

ALASKA LEGISLATURE

2595

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

151

one a novice with no equipment, and the other an experienced fisherman who owns and supplies all of the equipment.

In this hypothetical, the novice fisherman is using the same "tool" or "method and means" of taking fish as is supposedly banned by the regulations. The only difference is that the "guide" is not acting for profit. And as noted above, the distinction between commercial activities and non-commercial activities has been held insufficient to uphold restrictive regulations. In other words, the proposed regulations do not really prohibit a certain method or means of fishing. Instead, they restrict a particular class of persons who lack the proper expertise or equipment.

The statute, AS 160.05.251, is probably not unconstitutional on its face, as the statute only refers to a class of fishermen, "guided sport" but does not specifically regulate them. Since there might be some valid, regulatory purpose for this classification, it is probably not invalid per se.

A number of the regulations I have considered, however, appear to be unconstitutional. For example, 05 AAC 052.37 and 05 AAC 061.36 have a blanket prohibition on guided fishing. For the reasons stated above, they are probably unconstitutional.

Similarly, regulations such as 11 AAC 056.36 [j] and [k] [no guides on Sundays in July or after 6:00 PM] are unconstitutional, as they again prohibit a class of users, albeit for limited times. [It would be absurd to say that "Sunday fishing in July" is a "method or means", although it could be argued that "night time fishing" is a different "method or means" from "daytime fishing".]

For these reasons, I believe that the proposed regulations are unconstitutional.

Some thought should be given to who should challenge these regulations. Owsienek appears to hold that a guide would have standing to sue. However, since one strong argument is that a certain class of sport fishermen are being excluded, it would probably be wise to include as a plaintiff at least one of the guide's clients or potential clients.

Respectfully submitted this 19 day of July, 1999

Kenai River Professional Guide Association
P.O. Box 3674
Soldotna, Alaska 99669

STATEMENT

For Professional Services Rendered re: Constitutional of Proposed Guided Sport Fishing Regulations

Conferences, telephone calls,
Research, legal writing,
Review drafts, revisions,
Prepare brief for clients

Charles E. Tulin
Attorney at Law
529 West Third Avenue
Anchorage, Alaska 99501
907 272-9546
fax 907 272-6405

Signed:

Don Johnson,
Soldotna, AK

Kenai River Professional Guide Association

March 18, 2004

Rep. Cheryl Heinze
State Capitol, Room 108
Juneau, AK 99801-182
907-465-4930
800-331-4930
fax: 907-465-3834

The Kenai River Professional Guide Association would like to extend its support for CSHB452. This long overdue legislation represents a huge step toward legitimizing the professional sport fish guide industry in Alaska. Measures within the bill requiring statewide guide licensing, data collection, operator fees and insurance liability requirements are nothing new to us as commercial operators on the Kenai River but applying these as industry standards statewide is something we wholly support.

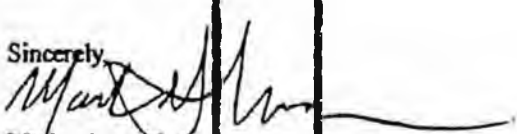
Requiring all sport fish guides and sport fish business owners to be licensed with the state and to keep records regarding various services they provide, will produce more accurate and inclusive information to the Alaska Board of Fisheries and other state agencies, which will greatly assist them in making future management decisions.

Moreover, Kenai River Guides have been abiding by stringent State Park Stipulations since 1985 and we are glad to see the remainder of the state adhere to the same standards of professionalism and safety.

Finally, one aspect of the bill we would like to see altered is a possible amendment or deferment of fees based on the fact that Kenai River Guides are already required to pay substantial registration fees through the Department of Natural Resources, division of State Parks. We were recently informed that our fees could possibly double for the 2005 season and this, combined with registration fees contained in CSHB452, would represent an inequitable financial burden on Kenai River Guides. We would like to respectfully request that any fees required by Department of Natural Resources, division of State Parks, of Kenai River Guides, be adjusted, reduced or credited to account for any additional fees required by CSHB452.

Thank you for your time and consideration regarding this important piece of legislation. If we can be of any assistance in constructing the final draft, please feel free to contact us at anytime.

Sincerely,


Mark Glassmaker
KRPGA Vice President

PO Box 3674
Soldotna, Alaska 99669
www.krpga.org

Subject: Support for CSHB452

Date: Sun, 21 Mar 2004 12:19:38 -0900

From: Mark Glassmaker Fishing <mgfish@gci.net>

To: Representative_Cheryll_Heinze@legis.state.ak.us

Rep. Cheryll Heinze
State Capitol, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-465-3834

Dear Rep. Heinze,

The Kenai River Professional Guide Association would like to extend its support for CSHB452. This long overdue legislation represents a huge step toward legitimizing the professional sport fish guide industry in Alaska. Measures within the bill requiring statewide guide licensing, data collection, operator fees and insurance liability requirements are nothing new to us as commercial operators on the Kenai River but applying these as industry standards statewide is something we wholly support.

Requiring all sport fish guides and sport fish business owners to be licensed with the state and to keep records regarding various services they provide, will produce more accurate and inclusive information to the Alaska Board of Fisheries and other state agencies, which will greatly assist them in making future management decisions.

Moreover, Kenai River Guides have been abiding by stringent State Park Stipulations since 1985 and we are glad to see the remainder of the state adhere to the same standards of professionalism and safety.

Finally, one aspect of the bill we would like to see altered is a possible amendment or deferment of fees based on the fact that Kenai River Guides are already required to pay substantial registration fees through the Department of Natural Resources, division of State Parks. We were recently informed that our fees could possibly double for the 2005 season and this, combined with registration fees contained in CSHB452, would represent an inequitable financial burden on Kenai River Guides. We would like to respectfully request that any fees required by Department of Natural Resources, division of State Parks, of Kenai River Guides, be adjusted, reduced or credited to account for any additional fees required by CSHB452.

Thank you for your time and consideration regarding this important piece of legislation. If we can be of any assistance in constructing the final draft, please feel free to contact us at anytime.

Sincerely,

Mark Glassmaker
KRPGA Vice President



Kenai River Sportfishing Association, inc.
 PO Box 1228 • 224 Kenai Avenue, Suite 102
 Soldotna, Alaska 99669
 907.262.8588 phone 907.262.8582 fax
 www.kenairiversportfishing.org kenairiv@ptialaska.net

Dedicated to preserving the greatest sportfishing river in the world, the Kenai.

March 31, 2004

Kenai River Sportfishing Association
 PO Box 1228
 Soldotna, AK 99669

The Honorable Cheryl Heinze
 Alaska State Legislature
 State Capitol, Room 108
 Juneau, AK 99801-1182

Dear Representative Heinze:

The Kenai River Sportfishing Association promotes responsible sportfishing in the state of Alaska. We strongly support HB 452, which would license and regulate sportfishing service operators and fishing guides in the state of Alaska.

We support this bill for the following reasons:

1. Since 1985, the sportfishing service operators and fishing guides on the Kenai River have had such regulation, which provides minimum requirements for the industry, provides assurance to clients of minimum standards and has not proved to be an undo burden on businesses.
2. The bill will provide statewide regulation for the sportfishing industry, bringing the rest of the state up to standards followed by the Kenai River Special Management Area, the state's most popular sportfishing region.
3. The bill is the right step in having legitimate statewide standards for the sportfishing industry, on par with the big game guide industry, where clients have recourse when minimum standards are not met.

We urge you to pass HB 452 and bring the rest of the state up to the professional standards set by the Kenai River Special Management Area. The bill assures minimum standards for the sportfishing industry, and will be beneficial for both businesses and clients.

Thank you for your consideration on this important bill.

Sincerely,

Ron Rainey, Board Chair
 Kenai River Sportfishing Association

Ricky Gease, Executive Director
 Kenai River Sportfishing Association

Subject: [Fwd: HB 452]

Date: Mon, 23 Feb 2004 13:52:22 -0900

From: Cheryll Heinze <Representative_Cheryll_Heinze@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Jon Bittner <Jon_Bittner@legis.state.ak.us>

fyi

Subject: HB 452

Date: Mon, 23 Feb 2004 14:11:48 -0800

From: catchalot@alaska.com

To: Representative_Cheryll_Heinze@legis.state.ak.us

Email For: Representative Cheryll Heinze
From: catchalot@alaska.com
Name: George \"Mike\" Patterson
Street: 8052 Queen Victoria Drive
City: Anchorage
Zip Code: 99518

Subject: HB 452

Rep Cheryll Heize

I agree with a processing fee for

\"Sport Guides Permits\" I would

like to see HB 452 expanded to include Rafting all sight-seeing

Guides with fee of \$75.00 resident and non-resident fee at

3-times \$225.00. I firmly believe

its time for non residents seasonal workers pay for the wages taken out of

Alaska. Outdoor Industry drains millions of Alaskan dollars to lower 48 every summer.

Thank You,

George m. Patterson

1-800-478-9190

Please Add My Email Address to your distribution list. Thank You.

Kodiak Association of Charter Boat Operators
P.O. Box 3206
Kodiak, Alaska 99615

March 6, 2004

Representative
Dan Ogg

The Kodiak Association of Charterboat Operators (KACO) is a non-profit organization located in Kodiak, Alaska. The purpose of our organization is to promote marine safety and provide charter boat operators a unified voice in the development, growth and regulation of the fishing and marine tour operations in Kodiak. To this end we have reviewed **HB 452**, which is described as, "An Act relating to licensing and regulation of sport fishing services operators and fishing guides; and providing for and effective date." As worded, HB 452 "...is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the State".

In theory KACO is in support of the objectives of HB 452, but the current draft by Representative Cheryll Heinze contains some stipulations that raise concerns in our organization, and we feel these should be addressed. These concerns are listed below:

Currently all charterboat operators are required to submit Saltwater Vessel Logbook sheets on a weekly basis to the Alaska Department of Fish and Game. The vessel logbooks detail the date, number of anglers, hours fished, catch and the ADF&G statistical area where the catch occurred. This information is for all salt-water sport species except halibut. This is a mandated event for all charterboat operators who fish in saltwater. The information is utilized by ADF&G fishery managers for in-season harvest management and post-season evaluation. Under the draft language in HB 452 (AS 16.40.280) the operator will also be required to report the names of clients, and sport fishing license number of each client. We feel this requirement is in excess of that needed for effective management of sport fisheries and will place an undue additional burden on the charterboat operator. We would request that this requirement, Sec.16.40. 280 (a) (1) and (2) be deleted from the draft.

Finally, we feel that the proposed cost of the Sport Fishing Services Operators License (\$100) and Fishing Guide License (\$50) as described in AS 16.05.340 (a) (26) (A) & (B) is excessive. Currently these licenses are issued by the State at no cost to the operator. We feel that a 50% reduction in the proposed fees (\$50) and (\$25) respectively would be appropriate to initiate the program.

In conclusion, the Kodiak Association of Charterboat Operators cannot support HB 452 as drafted unless some of our concerns are addressed. If you have any questions please feel free to contact me (tchatto@ptialaska.net) (907) 486-5301, or our Vice President, Roger Aulabaugh (dutchman@ptialaska.net) (907) 486-2955 here in Kodiak

Sincerely,

Tony Chatto
President



Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

Board of Directors

President
Tim Evers
567-3631
tmevers@alaska.com

Vice President
(Vacant)

Secretary/Treasurer
Perry Flotre
Phone/Fax 262-7631
arcticern@alaska.com

Member-at-Large
Mel Erickson
262-2980
gamefish@alaska.net

Member-at-Large
Marc Smith
567-4368
aomn@gsi.net

Member-at-Large
John Baker
567-3393
info@afishhunt.com

March 29, 2004

Representative Cheryll Heinze
State Capital, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-3834

Dear Representative Heinze,

The Deep Creek Charterboat Association is a trade association of 50 paid member Companies that represent over 70 charter boats that operate in Ninilchik, AK. The DCCA supports CSHB452 as it is now written. This legislation is long over due and will now legitimize the Professional Sport Fish Guiding Industry in Alaska. Our organization is familiar with many of the measures in the bill as we have participated in these measures for the last few years. Applying these industry standards statewide is essential. This bill will provide the Department of Fish & Game, the Board of Fish and many other organizations much needed data to better manage our resources and some extra funding to do so.

Thank you for your time & support of CSHB452. If we can be of assistance in any manner please feel free to contact us.

Sincerely,

Tim Evers
President, Deep Creek Charterboat Association

Cc: Senator Gene Therriault
Representative Pete Kott
Senator Tom Wagoner
Representative Mike Chenault

HB 452 TALKING POINTS
(as of 2-19-04)

This bill is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state.

This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made.

The bill establishes two types of licenses; a sport fishing services operator license and a fishing guide license; and establishes minimum requirements and fees for obtaining each license.

The number of guide businesses has remained nearly constant. The average number of registered guide businesses from 1998 through 2003 is 2,135 and has ranged from 2,065 to 2,242.

The number of fishing guides is increasing. The average number of registered guides from 1998 through 2003 is 4,559 and has ranged from 3,823 to 4,826.

The average percentage of guide businesses owned by Alaska residents from 1998 through 2003 is 90% and has ranged from 89% to 91%.

The percentage of nonresident fishing guides is increasing. The average percentage of guides who are Alaska residents from 1998 through 2003 is 72% and has ranged from 70% to 76%.

This bill establishes mandatory reporting requirements for all sport fishing businesses and sets license fees that cover the cost of the licensing program and reporting requirements.



Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

Board of Directors

President

Tim Evers
567-3631
tnevers@alaska.com

**Vice President
(Vacant)**

Secretary/Treasurer

Perry Flotre
Phone/Fax 262-7631
arctictern@alaska.com

Member-at-Large

Mel Erickson
262-2980
gamefish@alaska.net

Member-at-Large

Marc Smith
567-4368
aomn@gci.net

Member-at-Large

John Baker
567-3393
info@afishhunt.com

March 29, 2004

Representative Cheryll Heinze
State Capital, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-3834

Dear Representative Heinze,

The Deep Creek Charterboat Association is a trade association of 50 paid member Companies that represent over 70 charter boats that operate in Ninilchik, AK. The DCCA supports CSHB452 as it is now written. This legislation is long over due and will now legitimize the Professional Sport Fish Guiding Industry in Alaska. Our organization is familiar with many of the measures in the bill as we have participated in these measures for the last few years. Applying these industry standards statewide is essential. This bill will provide the Department of Fish & Game, the Board of Fish and many other organizations much needed data to better manage our resources and some extra funding to do so.

Thank you for your time & support of CSHB452. If we can be of assistance in any manner please feel free to contact us.

Sincerely,

Tim Evers
President, Deep Creek Charterboat Association

Cc: Senator Gene Therriault
Representative Pete Kott
Senator Tom Wagoner
Representative Mike Chenault

Market Insurance Company. Rates were approved effective 5/1/99, Minimum Premium for Guides and Outfitter's Policy is \$750.

	<u>100K/300K</u>	<u>500K/1,000K</u>	<u>1,000K/2,000K</u>
Hiking Backpacking Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Dogsled Guide, same as Hiking Backing			
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

Great Divide Insurance Company. Rates were approved effective 8/6/97, Minimum Premium for all limits is \$500.

Hiking Backpacking Guide	\$175 Flat	\$225	\$375 Flat
Each Additional Guide	\$100	\$125	\$200
Dog Sled Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

DEPARTMENT OF FISH AND GAME COMMENTS

ON GUIDE LICENSING BILL HB 452

Representative Heinze introduced HB 452 on February 16. This bill would require sport fishing business owners and guides to be licensed with the State. The bill is based on an earlier bill developed by a Board of Fisheries Guide Licensing Task Force in the mid-1990s and introduced by Representative Austerman in 1997.

After discussing HB 452 with department staff, fellow legislators, and hearing comments from various sport fishing charter/guide groups and individuals from around the state the Representative made several changes to the original bill. These changes were incorporated into CS (Committee Substitute) HB 452 which is dated February 27, 2004.

The four major areas affected by the language changes in CSHB 452 are:

1. The reporting provisions that required fishing guides to record the names of their clients on a daily basis, along with their sport fishing license number, the number of fish they harvested, and associated confidentiality provisions have been removed.
2. Sport fishing outfitters and transporters have been removed from the provisions of this bill. The CS language only speaks to licensing sport fishing guide businesses (lodges, charter vessel companies, etc.) and sport fishing guides that provide direct assistance and personal direction to their clients.
3. Businesses and guides that only assist personal use or subsistence fishermen in their fishing activities have been removed from the provisions of this bill. The CS language only speaks to licensing those businesses and guides that provide services of direct assistance and personal direction to sport anglers.
4. The definitions have been modified to only include sport fishing guide businesses and guides. Definitions of outfitters, transporters, and fishing clubs have been removed. A definition of a sport fishing guide was added.

The department has received a number of comments from sport fish guide groups and individuals in Southeast and Southcentral Alaska pertaining to both the original bill language and the CS language. We would like to respond to some of these comments so everyone has the same understanding on various aspects of this licensing bill.

1. Some guides believe that if the guide licensing program is administered by the Division of Sport Fish it will clearly designate the guided sport fishery as a sport fishery, not a commercial fishery.

We agree with this concept. The Board of Fisheries has received numerous proposals and testimony over the years that the guided sport fishery is a commercial fishery and should be regulated as such. Having a sport guide licensing program administered by the Division of Sport Fish will designate that these fisheries are sport fisheries.

2. Some guides believe that if this bill passes the Board of Fisheries will have to make separate allocations for all species to this new user group.

We do not agree with this idea. First of all the Board already has the authority to regulate guided sport fisheries differently than unguided sport fisheries. Secondly, this bill would not change the makeup of the various guided sport fisheries, it would only require them to be licensed and to report on their guiding activities.

3. Some guides believe that if the Division of Sport Fish administers the guide licensing program, they will become "allocative advocates" for this user group at Board of Fisheries meetings.

This is not true. Both fisheries divisions are tasked with providing the board and the public the most accurate and complete information regarding fishing issues. However, both divisions are strictly prohibited from entering into allocation discussions or debates. The Division of Sport Fish will continue to operate in this manner regardless of whether we administer the guide licensing program or not.

4. Some guides believe that the funds generated from the license fees associated with this bill will go into the General Fund or will be viewed as just another source of revenue by the Division of Sport Fish.

This is not true. All funds generated by this bill's license fees will go into the dedicated Fish and Game Fund, just like funds from the sale of sport fishing licenses and king salmon tags. These funds will be used to administer the provisions of the licensing bill including the reporting requirements.

The Division of Sport Fish is currently spending \$80,000 per year to operate the existing business and guide registration and saltwater charter vessel logbook programs, which have no fees associated with them. We estimate that this bill would generate approximately \$356,000 and we would expend \$346,000 to administer the licensing and reporting programs.

5. Some guides are requesting higher license fees for nonresident sport fishing business owners and fishing guides.

Due to a recent court ruling, the department has been advised by the Department of Law that the State must be able to prove that it is more costly to administer the licensing program for nonresident owners or guides than it is for residents before we can increase costs for nonresidents. Based on an analysis of such costs, there does not appear to be significant differences between the two groups to merit a differential fee structure.

The department welcomes any comments you may have on CSHB 452 and its provisions. Please contact:

Rob Bentz
Deputy Director
Division of Sport Fish
at: rob_bentz@fishgame.state.ak.us

**DEPARTMENT RESPONSES TO ISSUES RAISED DURING LABOR AND
COMMERCE COMMITTEE HEARING FOR HB 452 ON MARCH 17**

- 1. During public testimony several individuals stated that the proposed license fees are either too high or not necessary at all.*

The license fees proposed in HB 452 are:

- a sport fishing guide services operator license for the owner of the guiding business for \$100;
- a sport fishing guide license for the person providing direct assistance to the clients for \$50; and
- a combined operator/guide license for a person who is both the owner of the business and the guide who accompanies the clients for \$100.

Right now owners of sport fishing businesses and sport fishing guides do not pay the Department of Fish and Game anything. The current registration requirements for businesses and guides are free. The saltwater charter vessel logbook is free. The proposed license fees will cover the cost of the licensing program and reporting requirements. The department is not proposing this legislation as a revenue generating mechanism.

The proposed reporting requirements will provide the department and the Board of Fisheries with comprehensive information on the impacts of guided sport fishing activities in both saltwater and freshwater. Better information will lead to better regulations that will protect and improve the state's sport fishing resources.

We believe that these fees are a small price to pay for individuals that are making money by aiding in the harvest of public property resources owned by everyone.

- 2. Several people testifying stated that the paperwork that would be necessary according to the reporting requirements in HB 452 would be duplicative and unreasonably burdensome.*

We are assuming that the "duplicative" comments coming from saltwater charter vessel operators indicates they believe they will have to continue filling out the existing charter logbook, along with whatever reporting requirements are required within HB 452. This is not the case.

We envision that the reporting requirements within HB 452 for saltwater charter operations will be very similar to the current logbook forms. However, there will only be ONE reporting document, not two.

Freshwater guide operators, that currently have no reporting requirements other than on the Kenai River, will also have only ONE type of reporting document to complete.

We do not believe that requiring sport fishing guides to record their catch, harvest, and effort information in an accurate, timely, and enforceable manner is burdensome. We view it as an obligation for anyone involved in the harvest of public property resources.

- 3. One individual asked about how the provisions of HB 452 would be enforced?*

We envision that enforcement of the license and reporting requirements would be very similar to the existing enforcement of the sport fishing business and guide registration programs and the charter vessel logbook program. Business owners and guides would have to present their licenses to enforcement agents when contacted on the water and would have to have their reporting form filled out while the fish and clients are still on site.

- 4. Several people testified that they felt a \$500 fine for the first violation for a sport fishing guide not having all of the required documents on their physical person while guiding was too high.*

The wording in HB 452 states: "... is guilty of a violation and upon conviction is punishable by a fine of not more than \$500."

The MAXIMUM fine is \$500. A judge will decide the amount of the fine, on a case by case basis, depending on the circumstances of the case.

- 5. One person testified that they did not believe transporters of personal use fishermen should be included within the provisions of HB 452.*

The original language of HB 452 did include transporters and outfitters as well as guides who provided services to individuals engaged in subsistence, personal use, and sport fisheries.

The language of CSHB 452 (the current version before the Labor and Commerce Committee) has all references to transporters and outfitters removed. It also has no mention of subsistence or personal use fisheries. Only businesses and guides working with sport fishing clients are impacted by the provisions of CSHB 452.

HB

452

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/7/04

FURTHER:

REPORTED OUT

MAY 08 2004

SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: 8 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 452(FIN) am

HB 452 GUIDED SPORT FISHING/ ADFG & CFEC RECORDS

"An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of Natural Resources and the Department of Public Safety; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous S CS CS HB 452 (RES)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
F&G Sport	3/16/04	345.6			#2
DPS	4/1/04			✓	#3
F&G Commr. Fish. Entry	5/6/04	✓		✓	#4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			

MAY 08 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 452(JUD)
(H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to lic. and reg. of sport fishing operators RDU Alaska State Troopers
Component Alaska Bureau of Wildlife Enforcement
Sponsor Rep. Heinze
Requester (H) Judiciary Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 452(JUD) relates to licensing and regulation of sport fishing services operators and fishing guides. Certain provisions of the bill will allow Wildlife Enforcement Troopers to check additional documents during the course of contact with fishing guides, but such activity will occur in the normal course of business.

Section 2 of this proposal would allow the Department of Public Safety access for law enforcement purposes to records maintained by the Alaska Department of Fish & Game to facilitate more timely and complete investigations.

No fiscal impact is anticipated to the Alaska State Troopers as a result of passage of this bill.

Prepared by: Lt. Al Storey Phone 907-269-4532
Division Alaska State Troopers Date/Time 4/1/04 8:42 AM
Approved by: Commissioner William Tandeske Date 4/1/2004
Agency Department of Public Safety

MAY 08 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 452(L&C)
(H) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title: Guided Sport Fishing RDU: Sport Fisheries
Sponsor: Representative Heinze Component: Sport Fisheries
Requester: House Labor and Commerce Component No.: 464

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	246.8	246.8	246.8	246.8	246.8	246.8
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	65.0	65.0	65.0	65.0	65.0	65.0
Supplies	6.5	6.5	6.5	6.5	6.5	6.5
Equipment	17.3	5.0	5.0	5.0	5.0	5.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	345.6	333.3	333.3	333.3	333.3	333.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES (1024)	355.6	359.1	362.7	366.4	370.0	373.7
----------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Fish and Game Fund)	345.6	333.3	333.3	333.3	333.3	333.3
TOTAL	345.6	333.3	333.3	333.3	333.3	333.3

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The operating expenditures reflect the hiring of four new full-time employees and one new part-time employee necessary to collect and process the data generated annually from licenses sold and reporting requirements. Other expenses associated with the issuing of licenses and collection of data include office supplies, computers, and postage. We assume higher costs in the first year of implementation due to the one-time purchase of equipment such as computers.

We have assumed that the revenues generated by passage of this legislation will increase roughly 1% each year as the number of guides and operators increases from year to year.

(Continued on Page 2)

Prepared by: Kelly Hepler, Director Phone 267-2195
Division: Sport Fish Date/Time 3/16/04 2:31 PM
Approved by: Commissioner Kevin Duffy Date 3/16/2004
Agency: Alaska Department of Fish & Game

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 452(L&C)

ANALYSIS CONTINUATION

Revenues generated by the sale of licenses will be deposited into the Fish and Game Fund and will be used to issue licenses and collect information per the reporting requirements stipulated by the proposed law.

REPORTED OUT
MAY 08 2004
SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SCS CSHB 452(RES)
(S) Publish Date: 5/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Guided Sport Fishing/Vessel Licensing/ RDU Comm. Fish Entry Commission
ADFG & CFEC Records Component Commercial Fisheries Entry
Sponsor Representative Heinze Commission _____
Requester _____ Component No. 471

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	(92.0)	(92.0)	(92.0)	(92.0)	(92.0)	(92.0)
-------------------------------	---------------	---------------	---------------	---------------	---------------	---------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
See attached page.

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
Division Commercial Fisheries Entry Commission Date/Time 5/6/04 10:39 AM
Approved by: Mary McDowell, Commissioner Date 5/6/2004
Agency Commercial Fisheries Entry Commission

FISCAL NOTE #4

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SCS CSHB 452(RES)

ANALYSIS CONTINUATION

Elimination of the requirement that vessels used for guided sportfishing (sport charter) obtain a commercial vessel license is estimated to result in a loss of CFEC revenue of at least \$92.0 annually.

In 2003, 3083 vessel licenses were issued for vessels licensed ONLY for guided sport, generating \$92.0 in total fees. Additionally, in 2003, CFEC issued vessel licenses to 959 vessels that applied to participate in BOTH sport charter AND commercial fisheries (only one license per vessel is currently required, but both charter and commercial vessel license applications are submitted to obtain endorsements to participate in both fisheries). Those "dual-use" vessel licenses generated \$38.2. This fiscal note assumes that ALL of those vessels will continue to license for commercial fishing after passage of this bill. However, if that is not true, and some opt to no longer license for commercial fishing, the loss of revenue to CFEC could be higher than \$92.0.

CFEC is entirely funded by Receipt Supported Services(RSS) revenue. A number of factors in recent years, including reduced permit fees due to the Carlson class action and the downturn in salmon fisheries, have resulted in a significant decline in the amount of revenue generated by CFEC receipts. The agency is now very close to not generating enough revenue to fund its own budget. The additional loss of revenue due to the elimination of charter vessel license fees under this bill, could result in revenues being insufficient to cover CFEC's authorized budget. CFEC and the legislature will need to work together to address this problem in the near future, perhaps through a change in funding source, amendments to statutorily established fee structures, or both.

Although CFEC is concerned about the impact on its declining revenues, we support HB452 and the effort to consolidate all licensing of charter operators and vessels within ADF&G. Additionally, elimination of charter vessel licensing responsibilities will allow CFEC's very small licensing staff to more efficiently serve the licensing needs of commercial fishermen.

CURRENT SALTWATER AND FRESHWATER GUIDE REPORTING REQUIREMENTS

SALTWATER GUIDE REQUIREMENTS:

- 1) Number of fish harvested (by species)
- 2) Fishing Location (general location, not specific)
- 3) Number of clients
- 4) Number of hours fished by each client

SALTWATER AND FRESHWATER GUIDE REPORTING REQUIREMENTS AFTER PASSAGE OF HB 452

REGULATIONS AFTER PASSAGE OF HB 452:

SALTWATER AND FRESHWATER GUIDE REPORTING REQUIREMENTS:

- 1) Number of fish harvested (by species), and amount of fishing effort.
- 2) General locations fished
- 3) The name and licence number of each vessel used in providing sport guide services.

FRESHWATER GUIDE REQUIREMENTS:

NO REPORTING REQUIREMENTS*

**Except in the Kenai River Special Management Area (SEE ATTACHED)*

Alaska State Legislature



Representative Cheryll Heinze Sponsor Statement HB 452

“An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of natural Resources; and providing for an effective date.”

Currently Alaska lacks a unified set of standards for sport fish guiding. This makes it difficult to protect fish habitats and ensure the maximum utilization of Alaska's resources. HB 452 is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state. This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made. HB 452 will establish licensing and reporting requirements for businesses and guides providing sport fishing guide services in fresh and salt waters of Alaska.

The bill establishes two types of licenses: a sport fishing services operator license and a fishing guide license, and establishes minimum requirements and fees for obtaining each license. Under the provisions of the bill, sport fishing service operators must meet licensing, insurance, and other requirements established by the Board of Fisheries. It requires that fishing guides operate under the authority of a sport fishing service operator license, either by holding that license themselves or by being employed by, or under contract with, a holder of a fishing service operator license. The bill also requires that the licensed guide be certified in first aid, have applicable U.S. Coast Guard vessel licenses, and meet other requirements adopted by the Board of Fisheries.

HB 452 establishes reporting requirements, including where guided sport fishing activities are conducted and the quantity of fish harvested. The bill ensures that sensitive information will be kept confidential. I urge you to support this bill.

HB 452 TALKING POINTS
(as of 2-19-04)

This bill is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state.

This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made.

The bill establishes two types of licenses; a sport fishing services operator license and a fishing guide license; and establishes minimum requirements and fees for obtaining each license.

The number of guide businesses has remained nearly constant. The average number of registered guide businesses from 1998 through 2003 is 2,135 and has ranged from 2,065 to 2,242.

The number of fishing guides is increasing. The average number of registered guides from 1998 through 2003 is 4,559 and has ranged from 3,823 to 4,826.

The average percentage of guide businesses owned by Alaska residents from 1998 through 2003 is 90% and has ranged from 89% to 91%.

The percentage of nonresident fishing guides is increasing. The average percentage of guides who are Alaska residents from 1998 through 2003 is 72% and has ranged from 70% to 76%.

This bill establishes mandatory reporting requirements for all sport fishing businesses and sets license fees that cover the cost of the licensing program and reporting requirements.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 21, 2004

SUBJECT: CSHB 452(FIN); Reporting requirements established for sport fishing guides and sport fishing operators by the Department of Fish and Game and the Board of Fisheries (Work Order No. 23-LS1619U)

TO: Representative Cheryl Heinze
Attn: Jon Bittner

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether CSHB 452(FIN) requires that the Department of Fish and Game or the Board of Fisheries adopt uniform reporting requirements through out the state for sport fishing guides and sport fishing operators.

The answer to your question is no.

The bill does not require that the department or the board adopt any regulations regarding reporting requirements for sport fishing guides and sport fishing operators. The bill provides under sec. 16.40.280(a) [sec. 3 of the bill] that the department may collect information from sport fishing guides. In this context, the term "may" is discretionary. The department has the power to decide whether or not it will require reports of sport fishing guides. The department also has the discretion to determine where in the state information is to be collected and what information is to be reported. The listing of information that the department may collect under sec. 16.40.280(a) [sec 3 of the bill] is merely illustrative of the information that the department may require. There is no requirement that the department collect any the information described in that section.

The authority of the Board of Fisheries to require reports of sport fishing guides or sport fishing operators arises under AS 16.05.251(a) which sets out the broad general powers of the board. See, AS 16.05.251(a)(12). There is nothing in AS 16.05.251(a) which requires that the board establish uniform reporting requirements throughout the state or that the board collect any specific information from guides and operators. The exercise of the authority of the board under AS 16.05.251(a) to require reports of sport fishing guides and sport fishing operators is discretionary with the board.

If I may be of further assistance, please advise.

GU:lmb
04-119.lmb

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 15, 2004

SUBJECT: CSHB 452(FIN), An Act relating to licensing and regulation of sport fishing operators (Work Order No. 23-LS1619U)

TO: Representative Cheryll Heinze
Attn: Jon Bittner

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your inquiry as to the effect of the amendments made to HB 452 by the House Finance Committee on April 14, 2004.

The House Finance Committee adopted two changes to the bill. First, the committee added a new sentence to Sec. 16.40.280(b) [found in sec. 3 of the bill] that authorizes the Department of Fish and Game and the Board of Fisheries to adopt regulations requiring timely submission of reports required by the department or board. Second, the committee added language to Sec. 16.40.290(c) [found in sec. 3 of the bill] to provide that the penalty for failing to submit required reports in a timely manner is a violation for the first offense during a three year period and is a class B misdemeanor for a second or subsequent offense within a three year period. Before this change was made by the committee, the failure to file required reports in a timely manner was punishable as a class A misdemeanor under Sec. 16.40.290(a) [found in sec. 3 of the bill].

If I may be of further assistance, please advise.

GU:med
04-410.med

Fact Sheet on H.B. 452 – Guided Sport Fishing

Executive Summary

Alaska is a world class destination for sport fishing. Alaska's sport fishing guide industry provides access to fishery resources for those who might not otherwise be able to access them. This industry provides significant economic benefits to Alaskans by creating jobs and bringing tourism dollars into Alaska's communities. It is our goal to enhance this industry and increase the benefits that it provides to Alaskans, tourists, and our economy.

Reporting

ADF&G and the BOF have very little information regarding the operation of sport fish guides. Although freshwater and saltwater guides are required to register with ADF&G (free of charge), only saltwater guides are required to report information back to ADF&G. This legislation would, based upon need, establish flexible reporting requirements for all fresh and saltwater guides across Alaska. (Provisions in this bill assure that proprietary business information remains confidential.) With better information on where, when, and to what extent sport fish guides operate, ADF&G will be better able to effectively and efficiently manage Alaska's resources for sustained yield and ensure that the industry is regulated fairly.

Licensing

Currently, anyone can become a sport fish guide in the State of Alaska. Although many guides already have insurance, know first aid, and have fishing licenses, none of these items are required by the State of Alaska. (These items are already required by the Coast Guard to obtain a six-pack license.) This bill levels the playing field within the industry by establishing minimum professional standards that both fresh and saltwater sport fish guides must meet before obtaining a license. By establishing these standards, this legislation protects consumers, while further professionalizing and legitimizing the sport fish guide industry, thereby assuring its continued viability.

Benefits to the Industry

The sport fish guide industry will benefit from passage of this legislation. Since there are no existing reporting requirements, decisions regarding the regulation of this industry (and its clients) are often made in the absence of detailed information. Upon passage of this bill, the information gathered by the reporting requirements will be used to adopt regulations based on accurate information on guiding activities and to assure that stocks are managed for the continued benefit of sport fishermen. This information will also be useful in demonstrating the sport fish industry's economic value to the state.

Administrative

This legislation is cost-neutral to the state. ADF&G will use the revenues generated by the license fees to administer the licensing and reporting program. The bill includes a sunset provision for January 1, 2010. This provision will give the Legislature an opportunity to review the benefits of the program to both the industry and the state.

Fact Sheet on H.B. 452 – Guided Sport Fishing

Bill Summary

Licensing - Currently, sport fish guides are only required to register (free of charge) with ADF&G.

- This bill allows ADF&G to license sport fish guides and operators by creating three new licenses:
 - Guide license for \$50
 - Operator license for \$100
 - Operator/guide license for \$100
- Criteria to obtain a sport fishing operator license:
 - Hold current business license
 - Proof of minimum insurance coverage
 - Pay license fee mentioned above
- Criteria to obtain a sport fishing guide license:
 - Citizen of U.S., Canada, or Mexico
 - Certified in first aid
 - Holds appropriate license from Coast Guard
 - Holds a current sport fishing license
 - Pay license fee mentioned above

Reporting – This bill allows ADF&G to collect information from sport fishing guides including catch and general locations fished. ADF&G does not currently have a method by which to collect this information for guides in freshwater. This information will assist us in effectively and efficiently managing Alaska's resources for sustained yield.

- The BOF will custom tailor reporting requirements by area so that reporting is not burdensome or onerous. For example, the BOF may ask for year-end reporting on the Kuskokwim River, but may ask for bi-weekly in-season reports on the Kenai River. We do not want (or intend) to ask for information on all species/locations in Alaska.
- Saltwater guides already have to submit logbooks containing similar information to ADF&G. If this legislation is signed into law, the saltwater regulations will be repealed and replaced by new reporting regulations, so that there is only one set of reporting requirements for saltwater.

Confidentiality - All sport fishing guide reports are considered confidential. They will be available to the owner of the guiding company upon request. All other requests for records of any individual guiding business will be denied. The department will only release reporting information when the data is combined for at least four or more guiding businesses, to protect the rights of individual owners. The fish ticket program has been very successful at protecting the confidentiality of information for commercial fishing businesses and has been successfully defended in court cases several times in the past.

Penalties – Penalties/fines in the bill are consistent with penalties/fines for other similarly licensed occupations. In fact, the bill has been amended to soften the penalty for failure to submit timely reports from a class A misdemeanor (carrying a penalty of up to 1 year in jail and a \$10,000 fine) to a violation (which carries a penalty of up to \$500 fine with no jail time or permanent record).

Fiscal/Administrative – Revenues generated by this bill will be deposited into the Fish & Game fund and will be used to administer these new licensing and reporting requirements. Although the fiscal note reflects the hiring of four new full-time employees and one new part-time employee, four of these employees are already employed with ADF&G and are working on the saltwater logbook program. These employees will be reassigned to work on both salt and freshwater reporting/licensing and will be paid out of the revenues generated by the sport fishing guide/operator license fees.

Sunset – This legislation will sunset on January 1, 2010.

DEPARTMENT OF FISH AND GAME COMMENTS

ON GUIDE LICENSING BILL HB 452

Representative Heinze introduced HB 452 on February 16. This bill would require sport fishing business owners and guides to be licensed with the State. The bill is based on an earlier bill developed by a Board of Fisheries Guide Licensing Task Force in the mid-1990s and introduced by Representative Austerman in 1997.

After discussing HB 452 with department staff, fellow legislators, and hearing comments from various sport fishing charter/guide groups and individuals from around the state the Representative made several changes to the original bill. These changes were incorporated into CS (Committee Substitute) HB 452 which is dated February 27, 2004.

The four major areas affected by the language changes in CSHB 452 are:

1. The reporting provisions that required fishing guides to record the names of their clients on a daily basis, along with their sport fishing license number, the number of fish they harvested, and associated confidentiality provisions have been removed.
2. Sport fishing outfitters and transporters have been removed from the provisions of this bill. The CS language only speaks to licensing sport fishing guide businesses (lodges, charter vessel companies, etc.) and sport fishing guides that provide direct assistance and personal direction to their clients.
3. Businesses and guides that only assist personal use or subsistence fishermen in their fishing activities have been removed from the provisions of this bill. The CS language only speaks to licensing those businesses and guides that provide services of direct assistance and personal direction to sport anglers.
4. The definitions have been modified to only include sport fishing guide businesses and guides. Definitions of outfitters, transporters, and fishing clubs have been removed. A definition of a sport fishing guide was added.

The department has received a number of comments from sport fish guide groups and individuals in Southeast and Southcentral Alaska pertaining to both the original bill language and the CS language. We would like to respond to some of these comments so everyone has the same understanding on various aspects of this licensing bill.

1. Some guides believe that if the guide licensing program is administered by the Division of Sport Fish it will clearly designate the guided sport fishery as a sport fishery, not a commercial fishery.

We agree with this concept. The Board of Fisheries has received numerous proposals and testimony over the years that the guided sport fishery is a commercial fishery and should be regulated as such. Having a sport guide licensing program administered by the Division of Sport Fish will designate that these fisheries are sport fisheries.

2. Some guides believe that if this bill passes the Board of Fisheries will have to make separate allocations for all species to this new user group.

We do not agree with this idea. First of all the Board already has the authority to regulate guided sport fisheries differently than unguided sport fisheries. Secondly, this bill would not change the makeup of the various guided sport fisheries, it would only require them to be licensed and to report on their guiding activities.

3. Some guides believe that if the Division of Sport Fish administers the guide licensing program, they will become "allocative advocates" for this user group at Board of Fisheries meetings.

This is not true. Both fisheries divisions are tasked with providing the board and the public the most accurate and complete information regarding fishing issues. However, both divisions are strictly prohibited from entering into allocation discussions or debates. The Division of Sport Fish will continue to operate in this manner regardless of whether we administer the guide licensing program or not.

4. Some guides believe that the funds generated from the license fees associated with this bill will go into the General Fund or will be viewed as just another source of revenue by the Division of Sport Fish.

This is not true. All funds generated by this bill's license fees will go into the dedicated Fish and Game Fund, just like funds from the sale of sport fishing licenses and king salmon tags. These funds will be used to administer the provisions of the licensing bill including the reporting requirements.

The Division of Sport Fish is currently spending \$80,000 per year to operate the existing business and guide registration and saltwater charter vessel logbook programs, which have no fees associated with them. We estimate that this bill would generate approximately \$356,000 and we would expend \$346,000 to administer the licensing and reporting programs.

5. Some guides are requesting higher license fees for nonresident sport fishing business owners and fishing guides.

Due to a recent court ruling, the department has been advised by the Department of Law that the State must be able to prove that it is more costly to administer the licensing program for nonresident owners or guides than it is for residents before we can increase costs for nonresidents. Based on an analysis of such costs, there does not appear to be significant differences between the two groups to merit a differential fee structure.

The department welcomes any comments you may have on CSHB 452 and its provisions. Please contact:

Rob Bentz
Deputy Director
Division of Sport Fish
at: rob_bentz@fishgame.state.ak.us



Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

Board of Directors

President
Tim Evers
567-3631
injeverson@alaska.com

Vice President
(Vacant)

Secretary/Treasurer
Perry Flore
Phone/Fax 262-7631
arcticern@alaska.com

Member-at-Large
M. Erickson
202-2980
gamefish@alaska.net

Member-at-Large
Marc Smith
567-4368
aomni@gci.net

Member-at-Large
John Baker
567-3393
info@afishhunt.com

March 29, 2004

Representative Cheryll Heinze
State Capital, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-3834

Dear Representative Heinze,

The Deep Creek Charterboat Association is a trade association of 50 paid member Companies that represent over 70 charter boats that operate in Ninilchik, AK. The DCCA supports CSHB452 as it is now written. This legislation is long over due and will now legitimize the Professional Sport Fish Guiding Industry in Alaska. Our organization is familiar with many of the measures in the bill as we have participated in these measures for the last few years. Applying these industry standards statewide is essential. This bill will provide the Department of Fish & Game, the Board of Fish and many other organizations much needed data to better manage our resources and some extra funding to do so.

Thank you for your time & support of CSHB452. If we can be of assistance in any manner please feel free to contact us.

Sincerely,

Tim Evers
President, Deep Creek Charterboat Association

Cc: Senator Gene Therriault
Representative Pete Kott
Senator Tom Wagoner
Representative Mike Chenault

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Kenai River Sportfishing Association, inc.

PO Box 1228 • 224 Kenai Avenue, Suite 102

Soldotna, Alaska 99669

907.262.8588 phone 907.262.8582 fax

www.kenairiversportfishing.org • kenairiv@ptialaska.net

Dedicated to preserving the greatest sportfishing river in the world, the Kenai.

March 31, 2004

Kenai River Sportfishing Association
PO Box 1228
Soldotna, AK 99669

The Honorable Cheryl Heinze
Alaska State Legislature
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Representative Heinze:

The Kenai River Sportfishing Association promotes responsible sportfishing in the state of Alaska. We strongly support HB 452, which would license and regulate sportfishing service operators and fishing guides in the state of Alaska.

We support this bill for the following reasons:

1. Since 1985, the sportfishing service operators and fishing guides on the Kenai River have had such regulation, which provides minimum requirements for the industry, provides assurance to clients of minimum standards and has not proved to be an undo burden on businesses.
2. The bill will provide statewide regulation for the sportfishing industry, bringing the rest of the state up to standards followed by the Kenai River Special Management Area, the state's most popular sportfishing region.
3. The bill is the right step in having legitimate statewide standards for the sportfishing industry, on par with the big game guide industry, where clients have recourse when minimum standards are not met.

We urge you to pass HB 452 and bring the rest of the state up to the professional standards set by the Kenai River Special Management Area. The bill assures minimum standards for the sportfishing industry, and will be beneficial for both businesses and clients.

Thank you for your consideration on this important bill.

Sincerely,

Ron Rainey, Board Chair
Kenai River Sportfishing Association

Ricky Gease, Executive Director
Kenai River Sportfishing Association

SESSION

State Capitol, Room 416
Juneau, Alaska 99801-1182
(907) 465-4930 Tel
(907) 465-3834 Fax

INTERIM

716 W. Fourth Ave.
Anchorage, Alaska 99501-2133
Tel (907) 269-0174
Fax (907) 269-0177

Alaska State Legislature
REPRESENTATIVE CHERYLL BOREN HEINZE
Chair: Economic Development; International Trade & Tourism

*Spread on
the Journal = U*

April 5th, 2004

Dear Representative Gara,

You recently asked me a question in the House Judiciary Committee regarding HB 452's effect on the state's ability to limit guides. I would like to reaffirm my earlier statement that nothing in this bill shall limit the state's ability to decide the number of guides to allow in any particular area of the state. I hope that this letter will address the concerns you had on this matter. I would also like to take this opportunity to thank you for your help in getting HB 452 passed out of committee. If you have any further comments or concerns please don't hesitate to bring them to my attention.

Sincerely,


Representative Cheryll Boren Heinze

**SPREAD ON THE HOUSE JOURNAL
APRIL 23, 2004**

SENATE FINANCE COMMITTEE

SIGN-IN

HB 452-GUIDED SPORT FISHING/ ADFG & CFEC RECORDS

✓ NAME: Jim Preston Subject/Bill No: HB 452
Co./Dept./Title: _____ Phone: 789-0088
Address: Po Box 210328 Anka Bay 99821 Zip: _____
Do you wish to testify? Yes No Respond To Questions

✓ NAME: Rob Bentz Subject/Bill No: HB 452
Co./Dept./Title: ADFG; Deputy Dir, Sport Fish Phone: 465-6187
Address: ADFG Zip: _____
Do you wish to testify? Yes No Respond To Questions

✓ NAME: SARAH GILBERTSON Subject/Bill No: M.B. 452
Co./Dept./Title: ADFG; SPECIAL ASSISTANT TO COMMISSIONER Phone: X6137
Address: ADFG Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: Mary McDowell Subject/Bill No: HB 452
Co./Dept./Title: Commercial Fisheries Entry Commission Phone: 790-6936
Address: Juneau Zip: 99801
Do you wish to testify? Yes No Respond To Questions

SENATE COMMITTEE REPORT

DATE: 04/26/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5-6-04

Resources Committee considered CS FOR HOUSE BILL NO. 452(FIN) am

HB 452 GUIDED SPORT FISHING

"An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of Natural Resources and the Department of Public Safety; and providing for an effective date."

and recommends:

- be replaced with S CS CSHB 452 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # 27

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>FIG</u>	<u>5/6/04</u>	<input checked="" type="checkbox"/>			<u>4</u>

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>PURSAJ</u>	<u>4/1/04</u>			<input checked="" type="checkbox"/>	<u>3</u>
<u>FIG</u>	<u>3/16/04</u>	<input checked="" type="checkbox"/>			<u>2</u>

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<u>Elton</u>	<input checked="" type="checkbox"/>			
<u>Dyson</u>			<input checked="" type="checkbox"/>	
<u>Seelins</u>	<input checked="" type="checkbox"/>			
<u>B. Stevens</u>	<input checked="" type="checkbox"/>			
<u>CHAIR:</u>			<input checked="" type="checkbox"/>	

HB

453

HFIN

FILE



polarconsult alaska, inc.

ENGINEERS • SURVEYORS • ENVIRONMENTAL CONSULTANTS

Representative Bill Williams
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

April 22, 2004

Subject: HB-453

Dear Representative Bill Williams:

I am opposed to HB 453, and I would like to provide you with some reasons why this bill is not good for Alaskans.

For years I and others have been trying to sell renewable power to CEA or to MEA. I have offered this power to MEA at well below what CEA is selling it to them. MEA states that they cannot purchase our power as they have an all requirements contract with CEA.

CEA states they will buy our power at their avoided cost. This is the law. They claim their power production costs are a little more than one-half of the price they charge MEA. Therefore, CEA charges MEA a large amount to administer their contract and without RCA can charge them any amount they choose. CEA proposes to sell their own renewable power but fails to offer or make us part of the pool. That is, only they can own wind turbines or only they control governmentally subsidized hydroelectric plants. No one else need apply. To the maximum extent they are trying to monopolize all power production in the railbelt. If they truly had the consumer's interests at heart they would have a standard offer with their actual avoided cost as a benchmark. They would then sell power at the blended rate from all producers including themselves. This blended amount would always be less than the amount they now charge MEA or their own consumers.

CEA does not want competition, and it functions as a monopoly. It wants their guys in and others out. About 66% of the money spent by a typical utility is in generation and transmission. It is a lot more fun and more lucrative for their employees to play in this puddle. CEA is in actual fact an EOC. That is an employee owned company. Consider the wages they pay for even low level jobs. They have been overcharging MEA and Homer Electric and their own consumers for a long time.

If it were not for RCA there would be no restraint whatsoever on their activities. I am not a great fan of RCA as they do not always do what is right but they have the potential to improve and are sure better than the alternative.

If you care to discuss this whole matter in more detail I am available.

Earle Ausman, PE
Attachment: Williams Article

For your information I have done feasibility and economic studies, designed and built power plants, both hydro and thermal, and have worked on wind generation, and I have a strong preference where feasible for environmentally sound alternatives.

I have included part of an article by Walter Williams who discusses why the populace as whole does not always look out for itself in situations like this. This information discusses "narrow well-defined benefits and small widely dispersed costs". It explains why a relatively small group of people can hijack a cooperative such as CEA and why CEA, MOA and GVEA need oversight by the RCA and by the State Legislature.

CC: Anchorage News, Daily Frontiersman, MEA, HEA, CEA Board.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

ice of the Times

A CONSERVATIVE VOICE FOR ALASKANS

WILLIAM J. TOBIN
Senior editor

Low-price law kills free coffee

By **WALTER E. WILLIAMS**

A couple of weeks ago, heading down to George Mason University, I pulled in to my favorite Wawa gasoline station just off the Bel Air, Md. exit on I-95 South.

At each of the 20 gasoline pumps, there was a sign posted that Wawa would no longer dispense free coffee to its gasoline customers. Why? The station was warned that dispensing free coffee put it in violation of Maryland's gasoline minimum-price law.

Here's my no-brainer question to you: Do you suppose that Maryland enacted its gasoline minimum-price law because irate customers complained to the Legislature that gasoline prices were too low? Even if you had just an ounce of brains, you'd correctly answer no.

Then, the next question is just whose interest is served by, and just who lobbied for, Maryland's gasoline minimum-price law? If you answered that it was probably Maryland's independent gas-station owners, go to the head of the class.

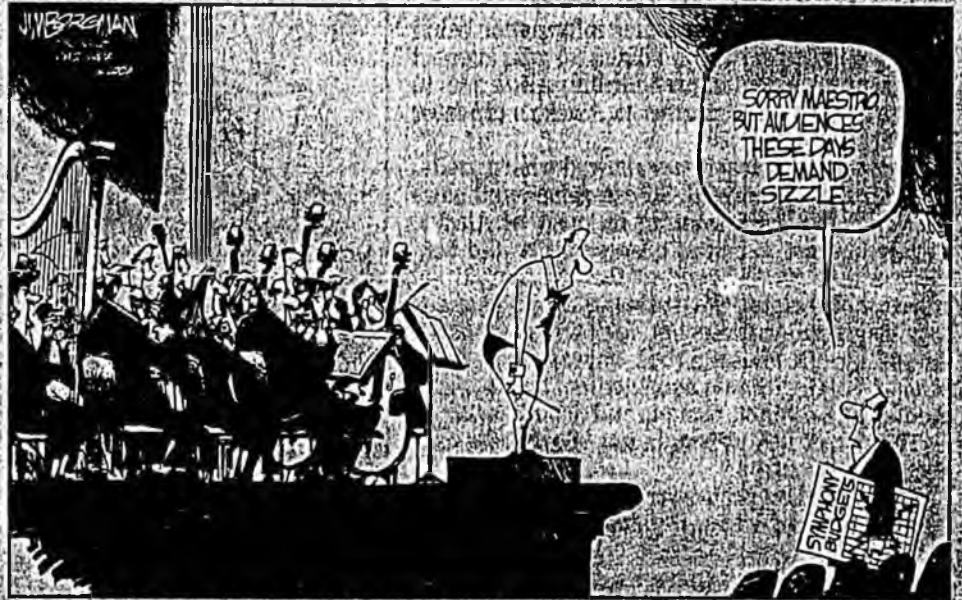
Let's first establish a general economic principle. Whenever one sees statutory or quasi-statutory minimum prices, he is looking at a seller collusion against customers in general as well as against particular sellers, those who are seen as charging too low a price.

This economic principle applies whether you're talking about minimum wages, minimum dairy prices or minimum real-estate sales commissions. Members of a seller collusion call for statutory and quasi-statutory minimum prices so they can charge customers higher prices than they could otherwise in the absence of a statutory minimum.

You say, "Williams, that's preposterous; how can they sell legislators on the idea? After all, buyers of gasoline are more numerous than sellers of gasoline." To answer that question, you have to recognize a couple of other facts.



Williams



First, legislators aren't known for being rocket scientists. Secondly, legislators love campaign contributions, and satisfying the interests of lobbyists is more important to their political careers than serving the interests of consumers in general.

Lobbyists such as WMDA Service Station & Automotive Repair Association, the Gasoline Retailers Association and the Petroleum Marketers Association of America are able to sell legislators on the fairy tale that if high-marketing gasoline outlets such as Wawa, Sheetz, Wal-Mart and others are allowed to charge prices that are too low, they'll drive all other gasoline stations out of business.

Having done so, these high-marketing outlets could charge any price they pleased and make huge profits.

In economics, we call this strategy predatory pricing. It's an argument that has a ring of plausibility, but there's little evidence anywhere anytime that a predatory pricing scheme produced results even remotely close to what would-be predators envisioned. Questioning this fairy tale and asking for evidence would never cross the mind of a legislator.

Another reason legislators can get away with establishing these minimum-price laws has to do with another

economic phenomenon called "narrow well-defined benefits and small widely dispersed costs." The beneficiaries of the gasoline seller collusion are relatively few in number and well organized. The victims, mainly gasoline customers, are difficult to organize, and the costs they bear are relatively small and widespread.

In other words, how many gasoline consumers would be willing to spend their time and energy fighting to unseat a legislator whose actions imposed, say, a nickel a gallon additional cost upon them? It's cheaper just to pay the nickel a gallon more and forget about it, but that's not true about gasoline retailers. It is worth their time and energy to pressure legislators for minimum-price laws, and politicians know this.

Maryland is not the only state with statutory minimum gasoline prices. It's joined by 12 other states, including New York, Michigan and Wisconsin. Wisconsin legislators have the gall to call its government-sponsored seller collusion the "Unfair Sales Act."

Walter E. Williams is a professor at George Mason University at Fairfax, Va. His column is distributed by Creators Syndicate Inc., 5777 W. Century Blvd., Suite 700, Los Angeles, CA 90045; (310) 337-7003.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819




Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax

Pete Kott
Speaker of the House

Memorandum

Date: April 23, 2004

To: Representative Bill Williams
Co-Chair Finance

From: Representative  Pete Kott
Speaker of the House

Re: HB 453

I want to take my name off a joint letter that was sent to you on April 21 in opposition to HB 453. I do, in fact, support the bill.

AB 453 - Public Utilities Reg Act; wholesale agreements

~~CS - version A~~

CS (LLC)

FN#1 Ø CED 2417

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 453(L&C)
(H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Joint Action Agencies RDU Regulatory Commission of Alaska (399)
Component Regulatory Commission of Alaska
Sponsor Representative Heinze
Requester House Labor & Commerce Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 - RCA Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no direct fiscal impact on the RCA in the immediate future, although it likely would require long-term adjustments to agency operations in later years.

Prepared by: Mark K. Johnson, Commissioner, Chair Phone (907) 276-6222
Division Regulatory Commission of Alaska Date/Time 2/27/04 2:38 PM
Approved by: Edgar Blatchford, Commissioner Date 2/27/2004
Agency Department of Community & Economic Development

HARTIG RHODES HOGE & LEKISCH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

www.hartig.com

717 K STREET
ANCHORAGE, ALASKA 99501-3397
TELEPHONE (907) 278-1592
FACSIMILE (907) 277-4352

April 22, 2004

ROBERT L. HARTIG (1928-1980)
JAMES D. RHODES (RETIRED)
KENT EDWARDS (RETIRED)

PETER B. BRAUTICAM
VIKRAM N. CHAOBAL
ROBERT G. FLINT
SEAN HALLORAN
LAWRENCE L. HARTIG
ANDREW E. HOGE
CHRISTINE FOOTÉ HYATT
MICHAEL JUNGREIS
ROBERT J. MAHONEY
DOUGLAS C. PERKINS

OF COUNSEL
PETER A. LEURIGI
MARGARET J. RAWITZ
TODD J. TIMMERMANS

RECIPROCAL RELATIONSHIP
GRUDING & SPITZGARDEN
JUNEAU, ALASKA

The Honorable John Harris, Co-Chairman
House Finance Committee
State Capital, Room 513
Juneau, Alaska 99801-1182
[Representative John Harris@legis.state.ak.us](mailto:Representative_John_Harris@legis.state.ak.us)

The Honorable Bill Williams, Co-Chair
House Finance Committee
State Capital, Room 515
Juneau, Alaska 99801-1182
[Representative Bill Williams@legis.state.ak.us](mailto:Representative_Bill_Williams@legis.state.ak.us)

Re: HB 453 [CSHB 453(L&C)]

Dear Chairmen:

On behalf of Homer Electric Association, Inc. (Homer Electric) I am responding to the letter of Ronald Saxton of the firm of Ater Wynne LLP. The letter was written on behalf of Chugach Electric Association, Inc. (Chugach), Anchorage Municipal Light & Power (ML&P), and Golden Valley Electric Association, Inc. (GVEA).

I represent Homer Electric in certain of their matters before the Regulatory Commission of Alaska (Commission). I have practiced in Alaska in the area of regulatory law for over 35 years.

Homer Electric depends upon Chugach to supply the power for its members. Homer Electric will be adversely affected if CSHB 453 (HB453) is passed. HB453 removes Commission review of wholesale power contracts between a joint action agency (JAA) and its members. It generally exempts the JAA from regulation by the Commission. While the letter referred to above suggests the legislation will not alter the ability of the Commission to review any rate charged by the utility for service under the jurisdiction of the Commission, the letter also makes clear the Commission cannot review or alter any rate between the JAA and the member utility (page 3, paragraph 4, last sentence). What this means is that the Commission might look at rates being passed on to the consumers of a JAA member; i.e., examine them, but it can do nothing about them.

I will, in this letter, deal with a point by point discussion, and where appropriate, refutation of the issues raised by the letter of April 15, 2004.

The first argument on page 2 is that HB453 removes unnecessary impediments

to building new generation. The first paragraph suggests one of the impediments being removed is the ability of the Commission to inquire into the reasonableness of new construction costs and rates, and whether they should be passed on to the rate payer. Simply stated, the bill affords no independent review of construction costs or their effect on rates. In other words, no body can protect the rate payer. The letter suggests the passage of the bill will merely insure the members of the new JAA will bring the new generation on line in the same efficient manner present utilities enjoy. That may be true as far as it goes; left unsaid, however, is that no independent body, such as the Commission, can review the prudence of construction, financing arrangements or operating costs of these new projects and decide what rates the rate payer should pay.

This argument further notes the JAA would not need a Certificate of Public Convenience and Necessity (CPCN). It suggests that such a requirement would be redundant. Of course, the legislature is never advised what the CPCN review requirements are, and to suggest they are simply redundant, is incorrect.

The last paragraph of the first point observes that the Alaska railbelt will need significant investment in the next 25 years. This is true. But a solution involving only the three largest generating utilities (Chugach, ML&P, and GVEA) and ignoring the utilities serving the Kenai Peninsula and the Matanuska-Susitna Valley, two of the most significant population blocks in the railbelt, is not the way to address the need.

The second point, beginning at the bottom of page 2, is that no one should fear JAAs because they will have the same success as the Four Dam Pool and Bradley Lake projects. It is true the projects are free from direct oversight of the RCA. Distinguishing factors between the Four Dam Pool and the Bradley projects and the current situation are that the participants in those projects are the only consumers of the power from the projects, buying the power from themselves; the contracts among the participants were negotiated before the exemptions were granted; and the exemptions were approved by 100% of the users. It is also true the projects provide extremely cost efficient power; however, that has more to do with the fact that the projects were heavily subsidized with state money, than any organizational efficiencies.

In order to allay the concerns of the Legislature about supervision of the JAAs, as its third point the letter suggests member elected boards of directors or the Municipal Assembly will protect the public. While it might be true in the case of a disastrous project some board or assembly members might be removed, regardless of what happens politically, the ratepayers will still have to pay rates sufficient to pay the debt on the project. AS 42.05.431(c)(3) requires the Commission to honor any rate covenant by a public utility to establish, charge, and collect rates sufficient to meet its obligations under a wholesale power contract [see legislation at page 2, lines 19-20].

The assertion that the interests of the consumers of power from Chugach are represented by the board of directors is false. The Chugach board is not "publicly

ected." Chugach generates power for nearly 115,000 consumers in southcentral Alaska. Approximately 50,000 of those consumers are not members of Chugach and have no right to vote on any Chugach issues. The Chugach board regularly attempts to impose high rates on these customers (who don't elect the board), to benefit the rates of its own retail customers (who do elect the board). If dissatisfied with the utility's "reliability, price, service or strategic planning," the wholesale customers of Chugach have no recourse except to the RCA. If Chugach makes a greater return on its services than predicted, it can keep the wholesale customers' money as long as it wants.

The last point on page 3 is most telling. First, the argument is made that the legislation will not eliminate the Commission's review of existing wholesale power agreements but the legislature is not told what happens when these wholesale power agreements expire. Second, the argument is made that although the Commission cannot review or alter the rates established in the wholesale power agreement between the JAA and its member, it could "examine" the rates if passed on in a subsequent wholesale power contract between a JAA member and a non-JAA member. Such an "examination" of rates would be futile at best. If a rate can't be analyzed, reviewed or altered, the power to "examine" the rate is of little value.

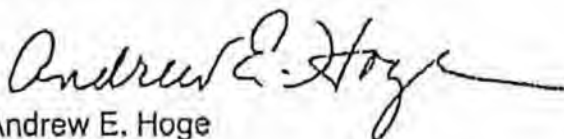
The assurance that Commission will continue to play an important role in protecting rate payers and the public at large is hollow if this legislation is passed. The Commission will be stripped of any meaningful role in protecting rate payers from excessive generation and transmission costs.

If Alaskans are embarking on a \$5 billion 25-year program to improve the railbelt generation and transmission needs, then more than ever before, there needs to be some impartial third party oversight of these decisions. Homer Electric, while it represents over 20,000 members, has but one vote in Chugach's elections. There has to be some independent review of Chugach or JAA decisions that affect the relationship between Chugach and Homer Electric, and its rate payers and, for that matter, all rate payers including those of Chugach, ML&P, and GVEA. HB 453 should not be passed out of committee.

Very truly yours,

HARTIG RHODES HOGE & LEKISCH

By:


Andrew E. Hoge

cc: Homer Electric Association, Inc.

Position Paper Regulatory Commission of Alaska

HB 453 – “An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreement, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act.”

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

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

In stark contrast, the exemption proposed in HB 453 would extend to an unknown number of new joint action agencies for an undefined number of projects which have not yet been planned, constructed, financed or operated. Further, the exemption would be of unlimited duration.

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

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

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

The Legislature should understand that while joint action agencies are identified in the final report of the Energy Policy Task Force as a method for unified system operation, the Task Force Report does *not* mention or endorse the exemption of such agencies from RCA regulation. The RCA agrees with the Energy Policy Task Force recommendations that joint action agencies can play a useful role in the planning, construction and operation of new generation and transmission facilities. In the view of the RCA, constructive use of the joint action agency concept must include statutory provisions as to the scope, governance and operation of such agencies. The complete exemption of such agencies from RCA jurisdiction does not solve any identifiable problem except to satisfy a general desire for the lessening of regulatory burdens.

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

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



Alaska Power Association
703 West Tudor Road, Suite 200
Anchorage, Alaska 99503
Ph: 907-561-6103, Toll-free: 1-877-992-7322
Fax: 907-561-5547, URL: www.alaskapower.org

March 31, 2004

Representative Eric Croft
House Finance Committee
Capitol Building, Room 519
Juneau, Alaska 99801

Subject: Alaska Power Association's Support of House Bill 453

Dear Representative Croft:

Alaska Power Association (APA) strongly supports House Bill 453, which would create a joint action agency for Railbelt electric utilities. The purpose for this new entity is to share the ownership and management of the Bradley Lake Hydroelectric project and Alaska Intertie assets, which could be acquired from the Alaska Industrial Development and Export Authority and its affiliate Alaska Energy Authority.

Although owned by the State, the Bradley Lake project and the Alaska Intertie are currently managed and funded by the Railbelt utilities through the Intertie Operating Committee and the Bradley Lake Project Management Committee, respectively. It is important to note that all the Railbelt utilities are either consumer-owned cooperatives or municipal systems that are directly responsible to their customers.

AIDEA has expressed an interest in divesting Bradley Lake and the Alaska Intertie to interested utilities in the Railbelt. The APA Board of Directors believes that it is in the best interest of the Railbelt utilities to have common ownership of these projects, to provide a funding mechanism for the projects' maintenance, capital improvements and repair. Please be aware that there is a difference of opinion on HB 453 among APA's members in the Railbelt. Chugach Electric Association, Anchorage Municipal Light & Power and Golden Valley Electric Association support the bill. Homer Electric Association and City of Seward Light & Power Division oppose it.

Attached is the APA resolution supporting authorization of a joint action agency for state electric infrastructure assets.

Sincerely,

Eric P. Yould
Executive Director



Alaska Power Association Resolutions 2004

INFRASTRUCTURE

5.1) A Resolution Supporting the Authorization of a JAA for State Electric Infrastructure Assets

The Alaska Industrial Development and Export Authority/Alaska Energy Authority is the owner of the Bradley Lake Hydroelectric Project and Alaskan Intertie. These assets are currently managed and funded by the Railbelt utilities through the Intertie Operating Committee and the Bradley Lake Project Management Committee, respectively. The Railbelt utilities are made up of a combination of cooperatives and municipalities.

AIDEA has expressed an interest in divesting itself of these electrical projects to interested utilities in the Railbelt. It would be in the best interest of the Railbelt utilities to have common ownership of these electrical projects that will provide a funding mechanism for necessary maintenance, capital improvements and repair of these projects. The Joint Action Agency is a formal organization recognized by the State of Alaska that is particularly useful for organizations that include municipalities and cooperatives. Alaska Power Association strongly supports the authorization of a Joint Action Agency as a new entity to share ownership and manage assets that may be transferred from AIDEA/AEA.

Alaska State Legislature

House Special Committee on Economic Development; International Trade & Tourism
REPRESENTATIVE CHERYLL BOREN HEINZE, CHAIR

SESSION

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4930 Tel
(907) 465-3834 Fax

INTERIM

716 W. Fourth Ave.
Anchorage, Alaska 99501-2133
Tel (907) 269-0160
Fax (907) 269-0177



Sponsor Statement HB 453

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

With transmission lines dating back to the 1950's and generation assets that are 20-30 years old Alaska's Energy infrastructure is in desperate need of an upgrade. According to the Railbelt Energy Study the cost of these upgrades would be at least \$5 billion. The House and Senate recognized this when they passed House Concurrent Resolution 21 establishing the Joint Energy Policy Task Force. HCR 21 mandated the review and analysis of the state's long-term energy needs, and asked the Task Force to develop a long-term energy plan to efficiently enhance Alaska's economic future.

One of the major recommendations made by the JEPTF was that the State “promote unified operation of Railbelt generation and transmission systems.” A Unified System Operator would, by coordinating the resources of the various Railbelt utilities, be in a position to undertake the enormous financial obligation of upgrading the Railbelt. The demands of these infrastructure upgrades are beyond the financial capability of any single utility. This bill is a tool that would give a Joint Action Agency the financial stability to fulfill the role of a Unified System Operator.

HB 453 makes slight changes to existing statutes that permit certain entities to create what is called a Joint Action Agency under AS 42.45.300, a business organization of similar structure to an “S” or “C” corporation, partnership, cooperative or limited liability corporation (LLC). Specifically, language is added to AS 42.05.431(c) and AS 42.05.711(o) to exempt contracts by such an agency (a JAA) from regulation. This is altogether fitting and proper in that the entity that is exempted by this change to statute (the JAA) can only be made up of cooperatives under AS 10.25 or entities owned by a political subdivision of the state, both of whose governing bodies are publicly elected.

Further, contracts consummated by a JAA with another public utility for the sale of power, wheeling, storage, regeneration, or wholesale repurchase under a wholesale agreement would be an agreement between two or more willing and capable parties. Any dispute would be handled in superior court according to contractual law. For these reasons I strongly urge you to support HB 453.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2004

SUBJECT: Joint Action Agencies, CS for HB 453(L&C)
(Work Order No. 23-LS1601H)

TO: Representative Tom Anderson
Attn: Josh Applebee

FROM: Barbara R. Craver 
Legislative Counsel

Enclosed is CS for HB 453(L&C). I want to point out that the second amendment made to HB 453 is problematic. I do not see how anything in AS 42.05.431 can modify the general exemption provided in AS 42.05.711(o). Amended by the committee, section 2 of the bill now reads:

* Sec. 2. AS 42.05.711(o) is amended to read:

(o) A joint action agency established under AS 42.45.310 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221, for the operation of, sale of power from, and other activities related to the power project the joint action agency purchases from the Alaska Energy Authority until the wholesale agreement and any related contract assigned by the authority becomes subject to review or approval by the commission under AS 42.05.431. The exemption provided by this subsection extends to repairs and improvements to the power project the joint action agency purchases from the authority but does not extend to any other power project or other activity of the joint action agency. A joint action agency established under AS 42.45.300 that is formed by public utilities owned by a political subdivision of the state, by cooperatives organized under AS 10.25, or by a combination of the two is exempt from regulation under this chapter as specified in AS 42.05.431, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221.

(italics added to indicate amendment #2 changes)

The language added by the amendment refers to AS 42.05.431 which concerns the power of the Regulatory Commission of Alaska to fix rates. I do not understand how "is exempt

Representative Tom Anderson
March 23, 2004
Page 2

from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221" can be modified by "as specified in AS 42.05.431."

There is an earlier reference to AS 42.05.431 in the first sentence of AS 42.05.711(o):

A joint action agency established under AS 42.45.310 is exempt from regulation under this chapter, including the requirement to obtain a certificate of public convenience and necessity under AS 42.05.221, for the operation of, sale of power from, and other activities related to the power project the joint action agency purchases from the Alaska Energy Authority *until the wholesale agreement and any related contract assigned by the authority becomes subject to review or approval by the commission under AS 42.05.431.*

(italics added). The reference to AS 42.05.431 here operates as a condition that will terminate the exemption from rate regulation when the events described in AS 42.05.431(c) occur. AS 42.05.431(c) applies only to certain wholesale power agreements "entered into between the Alaska Energy Authority and one or more other public utilities or among the utilities after October 31, 1987, and before January 1, 1988." These specific contracts as assigned and amended are the subject of AS 42.05.431(c) which allows those contract prices to be exempt from rate regulation "until all long-term debt incurred to pay the purchase price to the Alaska Energy Authority is retired."

Section 2 of CSHB 453(L&C), as currently drafted with the second amendment to HB 453, does not make sense. You may wish to forward this memo along to the next committee of referral so that committee can consider the issue discussed in this memorandum.

If I may be of further assistance, please advise.

BRC:med
04-312.med

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2004

SUBJECT: HB 453 and Joint Action Agencies (Work Order 23-LS1601A)

TO: Representative Cheryll Heinze
Attn: Jon Bittner

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have asked for an legal opinion on two questions in regard to HB 453. The questions are:

1) Do the exemptions given to joint action agencies in this bill apply to the retail rates of the individual utilities and cooperatives who are members of the agency?

2) Will this bill affect existing contracts between individual utilities?

1. Do the exemptions given to joint action agencies in this bill apply to the retail rates of the individual utilities and cooperatives who are members of the agency?

No. Both sections of this bill apply exclusively to joint action agencies, which are separate legal entities from the members of the agency. Under AS 42.45.300, a joint action agency may only be formed "for the purpose of participation in the design, construction, operation, and maintenance of a generating or transmission facility". It is my understanding that generating and transmitting electricity does not include retail distribution, thus a joint action agency does not conduct retail sales. However, as legally separate entities, each member of the agency operating as a public utility or an electrical cooperative continues to be regulated as before in regard to its retail sales of power. This bill does not change that.

2. Will this bill affect existing contracts between individual utilities?

Generally a new law will not operate to modify existing contracts. In fact, if a law has that effect, it may be found to violate Article I, Section 15, of the Alaska Constitution which provides: ". . . no law impairing the obligation of contracts . . . shall be passed . . ." The legislature cannot retroactively change rights that are fixed under a contract.

If I may be of further assistance, please advise.

BRC:med:mdr
04-240.med

oice of the Times

A CONSERVATIVE VOICE FOR ALASKANS

WILLIAM J. TOBIN
Senior editor

What happens if the lights go out?

By REP. CHERYLL HEINZE

Here's a question for you: Will the dwindling natural gas supplies and an aging electrical grid result in future widespread power outages in Anchorage and elsewhere?

The subject was front and center before a legislative meeting in Juneau last week.

The House Economic Development Committee was the forum for a debate on whether Kenai Peninsula and Cook Inlet gas, on which Anchorage depends, will be depleted before the aging electrical grid could be upgraded.

The problem is real. Eric Yould, executive director of the Alaska Power Association, posed this question:

"If we spend millions in the next few years upgrading the aging transmission lines and generators and have no gas to power the generators, then what?"

And this scary forecast came in a letter to the committee from Tony Izzo, president of Enstar Natural Gas Co.:

"Preliminary results from the Department of Energy show that as early as 2013 declining reserves in the Cook Inlet may not be enough to support home heating and power generation . . ."

And that, he added, could be the case even if the existing liquefied natural gas and fertilizer plants on the peninsula are closed and are no longer using big natural gas supplies.

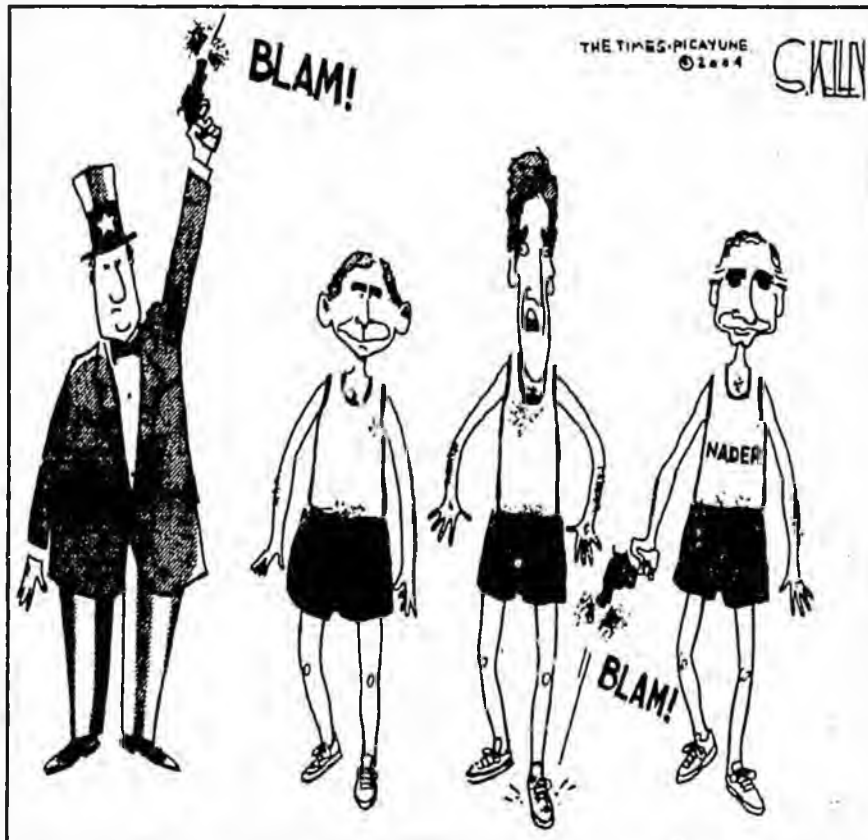
A potential shortage of natural gas is far from the only threat.

Joe Griffith, CEO of Chugach Electric, said 22 generators power the entire electric grid that serves this area.

"Twenty of these," he said, "were built in the 1960s and have upwards of 200,000 hours on them. Just to replace the rotors in one of these generators costs over \$2.5 million; to replace each generator would cost as much as \$50 million each.

"Multiply that by 20 and you see the nature of the challenge."

Not only that, he said, "some of our



transmission lines were built in 1958."

Are there alternative sources of power generation?

Not right away, in so far as committee member can determine.

Chugach Electric and Anchorage Municipal Light & Power are doing some investigative work on wind power, but the prospects are unclear.

Some suggest hydrogen power could be the salvation. The trouble is, the experts say, hydrogen power costs more to produce than it yields. Until better technology comes along, that's no lifesaver, however.

Jack Eckstrom, representing Evergreen, told the committee his company's plan to develop coal bed methane in the Matanuska Valley and other places in the state could offer an interim solution in a relatively short time.

According to Evergreen, coal bed methane reserves in Alaska might provide one-third to one-half of the 115 billion cubic feet of natural gas needed in the future.

That's the amount of natural gas that will be needed in just six to eight years, according to the experts.

The truth is that we're running out of time.

We don't have the answers we need, but we're going to keep looking.

One of the concerns is future financial stability of the various utilities.

To that end, we'll be holding additional hearings by the first part of March to examine actions by the Regulatory Commission of Alaska with respect to rates and operating margins.

Cheryll Heinze is a Republican member of the state House of Representatives from Anchorage.

The Anchorage Times

Editors: **TOM BRENNAN**, 264-8191; **PAUL JENKINS**, 264-8192; **WILLIAM J. TOBIN**, 264-8193.
Associate editor: **JAN SINGYKE**, 264-8107 • P.O. Box 100040, Anchorage, AK 99510 • FAX: 907-264-8194
• e-mail: AnchTimes@alaska.net

The Voice of the Times does not represent the views of the Anchorage Daily News. It is published under an agreement to preserve the separate editorial voice of the former Anchorage Times.

INFRASTRUCTURE

5.1) A Resolution Supporting the Authorization of a JAA for State Electric Infrastructure Assets

The Alaska Industrial Development and Export Authority/Alaska Energy Authority is the owner of the Bradley Lake Hydroelectric Project and Alaskan Intertic. These assets are currently managed and funded by the Railbelt utilities through the Intertic Operating Committee and the Bradley Lake Project Management Committee, respectively. The Railbelt utilities are made up of a combination of cooperatives and municipalities.

AIDEA has expressed an interest in divesting itself of these electrical projects to interested utilities in the Railbelt. It would be in the best interest of the Railbelt utilities to have common ownership of these electrical projects that will provide a funding mechanism for necessary maintenance, capital improvements and repair of these projects. The Joint Action Agency is a formal organization recognized by the State of Alaska that is particularly useful for organizations that include municipalities and cooperatives. Alaska Power Association strongly supports the authorization of a Joint Action Agency as a new entity to share ownership and manage assets that may be transferred from AIDEA/AEA.

5.2) A Resolution Urging Support for Development of Regional Electric Energy Projects

A stable and affordable electric infrastructure is vital to the economic stability of Alaska's communities and to their abilities to compete economically in national markets. The development of large projects, such as regional transmission interties and capital intensive power projects that allow communities to realize economy of scale from such projects, are well beyond the financial capability of individual utilities and their ratepayers. In addition, many rural communities have no foreseeable opportunities to interconnect to a transmission system that will allow them to significantly lower electric rates. The economic health of these communities is very dependent on the rate relief that Power Cost Equalization helps to provide.

The State of Alaska has established a comprehensive Electric Energy Task Force to develop Railbelt and Rural Electric Energy Plans. Alaska Power Association (APA) strongly endorses this action by the State, and looks to the Governor and Legislature to provide the requisite appropriations needed to implement the regional infrastructure elements of the plan and to continue full funding of PCE.

ASSOCIATION

6.1) A Resolution Honoring the Memory of Representative Ramona Barnes

Ramona Barnes served 18 years in the Alaska State Legislature, representing the citizens of District 22 in Anchorage. During that time, she became familiar with the challenges of the electric utility industry and evolved into a staunch supporter of rural electric utilities in their overriding goal of supplying affordable, reliable electric power to their owner-members.

The Alaska Power Association Board of Directors and members will deeply miss Representative Barnes--her staunch support for the Railbelt energy fund, her compassionate support for the Power Cost Equalization fund for rural Alaska, and her tenacious dedication to her constituents throughout the entire state. She was the first female Speaker of the House; the first female to have held every leadership position in the Alaska Legislature, and the longest serving woman legislator in state history. Alaska Power Association expresses its deepest condolences to the family of Ms. Barnes and it remembers the legacy this great legislator left for all Alaskans.

CITY OF SEWARD
P.O. BOX 167
SEWARD, ALASKA 99664-0167



- Main Office (907) 224-4050
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- City Clerk (907) 224-4046
- Engineering (907) 224-4049
- Utilities (907) 224-4050
- Fax (907) 224-4038

March 8, 2004

Representative Tom Anderson, Chair
House Labor and Commerce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: House Bill 453

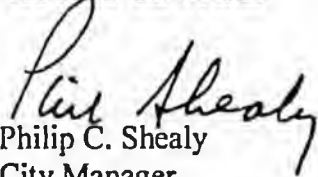
Dear Representative Anderson;

Please accept this letter of opposition to House Bill 453 from the City of Seward, Alaska for the following reasons;

1. We have no objection and will encourage wherever we can the formation of joint action agencies (JAA's) to construct new generation;
2. We are definitely opposed to exempting JAA from RCA regulations. We've been told such action would have no effect on retail rates, but if wholesale rates (contracts) are unregulated, the JAA can charge what they wish and the rate to the purchasers will go up, forcing us to raise retail rates. We are certainly willing to pay a fair price, but not at the expense of supporting retail customers of the JAA;
3. If the City of Seward is not a member and participant of the JAA, then regulation by RCA is a necessity.

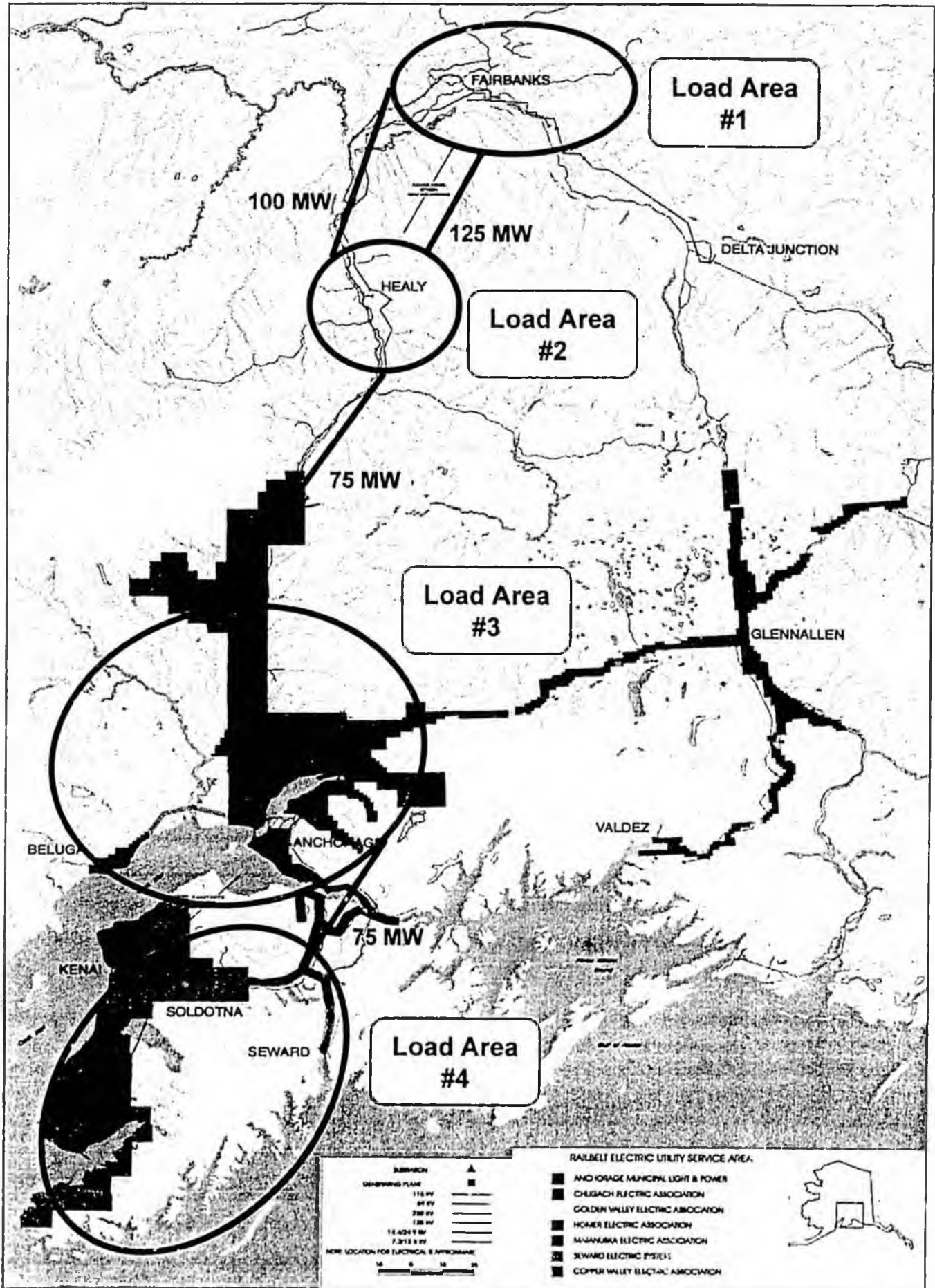
Thank you for considering our concerns regarding House Bill 453. If you have any further questions, please contact either myself and or Dave Calvert, Manager of the Seward Electric Utilities for further information.

Sincerely,
CITY OF SEWARD


Philip C. Shealy
City Manager

cc: Mayor and City Council, Kent Dawson, Dave Calvert.

Railbelt Energy Study





OF COURAGE... STATEWIDE BUSINESS NEWSPAPER

Alaska Journal of Commerce
on your Palmpilot.
>> Click Here <<

Classified AD?
Make your phone ring!
[Click Here](#)

MENU

- [Home](#)
- [Focus](#)
- [In this Issue](#)
- [Calendar](#)
- [Bulletin Board](#)
- [Movers & Shakers](#)
- [Business History](#)
- [Archive](#)
- [Around the World](#)
- [Legals & Classifieds](#)
- [Viewpoint](#)
- [Profile](#)
- [Cartoons](#)
- [Contact Us](#)
- [Advertise with us](#)
- [Subscribe](#)
- [About Us](#)
- [Submit Classifieds](#)
- [Oil & Gas](#)

COLUMNS

- [Wealthbuilders](#)
- [Fish Factor](#)
- [Travel Insight](#)
- [Property Wise](#)
- [Tech Watch](#)
- [Law Page](#)
- [Philanthropy](#)

SPECIAL SECTIONS

- [Top 25](#)
- [Book of Lists](#)
- [Top 40](#)
- [Wellness](#)

WEATHER

-25°
12°
10°
19°
30°
37°
34°
39°
45°
39°
42°

Choose City

- [Email Newsletter](#)
- [Palm Pilot Delivery](#)
- [Letter to the editor](#)
- [Comments](#)

Business Calendar Monday, February 23, 2004

F ob	M 22	T 23	W 24	T 25	F 26	S 27	S 28
----------------	---------	---------	---------	---------	---------	---------	---------

in this issue

Web posted Monday, February 23, 2004

Energy group suggests single Railbelt operator

By **Tim Bradner**
Alaska Journal of Commerce

A state task force assigned to tackle a broad range of electric power generation issues in Alaska has issued its first report to the Legislature and is hard at work on a second report due in March.

Anchorage businessman Mike Barry, who chairs the Alaska Energy Policy Task Force, told the House Special Committee on Economic Development that the group reached consensus on a number of long-term issues affecting the Southcentral-Interior Alaska "Railbelt" power grid, but avoided several contentious short-term issues.

Eight representatives of Alaska power utilities, including several from the Railbelt, were named to the task force last year by Gov. Frank Murkowski along with Barry, who is also chairman of the state's Alaska Energy Authority.

Barry told legislators that the major long-term recommendation on which the group reached consensus in the first report was that a single operating entity should be formed among the Railbelt utilities to operate the grid as a single system.

The biggest footprint on the North Slope

an ad hoc arrangement for cooperation that exists now among the different utilities and the state. The Alaska Energy Authority owns

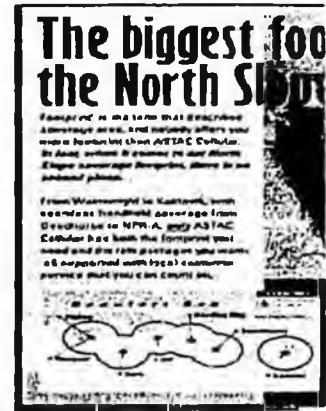
C
E
S

■ [Locate a copy](#)



Alaska
Oil & Gas
Reporter

Kenai
Peninsula
Online



electric power assets like the Bradley Lake hydroelectric plant near Kachemak Bay and the aging electric intertie which transfers power from Southcentral to Interior Alaska.

Another recommendation by the task force is that the state and the Railbelt utilities address replacement of aging power generation and transmission facilities, some of which are nearing 50 years of age, Barry told the House committee.

The task force also urged the state to assist the utilities in renewing their aging skilled workforce by investing more funds in technical education and training. Many skilled workers in the electric power industry are nearing retirement and there are not enough young people entering training to replace them.

However, the task force avoided one pending power generation issue because there would be disagreement. That is what to do with the mothballed 50 Megawatt Healy Clean Coal Project, a new-technology coal power plant at Healy that is owned by the state.

The plant has been idle since late 1999 because of an ongoing disagreement between the state and Golden Valley Electric Association, the Interior Alaska utility which had agreed to operate and buy power from the plant.

Barry told the House committee that a single operating entity for the Railbelt grid could take responsibility for the system as a whole. The different utilities, such as GVEA in the Interior and Chugach Electric Association in the Southcentral region, now have responsibility for their own areas.

There are a number of cooperative agreements for power sharing among the utilities but the contracts differ, which is an inefficient arrangement.

"This is one power grid and we have to make sure it works," he said. "We need to have a centralized system, so that every time we have to finance a replacement or repair we don't get into a complex renegotiating of amendments to existing contracts."

"When that happens the utilities are tempted to try to gain advantages over each other, and the state may not have the expertise to broker these disputes," Barry said.

The utilities have the expertise to operate the grid on a day-to-day basis but it should be done by one entity, he said. A single operator organization could be done in several ways, but the utilities also have sharp differences among themselves over different ways of doing it.

Barry urged the Legislature to let the utilities work out the disagreement among themselves and make a recommendation for a single operator arrangement to the state because it will require legislation.

Some Railbelt utilities are now lobbying legislators to adopt their favored versions of single operator arrangements, but on behalf of the task force Barry warned against the Legislature imposing one or another type of single operator arrangement on the Railbelt utilities.

The task force is now working on a set of recommendations on power generation issues outside the Railbelt, including rural Alaska. That is due in March.

Rep. Cheryl Heinze, R-Anchorage, chairman of the House special committee, told Barry the task force should also consider sources of energy in its discussions, including the pending shortage of natural gas in Southcentral Alaska.

Another member of the committee, Rep. Harry Crawford, D-Anchorage, said he would like to see more discussion of renewable energy.

Barry said the task force will have more information on renewable energy in its second report in March. Renewable energy is important for several rural Alaska utilities, he said.

[E-mail story to a friend](#)

[Printer friendly format](#)



© 2002 The Alaska Journal of Commerce and Morris Communications Corp.

Final Report

Railbelt Energy Study

Ater Wynne LLP

January 15, 2004



EXECUTIVE SUMMARY

During June 2003, five of the six Railbelt utilities¹ agreed to jointly undertake a Railbelt Energy Study (RES). At the request of the utilities, the law firm Ater Wynne LLP contracted with the economic/engineering consulting firm R. W. Beck in August 2003 to perform the study. This report is a summary of the activities completed during the study, and the results of these activities.

Background and Objective

The participating utilities have several motives for conducting the RES:

- All of the thermal generating capacity in the Railbelt is more than 20 years old, and much of it is more than 30 years old. The utilities need to determine during the next several years whether to retire these units or make the investments in them required to extend their lives. If they decide to retire the units, they also need to decide what new generating capacity, if any, they should build to replace the units.
- During the next few years, several of the utilities may need to build new capacity to satisfy load growth.
- ■ The utilities recognize that it may be both less costly and less risky to develop and operate new generating units jointly or collectively than to undertake these efforts separately.
- The utilities have several opportunities, such as restarting the Healy Clean Coal Project, constructing the Southern Intertie, and developing the Emma Creek Coal Project, that would provide benefits to (and impose costs on) more than one utility. As a result, the utilities recognize that decisions about these opportunities should reflect the joint or collective interests of the Railbelt utilities.

The objective of the RES is to identify the combination of generation and transmission (G&T) capital investments in the Railbelt through 2033 that 1) minimize future power supply costs and 2) maintain current levels of power supply reliability. The investments are to be identified taking into account uncertainty about future loads, fuel prices, and resource options, and assuming that the six Railbelt utilities act collectively. There are three important points to make about this objective:

- The RES is a *study*, not an Integrated Resource Plan (IRP). Each utility will still need to perform an IRP or Power Supply Plan, in order to identify appropriate

¹ The five participating utilities are Anchorage Municipal Light & Power (ML&P), Chugach Electric Association (Chugach), Golden Valley Electric Association (GVEA), Homer Electric Association (HEA), and Seward Electric System (SES). Matanuska Electric Association (MEA) was invited to participate but declined. Although MEA did not participate in the study, data for it has been included in the study, and the identified G&T capital investments reflect the need to serve its load.

The Alaska Energy Policy Task Force

Created by the 23rd Alaska Legislature
Legislative Resolve No. 24, 2003

Task Force Members

Mike Barry, Chair
AIDEA/Alaska Energy Authority
Chairman of the Board

H.A. Red Boucher
Vice Chair
Alaska Wireless Technology
Chugach Electric Association
Board Member

Tom Boutin
Alaska Department of Revenue
Deputy Commissioner

Dave Carlson
Southeast Conference
Intertie Coordinator

Wayne Carmony
Matanuska Electric Association
General Manager

Rick Eckert
Homer Electric Association
Interim General Manager

Steve Haagenon
Golden Valley Electric Association
President/Chief Executive Officer

Meera Kohler
Alaska Village Electric Cooperative
President/Chief Executive Officer

Robert Wilkinson
Copper Valley Electric Association
Chief Executive Officer

Staff Coordinators

Becky Gay, Legislative Staff
Speaker of the House Pete Kott
Senate President Gene Therrlault
269-3024 bcay@aidea.org

Bernie Smith
AIDEA/Alaska Energy Authority
269-4643 bsmith@aidea.org



Photo by Yutaka Suzuki, AK Division of Tourism

Headquartered at AIDEA/Alaska Energy Authority
813 W. Northern Lights
Anchorage, AK 99503
907-269-3000
Fax: 269-3044
<http://www.aidea.org/EnergyTaskForce.htm>
In State toll free: 1-888-300-8534

Utilize Alaska's abundant renewable resources in the production of hydrogen.

Executive:

Convene a workshop to discuss the potential for Alaska's leadership in hydrogen production. Such a workshop could serve as an educational tool and a platform for discussion between public, university research and private sector individuals and organizations.

Direct the University of Alaska and executive agencies to inventory ideal locations for future renewable energy generation sites that could be used as a source of hydrogen for in-state use and export.

3. Energy Infrastructure

The Task Force's goals and strategies focused on matters including, but not limited to: (1) infrastructure; (2) transmission and distribution; and (3) economic efficiency. As the electrical system ages, increased concerns about reliability and stability and needs for technology-driven system improvements will be required. In addition, the long-range need for a hydrogen-based infrastructure to support fuel cell technologies provides yet another opportunity for expansion in energy infrastructure. There must exist within the State the capacity to deliver resources and energy to end-users, whether within or outside of the State's boundaries.

Stimulate private-sector participation in its energy infrastructure to allow greater energy export capability to meet state, regional, and national energy demands.

Executive:

Provide tax-exempt bonding to fund projects, much like the Bradley Lake Hydroelectric financing model, with the State retaining only the obligations that cannot be transferred to the participating utilities.

Through AIDEA/AEA, support and encourage the formation of a Railbelt unified operations model that would operate in a consolidated manner and allow the most Alaskans to benefit from projects funded through the use of tax exempt financing.

Work with Alaska's Congressional delegation to provide financing or economic incentives to promote energy infrastructure development.

Encourage Railbelt utilities to establish a unified system by providing incentives such as conduit financing for Railbelt infrastructure.

Encourage adequate transmission infrastructure to increase economic development activity.

Conduct an assessment to identify the State's energy infrastructure security needs.

Executive:

The RCA should include in their deliberations the issue of cyber-security.

Private Sector:

Continue in the joint planning process to identify the State's energy infrastructure needs.

Encourage adequate and secure transmission infrastructure to increase economic development activity.

Continue to promote adequate fuel delivery infrastructure.

Assess the potential for the development of a locality into a sustainable energy community that utilizes novel distributed and/or renewable energy systems for residences and commercial enterprises.

Executive:

Examine the potential for the development of an Alaska locality into a sustainable energy community.

Legislative:

Examine opportunities to provide support for the development of such a community.

Alaska regional transmission planners should work to become leaders in energy infrastructure development.

Private sector:

Establish energy infrastructure development projects that will promote the reliable transportation of electricity throughout Central and Interior Alaska, both on and off the Railbelt system, that meets the State's energy, environmental and economic needs.

Define and establish a unified system operator for the Railbelt.

4. Regulatory

Streamline all licensing, permitting, and regulatory processes of energy projects.

Executive:

Review agency practices regarding the licensing, permitting, and regulatory processes of energy projects. These agencies could also review the licensing, permitting, and regulatory processes of energy projects in other states so as to develop a study of best practices regarding these issues.

Establish and maintain regulatory processes that are consistent and have defined processing timelines and encourage utilities to maintain long-term financial health.

Legislative:

Enact appropriate legislation for the implementation of best practices regarding the licensing, permitting, and regulatory processes of energy projects.

Private sector:

Provide input to the Executive and Legislative Branches to implement best practices regarding licensing, permitting, and regulatory processes of energy projects.



C. Long-term Energy Needs

Findings

The Task Force adopted the definition of long-term as 20 years or more. The energy requirements of the Railbelt are expected to increase 39% over that time. Certain needs emerged from Task Force discussions and public testimony. Within the next 20 years, it was determined that Alaska needs to:

- **Create secure and reliable transmission between load centers**
- **Provide energy infrastructure for economic development**
- **Identify and evaluate long-term fuel sources**
- **Establish a unified system operation**
- **Connect new areas to the Railbelt grid**
- **Replace aging generation**
- **Replace an aging workforce**

D. Recommendations

Specific recommendations of how to fulfill future needs were as follows:



- Structure implementation of a unified Railbelt system operator.
- Support increased vocational trade schools, higher education and training of technical and professional utility career staff and management.
- State grants or financing should give priority to unified Railbelt system operation and expanding the grid along the road system, i.e., the "Roadbelt."
- Where common projects are identified as the most cost effective energy solutions, encourage financial risk sharing among utilities through a model similar to the Bradley Lake Project agreement.
- Increase the proportion of renewables in long-term fuel sources. Renewables include hydroelectric generation.
- Loop the existing Railbelt energy grid to improve system reliability and serve new markets. See map for details.
- Advance the physical and cyber security of the critical electrical infrastructure in Alaska.
- Strive to have nationally competitive electrical rates.

E. Long-term Railbelt Projects

For details see Appendix D.

III. STATE-OWNED RAILBELT ENERGY ASSETS

Findings

→ The Task Force supports the transfer of AIDEA/AEA electrical assets in a manner that recognizes existing contracts. Current state ownership of energy assets should be transferred to a Unified System Operator to support the cooperation of the utilities in that endeavor. The Task Force recommends the state should provide financing through AIDEA/AEA to assist development of future generation and transmission. Through AIDEA/AEA, the State owns three Railbelt energy assets, as follows:

A. The Bradley Lake Project

The Bradley Lake Project is located in south central Alaska at the southern end of the Kenai Peninsula. The project includes a 610-foot long, 125-foot high concrete-faced and rock-filled gravity dam, a 3.5-mile power tunnel and steel-lined penstock. The project transmits power to the state's main power grid via two parallel 20-mile transmission lines. The project, which cost approximately \$328 million (including reserve fund balances), went into commercial operation in 1991. Homer Electric Association under contract with AEA now operates the project. Bradley Lake serves Alaska's Railbelt from Homer to Fairbanks as well as the Delta Junction area. The Bradley Lake Project Management Committee oversees operation and maintenance duties.

B. Alaska Intertie

The 170-mile transmission line that runs approximately between Willow and Healy is the state-owned portion of the 300-mile Anchorage to Fairbanks transmission system. It is rated at 345 kV and operates at 138 kV. The Intertie allows GVEA to purchase lower cost energy from Anchorage and the Kenai generated from natural gas and the Bradley Lake hydroelectric project. CEA and ML&P generate revenue from the sale of economy energy to GVEA. The Intertie Operating Committee oversees operations and maintenance duties.

C. Healy Clean Coal Project (HCCP)

The Healy Clean Coal Project grew out of a nationwide competition sponsored by the U.S. Department of Energy (DOE) to test new technologies aimed at solving the international problem of acid rain. Alaska was one of 48 applicants selected for 13 grants. The project is located adjacent to GVEA's existing Healy No. 1 power plant, which was constructed in 1967. General construction of the power plant began in May 1995 and was completed on November 21, 1997. A 90-day test of the power plant was completed in December 1999. HCCP has been idle since the completion of that test. After several engineering studies, AIDEA continues to pursue all options for getting HCCP into operation and selling power

IV. INDUSTRY AND /OR GOVERNMENT ACTIONS

Findings

To efficiently energize Alaska's economic development, the Task Force believes that the Railbelt utilities should develop a unified system operation. If there are legislative or regulatory issues, utilities should work cooperatively to determine actions needed to implement the unified system details. Different forms of unified systems operations may be used by the various utilities. The Task Force proposed the following examples.

A. Unified System Operations

Power Pooling:

Definition: "Two or more interconnected electric systems planned and operated to supply power in the most reliable and economical manner for their combined load requirements and maintenance program."

Source: *Edison Electric Institute*

Power pooling systems are usually set up in one of two ways; a member of the system takes on the role of the system operator or an independent operator is established. Power pools allow for better utilization of resources to meet the aggregated load. Better utilization of resources leads to lower production costs and more economical capital improvement plans. Power pools inherently share knowledge, which if transition to competition is imminent, will help smooth the process and automatically create a more level playing field.

Source: *R.W. Beck Railbelt RES Scope of Work*

The greatest benefit from a power pool assumes the utilities jointly meet capacity requirements and jointly dispatch as if they were one utility.

Joint Action Agency (JAA):

Defined in AS 42.45.300 as "Two or more public utilities may form a joint action agency for the purpose of participation in the design, construction, operation, and maintenance of a generating or transmission facility and to secure financing for carrying out the design, construction, operation, and maintenance of the facility. A JAA may request AIDEA to issue revenue bonds for projects of the agency. A joint action agency has the powers of a public utility under AS 42.05." The statute broadly defines "public utilities"—includes any corporation or cooperative that owns, operates, manages, or controls any plant, pipeline, or system for furnishing, by generation, transmission, or distribution, electrical service to the public.

Generation & Transmission Cooperative (G&T):

A G&T is a cooperative organization comprised of one or more utilities that plan, operate and maintain G&T facilities for the benefit of the member utility systems. The G&T governing board consists of members from each member utility. It is owned by several distribution utilities to provide for their power

supply needs, including in some cases ownership of generating plants and transmission lines. This is the method of unified operation that is most commonly employed by distribution cooperatives across the United States.

B. Other Tools

Integrated Resource Planning (IRP):

The National Energy Policy Act (NEPA - 1992) defined integrated resource planning and directed states to use that process as the starting point. "The term 'integrated resource planning' means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to electric customers at the lowest system cost."

Title 42 of the Alaska statute authorizes the formation of a JAA (Joint Action Agency)

Joint Action Agency: Sec. 42.45.300

Two or more public utilities may form a joint action agency for the purpose of participation in the design, construction, operation, and maintenance of a generating or transmission facility and to secure financing for carrying out the design, construction, operation, and maintenance of the facility. A joint action agency may request the Alaska Industrial Development and Export Authority to issue revenue bonds for projects of the agency. A joint action agency has the powers of a public utility under AS 42.05



SEATTLE-NORTHWEST
SECURITIES CORPORATION

1420 Fifth Avenue
Seattle, WA 98101
206/628-2876 Fax: 206/3432103
425/391-6900 Fax: 425/391-1080

March 22, 2004

TO: Representative Cheryll Boren Heinze
907/269-0177
465-3834

FROM: Christine Hein Pihl

PAGES: 10, including cover

Attached are copies of the inserts from my remarks. I will send you complete copies of these reports in the next few days (if you need them sooner, please let me know).

Good luck today!

C

A

STANDARD & POOR'S	RATINGS DIRECT
-------------------	----------------

Return to Regular Format

Research:

Public Finance Report Card: Public Power

Publication date: 21-Jan-2004

Credit Analyst: Peter V Murphy, New York (1) 212-438-2065; David Bodak, New York (1) 212-438-7869

Rating trends for the public power sector remain stable despite the increased risk and uncertainty in the overall U.S. power industry. Standard & Poor's Ratings Services has 235 ratings in the public power sector, with the overwhelming majority carrying investment-grade ratings, and only five ratings below investment-grade. Of the five ratings below investment-grade, four are California irrigation districts and water agencies whose bonds are rated 'B+' based on contracts with Pacific Gas and Electric Co. for the output of a specific power project. The other non-investment-grade-rated rating is Guam Power Authority, rated 'BB+/CreditWatch Negative'. The overall credit strength of the public power is further demonstrated by the rating distribution, with about 80% of credits rated at least 'A-' and 21% of ratings reaching the 'AA' category. The public power sector includes municipally owned electric utilities and combined, or multi-segment, utilities, as well as joint action agencies consisting of two or more participating utilities. Ratings are as of Jan. 20, 2004.

Since the last report card ("Public Finance Report Card: Public Power and Cooperatives", RatingsDirect, May 27, 2003), the sector has continued to experience overall credit stability, with only a handful of rating changes, despite ongoing industry turmoil on the investor-owned and merchant sectors. Aside from the sector's traditional strengths, the stability of the sector in the past year resulted from relatively low volatility in commodity prices for both fuel and power as compared with the prior three years, and from improved hedging activity that mitigated the impact of price swings. Rising power and fuel prices had resulted in weakening coverage and liquidity, and consequently, slight rating deterioration, in 2001 and 2002.

A

Traditional strengths of the sector that provide a solid credit foundation include the autonomy of public utilities' governing bodies in rate-setting and recovering costs (although there are exceptions, such as the requirement that Tennessee Valley Authority (TVA) distributors gain approval of TVA for rate increases above 2% and the state of Wisconsin, whose municipal electric utilities must file rate cases); the focus on core businesses and core mission to serve their customers; and for the most part, the absence of direct competition for retail customers. The absence of state or federal rate regulation enables these utilities to enact and implement rate increases or rate cuts quickly and as necessary in response to a changing cost or competitive structures, provided the willingness to do so exists. This is not often not the case for their investor-owned counterparts. Most public power utilities continue to operate as vertically integrated utilities and either own or have secured, through long-term contracts, sufficient generation to meet native-load demand, which is generally their main focus.

A2

With regard to retail competition, where deregulation of the retail electric industry has moved forward, the enabling legislation has not required municipally owned utilities to compete directly for their native customers. Rather, these public utilities may choose to open their service territories, a rare occurrence. As a result, the customer bases in the public sector have remained intact, which is very supportive of credit quality. However, in cases where public utilities' service territories have historically been multiply certified, the importance of being able to compete on price and on other measures has become heightened. Notable in this regard is Lubbock Power and Light (LP&L), the electric utility owned by the city of Lubbock, Texas. For over 80 years, LP&L has competed directly with an investor-owned utility (Southwest Public Service, or SPS, a unit of Xcel Energy Inc.) and typically held a strong market share. In the past year, however, due to an uncompetitive cost structure and competitive pressures that affected rate-making decisions, LP&L experienced operating losses and greatly reduced liquidity, and saw more than 5% of its customers switch to its direct competitor. Consequently, the rating was lowered to 'BBB-' from 'A+'. In contrast, Cleveland, Ohio, also competes directly with an investor-owned utility but retains a rate advantage and has posted net gains in the number of meters. Cleveland's electric revenue bonds are rated 'A-'.

Publication date: 08-May-2003
Reprinted from RatingsDirect

Survey of State Regulators Reveals Focus on U.S. Utilities' Financial Strength

Credit Analyst: Richard W. Corrigh, Jr., New York (1) 212-438-7885

(B1) A recently completed survey of state regulators, by RKS Research & Consulting on behalf of Standard & Poor's Ratings Services, revealed significant shifts in regulator priorities since the previous survey of January 2001. The feedback from the interviews, which polled 47 different jurisdictions, placed financial issues as the most important consideration for regulators, followed by federal-state jurisdictional disputes, and generation and transmission resource adequacy. Other topics included reliability and power quality issues, service obligations, and subsidization of affiliate transactions. Regarding concerns over the next five to 10 years, respondents focused on jurisdictional clarity and resource adequacy, which would indicate that financial concerns are expected to dissipate in this time frame. Two years ago, the primary issues noted by regulators were considerably different: the development of distributed generation and service reliability led the list, followed by transmission issues.

(B2) The responses indicate that utilities' financial profiles matter greatly to state regulators, at least in the short term. Regulators overwhelmingly stated that utilities need to maintain strong financial profiles. In fact, regulators highlighting this concern increased threefold, and more than a third expressed extreme concern for utilities' financial health, compared with less than 10% in 2001. Along with this position was the view by almost half of the respondents that utilities had weakened during the past three years, particularly those in the Midwest and the West. Reasons cited for this included the economic downturn, bad investment decisions, holding company/affiliate transactions, and the fallout from the California and Enron Corp. crises. However, about half of the Northeastern state regulators believe that utilities have 'actually strengthened' reflecting the conversion of many utilities to basically lower-risk transmission and distribution companies. Not surprisingly, only half of all commissioners said they had as much confidence in the integrity of utility financial statements compared with a few years ago. Interestingly, a measurable number--17%--indicated a higher confidence level in financial statement quality; 26% have less confidence.

State regulators clearly expect to be more involved in monitoring utilities in their jurisdictions. However, while utilities' financial conditions, and more specifically, their insulation from nonregulated activities, ranked first among the most pressing issues, opinion is evenly divided regarding whether current laws provide the appropriate enabling authority for regulators to ensure that utilities are not adversely affected by unregulated affiliates.

Other Issues of note include:

- Deep jurisdictional disputes with the FERC over Standard Market Design (SMD). The majority consider SMD fatally flawed and that it will lead to wide inequities between high- and low-cost electricity regions. Respondents highlighted inflexibility, cost-shifting among states, and whether any compelling

STANDARD & POOR'S	RATINGS DIRECT
-------------------	----------------

Research:

Return to Regular Format

Chugach Electric Association, AK Underlying Rating Placed on Watch Negative

Publication date: 28-Feb-2003

Credit Analyst: Leo Carrillo, San Francisco (1) 415-371-5077; Kathryn Mock-Masterson, San Francisco (1) 415-371-5009

2

SAN FRANCISCO (Standard & Poor's) Feb. 28, 2003--Standard & Poor's Ratings Services said today it placed its 'A' underlying rating (SPUR) on Chugach Electric Association, Alaska's approximately \$394 million in bonds outstanding on CreditWatch with negative implications (partially due to the latest rate order from the Regulatory Commission of Alaska (RCA). The insured ratings on the bonds remain unaffected by the CreditWatch listing.

The latest RCA rate order is expected to reduce debt service coverage and could trigger a violation of Chugach's rate covenants. Standard & Poor's had already expressed concern that Chugach's coverage of interest was relatively weak for a utility with mostly non-amortizing debt and that lower coverage margins could result in lower ratings." said Leo Carrillo, credit analyst with Standard & Poor's. "In addition to substantially weakening debt service coverage, the RCA's rate order signals heightened regulatory and refinancing risk for the utility."

Chugach has petitioned the commission to reconsider its decision, which the RCA has partially granted. A final determination may come as early as the end of March 2003. If a sufficiently favorable order is not forthcoming, Standard & Poor's expects that it will downgrade the utility.

Chugach is an electric cooperative serving two-thirds of Alaska's population. It faces no competition from investor-owned utilities; its only meaningful competition is the municipal utility serving Anchorage, Anchorage Municipal Light & Power.

Complete ratings information is available to subscribers of RatingsDirect, Standard & Poor's Web-based credit analysis system, at www.ratingsdirect.com. All ratings affected by this rating action can be found on Standard & Poor's public Web site at www.standardandpoors.com, under Fixed Income in the left navigation bar, select Credit Ratings Actions.

Chugach has approximately \$394 million in bonds outstanding as of Dec. 31, 2002. The bonds are unsecured obligations of Chugach, supported by revenues from its wholesale and retail power sales operations. Permissive legal provisions exempt Chugach from maintaining a debt service reserve account on any of its unsecured debt.

Chugach's business profile score is a '4' on Standard & Poor's 10-point scale, with '1' being the highest score. Chugach is Alaska's largest electric utility, with 61,000 retail customers and approximately 50% of the state's total generating capacity in a region with no outside transmission access. Chugach serves a moderately urban and growing service territory, with retail sales accounting for 64.8% of revenues in 2001 and residential customers accounting for 32.9% of revenues. Chugach faces no competition from investor-owned utilities, and its only meaningful competition is the municipal utility serving Anchorage, Anchorage Municipal Light & Power (MLP). Although Chugach's rates, at 4.9 cents per kWh, are only slightly above the regional average, contentious relations with the utility's two largest wholesale customers continue to distract management. The two wholesale customers have a history of pursuing regulatory and legal action in an effort to suppress Chugach's wholesale rates.

Financial performance was weak in 2002, with margin for interest coverage based on audited financials of less than 1.1x. Financial margins and interest coverage have diminished over the past two years, relative to historical levels. MFI coverage averaged 1.3x from 1996 to 2000, before falling to 1.2x or less in 2001 and 2002. Net operating margins (after interest) averaged \$7.3 million from 1996 to 2000, versus only \$3.6 million in 2002.

Dis

The recent decline in financial margins and the relaxing by regulators of Chugach's coverage target raises concern regarding regulatory support for the maintenance of Chugach's historically strong financial profile. In January 2003, the RCA issued a rate order that reduced Chugach's target times interest earned ratio (TIER) coverage level to 1.30x from 1.35x, requiring a rate refund for overcollection in 2000 and 2001. Following an appeal by the utility, the RCA revised its rate order, reducing the cost of the rate refund from an estimated \$7.1 million to \$1.6 million. Chugach is absorbing the cost of the refund through its cash reserves, which exceeded \$7 million as of Dec. 31, 2002.

Chugach expects to achieve MFI coverage of around 1.2x in 2003. Beyond 2003, MFI coverage remains above 1.3x, based on assumptions of 3% rate increases in 2004 and 2006. The projections also assume that the RCA will pass through to customers any increase in interest cost associated with Chugach's variable interest rate debt. Standard & Poor's continues to regard the forecasted interest coverage as thin for a utility with mostly non-amortizing debt.

Debt is high, but manageable, with a total debt-to-capital ratio of 76% as of Dec. 31, 2002, although Standard & Poor's considers the debt structure itself to be aggressive. Chugach's heavy reliance on non-amortizing debt introduces a significant level of refinancing risk to an otherwise moderate debt profile. The use of variable rate debt contributes to interest rate risk, especially given the utility's dependence on regulatory approval for recovery of rising interest rate costs. Chugach's \$80 million in variable-rate debt represents 15% of its overall debt burden. With increased refinancing and interest rate risk inherent in its new debt structure, Chugach's need for financial flexibility has increased.

Overall liquidity is adequate, but cash reserves remain low, given the utility's relatively aggressive financial profile. Total liquidity, including unrestricted cash and undrawn credit lines, amounted to \$77.3 million, or 214 days' cash, as of Dec. 31, 2002. Chugach maintains over \$70 million in lines of credit with CoBank and National Rural Utilities Co-op Finance Corp, against which over \$50 million remained untapped as of fiscal year end 2002. Cash reserves have remained flat at historical levels, with unrestricted cash reserves of around \$7.3 million, or 22 days of operating expense at fiscal year's end. Chugach does not maintain a debt service reserve fund, and has no plans to develop a sinking fund with which to prepay principal payments on its non-amortizing debt. Interest earnings from \$7 million in cash reserves will do little to dampen rising interest rate costs on the utility's \$60 million in variable-rate debt.

■ Outlook

The negative outlook reflects Standard and Poor's concern regarding Chugach's ability to achieve sound financial margins going forward. Rating stability will hinge on Chugach's future financial performance and evidence of a clear strategy for managing risks associated with the utility's non-

Ⓣ
 serving Anchorage, Anchorage Municipal Light & Power (ML&P).

Chugach is unlike other G&T cooperatives Standard & Poor's rates in both its unique strengths and the challenges it faces. Chugach differs in that half of its sales are to retail residential meters, whereas most G&Ts are wholesalers only. Standard & Poor's views this as a credit strength, as the margins from serving these customers can be greater than those derived from wholesale or commercial industrial sales. Furthermore, in the event of retail choice (which does not appear imminent in Alaska), residential customers are less likely to choose an alternate provider than industrial and commercial customers. Retail customers in 2001 consisted of 47% residential and 53% commercial and industrial. Distribution cooperatives, mainly Matanuska Electric Association (MEA) and Homer Electric Association (HEA), take the other half of Chugach's power.

Chugach differs further from other G&Ts in that it has only one all-requirements contract: It is with MEA and ends in 2014. Most other G&Ts sell their wholesale power through all-requirements contracts extending for the life of outstanding debt. MEA purchased about 62% of Chugach's wholesale power in 2001. The contract with HEA is a take-or-pay contract of 73MW and 5,000 megawatt-hours (MWh) annually (42% of the wholesale energy sold in 2001).

Chugach's relationship with MEA is strained as it is in litigation with MEA in rate cases and the courts. The Superior Court of Alaska recently granted summary judgment to Chugach on several claims MEA filed, though MEA intends to appeal these to the state's supreme court later in 2002. While these issues may be small in terms of potential monetary damages to Chugach, they serve to highlight the adversarial nature of the relationship and the potential for further acrimony in the years ahead, both of which serve to distract management focus.

Ⓣ Chugach's rates are set not by it but by the RCA, whereas many other G&Ts set their own. This distinction leads to the concern that regulators could set Chugach's rates such that its financial covenants are met and no more, though experience to date suggests that regulators are generally supportive of credit quality. ~~the minimum covenant requirement of 1.20x the MFI requirement.~~

The series 2002A term bond, like series 2001, is non-amortizing debt. Approximately 70% of Chugach's outstanding principal will mature in 2011 and 2012. Bullet maturities also expose bondholders to refinancing risk, which many other cooperatives do not face because of their amortizing debt.

Chugach's finances are distinguished by high MFI, debt service coverage, and equity ratios. These ratios are estimated (through November 2001) at 1.20 times (x), 1.73x, and 26% respectively, down slightly from 1.35x, 1.73x, and 29% in 2000. The drop can be attributed to a weak first quarter in 2001, a delay in getting a rate increase from the RCA, increased labor rates, and the 2001 refinancing. Projections forecast continued high debt service coverage over the next five years, but mainly because most of the outstanding principal comes due in 2011 and 2012. Standard & Poor's will expect continued strong coverage ratios; Chugach's coverage of interest is actually somewhat thin for a utility with mostly non-amortizing debt. Therefore, degradation of coverage margins, even by small amounts, could result in lower ratings.

Chugach's business position is a '4' on a scale of 1-10, with '1' being the strongest. The score reflects the cooperative's operational, managerial, and financial strength, but also reflects the difficult relations with MEA and the legal difficulties in which it is embroiled.

■ Outlook

The stable outlook reflects expectations that Chugach will continue to receive regulatory support for MFI ratio consistent with an 'A' rating for a utility with non-amortizing debt, and that current litigation will not harm the cooperative's financial health. The outlook also reflects expectation that Chugach will manage the now-substantial refinancing risk it faces through market purchases of outstanding debt, accumulation of funds, maintenance of strong liquidity, or some combination of the above.

■ Management

A seven-member board elected at large from Chugach's retail membership oversees the cooperative.

(G)

Chubb 206-343-2103

Position Paper Regulatory Commission of Alaska

HB 453 - "An Act exempting from regulation under the Alaska Public Utilities Regulatory Act wholesale agreements for the sale of power by joint action agencies and contracts related to those agreement, and joint action agencies composed of public utilities of political subdivisions and utilities organized under the Electric and Telephone Cooperative Act."

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

(G)

Alaska's most capital intensive industry.

Why does that matter?

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

In stark contrast, the exemption proposed in HB 453 would extend to an unknown number of new joint action agencies for an undefined number of projects which have not yet been planned, constructed, financed or operated. Further, the exemption would be of unlimited duration.

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

what if they maintain a audit rating?