

HOUSE FINANCE COMMITTEE
May 12, 2003
3:18 P.M.

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CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 3:18 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Berkowitz
Representative Mike Chenault
Representative Richard Foster
Representative Mike Hawker
Representative Kerttula
Representative Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

Representative Eric Croft
Representative Reggie Joule

ALSO PRESENT

Senator Ben Stevens; Kristi Tibbles, Staff, Senator Ben Stevens; Randy Ruaro, Staff, Representative Bill Williams; Jeff Ottensen, Acting Director, Statewide Planning Chief, Division of Statewide Planning, Department of Transportation & Public Facilities; Kristy Caitlin, Director, Governmental Affairs, AT&T Alascom, Anchorage; Pat Luby, Alaska Association of Retired Persons (AARP), Juneau; Dana Tindall, Senior Vice President of Legal Affairs, GCI, Anchorage; Matt Davidson, Alaska Conservation Voters

PRESENT VIA TELECONFERENCE

Chris Kennedy, Assistant Attorney General, Department of Law, Anchorage; Dave Harbour, Chair, Regulatory Commission of Alaska, Anchorage; Eric Yould, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), Anchorage; Jim Rowe, Director, Alaska Telephone Association, Anchorage; Leonard Steinberg, Vice President, General Counsel, Alaska Communication Systems (ACS), Anchorage; Steve Hamlen, United Utilities, Anchorage; Steve Conn, Attorney, Former Executive

Director, Alaska Public Interest Research Group (AKPIRG), Anchorage; Daniel Patrick O'Tierny, Assistant Attorney General, Department of Law, Anchorage;

SUMMARY

HB 111 An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date.

HB 111 was reported out of Committee with a "no recommendation" and with fiscal note #1 by the Department of Community & Economic Development.

HB 145 An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure.

CS HB 145 (FIN) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Law and zero note #3 by the Department of Administration.

#HB216

HB 216 An Act relating to municipal taxation of refined fuel products.

HB 216 was SCHEDULED but not HEARD.

#HB267

HB 267 An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date.

HB 267 was SCHEDULED but not HEARD.

#HB313

HB 313 An Act authorizing a pilot program relating to state procurement and the use of electronic commerce tools; and providing for an effective date.

HB 313 was SCHEDULED but not HEARD.

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CSSB 71(TRA) An Act relating to funding for transportation projects; and providing for an effective date.

HCS CS SB 71 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Transportation & Public Facilities.

#SB128

CSSB 128(FIN) am

An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date.

SB 128 was SCHEDULED but not HEARD.

#SB71

CS FOR SENATE BILL NO. 71(TRA)

An Act relating to funding for transportation projects; and providing for an effective date.

Co-Chair Harris MOVED to ADOPT work draft #23-LS0583\U, Utermohle, 5/12/03, as the version of the legislation before the Committee. There being NO OBJECTION, it was adopted.

RANDY RUARO, STAFF, REPRESENTATIVE BILL WILLIAMS, explained the changes made to the House Finance Committee substitute for SB 71. The change indicates that after October 1st, 2006, the amount that the Department of Transportation & Public Facilities can annually allocate to the track program for non-restricted highway apportionment reduced from 4% to 2%.

SENATOR BEN STEVENS noted that he did not oppose the House Finance version of the legislation. He commented on the original version of the bill in which federal law, Transportation Efficiency Act (TEA)-21, and its predecessor, Intermodal Surface Transportation Efficiency Act (ISTEA), mandates that all states expend at least 10% of Federal Surface Transportation Program funds on enhancements such as trails and landscaping. Over the past several years, the State of Alaska has expended amounts well beyond the minimum requirements for enhancement projects that could otherwise be applied to roadway construction and improvement projects. SB 71 will decrease the amount allocated for the Trails and Recreational Access Program to be in line with federal minimum requirements, making available millions for roadway construction and improvement projects.

SB 71 proposes to reduce the Department of Transportation's allocation of non-restricted federal apportionments to projects classified under the Trails and Recreational Access Program (TRAAK). Under current Department regulations, they allocate at least 8% percent to TRAAK projects; the House CS for SB 71 reduces that allocation to not more than 4% in

2004 and not more than 2% in 2006. The bill would redirect the funding into the Department's allocation for transportation projects classified under the Community Transportation Program (CTP), which includes the Statewide Road Surface Treatment program and the Highway System and Bridge Refurbishment program.

Administrative Order #161 from 1996, Knowles Administration established the Trails and Recreational Access for Alaska (TRAAK) program to address features such as trails, scenic highways, recreational access points and interpretive facilities. From 1998 to 2003, over \$150 million was allocated to the TRAAK projects while the federal minimum for transportation enhancement expenditures was \$43 million dollars, more than a 200% increase. The expenditures do not include separate bike paths or waysides for individual construction projects in the National Highway System, the Alaska Highway system or community transportation programs.

Only a municipality that is federally recognized, as a Municipal Planning Organization (MPO) would be impacted by Section (c) of the legislation, which is Anchorage and Fairbanks. In 1998, the Anchorage Metropolitan Area Transportation Solutions (AMATS) adopted a policy of programming 15% of its transportation funding allocation for enhancements. The three-year average at 15% for transportation enhancements from 2000-2002 in the Transportation Improvement Program averaged roughly \$5.5 million dollars. If realized, 10% of the Anchorage share of TEA-21 federal-aid transportation funds for a three-year average between 2004-2006, would roughly amount to \$5.8 million dollars.

Representative Berkowitz inquired about Section 1 of the bill and comments made regarding exceeding the federal guidelines. Senator Ben Stevens referenced the spreadsheet, noting that in FY03, the \$6.4 million dollar number came from a percentage of the none-restricted federal money. Adding a match to that, the State spent \$22 million dollars for similar projects. Representative Berkowitz asked where the other \$15 million dollars came from. Senator Ben Stevens replied that it came out of the CTP, the federal money pot. He referenced the Alaska Trails & Recreational Access for Alaska (TRAAK) Program handout in the file. (Copy on File). The bill takes TRAAK money and puts it back into the CTP.

Representative Berkowitz clarified that the federal government now provides money to the State with flexibility on how to appropriate it. Senator Stevens explained that the federal government provides funding with guidelines on how much to spent on transportation, clear outs, landscaping and pedestrian access. The State has been outspending the

minimum by 3 to 1. SB 71 will reduce it to the minimum requirement.

Representative Berkowitz noticed that since the federal guidelines address specifics, how was the State able to exceed the appropriation. Senator Stevens advised that the federal established criterion is a minimum with no maximum established. He did not know of a way to get the non-restricted highway money into non-road projects. The objective of the legislation is to go to the minimum required in order to maintain the State's eligibility for transportation funding and then use 90% of that for road construction for meeting existing traffic concerns in Anchorage.

JEFF OTTENSEN, ACTING DIRECTOR, STATEWIDE PLANNING CHIEF, DIVISION OF STATEWIDE PLANNING, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, referenced the large pie chart in the TRAAK handout. That chart indicates a category of federal aid received by the State called the Surface Transportation Program (STP). One of the rules with that category of money is that 10% be spent on transportation enhancements and 10% must be spent on safety. Those are minimum amounts.

Representative Berkowitz questioned Alaska's need for a bill, which determines federal appropriation percentages. He suggested that should be built in. Senator B. Stevens disagreed. He stated that the Legislature does not have anything to do with the Surface Transportation Improvement Program (STIP) and only approves that program. However, the program is developed by criteria set forth by the Department of Transportation & Public Facilities. The legislation would clarify that in the amount provided by the program, the amount used on transportation enhancement program would be limited. The numbers indicate that the State has exceeded the suggested percentages for the other enhancements, often by four times the amount of the federal minimum. The bill is an attempt to clarify in statute, what the minimum guidelines should be.

Representative Berkowitz noted that STP carries a 10% minimum enhancement and a 10% minimum safety. He asked if there were any other requirements and how the State arrived at the 40% - 50% enhancements. Mr. Ottensen explained that those are minimum amounts and that the State has the prerogative for spending more than the minimum on safety projects.

Representative Berkowitz inquired if the remaining 80% would be funds that the State was free to use, as needed. Mr. Ottensen replied that was correct, pointing out the requirements.

Representative Kerttula asked if under the proposed program, would funding be taken from other projects. Mr. Ottensen responded that the State would have to "slow down" the pace of building TRAAK projects and transportation improvements. There will be an acceleration of road building projects.

Representative Kerttula noticed that currently, there were decisions made to spend more funding on alternate types of projects and that the proposed legislation would shift the considerations. Mr. Ottensen acknowledged that was correct. In March 2002, the Department declared 8% be used for the TRAAK program and 33% for community transportation, essentially roads and buses. SB 71 was drafted to change that ratio to 4% & 37%; the committee substitute would change it further in FY06 to 2% & 39%.

Representative Kerttula inquired if comments had been received regarding regulations and projects completed. Mr. Ottensen replied that there had been few comments made. When Commissioner Barton took over, he determined that statewide needs for the TRAAK program were too large. Last year, a public interest finding was made, shrinking the program to 5%. When SB 71 was drafted, the Department was consulted and recommended that 4% would be adequate. Mr. Ottensen acknowledged that the decision had been a "policy call" regarding basic necessities for Alaskan communities. He noted that in some parts of the State, transportation is virtually non-existent.

Representative Kerttula asked if the legislation would affect all safety entities. Mr. Ottensen explained that some projects address both safety and enhancement, making the language confusing.

Representative Kerttula inquired if there was a way to separate safety projects under the current spending. Mr. Ottensen replied that would be difficult but they could provide that information in a few days as the projects are all coded.

Representative Berkowitz stated that Subsection © intrudes on local control. Senator Stevens commented that to be able to comprehend the impact of Section ©, it is important to note that that the allocation to AMATS recently had an increase to the reallocation transportation project. It moved from 22% to 27.5%, shifting the money. The Department of Transportation & Public Facilities recognizes that shift and increase in allocation. He noted that his position was to realize that increase and not spend 15% on road enhancement but rather return it to 10%. He pointed out that the \$5.7 million dollars used for trails has proven to build a good trail system in Anchorage and kept up with the steady expansion of other projects.

Representative Berkowitz commented on the determinations made by AMATS, agreeing that those should essentially be local considerations. Senator B. Stevens interjected that it was local determination utilizing federal money and was another example of exceeding minimum requirements for federal money.

Representative Berkowitz asked if Subsection © would apply to any other areas of the State outside Anchorage. Senator Stevens replied that it would also apply to Fairbanks.

Senator Stevens pointed out that an Administrative Order by the previous Administration established the existing track program. That order was signed in 1996. The regulations were not adopted until March 2002. The Department has been managing the TRAAK Program for six years.

Representative Kerttula questioned why the percentage was being dropped to 2% so quickly. Mr. Ottensen responded that the 2% was the change introduced in the adopted committee substitute. He added that it had not been a recommendation made by the Department, however, they are not opposed to it. There is a tremendous need reservoir for highways and that the global warming is having a devastating effect on the State's highways. Senator Stevens noted that the Department of Transportation & Public Facilities has indicated over a \$3 billion dollar backlog in road projects. He reiterated that the State should stay within the federal minimums.

Representative Berkowitz asked if there was anything in Subsection © that would impede Anchorage or Fairbanks from adopting it on their own. Mr. Ottensen replied there was not.

MATT DAVIDSON, ALASKA CONSERVATION VOTERS, testified against the legislation and the changes proposed in the committee substitute. He claimed that it was totally appropriate for the State of Alaska to spend more money on transportation enhancements than the federal minimal. In Alaska, these monies are used on a wide variety of projects. Putting only 2% into the enhancements would be a dramatic change. He provided a list of scheduled projects for this year created in October 2002. These projects total \$30 million dollars. Under SB 71, in 2006, that amount would be cut to \$7 million dollars statewide. Mr. Davidson urged that current funding remain in place.

Representative Chenault responded that there have been no new roads built statewide for many years and that in his district, some of the roads are not safe to drive. He noted that he would be willing to give up trails and wayside enhancements for safe roads.

Representative Kerttula asked the percentage of TRAAK projects that had been scheduled for safety. Mr. Davidson responded that they had not worked it out that way. He did not know if the cuts in the proposed funding could go to the reconstruction of the roads without major overhauls. Those are capital budget discussions.

Representative Berkowitz MOVED to delete Subsection ©, allowing municipalities to make their own decisions on how to use the funds. He urged more local control. Representative Stoltze OBJECTED.

KRISTI TIBBLES, STAFF, SENATOR BEN STEVENS, stated that Senator Stevens would oppose the recommended change.

A roll call vote was taken on the motion.

IN FAVOR: Kerttula, Moses, Berkowitz
OPPOSED: Meyer, Stoltze, Whitaker, Chenalut, Foster,
Hawker, Harris, Williams

THE MOTION FAILED (3-8).

REPRESENTATIVE KERTTULA MOVED to ADOPT Amendment #2, which would keep the percentages at the 4%/37% margin, allowing 4% go to projects classified under the Trails and Recreational Access. She thought that type project would use safety projects such as widening school crossings.

Co-Chair Williams OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Moses, Berkowitz, Kerttula
OPPOSED: Meyer, Stoltze, Whitaker, Chenault, Foster,
Hawker, Williams, Harris

THE MOTION FAILED (3-8).

Representative Foster MOVED to report HCS CS SB 71 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HCS CS SB 71 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Transportation & Public Facilities.

#HB145

HOUSE BILL NO. 145

An Act relating to public interest litigants and to attorney fees; and amending Rule 82, Alaska Rules of Civil Procedure.

CHRIS KENNEDY, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, commented on the changes made to the work draft adopted on May 9, 2003.

He pointed out that the House Judiciary version of the bill abolished public interest litigant's status and did so for only cases involving decisions by one of the natural resource agencies. Whereas, the proposed committee substitute differs in two main ways:

- It does away with public interest litigant status in all cases. It would abolish the public interest litigant doctrine which is a common law doctrine by the Alaska Supreme Court System about 25-years ago. It also recreates something similar to the public interest litigant doctrine by statute, only in constitutional cases. The net result will be regarding the question of special treatment for attorney fee matters.
- It goes beyond the area of fees and into the area of bonds and security that courts require for preliminary injunctions. It insures that a variance of a public interest litigant doctrine cannot be used to create a special exemption-posting bond. That issue resulted from a response from an unpublished order in a Cook Inlet lawsuit. The committee substitute preemptively does address that issue in Section #3 by insuring that bonds or securities protects the party that is being restrained. Those kinds of bonds or securities will be applied across the board rather than a potential for discrimination. In those cases, the committee substitute does not differentiate between constitutional and non-constitutional.

Representative Berkowitz inquired what would be needed before a person could qualify as a public interest litigant.

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Mr. Kennedy explained that the current public litigant status consists of a four-part test. The person must qualify for all four items of the criteria.

- The case needs to be designed to effectuate strong public policy.
- The case must be one in which numerous people would benefit from the success of the lawsuit.

- It would have to be a case that only a private party was expected to bring.
- The party bringing the case cannot have significant economic incentive to otherwise bring the suit. That requirement is the core of the public litigant status.

Representative Berkowitz asked if there recently had been an increase in public litigant litigation. Mr. Kennedy did not know if there had been a recent increase. The number of reported cases has been between 40 & 50. It is difficult to project the total number of cases as many do not go to appeal, which results in a reported decision. Often the public interest doctrine plays into the way the case is settled.

Representative Berkowitz asked what the language "plays a role" means. Mr. Kennedy explained that one role could create an uneven playing field in litigation. An adverse outcome does not need to be of a concern to prevail. On the other, should one of the claims be successful, there could be a considerable award, which could include the attorney fees. He suggested that the uneven incentive structure encourages people to bring cases that include more speculative claims than an ordinary litigant might incur.

Representative Berkowitz asked how many of those cases involved natural resources. Mr. Kennedy stated approximately 10% of the total.

Representative Berkowitz voiced concern that the legislation attempts to fix problems with public litigant suits thus, slowing down development statewide. He claimed that the legislation was "over reactive" if indeed, only 10% of the cases involved natural resources. Mr. Kennedy pointed out that the committee substitute sought to address a broad selection of cases, which is one of the fundamental differences between the House Finance version and the House Judiciary version. The House Judiciary version was aimed solely at resource issues and cases; this legislation is considerably broader.

Representative Berkowitz referenced the case involving the Capital Information Group. Mr. Kennedy stated that there had been quite a bit of litigation under the Public Records Act and that there are times when the requestors prevail.

Representative Berkowitz asked if there was concern from the Administration that eliminating this part of the public interest litigant verbiage could have a "chilling" effect on the transparency of government, making records less accessible to the public. Mr. Kennedy responded that there is no concern along those lines. He indicated that the

committee substitute does not create any penalty for that type case but rather treats them similarly to other civil litigation. The Administration hopes that by having this set of incentives, it will become possible to focus on facts of potential claims.

Co-Chair Williams pointed out Amendment #1, offered by Representative Berkowitz. (Copy on File).

Representative Kerttula requested a breakdown from the Attorney General's office of the cases that were either lost or settled under public interest litigants. Mr. Kennedy indicated that they do not keep complete records of that nature. There is a chart of all awards made in the natural resource cases over the last ten years. There has not been a need to "pull together all the cases", that involved the public litigant doctrine. In response to a query by Representative Kerttula, Mr. Kennedy speculated that the State had won most of those cases.

Representative Kerttula asked how high the bonds were. Mr. Kennedy advised that the bonds could be quite high, since their purpose was to keep the party from being enjoined and added that there is no fixed amount for a preliminary injunction.

Representative Kerttula asked if they had been routinely waived for public interest litigants. Mr. Kennedy indicated that recently there has been an expansion of that law. The intent of the committee substitute is to guarantee that the public interest doctrine is not expanded.

Representative Kerttula requested a copy of the unpublished opinion. Mr. Kennedy agreed to provide that to the Committee.

Representative Berkowitz MOVED Amendment #1. Co-Chair Williams OBJECTED.

Representative Berkowitz explained that there are problems experienced by public litigants and that the amendment would address the delay brought about by court cases. He speculated that the larger problem has to do with uncertainty, not the process. The amendment preserves the public interest litigants and would instead require an expedited proceeding, to ensure that if there was a challenge to regulation or permitting that it could be addressed quickly with something equivalent to a criminal "speedy trial".

Co-Chair Williams asked what would happen if neither side could reach an agreement in the 120 days. Representative Berkowitz explained, according to the criminal model, that the party would have the option of choosing. The person who

is the subject of the suit would control the delay in the process, not the person bringing it.

Mr. Kennedy noted that the Administration would oppose Amendment #1. He maintained that the amendment would change the "thrust of the bill". He noted that the intent of the legislation was to reform the public interest litigation policy, and that the current system encourages "kitchen sink" litigation. Mr. Kennedy commented that the committee substitute was protective of constitutional rights, creating special treatment and simplifies the doctrine for those cases, thus, lowering the bar. The legislation is more protective of constitutional rights than is current law.

Mr. Kennedy pointed out that the substance of the amendment would add a new Section #1. He acknowledged Representative Berkowitz's desire to expedite the process, adding that in an effort to change the manner in which civil litigation is handled and changing the court schedule are complex issues and should be worked out carefully. The Administration would be reluctant to have the Legislature add such language without the opportunity to consult with trial attorneys. He reiterated that the Administration would oppose Amendment #1.

Representative Berkowitz questioned the theory that the amendment would increase litigation. He stressed that it would leave the field basically unchanged. He added that the proposed fundamental change is complex and needs careful working, which goes to the heart of the bill. The public litigant doctrine is a "central issue of democracy" and is one of the few areas in which a single citizen could "stand up and try to affect change". He stressed that it is tremendously significant.

Representative Berkowitz acknowledged that the Administration might not support the amendment, but pointed out the purposes indicated, the most important purpose is the significant costs associated with the process to the State and private citizens. He reiterated that those costs result from delays and uncertainties.

A roll call vote was taken on the motion.

IN FAVOR: Moses, Berkowitz, Kerttula
OPPOSED: Stoltze, Whitaker, Chenault, Foster, Hawker,
Meyer, Harris, Williams

The MOTION FAILED (3-8).

Representative Foster MOVED to report CS HB 145 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note.

Representative Kerttula OBJECTED.

Representative Kerttula emphasized that the problems with private parties often revolve around delays. Cases in which public interest litigants have been successful, normally involve local community cases. She stated that when those cases are lost, the Alaska Supreme Court System has decided that those people should not be responsible to burden the "looser pay rule". Alaska is the only State that uses that rule and is an unusual rule in America. The legislation will cut off an important avenue allowing for certain cases to come forward and not facing the kind of financial burden that would exist in another case. She noted that she did not support the bill and would continue to work to define amendments for the House Floor.

Representative Berkowitz commented that he had not observed "real evidence" around how difficult public interest litigants are. The difficult nature of public interest litigation addresses subsistence, reapportionment, recall, access, fishing and zoning violations. That is what every person does when the government is not doing that job for him or her. This is an ancient doctrine, which allows people to stand up when the laws are not being enforced. The proposed legislation is a sustained attack on the public. The current version should have been brought forward before the House Judiciary Committee because of the serious legal ramifications. The bill must be improved; the House Finance Committee does not understand the consequences of why it is before them.

A roll call vote was taken on the motion.

IN FAVOR: Stolze, Whitaker, Chenault, Foster, Hawker,
Meyer, Williams, Harris
OPPOSED: Berkowitz, Kerttula, Moses

The MOTION PASSED (8-3).

CS HB 145 (FIN) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Law and zero note #3 by the Department of Administration.

#HB111

HOUSE BILL NO. 111

An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date.

Co-Chair Williams MOVED to bring up the original version of the bill before the Committee rather than the House Labor

and Commerce version. There being NO OBJECTION, the original version was before the Committee.

DAVE HARBOUR, (TESTIFIED VIA TELECONFERENCE), CHAIR, REGULATORY COMMISSION OF ALASKA (RCA), ANCHORAGE, supported approval of the Governor's version of the bill. He noted that at this time "nothing is broken" and nothing needs fixing. Extending the RCA for another four years, members should know that:

- Their predecessors and members in 1990, provided action to change the way that business was done for the RCA but changing the Alaska Public Utilities Commission (APUC) into the RCA with new rules. That action was successful. He noted that when action was taken in 1999, the APUC was overwhelmed by the 500 cases before them. Now, the normal number of cases per year is between 160-200. The number of cases processed should equal the number of cases that come in.
- The Legislative Budget and Audit Committee (LBA) has noted the improvement of the Commission.

LEONARD STEINBERG, (TESTIFIED VIA TELECONFERENCE), VICE PRESIDENT OF GENERAL COUNSEL, ALASKA COMMUNICATION SYSTEMS (ACS), ANCHORAGE, testified that ACS would support the House Labor and Commerce version of the legislation. ACS would not support authorizing RCA without further policy guidance. It is important to note that many things are being powered with shortsighted regulatory policies. Policies today are broken and are in need of repair and that the State Legislature should remedy these concerns. Alaska is being harmed because the one sided policies keep new investment discouraged in the telecommunication infrastructure. ACS cannot make any money under the current rules. Competitors have no incentive to invest. Today, State regulatory policy obligates ACS to lease its facilities at rates below sale costs, providing a subsidy to the competitors. Mr. Steinberg stressed that Alaskans prefer regulations that are fair, providing a level playing field. He reiterated that ACS supports the House Labor and Commerce version of the legislation and offered to answer questions of the Committee.

JOE GRIFFITH, (TESTIFIED VIA TELECONFERENCE), CEO, CHUGACH ELECTRIC, ANCHORAGE, echoed comments made by the previous speaker, Mr. Steinberg. He disagreed that "nothing was broken". The Commission results are broken and have placed many major entities in the Rail belt in financial difficulties. Inappropriate work from RCA has cost Chugiak Electric a lot of money and continues to impact them. No group should have the authority to place another entity into financial difficulty from mistakes that they make. The

issue results from the fact that RCA is not capable of doing the work that the State expects of them, representing the current market place. The new rules have not worked and the quality of the product is exceptionally bad. The proper criterion is how well is the Commission serving the market place and doing the work expected of them. The costs encountered from the Rail belt will be with them for years, creating consternation among rating agencies. The most recent case cost over \$5 million dollars. RCA does not have the right to make mistakes and to continue producing the product it has.

JIM ROWE, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, ALASKA TELEPHONE ASSOCIATION (ATA), ANCHORAGE, echoed comments made by the previous speaker, Mr. Griffith. He reiterated that the rural companies are very concerned that things are "wrong" and have been wrong with the current system. He spoke against the new Chair of the Commission. There had been full discussion given to those considerations in the House Labor and Commerce Committee. Amendments are needed and they have been submitted by many entities before the State Legislature. He pointed out that telecommunication concerns have been before the Legislature for many years. He predicted that within four years, there will be devastation within the industry.

STEVE HAMLIN, (TESTIFIED VIA TELECONFERENCE), UNITED UTILITIES, ANCHORAGE, spoke in support of comments made by Mr. Rowe. He noted that United Utilities was a member of the Alaska Telephone Association (ATA).

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Mr. Hamlin warned that decisions made by RCA in the past couple years have created great concerns for other business statewide. He warned that small local business and coops would be regulated out of existence. He urged that HB 111 be passed as amended in the House Labor and Commerce Committee.

ERIC YOULD, (TESTIFIED VIA TELECONFERENCE), EXECUTIVE DIRECTOR, ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION (ARECA), ANCHORAGE, noted that his utilities generate approximately 90% of the State's electricity. Last year, the Legislature indicated that they would put together a task force to press changes to the RCA. ARECA took that recommendation seriously and had a number of meetings, providing amendments that would streamline the agency.

Mr. Yould echoed agreement with Mr. Griffith that RCA needs reform. The amendments were provided to both the House Labor and Commerce Committee and the House Finance Committee

members. ARECA strongly believes that there are changes which need to be made to RCA. The amendments have been on the table for months and the Legislature has not chosen to address them.

Mr. Yould emphasized that they do not support the version of the legislation before the Committee and do not support a four-year extension to RCA. The industry only supports a one-year extension of the Commission without incorporating the proposed amendments. He pointed out that the LBA Committee recommended that RCA be extended for only two years.

STEVE CONN, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, FORMER EXECUTIVE DIRECTOR, ALASKA PUBLIC INTEREST RESEARCH GROUP (AKPIRG), ANCHORAGE, explained that the one "hope" that consumers, both rural and urban, have in Alaska, is both a strong and vital regulatory commission. The work they do should keep virtual monopolization and exploitation from occurring to the consumers. He noted that the utilities continue to be exempt from laws governing monopoly. That exemption should be dropped. Mr. Conn agreed with the Governor that the Commission should be extended for another four years. The focus should be that the consumers voice is heard within the RCA and stressed that would be difficult and detailed work. He noted that he did support the original bill.

PAT LUBY, ALASKA ASSOCIATION OF RETIRED PERSONS (AARP), JUNEAU, stated that AARP is in support the reauthorization of the RCA. The RCA is the only place that a consumer can go with a utility problem. Mr. Luby recommended that the bill pass as proposed by the Governor, a clean bill with no amendments.

KRISTY CAITLIN, DIRECTOR, GOVERNMENTAL AFFAIRS, AT&T ALASCOM, ALASKA, testified that Alascom has a long history of providing telecommunications services to the State of Alaska. It has the longest history of any inter-exchange carrier in the State.

Ms. Caitlin stated that both telecom service providers and policy-makers have a twofold obligation to the constituents of the State.

- To ensure that basic telecom services remain affordable to everyone in the State; and
- To provide a regulatory environment that fosters continued investment in the telecom infrastructure, ensuring that advanced services reach all parts of the State.

In the early days, Alascom was the only long distance carrier in Alaska, and as such, the regulated monopoly. In 1991, when intrastate long distance competition was initiated, additional regulations were developed to ensure that Alascom did not misuse its monopoly power to subvert competition. The new regulations, granted new long-distance competitors broad and significant freedoms. Competition grew and flourished. In 1995, AT&T bought Alascom.

Many of the regulations that restrict AT&T Alascom today are vestiges of the old monopolistic environment. However, in this highly competitive marketplace, they do not serve as an incentive for investment and only serve to add cost and provide a disincentive for investment. It was deregulation of the industry and the management of competition that spurred investment. In 1995, when AT&T fell below 60% market share in the lower 48, the Federal Communications Commission (FCC) ceased regulating AT&T as the "dominant carrier" and deemed the market for long distance as competitive.

Ms. Caitlin noted that AT&T Alascom currently has 42% of the long distance business and that their largest competitor, General Communications Incorporated (GCI) has 46-48% of the long distance business. Regulations add substantially to cost structures for tracking, journalizing and reporting. It also adds regulatory process that the competitors do not have. The situation really is one of "dominance" and with increased costs and inability to compete because of outdated regulations; ability to attract capital and invest in the network is hamstrung.

She pointed out that Alascom's proposed amendment language would establish a definition of "dominance." The amendment was intended to level the playing field so that all carriers could play by the same rules. The amendment is specifically intended to benefit Alaska consumers by:

- Ensuring a healthy competitive environment through equalizing regulatory requirements for all players;
- Reducing regulatory cost; and
- Increasing competitive flexibility.

Eliminating the additional costs and filing requirements, the amendment would directly increase AT&T Alascom's ability to more effectively compete and that the consumers would ultimately benefit from the increased competition.

Over the next 12 to 18 months, Alaska must wrestle with some difficult issues regarding telecom regulation. At stake is

the survival of an infrastructure, which is struggling to keep up with the rest of the country. In a true free market, there is less regulation, not more; and competition, not regulation, becomes the force to shape the market.

DANA TINDALL, SENIOR VICE PRESIDENT OF LEGAL AFFAIRS, GCI, spoke in support of the RCA, requesting that it be extended for an additional four years. She pointed out that the "stated" purposes of the amendments proposed were supposedly to accelerate the development of competition and promote investment and the improvement of existing facilities used to provide telecommunications services. However, in reality, the effect of the amendments would eliminate competition and allow ACS and other telephone companies to implement rate increases to consumers, while eliminating regulatory requirements to upgrade existing facilities.

- The amendments would allow all local telephone companies to implement rate increases to Alaska's consumers.

Depreciation expense is one large components of the costs that regulated utilities are allowed to collect from ratepayers. Regulated depreciation rates are based on the actual, useful service life of the equipment used to provide service. However, ACS is dissatisfied with the service lives set by the RCA after a recent proceeding in which it was seeking to raise rates. Section 4 of the previous version would reverse RCA's decision and authorize all telephone utilities to base depreciation on the service lives permitted by the Internal Revenue Service (IRS) for income tax purposes. Use of that would allow ACS and all other telephone companies, to implement rate increases to all ratepayers.

Ms. Tindall noted that Section 2 of the House Labor and Commerce version would allow local telephone companies to implement rate increases without any oversight from RCA.

- The amendments would allow local and long distance carriers to discriminate between customers and areas within the State.

Ms. Tindall pointed out that Section 5 of the previous version would declare the entire State "competitive" for long distance service and completely exempts all long distance carriers from rate regulation by the RCA. The exemptions would be available to long distance companies immediately and to any local phone company as soon as any competitor was able to provide service, but before actual development of competition.

- The amendments would allow ACS to eliminate

competition and that the amendments are contrary to federal law and would create tremendous market uncertainty.

Ms. Tindall continued, Section 8 of the House Labor and Commerce version allows ACS, without any negotiation to unilaterally increase the rates it charges to GCI pursuant to the existing Interconnection Agreement that was arbitrated under federal law and approved by the RCA. The pricing standard set in Sections 4 and 8 are contrary to the pricing requirements set by federal law and upheld by the United States Supreme Court.

- In direct contradiction of the stated purpose, the amendments eliminate requirements to upgrade existing networks.

Ms. Tindall pointed out that Section 1 of the amended version stipulates that the amendments are intended to improve the existing facilities used to provide local phone service; however, Section 3, prohibits the RCA from requiring phone companies to improve existing facilities. The amendment was targeted at a regulation adopted by the RCA in 1997 requiring all phone companies to support a data transmission rate of 28.8 kilobits per second by 2003. Furthermore, Section 5 exempts local phone companies from the statutory requirement (AS 42.05.291) to maintain "safe services and facilities" that allows RCA to require correction of unsafe facilities.

- In direct contradiction to the stated purpose, the amendments discourage investment in telecommunication facilities in Alaska.

Ms. Tindall indicated that Section 1 states that existing policies favoring local competition actually discourage investment in Alaska's telecommunication facilities. She noted that the argument is false and has been rejected by the United States Supreme Court.

- The amendments would require GCI to protect ACS from the effects of competition.

Ms. Tindall reiterated that the GCI leases portions of ACS' facilities to provide local phone service, and GCI pays RCA-approved rates for those facilities. The important aspect of the federal Telecommunications Act enables incumbents like ACS to continue to receive revenue even for customers served by a new competitor. Nonetheless, ACS has complained bitterly about the requirement that it allows GCI to use its facilities, and because of poor service and high rates of ACS, GCI is developing its own local exchange facilities.

Representative Stoltze MOVED to place HB 111 into a subcommittee to address the many different concerns and view points expressed. Co-Chair Williams OBJECTED.

DANIEL PATRICK O'TIERNY, (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, interrupted the discussion. He encouraged the Committee to retain the Governor's original "clean bill", which seeks the extension of the termination date for the RCA. He stated that the amendments would open up issues from past "phone wars". Several of the amendments implicate federal law and the Federal Communications Commission (FCC) directives. RCA's decisions are currently subject to judicial review. Several of the amendments involve technical features of ratemaking that do not lend themselves to making policy. Finally, he noted that several of the amendments relate to ongoing RCA proceedings. Given the significant issues currently before this Legislature and the limited time before session ends, to other than simply extend the RCA will guarantee another chapter in Alaska's "phone war".

Co-Chair Harris asked for assurance from the Administration regarding this issue. He observed that the issue had been raised for the last five years. There has been reference to the restructuring of the RCA during past legislatures. A number of companies have "taken exception" to decisions and/or operations made by RCA. He asked if the Administration was willing to work with those companies during the interim to craft legislation addressing the concerns. Mr. O'Tierney affirmed that the Administration would endeavor to create such legislation.

Representative Berkowitz questioned the impact on existing RCA rulings if the Commission were to sunset. Mr. O'Tierney was uncertain regarding those impacts.

Co-Chair Williams expressed his faith that the current Administration would resolve the RCA concerns. Representative Berkowitz disagreed.

Representative Foster MOVED to report HB 111 out of Committee with the accompanying fiscal note.

Representative Berkowitz OBJECTED.

Representative Berkowitz maintained that public testimony was not yet complete, and suggested that more information was needed. Co-Chair Williams responded that members had plenty of information provided by the lobbyists as well as discussion provided in the House Labor and Commerce Committee. He reiterated his trust in the Governor's office.

Representative Berkowitz indicated that he had further questions. Co-Chair Williams interjected that there would be future opportunities to discuss this bill during the Legislative process.

A roll call vote was taken on the motion.

IN FAVOR: Whitaker, Chenault, Foster, Hawker, Meyer,
Moses, Stoltze, Harris, Williams
OPPOSED: Berkowitz, Kerttula

The MOTION PASSED (9-2).

HB 111 was reported out of Committee with a "no recommendation" and with fiscal note #1 by the Department of Community & Economic Development.

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ADJOURNMENT

The meeting was adjourned at 5:27 P.M.