

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 11, 2005

3:28 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Bob Lynn  
Representative Harry Crawford  
Representative David Guttenberg  
Representative Norman Rokeberg  
Representative Pete Kott

**MEMBERS ABSENT**

Representative Gabrielle LeDoux

**COMMITTEE CALENDAR**

SENATE BILL NO. 129

"An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

- MOVED CSSB 129(JUD) OUT OF COMMITTEE

SENATE BILL NO. 52

"An Act relating to the reorganization of certain functions of the division of banking, securities, and corporations and the division of occupational licensing in the Department of Commerce, Community, and Economic Development; and providing for an effective date."

- MOVED CSSB 52(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 157

"An Act relating to the powers of electric or telephone cooperatives."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 129

SHORT TITLE: WRONGFUL FILING OF LIS PENDENS

SPONSOR(S): SENATOR(S) HUGGINS

03/03/05 (S) READ THE FIRST TIME - REFERRALS  
 03/03/05 (S) JUD  
 03/23/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 03/23/05 (S) Moved CSSB 129(JUD) Out of Committee  
 03/23/05 (S) MINUTE(JUD)  
 03/24/05 (S) JUD RPT CS 3DP 2NR SAME TITLE  
 03/24/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS  
 03/24/05 (S) NR: FRENCH, GUESS  
 03/31/05 (S) TRANSMITTED TO (H)  
 03/31/05 (S) VERSION: CSSB 129(JUD)  
 04/01/05 (H) READ THE FIRST TIME - REFERRALS  
 04/01/05 (H) L&C, JUD  
 04/11/05 (H) L&C AT 3:15 PM CAPITOL 17

BILL: SB 52

SHORT TITLE: OCCUPATIONS/CORPORATIONS/BANKS/SECURITIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/12/05 (S) READ THE FIRST TIME - REFERRALS  
 01/12/05 (S) L&C  
 02/01/05 (S) L&C AT 1:30 PM BELTZ 211  
 02/01/05 (S) -- Meeting Rescheduled to 02/08/05 --  
 02/08/05 (S) L&C AT 1:30 PM BELTZ 211  
 02/08/05 (S) Moved CSSB 52(L&C) Out of Committee  
 02/08/05 (S) MINUTE(L&C)  
 02/15/05 (S) L&C AT 1:30 PM BELTZ 211  
 02/15/05 (S) Moved CSSB 52(L&C) Out of Committee  
 02/15/05 (S) MINUTE(L&C)  
 02/16/05 (S) L&C RPT CS 2DP 1NR  
 NEW TITLE  
 02/16/05 (S) DP: BUNDE, SEEKINS  
 02/16/05 (S) NR: ELLIS  
 03/03/05 (S) TRANSMITTED TO (H)  
 03/03/05 (S) VERSION: CSSB 52(L&C)  
 03/04/05 (H) READ THE FIRST TIME - REFERRALS  
 03/04/05 (H) EDT, L&C  
 03/22/05 (H) EDT AT 5:00 PM CAPITOL 124  
 03/22/05 (H) -- Meeting Canceled --  
 04/05/05 (H) EDT AT 5:00 PM CAPITOL 124  
 04/05/05 (H) Moved CSSB 52(L&C) Out of Committee  
 04/05/05 (H) MINUTE(EDT)  
 04/06/05 (H) EDT RPT 3DP 3NR  
 04/06/05 (H) DP: COGHILL, CRAWFORD, DAHLSTROM;  
 04/06/05 (H) NR: LYNN, RAMRAS, NEUMAN  
 04/11/05 (H) L&C AT 3:15 PM CAPITOL 17

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
03/31/05	(H)	Moved CSSSHB 157(CRA) Out of Committee
03/31/05	(H)	MINUTE(CRA)
04/05/05	(H)	CRA RPT CS(CRA) NT 3DP 1NR
04/05/05	(H)	DP: SALMON, THOMAS, OLSON;
04/05/05	(H)	NR: LEDOUX
04/11/05	(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

DEBORAH GRUNDMANN, Staff  
to Senator Charlie Huggins  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 129 on behalf of Senator Huggins, sponsor.

RUTH HAMILTON HEESE, Assistant Attorney General  
Environmental Section  
Civil Division  
Department of Law

POSITION STATEMENT: Answered questions regarding SB 129.

MIKE FLEAGLE, Chairman  
Board of Game  
Alaska Department of Fish & Game (ADF&G)

POSITION STATEMENT: Provided background information on SB 129.

RICK URION, Director  
Division of Occupational Licensing  
Department of Commerce, Community, & Economic Development  
(DCCED)  
Juneau, Alaska

POSITION STATEMENT: Presented CSSB 52(L&C) to the committee.

JON BITTNER, Staff

to Representative Anderson  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 157 on behalf of  
Representative Anderson, sponsor.

ERIC YOULD, Executive Director  
Alaska Power Association (APA)  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 157 and answered  
questions regarding the bill.

ROBERT BAUMGARTNER, President  
Bristol Alliance Fuels (BAL)  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 157.

JODI MITCHELL, Chief Financial Officer  
Inside Passage Electric Cooperative (IPEC)  
Auke Bay, Alaska

POSITION STATEMENT: Commented on HB 157 and answered questions  
from the committee.

BRYAN BOGEN, President  
Delta Western  
[Address not provided]

POSITION STATEMENT: Testified in opposition to HB 157 in  
current form.

RICHARD GEORGE  
Angoon, Alaska

POSITION STATEMENT: Testified in support of HB 157.

MARK HICKEY, Lobbyist  
Petro Marine Services  
Juneau, Alaska

POSITION STATEMENT: Provided criticism to HB 157.

DEAN THOMPSON, Attorney  
Alaska Power Association  
[Address not provided]

POSITION STATEMENT: Testified in support of HB 157.

BRUCE BARTO  
Crowley Marine Services  
[Address not provided]

POSITION STATEMENT: Testified in opposition to HB 157.

BRAD REEVE, General Manager  
Kotzebue Electric Association  
[Address not provided]  
POSITION STATEMENT: Testified in support of HB 157.

DONNA VUKICH, General Manager  
Naknek Electric Association  
[Address not provided]  
POSITION STATEMENT: Testified in support of HB 157.

BUELL RUSSELL, Utility Financial Analyst  
Regulatory Commission of Alaska (RCA)  
Anchorage, Alaska  
POSITION STATEMENT: Answered questions regarding HB 157.

MARK SMITH, President  
Yukon Fuel Company  
[Address not provided]  
POSITION STATEMENT: Testified in opposition to HB 157.

THOMAS BOLEN, Public Services Director  
Northwest Arctic Borough (NWAB)  
Kotzebue, Alaska  
POSITION STATEMENT: Testified in support of HB 157.

#### **ACTION NARRATIVE**

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at [3:28:48 PM](#). Representatives Anderson, Lynn, Crawford, and Guttenberg were present at the call to order. Representatives Kott and Rokeberg arrived as the meeting was in progress.

#### **SB 129-WRONGFUL FILING OF LIS PENDENS**

CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 129(JUD), "An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

DEBORAH GRUNDMANN, Staff to Senator Charlie Huggins, Alaska State Legislature, presented the CSSB 129(JUD) on behalf of Senator Huggins, sponsor. She explained that the bill is an act related to the wrongful recording of a notice of pendency of an

action relating to title to or right to possession of real property. She continued:

Senate Bill 129 discourages abusive filings of illegal lis pendens notices and, in fact, makes it a class A misdemeanor to file a wrongful notice of a lis pendens. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

MS. GRUNDMANN continued:

Senate Bill 129 responds to instances to nuisance filings used as a form of retribution against public officials. Current laws clear that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation. But the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily the improper filing is against property that is not subject to dispute, however, the filing is made simply because the filer has a grievance against the owner or someone connected with the owner. There's an example: in 2003, a former state employee filed a lis pendens targeting the home, development property, mining claims of members of Alaska Board of Game, an assistant attorney general, and a real estate developer. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars in attorney time to resolve.

REPRESENTATIVE LYNN asked how many lis pendens abuses there have been.

[3:31:32 PM](#)

RUTH HAMILTON HEESE, Assistant Attorney General, Environmental Section, Civil Division, Department of Law, stated that there have been two instances that have been high profile. She commented, "Whether they have occurred elsewhere, we're not really knowledgeable at this moment because oftentimes you don't know that a lis pendens has been filed on your real property until you go to do something with the real property."

CHAIR ANDERSON noted that he has filed many lis pendens when he worked for a law firm, and many of them were either in commercial transaction or divorce proceedings. He asked that Ms. Hamilton Heese to explain lis pendens for the committee.

MS. HAMILTON HEESE explained that lis pendens is a pending lawsuit, or in other words, "a notice filed on public records with the purpose of warning all persons who are interested in the property that the title to certain property is in litigation and that they are in danger of being bound by an adverse judgment." She reiterated that this bill makes it a class A misdemeanor to file a wrongful notice of a lis pendens; therefore an individual would be subject up to a \$10,000 fine, or up to a year in prison. An organization that frivolously files a lis pendens would be subject to a \$200,000 fine.

[3:34:00 PM](#)

REPRESENTATIVE GUTTENBERG asked if [a person could file a lis pendens against any other person, regardless of whether the second person works for the state or other government].

MS. HAMILTON HEESE replied that the bill does have a broader application and could be for people outside of the realm of the public decision process. She continued: "If something like this happens, that the land isn't at issue, that person could take advantage of this law. But this ... amendment to the existing law is being spurred by the very situation that we are here discussing with you."

[3:34:55 PM](#)

REPRESENTATIVE GUTTENBERG asked for further clarification if the motivation behind the bill was the previously mentioned action against the Board of Game.

MS. HAMILTON HEESE replied affirmatively, and added that the "experience behind the 1998 law being passed" was also a motivating factor.

REPRESENTATIVE GUTTENBERG asked what kind of penalty would there be for "people that have already done this" before the bill passes.

MS. HAMILTON HEESE responded that she did not know.

[3:36:07 PM](#)

REPRESENTATIVE ROKEBERG asked why the current legislation doesn't apply to the case used in the example.

MS. HAMILTON HEESE explained that the 1998 law dealt with names against property, and she said, "This is a different animal, a different type of document."

REPRESENTATIVE ROKEBERG commented, "So it's the way the statute was drafted."

MS. HAMILTON HEESE agreed.

[3:37:06 PM](#)

MIKE FLEAGLE, Chairman, Board of Game, Alaska Department of Fish & Game (ADF&G), stated that he was a member of the Board of Game when the previously mentioned lawsuit was filed against the board. He clarified that the lawsuit was not only directed against ADF&G and the board, but also against specific board members. He said that some of his colleagues on the board had some pretty major problems trying to straighten it out. He pointed out that Board of Game members serve in a voluntary capacity, although they do receive a daily honorarium. He expressed concern that members could be personally filed against for actions that they take as officials of the state; this makes it difficult to find members willing to serve. He offered his belief that this bill would alleviate some of those concerns.

[3:41:04 PM](#)

REPRESENTATIVE GUTTENBERG asked for the definition of the term "reckless disregard."

MS. HAMILTON HEESE replied that it is a standard term and refers to "knowingly doing something that probably is not quite right."

CHAIR ANDERSON closed public testimony.

[3:42:09 PM](#)

REPRESENTATIVE LYNN moved to report CSSB 129(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 129(JUD) was reported from the House Labor and Commerce Standing Committee.

SB 52-OCCUPATIONS/CORPORATIONS/BANKS/SECURITIES

CHAIR ANDERSON announced that the next order of business would be CS FOR SENATE BILL NO. 52(L&C), "An Act relating to certain functions of the division of banking, securities, and corporations and the division of occupational licensing in the Department of Commerce, Community, and Economic Development; relating to program receipts and record search fees of the Department of Commerce, Community, and Economic Development related to banking, securities, and corporations; and providing for an effective date."

RICK URION, Director, Division of Occupational Licensing, Department of Commerce, Community, & Economic Development (DCCED), stated that with Administrative Order 219, the Division of Banking, Securities, and Corporations functions will be moved to the Division of Occupational Licensing. He indicated that this was a great move since the two division have many common issues. He started off stating that the bill before the committee is a housekeeping bill and makes no substantive changes to the law. He explained that CSSB 52(L&C) replaces all references to specific divisions with the word "department". Mr. Urion expressed the hope that with the passage of CSSB 52(L&C), the Division of Occupational Licensing will change its name to more accurately reflect the inclusion of the Division of Banking, Securities, and Corporations.

REPRESENTATIVE ROKEBERG asked if there will be any investigatory efforts that will require the division to police its new responsibility.

MR. URION answered that there would be no more policing than the division already does. He explained that the creation of one common databank will enable the division to do in-house investigations.

REPRESENTATIVE GUTTENBERG asked if the department has authorities that the division didn't have with regard to enforcement and prosecution.

MR. URION asserted that the division would assume absolutely no more authority than it has now. He reiterated that the references to specific divisions in statute are being eliminated and replaced with references to the "department".

REPRESENTATIVE ROKEBERG stated that one of the issues that he knew about from the Division of Banking, Securities, and Corporations were problems concerning oversight of Native

corporations with their elections of boards of directors. He then asked if this responsibility now falls under the auspices of the [Division of Occupational Licensing].

[3:47:06 PM](#)

MR. URION answered yes. In further response to Representative Rokeberg, he specified that there are nine positions with three vacancies.

[3:47:44 PM](#)

REPRESENTATIVE ROKEBERG asked if the division received personnel after the passage of the executive order.

MR. URION answered that there are nine positions, with three vacancies. He expressed the need for more staff.

REPRESENTATIVE ROKEBERG said that this was all being done by executive order and that basically this was a name change. He asked if, by doing this, [the legislature] is ratifying the governor's executive order.

MR. URION stated that this is a "one stop business shop". He highlighted the new departmental website, where one can take care of many business-related tasks.

REPRESENTATIVE ROKEBERG reported that this was an administrative order and not an executive order, and therefore the legislature had no opportunity to accept or reject the change.

[3:49:24 PM](#)

CHAIR ANDERSON closed public testimony.

REPRESENTATIVE ROKEBERG moved to report CSSB 52(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 52(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 157-ELEC/PHONE COOP & OTHER ENTITIES

[3:50:22 PM](#)

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 157, "An Act relating to the powers of electric or telephone cooperatives."

JON BITTNER, Staff to Representative Anderson, Alaska State Legislature, presented HB 157 on behalf of Representative Anderson, sponsor. He explained:

[This bill] makes two basic changes to the Alaska Electric and Telephone Cooperative Act, which is AS 10.25. Basically AS 10.25 grants the electric and telephone cooperatives broad powers to conduct various activities. Those powers include the ability to become a member of other cooperatives or corporations or own stock in them and to do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

[House Bill] 157 proposes to clarify AS 10.25.020 to make clear that a cooperative utility may own an interest in another entity that does not provide electric utility services. This particular change was made because of recent court decisions in Georgia, Mississippi, and Texas, which have called into question a cooperative's ability to own subsidiary corporations which don't directly deal with their particular utility. There have been other court cases in other states that have gone the other way. What we're trying to do is help interpret Alaska's laws in the off chance that there is a lawsuit in the future that deals with this particular issue, to stay within the intent of the statutory language.

MR. BITTNER continued:

The second change we make in HB 157 is the addition of limited liability companies to the list of entities a cooperative may become a member of. Limited liability companies, or LLCs, are a relatively new type of member owned legal entity which became popular after these statutes were written. We're basically just bringing the statutes up to speed....

CHAIR ANDERSON moved to adopt the committee substitute for SSHB 157, labeled 24-LS0562\X, as the working document. There being no objection, Version X was before the committee.

[3:53:05 PM](#)

MR. BITTNER continued:

This is a CS we came up with working with the co-chairman of the [House Community and Regional Affairs Standing Committee (HCRA)], which was the previous committee this bill was in, as well as the Department of Revenue and the various parties for and against what we have here. Basically we took out [paragraph (9)] of the [HCRA] version, which stated that ... the cooperative could only use fuel oil that was not needed for electric generation. By putting that particular language specifically under that section it was felt that it ... granted too much authority to the cooperatives outside of what we were trying to do.

CHAIR ANDERSON noted that Representative Kurt Olson, Alaska State Legislature, had recommended this change.

MR. BITTNER explained that paragraph (9) was removed because the cooperatives don't want the direct authority to sell heating oil as a cooperative; they want to authority to own all or part of a subsidiary corporation or entity that will sell this heating oil or bulk fuel storage, not necessarily to do it as a cooperative, which, he noted, raises certain other issues.

[3:54:26 PM](#)

ERIC YOULD, Executive Director, Alaska Power Association (APA), noted that APA members generate roughly 90 percent of the electricity in the State of Alaska. He stated:

My board of directors passed a resolution basically saying Alaska's electric cooperatives ... are increasingly receiving requests from members asked the cooperative to become the full service energy supplier in the community, supplying not only electricity but also home heating oil and other forms of energy. ... This particular bill, 157, the version which you have before you today, which we also endorse, confirms [cooperatives'] authority to own some or all of other for-profits, nonprofits, or LLCs, and play by the same rules of these entities in the conduct of their business. If we do otherwise, we would lose our tax exempt status. In other words, if we own or have shares in any of these companies we would pay all due taxes and play by the same rules as everybody else.

... Nonprofit organizations already the authority to own for-profit, nonprofit, and LLCs. We're really trying to get the same authority that even nonprofits presently have. And basically that means that we're going to play by the rules. ...

Examples of the kind of business that the [cooperatives] would envision getting into would be exporting their expertise in development of wind power, Internet access in communities where there is no access, providing management for other utilities that perhaps don't have the capabilities of some of the larger utilities, and we're doing this in some occasions already, and even at the request of the Denali Commission and others. And more recently we have been asked by certain communities, at least two, to get into the fuel distribution business. And once again these are situations ... where the local distributors are looking to get out of the business and the communities are thinking that because the [cooperatives] have a certain infrastructure in place [and] expertise, that they could perhaps bring down the cost of fuel in rural Alaska.

MR. YOULD remarked that it is not APA's objective to be competing with the fuel industry, but when there's a need, the cooperatives would like to have the option to step in. He continued, "Basically we're trying to clarify that we can develop subsidiaries to protect ourselves from the liability that any other corporation would be wanting to protect themselves from." He commented that the fuel industry has come before the House Labor and Commerce Standing Committee to suggest that because of tax breaks and grants, the cooperatives would represent undo competition, and to point out that the cooperatives get power cost equalization (PCE). He remarked that the PCE program has been beneficial to the consumers in rural Alaska, but it doesn't help the utility. He noted that PCE also goes to investor-owned utilities. He continued:

It's suggested that the electric [cooperatives] will get grants that are not available to the private sector. As a matter of fact, grants, according to the Denali Commission, shall be available to any entity, whether it's a profit, nonprofit, cooperative, investor-owned, whatever; they all have access to it.

MR. YOULD pointed out several instances in which investor-owned utilities have received grants, and he noted that the private sector receives certain tax breaks from the federal government.

[4:02:10 PM](#)

REPRESENTATIVE ROKEBERG asked how Mr. Yould would propose to implement this law in an area where there currently are private sector fuel distributors.

[4:03:44 PM](#)

MR. YOULD replied:

There's a lot of elements to this. Number one: ... by law we cannot cross-subsidize; otherwise we will lose our tax-exempt status. ... Number two: there's probably, in most rural villages, not enough room for the capital infrastructure that would support two competing distributors. ... Number three: the Denali Commission itself, if they are the major source of grants, if you will, that would somehow give us an unequal advantage, ... has a policy that says, "You will not be issued a grant or a low-interest loan, or anything else if it will be used to develop a business that will be in competition with somebody that's already in business." So unless we go out and get market rate loans to start up such a subsidiary, which would be a taxable entity in the first place, I don't see how we'd have an advantage.

[4:04:52 PM](#)

MR. YOULD continued:

Number four: [cooperatives] are owned by those people in the local community. They may come and ask the [cooperative] to try and get into the business to compete with somebody else, but once again, the board of directors is going to look at it and if they can't see a way to raise the capital and be competitive, that's not going to happen. ... I think it's very unlikely that you would actually find the [cooperatives] in direct competition with certainly the individuals that are presently in the business. That's not to say that if significant gouging was taking place, which is not the case, I don't believe,

that the community wouldn't approach the [cooperative] with the idea of trying to force down the rates by virtue of getting in the business, but that's a pretty heavy handed way to drive down rates; it would cost an awful lot of money.

4:06:27 PM

REPRESENTATIVE GUTTENBERG, referring to Mr. Yould's previous comment that a community might not be able to support two different infrastructures, commented that it seems as though [the cooperative] would already have infrastructure in place if it had a utility with fuel storage and a metering system in a community.

MR. YOULD replied that infrastructure would also include fuel trucks and pump trucks, which the cooperatives don't already have. He noted that the utilities' storage tanks are all for diesel fuel, while the communities need gasoline and heating fuel, which the utilities do not have the infrastructure for. He stated that the utilities do however have the management expertise that could be made available on a contract basis.

4:08:09 PM

ROBERT BAUMGARTNER, President, Bristol Alliance Fuels (BAL), explained that BAL is an independent tank farm operator and fuel supplier in Dillingham. He commented:

There has been a tremendous infrastructure that has been invested in and assembled by many private entities throughout the State of Alaska for the purpose of providing fuel products to the residents of Alaska. In my opinion, HB 157 provides an unfair advantage to electric utilities, including publicly funded or subsidized electric cooperatives, to provide this service in competition with private industry. There are currently 117 ... Motor Fuel Qualified Dealers licensed by the State of Alaska ... that will be affected by this legislation if passed the way it is.

Bristol Alliance operates a single site located in Dillingham. ... Our particular operation requires invested and working capital of \$10 million, and that's one of two in that community. Some of these 117 Motor Fuel Qualified Dealers have multiple sites.

You're talking about hundreds of millions if not billions of dollars of infrastructure involved in providing fuel services to Alaska.

I also believe that this bill will result in an even greater imbalance in the price of energy products because the barriers to exit are pretty high in this industry; you can't take your tanks easily and move them downstream somewhere else. So those people that will be left to support private industry with the reduced marketplace will have to pay a higher price, and they're the ones who can least afford it.

MR. BAUMGARTNER continued:

The Institute of Social and Economic Research (ISER) previously investigated a similar idea in the early [1990s] for the onetime Western Alaska Fuel Cooperative located in Dillingham, Alaska. The ultimate end of years of effort and support by the Alaska Power Association as well as the explicit assistance of the City of Dillingham and the investigation by the local electric utility, Nushagak Electric Cooperative, found the effort was not practical because fundamentally there were two other suppliers there. And a fuel cooperative would not be economically feasible if required to stand on its own merits in a divided and small marketplace. ...

I was fairly intimate with the details of that study by ISER, and actually there were quite a few assets that Nushagak Electric would have been able to bring to the table to assist in starting a competitive fuel operation. There are communities [that are] very small, with no fuel delivery system in place where a waiver of current restrictions placed on electric utilities or perhaps clarification might apply, but this blanket approach encourages subsidies and movement away from the entrepreneurial effort is not the way.

REPRESENTATIVE ROKEBERG asked for more information regarding the ISER study.

MR. BAUMGARTNER replied that he couldn't remember the exact year of the study, but knew it was in the early 1990s. He stated that he did not have a copy of that study with him, but he could

get one. He recalled that the Alaska Power Authority funded the study with a \$25,000 grant.

JODI MITCHELL, Chief Financial Officer, Inside Passage Electric Cooperative (IPEC). She commented that IPECs goal is to lower the price of fuel for its customers in the villages, but it is not its desire to put anyone out of business or to compete unfairly. She said, "We just want to do it where it makes sense and where we can enhance the lives of our customers."

[4:14:21 PM](#)

REPRESENTATIVE GUTTENBERG asked Ms. Mitchell is she saw any way to address the concerns voiced by Mr. Baumgartner.

MS. MITCHELL replied that the villages IPEC serves are pretty small, with populations under 900. She said she couldn't see that there is room for two distributors. She commented that the only way she could see IPEC becoming a fuel distributor would be if it were to take over a current business when the owner chose to leave the business.

[4:15:41 PM](#)

BRYAN BOGEN, President, Delta Western, explained that this company is a fuel distributor in Western Alaska and Southeast Alaska. He stated that he has a significant degree of concern regarding the current draft of the HB 157. He said, "The margins in our business have stayed flat while the prices of fuel to the consumers have doubled or tripled." He noted that as the bill is currently drafted, it would allow electric utilities that are receiving subsidized funds to compete with [the fuel distributors], and would significantly change the way he would make decisions about investing in the long term viability of some of the Delta Western sites.

[4:17:17 PM](#)

MR. BOGEN commented that if there is no cross subsidization from the electric utilities where they're getting subsidies, "I'm not sure where they come up with the capital to turn around and invest in these fuel distributors." He stated that it is his goal to make sure that there is a level playing field and that [fuel distributors] are not put at a competitive disadvantage.

[4:18:44 PM](#)

REPRESENTATIVE LYNN asked if there are any changes that could be made to the bill to help protect the [fuel distributors].

MR. BOGEN responded that there are certain communities throughout the state that are not served by a fuel distributor that could be. He said that he wouldn't object to those being served by an electric utility. "That might make sense in certain limited cases," he said, "The problem with this bill as it's drafted is that it's one size fits all. ... Every one of our sites is very different."

[4:20:14 PM](#)

CHAIR ANDERSON asked for Mr. Bogen's response to Ms. Mitchell's statement that the cooperatives didn't plan to make any major changes.

MR. BOGEN replied:

If there was some sort of authority set up, and if an electric utility wanted to go into a market that wasn't being served by private competition, and hadn't been served or the price of fuel was high in a community, and the electric utility went and made a case that this market isn't being served, ... that's great; as long as there is that opportunity to provide that feedback so that we can all debate the merits of each one of these individual markets, we'd be amenable to some sort of compromise like that.

[4:21:40 PM](#)

REPRESENTATIVE ROKEBERG asked, "To become a dealer in this state, is there any solvency or capital requirements necessary to do that?"

MR. BOGEN replied that there are bonding requirements, and minimums required in order to be exempt from paying taxes directly to the distributor. He said he could get the committee more information if so requested.

REPRESENTATIVE ROKEBERG asked, "If you're going to establish any kind of infrastructure, do you have to provide the bonding or permits or depending upon the jurisdiction?"

MR. BOGEN replied affirmatively and added, "It would be one of our goals to make sure that the ... electric utilities needed to meet those same sorts of requirements."

RICHARD GEORGE testified that he is from Angoon and has been with the electrical utility [IPEC] for almost 30 years and has never seen fuel the big issue that it is today. He commented:

Our community unemployment rate is about 80 percent. Our school system is on the verge of early shutdown because [there is] not enough money. Their biggest cost is electricity. IPEC would like to alleviate the high cost of electricity by selling heating fuel. ... We are looking at [the committee] to help us deal with the high cost of living. The price of fuel is turning into a struggle to exist. An example of what I'm saying: the price of fuel out there today is [\$2.76 per gallon]. In my position I know the price of what we pay for, and the dealer is buying from the same source that we are, and we pay [\$1.68 per gallon]. If [Mr. Bogen] was speaking of somehow moderating that price of fuel to help us in the community, then ... I wouldn't be here. This bill, if it were to pass, would help us a great deal....

REPRESENTATIVE ROKEBERG commented, "We in the legislature share your concerns about your community and so forth; I hope you got your community qualified for some of the money we just appropriated for the emergency fuel costs."

MR. GEORGE stated, "And our utility fees: if we could moderate that price a little bit it would help...."

[4:27:01 PM](#)

REPRESENTATIVE ROKBERG asked if the village corporation or other municipal entity considered going into the fuel business rather than the local electrical cooperative.

MR. GEORGE responded, "No. Money is just as tight with them...."

REPRESENTATIVE ROKEBERG asked, "Where are you going to get the money as a [cooperative] to go into the fuel business?"

MR. GEORGE answered, "I think it's very minimal. All we're doing is looking at a fuel truck."

4:28:49 PM

MARK HICKEY, Lobbyist, Petro Marine Services, said that Petro Marine Services is an Alaska-owned, Alaska-based fuel marketing and distribution company. He noted:

The general comments you heard from [Mr. Bogen] ... reflect the views that we have at Petro Marine Services as well. We have not taken a position in opposition to the bill; we are troubled by it. We see it as overly broad. We can see circumstances ... where, in a market area that you have no current distributor, a need to authorize a cooperative to be able to go into the business. There should be some very specific rules that would govern that. One that hasn't been mentioned is that it should be revenue neutral to the state as far as payment of fuel taxes. With this new CS you've addressed [paragraph] 9 in the bill from the previous committee. I think that's something the committee would want to look at: is there a revenue impact, particularly as relates to fuel taxes. We need to see a level playing field, and the [cooperatives] do have access to various grants, not just Denali Commission, [but] also U.S. Department of Agriculture, low interest loans.

MR. HICKEY continued:

I have the same question that was raised earlier about, if on the one hand, in making this investment, the assets of the [cooperative] are not to be brought to bear, where then is capital going to come from? It has struck us, particularly in the small communities, ... there needs to be a tank farm; if the tank farm is the [cooperative's] tank farm, well, that's use of the asset. ... Working something out that's very specific that deals with certain circumstances where it makes sense to allow this is something that Petro Marine could support. We would suggest looking at the Regulatory Commission of Alaska [RCA], possibly, as a party to be involved in making determinations to allow such an action; they're generally involved with the [cooperatives] now in rate setting.

4:31:34 PM

REPRESENTATIVE GUTTENBERG asked if there was anyone from the Department of Revenue online to answer questions.

CHAIR ANDERSON replied that there was not.

[4:32:02 PM](#)

DEAN THOMPSON, Attorney, Alaska Power Association (APA), remarked, "Mr. Yould made a lot of the points that I was going to make." He stated:

First of all, from a legal standpoint and a factual standpoint, cooperatives in Alaska are private member-owned corporations; they happen to be tax exempt, but this private sector versus public sector is inapplicable when we're talking about cooperatives. Cooperatives ... are not government entities, they are not public bodies. ...

As far as the concerns about competition in the fuel industry: from APAs perspective, that is ... a tertiary issue. Really what we are talking about here is broader and more important than just fuel. We're talking about a cooperative's ability to own an interest in some other entity. And cooperatives have been doing that for years, just as nonprofit corporations have been, and for-profit corporations, and other cooperatives. It is this power that allows cooperatives to wholly own nonprofit educational foundations, and for cooperatives to perform consulting services for other entities in the community. But it's always directly democratically from the members, what's in the members' best interest, and from the cooperative standpoint, doing it in a way that continues to preserve their tax-exempt status. And that tax-exempt status is in order to keep ... electricity prices, initially, low for their members. So I guess it's important to recognize a cooperative for what it is. ...

As far as the fuel dealers concerns: there's a very large practical limitation on some of these worst-case scenarios that are being discussed. And that is that nonprofit electric cooperatives are subject to what's called the 85:15 test. I'll just very briefly summarize it: under federal tax law a cooperative loses its tax exempt status if it receives more than

15 percent of its revenue from either nonmembers or from providing services that aren't utility services. So when you're talking about these small rural electric utilities, you have a very firm limit on the scope of any sort of competitive harm, even if that were to occur.

4:35:24 PM

MR. THOMPSON continued:

Finally, I just wanted to put into perspective what I think is a legal issue, and it has been discussed that HB 157, if passed, would somehow bring about a change that would allow cooperatives to compete with other entities for the very first time. ... What the Alaska Power Association is talking about is simply the ability for a cooperative to own an interest in another legal entity. The cooperative would not be competing with anyone. If there was competition it would be between the corporation or LLC or whatever that happens to have some competition with another entity. And the subsidiary itself, most likely would be a for-profit, or at least a taxable entity, and it would be subject to the same rules, requirements, and challenges as competitors.

Again, I would agree with what I heard from the proponents earlier, that this is not about competition; it's more about just bringing certainty to the existing power of a cooperative to own a subsidiary or own an interest in that. And I would remind the committee that nonprofit corporations in Alaska have that power, [and] other cooperatives, other than electric and telephone cooperatives, have the power to be members in other entities and own stock in them. And right now, today, through AS 10.25.010(a)(9), electric cooperatives have the ... power to become a member or own stock in another cooperative or a corporation. So, HB 157, under the [Version X], if I understand it correctly, is not really a change to the law, it just adds the clarification, mainly with the LLC issue and by adding the term "any lawful purpose."

4:37:40 PM

REPRESENTATIVE ROKEBERG asked Mr. Thompson, "How is it that a member cooperative is going to finance the establishment or acquisition of a portion of a fuel distribution business out of their own equity or net worth?"

MR. THOMPSON replied that a cooperative could do it through partnership or be one of many members of an entity. Regarding the finances, he said that either the entity would borrow money on the market, or the cooperative would use its retained earnings if so approved by its governing board. He noted that it would be the same way that a nonprofit might become a member of another entity.

REPRESENTATIVE ROKEBERG asked, "So your testimony is they could do this under current law now, is that correct?"

MR. THOMPSON offered his belief that this was correct. "Unfortunately," he said, "there have been these conflicting court decisions in other states that increases the uncertainty about that. I believe that if the issue were litigated in Alaska a cooperative would win that litigation. But it would be after tens of thousands of dollars, if not more, in litigation fees and delay and uncertainty." He continued, "From APAs perspective, that is what this very minor change, adding LLC and adding 'any lawful purpose' accomplishes. It gives increased certainty in light of these conflicting cases that have recently arisen."

[4:40:07 PM](#)

REPRESENTATIVE ROKEBERG remarked:

So your opinion would be that the enumerated exceptions are allowable activities of an electrical cooperative under the statute that we're amending here, [AS 10.25.020], is not limiting the activities of a [cooperative].... Is there case law here about that or decisions of the RCA, where the RCA would assert their authority, prohibiting activities that are not statutorily allowed.

MR. THOMPSON replied:

I believe [the RCA's] involvement would only ... if the activities of that subsidiary fell within the RCA's jurisdiction. ... As far as the provisions of AS 10.25.020: there are some utility-type services that are listed there that are specifically authorized.

However, what I was referring to before was in AS 10.25.010(9), which provides general powers for electric or telephone cooperatives. And it states as it exists today that electric or telephone cooperative may "become a member of other cooperatives or corporations or own stock in them". And there are no limitations in that statute limiting the generality of that clause.

[4:42:12 PM](#)

BRUCE BARTO, Crowley Marine Services stated:

With few exceptions, most communities in rural Alaska currently are being adequately served by existing private fuel suppliers. Many of these are owned by small business concerns who rely on this local business for all or some of their livelihood. These businesses provide a vital service to the individual consumers and the general public in those communities. [House Bill 157] would jeopardize the significant investments made in Alaska by the private distribution and delivery industry. It would also directly affect the viability of many in this business and could potentially result in lost jobs and reductions in the level and quality of services not being provided. [House Bill 157] would jeopardize the viability of these businesses by allowing regulated utilities to sell fuel to the same customers that these enterprises now rely on, and could have the effect of driving these entities out of business, or severely impacting prices for other consumers not able to purchase fuel from the utilities.

The private enterprise system now in place is providing essential services for fuel sales and delivery in Alaska. I encourage the committee to please avoid a legislative blanket solution that has the potential of causing lasting adverse impacts to these businesses, and undermining the economic viability of those in private enterprise who continue to invest in that trade.

CHAIR ANDERSON commented that if two for-profit companies merged, they could then have a monopoly and raise prices. He also remarked that he had heard companies threaten to pull their business out of Alaska if HB 157 passes.

4:46:25 PM

MR. BARTO pointed out that Crowley Marine Services has been working to acquire Yukon Fuel Company, and he reminded the committee that there once was a monopoly in Alaska that was controlled by the major oil companies who, for the most part, have withdrawn from most of rural Alaska in recent years. He said:

I think part of the reason that those monopolies or certainly large entities that had pricing control withdrew from that market is [because] they didn't feel they were getting a satisfactory rate of return on their investment. And I think it's a unique situation in Alaska, particularly in a lot of the Western Alaska market that we serve because of its isolation and seasonality, you tend to get a lot of prices swings out there.... Over time they balance out with what's happening in the real market, but at a given point in time, let's say in September of any given year, may appear to be significantly out of sync with what's happening elsewhere in the market. And I think those anomalies will always exist, but they tend to unfortunately draw a lot of attention, particularly when prices are going up. They generally don't draw a lot of attention when prices are going down. ...

[Crowley Marine Services] has been for many years in a ... monopoly situation in Kotzebue where we are the only ... commercial local tank farm operator. We have a relationship with the local village corporation in that community who competes with us for local home heating fuel sales. ... In that instance, Crowley has the ability to gouge the market, if you will. I can clearly tell you, from my perspective, at least, ... that our margins at Kotzebue are acceptable margins but they in fact are lower than other communities where we do compete with other established tank farm operators. So at the end of the day, it's all market driven, and I think it tends to balance itself out. I don't think you'll find a situation with the number of players that are in the market today in Alaska where you'll have a monopoly situation for very long because those markets tend to equalize themselves over time.

4:50:03 PM

BRAD REEVE, General Manager, Kotzebue Electric Association (KEA), stated:

We are very much in favor of HB 157. [Kotzebue Electric Association (KEA)] has developed the only wind farm in the state and we as a utility are looking for new business models to accommodate services needed in rural Alaska, which could be the development of a wind consulting business or wind turbine construction company. And we have been asked to joint venture with two different turbine manufacturers for service and marketing. [House Bill 157] ... clarifies some of this and allows us to move into those areas. ... One of the greatest concerns we have in rural Alaska today is the price of energy.

Something that we did in 1978 was change the business model of purchasing fuel when we constructed our first storage tank. This change in infrastructure and delivery has saved our community millions and millions of dollars. In 1983 we combined with other utilities and formed a joint fuel buying group, including Nome Joint Utilities, Nushagak, Naknek, Iliamna, Nuhalin, [indisc.], and later we were joined by Unalakleet. This group has been recognized as probably the most successful model for competitive fuel purchasing. And I think it's actually help the people delivering fuel because it does solve one of the issues that remains a problem in rural Alaska, and that is the ability to finance fuel deliveries and to be able to take deliveries.

The Northwest Arctic Borough and the North Slope Borough have continued over a number of years to hold joint economic summits. This past February was the most recent and during each of those the cost of fuel and the cost of energy remains one of the highest priorities as an issue. And one of the major themes has been to look at finding ways to lower the price of energy and without that sort of lower cost energy, economic development is stifled. And one of the things that could be a potential as we look for new models is to come up with a company that could provide some financing to entities. It's not uncommon to see fuel delivered to the same village at three different price levels all for the same fuel.

MR. REEVE continued:

Last year ... we celebrated our fiftieth anniversary; the utility was created out of the need and desire of the community to have its own electric company. Cooperatives are an integral part of Alaskan business; they were created by the citizenry to meet a need and exist to help lower cost. What we are really looking at for today are new models and methods of serving our communities and keeping our cost structures down.

[4:53:43 PM](#)

CHAIR ANDERSON asked Mr. Reeve for his response to the fuel companies' arguments that the cooperatives have an unfair advantage because they have access to grants and loans.

MR. REEVE replied that there was the argument in 1980 when the fuel-buying group was formed that this would lead to higher fuel prices, which hasn't happened. He stated:

If we want to encourage some competition then we need to look at new business models to see what will work. ... I think there are potentially solutions to make things work, and I think we're in a good situation of being the local company that's really interested in economic development to help make some of these things take place.

DONNA VUKICH, General Manager, Naknek Electric Association (NEA), testified in support of HB 157. She stated:

Naknek Electric Association serves the communities of Naknek, South Naknek, and King Salmon, and additionally NEA has a management agreement with Iliamna, Newhalen, and Nondalton Electric Cooperative, and through the Denali Commission, in a technical agreement with Manokotak Power Company. [Naknek Electric Association] also provides radio communication to the Bristol Bay Borough. And our members have come to us and asked us to look into subsidiary businesses where we might be able to provide services to the community. This is including all types of businesses like we currently do, along with possible fuel distribution. While it's not our intent to be in competition with fuel distributors, if

we were to operate a fuel business we would assume that we would be on the same playing field, and that it would be operated as a for profit subsidiary. [Naknek Electric Association] spent the last three years actively engaged in economic development in Bristol Bay Borough, and the high energy costs are a definite deterrent to economic development. Our position on HB 157 is also supported by the Bristol Bay Borough and the Lake and Peninsula Borough.

REPRESENTATIVE LYNN asked what other services NEA provides.

MS. VUKICH replied that NEA has a management and administrative agreement with ... INN Electric Cooperative in Iliamna in which NEA provides all of the management for them as well as all the billing and supervision of the operations staff that is located in Iliamna. She added that NEA also has a technical agreement with Manokotak Power Company in which NEA provides training for power plant operation as well as providing collection services. [Naknek Electric Association] also provides radio communications to Bristol Bay Borough.

[4:58:26 PM](#)

REPRESENTATIVE ROKEBERG asked RCA to write an opinion letter regarding the issue of AS 10.25.010(9) which provides for ownership of stock and corporations. He noted that Mr. Thompson had testified that Mr. Thompson believed that current statute will allow this activity to take place anyway. He said, "I would like to hear the RCA's opinion of that, particularly in light of [AS 10.25.010(4)], which limits the abilities and powers of a cooperative." He also asked if the RCA looks into "the issue of solvency and cross ownership or any of these other issues that come up before then."

BUELL RUSSELL, Utility Financial Analyst, Regulatory Commission of Alaska (RCA) replied that the RCA will research that and get a letter to the committee.

CHAIR ANDERSON asked that the RCA get that letter to the committee by Wednesday.

[5:00:39 PM](#)

MARK SMITH, President, Yukon Fuel Company, testified:

I do not believe there is a level playing field out there; I represent villages that are generally in Western Alaska. ... We provide the fuel that for the most part goes to local resellers whose business it is to resell to the local community. Yes, there are some businesses that do benefit from a variety of subsidies, but I would say, just off-hand, I think the absolute lions share has gone to the local electric utilities. And this is something that no one objects to; it's a fantastic thing to have that infrastructure renewed. It isn't fair though to, the day after the Denali Commission turns over that tank farm to the local community, for the local electric utility to get into the fuel business.

And I think one of the major concerns that we've heard from a variety of the folks that have testified is the difference in the cost of fuel. And just as a side note, the gentleman from Angoon said that the fuel price at his cooperative was ... \$1.67, and the last time I looked at the Seattle prices, it's well over \$2 a gallon.... So I think there's sometimes confusion between what the utility gets for its cost of fuel and what you actually have to charge to cost a profound level of infrastructure to both wholesale and retail a variety of fuel products in the local markets. ...

In looking at the cost of fuel, I don't think that this bill will help lower the cost of fuel. I think there're many businesses that may be appropriate for a utility to be in, but as long as there's another provider in any of the utility service area, I think that HB 157 does not do a favor to private industry and certainly not the community.

[5:03:29 PM](#)

CHAIR ANDERSON recommended that Mr. Smith draft another letter to the committee to finish his testimony to the committee.

THOMAS BOLEN, Public Services Director, Northwest Arctic Borough (NWAB), testified in support of HB 157. He said that the borough has been working on the fuel issue for the last three years, and is specifically concerned about the cost of fuel. He noted that one solution the borough has thought of is the formation of a bulk fuel cooperative. He explained that in this cooperative, the membership would only be entities that are

involved in bulk fuel; "it would not be the individual home resident consumers." He stated, "We recognize that state statute does not currently prohibit what we want to do but ... if it were to pass, it would clarify that to save us from some legal challenge that may come in the future." He noted, "Clearly we could start a new cooperative, but it seems to be more efficient to use an existing cooperative structure if it exists."

[House Bill 157 was held over.]

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [5:07:12 PM](#).