyer and Seller specifically covenant and agree that this Conditional  
68 Sales Contract shall be deemed to be and is a Security Agreement under the Alaska Uniform Commercial  
69 Code, and that the conditional sale entered into is a secured transaction under A.S. s 45.09.102(b) and  
70 \$45.09.107.  
71

72 21. **Waiver of Warranties.** Buyer and Seller agree that Buyer has inspected the mobile home in its  
73 condition as of the execution of this agreement and that Buyer is familiar with and accepts the mobile  
74 home in an "as is" condition. The only exceptions to the acceptance of the mobile home in its present  
75 condition are stated as follows:  
76

77 NONE NONE NONE NONE

78  
79 No other warranties or guarantees on the part of Seller have been made with respect to the mobile home  
80 and any of its fixtures, equipment or accessories.  
81

82 22. **Notices.** All notices shall be deemed duly given if addressed to Buyer at the following address:

83 XXXXX, Anchorage, AK 995

84  
85  
86 and to the Seller at the following address:

87  
88 XXXXXXX, Anchorage, AK 995  
89

90 23. **Governing Law.** This contract shall be construed in conformity with the laws of the State of  
91 Alaska, and shall not be deemed to limit any rights of the parties under such laws unless otherwise  
92 expressly provided.

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24. **Severability.** Any part of this contract contrary to the laws of the State of Alaska shall not invalidate any other part of this contract which is not so affected.

25. **Successors.** This agreement shall inure to the benefit of and be binding upon the parties, their legal representatives and assigns.

26. **Entire Contract.** This contract constitutes the entire contract and no waivers or modifications shall be valid unless written upon or attached to this contract.

27. **Receipt of Copy.** Buyer acknowledges receipt of a true copy of this contract at the time of execution hereof.

IN WITNESS WHEREOF the parties hereto have executed this contract on the date set forth their respective signatures below.

DATE: XXXXXXXX , 1998

\_\_\_\_\_  
"Seller" XXXXXXXX

\_\_\_\_\_  
"Seller" XXXXXXXX

DATE: XXXXXXXX , 1998

\_\_\_\_\_  
"Buyer" XXXXXXXX

\_\_\_\_\_  
"Buyer" XXXXXXXX

WE HAVE READ THIS CONTRACT \_\_\_\_\_



TRIAD SALES CO., INC.  
3200 SEWARD HWY. #203  
ANCHORAGE, ALASKA 99503

Date \_\_\_\_\_

EARNEST MONEY RECEIPT ON MOBILE HOME: (PERSONAL PROPERTY)

Received From: \_\_\_\_\_ S:S \_\_\_\_\_  
Address: \_\_\_\_\_ DOB \_\_\_\_\_  
Anchorage, Alaska 99 \_\_\_\_\_

THE DEPOSIT: \$ \_\_\_\_\_ ON ACCOUNT OF PURCHASE PRICE OF THE FOLLOWING DESCRIBED MOBILE HOME . TO-WIT:

Serial # \_\_\_\_\_ Mfg. \_\_\_\_\_ Size \_\_\_\_\_ Year \_\_\_\_\_  
Bedrooms \_\_\_\_\_ Bath \_\_\_\_\_ Tipout \_\_\_\_\_ Addition \_\_\_\_\_ Arctic Entry \_\_\_\_\_  
Location \_\_\_\_\_ Space \_\_\_\_\_

THE TOTAL PURCHASE PRICE IS \$ \_\_\_\_\_, BALANCE OF DOWN PAYMENT IS \$ \_\_\_\_\_, AMOUNT TO BE FINANCED IS \$ \_\_\_\_\_, FOR \_\_\_\_\_ MONTHS AT \$ \_\_\_\_\_ PER MONTH, FIRST PAYMENT DUE \_\_\_\_\_ INTEREST RATE OF \_\_\_\_\_ %, FIRST YEAR INSURANCE IS \$ \_\_\_\_\_, ESCROW CLOSING COST IS \$695.00. PROMISSORY NOTE FEE \$150.00.

ALL TERMS AND CONDITIONS OF SALE ARE IN WRITING, TAXES AND SPACE RENT ARE PRO-RATED TO DATE OF CLOSING. TRIAD SALES CO., INC. MAKES NO WARRANTIES REGARDING PRIOR LIENS ON MOBILE HOME. PURCHASER (S) ACKNOWLEDGE THAT THEY HAVE INSPECTED THE MOBILE HOME AND THE LOCALE. PURCHASERS AGREE TO READ THE PARK RULES AND SIGN THE LEASE AGREEMENT PRIOR TO CLCSING. PARTIES HERETO HEREBY RELEASE TRIAD SALES CO. FROM ANY RESPONSIBILITY FOR ERRORS AND MISUNDERSTANDING IN PRESENTATIONS. AT CLOSING, BUYER TO PAY ESCROW FILING FEE OF \$30.00 AND WILL PAY A MONTHLY ESCROW FEE TO THE BANK OF \$6.25, AND SELLER TO PAY A MONTHLY CASHIERS CHECK FEE OF \$5.00. AND DOCUMENT FEE OF \$200.00. MOBILE HOME SOLD AS IS WHERE IS. DEPOSIT NON REFUNDABLE IF OFFER APPROVED BY SELLER. ALL FUNDS WILL BE RELEASED AT CLOSING.

Sale Includes: Washer \_\_\_\_\_, Dryer \_\_\_\_\_, Dishwasher \_\_\_\_\_, Drapes \_\_\_\_\_, Carpet \_\_\_\_\_, Range \_\_\_\_\_, Refrigerator \_\_\_\_\_, Fence \_\_\_\_\_, Storage Shed \_\_\_\_\_.

The purchaser and seller have agreed to possession of said property within \_\_\_\_\_ days. The purchaser agrees to complete the purchase in the manner and upon the terms herein. If the seller or his agent fails to complete the sale in the manner and upon the terms herein, this agreement is void and the earnest money shall be refunded. Time is of the essence of this agreement, Seller must accept this agreement within \_\_\_\_\_ days.

Purchaser (s) \_\_\_\_\_ And \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

I HEREBY APPROVE THIS SALE UPON FOREGOING TERMS, AND AGREE TO PAY TRIAD SALES CO., INC. COMMISSION AS AGREED UPON IN THE LISTING CONTRACT.

TRIAD SALES CO., INC. \_\_\_\_\_ SELLER \_\_\_\_\_

SMOKE DETECTOR WAIVER

THE UNDERSIGNED PURCHASER OF A MOBILE HOME:

Serial No.: XXXXXX Make: XXXXXXXX Model: XXXXXX

From XXXXXXX and XXXXXXXXX , herein acknowledges its awareness of the requirement of AS 18.70.095 to install and maintain smoke detectors approved by the State of Alaska Fire Marshal in all units. The undersigned releases Sellers and Triad Sales Co. of any responsibility or liability in connection with the maintenance, replacement or installation of smoke detector devices in the mobile home, which obligation is that of the undersigned, as long as the mobile home is utilized as a dwelling unit.

\_\_\_\_\_  
BUYER: XXXXX

\_\_\_\_\_  
BUYER: XXXXXX

DATED: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

COURTESY INSPECTION  
OF HOME

DATE: XXXXX

PURCHASED FROM: XXXX

PURCHASER(S): XXXX

MOBILE HOME LOCATED: XXXX

Purchasers, above mentioned, have closed on a transaction for the purchase of a mobile home. Purchaser(s) again acknowledge that the mobile home is being purchased AS IS and that there are no warranties or guarantees, expressed or implied.

By signature(s) below, purchaser(s) acknowledge that they have inspected the home to their satisfaction and this walk through with the selling agent confirms that all personal property items as listed in the purchase agreement are present.

PURCHASER(S) FURTHER CONFIRM THAT CONDITION OF THE MOBILE HOME, ANY PERSONAL PROPERTY LISTED AS PART OF SALE, AND THE LOT IS AS REPRESENTED AND AGREED UPON.

\_\_\_\_\_  
Purchaser: XXXXXXXXXXXXX

\_\_\_\_\_  
Purchaser: XXXXXXXXXXXXX

DATE: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
Sales Agent



TRIAD SALES COMPANY  
3200 SEWARD HIGHWAY, SUITE 203  
ANCHORAGE, ALASKA 99503

DATE: July 10th, 1998

ESCROW # \_\_\_\_\_

It is agreed and understood by the parties herein that the underlying obligation may not amortize in the same manner as the Conditional Sales Agreement.

Triad Sales Company will not determine or monitor the balance or perfect the payoff to a third party. Triad Sales Company will not be held liable for any short fall due on the underlying dept. It is the responsibility of the parties to notify the Escrow servicer of any adjustments to the escrow within thirty days, such as reserves and payment changes. Failure to notify the Escrow Servicer of payment changes may result in a variance or shortfall in the balance or payoff.

WHEN A BUYER PAYS THE TAXES AND INSURANCE THAT IS INCLUDED IN THE SELLERS PAYMENT THE INSURANCE POLICY WILL REMAIN IN THE SELLERS NAME AS REQUIRED BY HIS LENDER. THE NEW BUYER SHOULD PURCHASE ADDITIONAL INSURANCE TO PROTECT THEIR INVESTMENT

IT IS THE RESPONSIBILTIIY OF THE SELLERS TO GUARANTEE THAT ALL APPLIANCES ARE IN WORKING CONDITION, THAT ALL BACK TAXES AND SPACE RENT IS PAID. TRIAD SALES IS NOT RESPONSIBLE FOR TITLE OF MOBILE HOME. SOLD WITH BILL OF SALE ONLY.

IT IS THE RESPONSIBILITY OF THE BUYERS TO REGISTER AND BE APPROVED AT THE MOBILE HOME PARK, TO HAVE ALL UTILITIES TRANSFERED TO THEIR NAMES AND INSPECT THE MOBILE HOME, AND THAT THE HOME IS IN A "AS IN" CONDITION, UNLESS NOTED ON THE EARNEST MONEY FORM.

TRIAD SALES CO. INC. WILL NOT BE LIABLE FOR THE RESPONSIBILITY OF THE SELLERS OR THE BUYERS.

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

TRIAD SALES CO. INC, (907) 277-5655  
**MOBILE HOME PURCHASE**  
Customer Information Sheet

**This is a list of basic requirements from both the buyer and seller  
in order to purchase / sell a mobile home.**

**SELLER:** Must guarantee that the appliances are in working condition the day the buyer moves in. (Unless otherwise stated).

**SELLER:** Will have all utilities shut off the day after Buyer takes possession.

**SELLER:** Will assure BUYER that all past taxes and/or past space rent will be the responsibility of the SELLER.

**BUYER:** Will show proof of being registered and approved at the mobile home park.

**BUYER:** Will show proof all Utilities are established in buyer's name BEFORE move in day.

**BUYER:** Will inspect the condition of the mobile home, and that the home is accepted in a "AS IS" condition, unless noted on earnest money form.

**NOTE:** TO PROTECT BOTH THE BUYER AND THE SELLER, ALL THE ITEMS LISTED ABOVE MUST BE COMPLETED BEFORE CONTRACTS ARE SIGNED.

**BUYERS Estimated MOVE-IN Expenses.**

Prorated Taxes: \_\_\_\_\_ Prorated Space Rent: \_\_\_\_\_

First Month Space Rent: \_\_\_\_\_ Park Security Deposit: \_\_\_\_\_

Closing Cost: \_\_\_\_\_ Escrow Fees: \_\_\_\_\_

Insurance (25%) \_\_\_\_\_ Note Fee \_\_\_\_\_

-----  
Date for above items to be completed and Contracts signed: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

BUYER #1: \_\_\_\_\_

BUYER #2: \_\_\_\_\_

SALES AGENT: \_\_\_\_\_

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
MOBILE HOME DEALERS

333 Willoughby Avenue, 9th Floor, Juneau, AK 99801-0800

P.O. BOX 110806, JUNEAU, ALASKA 99811-0806

Telephone: (907) 465-3811

E-mail address: License@commerce.state.ak.us

**MOBILE HOME DEALER  
APPLICATION PACKET**

AS Sec. 08.67.010 states that a mobile home dealer may not do business in the state unless the dealer is registered with the Department of Commerce and Economic Development, Division of Occupational Licensing.

AS Sec. 08.67.080 further defines a "dealer" as a person who is engaged in the business of buying, selling, or dealing in new or used mobile homes.

The department will approve an application for registration if the applicant provides the following documentation required by AS 08.67.020 and AS 08.67.050:

1. Completed application containing the name under which the business is conducted and its location and the name and addresses of all persons having an interest in the business.
2. The name and address of all sales representatives.
3. The name and make of all new mobile homes handled; whether or not used mobile homes are handled.
4. A statement that the applicant is a bona fide dealer in mobile home sales with a principal office at the location given.
5. The name of the manufacturer of the mobile home and the date and duration of the applicant's sales and service agreement with the manufacturer if the applicant sells a mobile home as a new or current model mobile home having a manufacturer's warranty.
6. A surety bond for \$50,000.00 that is in favor of the state, which is executed by an authorized corporate surety approved by the department.
7. Check or money order made payable to the State of Alaska
  - \$ 50.00 Nonrefundable application fee
  - \$ 510.00 Registration fee
8. Mobile home dealers doing business in Alaska MUST hold an Alaska Business License. Please contact Business Licensing if you need an application or have any questions at (907) 465-2550 or E-mail address at License@commerce.state.ak.us.

**BEN MARSH & ASSOCIATES**

2550 DENALI STREET

SUITE 1310

APR 19 1999

ANCHORAGE, AK 99503

(907) 278-3615

FAX (907) 276-8801

DATE: 4/19/99

TO: Rep. Norm Rokeberg

COMPANY: L + C Committee

FAX NO.: (907) 465-2040

FROM: \_\_\_\_\_

Re: Resolution adopted by AHA at our monthly meeting April 15, 1999. We will have someone at LHO for hearing at 3:15 PM, 23 April.

*Ben Mandy*

Number of pages being transmitted, including cover page \_\_\_\_\_

PLEASE NOTIFY SENDER IF ALL PAGES NOT RECEIVED

## ALASKA MANUFACTURED HOUSING ASSOCIATION

### RESOLUTION ADOPTED 15 APRIL 1999

WHEREAS, House Bill 436 was enacted into law in 1996 and became AS 08.67.010, and was amended by HB 33, Twentieth Legislature, in 1998, and

WHEREAS, AS 08.67.010 sets forth the requirements for registration of Mobile Home Dealers, including application, bond, and fee, and

WHEREAS, AS 08.67.010 was enacted into law as a consumer protection measure, since mobile home dealers were not regulated nor licensed as real estate licensed agents are required to be, and


WHEREAS, Alaska Manufactured Housing Association, speaking for the mobile home industry, asked for and supported HB 436 as originally adopted, and

WHEREAS, HB 167 has been introduced in the current legislative session, and would exempt mobile home dealers selling used units only from the requirements of AS 08.67.010 and,

WHEREAS, enactment of HB 167 would remove important consumer protection features from the law,

NOW, THEREFORE BE IT RESOLVED, that AMHA opposes the adoption of HB 167.

Dated, this 15<sup>th</sup> day of April, 1999.

Signed,   
President

Attest,   
Executive Secretary

**HB**

**169**

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: April 13, 2000

FURTHER REFERRALS:

Date of Committee Action: April 17, 2000

The LABOR AND COMMERCE Committee considered:

HB 169

HOUSE BILL NO. 169

ELEC.COOPS:EXPANSION & POLITICAL ACTIVITY

"An Act relating to including the costs of expansion activities and political activities in rates of electric cooperatives."

recommends it be replaced with the following committee substitute CSHB169 CLTC  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *[Signature]* 4-17-2000

**Subject: HB 169**

**Date:** Fri, 14 Apr 2000 06:27:28 -0800

**From:** Nan Thompson <nan\_thompson@rca.state.ak.us>

**Organization:** Regulatory Commission of Alaska

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

**CC:** Bernie Smith <bernie\_smith@rca.state.ak.us>,  
Representative\_Joe\_Green@legis.state.ak.us

RECEIVED  
APR 14 2000

Representative Rokeberg:

You asked during the House Restructuring Committee's last meeting on Wednesday that I prepare comments on HB 169 by Friday for consideration by the House Labor and Commerce committee. All but the first and last comments address section 1 of the bill. I am in Tacoma today at a site visit for the Joint FCC/State Conference on Delivery of Advanced Services, and will not be available for questions when your committee meets, but Commissioner Bernie Smith is standing by.

- Amend AS 10.25, the Electric and Telephone Cooperative Act, as well as AS 42.05 because the bill's intent is to empower the members of cooperatives to decide if their organization should be engaged in political or "expansion" activities. (See Rep. Green's sponsor statement). AS 10.25 governs the relationship between cooperatives and their members, and AS 42.05 deals with ratemaking issues.
- Amend 42.05.381(a) to include "political activity" and "lobbying" rather than amending 42.05.381(j) and attempting to define the cost of political activity. This would put into the statute the APUC's application of the existing statute, upheld by the Alaska Supreme Court in Homer Electric Assn v. APUC, 756 P.2d 874(Alaska 1988) that the activities prohibited by 42.05.381(a) include lobbying.
- Define "political activity" more specifically to avoid a First Amendment challenge. The term "core services" used in the draft bill's amendment to 42.05.381(j)(2)(b) is vague. Political activity could be defined as: advocate for a political or policy position not directly related to the certificated services of the utility.
- Change the concept of individual votes of the members to include the costs of expansion activities in rates to a vote of the majority of the cooperative members. Individual voting and rates would be cumbersome to manage. The utility would have to charge two different rates to its customers and appropriately allocating the costs amongst approving members would be difficult.
- Revise the section on expansion activity to simplify and clarify it and restrict it to ratemaking issues. I suggest: "An electric cooperative may only include the cost of expansion activity in a rate if the cooperative
  - (1) advised its members that a portion of the rates would be used for expansion activities;
  - (2) identified for members how much of the rate would be used for expansion activities;
  - (3) advised the members that it could not discriminate against a member who opposed including the expansion costs activity in rates;
  - (4) received the approval of a majority of the members voting in an election of all of the members; and
  - (5) the result of the election was approved by the commission.
- Adopt the expansion activity definition proposed by ARECA, but put a period before the proviso so that all expansion activity costs in rates would go to a vote of the membership.
- Eliminate sections 2 through 6 and do not amend 42.05.711. If a utility is exempt, it should be governed by the cooperative association act and its members. The question of whether or not a particular cost item should be included in rates is rate regulation issue, not an exemption issue. The proposed exception for a particular cost item is inconsistent with the concept of exempting a utility entirely from rate regulation.

**FISCAL NOTE**

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Commerce  
 Title ELEC.COOPS:EXPANSION & POLITICAL ACTIVITY BRU  
 Sponsor Rep. Green Component Ak Public Utilities Commission  
 Requester House URS Component Serial No. 346

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

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
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	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time						
Temporary						

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

Prepared by Robert A. Lohr Phone 276-6222  
 Division APUC Date/Time \_\_\_\_\_  
 Approved by Commissioner [Signature] Date 5/4/99  
 Agency \_\_\_\_\_

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BUDGET SUBCOMMITTEES  
ALASKA COURT SYSTEM  
OFFICE OF ENVIRONMENTAL CONSERVATION  
DEPT. OF REVENUE

Representative Joe Green  
District 10  
House Majority Leader

TO: Representative Bill Hudson, Chairman  
House Special Committee on Utility Restructuring

FR: Representative Joe Green

RE: HB 169

DATE: February 22, 2000

I have introduced HB 169, An Act relating to including the costs of expansion activities and political activities in rates of electric cooperatives.

HB 169 is an attempt to clarify that rate monies collected by utility cooperatives cannot be used for political or expansion activities without member approval. Over the past few years we have seen such efforts by utilities in south central Alaska. These activities have been expensive for members of both the cooperative initiating certain actions as well as those defending them. In the end the coop members who own the organizations end up paying huge amounts for essentially frivolous actions by their boards which could have been prevented by enactment of HB 169.

I would appreciate a hearing on HB 169 at your next meeting.

Thank you.

# Alaska State Legislature



Representative Joe Green  
District 16  
House Majority Leader

## Sponsor Statement

### HB 169 - Member approval of political and expansion activities

HB 169 empowers consumers by providing them the opportunity to approve rate charges for political and expansion activities. AS 42.05.381(a) currently restricts rate monies collected by a utility from being used for political contributions or public relations, with some exceptions. However, political and expansion activities *are* being undertaken with these monies, which suggests the statute needs clarification.

HB 169 establishes that an electric cooperative may only include the costs of political or expansion activities in its rates if it; 1) advises members that rate monies will be used for such activities, 2) tells them how much of the rate money would be used for such activities, 3) informs the member that the cooperative would not refuse service if the member declines to consent, and finally, 4) receives the consent of the member.

Each cooperative member receives a billing statement, which could easily include a statement of intent for the rate monies collected, and a questionnaire asking if the member approves of some of their rate money being used for political or expansion activities. I'd appreciate your support of HB 169.

Hudson

## ASHBURN AND MASON

LAWYERS

A PROFESSIONAL CORPORATION

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ANCHORAGE, ALASKA 99501-5914MARR E ASHBURN  
WILLIAM S CUMMINGS  
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MARTIN M WEINSTEINTELEPHONE  
(907) 278-4331TELECOPIER  
(907) 277-8235

wsc@anchorage.alaska.gov

March 27, 2000

Edward C. Willis  
22424 North Birchwood Loop, #217  
Chugiak, Alaska 99567

RE: HB 169 and First Amendment Issues

Dear Mr. Willis:

You have asked me to review HB 169, "An Act relating to including the costs of expansion activities and political activities in rates of electric cooperatives," and to specifically address the First Amendment implications of this Act in light of Mr. Tillinghast's March 20, 2000 letter to Don Edwards, the General Counsel of Chugach Electric Association. I have completed that review, and strongly disagree with Mr. Tillinghast's conclusions. The provisions in HB 169 would not infringe on the constitutional rights of electric cooperatives. To the contrary, the Bill is narrowly tailored to protect the important constitutional right of electric cooperative members and customers not to be forced to contribute to causes to which they may object.

Mr. Tillinghast's constitutional analysis rests on the "understanding" that the Bill's requirement that consumers' consent to use of their funds for an expansion activity or a political activity is substantially equal to an outright prohibition of commercial speech. This is an unjustified leap. House Bill 169 does not prohibit electric cooperatives from engaging in political or expansion activities; it merely provides that before these costs are passed through to consumers as part of electrical rates, the cooperative inform its customer/members and receive the customers' consent. The cooperative would remain free to fund expansion or political activities from its margin regardless of customer consent,<sup>1</sup> and from its rates to the extent that the cooperative's members do consent. Thus, the

---

<sup>1</sup>In fact, an electric cooperative's use of funds that would otherwise be returned to its members as capital credits to engage in speech or other activities unrelated to its core purpose of providing electricity would appear to infringe on the constitutional rights of the members not to be compelled to contribute to speech, as discussed below. Unlike corporate shareholders, cooperative members are not free to invest elsewhere if they object to corporate spending. Nothing in this Bill, however, would prohibit cooperatives from using these funds for expressive activities.

ASHBURN AND MASON, P C.

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Edward C. Willis  
March 27, 2000  
Page 2

assumption underlying Mr. Tillinghast's analysis – that the Bill effectively prohibits speech – is incorrect. The Bill does not regulate the cooperative's speech in anyway. It merely prevents cooperatives from using their rate structure to force nonconsenting customers from contributing to these activities.<sup>2</sup>

Moreover, even if, as a result of this Bill, electric cooperatives could not afford to speak as much as they otherwise would, this would not arise to a constitutional concern. The First Amendment does not guarantee any speaker unlimited resources to broadcast his or her message.

Rather than infringing on the constitutional right of cooperatives to engage in commercial speech, House Bill 169 protects the First Amendment right of cooperative members not to be compelled to contribute to speech. The United States Supreme Court has repeatedly recognized that the First Amendment protects the right not to speak and the right not to be forced to give financial support to the speech of others, as well as the right of free speech. "At the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State." *Abood v. Detroit Board of Educ.*, 431 U.S. 209, 234-35, 97 S.Ct. 1782, 1799 (1977); *Keller v. State Bar of Cal.*, 496 U.S. 1, 110 S.Ct. 2228 (1990). Just this week, the Supreme Court confirmed that the right not to be required to contribute to the speech of others is entitled to constitutional protection. See *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. – (2000) (holding that mandatory contributions for student groups must be distributed in a viewpoint neutral manner).

Because utility customers are required to pay the applicable rate, which is established by the State, inclusion in those rates of expenses relating to objectionable speech raises the same constitutional concern as other forced associations. The New York Court of Appeals recognized this concern in two related cases holding that charitable contributions could not be included in a utility's rates. See *Cahill v. Public Service Comm'n*, 69 N.Y.2d 265, 513 N.Y.S.2d 656, 657, 506 N.E.2d 187, 188-89 (N.Y. 1986), cert. denied 484 U.S. 829, 830 108 S.Ct. 100, 101, 98 L.Ed.2d 61 (1987)) (*Cahill I*);

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<sup>2</sup>In addition, Mr. Tillinghast fails to recognize that the United States Supreme Court, in discussing the free speech rights of regulated utilities, has carefully reserved the question of whether the costs of this speech can constitutionally be passed on to ratepayers. See *Consolidated Edison Co. v. Public Service Comm'n*, 447 U.S. 530, 543 & n.13, 100 S.Ct. 2326, 2336 & n. 13 (1980) (stating that because Commission did not establish that it could not exclude costs of bill inserts from the utility's rate base, Court had no occasion to address whether utilities would be prevented from passing these costs through to ratepayers), *Id.*, 447 U.S. at 544, 100 S.Ct. at 2337 (Marshall, J., concurring), *Pacific Gas & Electric Co. v. Public Utilities Comm'n*, 475 U.S. 1, 22 n.1, 106 U.S. 903, 915 n.1 (Marshall, J., concurring) (noting that nothing in opinion or plurality opinion addresses whether State may exclude cost of mailing from utility's rate base)

## ASHBURN AND MASON, P. C.

Edward C. Willis  
March 27, 2000  
Page 3

and *Cahill v. Public Service Comm'n*, 76 N.Y.2d 102, 556 N.Y.S.2d 840, 556 N.E.2d 133 (N.Y. 1990) (*Cahill II*). In *Cahill I*, the Court held that the decision by the New York regulatory commission to allow public utilities to include charitable contributions in their rates constituted sufficient state action to state a claim for violation of First Amendment rights. In *Cahill II*, the Court held that the policy authorizing utilities to include charitable contributions in their rates did violate the First Amendment. Neither *Cahill* decision prevented the utilities from continuing to make charitable contributions from their profits.

The United States Supreme Court cases on forced contributions to the speech of others support the *Cahill* decisions. These cases generally require that only those expenses that 1) are germane to the purpose which justifies the forced association, 2) are justified by the government's interest in requiring the association, and 3) do not add significantly to the burden on free speech that is inherent in the association, are allowable.<sup>3</sup> As electric cooperatives are formed and allowed to enjoy regulated monopoly status in order to provide efficient electrical service throughout the state, the cost of expressive activities that are not germane to this purpose, or which, even if arguably germane, unjustly burden the free speech rights of the ratepayers, may not be constitutionally included in rates.

Without HB 169, electric cooperatives cannot constitutionally include in their rates the costs of any expressive activities not directly related to their core function of providing electricity to their members.<sup>4</sup> It would be difficult, however, for individual electric consumers to enforce their

---

<sup>3</sup>In *Southworth*, the Supreme Court recognized that this "germaneness" test would be unworkable in the University context, where the University seeks to stimulate all speech. The Court therefore required that money collected from students be distributed to student groups through a viewpoint neutral procedure. The Court did note, however, that "if a university decided that its students' First Amendment interests were better protected by some type of optional or refund system, it would be free to do so." This would seem to further support the Legislature's adoption of a volunteer system for ratepayer contribution to cooperative speech.

<sup>4</sup>Alaska Statute 42.05.381(a) also prevents a utility from including certain non-germane expenses in its rates.

All rates demanded or received by a public utility . . . for a service furnished or to be furnished shall be just and reasonable, however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;

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ASHBURN AND MASON, P C

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Edward C Willis  
March 27, 2000  
Page 4

constitutional rights. House Bill 169 provides an efficient mechanism to protect consumer's rights, by requiring the cooperatives to obtain consumer consent before passing the costs of certain expressive activity through to consumers. Of course, nothing in HB 169 allows a utility to charge a rate that is not also in conformity with AS 42.05.381(a) or that has not been properly approved by the Regulatory Commission of Alaska. Rather than prohibiting the cooperatives' commercial speech, HB 169 simply protects consumers from being forced to fund expression without their consent.

For these reasons, I respectfully disagree with Mr. Tillinghast's opinion. House Bill 169 would not infringe on the constitutional right of electric cooperatives to speak, even if it does reduce the funds available to them to support this speech. The right of cooperative customers not to be compelled to contribute to expressive activities or causes with which they disagree is, however, implicated, and HB 169 appears narrowly tailored to protect this important constitutional right.

Very truly yours,

ASHBURN & MASON



William S Cummings

WSC

N:\WSC\0245\HB16911

- 
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance, or
  - (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB 169**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Commerce  
 Title ELEC.COOPS:EXPANSION & POLITICAL ACTIVITY BRU  
 Component Ak Public Utilities Commission  
 Sponsor Rep. Green  
 Requester House URS Component Serial No. 346

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

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
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	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005

CHANGE IN REVENUES ( )	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time						
Temporary						

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

Prepared by Robert A. Lohr Phone 276-8222  
 Division APUC Date/Time \_\_\_\_\_  
 Approved by Commissioner [Signature] Date 5/4/99  
 Agency \_\_\_\_\_

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**Sec. 42.05.381. Rates to be just and reasonable.** (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
- (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
- (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
- (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.

(b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.

(c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.

(d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers.

(e) The commission shall adopt regulations for electric cooperatives and for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure. A cooperative or telephone utility may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative or telephone utility satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error. The commission shall adopt the regulations concerning adjustment of rates by local exchange telephone utilities on or before October 1, 1991.

(f) A local exchange telephone utility may adjust its rates in conformance with changes in jurisdictional cost allocation factors required by either the Federal Communications Commission or the Alaska Public Utilities Commission upon a showing to the Alaska Public Utilities Commission of

- (1) the order requiring the change in allocation factors;
- (2) the aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factors; and
- (3) the rate adjustment required to conform to the required shift in local revenue requirement.

(g) The commission shall allow, as a necessary and reasonable expense, all payments made to the Department of Environmental Conservation under AS 46.14.240 — 46.14.250. The commission shall allow the public utility to recover these fees through a periodic fuel surcharge rate adjustment. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980; am § 3 ch 104 SLA 1986; am § 1 ch 87 SLA 1990; am §§ 1, 2 ch 81 SLA 1991; am § 11 ch 74 SLA 1993)

**Effect of amendments.** — The 1986 amendment added subsection (e).

The 1990 amendment inserted "and for local exchange telephone utilities" in the first sentence and inserted "or telephone utility" after "cooperative" in the second and third sentences of subsection (e).

The 1991 amendment, effective June 27, 1991, added the last sentence in subsection (e) and added subsection (f).

The 1993 amendment, effective June 26, 1993, added subsection (g).

#### NOTES TO DECISIONS

**Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's intrastate rates.** *United States v. RCA Alaska Communications, Inc.*, 597 P.2d 489 (Alaska 1979).

**Lobbying expenses excluded from revenue requirement.** — The commission acted reasonably and

within its statutory authority in excluding lobbying expenses as part of a utility's revenue requirement. *Homer Elec. Ass'n v. State, Pub. Utils. Comm'n*, 756 P.2d 874 (Alaska 1988).

**Applied in Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough, 534 P.2d 549 (Alaska 1975).**



# CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.  
General Manager

March 24, 2000

Representative Bill Hudson, Chair  
House Special Committee on Utility Restructuring  
State Capitol, Room 108  
Mail Stop 3101  
Juneau, Alaska 99801-1182

Re: HB 169

Attention: Sioux Plummer

Dear Representative Hudson and Committee Members:

We understand HB 169 as an effort to prevent utilities from spending money on ill-advised takeover and political adventures. As victims of this chicanery, Chugach is very sympathetic to the rationale. However, Chugach cannot support HB 169 as a solution because:

- HB 169 would not have prevented MEA's expenditure of funds on its takeover attempt.
- The problem is not best addressed by legislation curtailing or burdening speech. Rather, the matter is best left to the ratemaking efforts of the RCA.
- HB 169 could have unintended effects which far outweigh any possible benefit.
- HB 169 is likely an unconstitutional restraint on speech.

In short, the measure would do more harm than good and for that reason we urge the Committee not to recommend approval of the bill.

HB 169 does not prevent expenditures. For this reason, MEA's attempted purchase of Chugach during the Fall of 1998 and most of 1999 would not have been prevented even if HB169 had been law.

The right place to deal with this is before the Regulatory Commission of Alaska. A.S. 43.05.381(a) already prohibits public utilities from including public relations expenditures in their rates<sup>1</sup> and the regulatory commission has traditionally not allowed these and political costs

<sup>1</sup> Although this provision is a questionable burden on commercial speech as outlined in the attached legal opinion, it has apparently never been challenged.

in rates. Electric utility rates are generally set by the RCA. The RCA is already empowered to determine whether costs such as these are legitimately included in customers' rates. The specific question of who will pay for the costs imposed by political activities or unsolicited takeover attempts can be brought before the RCA by any concerned citizen. Indeed, the issue is likely to be an issue in Chugach's upcoming rate cases.

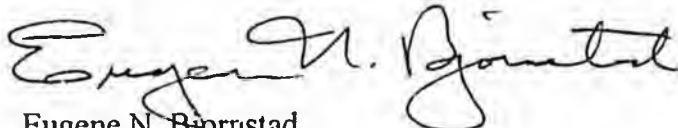
HB 169 could have unintended effects which far outweigh any possible benefit. The following are possible unintended consequences of HB 169:

- Could discourage efforts to attract new businesses or industries to Alaska. For example, efforts to interest a customer of another utility to locate additional operations in the soliciting utility's service territory could be excluded from costs included in rates even though the net effect is to benefit all customers.
- Could discourage utility efforts to develop additional services that could be sold to another utility's customers. This could defeat one of the most effective strategies in enhancing customer value by adding services that can be provided efficiently by the electric utility.
- Could discourage legitimate expenditures to educate the public as to benefits or detriments of a proposed merger or purchase of cooperative assets.

Infringements on free speech deserve careful scrutiny. The attached legal opinion demonstrates the courts' antipathy to limits on speech of the sort proposed by HB 169. The legislators should carefully consider whether the proposal meets the strict standards imposed by our constitutional guarantees of free speech.

For all of the reasons outlined above Chugach has concluded that HB 169 is evidence that bad facts can make for bad law. Chugach urges the committee not to recommend approval of this bill.

Sincerely,



Eugene N. Bjornstad  
General Manager

Attachment

ATTORNEYS AT LAW  
SIMPSON, TILLINGHAST, SORENSEN & LORENSEN  
A PROFESSIONAL CORPORATION

LESLIE LONGENBAUGH  
RONALD W. LORENSEN  
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ONE SEALASKA PLAZA, SUITE 300  
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March 20, 2000

**RECEIVED**

MAR 23 2000

GENERAL COUNSEL'S OFFICE

Mr. Don Edwards, Esq.  
General Counsel  
Chugach Electric Association, Inc.  
P.O. Box 196300  
Anchorage, AK. 99519-6300

Re: HB 169 and 1<sup>st</sup> Amendment Issues  
OUR FILE NO: 594.17

Dear Mr. Edwards:

You have asked us to review Section 1 of HB 169 (proposed AS 42.05.381(h)), which would prohibit an electric cooperative from including "expansion activities" in its rates without "first secur[ing] the [coop's existing] customer's consent to the inclusion of a charge for expansion activity." "Expansion activity" includes competitive advertising. In that regard, we believe that the legislation raises serious constitutional issues, in that: (i) advertising is protected commercial speech under both the Alaska and federal constitutions; <sup>1/</sup> and (ii) no substantial justification for this limitation on protected speech seems apparent. In light of both United States and Alaska Supreme Court decisions that involve facts very similar to those presented by HB 169, it is our view that the legislature may have a difficult time justifying this legislation. <sup>2/</sup>

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<sup>1/</sup> United States Constitution, Amendment 1; Alaska Constitution, Art. 1, Sec. 5.

<sup>2/</sup> We appreciate that existing law already prohibits the inclusion of costs for "public relations" in a utility's rates. AS 42.05.381(a). At the outset, that makes the intent of HB 169 even more difficult to understand, since "expansion activity" (the conduct restricted by HB 169) would seem to be subsumed in the existing phrase "public relations."

The rationale for simply reenforcing existing law aside, the fact that there is an existing restriction on "public relations" does not change our opinion on HB 169 for two reasons. First, existing law would be subject to the same rigorous constitutional scrutiny that would face the proposed legislation. Second, HB 169 is, if anything, even broader, and therefore more suspect, than existing law. Currently, utilities can request a case-by-case exemption from the restriction on including "public relations" costs in their rate base (AS 42.05.711(d)), but no such exemption would be possible under HB 169. Sec. 3, HB 169. Moreover, the restriction imposed by HB 169 extends to any activity that is "intended to attract customers..."--a large and vague net that could capture a wide range of speech and conduct, and for that reason be especially vulnerable to a 1<sup>st</sup> Amendment challenge.

Mr. Don Edwards, Esq.  
March 20, 2000  
Page 2

In undertaking this analysis, we appreciate that the legislation does not expressly prohibit expansion advertising. It is, however, our understanding that forcing a utility to pay for otherwise-legitimate business activity out of its margin (or, alternatively, obtain consumer-by-consumer consent) significantly affects the practicality of engaging in "expansion activity." And, any significant constraint on the exercise of protected commercial speech would be tested under the same standards as an outright prohibition on that speech. See *Alaska Transportation Commission v. AIRPAC, Inc.*, 685 P.2<sup>nd</sup> 1248, 1254 (Alaska 1984)

Commercial advertising is protected commercial speech. *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). In *Central Hudson*, the United States Supreme Court considered a case very similar to that presented by HB 169. *Central Hudson* invalidated a public utility commission regulation that banned promotional advertising by electric utilities. The ban had been justified on energy conservation grounds, but the court held that the state's justification was too tenuous and speculative to justify the ban. *Central Hudson* established a four-part analysis to test the validity of government regulation of commercial speech:

*At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.*

447 U.S. at 566.

The Supreme Court recently reaffirmed the *Central Hudson* test in *Greater New Orleans Broadcasting Association v. United States*, 527 U.S. 173, 174-5 (1999) (overbroad federal ban on private casino gambling advertisements broadcast by radio or television stations violated the First Amendment).

In applying the *Central Hudson* test, the government bears the burden of justifying the challenged restriction. *Greater New Orleans*, 527 U.S. at 174.

In *Alaska Transportation Commission v. AIRPAC, Inc.*, 685 P.2d 1248, the Alaska Supreme Court adopted the *Central Hudson* test--again, applying it in a context that was

Mr. Don Edwards, Esq.  
March 20, 2000  
Page 3

quite similar to HB 169. In *AIRPAC*, the Alaska Transportation Commission had attempted, *inter alia*, to "limit[] AIRPAC's right to solicit customers for its back-haul trip from Anchorage to Dutch Harbor." The Alaska Supreme Court ruled that the ATC's order violated AIRPAC's right to free speech because, under the *Central Hudson* test, the restrictions on AIRPAC's marketing efforts were unnecessary to further any substantial state interest. For example, the ATC's order did not relate to air safety, and "restricting an air taxi operator's right to solicit business for the flight back to its base of operations inhibits economical and efficient service." 685 P.2d 1253-54.

We have like difficulty conforming HB 169 to the *Central Hudson* test. First, expansion advertising is protected speech, in that it "concern[s] a lawful activity and...[is] not...misleading." Second, there is no "substantial state interest" apparent from the bill itself. The inclusion of promotional costs in rates to customers does not raise the involuntary participation issue that exists with respect to political activities by utilities, and therefore we doubt that the bill is motivated by any desire to protect ratepayers' rights of free speech. Compare *Homer Electric Association v. Alaska Public Utilities Commission*, 756 P.2d 874, 878 n.8 (Alaska 1988) (potential constitutional problems with requiring ratepayers to subsidize political or religious activities with which they do not agree); see also proposed AS 42.05.381(i) in Section 1 of HB 169.

Indeed, the only apparent motivation for the bill is to protect other public utilities from competition. If the sole purpose of Alaska's public utilities statutes was to preserve monopolies, an argument for the legislation might be more plausible. However, competition is not prohibited, nor even necessarily discouraged, under our public utility laws. See *Chugach Electric Association v. City of Anchorage*, 426 P.2<sup>nd</sup> 1001 (Alaska 1967).

Moreover, the final question asked by the *Central Hudson* test is whether the restriction on speech is "not more extensive than necessary" to further the statute's interest. Even to the extent that Alaska's public utility statutes are concerned with potentially unhealthy competition, AS 42.05.221(d) creates a tailored, balanced process for addressing that issue in a specific service area. With this less-intrusive means of controlling damaging competition (whenever it is, in fact, damaging), a sweeping restriction on *all* competitive speech seems especially overbroad.

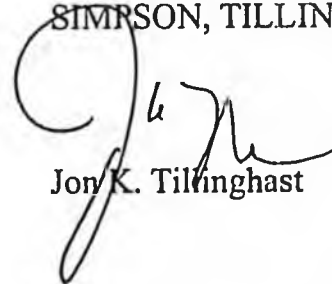
In summary, though we can't warrant that there is no conceivable justification for HB 169's constraints on protected commercial speech, none that meets the governing federal and Alaska test seems evident to us.

Mr. Don Edwards, Esq.  
March 20, 2000  
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If you have any further questions on this matter, please don't hesitate to ask.

Sincerely,

SIMPSON, TILLINGHAST, SORENSON & LORENSEN

A handwritten signature in black ink, appearing to read 'Jon K. Tillinghast', is written over the typed name. The signature is stylized with a large initial 'J' and a long horizontal stroke.

Jon K. Tillinghast



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151

March 29, 2000

ATTN Sue Plummer

The Honorable Bill Hudson, Chair  
House Special Committee on Electric Restructuring  
State Capitol, Room 108  
Mail Stop 3101  
Juneau, Alaska 99801-1182

RE: HB 169

Dear Representative Hudson and Committee Members:

Golden Valley Electric Association (GVEA) is pleased to have this opportunity to present these comments to the Committee. As we understand the issue, HB 169 was introduced in response to the MEA-attempted takeover of Chugach Electric Association last year. While Golden Valley is sympathetic to all of those who were directly affected by this effort, we believe that rate matters are best addressed by the Regulatory Commission of Alaska (RCA).

Cooperative members elect directors to represent their interests in the operation and management of the electric cooperatives. Through the election process and the right to recall directors, cooperative member-owners have a voice in their co-ops.

The RCA is the agency authorized to review utility and cooperative rates and balance the interests of consumers, cooperatives and the public. The RCA already has the authority to determine whether costs such as those identified in HB 169 are legitimately included in the rates charged to the customers of cooperatives. Additionally, customers, citizens or members of a cooperative have the right to have the issue of costs spent to acquire the customers of another cooperative or political activities addressed by the RCA.

Golden Valley respectfully urges the Committee not recommend approval of this bill for the following reasons:

- Rate issues are best addressed by the RCA.
- HB 169 may discourage efforts to attract and retain businesses in Alaska.

Letter to: Representative Bill Hudson  
March 29, 2000  
Page 2

- HB 169 may thwart efforts to develop new and innovative products and services that would be valued by consumers.
- HB 169 may infringe on the shrinking free speech rights granted under the Constitution.
- This committee is also considering legislation that would restructure the electric industry in Alaska. HB 169 might be considered, if at all, along with this legislation. However, HB 169 may indeed deter the formation of a competitive market place as anticipated in the restructuring of the electric marketplace. Competitive electric providers would likely advertise in order to attract or acquire the customers of a cooperative or utility. It may also be safe to assume that competitive electric providers would seek to recover advertising costs through the prices it charges consumers. HB 169, if approved, could potentially prevent the development of a competitive marketplace.

Thank you for considering these remarks.

Sincerely,



George B. Kitchens  
Executive Vice President

cc: GVEA Board

Remarks of Ted Carlson before the House Special Committee on Utility  
Restructuring, 8:00 A.M., Wednesday March 22, 2000.

HB 169

This legislation does not prohibit a cooperative from spending money on expansion activities or political activities. It only asks that members be advised of the expense of those activities and then given the choice of whether they wish to participate in paying for them. It gives specific direction to the utilities as to what expansion costs can and cannot be included in the rate and helps to clarify for all concerned what is up until now, apparently unclear.

State Statute is already very clear about advertising expenses, utility board election expenses, lobbying and so forth. The Regulatory Commission is given the authority to police rates to insure that a cooperative does not include costs that are not allowable under 42.05.381. The newly restructured Commission is exercising their jurisdiction and recently has opened an investigatory docket to examine whether Matanuska Electric Association has improperly included the costs of goodwill advertising, expansion activity and legal costs in their rates. In MEA's pre-filed response they establish the very reason this committee needs to redefine, exactly what is allowable and what isn't allowable in this era of preparation for restructuring.

In their pre-filed testimony before the commission in docket U99-130, MEA is asked the question "whether the cost of the attempted acquisition of Chugach Electric Association is allowable in the revenue requirement?"

Answer:

"While I'm not an attorney and believe this question is essentially a legal issue, precedent indicates that it may well be allowable, as evidenced by CEA including MEA takeover costs in its 1994 and 1995 SRF filings. MEA goes on to say "MEA's view is that while potentially allowable, it is more appropriate to normalize out this cost given that it was fairly large, non-recurring expenditure." So we have one utility saying it is allowable, and another saying it isn't. Who is right?

As you consider the future of restructuring, I think it is very important to make sure that in the interim, more ratepayer money is not squandered on strategies that ultimately fail, leaving the consumer holding the bag.

Until the legislature speaks and gives a firm directive, it appears that the cooperatives will be arguing both sides of the issue as to whether these are allowable costs, churning up valuable time and commission resources, which would be more properly directed to overall issue of the structure of the industry.

I thank you for your time and would be happy to answer questions.

(907) 688-2573 or (907) 862-2574





# POWERLINES

Vol. XII, No. 141

Published by Matanuska Electric Association, Inc.

November 1997

## Competition heats up

# Chugach goes after a neighbor's customers

**C**hugach Electric Association has declared it intends to serve customers in a sister utility's service territory, firing the opening shot in what could become a competitive war for electric utility customers.

Chugach fired a shot across Anchorage Municipal Light & Power's bow in the form of a Sept. 19 letter saying it intended to begin serving one or more of ML&P's customers - beginning with a condominium office complex that houses Ray Kreig & Associates, among other firms. Kreig is a member of Chugach's board of directors.

Chugach has also approached several other ML&P customers, including the Anchorage Daily News and Columbia Alaska Regional Hospital, claiming it can provide them with electricity at a lower cost than ML&P charges.

*Continued on page 3*



*HYDRO PURCHASE -- At the October signing, ownership of the Eklutna Hydroelectric Plant transfers from the federal government to MEA, Chugach Electric Association and Anchorage Municipal Light & Power. From left are MEA General Manager Wayne Carmony, Chugach General Manager Gene Bjornstad and Municipality of Anchorage Operations Manager George Vakalis. MEA operates the plant. (See January 1998 Powerlines for a feature story.)*

# IBEW wages 'corporate campaign' at MEA

**S**urrounded by customer-hungry utilities, MEA management believes the co-op needs to become more competitive without sacrificing customer service.

"This is a difficult task, even in the best of circumstances," said co-op spokesman Bruce D. Scott, "but MEA has been gearing up for competition in the midst of an all-out effort to resist it by higher-ups from the International Brotherhood of Electrical Workers."

MEA and the IBEW, Local 1547, are

presently negotiating separate contracts for the Information Services (computer) and Eklutna power plant employees represented by the union. But even as they sit at the bargaining table, the IBEW is waging a "corporate campaign" at the co-op, said Scott, MEA director of member and public relations.

In a corporate campaign, "the union uses all the leverage at its disposal to harass the company and make fighting the union so distracting and so expensive that management caves in on its bargaining demands,"

says an article in *Electric Light and Power Magazine*.

Author Ronald Meisburg writes that the tactics used in a corporate campaign may include conducting a public relations campaign against company management and obtaining unfavorable coverage in the media. He says other tactics include "inundating the company with information requests" and "filing unfair labor practice charges" against the company.

Whether or not IBEW leaders read Meisburg's article, Scott said they seem

*Continued on Page 2*

# IBEW wages 'corporate campaign' at MEA

*Continued from Page 1*

to be following the blueprint for a corporate campaign, such as by making an attempt to bury MEA in information requests, Scott said.

Human Resources Director James Woodcock said that this year's correspondence from the IBEW requesting information from the co-op's management fills two fat binders.

Examples include a request from the IBEW for all daily time sheets for all linemen for a period of five years – literally thousands of pieces of paper, he said. In a separate request, a union representative asked for a list of all jobs performed by engineering supervisors from Aug. 1, 1996 to date, "along with all documents related to the jobs." The demand gave MEA less than 10 days to come up with the information.

While information requests are time-consuming and costly, Scott said, "two of the biggest weapons in the IBEW's arsenal are the grievance and the unfair labor practice complaints."

Between Jan. 1, 1996 and Oct. 20, the IBEW filed 84 grievances with the co-op and a dozen unfair labor practice complaints with the National Labor Relations Board (NLRB) against MEA. Scott said 40 of those grievances were filed through Oct. 20 of this year.

"The grievances cost the co-op thousands of dollars in attorneys' fees, in addition to consuming a great deal of staff time and associated in-house expenses," he said. "If the corporate campaign continues through the end of the year, MEA's legal expenses for labor relations are on a pace to average \$240,000 per year since 1995," he said.

"But much more is at stake than attorney fees," he said. "Let's take one example, a disagreement that crops up with the IBEW on a regular basis – whether to enroll employees in the IBEW's \$1 billion pension fund or the national plan MEA participates in."

"The national plan most of MEA's employees are enrolled in has performed so well that MEA has frequently enjoyed a moratorium on investing in the fund, saving the co-op about \$2 million since 1994 and \$5.5 million in the past decade," he

said. "During this 10-year period, our members would have had to pay out millions of additional dollars if the union's pension plan had been in place."

Scott said that in the normal course of events, grievances are filed with the company and, if management and the union are unable to resolve them, the IBEW has the option to send them to arbitration (see box).

"Lately, however, the union, in its enthusiasm for the corporate campaign, has sent grievances straight to arbitration, before MEA management has even seen them," he said.

"The IBEW has even filed a complaint over our bylaws with the NLRB," he said. The union contends that a bylaw amendment proposed and approved by MEA's members last year is unlawful because it effectively excludes IBEW members and interdependent relatives from serving on the co-op's Board of Directors.

#### Subcontracting a concern

Many of the grievances filed this year stem from an amendment to MEA's bylaws approved by the co-op's members in 1994, Scott said. The amendment requires the co-op to engage in "free, open and competi-

tive bidding" and says MEA cannot require contractors to sign labor agreements with the IBEW or any other union. Chugach Electric Association has a similar bylaw.

"This bylaw has the effect of placing IBEW members in competition with non-union workers, as well as members of other unions," Scott said.

MEA awarded several major construction contracts this year to a nonunion firm – a firm that won the bids in free, open and competitive bidding, he said. "Since then, the IBEW has stepped up its corporate campaign, turning in stacks of grievances and unfair labor practice complaints, sometimes on a daily basis, even though our labor agreements allow MEA to subcontract work."

Woodcock said that about a third of the complaints filed in 1997 appear to be tied to MEA's award of contracts to the non-union firm, Irby Construction, one of several contractors performing work for MEA this year.

#### 'Preparation' expense

In 1996, the IBEW filed 40 grievances and four unfair labor practice (ULP) complaints. Later, it withdrew 14 of the grievances and three of the ULPs (the NLRB

*Continued on Page 4*

## How the grievance process works

In short, the grievance process works like this: A grievance is filed by the union and submitted to the company. The company and the union discuss the issue to see if the two parties can resolve it. If it is not resolved to the union's satisfaction, the IBEW can ask that the grievance proceed to arbitration.

Arbitration is a process whereby the parties select an individual to act as an arbitrator. The arbitrator listens to the arguments on each side and then issues a decision. The arbitrator has the authority to determine whether the grievance has merit and whether or not the company should be ordered to take steps to remedy the complaint. The arbitrator also has the authority to deny the union's grievance.

In two of MEA's three bargaining union agreements – the Engineering, Operations and Accounting unit and the Information Services unit, respectively, the employee is supposed to discuss the issue of concern with his or her supervisor and the next level of supervision prior to filing a grievance.

Under the third agreement, which covers the "Outside" unit which includes linemen, meter readers and other employees, the process starts with a grievance. MEA is negotiating an agreement covering a fourth work unit consisting of employees at the Eklutna Hydroelectric Plant.

Approximately one-half of MEA's workforce is nonunion.

# Competition heats up in the Anchorage Bowl

Continued from Page 1

Chugach unilaterally declared it would pay ML&P a rental fee – called a “wheeling” charge – for using ML&P’s lines to serve customers that presently “belong” to the municipal utility. MEA analysts said the rate chosen by Chugach “has no demonstrated basis in fact.” It would take a fairly extensive study, and likely hearings before the Alaska Public Utilities Commission (APUC), to determine what the wheeling charge should be, and whether Chugach should even be allowed to pay one, the analysts said.

ML&P responded to Chugach’s letter by filing a complaint with the APUC. Its complaint says ML&P is certified by the commission to provide service in an exclusive territory; Chugach, therefore, lacks the authority to provide service to customers within ML&P’s territory.

Both utilities provide electrical service in Anchorage. ML&P serves an area sweeping north of Tudor Road, west of Boniface Parkway and east of Arctic Boulevard. Chugach serves most of the remaining Anchorage area. MEA provides service to Eagle River and Chugiak in the northern part of the Municipality of Anchorage.

Chugach representatives have stated that the APUC has the authority to determine when and where utilities can compete. But just in case that argument fails, Chugach is supporting a bill in the state legislature that would expressly give the APUC authority to regulate competition.

In the waning hours of the last legislative session, Chugach lobbyists introduced a different bill that would allow Chugach to compete with ML&P. The bill is now in the House of Representatives’ Labor and Commerce Committee.

“MEA is opposing the bill because it would allow Chugach to set the rules for competition statewide, without grass roots involvement from the state’s other utilities,” said MEA General Manager Wayne D. Carmony. “There is a chance that the state could rush into defining how competition will be practiced before we assess the impact on ratepayers.”

“There is a possibility, for example, that power providers would sell electricity at a discount to large commercial users. But because the fixed costs of a utility’s investment do not go away, this could result in increased costs to residential customers,” he said.

Carmony said that a competitive battle is also being waged by private energy firms trying to do just that – pick up the largest

customers at a discount.

An Anchorage-based firm called Alaska Power Systems is marketing on-site diesel generators to Copper Valley Electric Association customers in Glennallen and Valdez. Another private firm, Aurora Power Resources (APR), is pooling its large commercial natural gas customers into one group “and going to all the power generators in the Railbelt and asking them to bid for the group,” according to an APR spokeswoman.

In Fairbanks, Golden Valley Electric Association (GVEA) recently signed a power supply contract with ML&P. GVEA previously had purchased as much as 300 million kilowatt-hours per year from Chugach, at less than half of what Chugach charges MEA. Chugach responded by suing GVEA for breach of contract.

MEA spokesman Bruce D. Scott said that increased competition has not been without its costs, particularly in the arena of legal expenses. MEA invested a considerable sum to fight off hostile takeover at-

Continued on Page 4

## Who’s who among Railbelt utilities

A member-owned cooperative, Chugach Electric Association, serves approximately 66,600 retail customers in Anchorage and provides wholesale electricity to MEA, Homer Electric Association, the city of Seward, Golden Valley Electric Association (GVEA) in Fairbanks and Chugach itself.

Owned by the Municipality of Anchorage, Anchorage Muni-



pal Light & Power (ML&P) serves some 46,000 customers in Anchorage and recently signed a five-year contract to supply wholesale power to GVEA, in competition with Chugach.

Incorporated in 1941 as a member-owned cooperative, MEA serves 34,000 customers in the Chugiak-Eagle River area and throughout the Mat-Su Valley.

### MEA’s next Board of Directors meetings:

Monday, November 10 - 7 p.m.  
Monday, December 8 - 7 p.m.

at MEA’s main office in Palmer.  
Call 745-3231 for directions.

Web site: [www.Matanuska.com](http://www.Matanuska.com)

### Board of Directors:

Barbara J. “Tamie” Miller	376-5636
<i>Acting President</i>	
William A. “Bill” Folsom	745-4339
<i>Secretary-Treasurer</i>	
Redney R. Cottle	376-5711
James S. Hermon	745-3558
Frank G. Mielke	688-9754
Douglas R. Mills	745-3867
Wayne D. Carmony	745-9211
<i>General Manager</i>	

# What's at stake for the IBEW

The International Brotherhood of Electrical Workers' corporate campaign at MEA is one of the ways the union is working to resist competition, said Bruce D. Scott, MEA director of co-op member and public relations.



coming much more competitive.

"This is forcing employers to operate more efficiently, to change the way we do business," he said. "We've always been extremely cost-conscious at MEA, but

we're under pressure to become even more cost-efficient and concerned about the costs we pass on to our members than we have been in the past."

He noted that MEA has instituted three rate reductions – and no rate increases – during the past 18 months.

Scott said that IBEW, Local 1547, appears to be in a financially healthy position to wage its corporate campaign at MEA (See Page 1) and tackle competition in its labor market.

According to a federal report the IBEW filed, the local had revenues of more than \$6.5 million in 1996 and assets with a fair market value of nearly \$1.7 million. All but \$200,000 of its revenues came from its dues-paying members. Scott said the dues represent only a fraction of the value of the contracts it negotiates for its members. The union paid out some \$2.1 million in gross salaries to its union hall employees in 1996, as well as \$122,000 in allowances and disbursements, says the report filed with the U.S. Department of Labor.

"The IBEW is fighting to negotiate exclusive labor agreements and maintain the ones it has," Scott said. "The 5,000 or so IBEW members have had a fairly captive labor market in Alaska for decades. Now they're facing increased competition from nonunion workers, who make up the majority of Alaskans, as well as from workers in other unions."

Scott noted that the members of both MEA and Chugach Electric Association have changed their respective bylaws during the past few years to demand the utilities engage in "free, open and competitive bidding." Both sets of bylaws say that bidders may not be required to sign labor agreements with the IBEW or any other union.

"This throws open the doors to competition," he said, adding that the availability of such "open bid" work could even attract more skilled workers to Alaska.

General Manager Wayne D. Carmony said the electric industry as a whole is be-

# Competition heats up

Continued from Page 3

tempts by Chugach in 1994 and 1995, as well as tens of thousands of dollars for APUC proceedings, he said.

He said the co-op also spent \$179,000 in a successful effort to defeat a \$5 million lawsuit filed by GVEA. The Fairbanks utility attempted to force MEA to upgrade some of its lines to allow other utilities to ship more cheap power to GVEA without providing sufficient compensation to MEA or giving adequate consideration of safety and related issues, he said.

"It is too soon to predict the shape of competition, or even if we will truly have it here in Alaska," he said. "In the Lower 48, there is more impetus for competition because major transmission lines flow from one state to another, enabling an electric utility in Georgia, for example, to purchase wholesale power from a power generation company in Florida. Alaska's power lines are all in-state."

Scott said a recent Federal Energy Regulatory Commission order directed electric utilities under its jurisdiction to allow others to use their transmission lines to provide electricity, charging them the same rates the utilities would charge themselves to provide power.

FERC also directed those utilities to "unbundle" services they provide to encourage competition, a process that ultimately could require a utility such as Chugach to break its generation, transmission, and distribution components into separate components or companies.

"Unbundling is a prerequisite if you're going to identify the costs of using a transmission or distribution line, such as Chugach is proposing to do with ML&P's lines," Scott said.

Carmony said that in its proposed 1998 budget, MEA is dividing itself on paper into a "wire company" and "service company" to better identify and control costs.

## IBEW's 'corporate campaign'

Continued from Page 2

dismissed the fourth) – a third of the 44 complaints it filed. Scott said there is a possibility the union may drop some of the dozens of grievances it has filed in 1997. But even if the union eventually drops some of its complaints, they are extremely costly to MEA and its members, he said.

"The union may know in advance that it intends to drop a grievance at some point in the future. But the co-op has to treat every complaint as if the IBEW planned to take the issue to arbitration or file a complaint with the NLRB," he said.

"Filing grievances is one way for the IBEW to put pressure on MEA management to comply with the union's demands," he said. "Filing grievances and unfair labor

practice complaints forces the co-op to hire attorneys to defend its members' interests. The IBEW's representatives then turn around and accuse management of having bad labor relations and 'wasting' funds on attorneys."

Since the IBEW began the corporate campaign, the charges against management have become part of the campaign rhetoric during the annual election for MEA directors, he said.

"Regardless of what happens Outside," Scott said, "MEA will do its best to represent the interests of our members, while preparing for the larger competitive battle with other electric utilities and private power providers."

**POWERLINES** is published monthly by Matanuska Electric Association Inc., a non-profit electric cooperative owned and operated by the people it serves.

MEA's goal is to provide reliable power at the lowest possible cost.

Questions and suggestions regarding this publication should be addressed to Bruce D. Scott, CREC or Pamela Sudloske in Member and Public Relations, 745-3231.

To report a power outage, call 745-3231 or MEA's toll-free number, 800-478-5150.



**Matanuska Electric  
Association, Inc.**

P.O. Box 2929  
Palmer, Alaska 99645-2929  
Telephone: (907) 745-3231  
Fax: (907) 745-9328  
March 27, 1998

Mr. James R. Hays  
10828 Steeple Drive  
Eagle River, AK 99577

Dear Mr. Hays:

Thank you for your interest in Matanuska Electric Association. You have written to request:

1. The annual budget for the Member and Public Relations Department for 1994,
2. The annual budget for the Member and Public Relations Department for 1995,
3. The annual budget for the Member and Public Relations Department for 1996,
4. The annual budget for the Member and Public Relations Department for 1997,
5. The annual budget for the Member and Public Relations Department for 1998,
6. A complete breakdown of the public relations sponsorship, donations and contributions for 1994,
7. A complete breakdown of the public relations sponsorship, donations and contributions for 1995,
8. A complete breakdown of the public relations sponsorship, donations and contributions for 1996,
9. A complete breakdown of the public relations sponsorship, donations and contributions for 1997,
10. A complete breakdown of the public relations sponsorship, donations and contributions for 1998,
11. The annual meeting expense for 1994,
12. The annual meeting expense for 1995,
13. The annual meeting expense for 1996,
14. The annual meeting expense for 1997,
15. The annual meeting expense for 1998,
16. The "Powerlines" production and printing expense for 1994,
17. The "Powerlines" production and printing expense for 1995,
18. The "Powerlines" production and printing expense for 1996,
19. The "Powerlines" production and printing expense for 1997,
20. The "Powerlines" production and printing expense for 1998,
21. "All costs pertaining to the publication of the Matanuska Electric Association Members Only Coupon Savings Book, including but not limited to staff time soliciting participation, printing costs, layout and design, distribution and any other associated costs to compile and publish (the) MEA Coupon Savings Book.

James R. Hays  
March 27, 1998  
Page 2

As the "proper purpose" of the request, you state that you want the information to "answer outstanding questions regarding the MEA's public relations objectives, the cost-benefit analysis and whether this is an expense that is appropriately factored into my rate base."

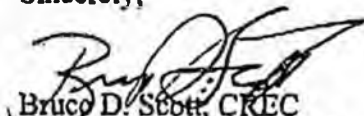
In our judgment, there is no relationship between the information you have requested and the stated purpose. However, we will provide the attached 1998 budget information as a courtesy, without waiver of our position that all requests for other than routine information must state a proper purpose. Enclosed is a copy of the 1998 Operating Budget approved by Matanuska Electric Association's Board of Directors. Including memberships in associations,<sup>1</sup> claims settlements, customer service and information, annual meeting, division personnel wages and benefits, marketing/sales expense, economic development, and other items, the Member and Public Relations Division's 1998 budget is \$861,100.

The other information you request is extensive and not readily available. Before I embark upon what could be a timely and expensive research project,<sup>2</sup> please help me to understand how the information you request will assist in accomplishing your stated objectives. In addition, please provide some details regarding the "outstanding questions" you have regarding MEA's public relations objectives. Perhaps I could address them directly.

MEA's 1998 budget, the same as those adopted in the 1994-97 period you cite, was developed by management at the direction of the member-elected Board of Directors, and approved by the Board. I am certain the Board concluded the expenses were adequately factored into our rate base, particularly since the Board has worked diligently to reduce expenses and, in fact, has approved two rate reductions during the past 12 months.

Mr. Hays, please understand that your inquiry comes at the busiest time of the year for our department, as we are preparing for the Annual Membership Meeting on April 30.

Sincerely,

  
Bruce D. Scott, CREC  
Director of Member and Public Relations

UDS/prw  
cc: Consumer Protection Division, Alaska Public Utilities Commission

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<sup>1</sup> Memberships include dues for the National Rural Electric Cooperative Association and Alaska Rural Electric Cooperative Association, Northwest Public Power Association and approximately two dozen national, state and local associations, including chambers of commerce.

<sup>2</sup> The applicable MEA Board policy requires you to prepay for that effort.



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in the right place ]

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**1999 election details**

Total number of members of record for the 1999 election	55,568
Total number of returned mail ballot envelopes	8,617
Number of validated, returned mail ballot envelopes	8,190
Percentage of valid returned mail ballot envelopes	95.1%
Number of in-person ballots issued at the annual meeting	99
Number of in-person ballots cast at the annual meeting	93
Number of ballots cast in the 1999 election	8,283
Percentage of total membership that voted in the 1999 election	14.9%
Number of members that registered at the 1999 annual meeting	204

**Proposed bylaw amendments regarding:**

Limit the amount of time to gather petition signatures for special meetings

yes 5,926, no 1,775

Limit the amount of time to gather petition signatures for removal of directors; Revise procedures for appointing replacements; Expand mail voting

yes 5,764, no 1,909

Eliminate Member Advisory Council

yes 3,803, no 3,820

Allow consecutive terms for committee members

yes 5,341, no 2,333

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## 91% say "No" to MEA

Chugach members overwhelmingly rejected Matanuska Electric Association's attempt to take over the state's largest electric utility. In balloting results announced Nov. 19, 90.8 percent of the voters said "No" to MEA's unsolicited attempt to acquire Chugach's assets. Only 9.2 percent of the voters approved the proposal.

"We're pleased but not surprised with the results of the vote," said Chugach General Manager Gene Bjornstad. "Our analysis indicated from the beginning that this was a bad deal for our members. Obviously, they felt the same way."

A total of 14,571 ballots were cast in the election. That represented 26.2 percent of the 55,608 cooperative members as of the July 21 record date for the voting.

Sixty-nine members registered for the special membership meeting held Nov. 18 at the Hotel Captain Cook to discuss MEA's proposal. In a curious turn of events, no one from MEA came forward to speak on behalf of MEA's proposal despite repeated calls for a representative from Chugach's President Chris Birch when he reached that point on the agenda.



"It makes you wonder whether they were ever serious at all," said Bjornstad. "If not, what a waste. We've heard from members of both utilities who are very unhappy about the amount of money which has been spent on this ill-conceived effort."

MEA, a wholesale customer of Chugach, launched its expensive and highly publicized campaign to take over Chugach a little more than a year ago. After studying the financial implications of the proposal, Chugach's board unanimously determined that it was flawed and misleading, and not in the best interests of Chugach members. The board recommended that the members reject it.

MEA fell far short of the votes it needed for member approval - which itself was only part of what it would have taken for the acquisition to proceed. Chugach has steadfastly maintained that the acquisition could not legally be accomplished unless both Chugach's membership and its board of directors approved the transaction. In order for Chugach members to indicate their

approval of the proposal, MEA needed a majority (or nearly 28,000) of all Chugach members, including two-thirds of those actually voting, to vote in favor of it. The 1,336 "Yes" votes cast represented a fraction of the minimum needed to indicate member approval.

"Our members have spoken clearly and thoughtfully. They have rejected MEA's distorted assessment of the present and irresponsible vision of the future," Bjornstad said.

"Chugach members were understandably skeptical of short-term promises that could not be kept or could be kept only at the expense of future ratepayers," he said. "They rejected a proposal which would have saddled Alaska's largest supplier of electricity with huge amounts of additional debt. Instead, our members have chosen professional management with a clear vision of the future.

"MEA's campaign has been costly, and MEA has sued Chugach numerous times in the past year. Notwithstanding this diversion, as an organization I am most proud of the fact that we have continued to provide excellent service to both wholesale and retail customers. This includes our efforts to bring customer choice and improved customer service offerings to the retail electric business. We have also continued to maintain a very high level of reliability and have had no non-fuel rate increases since 1994.

"We've said for some time that the three most important things to customers are reliability, price and service - and that's MEA's proposal would have done nothing to improve any of them," Bjornstad said. "It looks like Chugach members felt the same way."

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Check  
Daily  
News  
6 Nov 1998

# Chugach Members

## Why You Should Wait to Weigh the Facts

Matanuska Electric Association (MEA) wants to take over Chugach's assets and give complete control to the MEA board in Palmer. In its latest proposal, MEA also said Chugach membership would not have seats on the new MEA board. The hostile takeover proposal was originally presented to the Chugach Electric board on October 12. But the details of how it would work are sparse.

We on the Chugach board are committed to a thorough evaluation of the proposal and other opportunities for the benefit of our members. We have been working diligently with independent experts to evaluate this proposal. We think that's what you want us to do. But MEA has just decided it will no longer deal with the board you elected. They want to have their board run the process instead. That means decisions for your company would be made in the Valley.

There are many unanswered questions about the proposal. Things that just don't add up.

## Why the Rush?

MEA asked Chugach to consider the proposal, yet the original process gave us less than five business days to make a decision. Why doesn't MEA want Chugach to have time to answer the important questions?

## Where Are the Details?

We've told MEA specific information is needed to evaluate the proposal. MEA is unwilling to provide it. Why isn't MEA providing the details? With nearly a half a billion dollars at stake, we think you want us to take a close look.

## Let the Process Work.

We want to answer these and other questions before reaching a decision affecting the future of your company. Rushing the decision process is not the best thing for Chugach members.

We'll keep you updated on the process and our conclusions.

For more detailed information, log onto the Chugach web site at [www.chugachelectric.com](http://www.chugachelectric.com) for the latest updates.



*your energy company*



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E. General Manager

FOR IMMEDIATE RELEASE FOR MORE INFORMATION, CONTACT October 21, 1998 Eugene N. Bjornstad, General Manager, 762-4709

CHUGACH BOARD BEGINS EVALUATION OF MEA PROPOSAL

During an executive session of its regularly scheduled meeting on October 21, 1998, the board of directors of Chugach Electric Association, Inc. discussed the unsolicited proposal of Matanuska Electric Association to acquire Chugach's assets. Following that session, Chugach board president Pat Jasper announced that the Chugach board is committed to a thorough examination of the MEA proposal and other opportunities available to Chugach and that Chugach is working with the investment banking firm of Goldman, Sachs & Co. and the consulting arm of Deloitte & Touche in that process.

Noting that the only information provided so far by MEA concerning its proposal was presented in a joint meeting with Chugach's board and General Manager last week and in statements by MEA reported in the public media during the past week, Ms. Jasper indicated that Chugach will invite MEA to submit additional information to clarify the terms of its proposal and will continue to consult with its own staff and outside advisers to determine what course of action will be in the best interests of Chugach's members.

Chugach's board intends to continue the process of considering the MEA proposal at an executive session on November 4. The board intends to complete this process on a timely basis, but in a manner consistent with its determination to perform the careful analysis required. When the board has reached its conclusion as to the most appropriate course of action for its members, it will make a further announcement.

Chugach also released the text of a letter that it is sending to MEA today.

Chugach is the largest electric utility in Alaska. Chugach serves retail consumers at more than 68,000 metered locations from Anchorage to the northern Kenai Peninsula, and from Whittier to Tyonek. Chugach provides power to residents from Homer to Fairbanks through wholesale and economy energy service to other utilities throughout the Railbelt.



your energy company

Chugach Responds to MEA Proposal



CHUGACH ELECTRIC ASSOCIATION, INC.

October 21, 1998

Barbara J. Miller, President Matanuska Electric Association, Inc. P.O. Box 2922 Palmer, Alaska 99645

Dear Ms. Miller,

Enclosed for your information is a press release issued by Chugach this evening that describes the outcome of the board's initial discussions of MEA's unsolicited proposal to acquire the assets of Chugach. As indicated in our press release, the Chugach board is committed to a thorough examination of your proposal and other opportunities available to Chugach.

In order for the board and its advisers to analyze your proposal with the appropriate degree of thoroughness, we need additional information. Our senior staff, in consultation with our outside advisers, is in the process of putting together a preliminary list of that information and we intend to provide you that list by early next week.

We hope that MEA will give Chugach the requested information promptly in order to assist the board and its advisers. At last week's joint board meeting at which we heard of your proposal for the first time, MEA indicated that it is not willing to give Chugach's senior staff access to information in its possession relating to its proposal. The board has directed me to make clear to you that the board is unwilling to accept any limitation on the individuals with whom it chooses to consult and share this information. Such limitations are clearly inconsistent with the board's right and duty to confer with appropriate advisers. We hope that you will reconsider your position and decide to assist the board in analyzing your proposal. Our staff has significant expertise and information that we need to utilize in making our decision on your proposal. And it perplexes us that you consider some of this information relevant enough to display in overheads at our joint board meeting but at the same time want to withhold this information from our senior staff.

We also hope you will abandon your insistence that in order for us to have access to the information our consultants must personally visit your consultants in Georgia. Such a procedure involves an inordinate waste of time, effort and money on Chugach's part and would operate as a further limitation on the availability of the information to our staff and advisers.

We do not think it is constructive for you to attempt to impose the ground rules under which the Chugach board will discharge its responsibilities. We hope you will respond to our information request in the spirit of cooperation that the Chugach board displayed as it began to consider MEA's proposal tonight.

In order to ensure the efficient distribution of any further communications from MEA concerning its proposal, we ask that you direct them to Gene Bjornstad. Let me reiterate on behalf of the entire board that we are serious about our examination of your proposal, but we expect our seriousness to be reciprocated.

Sincerely, Pat Jasper, President Board of Directors

ADN 26 Oct 1998 PA-6

# They Just Don't Get It.

ADN  
18/10/1998  
P. A-8

- Chugach Electric doesn't know how to refinance interest debt that is way too high—without raising your utility rates.
- They don't know how to manage two utilities more efficiently than one—without cutting a lot of jobs.
- They don't know how to manage Chugach so they can lower rates and issue capital credits checks regularly.
- And they can't come up with a plan that will put a \$500 savings check in every member's pocket.

## **MEA can do all these things. And Chugach doesn't like it.**

So they are publicly dismissing our proposal to acquire Chugach Electric Association, calling it "deceptive and misleading."

Chugach says our financial model is "flawed"—that the numbers don't work. But a \$10 billion cooperative banking institution, familiar with both utilities, reviewed these numbers and has agreed to provide the financing.

Chugach complains they need more details from us. Do they want us to show them how to do a job they've ignored until now?

And now they are telling you not to petition for the right to decide for yourself. What are they afraid of?

## **Our offer is very simple.**

Better management. No rate increases for three years. A possible rate reduction in the fourth. More than \$200 million in savings over 25 years. A \$500 savings check for every qualified member,\* as well as voting and all the other rights of MEA member/owners.

Don't let half-truths from Chugach fool you. After all, their Board and management are worried about losing their jobs. You, however, have nothing to lose—and a bigger, better co-op to gain.

We welcome your questions and comments.  
Please call us toll-free from Anchorage: 1-800-478-5150  
between 8AM and 5PM Monday-Friday.



Matanuska  
Electric Association

**THE POWER OF AN IDEA WHOSE TIME HAS COME**

\*Subject to regulatory approval. One \$500 payment per membership, whether an individual or joint account. Members must meet three conditions:  
1) You must have been an active member of MEA for at least 12 months.

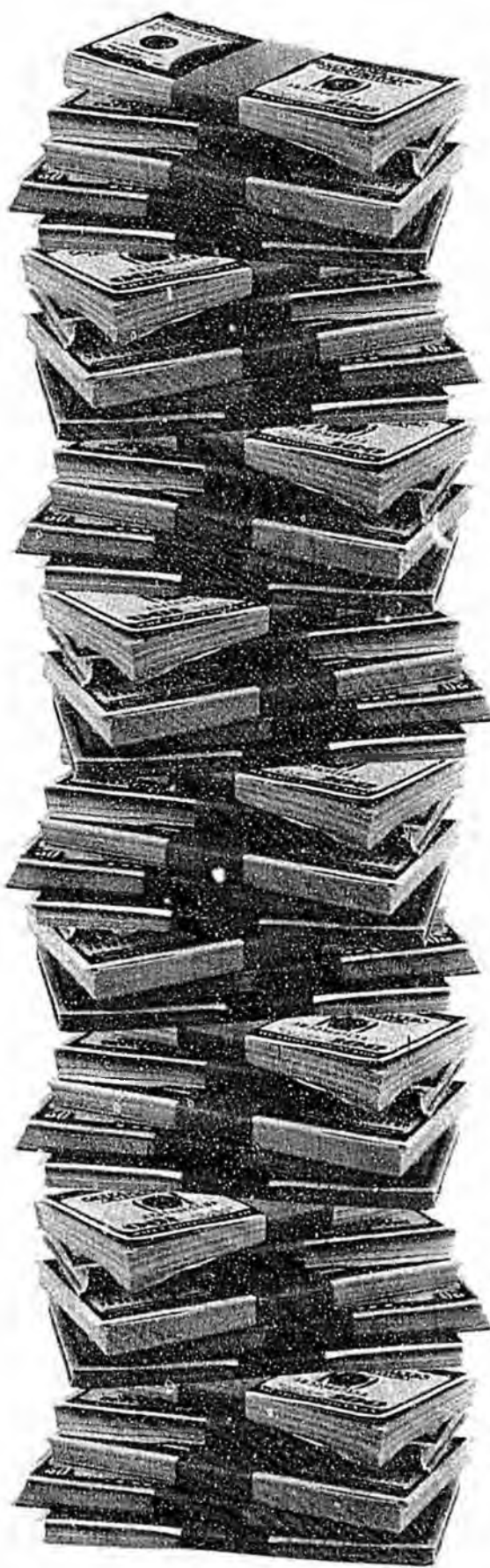
PCS ADW  
8-NOV 1998

# \$260,000

At a rate of \$10,000 a day, this is how much Chugach Electric Association's inaction has cost co-op members in unnecessary interest expense since October 12, 1998. That's the date MEA submitted a proposal to acquire CEA assets and refinance CEA's long-term debt. This money belongs in the pockets of co-op members.



Matanuska Electric Association



# MEA Wins Millions For Co-op Members.

Five months after MEA's first push for action, the Board of Chugach Electric Association finally sees the light and is refinancing its high-interest bond debt. If Chugach does it right, the potential savings can be as much as \$105 million. MEA's share should be \$27 million.

This is a huge victory for MEA. It comes after a five-month battle to acquire Chugach so that we could refinance this debt ourselves and achieve other savings from joining operations at the two utilities.

The Chugach Board rejected our acquisition offer, and claimed that refinancing wouldn't work. But MEA's Board fought on. We took the acquisition battle to Chugach members, spending money on an advertising campaign and to gather enough signatures to force a vote on this critical issue. We have asked for an advisory vote from our own members.

We also asked the Alaska Public Utilities Commission to order CEA to do the refinancing. All signs were the Commission was preparing to act. Finally, on March 17, Chugach announced they were refinancing.

Throughout, we've had to fight complaints about wasteful spending from the IBEW and its supporters. The IBEW chose this time to launch a strike against MEA. We've had to deal with lawsuits from a union supporter and an IBEW-sponsored committee to "Re-Wire the Board." But MEA's Board and management knew this was the right thing to do — so we stood our ground. And now our investment has achieved as much as a \$27 million return!

Saving money. Investing wisely. Sound management. Persistence. Service to members. Electricity at the lowest possible cost, with six rate reductions in three years. Your MEA Board of Directors is doing the job you elected us to do.



**Matanuska Electric Association**

MEA Board Members: Barbara J. "Tamie" Miller • Bill Folsom • Rod Cottle  
Craig Campbell • Rose Marie "Tiny" DePriest • Jim Hermon • Wes Pollock

“If Chugach does it right,  
MEA’s share should  
be \$27 million.”



Matanuska  
Electric Association

P.O. Box 2929 Palmer, Alaska 99645

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Anchorage, AK  
Permit #537

read that "the commission may allocate costs among the parties *excluding the commission*." We think this is inconsistent with the legislature's intent. Consequently, we reverse the APUC's cost allocation and remand for further findings as to the propriety of a 100% cost allocation in the case at bar.<sup>16</sup>

#### V. CONCLUSION

The APUC rate-setting order, insofar as it relates to the exclusion of lobbying expenses from Homer Electric's revenue requirement, is **AFFIRMED**. In accordance with the trial court's earlier order, however, we **REMAND** to the superior court with instructions to **REMAND** the matter to the APUC for a determination of the specific portion of Alaska Rural dues actually used for lobbying activities.

The APUC cost allocation order is **REVERSED** and the matter is **REMANDED** to the superior court with instructions to **REMAND** to the APUC with instructions that the APUC (1) exclude from its cost allocation any fees attributable to services performed by the Attorney General's office in connection with this proceeding, and (2) make further findings as to the propriety of a 100% cost allocation order in this case.

MATTHEWS, Chief Justice, dissenting in part.

I agree with the opinion, except as to part IV concerning the 100% cost allocation to Homer Electric.

APUC gave three reasons in support of this allocation:

1. ability to pay, finding that Homer Electric had the superior ability since it could pass the costs on to the consumer;
2. "that insofar as possible the cost causer should be the cost payer; i.e. HEA was the party whose tariff revision generated the audit and associated costs in this proceeding and should be required to bear the burden of paying those costs."; and

16. We do not mean to suggest that the 100% cost allocation is necessarily unjustified. Our holding is simply that it is an abuse of discre-

3. that "HEA was spared the expense of a full evidentiary hearing in this proceeding."

The expression of the third reason suggests that if the Commission had subjected the utility to a full evidentiary hearing and was thus responsible for needless additional work, the Commission would not have made the 100% allocation.

It seems to me that all of these reasons are appropriate for consideration and that the Commission has expressed grounds which suffice to satisfy the "just under the circumstances" statutory standard. I would therefore affirm the cost allocation.



Dan (Ike) PARKER and Parker Paving, Inc., Appellants/Cross-Appellees,

v.

NORTHERN MIXING COMPANY, C.J. Guthrie, Douglas Guthrie, and Guthrie Machinery Co., Appellees/Cross-Appellants.

Nos. S-1667, S-1737.

Supreme Court of Alaska.

May 27, 1988.

Members of de facto partnership owning asphalt plant sued each other over proper distribution of assets and losses. The Superior Court, Third Judicial District, Charles K. Cranston, J., made various findings, rendered an accounting, and issued judgment from which all parties appealed. The Supreme Court, Rabinowitz, C.J., held that: (1) trial court properly found that individual who advanced monies to de facto partnership was not member of partnership, but was creditor; (2) one partner was entitled to partnership contribution for val-

tion for the APUC to enter such an order without a more individualized consideration of the facts of the particular case.

HOMER ELECTRIC ASSOCIATION,  
INC., Appellant,

v.

STATE of Alaska, ALASKA PUBLIC  
UTILITIES COMMISSION, Appellee.

No. S-1952.

Supreme Court of Alaska.

May 20, 1988.

In connection with nonprofit electric cooperative's rate increase request, Public Utilities Commission entered orders excluding lobbying expenses from cooperative's "revenue requirement" and allocating 100 percent of costs incurred in rate-making proceeding to cooperative, and cooperative appealed. The Superior Court, Third Judicial District, Kenai, Charles K. Cranston, J., affirmed Commission on all substantive issues, but remanded for determination of specific proportion of cooperative's dues actually used for lobbying purposes, and cooperative appealed. The Supreme Court, Burke, J., held that: (1) per se exclusion of lobbying expenses from cooperative's "revenue requirement" was not abuse of Commission's discretion; (2) fees Commission paid for services performed by Attorney General's office in connection with rate-making proceeding were not "costs" recoverable by Commission; and (3) remand was required for individualized findings as to propriety of allocating 100 percent of costs of proceeding to cooperative.

Affirmed in part, reversed in part, and remanded with instructions.

Matthews, C.J., filed opinion dissenting in part.

**1. Electricity** ⇐11.3(4)

Public Utilities Commission had discretion under general statutory authority to exclude electric cooperative's lobbying expenses from cooperative's "revenue requirement," upon determination that inclusion of such costs would be contrary to best interests of electric cooperative's ratepayers, even though lobbying expenses

were not listed in mandatory exclusion provision. AS 42.05.141, 42.05.141(a)(3), 42.05.381(a).

**2. Electricity** ⇐11.3(5)

Public Utilities Commission's determination that it would not be just, fair or reasonable for electric cooperative to charge ratepayers for lobbying activities carried out on cooperative's behalf was subject to reasonable basis test upon review. AS 42.05.141, 42.05.141(a)(3), 42.05.381(a).

**3. Electricity** ⇐11.3(4)

Per se exclusion of lobbying expenses from electric cooperative's "revenue requirement" was not abuse of Public Utilities Commission's discretion in rate-making proceeding. AS 42.05.141, 42.05.141(a)(3), 42.05.381(a).

**4. Electricity** ⇐11.3(4)

"Costs" recoverable by Public Utilities Commission in rate-making proceeding did not include fees paid by Commission for services performed by Attorney General's office pursuant to explicit statutory mandate. AS 42.05.111, 42.05.111(b), 42.05.651, 42.05.651(a), 42.06.610, 42.06.610(a).

See publication Words and Phrases for other judicial constructions and definitions.

**5. Electricity** ⇐11.3(5, 7)

Determinations that electric cooperative could better pass along costs of rate-making proceeding to ratepayers and that cooperative had "caused" costs of proceeding by requesting rate increase did not justify Public Utilities Commission's allocation of 100 percent of costs of rate-making proceeding to electric cooperative; remand was required for individualized consideration of facts of particular case. AS 42.05.651(a), 42.06.140 et seq.

C.R. Baldwin, Kenai, for appellant.

Virginia A. Rusch, Asst. Atty. Gen., Anchorage, and Grace Berg Schaible, Atty. Gen., Juneau, for appellee.

Roger R. Kemppe, Donald C. Ellis, Kemppe, Huffman and Ginder, P.C., An-

merits and Homer Electric, joined by Alaska Rural as amicus curiae on the lobbying expense issue, appealed the matter to the superior court. Homer Electric argued on appeal that (1) the APUC erred in excluding lobbying expenses from Homer Electric's revenue requirement, (2) the APUC erred in including as costs those attorney's fees attributable to services performed by the Attorney General's office and, (3) the APUC abused its discretion in allocating to Homer Electric 100% of the costs incurred by the APUC in the rate making proceeding. The superior court affirmed the APUC on all substantive issues, but remanded the case for a determination of the specific proportion of Alaska Rural dues actually used for lobbying purposes. Homer Electric appeals the superior court's ruling.

## II. EXCLUSION OF LOBBYING EXPENSES

[1] The APUC's decision to exclude lobbying expenses in the case at bar was based upon its conclusion that, "as a matter of law and public policy," lobbying expenses should be excluded from public utilities' revenue requirements.<sup>4</sup> We must decide whether such a policy decision was within the APUC's legitimate statutory authority and, if so, whether there was a reasonable basis for its application in the case at bar.

The APUC's general powers and duties are defined in AS 42.05.141. That statute provides in part:

(a) The Alaska Public Utilities Commission may

....

(3) *make or require just, fair and reasonable rates, classifications, regula-*

4. The APUC's decision in this case was based upon its earlier decision on the same question in *In re Chugach Electric Ass'n*, APUC Order No. U-81-53(21)/U-83-57(9)/U-84-13(1) (1984).
5. Homer Electric adopts Alaska Rural's argument on this issue *in toto*.
6. The amendment, as originally proposed, read:  
All rates demanded or received by a public utility, or by any two or more public utilities

tions, practices, services and facilities for a public utility[.]

(Emphasis added). In addition AS 42.05.381(a) provides in part:

All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished *shall be just and reasonable*; however, a rate may not include an allowance for costs of political contributions, or public relations....

(Emphasis added).

The APUC asserts that it has been given ample authority under these provisions to exclude any operating costs, including lobbying expenses, from a utility's revenue requirement when it concludes that inclusion of such costs is contrary to the best interests of the utility's ratepayers. Alaska Rural, appearing as amicus on behalf of Homer Electric,<sup>5</sup> argues that both the wording and legislative history of AS 42.05.381(a) preclude the APUC from excluding lobbying expenses from a utility's revenue requirement.

Alaska Rural's argument is primarily one of legislative intent. As originally enacted, AS 42.05.381(a) provided only that public utility rates be "just and reasonable," as determined by the APUC under its general rate making authority, Ch. 113, § 6, SLA 1970. The statute was amended in 1976, however, to specify certain expenditures which the APUC was *required* to omit from a utility's allowable costs. Ch. 86, § 1, SLA 1976. As originally proposed, the 1976 amendment would have specifically excluded lobbying costs, as well as costs in connection with advertising, political and charitable contributions, and public relations.<sup>6</sup> The bill was amended on the floor, however, to delete the prohibitions on lob-

jointly, for a service furnished or to be furnished shall be just and reasonable; *however, no rate may include an allowance for costs of advertising, political or charitable contributions, lobbying expenses, or public relations....*

H.C.S.S.B. 50, 10th Leg., 1st Sess. (May 14, 1977) (emphasis added). These exclusions were made subject to certain exceptions not relevant here. *Id.*

bying expenses, advertising and charitable contributions.<sup>7</sup>

Alaska Rural argues that the legislature's deletion of the term "lobbying expenses" from the list amounts to a legislative determination, not only that lobbying expenses need not be excluded, but also that they may not be excluded from a utility's revenue requirement. In support of its argument, Alaska Rural points to the statements of Representative Freeman, a sponsor of the amendment to remove "lobbying expenses" from the list, who argued during debate on the measure:

Mr. Speaker . . . I am basing my objection on personal experience. . . . [A]dvertising. . . lobbying expenses, [and] charitable contributions . . . these are the sort of things that—especially the lobbying and advertising—are just part of doing business. For instance, if a utility sends a man down here to—in connection with a bill such as this, that's lobbying, and I just see no reason why you should . . . a public utility especially has to come up with money to do business somewhere and this is just part of doing business. And I see nothing to be gained by putting these kinds of restrictions on a utility.

Record of the House Floor Debate on H.C. S.S.B. 50 (May 20, 1977). Alaska Rural concludes, based upon the foregoing, that the history of AS 42.05.381(a) evidences a clear legislative intent to *allow* lobbying expenditures as part of a utility's revenue requirement. We do not agree.

The mandatory exclusion provisions of AS 45.05.381(a) simply specify certain items which the APUC *must* exclude from a utility's revenue requirement. They say nothing whatsoever about what the APUC *may* exclude under its general authority to establish "just, fair and reasonable rates." AS 42.05.141(a)(3). The legislative history upon which Alaska Rural relies suggests at most that the legislature did not intend to eliminate the APUC's discretion to allow lobbying expenses if it saw fit to do so. Even Representative Freeman's comments, however, do not suggest an intent to pro-

hibit the exclusion of such expenses where the APUC, in its discretion, determines that exclusion is appropriate.

[2] Having found no express or implied statutory prohibition on the APUC's ruling, we should reverse only if we find that the APUC had no reasonable basis for concluding that it was not "just, fair and reasonable" for public utilities to charge ratepayers for lobbying activities carried out on the utilities' behalf. *See Alaska Public Utilities Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 559 (Alaska 1975) (APUC rate making decisions generally subject to "reasonable basis" test); *Kelly v. Zamarello*, 486 P.2d 906, 917 (Alaska 1971) (reasonable basis test should be applied in cases "concerning administrative expertise as to either complex subject matter or fundamental policy formulations").

[3] In reaching its decision on the lobbying expense issue in this case, the APUC relied upon several of its earlier decisions excluding lobbying expenses. *See In re Chugach Electric Ass'n*, APUC Order No. U-81-53 (21)/U-83-57(9)/U-84-13(1) (1984); *In re Enstar Natural Gas*, APUC Order No. U-81-101 (1982); *In re RCA Alaska Communications*, APUC Order No. U-78-4(33) (1981). In those cases, the APUC noted that utility companies, in charging their customers for lobbying activities, are "presuming to determine without the prior knowledge or consent of [their] ratepayers what pending legislation is or is not beneficial to them." *In re Enstar Natural Gas*, U-81-101 at 3. It also noted that the practice of forcing ratepayers, by virtue of the utility's monopoly status, to subsidize political activities which they may not agree, has been rejected by numerous other jurisdictions. *See In re RCA Alaska Communications*, U-78-4(33) at 95-96; *see also In re Public Service Co. of Colorado*, 13 P.U.R.4th 40, 58 (Colo.Pub.Util.Comm'n 1975); *In re Washington Water Power Co.*, 24 P.U.R.4th 39, 50 (Idaho Pub.Util.Comm'n 1978); *Washington Utilities and Transportation*

(May 18, 1977).

7. *See* H.C.S.S.B. 50, am H. 10th Leg., 1st Sess.

*Comm'n v. Pacific Northwest Bell Telephone*, 26 P.U.R.4th 495, 514 (Wash.Util. & Trans.Comm'n 1978). See generally *In re Southwestern Bell Telephone*, 19 P.U.R.4th 1, 27-28 (Kansas State Corp. Comm'n 1977) (citing additional authorities). In accordance with these considerations, the APUC concluded that lobbying expenses were more appropriately borne by investors than by ratepayers, and that such activities should be financed out of profits rather than out of general operating costs.

We believe that the APUC's decision represents a logical solution to a difficult policy problem, and one which is consistent with the general regulatory trend in this arena.<sup>8</sup> We cannot say that it was without any reasonable basis. Nor can we say that it was unreasonable for the APUC to opt for a *per se* rule concerning the exclusion of lobbying expenses, rather than a case by case approach based upon the individual merits of each lobbying effort. The latter approach was explicitly abandoned by the APUC as unworkable because it required the Commission to make such "subjective and judgmental" decisions as:

Is the Legislature (or Congress) acting wisely in changing existing laws? What types of proposed legislation should be defeated? Should a utility be reimbursed for meritorious but unsuccessful lobbying efforts? How should legislation beneficial to one utility's ratepayers but detrimental to others be treated?

*In re Enstar Natural Gas*, APUC Order No. U-81-101 at 3-4 (1982). We agree

8. In fact, at least one court has held that it may be unconstitutional to force ratepayers to subsidize political or religious activities with which they do not agree. *Cahill v. Public Service Comm'n*, 69 N.Y.2d 265, 513 N.Y.S.2d 656, 657, 506 N.E.2d 187, 188-89 (N.Y. 1986), cert. denied, — U.S. —, 108 S.Ct. 100, 98 L.Ed.2d 61 (1987) (plaintiff stated cause of action for violation of First Amendment rights based on Public Service Commission practice of including charitable contributions as part of a utility's authorized expenditures).

9. Neither the APUC nor Homer Electric has contested that portion of the superior court's decision which required remand for a determination of the specific percentage of Alaska Rural dues attributable to lobbying expenses. We

with the APUC that it would be untenable to force that body into a position of having to choose between "good" lobbying and "bad" lobbying for purposes of establishing a utility's proper revenue requirements. Thus, we hold that the APUC acted reasonably and within its statutory authority in excluding such expenses altogether.<sup>9</sup>

### III. ATTORNEY GENERAL'S SERVICES AS AN ELEMENT OF COSTS

[4] Alaska Statute 42.05.651(a) grants the APUC the authority to allocate among the parties, including the Commission itself, the costs incurred by the APUC in connection with certain rate making proceedings. In this case, the APUC concluded that the fees which it was required to pay to the Attorney General's office for the use of an assistant attorney general were allocable costs within the meaning of AS 42.05.651(a).<sup>10</sup> Accordingly, it assessed \$482.06 in attorney's fees against Homer Electric, as part of its cost allocation order. Homer Electric contests the allocation, arguing that the term "costs," as used in AS 42.05.651(a), does not include attorney's fees, and that, even if it did, it would not include fees paid to assistant attorneys general who are statutorily designated as legal counsel to the Commission. See AS 42.05.111.

The APUC concluded, and the superior court agreed, that our holding in *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170 (Alaska 1986), controls this issue. In *Amerada Hess*, we

agree with the trial court's conclusion that the arbitrary 50% figure was unsupported by the evidence, and we affirm the lower court's decision as to this limited remand.

10. The State Attorney General is designated by statute as staff counsel for the Commission. AS 42.05.111. However, the two assistant attorneys general assigned to the APUC are in fact paid for through "reimbursable services agreements," under which the Commission pays the Attorney General's office some \$120,000 per year in exchange for its services. Of this figure, the Commission estimates that 46% (or \$55,000) of the services provided by these assistant attorneys general is attributable to hearings and investigations for which the Commission may recover costs under AS 42.05.651.

held that the term "costs," as used in AS 42.06.610, includes fees paid to temporary private counsel retained on a contract basis by the APUC in connection with proceedings under the Pipeline Act. We stated:

We ... reject the owners' contention that AS 42.06.610 does not authorize the allocation of attorney's fees. Pursuant to AS 42.06.610, the Commission is authorized to allocate the "costs" of the proceeding. The statute provides that "costs" include consultants' fees, but it nowhere excludes attorney's fees. When the legislature uses the term costs, it often intends to include attorney's fees. See, e.g., AS 09.60.010. The inclusion of attorney's fees in the "costs" allocable in AS 42.06.610 is consistent both with the apparent intent of the legislature to allow the APUC to recoup its costs of regulation, and with AS 42.05.141(1) which provides that the powers of the APUC shall be liberally construed to accomplish its stated purposes. Thus, we hold that AS 42.06.610 authorizes the APUC to allocate the costs incurred in hiring temporary legal counsel for a particular proceeding.

*Id.* at 1182 (footnote omitted). The APUC points to the similarity in wording between AS 42.06.610<sup>11</sup> and AS 42.05.651(a),<sup>12</sup> and argues that there is no reasoned basis upon which *Amerada Hess* can be distinguished from the case at bar. It concludes, therefore, that attorney's fees, including those attributable to the services of the Attorney

General, are clearly allocable under the statute.

We agree with the APUC that the *Amerada Hess* rationale is applicable in the context of cost allocations under AS 42.05.651(a). Contrary to the APUC's assertion, however, that decision does not justify the cost allocation order entered here. *Amerada Hess* was expressly limited to cost allocations with regard to privately contracted "temporary legal counsel." 711 P.2d at 1181-82. That decision does not suggest that the APUC is entitled to be reimbursed for the cost of services rendered by the Attorney General's office pursuant to its statutory duty under AS 42.05.111,<sup>13</sup> nor do we think that such general overhead expenditures can be reasonably justified as an element of "costs" under AS 42.05.651(a).

Alaska Statute 42.05.651(a) provides that the APUC is entitled to allocate "costs ... includ[ing] the costs of any time devoted to investigation or hearing by *hired consultants* ... [and] any *out-of-pocket expenses* incurred by the commission in the particular proceeding." (emphasis added). Under traditional principles of *ejusdem generis*, we must limit the application of the general term "costs" to those expenses which are similar in nature to the more specific terms, "hired consultants" and "out-of-pocket expenses." See 2A N. Singer, Sutherland Statutory Construction § 47.17 (Sands 4th ed. 1984). Accordingly, while it may be appropriate to allow recovery of the state's expenses with regard to privately contracted outside counsel,<sup>14</sup> we do not

11. AS 42.06.610(a) provides:

During a proceeding held under this chapter, the commission shall allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.

12. See *supra* note 3.

13. AS 42.05.111 provides:

(a) The attorney general is legal counsel for the commission. The attorney general shall

advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in proceedings before the commission in which the attorney general is representing the public interest or a party before the commission.

14. We note that the use of temporary legal counsel is expressly limited by the terms of AS 42.05.111(b) to those situations in which the Attorney General is representing the public interest or a party before the commission.

think it proper, under this statutory scheme, to permit recovery for routine services rendered by officers of the state pursuant to an explicit statutory mandate.

Under the broad reading suggested by the APUC, we can conceive of no state expense incurred in connection with APUC rate making proceedings which would fall outside the scope of the term "costs" under AS 42.05.651(a). In our view, the term "costs" was never intended to be so broadly construed. Thus, we hold that the APUC erred in allocating as part of its costs those fees attributable to services performed by the Attorney General's office in connection with this proceeding.

#### IV. 100% COST ALLOCATION TO HOMER ELECTRIC

[5] Alaska Statute 42.05.651(a) allows the APUC to allocate the costs of rate making proceedings "among the parties, including the commission, as is just under the circumstances." In determining whether an allocation is "just under the circumstances," the Commission may consider "the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances." AS 42.05.651(a).

In the case at bar, Homer Electric and the APUC were the only parties. The APUC allocated 100% of the costs of the proceeding to Homer Electric. The primary justifications offered by the Commission in support of this result were (1) that Homer Electric had a greater ability to pay because Homer Electric could pass the costs on to its ratepayers, while the APUC "must function under budgetary limitations," and (2) that, in fairness, "the cost-causer should be the cost-payer," and Homer Electric created these costs by filing its tariff revisions. We agree with Homer Electric that such considerations, by themselves,<sup>15</sup> are insufficient to justify the allocation in this case.

15. The Commission also noted that "Homer Electric was spared the expense of a full evidentiary hearing." However, this consideration is essentially neutral in character; the Commission was equally "spared" such costs. Moreover, AS 42.05.651(a) provides that costs should

In *Amerada Hess*, 711 P.2d at 1180, we upheld the cost allocation scheme established under the Pipeline Act against a constitutional challenge claiming that the statute violated due process by allowing the Commission to be a "judge in its own cause" as to liability for costs. We stated:

We conclude that the dual role of the APUC as both administrator of its own budget and adjudicator of costs does not violate state due process if sufficient safeguards exist against APUC's discretion. In this case, the APUC's issuance of a reasoned decision explaining its cost allocation was sufficient safeguard against the APUC's abuse of discretion. *We can adequately check the APUC's exercise of discretion by reviewing a decision setting forth the agency's factual premises and substantive considerations.*

*Id.* (emphasis added). We believe that this is an appropriate case in which to act as a check on the APUC's discretion.

We do not question the APUC's general authority to determine the appropriate proportion of the costs to be borne by each party in a rate making proceeding. However, we are disturbed by the reasoning of the APUC in this case. The factors upon which the APUC order is based, *i.e.*, that Homer Electric can better pass along its costs and that Homer Electric "caused" the costs in this proceeding by requesting the rate increase, would appear to be present in virtually every case. Indeed, the APUC's arguments suggest that it may be the Commission's regular policy that utility companies bear all costs in rate making proceedings. Such a policy is contrary to the clear wording of AS 42.05.651(a), which allows the Commission to allocate costs among the parties "*including the commission.*" To allow the APUC to base its findings as to its own liability upon such superficial and recurring grounds would be tantamount to interpreting the statute to

be allocated among the parties as is "just," whether they are incurred in hearings or investigations. Thus, the fact that this matter did not go to a "full evidentiary hearing" is not controlling.

read that "the commission may allocate costs among the parties *excluding the commission*." We think this is inconsistent with the legislature's intent. Consequently, we reverse the APUC's cost allocation and remand for further findings as to the propriety of a 100% cost allocation in the case at bar.<sup>16</sup>

#### V. CONCLUSION

The APUC rate-setting order, insofar as it relates to the exclusion of lobbying expenses from Homer Electric's revenue requirement, is **AFFIRMED**. In accordance with the trial court's earlier order, however, we **REMAND** to the superior court with instructions to **REMAND** the matter to the APUC for a determination of the specific portion of Alaska Rural dues actually used for lobbying activities.

The APUC cost allocation order is **REVERSED** and the matter is **REMANDED** to the superior court with instructions to **REMAND** to the APUC with instructions that the APUC (1) exclude from its cost allocation any fees attributable to services performed by the Attorney General's office in connection with this proceeding, and (2) make further findings as to the propriety of a 100% cost allocation order in this case.

MATTHEWS, Chief Justice, dissenting in part.

I agree with the opinion, except as to part IV concerning the 100% cost allocation to Homer Electric.

APUC gave three reasons in support of this allocation:

1. ability to pay, finding that Homer Electric had the superior ability since it could pass the costs on to the consumer;
2. "that insofar as possible the cost causer should be the cost payer; i.e. HEA was the party whose tariff revision generated the audit and associated costs in this proceeding and should be required to bear the burden of paying those costs."; and

<sup>16</sup> We do not mean to suggest that the 100% cost allocation is necessarily unjustified. Our holding is simply that it is an abuse of discre-

3. that "HEA was spared the expense of a full evidentiary hearing in this proceeding."

The expression of the third reason suggests that if the Commission had subjected the utility to a full evidentiary hearing and was thus responsible for needless additional work, the Commission would not have made the 100% allocation.

It seems to me that all of these reasons are appropriate for consideration and that the Commission has expressed grounds which suffice to satisfy the "just under the circumstances" statutory standard. I would therefore affirm the cost allocation.



Dan (Ike) PARKER and Parker Paving, Inc., Appellants/Cross-Appellees,

v.

NORTHERN MIXING COMPANY, C.J. Guthrie, Douglas Guthrie, and Guthrie Machinery Co., Appellees/Cross-Appellants.

Nos. S-1667, S-1737.

Supreme Court of Alaska.

May 27, 1988.

Members of de facto partnership owning asphalt plant sued each other over proper distribution of assets and losses. The Superior Court, Third Judicial District, Charles K. Cranston, J., made various findings, rendered an accounting, and issued judgment from which all parties appealed. The Supreme Court, Rabinowitz, C.J., held that: (1) trial court properly found that individual who advanced monies to de facto partnership was not member of partnership, but was creditor; (2) one partner was entitled to partnership contribution for val-

tion for the APUC to enter such an order without a more individualized consideration of the facts of the particular case.



**Matanuska Electric  
Association, Inc.**

P.O. Box 2929  
Palmer, Alaska 99645-2929  
Telephone: (907) 745-3231  
Fax: (907) 745-9328

April 13, 2000

Honorable Norman Rokeberg  
Chairman, Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801

Dear Representative Rokeberg:

~~Although amended, HB169 still presents an impossible straight-jacket for regulated electric utilities.~~

No business can function if communications with owners are minutely regulated or prohibited. HB169 envisions that any owner (and Matanuska Electric Association has over 30,000 different owners) can object to any expenditure at any time and request their 1/30,000 share returned to them.

This is obviously an absurd business practice.

Why does this legislation apply only to regulated electric companies? Why not telephone? Why exempt Enstar?

Business is changing. Chugach Electric has gone into the internet business buying several local companies. Will every expenditure made in that endeavor be subject to refund to one of their owners? If Homer Electric and Matanuska Electric attempt to offer full energy service to consumers, including home heating fuel, fuel cells, or propane or even consolidated one stop shopping for home repair, how does HB169 apply?

MEA believed refinancing Chugach debt would save our joint memberships \$100 million. We spent under half a million to pursue that objective. That was a wise business decision and one supported in an advisory vote by 59 percent of MEA members.

ARECA opposes this bill. Does even one utility in Alaska support HB169?

The business world is changing and becoming more competitive, but increased restrictive regulations forced by HB169 that simply singles out electric utilities is a step backwards, not forwards.

RECEIVED  
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Honorable Norman Rokeberg  
April 13, 2000  
Page 2

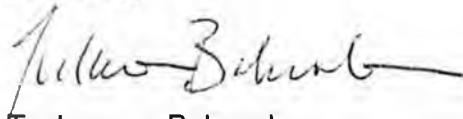
Finally, if every member has a new right to ask to be reimbursed for any expenditure they believe is not directly related to providing electricity, I assure you MEA will be forced to stop donating to community activities. It has been a corporate decision to help numerous local groups, schools, parks, Chambers of Commerce, and be an active member in the communities we serve.

HB169 effectively prohibits any donations to sports, schools, scholarships, parks, Boys and Girls Clubs, etc. A process by which every member can ask to be reimbursed for their 1/30,000 share of any donation makes it impossible to make donations.

HB169 simply mirrors an IBEW proposed bylaw in 1999 which MEA members rejected.

~~I respectfully urge you to vote against HB169.~~

Sincerely,



Tuckerman Babcock  
Manager of Government and Strategic Affairs

mat  
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cc: Members of House Labor & Commerce Committee

1-LS0766M  
Cramer  
4/17/00

J. Green

CS FOR HOUSE BILL NO. 169( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to electric and telephone cooperatives, including expansion  
2 activities and political activities of electric and telephone cooperatives."

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

4 \* Section 1. AS 10.25.010 is amended by adding new subsections to read:

5 (c) An electric or telephone cooperative may only include the cost of  
6 expansion activity in its rates to a member if the cooperative

7 (1) advised its members that a portion of the rates would be used for  
8 expansion activities;

9 (2) identified for members how much of the rate would be used for  
10 expansion activities;

11 (3) advised members that the cooperative would not discriminate  
12 against or refuse to serve a member who opposed including the cost of expansion  
13 activity in rates; and

14 (4) received approval of a majority of the cooperative's board of

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directors for including the cost of expansion activity in rates.

(d) An electric or telephone cooperative may only include the cost of political activity in its rates to a member if the cooperative

(1) advised its members that a portion of the rates would be used for political activities;

(2) identified for members how much of the rate would be used for political activities;

(3) advised members that the cooperative would not discriminate against or refuse to serve a member who opposed including the cost of political activity in rates; and

(4) received approval of a majority of the cooperative's board of directors for including the cost of political activity in rates.

(e) In this section,

(1) "expansion activity" means an activity that is intended to attract customers for electrical service to an electric cooperative from customers of another electric public utility;

(2) "political activity" means an activity intended to advocate for a political or policy position not directly related to the certificated services of the cooperative.

\* Sec. 2. AS 42.05.381 is amended by adding a new subsection to read:

(k) A telephone or electric cooperative may only include the cost of expansion activity or political activity, as defined in AS 10.25.010, in its rates if it has complied with AS 10.25.010.

**HB**

**183**

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: April 20, 1999

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-10-99

The LABOR AND COMMERCE Committee considered:

HB 183

HOUSE BILL NO. 183

ALASKA PUBLIC UTILITIES COMMISSION

"An Act relating to the powers and duties of the chair of the Alaska Public Utilities Commission; relating to membership on the Alaska Public Utilities Commission; and relating to the annual report of the Alaska Public Utilities Commission."

recommends it be replaced with the following committee substitute CS # HB 183(L+C)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/DMA) \_\_\_\_\_

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

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

zero fiscal note(s) DCEd

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>Jerry Sanden</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>				<input checked="" type="checkbox"/>
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>John Harris</i>			<input checked="" type="checkbox"/>	
<i>Van Koley</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE

*Van Koley*

5-10-99

*Not considered  
Send to H Finance*

**Amendments for discussion**

**HB 183**

**House Labor & Commerce Committee**

**May 5, 1999**

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 183(L&C), Draft Version "K"

1 Page 1, line 5, following "commission;":

2 Insert "relating to members and employees of the Alaska Public Utilities  
3 Commission;"

4 Page 3, line 14, following "(a)":

5 Insert "The chair of the commission is responsible for directing the overall  
6 operation of the commission."

7 Page 3, line 17:

8 Delete "The"

9 Insert "Under the direction of the chair, the [THE]"

10 Page 3, line 26:

11 Delete "contract for"

12 Insert "enter into a contract for no more than \$5,000 to [AND]"

13 Page 3, line 27:

14 Delete "commission"

15 Insert "chair [COMMISSION]"

16 Following ".":

17 Insert "The commission may contract for and engage the services of  
18 consultants and experts the commission considers necessary."

19 Page 3, following line 27:

20 Insert a new bill section to read:

1       \*\* Sec. 7. AS 42.05.131 is amended by adding new subsections to read:

2               (c) Members and employees of the commission, except clerical and secretarial  
3       staff, are subject to AS 39.50. Members and employees of the commission are subject  
4       to AS 39.52.

5               (d) A member of the commission is disqualified from voting on any matter  
6       before the commission in which the member has a conflict of interest."

7       Renumber the following bill sections accordingly.

8       Page 5, line 27:

9               Delete "sec. 7"

10              Insert "sec. 8"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 183(L&C), Draft Version "K"

1 Page 3, following line 12:

2 Insert a new bill section to read:

3 "\* Sec. 6. AS 42.05 is amended by adding a new section to read:

4 Sec. 42.05.115. Powers and duties of commission chair. (a) The chair of  
5 the commission shall

6 (1) employ the commission staff;

7 (2) establish and implement a time management system for the  
8 commission;

9 (3) assign the work of the commission to members and staff of the  
10 commission so that matters before the commission are resolved as expeditiously and  
11 competently as possible; when assigning a matter, the chair shall also set a date by  
12 which time the matter should be completed.

13 (b) The chair of the commission may appoint a hearing officer to hear a  
14 matter that has come before the commission; a member of the commission may serve  
15 as hearing officer.

16 (c) When the chair of the commission believes that it is in the public interest  
17 for the commission to participate as a party in an adjudicatory matter, the chair shall  
18 direct the commission staff to do so."

19 Renumber the following bill sections accordingly.

20 Page 5, line 27:

21 Delete "sec. 7"

22 Insert "sec. 8"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 183(L&C), Draft Version "K"

1 Page 4, line 13, following "":

2       Insert "The commission shall adopt regulations by December 31, 1999, that  
3 establish standards of timeliness for the types of cases that come before the commission.  
4 The commission shall establish the standards based in part on degrees of complexity of  
5 the cases. Except as provided in AS 42.05.171, when a matter comes for decision before  
6 the commission, the chair shall appoint a hearing panel composed of three or more  
7 commissioners to hear and decide the case. The panel shall exercise the powers of the  
8 commission with respect to the matter. A decision of a hearing panel may be appealed  
9 to the commission if there is an allegation in the appeal that action taken or a decision  
10 made by the commission is contrary to commission precedent and is not based on an  
11 intervening change in law. The commission may grant or deny the application to  
12 appeal. If a decision of a hearing panel is not subject to appeal to the commission or  
13 if the commission denies an application to appeal, the decision of the hearing panel is  
14 a final decision for purposes of appeal to the courts."

15 Page 4, line 26:

16       Delete "three or more commissioners"

17       Insert "a hearing panel appointed under AS 42.05.151(b) [THREE OR MORE  
18 COMMISSIONERS]"

19 Page 4, line 30:

20       Delete "commissioners"

21       Insert "panel [COMMISSIONERS]"

22 Page 5, following line 17:

1           Insert a new bill section to read:

2           **\*\* Sec. 12.** AS 42.06 is amended by adding a new section to read:

3                       **Sec. 42.06.155. Commission decision-making procedures.** The commission  
4           shall comply with AS 42.05.151(b) for matters that come before the commission for  
5           decision."

6           Renumber the following bill sections accordingly.

7           Page 5, following line 29:

8           Insert a new bill section to read:

9           **\*\* Sec. 17. TRANSITIONAL PROVISION.** Litigation, hearings, and other proceedings  
10          pending under procedures authorized by a law amended by this Act continue in effect and  
11          may be completed notwithstanding an amendment made by this Act."

12          Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 183(L&C), Draft Version "K"

1 Page 1, line 10, following "Commission;":

2 Insert "relating to regulatory cost charges;"

3 Page 5, following line 17:

4 Insert new bill sections to read:

5 \*\* Sec. 12. AS 42.05.254(a) is amended to read:

6 (a) A regulated public utility operating in the state shall pay to the  
7 commission an annual regulatory cost charge in an amount not to exceed the  
8 maximum percentage of adjusted gross revenue that applies to the utility sector  
9 of which the utility is a part. The total regulatory cost charges that the  
10 commission expects to collect from all regulated public utilities and regulated  
11 pipeline carriers may not exceed .8 percent of the total adjusted gross revenue of  
12 all regulated public utilities and the total gross revenue of all regulated pipeline  
13 carriers [DERIVED FROM OPERATIONS IN THE STATE, AS MODIFIED  
14 UNDER (c) OF THIS SECTION IF APPROPRIATE]. An exempt utility shall pay  
15 the actual cost of services provided to it by the commission.

16 \* Sec. 13. AS 42.05.254(b) is amended to read:

17 (b) The commission shall by regulation establish a method to determine  
18 annually the amount of the regulatory cost charge for a public utility. If the amount  
19 the commission expects to collect under (a) of this section and under AS 42.06.286(a)  
20 exceeds the authorized budget of the commission, the commission shall, by order,  
21 reduce the percentages determined under (i) [SET OUT IN (a)] of this section so  
22 that the total amount of the fees collected approximately equals the authorized budget  
23 of the commission for the fiscal year.

24 \* Sec. 14. AS 42.05.254(h) is amended by adding a new paragraph to read:

1 (5) "adjusted gross revenue" means the gross revenue of a utility as  
2 modified under (c) of this section, if appropriate.

3 \* Sec. 15. AS 42.05.254 is amended by adding a new subsection to read:

4 (i) The commission shall by regulation establish a method to determine  
5 annually the maximum percentage of adjusted gross revenue that will apply to each  
6 regulated public utility sector and the maximum percentage of gross revenue that will  
7 apply to each regulated pipeline carrier sector. The method established shall allocate  
8 the commission's costs, other than the cost of services provided to exempt utilities,  
9 among the regulated public utility sectors and the regulated pipeline carrier sector  
10 based on the relative amount of the commission's annual costs that is attributable to  
11 regulating each sector.

12 \* Sec. 16. AS 42.06.286(a) is amended to read:

13 (a) A pipeline carrier operating in the state shall pay to the commission an  
14 annual regulatory cost charge in an amount not to exceed the maximum percentage  
15 of gross revenue that applies to regulated pipeline carriers. The total regulatory  
16 cost charges that the commission expects to collect from all regulated pipeline  
17 carriers and regulated public utilities may not exceed .8 percent of the total gross  
18 revenue of all regulated pipeline carriers and the total gross revenue of all  
19 regulated public utilities [DERIVED FROM OPERATIONS IN THE STATE]. A  
20 regulatory cost charge may not be assessed on pipeline carrier operations unless the  
21 operations are within the jurisdiction of the commission.

22 \* Sec. 17. AS 42.06.286(b) is amended to read:

23 (b) The commission shall by regulation establish a method to determine  
24 annually the amount of the regulatory cost charge. If the amount the commission  
25 expects to collect under (a) of this section and under AS 42.05.254(a) exceeds the  
26 authorized budget of the commission, the commission shall, by order, reduce the  
27 percentage determined under (f) [SET OUT IN (a)] of this section so that the total  
28 amount of the fees collected approximately equals the authorized budget of the  
29 commission for the fiscal year.

30 \* Sec. 18. AS 42.06.286 is amended by adding a new subsection to read:

31 (f) The commission shall by regulation establish a method to determine  
32 annually the maximum percentage of gross revenue that will apply to each regulated

1 pipeline carrier sector and the maximum percentage of gross revenue that will apply  
2 to the regulated public utility sector in accordance with AS 42.05.254(i)."

3 Renumber the following bill sections accordingly.