



**HB**

**74**

# STATE OF ALASKA

*Interim:*

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Fairbanks, Alaska 99701  
(907) 456-7423  
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*Session:*

State Capitol Building  
Juneau, Alaska 99801  
(907) 465-3466  
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## REPRESENTATIVE JIM HOLM DISTRICT 9

### HB 74

### "An Act relating to enhanced 911 surcharges"

## Sponsor Statement

18 January 2005

Enhanced 9-1-1 technology is sweeping the nation. This enhanced emergency service provides a faster, more efficient means of rescue to the citizens of Alaska by immediately providing the dispatcher with the identity and physical location of a caller. Bottom line: Enhanced 9-1-1 can and does save lives.

Currently AS 29.35 gives a municipality the ability to cover the cost of the Enhanced 9-1-1 through a minimum surcharge of only fifty cents in Anchorage and seventy-five cents in the rest of the state. Municipalities, not the State of Alaska, are paying for the Enhanced 9-1-1 system and operational costs. The burden of these costs is borne however by local property taxes. We believe that the users of the service, and those that benefit from it, should pay their fair share and that the burden should not solely be on the property tax payers.

This bill is about local control and local option. Municipalities run the Enhanced 9-1-1 to better serve their communities. If passed, HB ### will give municipalities the option to diversify their revenue stream for Enhanced 9-1-1 through an increased surcharge. However, Municipalities may only impose an increased surcharge by ordinance and they must review their costs annually to make sure any surcharge is not excessive. The people of Alaska will have more control over their local government and their public safety. Enhanced 9-1-1 is a true asset to any community and is a necessary tool in saving lives.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 19, 2005

**SUBJECT:** Enhanced 911 surcharges; sectional summary (House Bill 74)

**TO:** Representative Jim Holm  
Attn: Matthew Rudig

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

**Sec. 1.** Limits a municipality to the use of an ordinance for providing an enhanced 911 system and imposing an enhanced 911 surcharge, rather than permitting this to be done also by resolution. Permits a surcharge to be imposed only once a month. Requires a public hearing for the annual review of the surcharge by the governing body. Eliminates the cap on the amount of a surcharge imposed in existing law, and the distinction between the amount of surcharge that may be imposed by larger municipalities, and the amount that may be imposed by smaller municipalities.

**Sec. 2.** Eliminates provisions in existing law limiting the enhanced 911 surcharge to one per customer on a local exchange access line for a wire line telephone and one for each wireless telephone number. Also eliminates the provision limiting the number of surcharges that may be imposed on a customer with many local exchange access lines to 100.

**Sec. 3.** Permits a municipality to impose a point-of-purchase 911 surcharge from prepaid wireless telephone accounts. This surcharge may not exceed one percent of the purchase value.

TBC:jad  
05-028.jad

## **E-911 SURCHARGE QUESTIONS AND ANSWERS**

### **What is Enhanced 911?**

We all know that when we dial 911 we get connected to an emergency operator. Enhanced 911 or E-911 is a system that gives the operator important information about the call. Much like Caller ID on your phone, it identifies the number that is calling as well as the address of the phone. In the case of a cellular phone call, it will soon be able to identify the location of the caller.

### **Why does there have to be a surcharge to provide E-911 service?**

There does not need to be a surcharge for a municipality to offer E-911 service. The proposed legislation offers a surcharge as a funding tool but does not mandate it be imposed. Most cities offering E-911 service pay for the service partially with a surcharge and partially with other sources of revenue such as property tax or sales tax.

### **What does the State of Alaska pay toward E-911 service?**

Nothing, except for the same surcharge you and I might pay. Some communities used the proceeds from the Safe Communities & Revenue Sharing and the Community Matching Grants Programs to pay for a portion of their E-911 service, but those State programs were eliminated in 2002.

### **Shouldn't there be a cap on what a city can assess as a surcharge?**

Each city should be allowed to determine what is best for their community. What is right for Anchorage may not be right for Nome. As with other municipal revenue sources such as sales tax or property tax, there should be not cap imposed by the State.

### **Won't we have the highest surcharge in the nation?**

Not necessarily. Existing surcharge rates range from \$.35 to \$4.00 per month (North Carolina) and many E-911 providers are reassessing the current rates as costs for technology increase.

### **Won't the phone companies be blamed for any surcharge increase?**

An explanation of the charge can and should be put on the phone bill with a local government contact number for any phone subscriber to call with questions.

**How can we trust city officials to not charge too much?**

There are several safeguards in place. First, the surcharge cannot be changed without an ordinance, which requires a public hearing. Second, the surcharge may only be used for E-911 & related dispatch services. An annual review of the costs and revenues of the program are required to be made. Third, the assembly and council members are elected officials. If they make decisions that are unacceptable by their community, they risk losing re-election.

**Can the surcharge be used to buy fire engines and ambulances?**

No. The surcharge may only be used for E-911 communications and related emergency dispatch services, such as to pay for the operator who answers the emergency call. Equipment and manpower to respond to the call cannot be paid for with surcharge revenues.

**Isn't this an urban issue that does nothing for rural Alaska?**

It's true that this legislation does not solve the problem of providing E-911 service in all areas of the state, but it does give all communities a means of paying for part of the service that they did not have before. For example, Nome currently has a surcharge in place to help them pay for E-911 service in the future. Kotzebue has been considering a surcharge for their area as well. Without the surcharge, they may not be able to obtain the resources needed to implement this vital service.

**What will happen if the surcharge limit isn't raised?**

For those that currently have an E-911 system, it will delay or eliminate their ability to upgrade to the latest technology, such as the ability to identify the location of cell phone calls. For those that are considering adding E-911 service, it will make it more difficult to implement the service.

**Isn't the existing surcharge a large part of a monthly phone bill?**

No. A typical telephone bill in Alaska is about \$25.00, excluding long distance charges. The current \$.50 surcharge in Anchorage is about 2% of the total bill. A similar but much less sophisticated telephone service, Caller ID costs telephone subscribers in Alaska \$6.00 per month or more, depending on the carrier and location.

# Alaska State Legislature

Rep. Gabrielle LeDoux  
Rep. Pete Kott  
Rep. Mark Neuman  
Rep. Sharon Cissna  
Rep. Woodie Salmon



State Capitol, Room 124  
Juneau, AK 99801-1182  
Co-Chairs  
Rep Kurt Olson  
(907) 465-2693 FAX 465-3335  
Rep. Bill Thomas  
(907) 465-3732 FAX 465-2652

## COMMUNITY & REGIONAL AFFAIRS COMMITTEE

February 16, 2005

To: Representative Jim Holm

From: Representative Kurt Olson  
Representative Bill Thomas  
Co-Chairs, CRA


Re: HB-74

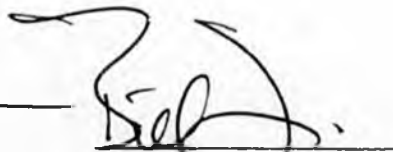
Jim,

As you are aware, SB100 is moving through the Senate and has the support of most communities, emergency service providers, telecommunications companies, and NENA.

HB 74 has little support. Any bill with a cap over \$2.00 will not get out of either the House or the Senate. In the event you wish to go forward, we have prepared a committee substitute of your bill that will have support and a reasonable chance of becoming law. We have attached a copy for your review.

Let us know if you want us to proceed with CS HB 74 (CRA) 24-LS0043/L and we will schedule it for next week.

  
Kurt Olson

  
Bill Thomas

24-LS0043\L

Cook

2/15/05

**CS FOR HOUSE BILL NO. 74(CRA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE HOLM

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to enhanced 911 surcharges imposed by a municipality; and providing  
2 for an effective date."

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

4 \* Section 1. AS 29.35.131(a) is amended to read:

5 (a) A municipality may, by resolution or ordinance, elect to provide an  
6 enhanced 911 system at public safety answering points and [,] may purchase or lease  
7 the enhanced 911 equipment or service required to establish or maintain an enhanced  
8 911 system at public safety answering points from a local exchange telephone  
9 company or other qualified vendor. The municipality [, AND] may impose an  
10 enhanced 911 surcharge [, IN AN AMOUNT TO BE DETERMINED BY THE  
11 MUNICIPALITY,] on all local exchange access lines that provide telephone service to  
12 wireline telephones in the area to be served by the enhanced 911 system and [. A  
13 MUNICIPALITY THAT PROVIDES SERVICES UNDER AN ENHANCED 911  
14 SYSTEM MAY ALSO BY RESOLUTION OR ORDINANCE IMPOSE AN

1 ENHANCED 911 SURCHARGE] on each wireless telephone number that is billed to  
2 an address within the enhanced 911 service area. An [FOR A MUNICIPALITY  
3 WITH A POPULATION OF 100,000 OR MORE, AN ENHANCED 911  
4 SURCHARGE MAY NOT EXCEED 50 CENTS PER MONTH FOR EACH  
5 WIRELESS TELEPHONE NUMBER OR 50 CENTS PER MONTH FOR EACH  
6 LOCAL EXCHANGE ACCESS LINE FOR WIRELINE TELEPHONES. FOR A  
7 MUNICIPALITY WITH FEWER THAN 100,000 PEOPLE, AN] enhanced 911  
8 surcharge may not exceed \$2 [75 CENTS] per month for each wireless telephone  
9 number and \$2 [OR 75 CENTS] per month for each local exchange access line for  
10 wireline telephones unless the surcharge is imposed by ordinance approved by the  
11 voters of the enhanced 911 service area. The amount of surcharge imposed for  
12 each wireless telephone number must equal the amount imposed for each local  
13 exchange access line for wireline telephones, and the billing method used for both  
14 types of surcharge must be substantially similar. An enhanced 911 service area  
15 may be all of a city, all of a unified municipality, or all or part of the area within a  
16 borough and may include the extraterritorial jurisdiction of a municipality in  
17 accordance with AS 29.35.020. The governing body of a municipality shall review an  
18 enhanced 911 surcharge annually to determine whether the current level of the  
19 surcharge is adequate, excessive, or insufficient to meet anticipated enhanced 911  
20 system needs. The municipality may only use the enhanced 911 surcharge for the  
21 enhanced 911 system.

22 \* Sec. 2. AS 29 35.131(a) is amended to read:

23 (a) A municipality may, by resolution or ordinance, elect to provide an  
24 enhanced 911 system at public safety answering points, [AND] may purchase or lease  
25 the enhanced 911 equipment or service required to establish or maintain an enhanced  
26 911 system at public safety answering points from a local exchange telephone  
27 company or other qualified vendor, and [. THE MUNICIPALITY] may impose an  
28 enhanced 911 surcharge, in an amount to be determined by the municipality, on all  
29 local exchange access lines that provide telephone service to wireline telephones in the  
30 area to be served by the enhanced 911 system. A municipality that provides  
31 services under an enhanced 911 system may also by resolution or ordinance

1        impose an enhanced 911 surcharge [AND] on each wireless telephone number that  
2        is billed to an address within the enhanced 911 service area. For a municipality with  
3        a population of 100,000 or more, an enhanced 911 surcharge may not exceed 50  
4        cents per month for each wireless telephone number or 50 cents per month for  
5        each local exchange access line for wireline telephones. For a municipality with  
6        fewer than 100,000 people, an [AN] enhanced 911 surcharge may not exceed 75  
7        cents [\$2] per month for each wireless telephone number or 75 cents [AND \$2] per  
8        month for each local exchange access line for wireline telephones [UNLESS THE  
9        SURCHARGE IS IMPOSED BY ORDINANCE APPROVED BY THE VOTERS OF  
10       THE ENHANCED 911 SERVICE AREA. THE AMOUNT OF SURCHARGE  
11       IMPOSED FOR EACH WIRELESS TELEPHONE NUMBER MUST EQUAL THE  
12       AMOUNT IMPOSED FOR EACH LOCAL EXCHANGE ACCESS LINE FOR  
13       WIRELINE TELEPHONES, AND THE BILLING METHOD USED FOR BOTH  
14       TYPES OF SURCHARGE MUST BE SUBSTANTIALLY SIMILAR]. An enhanced  
15       911 service area may be all of a city, all of a unified municipality, or all or part of the  
16       area within a borough and may include the extraterritorial jurisdiction of a  
17       municipality in accordance with AS 29.35.020. The governing body of a municipality  
18       shall review an enhanced 911 surcharge annually to determine whether the current  
19       level of the surcharge is adequate, excessive, or insufficient to meet anticipated  
20       enhanced 911 system needs. The municipality may only use the enhanced 911  
21       surcharge for the enhanced 911 system.

22       \* Sec. 3. Section 1 of this Act takes effect June 30, 2006.

23       \* Sec. 4. Section 2 of this Act takes effect June 30, 2009.

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## REPRESENTATIVE JIM HOLM DISTRICT 9

17 February 2005

Co-Chairman Kurt Olson  
Co-Chairman Bill Thomas

Dear Kurt and Bill,

Thank you for your consideration of HB 74. I would like to respond to your comments regarding the success of this legislation. Last year, HB 461 passed the house by a vote of 33-6. HB 461 and HB 74 are very similar in language and exactly the same in premise.

I ask that you please schedule HB 74 for a hearing next week. It is certainly your choice as Chairmen of the House Community and Regional Affairs Committee to substitute HB 74 with your proposed committee substitute. However, I would like to propose the attached amendment to your committee substitute. In my opinion, there is no reason to limit local control and initiate a costly voting process to change the surcharge amount above and beyond the two-dollar cap set in the committee substitute because it would still require a statutory fix to raise the cap above two dollars regardless of an ordinance.

I thank you for your attention to this legislation. Enhanced 911 saves lives. It is important to the people of my district and the entire State of Alaska that legislation is passed to provide municipalities with the ability to fund this life saving service.

Sincerely,



Representative Jim Holm  
JH/mr

AMENDMENT \_\_\_\_\_

Offered in the House

By

TO: CSHB 74(CRA) Version "L"

- 1 Page 2, Line 10 & 11
- 2 Delete "unless the surcharge is imposed by ordinance approved by the
- 3 voters of the enhanced 911 service area"

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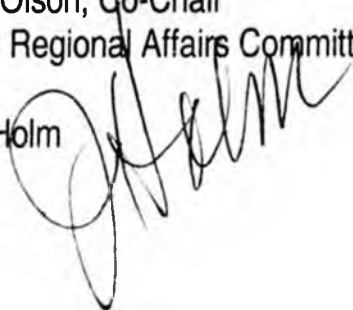
*Session:*

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Juneau, Alaska 99801  
(907) 465-3466  
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## REPRESENTATIVE JIM HOLM DISTRICT 9

DATE: 21 January 2005

TO: Representative William Thomas Jr., Co-Chair  
Representative Kurt Olson, Co-Chair  
House Community & Regional Affairs Committee

FROM: Representative Jim Holm 

RE: HB 74

Please schedule HB 74: AN ACT RELATING TO ENHANCED 911 SURCHARGES, for hearing in the House Community & Regional Affairs Committee at your earliest convenience. Back-up material is attached.

Thank you very much for your help with this bill.

**GCI POSITION PAPER**  
**"e911 BILL"**

GCI supports reasonable legislation to authorize a surcharge on phone bills to pay the costs of "e-911" systems. GCI believes that any such legislation must:

- require equal treatment of both traditional wireline and wireless phone lines, with the exact same surcharge and exemption applicable to each;
- narrowly define the "e911" costs that can be recovered through the surcharge;
- include a cap of no more than \$2 per line per month, or \$24 per line per year;
- limit the responsibilities of carriers for collection in the absence of voluntary nonpayment by a customer.

GCI does not accept the argument that the proposed surcharge is a "user's fee" or that telephone companies or subscribers in any way create the costs of an e911 system. In fact, the opposite is true. The existing telephone system facilitates the provision of a public safety system that would be most appropriately funded through general taxation measures.

Nonetheless, GCI supports the surcharge concept so long as it is reasonable. Reasonableness requires that all carriers—wireline and wireless—be treated equally and that the surcharge is capped. The cost of basic phone service is already increasing due to a number of factors, primarily the recovery of cost in local service that were previously recovered in other ways. The addition of anything more than a reasonable additional surcharge could cause a reduction in the number of subscriber lines.

Carriers should not be forced to become collection agents for the surcharges. Carriers should be responsible for pay to municipalities only such sums as are collected from customers,

and carriers should not be responsible for forcing payment of the surcharge by, for example, discontinuing service in the event of nonpayment.

called NAF (Network Access Fee). In exchange, we expect to see more competitive in-state long distance rates.

In April 2007, we will further reduce access charges paid by long distance carriers, for a total reduction of about 4 cents per minute. At the same time, the NAF fixed fee will increase to \$3.00 per month. We expect Alaskan consumers will experience a combination of reduced in-state long distance charges, increased industry investment into technological improvements and more vibrant long distance competition.

### Consumer Information & FAQ

Do customers still have to pay the NAF even if they make no long distance calls?

Yes. The NAF is intended to pay for that part of the network that must be in place so that citizens are able to place instate long distance calls, whether such calls are placed or not.

Do all carriers charge the NAF?

All local exchange carriers must charge the NAF. However, other types of carriers, such as cellular and long distance companies, will not charge the NAF.

Will the NAF be charged to customers receiving Lifeline service?

We do not believe it will be. Federal Lifeline subsidies support local low income residential customer charges including "other non-discretionary charges associated with basic residential service". [See 47 CFR 54.403(a)(4).] We view the NAF as a "non-discretionary charge associated with basic residential service."

What is the purpose of the NAF?

The NAF is designed to recover a portion of the cost of the "local loop" (i.e., the wires and associated local network facilities that connect a telephone customer to the local telephone company's central office switch). The annual cost of the local loop (statewide for all Alaska local telephone companies) is about \$200 million. Twenty percent of this amount is allocated to instate long distance services, 25% to interstate long distance services and the remaining 55% is allocated to local services. This means instate long distance companies have until now-- charged that roughly \$40 million (20% x \$200 million) in local loop costs to their instate long distance customers through instate long distance rates. Under the new rules, the \$40 million will instead be paid in part through NAF revenues (approximately \$8 million in 2005 and approximately \$16 million in 2007), reducing long distance companies' costs. The NAF will help to keep local telephone companies solvent after they are required to reduce the \$40 million in access fees they charge to instate long distance companies.

Will long distance rates decline as a result of lower access charge fees to long distance carriers?

We believe that consumers will see a combination of lower long distance bills and improved technology and service as competitive market forces compel the long distance companies to pass their NAF cost savings on to their customers. We have directed the long distance carriers to maintain adequate records so that we can review the extent to which savings are passed on to customers.

Has the Commission required a dollar for dollar pass-through of long distance carriers' in-state access charge savings to instate long distance rates?

We declined to do this for several reasons, including:

We believe the competitive market will force long distance carriers to directly and indirectly pass the vast majority, if not all, of their access charge savings through to long distance customers. Historically, long distance companies have offered rates that are only slightly above the costs they pay in access fees. We believe that this

market trend will continue and that by reducing the access fees, long distance fees will also be reduced. We have no reason to believe that the market will not continue to operate as efficiently in the future as it has in the past in driving prices lower.

Measuring and monitoring the level of pass-through would be extremely complex, expensive and prone to considerable dispute. The costs of doing so could very well outweigh consumer benefits. Nevertheless, we have directed the long distance carriers to maintain adequate records so that we can perform pass-through measurements if it appears that competition fails to produce consumer benefits.

We believe that long distance carriers may choose to reinvest part of their savings in upgrading existing networks and technology. Technological improvements valuable to ratepayers might not otherwise occur.

Is this rate redesign necessary?

We believe that this change is required by federal telecommunications policies and the evolving telecommunications market, over which we have little control. For about two decades the federal government has been reducing interstate access fees paid by long distance carriers for interstate calls so that nationwide interstate access charges average less than two cents per minute. This compares to about 14 cents per minute for instate access charges.

Our change will also help to keep competition vibrant. For many years the federal government has exempted Internet providers and cellular carriers from paying most access charges (both federal and state), even though these providers also rely on the local loop to originate and terminate calls in much the same manner that long distance carriers do. These exemptions and the growth of these telecommunications markets have resulted in a shift of long distance calling away from traditional long distance service. While a portion of this shift is a natural result of the growth of these markets and new technologies, another portion is simply due to unequal regulatory treatment under federal law.

Will the NAF result in instate long distance rates that are as low as interstate rates?

Not at the modest levels we have adopted. The federal government has been able to reduce the per minute interstate access fees paid by long distance carriers by adopting a subscriber line charge (a SLC is the national functional equivalent of the Alaska NAF) and by applying its Universal Service Fund. The federal subscriber line charge is currently capped at \$6.50 per line for residential service and single line business service and \$9.20 per line for multiple line business service. The Alaska NAF would probably have to rise to roughly the same level as the federal SLC, or more, before instate access fees could drop to the level of federal access fees and before instate long distance rates could, in turn, fall to the level of interstate long distance rates. At this time, our rules only permit the Alaska NAF to rise to \$3.00 beginning April 1, 2007.

Are there likely to be future changes in rates?

The Federal Communications Commission (FCC) plans to restructure how all carriers pay each other for use of their services (i.e., "intercarrier compensation"). Most of the proposals before the FCC would further reduce the access fees paid by instate long distance companies. While this may lead to further long distance savings, it could also lead to increases in local rates or increases in the NAF or the SLC.

Where can I learn more about these issues?

For more on the NAF on the Commission's proceeding Docket R-01-001 or contact us at:

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

Phone: (907) 276-6222, Outside Anchorage (in Alaska) 1-800-390-2782

Fax: (907) 276-6210

E-mail: [rca\\_mail@rca.state.ak.us](mailto:rca_mail@rca.state.ak.us)

For more on the FCC's Intercarrier Compensation proceeding Docket CC No. 01-92 or contact the FCC at:

Federal Communications Commission

445 12th Street SW

Washington, DC 20554

Phone: 1-888-CALL-FCC (1-888-225-5322)

Fax: 1-866-418-0232

E-mail: [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

Last Update: 03/04/05

## In-State Long Distance Rates

[Home](#) > [Telecommunications](#) > [In-State Long Distance Rates](#)

[How Long Distance Rates May Decrease In 2005 \(view as .pdf\)](#)

### Introduction

In December 2004, the Commission established new regulations with the goal, among other things, of correcting imbalances between long distance rates for calls completed within Alaska (in-state) and long distance calling rates for state-to-state (interstate) calls.

Currently in-state optional calling plan rates are typically 14 cents a minute or higher, compared to state-to-state (interstate) optional calling plan rates which can be found for as low as 4 cents per minute.

The difference between what Alaska consumers pay to call within the state and the amount they pay to call interstate, exists in large part, because Alaskan local telephone companies may charge long distance carriers up to 14 cents per minute for calls within the state. These telephone companies own and maintain the local infrastructure which delivers the long distance calls over telephone lines to a consumer's home. (View schematic of an in-state long distance call.) In exchange for the right to pass these calls over their infrastructure, Alaska's local telephone companies charge long distance companies fees called Access Charges.

Access charges are added to the per-minute fees that Alaska's long distance carriers, AT&T Alascom, GCI and others, charge Alaskan consumers. This pass-through of access charge costs from the local telephone company to the long distance company to the consumer generally prevents Alaska's long distance carriers from charging less than 14 cents per minute for an in-state call.

Many Alaskans recall when interstate calling rates ranged from 25 cents to 50 cents per minute. These high rates were caused, in part, by the same type of Access Charges that we pay today for in-state calling. Approximately two decades ago, the Federal Communications Commission (FCC) began the process of lowering the interstate per minute access charges that local telephone companies charge to long distance companies by replacing it with a fixed monthly charge paid by local telephone consumers.

It is important to note that the access costs didn't go away, but were removed from the per minute long distance rate, which allowed interstate long distance rates to go down. Access Charges formerly included in the long distance rate, became part of the consumer's monthly phone bill, showing as a fixed charge. Initially one dollar, this federal subscriber line charge (or SLC) gradually increased to \$6.50 per month, which is what residential consumers pay today. This action (along with adoption of the federal universal service fund and federal rate integration policies) has caused long distance rates to fall to the levels we see today.

Over the last two years, the Commission sought comment on how to best resolve the problems associated with the cost of in-state calling. We decided to follow the policy used by the FCC and reduce per minute access charges of long distance rates. However, like the FCC, we have not completely removed per minute access charges. Rather, we have implemented a two-stage program of removing less than half of the total Access Charges over a three-year period, in part, so we could see how the program affected in-state long distance rates.

In the first year of the program, the reduction on access charge rates paid by the largest long distance carriers will be about two cents per minute on a typical in-state call. In total, that reduction represents about \$8 million. Beginning in April 2005, local telephone customers will see a \$1.50 fixed fee added to their monthly phone bill.

Representative Kurt Olson, Co-Chairman  
Community and Regional Affairs Committee  
Xxx

Re: House Bill 221

Dear Representative Olson:

I am writing to explain GCI's opposition to HB 221, which would require long distance carriers to reduce in-state long distance rates because of the implementation of a new charge on consumers called the "Network Access Fee" (NAF).

To begin, this is an enormously complicated regulatory matter that is difficult to address without going into enormous detail. The complexity is illustrated by the fact that the Regulatory Commission of Alaska—which already had expertise in this area—took over four years to resolve the issues. The proceeding at the RCA involved many public hearings and thousands of pages of comments. It is impossible to fully address the matter in one letter or even in a series of committee hearings.

At a very basic level, HB 221 constitutes a return to reliance on state regulation to set prices in the highly competitive long distance market. Rates in that market have been set through competitive forces for about 14 years. Reliance on these market forces has been very successful, reducing in-state long distance rates from about 35 cents per minute prior to competition to about 14 cents per minute, or less, today. Furthermore, the entire trend in telecommunications is away from regulatory rate-making and toward greater reliance on competition and market forces to set prices. Thus, HB 221 goes against the success of the past 14 years and against all trends in telecommunications.

In fact, competition in telecommunications caused long distance carriers to reduce current rates so much that the rates are now well below the cost of providing service. In fact, prior to implementation of the Network Access Fee, the "access charges" paid by the long distance carriers to local exchange carriers were approximately equal to the price per minute charged to consumers, leaving no margin for the long distance carrier to support its own cost and investment in infrastructure. The causes of this situation are complex, including the fact that in-state long distance essentially competes against other services, such as cellular service, that did not have to pay the same high access charges. Whatever the reason, the lack of any margin in long distance service was undesirable and threatened to discourage any investment in the critical facilities necessary to serve Alaska, particularly rural Alaska.

As a legal matter, it would actually be illegal for the legislature to require carriers to provide service at a loss. While carriers may have voluntarily priced below cost, any state mandate that carriers continue to service at a loss is barred by constitutional principles against confiscation. Such an illegal mandate would result from a requirement to reduce long distance rates such as in HB 221.

Another important point is that it is impossible to know whether, or to what extent, access charges will actually go down on a per minute basis as a result of implementation of the NAF. Per minute access cost is determined not only by the amount payable by long distance carriers in access cost, but by the number of minutes over which that cost is spread. While the NAF reduced the total cost payable by the long distance companies, the number of in-state long distance minutes is also subject to significant erosion at this time. Cellular calling throughout the Railbelt is substituting for long distance calling. New services designated "Voice over Internet Protocol" are not subject to in-state access charges, but can be used to call from one location in the state to another. And huge numbers of minutes are being moved to "debit cards" that AT&T claims are not subject to in-state access charges. Even e-mails often substitute for long distance calling in many instances. All of these factors are combining to move traffic off of the long distance network. Thus, although the total cost paid by long distance carriers will go down as a result of the NAF, per minute costs may go down much less, or not at all. Since long distance rates are set on a per minute basis, it is impossible to reduce that price unless the per minute cost goes down, which is uncertain.

The above factors lead the Commission to realize that measurement of whether long distance carriers had flowed through access charge reductions—as required by HB 221—would be extremely difficult or impossible. Given the very successful reliance on market forces to drive long distance rates to cost over the past 14 years, it seems foolish to embark upon that difficult or impossible regulatory inquiry and re-establish regulatory ratemaking.

As stated at the outset, this is an enormously complicate subject. That is in itself a good reason for the Legislature to leave the matter to the RCA.

For all these reasons, GCI opposes HB 221 and urges you not to advance the bill in the Legislature.

Sincerely,

24-LS0043/S  
Cook  
2/25/05

**CS FOR HOUSE BILL NO. 74(CRA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): RE/REPRESENTATIVE HOLM

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to enhanced 911 surcharges imposed by a municipality."**

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

3 **\* Section 1.** AS 29.35.131(a) is amended to read:

4 (a) A municipality may, by resolution or ordinance, elect to provide an  
5 enhanced 911 system at public safety answering points and [,] may purchase or lease  
6 the enhanced 911 equipment or service required to establish or maintain an enhanced  
7 911 system at public safety answering points from a local exchange telephone  
8 company or other qualified vendor. The municipality [, AND] may impose an  
9 enhanced 911 surcharge [, IN AN AMOUNT TO BE DETERMINED BY THE  
10 MUNICIPALITY,] on all local exchange access lines that provide telephone service to  
11 wireline telephones in the area to be served by the enhanced 911 system and [. A  
12 MUNICIPALITY THAT PROVIDES SERVICES UNDER AN ENHANCED 911  
13 SYSTEM MAY ALSO BY RESOLUTION OR ORDINANCE IMPOSE AN  
14 ENHANCED 911 SURCHARGE] on each wireless telephone number that is billed to  
15 an address within the enhanced 911 service area. An [FOR A MUNICIPALITY

1 WITH A POPULATION OF 100,000 OR MORE, AN ENHANCED 911  
2 SURCHARGE MAY NOT EXCEED 50 CENTS PER MONTH FOR EACH  
3 WIRELESS TELEPHONE NUMBER OR 50 CENTS PER MONTH FOR EACH  
4 LOCAL EXCHANGE ACCESS LINE FOR WIRELINE TELEPHONES. FOR A  
5 MUNICIPALITY WITH FEWER THAN 100,000 PEOPLE, AN] enhanced 911  
6 surcharge may not exceed \$2 [75 CENTS] per month for each wireless telephone  
7 number and \$2 [OR 75 CENTS] per month for each local exchange access line for  
8 wireline telephones unless the surcharge is imposed by ordinance approved by the  
9 voters of the enhanced 911 service area. The amount of surcharge imposed for  
10 each wireless telephone number must equal the amount imposed for each local  
11 exchange access line for wireline telephones. An enhanced 911 service area may be  
12 all of a city, all of a unified municipality, or all or part of the area within a borough  
13 and may include the extraterritorial jurisdiction of a municipality in accordance with  
14 AS 29.35.020. The governing body of a municipality shall review an enhanced 911  
15 surcharge annually to determine whether the current level of the surcharge is adequate,  
16 excessive, or insufficient to meet anticipated enhanced 911 system needs. The  
17 municipality may only use the enhanced 911 surcharge for the enhanced 911 system.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 17, 2005

**SUBJECT:** Enhanced 911 surcharge (HB 74)

**TO:** Representative Jim Holm  
Attn: Matthew Rudig

**FROM:** Tamara Brandt Cook  
Director

*TBC*

You ask whether a statute describes what an enhanced 911 surcharge imposed by a municipality may be used for. AS 29.35.131(a) states: "The municipality may only use the enhanced 911 surcharge for the enhanced 911 system." A definition of "enhanced 911 system" that applies to this subsection is set out in AS 29.35.137(3):

(3) "enhanced 911 system" means a telephone system consisting of network, database, and enhanced 911 equipment that uses the single three digit number, 911, for reporting a police, fire, medical, or other emergency situation, and that enables the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911; an enhanced 911 system includes the personnel required to acquire, install, operate, and maintain the system and its facilities and to dispatch the calls generated by the system;

TBC:jad  
05-104.jad

FAX COVER SHEET  
ANCHORAGE LEGISLATIVE INFORMATION OFFICE

Office 907-269-0111

Fax 907-269-0229

To: HCRA -

Attn: Rep Olson ) Thomas

Fax: 465-~~411~~3835 Phone: \_\_\_\_\_

From: \_\_\_\_\_ Phone: \_\_\_\_\_

Instructions: Written backup for HB 74 from  
Jim Rowe.

Sent: Date 3-17-05 Time \_\_\_\_\_

Disposal of Original: Discard: \_\_\_\_\_ Pouch \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

Number of Pages: \_\_\_\_\_ (counting cover sheet)

Transmitted by: \_\_\_\_\_



# NEWS

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F.2d 386 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE:  
March 10, 2005

NEWS MEDIA CONTACTS:  
Rosemary Kimball at (202) 418-0511  
e-mail: [rosemary.kimball@fcc.gov](mailto:rosemary.kimball@fcc.gov)  
Lauren Patrich at (202) 418-7944  
e-mail: [Lauren.patrich@fcc.gov](mailto:Lauren.patrich@fcc.gov)

## FCC EXTENDS TRUTH-IN-BILLING RULES TO WIRELESS PHONES; SEEKS COMMENT ON ADDITIONAL MEASURES TO INCREASE ABILITY OF CONSUMERS TO MAKE INFORMED CHOICES

Washington, DC – The Federal Communications Commission has expanded the federal consumer protection rules that apply to consumers' wireless phone bills. It has also asked for comment on additional measures to facilitate the ability of telephone consumers to make informed choices among competitive telecommunications service offerings.

The actions come in response to consumer concerns with the billing practices of wireless and other interstate providers, outstanding issues from the FCC's 1999 *Truth-in-Billing Order* and a petition filed by the National Association of State Utility Consumer Advocates (NASUCA).

Specifically, the Commission:

- Removed the existing exemption for Commercial Mobile Radio Service (CMRS) carriers from the rules requiring that billing descriptions be brief, clear, non-misleading and in plain language;
- Held that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or government mandated charges;
- Clarified that the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the amount authorized by the government to be collected; and
- Clarified that state regulations requiring or prohibiting the use of line items for CMRS constitute rate regulation and are preempted.

In a *Second Further Notice of Proposed Rulemaking*, the Commission:

- Sought comment on the distinction between government "mandated" and other charges;
- Tentatively concluded that, where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges;
- Sought comment on whether it is unreasonable to combine federal regulatory charges into a single line item;
- Tentatively concluded that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale; and
- Tentatively concluded that the Commission should preempt inconsistent state regulation of telecommunications carrier-specific truth-in-billing rules. The Commission emphasized, however, that no such action would limit states' ability to enforce their own generally applicable consumer protection laws.

Action by the Commission March 10, 2005, by *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking* (FCC 05-55). Chairman Powell, Commissioners Abernathy and Martin, with Commissioner Copps approving and dissenting in part, and Commissioner Adelstein approving and dissenting in part. Chairman Powell, Commissioners Abernathy, Copps, Martin and Adelstein issuing separate statements.

- FCC -

CGB Contact: Michael Jacobs at (202) 418-2859.

CC Docket No. 98-170, CG Docket No. 04-208.

## FCC Holds Wireless To New Standard

BY MARK ROCKWELL  
MARCH 10, 2005  
NEWS@2 DIRECT

WASHINGTON--At its meeting today, the FCC moved to bring wireless carriers under more federal scrutiny in billing matters, but also stepped in front of growing state regulation of wireless carriers' bills.

The FCC voted to remove an exemption for commercial mobile radio services (CMRS) rules that require telephone billing to be "brief, clear, non-misleading and in plain language." Under the new rules, wireless carriers would be held to that standard as well. The rules were changed in the face of exploding informal consumer complaints about wireless carrier billing at the commission. The number of complaints about wireless billing grew from "a few dozen" in 1999, to 18,000 in 2004, said Jay Keithly, acting chief of the FCC consumer and governmental affairs bureau.

FCC commissioners and staff said by and large, wireless carriers already are moving to clarify and simplify their billing, as those bills are an advantage in a competitive market. The increasing complaints, however, said FCC Commissioner Kathleen Abernathy, made the commission "remove ambiguity" concerning wireline and wireless billing requirements. FCC Commissioner Kevin Martin agreed that with the CMRS exemption from truth in billing rules, there had been a disconnect about what was expected of wireless carriers. The removal of that exemption goes a long way toward that, commissioners agreed.

The most controversial portion of the agency's truth in billing action today, however, was its pre-emption of state utility commissions over "line items" included on wireless bills. Items such as E911 surcharges, universal service fund items, primary carrier surcharges and other cost recovery mechanisms that appear on customers' bills separated out from the main service charge and mandated by some states, weren't valid. The FCC preempted state utility commissions' authority to mandate such line item charges, invoking Congress' intention that states can't regulate wireless carrier rates. ]

The move puts the fate of E911 surcharges in somewhat of a limbo, say state representatives, until the order is officially issued and the details of the decision are digested by state commissions.

Even FCC commissioners couldn't agree on the pre-emption. Democratic minority commissioners Jonathan Adelstein and Michael Copps dissented on the issue, saying it sent the wrong message and crippled state commissions' consumer protection efforts. "We take one step forward by applying basic truth-in-billing to wireless services. That's good," said Copps. "Then, amazingly, given the language we hear today on how pro-consumer the order is, the majority proceeds to put the kibosh on state consumer protection efforts."

Chairman Michael Powell, presiding over his last FCC meeting, said he didn't take the decision to pre-empt states lightly, but allowing them to regulate rates would cripple wireless carriers rolling out national pricing plans. "CMRS cannot be efficiently regulated in price across 50 states," he said.

The decision both heartened and depressed state regulators. They commended the FCC's effort to include CMRS providers in truth in billing rules, but said the agency's preemption of their ability to specify line items as squashing their efforts to handle growing consumer concerns. "The FCC's clarification of truth in billing rules applying to wireless carriers is a shot across the bow" of wireless carriers that don't provide clear bills, said Brad Ramsay, general counsel for the National Association of Regulatory Utility Commissioners. However, Ramsay added that the agency's preemption of states' regulation of line items on bills wasn't justifiable. "How can you argue that wireless carriers can't have nationwide billing plans" with states overseeing line items, he remarked, adding that major wireless carriers already are offering such plans while states oversee the items on bills.

*This is an interpretation. The order has not been released so this might be incorrect.*

FCC Holds Wireless To New Standard

By Mark Rockwell

March 10, 2005

*[SEE HIGHLIGHTED TEXT]*



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## FCC Holds Wireless To New Standard

By Mark Rockwell

March 10, 2005

HB 74

WASHINGTON—At its meeting today, the FCC moved to bring wireless carriers under more federal scrutiny in billing matters, but also stepped in front of growing state regulation of wireless carriers' bills.

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AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLM

TO: CSHB 74(CRA), Draft Version "S"

1 Page 2, following line 17:

2 Insert a new bill section to read:

3 **\*\* Sec. 2.** AS 29.35.131(c) is amended to read:

4 (c) A local exchange telephone company or wireless telephone company shall  
5 include the appropriate enhanced 911 surcharge [, STATED SEPARATELY AND  
6 INCLUDED] in the total amount owed [,] in the bills delivered to its customers. The  
7 Regulatory Commission of Alaska may not consider the enhanced 911 surcharge as  
8 revenue of the telephone company and has no jurisdiction over an enhanced 911  
9 system. A customer is liable for payment of the enhanced 911 surcharge in the  
10 amounts billed by the telephone company until the amounts have been paid to the  
11 telephone company."

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 74  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOA  
 Title 911 Surcharge RDU Enterprise Technology Services  
 Component \_\_\_\_\_  
 Sponsor Rep. Holm  
 Requester \_\_\_\_\_ Component No. 2082

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Enterprise Technology Services does not anticipate any funding issues to this division for this legislation as written.

Prepared by: Stan Herrera Phone 465-5735  
 Division: Enterprise Technology Services Date/Time 3/3/05 10:49 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/3/2005  
 Agency: Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB074-DPS-ASTD-2-28-05  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act related to enhanced 911 surcharges RDU Alaska State Troopers  
 Component AST Detachments  
 Sponsor Representative Holm  
 Requester House Community & Regional Affairs Component No. 2325

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The passage of this bill will have no fiscal impact on the Department of Public Safety.

The bill will allow municipalities to increase surcharge fees for the enhanced 911 services they provide. Surcharges may only be increased by ordinance and costs must be reviewed annually to make sure any surcharge is not excessive.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223  
 Division: Alaska State Troopers Date/Time 2/28/05 2:34 PM  
 Approved by: Commissioner William Tandeske Date 2/28/2005  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 74  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title 911 Surcharge RDU Comm Assist & Ec Dev (405)  
 Component Community Advocacy  
 Sponsor Holm  
 Requester House CRA Component No. 2703

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation, among other things, permits municipalities to provide an enhanced 911 system at public safety answering points and impose an enhanced 911 surcharge on all local exchange access lines that provide telephone service to wireline telephones in the area to be served by the enhanced 911 system.

It has no impact on the operations of the division.

Prepared by: Athena Logan, Local Government Specialist Phone 907-269-4540  
 Division: Community Advocacy Date/Time 3/2/05 10:32 AM  
 Approved by: Edgar Blatchford, Commissioner Date 3/2/2005  
 Agency: Commerce, Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 74  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title 911 Surcharge RDU Regulatory Commission of Alaska (399)  
Component Regulatory Commission of Alaska  
Sponsor Holm  
Requester House CRA Component No. 2417

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation, among other things, permits municipalities to provide an enhanced 911 system at public safety answering points and impose an enhanced 911 surcharge on all local exchange access lines that provide telephone service to wireline telephones in the area to be served by the enhanced 911 system.

Implementation of HB 74 will have no impact on the mission or operations of the Regulatory Commission of Alaska.

Prepared by: Kate Giard, Chairman Phone 907.276.6222  
Division Regulatory Commission of Alaska Date/Time 3/2/05 10:41 AM  
Approved by: Edgar Blatchford, Commissioner Date 3/2/2005  
Agency Commerce, Community, and Economic Development

E-911 Dispatch Center  
Costs and Revenues  
Selected Alaska Cities

	Call Center/Dispatch Operating Costs	Current E-911 Surcharge Revenue	Current Revenue Shortfall
Anchorage (1)	\$ 6,079,516	\$ 2,066,944	\$ 4,012,572
Fairbanks (2)	\$ 4,680,000	\$ 436,293	\$ 4,243,707
Kenai (3)	\$ 2,266,680	\$ 447,352	\$ 1,819,328
Juneau (4)	\$ 1,204,100	\$ 305,500	\$ 898,600
Kodiak (5)	\$ 602,320	\$ 52,000	\$ 550,320

**Note: Operating costs only. Does not include capital expenditures or anticipated Wireless E-911 cost recovery.**

Sources

- (1) Anchorage Police Department/Office of Management & Budget
- (2) City of Fairbanks Office of the City Manager
- (3) Kenai Peninsula Borough Office of Emergency Management
- (4) City and Borough of Juneau FY 2005 Operating Budget
- (5) City of Kodiak Finance Department, 2005 budget

# ALASKA STATE LEGISLATURE

## REPRESENTATIVE KURT OLSON

- Co-Chair, Community and Regional Affairs
- Member, Resources



Session: January - May  
State Capitol  
Juneau, AK 99801-1182  
Phone: 907-465-2693  
Fax: 907-465-3835

Interim: May - December  
145 Main Street Loop, Ste 221  
Kenai, AK 99611  
Phone: 907-283-2690  
Fax 907-283-2763

Official Business

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March 3, 2005

Please distribute the following C.S. to the appropriate LIO's for tomorrow's Community and Regional Affairs Committee meeting.

Thank you,

CRA Committee Aide

*Faxed  
# 2864*

# TRANSACTION REPORT

Mar-02-05 Wed 4:59 PM

Type	Sending	Receiver	TX/RX Time	Pages	Note
Mar-02	4:58 PM	2864	58s	3	OK

# STATE OF ALASKA



*Interim:*

119 North Cushman St., Rm. 205  
Fairbanks, Alaska 99701  
(907) 456-7423  
Fax: (907) 451-9293

*Session:*

State Capitol Building  
Juneau, Alaska 99801  
(907) 465-3466  
Fax: (907) 465-2937

## REPRESENTATIVE JIM HOLM DISTRICT 9

### HB 74

### "An Act relating to enhanced 911 surcharges"

## Sponsor Statement

17 February 2005

Enhanced 9-1-1 technology is sweeping the nation. This enhanced emergency service provides a faster, more efficient means of rescue to the citizens of Alaska by immediately providing the dispatcher with the identity and physical location of a caller. Bottom line: Enhanced 9-1-1 can and does save lives.

Currently AS 29.35 gives a municipality the ability to cover the cost of the Enhanced 9-1-1 through a minimum surcharge of only fifty cents in Anchorage and seventy-five cents in the rest of the state. Municipalities, not the State of Alaska, are paying for the Enhanced 9-1-1 system and operational costs. The burden of these costs is borne however by local property taxes. We believe that the users of the service, and those that benefit from it, should pay their fair share and that the burden should not solely be on the property tax payers.

This bill is about local control and local option. Municipalities run the Enhanced 9-1-1 to better serve their communities. If passed, HB 74 will give municipalities the option to diversify their revenue stream for Enhanced 9-1-1 through an increased surcharge. However, Municipalities may only impose an increased surcharge by ordinance and they must review their costs annually to make sure any surcharge is not excessive. The people of Alaska will have more control over their local government and their public safety. Enhanced 9-1-1 is a true asset to any community and is a necessary tool in saving lives.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 19, 2005

**SUBJECT:** Enhanced 911 surcharges; sectional summary (House Bill 74)

**TO:** Representative Jim Holm  
Attn: Matthew Rudig

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

**Sec. 1.** Limits a municipality to the use of an ordinance for providing an enhanced 911 system and imposing an enhanced 911 surcharge, rather than permitting this to be done also by resolution. Permits a surcharge to be imposed only once a month. Requires a public hearing for the annual review of the surcharge by the governing body. Eliminates the cap on the amount of a surcharge imposed in existing law, and the distinction between the amount of surcharge that may be imposed by larger municipalities, and the amount that may be imposed by smaller municipalities.

**Sec. 2.** Eliminates provisions in existing law limiting the enhanced 911 surcharge to one per customer on a local exchange access line for a wire line telephone and one for each wireless telephone number. Also eliminates the provision limiting the number of surcharges that may be imposed on a customer with many local exchange access lines to 100.

**Sec. 3.** Permits a municipality to impose a point-of-purchase 911 surcharge from prepaid wireless telephone accounts. This surcharge may not exceed one percent of the purchase value.

TBC:jad  
05-028.jad

Introduced by: Mayor Thompson  
Council Member Johnson  
Council Member Thies  
Council Member Seeliger  
Date: January 31, 2005

**RESOLUTION NO. 4148**

**A RESOLUTION IN SUPPORT OF HOUSE BILL 74 WHICH WOULD  
AUTHORIZE MUNICIPALITIES TO ENACT A TELEPHONE  
SURCHARGE ON A LOCAL BASIS TO PAY THE COSTS OF THE  
ENHANCED 911 DISPATCH SYSTEM**

**WHEREAS**, the enhanced 911 ("E-911") system automatically provides emergency service dispatchers with the identity and location of callers; and

**WHEREAS**, E-911 is being extended to cell phones, which now amount to a significant and growing percentage of phone users; and

**WHEREAS**, current Alaska statutes authorizes small municipalities to enact an maximum surcharge of \$0.75 per month per line, which covers only a fraction of the full cost of the E-911 dispatch system; and

**WHEREAS**, the Fairbanks North Star Borough has enacted a surcharge which is used cooperatively in the Interior to provide E-911 service; the City, the Borough, and other agencies have worked cooperatively to use these funds efficiently; and

**WHEREAS**, House Bill 74, sponsored by Representative Holm, would amend current law to authorize a municipality, by ordinance after public hearing, to set the surcharge at the rate determined appropriate by the local governing body. Surcharge funds would continue to be restricted to pay the costs of the system.

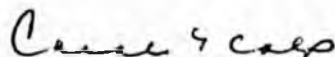
**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Fairbanks strongly supports passage of House Bill 74 without any amendments that impose a statewide limit on local control.

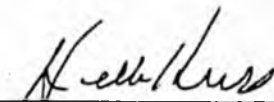
**Passed, Approved and Effective this 31st day of January, 2005**

  
Steve M. Thompson, Mayor

ATTEST:

APPROVED AS TO FORM

  
Carol L. Colp CMC, City Clerk

  
Herbert P. Kuss, City Attorney

**ALASKA FIRE CHIEFS ASSOCIATION  
05-01**

**RESOLUTION IN SUPPORT OF AMENDMENT OF THE ALASKA STATUTES TO  
AUTHORIZE MUNICIPALITIES TO INCREASE THE PHONE SURCHARGE TO PAY  
THE COSTS OF EMERGENCY SERVICES DISPATCH**

**WHEREAS**, dispatch centers are an essential part of providing emergency police, fire, and emergency medical services; and

**WHEREAS**, Alaska Statutes section 29.35.131 authorizes smaller Alaskan municipalities to enact a surcharge of up to \$0.75 per month upon telephone lines to pay for the expense of enhanced 911 services; and

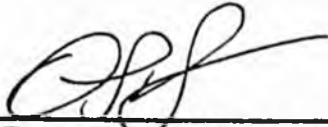
**WHEREAS**, as currently written, AS 29.35.131 does not authorize a surcharge for the operating costs of emergency dispatch centers; and

**WHEREAS**, authorization for municipalities to increase the phone surcharge to pay the cost of dispatch centers in an appropriate amount will provide desperately needed revenue to operate dispatch centers.

**NOW, THEREFORE, BE IT RESOLVED THAT THE ALASKA FIRE CHIEFS ASSOCIATION SUPPORTS AMENDMENT OF STATE LAW TO AUTHORIZE A COMMUNITY OPTION FOR LOCAL INCREASE OF THE TELEPHONE SURCHARGE TO PAY THE COST OF OPERATION OF DISPATCH CENTERS UP TO THE AMOUNT ALLOWED BY STATE LAW.**

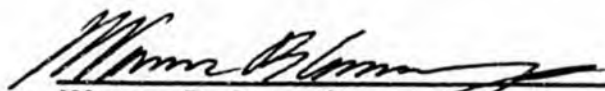
**BE IT FURTHER RESOLVED, THAT THE ALASKA FIRE CHIEFS SUPPORTS HOUSE BILL 74 AS PROPOSED BY REPRESENTATIVE JIM HOLM, WHICH WOULD AUTHORIZE AN INCREASED SURCHARGE.**

**ADOPTED, THIS 6TH DAY OF FEBRUARY, 2005**



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**Dave Tyler, President  
Alaska Fire Chiefs Association**



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**Warren B. Cummings,  
Attest, First Vice-President**



**Alaska Municipal League  
RESOLUTION #2005-12**

***A RESOLUTION URGING THE 24<sup>TH</sup> ALASKA LEGISLATURE TO PASS  
LEGISLATION THAT WOULD REMOVE THE CAP ON E911 SURCHARGES TO  
ALLOW LOCAL GOVERNMENT TO PROVIDE BETTER EMERGENCY  
RESPONSE SERVICES.***

**WHEREAS**, Enhanced 911 service saves lives and property by providing faster emergency response by allowing the dispatcher to know the identity and physical location of the caller; and

**WHEREAS**, enhanced 911 service costs have increased as the technology improves for these vital services; and

**WHEREAS**, important funding sources for E911 service and equipment, the Safe Communities and Revenue Sharing, as well as the Community Matching Grant programs have been eliminated by the legislature; and

**WHEREAS**, emergency 911 service is provided exclusively in Alaska by local government with no financial assistance from the State; and

**WHEREAS** enacting State legislation authorizing local government to determine surcharge rates that reflect the needs of their community will help provide more municipalities with the tools to offer E-911 service.

**NOW THEREFORE BE IT RESOLVED** that the Alaska Municipal League strongly urges the 24<sup>th</sup> Alaska Legislature to pass legislation that would remove the cap on E911 surcharges to provide local control of E911 funding so that local government may provide better emergency response services to its citizens.

**CITY OF NORTH POLE  
RESOLUTION 05-02**

**A Resolution In Support of House Bill 74  
Authorizing Municipalities to Enact a Telephone Surcharge on a Local  
Basis to Pay the Costs of the Enhanced 911 Dispatch System**

**WHEREAS**, the Enhanced 911 System automatically provides emergency service dispatchers with the identity and location of callers; and

**WHEREAS**, the Enhanced 911 System is being extended to cell phones, which now constitute a significant and growing percentage of phone users; and


**WHEREAS**, current Alaska statutes authorizes small municipalities to enact a maximum surcharge of \$0.75 per month per line, which covers only a fraction of the full cost of the Enhanced 911 Dispatch System ; and

**WHEREAS**, the Fairbanks North Star Borough has enacted a surcharge which is used cooperatively in the Interior to provide Enhanced 911 service; the cities of North Pole and Fairbanks, the Borough and other agencies have worked cooperatively to use these funds efficiently; and

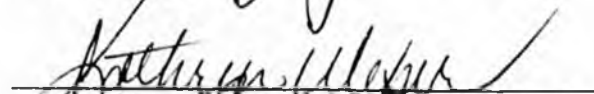
**WHEREAS**, House Bill 74, sponsored by Representative Jim Holm, would amend current state law to authorize a municipality, by ordinance after public hearing, to set the surcharge at the rate determined appropriate by the local governing body. Surcharge revenues would continue to be restricted to pay the costs of the Enhanced 911 System.

**THEREFORE BE IT RESOLVED**, that the City Council of the City of North Pole strongly supports passage of House Bill 74 without any amendments that impose a statewide limit on local control.

**PASSED AND APPROVED THIS 7<sup>th</sup> DAY OF FEBRUARY 2005.**

  
\_\_\_\_\_  
Jeffrey James Jacobson, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Kathryn Weber, CMC, City Clerk

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 100(L&C)  
 (S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act relating to enhanced 911 surcharges RDU Alaska State Troopers  
 Component AST Detachment  
 Sponsor Senator Bunde  
 Requester \_\_\_\_\_ Component No. 2325

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will have no fiscal impact on the Department of Public Safety if passed in its current form.

The bill allows municipalities to increase the surcharge that is collected related to the enhanced 911 systems. The bill would require that the surcharge be imposed by ordinance approved by the voters of the enhanced 911 service area.

Prepared by: Captain Al Storey Phone 269-5682  
 Division Alaska State Troopers Date/Time 2/16/05 12:10 PM  
 Approved by: Commissioner William Tandeske Date 2/16/2005  
 Agency Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 100(L&C)  
 (S) Publish Date: 2/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Enhanced 911 Surcharges RDU Regulatory Commission of Alaska  
Imposed by a Municipality Component Regulatory Commission of Alaska  
 Sponsor Bunde  
 Requester Senate Labor & Commerce Component No. 2417

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

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

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

The Regulatory Commission of Alaska's (RCA) mission is to protect consumer interests and promote economic development by ensuring affordable, reliable utility and pipeline services and ensuring that the utility and pipeline infrastructure is adequate to support community needs.

SB 100 contemplates changes to the municipal statute, AS 29. Passage of SB 100 will have no impact on the RCA's statutes or operations.

Prepared by: Kate Giard, Chairman Phone (907) 263-2110  
 Division Regulatory Commission of Alaska Date/Time 2/15/05 11:53 AM  
 Approved by: Edgar Blatchford, Commissioner Date 2/15/2005  
 Agency Commerce, Community & Economic Development



## Alaska State Legislature

**Senate Majority** Web: [www.akrepublicans.org](http://www.akrepublicans.org)

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**Sponsor:** Senator Con Bunde  
**Current Version:** SB 100  
**Contact:** Lauren Wickersham, 465-3881

### Fact Sheet for: Senate Bill 100

**Short Title:** ENHANCED 911 SURCHARGES

**Summary:**

- Increases the current E-911 surcharge caps from 50 cents and 75 cents to a statewide cap of \$2.
- Removes statute that changes the surcharge caps based on the population of a municipality.
- Allows an increase above the \$2 cap by ordinance approved by the voters of the E-911 service area.
- Requires the surcharges to be levied on wireless telephone numbers and local exchange access lines for wireline telephones equally.

**Benefits:**

- Provides municipalities with the revenue they need to implement and maintain E-911 systems.

**Background:**

- Enhanced 911 systems have been dramatically improving public safety across the nation. Among other benefits, the new technology uses GPS systems to track an individual's location and phone number where he or she calls from. The new systems are saving lives by saving time. Currently, the 50 cent and 75 cent surcharge cap insufficiently funds E-911 systems. This bill allows municipalities across the state to collect the revenue they need to implement and maintain this public safety tool.



Alaska State Legislature

Senator Con Bunde  
Senate District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee

## **Sponsor Statement**

### **Senate Bill 100**

"An Act relating to enhanced 911 surcharges imposed by a municipality."

Current Alaska statute allows municipalities to fund 911 services via a surcharge on their telephone billing statements. That surcharge is capped at 50 cents for municipalities with populations of 100,000 or more and 75 cents for populations of fewer than 100,000 (AS 29.35.131 Section (a) ). This surcharge applies to both wireless telephone numbers and local exchange access lines for wireline telephones.

Basic 911 (B911) is the delivery of emergency 911 calls to a Public Safety Answering Point (PSAP). A "Basic 911 system" does not provide for options or enhanced systems that can track or locate callers. New technology is providing for more efficient and timely ways to handle and operate 911 calls.

An "Enhanced-911 system" is capable of directing 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated. It provides the capability for Automatic Number Identification (ANI) and Automatic Location Identification (ALI). Both of these features are imperative to respond to 911 calls as quickly as possible. Enhanced 911, particularly when applied to both wireless and wireline calls, has the potential to save lives.

Municipalities cannot afford to fully implement E-911 services with the caps that are presently in statute. The current revenue shortfall in municipalities ranges from over \$4 million (in Anchorage and Fairbanks) to just over \$500,000 (in Kodiak).

Senate Bill 100 includes 4 main changes to current statute. It increases the surcharge caps from 50 and 75 cents to a statewide cap of \$2. It removes statute that bases caps on the population of a municipality. It also allows a municipality to increase the E-911 surcharge above and beyond the \$2 cap with a majority vote of those in the effected service area. And finally, SB 100 requires surcharges be levied on wireless telephone numbers and local exchange access lines for wireline telephones equally.

SB 100 enables municipalities to fund E-911 and thus, to provide residents with a superior emergency response service. It improves public safety and brings life-saving technology to the residents of Alaska.

I urge your support of SB 100.

**HB**

**108**

# ALASKA STATE HOUSE OF REPRESENTATIVES

Alaska State Capitol  
Juneau, Alaska 99801  
Room 408



Phone (907)-465-4954  
Fax# (907)-465-2418

Representative Tom Anderson

## MEMORANDUM

Date: February 24, 2004

To: Representative Kurt Olson, Co-Chair  
Representative Bill Thomas, Co-Chair  
House Community & Regional Affairs Committee

From: Representative Tom Anderson, Chair  
House Labor & Commerce Committee *Tom*

Re: HB 108

---

I would request you schedule HB 108 for a hearing before your committee at your earliest convenience.

This legislation would require an exemption from regulation by the Regulatory Commission of Alaska (RCA), something that every other municipally owned utility in Alaska, except one, already enjoys (the City of Pelican requested continued RCA regulation of its water utility when it was sold). Anchorage as the largest, most highly sophisticated city in the state is fully capable of soundly regulating its own municipally owned utilities. Self-regulating Anchorage's water utility would save ratepayers money and enhance local control.

Anchorage has extensive experience regulating other municipally owned enterprises. The Port of Anchorage, Merrill Field, and Solid Waste Services are all financially sound and provide first class customer service. Actually, Anchorage has self-regulated its public utilities for more years than have state regulators. RCA regulation is slow, expensive and partially duplicates the review process that the municipal administration and assembly already apply. AWWU ratepayers pay in excess of \$500,000 per year to the RCA to cover the cost of regulation. The greater cost is in the form of regulation lag, the delay in obtaining approval of a requested rate change.

Thank you for your consideration of this request. Please contact Josh Applebee at 4954 in my office if you have any additional questions.

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### **SPONSOR STATEMENT FOR HB 108**

**BY: Representative Tom Anderson**

**TITLE:** "An Act relating to the regulation of water and sewer utilities of political subdivisions that are not in competition with other water and sewer utilities."

House Bill 108 would exempt Anchorage Waste Water Utility from regulation by the Regulatory Commission of Alaska (RCA). Except for the City of Pelican, no other municipal owned water/wastewater utility is regulated by the RCA. (Pelican requested regulation of its water utility by the RCA).

The Municipality of Anchorage believes the current RCA regulation processes are cumbersome, slow, expensive, and non-responsive to local needs. Ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on every bill, whether or not their utility has a case pending. For example, from 1993 until 2003 AWWU never had a rate increase from the RCA or the APUC, yet ratepayers have paid a regulatory assessment to the RCA as part of every bill. In 2004 AWWU ratepayers are projected to pay about \$500,000 to the RCA to cover the costs of regulation. The greatest costs appear in the form of regulatory delay in obtaining approval of a requested change.

The MOA is directly accountable to ratepayers served by the utilities - they are voters. The Municipality has experience successfully regulating enterprise activities. The Port of Anchorage, Solid Waste Services and Merrill Field are all financially sound and provide first class customer service. Municipal public hearings are held on any proposed rate increase and the public is very involved in the hearing process.

HB 108 changes existing law by adding lines 5 thru 8 on Page 2. This language states that a water or sewer utility owned by a political subdivision not directly competing with another water or sewer utility is exempt from RCA regulation.

I would ask for your support on HB 108.



# Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.muni.org>


Mayor Mark Begich

Office of the Mayor

## MEMORANDUM

DATE: February 3, 2004

TO: The Honorable Tom Anderson, Chair  
House Labor & Commerce Committee

FROM: Anchorage Mayor Mark Begich 

SUBJECT: Self-regulation of Anchorage Water and Wastewater Utilities

The Municipality of Anchorage and the Anchorage Assembly have designated "Regulating Anchorage's Own Water/wastewater Utilities" as a top municipal legislative priority for 2004. This would require an exemption from regulation by the Regulatory Commission of Alaska (RCA), something that every other municipally owned utility in Alaska, except one, already enjoys.\* Anchorage as the largest, most highly sophisticated city in the state, is fully capable of soundly regulating its own municipally owned utilities. Self-regulating Anchorage's water utility would save rate-payers money and enhance local control.

AWWU has provided its customers excellent service, low, stable rates and sound finances, as well as continuity of management. Over the years, the mayor and assembly have made sound decisions in their oversight of municipally owned utilities. Municipal public hearings are held on any proposed rate increase. Municipal regulation will continue to balance consumer protection with the financial soundness of the public utility. It will allow the utilities to continue to operate on a sound business basis. The process will be accountable to local people, more responsive, timely and economical than current RCA regulation.

Anchorage has extensive experience regulating other municipally owned enterprises. The Port of Anchorage, Merrill Field and Solid Waster Services are all financially sound and provide first class customer service. Actually, Anchorage has self-regulated its public utilities for more years than have state regulators.

RCA regulation is slow, expensive and partially duplicates the review process that the municipal administration and assembly already apply. AWWU ratepayers pay in excess of \$500,000 per year to the RCA to cover the cost of regulation. The greater cost is in the form of regulatory lag, the delay in obtaining approval of a requested rate change.

\* The City of Pelican requested continued RCA regulation of its water utility when it was sold.

*Community, Security, Prosperity*

The Municipality in 1991 petitioned the APUC (predecessor to the RCA) to exempt AWWU and the electric utility from regulation. The Commission denied the request for self-regulation of the electric utility. By a 2-2 vote, the commission split on the question of exempting AWWU. The opinion by the commissioners who opposed self-regulation cited competition by the electric utility with other electric utilities as the reason why AWWU should remain regulated by the state.

To accomplish the exemption from RCA regulation a new section is needed in AS 42.05.711:

"A water/wastewater utility owned by and serving a first class or home rule municipality is exempt from regulation by the Commission, other than AS 42.05.221 - 42.05.281 and 42.05.385."

This section was amended as recently as the year 2000 by SB 324 to protect Ketchikan's public utilities, which have been self-regulated for 50 years, from the risk of regulatory takeover by the RCA in light of possible telephone competition.

*Cara Anderson 1*  
*Rene Romero - 5 years ASSETS*

**2004 STATE LEGISLATIVE PROGRAM  
MUNICIPAL PRIORITY ISSUES  
LEGISLATION**

**ISSUE/PROJECT NAME:** Regulating our own utilities

**ISSUE/IMPROVEMENT TYPE:** Legislation- Utility

**STATE GRANT REQUEST:** None

**LOCAL MATCH:** N/A

**PRIORITY:** 1

**ISSUE/PROJECT DESCRIPTION:**

We support state legislation that would include the Municipality of Anchorage utilities in the existing exemption from regulation by the Regulatory Commission of Alaska (RCA) already provided to other municipally owned utilities.

Anchorage utilities are the only municipal utilities in Alaska subjected to state regulation. The sole exception is the City of Pelican's water utility, where Pelican requested to be regulated by the RCA. Anchorage ratepayers pay higher rates for this state "service" but these regulatory charges are not imposed on any other municipal utility, except Pelican. Currently Anchorage ratepayers pay \$930,000 per year.

Municipal regulation would continue to balance consumer protection with the financial soundness of the utilities. It would be:

Directly accountable to local people  
More responsive  
More timely  
More economical  
Simpler

The Municipality has extensive experience regulating other municipally owned enterprises. They are all financially sound and also provide first class customer service. For example, the Solid Waste Services Collection Utility has been regulated by the Municipality for many years. Its customers enjoy among the lowest refuse collection rates in the country. The rates for residential and commercial refuse collection have not increased in the past thirteen years.

Voters in the Municipality would hold the Mayor and Assembly members, those elected officials who would set and approve utility rates, fully accountable – and they do vote.

During the recent California energy crisis the utilities regulated by the state public utilities commission got in trouble, with the largest gas and electric utility having to file bankruptcy. On the other hand, municipally owned utilities fared very well.

**POLITICAL SUBDIVISIONS:**

**Community Council:** Anchorage

**Assembly Section:** 9

**Legislative District(s):**

**House:** 16-32

**Senate:** I-P

**CONTACT PERSON:** Robert Lohr, Management Systems Officer, 343-4467

ANCHORAGE WATER UTILITY  
**RATE HISTORY**  
 1992 THROUGH 2004

Docket/Order	Type of Rate Increase	Rate Increase Received	Effective Date of Increase	Single Family Rate	Commercial Metered Rate
per U-90-64(4)	Permanent	6.00%	3-Jun-92	\$24.75	\$3.14
per U-94-89(5) COSS	Cost of Service <sup>(1)</sup>	0.00%	1-Jun-95	\$25.80	\$2.64
per U-04-023(1)	Interim	13.61%	23-Feb-04	\$29.35	\$3.00

<sup>(1)</sup> Cost of Service rates reallocate costs to customer classes without changing the total revenue to the Utility

ANCHORAGE WASTEWATER UTILITY  
**RATE HISTORY**  
 1992 THROUGH 2004

Docket/Order	Type of Rate Increase	Rate Increase Received	Effective Date of Increase	Single Family Rate
per U-90-64()	Permanent	14.89%	8-Jun-92	\$21.65
per U-94-88(5)COSS	Cost of Service <sup>(1)</sup>	0.00%	1-Jun-95	\$21.80
per LO# L0001127	Permanent	-2.75%	1-Jan-01	\$21.20
per U-04-022(1)	Interim	8.06%	23-Feb-04	\$22.90

<sup>(1)</sup> Cost of Service rates reallocate costs to customer classes without changing the total revenue to the Utility

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number:  
 Bill Version:  
 (H) Publish Date:

OLD  
 Fiscal Note  
 for  
 Reference  
 ONLY

Revision Date/Time (Note if correction):  
 Title Municipal Water & Sewer Utilities  
 Sponsor Labor & Commerce  
 Requester House Community & Regional Affairs

Dept. Affected:  
 RDU Regulatory  
 Component Regulator  
 Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1141 )</b>	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)
<b>TOTAL</b>	(258.8)	(345.6)	(345.6)	(345.6)	(345.6)	(345.6)

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time	-2	-2	-2	-2	-2	-2
Part-time						
Temporary						

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

This legislation would remove the Municipality of Anchorage d/b/a AWWU (water and sewer utilities) from Regulatory Commission of Alaska (RCA) oversight. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

AWWU is expected to pay a total of approximately \$406,550 in RCC's in FY 2004. The RCA estimates loss of this revenue will result in the loss of 2 positions within the agency for a total reduction of \$258.8 in this component. The precise distribution of operating expense reductions has not been determined at this time. Some RCC's would be realized in FY 2005 if an effective date of July 1, 2004 is assumed.

Prepared by: <u>Mark K. Johnson, Commissioner, Chair</u>	Phone <u>(907) 276-6222</u>
Division: <u>Regulatory Commission of Alaska</u>	Date/Time: <u>3/3/04 5:36 PM</u>
Approved by: <u>Edgar Blatchford, Commissioner</u>	Date: <u>3/3/2004</u>
Agency: <u>Department of Community &amp; Economic Development</u>	

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number:  
 Bill Version:  
 (H) Publish Date:

OLD  
 Fiscal Note  
 for  
 Reference  
 only

Revision Date/Time (Note if correction):

Title: Municipal Water & Sewer Utilities  
 Sponsor: Labor & Commerce  
 Requester: House Community & Regional Affairs

Dept. Affected:  
 RDU: RCA Audit  
 Component: RCA Audit  
 Component No.:

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( 1141 )</b>	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)
<b>TOTAL</b>	(45.7)	(61.0)	(61.0)	(61.0)	(61.0)	(61.0)

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would remove the Municipality of Anchorage d/b/a AWWU (water and sewer utilities) from Regulatory Commission of Alaska (RCA) oversight. The RCA Audits & Investigations component will see a reduced workload as a result of this legislation. The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency.

AWWU is expected to pay a total of approximately \$406,550 in RCCs in FY 2004. The RCA estimates \$45.7 of this reduction would occur in RCA Audits & Investigations. Some RCCs would be realized in FY 2005 if an effective date of July 1, 2004 is assumed.

Prepared by: Mark K. Johnson, Commissioner, Chair  
 Division: Regulatory Commission of Alaska  
 Approved by: Edgar Blatchford, Commissioner  
 Agency: Department of Community & Economic Development

Phone: (907) 276-6222  
 Date/Time: 3/3/04 5:38 PM  
 Date: 3/3/2004

**HB**

**117**



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

March 17, 2005

Representative Kurt Olson  
State Capitol  
Room 110  
Juneau, Alaska 99801

Dear Representative Olson,

This letter is in response to the request by the C&RA Committee to provide information regarding the amount in enhanced attorney fees paid by municipalities that have lost in public interest litigant cases over the last five years.

I made numerous phone calls to communities throughout the state. While there, no doubt, have been some lawsuits which have been lost by a municipality during that time period, I was not able to track one down. The reason that was given across the board was that as public money was involved, all municipal attorneys and/or contract attorneys agreed that unless they were confident of winning, they did not enter into a litigious battle. They simply negotiated to settle.

Again, AML and its member communities are concerned with enhanced requirements made to the losing party. While it can be argued that the public interest is being served by those bringing and prevailing in the lawsuit, one must keep in mind that the public interest is also served by keeping attorney costs to a minimum. Municipalities, through the loss of revenue sharing, safe community funds and other sources of revenue are not in a position to limitlessly pay for attorneys to represent them. Many small communities no longer even have liability insurance, full well knowing that the risk of a potential lawsuit will be the final nail in the coffin.

Thank you, again for the opportunity to comment on this legislation. Please feel free to call us at any time, as we are always willing to find solutions that are amenable to the State of Alaska, Alaska's communities and the residents of the state.

Sincerely,

Kathie Wasserman  
Alaska Municipal League

CHRIS KENNEDY  
DEPT OF LAW

24-GH1052A

**HOUSE BILL NO. 117**

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

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 1/28/05**

**Referred: Community and Regional Affairs, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the liability of the state and municipalities for attorney fees in  
2 certain civil actions and appeals; and providing for an effective date."

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **FINDINGS, PURPOSE, AND INTENT.** (a) The legislature finds that

7 (1) awards of enhanced attorney fees to adverse parties that are significantly  
8 beyond those ordinarily granted under the state's tradition of awarding a partial recovery of  
9 attorney fees to a prevailing party impose a substantial cost on the state and municipalities at a  
10 time of fiscal scarcity; and

11 (2) except if provided by a specific statute, if needed to preserve the courts'  
12 authority to sanction litigants, or if there is an exercise of eminent domain, there is no public  
13 policy that sufficiently supports such enhanced awards to justify their fiscal impact.

14 (b) The purpose of sec. 2 of this Act is to reduce the impact of the matters in the

1 findings made in (a) of this section on the state fisc, under art. II, sec. 21, of the Constitution  
 2 of Alaska and the doctrine of sovereign immunity, and on the fisc of municipalities, through  
 3 the legislature's power to confer immunity upon the state and municipalities.

4 (c) This Act does not preclude the enactment of, nor create an implied repeal of,  
 5 specific statutes authorizing awards of ~~costs or fees~~ in particular situations, such as in  
 6 AS 45.50.537. *Attorney fees*

7 \* **Sec. 2.** AS 09.65 is amended by adding a new section to read:

8 **Sec. 09.65.065. Liability of the state and municipalities for attorney fees.**

9 (a) Except as otherwise provided by statute or awarded by a court as a sanction, in a  
 10 civil action or appeal the state or a municipality is not liable to pay an attorney fee  
 11 award exceeding the following:

12 (1) in a civil action or appeal in which a money judgment is recovered,  
 13 20 percent of the money judgment recovered;

14 (2) in a civil action in which the prevailing party recovers no money  
 15 judgment and

16 (A) that civil action goes to trial, 30 percent of the prevailing  
 17 party's reasonable actual attorney fees that were necessarily incurred in  
 18 litigating issues upon which the party prevailed; or

19 (B) that civil action is resolved without trial, 20 percent of the  
 20 prevailing party's reasonable actual attorney fees that were necessarily incurred  
 21 in litigating issues upon which the party prevailed;

22 (3) in an appeal in which the prevailing party recovered no money  
 23 judgment, 20 percent of the prevailing party's reasonable actual attorney fees that were  
 24 necessarily incurred in litigating issues upon which the party prevailed.

25 (b) The provisions of (a) of this section do not apply to a civil action or appeal  
 26 relating to condemnation of property under the power of eminent domain.

27 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
 28 read:

29 **APPLICABILITY.** Section 2 of this Act applies to all civil actions and appeals filed  
 30 on or after the effective date of this Act.

31 \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

### **Summary HB 117 (Liability of State and Municipalities for Attorney Fees)**

- In most civil cases in Alaska, the losing party pays a portion of the winning party's attorney fees. In cases that are about principles (rather than money), the standard fee reimbursement is usually 20 percent, and no more than 30 percent, of actual fees.
- In some cases the courts give much higher awards to people suing state and local governments, amounting to a 100% fee reimbursement. At the same time, if the state or local government wins one of these cases, it receives no payment of its own attorney fees.
- This situation represents a policy choice by the courts to subsidize certain types of litigation, often litigation that the courts believe will further what is, in its view, a strong public policy.
- For the state alone, over last 10 years the cost of this subsidy averages almost \$600,000 per year above normal "partial" compensation
- HB 117 creates a new provision in the chapter of title 9 devoted to immunities.
- The bill would set limits on liability that are similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party.
- These limits do not apply to condemnation proceedings or in other situations where the legislature has voted to provide for enhanced fee reimbursement.
- the immunity created by HB 117 will save the state significant money each year, but, most importantly, it reasserts legislative control over state expenditures to encourage litigation on public concerns, based on policy priorities determined by the legislature.

Prepared by: Alaska Department of Law, February 25, 2005

HB 117



FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 27, 2005

The Honorable John Harris  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to, as a matter of sovereign immunity, limit the award of attorney's fees against the state and municipalities.

Since territorial days, Alaska has had a statutory policy of requiring the losing party in most litigation to pay a portion of the prevailing party's attorney fees. In recent years, this policy has been embodied primarily in Alaska Rule of Civil Procedure 82, which the Alaska Supreme Court adopted in response to a legislative delegation, made immediately following statehood, in AS 09.60.010. In most cases, the prevailing party receives a partial fee award, equal to no more than 20 percent of a money judgment or 20 percent of actual fees in a non-monetary case.

In cases brought against state or local governments, departures from the general rule of partial fee reimbursement have occurred with some regularity, with the governmental party required to reimburse all of the prevailing party's fees. Ordinarily, the basis for these enhanced fee awards has been the judicially created public interest litigant policy, wherein selected litigants bringing suits to advance ends deemed by the court to reflect strong public policies are granted full fees as a subsidy from the state treasury. The cost of this subsidy has been significant to the state in all recent fiscal years and, on a more irregular basis, has been significant to the municipalities targeted by such lawsuits.

There are instances where a Legislative policy sufficiently supports full attorney fee awards and the legislature has chosen to provide for them by statute. Full reimbursement is also important for eminent domain proceedings. Beyond these contexts, the Legislature has not identified a policy that would support a direct public subsidy to private litigants that goes beyond the traditional norm of partial fee awards. To ensure that public money is not disbursed as a subsidy to these litigants without an appropriate legislative authorization, this bill would provide, as a matter of sovereign immunity, that the state or a municipality would not be liable for an attorney fee award in excess of certain percentages of a money

The Honorable John Harris

January 27, 2005

Page 2

judgment or, if a money judgment is not recovered, certain percentages of the reasonable actual attorney fees the prevailing party incurred in litigating the issues upon which the party prevailed. This would prevent enhanced fee awards against the state or municipalities that are not authorized by statute, but leave those governments open to the standard partial fee awards called for in the Civil Rule 82 fee schedule.

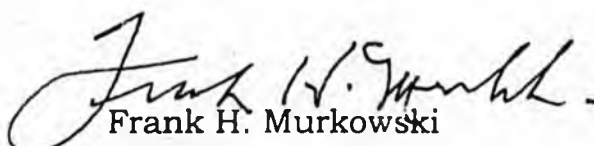
Section 1 of the bill describes the purposes of the Legislation. It notes the fiscal impact of enhanced fee awards, and specifically relies on the legislature's constitutional authorities in regulating this area. Section 1 states clearly that this bill, if enacted into law, would neither preclude nor repeal specific statutes authorizing the award of costs or fees in particular situations.

Section 2 of the bill would create a new provision in the chapter of AS 09 devoted to immunities. It provides that for civil actions or appeals in which a money judgment is recovered, the state and municipalities are not liable to pay more than 20 percent of the money judgment. In civil actions in which no money judgment is recovered, the liability of the state and municipalities for attorney fees for cases that go to trial is capped at 30 percent of the reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed, and 20 percent for cases that do not go to trial. For appeals in which no money judgment is recovered, the liability of the state and municipalities for attorney fees is capped at 20 percent of reasonable actual attorney fees that were necessarily incurred in litigating issues on which the party prevailed. These limits on liability are very similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party. These limitations do not apply if the statutes provide differently, if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Section 3 of the bill would make the bill, if enacted into law, applicable only to civil actions or appeals initiated after it takes effect.

I urge your prompt consideration and passage of this bill.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 117  
 (H) Publish Date: 1/28/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An act relating to liability for attorney RDU Risk Management  
fees in certain civil actions Component Risk Management  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 71

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Section 2 provides enhanced immunity for State and municipalities to not be liable to pay attorney fee awards exceeding those provided for in Civil Rule 82 (unless otherwise provided by specific statute).

Risk Management is not affected by this new limitation.

Any monetary judgment awarded on personal injury (tort) actions against the State of Alaska covered by the Risk Management self insurance program are presently addressed by Civil Rule 82 - which remains unchanged.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Risk Management Date/Time 12/10/04 10:46 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date 12/10/2004  
 Agency Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 117  
 (H) Publish Date: 1/28/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to the liability of the state and RDU CIVIL  
municipalities for attorney fees..." Component Labor & State Affairs  
 Sponsor \_\_\_\_\_  
 Requester Governor Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill would, as a matter of sovereign immunity, limit the award of attorney fees against the state and municipalities. Though the bill will apply to almost all actions against the state and municipalities, it will have a particular effect on attorney fees awarded to parties determined by the courts to be public interest litigants. HB 145, passed by the legislature in 2003, has been challenged in court and found by the superior court to be unconstitutional because it was viewed as requiring a court rule change, thus needing a two-third vote by both houses of the legislature, which it did not receive. In addition the court found it to be an unconstitutional denial of due process and equal protection insofar as it required public interest litigants to pay attorneys fees. That decision is being appealed to the Alaska Supreme Court. This bill responds to the Superior Court decision by narrowly focusing on the award of fees against the state or municipality and limiting the award to the amount applicable under Civil Rule 82 unless

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 12/9/04 4:09 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 12/9/2004  
 Agency Department of Law

**FISCAL NOTE #2**

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

**BILL NO. HB 117**

**ANALYSIS CONTINUATION**

otherwise provided for in specific statutes, or if the courts determine it is appropriate to award attorney fees as a sanction for misconduct by a party or the party's counsel, or in cases involving the condemnation of property under the power of eminent domain.

Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

### **Summary HB 117 (Liability of State and Municipalities for Attorney Fees)**

- In most civil cases in Alaska, the losing party pays a portion of the winning party's attorney fees. In cases that are about principles (rather than money), the standard fee reimbursement is usually 20 percent, and no more than 30 percent, of actual fees.
- In some cases the courts give much higher awards to people suing state and local governments, amounting to a 100% fee reimbursement. At the same time, if the state or local government wins one of these cases, it receives no payment of its own attorney fees.
- This situation represents a policy choice by the courts to subsidize certain types of litigation, often litigation that the courts believe will further what is, in its view, a strong public policy.
- For the state alone, over last 10 years the cost of this subsidy averages almost \$600,000 per year above normal "partial" compensation
- HB 117 creates a new provision in the chapter of title 9 devoted to immunities.
- The bill would set limits on liability that are similar to the limits that courts have found for years to represent fair partial compensation to a prevailing party.
- These limits do not apply to condemnation proceedings or in other situations where the legislature has voted to provide for enhanced fee reimbursement.
- the immunity created by HB 117 will save the state significant money each year, but, most importantly, it reasserts legislative control over state expenditures to encourage litigation on public concerns, based on policy priorities determined by the legislature.

Prepared by: Alaska Department of Law, February 25, 2005

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,  
GOVERNOR

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907)269-5274  
FAX: (907)278-7022

February 22, 2005

By U.S. Mail and PDF

Ms. Kaci Schroeder  
Legislative Aide to Representative Thomas  
Committee Aide, House Community and Regional Affairs Committee  
State Capitol, Room 428  
Juneau, Alaska 99801-1182

Re: HB 117

Dear Ms. Schroeder,

You have asked two questions with respect to HB 117: (1) would HB 117 be rejected by the Superior Court on the same basis as was former HB 145 and, (2) can the statute be drafted in such a way as to take the income of the litigant into account.

We very much appreciate the Committee's thoughtful approach to HB 117. Before responding to your questions, I would like to first clarify several assumptions underlying the Committee's concerns. You suggest that the public interest litigant policy was put in place to protect public interest litigants who cannot match the resources that are available to governments. That is not correct. The public interest litigant policy was put in place by the courts for the stated purpose of encouraging certain types of lawsuits, those that raise matters of public importance. The policy makes no reference to the wealth of the litigants, but rather focuses only on the type of issues raised. Also keep in mind that it applies equally to private persons as well as governments. Thus, for example, if Bill Gates brings a public interest lawsuit against the City of Haines, Mr. Gates is subsidized with enhanced fees if he wins and protected from having to pay fees if he loses. The City of Haines is not.

Secondly, when speaking of the public interest litigant policy, it is important to keep in mind whose policy it is. In the view of the administration, the policy decision as to what litigation is appropriately subsidized with public monies is one for the Legislature. Consistent with this approach, there are a number of instances where the legislature has specifically determined that it wishes to

encourage litigation by requiring full fees to be paid to the winning parties. One example is AS 45.50.537 (consumer protection).

However, the public interest litigant subsidy was created and implemented by the court system. Thus the courts, and not the Legislature, have determined what are issues of public importance deserving of subsidy from public funds. Under HB 117, the baseline rule would be that there would be no enhanced fee awards, and special exceptions would be made by the Legislature based on policies the Legislature feels are important. It would reclaim for the legislature its rightful role as the body that makes policy relating to the use of public funds.

With that background, I will turn to you specific questions. HB 145 prohibited courts from treating litigants differently based on the public interest litigant criteria developed by the court system. This included instances when the public interest litigant policy was used either as a shield (to avoid paying fees) or as a sword (to obtain enhanced fees). HB 117 affects only the situation where the policy is used as a sword, to obtain enhanced fees. With respect to the part of HB 145 that affected the use of the public interest litigant policy as a sword, the sole basis for the court's decision was that the legislative action changed a court rule of procedure and required a 2/3 vote that it did not receive. Judge Collins thought this was a very close question, and in the end she ruled against HB 145 because she felt it micromanaged how the court would weigh some of the various factors listed in Rule 82.

While we disagree with this conclusion, and are currently challenging it in the Supreme Court, we do not believe that HB 117 raises the same concern. Rather than defining how the court will evaluate fee issues, it goes back to a much more basic level, dealing with the historically-recognized legislative prerogative to decide the extent to which the sovereign may be required to pay money. Courts, including our own, have consistently upheld the ability of the state to determine the extent of its sovereign immunity. Thus we believe that HB 117 is substantially more likely to withstand a court challenge.

Your second question was whether HB 117 could incorporate an indigency criterion for obtaining full fees. We believe that is not appropriate in this bill. First, as described above, this bill is set up as a simple assertion of sovereign immunity. If you begin to add in language that creates a scheme to differentiate among those against whom it is asserted, then you make the legislation more vulnerable to constitutional challenge. Secondly, it would be very difficult to define the exceptions. As you note there are many ways in which a party could get around such a requirement, such as by using an indigent person as a stalking horse while the litigation was in reality funded by a wealthy entity. In addition,

there are often instances when the individual is indigent, but the legal representation is provided at no cost by well-funded law firms such as Trustees for Alaska or Earthjustice. For these reasons we do not support an effort to incorporate an indigency requirement in this legislation.

However, that does not mean that what you propose cannot be done. The legislature can pass HB 117 as it now stands, setting a baseline, default ceiling that limits state and municipal liability. While we cannot speak for the Governor's Office on how it would approach such options, there are then several approaches which the legislature could use to openly subsidize public interest litigation that would be effective from a legal perspective. First, the immunity in HB 117 is expressly limited by the words "except as otherwise provided by statute." The legislature can provide for full fees for those kinds of litigation that the legislature believes are deserving. As noted above, an example of such legislation is AS 45.50.537. Another example is the provision in HB 145 that provides for full fees for successful constitutionally-based challenges.

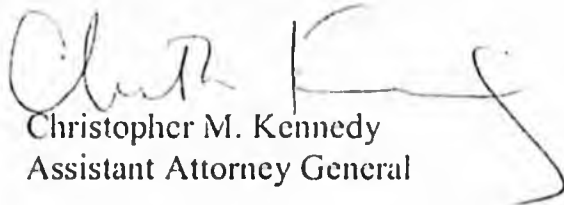
A second legally acceptable way to provide a subsidy of public money is, as you suggest, to deal with the financial means of the litigant rather than subject areas of litigation. This could be accomplished by appropriating specific monies to be used to fund litigation by indigent persons against the state on matters of public importance. Finally you could create some form of hybrid whereby you funded indigent persons who wished to bring lawsuits of public importance in certain areas of law.

I hope this responds to your concerns. If you have further questions, please feel free to contact us at your convenience.

Sincerely,

SCOTT J. NORDSTRAND  
ACTING ATTORNEY GENERAL

By:

  
Christopher M. Kennedy  
Assistant Attorney General

CMK/cam

cc: David Marquez  
Craig Tillery  
Linda Hay



# Alaska State Legislature

Please enter into the record my testimony to the House Community & Regional Affairs  
committee name

Committee on \_\_\_\_\_, dated \_\_\_\_\_  
HB 117 2-17-05  
bill # / subject public hearing date

The Alaska Constitution is, without a doubt, the best constitution of any of the states in our union.

Article I, Section 1 of the Inherent Rights provision of the Alaska Constitution states that "all persons have the corresponding obligation to the people and to the state."

Our organization, The Alaska Constitutional Legal Defense Fund, is a public interest litigant that has been successful in all of our cases before the Alaska Supreme Court. We have never lost an Alaska case as a public interest litigant. These cases include: Payton, McDowell, Gulkana River, Owsheck and Totemoff. The Payton decision found that "uses rather than users were more proper and important as applied to public trust resources." The McDowell decision stated that, "fish was a common use resource and a simple one at that." The Gulkana River decision broadens the definition of navigability of rivers in Alaska and, therefore, as it pertains to all waters in Alaska. The Totemoff v. Alaska case was a very important case in which the U.S. Supreme Court refused to override the Alaska Supreme Court decision.

The Owsheck decision ruled that all fish and game guides are as close to the actual harvesters of these common property resources and, therefore, of all under the protection of these common property resource rules.

We find that our governor's stingy attitude does not recognize the need of the State of Alaska's support of the Alaska Constitution and those who are willing public trust litigants.

We also find that the 14<sup>th</sup> Amendment of the U.S. Constitution, "that those who are selected and or elected (i.e., governors) support those who are willing to act as responsible public interest litigants."

We thereby request that all of those who are selected (including the governor and legislators) and the general public be supportive of the Alaska Constitution and the U.S. Constitution's 14<sup>th</sup> Amendment. We find that they, in fact, are proposing changes to both the Alaska and U.S. Constitution without the proper citizenship's right to vote on such important public issues.

Signed: Dale Bondurant *Dale Bondurant*  
Testifier

The Alaska Constitutional Legal Defense Fund  
Representing (optional)

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## Alaska Civil Liberties Union

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February 15, 2005

To: Representatives Kurt Olson and Bill Thomas, Co-Chairs  
Members of the House Community and Regional Affairs Committee

From: Michael W. Macleod-Ball, Executive Director

RE: House Bill No. 117  
*An Act relating to the liability of the state and municipalities for attorney fees in certain civil actions and appeals; and providing for an effective date*

Please accept this statement in opposition to the above referenced bill. We oppose HB 117 (SB 86) on the grounds that it will have a chilling effect on the ability of parties acting in the public interest to challenge the inappropriate exercise of governmental authority. Further, the bill will tend to widen the legal advantage currently held by governmental litigants over private individuals.

The typical plaintiff in a public interest lawsuit is an individual, a non-profit advocacy organization, or a charitable organization. The typical defendant in such a suit is a governmental entity - usually the federal or state government due to the nature of the issues commonly litigated. There can be no dispute that the typical suit pits a party with limited financial resources who needs to hire outside counsel against a governmental entity with access to substantially greater financial and legal resources. As often as not, the dispute is over principle and not over money.

Compare this to any other type of litigation. First, private suits almost always involve a fight over money or property interests. Typically, general civil litigation pits business against business or individual against individual. Certainly there are disparities in each party's ability to cope with the costs of litigation -- but it's a matter of happenstance.

The public interest litigant, therefore, is financially disadvantaged and typically does not have the prospective benefit of a money damages award. As a result, attorneys are not readily available to take on such cases without sizable retainers - it is not profitable for them to do so. Therefore, the public interest litigant is legally disadvantaged as well - because the governmental adversary will always have counsel on board from the start. In his letter of transmittal, the Governor complains that the public interest litigant is being subsidized by the current system of attorney fee reimbursement. But, bear in mind that the public interest litigant only receives reimbursement if a) he or she is acting in the public interest and b) he or she is successful in showing that the government acted wrongly. On the other hand, the government gets its subsidy from the taxpayers whether it wins or not. It's not as if the individual within the government who caused the government to violate the victim's rights is made to reimburse the taxpayers for