Crystal Koeneman

From: Crystal Koeneman
Sent: Tuesday, April 15, 2014 12:00 PM
To: Crystal Koeneman
Subject: RE: HB140

-------- Original message --------
From: "Foerster, Catherine P (DOA)"
Date:04/04/2014 9:12 AM (GMT-09:00)
To: "Rep. Lora Reinbold"
Cc: "Seamount, Dan T (DOA)"
Subject: FW: HB140

Representative Reinbold,
Below is an e-mail that we sent to Senator Giessel yesterday at the request of her staff.
It outlines most of AOGCC's concerns with HB140, as currently written.
You and I are scheduled to meet at 1:30pm on Monday to discuss these concerns. I hope the information below is helpful in our discussion.
Cathy

From: Foerster, Catherine P (DOA)
Sent: Thursday, April 03, 2014 12:40 PM
To: Giessel, Cathy (LAA)
Cc: Seamount, Dan T (DOA)
Subject: HB140

Senator Giessel,

Thank you for taking time to consider AOGCC's concerns relative to HB140. Please feel free to share our concerns with your colleagues as you deem appropriate.

HB140 has, I think, serious consequences to AOGCC, including:

1. The bill would force the commissioners to participate in ex parte communications.
   Anyone who wanted to could call up and require a commissioner to explain our reasons for a proposed regulation or regulatory change. We don't currently have conversations like this with individuals because, as a quasi-judicial body, we make all of our decisions as part of a public process. The technical reasons behind a proposed regulation or regulatory change are appropriately discussed on the public record. These one-on-one chats could make us vulnerable to court challenges about ex parte communications. We have been involved in lengthy and costly law suits over this sort of thing in the past.
2. The bill would infringe on the long-held protection of the deliberative process privilege underlying an agency's adjudicatory process.
   Adjudicatory decision makers, including judges and those adjudicating administrative disputes, have long been protected from inquiry into the mental processes which underlie their decisions. As a result, if an agency's decision is appealed, the courts look only to whether the agency has provided notice and an opportunity to be heard, whether there is statutory authority for the agency's decision, and whether there is evidence in the record to support the decision. The reason is simple and straightforward: the pertinent inquiry is whether an appropriate decision has been rendered. This approach works very well and tends to limit the number of appeals as well as the grounds for overturning the agency's decisions. This bill changes that in significant

ways. It requires the decision maker to respond to questions regarding those processes. The bill also requires AOGCC to keep a record of which evidence it relies upon and which evidence it rejects, all of which increases both the likelihood of appeals – an expensive and time-consuming process – and the bases for those appeals. Further, it unnecessarily creates the potential for bad will in the public. Imagine if, as a legislator, you had to keep a public record of which constituents' comments and requests you considered and which you ignored.

3. The bill would allow the Governor to override our regulations.
   This is problematic for two reasons. First, we have a weird little niche of highly technical regulations and the meaning of our regulations is generally not obvious to the lay person. Giving a lay person carte blanche to erase highly technical regulations that usually are the result of months (if not years) of consideration, staff time, and hearing time could put us into gridlock. Second, giving the Governor veto power over the decisions of an agency that is, by design and statute, independent would violate that independence.
4. The bill would require us to make an up-front estimate of the costs of proposed regulations, thus duplicating a process that is already in place and that works better.
   AOGCC has formal working procedures in place to involve the public and address costs to them when creating and modifying regulations. We hold hearings (often multiple hearings for one set of regulations changes) and, in those hearings, the public is encouraged to share their concerns relative to cost impacts. We take these cost impacts into account as part of our deliberative process. Requiring an up-front cost estimate prior to the hearings would add work to the agency, add cost to the agency (and, thus, to the regulated industry), impede our progress, and provide no additional benefit to the public.
5. The bill would substantially increase the burden of the hearing process.
   It would create a situation where the published cost estimate could become the subject of debate at the hearing. This would funnel time and energy away from meaningful discussions on the technical aspects of the regulations and could derail the entire process.
6. The bill would dramatically increase AOGCC costs.
   AOGCC would need to hire an additional experienced Petroleum Engineer (which would be very difficult, since we are competing with the regulated industry, where compensation is much more competitive than in State service), a Cost Estimator, and an Office Assistant II to handle the increased work load. Further, we would require an estimated $10,000 per year for temporary hearing space to accommodate an abnormal increase in hearing attendance above what our current hearing room adequately accommodates.
7. The bill would require AOGCC to concede that the Federal Government has jurisdictional authority of over our agency.
   Stating that Federal law requires AOGCC to take regulatory action is at odds with Alaska's assertion of state's rights and the authority to act independently of the Federal Government. AOGCC's problem with this may best be characterized in light of the BLM ~~legacy~~ travesty wells. AOGCC has battled the Federal BLM and DOI for years regarding cleanup of these wells and drill sites, a dispute turning largely on jurisdictional issues. The AOGCC is deeply troubled and puzzled by proposed legislation that could be read to force it to concede Federal jurisdiction or authority over it.