

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

March 5, 2002
1:38 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Loren Leman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

Senator Alan Austerman

COMMITTEE CALENDAR

SENATE BILL NO. 280

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water, wastewater, and solid waste systems."

MOVED CSSB 280(L&C) OUT OF COMMITTEE

SENATE BILL NO. 309

"An Act relating to actions to quiet title to, eject a person from, or recover real property or the possession of it, and to acquisition of real property by adverse possession; and providing for an effective date."

MOVED CSSB 309(L&C) OUT OF COMMITTEE

SENATE BILL NO. 324

"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 CSSB 324(L&C) OUT OF COMMITTEE

SENATE BILL NO. 328

"An Act requiring that a nonresident big game hunter be accompanied by a big game guide who is providing big game hunting services to the nonresident under a contract with the nonresident or who is employed by a big game guide who has a contract to provide big game hunting services to the nonresident."

MOVED SB 328 OUT OF COMMITTEE

SENATE BILL NO. 320

"An Act relating to certain motor vehicle repairs and prohibiting

discrimination in motor vehicle insurance rates based on credit rating or credit scoring; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS SENATE COMMITTEE ACTION

SB 309 - No previous action.

SB 320 - See Transportation minutes dated 2/28/02.

SB 324 - No previous action.

SB 328 - No previous action.

WITNESS REGISTER

Ms. Wilda Rodman
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the proposed committee substitute to SB 280 for the sponsor

Mr. Dan Easton
Director, Facility Construction and Operation
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Answered questions about CSSB 280(L&C)

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 309 to the committee

Mr. Bryan Merrell
First America Title Insurance Co.
Anchorage, AK

POSITION STATEMENT: Opposed to SB 309

Mr. Jon Tillinghast
Simpson, Tillinghast, Sorenson and Longenbaugh
One Sealaska Plaza
Juneau, AK

POSITION STATEMENT: Supports SB 309

Mr. Russell Dick
Sealaska Corporation
One Sealaska Plaza

Juneau, AK

POSITION STATEMENT: Supports SB 309

Mr. Bill Cummings
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Expressed concerns about SB 309

Mr. Jim Voetberg
Ketchikan Public Utilities
2930 Tongass Ave.
Ketchikan, AK

POSITION STATEMENT: Supports SB 324

Ms. Heather Graham
No address provided
Anchorage, AK

POSITION STATEMENT: Counsel to City of Ketchikan Telephone
Utilities Legislative Affairs Agency

Mr. Bill Stoltze
Staff to Senator Halford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of SB 328

Senator Rick Halford
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Explained the intent of SB 328

Mr. Arthur Andres
PO Box 55878
North Pole, AK 99705

POSITION STATEMENT: Supported SB 328

ACTION NARRATIVE

TAPE 02-10, SIDE A
Number 001

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:38 p.m. Senators Leman, Torgerson, Davis and Stevens were present. Chairman Stevens informed members that SB 320 would be pulled from today's calendar at the request of the sponsor and would be rescheduled at a later date. He also announced that today is Debbie Grundmann's birthday. The first

order of business to come before the committee was SB 280.

#SB280

SB 280-WATER/SEWER/WASTE GRANTS TO UTILITIES

MS. WILDA RODMAN, staff to Senator Therriault, sponsor of the measure, informed members that she was asked to submit a new committee substitute (CS) to deal with the following concerns: SB 280 would open up the pool of applicants too wide; and it would allow utilities to be eligible for solid waste grants, which was not the intent. The original bill allowed public utilities to apply if their rates were subject to the Regulatory Commission of Alaska (RCA). Under the proposed CS, a water and sewer utility is eligible to apply if it serves as the primary utility for a municipality and its rates are regulated by the RCA. The field was not narrowed down in the CS specifically to Fairbanks because the sponsor wanted to create an incentive to other communities that want to privatize.

In regard to the solid waste issue, the proposed CS excludes solid waste grants by restricting eligibility to AS 46.03.030(b) (1)-(3). On page 1, line 11, of the CS, utilities are no longer eligible to apply for "(4) a solid waste processing, disposal, or resource recovery system."

MS. RODMAN explained one last change in the proposed CS bases the grant match ratios on the population of a municipality. The original bill based the grant match ratio on the population of the public utility service area. The change is consistent with current statute. She pointed out that she worked with the Department of Environmental Conversation (DEC) to narrow the scope and used its definition of "primary."

SENATOR LEMAN asked where the definition of "primary" is located in the proposed CS.

MS. RODMAN said it is not and asked Mr. Easton of DEC to elaborate. She said the rationale is that "primary" is self-explanatory in that a primary utility serves the largest number of people in a service area.

SENATOR LEMAN said it is not obvious to him in looking at Section 1 that the bill is restricted to water and wastewater projects and not solid waste. He asked for clarification.

MS. RODMAN said that language is in Section 3 on page 2, line 15.

With no further questions or discussion, SENATOR LEMAN moved to adopt the proposed CS to SB 280 (Craver, 03/04/02).

CHAIRMAN STEVENS announced that with no objection, CSSB 280(L&C) was adopted.

MR. DAN EASTON, Director of Facility Construction and Operations for DEC, informed members that he worked with Senator Therriault's office on the committee substitute. It maintains the focus of the program on municipal systems, be they private or publicly owned, as opposed to systems serving private developments, such as trailer parks or subdivisions. One effect of the committee substitute is to limit the increase in the size of the pool of eligible systems so instead of having 50 new eligible systems, there will be one or two. That means DEC does not anticipate an effect on its workload and expects to provide a zero fiscal note to the committee substitute.

SENATOR LEMAN asked Mr. Easton his understanding of a primary utility, for the record.

MR. EASTON said he is thinking of the Webster's definition, in other words, the primary utility would be the most significant or main utility.

SENATOR LEMAN said he could not think of any competing water and sewer utilities, but both Chugach Electric and Municipal Light and Power are located in Anchorage and are both significant electrical utilities. He could argue that both utilities could meet the definition of primary. He asked Mr. Easton if he could think of a similar example in the water and sewer business.

MR. EASTON said he could not. He noted there are two utilities in Fairbanks, but they have a common owner so would not qualify.

SENATOR LEMAN commented that some communities have competing haul systems but DEC will have to sort out whether those companies meet the definition of a primary utility and might not even apply.

CHAIRMAN STEVENS noted there was no further testimony or proposed amendments.

SENATOR LEMAN moved CSSB 280(L&C) from committee with a zero fiscal note.

There being no objection, CHAIRMAN STEVENS announced the motion carried and that the committee would take up SB 309.

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#SB 309

SB 309-ADVERSE POSSESSION

SENATOR GENE THERRIAULT, sponsor of SB 309, said he was approached after the session began about this issue. Adverse possession is a doctrine under which a person - even a squatter acting in bad faith - can take another's property without compensation by simply possessing it. Although the doctrine began in the Middle Ages under circumstances that do not apply today, it creates an interesting policy issue so he agreed to introduce the bill.

SB 309 limits the current statute pertaining to adverse possession to two narrow circumstances: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property. After reading about the history of the doctrine, he decided he falls on the side of the private property owner. Arguably, Alaska has the largest private property owners in the nation, those being the Native corporations. The old doctrine that requires a property owner to keep tabs on who might be squatting on the land might put the owner at risk of losing a portion of that property. He said some of his constituents own property in locations that they are unable to visit regularly. Under current doctrine, they must make sure their property has not been encroached upon, otherwise risk losing it.

1:52 p.m.

SENATOR LEMAN asked the significance of increasing the timeframe from seven to 20 years.

SENATOR THERRIAULT told members that 20 years is an arbitrary timeframe that was suggested to him but that he is willing to consider shortening that period.

SENATOR LEMAN said he would like to hear testimony on that question. He believes the other provisions are reasonable and will help limit the application of adverse possession.

CHAIRMAN STEVENS said he shares Senator Leman's concern.

The committee took a brief at-ease.

SENATOR THERRIAULT informed members, regarding the selection of 20 years, as people from England started to purchase land when the country was established, it was often difficult to journey across the ocean to check on the land so the New England states established a 20 year period of time. With the Manifest Destiny movement, the nation wanted land to be put into productive use., The time period was shortened to allow another to take possession

of the land if the titleholder was not using it. He noted that circumstances have changed so the shorter time period no longer makes sense. A 20-year time period still exists in a number of the New England states.

CHAIRMAN STEVENS suggested basing the timeframe on Henry VIII's days when it was 60 years.

SENATOR LEMAN expressed concern about copying what the New England states are doing.

MR. BRYAN MERRELL, state counsel and underwriter for First America Title Insurance Company, informed members that SB 309 is a double-edged sword for First America. For certain types of title insurance policies, title insurers issue coverage against adverse possession to assure policyholders that no one can claim adverse possession to their property. First America does a risk evaluation using surveys and questions directed to the landowners involved in the transaction. In essence, SB 309 is somewhat favorable to First America because it will make it more difficult for someone to raise an issue of adverse possession. However, a cause for concern is clearing or correcting title defects that may have occurred in the past. One of First America's better allies for assisting private landowners who are attempting to insure titled real property is to suggest, in cases where old deeds of records exist but the people who may claim those interests cannot be tracked down or are not interested in clearing the record, to use the doctrine of adverse possession. Likewise, there are times when those interests may have been missed or in which the underwriter decides to take a risk and provide insurance. If they do come up during a title search, the underwriter can use adverse possession as a means to clear the title. The restrictive nature of SB 311 will make that process harder for people with those concerns. In his experience as a title examiner, it is a good tool to use to fix some title problems.

Regarding the timeframe, MR. MERRELL said shortening it from 20 to 10 years would help. Some of the aspects involved in the codification of the statute would be required by the Alaska Supreme Court to claim adverse possession, for example, the concept of having claimed the right in an open and hostile way and notoriously, which is what the Supreme Court has determined. Some of the other aspects, particularly the concept of paying for the property that one is adversely possessing, are unusual. He has not been able to do a survey to figure out where other states fall on this issue. But, in his experience, he cannot recall any other states being this restrictive as to the statute.

MR. MERRELL asked members to consider the need for some folks to be able to clear title in a state like Alaska where there are a lot of old interests, errors and flaws in the recording system that make it difficult to get clear title.

CHAIRMAN STEVENS thanked Mr. Merrell and called Mr. Dick and Mr. Tillinghast.

MR. RUSSELL DICK, Natural Resources Manager for Sealaska Corporation, stated strong support of SB 309. Native corporations established under the Alaska Native Claims Settlement Act (ANCSA) are the largest private landowners in the state of Alaska. Sealaska is the largest private property landowner in the Southeast region. He noted he would address SB 309 from two fronts: ANCSA conveyed lands and non-ANCSA lands.

MR. DICK said that lands conveyed to Native corporations served two purposes: (1) to settle Alaska Natives aboriginal claims; and (2) to meet the social, cultural and economic needs of Natives. In that sense, these lands are the foundation of existence of Native peoples and Native corporations. Recognizing that, Congress imposed a prohibition of adverse claims against Native lands as long as the lands remained in an undeveloped state. Although that was effective when ANCSA was first enacted, it is inadequate now. He does not believe Congress recognized how expansive these land bases would become. Congress didn't consider the degree of development on these lands nor the burden created by having to actively patrol large remote landholdings. Sealaska Corporation has 290,000 acres of land with an entitlement, which will total upwards of 350,000 acres spread throughout Southeast Alaska. If development is minimal or occurs in specific areas, the cost of patrolling the lands will be burdensome and an economic waste that serves no valid public policy.

MR. DICK informed members that Sealaska Corporation has also purchased non-ANCSA lands. These types of lands do not maintain the same prohibition of adverse claims so that adverse possession can occur regardless of whether or not they are developed. Sealaska purchased a piece of property in Cordova on which a squatter built a house. Sealaska had to spend considerable time and money to evict the squatter. Had Sealaska not known the squatter was there, a tacking issue may have arisen. In other words, if the squatter had lived on the land for six years at the time of the purchase, that time would apply toward the seven years required for adverse possession.

MR. DICK stated that the State of Alaska has always respected

private property rights because there is so little private property here. The doctrine of adverse possession seems to be inconsistent with the recognition of the importance of protecting and preserving private property ownership and its associated rights. The only lands subject to adverse possession in Alaska are private property lands. He repeated that Sealaska is very supportive of SB 309 as it goes a long way toward protecting the rights of private property landowners.

MR. JON TILLINGHAST, legal counsel to Sealaska, told committee members that New Hampshire is among the New England states that use or used 20 years. He said in his discussion about adverse possession, he will put two types of claims to the side - the first being claims premised on color of title, meaning a person has a deed with a problem. Those are the claims Mr. Merrell spoke of and SB 309 preserves those claims. The second type of claims he would like to put aside are those involving a boundary dispute, for example when a property owner built a fence in the wrong location 20 years earlier. SB 309 puts new restrictions on bringing those kinds of claims. For example, it says a person must possess the property for 20 years rather than seven.

MR. TILLINGHAST said the heart of the bill is in Section 1, which is aimed at a person one could only call a squatter; a person with no claim to title who is simply there with the hope of staying long enough to acquire the title. He said he will not review the historical reasons for adverse possession, but explained the only justification at this time for a squatter law is that a squatter will make more productive use of the land than the absentee landowner. He noted that modern courts have upheld that doctrine. He finds the concept frightening because the state is saying that if a private landowner is not making a sufficiently socially valuable use of his or her private property, it will be given to someone else.

MR. TILLINGHAST said the fact that a person cannot get adverse possession from the state or federal government is well established. The state and federal governments have argued that it would be too burdensome to police property they own. In Alaska, ANCSA regional corporations own roughly 80 million acres of land: those corporations have precisely the same problem the state has yet the state wishes to maintain its immunity from adverse possession but maintain its right to squat on private property without paying. That philosophy reflects a different value judgment than Sealaska, as to the relative sanctity of public property ownership and private property ownership. He offered to answer questions.

SENATOR LEMAN asked Mr. Tillinghast to clarify whether there is a difference between ANCSA and non-ANCSA property in the application of adverse possession.

MR. TILLINGHAST explained that ANCSA protects ANCSA property from being divested by adverse possession as long as it remains undeveloped.

SENATOR LEMAN asked if, "...somebody could put that road in adversely?"

MR. TILLINGHAST said he does not know the answer to that question.

MR. DICK said a more likely scenario is that Sealaska might build an advance logging road which would provide a convenient way for a squatter to drive in.

SENATOR LEMAN asked if that ANCSA land would not have the same protection as adjoining state or federal land.

MR. DICK said that is correct.

CHAIRMAN STEVENS asked how many cases of adverse possession have been claimed against ANCSA land in the past.

MR. DICK said he knows of two cases with Sealaska.

CHAIRMAN STEVENS noted no representation from other Native corporations in the room and then asked Mr. Dick if he is aware of positions from any other corporations on this legislation.

MR. DICK said he is not.

CHAIRMAN STEVENS said he would like to get more input from large landowners and discuss the 20-year issue before taking action on the bill.

MR. BILL CUMMINGS, assistant attorney general, Department of Law (DOL), said DOL is not unmindful of the problems with adverse possession that Sealaska and other ANCSA corporations have with lands they acquire and might minimally develop. However, DOL is concerned that SB 309 stands the whole notion of adverse possession on its head. In some situations, it could work to the public's detriment and could be used to commit outrages. DOL's biggest concern is the large number of highway rights-of-way the state claims under adverse possession. The state is currently embarking on a program called "gravel to paving" in which the

state is paving many gravel roads in rural areas. The presumption is that the state has been doing this for 20 to 30 years without any objections so the state is assuming it has title by adverse possession. If SB 309 comes to pass, the state will have to re-examine its presumption and possibly kill the program. Another example is a state program to build roads and put in drainage culverts. The culverts are located within the highway right-of-way and carry water away from the highway. The state has never acquired any easements below the outfall so, if SB 309 was enacted, the state would have to go back and redo engineering decisions that were made up to 50 years ago, render compensation, all after everyone in the chain of title has acquiesced to what the state has been doing to carry off the drainage water. Mr. Cummings said the state needs some way to address these very valid public concerns.

MR. CUMMINGS said DOL's final concern is that SB 309 could be used to the detriment of the public. He cited a case named Veazey (ph) v. Green, (35 P.3d 14) and said under SB 309, the plaintiff would have lost. The facts of the case are as follows: a woman was given a tract of land by her grandmother but the deed was not transferred; the woman spent 10 years building a house, clearing the land and planting on it; then the grandmother advanced in age and lost some of her mental faculties and went into a land transaction with a developer who acquired the property. The woman would have lost her 10 years of labor under this bill. He offered to answer questions.

SENATOR LEMAN asked, regarding the drainage issue, if one goes back 30 or 40 years when some of the engineering decisions were made, whether they would be barred from claim by Section 4 of the bill.

MR. CUMMINGS said it is not clear. The rules that are used now when one combines the 10 years of use along with the rules of inverse condemnation, would imply the state took it a long time ago so nothing can be done about it now. However, under SB 309, particularly Section 1, anyone could bring an action at any time. He noted the need for legislation that is much more precise to protect the state's interests on the culverts.

SENATOR LEMAN suggested that Mr. Cummings work with committee members and the sponsor on ways to find ways to address the issues he has raised.

CHAIRMAN STEVENS asked Mr. Cummings his position on SB 309.

MR. CUMMINGS said DOL is opposed to the bill because of what it

does to the state's interests.

CHAIRMAN STEVENS asked about DOL's position on applying adverse protection requirements to protect private landownership.

MR. CUMMINGS replied there is room for improvement as long as the changes are not too burdensome or allow for outrages.

TAPE 02-10, SIDE B

CHAIRMAN STEVENS repeated his desire to hold the bill and request positions from other large landowners.

SENATOR THERRIAULT agreed and said that this is his first time dealing with this area of the statutes. He said he is willing to discuss the matter further and find language to address the issues raised.

SENATOR LEMAN expressed concern that SB 309 not overreach and create unintended difficulties.

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#SB 324

SB 324-PUBLIC UTILITIES EXEMPT FROM REGULATION

CHAIRMAN STEVENS then announced the committee would take up SB 324.

SENATOR ROBIN TAYLOR, District A, gave the following sponsor statement.

SB 324 would ensure that the City of Ketchikan retains the ability to set rates for its telephone utility in the event it faces competition from another utility company. Alaska law provides that where a municipality owns and operates a public utility, the municipality may regulate the terms and conditions governing the provisions of that public utility and has the power to set the terms and conditions for the utility services that they offer. That is probably obvious to everyone because that is how we all started in Alaska, was with towns that set up a generating plant or built a little dam, started building water lines, sewer lines, and because they had an elected city council and they owned the utility, there was no need for oversight or regulation by some state entity.

Alaska law also provides that if a municipal utility faces competition, all of the municipalities' utilities become fully subject to economic regulation by the Regulatory Commission of Alaska [RCA]. The RCA may grant an exception to this rule. Principles of fairness and regulatory parity provide that this statute should be amended when a municipality faces competition from a telecommunications company. New competitive providers are subject to less regulation by the RCA. Under federal law, some new telecommunications companies are not regulated at all, cellular providers as an example.

By contrast, if the municipality owned a telephone utility becomes subject to economic regulation by RCA, it will be more heavily regulated than the new entrant that is competing with it because we cannot regulate those folks under federal law. So, a guy comes into your town and wants to set up a cellular system - a wireless system - he's not regulated because of federal law but, because he's competing with the local telephone company, he would now be subjected to regulation by RCA. And we've all been here long enough to go through various telephone wars and utility wars and so on, that have been created and caused by decisions made by the RCA or decisions that are pending before the RCA or haven't been made by them, and then we end up seeing - there's always an attempt it seems like every year for the 18 I've been here - somebody always wants to reach out and touch you. In the way they draft their legislation, they're going to reach out and all of a sudden, all of the municipalities that had been running their own utilities for years get pulled into this regulatory scheme. Well, the regulatory scheme can cost hundreds and hundreds of thousands of dollars for a utility to comply with, just on a rate change. We've seen a lot of examples of that even recently. I think many of us had hoped, when we restructured the RCA, that we would not be running into these huge costs for utility rate changes but they are still ongoing and are still a major problem. It's a tremendous burden to cast upon a small community merely because somebody wants to show up and start cherry-picking a telephone company on you.

By economically regulating the municipally-owned utility, while allowing the new entrant to set prices without regulatory oversight, the marketplace is unable to provide the benefits of competition to the public.

The new entrant will be able to set its rates based on market forces and competitive need while the municipality which owns the utility will be required to set its rates based on its costs through rate cases. These cases could be expensive and time consuming, and sometimes attract input from other interveners. The unregulated entity has only to price its service slightly under the regulated rates of its competitor to gain market share. Such prices are not necessarily the lowest possible rates and are not necessarily as low as the rates that would be given during unfettered competition. And that's in essence what we're facing right now in Ketchikan. That's the only reason this bill was brought is to make certain that not only Ketchikan but other municipally-owned utilities that may face some form of competition don't get drug into this entire AKPIRG affected regulatory scheme that can take months and months.

2:40 p.m.

SENATOR LEMAN said he agrees it doesn't make sense that because one utility becomes regulated, all others should be unless the concern is that funds are being shifted from one utility to another in the case of common ownership. He said he also agrees the rate cases are expensive. He then asked, since a utility is not regulated until it has market power, if it would do a disservice to the bill to insert the word "unregulated," on page 2, line 4, language so that it reads:

operated by a political subdivision that competes with an unregulated telecommunications utility.

He asked if a circumstance might occur where a competing utility would become regulated.

SENATOR TAYLOR said he believes that would take a change in federal law.

SENATOR LEMAN said he is wondering if a company that is regulated would come in to compete even though they may not be regulated in that marketplace.

SENATOR TAYLOR said he did not know.

SENATOR TORGERSON asked why the phrase "electric company" is included in the bill.

SENATOR TAYLOR said he believes that is what some utilities call themselves. He said it does not include telecommunications and

speaks to not reaching out to cover all of the other utilities.

SENATOR TORGERSON pointed out the qualifier is "that competes with telecommunications" and he said he is not aware of any electric companies that do compete with them.

SENATOR TAYLOR hoped that answer would become clear in later testimony.

MR. JIM VOETBERG, Assistant City Manager of the City of Ketchikan, stated support for SB 324. He informed members that he submitted written testimony and would touch on the main points.

The City of Ketchikan and the City of Ketchikan doing business as Ketchikan Public Utilities owns and operates several utilities including telecommunications, electric, water, solid waste collection and disposal, and wastewater collection and treatment. This legislation is important to the city because it allows the city to operate its utility in a cost-effective manner and allows the city to utilize its utilities to assist in the economic development of Ketchikan. Should the city become regulated under the RCA, the cost to the rate payers is estimated at around \$700,000 annually, which does not include the cost of a rate study that, for each utility, could be in the range of \$250,000. These costs include annual fees paid to the RCA plus additional staff to perform the increased workload under a regulated utility. These costs would be directly passed on to our customers resulting in higher utility bills. Given the economic situation in Ketchikan, this is not the time to increase costs to its residents and businesses.

By transferring regulatory control from a local city council to the state RCA eliminates the local decision making process that has worked for over 50 years and it takes away a tool to assist in economic development. Finally, given the advancement of telecommunication technology and the varying levels of regulation placed on telecommunication companies, this proposed legislation creates a level playing field. Under current regulations, should a cable company such as GCI use its cable plant to provide telephone service in Ketchikan, GCI would not be regulated while Ketchikan would be fully rate regulated. If a wireless company, such as APT, were to compete in Ketchikan, APT would be lightly regulated and, again, Ketchikan would be fully rate regulated. And should a company compete as a

competitive local exchange carrier - a CLEC- again, the CLEC would be lightly regulated while Ketchikan would be fully regulated. In any case, under the current regulation, the playing field would not be level.

In closing I want to stress the importance of this relatively small change to AS 42.05.711(b)(2), to the community of Ketchikan, and to point out that it only affects the City of Ketchikan because we are the only municipally owned telephone company in the state, and actually we're only one of three, we think, nationwide. The city looks to the state to allow it to preserve local control as it has for over 50 years and to ensure that local government has the tools it needs to better serve our community and better assist in turning Ketchikan's economy around. Thank you for allowing me to testify and I'll address any questions you may have.

MR. VOETBERG said, in response to Senator Torgerson's question, Section 1(b) follows the language in current [statute].

SENATOR LEMAN said he noticed that "electric operating entity" was used everywhere else in the subsections and that perhaps the drafters decided to use "electric company." He suggested making the phrase consistent throughout. He then asked Mr. Voetberg whether inserting the word "unregulated" before "telecommunications company" would do any disservice to what he is trying to accomplish. He commented that Mr. Voetberg expressed concern about an unregulated company coming in and competing with the Ketchikan utility. However, once they get market share they would become a regulated utility.

MR. VOETBERG said he was not certain about the market share issue. He noted there are various levels of regulation, for example, a wireless company is looking at providing telephone service to Ketchikan customers through a wireless system. The wireless company is regulated but not fully rate regulated. To his understanding, "fully rate regulated" means that costs and revenues have to match. If not fully rate regulated, one can set and submit rates to the RCA, which does not make sure the costs and revenues balance each other. He suggested inserting the word "unregulated" will not address the issue in Ketchikan. He asked that Heather Graham address this issue on the City of Ketchikan's behalf.

SENATOR LEMAN said the goal is a level playing field and that there might be a more artful way to get there.

MR. VOETBERG said the City of Ketchikan has considered several versions of this and found SB 324 to be the closest to the level

playing field that it can come.

MS. HEATHER GRAHAM, legal counsel to the City of Ketchikan telephone utilities division, said that when a new telecom company seeks to provide service and market, it is never fully rate regulated. Therefore, at most, it would be required to post a tariff of its prices. It is not subject to full rate regulation, which means the RCA would carefully evaluate and review all of the new entrants and require them to charge a certain rate based on their costs. The new entrant can charge whatever it wishes and can raise and lower its rates at will. By contrast, if the existing law is applied to Ketchikan without an exemption, the City of Ketchikan would be required to go through an exhaustive rate setting process that takes a lot of time and is very expensive. The city would not be able to raise and lower its rates at will. In effect, it would be hamstrung and would be unable to compete effectively with a new entrant because the new entrant will either be unregulated or lightly regulated. She explained that lightly regulated means the new entrant would have to get a certificate from the RCA, a minor matter, and agree to post tariffs. She maintained that Mr. Voetberg has accurately reflected why the City of Ketchikan supports SB 324.

SENATOR LEMAN asked at what stage a new entrant would become rate regulated and whether it is related to market share.

MS. GRAHAM said there is no threshold at which point a new entrant would become fully rate regulated. She noted the best example in Anchorage is GCI. GCI has acquired 40 percent or more of the local exchange market in Anchorage but is not fully rate regulated. The incumbent, ACS, is fully rate regulated.

SENATOR LEMAN asked Ms. Graham if she could suggest language that would provide a level playing field.

MS. GRAHAM said she does not believe a change is necessary.

MR. HOWARD GARNER, Executive Vice President of Alaska Power and Telephone (APT) Company, and an officer of the Alaska Telephone Company, a subsidiary, informed members that APT owns the wireless company in Ketchikan. APT has been a member of the Ketchikan community for a substantial amount of time and has a large investment there. APT opposes SB 324 for several reasons, the primary one being that there is a ready solution available to the City of Ketchikan. A mechanism is available to the City to apply for an exemption from the RCA. He has worked with the RCA for over 10 years as APT has extensive regulated operations on both the electric and telephone side. He does not believe the process to be as difficult as earlier testimony indicated. The RCA does a reasonable job of protecting the public interest. He maintained that some of the previous comments made were "quite

out of line" with his actual experience. APT's second concern is that SB 324 would place the State of Alaska in a difficult position regarding the federal Telecom Act of 1996, specifically under Section 254(k), which is entitled, "Subsidy of Competitive Services Prohibited." He read a paragraph from that section:

A telecommunication carrier may not use services that are not competitive to subsidize services that are subject to competition. The commission [Federal Communications Commission] with respect to interstate services, and the states, with respect to intrastate services, shall establish any necessary cause [indisc.] allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common cost of facilities used to provide those services.

MR. GARNER requested that the commission thoroughly investigate the Telecommunication Act of 1996 and compliance with it. APT's application has been made to the RCA for a certificate to provide service and APT believes that process contains adequate safeguards.

SENATOR LEMAN asked if the City of Ketchikan would be subject to those same conditions in the federal law, and "they couldn't cross subsidize or else they would be in violation."

MR. GARNER said that is correct.

SENATOR LEMAN said in the setting of rates, they would have to demonstrate that they are not cross subsidizing but the City of Ketchikan, as a utility company, would have to meet the same law and would probably have to make a statement to that effect.

MR. GARNER said they would have to make that statement. He said to his understanding, the RCA can consider Ketchikan's request that they not be required to be fully regulated because that would not be in the public's interest.

SENATOR TORGERSON asked if APT would oppose or support a waiver if the City of Ketchikan was to include one.

MR. GARDINER said APT would oppose that. During the history of municipally owned telephone companies in Alaska, there was one-time substantial ownership in Anchorage and Fairbanks and those communities got along without that requirement. He sees no reason for special treatment.

MR. REED STOOPS informed members that Dana Tindall was called to

an RCA hearing so he would ask her to submit written testimony.

There being no further testimony, SENATOR TORGERSON moved to delete the word "company" on page 2, line 3, and insert the words, "operating entity" to make that language consistent with the rest of the bill [Amendment 1].

There being no objection to the motion, CHAIRMAN STEVENS announced that Amendment 1 was adopted.

CHAIRMAN DAVIS asked for the will of the committee.

SENATOR DAVIS asked that the committee wait for testimony from the individual who was unable to testify today [Ms. Tindall].

MR. STOOPS said he assumes Ms. Tindall would have some of the same concerns as the APT but since this is a relatively new issue, they are still trying to learn from the RCA.

CHAIRMAN STEVENS said the bill could be moved to the Senate Judiciary Committee where more public testimony will be taken.

SENATOR TORGERSON moved CSSB 324(L&C) from committee with individual recommendations and its accompanying fiscal notes.

CHAIRMAN STEVENS announced that with no objection, the motion carried.

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The committee took up SB 328.

#SB 328

SB 328-BIG GAME HUNTERS ACCOMPANIED BY GUIDE

MR. BILL STOLTZE, staff to Senator Halford, sponsor of SB 328, explained that SB 328 was introduced to close a loophole in the 1996 guide bill. That loophole allowed a nonresident assistant to be exempt from the requirements to obtain the services of a registered guide of big game species in Alaska.

SENATOR RICK HALFORD said this problem was brought to his attention by a person from Elfin Cove. He explained that non-residents can get a guide license because a guide license is a commercial license, which is protected by the commerce clause of the U.S. Constitution. A non-resident is required to have a guide to hunt sheep, goat, grizzlies and brown bear. The individual from Elfin Cove ran into two non-resident hunters hunting on the outside [coast]. Both hunters had assistant guide licenses and were guiding each other for no compensation. A loophole in Alaska's law allows a non-resident to be guided by a resident relative (within the second degree of kin), or by a guide, but it

does not say the guide must be employed by anyone or paid by anyone. As a result, the two hunters held licenses as assistant guides for a guide who wasn't contracting and was not involved. SB 328 requires the assistant guide to be operating for a registered guide. He noted that Senator Elton also discussed this problem with him. Senator Halford maintained that SB 328 is a small fix for a very narrow problem.

MR. ARTHUR ANDRES, testifying from Fairbanks, stated support for SB 328.

There being no further testimony, SENATOR TORGERSON moved SB 328 from committee with individual recommendations and its accompanying fiscal note.

CHAIRMAN STEVENS announced that with no objection, the motion carried. He then announced the next meeting would be held on March 14 and adjourned the meeting at 3:10 p.m.

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