

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 11, 2010

2:06 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 227

"An Act relating to public accounting; and providing for an effective date."

MOVED SB 227 OUT OF COMMITTEE

SENATE BILL NO. 205

"An Act relating to the power of the Regulatory Commission of Alaska to fix rates after an investigation and hearing."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 227

SHORT TITLE: PUBLIC ACCOUNTING

SPONSOR(S): SENATOR(S) PASKVAN

01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	L&C, FIN
02/11/10	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 205

SHORT TITLE: RCA RATE CHANGE

SPONSOR(S): SENATOR(S) WIELECHOWSKI, FRENCH

01/19/10	(S)	PREFILE RELEASED 1/8/10
01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	L&C, FIN
01/19/10	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/19/10	(S)	L&C, FIN

02/11/10

(S)

L&C AT 2:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JAKE HAMBURG

Staff to Senator Paskvan
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on SB 227 for the sponsor.

JULIE OLSON, President
Alaska Society of CPAs

POSITION STATEMENT: Supported SB 227.

LISA ROGERS

Alaska Society of CPAs

POSITION STATEMENT: Supported SB 227.

MAX MERTZ, CPA

Representing himself
Juneau, AK

POSITION STATEMENT: Supported SB 227.

SENATOR WIELECHOWSKI

Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 205.

TIM MCCLOUD, President and General Manager
Alaska Electric Light and power (AEL&P)
Juneau, AK

POSITION STATEMENT: Opposed SB 205.

JAN WILSON, Commissioner

Regulatory Commission of Alaska (RCA)

POSITION STATEMENT: Answered questions on SB 205 and stated no position.

RICH GAZAWAY, Staff

Regulatory Commission of Alaska (RCA)

POSITION STATEMENT: Answered questions on SB 205 and stated no position.

MATT WALLACE

Alaska Public Interest Research Group (AKPIRG)

POSITION STATEMENT: Supported SB 205.

BOB GRIMM, President and CEO
Alaska Power and Telephone
POSITION STATEMENT: Opposed SB 205.

PAT LUBY, Advocacy Director
AARP-Alaska
POSITION STATEMENT: Supported SB 205.

ACTION NARRATIVE

[2:06:28 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 2:06 p.m. Present at the call to order were Senators Bunde, Meyer, Thomas and Paskvan. Senator Davis was excused.

SB 227-PUBLIC ACCOUNTING

[2:07:12 PM](#)

CHAIR PASKVAN announced SB 227 to be up for consideration.

JAKE HAMBURG, staff to Senator Paskvan, sponsor of SB 227, said that he and Senator Paskvan worked closely with the State Board of Public Accountancy and the Alaska Society of Certified Public Accountants in developing this bill and it enjoys their full support. He said SB 227 updates Alaska's uniform accountancy statutes to keep up with today's business demands and the needs of the accounting profession. Forty-five states have already enacted some version of this bill that simply does three things.

The first is that it establishes mobility provisions to allow licensed certified public accountants (CPAs) from other states to practice certain functions within Alaska without unnecessary filings, forms and fees. Mr. Hamburg explained that this will allow Alaska CPAs to practice in other states without the same hassles due to reciprocity requirements by some of those states.

He said this provision allows consumers or clients to receive timely services from CPAs best suited to the job regardless of their location, without the hindrances of unnecessary filings, forms, and increased costs that do not protect the public interest.

[2:09:49 PM](#)

Second, this bill updates Alaska's uniform accountancy statutes to allow for simple majority ownership by CPAs of CPA firms. The accounting profession has changed over the past several years, as has the composition of today's typical CPA firms, he explained. Non-CPA professionals who enhance accountants' abilities to serve their clients, such as lawyers, computer information specialists or consultants, now work for accounting firms. Additionally, modern audits require input from and participation by many different types of professions and professionals in addition to CPA auditors. To maintain an experienced multi-disciplinary audit force, firms need to be able to offer ownership to different types of professionals. Ownership can also be used to attract and retain talented individuals that would be invaluable to a CPA firm.

MR. HAMBERG stated that competition for talented employees is more intense than ever especially in an accounting firm and with the current law non-CPA professionals cannot become partners. Alaska CPA firms can have a tougher time hiring and retaining these non-CPAs because they often have little incentive to make a long-term commitment to them.

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Third, he said, this bill enhances the board's ability to protect the public's interest by directing it to investigate a complaint made by the accountancy regulatory body of another state. It adds a fair way to take corrective action regarding ownership by making it a basis for board action. It also provides that persons with practice privileges, out-of-state permits, or out-of-state exemptions and legal entities that hire individuals with practice privileges consent to the jurisdiction and disciplinary authority of the board. He said it will also insure that CPA firms in Alaska are able to provide the best services to their clients and remain competitive with their peers from outside of Alaska.

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SENATOR BUNDE said this seems to be a common-sense improvement of business and asked if he had heard of any "push-back."

MR. HAMBURG replied no.

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JULIE OLSON, President, Alaska Society of CPAs, said the Society passed a resolution supporting SB 227.

[2:14:10 PM](#)

CHAIR PASKVAN asked if this does everything the Society wants it to.

MS. OLSON replied yes.

[2:14:37 PM](#)

SENATOR THOMAS asked what percent of the accounting firms in Alaska belong to the Society.

MS. OLSON replied a majority of the accounting firms here, and the State Society has about 500 members.

[2:15:26 PM](#)

SENATOR THOMAS remarked that he didn't want to pass this lengthy bill that seems innocuous and then have his phone "ring off the hook" the next day about the legislature giving opportunities to out-of-state firms.

MS. OLSON said the Society made every effort to make sure all the CPAs in the state are aware of this through their newsletter and they hadn't heard of any opposition to it.

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LISA ROGERS, Alaska Society of CPAs, supported SB 227. She said it aligns Alaska statutes with three provisions set forth in the Uniform Accountancy Act, which is model legislation drafted by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA). She said the NASBA represents the regulators and is an organization to which the boards of accountancy in all licensing jurisdictions in the country belong. The AICPA represents the profession and sets forth the professional standards to which all CPAs must adhere. Although SB 227 is 21 pages long, it accomplishes three things: mobility, uniform disciplinary proceedings and a simple majority CPA ownership of firms. Forty-five other states have already passed this legislation.

MS. ROGERS said they have spent over two years working on drafting the legislation with the help of NASBA and AICPA. Both the State Board of Public Accountancy and the Alaska Society of CPAs have passed unanimous resolutions in support of legislation that accomplishes these objectives and she knows of no opposition to it. She urged passing it quickly, so Alaska can be in sync with the rest of the nation.

[2:18:25 PM](#)

MAX MERTZ, CPA, Juneau, said he has been on the Board of Public Accountancy for six years, and was chair for four years ending in 2009. It was during his term as chair that the mobility and firm ownership idea came to the state and this bill was developed. He said the Board of Accountancy takes its mission of regulating the accounting profession in Alaska and protecting the public interest very seriously. One of the chief challenges it has is to be able to effectively pursue licensees from other states that come to Alaska but don't properly serve their clients.

He explained that out-of-state practice becomes more commonplace in the electronic age. Prior to the mobility initiative in 2007, each state had its own rules for out-of-state licensees to provide services in other states and for states to carry through and enforce actions on Boards of Accountancy in other states. This resulted in inefficient systems that are difficult to navigate making further compliance and enforcement nearly impossible.

With mobility, he said, the Alaska Board of Accountancy will gain automatic jurisdiction over all CPAs practicing in the state. This will enable the board to discipline out-of-state licensees whether they are registered in Alaska and licensed or not. The mobility bill can be likened to a driver's license that will provide CPAs with mobility to practice in other states than their home state while retaining and strengthening the state board's ability to protect the public interest. Certainly, it's only successful if it's passed in all the states and now three of the remaining five have legislation pending and the other two expect to have legislation very shortly. Likewise, Mr. Mertz said he had heard of no opposition to the bill.

[2:21:43 PM](#)

CHAIR PASKVAN asked if this statute gives Alaska jurisdiction to discipline potential violations of the standard in other states.

MR. MERTZ replied yes.

[2:22:29 PM](#)

CHAIR PASKVAN closed public testimony and noted the zero fiscal note.

[2:22:38 PM](#)

SENATOR MEYER moved to report SB 227 from committee with individual recommendations and the attached zero fiscal note. There were no objections and it was so ordered.

[2:23:41 PM](#)

At ease

[2:26:42 PM](#)

CHAIR PASKVAN called the meeting back to order at 2:26 p.m.

SB 205-RCA RATE CHANGE

[2:27:03 PM](#)

CHAIR PASKVAN announced SB 205 to be up for consideration.

[2:27:45 PM](#)

SENATOR WIELECHOWSKI, sponsor of SB 205, said this bill tells the RCA in statute that it may not compensate a for-profit public utility for its negligent conduct, recklessness, or intentional violation of the law. For-profit utilities are operating monopolies; therefore, if allowed to recoup from reckless behavior, a for-profit utility has no incentive to be efficient or to act as a reasonable or prudent company because if a utility makes a mistake, the consumer can't go down the street to another utility because they have a regulated monopoly. This bill encourages efficiency and encourages utilities to act in a reasonable and prudent manner that will ultimately keep costs down and protect the consumers of the State of Alaska. He said SB 205 has a zero fiscal note.

SENATOR THOMAS asked for an example of a case like this.

[2:29:51 PM](#)

SENATOR WIELECHOWSKI answered that he knew of a highly publicized incident, but essentially a company could intentionally be violating the law, and under current RCA law they could pass that cost on to the consumers.

SENATOR THOMAS asked if this bill related to situations in the realm of maybe a company extended some utility lines and did sloppy work or used a product that wasn't for that application and it failed; it would get replaced and then the company would come back to the RCA who would then have the authority to deny any increase in rates to consumers.

SENATOR WIELECHOWSKI answered something like that; SB 205 is not trying to penalize companies for making a mistake if it was legitimate; they could file with the RCA for it and be compensated. But if the company was truly acting negligently,

typically defined as breaching their duty which was the cause of the damages that follow, then they wouldn't be able to recoup those expenses. He couldn't think of many instances in the American free enterprise system where companies can be compensated for their negligence like that.

[2:32:29 PM](#)

SENATOR THOMAS asked what the utilities' recourse would be if they were found to be negligent.

SENATOR WIELECHOWSKI replied if the RCA ultimately determines under this bill that there was negligence or recklessness for-profit utilities would not be able to be compensated from the consumers. That money would have to come from their profits.

SENATOR THOMAS asked if that decision could be taken to court.

SENATOR WIELECHOWSKI answered yes.

SENATOR BUNDE asked who makes the determination of reckless.

SENATOR WIELECHOWSKI answered the RCA, but he understands there is a right to appeal that decision to the court.

SENATOR BUNDE asked if someone makes a huge mistake and it makes the utility go bankrupt, is there something in place to make sure it continues operating.

SENATOR WIELECHOWSKI answered that companies go bankrupt now, but they just look for another better company to continue operation.

SENATOR MEYER asked if recklessness already has some ramifications.

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SENATOR WIELECHOWSKI answered that nothing in law says the RCA can't allow a rate to compensate a utility for negligent reckless conduct - and the RCA determines what is just and reasonable - so it could find that allowing a rate for negligence was just and reasonable. This bill would prevent them from doing so.

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CHAIR PASKVAN said current statute, AS 42.05.431(a), indicates that the Commission can find that a rate demand or a practice

affecting the rate is unjust, unreasonable, unduly discriminatory or preferential. Is SB 205 adding anything here?

SENATOR WIELECHOWSKI answered yes; he thought it was. But the in the specific case from which this issue stems, the RCA allowed Enstar to collect on the backs of Southcentral consumers for months and months even though it was clearly negligent. They even admitted it was negligent conduct. He didn't think the language is as clear as they would like; the facts of what has been allowed already prove that.

CHAIR PASKVAN said he understood that a determination would be coming out in a couple of weeks as to whether that collection can be retained, and maybe it would be proper to defer this issue until they know the outcome.

SENATOR WIELECHOWSKI answered that a decision in that particular case is expected on March 1, but this is really about an overarching principle. He explained that the RCA can come out and say this particular case is unjust or unreasonable, but they can't make law that will protect consumers in future cases. Whatever happens to this bill will have no bearing on that case; it would not be ex post-facto.

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SENATOR MEYER said he supported protecting consumers, but wanted to know how far-reaching this bill would be. He asked if it was going after the for-profit utilities that include ACS, GCI, and AT&T and what it would do to ML&P that is owned by the City of Anchorage.

SENATOR WIELECHOWSKI answered that ML&P is not considered a for-profit utility; it is owned by a political subdivision. As he was thinking this through, he concluded that it would be very difficult to cover co-ops or companies that are owned by political subdivisions because they have nowhere else to go for the compensation. Chugach Electric Association, for instance, is owned by all the ratepayers. The co-ops and companies that are owned by political subdivisions are held in check by the citizens who have a right in those cases to vote out the members of the boards or assemblies. For-profit companies, however, can pay for mistakes out of their profits.

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TIM MCCLOUD, President and General Manager, Alaska Electric Light and power (AEL&P) Juneau, opposed SB 205, because he said it discriminates against the investor-owned utilities. If it

included the other utility structures they would be expressing similar concerns, because they all operate under the same regulatory principles.

MR. MCCLOUD said he is confident that the RCA would not allow a utility, profit or non-profit, to receive compensation under existing regulations unless it could demonstrate that the rationale is just and reasonable. The proposed language would eliminate the RCA's discretion to rule on very complex issues. It could lead to higher utility rates by encouraging unreasonable investments in system redundancy, maintenance operations, and inspections that a company might want to have to protect themselves from being considered negligent for a system failure. For instance, he asked if under this bill a utility could recover the cost of repair as a result of a heavy snow storm or would it be negligent for not burying the lines even though the investment would result in a higher rate to the customers.

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SENATOR BUNDE asked where AEL&P gets its money and if it provides a dividend to its investors.

MR. MCCLOUD answered that it pays a small dividend. Most of their profits go into repairs and upgrades to the existing system - the same as a non-profit utility's would be used.

SENATOR BUNDE said under current law, the public ends up paying, but under this law it would just be another part of the public that would end up paying, because with reduced profits there would be reduced dividends and return on investment.

MR. MCCLOUD said that is correct. It is important for utilities of all types to be healthy, because the financing is critical to maintaining low rates. The cost of borrowing money, which is how they get their money, could end going up very high.

[2:47:00 PM](#)

SENATOR THOMAS asked if they generally self-perform on interties.

MR. MCCLOUD replied that AEL&P is not an intertie, but generally they do their own construction work on transmission lines. Sometimes they subcontract.

SENATOR THOMAS asked if he was concerned that this measure would make him responsible for someone else's work.

MR. MCCLLOUD answered that he hadn't considered that.

CHAIR PASKVAN asked his current understanding of how the RCA deals with reckless conduct.

MR. MCCLLOUD answered that the RCA rules correctly on these issues. A company could not be compensated for intentionally being reckless. He would hate to take away that discretion because these cases are very complicated.

[2:49:54 PM](#)

CHAIR PASKVAN asked what the RCA experience and capacity is to conduct hearings on reasonable practice.

JAN WILSON, Commissioners, Regulatory Commission of Alaska (RCA), answered that the RCA has conducted extensive hearings in many proceedings on those kinds of issues.

[2:50:52 PM](#)

SENATOR BUNDE asked if this bill would be a tool in their endeavors.

MS. WILSON answered that the commission had no position on this bill.

SENATOR BUNDE asked if it would be a help or a hindrance to their work.

MS. WILSON answered that the commission takes its guidance from statutes the legislature passes and executes them in the best way they can. Currently the commission operates under the just and reasonable standard, and the concept of cost-based rates underlies that standard. However, she suggested that the just and reasonable standard may not be a very good standard by which to judge the kind of conduct this bill is trying to prohibit.

She added that a "prudent management" concept also underlies utility rate making principles. Even if a utility spends money that is definitely for the service it is providing, but it does so imprudently, then the commission would normally not allow those actions to be collected in rates.

SENATOR BUNDE asked if the commission needs more clarification on the standard.

MS. WILSON replied that the general rate making principles under which they now operate have always guided them since enactment of AS 42.05, but if the legislature wants to give them more specific guidance, the commission is capable of administering it.

SENATOR BUNDE stated that the commission's job is to protect the consumer and asked if they are able to do that now or do they need this bill.

MS. WILSON replied that the commission would have to have a meeting to take an official position on it. She was speaking for herself at that time. She added that the imprudent standard has a lot of precedent, but if the legislature wants to establish a negligent standard they could administer that, too.

SENATOR BUNDE suggested that the commission meet and take an official position.

MS. WILSON said they could certainly do that.

[2:55:50 PM](#)

SENATOR MEYER asked if someone is intentionally negligent, would that also be imprudent.

MS. WILSON answered probably, but the imprudent standard is one that says "a prudent manager under the same circumstances at the time the decision was made would not have made the decision that lead to these costs" - a little bit different than the negligent standard.

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SENATOR MEYER said the reason for this bill is to protect the consumer from a for-profit utility and the fact that the consumer doesn't have a choice. He was concerned that going after one kind of utility would adversely impact others. The telephone industry, for instance, is very competitive and the consumer has multiple choices.

[2:58:00 PM](#)

RICH GAZAWAY, Staff, Regulatory Commission of Alaska (RCA), said Senator Meyer was correct in that the telecom arena is competitive in several markets. How the carriers are rated depends in large part on how competitive the market is and whether the competitor is the incumbent or the entrant.

[2:59:08 PM](#)

MATT WALLACE, Alaska Public Interest Research Group (AKPIRG), said he supported SB 205 for two reasons. One is that companies will respond to financial incentives and two, standard competitive market forces don't apply to utilities. The incentive in SB 205 provides additional protection for consumers by prohibiting companies from putting their mistakes or reckless behavior on their backs.

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SENATOR BUNDE said in his view, one of the reasons for the high cost of medicine in this country is that providers practice defensive medicine to avert lawsuits. Could something like this cause a lot of similar defensive behavior by a utility company with the unintended consequence that the rates go up for the consumer - maybe doing more harm than good when that happens?

MR. WALLACE answered that this situation is substantially different than with health care - mainly because those situations often have very large awards that are the result of civil suits for malpractice. This bill would simply prevent companies from passing the costs of their negligence or reckless behavior on to consumers.

SENATOR THOMAS asked if he is concerned that adding this language creates a different standard for non-profits versus for-profits and another classifications of utility that might lead to confusion.

MR. WALLACE answered no one can say for sure, and he wasn't as concerned about that type of situation mostly for the reasons outlined by Senator Wielechowski. Other co-op utility structures tend to have other avenues for consumers' voices.

[3:07:06 PM](#)

BOB GRIMM, President and CEO, Alaska Power and Telephone, said he viewed this as a reaction to a single incident that will be remedied by the RCA using existing statutes. This legislation, while well-meaning, targets only one segment of the utility, and the electric industry is a very small minority. It could handicap that segment of the industry and become a potential barrier for an IOU to enter into that segment of the industry.

He was also concerned that regulatory administrative law is a body with precedent that goes back many years and is practiced in every state of the union. SB 205 comes up with a remedy to a situation which he was sure had occurred in the past in the practice of public utility administrative law, and was dealt

with in an effective manner. He believed this is overreacting to a single instance.

3:10:13 PM

Finally, Mr. Grimm said that by regulation, the RCA's powers and duties are to be deliberately construed by the courts; this means when they make a decision they have a higher standing than a normal statute under the law. Also, under state law, the RCA has the ability to levy civil penalties and fines upon public utilities that exhibit repeated behavior that might be at the root of this proposed legislation. Finally, Alaska Power and Telephone is an investor-owned utility; the largest part of their equity is owned by their own employees. So, the actual burden for any hardship, due or undue under this change, would be borne by them.

He directed this question to the sponsor - if any other state has this specific language or provides specific guidance to regulatory agencies dealing with public utility regulation similar to the RCA.

3:11:42 PM

PAT LUBY, Advocacy Director, AARP, supported SB 205. He said if a negligent error is made, the company should be responsible - for instance, like Toyota. Their profits will be lower and their shareholders will lose some of their profits, but Toyota's customers are not responsible for the cost of the error. That is how it should be for Alaska utilities. He said the RCA should be empowered to hold the party who made the negligent error responsible and the customer should be held harmless.

CHAIR PASKVAN thanked him and finding no further testimony, held SB 205. He said he would reopen public testimony later if needed.

3:14:09 PM

There being no further business to come before the committee, he adjourned the meeting at 3:14 p.m.