



HB

151



DIVISION OF OCCUPATIONAL LICENSING

Frank H. Murkowski, Governor

April 6, 2005

The Honorable Tom Anderson, Chair
Labor and Commerce Committee
House of Representatives
Alaska State Capitol, Room 432
Juneau, AK 99801

Dear Representative Anderson:

Re: HB 151

The members of the Alaska State Board of Examiners in Optometry are **unanimous in opposing HB151** "An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date." Our position is as follows:

There is no precedent for this bill. Legislation of this nature does not exist in any other state: The decisions concerning post-operative care are the responsibility of the surgeon and patient and regulated by the Medical Board.

Optometrists in Alaska are authorized to examine, diagnose, and treat conditions of the human eyes, employing methods they are educationally qualified to use as established by the optometry board" (AS 08.72.300): Pre- and post-operative care has been part of optometry's scope since the early 1980's in Alaska.

Co-management of pre- and post-surgical care is already highly regulated under Federal law: Federal laws regulating financial arrangements and safe harbor regulations between surgeons and referring doctors are already in place. Medicare has studied and regulated co-management for many years.

HB 151 would reduce patient access to care, limit freedom of choice, and increase costs, especially for rural patients: Most eye surgery occurs in urban areas, and rural patients would carry the burden of additional cost for staying extra days and additional travel expenses unless they sign a document declaring a travel hardship, that they understand the "special risks" of being co-managed by their optometrist and other unnecessary conditions. Urban optometrists would be prevented from seeing patients post-operatively, even though within their scope of practice. Freedom of choice of providers would be limited under this bill.

There is no public health justification for this bill: To our knowledge, the Board has not received any complaints from the public concerning post-surgical care by optometrists since creation of the board approximately 25 years ago.

Please contact me if you have questions regarding our opposition to this bill.

Sincerely

JSM

Jill Geering Matheson, OD, Board Chair
Alaska State Board of Examiners in Optometry

4/5/05

State Representative Gabrielle LeDoux
Room 412, State Capitol
Juneau, Alaska 99811

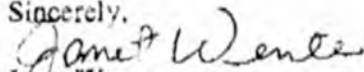
Dear Representative LeDoux:

I was recently made aware of HB 151, an issue that is in front of State House Labor & Commerce this afternoon. I feel it's important for patient safety to have postoperative care following ocular surgery by an ophthalmologist and not an optometrist for at least the first 48 hours.

This bill will continue the comanagement practice, as it will allow for a patient to have the surgeon available who performed the procedure or a colleague for at least 48 hours post operatively.

Bottom line, patient safety must always be paramount.

Sincerely,


Janet Wentz

10826 Bells Flats Rd.
Kodiak, Alaska 99615

Janet Wentz
10826 Bells Flats Rd
Kodiak Alaska 99615

Rep. Tom Anderson

From: Michelle LeKites [lekites@gci.net]
Sent: Tuesday, April 05, 2005 2:30 PM
To: Rep. Tom Anderson
Subject: Oppose BH151

Representative Anderson:

Please note that I strongly oppose BH151 for the following reasons:

1. This limits a practice we have been doing for over 2 decades with out complaints. (The National Institute of health just released a study done by OMD's that says we provide excellent post-op care.)
2. This restricts trade. It legislates "who" and "how" co-management is done. It takes OD's out as co-managers unless a contract is signed and limits other professionals from co-managing. Additionally, it is bringing the legislators into regulating medicine...this is for the medical board. Not to mention, it makes something we currently do into a misdemeanor offense.
3. This is taking away a practice we currently do, and some things we are well educated and trained in.

Charles A. LeKites, O.D.
Michelle LeKites
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PATRICIA M. NOLAN

FAK NO. 907 583 4265

P. 02

Patrick M. Nolan, D.O., F.A.C.E.

ENDOCRINOLOGY/ INTERNAL MEDICINE
A PROFESSIONAL CORPORATION
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ANCHORAGE, ALASKA 99508
TELEPHONE (907) 561-6100

April 5, 2005

House Labor and Commerce Committee Members
Alaska State Legislature
State Capitol
Juneau, AK 99801

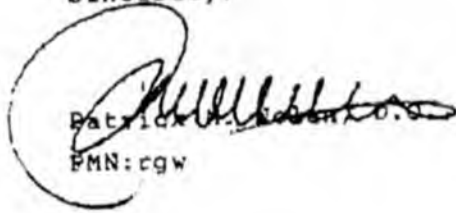
Attn: Chair Anderson

Re: HB 151 - Ocular Postoperative Care

Dear House Labor and Commerce Committee Members:

It has come to my attention that HB 151 regarding Ocular Postoperative Care is up for consideration. I support HB 151 because I believe that appropriate postoperative care following ocular surgery by an ophthalmologist is imperative for good patient care. HB 151 provides for appropriate ocular postoperative care by the appropriate professional, an ophthalmologist. I support HB 151 and urge you to do so as well.

Sincerely,


Patrick M. Nolan, D.O. F.A.C.E.
PMN:cgw



AMERICAN ACADEMY
OF OPHTHALMOLOGY

April 4, 2005

The Honorable Tom Anderson
Chair, Labor and Commerce Committee
Alaska State Capitol
Juneau, Alaska 99801-1182

Suite 700
1101 Vermont Avenue NW
Washington DC, 20005-3570
Tel. 202.737.6662
Fax 202.737.7061
<http://www.aaao.org>

Dear Chair Anderson:

HB 151 addresses a particular problem unique to surgical eye care. As you are aware, co-management is the sharing of postoperative responsibilities between the operating surgeon and another health care provider. In theory, this arrangement is to be entered into only in cases when it is in the best interests of the patient, for example, when it is too far for the patient to safely travel. If this were the only kind of co-management around, we would not require corrective legislation. In practice, there is abuse, and there are times when this behavior is unethical.

In the interest of patient safety, the enactment of HB 151 will eliminate the pressure between surgeons and allied health professionals to enter into such agreements that are not in the best interest of patient quality of care. This bill would eliminate the unethical behavior by carefully regulating when post-operative co-management is appropriate and is in the patient's best interest.

Below, I have listed several of the most common complications that can occur during the immediate post-operative period:

**COMMON SURGICAL COMPLICATIONS IN THE IMMEDIATE POST-OPERATIVE
PERIOD (48 hours) AFTER EYE SURGERY**

HypHEMA (bleeding within the eye)
Flat chamber (anterior part of the eye collapses)
Iris incarceration (Iris stuck in the wound)
Choroidals (blood between the retina and sclera, causes flat anterior chamber.)
Wound Infection
Elevated Eye Pressure

The enactment of HB 151 will ensure that patients have access to a surgeon within the 48 hour window in which the above complications from eye surgery could occur.

HB 151 does not ban co-management of patients, but it ensures that such arrangements are truly in the best interests of patients. It recognizes unique challenges of delivering health care services to the citizens of Alaska. In addition, the bill permits flexibility in cases of emergencies and unexpected circumstances. HB 151 is a patient-friendly bill, and I urge the committee's support of this important patient care legislation.

Sincerely,

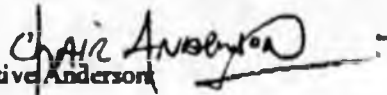
Susan H. Day, MD
President

CC: Members of the House Labor & Commerce Committee

April 5, 2005

Representative Tom Anderson
Chairman, House Labor and Commerce Committee

Dear Representative Anderson



I am writing this letter to provide support for HB 151. Its importance for patient care cannot be overstated.

Facts.

- The most devastating complication of cataract surgery (endophthalmitis) occurs almost exclusively in the first few days after surgery.
- Endophthalmitis can cause irreversible blindness within 24 hours.
- Only ophthalmologists/eye surgeons (eye doctors with medical degrees) have done cataract surgery and treated endophthalmitis.
- Endophthalmitis can be more easily misdiagnosed by those with less experience and training.
- Delays in diagnosis and treatment can lead to irreversible vision loss.
- If a surgeon leaves the state the day after surgery (without equivalently trained coverage) their patients are unnecessarily abandoned to the care of optometrists with no significant training/experience in post-surgical complications.
- There are many other complications that occur in the immediate post-operative period that are significant and can only be handled by eye surgeons.
- If the surgeon has provided no back-up ophthalmologist, the patient's care will be delayed by either having to go to the emergency room or waiting for their surgeon to fly back to Alaska.
- The reality is emergencies end up being cared for by local eye surgeons who take emergency call, not because they want to, but because it is consistent with the Hippocratic oath taken by medically trained physicians.

Other Facts (Non medical), but illuminating):


- Optometrists that refer patients to local surgeons receive no money related to that surgical referral.
- Optometrists receive in the realm of \$200-400 per eye when the referral is to the itinerant surgeon. (Co-management fees).
- Local optometrists have referred themselves or their parents to me for surgery yet refer all or most of their patients to the itinerant surgeon.
- The vast majority of local optometrists refer surgery to the itinerant surgeon.
- The American Academy of Ophthalmology has stated officially that co-management should only occur when geographically necessary (i.e., a patient that lives in Kodiak/Seward etc. and cannot stay in or return to Anchorage after surgery) and co-management should not be the routine/ business model behind a eye surgical practice (i.e. co-managing all of your patients to allow you to be out of state except for doing the surgery itself.)

With these facts it can only be inferred that optometrists and the itinerant surgeon are fighting against this bill for financial gain or, for the optometrists, the prestige of being associated with a

surgical practice. At best they can argue that co-management is equivalent care and should therefore be allowed. But this requires believing that going to medical school is unnecessary and that years of doing surgery and handling the post-operative complications is superfluous. If the current itinerant surgeon were to say, as he has to me and others, that optometrists are as good as or better than he is at managing the post-operative care, then he should not be doing surgery. It is unethical to do surgery if you are no longer as qualified as an optometrist in post-operative care.

I feel I speak not only for myself but for other local ophthalmologists when I state unequivocally that our interest regarding this and similar bills is to protect the health care of Alaskans. It is not our goal to take other eye care providers' business, but simply to ensure that all surgeons that operate in Alaska are held to the same standard or at least a minimal standard that reasonably protects patients.

Please contact me at any time if you have any questions or need me to elaborate on any of these points in detail. I am a 4th generation Alaskan that requires no more patients or money to feel gratified. I am outraged by eyecare professionals abusing their trust for financial gain with predictable risk to patient care.



Griffith C. Steiner, MD
Board Certified Ophthalmologist
Anchorage, Alaska
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lbngriff@sci.net

CC: Members of the House Labor and Commerce Committee



March 30, 2005

3200 Providence Drive
P.O. Box 196604
Anchorage, Alaska
99519-6604

Tel 907.562.2211

Members of the House Labor and Commerce Committee
c/o The Honorable Tom Anderson
Chair, House Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Chairman Anderson and Members of the House Labor and Commerce Committee:

I am writing today to express my support for House Bill 151, relating to provider responsibility for ocular postoperative care. After speaking with some of the practicing physicians here at Providence, I am convinced that it is in the best interest of our facilities, our patients and the medical community that this important legislation be enacted this legislative session.

Unfortunately, in Alaska we have seen so-called "cataract mills" being operated. While cataract surgery has become common in the eyes of many and is, for the most part, performed without complication, there are occasions when complications can occur. If and when complications occur, it is imperative that the physician most familiar with the surgery performed manages postoperative care. In the case of "cataract mills," often follow-up care is abandoned by the surgeon who performed the procedure and it is left to an Ophthalmologist totally unfamiliar with the case.

Our intentions and desires are to have quality care for all patients and in that light H.B. 151 "set the stage" to accomplish that for those requiring cataract surgery. It is for this reason that I urge your favorable consideration of House Bill 151.

Thank you for your consideration.

Sincerely,

E. Al Parrish
Vice President/Chief Executive Alaska Region
Providence Health System

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 151 BY: Representative Tom Anderson

TITLE: "An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

The majority of eye surgery performed in the United States today is technologically advanced and is safer and more effective than ever before. The most common major eye surgery performed in the United States is cataract surgery; with more than 1.5 million cases a year. Cataract surgery has evolved to such an advanced state that many cases take less than 15 minutes to perform. The speed with which modern cataract surgery can be performed has tended to trivialize the seriousness of this surgery in the public's mind, causing patients to infer that it is risk free. No surgery is risk free, including short cases such as uncomplicated cataract surgery. However, complications do occur and can be serious. Permanent loss of vision and patient death are some of the more serious potential complications. It is important for postoperative care to be managed by an ophthalmologist familiar with the surgery and the potential complications.

Unfortunately, the reduction of surgical time for cataract surgery has led to the appearance of so-called "cataract mills" where patients are referred in large numbers by an optometrist and, in return for a "co-management fee", the referring optometrist is then allowed to manage the patient postoperatively. The operating surgeon, in this setting, often meets the patient just minutes prior to surgery and takes no responsibility after surgery. In some cases this surgeon may travel from cataract mill to cataract mill and is unavailable for any postoperative consultation or advice. The patient's follow-up care is therefore abandoned, by pre-arrangement, to the referring Optometrist who is not qualified by training or experience to handle any serious complications resulting from cataract surgery.

Another serious situation may arise as a result of the "cataract mill". Should the patient require hospitalization, the surgeon is unlikely to have local hospital privileges. The patient is then dumped on another ophthalmologist unfamiliar with the patient but now responsible for rendering critical care.

Co management of eye surgery as currently practiced in Alaska is a recipe for sub-optimal patient care. House Bill 151 addresses the issue of postoperative care for eye surgery in Alaska, taking into account the unusual and sometimes-difficult medical and surgical challenges our state often poses in terms of isolation, limited medical resources and transportation difficulties.

I urge your support for this legislation.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Sectional Analysis for HB 151 BY: Representative Tom Anderson

Section 1. Adds a new section to AS 08.64

Places limits on how and when a surgeon who performs eye surgery in this state may delegate responsibility to someone else for post-operative care of the patient

Section 2-3. Amends AS 08.64.370

Requires compliance with Sec. 1 of the bill by certain people who are exempt from licensing as physicians.

Section 4. Amends AS 08.64.380

Adds definition of "knowingly" which is a term used in secs. 1 and 3 of the bill.

Section 5 and 7 Amends the uncodified law of the State of Alaska and adds an effective date

These sections allow the State Medical Board to begin the regulations process before the rest of the bill takes effect.

Section 6. Amends the uncodified law of the State of Alaska

Applies the amendments made by the bill to eye surgery occurring on or after the effective date of secs. 1-4 of the bill

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 151(HES)
 (H) Publish Date: 3/18/05

Revision Date/Time (Note if correction):
 Title: Responsibility for Eye Care
After Surgery
 Sponsor: House Labor & Commerce
 Requester: House HES
 Dept. Affected: Commerce
 RDU: Occupational Licensing (117)
 Component: Occupational Licensing
 Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 151 amends statutes of the State Medical Board to address provider responsibility for ocular postoperative care. New funds are not required to implement provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 2/28/05 1:21 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/28/2005
 Agency: Commerce, Community, and Economic Development

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (607) 562-0304 • (907) 561-2063 (fax)

March 4, 2005

House Health Education and Social Services Committee Members
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: HB 151 - Ocular Postoperative Care

Representative Tom Anderson

Dear House Health Education and Social Services Committee Members:

The Alaska State Medical Association (ASMA) represents physicians from across the State and is primarily concerned with the health of all Alaskans.

ASMA is writing in support of HB 151. Appropriate postoperative care following ocular surgery by an "EYE MD", an ophthalmologist, is imperative for good patient care.

Today's technology makes many surgical procedures, including ocular surgeries, appear to be routine. Most often, such surgeries have a high rate of success. So high, the public loses sight of the seriousness of the surgery and the complications that might occur.

HB 151 provides for appropriate ocular postoperative care by the appropriate professional. ASMA supports HB 151 and urges you to do so as well.

Sincerely,

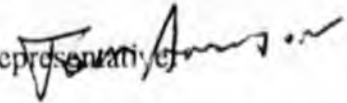
Paul Worrell, MD

By: Paul Worrell, MD President
For: The Alaska State Medical Association

Alaska Society of Eye Physicians & Surgeons
6100 Kalmia Drive
Anchorage, Alaska 99507
907-563-8526

2/27/05

State House of Representatives
House Health Education & Social Services Committee:

Dear Representative 

I am writing this letter to express the support of the Alaska Society of Eye Physicians & Surgeons for HB 151. The American Academy of Ophthalmology, the national association of ophthalmologists, also endorses HB 151. HB 151 would establish necessary guidelines in Alaskan state law for provider responsibility for ocular post-operative care. The bill is intended to close a loophole in the existing law that allows for potential abuses of co-management arrangements between providers due to incentives not related to the care of the patient.

The scope of this bill is thoughtfully limited to ocular post-operative care. Ocular care is one of the rare areas in medicine where non-physicians inappropriately perform post-operative care. Specifically, this bill would prevent itinerant surgeons from allowing non-medical personnel to provide inappropriate post-operative care after eye surgery.

It makes common sense. The operating surgeon, a medical doctor or doctor of osteopathy, should examine patients for infections, other diseases, and complications that might occur in the post-operative period following surgery in order to prevent potential loss of vision. However, irresponsible delegation of post-operative care to an optometrist, who can neither accurately diagnose nor treat complication and emergencies, is a gamble that no patient should have to face.

This legislation would have no fiscal impact to consumers or to health care costs. In fact, patients would receive better and safer treatment at no additional costs.

BRIEFING: HB 151

HB 151 would establish necessary guidelines in Alaskan state law for provider responsibility for ocular post-operative care. The bill is intended to close a loophole in the existing law that allows for potential abuses of co-management arrangements between providers due to incentives not related to the care of the patient.

- HB 151 takes into account the unique challenges of performing eye surgery in Alaska.
- HB 151 does not prohibit legitimate co-management of surgical patients and would have no effect on responsible surgical practices in Alaska.

- HB 151 is consistent with the principles of the Joint Position Paper of the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgeons on Ophthalmic Post-operative care.
- *HB 151 provides that unless a surgeon enters into a written co-management agreement with the patient, the bill requires a surgeon to be physically available to the patient for post-operative care in the community in which the operation was performed for 120 hours after surgery.*
- HB 151 PERMITS CO-MANAGEMENT IF:
 - The distance that patient would have to travel to the regular office of the operating surgeon would result in an unreasonable hardship for the patient, as determined by the patient;
 - The surgeon will not be available for post-operative care as a result of the surgeon's personal travel, illness, travel to an area of the state for occasional practice of medicine, or travel to an area of a state designated as a physician shortage area; or
 - Other justifiable circumstances exist, as determined by the Alaska State Medical Board.
- **HB 151 PROTECTS BOTH PATIENTS AND THE OPERATING SURGEON** by prohibiting co-management arrangements:
 - In which a fee is paid to the person to whom the care is delegated that does not reflect the fair market value of the services performed by that person;
 - That are entered into as a matter of routine and not on a case-by-case basis;
 - That are not clinically appropriate for the patient;
 - That is made with the intent to induce surgical referrals;
 - That is based on economic considerations affecting the surgeon.
- HB 151 CONTAINS **EXTRA FLEXIBILITY** for both the patient and the operating surgeon by allowing the surgeon to delegate post-operative care of a patient without a written co-management agreement because of unanticipated circumstances that were reasonable foreseeable before the surgery was performed.

Please feel free to call me at anytime at 907-563-8526 if you have any additional questions.

Cordially,



Carl Rosen, M.D.

President

Alaska Society of Eye Physicians & Surgeons

6100 Kalmia Drive

Anchorage, Alaska 99507

907-563-8526

cc: All members of the House HESS Committee

ATTN: Rep Tom ANDERSON FAX 465-2418

Alaska State House of Representatives
HESS Committee Members
Juneau, Alaska 99801

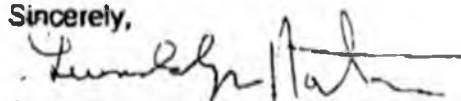
Dear Members:

Thank you for considering HB 151. I follow the Alaska legislature thru media coverage and a daily monitoring of the Alaska Legislature thru it's website and that is where I noticed HB 151. I did some further research by entering the American Academy of Ophthalmology website.

Despite position papers from groups such as the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgeons that call for ocular surgeons to provide either hands on post-operative care or to enter into a co-management care agreements with a similarly qualified medical doctor for post-operative care, some doctors offering this service have chosen to ignore these guidelines and entrust post-operative follow-up to non-medical personnel.

As these procedures continue to increase in volume the risks to the patient will continue to increase as well, unless something is done to quell the complacency of a few when it comes to post-operative follow-up. HB 151 sets into law that which is already in practice by most people in this profession, but it protects our patients from those few that continue to put profit above proscribed procedure. I urge you to pass HB 151.

Sincerely,



Gwen Norton
P.O. Box 141796
Anchorage, Alaska 99514

Cc: Wilson, Seaton, Cissna, Kohring, Gardner, McGuire, Anderson



Alaska Native Brotherhood Camp 2

March 17, 2005

Honorable Representative Peggy Wilson
Chair, Health Education & Social Services Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Representative Wilson,

You have an excellent opportunity this year to pass legislation that would significantly enhance patient safety when it comes to Alaskans seeking cataract and other types of ocular surgery. Once more by passing House Bill 151 you will increase the safety threshold without necessarily increasing the costs of delivering that service.

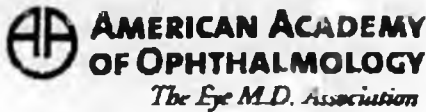
It seems that few itinerant surgeons feel that unlike any other form of surgery, it is okay to entrust immediate post-operative care of a patient to an optometrist that is not schooled or trained in post-surgical care. They lack the foundation to identify infections, diseases and other medical complications that could arise following a surgical procedure.

This practice of entrusting post-operative care to non-medically trained optometrists is not endorsed by any society, association or academy of professions that practice eye surgery and Alaska should pass HB 151 to end that practice here. If an eye surgeon is too busy to provide his or her own post-operative care, then they must be required to arrange for an equal level of care for that patient through a co-management agreement with another eye surgeon, for that all important 48-hour period of time. Please pass HB 151.

Sincerely,
Alaska Native Brotherhood Camp 2

Robert W. Loescher, Chair
Legislative Affairs Committee

Cc: Representative Seaton
Representative Kohring
Representative Anderson
Representative McGuire
Representative Cissna
Representative Gardner



March 15, 2005

The Honorable Peggy Wilson
Chair, Health, Education, and Social Services Committee
Alaska State Capitol
Juneau, Alaska 99801-1182

Suite 700
1101 Vermont Avenue, N.W.
Washington, DC 20005-3570

Tel. 202.737.6662
Fax 202.737.7961
http://www.aaopt.org

Dear Chair Wilson:

I would like to compliment the House Health, Education and Social Services Committee for the time the Committee members have taken to review HB 151. HB 151 addresses a particular problem unique to surgical eye care. As you are aware, co-management is the sharing of postoperative responsibilities between the operating surgeon and another health care provider. In theory, this arrangement is to be entered into only in cases when it is in the best interests of the patient, for example, when it is too far for the patient to safely travel. If this were the only kind of co-management around, we would not require corrective legislation. In practice, there is abuse, and there are times when this behavior is unethical.

In the interest of patient safety, the enactment of HB 151 will eliminate the pressure between surgeons and allied health professionals to enter into such agreements that are not in the best interest of patient quality of care. This bill would eliminate the unethical behavior by carefully regulating when post-operative co-management is appropriate and is in the patient's best interest.

The Committee had specifically asked for information as to the possible complications that can occur in the immediate post-operative period. Below, I have listed several of the most common complications that can occur:

COMMON SURGICAL COMPLICATIONS IN THE IMMEDIATE POST-OPERATIVE PERIOD (48 hours) AFTER EYE SURGERY

- Hyphema (bleeding within the eye)
- Flat chamber (anterior part of the eye collapses)
- Iris incarceration (iris stuck in the wound)
- Choroidals (blood between the retina and sclera, causes flat anterior chamber.)
- Wound Infection
- Elevated Eye Pressure

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HB 151 does not ban co-management of patients, but it ensures that such arrangements are truly in the best interests of patients. It recognizes unique challenges of delivering health care services to the citizens of Alaska. In addition, the bill permits flexibility in cases of emergencies and unexpected circumstances. HB 151 is a patient-friendly bill, and I urge the committee's support of this important patient care legislation.

Sincerely,

Susan H. Day
President

Members Committee on Labor and Commerce
House of Representatives
State of Alaska

28th March 2005

Dear Sirs:

I am writing in support of HB151. I have been a practicing eye surgeon in the state of Alaska for over eight years. I am also one of two retinal surgeons practicing in Alaska. As a retinal specialist I treat disorders of the retina and vitreous, such as retinal detachment, vitreous hemorrhage, severe eye trauma, infections, and complications from eye surgery.

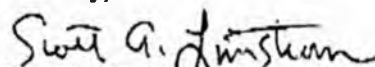
HB 151 addresses the need for proper post-operative care for patients in the state of Alaska. In Ophthalmology, patients from outlying areas may be left in the hands of an Optometrist, an eye care provider who is not a surgeon, for some of their post-operative care. This arrangement is called "co-management" of the patients' care. For their services, the Optometrist is paid a fee usually equal to 20% of the surgical fee paid to the surgeon. I occasionally rely upon my Optometric colleagues to help manage patients from outlying areas. I do not release the patient to be followed by the Optometrist until they are out of the critical post-operative period where complications can still occur. Myself, or my partner are always available thereafter, 24 hours per day 7 days per week, should the patient develop further problems.

Unfortunately, abuses can and do occur in this arrangement between the Optometrist and the surgeon. It is critical that the co-management fee not be used to induce referrals (ie. as a kickback), that the patient be completely informed of the arrangement, and that the surgeon manage the patient until they are stable.

As a retinal surgeon I am often referred the complications of many different types of eye surgery. One of the most feared complications of cataract surgery is endophthalmitis, or infection of the inside of the eye. This complication often occurs several days after the surgery. It is considered an absolute emergency requiring surgical vitreous biopsy and injection of antibiotics. If not treated quickly the patient will lose all vision. It is the responsibility of the surgeon to manage the patient during this critical post-operative period. It is not appropriate to operate on a patient and leave them in the hands of a non-surgeon during a time when sight-threatening complications can occur.

HB 151 simply defines the critical post-operative period during which a surgeon must be available to provide care for his or her patient. In Alaska it is sometimes necessary for patients from outlying areas to receive care in a co-management type of arrangement, such as exists between Ophthalmologists and Optometrists. It is imperative the management of the patient be done in an ethical manner and not endanger the patient in any way.

Sincerely,


Scott A. Limstrom, MD
3500 LaTouche, Suite 250
Anchorage, Alaska 99508
(907)561-1530



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Joint Position Paper: Ophthalmic Postoperative Care

A Joint Position Paper of the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgery

This position paper examines the role of co-management of ophthalmic surgical patients and offers guidelines as to when this practice is ethical and proper and when it is unethical and even illegal. Co-management will be defined as the sharing of postoperative responsibilities between the operating surgeon and another healthcare provider.

Federal Medicare policy concerning co-management has been adapted and interpreted by States and carriers with variations in details and restrictions. In addition, the AMA and the American College of Surgeons have issued guidelines addressing this issue, agreeing that the operating surgeon has the responsibility for the postoperative care and disapproving if economic considerations drive the decision to transfer the care of a patient following surgery. Although this obligation may be ethically ceded to another healthcare provider, it is anticipated that this will be an exceptional, rather than a routine, occurrence. If the reason for sharing postoperative care with another provider, however well trained, is economic, specifically as an inducement for surgical referrals, or the result of coercion by the referring practitioner, it is patently unethical and, in many jurisdictions, illegal. **The Office of the Inspector General of the Department of Health and Human Services has also expressed concern about co-management based on economic considerations rather than clinical appropriateness and has refused to provide safe harbor protections for such arrangements, preferring to review cases on an individual basis.**

If co-management of surgical patients is being considered, justifiable circumstances should exist such as:

- The surgeon's unavailability (travel, illness, leave, itinerant surgery in a rural area, or surgery performed in a designated physician shortage area).
- The patient cannot travel to the surgeon's office because of distance or the development of another illness.

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When situations arise in which the surgeon concludes that the delegation of postoperative care is in the patient's best interest, guidelines that should be followed include:

- The surgeon, prior to surgery, must inform the patient if there are any prearranged postoperative management plans, and the patient must voluntarily consent to this in writing. This consent process, which should be documented in the medical record, should include the reason for the transfer of care, the qualifications of the healthcare provider who will render the postoperative care, and any special risks that may result from this arrangement.
- If an unanticipated transfer of postoperative care is required, the patient should be informed and this information documented in the medical record.
- The surgeon should inform the patient of the financial implications resulting from the co-management arrangement, particularly with regard to the patient's payment obligations and the postoperative provider's reimbursement.
- The transfer of care must not occur unless it is clinically appropriate and in the patient's best interest.
- The surgeon should confirm that the co-manager is legally entitled and professionally trained to provide the particular services.
- The co-management must not be done as a matter of routine policy on all patients.
- The surgeon should follow the patient until postoperatively stable, and there is no fixed time when the patient is sent back to the referring provider.
- The patient should be reassured that he/she has access to the surgeon, if necessary, during the postoperative period at no additional cost. (If a Medicare/Medicaid patient returns to the surgeon, both the surgeon and postoperative care provider must file a corrected claim.)

The American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgery agree with the above positions. The ophthalmic surgeon has the primary responsibility for the preoperative assessment and postoperative care of his/her patients, **regardless of the type of surgery performed**. The decision to co-manage should be the result of a determination of what is best for the patient and not economic considerations. If the co-management of patients is done on a routine basis for predominantly financial reasons, it represents unethical behavior and may be illegal. **Above all, patients' interests must never be compromised as a result of co-management.**

*This position paper is provided for informational purposes and is intended to offer practitioners voluntary and non-enforceable guidelines as to what co-management practices the AAO and ASCRS consider to be appropriate and in patients' best interests. Practitioners should use their personal and professional judgment in interpreting these guidelines and applying them to the particular circumstances of their individual practice arrangements. This paper is not intended to provide legal advice and should not be relied upon as such. Practitioners are encouraged to consult an experienced health care attorney if they have questions about the propriety of their co-management arrangements under applicable laws and regulations.

Approved February 2000

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HB

157

24-LS0562X
Craver
4/8/05

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 157(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES ANDERSON, Thomas

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 10.25.020 is amended to read:

5 **Sec. 10.25.020. Powers of electric cooperative.** An electric cooperative may

6 (1) generate, manufacture, purchase, acquire, accumulate, and transmit
7 electric energy, and distribute, sell, supply, and dispose of electric energy to its
8 members, to governmental agencies and political subdivisions, and to other persons
9 not exceeding 10 percent of the number of its members; however, a cooperative that
10 acquires existing electric facilities may continue service to persons, not in excess of 40
11 percent of the number of its members, who are already receiving service from these
12 facilities without requiring them to become members, and these persons may become
13 members upon the terms as may be prescribed in the bylaws;

14 (2) assist persons to whom electric energy is or will be supplied by the

1 cooperative in wiring their premises and in acquiring and installing electrical and
2 plumbing appliances, equipment, fixtures, and apparatus by financing them, and, in
3 connection with these services, wire or have wired the premises, and buy, acquire,
4 lease, sell, distribute, install, and repair electric and plumbing appliances, equipment,
5 fixtures, and apparatus;

6 (3) assist persons to whom electric energy is or will be supplied by the
7 cooperative in constructing, equipping, maintaining, and operating electric cold
8 storage or processing plants by financing them or otherwise;

9 (4) operate a waste heat distribution system;

10 (5) operate a heating distribution system that was in existence on
11 June 9, 1988;

12 (6) provide sewer, water, or gas utility service if the cooperative has
13 received a certificate of convenience and necessity under AS 42.05.221 - 42.05.281
14 from the former Alaska Public Utilities Commission or the Regulatory Commission of
15 Alaska for each type of service provided;

16 (7) provide direct satellite television programming services; in this
17 paragraph, "direct satellite television programming services" means a video broadcast
18 signal that is received directly from a satellite by an end user;

19 (8) become a member of other limited liability companies or
20 corporations organized for any lawful purpose, or own stock in them.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Sectional Analysis for HB 157 BY: Representative Tom Anderson

Section 1. Amends AS 10.25.020

Adds the ability to form a limited liability company organized for any lawful purpose to the list of the powers of an electric cooperative.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSS HB 157
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Elec/Phone Coop & Other Entities RDU Tax and Treasury
 Component Tax
 Sponsor Rep. Anderson, Thomas
 Requester (H) CRA Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

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

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* See page 2

Prepared by: Chuck Harlamert Phone 465-2320
 Division Tax Division Date/Time 4/5/05 4:34 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 4/5/2005
 Agency Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSS HB 157

ANALYSIS CONTINUATION

We are unable to estimate the revenue impact, if any, of the bill.

AS 10.25.540(b) exempts telephone and electric cooperatives from all state taxes other than the cooperative tax under AS 10.25.550 or .555. We do not believe that this exclusion is intended to avoid requirements for collection or remittance of taxes on their members or other customers.

New section AS 10.25.020(8) specifies that cooperatives may own, in whole or in part, LLCs or corporations organized for any lawful purpose. Revenue does not have the expertise to opine whether the bill clarifies existing law or establishes new rights for the cooperatives. To the extent that the activities of these LLCs or corporations are attributed to the cooperative and not taxed as a separate entity, the cooperatives' tax exemption will shelter the LLC/Corporate activity from state taxation. The activity thus sheltered from tax would be limited to the portion of the LLC/Corporation's activity that is attributed to a cooperative.

Excise, ad valorem, and property taxes are imposed at the entity level and are not attributed to the owners of the entity. The LLC or corporation will pay any applicable motor fuel tax, property tax, local sales tax, or other non-income taxes. Therefore, the arrangement allowed under the bill will not avoid these taxes.

In contrast, income taxes are commonly attributed to the owner of the operating entity instead of the entity itself. An LLC that is either a single member LLC (owned wholly by the cooperative) or a multi-member LLC that elects to be treated as a partnership for tax purposes, the income of the LLC will be attributed to the owners. The LLC's activity will not be subject to corporate income taxes to the extent that the income is allocated to a cooperative. Thus, the income of a single member LLC owned by a cooperative, and the cooperatives' share of the income of a multi-member LLC electing partnership treatment, will be sheltered from state corporate net income tax.

This same "loophole", that of sheltering income through attribution to an exempt entity, is used by the majority of businesses operating in the state. Every S-corporation and every partnership or LLC electing partnership treatment and having individual partners/members achieves the same result under Alaska law.

New section AS 10.25.020(9) authorizes cooperatives to sell fuel that is not needed to generate electric energy. We believe that the state tax exemption for cooperatives does not extend to excuse cooperatives from collection and reporting requirements applicable to dealers of motor fuel. Cooperatives could experience financial hardship if they fail to collect tax on sales of taxable fuel and are later forced to pay the uncollected tax along with any interest owing. We recommend that the committee consider adding language to clarify the cooperatives' obligation to collect and remit motor fuel tax as a dealer under AS 43.40.010.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SSHB 157
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Electric/Telephone Co-ops RDU Regulatory Commission of Alaska (393)
and Other Entities Component Regulatory Commission of Alaska
Sponsor Anderson
Requester House Community & Regional Affairs Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds "limited liability company" to the list of entities of which an electric or telephone cooperative can become a member; the other two entities on the list are cooperatives and corporations. This legislation has no fiscal impact on the operations of the agency.

Prepared by: Kate Giard, Chairman
Division Regulatory Commission of Alaska
Approved by: Edgar Blatchford, Commissioner
Agency Commerce, Community, and Economic Development

Phone 907.276.6222
Date/Time 3/21/05 4:00 PM
Date 3/21/2005

**HOUSE BILL NO. 157 BACKGROUND
MARCH 2005**

I. Introduction.

House Bill No. 157, "An Act clarifying the powers of electric or telephone cooperatives to become members of or own stock in other entities," proposes to amend AS 10.25.010(a) to read:

Sec. 10.25.010. Powers of electric or telephone cooperative; prohibited action. (a) Except as provided in (b) of this section, an electric or telephone cooperative may

...

(9) become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;

.....

The purpose and function of this amendment are to (1) clarify the existing power of an electric or telephone to become a member of, or own stock in, other legal entities, and (2) expressly include limited liability companies (which did not exist in Alaska until 1994) as a type of legal entity in which a cooperative can become a member.

II. Background.

A. Current powers of electric and telephone cooperatives.

As it currently exists, the Alaska Electric and Telephone Cooperative Act (AS 10.25) grants electric and telephone cooperatives broad powers to conduct various activities. For example, AS 10.25.010 provides 14 various general powers of electric and telephone cooperatives. In addition to traditional powers closely related to the provision of electric and telephone utility services, those powers include the power to:

(9) become a member of other cooperatives or corporations or own stock in them; [and]

...

(14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

AS 10.25.010(a).

In addition, AS 10.25.630 provides:

This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as provided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things.

B. The current power to become members of, or own stock in, other legal entities.

As stated above, by statute, Alaska electric and telephone cooperatives, themselves, have the power to engage in a broad range of activities. In addition, through AS 10.25.010(a)(9), as it is currently written, electric and telephone cooperatives can also form subsidiary corporations or cooperatives either through becoming a member of other cooperatives or corporations or by owning stock in them. Ownership in a cooperative, and often in a non-profit corporation, occurs through "membership" in that entity. Ownership in a for-profit corporation occurs through ownership of "stock" in the corporation.

The power to become a member of, or own stock in, another cooperative or corporation allows a cooperative to own all or a portion of another legal entity that conducts activities separate from the cooperative's utility operations. Examples of this could include a cooperative purchasing stock in a publicly traded corporation for investment purposes, or owning all of the stock or membership interest of another corporation that performs services in which the cooperative is interested or has operational experience and expertise. For example, cooperatives often have wholly-owned subsidiary corporations that provide educational services and scholarships to members of the cooperative. In addition, some cooperatives form subsidiary corporations that separately provide other types of services, including Internet and miscellaneous contracting services.

III. The proposed amendment in HB 157 clarifies the power to become a member of, or own stock in, other legal entities "organized for any lawful purpose."

Again, AS 10.25.010(a)(9) already provides the power for an electric or telephone cooperative to "become a member of other cooperatives or corporations or own stock in them." The statute does not limit this power in any way, but there are no published Alaska court decisions that have addressed this power. In other states, however, courts have recently addressed challenges to the power of electric cooperatives to own stock in for-profit subsidiaries. Typically, the issue has arisen when an electric cooperative owns stock in a subsidiary corporation that sells propane gas to the cooperative's members. In those cases, competing propane distributors have challenged the cooperative's power to own a subsidiary corporation whose activities extend beyond the narrow activity of providing electric energy.

In recent decisions, courts in Alabama, Colorado, and Kentucky have held that an electric cooperative has the power to own a subsidiary corporation that provides propane gas service. However, courts in Georgia, Mississippi, and Texas have held that electric cooperatives cannot own subsidiary corporations that provide services not associated the provision of electric energy. Although the specific language of the particular cooperative statutes that were interpreted in those

cases vary in different ways from the language of the Alaska co-op statute, those cases could be cited in the future to help interpret cooperative powers in Alaska.

Given these recent conflicting court decisions from other states, there is a concern that AS 10.25.010(a)(9) could be misinterpreted in the future to infer an unintended and unstated limitation on the power of a cooperative to become a member of, or own stock in, other legal entities. That is, a litigant might attempt to argue that the statute should be interpreted to limit a cooperative's power to own a subsidiary to allow only ownership of entities that provide traditional electric or telephone utility services. Although there is no such limitation in AS 10.25.010(a)(9) as it currently exists, the uncertainty created by the conflicting court decisions makes it prudent to clarify that AS 10.25.010(a)(9) imposes no such limitation.

HB 157 proposes to clarify AS 10.25.010(a)(9) by adding the clause "organized for any lawful purpose." As amended, AS 10.25.010(a)(9) would provide that an electric or telephone cooperative may "become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;". The addition of "organized for any lawful purpose" will clarify that the power of a cooperative to own an interest in another entity is not limited to only those entities that provide electric or telephone utility services.

This amendment simply preserves and clarifies the status quo with respect to cooperatives as they provide diversified services with meaningful benefits to their members. Particularly in rural areas of Alaska, co-op subsidiaries can fulfill important needs that are not directly associated with the provision of traditional electric or telephone utility service and that are, in many cases, requested by local residents.

For example, in some rural areas, cost-effective and environmentally sound bulk fuel storage, facilities maintenance, and delivery are lacking. This is an activity in which rural electric cooperatives have experience and expertise. Through membership or ownership interests in subsidiary entities, electric cooperatives may be able to provide those types of services more safely and at a lower cost than would otherwise occur.

The other change to AS 10.25.010(a)(9) proposed in HB 157 is the addition of "limited liability companies" as a legal entity in which a cooperative may become a member. Limited liability companies (LLCs) are a relatively new type of member-owned legal entity. They were first recognized in Alaska in 1994 and are codified in the Alaska Revised Limited Liability Company Act, AS 10.50. LLCs did not exist when AS 10.25.010(a)(9) was adopted. However, LLCs are increasingly becoming preferred over corporations and cooperatives for many types of non-profit and for-profit organizations, including subsidiaries. Even though LLCs are not prohibited by the current statute, the addition of "limited liability companies" in HB 157 clarifies this by expressly including LLCs as a type of legal entity in which an electric or telephone cooperative may become a member.



ALASKA POWER ASSOCIATION R E S O L U T I O N

1.6) A Resolution Supporting Legislative Action to Clarify the Cooperative's Ability to become the Full-Service Energy Provider in the Communities that they Serve

Alaska's electric cooperatives are increasingly receiving requests from their members asking the cooperative to become the full-service energy supplier in the community, supplying not only electric energy but also home heating oil and other forms of energy. Recent court cases in other states (notably, Georgia, Texas, and Mississippi) have called into question the ability of Alaska's electric cooperatives to form subsidiaries to respond to these member needs.

Alaska Power Association urges legislative action that would confirm Alaska's electric cooperatives' ability to meet this need by amending AS 10.25.010(a), Powers of electric or telephone cooperative, to include a new subsection to read:

(15) Become a member of or own stock in a corporation, limited liability company or subsidiary, organized for a lawful purpose or purposes for which a corporation or company may be organized.

Approved 12/04 by Alaska Power Association Board of Directors

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Bristol Bay Borough

March 25, 2005

Legislators:

The Bristol Bay Borough supports House Bill No. 157, expanding the powers given to electric or telephone cooperatives. We feel it is important to provide as many avenues as possible to reduce costs in rural Alaska. It will be impossible for rural Alaska to reduce costs if we are forced to do business with the limited existing companies presently providing services.

House Bill No.157 will afford an opportunity for electric or telephone cooperatives to work together to reduce costs, that until now remained fixed or on the increase.

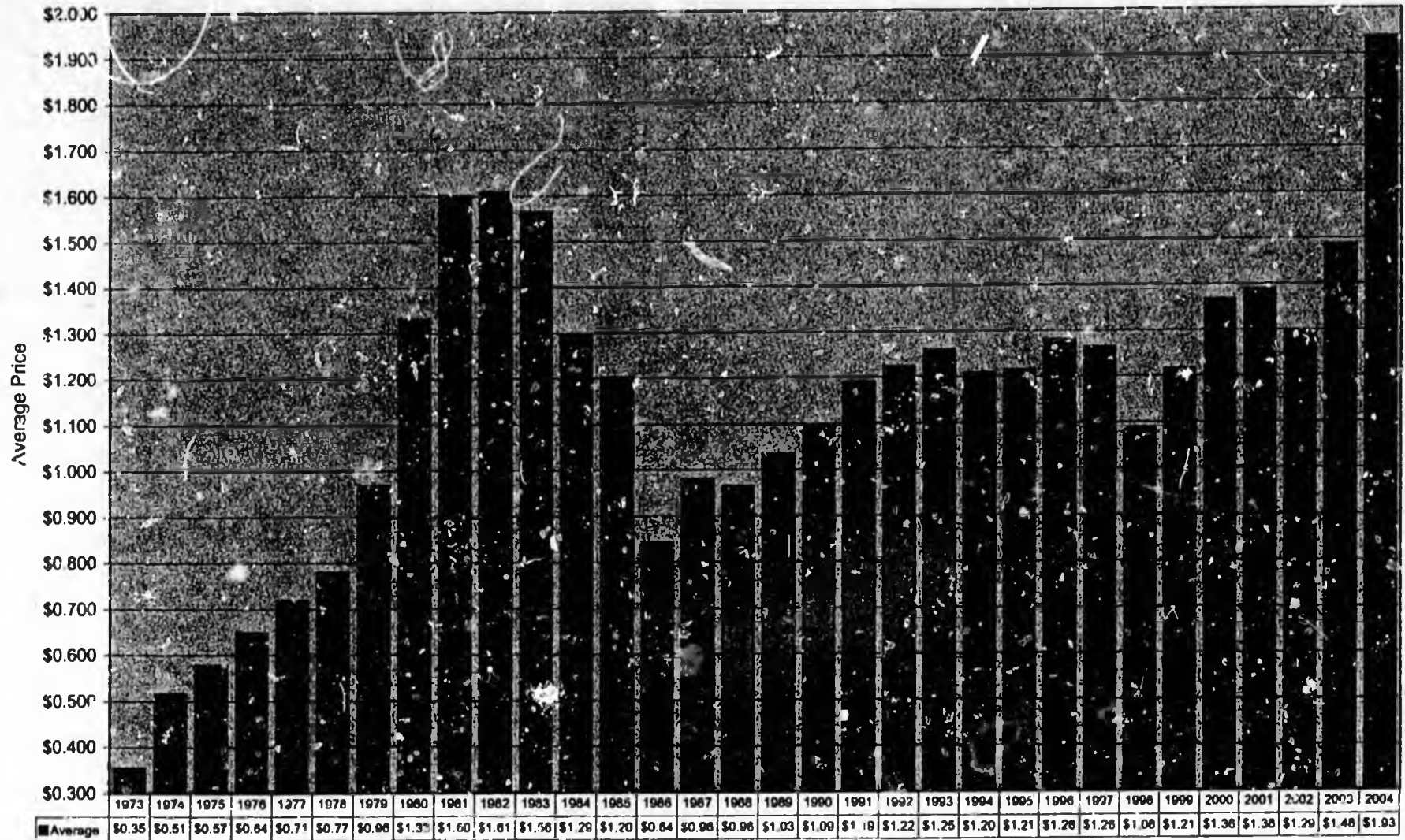
THE BRISTOL BAY BOROUGH SUPPORTS HOUSE BILL 157 AND URGES THE ALASKA STATE LEGISLATURE TO PASS THIS ACT.

Thank you,

A handwritten signature in cursive script, appearing to read "Fred W. Pike".

Fred W. Pike, BBB mgr.

**Alaska Village Electric Cooperative, Inc.
1973 - 2004 Fuel Prices**



STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

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April 13, 2005

The Honorable Tom Anderson, Chairman
House Labor & Commerce Committee
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 157

Dear Chairman Anderson:

During the April 11, 2005 committee hearing on CSSSHB 157, the Regulatory Commission of Alaska (RCA) was asked to provide an opinion regarding how AS 10.25.010(a)(4) and AS 10.25.010(a)(9) relates to the proposed legislation and what the RCA's jurisdiction is in this area. Additionally, the RCA was asked whether it reviews issues of solvency and cross-ownership.

CSSSHB 157 proposes to amend AS 10.25.020, powers of electric cooperatives, by adding the following language allowing an electric utility cooperative to:

(8) become a member of other limited liability companies or corporations organized for any lawful purpose, or own stock in them;¹

(9) sell fuel not needed to generate electric energy.

There was testimony at the committee hearing that the existing language in AS 10.25.010(a)(9) already provided electric and telephone cooperatives with the power to become a member of other cooperatives or corporations or own stock in them. This appears to be correct. AS 10.25.010(a)(9) states, "[e]xcept as provided in (b) of this section, an electric or telephone cooperative may ... become a member of other cooperatives or corporations or own stock in them." The limitations addressed in section (b) relate to the use of funds to promote or oppose a candidate for the director of a cooperative.

¹ We note that the earlier bill proposing to amend AS 10.25.010(a)(9) contained the reference to "cooperatives" while the language proposed in CSSSHB 157 for AS 10.25.020(8) drops this reference.

² AS 42.05.141.



At the hearing, it was suggested that AS 10.25.010(a)(4) may be at odds with AS 10.25.010(a)(9). AS 10.25.010(a)(4) provides that an electric or telephone cooperative may:

... construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, that is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

Our review of these provisions does not lead us to the conclusion that they are necessarily in conflict. The two provisions appear to address the different powers that a cooperative may exercise and do not appear to be a limitation on each other. An electric cooperative's ability to engage in activities other than the generation and distribution of power may be limited by other provisions such as AS 10.25.010(a)(4) and (14), and AS 10.25.610. However, interpretation and application of these statutes is not within the jurisdiction of the RCA.

The RCA's jurisdiction over the activities of electric cooperatives is found in AS 42.05 and is limited to public utility operations.³ An electric cooperative's membership in another cooperative or ownership interest in a corporation is not subject to our approval. We generally only review the implications of such an arrangement when the arrangement would affect the operations or rates of an economically regulated public utility, or the power cost equalization⁴ (PCE) levels of an unregulated utility.⁵

If a regulated electric cooperative were to purchase fuel from an affiliated interest, the RCA would review these costs to determine the reasonableness of including the costs in consumer rates. AS 42.05.511(c) provides that

In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease, or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital.

³AS 42.45.

⁴Many electric cooperatives are exempt from economic regulation under AS 42.05.711.

Thus, the RCA's authority is limited to determining whether the costs associated with affiliated transactions should be included in a regulated utility's rates.

The RCA also has the jurisdiction to review the affiliated transactions of non-regulated electric cooperatives when it sets PCE levels. The RCA reviews affiliated transactions under the same standard provided for in AS 42.05.511(c). While the RCA has the authority to determine the PCE levels of unregulated utilities, it does not have the authority to review the actual rates those utilities charge its customers.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA



Kate Glard
Kate Glard
Chairman

(3) "qualified dealer" means a person who (A) refines, (B) imports, (C) manufactures, (D) produces, (E) compounds, or (F) wholesales motor fuel, who satisfies criteria for qualified dealers established by the department by regulation and who obtains a qualified dealer's license from the department;

Gas prices hit \$5 a gallon in Bush, \$2 in Anchorage

RIPPLE: Rural Alaska hard hit by rapidly rising price of fuel.

By JOEL GAY

Anchorage Daily News

Published: May 19th, 2004

Last Modified: May 20th, 2004 at 01:16 AM

Gasoline has edged over \$2 a gallon in Anchorage, but the residents of Arctic Village don't want to hear any complaints. They're paying \$5.

And that's before the latest round of price hikes takes effect. When the next airplane load of fuel reaches the tiny village in far northeastern Alaska, the price could break \$6.

"We don't even want to talk about that," said Joyce John, a clerk at Midnight Sun Native Store. "Might as well raise a dog team."

With crude oil prices at record levels and gasoline costs across the nation running an average of 52 cents a gallon higher than last year at this time, everyone is feeling the pinch. But in rural Alaska, where cash is often short, the petroleum price surge carries an additional sting. Expensive gasoline may force subsistence hunters and fishermen to pare back their trips. Electric bills will rise because most power comes from diesel generators. And some villages may struggle to buy a year's worth of heating oil, because of the high price and because state financial aid has expired.

Although rural Alaska is not likely to collapse under the weight of higher fuel costs, "it creates a snowball effect out there," said Jim McMillan of the Alaska Energy Authority. And in communities such as Arctic Village, Nikolai, Togiak and Tok, residents say there's no use in complaining.

"It's really going to hurt us," said Brenda Gilbert of Arctic Village. "But we've survived this long; we'll survive."

The U.S. Department of Energy reported Wednesday that the average gasoline price nationwide was almost \$2.02 per gallon. Anchorage-area stations straddled that mark, according to the price-tracking Web site GasBuddy.com, with prices ranging from \$1.93 to \$2.09.

But an informal survey of rural Alaska communities shows prices well above that and climbing. Arctic Village shared honors with the Kuskokwim River community of Nikolai for peak prices at \$5 a gallon. In Shungnak, on the Kobuk River east of Kotzebue, gasoline jumped from \$3.25 to \$4.45 overnight.

Those prices almost make Noatak's look good. Residents of the northwest Arctic village are paying \$4.25 a gallon, tribal administrator Herbert Walton said. "But it looks like it's probably going to go over \$5 next month," he said.

The stratospheric prices in Noatak and other villages stem from the unique fuel delivery system in some communities. Where there are no roads for tank trucks, and no rivers or

oceans for barges, or when the bulk tanks run dry between seasonal deliveries, fuel is hauled by airplane.

One of the major fuel carriers, Fairbanks-based Everts Air Fuel, uses cargo planes like the DC-6 and the C-46 to transport as much as 4,500 gallons at a time, corporate administrator Karen Wing said. Other companies deliver fuel by the 55-gallon drum, landing on airstrips too short for bigger planes.

Wing wouldn't say how much it costs to fly fuel, citing the tremendous variations in delivery distance and volume. But in Noatak, residents just absorb it as the cost of living, Walton said. "There's nothing we can do about it."

Subsistence hunters have no choice but to pay the higher price, said Jim Magdanz of the Alaska Department of Fish and Game in Kotzebue. For species such as bearded seal, typically harvested 30 to 40 miles offshore, "you've just got to put a drum of gas in the boat and go," he said. "I think people will pay the price, because that food is important to them."

It's not unlike an urban grocery store increasing the price of hamburger when diesel costs rise, Magdanz said. "It's just more direct with subsistence."

In a survey of subsistence hunters this winter, Fish and Game found that fuel was a major expense, Magdanz said. "People certainly spend more on gasoline than they do on the equipment itself."

In Nikolai, Winchell Ticknor said expensive gas may curtail his hunting and fishing, perhaps keeping him closer to home. But there's no question he will go out, even at \$5 a gallon.

"You've got to have moose, and you've got to have fish," he said. "You've got to do that if you want to survive the winter."

Other rural residents will feel the higher prices sooner or later. In Bethel, City Manager Bob Herron said one station bumped its gas from \$2.78 to \$3.24, "and it's supposed to go up again" when the next fuel barge arrives.

With similar increases in heating oil and diesel, Herron foresees the need to cut the city budget elsewhere to pay for fuel. "It's going to hurt," he said.

Other communities are scrambling just to buy the fuel they need to get through next winter. Many depended on the state's now-defunct revenue sharing programs for cash to fill their bulk storage tanks.

"I don't know what they're going to do," said Bill Rolfzen of the Department of Community and Economic Development.

In the Yukon River community of Anvik, "we're waiting for a miracle," said Christine Elswick. City officials are trying to work out a deal to buy 5,000 gallons of heating oil at record prices, she said. "They're working on it. I don't know what the outcome will be."

Electric rates will have to rise in many communities, said Meera Kohler of the Alaska Village Electric Cooperative, which powers 50 western Alaska villages, largely with diesel generators.

"We are going to get absolutely hammered with fuel costs this year," she said. Prices are running an average of 30 to 40 cents more per gallon, which could raise rates 10 percent, she said.

Airplane ticket prices haven't risen, but they could if crude oil prices stay high, said Patrick Thurston, director of operations at Hageland Aviation. Most rural air carriers can absorb short-term fluctuations in the price of fuel, he said.

Togiak, a village of 750 on the Bristol Bay coast, got some good news recently. The price of gas dropped to \$3.55.

The village had run out and bought several drums from the fish processing plant across Togiak Bay, Nellie Thomas said. "It was \$4.50 for two or three weeks," she said, making the new price seem like a bargain.

Daily News reporter Joel Gay can be reached at jgay@adn.com or at 257-4310.

STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501 3469
PHONE: (907) 276-6222
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TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

April 12, 2005

The Honorable Kurt Olson, Co-Chairman
House Community & Regional Affairs Committee
Alaska House of Representatives
Alaska State Capitol Room 428
Juneau, AK 99801-1182

Re: HB 157

Dear Representative Olson:

During the committee hearing of HB 157 on March 31, 2005, a question was raised regarding the potential impact of this bill on the Power Cost Equalization (PCE) levels of electric utility cooperatives. We understand HB 157 would, in part, allow electric cooperatives to have memberships in LLCs that could be formed to purchase and sell fuel.

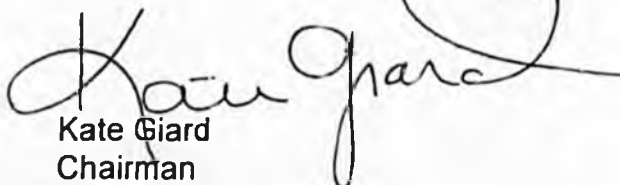
The amount of reimbursement or support that is provided under the PCE program is determined by calculating the total eligible costs incurred by the utility times the current funding rate. The total amount of PCE funding is determined annually by the Legislature and is allocated among eligible utilities on a pro-rata basis as determined by the Alaska Energy Authority. The current PCE pro rata funding rate is 65 percent of total eligible costs.

If cooperatives were successful in lowering their costs, then the fixed amount of Legislative funding for PCE could be allocated on a higher ratio than is available today. In summary, any reduction in an individual or group of utility's costs could have the effect of helping to increase the pro rata funding rate of all utilities participating in the PCE program.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA



Kate Giard
Chairman





ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

April 11, 2005

Rep. Tom Andersen, Chairman
Rep. Pete Kott, Vice Chairman
Members of the House Labor and Commerce Committee
Room 17, Capitol Building
Juneau, Alaska

Re: **CSSSHB 157**

Honorable Chairman and Committee Members:

I regret that I am unable to testify in person before your committee on the merits of House Bill 157, clarifying the powers of electric cooperatives.

Please accept the attached written testimony supporting passage of this bill, with which I urge you to pass this bill out of your committee and to the House floor for consideration.

If any further information is needed, I am available at the address below, by email at mkohler@avec.org or by telephone at (907) 565-5531 at any time.

Thank you for your consideration.

Sincerely,

Meera Kohler
President & CEO

Attachment



ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

Support for Passage of HB 157

April 2005

HB 157 clarifies Alaska's existing statute on electric cooperatives, allowing them to establish subsidiaries or own stock in companies doing non-electric business without fear of legal challenge. Such challenges have occurred in other states, where some courts have ruled in favor of co-ops and some have ruled against.

HB 157 has been brought forward in response to members of electric cooperatives who are asking their locally owned, not-for-profit company to utilize the co-ops' established management and administrative structure to provide other essential community services such as heating oil in communities where such services are not available, or where existing suppliers are preparing to exit the market.

Objections are being raised, apparently by for-profit fuel transport interests, who cite such issues as "a non-level playing field" and "subsidies such as the Power Cost Equalization Program." These are not legitimate concerns. The cooperatives are not going to compete with the fuel transport companies. Any subsidiary providing fuel or other services, whether owned in part by an electric cooperative or not, would have to follow the same rules as any other company.

The issue of PCE is a non-issue. Any assets or operating costs that might be used by an electric co-op in any non-electric-related business would be required, by statute, to be separately accounted for under contract with the business. The practical effect of this would be to reduce eligible cost for the PCE program and would result potentially in lower PCE credits for our individual consumers. Our consumers would therefore expect that reduced PCE to be offset by lower costs for other essential goods and services that they would like their electric cooperative to provide for them. In that case, our consumers would benefit and the PCE program would also benefit.

It is indeed ironic that protests are emanating from the fuel transport industry – the very industry that is currently engaged in a process to merge to transform the current fuel oligopoly into a monopoly.

In the pending buyout of Yukon Fuel by Crowley Maritime, which incidentally, the utilities of Western Alaska have been fighting now for almost two years, the parties have asserted that the fuel market is an open one that 'anyone can enter' easily. While the electric cooperatives are not planning to compete with Yukon Fuel or Crowley Marine, they do want to have the ability to help form companies that can provide other services in communities that desperately need them. AVEC and its consumer-members throughout our 52 villages strongly support HB 157 and urge the House Labor & Commerce Committee to advance this bill without delay.

Josh Applebee

From: Tom Bolen [tbolen@nwabor.org]
Sent: Tuesday, April 12, 2005 10:08 AM
To: Rep. Tom Anderson
Subject: House Bill 157

Dear Rep. Anderson,

I feel compelled to follow my testimony yesterday afternoon before your committee with this email for several reasons. First, because I was the last to testify, I was very frustrated and didn't really deliver the concise message I had hope to deliver on behalf of the Northwest Arctic Borough.

Second, I took exception to many things said by the fuel companies present, but did not want to step out and take a strong adversarial position with them in light of the fact that we still have yet to go out for this years annual fuel bid.

The important points regarding this bill are as follows:

#1 We are not writing new law, we are only attempting to clarify existing law.

#2 In our area, Crowley DOES have a monopoly, and they are not the nice guys they portray themselves to be. They make a huge profit on our region, and that profit is at the expense of all fuel consumers in our Borough. If Crowley was doing such a great job, and their margins were so slim, we wouldn't be looking for another business model to lower the cost of fuels.

The reason that Yukon, and Delta Western do not routinely compete with Crowley in our region IS because Crowley has a monopoly with regard to logistics and infrastructure. Crowley recently attempted to ensure and strengthened its monopoly in its attempted merger with Yukon Fuel. Fortunately for us, this merger did not take place.

#3 The passage of HB 157 will NOT cause electric coops all across the state to go into the fuel business, as the fuel companies suggest. It will only happen on a limited basis, where cooperative boards see a need and financial viability.

There is absolutely no need for any of us to have to explain where the capital financing for this business expansion will come from. If the financing is available and legal, and the boards of coops are willing, then fuel coops will emerge; if not, they won't. Fuel companies are frightened because they are about to lose their "gravy."

#4 Cooperatives are NOT against the law, or un-American; they are another viable business model, and the market may well determine that they will eventually displace "for Profit" fuel enterprises in some areas of rural Alaska.

#5 In our case in Northwest Arctic, it is our desire to create a cooperative whose members will be bulk fuel operators including municipal city governments, electric coops (AVEC), the school district, tribal governments, and independent operators.

The Coop would supply the lowest cost wholesale fuels to these entities, who would either consume it, or retail it to the public. Village level enterprise would continue unchanged, except that fuels would cost less. We would not have individual residents as members. Kotzebue Electric, an existing electric Coop in Kotzebue, has the capacity to form a subsidiary that would be this "Fuel Coop."

#6 Passage of HB 157 would dissuade fuel companies from aggressively challenging the creation of such enterprises in order to protect their profits. A Northwest Arctic Bulk Fuel working group approached Crowley with an offer to purchase their Kotzebue Tank Farm several years ago. It was our perception that an international maritime company which owned only three tank farms in the world might be willing to sell, since tank farms

comprised such a minor part of its corporate activity. Crowley responded by cutting off discussions and then began building a brand new tank farm in Bethel. So much for slim margins.

The Northwest Arctic Borough urges passage of HB 157, as it will be an important tool for us in our battle to lower the cost of living for residents in our region of rural Alaska. Thank you for the opportunity to comment on this important issue.

Tom Bolen
Public Services Director
Acting Mayor
Northwest Arctic Borough
(907) 442 2500 ext 112
Fax (907) 442 2930

Bristol Alliance Fuels, LLC

4141 B Street, Suite 207
P.O. Box 112105, Anchorage, AK 99511
Phone: (907) 222-2828
Fax: (907) 222-1418

April 7, 2005

Representative Anderson
House Labor and Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

Via: Facsimile (907) 465-2418

Re: Alaska House Bill 157 (HB 157)

Dear Representative Anderson:

I would like to go on the record as opposed to Alaska House Bill 157. There is a tremendous infrastructure that has been invested in and assembled by many private entities throughout the State of Alaska for the purpose of providing fuel products to the residents of Alaska. Your bill provides an unfair advantage to electric utilities, including publicly funded or subsidized electric utilities to provide this service in competition with private industry.

There are currently 117 Motor Fuel Qualified Dealers licensed by the State of Alaska, some of which are operators with multiple tank farm sites. Bristol Alliance Fuels is just one dealer with a single site located in Dillingham. Dillingham also has another local dealer, Delta Western, Inc. While I cannot speak for Delta or any other dealer in the state, I can say that our operation alone requires invested and operating capital of over \$10 million. After investing 20 years building our enterprise, I resent the effort to thwart the free market system that encourages such initiative. There must be other ways to address the high costs of energy delivery in the State of Alaska.

This bill will result in an even greater imbalance in the price of energy products especially in rural areas. Not everyone will be able to take advantage of this service and those that are left to be supplied by private industry will be called upon to support an infrastructure requiring even higher margins to carry the related costs of such investments. In many communities, your bill will result in higher fuel costs for those who can least afford it.

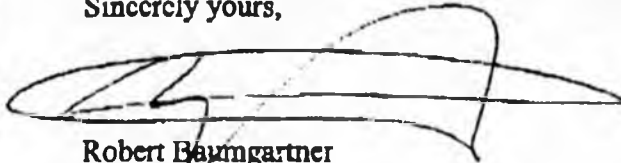
The Institute of Social and Economic Research previously investigated this particular idea for the onetime Western Alaska Fuel Cooperative, located in Dillingham, Alaska. The ultimate end of years of efforts and the explicit assistance of the City government as well as the investigation by the local electric utility, Nushagak Electric Cooperative, found the effort was not practical. Why? Fundamentally, because there were already two

fuel companies in Dillingham. A fuel cooperative would not be economically feasible if required to stand on its own merits in a divided and small marketplace. There may be communities so small with no fuel delivery system in place where a waiver of current restrictions placed on electric utilities might apply, but a blanket approach that encourages subsidies and movement away from entrepreneurial effort is not the way.

While I appreciate that fuel is an essential commodity and fuel prices are a significant factor in the costs of living and doing business in Alaska, especially rural areas, HB 157 does not address the underlying problems that impact the costs of energy in today's global economy.

Again, Bristol Alliance Fuels is opposed to this legislation as it is written. Publicly funded or subsidized electric utilities should not compete with private industry and have no business doing so. I would be happy to help explore what other methods might be employed to address the high costs of energy delivery especially in rural Alaska.

Sincerely yours,



Robert Baumgartner
President
Bristol Alliance Fuels, LLC

Cc: Representative Kott
Representative LeDoux
Representative Lynn
Representative Rokeberg
Representative Crawford
Representative Guttenberg



April 7, 2005

Subject: House Bill 157

Dear Representative Harris:

Service Oil & Gas, Inc. has been privileged to do business in Alaska since 1975. Over the years, we have grown our business to include branch offices in Glennallen, Valdez, Delta Junction, Fairbanks, Talkeetna, Wasilla, Palmer and Anchorage. We provide work for 120 Alaskans in jobs that provide good compensation and benefits for them and their families. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Service Oil & Gas, Inc., along with other private companies in the fuel distribution and sales business in Alaska, are opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

We respectfully request that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Sincerely,

P.O. Box 767, Airport Rd. & Richardson Hwy., Valdez, AK 99686 • Phone: (907) 835-4658 • Fax: (907) 835-3718 • www.serviceoil.com

**Yukon Fuel Company**

April 7, 2005

Subject: Alaska House Bill 157 (HB 157)

Dear Representative Tom Anderson:

Yukon Fuel Company has been privileged to do business in Alaska throughout the years. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. HB 157 would enable competition between the electric cooperatives and local fuel retailers, many of which are local corporations and private individuals, directly impacting the economy in rural Alaska. Yukon Fuel Company, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation.

HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

Yukon Fuel Company respectfully requests that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Yours very truly,

A handwritten signature in black ink, appearing to read 'M Smith', is written over a white background.

Mark Smith
President
907 777.5505
msmith@yukonfuel.com

CROWLEY

April 7, 2005

The Honorable Tom Anderson
Chair, House Labor & Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182
Fax: 907-465-2418

Subject: Alaska House Bill 157 (HB 157)

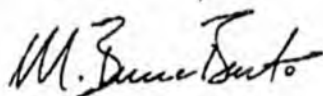
Dear Representative Anderson:

Crowley Marine Services, Inc. has been privileged to do business in Alaska since 1953. We are writing to express our concerns about the referenced bill now before the House Labor & Commerce Committee.

Among other changes, this bill would amend existing law to allow electric cooperatives, including publicly funded or subsidized non-profit electric cooperatives, to commercially sell fuel to consumers, businesses and other entities. Crowley, along with other private companies in the fuel distribution and sales business in Alaska, is opposed to this legislation. HB 157 as written would permit publicly funded or subsidized non-profit electric cooperatives to compete with the essential services now being provided throughout Alaska by private enterprise. We fully appreciate that fuel prices have recently reached historically high levels. We also recognize the direct impact this has on the cost of living and the cost of doing business, particularly in many rural Alaska communities. HB 157 would not change these dynamics nor does it address the fundamental fact that fuel is a basic commodity driven by global, regional and local free market forces.

Crowley respectfully requests that you thoroughly weigh the public policy implications of this proposed legislation. We trust you will find that the broad legislative relief proposed in HB 157 is inappropriate where viable, sustainable private enterprise fuel suppliers are providing valuable and needed services to the general public.

Yours very truly,



M. Bruce Barto
Vice President & General Manager
Petroleum Services
206.332.8081
bruce.barto@crowley.com



CROWLEY MARINE SERVICES, INC.
1102 SW MASSACHUSETTS • SEATTLE • WASHINGTON • 98134 • 206.332.8000
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—
DAN S. BAIR
OF COUNSEL
—
JODY A. REAUSAW
OF COUNSEL

April 11, 2005

Honorable Thomas Anderson
Chair
Committee on Labor & Commerce
House of Representatives
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Re: CSHB 157

For many years, I have represented Mr. Mark Steer, doing business as Twin Cities Fuel, a retail supplier of petroleum products in Lower Kalskag, Alaska.

Mr. Steer spent the bulk of his years as a public school educator teaching in Lower Kalskag. He was active in the community and was, for a time, a member of the Lower Kalskag City Council. In addition, he founded, and still operates, the fuel supply business known as Twin Cities Fuel. Last year, Mr. Steer retired as a public school teacher.

Last week, Mr. Steer, whose primary residence is now in Nebraska, but who retains a home in Lower Kalskag, was made aware by word-of-mouth from his fuel wholesaler of the existence of the pending bill, House Bill 157. On Friday, April 8, Mr. Steer asked me to perform some research about the measure, and I learned later that day of today's scheduled telephonic hearing.

I believe that there is background of which members of the Legislature may not be fully aware.

For example, in Lower Kalskag and its adjacent community, Upper Kalskag, a significant federally-funded investment of approximately \$4,800,000 in the infrastructure for rural bulk fuel storage and delivery has been made through the Denali Commission.

We understand that the Alaska Village Electric Cooperative, Inc. ("AVEC") contributed approximately \$200,000 to the total

JOSEPHSON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Honorable Thomas Anderson, Chair

Page 2

project, and AVEC obtained fuel tanks, ostensibly as part of its program for upgrading the rural electrical power system.

Twin Cities Fuel and its local competitor, Morgan Fuels of Upper Kalskag, were invited to lease storage and ancillary facilities in the consolidated campus so funded and located in Upper Kalskag. There is no subsidy in the lease arrangements, the terms of which were carefully constructed to meet anticipated operation, maintenance and replacement expenses for the prudent management of the leased premises.

When the Denali Commission's participation first became a topic of public discussion, a very sensitive issue for Mr. Steer and other private sector small businessmen and small businesswomen was whether federal money would be used to upset the existing market share balance among fuel suppliers.

The Denali Commission's Investment Policy promulgated in March 2003, of which a copy is attached, contained explicit assurances that no retail supplier would be adversely affected, without his or her consent, as a result of Denali Commission funding. The language of the policy could hardly be more clear:

"The existing market share balance among retail fuel suppliers within a community may be significantly altered as a result of a Denali Commission funding only if all of the affected retail fuel suppliers currently operating in the community agree to it or if such alteration is deemed necessary to facilitate competitive conditions in the community."

Attachment, page 3.

Furthermore, I received a letter dated June 7, 2004, from AVEC counsel in Anchorage which, in pertinent part, assured my client:

". . . AVEC has no interest in absorbing Twin Cities Fuel. AVEC is not in the retail or wholesale fuel business. AVEC purchases and stores fuel for use in generating electricity, not for resale to others."

Mr. Chairman, Twin Cities Fuel and its owner are deeply

JOSEPHSON & ASSOCIATES, P.C.

ATTORNEYS AT LAW

Honorable Thomas Anderson, Chair

Page 3

concerned lest legislation which would allow AVEC to provide fuel on a retail basis in Upper Kalskag and Lower Kalskag (as well as elsewhere) would not only significantly alter the competitive balance but would likely destroy the existing local retailers who now compete. It could well be that retailers in other communities are presently unaware of this impending threat and, were they to be aware, would express their own, similar, concerns.

In this regard, I express the hope that the Legislature will go to great lengths to notify all existing fuel suppliers, both retailers and wholesalers, of the pendency of CSHB 157 and solicit any comments they may have.

These are individuals who, like Mr. Steer, have invested their own resources, time and labor as venturing small business operators, without public subsidy, in the time-honored American free enterprise way. My client believes that the proposition that state law might now, for the first time, permit cooperatives, heretofore barred from retail sales, to compete with local, private sector, retailers presents a very grave prospect for these small businesses. The cooperatives, of course, would enjoy certain tax advantages denied to the private sector retailers. In contexts such as the villages of Lower Kalskag and Upper Kalskag, a cooperative's retail activity would upset the competitive balance in a way that is wholly at odds with the written policy of the Denali Commission, the principal funding source for bulk fuel storage upgrades. Moreover, AVEC's exercise of the authority contemplated in CSHB 157, at least in Lower Kalskag and Upper Kalskag, would be contrary to the assurances Mr. Steer received from AVEC counsel last June.

Furthermore, even if AVEC were not to exercise the authority to conduct retail sales in Lower Kalskag and Upper Kalskag, so as to adhere to its past assurance, Twin Cities Fuel would still have profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska. This is a concern that I cannot address in a few hours of available consideration, but I would ask that the Legislature explore how and whether the passage of CSHB 157 might affect the availability of fuel to the retailers who now serve rural Alaska.

Thank you, Mr. Chairman, on behalf of Mr. Steer, for your study of these concerns as the Committee on Labor and Commerce considers CSHB 157. I am sending a copy of this correspondence to your committee colleagues as well, for their ready reference.

JOSEPHSON & ASSOCIATES, P.C.
ATTORNEYS AT LAW

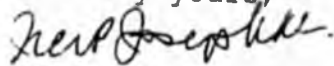
Honorable Thomas Anderson, Chair

Page 4

I would appreciate having this letter incorporated into the committee's records as written testimony with regard to CSHB 157, since I am unable to be present personally at this afternoon's hearing. If and when the hearing is carried over to another day, I would appreciate notification so that I could plan to be present.

With best wishes to you and your colleagues for a successful conclusion to the current legislative session, I am

Sincerely yours,



Joe P. Josephson
Attorney for Twin Cities Fuels.

cc: Honorable Gabrielle LeDoux
Honorable Pete Kott
Honorable Norm Rokeberg
Honorable Harry Crawford
Honorable David Guttenberg
The Denali Commission
Mr. Mark Steer
John Andrew Leman, Esquire

Attachment: Copy of Denali Commission Investment Policy



Denali Commission
510 L Street, Suite 410
Anchorage, AK 99501

907.271.1414 *tel*
907.271.1415 *fax*
888.480.4321 *toll free*

Private Enterprise Policy April 30, 2003

1. Objective

The purpose of this policy is to establish guidelines for infrastructure projects where private enterprise is involved.

2. General Policy

Economic development is a part of the mission of the Denali Commission. However, economic development is primarily a function of private enterprise. A fundamental prerequisite of economic development is basic sustainable public infrastructure such as transportation, sanitation facilities, energy and healthcare. Another important consideration is that for private enterprise to function efficiently a market large enough to support competition is necessary. When the necessary prerequisites are in place for the market to function efficiently, private enterprise tends to drive costs down and quality of service up.

However, in the small/isolated communities of Alaska, the market does not function efficiently or does not function at all. Frequently the needed public infrastructure is not in place and the market size is insufficient to support the competition necessary to encourage efficient market dynamics. This fact does not lessen the need for basic services like health care, lights, heat and sanitation. The challenge is to harness the forces of private enterprise where they exist to provide needed services at an affordable price. Where private enterprise is inadequate or non-existent to achieve this purpose, consideration must be given to providing these services through other means.

3. General Provisions

The Denali Commission will embrace and support, in appropriate ways, private enterprise where it is functioning or can function efficiently and adequately to meet the needs of all members of the local community. The Commission will not support the replacement of or new structures for a publicly funded service to compete with services delivered by private enterprise as long as those services are:

1. Accessible to all members of a community including temporary members;
2. Reasonably priced when compared to comparable communities;
3. Predictably available and sustainable for the long term.

AUG/17/2004/TUE 12:34 AM

P. 004

Denali Commission Investment Policy March 2003
Infrastructure Subcommittee Meeting

2

All proposals for new or upgraded infrastructure facilities to be funded with Denali Commission funds shall be evaluated on the basis of public benefits resulting from the project. A proposal for funding may be approved where the facility is or will be owned, operated, and/or maintained by private entities only if there is found to be a direct and substantial public benefit from the project.

Facilities funded in whole or in part by the Denali Commission may not be sold, leased, sub-leased, or interest otherwise assigned without the express approval of the Denali Commission or its successor agency. In any event, the facility shall continue to provide the originally intended public benefit until such time as that public need no longer exists or until the serviceable life of the facility has expired.

Funding decisions must take into account existing private enterprise in the community. Funding should not generally be used to create new or additional competition with existing private enterprise in the community. However in cases where an unregulated monopolistic or otherwise inefficient condition exist in which current services are not available at fair and reasonable rates the Commission, after appropriate consultation, may consider funding projects that would contribute to more competitive rates.

4. Provisions Specific to Health Care

The Denali Commission seeks to support health care facilities in a manner which improves access to quality, affordable health services, be it by a private entity or a publicly funded one. The Denali Commission does not seek to create or enhance competition in an inefficient market. In this scenario, an inefficient market is one that cannot support two mutually exclusive health care providers. Given the economic fragility of rural health care systems, Denali Commission funding for health care facilities will be deployed in a manner which encourages a cooperative and collaborative arrangement for the health benefit of the community in question, and improves the sustainability of the overall care delivery system for that population. Denali Commission health facility funding supports systems that ensure access to care for everyone regardless of ability to pay. It is expected that a system that is exclusively private in rural Alaska will not be able to meet that criteria. Thus, some integration of public and private provider entities will likely be required in areas where any private provider system currently exists.

5. Provisions Specific to Bulk Fuel Storage

The developer of any bulk fuel storage consolidation project funded in whole or in part by Denali Commission funds will consult with all retail fuel suppliers within a community in the course of developing the project's conceptual design to ensure that their interests are understood and, to the extent feasible, dealt with in the course of conceptual design.

Denali Commission Investment Policy March 2003
Infrastructure Subcommittee Meeting

3

The existing market share balance among retail fuel suppliers within a community may be significantly altered as a result of a Denali Commission funding only if all of the affected retail fuel suppliers currently operating in the community agree to it or if such alteration is deemed necessary to facilitate competitive conditions in the community. For each type of fuel, the existing market share for a retail fuel supplier is defined as that supplier's existing in-service storage capacity as a percentage of the total gallons of existing in-service storage capacity for all retail fuel suppliers in the community.

Where multiple retail fuel suppliers are involved in a project, comparable levels of investment in project costs (based on market share) will be sought from each participating retail fuel supplier in the community, whether public or private.

Denali Commission funds may be used to upgrade or replace fuel storage facilities owned by private sector retail fuel suppliers if there is determined to be significant public benefit. However, to ensure that long term project benefits flow through to the public, such new or improved fuel storage and dispensing facilities will generally be owned by a local government entity which may lease the facilities to the private sector fuel supplier at a nominal cost or contract with the private sector fuel supplier for facility operation. The term of such lease or contract will be for the life of the assets, and is not transferable as an asset of the leaseholder without express written approval of the Denali Commission or its successor agency.

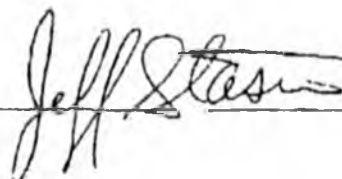
5. Implementation

Denali Commission partners will have full responsibility for implementing this policy. The Denali Commission will monitor to ensure satisfactory implementation. This policy may be modified or waived only by agreement of the Denali Commission Chief of Staff if it determine that modification or waiver is in the public interest.

6. Appeals Process

Any decisions of the Chief of Staff may appealed to first to the Federal Co-chair and if deemed necessary to the full Commission.

Issued by:



Date:

May 29, 2003

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of Counsel

Jody Reausaw
of Counsel

FAX COVER PAGE

TO: TOM ANDERSON

FAX NO.: 907-465-4939

FROM: JOE P JOSEPHSON

DATE: 4/11/05

RE: ERRATUM

No. of Pages Following: 1 SENT VIA: X FAX ONLY FAX & MAIL

The pages following contain information intended for the addressee(s) named above, and the information is confidential. In the event that any of the pages following are not received, or are distorted or unreadable for any reason in the transmittal process, please notify the office of Josephson & Associates at (907) 276-0151.

JOSEPHSON & ASSOCIATES

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ANDREW L. JOSEPHSON
OF COUNSEL
DAN S. BAIR
OF COUNSEL
JODY A. REAUEAW
OF COUNSEL

ERRATUM

April 11, 2005

To: Members of the House Committee on Labor & Commerce
House of Representatives
Juneau, Alaska

Re: CSHB 157

Dear Members:

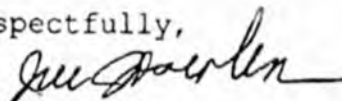
On page 3, in the fourth paragraph on the page, a sentence clause erroneously read in part: ". . .Twin Cities Fuel would have profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska."

The sentence clause should have read as follows, and I apologize for the error:

". . .Twin Cities Fuel would foresee (HAVE) profound effect upon the company's ability to purchase fuel from wholesale sources now serving rural Alaska."

With best wishes, I am

Respectfully,



Joe P. Josephson

STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-3222
FAX: (907) 276-0160
TTY: (907) 276-4533
WEBSITE: www.state.ak.us/rca/

April 13, 2005

The Honorable Tom Anderson, Chairman
House Labor & Commerce Committee
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 157

Dear Chairman Anderson:

During the April 11, 2005 committee hearing on CSSSHB 157, the Regulatory Commission of Alaska (RCA) was asked to provide an opinion regarding how AS 10.25.010(a)(4) and AS 10.25.01u(a)(9) relates to the proposed legislation and what the RCA's jurisdiction is in this area. Additionally, the RCA was asked whether it reviews issues of solvency and cross-ownership.

CSSSHB 157 proposes to amend AS 10.25.020, powers of electric cooperatives, by adding the following language allowing an electric utility cooperative to:

(8) become a member of other limited liability companies or corporations organized for any lawful purpose, or own stock in them;¹

(9) sell fuel not needed to generate electric energy.

There was testimony at the committee hearing that the existing language in AS 10.25.010(a)(9) already provided electric and telephone cooperatives with the power to become a member of other cooperatives or corporations or own stock in them. This appears to be correct. AS 10.25.010(a)(9) states, "[e]xcept as provided in (b) of this section, an electric or telephone cooperative may ... become a member of other cooperatives or corporations or own stock in them." The limitations addressed in section (b) relate to the use of funds to promote or oppose a candidate for the director of a cooperative.

¹ We note that the earlier bill proposing to amend AS 10.25.010(a)(9) contained the reference to "cooperatives" while the language proposed in CSSSHB 157 for AS 10.25.020(8) drops this reference.

² AS 42.05.141.



At the hearing, it was suggested that AS 10.25.010(a)(4) may be at odds with AS 10.25.010(a)(9). AS 10.25.010(a)(4) provides that an electric or telephone cooperative may:

... construct, buy, lease, or otherwise acquire, and equip, maintain and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, that is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

Our review of these provisions does not lead us to the conclusion that they are necessarily in conflict. The two provisions appear to address the different powers that a cooperative may exercise and do not appear to be a limitation on each other. An electric cooperative's ability to engage in activities other than the generation and distribution of power may be limited by other provisions such as AS 10.25.010(a)(4) and (14), and AS 10.25.610. However, interpretation and application of these statutes is not within the jurisdiction of the RCA.

The RCA's jurisdiction over the activities of electric cooperatives is found in AS 42.05 and is limited to public utility operations.³ An electric cooperative's membership in another cooperative or ownership interest in a corporation is not subject to our approval. We generally only review the implications of such an arrangement when the arrangement would affect the operations or rates of an economically regulated public utility, or the power cost equalization⁴ (PCE) levels of an unregulated utility.⁵

If a regulated electric cooperative were to purchase fuel from an affiliated interest, the RCA would review these costs to determine the reasonableness of including the costs in consumer rates. AS 42.05.511(c) provides that

In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease, or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the service or property with its own personnel and capital.

³AS 42.45.

⁴Many electric cooperatives are exempt from economic regulation under AS 42.05.711.

Thus, the RCA's authority is limited to determining whether the costs associated with affiliated transactions should be included in a regulated utility's rates.

The RCA also has the jurisdiction to review the affiliated transactions of non-regulated electric cooperatives when it sets PCE levels. The RCA reviews affiliated transactions under the same standard provided for in AS 42.05.511(c). While the RCA has the authority to determine the PCE levels of unregulated utilities, it does not have the authority to review the actual rates those utilities charge its customers.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA



 Kate Giard
Chairman

STATE OF ALASKA

DEPARTMENT OF COMMERCE
COMMUNITY AND ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

FRANK H. MURPHY, GOVERNOR

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April 12, 2005

The Honorable Kurt Olson, Co-Chairman
House Community & Regional Affairs Committee
Alaska House of Representatives
Alaska State Capitol Room 428
Juneau, AK 99801-1182

Re: HB 157

Dear Representative Olson:

During the committee hearing of HB 157 on March 31, 2005, a question was raised regarding the potential impact of this bill on the Power Cost Equalization (PCE) levels of electric utility cooperatives. We understand HB 157 would, in part, allow electric cooperatives to have memberships in LLCs that could be formed to purchase and sell fuel.

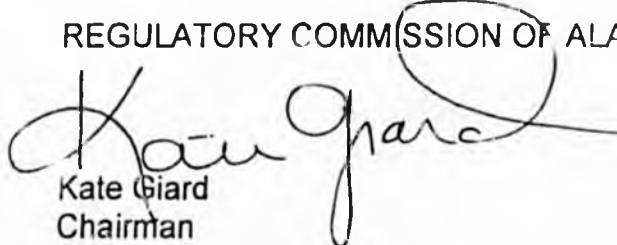
The amount of reimbursement or support that is provided under the PCE program is determined by calculating the total eligible costs incurred by the utility times the current funding rate. The total amount of PCE funding is determined annually by the Legislature and is allocated among eligible utilities on a pro-rata basis as determined by the Alaska Energy Authority. The current PCE pro rata funding rate is 65 percent of total eligible costs.

If cooperatives were successful in lowering their costs, then the fixed amount of Legislative funding for PCE could be allocated on a higher ratio than is available today. In summary, any reduction in an individual or group of utility's costs could have the effect of helping to increase the pro rata funding rate of all utilities participating in the PCE program.

If you have any additional questions, please feel free to call me at (907) 263-2110.

Warm regards,

REGULATORY COMMISSION OF ALASKA


Kate Giard
Chairman





ALASKA VILLAGE ELECTRIC COOPERATIVE INC.

April 11, 2005

Rep. Tom Andersen, Chairman
Rep. Pete Kott, Vice Chairman
Members of the House Labor and Commerce Committee
Room 17, Capito! Building
Juneau, Alaska

Re: **CSSSHB 157**

Honorable Chairman and Committee Members:

I regret that I am unable to testify in person before your committee on the merits of House Bill 157, clarifying the powers of electric cooperatives.

Please accept the attached written testimony supporting passage of this bill, with which I urge you to pass this bill out of your committee and to the House floor for consideration.

If any further information is needed, I am available at the address below, by email at mkohler@avec.org or by telephone at (907) 565-5531 at any time.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads 'Meera Kohler'.

Meera Kohler
President & CEO

Attachment



ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

ALASKA VILLAGE ELECTRIC COOPERATIVE, INC.

Support for Passage of HB 157

April 2005

HB 157 clarifies Alaska's existing statute on electric cooperatives, allowing them to establish subsidiaries or own stock in companies doing non-electric business without fear of legal challenge. Such challenges have occurred in other states, where some courts have ruled in favor of co-ops and some have ruled against.

HB 157 has been brought forward in response to members of electric cooperatives who are asking their locally owned, not-for-profit company to utilize the co-ops' established management and administrative structure to provide other essential community services such as heating oil in communities where such services are not available, or where existing suppliers are preparing to exit the market.

Objections are being raised, apparently by for-profit fuel transport interests, who cite such issues as "a non-level playing field" and "subsidies such as the Power Cost Equalization Program." These are not legitimate concerns. The cooperatives are not going to compete with the fuel transport companies. Any subsidiary providing fuel or other services, whether owned in part by an electric cooperative or not, would have to follow the same rules as any other company.

The issue of PCE is a non-issue. Any assets or operating costs that might be used by an electric co-op in any non-electric-related business would be required, by statute, to be separately accounted for under contract with the business. The practical effect of this would be to reduce eligible cost for the PCE program and would result potentially in lower PCE credits for our individual consumers. Our consumers would therefore expect that reduced PCE to be offset by lower costs for other essential goods and services that they would like their electric cooperative to provide for them. In that case, our consumers would benefit and the PCE program would also benefit.

It is indeed ironic that protests are emanating from the fuel transport industry – the very industry that is currently engaged in a process to merge to transform the current fuel oligopoly into a monopoly.

In the pending buyout of Yukon Fuel by Crowley Maritime, which incidentally, the utilities of Western Alaska have been fighting now for almost two years, the parties have asserted that the fuel market is an open one that 'anyone can enter' easily. While the electric cooperatives are not planning to compete with Yukon Fuel or Crowley Marine, they do want to have the ability to help form companies that can provide other services in communities that desperately need them. AVEC and its consumer-members throughout our 52 villages strongly support HB 157 and urge the House Labor & Commerce Committee to advance this bill without delay.

Josh Applebee

From: Tom Bolen [tbolen@nwabor.org]
Sent: Tuesday, April 12, 2005 10:08 AM
To: Rep. Tom Anderson
Subject: House Bill 157

Dear Rep. Anderson,

I feel compelled to follow my testimony yesterday afternoon before your committee with this email for several reasons. First, because I was the last to testify, I was very frustrated and didn't really deliver the concise message I had hope to deliver on behalf of the Northwest Arctic Borough.

Second, I took exception to many things said by the fuel companies present, but did not want to step out and take a strong adversarial position with them in light of the fact that we still have yet to go out for this years annual fuel bid.

The important points regarding this bill are as follows:

#1 We are not writing new law, we are only attempting to clarify existing law.

#2 In our area, Crowley DOES have a monopoly, and they are not the nice guys they portray themselves to be. They make a

huge profit on our region, and that profit is at the expense of all fuel consumers in our Borough. If Crowley was doing such a great job, and their margins were so slim, we wouldn't be looking for another business model to lower the cost of fuels.

The reason that Yukon, and Delta Western do not routinely compete with Crowley in our region IS because Crowley has a

monopoly with regard to logistics and infrastructure.

Crowley recently attempted to ensure and strengthened its monopoly

in its attempted merger with Yukon Fuel. Fortunately for us, this merger did not take place.

#3 The passage of HB 157 will NOT cause electric coops all across the state to go into the fuel business, as the fuel

companies suggest. It will only happen on a limited basis, where cooperative boards see a need and financial viability.

There is absolutely no need for any of us to have to explain where the capital financing for this business expansion will

come from. If the financing is available and legal, and the boards of coops are willing, then fuel coops will emerge; if not,

they won't. Fuel companies are frightened because they are about to lose their "gravy."

#4 Cooperatives are NOT against the law, or un-American; they are another viable business model, and the market may well

determine that they will eventually displace "for Profit" fuel enterprises in some areas of rural Alaska.

#5 In our case in Northwest Arctic, it is our desire to create a cooperative whose members will be bulk fuel operators including

municipal city governments, electric coops (AVEC), the school district, tribal governments, and independent operators.

The Coop would supply the lowest cost wholesale fuels to these entities, who would either consume it, or retail it to the

public. Village level enterprise would continue unchanged, except that fuels would cost less. We would not have

individual residents as members. Kotzebue Electric, an existing electric Coop in Kotzebue, has the capacity to form a

subsidiary that would be this: "Fuel Coop."

#6 Passage of HB 157 would dissuade fuel companies from aggressively challenging the creation of such enterprises in order

to protect their profits. A Northwest Arctic Bulk Fuel working group approached Crowley with an offer to purchase their

Kotzebue Tank Farm several years ago. It was our perception that an international maritime company which owned only

three tank farms in the world might be willing to sell, since tank farms

comprised such a minor part of its corporate activity. Crowley responded by cutting off discussions and then began building a brand new tank farm in Betnel. So much for slim margins.

The Northwest Arctic Borough urges passage of HB 157, as it will be an important tool for us in our battle to lower the cost of living for residents in our region of rural Alaska. Thank you for the opportunity to comment on this important issue.

Tom Bolen
Public Services Director
Acting Mayor
Northwest Arctic Borough
(907) 442 2500 ext 112
Fax (907) 442 2930

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSSHB 157(CRA)
 () Publish Date: _____

Revision Date/Time: _____ Dept. Affected: Commerce
 Title: Electric Phone/Coops and RDU: Regulatory Commission of Alaska (399)
Other Entities Component: Regulatory Commission of Alaska
 Sponsor: Anderson
 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 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES (1141)						
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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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no impact on the operations of the Regulatory Commission of Alaska (RCA). As part of its regulatory oversight of economically regulated utilities and all Power Cost Equalization (PCE) participants, the RCA already reviews affiliated interest transactions to ensure that utility customers are not harmed by non-utility activities.

Prepared by: Kate Giard, Chair Phone 907.263.2110
 Division: Regulatory Commission of Alaska Date/Time 4/11/05 2:44 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/11/2005
 Agency: Commerce, Community, and Economic Development

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 157 BY: Representative Tom Anderson

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

As it currently exists, the Alaska Electric and Telephone Cooperative Act (AS 10.25) grants electric and telephone cooperatives broad powers to conduct various activities. Those powers include the ability to become a member of other cooperatives or corporations or own stock in them and to do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

These powers allow the formation of subsidiary corporations or cooperatives in which a cooperative can own all or a portion of another legal entity that conducts activities separate from the cooperative's utility operations. For example, some cooperatives provide internet or cable television services.

Recent court decisions in Georgia, Mississippi and Texas have called into question a cooperative's ability to own subsidiary corporations. While the statutes in those states are different from those here in Alaska, there is a concern that those cases could be used in the future to help interpret Alaska's laws.

HB 157 proposes to clarify AS 10.25.010(a)(9) to make clear that a cooperative utility may own an interest in another entity that does not provide electric or telephone utility services. This amendment simply preserves and clarifies the current statutes which allow cooperatives to provide added benefits to their members.

For example, in some rural areas, cost-effective and environmentally sound bulk fuel storage, facilities maintenance and delivery are lacking. This is an activity in which rural electric utilities have useful expertise. Through membership or ownership in interests in subsidiary entities, electric cooperatives may be able to provide those types of services more safely and at a lower cost than would otherwise occur.

The second change made in HB 157 is the addition of "limited liability company" to the list of entities a cooperative may become a member of or own stock in. Limited liability companies (LLCs) are a relatively new type of member-owned legal entity. They were first recognized in

Alaska in 1994 and did not exist when AS 10.25.010(a)(9) was enacted. LLCs are increasingly becoming preferred over corporations and cooperatives for many non-profit and for-profit organizations, including subsidiaries. Although LLCs are not specifically prohibited in the statutes, the addition made by HB 157 clarifies this by expressly including LLCs as an acceptable legal entity a cooperative may become a member or own stock in.

This bill is necessary and important to preserve the intent of existing statutes. I urge your support for this legislation.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SSHB 157
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Electric/Telephone Co-ops RDU Regulatory Commission of Alaska (399)
and Other Entities Component Regulatory Commission of Alaska
 Sponsor Anderson
 Requester House Community & Regional Affairs Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structure						
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds "limited liability company" to the list of entities of which an electric or telephone cooperative can become a member; the other two entities on the list are cooperatives and corporations. This legislation has no fiscal impact on the operations of the agency.

Prepared by: Kate Giard, Chairman Phone 907.276.6222
 Division: Regulatory Commission of Alaska Date/Time 3/21/05 4:00 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/21/2005
 Agency: Commerce, Community, and Economic Development

**HOUSE BILL NO. 157 BACKGROUND
MARCH 2005**

I. Introduction.

House Bill No. 157, "An Act clarifying the powers of electric or telephone cooperatives to become members of or own stock in other entities," proposes to amend AS 10.25.010(a) to read:

Sec. 10.25.010. Powers of electric or telephone cooperative; prohibited action. (a) Except as provided in (b) of this section, an electric or telephone cooperative may

...

(9) become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;

....

The purpose and function of this amendment are to (1) clarify the existing power of an electric or telephone to become a member of, or own stock in, other legal entities, and (2) expressly include limited liability companies (which did not exist in Alaska until 1994) as a type of legal entity in which a cooperative can become a member.

II. Background.

A. Current powers of electric and telephone cooperatives.

As it currently exists, the Alaska Electric and Telephone Cooperative Act (AS 10.25) grants electric and telephone cooperatives broad powers to conduct various activities. For example, AS 10.25.010 provides 14 various general powers of electric and telephone cooperatives. In addition to traditional powers closely related to the provision of electric and telephone utility services, those powers include the power to:

(9) become a member of other cooperatives or corporations or own stock in them; [and]

...

(14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

AS 10.25.010(a).

In addition, AS 10.25.630 provides:

This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as provided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things.

B. The current power to become members of, or own stock in, other legal entities.

As stated above, by statute, Alaska electric and telephone cooperatives, themselves, have the power to engage in a broad range of activities. In addition, through AS 10.25.010(a)(9), as it is currently written, electric and telephone cooperatives can also form subsidiary corporations or cooperatives either through becoming a member of other cooperatives or corporations or by owning stock in them. Ownership in a cooperative, and often in a non-profit corporation, occurs through "membership" in that entity. Ownership in a for-profit corporation occurs through ownership of "stock" in the corporation.

The power to become a member of, or own stock in, another cooperative or corporation allows a cooperative to own all or a portion of another legal entity that conducts activities separate from the cooperative's utility operations. Examples of this could include a cooperative purchasing stock in a publicly traded corporation for investment purposes, or owning all of the stock or membership interest of another corporation that performs services in which the cooperative is interested or has operational experience and expertise. For example, cooperatives often have wholly-owned subsidiary corporations that provide educational services and scholarships to members of the cooperative. In addition, some cooperatives form subsidiary corporations that separately provide other types of services, including Internet and miscellaneous contracting services.

III. The proposed amendment in HB 157 clarifies the power to become a member of, or own stock in, other legal entities "organized for any lawful purpose."

Again, AS 10.25.010(a)(9) already provides the power for an electric or telephone cooperative to "become a member of other cooperatives or corporations or own stock in them." The statute does not limit this power in any way, but there are no published Alaska court decisions that have addressed this power. In other states, however, courts have recently addressed challenges to the power of electric cooperatives to own stock in for-profit subsidiaries. Typically, the issue has arisen when an electric cooperative owns stock in a subsidiary corporation that sells propane gas to the cooperative's members. In those cases, competing propane distributors have challenged the cooperative's power to own a subsidiary corporation whose activities extend beyond the narrow activity of providing electric energy.

In recent decisions, courts in Alabama, Colorado, and Kentucky have held that an electric cooperative has the power to own a subsidiary corporation that provides propane gas service. However, courts in Georgia, Mississippi, and Texas have held that electric cooperatives cannot own subsidiary corporations that provide services not associated the provision of electric energy. Although the specific language of the particular cooperative statutes that were interpreted in those

cases vary in different ways from the language of the Alaska co-op statute, those cases could be cited in the future to help interpret cooperative powers in Alaska.

Given these recent conflicting court decisions from other states, there is a concern that AS 10.25.010(a)(9) could be misinterpreted in the future to infer an unintended and unstated limitation on the power of a cooperative to become a member of, or own stock in, other legal entities. That is, a litigant might attempt to argue that the statute should be interpreted to limit a cooperative's power to own a subsidiary to allow only ownership of entities that provide traditional electric or telephone utility services. Although there is no such limitation in AS 10.25.010(a)(9) as it currently exists, the uncertainty created by the conflicting court decisions makes it prudent to clarify that AS 10.25.010(a)(9) imposes no such limitation.

HB 157 proposes to clarify AS 10.25.010(a)(9) by adding the clause "organized for any lawful purpose." As amended, AS 10.25.010(a)(9) would provide that an electric or telephone cooperative may "become a member of other cooperatives, limited liability companies, or corporations organized for any lawful purpose, or own stock in them;". The addition of "organized for any lawful purpose" will clarify that the power of a cooperative to own an interest in another entity is not limited to only those entities that provide electric or telephone utility services.

This amendment simply preserves and clarifies the status quo with respect to cooperatives as they provide diversified services with meaningful benefits to their members. Particularly in rural areas of Alaska, co-op subsidiaries can fulfill important needs that are not directly associated with the provision of traditional electric or telephone utility service and that are, in many cases, requested by local residents.

For example, in some rural areas, cost-effective and environmentally sound bulk fuel storage, facilities maintenance, and delivery are lacking. This is an activity in which rural electric cooperatives have experience and expertise. Through membership or ownership interests in subsidiary entities, electric cooperatives may be able to provide those types of services more safely and at a lower cost than would otherwise occur.

The other change to AS 10.25.010(a)(9) proposed in HB 157 is the addition of "limited liability companies" as a legal entity in which a cooperative may become a member. Limited liability companies (LLCs) are a relatively new type of member-owned legal entity. They were first recognized in Alaska in 1994 and are codified in the Alaska Revised Limited Liability Company Act, AS 10.50. LLCs did not exist when AS 10.25.010(a)(9) was adopted. However, LLCs are increasingly becoming preferred over corporations and cooperatives for many types of non-profit and for-profit organizations, including subsidiaries. Even though LLCs are not prohibited by the current statute, the addition of "limited liability companies" in HB 157 clarifies this by expressly including LLCs as a type of legal entity in which an electric or telephone cooperative may become a member.