

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 27, 2004

3:25 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 505

"An Act relating to importing beer or wine for personal consumption and a liquor license for that purpose, and to taxes on beer or wine imported for personal consumption."

- HEARD AND HELD

HOUSE BILL NO. 453

"An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreements, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act."

- HEARD AND HELD

HOUSE BILL NO. 450

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation

system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

- BILL HEARING POSTPONED

PREVIOUS COMMITTEE ACTION

BILL: HB 505

SHORT TITLE: ALCOHOL LICENSING: CONNOISSEUR LICENSE

SPONSOR(S): REPRESENTATIVE(S) KOTT

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C, FIN
02/27/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 453

SHORT TITLE: JOINT ACTION AGENCIES

SPONSOR(S): REPRESENTATIVE(S) HEINZE

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C, FIN
02/27/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SUE STANCLIFF
House Majority Office
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Presented HB 505 on behalf of
Representative Kott, sponsor.

BOB BAILEY
Alaska Wine and Spirits Wholesalers Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 505.

MATT JONES
Anchorage, Alaska
POSITION STATEMENT: Testified against HB 505, saying it gives
the consumer fewer choices.

DOUG GRIFFIN, Chairman
Alcoholic Beverage Control Board
Department of Public Safety
Anchorage, Alaska
POSITION STATEMENT: Answered questions on HB 505.

REPRESENTATIVE CHERYLL HEINZE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 453.

JON BITTNER, Staff
to Representative Cheryll Heinze
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 453 on behalf of
Representative Heinze, sponsor, and answered questions.

JOE GRIFFITH, Chief Executive Officer
Chugach Electric Company
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 453.

TOM LOVAS, Chief Executive Officer
Four Dam Pool Power Agency
Anchorage, Alaska
POSITION STATEMENT: Gave background information on joint action
agencies and answered questions.

JIM POSEY, General Manager
Municipal Light and Power
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 453.

TUCKERMAN BABCOCK, Manager
Government and Strategic Affairs
Matanuska Electric Association
Palmer, Alaska

POSITION STATEMENT: Testified in opposition to HB 453.

MARK JOHNSON, Commissioner
Regulatory Commission of Alaska
Department of Community and Regional Affairs
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 453.

ACTION NARRATIVE

TAPE 04-20, SIDE A

Number 0001

VICE CHAIR GATTO called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Gatto, Dahlstrom, Crawford, and Guttenberg were present at the call to order. Representatives Anderson, Lynn, and Rokeberg arrived as the meeting was in progress.

HB 505-ALCOHOL LICENSING: CONNOISSEUR LICENSE

VICE CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 505, "An Act relating to importing beer or wine for personal consumption and a liquor license for that purpose, and to taxes on beer or wine imported for personal consumption."

Number 0089

SUE STANCLIFF, House Majority Office, Alaska State Legislature, introduced HB 505 on behalf of Representative Kott, sponsor. She explained that the bill would require individuals who import beer and wine for personal consumption to acquire a license from the Alcoholic and Beverage Control Board ("ABC Board") prior to importing wine and beer, and to pay the alcoholic beverage tax, the excise tax, on those imports through the Department of Revenue.

MS. STANCLIFF said the Twenty-first Amendment [to the federal constitution] grants states the authority to regulate taxation, distribution, and sale of alcoholic beverages; the key provision in that amendment reads: "The transportation or importation

into any State, Territory, or Possession of the United States for the delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Number 0207

MS. STANCLIFF noted that the majority of states require consumers to purchase alcoholic beverages from retailers licensed by the state. This "three-tiered system" is what Alaska adopted at statehood and has used successfully for nearly half a century. However, technology, primarily in the form of direct purchasing of alcohol over the Internet, threatens the system in Alaska. An estimated \$1 billion-plus in alcohol is illegally shipped to consumers in the U.S., thereby avoiding state taxation and state laws that prohibit the sale of alcohol to minors. This bill would establish a framework for control of alcohol sales via the Internet and to attempt to avoid some problems identified in the Lower 48 with the sale of alcohol.

Number 0324

MS. STANCLIFF, in response to a question from Representative Dahlstrom, said enforcement would fall to the ABC Board. She acknowledged the difficulty of enforcement and indicated the intention isn't to spend a lot of money on enforcement. She related that other states with similar laws use it as a deterrent, a notification to the public that this type of activity is illegal. Ms. Stancliff offered her belief that minors are purchasing alcohol via the Internet.

REPRESENTATIVE DAHLSTROM asked how a customer provides proof of age for an Internet transaction.

MS. STANCLIFF replied that it is often necessary to fax a copy of identification to the seller. An Alaskan who traveled to California and returned with a case of wine wouldn't be in violation of this proposed law, since the product wouldn't have been shipped in. She specified that the purpose of this bill is to gather shipping revenues through taxation and licensing. In this bill the two-year connoisseur license for wine carries a fee of \$100.

Number 0616

REPRESENTATIVE DAHLSTROM asked: If a California winery wanted to ship a case of wine, would that transaction be covered by this bill?

MS. STANCLIFF said she believes, but isn't certain, that alcohol shipped into the state would be covered.

Number 0667

REPRESENTATIVE CRAWFORD asked if the cost of the connoisseur license would be prohibitive.

MS. STANCLIFF replied that, for her, the primary concern is legality rather than expense.

REPRESENTATIVE CRAWFORD asked what the cost to the state would be for issuing these licenses that he believes are expensive.

MS. STANCLIFF replied that the Department of Revenue or [the Division of Occupational Licensing in the Department of Community & Economic Development (DCED)] might be better able to respond. She said she believes the fiscal note was based on costs that other states with similar legislation have experienced.

Number 0807

CHAIR ANDERSON asked if this legislation would affect even one bottle of wine coming through the mail.

MS. STANCLIFF replied, "It does affect even one bottle. If you are a member of wine-of-the-month club - one bottle."

CHAIR ANDERSON asked what penalties would result from this legislation.

MS. STANCLIFF replied that the provider who breaks the law would have committed a class C felony. She read from Section 5, page 3, subsection (d).

CHAIR ANDERSON asked about the procedure if a person has bought a bottle of wine through a wine-of-the-month club and doesn't have a connoisseur's license.

MS. STANCLIFF replied that violating this law would result in a class A misdemeanor for the person purchasing the wine; the winery that provided the wine would be guilty of a class C felony.

Number 1003

VICE CHAIR GATTO remarked:

I can order a bottle of wine and if I get caught, spank my hand and I won't order any more. If I don't get caught, I can order wine all day and all night and all week and all year until I get caught. Now, on my next offense I'm subject to penalty. I'm going to guess that if a person wants a bottle of wine, they are probably not going to get caught.

MS. STANCLIFF offered that when people want a bottle of wine, they usually buy one at a local liquor store, rather than order it over the Internet. She said she didn't believe people were readily violating the law, but could also understand Vice Chair Gatto's point.

VICE CHAIR GATTO asked, if his sister sent him a bottle of wine, whether she would be in violation.

MS. STANCLIFF responded that she didn't know, but that this is a concern and may require an amendment because the intent of the bill is to prevent minors from ordering alcohol through the Internet, and as a revenue-generating tax. She also expressed concern for the dry communities in Alaska that can bring in alcohol through the Internet.

REPRESENTATIVE LYNN questioned whether many minors order alcohol via the Internet.

Number 1209

BOB BAILEY, Alaska Wine and Spirits Wholesalers Association, Anchorage, said his association supports restricting the direct shipment of alcohol into Alaska for three main reasons: preventing the sale of alcohol to minors; addressing shipments into dry communities; and tax revenue that isn't coming to the state, but should be. He related that there has been an increase in Internet ordering of alcohol into Alaska and that while there are providers who are diligent about checking identification, this doesn't preclude someone from using another's identification.

MR. BAILEY spoke to the increase in the alcohol excise tax that went into effect October of 2002. He said Alaska has the highest alcohol excise tax in the U.S., and this provides a legitimate financial reason for someone to order alcohol from

out of state, in particular, low-priced, low-weight liquor goods in plastic bottles. He informed the committee that when Alaska's alcohol tax is over \$30 a case, that pays for the freight quickly. He said Alaska is only one of two states in the U.S. that have no restrictions on direct sale of alcohol. He gave an example of a winery in California that can legally ship directly to anyone in Alaska, but said an Alaskan licensed retailer is unable to do so.

Number 1399

MR. BAILEY pointed out that enforcement would be necessary, but opined that the felony provision would be the primary deterrent. He predicted that wineries would oppose this bill, since they'd prefer the status quo that allows them to ship freely. He also surmised they'd notify customers of a change in the law so they'd be in compliance. He noted that the process for the legitimate connoisseur includes getting a license; getting the appropriate shipping label; and sending it to the provider, who'd then be alerted that shipping to Alaska was legal.

Number 1436

REPRESENTATIVE CRAWFORD asked for clarification of which states allow shipping of alcoholic beverages.

MR. BAILEY pointed to a map. He noted that states can use federal courts to enforce their liquor laws.

REPRESENTATIVE CRAWFORD expressed concern that the process was complicated and the cost of the license onerous.

MR. BAILEY noted that this bill is patterned on a bill from Montana and that the actual cost of the license could be changed. He indicated support for the felony penalty.

REPRESENTATIVE LYNN asked how many connoisseurs in Alaska would apply for this license.

MR. BAILEY replied that he didn't know, but Montana had issued 18 of these licenses since passing a similar law. He stressed that this legislation, because of the felony provision, is focused on providers of alcohol. In further response, he reiterated the three projected areas of impact from the bill: collection of taxes, aid in preventing minors' consumption, and aid in preventing alcohol from getting to dry communities. He added that in some cases, up to 10 percent of alcohol that goes

to minors was purchased via the Internet in other states, but there are no related statistics for Alaska.

MR. BAILEY, in response to further questions from Representative Lynn, admitted the revenue from this bill wouldn't be substantial. He mentioned the amount the state is losing on cheap liquor being shipped into the state by people who want to avoid paying the state tax of \$30 a case. Likening it to the state's efforts to tax tobacco, he noted that the industry pays over \$30 million a year in alcohol tax into the general fund, and suggested some of that could pay for this bill.

REPRESENTATIVE CRAWFORD agreed the felony provisions in the bill are good, but questioned the amount for the license fee.

MR. BAILEY agreed with Representative Crawford.

Number 1860

REPRESENTATIVE DAHLSTROM asked Mr. Bailey to address the benefits that this bill would bring to local business owners. She also asked Mr. Bailey to state his major concern.

MR. BAILEY said it wasn't possible to measure the benefit at this point. He said his major concern is consumption by minors, specifically, "regulating that the people who shouldn't get it don't get it."

Number 1943

REPRESENTATIVE ROKEBERG surmised that probably the major effect would be prohibiting the purchase of spirits via the Internet. He asked whether that is correct.

MR. BAILEY replied:

Right now, we suspect that inexpensive liquor like vodka in plastic bottles, which may or may not be going to bootleggers - we have no idea where it's going - that would be prohibited completely by this. The only thing allowed through the connoisseur's license is the purchase of wine or beer, not spirits.

REPRESENTATIVE ROKEBERG recounted his personal experience with a California vineyard. He said the genuine connoisseurs wouldn't be affected as much as the wine-of-the-month club customers. He noted that this bill prohibits the illegal purchase, over the

Internet primarily, of spirits, wine, and beer. It thus maintains the integrity of the three-tiered system, with regulation of the manufacturer, wholesaler, and retailer. He referred to cyberspace as the fourth tier that needs regulation. He asked if Mr. Bailey thought there was a sense of fairness involved, since in-state people were paying taxes but out-of-state people weren't.

Number 2113

MR. BAILEY said his association had attempted to pass this legislation in the past, and the increased alcohol excise tax provided further impetus for HB 505.

VICE CHAIR GATTO asked whether a person could, at this time, go to the Internet and order wine legally.

MR. BAILEY replied that retailers have to purchase products through wholesalers who are, in turn, designated by the supplier. Individuals can order over the Internet, and retailers can order over the Internet but cannot legally put that product in their stores for resale.

VICE CHAIR GATTO asked about the urgency of this bill.

MR. BAILEY said one could infer that the high use of the Internet in Alaska has resulted in a higher-than-average rate of ordering alcohol over the Internet, which has resulted in lost revenue to the state.

CHAIR ANDERSON said he supported the bill, but didn't think minor consumption was an issue, and also felt the excise tax was too high in Alaska, so that he wasn't overly concerned about the lost revenue. He said he did believe, however, that the dry-community issue in Alaska was a salient point.

Number 2338

MATT JONES, Anchorage, testified that he thought it important to clarify that Montana is a "control state" where the sale and distribution of alcohol is controlled by the state, so there is a vested interest in reducing sales of "non-state-sold alcohol." However, Alaska is a "license state" where alcohol is sold by private companies.

TAPE 04-20, SIDE B

Number 2372

MR. JONES said he understood and supported the need to collect taxes, as well as the need to keep alcohol out of dry communities and away from minors. He wasn't sure beyond these effects what the purpose of this bill was. He said the bill would result in out-of-state wineries' not wanting to deal with shipping to Alaska because of the added regulation. He suggested this would be unfortunate because liquor stores in Alaska don't carry every wine, and he felt that as a consumer his choices would be diminished. He proposed that the legislature could regulate the sale of hard liquor over the Internet with another bill, rather than HB 505.

REPRESENTATIVE ROKEBERG read from the bill, page 2, Section 3. He asked, "So, there's a requirement of registration. Do you think these wineries will not register with the board and therefore will not send you any wine?"

MR. JONES said his concern was more than that, since the winery or brewery has to obtain a general wholesale license and get a registered agent, and these requirements of the bill constitute a burden for a small winery or brewery.

REPRESENTATIVE ROKEBERG clarified that the current law requires obtaining a general wholesale license, appointing an agent, and obtaining other applicable licenses. He said subsection (b) actually makes it less cumbersome, since the business could sell wine directly to the consumer without a wholesale license.

MR. JONES asked why there is a limit on the number of cases of wine he can buy, since this would also limit revenue from taxes.

Number 2145

DOUG GRIFFIN, Chairman, Alcoholic Beverage Control Board, Department of Public Safety, said the amount of alcohol coming into the state due to the Internet sales is unknown. He said this bill would not be a large revenue-generator. He noted that he suspects there have been occurrences of underage people getting alcohol through the Internet, but had never received a complaint about this. He thought increased use of the Internet would be an indicator that the ABC Board had done a good job of reducing access to alcohol for underage persons.

MR. GRIFFIN said he wasn't aware of the cheap spirits Mr. Bailey had referred to, and felt this bill was aimed primarily at fairly high-end wine. He commented that this is part of a

nationwide battle between wineries, which argue they can't get their product to be carried by wholesalers, and wholesalers who feel that wineries are avoiding taxation, that underage people may have access to alcohol, and that taxes aren't being paid by these direct shipment routes. He surmised this battle is ripe for adjudication before the U.S. Supreme Court, since circuit courts have ruled in favor of the Twenty-first Amendment, saying states have the right to regulate alcohol, and also in favor of the interstate commerce clause, saying states could not limit the ability of people to carry out commerce between states.

Number 1948

CHAIR ANDERSON said he had some concerns and thought it better to hold the bill until next week. [HB 505 was held over.]

HB 453-JOINT ACTION AGENCIES

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 453, "An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreements, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act."

Number 1875

REPRESENTATIVE CHERYLL HEINZE, Alaska State Legislature, sponsor, introduced HB 453. She referred to a chart that illustrated upgrades needed for the Railbelt area electrical grid, noting that the transmission lines date to the 1950s and that generation assets are 20 to 30 years old. She said Alaska's energy infrastructure is in desperate need of an upgrade. According to the Railbelt Energy Study, the cost of building, upgrading, and maintaining these upgrades is anticipated to be around \$5 billion. She predicted the cost of new generators alone over this period would be \$750 million, or \$2,000 for every resident along the Railbelt. She believed that the House and Senate recognized this when they passed HCR 21, establishing the Joint Energy Policy Task Force.

Number 1793

REPRESENTATIVE HEINZE explained that HCR 21 mandated the review and analysis of the state's long-term energy needs, and asked the task force to develop a long-term energy plan to efficiently

enhance Alaska's economic future. She commented that one of the major recommendations made by the task force was that the state promote unified operation of a Railbelt generation and transmission system. The unified system operator would be in a position to undertake the financial obligation of upgrading the Railbelt. She pointed out that each company alone couldn't be responsible for the \$5 billion cost, but she thought several companies together could.

REPRESENTATIVE HEINZE said this bill makes slight changes to the joint action agency (JAA) statute, AS 42.45.300, specifically changing language to exempt contracts from regulation. Contracts made by the JAA with another public utility for the sale of power, storage, regeneration, or wholesale repurchase under a wholesale agreement would be an agreement between two or more willing and capable parties. Any dispute would be handled under contract law. She urged the committee to support this bill. She indicated she'd spoken with members of the utilities in the Railbelt and had addressed their concerns.

REPRESENTATIVE HEINZE focused attention on two questions she'd asked Legislative Legal and Research Services. First, do the exemptions given to JAAs in this bill apply to the retail rates of the individual utilities and cooperatives that are members of the agency? She said the answer is no. This won't affect retail rates; it only affects the sale of wholesale power. And second, will this bill affect existing contracts between individual utilities? Again, she said, the answer is no. A new law won't operate to modify existing contracts.

[Chair Anderson passed the gavel to Vice Chair Gatto.]

Number 1633

JON BITTNER, Staff to Representative Heinze, Alaska State Legislature, testified that in December 2003 the task force report on the electrical system in the Railbelt was released. In its long-term energy needs section, the report said, within the next 20 years it was determined that Alaska will need to provide energy infrastructure for economic development, to establish a unified system of operation, and to replace aging generation [facilities]. He said HB 453 aids the Railbelt utilities in achieving these needs and provides a stronger framework in the statutes that large business enterprises like a Railbelt JAA would need.

MR. BITTNER explained that this bill would ensure the utilities could assume the economic leverage they need to replace aging generators and old transmission lines. He commented that Alaska's energy infrastructure is in need of repair and replacement. According to the task force report released in January 2004, most of the Railbelt's generation capacity is 20 to 40 years old and will become more costly to maintain and replace. He concluded that the JAA being created by Chugach Electric Company ("Chugach Electric"), Municipal Light and Power (ML&P), and Golden Valley Electric Association (GVEA) will fill the need to resolve these issues.

Number 1574

MR. BITTNER continued, saying the Railbelt report makes two things clear. First, the cost of upgrading Alaska's infrastructure will continue to increase. Second, there is a need for a unified system operator. He said HB 453 helps to address these issues by providing support for Alaska's generation-transmission facilities that must undertake a huge financial burden to maintain and expand the Railbelt's energy infrastructure. He opined that utilities would gladly undertake the necessary improvements if they could. All they need from the legislature are better tools to develop them.

MR. BITTNER explained that with wholesale power agreements and infrastructure improvements exempt from conventional rate regulation, the participating utilities would feel secure in committing to the necessary large-scale projects. Far from removing all oversight from wholesale power agreements, he said, HB 453 would remove an unnecessary burden of regulatory scrutiny of wholesale power sales contracts and simply make the utilities' transactions subject to contractual law, as are most other contracts. The involved parties would make an agreement based on a mutually acceptable contract that would cover all aspects of the transaction over the course of that contract. Mr. Bittner suggested if this unnecessary, onerous burden is removed, the new Railbelt partnership will further reduce costs to consumers, and said this deregulation is entirely in line with existing JAA guidelines and statutes.

Number 1500

REPRESENTATIVE CRAWFORD said Chugach Electric had assured him this bill doesn't affect consumers. However, if wholesale rates doubled, this would surely affect the rates that consumers pay,

and he knew of no entity other than RCA [Regulatory Commission of Alaska] that protects the consumer.

MR. BITTNER replied that this bill wouldn't remove regulations to retail customers, and that RCA would still regulate rates for them. He said the federal antitrust laws would cover most rate changes for the wholesale agreements as well.

REPRESENTATIVE HEINZE proposed that one of the utility companies involved should answer Representative Crawford's question, since they have more expertise.

Number 1371

JOE GRIFFITH, Chief Executive Officer, Chugach Electric Company, Anchorage, testified in support of HB 453, saying costs of the generation and transmission of power will be passed to the ultimate consumer, since that's the only source of money to pay for the generation and transmission system. He informed the committee that in places that don't have sufficient competition, where there are cases of over-monopolistic service territories, RCA has the responsibility to regulate.

MR. GRIFFITH pointed out that this does not describe the proposed JAA, and said he thought the assumption was that the JAA might not do business in a proper and appropriate manner. But, he pointed out, it wouldn't make good business sense to the JAA to price-gouge, and it's against the law. He asserted that they'd do business in a reasonable manner and charge a reasonable amount for their product, with margins, just as they do today. He pointed out that in 38 or 40 states the wholesale power and the distribution of the retail [power] isn't regulated. He said Alaska is unique in this matter. He explained that the current wholesale contracts that Chugach Electric has couldn't be regulated if they hadn't written regulation language in to start with, when they made the contracts. He said he didn't see deregulation as a problem.

Number 1269

VICE CHAIR GATTO remarked, "Utilities, by their very nature, are not a free-market enterprise."

MR. GRIFFITH responded that the wholesale side of the business generally is.

VICE CHAIR GATTO replied that the utility isn't a free-market enterprise, since there is no competing utility with parallel power lines running down the road that customers could take advantage of. He further said the only thing in place to prevent a monopoly was a regulatory commission.

MR. GRIFFITH replied that this was correct for public utilities, but not for JAAs, which aren't a public utility.

VICE CHAIR GATTO read from the bill, saying, "In the very first words of the bill, 'An Act exempting from regulation', and in the second word [line 2], 'wholesale agreements for the sale of power'." Noting that he lives in the Matanuska-Susitna area, he remarked, "We purchase our power wholesale, and very recently, within the last year, there was a lawsuit that said, ... 'We have been overcharged,' and the court said, 'Yes, you have.'" He asked whether that is correct.

Number 1086

MR. GRIFFITH replied that Vice Chair Gatto was not exactly correct. He explained:

It was a rate case, ... the first one that Chugach Electric had taken forward since 1987. And in that rate case we asked for a ... refundable rate increase. We were granted that and then, through the process before the regulatory commission, they determined that those rates ... we asked for were not the ones that should be placed, in fact. So we refunded the money we had collected. There wasn't any overcollection from the standpoint of price-gouging or anything; it was that the rate-case determination was different.

VICE CHAIR GATTO responded:

And so the regulatory commission, then, was the savior for protecting the consumer indirectly, because Matanuska Electric refunded that money to the consumers in their service area. That, ... to me, was a very novel occurrence in that this commission was the protector of this consumer. And without this commission, this consumer would not have had any refund, and that's what the decision was, that indeed the consumer deserved a refund because of the rate application change.

Whether or not there was an error, remember that without -- that's why ... I'm concerned about this exempting from regulation. Quite frankly, it scares me. And I think that any public utility, by its very nature of being a monopoly, certainly can have an agreement with a union and say, "OK, you want an extra \$5 an hour? It doesn't matter to us. Just come back to work, because all we've got to do is pass it on." Without a ... regulatory agency, we, the consumer, are in one pot of trouble. Am I correct?

MR. GRIFFITH replied that he couldn't entirely agree, and reiterated that JAAs aren't public utilities, but are wholesalers of generation and transmission assets. He said contracts for generation, transmission facilities, and labor aren't scrutinized or regulated by RCA except after the fact, and then only because the authority to do this is written in the contracts. He pointed out that the utilities themselves wrote regulation into the contracts, and said he didn't think there was evidence to say there'd been any example of misappropriation of funds or gouging of consumers. He said he felt the process Chugach Electric went through in the rate case was entirely appropriate.

Number 1033

VICE CHAIR GATTO asked: If this legislation had been in place, would that process have proceeded exactly as it did?

MR. GRIFFITH said yes, since those contracts weren't under a JAA. He said even if the contracts were transferred, the contractual language would remain the same.

Number 0978

TOM LOVAS, Chief Executive Officer, Four Dam Pool Power Agency, testified, saying he was participating to understand the requests of this legislation, to gather information, and to understand the conditions surrounding the request for this legislation. He also wanted to present information with regard to the potential impact of HB 453 on the Four Dam Pool Power Agency, now the sole JAA in operation in Alaska under the authorizing legislation.

MR. LOVAS said HB 453 was not specifically initiated by the Four Dam Pool Power Agency, but rather by the Railbelt utilities previously mentioned. The board of directors of the Four Dam

Pool Power Agency hadn't yet taken a position on this legislation, and thus he wasn't there to either support or oppose it.

MR. LOVAS informed the committee that he did not think this legislation, as it was described, would affect the Four Dam Pool Agency at this time, but it might in the future when it could be beneficial if the agency added additional projects to the four hydroelectric units currently operated under the agency framework, or if the Four Dam Pool Power Agency began to provide power to nonmembers of the agency directly. He explained that presently all sales at the wholesale level from the agency's projects flow to the initial members of the agency, which are the ultimate distribution utilities of that power. They make no sales other than to members of the agency, except for interruptible arrangements that may be from surplus energy. But those, too, are organized through and by the initial members of the agency. Consequently, wholesale power transactions of the Four Dam Pool Power Agency are only within the membership of the agency itself and not a third party.

MR. LOVAS explained that the priority of the projects is to deliver power to those members and only those members of the agency, each of which participates in the determination of the budgets, rates, and charges. Sales of any surplus to third parties are only by unanimous agreement of the members of the agency. Their projects are governed by a power sales agreement that was preexisting with the State of Alaska and continued on through the arrangements by which the agency could acquire projects from the state for the purposes of the member utilities. Mr. Lovas said the authorizing legislation of the initial project currently serves their needs and provides the exemption from regulation that coincides with the exemption that occurred in the prior projects, when they were owned by the State of Alaska, under the power sales agreement.

[Vice Chair Gatto returned the gavel to Chair Anderson.]

Number 0772

REPRESENTATIVE ROKEBERG recalled the negotiations and the difficulties with organizing the first JAA. He asked Mr. Lovas if the Four Dam Pool and the legislation establishing that JAA was the first one in Alaska. He also wanted to know if the Four Dam Pool Power Project was regulated.

MR. LOVAS replied that his company was the first JAA in the state. It is regulated by the Federal Energy Regulatory Commission (FERC) with regard to the hydroelectric project licensing issues. It is exempt from rate regulation by the RCA under the terms of the existing legislation until such time as any debt on the projects is fully paid.

Number 0700

REPRESENTATIVE ROKEBERG asked for the rationale behind this arrangement.

MR. LOVAS responded that the original arrangement by which the pool was formed included exemption from rate regulation for the Four Dam Pool itself, while the projects were owned and operated on behalf of the utilities by the State of Alaska. That longstanding arrangement has continued on through this transaction whereby the agency becomes the owner in lieu of the State of Alaska. It's a continuation of a historical framework.

REPRESENTATIVE ROKEBERG asked, "Is the theory that the pool has an existing contractual relationship in place, but then if there's any transfer of your commodity, your energy, it's between members that are already members to the agreement?"

MR. LOVAS affirmed that. The power sales agreement was specific in that the power from the projects could only be used for the purposes of the members of the pool that was originally established back in the mid-1980s. There was no mechanism for the agency to move power from the hydroelectric projects that are incorporated in this to a third party that's not a member of the agency itself.

REPRESENTATIVE ROKEBERG asked how many of the Four Dam Pool Power Agency generators are tied to the grid.

MR. LOVAS replied that none are tied together with the grid at this point, other than the delivery to the local distribution cooperatives or municipalities.

Number 0600

REPRESENTATIVE ROKEBERG noted that even though they have a JAA, they don't have a traditional grid whereby they can sell power back and forth from one location to another.

MR. LOVAS concurred. He noted that development projects underway would interconnect service territories, but the priority obligation to the power would still apply from each project to the initial member that was involved with that project. He said there was one exception that might develop, a potential segment of transmission from Petersburg to Kake; this would involve surplus power, not the priority power that goes to the members.

REPRESENTATIVE ROKEBERG asked Mr. Lovas, if he made a third-party sale, whether he'd have to have the unanimous consent of the membership, and whether this would be a regulated arrangement with the third party.

MR. LOVAS replied that was correct, saying it could only be for power not otherwise required by the members. He didn't believe such a sale would be regulated.

REPRESENTATIVE ROKEBERG asked Mr. Lovas why a JAA model was adopted for the Four Dam Pool Power Agency.

MR. LOVAS said the Four Dam Pool term was developed at the time the long-term power sales agreement was established among the five purchasing utilities of the project. He believed that term had continued to be carried forward into the JAA as a matter of familiarity.

Number 0423

REPRESENTATIVE ROKEBERG restated his question: "Why did you become a joint action agency?"

MR. LOVAS replied that it was a mechanism available within the state legislation, with statutes that provide a means by which a number of public utilities would come together for the purpose of owning and operating a project on their behalf. There was a prior, available alternative to establish a framework.

Number 0367

MR. GRIFFITH of Chugach Electric said, "This is a very simple change in the statutes we're asking for." He said he feels the JAA is an organization whose time has come. The energy task force had commented on the need for a joint system operator of some nature. Mr. Griffith said ML&P and GVEA are saying they want to be the joint system operator; they recognize the costs

and the challenges and are ready to act. He warned the committee that there was no time to dally.

MR. GRIFFITH suggested it would be advantageous to not be regulated in the wholesale sale of power, but to be regulated in generation and transmission assets only; he felt this was appropriate because the resulting contracts would be between willing sellers and willing buyers, and contract law provides for adjudicating contract disputes in superior court. He did not feel that these contracts required regulation. He explained that this bill would remove the "regulatory burden off of this fledgling entity that we're creating." He told the committee the burden consists of having to hire attorneys and build cases; these activities are expensive and time consuming, and wouldn't allow the JAA to be financially flexible.

MR. GRIFFITH referred to his own rate case that Vice Chair Gatto had brought up, and commented that it cost Railbelt customers in the neighborhood of \$5 million. He said this money was "absolutely nonproductive" and that he didn't think wholesale contracts ought to be saddled with regulation. He said the underpinning of Alaska's economy is the electrical system and that the financing needed lack of regulation. He pointed out that the courts are there to handle disputes.

Number 0087

CHAIR ANDERSON remarked that there'd be debate because of the many people involved in this process. He had two questions, he noted, and said, "One was the idea that, do you really need to make this a statute, do you really need to codify this at this time? Can't you already accomplish this without codification?"

MR. GRIFFITH replied that they could create a JAA today without codification. He wasn't sure whether it would be regulated.

TAPE 04-21, SIDE A

Number 0040

CHAIR ANDERSON asked whether, without regulation, the consumer would be hurt.

MR. GRIFFITH responded that this wouldn't happen because his group wouldn't use poor business practices. He said they have a very low margin and would be wholly owned subsidiaries of publicly owned and publicly governed entities. He said he couldn't imagine the boards of the utilities that would own the

JAA, or the assembly of the municipality, allowing somebody to go out and gouge its own members.

REPRESENTATIVE ROKEBERG asked if Chugach Electric is currently regulated for wholesale sales of power.

MR. GRIFFITH replied yes, by virtue of the wholesale contracts it has, because it has required that in the contracts.

REPRESENTATIVE ROKEBERG asked if it is regulated by RCA by contract or statute.

MR. GRIFFITH replied that it is regulated by RCA by contract, but he believes the statutes were unclear about regulation on the wholesale sale of power.

REPRESENTATIVE ROKEBERG asked if most utilities in the country are privately held.

MR. GRIFFITH said most of the power in the U.S. is owned by publicly held corporations owned by investors, and many of those are regulated.

Number 0224

REPRESENTATIVE ROKEBERG asked for clarification on wholesale sales regulation.

MR. GRIFFITH responded, "In the main, it is unregulated and sold on almost a spot-market basis over several large power pools." He added, "The United States is fairly well wired together, except for Alaska."

REPRESENTATIVE ROKEBERG said this legislation would allow them to set up a JAA and exempt them from regulation, but he was unclear as to the intent of the legislation.

Number 0320

JIM POSEY, General Manager, Municipal Light and Power, Anchorage, testified in support of HB 453, saying the intention of HB 453 is to deregulate.

MR. GRIFFITH said it was their intention to create a JAA, and they could do this under existing statute, but were suggesting it would be a better business proposition to be unregulated by the RCA. He said they would become the unified system operator

referred to in the energy task force report. He added they would participate in joint upgrading projects and new power-generation facilities.

Number 0393

VICE CHAIR GATTO said:

You mentioned a willing buyer and a willing seller. Imagine ... that we were living in a Bush community and had one store. We would still have a willing buyer and a willing seller, but the store certainly would still have the ability to make ... virtually any price. ... They would certainly be able to raise the price easily, wouldn't it?

MR. GRIFFITH replied that since they were unregulated, they could set any price they chose.

Number 0455

VICE CHAIR GATTO stated:

I guess that's what troubles me about whenever we establish a utility. We really need to maintain a regulatory authority over a utility. Of course, as I mentioned earlier, my concern is to remove the regulatory ... authority and yet leave the utility in place to establish, conceivably, it's own wholesale power rates.

So, let me go to another thought. ... If, indeed, we've looked at future power costs, would they then still be controlled or somehow maintained by some regulatory authority when these existing contracts expired?

MR. GRIFFITH answered that if the JAA makes the contract and this legislation is approved, then the answer is yes, post-2014.

Number 0546

TUCKERMAN BABCOCK, Manager of Government and Strategic Affairs, Matanuska Electric Association (MEA), testified that MEA opposes this bill, sees no reason to amend the existing statute, and believes it provides for the creation of a JAA. He commented, "The three utilities on line today that are intending to do that

are perfectly welcome to do so. They do not need to be deregulated from the State of Alaska and the regulatory commission in order to accomplish that goal." He asserted that it was a misrepresentation of the energy task force report to claim that these three utilities, acting together to form a JAA, somehow would realize the recommendations of that report. Urging the committee to read the report, he explained that the task force recommended a unified system operator, not an unregulated JAA.

MR. BABCOCK said MEA is concerned because it is the biggest consumer in the Railbelt and has an all-requirements contract with Chugach Electric that expires in 2014. He said he believes MEA's perspective is really that of a consumer, as opposed to looking for a way to maximize investment on generation and transmission. Thus MEA doesn't see value in the legislature's taking this special step to exempt this JAA from regulation. Each of these utilities, under current state law, could go to its own members today and request permission to deregulate. However, he suggested, they've chosen to support the "legislative end-run around their own member owners."

MR. BABCOCK said he didn't feel this action boded well for the consumer; even if the committee wished to analyze this legislation, anything of this significance should take more consideration and caution before making such a major change to how the utilities in the Railbelt are regulated. He mentioned the need for the committee to make sure consumers and the member owners of these cooperatives are protected.

Number 0723

REPRESENTATIVE GUTTENBERG noted that a JAA's members are the utility companies members, so why would their members not automatically vote to deregulate themselves?

MR. BABCOCK replied:

The various utilities that want to create the joint action agency themselves become economically deregulated. Once the membership has done that, I think you would be more secure as a legislature in agreeing to amend the joint action agency statute to have the joint action agency itself be unregulated. But at this point what you have before you are monopoly utilities looking for a way to [have] aspect of their business to be unregulated by the consumer

protection agency. And that makes Matanuska Electric very nervous.

Number 0785

VICE CHAIR GATTO said MEA is a major wholesale purchaser and is at the receiving end of contracts. He referred to a letter from the RCA and asked that it be read into the record. It stated [original punctuation provided]:

The Regulatory Commission of Alaska is opposed to HB 453. This legislation holds the potential to exempt from regulatory oversight most new electrical generation in the Railbelt in future years. The only effect of HB 453 is to provide an exemption from all forms of regulatory oversight - this legislation does nothing to otherwise enhance the functioning of joint action agencies or define their operations. From the perspective of the RCA, HB 453 provides no tangible or measurable benefits to the consuming public while at the same time creates significant potential for the abuse of monopoly power in Alaska's most capital-intensive industry.

The principal joint action agency under Alaska law is the entity created to manage the "four-dam pool" assets which were built with direct state appropriations in the 1980's. This agency has functioned reasonably well, but this has been the case because of the unique circumstances which caused its formation. Underpinning the formation of the four-dam pool joint action agency was the fact that all of the assets which were and are subject to agency management were *already constructed* and that agreements were *already in place* for the purchase and sale of wholesale power from those projects. In summary, the State, with heavy Legislative involvement, determined that these investments were appropriate and that management under the joint action agency concept was the preferred course for the administration of these facilities. AS 42.05.431(c) grants an exemption to the four-dam pool agency from RCA jurisdiction but that exemption is of limited duration.

In stark contrast, the exemption proposed in HB 453 would extend to an unknown number of new joint action agencies for an undefined number of projects which

have not yet been planned, constructed, financed or operated. Further, the exemption would be of unlimited duration.

If exempt from RCA jurisdiction, new electrical generation facilities in the Railbelt constructed under the auspices of one or more new joint action agencies would not be subject to ANY independent review as to (1) their necessity or prudence; (2) the reasonableness of their operating expenses; or (3) the rates to be charged for power produced from these facilities. The RCA believes that a grant of such sweeping authority would be unprecedented in Alaska's history.

A variety of problems could arise under this legislation which would be very difficult to correct once significant resources had been invested in a particular project. One area lies in the scope of projects which might be undertaken. For example, the potential exists that a self-governed, unregulated joint action agency could determine that the provision of generation or transmission facilities might include the construction of extensive private roadways, pipelines, or even railroads. No independent mechanism would exist to control or question such decisions or investments. Similarly, no direct mechanism would exist to control or question the sizing of proposed plant investments or their fuel sources.

In the arena of operations and maintenance, no agency could review the reasonableness or prudence of expenses of joint action agency facilities. Any and all expenses would be included in the wholesale rates to be charged to power distributors on a "take it or leave it" basis.

The Legislature should understand that while joint action agencies are identified in the final report of the Energy Policy Task Force as a method for unified system operation, the Task Force Report does not mention or endorse the exemption of such agencies from RCA regulation. The RCA agrees with the Energy Policy Task Force recommendations that joint action agencies can play a useful role in the planning, construction, and operation of new generation and transmission

facilities. In the view of the RCA, constructive use of the joint action agency concept must include statutory provisions as to the scope, governance, and operation of such agencies. The complete exemption of such agencies from RCA jurisdiction does not solve any identifiable problem except to satisfy a general desire for the lessening of regulatory burdens.

The Legislature should understand that regional interests of one utility could induce generation and transmission decisions which, while favorable to one utility, are not in the overall public interest. The State needs to retain oversight of major infrastructure decisions, and continued ratemaking jurisdiction. Decisions on major infrastructure projects are best reviewed either by the Legislature or through an agency charged with siting and cost analysis that embraces the Railbelt as a whole. This will ensure major infrastructure decisions are made in the public interest.

Multiple and serious costs to the consuming public would arise from the blanket exemption proposed in HB 453. HB 453 should not be enacted by the Legislature.

CHAIR ANDERSON surmised that regulatory agencies would always be opposed to deregulation.

Number 0844

MR. BABCOCK pointed out that any utility or JAA that invests in generation and transmission is going to get a guaranteed return in its rates that it's able to charge by the commission. He offered that the debate that MEA, Homer [Electric], and others had with Chugach Electric before the [RCA] on Chugach Electric's latest rate case was the amount Chugach Electric thought it needed to increase rates for retail and for wholesale, and the amount the RCA, after a few years of analysis, determined to be actually reasonable rates.

MR. BABCOCK said, in fact, the commission granted a rate increase for Chugach Electric's retail consumers, although it was smaller than the rate Chugach Electric had wanted. The commission approved a rate decrease for the wholesale customers. He suggested that regulation is the procedure that best protects

the consumers in Alaska, and he urged the committee not to change it.

Number 0895

CHAIR ANDERSON asked for Mr. Babcock's reaction to Alaska Power Association's support of HB 453.

MR. BABCOCK replied that he was not surprised that most monopoly utilities would like to be deregulated. He said Mr. Yould [of Alaska Power Association] represented an association of monopoly utilities. He related that if MEA were a big generation and transmission utility, it would probably be here as well, saying, "Hey, great, deregulate us. We'd love to set our own rates without any public scrutiny." He characterized MEA as the biggest consumer in the Railbelt and said that's the perspective he brought to bear.

Number 0982

MR. POSEY of ML&P spoke again in support of HB 453. He said a year ago he became aware that the state was looking for money, and thought they should have a conversation about what the state was going to do with energy assets. He suggested the "Railbelt folks" should be ready and should look for a tool in order to accept assets such as the Alaska Intertie and Bradley Lake [projects], if there is a decision to do that, "because taking care of these assets takes ownership in order to invest money." He continued:

If the state wasn't going to be putting money back into infrastructure development, we - that is, the Railbelt utility folks - had to be able to have a tool to acquire the assets and go out to the market in order to repair and/or expand these group of assets.

That is the total purpose. We are also looking at the Railbelt energy study and the task force report that says how much investment has to happen over the next 10 to 15 years. Once again, we need a vehicle because all of us together make one medium-sized utility in the Lower 48. So if we can't band together to do some of these things, it would be very difficult for it to happen at all. That dictates what happens to our economy in the state of Alaska.

We're not seeking to deregulate our distribution, and Mr. Tuckerman said we can go and invoke the membership, but once you go for that, ... all of it's deregulated, not just the wholesale. AEA [Alaska Energy Authority] and AIDEA are not regulated for what they do; they're basic assets. We're trying to walk into their shoes in order to do the same thing that they can do, if the state is not going to make major investments into infrastructure. That's the total, real reason we're here today. And that answer is, we would like to help ourselves with that toolbox, and this piece would help us get that done.

Number 1094

CHAIR ANDERSON asked Mr. Posey how he would respond to the fear that the consumer would pay the price in a monopolistic arena.

MR. POSEY replied:

You heard Tom Lovas basically say that that's for sales between themselves and the use of those assets to provide for themselves. It's basically not regulated. For us, those things that we're trying to do, the assets that we use, for ourselves and anyone who wanted to contract with us, to do the same thing for a relative same price that we charge ourselves would fall into that same group.

Or they can join the joint action agency and ... join the larger group to do these things that have to be done for the future investments in our utilities - no more, no less. If you want to deal with the joint action agency, you can join or you can buy from it. But for our own purposes, we represent ... over 80 some percent, 90 percent of production of the electricity in the Railbelt, and a large portion of the interests. Current contracts [are] not covered by this at all. In fact, I think MEA is interested in building their own generation after the 4/2014 date. They don't have to be unless they want to build their generation as part of the joint action agency.

Number 1211

VICE CHAIR GATTO said:

It just reminds me of something: as a kid in a gang they said, "You're either with me or you're against me." What you're saying sounds awful similar to that, that you can tell MEA, "They can join us or you're against us." I don't think that's a fair appraisal of MEA's position. Their position is ... to supply power at the lowest possible penny per kilowatt-hour to their consumers. And they do that essentially by buying from someone else and reselling it. They do the distribution costs, but, I think, ... about half their cost is the purchase of power. So the purchase price of their kilowatt has an enormous influence on the rates that the customers pay. Now, ... you wouldn't characterize the RCA as being opposed to modernization, would you?

MR. POSEY responded:

The various interests here are interested in reducing the total costs of future generation and transmission. And we can only do that if we band together in order to make these investments. Anyone else who would like to do that is free to do it. MEA has asked me, if they build new generation, will I buy from them ... because they know they have to build to a certain size. You read the task force report; it says generation of this size should be built as a group.

It's not a gang. It's the recommendation of the various task force that say, "Where are these areas?" Fairbanks, and for the borough and the valley, they need to act together as one group in order to do it - not as a gang, but need to band together to do these investments, just because of the total cost. And you don't want to overbuild nor underbuild for that future. It's not one gang against one person. It's following that task force report, that all of us are one medium-sized utility in the Lower 48. And that includes MEA. And if we don't work together, and I do mean work together, we can't get there, not at a reasonable price for all the consumers.

Number 1453

MARK JOHNSON, Commissioner, Regulatory Commission of Alaska, Department of Community and Regional Affairs, referred to the position paper he'd submitted [text provided previously] and the

impact of this bill related to RCA jurisdiction, specifically, two sections affected in AS 42.05. He expressed disappointment in this legislation, saying the commission believes there is a role for JAAs in carrying out identifiable needs in the energy task force report, but this bill doesn't address any of the problems identified in the report. He said RCA is against this legislation and believes it represents bad public policy. [HB 453 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:25 p.m.