ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
April 23, 2003
3:28 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 47
"An Act prohibiting discrimination by credit rating or credit scoring in certain insurance rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 111
"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 251
"An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

- MOVED CSHB 251(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 47
SHORT TITLE:INSURANCE DISCRIMINATION BY CREDIT RATING
SPONSOR(S): REPRESENTATIVE(S)CHENAULT

Jrn-Date Jrn-Page Action

01/21/03	0043	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0043	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0043	(H)	STA, L&C
02/05/03	0135	(H)	COSPONSOR(S): STEVENS
02/06/03		(H)	STA AT 8:00 AM CAPITOL 102
02/06/03		(H)	Heard & Held
02/06/03		(H)	MINUTE(STA)
02/10/03	0173	(H)	COSPONSOR(S): CRAWFORD
03/29/03		(H)	STA AT 9:30 AM FAHRENKAMP 203
03/29/03		(H)	Heard & Held MINUTE(STA)
04/10/03		(H)	STA AT 9:00 AM CAPITOL 102
04/10/03		(H)	Moved CSHB 47(STA) Out of Committee -- Time Change --
04/10/03		(H)	MINUTE(STA)
04/11/03	0927	(H)	STA RPT CS(STA) NT 1DP 4NR
04/11/03	0927	(H)	DP: LYNN; NR: SEATON, HOLM,
04/11/03	0927	(H)	DAHLSTROM, WEYHRAUCH
04/11/03	0927	(H)	FN1: ZERO(CED)
04/11/03	0927	(H)	REFERRED TO LABOR & COMMERCE
04/23/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 111
SHORT TITLE:RCA EXTENSION/ TELECOMMUNICATION POLICIES
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/19/03	0250	(H)	READ THE FIRST TIME - REFERRALS
02/19/03	0250	(H)	L&C, FIN
02/19/03	0250	(H)	FN1: (CED)
02/19/03	0250	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/10/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/10/03		(H)	Heard & Held
03/10/03		(H)	MINUTE(L&C)
03/17/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/17/03		(H)	<Bill Hearing Postponed to 3/19>
03/19/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/19/03		(H)	Heard & Held <Subcommittee Assigned>
03/19/03		(H)	MINUTE(L&C)
03/27/03		(H)	L&C AT 1:00 PM CAPITOL 120
03/27/03		(H)	MINUTE(L&C)
04/10/03		(H)	L&C AT 2:00 PM CAPITOL 120
04/10/03		(H)	-- Meeting Canceled --

04/15/03		(H)	L&C AT 1:00 PM CAPITOL 120
			- Subcommittee Meeting -
04/23/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 251
SHORT TITLE:MARINE PILOT FOR FOREIGN PLEASURE CRAFT
SPONSOR(S): REPRESENTATIVE(S)DAHLSTROM

Jrn-Date	Jrn-Page		Action
04/07/03	0819	(H)	READ THE FIRST TIME - REFERRALS
04/07/03	0819	(H)	L&C, FIN
04/16/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/16/03		(H)	Heard & Held
			MINUTE(L&C)
04/23/03		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SAM SORICH,
Western Regional Office
National Association of Independent Insurers
Sacramento, CA
POSITION STATEMENT: Testified in support of the proposed committee substitute for HB 47.

EDDY LO, Insurance Manager
Fair Isaac Corporation
San Rafael, CA
POSITION STATEMENT: During the hearing on HB 47, described how Fair Isaac develops models using credit information.

DANA TINDELL, Senior Vice President
Legal, Regulatory and Governmental Affairs
GCI
Anchorage, Alaska
POSITION STATEMENT: Testified for the extension of the RCA in HB 111 but against the proposed CS, which would be preempted by a recent FCC ruling.

KRISTI CATLIN, Director
Government Relations
AT&T Alascom
Anchorage, Alaska
POSITION STATEMENT: Testified in support of the proposed CS to HB 111.

LEONARD STEINBERG, Vice President and General Counsel
ACS (Alaska Communications Systems)
Anchorage, Alaska
POSITION STATEMENT: Spoke in favor of the proposed CS to HB 111.

JIM ROWE, Director
Alaska Telephone Association
Anchorage, Alaska
POSITION STATEMENT: Supported the proposed CS to HB 111.

ERIC YOULD, Executive Director
Alaska Rural Electric Cooperative Association
Anchorage, Alaska
POSITION STATEMENT: Supported HB 111 but opposed the CS unless electric industry amendments are adopted.

ROSALEE WALKER
Older Persons Action Group (OPAG)
AARP, Local Chapter 865
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 111.

BOB LINQUIST
Waste Management of Alaska
Anchorage, Alaska
POSITION STATEMENT: During the hearing on HB 111, testified about garbage collection in the Mat-Su Valley.

PAM KRIEBER, Owner
Valley Refuse, Inc.
Wasilla, Alaska
POSITION STATEMENT: During the hearing on HB 111, testified against price deregulation for garbage collection utilities.

DAVE HARBOUR, Chairman
Regulatory Commission of Alaska (RCA)
Department of Community and Economic Development
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 111

ASHLEY REED, Lobbyist
for Fraser Stryker
Anchorage, Alaska

POSITION STATEMENT: Testified in support of the proposed CS for HB 251.

ACTION NARRATIVE

TAPE 03-38, SIDE A
Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:28 p.m. Representatives Anderson, Lynn, Dahlstrom, Gatto, Rokeberg, Crawford, and Guttenberg were present at the call to order.

HB 47-INSURANCE DISCRIMINATION BY CREDIT RATING

Number 0048

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 47, "An Act prohibiting discrimination by credit rating or credit scoring in certain insurance rates; and providing for an effective date."

Number 0118

SAM SORICH, Western Regional Office, National Association of Independent Insurers, explained that his group is an association of insurance companies. He testified that 100 of his member businesses are doing business in Alaska, and they account for about 60 percent of the car and homeowners' insurance written in the state. He stated:

> The business of insurance is a unique business. When we sell our product, we don't really know the ultimate price of that product; we don't know who is going to file a claim, and when a claim is filed, what the ultimate cost is. What we do is we estimate our costs and charge premiums. One approach is to charge everybody the same premium and just average things, but that wouldn't be fair. So what the insurance industry has done over the years is to identify factors that are proven predictors of loss. So insurance companies use the claims history of a person, that type of car a person drives, how a person uses a car, the type of home construction as factors that are good predictors of whether or not a person is going to have a loss.

MR. SORICH said:

Some insurance companies have recently introduced the use of credit information as a predictor of loss. As Mr. Lo will show you, this factor is based on a solid, scientific evidence. The Fair Isaac Company has looked at millions of credit reports and millions of insurance policies and the loss history on those policies and have determined, have seen a clear relationship between certain credit factors and the likelihood that a person is going to have an insured loss. And it's not just the Fair Isaac research that has established this relationship. There's been a body of research, most recently a report that was done by the University of Texas Business School, not paid for [by] the insurance industry, not paid for by the insurance agents, but paid for by the Texas legislature. This report came out a month ago from the University of Texas and it confirms the relationship between loss experience and credit characteristics, specifically an insurance score. And Mr. Lo will explain what an insurance score is. Insurance companies have a responsibility to our customers to consider this evidence. Because if we are forced to reject this evidence, we are going to be forced to charge people more than they should be paying for their insurance based on proven cost predictors ...

Number 0351

MR. SORICH continued:

First on the legal basis, the Federal Fair Credit Reporting Act was enacted in 1970. It specifically allows insurance companies to use credit information. Now states can enact laws that restrict the use of this information, but any state enactment cannot be inconsistent with the federal law. No state has absolutely prohibited the use of credit information. There are many states, though, that have restricted the use. In terms of the consumer benefits, the use of credit information helps insurance companies make decisions that are objective. An insurance score does not consider a person's income, where a person lives. What kind of car a person drives, a person's race, a person's income, is not considered in an insurance score. An insurance score is based on the objective information in a credit report.

MR. SORICH testified:

Secondly, the use of credit ... gives insurance companies more information about our policyholders so we can make fairer decisions. We are a fact-based industry. We make our decisions based on information. The more information we make, the more well informed our decisions are and the fairer our decisions will be. Third, the use of this tool helps us to make our decisions more quickly. When people apply for insurance, we are able to make a decision more quickly based on the insurance score of how much to charge a person and whether or not the policy will be written. That helps to lower the cost of insurance. Fourth, the use of this information helps us to establish a higher level of equity and fairness. Again, the body of evidence that establishes this relationship does show that this is a good predictor. If we are forced to ignore this tool, our rates will be less fair.

Number 0497

MR. SORICH noted:

And finally, the use of this tool is helping insurance companies to make insurance more available. We are in the business of writing business. We're not in the business of not writing business. Insurance companies want to offer coverage. And providing them this additional information gives insurance companies the security of knowing ... the likelihood of whether or not a person will file a claim is. ... There is some controversy, no doubt about it. But I think there are good reasonable answers to some of the controversy.

MR. SORICH stated:

The National Conference of Insurance Legislators (NCOIL) last November adopted a model act, the NCOIL model. The NCOIL model was adopted not by insurance companies, not by insurance agents, but by legislators, state legislators just like you. The NCOIL model addresses many of the concerns that have been raised, and the NCOIL model is reflected in the committee substitute (CS) for HB 47. A number of states have already passed the NCOIL model: North Dakota, Nebraska, Kansas, Oklahoma. And just yesterday, the Georgia legislature passed a bill that's modeled on the NCOIL model, and that's on the governor's desk. So I would encourage the committee to consider adopting ... committee substitute HB 47 because it's based on NCOIL and it's got a solid body of research behind it.

MR. SORICH continued:

> ...There has been some talk about what Hawaii's law is or isn't. Hawaii's insurance code does not prohibit insurance companies from using credit completely. What the Hawaii law says, and it's only applicable to auto insurance, there's no restriction on the use of credit information for homeowners' insurance in Hawaii. The Hawaii law does prohibit insurance companies from using credit information to develop rates. There is a question about whether the law also applies to an underwriting decision, and that issue is before the Hawaii Supreme Court. ... But again, no state has completely prohibited the use.

Number 0671

EDDY LO, Insurance Manager, Fair Isaac Corporation, testified about modeling that is based on credit information. He referred to page 5 of the presentation package. Mr. Lo reiterated that the Fair Credit Reporting Act allows the use of credit information. His company, Fair Isaac, as a modeler, started studying the use of credit over 30 years ago. But in the last 10-12 years, he said, the company has applied technology to the use of credit information, predicting losses in personal, auto, and homeowners' insurance. The company works on the individual policy level, matching the premium and loss to credit information on a one-to-one basis. Company officials examine the set of credit characteristics that distinguish whether there was a loss, and based on that likelihood, they predict the loss potential for that same class of business with similar credit characteristics. Those are the basics behind [the modeling], he explained.

Number 0755

MR. LO emphasized several preliminary points. He explained that Fair Isaac has built many kinds of predictors. One predictor is the FICO (Fair, Isaac and Company) score that predicts the likelihood of repayment of loans, auto loans, and mortgage loans, but he emphasized that he was not talking about those predictors today. Fair Isaac also has developed a different set of credit-based predictors for personal, auto, and homeowners' insurance, which are the subject of today's presentation. He said that the key relationship from the credit data is that whenever there is an increase in financial obligation as reflected in a credit report, there is an increase in actual losses and an increase in the prediction of future losses. He stressed that all the issues that he will discuss are based on this found relationship between increased financial obligation and future losses.

Number 0830

MR. LO highlighted the graphic on page 5, upper left column, which lists five credit characteristics that figure in insurance losses. The middle box in the left hand column shows the number of months since the most recent adverse public record, that is, a bankruptcy, foreclosure, judgment, or lien. In this example, when the losses happen within the last four years, the loss ratio, relative to the group that has no such adverse public record, is 68 percent higher. He said that very significant difference would be useful to an underwriter. The first box on the right hand side looks at the number of adverse public records -- the number of bankruptcies, foreclosures, judgments, and liens in the past. He explained that 96 percent of people have no such adverse public record, so the majority of people are not affected by this particular credit characteristic. But for the remaining 3-4 percent, the loss ratio is simply a measure of loss performance on a policy. So when loss ratio is high, then either the actual loss is high or the expected loss is high. On that basis, he said the company finds that anyone with more than one adverse public record has a loss ratio of 64-68 percent, a very significant number relative to the group that has no such adverse public records.

Number 0970

MR. LO pointed to the middle box on the right hand column, the number of trade lines that are delinquent. He explained that a trade line is any entry on a credit report such as a credit card, a mortgage loan, or an auto loan. The company looks at how many of those were more than 60 days delinquent in the last two years. Basically, 89 percent of the population does not have such delinquencies on their credit reports. But of the remaining 11 percent [of the population], 15 percent of the time, the more delinquency there was in the past, the higher the losses in the past. Therefore, [the losses] are expected to be higher in the future.

MR. LO said that another credit characteristic is the number of collections. He said that 97 percent of the people have no such collections on their credit report. For those [people] that do, the loss rate shown is again very high. He said there's a very clear distinction.

Number 1039

MR. LO explained that the fifth characteristic is the number of trade lines opened in the last 12 months, the bottom box in the right hand column. These trade lines are not actual financial obligations; they are indications that someone was seeking obligations. The more a person seeks financial obligation or the use of credit, the higher the losses were in the past, and will be in the future.

MR. LO summarized that in using these five characteristics, there is a clear distinction. He said there are more characteristics, but he is only allowed to show five in a year to the public. There are other models out there -- Fair Isaac is only one model -- which are very creative in the use of credit information as the model attempts to produce very powerful results. He turned to the results of using five characteristics. The bottom box, left hand column on page 7 [deals with] the number of adverse public records, using that information to separate risk. Since the majority of the people have no such adverse public record, they are assigned 30 points. People with one or more adverse actions are assigned zero. This one characteristic and the two attributes make it possible to separate out risk. Focusing on the months since the most recent adverse public record, points are assigned as follows: 30 points to people with no public records, zero points for less than four years, and 10 points for more than four years. He summarized how this very simple numeric scheme can separate out the risk. With the characteristic of delinquent trade lines [illustrated in the bottom box on the right side], he said it is known that the more delinquency in a person's credit record, the worse the person's risk [for an insurance loss]. Points for delinquency are assigned as follow: 25 for no deliquency, 10 to one delinquent trade line, and zero for two or more. For the number of collections, 20 points are assigned to a person with no collection history. The last characteristic, number of trade lines opened on the last 12 months, is shown on page 8, [top left-hand box]. On these five characteristics, this model predicts a risk between the lowest score of zero and the highest score of 125. On that basis, he said his company is able to tell one risk from the other. If the company uses more than five characteristics, the model is even more powerful with finer [delineations of risk].

Number 1232

MR. LO turned to a commercial value model on page 2, the bottom right hand corner. He pointed to the smooth, downward sloping set of bars, each representing a group of policies in a certain score range. The low scores are on the left side, and the high scores are on the right side. He explained that when the score value is low, the policy could generate 70 percent higher or worse [losses] than the average. The score values on the right are high and they predict that the policy will have future losses 50 percent better than average. The swing from 70 percent worse to 50 percent better is a separation that really helps an underwriter [decide whether to] accept, reject, or tier the risk into the proper rating structures.

Number 1283

MR. LO concluded that FCRA gave the legal base to collect information and statistics throughout the years, and models were built, not just for insurance but for other businesses as well. For insurance, the model was built, validated, proven, used, and implemented in a number of states. The insurers can use [the model] to underwrite on a selection basis or can assign a risk into a certain tier by a score range.

CHAIR ANDERSON announced that HB 47 and questions pertaining to it would be held until next week, when the sponsor can present the bill. Witnesses will be able to testify then also.

HB 111-RCA EXTENSION/ TELECOMMUNICATION POLICIES

Number 1362

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 111, "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

CHAIR ANDERSON noted that the subcommittee discussed this bill over the last month and has a committee substitute (CS) that should be adopted for discussion purpose.

Number 1399

REPRESENTATIVE ROKEBERG moved to adopt the proposed CS for HB 111, Version 23-GH1079\I, Craver, 4/23/03 as the working document.

Number 1420

REPRESENTATIVE DAHLSTROM objected. She explained that there are many serious issues in the CS that need to be discussed, and the best policy is to separate the issues [out from the original bill]. She said the RCA [Regulatory Commission of Alaska] bill should be a clean bill with nothing attached. She noted that she fully supports all the other issues being addressed, put on the table, and discussed in the right forum with all the players there. She does not agree with tying everything into this bill.

Number 1483

REPRESENTATIVE CRAWFORD said he just got the CS and has not had a chance to review it. He said he opposes moving this bill out because it has not been discussed sufficiently in the full committee. If the committee is going to move a bill out of committee today, he favors moving the original bill with its sunset extension rather than a "Christmas tree."

Number 1524

REPRESENTATIVE GATTO said he, too, hasn't had time to review the bill. He said he prefers to have a couple of days to review it. He could probably support the CS but he's not versed in it.

CHAIR ANDERSON said the bill needs to be expedited and he asked that the committee move the CS today.

REPRESENTATIVE DAHLSTROM clarified that she supports many of the provisions in the CS, but every single issue in the CS needs to be addressed [by the committee].

REPRESENTATIVE ROKEBERG asked whether there will be public testimony.

CHAIR ANDERSON said he would allow a small amount of public testimony, noting that some of the interested parties have testified several times.

REPRESENTATIVE ROKEBERG recalled the fact that there is a motion on the table.

Number 1610

REPRESENTATIVE LYNN explained that when he uses his phone, the garbage service, natural gas, or electricity, he expects them to work, and when they don't work, he wants them fixed quickly. He said he wants the lowest possible price for these utilities while providing a fair and reasonable return to the providers of these utilities so that they can stay in business. The aforementioned is most likely to occur when there's fair competition on a level playing field. He said he has learned that these issues are complex times a million. These phone wars and utility wars will take a long time to resolve, which is why the legislature instituted the RCA, he observed. The RCA is supposed to have expert commissioners, expert staff, and the resources to resolve the conflicts in a manner consistent with the best interests of the consumers. If that can't happen, some people ought to be replaced, he said. The legislature won't get the results it wants with a Band-Aid approach, he remarked.

Number 1743

REPRESENTATIVE LYNN continued, saying the legislature ought to stay out [of these conflicts] as much as possible, extend the RCA, and let it do its work. He would like to see HB 111 go as a clean bill [extending the sunset date only]. Some of the [issues addressed] in the CS are very valid points, and it's difficult not to agree with everybody. But when a legislator is elected to office, he can't agree with everybody. Representative Lynn said that his bottom line still is when he turns on his utility, he wants it to work, and he wants to pay as little as possible. He said he does not support the CS.

Number 1777

REPRESENTATIVE GUTTENBERG spoke on behalf of the CS. He said the subcommittee had a huge learning curve, and it had an in depth discussion with all [parties] of the regulated community. Some competitive issues need to be addressed, he said. The public has been touched by these problems, and the subcommittee deals with some of them in the CS. The subcommittee spent a lot of time working on this [subject], in some ways a lot less time than necessary. He said he favors adopting the CS and hearing public testimony.

REPRESENTATIVE ROKEBERG said he made a motion [only] to adopt the CS as a working document, but the committee is debating the merits of the bill. He prefers to hear from the public and to hear more about the bill.

Number 1856

REPRESENTATIVE DAHLSTROM thanked Chair Anderson for pulling the subcommittee together. The members of the subcommittee acknowledged that these are critical issues that need to be addressed; the disagreement is how to address those issues. She said the legislature needs to give the RCA the opportunity to do its job. There's been a major change [in the RCA], and she said she is confident that if the RCA doesn't conduct itself [appropriately], the governor will make changes.

The committee took an at-ease from 4:03 to 4:10 p.m.

Number 1920

A roll call vote was taken. Representatives Guttenberg, Gatto, Rokeberg, and Anderson voted in favor of adopting CSHB 111 as a working document. Representatives Crawford, Dahlstrom, and Lynn voted against it. Therefore, Version I was before the committee by a vote of 4-3.

Number 1962

CHAIR ANDERSON said that because of concerns by the committee, he will not move HB 111 out today but will take public testimony. He thanked Representatives Dahlstrom and Guttenberg for their service on the subcommittee. He also thanked the interested parties who gave input and recommendations, including the RCA and the governor's office.

CHAIR ANDERSON stated that the subcommittee's mandate was the analysis of potential revisions to the state's regulatory laws, which was a daunting task, to say the least. The subcommittee's mission has been to assess the efficacy of amending the RCA's renewal bill, HB 111, using it to improve [the RCA's] current process and procedure. He said he understands the argument from the RCA that there needs to be a renewal without delay. In the proposed CS, the RCA is renewed for four years, as recommended by the governor. No one disagrees that a commission is necessary. But he said that statutory deadlines have not been met as suggested by [Chairman Dave Harbour] in his correspondence [dated April 15, 2003]. The RCA has declared that there are categories of cases not covered by recent legislation. Some cases, which occurred before RCA Chair Harbour's tenure, were addressed so late in the review cycle that nonparticipation by commissioners resulted and a lack of time of the hearing officer to recommend decisions occurred. Ultimately, the final judgment appeared rushed. The commission rolled old issues into new dockets, thus giving the appearance that old dockets were not completed.

Number 2045

CHAIR ANDERSON referred to how the RCA noted in its correspondence to the committee that it is "accountable through the political process." However, Chair Anderson contended that there is only indirect accountability. Commissioners are not elected, they are appointed, he said. The only true measure of a commissioner's performance is during the sunset review, which the committee has before it, HB 111. That is the only time the legislature can assess performance directly. The assertion in the RCA correspondence that legislative mandates based on lobbying efforts would dilute the commission, as an "independent, objective, ex-parte-protected forum" isn't true, he argued. The legislature sets the policy; that's why it's here -- not to shirk responsibility -- but to work on these problems. The commission's decision-making ability, should this proposed CS pass the committee, would remain independent. While there are concerns, the objectivity and ex parte aspects will continue. The RCA letter referred to Senator [Drue] Pearce's desire to allow the RCA to coalesce for four more years. Chair Anderson asserted that this occurred four years ago, and the RCA has had ample time to [accomplish] this. He stated, bear in mind that this proposed legislation doesn't seek a restructure of the RCA, either. The committee is not tinkering with the RCA's structure. It is only offering substantive policy guidance, the reason why legislators are elected.

Number 2122

CHAIR ANDERSON explained that on telephony issues, the subcommittee has reached some significant remedial ground. He said some people testifying today may testify that these provisions may hurt them. That's not his intention, he said. He said he has no favorites, but he must contend with the consumer, the patron, the public, and the business market. The RCA also stated [in its letter] that "it embraces ... change in ... statutes, regulations and administration" but experience doesn't support this [claim] in telephony issues. That is why the subcommittee has targeted just telephony issues.

CHAIR ANDERSON noted that Pam Krieber of Valley Refuse and Bob Lindquist from Waste Management were signed up to testify. He invited their testimony, but asked them to recognize that this CS doesn't affect their issues.

Number 2143

CHAIR ANDERSON stated that he was confused by the RCA's suggestion that the committee is performing "statutory micromanagement," which results in a lower efficiency. This proposed CS proposes policy guidance and de-tariffing proposals that will lead to fewer proceedings and afford the RCA the ability to handle its remaining caseload. He disagreed that the RCA can administratively resolve all of the issues brought before the committee over the last two months. If the proposed CS passes, competitors will continue to have access to incumbent facilities, at rates that will offer healthy margin opportunities. A policy change promoting companies [that] are competitors to [jointly] build their own facilities would provide an incentive for investment. And most importantly, he said, consumers would reap the benefit from this idea of free flow marketing and this model of fairness. Legislators are the policy makers, and their targets should be the consumer. Legislators need to ensure fairness in the market place and support the RCA to perform its duties for the benefit of the public. He said he believes the proposed CS will achieve some of these targets for telephony service.

Number 2225

DANA TINDELL, Senior Vice President, Legal, Regulatory and Governmental Affairs, GCI, apologized that she was not fully up to speed on the CS to HB 111 because she has only had it for an hour. She said she has not had an opportunity to see any of the proposed amendments nor work with the subcommittee on the CS. She testified:

> GCI is in support of a clean four-year extension of the RCA. The amendments, ... looking at this committee substitute to the original RCA bill, fall into roughly three categories: deregulation, anti-

competition, and de-tariffing, which falls under deregulation. Under the deregulation amendments, this bill would essentially deregulate depreciation rates for electric and telephone companies throughout the state. Right now, depreciation is an issue in a rate case [that] ACS has before the RCA where they asked for a $60 million ... rate increase for all of their telephone companies. The one issue in dispute that determines whether or not they get that rate increase is depreciation. ... We are a party to this proceeding. It turns out that ACS has over-depreciated the majority of its plant. Now, just by mathematical calculation, because there is a lot of lives left on the plant, they come out with a low depreciation rate. They are seeking a higher depreciation rate so they can increase rates. And the RCA is standing in their way. This bill would deregulate depreciation, and the RCA would not be able to stand in ACS's way for rate increases nor apparently [for] the electric companies.

Number 2331

MS. TINDALL continued:

This bill also deregulates incumbent monopoly telephone providers upon the entrant of any competition at all. So if a competitor enters a service area and gets one customer, this bill would deregulate service. Among other things, this bill would deregulate, and the incumbent provider would no longer have to comply with AS 42.05.291, which is Standards of service, AS 42.05.301, which is Discrimination in service. Under this bill, incumbent providers with market power would be able to discriminate in service. AS 42.05.306, which is Discounted services and reduced rates for low-income users, AS 42.05.361, Rates and rate schedules -- they would no longer have to file them. AS 42.05.371, Adherence to tariffs -- they would no longer have to adhere to their tariffs, but I'm not sure why that matters if they no longer have to file them. AS 42.05.381, the statutory requirement that rates be just and reasonable -- utility providers would no longer have to comply with. AS 42.05.391, Discrimination in rates ... is a different issue than discrimination in service. Under discrimination in service, you can refuse to provide consumers with service; under discrimination in rates, you can charge them discriminatory rates. They are two different things. [Tape ends mid-statement]

TAPE 03-38, SIDE B
Number 2366

MS. TINDALL stated:

...issues, and then of course once again, they get deregulated from depreciation under that list. Those are the deregulatory issues in this bill. The incumbent carriers would no longer have to offer tariffs; long distance rates would be deregulated such that AT&T, who has by FCC regulation a monopoly in some 150 communities throughout, would be able to raise rates without getting commission approval. Right now they can go in and go for a rate increase through a rate case where they have to make a showing to back up their proposed rate increase. But under this committee substitute, they would not have to make that showing and they could just go through with that rate increase.

Number 2335

MS. TINDAll commented:

The anti-competitive issues are also of concern to GCI. Much of the anti-competitive portions of this committee substitute, however, are preempted by federal law. The FCC establishes the way in which pricing is done for GCI to lease portions of ACS's network. They are very specific in what they require. ... Total element long run incremental cost is what it has to be based on. And that means that there has to be a model with the most advanced telecommunications services, ... the lowest cost under competitive pressure assumed. And the only thing that's fixed would be where the existing wire centers are today. Otherwise, there is nothing fixed in that model. This bill would be automatically pre-empted because it directly flies in the face of that regulation. That regulation has been upheld by the United State Supreme Court as being fair and reasonable and has been fought out pretty thoroughly in the Lower 48 so its pretty clear. The amendment that would require that rates be set on existing cost is ... totally pre-empted.

Number 2280

MS. TINDALL observed:

> The RCA's purpose is to protect consumers from this type of bold and bald market power, from rate increases where there's no showing if there's not competition, from discrimination from service, from discrimination rates, that's what they're there for. They're also there to ensure that carriers have an opportunity to make a fair and reasonable rate of return. If a carrier feels it's not making a fair and reasonable rate of return and cannot get redress at the Regulatory Commission of Alaska, they can go to court and can make a confiscation claim. No carriers to date have done that. None of them have gone to court and tried to make their claim. ACS is free to go to the FCC and get a petition from forbearance of applying their regulations based on the fact that somehow the pricing regulations are hurting them. That would require a showing and require putting facts on the record. ACS has not done that. ACS simply goes to the legislature. The RCA is the expert body. This is a very complicated issue. Things are not as they seem. These things do require in-depth discussion because the impact of this legislation if it passed is anti-consumer. Rates across the state would go up and ...parts of competition would be eliminated. Thankfully, a lot of it is preempted by the FCC.

Number 2219

MS. TINDALL concluded:

> So I would urge you, because a bill has to pass ... to pass out a clean bill and extend the RCA for four years.

Number 2211

REPRESENTATIVE ROKEBERG confirmed that Ms. Tindall stated that the bill would set rates at existing cost levels, which would be preempted by federal law at the FCC. He asked how the FCC 's ruling impacts the state's right to set rates.

MS. TINDALL reiterated that [the FCC] order has not been released yet. She stated:

> Based on what we can tell from the open discussion by the commissioners ... that order dealt primarily with whether or not unbundled element of switching had to be continued to be available. Currently in Alaska, ... GCI is the only competitor that leases unbundled elements. ... GCI, for the most part, doesn't lease the switching element, except for some four percent of our lines in Fairbanks where we had to because of the way the network was configured. Essentially, the FCC order, we believe, deals with the switching element and with line sharing. And there is no line sharing in Alaska, as well. It is our belief, and I think the RCA has testified to this as well, that this order will have little or no impact on Alaska. There may be a provision in it for an incumbent carrier, such as ACS, to make a filing or petition with the state commission to show why somehow they shouldn't have to offer an unbundled element.... There is a presumption that that element will be offered for everything except the switching element for business users. Although there has been a lot of talk about what the FCC [did], ... the order is not out, and to the best of my knowledge and most others, and I urge you to check it out with others, it will have little or no impact on Alaska. And it certainly doesn't undo the fact that total element long run incremental cost is preempted by the FCC in the state law and upheld by the United State Supreme Court.

Number 2089

REPRESENTATIVE ROKEBERG commented that some of the issues in the CS are not addressed in the [FCC] ruling and asked how the ruling effects the jurisdiction of the RCA.

MS. TINDALL said the prior to the FCC order, the method of pricing and the availability of unbundled elements was established by the federal government. Post that order, the only unbundled element that is affected is the high-capacity switching element, which is not an issue in this state. Prior to the order, the states don't have the jurisdiction on this issue, and after the order, they don't have the jurisdiction on this issue; it is preempted.

REPRESENTATIVE ROKEBERG asked about line sharing and leasing ACS lines.

MS. TINDALL replied that line sharing doesn't exist in Alaska. GCI leases unbundled [network] elements (UNEs) from ACS.

Number 1998

KRISTI CATLIN, Director, Government Relations, AT&T Alascom, testified:

> The committee has on record my previous testimony and Mike Felix's previous testimony outlining our position on the responsibility of telephone providers and regulators in the telecommunications market. Those responsibilities are primarily to ensure [that] basic telecom services remain affordable and to provide a regulated environment that fosters investment. The old monopoly-era regulations are no longer accomplishing these goals. The inter-exchange carrier market, as it stands today, is fully competitive. Alascom's market share has gone from 100 percent in 1989 to 42 percent today, where GCI's percentage is 46-48 percent. Although we participated in a four-year procedure at the RCA, Alascom is still the dominant carrier. AT&T Alascom has submitted language to amend HB 111 that is included as Section 6 of the CS. It adds very simple and straightforward language that defines a carrier as nondominant once its market share hits 60 percent, the same percentage used in defining AT&T nondominant in the federal jurisdiction. AT&T Alascom reaffirms its support for this amendment.

Number 1925

MS. CATLIN continued:

> The amendment is specifically intended to benefit Alaska consumers by ensuring a healthy competitive environment through equalizing regulatory requirements for all players by reducing regulatory cost and by increasing competitive flexibility. By eliminating these additional costs and filing requirements, this amendment will directly increase AT&T Alascom's

> ability to more effectively compete. And, as has been shown both nationally and in Alaska, we believe that consumers will ultimately benefit by the increased competition. Even-handed regulation yields downward pressure on prices. It also results in parity on the evaluation of new and more efficient technologies, which provides incentive to bring Alaskan consumers the additional products and services they desire.

Number 1889

MS. CATLIN commented:

> I'd like to address just one comment made by Dana, and it has to do with AT&T Alascom's 150 facilities-restricted locations. They're restricted on the federal side but not on the state side, just for the record, and it is for toll service. It's for the per-minute long distance calling you and I do everyday. It's not for data services that we sell to businesses or for any wholesale services; it's for the MTS services. ...Those locales ... are well less than 10 percent of Alascom's traffic, no matter how you measure it, whether its interstate, intrastate,... its less than 10 percent, [but] we have over 70 percent of our costs. It's a very small percent of our traffic, and for all of those locations, in addition to our other locations, we're held to geographic rate averaging, and we cannot raise toll rates to those areas. So we can't raise our prices. So I want to make it really clear for the committee that we can't do what you're being told we can do there.

Number 1840

REPRESENTATIVE ROKEBERG asked why AT&T Alascom can't raise its rates in those areas. Is it because of FCC regulations, he asked.

MS. CATLIN replied that it's a [matter of] state regulation. She explained that AT&T could raise prices, but it would have to raise those prices in Anchorage also, and Anchorage is a competitive market. She said that AT&T would lose market share, and no competitor in its right mind, for 10 percent of its traffic, would [do that]. She said that AT&T would never do that. She stated that AT&T hasn't had a residential rate increase as long as she has worked in "regulatory," which is eight years.

REPRESENTATIVE ROKEBERG asked if this bill will allow other carriers to compete in those areas or are they restricted areas.

MS. CAITLIN answered that on the intrastate side, other carriers can compete now. It's only a federal requirement for message toll service, which is the regular telephone calling, that [other carriers] are not allowed to bill facilities for that purpose. For instance, GCI is already entering many of those locations for private line service, which is the dedicated business services for schools and libraries. So GCI is already in many of these locations, she said.

REPRESENTATIVE ROKEBERG asked if GCI is prohibited from offering service.

Number 1767

MS. CATLIN said that on the state side, GCI is not prohibited at all. However, on the federal side, there is still a facilities restriction in those 150 locations if GCI wants to provide message toll service over those facilities. AT&T, GCI, and the RCA have all told the FCC that they don't want that to continue. And that [issue] is pending at the FCC, she said.

Number 1731

LEONARD STEINBERG, Vice President and General Counsel for ACS (Alaska Communications Systems), spoke in support of CSHB 111. He testified:

> We endorse the committee substitute in part for some of the reasons articulated by the chairman in his comments a few minutes ago. Fundamentally, we believe that these are issues of very important state policy. ... Elected representatives of the state ... are best suited to establish state policy, and we are concerned that a great deal of state policy is being set by unelected, appointed regulators, and we do not feel that is in the best interests of the state. There has been some discussion ... about whether these issues could be better addressed by the RCA. ... These issues have been brought before the RCA for years, and they have not been resolved.

Number 1669

MR. STEINBERG commented:

> There are severe problems in the local exchange business in Alaska. These problems are a result of ... shortsighted and one-sided policies and pro-regulatory policies. ... It is true that ACS has been harmed; its shareholders have been harmed; more importantly, Alaska's consumers have been harmed. What has occurred is a result of the way competition has been brought into the state... ACS is not opposed to competition whatsoever. We simply want competition on a fair and level playing field. ACS has been harmed, both in terms of its revenues and in terms, even more importantly, of its return on its investment. Currently, its return on investment in its competitive markets is approaching unsustainable levels. What this has done is to choke off investment in the infrastructure that Alaskans would benefit from in the future. It's also choked off our ability to serve customers.... Well, when you don't have the money, you can't do that. The way competition has been promoted in Alaska through misguided policies ... has contributed to a very difficult situation for Alaska's consumers.

Number 1620

MR. STEINBERG observed:

> The specific issues ... to address are to obtain a fair price for the leasing of our facilities to whatever competitor is around, and we also believe that when you get into competitive market places, such as Anchorage, where ACS only has about 50 percent of the market, that it probably is time to look at deregulatory alternatives.... The purpose of regulation is largely to substitute for market controls, for market forces. Once you have a competitive market place, then there is no further need to have government regulators substituting their judgment for that of the market, and therefore we believe in a competitive market place, it is appropriate to deregulate.

Number 1567

MR. TINDALL continued:

Briefly, I would like to address a few of the points that were made by Ms. Tindall. Not surprisingly, we have a different perspective on some of those points. First of all, Ms. Tindall raised the issue of depreciation rates. ... Yes, depreciation rates have been an issue before the RCA. One of the reasons it's an issue here before this committee is because ... the RCA has made misguided policy judgments ... When a company is allowed to recover its investment when you are a monopoly, basically, you are guaranteed a recovery over a period of time. When you are in a competitive situation, those guarantees don't exist really any longer. ... Despite references that I've heard to the RCA ensuring that utilities have an opportunity to earn a fair return, that simply is not the case in a competitive marketplace. ...The economists that I've talked to ... have supported shorter depreciation lives. In fact, [in] the ... order ... that we're waiting for, the FCC has indicated in its press release on that order that it believes shorter depreciation lives and higher depreciation rates are appropriate in competitive environments.

Number 1493

MR. STEINBERG pointed out:

Just as example of ... the unfairness, in a recent order we have from the RCA, certain assets of ACS such as our metallic cable, that is the basic copper wire that most of your service runs over, we were ordered to depreciate that on a 30-year basis, whereas we have learned that GCI depreciates that very same asset on a 12-year basis. That's the kind of fundamental unfairness that we think the committee substitute is intended to fix.

Going to the notion of anticompetitive and this notion of preemption, ... we disagree vehemently with Ms. Tindall on this issue. We do not believe the committee substitute ... would be preempted by federal law. As a very brief overview, the FCC does establish the so-called TELRIC, total element long run

> incremental cost pricing methodology, and delegates to the states a great deal of discretion about how to implement those guidelines and how to set prices. ... We believe [it] is appropriate for the legislature to establish what the state policy ought to be. ... We do not believe any of this involves preemption of federal law.

MR. STEINBERG concluded:

> Finally, I was quite surprised to hear Ms. Tindall note that we shouldn't be here at the legislature because we could always go to court or always go to the FCC. As Ms. Tindall well knows, ACS has attempted to do both of those things and has been opposed in every effort by GCI in seeking redress in those alternative forms. ... That is one of the reasons we believe that it is appropriate for this legislature to help establish the policy.

Number 1407

REPRESENTATIVE GATTO asked Mr. Steinberg to comment on the statement that ACS paid too much for the utility and now simply wants to get its money back.

MR. STEINBERG replied that there's an amount ACS paid in excess of the book value; that amount is not depreciated. Depreciation is on the net investment in plant. Every company depreciates its assets. The question here is over what period of time are companies allowed [by the RCA] to depreciate those assets. He said that it's fundamentally unfair to impose a 30-year timetable on ACS, when GCI depreciates the very same asset in 12 years. Upon further questioning by Representative Gatto, he said it is fundamentally unfair that the RCA requires ACS, as the incumbent carrier, to file rate cases. ACS was required by the old APUC (Alaska Public Utility Commission), at the time of the acquisition of the ATU (Anchorage Telephone Utility), to file a rate case and justify its costs. He pointed out that GCI does not have those obligations; GCI does not have to go through the same process as ACS of justifying its costs for its rates and having the RCA order a depreciation rate for ratemaking purposes.

Number 1318

REPRESENTATIVE ROKEBERG asked how the FCC and the RCA each handle the depreciation issue.

MR. STEINBERG replied that the FCC does have guidelines for depreciation, which apply to a certain class of carriers known as price cap carriers. In fact, there are no guidelines that apply to rate-of-return carriers like ACS. When you compare the depreciation rates that the RCA has imposed on ACS with the depreciation rates it has imposed on other telephone utilities in Alaska, ACS has the lowest depreciation rates. He said his company compared rates with peer group companies in the Lower 48 and found that the depreciation rates imposed by the RCA are simply out of "sync."

REPRESENTATIVE ROKEBERG asked if depreciation is governed by GAAP (generally accepted accounting principles).

Number 1233

MR. STEINBERG replied the GAAP rules key off of the regulated ratemaking rules. He commented about the forthcoming order by the FCC. [The FCC has issued] a four-page press release, which precedes a 400-500-page order, which has not been seen yet. The biggest part of the debate before the FCC was how to determine whether there was sufficient impairment to require these network facilities to be leased to another carrier. He said there was a great deal of debate from companies all across the country on this question. The FCC essentially decided that it wasn't going to decide the issue; it was going to delegate the decision to the states. [This decision] essentially puts even more power in the hands of the states, and it is very important for the legislature to provide appropriate policy guidance when the state regulators have so much power.

REPRESENTATIVE ROKEBERG asked if the order will define network.

MR. STEINBERG replied that the FCC considered the question about whether competitors were impaired such that they couldn't sufficiently compete [and thus needed] to have access to network facilities.

Number 1071

JIM ROWE, Director, Alaska Telephone Association, testified in support of the proposed CSHB 111. He thanked the subcommittee for its work. He said he has had several weeks to review the pieces that have been incorporated into the CS. He said he appreciated that the language submitted by AT&T has been included in Section 2 of the CS. "It's very important," he said. It's somewhat similar to Section 6, he said.

MR. ROWE pointed out that these sections deal with dominance. He said it is noteworthy that only a single [telephone company] has testified in support of a clean bill. That suggests that the status quo at the RCA is not satisfactory to the many other very disparate members of the telecommunications industry -- the long distance industry, the rural local exchange industry, and the urban local exchange industry. He warned that dependable, low-cost telecommunications service will not always be readily available because something is already happening. As Mr. Steinberg mentioned, that problem is a lack of investment. The rural companies are not yet in the wire line competitive arena. They are preparing for competition, and fiduciary responsibility warns against making an investment where the cost of that investment cannot be recovered. Infrastructure investments have been deferred. The public has not experienced phone problems yet, but this will happen in the future.

Number 0990

MR. ROWE explained that the status quo [at the RCA] is not sufficient at this time, and [members of the telephone industry] are concerned. He spoke in deference of [RCA] Chairman [Dave] Harbour and Commissioner Mark Johnson, who are recently appointed, and has faith that things will get better. But that faith is not sufficient, he remarked. Members of the industry have been disadvantaged. He pointed out that AT&T Alascom is not asking for a level playing field nor is the company asking for GCI to be [named] the dominant carrier. It is asking not to be [named] the dominant carrier, even though it's smaller.

Number 0901

MR. ROWE referred to Section 2, and used the example of a competitor coming into the area of a rural local exchange company. If the RCA decided that a competitor and the public would be served by competition in that area, he warned against [the RCA] making the small rural local exchange company the dominant carrier. Why, he asked. There's a cost to being a dominant carrier, just as there is to Alascom. [The dominant carrier] has to file reports that the other carrier doesn't. He pointed out that GCI officials recently noted that the company has 1,200 employees, and he contrasted that with the Summit Telephone Company that has 20 employees in its rural area. He asked if GCI came into the area, would the RCA consider the dominant carrier to be the Summit Telephone Company. That's absurd, he warned, but that's the status quo. The RCA might rule in Summit's favor 18 months later, but Summit would probably be gone before then. He said that ATA is not asking that GCI or any other competitor be made the dominant carrier; the group is asking to be made nondominant. He advised against holding one telephone company to a higher standard than another. He clarified that he's not advocating giving up the carrier of last resort [provision in state law]. The cooperatives, the for-profit companies, and the Native-owned companies are serving their customers because a bell operating company didn't go to that area. They're there because AT&T didn't see it as a profitable business. The ATA members are already spending money in fear of a competitive environment where there is no business case for being there. [The ATA companies have] universal service funding.

MR. ROWE advised the committee to listen to the preponderance of concern by members of the industry; there is dissatisfaction with the history, not necessarily the future, of the RCA. The industry has concerns, which are already impacting it.

Number 0795

REPRESENTATIVE GATTO asked what would happen if the RCA was disbanded rather than extended.

MR. ROWE replied that it would be a disadvantage to the public to disband the RCA. Telecommunications is a regulated industry, and it should be regulated in noncompetitive areas. It is a public utility, serving the public. His group has never testified against a public utility commission in the state; it's necessary. That's the concept of universal service; it's affordable access to telecommunications. In a purely competitive environment, companies go where they can make money, and pull out of those places they can't make money. He noted that GCI may not be happy when they can serve all the little places where AT&T is losing money.

Number 0680

REPRESENTATIVE GUTTENBERG asked about ATA.

MR. ROWE explained that the Alaska Telephone Association was created in 1949. It is open to regular members who are incumbent local exchange carriers in Alaska. At this time, ACS is not a member, and Circle Utilities is not a member. There are 14 members but 22 companies. There are 150-160 associate members including AT&T Alascom and GCI.

Number 0606

REPRESENTATIVE ROKEBERG asked if anything in this CS threatens the concepts of carrier of last resort or mandatory service to the rural areas of the state.

MR. ROWE replied no. The companies he represents are there because they want to be the carriers of last resort; many of the company officials live in the communities.

Number 0558

REPRESENTATIVE ROKEBERG asked if Anchorage is the only community in the state that doesn't receive some universal service subsidy.

MR. ROWE responded that he didn't know about Anchorage. He confirmed that all other lines outside of Anchorage are subsidized, including Juneau and Fairbanks.

Number 0471

ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), mentioned that he has a similar role as Jim Rowe, although he represents the electrical utility industry. His members, both large and small, generate about 90 percent of the electricity in Alaska.

MR. YOULD testified:

> The bill that you have before you, the committee substitute, does not have anything in it for the electric utility industry. Interestingly enough, the electric utility industry has worked very hard all last year throughout the summer and this year as well to craft some amendments [that] we feel would streamline the regulatory commission, make their decision process more timely, and actually lessen the cost to the State of Alaska. I have submitted these amendments to the subcommittee and then individually ... to each of the other members of this committee .... Nevertheless, Mr. Chairman, we want to go on record as saying that we could support this committee

> substitute if our amendments were adopted as well, and we hope that this committee will adopt those amendments.

Number 0387

MR. YOULD stated:

> My board of directors has basically taken the position that we could accept a three-year extension of the RCA if we could get our amendments passed. If, on the other hand, this committee does not chose to adopt the amendments we have proposed, we'd find ourselves in the court with Dana [Tindall of GCI]. We would actually rather see a clean bill, however, we would also only like to see it extended for one or two years because we feel without streamlining amendments, we would like to hold the RCA's feet to the fire and make sure that the assertions that Mr. Harbour has made before this committee and others that he can get the job done is in fact the case.

Number 0324

REPRESENTATIVE GATTO confirmed Mr. Yould's opinion that there's nothing in the CS for the electrical utilities. Representative Gatto pointed to the language "An electric or telephone utility's" on page 4, line 10.

CHAIR ANDERSON pointed out that committee members received the CS at noon today. He noted that because of time limitations and because the bill is being held, he suggested that Mr. Yould review this provision in the CS.

Number 0213

ROSALEE WALKER, Older Persons Action Group (OPAG), AARP, Local Chapter 865, noted that committee members have a copy of the [March 9, 2003] AARP [Alaska] letter, supporting HB 111. She said she advocates for the RCA, an agency to look after the interests of consumers. She could not offer any comments on the CS. She pointed out that consumers need a process for resolving their complaints and reasonable prices for utilities.

Number 0045

BOB LINQUIST, Waste Management of Alaska, referred to a letter in regards to Valley Refuse and his company's response to it. He commented to Ms. Walker that his company has proposed a senior discount but the state would not allow it. He said he wished to clarify two points with regard to the letter [of April 17, 2003 from Valley Refuse, Inc]. Price deregulation is not deregulation, he explained. In a price-deregulated market, a company would still have to file a certificate, tariffs, be the carrier of last resort, couldn't price below cost, and could not discriminate among similar customers.

TAPE 03-39, SIDE A
Number 0030

MR. LINDQUIST said that if this issue is not a part of the CS to HB 111, he said he hopes it is addressed in other legislation. All the state would be primed for this type of competition, where there are three or more competitors in a service area, this type of competition would be appropriate. In the case of Mat-Su Valley, there are 9 certificated haulers, it's definitely appropriate. He said he's a resident of the Mat-Su Valley. He said his company has introduced services in the area, its very exciting to go through a neighborhood and not see trash piling up alongside the road anymore. He said he looks forward to working with the RCA for positive changes.

CHAIR ANDERSON confirmed that the committee has his letter.

Number 0108

PAM KRIEBER, Owner, Valley Refuse, Inc., testified that she supports extending the RCA. She explained that she supports the continued regulation of refuse service by the RCA. She referred to her letter [of April 17, 2003 to the committee]. Valley Refuse is a small refuse utility in the Mat-Su Valley. She and her partner are 20-year Alaskans, have been in business for over 9 years, and have over 3,000 customers, mostly residential households. She disagreed with Mr. Linquist's reference to nine certificated haulers in the area. She identified three companies that provide the basic hauling service: Waste Management, Valley Refuse, and Raymond Refuse.

MS. KREIBER noted that Waste Management owns the largest refuse hauling utility in each geographic region of Alaska. Waste Management is a Houston, Texas, based company, and is the largest refuse hauler in the United States. When comparing the refuse companies operating in Alaska, Waste Management has no peer in terms of gross operating revenues, net income, value of assets available in this state, purchasing power for new equipment, and availability of expert legal counsel. Valley Refuse competes against Waste Management in the Matanuska-Susitna Borough through economically regulated competition. The regulatory commission reviews the rates charged by both Valley Refuse and Waste Management to assure that these rates are based on the cost incurred by providing the service. She asked the committee not to allow language [in HB 111] for the blanket deregulation of utilities in areas where competition is currently managed by the regulatory commission. The RCA rate review prevents predatory pricing, she noted.

Number 0370

MS. KRIEBER testified that Waste Management has tried repeatedly for the past five years to deregulate refuse hauling. In her letter of April 17, she outlined these repeated attempts and can provide documentation. She opined that it would certainly be in Waste Management's best interest to be exempt from the scrutiny of the RCA and the State of Alaska attorney general. If there were no state oversight, Waste Management could price its service well below the cost of providing that service, operating at a loss long enough to drive a competitor out of business, at the most, 12-18 months. Then with competition eliminated and potential competitors intimidated, the company would be free to increase their rates to levels high enough to make up for the losses sustained and maximize their profits. And it could do this legitimately through the regulatory process. The end result of this would be Alaskan citizens paying inflated rates for the refuse service and bankruptcy for small Alaskan businesses. Ms. Krieber urged the committee not to deregulate the refuse collection industry.

Number 0497

DAVE HARBOUR, Chairman, Regulatory Commission of Alaska, said [today's testimony] helps the committee understand his [role] as a commissioner. He listens to these advocates in a formal hearing process, accompanied by some of the best attorneys in the United States.

MR. HARBOUR commented:

> The regulatory system is alive and well. Our objective is to be fair to the consumers and also to be fair to the utilities to be sure that they have the

opportunity to make a fair rate of return. In my brief two-month analysis of the commission, I am here to assure you that that is being done. The statements I made in my letter I stand by. If this forum wants to take me to task for any of the statements I have made, I would be happy to discuss them in more detail with you. Those are important for you to understand as being the way it is at the Regulatory Commission now. We support a clean bill. That's why we're here. You've got to have a regulatory commission; I say you've got to. I know you want to have a regulatory commission because you don't want to adjudicate all these complicated issues yourself. You don't have the time, even if you had the desire to do so ....

Number 0635

MR. HARBOUR commented:

If I were with you as you were deliberating on whether to include [some of those amendments] in a CS, I would have suggested to you, "Shouldn't we ask really what that dominance means?" To us, ... there is a legal definition and implication of the word. If we say 60 percent dominance statewide, what about the situation where that very company has 100 percent monopoly in a village. Is [the company] off the hook of the 60 percent rule statewide? Does that mean [it's] off the hook with regard to dominant regulation in the village? I would have said to you, ..."I hope that without the due consideration that the commission puts into all these weighty issues, we don't produce a bill that ends up being known as the 2003 Consumer Cost Increase Act." I'm very concerned that that may well be the outcome of this.

Number 0685

MR. HARBOUR continued:

We're all after healthy, vibrant companies, utilities, and competition. And I assure you that I'm after that; it's at the top of my list. Because that's how you take care of consumers. But on the other hand, you need to take care [of the companies]. You have heard from several companies of the 300 roughly that we regulate throughout the state. You have heard in

> my correspondence that we've issued over 2,000 important orders since 1999. And only 16 have been appealed. Mr. Chairman, I think the report card is very good. Your own [Legislative Audit Division] has done two audits that has supported the RCA, has made suggestions for improvement. We've agreed to those improvements, and have either undertaken or completed those improvements. ... You should have confidence that the RCA is acting on your behalf to do the work that you would do if you had the time and desire to do [it] yourself.

Number 0742

REPRESENTATIVE LYNN said he agreed with Mr. Harbour's comments and is focused on the future of the RCA.

CHAIR ANDERSON said he would hold the bill over and will keep public testimony open.

HB 251-MARINE PILOT FOR FOREIGN PLEASURE CRAFT

[Contains discussion of SB 20]

Number 0820

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 251, "An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

REPRESENTATIVE GATTO moved to adopt the proposed committee substitute (CS) to HB 251, Version 23-LS0865\U, Utermohle, 4/22/03, as the working document. There being no objections, Version U was before the committee.

Number 0870

REPRESENTATIVE DAHLSTROM stated that the bill was discussed in committee last week. The interested parties agreed to changes and decided to wait to put those agreements into written form rather than conceptual amendments. These changes are incorporated into Version U before the committee. Language on page 2, line 12, exempts small foreign pleasure craft less than 20 meters from all pilotage requirements. On page 2, line 17, a new section directs the Board of Marine Pilots to establish procedures for vessels leaving state waters. This allows the state to keep better track of the position of yachts. The paragraph also deals with the timely payment of pilots. The vessels must employ an agent who holds an Alaska license.

CHAIR ANDERSON asked whether the marine pilots are satisfied with this language.

REPRESENTATIVE DAHLSTROM said she believes the marine pilots' concerns have been met, but a representative is here to answer any questions.

Number 0943

REPRESENTATIVE LYNN asked about the position of the marine pilots on this CS.

Number 0978

ASHLEY REED, Lobbyist for Fraser Stryker, described his involvement with this issue. He explained that early on, he thought this amendment could be included in the [sunset extension] of the Board of Marine Pilots [in SB 20]. The marine pilots and the sponsors said they would work with him and another lobbyist if they didn't use their [reauthorization bill] as a vehicle for this legislation. He explained that last week, Senator Therriault assembled the interested parties: the marine pilots, their lobbyists, several marine pilots in town for a board meeting, lobbyists for the yacht industry, and legislative staff. Both sides reached agreement and the proposed CS is the result. He noted that there has been some question about the Coast Guard's position [about pilotage on foreign pleasure craft]. Senator Therriault has put together another meeting next week with the Coast Guard, he added.

Number 1106

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 251, Version 23-LS0865\U, Utermohle, 4/22/03, out of committee with individual recommendations and the attached zero fiscal note. There being no objection, CSHB 251(L&C) was passed out of the House Labor and Commerce Standing Committee.

ADJOURNMENT

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