

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 3, 2002

3:30 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

OTHER LEGISLATORS PRESENT

Representative William K. (Bill) Williams

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 496

"An Act providing that a utility or electric operating entity owned and operated by a political subdivision of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act."

- MOVED CSHB 496(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 447

"An Act relating to the interest rates that may be charged on loans by the Commercial Fishing and Agriculture Bank."

- MOVED HB 447 OUT OF COMMITTEE

HOUSE BILL NO. 429

"An Act relating to certain licenses for the sale of tobacco products; relating to tobacco taxes and sales and cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; relating to notification regarding a cigarette

manufacturer's noncompliance with the tobacco product Master Settlement Agreement or related statutory provisions and to confiscation of the affected cigarettes; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 496

SHORT TITLE:PUBLIC UTILITIES EXEMPT FROM REGULATION

SPONSOR(S): REPRESENTATIVE(S)WILLIAMS

Jrn-Date	Jrn-Page		Action
02/19/02	2321	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2321	(H)	L&C
04/03/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 447

SHORT TITLE:COM FISH & AGRICULTURE BANK INTEREST RATE

SPONSOR(S): REPRESENTATIVE(S)MULDER

Jrn-Date	Jrn-Page		Action
02/19/02	2309	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2309	(H)	L&C
04/03/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 429

SHORT TITLE:TOBACCO TAXATION; LICENSING

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/15/02	2282	(H)	READ THE FIRST TIME - REFERRALS
02/15/02	2282	(H)	L&C, JUD, FIN
02/15/02	2282	(H)	FN1: (REV)
02/15/02	2282	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/15/02	2282	(H)	REFERRED TO LABOR & COMMERCE
04/03/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

RANDY RUARO, Staff
to Representative William K. (Bill) Williams
Alaska State Legislature

Capitol Building, Room 515
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 496 on behalf of
Representative Williams, sponsor.

JIM VOETBERG, Assistant City Manager
City of Ketchikan;
Assistant General Manager
Ketchikan Public Utilities (KPU)
334 Front Street
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified in support of HB 496, saying it
would provide a level playing field.

HEATHER GRAHAM
City of Ketchikan
334 Front Street
Ketchikan, Alaska 99901

POSITION STATEMENT: Testified on HB 496, saying it would take
some time for a fully rate-regulated utility to set rates.

MICHAEL GARRETT, President
AP&T Wireless
4300 B Street, Suite 303
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 496.

REED STOOPS, Lobbyist
for General Communications Incorporated (GCI)
240 Main Street, Number 600
Juneau, Alaska 99801

POSITION STATEMENT: Testified on HB 496.

DALE ANDERSON, Staff
to Representative Eldon Mulder
Alaska State Legislature
Capitol Building, Room 507
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 447 on behalf of
Representative Mulder, sponsor.

ED CRANE, President
Commercial Fishing and Agriculture Bank (CFAB)
2550 Denali Street, Number 1201
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 497 and gave
specific information on the workings of CFAB.

NEIL SLOTNICK, Deputy Commissioner
Department of Revenue
PO Box 110405
Juneau, Alaska 99811-0405

POSITION STATEMENT: Presented HB 429 on behalf of the
Department of Revenue.

JOHANNA BALES, Auditor
Department of Revenue
550 West 7th Avenue, Suite 550
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on behalf of the department on HB
429, as an expert on tobacco tax.

MIKE ELERDING, President
Northern Sales Company of Alaska
PO Box 8112
Ketchikan, Alaska 99801

POSITION STATEMENT: Testified against HB 429 and gave specific
suggestion for stamping.

MARK JOHNSON, Chief
Community Health & Emergency Medical Services
Division of Public Health
Department of Health & Social Services
PO Box 110616

Juneau, Alaska 99811-0616
POSITION STATEMENT: Testified in support of HB 429, saying it
might prevent youths from smoking.

ACTION NARRATIVE

TAPE 02-48, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce
Standing Committee meeting to order at 3:30 p.m. Members
present at the call to order were Representatives Hayes,
Crawford, Halcro, and Murkowski. Representatives Rokeberg,
Kott, and Meyer arrived as the meeting was in progress.

HB 496-PUBLIC UTILITIES EXEMPT FROM REGULATION

CHAIR MURKOWSKI announced the first matter before the committee,
HOUSE BILL NO. 496, "An Act providing that a utility or electric
operating entity owned and operated by a political subdivision

of the state competing directly with a telecommunications utility is not subject to the Alaska Public Utilities Regulatory Act."

Number 0061

RANDY RUARO, Staff to Representative William K. (Bill) Williams, Alaska State Legislature, presented HB 496 on behalf of Representative Williams, sponsor. He told members HB 496 is about fairness, and he characterized the present statute as unfair as written. The current statute would allow an unregulated or partially rate-regulated utility to compete with a municipal utility and cause the municipal utility to become fully rate-regulated by the Regulatory Commission of Alaska (RCA); Mr. Ruaro called the resulting situation unbalanced. He mentioned the bill's zero fiscal note. He also reported that the RCA had submitted a letter saying it didn't oppose the bill and that the issue is one to be decided legislatively.

MR. RUARO drew attention to the sponsor's proposed Amendment 1, which read [original punctuation provided]:

Page 2, Line 3

Delete: "company"

Insert: "operating entity"

This is a technical change to conform the terminology used in the legislation on page 2, line 3 to the terminology in the existing statute on page 1, line 8.

Number 0220

CHAIR MURKOWSKI asked if there were situations in other areas of the state similar to the one in Ketchikan.

MR. RUARO said he wasn't aware of any similar situations, but the language would cover future municipal utilities.

Number 0271

REPRESENTATIVE HALCRO asked if the bill could be tightened to avoid giving municipal utilities blanket immunities against regulated competition.

MR. RUARO pointed out that a municipal utility is subject to its own city code and to oversight regulation on rates through the municipality, city council, and utility board. Immunity is not

preserved if the competing entity is also fully regulated. He said the bill would keep things on a "level playing field." The municipal utility would become fully rate-regulated only when it was subjected to competition that was fully rate-regulated as well.

Number 0406

CHAIR MURKOWSKI surmised that [paragraph] (2) would provide for a municipally owned utility to be regulated if the competing utility entering the market also were rate-regulated.

MR. RUARO added "fully rate-regulated" to Chair Murkowski's inference and then said she was correct.

CHAIR MURKOWSKI asked if there is a distinction between "fully" and "less-than-full."

MR. RUARO pointed out a spectrum of regulation levels from unregulated to fully rate-regulated. Fully rate-regulated is what a utility would become without the legislation.

Number 0523

JIM VOETBERG, Assistant City Manager, City of Ketchikan; Assistant General Manager, Ketchikan Public Utilities (KPU), testified before the committee. He proclaimed his support for HB 496. Mr. Voetberg told the committee that the City of Ketchikan owns and operates several utilities including telecommunications, electric, water, wastewater collection and treatment, and solid [waste] collection and disposal. The legislation is important to Ketchikan because it allows the city to continue operating in a similar manner to what it has for over 50 years. It also provides local leaders with an important tool for economic development of the community.

MR. VOETBERG warned that should the city become regulated under the RCA, the cost to ratepayers would be an estimated \$700,000 annually. This cost does not include a rate study that could be as much as \$250,000 for each utility division. He gave a breakdown of what might contribute to the rate-study cost. Mr. said this isn't the time to increase costs to residents and businesses, given the economic situation of the city.

MR. VOETBERG identified AP&T [Alaska Power & Telephone Company] as the one phone company that had opposed the legislation. He said the city has listened to the company's arguments and

disagrees with some of its conclusions. He gave the example of a procedure whereby a utility can seek waivers from regulatory oversight by the RCA. However, the procedure can be very time-consuming and expensive, particularly when a company opposes the waiver. He said AP&T had made it known that a waiver for KPU would be opposed; the costs of this would be passed on to ratepayers. He noted that AP&T also had suggested [HB 496] is special legislation, but he said the City of Ketchikan doesn't find "creating a level playing field" is special legislation.

Number 0691

MR. VOETBERG addressed March 5, 2002, correspondence with RCA chairperson Nan Thompson, in which Ms. Thompson said the RCA doesn't support or oppose the legislation, which defers the policy issues to [the legislature].

MR. VOETBERG offered that the City of Ketchikan wants to level the playing field with [HB 496]. He gave the example of a company like GCI [General Communications Incorporated] being lightly regulated, while [KPU] would be fully rate-regulated. He told the committee the legislation doesn't stifle competition; it only makes it occur on an even basis. He stressed the importance of the "relatively small change" to AS 42.05.711(b)(2) to the community of Ketchikan.

Number 0821

CHAIR MURKOWSKI surmised that KPU is a municipally regulated utility and not subject to the RCA. She asked, if a wireless company were to come in, whether KPU would be fully [rate]-regulated. She asked the difference between fully regulated and lightly regulated. She said currently wireless companies are "popping up all over."

Number 0905

MR. VOETBERG replied that "fully rate-regulate" refers to a situation in which the [RCA] will require a rate study. The costs charged to customers would have to be justified by the study, and the RCA would ensure that the costs and charges are balanced. He said "lightly rate-regulated" is a situation wherein an entity doesn't have to undergo the process, and rates can be set at whatever rates that entity desires. Mr. Voetberg explained that whereas the fully rate-regulated entity is required to go through a long process to determine its rates, a

lightly regulated competitor can quickly undercut those rates by small margins and thereby pick up customers.

Number 0966

CHAIR MURKOWSKI asked how AP&T is regulated, for example.

MR. VOETBERG answered that he isn't aware of how the company is regulated, but it isn't fully rate-regulated.

Number 0998

HEATHER GRAHAM, City of Ketchikan, offered that sometimes it takes longer than several months for a company that is fully rate-regulated to change its rates, and it can be a lot longer than that.

Number 1040

MICHAEL GARRETT, President, AP&T Wireless, testified via teleconference. He told the committee his organization opposes HB 496 because it could encourage the city to subsidize competitive businesses it owns with monopolized services it provides in other utilities. He said it removes all independent oversight. The cities that could be affected by the new change "have an administrative solution." He called the bill "special legislation" to support one group.

MR. GARRETT told members that existing law gives the [RCA] the ability to waive the regulatory requirement of the city if it finds that doing so is [in the] public interest. He said the proposed changes remove the burden of proof from a city that a waiver [must be] in the public interest. He characterized the RCA as the best qualified to make decisions on such matters.

Number 1149

MR. GARRETT pointed out that even the [federal] Securities and Exchange Commission (SEC), in its Telecommunications Act of 1996, identified that "competitive services should not be subsidized by [noncompetitive] services." The SEC empowers the state to make sure that "accounting or other measures" are in place; he said the RCA is that body for Alaska. The proposed changes would take away that authority from RCA. He posited that the changes in the law could be considered contrary to the Telecommunications Act of 1996.

Number 1177

MR. GARRETT referred to section 254(k) of the foregoing Act. He said current [state law] is consistent with the federal law, but the language in HB 496 wouldn't be. He said the bill is a result of his company's attempt to provide competitive services in Ketchikan. Mr. Garrett said AP&T wouldn't have a problem with [KPU's] remaining unregulated if RCA found that to be in the public interest. If "the city" were to file for a waiver with the SEC, AP&T would ask to make comments on the applications, "but that would be an issue between the city and the RCA, not AP&T," he told members.

Number 1262

MR. GARRETT referred to previous statements that the city would be "regulated" and AP&T "lightly regulated." He said AP&T is a family of companies that have both competitive and noncompetitive services; all of their noncompetitive services are regulated by the State of Alaska. He said if KPU faced regulation, it would be in the same position as AP&T. He asked several questions based on different scenarios that he said could be created by the bill.

MR. GARRETT conceded there was a risk the RCA might not approve a waiver if the city filed for one. He said the RCA would have to justify that decision. He claimed that this would leave no independent organization - other than the utility - to look at the facts.

Number 1364

CHAIR MURKOWSKI asked Mr. Garrett how long the waiver process takes.

MR. GARRETT answered that he didn't know. He said he wasn't sure if RCA had a set a timeline.

CHAIR MURKOWSKI requested a comment about Mr. Garrett's assertion that the bill could be used to maintain a monopoly situation in Ketchikan.

Number 1436

MR. VOETBERG replied that KPU has been operating the utility for over 50 years under the control of the city council. Section 254(k) of the federal regulations prohibits cross-subsidization.

He told the committee that if there is a concern, any company can go to the Federal Communications Commission (FCC) and file a complaint. Mr. Voetberg said the proposed change in the state statute has nothing to do with section 254(k) of the federal regulation.

Number 1490

MS. GRAHAM agreed with Mr. Voetberg, saying federal law bars cross-subsidies between competitive and noncompetitive services; that bar remains, regardless of what the Alaska State Legislature does.

CHAIR MURKOWSKI asked if she was correct in assuming Mr. Voetberg's and Ms. Graham's testimonies were claiming that there is a process in place through municipal regulations that will prevent rates from going "willy-nilly or unchecked."

MR. VOETBERG and MS. GRAHAM concurred.

CHAIR MURKOWSKI asked if Ketchikan had considered a waiver.

MR. VOETBERG said it had not.

Number 1553

CHAIR MURKOWSKI asked Mr. Voetberg what he foresaw procedurally if a waiver were requested.

MR. VOETBERG estimated it would take several months. There would be a "back and forth" of filings in the case of an opposition. He said the [RCA] is very busy, and decisions can take one to two years.

Number 1596

REPRESENTATIVE HALCRO suggested there needs to be a more balanced way to tie the locally owned utility's exemption to the level of exemption that a new entrant into the market enjoys. The concern is that if one is lightly regulated, there should be consideration of adjusting the exemption to what type of competition comes in. Representative Halcro expressed his concern that if a blanket grant of immunity is bestowed upon a locally owned utility that is unregulated by the RCA, and a new entrant to the market that is regulated wants to enter, a competitor might be bogged down in rate-filing requirements and other regulations.

Number 1677

CHAIR MURKOWSKI pointed out that the only way it would equalize itself is if a fully regulated utility were to enter the market; then the two would be put on par. She asked if Representative Halcro's concern [arises] if KPU, for example, were unregulated and the entrant were regulated.

REPRESENTATIVE HALCRO said he was trying to think of how the playing field could be kept level.

CHAIR MURKOWSKI offered that it would be quite confusing if several entrants came into the market at six-month intervals at different levels of regulation.

Number 1733

REPRESENTATIVE MEYER asked how it would pertain to cooperatives. He gave examples from Anchorage.

CHAIR MURKOWSKI said she wasn't sure it would apply because [the examples] weren't municipally owned public utilities.

REPRESENTATIVE ROKEBERG said they are different. He stated his belief that GCI and Alaska Communications Systems (ACS) are regulated utilities in the state, and that if they were to enter the Ketchikan market and compete with the local utility, they would be regulated and the Ketchikan utility would not be, under [HB 496]. He expressed doubt that GCI or ACS would readily accept the "lightly regulated" moniker.

Number 1789

CHAIR MURKOWSKI said she didn't know where everybody fit in that lightly-versus-fully-regulated spectrum, including GCI and ACS.

REPRESENTATIVE HALCRO asked if anyone available from the RCA could assist the committee in understanding the issue.

Number 1814

REED STOOPS, Lobbyist for General Communications Incorporated (GCI), testified before the committee. He told the committee GCI wasn't taking a position on the bill, but said he would like to explain the status of the regulations on ACS and GCI. If Ketchikan didn't get the legislation and would be regulated by

the RCA, it would be regulated as a monopoly in the same way that the Anchorage Telephone Utility (ATU) was regulated when GCI began to compete [with ATU].

MR. STOOPS said the reason for a different set of regulations for a monopoly than for a competitor is that a competitor comes in with no protection. The in situ utility's urge to compete will likely force it to lower costs against the entrant and shift the costs to those operations where the utility holds a monopoly. When a new competitor gets its foot in the door and becomes established, it loses its "lightly regulated" status and is placed on an equal footing with the its fully regulated rival. Mr. Stoops characterized the premise of the federal Telecommunications Act as encouraging competition by allowing a competitor to enter a market and then be subject to full regulation if it has gained enough of a market share and has become established.

Number 1933

MR. STOOPS, in response to Representative Halcro, explained that "lightly regulated" companies are required to get a certificate of authority, subject to consumer complaints and a variety of regulations that fall short of rate regulations; there is no need to regulate their rates because they are entering with no market share. He offered that the regulatory process makes sure the market competes fairly. Mr. Stoops said at a point at which an entrant achieves a 40- to 50-percent market share, the RCA might deregulate the former monopoly carrier. The RCA looks out for the interests of the consumer, he added.

REPRESENTATIVE HALCRO suggested that adoption of the legislation would continue all of KPU's protections as a monopoly without having to allow the potential for competition.

MR. STOOPS replied that the legislation would entrust the Ketchikan municipal government with the same function as the RCA. He posited that [AP&T] would be faced with the choice of having the RCA be the judge or having the municipality that owns the utility be the judge.

Number 2033

REPRESENTATIVE ROKEBERG mentioned case law. He said the "incumbent elect" would be in an unregulated situation "in this case." He asked if there is automatic assertion of authority by

the RCA, even though there is no economic regulation to set tariffs or terms of the transmission-line uses and so forth.

Number 2065

MR. STOOPS answered that under current law, all regulation is municipal. If AP&T came in [to the Ketchikan market], KPU would have to go under RCA regulation for the first time, and would have to justify and make filings regarding its rate structure in the future. He pointed out that if the bill were passed, the authority would remain with the City of Ketchikan. If AP&T were concerned, it would have to appeal to the FCC and file a federal action, rather than [appealing to] the RCA.

REPRESENTATIVE ROKEBERG surmised, then, that [the City of Ketchikan] could keep any other entity from competing with it unless an entrant wanted to install its own transmission grid.

MR. STOOPS responded that AP&T is thinking of providing wireless service and would put in its own equipment. He said there needs to be some oversight because the incumbent carrier has all the business. When people are being switched from one carrier to another, there needs to be somebody to make sure that happens or to file a complaint with, if it doesn't happen. Mr. Reed said the key issue at hand is the question of who will be the recipient of those complaints when they inevitably happen. He cited the RCA, the City of Ketchikan, and the FCC as possible entities that could fulfill that adjudicative role. The policy decision is the appropriate forum for resolving disputes that would result from an entrant's offering competitive service.

Number 2141

CHAIR MURKOWSKI referred to Representative Halcro's earlier suggestion about leveling the playing field; he said that with the premise of the federal Telecommunications Act [of 1996], it makes no sense to "try to have everybody travel up at the same level." [Utilities] in a monopoly position are saddled with a high level of regulation until another company can "even out" the market shares and until positions change enough that there is additional regulation oversight [for the new entrant].

Number 2176

MR. STOOPS said that situation already exists in the RCA process whereby it orchestrates a balance. He said in the present case [of KPU], a municipal entity owns and regulates a utility. He

added that he couldn't think of a fair way to balance that situation.

CHAIR MURKOWSKI remarked that the RCA has an overwhelming number of cases in the area of telecommunications and cannot keep up. She said she'd like to know the RCA's perspective on the matter.

Number 2285

REPRESENTATIVE ROKEBERG referred to AS 42.05.221 and commented, "It seems to me that this is just economic regulation and there is still some jurisdiction from the RCA or some other matters."

MR. VOETBERG responded that there must still be a certificate of public convenience for the serving area for the "rate-regulation portion."

REPRESENTATIVE ROKEBERG offered his opinion that if independent competitors were to enter the market, they would be subject to the same RCA restrictions and a sorting out of those issues that were not economic- or tariff-related. He stated his assumption that KPU is not entirely exempt.

Number 2350

MR. VOETBERG mentioned the FCC and pointed out that KPU has a rule exemption for its area; a competitor who wanted to compete using KPU's facilities would have to go to the RCA in order to get the exemption lifted. He said there is a process in place for that.

TAPE 02-48, SIDE B
Number 2356

REPRESENTATIVE HAYES moved to adopt Amendment 1, which read [original punctuation provided]:

Page 2, Line 3
Delete: "company"
Insert: "operating entity".

This is a technical change to conform the terminology used in the legislation on page 2, line 3 to the terminology in the existing statute on page 1, line 8.

There being no objection, Amendment 1 was adopted.

Number 2345

REPRESENTATIVE ROKEBERG moved to report HB 496, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 496(L&C) was moved out of the House Labor and Commerce Standing Committee.

HB 447-COM FISH & AGRICULTURE BANK INTEREST RATE

CHAIR MURKOWSKI announced the next matter before the committee, HOUSE BILL NO. 447, "An Act relating to the interest rates that may be charged on loans by the Commercial Fishing and Agriculture Bank."

Number 2305

DALE ANDERSON, Staff to Representative Eldon Mulder, Alaska State Legislature, presented HB 447 on behalf of Representative Mulder, sponsor. He explained that HB 447 addresses an inequity in AS 45.45 that inhibits the ability of the Alaska Commercial Fishing and Agriculture Bank (CFAB) to serve its mandated purpose of granting loans for small businesses and business enterprises. Alaska has a usury law that limits the rates of interest for certain types of loans - usually small loans. He said AS 45.45.010 defines a small loan as one under \$25,000 and establishes a maximum annual fixed-interest rate for such loans at 5 percent above the 12th Federal Reserve District discount rate. In Alaska, conventional lending institutions, including commercial banks and credit unions, are exempt from state statutes because of federal preemption provisions.

MR. ANDERSON told the committee CFAB is the only Alaskan institutional lender subject to this statute, because of its organizational structure as a cooperative bank. By law, it cannot charge "too much interest." Any interest collected in excess of its needs is credited back to its member-borrowers. He said the commercial fishing community had not generated significant demand for small loans in the past, but since limited entry fishing permits began being traded in the \$20,000-to-\$40,000 range, there is a much greater need for small loans.

MR. ANDERSON told the committee that CFAB's [being subject] to the existing statute, along with the period of the lowest market rates in the last 20 years, renders it unable to make significant numbers of small loans to Alaskan residents. This opens the potential for a drastic demographic shift of permit

ownership. Mr. Anderson said the basic purpose of HB 447 is to ensure that CFAB is able to continue serving its Alaskan member-borrowers in an efficient manner, and to equitably compete with other lender institutions servicing this unique market.

Number 2219

MR. ANDERSON pointed out that the fiscal note from the director of [the Division of Banking, Securities & Corporations] states that there is no fiscal impact on the operation of the division [as a result of HB 447]. He said the legislation comes at the request of both the members of CFAB and the bank examiners. The examiners filed a report that said the cap, if it remains, would have an adverse effect on the institution.

Number 2177

ED CRANE, President, Commercial Fishing and Agriculture Bank (CFAB), testified before the committee. He said the sponsor statement summed up his sentiments well. He offered to answer questions.

Number 2147

CHAIR MURKOWSKI requested confirmation that CFAB is the only entity subject to the usury law.

MR. CRANE answered in the affirmative, adding that the usury law goes back to before 1949. He said it has applied to many institutions, but since the federal Financial Institutions Reorganization Act of 1986, credit unions and financial banks "slid out from under" [the usury law]. He said since CFAB does not fit any conventional definition of financial institutions, it is [still] subject to the usury law. Mr. Crane said the higher demand for small loans and the low lending rates have created a problem with the usury law for CFAB.

Number 2046

CHAIR MURKOWSKI asked how CFAB's structure prevents it from collecting too much interest. She underlined how the public might perceive that CFAB's exemption from the usury law would allow it to charge very high rates.

MR. CRANE answered that CFAB is mandated by its statute to be structured and operated as a cooperative. The customers are the owners. The only revenues come from the customers. In each

fiscal year, profits are shared with the cooperative's members. He said those profits - or margins - are prorated back to the customer. He gave examples of similar cooperatives.

Number 1945

CHAIR MURKOWSKI asked what CFAB's current interest rate is.

MR. CRANE replied that CFAB's rates range between 8.5 and 11 percent. The past 11 years have seen a patronage refund to members in the range of 18 to 19 percent.

REPRESENTATIVE ROKEBERG asked what the [federal discount rate for District 12] is.

MR. CRANE said it is 1.75 percent.

Number 1907

REPRESENTATIVE ROKEBERG asked how the "new mandate" to broaden the scope of the bank is going.

MR. CRANE replied that it is going slowly because of recent economic events. He explained that Representative Rokeberg was referring to a move by the bank to expand its business into the realm of tourism and resource-based enterprises. He said CFAB has been cautious and slow in its approach, but he estimated that the bank has made \$6 million in loans to tourism enterprises.

REPRESENTATIVE ROKEBERG asked if CFAB would be forced to charge no more than 6.5 percent on those loans.

MR. CRANE clarified that the figure would be 6.75 percent. He explained that part of the problem is that the statute mandates a fixed rate of interest. He said federal tax law demands that CFAB treat members alike concerning patronage refunds.

Number 1822

REPRESENTATIVE CRAWFORD expressed concerns he had heard from constituents that the bill might compete with the Division of Investments. He asked if there was anything to [the belief that] CFAB and the Division of Investments would be competing for the same market.

MR. CRANE underlined that CFAB is a private lending institution. He said it lends money borrowed from outside the state. There are no public funds involved, nor is there any public risk. At the end of the year, CFAB pays state corporate income tax. He asked Representative Crawford if he was really concerned with CFAB competing with the Division of Investments.

REPRESENTATIVE CRAWFORD said he didn't know.

Number 1725

MR. CRANE said he didn't see any impact on the Division of Investment's loan program.

Number 1664

REPRESENTATIVE HALCRO moved to report HB 447 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 447 was moved out of House Labor and Commerce Standing Committee.

HB 429-TOBACCO TAXATION; LICENSING

Number 1623

CHAIR MURKOWSKI announced the final matter before the committee, HOUSE BILL NO. 429, "An Act relating to certain licenses for the sale of tobacco products; relating to tobacco taxes and sales and cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and sales; relating to notification regarding a cigarette manufacturer's noncompliance with the tobacco product Master Settlement Agreement or related statutory provisions and to confiscation of the affected cigarettes; and providing for an effective date."

Number 1601

NEIL SLOTNICK, Deputy Commissioner, Department of Revenue, testified before the committee. He said HB 429 was not a tobacco tax bill but a "tobacco tax stamp bill." Alaska has a tobacco tax - one of the highest in the nation - but it is one of only four states without the requirement of a stamp to be placed on [cigarettes] when the tax is paid. [Mr. Slotnick passed around a pack of cigarettes from California as an example of what a stamped pack of cigarettes looks like.]

Number 1564

MR. SLOTNICK told the committee the reason to have a tax stamp is to ensure that state inspectors can determine whether a store has paid the tax on cigarettes in stock. He said there have been some successful enforcement measures regarding the tax since it was imposed four years prior, but they are incredibly time-consuming and difficult, and "require a little bit of luck." He said for the state to enforce the tax statute, the stamp is needed. He also mentioned that there are some federal benefits for the imposition of a tax stamp.

MR. SLOTNICK posed the question, "Does Alaska have a smuggling problem?" He answered that there is smuggling, but the magnitude isn't known. He gave examples of how other states' tax stamps have increased their tobacco tax revenues, and he expressed the department's feeling that the stamp would do the same for Alaska's revenues. It would provide easy detection and a deterrent to untaxed tobacco in Alaska.

Number 1391

MR. SLOTNICK addressed the fiscal note. The department is requesting two positions: an administrative position to sell the stamps, and an enforcement position to take appropriate action against entities that have violated the tax laws. If it is found that the department underestimated the level of smuggling, the department may request another position.

MR. SLOTNICK referred to a charts in members' packets that outline the decline in taxable cigarette sales since the imposition of the tax increase. He pointed out a 22-percent decrease, part of which was the result of cessation [of tobacco use].

Number 1302

MR. SLOTNICK noted that there would be some costs associated with the stamp. A discount would give some money back to distributors to offset some of the costs they will be required to bear. He said the stamp would also partially benefit distributors, since smuggling and black-market sales would be discouraged. Mr. Slotnick pointed out that some states give distributors no discount, while others are more generous. He said smaller distributors would be given a 2-percent discount

[under HB 429], and larger ones would receive a 1-percent discount.

Number 1229

REPRESENTATIVE MEYER asked why the stamp is to be placed only on cigarettes and not all tobacco products.

Number 1202

JOHANNA BALES, Auditor, Department of Revenue, testified via teleconference. She informed the committee that the stamps are much easier to apply to cigarette packages than to the packaging used for snuff, cigars, and leaf tobacco. She said she didn't know of other states that stamp other tobacco products. There has not been the same decline in the use of other tobacco products and, therefore, the department does not have the same compliance issues with them.

REPRESENTATIVE MEYER asked how the dollar-per-pack tax applied to the other forms of tobacco.

MS. BALES said the tax went from 25 percent of the wholesale cost to 75 percent of the wholesale cost.

REPRESENTATIVE MEYER asked how [the stamp] works. He gave the example of the Anchorage city tax on tobacco. He asked if the stamp would show that the tax had been paid on the state tax, or would show that the state and city tax had been paid.

MS. BALES answered that it would only indicate that the state tax had been paid.

Number 1098

REPRESENTATIVE MEYER asked if tobacco could be purchased over the Internet.

MS. BALES replied that the state law levies a tax on importation for resale and personal consumption of cigarettes only. Other tobacco products can be purchased through the mail, and as long as they are only for personal consumption, there is no tax.

REPRESENTATIVE MEYER asked who would affix the stamp.

MS. BALES replied that the distributor is the one required to attach the stamp.

REPRESENTATIVE MEYER asked if the distributor would be given a discount to attach the stamps.

MS. BALES answered in the affirmative.

REPRESENTATIVE MEYER asked why a discount should be given. He reasoned that if it is the law, [distributors] should automatically do it.

Number 1048

MS. BALES told Representative Meyer that it would be up to the legislature to decide that matter. She said the department has proposed the discount because most states do. The average discount is 3 percent.

REPRESENTATIVE MEYER said he just wanted to zero out the fiscal note, perhaps by passing the charges on to someone else.

Number 0994

CHAIR MURKOWSKI asked Mr. Slotnick why the stamp was not proposed in 1997 when the tobacco-tax increase was passed.

MR. SLOTNICK responded that he believed it was considered and that he didn't know why the stamp was not adopted. He offered that the tax was controversial enough that [legislators] didn't want to impede it with the stamp.

CHAIR MURKOWSKI asked, in reference to Internet sales, what constitutes personal consumption. She used an example of five pallets of cigarettes in her garage for "personal use."

Number 0894

MR. SLOTNICK told the committee that under the bill, being in possession of unstamped cigarettes is not allowed.

MS. BALES pointed out the distinction that is made is between cigarettes brought into the state and other tobacco products. No determination must be made regarding cigarettes for personal use or resale, because any cigarettes imported into the state must be taxed according to the law.

CHAIR MURKOWSKI asked how it would be known whether the cigarettes were imported.

MS. BALES said federal law would be called into play. She referred to the Jenkins Act, which requires distributors to report the sale of cigarettes to state departments of revenue when shipping them across state lines. She then referred to the Cigarette Contraband Tax Act, which says it is illegal to ship via interstate commerce more than 60,000 cigarettes to someone unlicensed. The law only applies in states that require a tax stamp. She said the Jenkins Act carries a misdemeanor penalty for violation, and the Cigarette Contraband Tax Act carries a felony penalty.

Number 0724

CHAIR MURKOWSKI mentioned that the distributors would be responsible for applying the stamps. She asked how many distributors are in Alaska.

MS. BALES estimated 55 to 60 distributors.

CHAIR MURKOWSKI asked if small distributors would be able to contract the stamping out to some other entity to save on costs.

Number 0665

MS. BALES replied that smaller distributors would be able to contract that work out. There are different license types in the state: distributors and direct-buying retailers. Of the 55 distributors, 15 to 20 are in-state businesses; 4 of those are large distributors, and the rest are direct-buying retailers. Most of those companies buy their products from distributors in the Lower 48 that are equipped to stamp in all the other states. Ms. Bales said the large distributors she'd talked to had told her they could stamp for the smaller smoke shops in Alaska.

Number 0548

MS. BALES, in reply to a question from Chair Murkowski, explained that the product would have to be stamped as soon as the shipping containers were opened. Sealed shipping containers could remain unstamped. She characterized the system as similar to the one in existence. Under the bill, the stamps would have to be purchased upfront so they would be available when the product was unpacked.

Number 0450

CHAIR MURKOWSKI raised a scenario involving Costco, with the stamping taking place outside of Alaska. She asked what would happen if the stamped cigarettes were not selling in Alaska and the product became stale on the shelf. What could the store do, since the stamped cigarettes could not be shipped to another state because of the Alaska stamp?

MS. BALES answered that the bill would provide for a credit. The product could be sold out of state if the other state's stamp were placed on the product. She said the current law does not allow the credit for selling out of state. Ms. Bales said Costco had told her it wasn't sure if it would stamp within the state or elsewhere.

Number 0300

CHAIR MURKOWSKI referred to page 7 and its mention of sale of the stamps. She inquired about the imagined result behind allowing the department to enter into agreements with financial institutions to permit the sale of stamps. Chair Murkowski said she thought this was to be run throughout the Department of Revenue.

Number 0268

MS. BALES responded that some states contract with financial institutions that sell all of their stamps. The department has made a provision to do that if, at some time, it is a more cost-effective approach.

CHAIR MURKOWSKI invited Ms. Bales to deliver her prepared testimony.

Number 0188

MS. BALES pointed out that the state has seen a 22-percent decrease in taxable cigarettes [since the elevation of the tobacco tax]. The decrease as a result of cessation [of tobacco use] was projected to be about 13 percent. Ms. Bales referred to a study conducted by the Department of Health and Social Services Study - "The Impact of the 1997 Tobacco Tax Rate Increase in Alaska" - that found its data was inconclusive. She said there is no conclusive evidence that people have quit smoking as a result of the tax increase, but there is evidence of smuggling. She said the department had undertaken several investigations of smuggling; she gave some examples.

TAPE 02-49, SIDE A
Number 0001

CHAIR MURKOWSKI asked if Metlakatla - the only recognized reservation in the state - could ignore the tax stamp and become the "Mecca of cigarette sales."

Number 0168

MS. BALES said the department did not perceive a problem with Metlakatla. Tobacco sellers in that community are not required to stamp. She said the community is allowed to purchase a certain number of untaxed cigarettes based on a formula that takes the community's population into account. Ms. Bales pointed out that the community has agreed to tax any cigarettes that exceed the annual allocation.

Number 0215

REPRESENTATIVE MEYER asked how the tax applies to military bases.

MS. BALES indicated all of the product on military bases must be sold at a price no less than 90 percent of the retail value of that product off the base. In further response, she said the bases are exempt from the tax.

Number 0298

MIKE ELERDING, President, Northern Sales Company of Alaska ("Northern Sales"), testified via teleconference. He gave background information on his company. In 2001, Northern Sales collected and paid \$3,669,000 for the excise tax. He said his warehouses are presently holding \$1.3 million [of inventory], and the tax on that is \$380,000 - 29 percent of the cost of goods.

MR. ELERDING said Alaska has one of the highest state excise taxes in the nation, and it is only one of six with a tax of \$10 a carton or greater. He said the stated reason for the tax increase was to discourage the habit of smoking cigarettes. In fiscal year 1997, the state collected \$15 million in excise tax. In fiscal year 2001, Alaska collected \$41 million in excise tax. He said the state has achieved its goal of decreasing the amount of cigarettes consumed in Alaska.

Number 0465

MR. ELERDING said the rationale behind HB 429 is to discourage bootlegging of cigarettes in the state. However, it places the burden of tax collection and stamping on the distributors. Mr. Elerding said the logistics of supplying the company's geographic locations would require four separate tax-stamping operations; the costs generated by these redundancies would be greater than the proposed discount from the state. The company's profit margin is so small that it wouldn't be able to operate as a result of the bill.

MR. ELERDING told members that if his company goes out of the cigarette business, large out-of-state companies will fill its niche. He warned that this will result in a loss of jobs for the state. He also said he believes the majority of bootlegging is the result of Internet sales of tobacco products to individuals. Tax stamping would not impact these sales.

Number 0768

CHAIR MURKOWSKI noted that Mr. Elerding had raised an interesting dilemma. Large distributing companies will become more successful at amortizing the tax costs because of their large sales volume, while smaller Alaskan companies will find it harder and harder to do business. She raised the issue of giving additional discounts to Alaska-based operations. She asked Mr. Elerding if he had contemplated any solutions to those types of problems.

Number 0858

MR. ELERDING agreed with Chair Murkowski's insight on the larger entities' being more competitive because of their economies of scale. He suggested the state could require stamping to take place within Alaska's borders, and require that all cigarette sales be made in cash, "on the spot," to help reduce risk exposure when collecting the state excise tax.

Number 1102

MARK JOHNSON, Chief, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services, testified before the committee. He said the department supports the intent of the bill; he noted that one of its goals is to reduce tobacco products. He said studies show youth to be more price-sensitive, so limiting access to nontaxed tobacco would help.

Number 1163

CHAIR MURKOWSKI stated her intent to hold the bill over in order to further explore the issue with the Department of Revenue and try to address the concerns of local businesses.

Number 1203

MS. BALES expressed concern that many of the smaller smoke shops' distributors exist outside of the state. She said Mr. Elerding's suggestion would hurt the smaller distributors. [HB 429 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:30 p.m.