

**ALASKA STATE LEGISLATURE  
HOUSE COMMUNITY AND REGIONAL AFFAIRS  
STANDING COMMITTEE**

February 28, 2002  
8:10 a.m.

**MEMBERS PRESENT**

Representative Kevin Meyer, Co-Chair  
Representative Carl Morgan, Co-Chair  
Representative Andrew Halcro  
Representative Drew Scalzi  
Representative Lisa Murkowski  
Representative Gretchen Guess  
Representative Beth Kerttula

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 296

"An Act relating to mergers and consolidations of municipalities."

- MOVED CSHB 296(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 355

"An Act relating to the taxation of mobile telecommunications services by municipalities; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 296

SHORT TITLE:MUNICIPAL MERGER AND CONSOLIDATION

SPONSOR(S): REPRESENTATIVE(S)WHITAKER

Jrn-Date	Jrn-Page		Action
01/14/02	1952	(H)	PREFILE RELEASED 1/4/02
01/14/02	1952	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1952	(H)	CRA
02/28/02		(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HB 355

SHORT TITLE:MOBILE TELECOMMUNICATIONS TAX

SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
01/23/02	2045	(H)	READ THE FIRST TIME - REFERRALS
01/23/02	2045	(H)	CRA, L&C
01/23/02	2045	(H)	REFERRED TO CRA
02/28/02		(H)	CRA AT 8:00 AM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE JIM WHITAKER

Alaska State Legislature  
Capitol Building, Room 411  
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 296.

TAMARA COOK, Director

Legal and Research Services Division  
Legislative Affairs Agency  
Alaska State Legislature

Terry Miller Legislative Office Building, Room 329  
Juneau, Alaska 99801

POSITION STATEMENT: Provided clarification on HB 296.

DAN BOCKHORST, Staff

Local Boundary Commission  
Department of Community & Economic Development  
550 West Seventh Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Testified on HB 296.

PETE ROBERTS, President

Citizens Concerned About Annexation  
PO Box 1134  
Homer, Alaska 99603

POSITION STATEMENT: Testified in support of HB 296.

AMY ERICKSON, Staff

to Representative Murkowski  
Alaska State Legislature  
Capitol Building, Room 408  
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB 355, the House Labor & Commerce Standing Committee.

DAN YOUMANS, Director  
External Affairs  
AT&T Wireless  
(No address provided)

POSITION STATEMENT: Testified in support of HB 355.

DARRELL BELL, Director of Taxes  
AT&T Wireless  
(No address provided)

POSITION STATEMENT: Testified on HB 355 and indicated agreement with adopting the federal act by reference.

CHUCK HARLAMERT, Juneau Section Chief  
Tax Division  
Department of Revenue  
PO Box 110420

Juneau, Alaska 99811-0420

POSITION STATEMENT: Discussed the fiscal note analysis for HB 355.

#### **ACTION NARRATIVE**

TAPE 02-11, SIDE A  
Number 0001

CO-CHAIR CARL MORGAN called the House Community and Regional Affairs Standing Committee meeting to order at 8:10 a.m. Representatives Morgan, Meyer, Halcro, Scalzi, and Guess were present at the call to order. Representatives Murkowski and Kerttula arrived as the meeting was in progress. Co-Chair Morgan introduced Close-Up students who were in attendance.

#### HB 296-MUNICIPAL MERGER AND CONSOLIDATION

CO-CHAIR MORGAN announced that the first order of business would be HOUSE BILL NO. 296, "An Act relating to mergers and consolidations of municipalities."

Number 0097

REPRESENTATIVE JIM WHITAKER, Alaska State Legislature, testified as the sponsor of HB 296. This legislation deals with the most basic tenet of democracy, self-determination. Representative

Whitaker informed the committee that a large community can, by virtue of a vote, determine that a smaller community should become part of the larger community, no matter the decision of the smaller community. "This particular bill would correct that affront to democracy and self-determination," he explained.

REPRESENTATIVE WHITAKER explained that Section 1 of HB 296 merely cleans up existing statute. The current statute allows an indefinite amount of time for signatures to be collected in order to place a consolidation effort before the voters. Signatures may be collected over a period of time, five to ten years, and some of those signatures may be from people who no longer live in the area, yet those signatures would still count. This legislation would change that by requiring that signatures for such be collected in a period of one year.

Number 0368

REPRESENTATIVE WHITAKER turned to Section 2 of HB 296. To uphold the basic tenet of self-determination, that is community self-determination, it is unacceptable that a larger community simply absorbs an existing governmental entity. Representative Whitaker clarified that this discussion isn't about annexation. This legislation addresses the situation in which an existing city is absorbed by a borough, for example, and a consolidated government is formed. This happens even when a majority of the smaller entity preferred [not to be absorbed by the larger governmental entity]. Therefore, the smaller community's right to self-determination has been taken away.

REPRESENTATIVE SCALZI recalled the request, during the Homer annexation, that smaller second class cities become involved in the dialogue during an annexation. Therefore, he requested that Representative Whitaker draw the distinction.

REPRESENTATIVE WHITAKER reiterated that annexation is a separate subject and doesn't apply to consolidation or unification, which this bill addresses. He deferred to Tam Cook, Legislative Legal Services, regarding the specific distinctions.

Number 0596

REPRESENTATIVE GUESS inquired as to whether [HB 296] will result in the problem of one [local government] providing services to another [local government] which could create an incentive for voters [of the smaller community] to not vote for [consolidation/unification].

REPRESENTATIVE WHITAKER agreed that could be a possibility. However, he emphasized the need to not, in the search for expediency and efficiency, trump a basic tenet such as self-determination. Representative Whitaker, in further response to Representative Guess, said he wasn't aware of any cases like Representative Guess had described.

REPRESENTATIVE GUESS requested that Representative Whitaker review Section 3.

Number 0729

REPRESENTATIVE WHITAKER requested that Section 3 be deleted because that section [posed a problem for the Local Boundary Commissions (LBC)], and it wasn't a battle he felt could be won.

CO-CHAIR MEYER asked that Representative Whitaker elaborate as to why he felt that he wouldn't win the battle with the LBC over Section 3.

REPRESENTATIVE WHITAKER remarked that [this battle] isn't worth fighting over. The LBC had significant objections to [Section 3] in relation to the it's ability to conduct their business. Representative Whitaker said that he didn't want HB 296 to become a review of the LBC and its powers.

REPRESENTATIVE SCALZI requested clarification of the relationship of annexation of a second class city to a larger city such as in the Homer annexation. How does [HB 296] differ from [the Homer situation], he asked.

Number 0986

TAMARA COOK, Director, Legal and Research Services Division, Legislative Affairs Agency, Alaska State Legislature, stated that the Homer situation is different in several regards. She explained that there are two ways in which to accomplish local boundary changes. One way to accomplish a local boundary change is by proposal by the LBC subject to legislative oversight. The second way is through local option. In the Homer situation, the first method, proposal by the LBC subject to legislative oversight, was utilized. However, Article X, Section 12 of the Alaska State Constitution does allow for local option boundary changes. The last sentence of Article X, Section 12, says, "The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action." Therefore,

the statute being amended in HB 296 is a local action statute that has nothing to do with the LBC's authority over consolidation.

MS. COOK also pointed out that there are procedures for annexation that are separate from those for consolidation. Representative Scalzi is correct in that there could be a situation in which annexation involves including one city into another city, although those issues are somewhat different. The statutes [encompassed in HB 296] deal with merger and consolidation, which always involve municipalities that join together. [Mergers and consolidations] never involve land that is unincorporated or borough land, which was the case in the Homer situation. Literally, merger and consolidation means that two municipalities come together to form a single municipality. Ms. Cook explained, "This particular provision is the local option merger and consolidation statute. The Local Boundary Commission could still, if it chose to get involved in a merger or consolidation, submit a proposal and do the route that we saw in Homer." Therefore, the constitution specifies that the legislature can pass laws that deal with the procedure for local option changes. The LBC does get involved in that it reviews local option merger and consolidation petitions. Ms. Cook pointed out that if the local option route is taken, a vote is taken. That [vote] is required by statute. Therefore, HB 296 places two more procedures into the already established statutory framework.

Number 1201

MS. COOK explained that Section 1 of HB 296 changes [statute] such that only a year is allowed to collect signatures for a merger and consolidation petition. [Section 2] changes the vote requirement that currently exists for merger and consolidation [petitions]. Currently, all the people that would be included in the new proposed municipality vote and are counted in order to determine passage [of the merger/consolidation]. The significant change in Section 2 is that the votes of the areas will be tabulated separately, which Ms. Cook viewed as a legislative policy choice.

CO-CHAIR MEYER inquired as to whether there is a problem with the current method of doing mergers and consolidations.

MS. COOK said that she wasn't familiar with any facts on that matter.

Number 1344

DAN BOCKHORST, Staff, Local Boundary Commission; Department of Community & Economic Development (DCED), testified via teleconference. Mr. Bockhorst noted that the LBC hasn't yet formally considered HB 296. However, he noted that he has discussed HB 296 with the LBC Chairman, Kevin Waring, who agrees with the views he will state today. In regard to Section 1, Mr. Bockhorst said that the department considers it to be reasonable and thus endorses it. In regard to Section 2, Mr. Bockhorst concurred with Ms. Cook's comments that Section 2 is a policy decision. He pointed out that Article X, Sections 3 and 7, of the Alaska State Constitution impose the duty on the legislature to determine which municipal governments will be merged and consolidated. Therefore, the department views Section 2 as a legitimate public policy proposal deserving serious consideration.

Number 1470

MR. BOCKHORST noted that the current law provides for an areawide vote. That law has been in place since 1972, and was reenacted in 1985 when Title 29 was comprehensively rewritten. He turned to the policy debate on the merits of providing a requirement for separate votes in each municipal government. The Alaska Supreme Court has held that the constitutional policy of minimizing the number of local government units - as established in Article X, Section 1, of the Alaska State Constitution - is served when city and borough governments do join. Therefore, the more difficult it is to merge or consolidate, the less the aforementioned constitutional policy is served.

MR. BOCKHORST informed the committee that in 1991 the legislature created an ad hoc task force on governmental roles, which was intended to address efficiencies and effectiveness. That ad hoc committee presented its report to the legislature in 1992. Among the conclusions of the ad hoc committee was that merger, consolidation, and unification of city governments and borough governments should be encouraged, when possible, in order to achieve more efficient and cost-effective service delivery. Since HB 296 would require a vote of each municipality, it would - to varying degrees - raise the bar for municipal mergers and consolidations. However, Section 2 wouldn't have created particularly extreme situations in the recent proposals before the LBC. The recent proposals before the commission have been such that a single city government and

a single borough government have proposed consolidation. In all cases, the city governments have encompassed a substantial portion of the borough population -- ranging from approximately 40 percent to 75 percent of the population of the total borough. The LBC has dealt with proposals for the consolidation of the following: the City of Haines and the Haines Borough, the City of Ketchikan and the Ketchikan Gateway Borough, and the City of Fairbanks and the Fairbanks North Star Borough. However, slight changes in those proposals could have resulted in Section 2 of HB 296 making it more difficult to merge or consolidate. For example, the Ketchikan Gateway Borough consists of the City of Ketchikan and the City of Saxman. If Section 2 had been in place and had the City of Saxman been included in the Ketchikan consolidation proposal, voter approval from each of the three municipal governments effected would have been required. Because of the characteristics of the City of Saxman, such a situation would have allowed 2-3 percent of the voters to block a consolidation, even if the remaining voters had endorsed the consolidation.

Number 1723

MR. BOCKHORST turned to Representative Scalzi's comment regarding the merger/consolidation of the City of Homer and the City of Kachemak. This is a situation in which the provisions of HB 296 might make it more difficult to consolidate the aforementioned local governments, if the local option process was used. Under current law, the consolidation of the City of Homer and the City of Kachemak would require a majority of the total votes cast. Requiring separate voter approval could result in a situation in which roughly 4 percent of the total number of votes cast in that proposal could prevent the consolidation. However, he stressed that there are alternatives such as a proposal for legislative review annexation of the City of Kachemak to the City of Homer. In the past there have been instances in which city governments have been consolidated or merged through annexation. For example, the City of Port Chilkoot was annexed to the City of Haines in 1970. An extreme example of a situation in which the separate vote requirement could impact the outcome of consolidation is with the City of Kupreanof, which joins the City of Petersburg. The City of Kupreanof receives services from the City of Petersburg. If the separate voter approval requirement was in place, less than one-half of one percent of the total voters could preclude consolidation of the City of Kupreanof and the City of Petersburg. However, the consolidation, in effect, could occur through a legislative review annexation.

REPRESENTATIVE HALCRO related his understanding that in a situation in which one community provides services to another community, a small number of voters in the smaller city could block a consolidation or merger. However, if the case is strong enough, the city providing the services could propose its claim to the LBC through the annexation process.

MR. BOCKHORST answered yes. In further response to Representative Halcro, Mr. Bockhorst agreed that in the most egregious cases, when a consolidation is being refused for all the wrong reasons, there is a safety net [in the legislative review annexation].

Number 1926

PETE ROBERTS, President, Citizens Concerned About Annexation, testified via teleconference. Mr. Roberts announced support of HB 296 [in order to maintain] self-determination and local control. He pointed out that [the U.S.] legal system includes many built-in provisions to thwart a large majority from rolling over a smaller minority. Mr. Roberts said he feels Section 2 is appropriate. He pointed out that Article I, Section 2, of the Alaska State Constitution says, "All political power is inherent in the people." Mr. Roberts expressed the need to review boundary changes by decree. There needs to be due process.

Number 2122

CO-CHAIR MEYER noted that his earlier question regarding examples of this problem had been answered through the examples specified by Mr. Bockhorst and through the information in the committee packet regarding the Fairbanks North Star Borough.

CO-CHAIR MORGAN, in response to Representative Halcro, announced that there is a fiscal note.

REPRESENTATIVE GUESS pointed out that the size of the fiscal note would depend upon who is in charge of the election.

REPRESENTATIVE WHITAKER, in response to Co-Chair Meyer, answered that HB 296 is not an unfunded mandate.

CO-CHAIR MEYER indicated that under HB 296 cities would be required to do more work.

REPRESENTATIVE WHITAKER replied no, and explained that there would be one election with separate counts [for the separate local governments]. He acknowledged that such might take an hour more of work.

REPRESENTATIVE GUESS asked if it was Representative Whitaker's belief that this change should occur so that one-half of one percent could actually block a merger.

REPRESENTATIVE WHITAKER replied:

It is not my intent to allow any obstructionist effort; it is my intent to continue to provide the right to self-determination. As a result of that, there may be circumstances and situations wherein one-half of one percent may be viewed by the other ninety-nine point five percent as being obstructionist. However, the rights of that one-half of one percent have been maintained.

Number 2270

REPRESENTATIVE GUESS moved that the committee amend HB 296 by deleting Section 3. There being no objection, Section 3 was deleted.

Number 2303

REPRESENTATIVE SCALZI moved to report HB 296 as amended out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 296(CRA) was reported from the House Community and Regional Affairs Standing Committee.

The committee took a brief at-ease from 8:43 a.m. to 8:45 a.m.

#### HB 355-MOBILE TELECOMMUNICATIONS TAX

CO-CHAIR MEYER announced that the next order of business before the committee would be HOUSE BILL NO. 355, "An Act relating to the taxation of mobile telecommunications services by municipalities; and providing for an effective date."

REPRESENTATIVE GUESS announced that she had a conflict of interest with HB 355 due to her employment.

REPRESENTATIVES SCALZI and KERTTULA objected and thus Representative Guess was required to participate.

Number 2345

AMY ERICKSON, Staff to Representative Murkowski, Alaska State Legislature, testified on behalf of the sponsor, the House Labor & Commerce Standing Committee. Ms. Erickson said:

House Bill 355 conforms Alaska statutes to the federal Mobile Telecommunications [Sourcing] Act to allow for the appropriate taxes and fees on wireless services in Alaska. State and local governments tax mobile telecommunication services in a variety of ways. Because of the mobility of wireless equipment, determining which state and local taxes apply to a wireless call is complicated. The process of determining where a transaction is taxable is commonly referred to as "sourcing." In order to create a more uniform system for taxing wireless telecommunications, Congress passed the Mobile Telecommunications [Sourcing] Act, the crafting of which was a joint effort between industry, state and local, and tax officials. This was enacted in 2000.

States have until August 1st of this year to conform to the federal act. If [Alaska] fails to conform as a state, we'll be unable to impose taxes on most calls made outside of where the customer's primary use occurs - that's called "roaming."

Implementation of HB 355 creates the concept that the customer has a "primary place of use." That is, the residential or business street address where the customer uses the mobile service, which determines which jurisdiction has the right to tax the wireless call. Additionally, the bill prevents multiple taxation, achieves administrative simplicity and cost savings in the billing process, and avoids expensive audit litigation when multiple states claim jurisdiction to tax the same call.

MS. ERICKSON informed the committee that until this morning there was no known controversy with HB 355 and thus she urged the committee's support.

REPRESENTATIVE MURKOWSKI noted that the fiscal note was not received until last evening.

Number 2514

DAN YOUMANS, Director, External Affairs, AT&T Wireless, reiterated that HB 355 would place Alaska in compliance with the Mobile Telecommunications Sourcing Act, which was the result of a collaborative effort between the wireless industry and a number of organizations, including the National Governor's Association, the National Conference of State Legislatures, the federal tax administrators, the Multi-State Tax Commission, and the National League of Cities. Mr. Youmans informed the committee that HB 355 is supported by both AT&T Wireless and ACS. As mentioned, the federal law is intended to simplify how taxes are collected and remitted by wireless carriers. This [federal law] was necessary because the existing law speaking to fixed telecommunications didn't clearly specify which jurisdiction should be allowed to tax revenues from wireless phones. Additionally, the federal act specified changes in how wireless services were sold. Today, wireless calls are no longer sold on a call-by-call, minute-by-minute basis. New rate plans now include buckets of air time, which generally provide better deals to customers of wireless service. However, these plans have made the assessment of local taxes very difficult. For example, a rate plan may include 300 minutes of air time, a bucket of minutes, and may cost \$29.99 and also come with 1,000 free [minutes] for nights and weekends. Therefore, assessing taxes on these calls that are made from different municipalities becomes extremely complex. For example, what if the customer doesn't use all the minutes in a month or what if the customer uses all of the minutes and buys additional minutes at a higher rate.

MR. YOUMANS pointed out that the Mobile Telecommunications Sourcing Act has greatly simplified this process by allowing the jurisdiction of a customer's primary place of use to tax all the charges all the month no matter where the customer made the calls in the United States. In HB 355, the primary place of use is defined as the customer's residential street address or primary business address. Therefore, if a customer's residential street address is in the City of Seward, the only jurisdiction that could apply taxes would be Seward, no matter where the customer uses his/her wireless phone. Mr. Youmans informed the committee that on a state-by-state basis he has found this proposal to be revenue-neutral.

Number 2712

MR. YOUMANS summarized by saying that the bill has the following three benefits. First, HB 355 greatly simplifies the wireless carriers' administration of local taxes and jurisdictional audits for such taxes. Second, HB 355 helps consumers by clarifying which taxes apply to their bills. Without this clarification a consumer could be in a position in which multiple jurisdictions attempt to charge that customer for taxes. Third, HB 355 ensures that taxes are collected on all appropriate revenue of wireless users whose resident or primary business address is in their jurisdiction. Mr. Youmans concluded by requesting that the effective date be changed from July 1, 2002, to August 1, 2002, which is when the federal law officially goes into effect.

Number 2755

REPRESENTATIVE MURKOWSKI turned to the fiscal note and its analysis. The analysis of the fiscal note points out that although the language of HB 355 is somewhat patterned after the federal act, it isn't verbatim and so "some differences may produce unintended consequences." Therefore, the fiscal note recommends adoption of the federal act by reference. Representative Murkowski inquired as to how HB 355 differs from the federal act.

MR. YOUMANS remarked that he was concerned to hear that the Department of Revenue has some issues with HB 355 because he worked closely with the department on this legislation.

Number 2839

DARRELL BELL, Director of Taxes, AT&T Wireless, testified via teleconference. Mr. Bell informed the committee that he did most of the drafting, in conjunction with the Department of Revenue. Great pains were taken to reword the bill to exactly follow the federal bill. Therefore, he, too, was surprised. However, Mr. Bell announced that he didn't oppose incorporating the entire act by reference because there was never any intent to differ from what the federal act achieves.

REPRESENTATIVE MURKOWSKI pointed out that the fiscal note analysis also mentions that HB 355 is restricted to the municipal taxes in Alaska. Therefore, the Department of Revenue recommends changing HB 355 so that it applies to state as well

as municipal taxes. She inquired as to [Mr. Bell's] thoughts on that.

MR. BELL said that recommendation would be fine. He said that the only state tax he was aware of was the Universal Service Fund tax. However, he wasn't aware of that tax during the drafting of HB 355 and thus the legislation was drafted to deal with the borough and city issues. Mr. Bell emphasized the preference of changing HB 355 so that it applies to state as well as municipal taxes.

CO-CHAIR MEYER inquired as to what the Telephone Cooperative Gross Receipts Tax is that is mentioned in the fiscal note analysis. [There was indication that this question could be answered by the department during their testimony.]

Number 2944

REPRESENTATIVE KERTTULA turned to the new section, AS 29.45.780, and inquired as to whether those customer procedures differ from how one deals with the telephone bill.

MR. BELL explained that [HB 355] requires that the carrier respond to the customer within 60 days [once there is a complaint] regarding the taxes on the bill. This is the first step for the customer in obtaining a correction of an error.

REPRESENTATIVE KERTTULA asked if this has to be done in writing for telephone lines or can one call the carrier.

MR. BELL said he guessed that under HB 355 one could just call.

TAPE 02-11, SIDE B

REPRESENTATIVE KERTTULA pointed out that the language says, "If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing."

Number 3003

REPRESENTATIVE GUESS inquired as to whether [HB 355] includes mobile data as well.

MR. BELL replied, "Yes, to the extent mobile data is taxable."

REPRESENTATIVE GUESS also inquired as to who is in charge of the database.

MR. BELL explained that the state can choose to do nothing in regard to a database, and therefore the carriers would continue to use a nine-digit zip code approach. If the state chooses to do a database, it has to be done by the state or an entity with which all the cities and boroughs agree. That database would be used to correctly assign customers to their jurisdiction.

REPRESENTATIVE GUESS surmised then that HB 355 doesn't force the state to have an active role in creating a database.

MR. BELL agreed. If the state chooses to provide a database, the carrier must use that database if it desires to be held harmless in how customers are assigned jurisdictions. Mr. Bell suspected that many states wouldn't do a database in the hopes that the two or three vendors [in their state] would become providers of these databases and thus the state would endorse the database if it likes it.

Number 2872

REPRESENTATIVE GUESS pointed out that HB 355 refers to the primary business street address but doesn't refer to the primary residential address. Therefore, she inquired as to why "primary" wasn't specified for the residential address while it was for the business address.

MR. BELL recalled that the League of Cities wanted a primary business address so that the customer couldn't shop around for the lowest rate of all his/her business locations. He said, "We were trying to focus in on what they call 'gaming' on coming up with a service address that would be the point of taxation." He explained that there was a compromise in the specifications of the primary area of use.

REPRESENTATIVE GUESS inquired as to whether the customer bears any obligation to notify his/her service provider that the customer will be temporarily moving their residential address, although the primary residential address hasn't changed.

MR. BELL replied no, and explained that the primary place of use has to be one which is reflected in the customer's call activity across the board. [This] attempts to move away from identifying the location of every call.

MR. YOUMANS interjected that [the primary place of use] has to be within the carrier's service area. Therefore, if the secondary residence isn't in the carrier's service area, then that wouldn't be considered the customer's primary place of use.

REPRESENTATIVE GUESS said that she understood that there was a compromise, but she feels it seems sloppy to not [require] the primary residence address. She said she didn't want to be in a situation in which Juneau, as well as Anchorage, thinks it can tax her during the four months she is in Juneau.

MR. BELL remarked that [the carriers] don't want to be in a situation of tracking the customer's activity and change [the primary place of use] every couple of months.

Number 2696

REPRESENTATIVE MURKOWSKI asked what would happen if Alaska fails to come into compliance with the federal act.

MR. YOUMANS explained that the problem would relate to the authority a local jurisdiction would have in Alaska to charge taxes on calls made out of that jurisdiction. For example, when a customer who lives in Seward uses his wireless phone in Seattle, [Seward] wouldn't be able to collect the taxes it was owed for those calls made in Seattle because the municipality wouldn't have the authority to tax outside of its jurisdiction.

MR. BELL pointed out that the federal act takes away the right to tax customers traveling into an area whose primary place of use is outside of the state. If Alaska doesn't come into compliance with the federal act, then the aforementioned revenue stream from roaming will be lost.

REPRESENTATIVE GUESS questioned whether not specifying a primary residential address could be setting up a situation in which Juneau would decide that it should receive some of the tax revenue from those who move to Juneau [for part of the year].

MR. BELL said that if one uses their phone primarily in Juneau, then an audit would be required in order to change the primary place of use to Juneau.

MR. YOUMANS interjected that the determination would come from an audit.

REPRESENTATIVE GUESS questioned, "Again, tell me why we shouldn't change this to primary residential."

MR. YOUMANS commented that perhaps it's something that should be reviewed. He echoed earlier comments that the language was a compromise so that [a customer] isn't linked to one address in recognition of people moving around a bit. If there was a question, then the customer would show their phone records to from where the primary calls are made [in order to determine] the primary place of use.

REPRESENTATIVE GUESS remarked that it seems to place quite a burden on the customer.

REPRESENTATIVE MURKOWSKI pointed out that Alaska probably has a greater population of folks that are mobile. She noted that she uses her cell phone more in Juneau than she does in Anchorage.

MR. YOUMANS offered to review this issue.

MR. BELL related his belief that changing the language to the primary residential address would probably follow what is [currently] being done more closely. Therefore, "we" probably wouldn't argue with that change, although one state - Alaska - would have a little different wording.

Number 2425

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, began by apologizing for the late arrival of the fiscal note. He echoed earlier comments that the department had worked closely with Mr. Bell and Mr. Youmans over the last year. The department reviewed the first draft of HB 355 and suggested changes, which were carried through. He noted that he spoke with Mr. Bell and Mr. Youmans last September and gave them the impression that the department was satisfied, which it was at the time. Upon further accumulation of information from [similar] legislation being brought forward in other states, the fiscal note was developed. The suggestions of the fiscal note are minor technically. Mr. Harlamert said that the [department] believes that the bill is a great idea.

MR. HARLAMERT turned to the suggestion of adopting the federal act by reference. He explained, "So the extent that our law does not change to match the federal law, we lose the ability to tax -- we only get the tax where they overlap. Our basic theme is to stay on par with the federal law, as closely as possible.

The idea is that it's revenue-neutral for everybody." He reiterated the belief that HB 355 is a good bill, and he said he hoped it would go through. Mr. Harlamert turned to the problems the department had with the bill, which he viewed as rather technical. Some of the minor differences between the bill [and the federal law] can't be explained by the department because the department doesn't have expertise in this industry. He pointed out, "If you build in the potential for our law deviating from the federal law, you, by nature, limit our ability to tax this activity. It just doesn't make any sense, in my opinion, to do that. We should, as closely as possible, mimic the federal law."

MR. HARLAMERT, in response to Co-Chair Meyer, explained that the Telephone Cooperative Gross Receipts Tax is a state tax on local telephone cooperatives and it's in lieu of any other state tax. This tax is shared directly with the communities in which the telephone cooperative operates. This tax was mentioned only to illustrate why one would want to include state taxes in HB 355. Mr. Harlamert said that [the department] can't measure the amount of the Telephone Cooperative Gross Receipts Tax that could be attributable to mobile services. Most of the cooperatives have a taxable subsidiary that handle mobile services. Mr. Harlamert stated that it's not really a critical issue to the department.

CO-CHAIR MEYER noted that he would like to know the financial impact to the state if this bill passes because that would determine whether HB 355 needs to go to the House Finance Committee.

Number 2131

REPRESENTATIVE MURKOWSKI expressed her frustration with receiving the fiscal note late. She asked if Mr. Harlamert could provide an example of the unintended consequences mentioned in the analysis of the fiscal note.

MR. HARLAMERT said that he couldn't be specific because he isn't competent to discuss the underlying industry. He said he could only provide the observation that federal law overrides the state law and the state can't step beyond the sourcing provisions granted by the federal law. Therefore, any deviation from the federal law limits [the state] and thus has the potential to generate an unintended difference between what the state law allows the state to tax and the federal law allows the

state to tax. The best scenario is to match the [federal] law as closely as possible.

REPRESENTATIVE MURKOWSKI expressed her hope that the committee would be willing to hold HB 355 in order that the department could meet with Mr. Bell and Mr. Youmans and anyone else interested. She related her understanding that the department needs the expertise of the industry. She also expressed her hope that this could be worked out in order to have a strong zero fiscal note.

MR. HARLAMERT pointed out that even with the adoption of the federal law verbatim, the risk of it becoming outdated would remain. Therefore, adopting the federal law by reference is the simplest way to automatically build into Alaska's system any changes that occur to the federal law.

Number 1912

REPRESENTATIVE GUESS related her understanding that the department would like for HB 355 to include state taxes and tie the bill to federal law. She asked if the tie to the federal government would take into consideration prepaid telephones and other things coming in the wireless industry.

MR. HARLAMERT clarified that the latter change, tying our law to the federal law, would make the other suggestion, including state taxes, irrelevant. The federal law applies to state and municipal taxation. In further response to Representative Guess, Mr. Harlamert agreed that his opinion is that this legislation needs to be tied to the federal law.

MR. YOUMANS noted that he would be happy to work with the department on [adopting the federal law by reference].

MR. BELL added that the route being suggested is the route that [the industry] wanted to go in the first place. He informed the committee that in many states when this route has been attempted, the state has pointed out that there are certain restrictions on drafting the statutes and thus the federal act couldn't be adopted by reference. He thought that was the case in Alaska and was why all the work on HB 355 happened. However, "if we can do it by reference, we'll do it by reference," he said.

Number 1774

REPRESENTATIVE KERTTULA related her belief that it can be done in statute, but the regulations would be a different matter. One of the difficulties with regulations is that you don't know what will happen, and furthermore agencies only have certain authorities. She said she feels that there is a little more latitude with the statutes.

MR. YOUMANS clarified that he didn't mean [adopting the federal law] by regulation but rather by reference.

MR. BELL interjected that there is no desire to have this done by regulation.

CO-CHAIR MEYER announced that HB 355 would be held.

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:28 a.m.