

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 31, 2005

8:08 a.m.

MEMBERS PRESENT

Representative Kurt Olson, Co-Chair
Representative Bill Thomas, Co-Chair
Representative Gabrielle LeDoux
Representative Woodie Salmon

MEMBERS ABSENT

Representative Pete Kott
Representative Mark Neuman
Representative Sharon Cissna

COMMITTEE CALENDAR

HOUSE BILL NO. 229

"An Act relating to the reinstatement of Native corporations;
and providing for an effective date."

- MOVED HB 229 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 157

"An Act clarifying the powers of electric or telephone
cooperatives to become members of or own stock in other
entities."

- MOVED CSSSHB 157(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 229

SHORT TITLE: REINSTATEMENT OF NATIVE CORPORATIONS

SPONSOR(S): REPRESENTATIVE(S) FOSTER

03/22/05	(H)	READ THE FIRST TIME - REFERRALS
03/22/05	(H)	CRA, FIN
03/31/05	(H)	CRA AT 8:00 AM CAPITOL 124

BILL: HB 157

SHORT TITLE: ELEC/PHONE COOP & OTHER ENTITIES

SPONSOR(S): REPRESENTATIVE(S) ANDERSON

02/18/05 (H) READ THE FIRST TIME - REFERRALS
02/18/05 (H) CRA, L&C
02/28/05 (H) SPONSOR SUBSTITUTE INTRODUCED
02/28/05 (H) READ THE FIRST TIME - REFERRALS
02/28/05 (H) CRA, L&C
03/22/05 (H) CRA AT 8:00 AM CAPITOL 124
03/22/05 (H) <Bill Hearing Canceled>
03/31/05 (H) CRA AT 8:00 AM CAPITOL 124

WITNESS REGISTER

PAUL LABOLLE, Staff
to Representative Richard Foster
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of the sponsor of HB
229, Representative Foster.

ALYCE HOUSTON, Corporation Records & Licensing Supervisor
Division of Banking & Securities
Department of Commerce, Community, & Economic Development
Juneau, Alaska
POSITION STATEMENT: Offered information regarding HB 229.

JOHN BITTNER, Staff
to Representative Tom Anderson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of the sponsor of HB
157, Representative Anderson.

BRIAN BOGEN, CEO/President
Delta Western, Inc
Seattle, Washington
POSITION STATEMENT: Offered information pertaining to HB 157.

BRAD REEVE, General Manager
Kotzebue Electric Association
Kotzebue, Alaska
POSITION STATEMENT: Testified in support of HB 157.

SALLY SADDLER, Business Development Specialist/Legislative
Liaison
Division of Community Advocacy
Department of Commerce, Community, & Economic Development
Juneau, Alaska
POSITION STATEMENT: Offered information pertaining to HB 157.

ERIC P. YOULD, Executive Director
Alaska Power Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 157.

DONNA VUKICH, General Manager
Naknek Electric Association
Naknek, Alaska
POSITION STATEMENT: Offered testimony on HB 157.

RICHARD GEORGE, Board Member
Inside Passage Electric Cooperative
Angoon, Alaska
POSITION STATEMENT: Offered testimony on HB 157.

VERN RAUSCHER, General Manager
Inside Passage Electric Cooperative
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 157.

DALE PETERS, President of the Board
Naknek Electric Association
Naknek, Alaska
POSITION STATEMENT: Testified in support of HB 157.

MEERA KOHLER, President & CEO
Alaska Village Electric Cooperative
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 157.

MARK HICKEY, Consultant
Petro Marine Services
Anchorage, Alaska
POSITION STATEMENT: Offered testimony on behalf of Petro Marine Services.

RAY GILLESPIE, Lobbyist
Yukon Fuel Company
Anchorage, Alaska
POSITION STATEMENT: Offered information regarding HB 157.

CHUCK HARLAMERT, Juneau Section Chief
Tax Division
Department of Revenue
Juneau, Alaska
POSITION STATEMENT: Offered information regarding HB 157.

ACTION NARRATIVE

CO-CHAIR BILL THOMAS called the House Community and Regional Affairs Standing Committee meeting to order at [8:08:36 AM](#). Representatives Thomas, Olson, LeDoux, and Salmon were present at the call to order.

HB 229-REINSTATEMENT OF NATIVE CORPORATIONS

[8:09:10 AM](#)

CO-CHAIR THOMAS announced that the first order of business would be HOUSE BILL NO. 229 "An Act relating to the reinstatement of Native corporations; and providing for an effective date."

[8:09:14 AM](#)

PAUL LABOLLE, Staff to Representative Foster, Alaska State Legislature, presented HB 229 on behalf of Representative Foster. He explained that every two years a \$100 fee and report listing the corporate officers is required by the state. If a Native corporation fails to file the aforementioned report during the allocated time period, this legislation provides an additional two-year grace period after which no compliance will result in involuntarily disolvement and legislation is required to reinstate the corporation. Reinstatement ensures that should the dissolved corporation form a new corporation, it wouldn't have its assets granted under the Alaska Native Claims Settlement Act and thus it would be a corporation with no assets.

[8:10:13 AM](#)

CO-CHAIR THOMAS asked if a new corporation is formed, would it take the debts with it.

MR. LABOLLE replied that the new corporation would be not maintain the debts or assets, although the shareholders would have the debts and assets.

[8:10:38 AM](#)

REPRESENTATIVE LEDOUX asked why the shareholders would have the debts of the corporation.

MR. LABOLLE related that he will refer that question to the technical expert. He noted that the assets would be broken-up and transferred to each member of the corporation, and thus he assumed the same would apply for the debts.

ALYCE HOUSTON, Corporation Records & Licensing Supervisor, Department of Commerce, Community, & Economic Development, related that it would be "winding up business" as the statutes allow for voluntary or involuntary dissolution.

[8:11:51 AM](#)

REPRESENTATIVE LEDOUX moved to report HB 229 out of committee with individual recommendations and the zero fiscal note. There being no objection, HB 229 was reported from the House Community and Regional Affairs Standing Committee.

The committee took an at-ease from [8:12:21 AM](#) to [8:39:37 AM](#).

HB 157-ELEC/PHONE COOP & OTHER ENTITIES

CO-CHAIR THOMAS announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 157, "An Act clarifying the powers of electric or telephone cooperatives to become members of or own stock in other entities."

CO-CHAIR OLSON moved to adopt CSSSHB 157, Version 24-LS0562\L, Craver, 3/31/05, as a work draft. There being no objection, Version L was before the committee.

[8:39:44 AM](#)

JOHN BITTNER, Staff to Representative Tom Anderson, Alaska State Legislature, informed the members that CSSSHB 157 is brought forth to address concerns regarding the scope of the original bill. He related the changes on page 2, lines 20-21, allow an electric cooperative to form a limited liability company (LLC). The aforementioned language updates the statutes because LLCs weren't common in Alaska when the original statutes were written. The language on page 2, line 22, gives the electric cooperative the authority to sell fuel not needed to generate electricity. He explained that these [paragraphs] are under AS 10.25.020 because "everything we do here only applies to electric cooperatives." He mentioned that there was some concern with regard to including telephones. However, telephone [companies] as far as he knows aren't interested in selling fuel whereas electric utilities already purchase bulk fuel for

personal use, and therefore it would make more sense for electric utilities to expand into the private aspect.

[8:42:09 AM](#)

MR. BITTNER, in response to Representative Salmon, specified that the difference in the number of paragraphs in HB 157 and CSSSHB 157, Version L, is because in Version L the language is inserted in AS 10.25.020, which only addresses electric cooperatives. The original bill addressed both telephone and electric cooperatives.

[8:43:03 AM](#)

REPRESENTATIVE SALMON asked, for clarification purposes, if the legislation allows the electric company to sell fuel.

MR. BITTNER said that's his understanding.

The committee took an at-ease from [8:43:40 AM](#) to [8:46:21 AM](#).

[8:46:26 AM](#)

BRIAN BOGEN, CEO/President, Delta Western, Inc., related his concern regarding whether this legislation is a matter of "good public policy" to encourage governmentally subsidized entities to compete with the private sector. He added that he is not opposed to competition, but he is "uncomfortable" competing with entities that receive public subsidies.

[8:47:52 AM](#)

BRAD REEVE, General Manager, Kotzebue Electric Association, testified in favor of HB 157. He explained that the original goal of his association was to form a joint fuel buyers group to attract competition and build a new model for fuel deliveries in the Northwest, which has been recognized as one of the most successful models for competitive fuel purchases in Alaska. He noted that the [cooperative] built its own infrastructure and has saved over \$20 million in fuel costs that went directly to the community. He highlighted that fuel costs are escalating to the point of making a lot of communities unviable, and therefore one must be willing to review new models to assist rural Alaska. In establishing competitive markets, storage and financing have been a concern. The most promising potential [solutions] has been fuel cooperatives and other models to reduce the high cost of energy. He related that the Northwest Artic School District

has a fuel buying arrangement with a cooperative to obtain lower fuel costs. He opined that this legislation would allow cooperatives, "which really don't have a profit motive," to sell fuel and keep costs low in rural Alaska.

8:54:03 AM

CO-CHAIR THOMAS inquired as to the power cost equalization (PCE) ramifications of this legislation.

SALLY SADDLER, Business Development Specialist/Legislative Liaison, Department of Commerce, Community, & Economic Development, said, "I don't have the answer to that question, but I can get that for you."

8:55:03 AM

ERIC P. YOULD, Executive Director, Alaska Power Association, relayed that his association represents the electric utility industry which generates 85 percent of electricity throughout Alaska. He related his belief that high fuel prices in rural Alaska are exacerbated by the windfall [profit] that is coming to the state in the form of \$50 per barrel oil. He noted the Board of Directors of the Alaska Power Association adopted a resolution recognizing that Alaska's electric cooperatives are increasingly receiving requests from its members asking the cooperative to become the full service energy supplier in the community. However, recent court cases in other states have questioned the ability of Alaska's electric cooperatives to form subsidiaries to respond to their members' needs. Therefore, [per the aforementioned resolution] the Alaska Power Association urged legislative action confirming Alaska's electric cooperatives ability to meet the needs of their members and communities.

MR. YOULD turned to the high cost of electricity in rural Alaska. He informed the committee that the Inland Passage Electric Cooperative provides electricity to Angoon, Hoonah, Kake, Klawock, and Chilkat. A little of a year ago, the cost of diesel fuel was \$1.57 a gallon. However, this year the cost of diesel fuel is \$2.27 a gallon. In rural Alaska the average cost of electricity is about \$0.45 an hour and the increased diesel cost creates a surcharge of almost \$0.07 per kilowatt-hour. Therefore, the situation in rural Alaska is quite chronic. He added that fuel brought into rural Alaska communities go to the local electric utility, retail distribution, and school districts. The aforementioned have varied fuels prices and

often the cooperative's price is less than all three. The reason for the cooperative's low price is because of its competent management staff who are part of the communities and try to obtain the cheapest bid price from the distributors, he opined. He said his association would like to be able to "knock" the high cost of fuel as low as possible. The problem is many cooperatives are trying to get into the fuel business to provide propane for their own users. He explained that basically, electric cooperatives would allow stock in a subsidiary corporation that sells gas to the cooperative members. The aforementioned was challenged in the states of Alabama, Colorado, and Kentucky where state courts found that the electrical cooperatives couldn't move into the propane business due to existing state statute. In the challenges in the states of Georgia, Mississippi, and Texas state courts found that the local state statutes allowed the cooperatives to be in the subsidiary businesses. Therefore, HB 157 attempts to clarify that cooperatives can be in the business of providing fuel without it being illegal. This legislation modernizes the statutes by specifying that cooperatives can own stock and ownership in a LLC, because there was no such entity when the original cooperative statute was written. He concluded by relating that the Alaska Power Association strongly supports this legislation and hopes it's reported from committee today.

[9:01:55 AM](#)

REPRESENTATIVE LEDOUX inquired as to the rationale for allowing electric cooperatives to sell fuel as opposed to other commodities, such as groceries, that are also exorbitant in rural areas.

MR. YOULD highlighted that cooperatives are "member driven" and aren't in the market of looking for business ventures but rather responding to member's requests, in order to drive down the costs of collective goods. The cooperatives are not in the market to make profits because it could lose its tax-exempt status. He opined that electric companies should be looking for as much competition as possible. In rural Alaska, there is almost no competition, and it's almost a monopolistic system. He related there is not a "ground swell" of cooperatives wanting to enter the fuel business, presently only two communities are looking into the business because the local retailers are looking to get out of the business. The only difference between cooperatives and the private sector is that cooperatives don't pay taxes. Nevertheless, the cooperative always operates on the zero profit margin in order to keep the cost to the consumer as

low as possible while private companies will always try to [increase] profit as possible, he said.

[9:05:24 AM](#)

DONNA VUKICH, General Manager, Naknek Electric Association, related that over the last eight to ten years Naknek Electric Association's members have expressed the desire to find a fuel entity to provide the needs of the community. However, due to the earlier mentioned court cases, Naknek Electric Association doesn't feel it can invest or leverage its members' money and face an uncertain outcome were there a challenge. Ms. Vukich explained that Naknek Electric Association is reviewing a "for profit corporation subsidiary" of the cooperative and some money would go into a dividend in order to build a reserve. "We believe that we could keep the cost down for our community so that it is a savings for our community," she opined.

[9:07:23 AM](#)

RICHARD GEORGE, Board Member, Inside Passage Electric Cooperative, relayed that the unemployment rate in the community of Angoon is about 80 percent. He said that in his 30 years with the cooperative he has never seen the price of fuel as such the issue it is today. The price of fuel in Angoon is \$2.72 per gallon. He informed the committee that the Inside Passage Electric Cooperative purchases fuel at the same source [as the retailer] for \$1.71, so there is a "wide spread for profitability." Fuel costs, he opined, need to be lower in order to help alleviate the current living conditions of rural communities. In fact, there has been discussion of closing the local school early due to the high operational costs, which most view [as the fault] of utilities. He related many of the areas in which increased fuel costs have impacted people. He said electric utilities aren't trying to make profits from selling fuel but rather help alleviate the cost of the commodity in order to sustain [the rural] lifestyle.

[9:11:59 AM](#)

VERN RAUSCHER, General Manager, Inside Passage Electric Cooperative, offered his support of HB 157. He turned to a graph that highlights the barge fuel cost, which has increased 140 percent over the last 10 years, 110 percent over the last five years. As a cooperative there is an obligation to provide low cost services while searching for ways in which to enhance the welfare of the customers, he added.

[9:13:46 AM](#)

DALE PETERS, President of the Board, Naknek Electric Association, said he supports HB 157. He offered that people in Naknek are moving because of the high cost of living and this legislation would change the statutes in order to help the communities. Economic development is one of the associations' highest priorities and it's important to meet the members' needs.

[9:15:13 AM](#)

MEERA KOHLER, President & CEO, Alaska Village Electric Cooperative, related that her cooperative serves 52 villages, which represent 44 percent of Alaska's village population. She noted that the cooperative's "huge" business expense is fuel. She said her cooperative is one of the few locally controlled and owned operations that is economically sustainable, which she attributed to the force of many villages working together to provide their own needs. She highlighted that the rural communities have issues with aging wires, Internet access, and jobs. The cooperative is always on the cusp of what is allowed by statute. With regard to earlier comments that cooperatives are "subsidized", Ms. Kohler specified that the only subsidy electric cooperatives receive is what its members receive in PCE. She highlighted that PCE is computed by the state based upon the actual costs of doing business. If the cooperative was able to diversify and provide other services, costs would be reduced because the costs would be spread amongst other businesses. Furthermore, diversification would be a benefit to PCE because it would reduce the allowable costs for PCE. Ms. Kohler explained that as a nonprofit cooperative, its assets are capitalized over a long-term period of 15-30 years, and therefore the cost included in the electric base rates is only one-fifteenth to one-thirtieth of the cost of those assets. However, a private entity typically collects on its assets within 5 years. "The back of rural Alaska is breaking; they're economically strapped. And this bill will go a long way towards empowering them to help themselves to achieve that sustainability," she said. She urged the committee to move HB 157 out of committee.

[9:19:05 AM](#)

MARK HICKEY, Consultant, Petro Marine Services, related that his company is an Alaska-based company that is concerned about this

legislation, although no formal position has been taken. The concern is regarding whether there's a level playing field for competition. Mr. Hickey indicated that the concern stems from tax treatment and subsidies. With regard to subsidies, there is a more significant subsidy with the cooperatives than the PCE, which is found in the capital side. In the past the subsidy has come in the form of state programs, although more recently it has surfaced in program with the Denali Commission and the U.S. Department of Agriculture's rural development program. He relayed that in the 2004 report from the Department of Agriculture, some \$20 million worth of grants went to cooperatives and another \$14 million-plus in low interest loans went to cooperatives. Private companies don't have access to those types of funds and aren't asking for such. However, cooperatives do ask for that money. The aforementioned is something which the committee should examine with regard to whether it's a level playing field. With regard to the tax treatment, Mr. Hickey suggested that the committee may want to take some time and question what it means to allow cooperatives to sell fuel without doing so through a corporation or an LLC. For instance, the state may not be able to collect state fuel and marine fuel taxes from the cooperative because of its tax-exempt status, which would result in a negative fiscal impact for the state.

[9:22:21 AM](#)

CO-CHAIR THOMAS pointed out that electric companies don't seem to be interested in buying some of the rural fuel distributorships, while the cooperatives may want to buy those local facilities. He asked if there would be a problem with the aforementioned when the [electric companies] don't want to have a presence in an area.

MR. HICKEY replied that's a problem throughout rural Alaska and perhaps there are locations and conditions that warrant [the cooperatives help], but still the question regarding whether there is a level playing field should be addressed as well as whether the state wants to encourage subsidies in private business.

[9:23:52 AM](#)

CO-CHAIR THOMAS opined that no privately owned electric companies want to buy the local fuel companies in the rural villages.

MR. HICKEY said the aforementioned instances presents a problem. However, creating broad authority, without regard to circumstances, allowing government supported subsidized cooperatives to compete with the private sector without restriction and without the same tax treatment is "unfair in our view." He added that Petro Marine Services is not the retailer in many of the smaller locations, but individual retailers stop operating because of the thin margins in the area. He opined that this legislation may impact the community by pushing the small retailer out of business.

[9:26:01 AM](#)

RAY GILLESPIE, Lobbyist, Yukon Fuel Company, expressed concern about government subsidized competition from tax-exempt organizations. However, he acknowledged that there are certain circumstances in rural Alaska that deserve attention and a solution. He indicated that Alaskans are the victims of forces outside of [the state's] control. This legislation, he opined, significantly expands the cooperative authority to enter the private for-profit business. He, too, mentioned the issue of subsidies to these cooperatives, which Yukon Fuel has supported. Although these [subsidy] programs tend to reduce the cost of fuel in rural Alaska and make fuel storage and distribution more environmentally safe, allowing those subsidies to be used in direct competition with the private sector are questionable. An ill-advised system could result in driving private investment and competition from the market place and replacing it with a more government dependent system. With regard to the CS specifically, Mr. Gillespie suggested that it goes far beyond the original legislation by allowing cooperatives to go directly into the fuel sales business.

[9:29:32 AM](#)

CO-CHAIR OLSON asked about the tax issues of this bill.

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, detailed that [paragraph] (8) enables cooperatives to establish subsidiaries, specifically LLCs. If the subsidiary is established as an LLC, the taxable income of that LLC will be attributed to the cooperative and be exempt based on the cooperative's exempt status. He opined that the same mechanism applies to the majority of businesses that operate in the state, such as S corporations. He added that thus far the Department of Revenue sees no additional tax consequences.

[9:32:16 AM](#)

CO-CHAIR THOMAS asked if there are any bonding requirements.

MR. HARLAMERT replied not to his knowledge.

[9:32:29 AM](#)

CO-CHAIR THOMAS related his understanding that this legislation establishes that cooperatives can buy shares of another fuel company and become partners.

MR. HARLAMERT related that is his understanding, and under those circumstances the corporation would be a taxable commodity under state law for excise, fuel, and corporate income taxes. Only in the case of an LLC as a single member LLC or one that elects to be treated as a partnership for income tax purposes that there would be any sheltering under the cooperative's exemption .

MR. HARLAMERT related that [paragraph] (9) enables cooperatives to directly sell fuel in communities and have exempt status [from the motor fuel tax]. He highlighted that normally taxable fuel is paid to the state by the seller, who would be exempt in this case. Whether that exemption can flow to the user of the fuel however, he was unsure of the legalities and offered to get back to the committee with more information.

[9:35:22 AM](#)

REPRESENTATIVE LEDOUX asked, assuming the users are liable for the "use" tax, who would be liable for collection.

MR. HARLAMERT replied the users are liable to report and pay directly to the department. He opined that the likelihood of collection is "much diminished under those circumstances."

[9:35:58 AM](#)

CO-CHAIR THOMAS highlighted that at the local level people cannot afford to run schools and businesses [because of high fuel costs].

[9:37:01 AM](#)

REPRESENTATIVE SALMON commented it is cheaper to get fuel from an aircraft in Fairbanks than from the local fuel companies, and therefore competition would be good for rural communities. He

further commented that this legislation is good legislation that will create that [competition].

[9:38:03 AM](#)

CO-CHAIR OLSON moved to report CSSSHB 157, Version 24-LS0562\L, Craver, 3/31/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 157(CRA) was reported out of the House Community and Regional Affairs Standing Committee.

ADJOURNMENT

[9:38:29 AM](#)

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:38 a.m.