

# LEGAL SERVICES

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## MEMORANDUM

April 10, 2014

**SUBJECT:** Review of letter concerning CSHB 140(FIN) am relating to regulations (Work Order No. 28-LS0478\G.A.)

**TO:** Representative Lora Reinbold  
Attn: Crystal Koeneman

**FROM:**  Terry Bannister  
Legislative Counsel

You have asked for a review of a letter from the Alaska Oil and Gas Conservation Commission (AOGCC) dated March 27, 2014, relating to CSHB 140(FIN) am. This memo provides a few comments that I am able to make within the limited time available.

A portion of the letter addresses sec. 44.62.213(b), which requires that an agency answer questions from the public under certain conditions. The letter states that the AOGCC staff already answers the questions. Since the letter states that the AOGCC already does this, it is not clear why the AOGCC does not want to be covered by the provision in the bill. The letter does not state why.

The nature of AOGCC as an independent agency does not require that it be excluded from provisions of the bill. The AOGCC is established as an "independent" agency by AS 31.05.005, and is not placed in a department, so it doesn't report directly to the governor. However, it is not entirely independent since the three commissioners are appointed by the governor,<sup>1</sup> the governor designates the chair of the commission,<sup>2</sup> and the Department of Law provides legal counsel to the AOGCC.<sup>3</sup> AOGCC's independence is determined by statute, so statutes can change this.

The quasi-judicial nature of AOGCC is more extensive than the quasi-judicial activities of many other agencies. Many other agencies exercise some quasi-judicial powers, e.g., holding hearings on appeals from professional license denials. The quasi-judicial nature of AOGCC, by itself, does not require exclusion from the bill. However, the AOGCC

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<sup>1</sup> AS 31.05.005.

<sup>2</sup> AS 31.05.005.

<sup>3</sup> AS 31.05.021.

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adjudicates disputes between the state and other parties. So it could be argued that regulation review by the governor (under sec. 2 of the bill (AS 44.62.040(c)) might raise a conflict of interest for hearings in which a state agency<sup>4</sup> participates. The AOGCC adopts its own hearing regulations under AS 31.05.060(b) for certain situations. To the extent that a department under the supervision of the governor takes part in a hearing in those situations, it could be argued that there is a conflict of interest if the governor is able to review and return hearing regulations that would be used in a situation involving, e.g., the Department of Natural Resources.

The letter indicates that publishing cost estimates with the notice of hearing may complicate AOGCC hearings. This may be the case. However, this alleged potential problem appears to be more of a policy call than a legal matter.

With regard to the letter's request that other quasi-judicial independent agencies be exempted, "quasi-judicial" does not appear to be defined generally for the statutes. As indicated earlier, since many agencies have some features of quasi-judicial activity, it is not clear exactly which agencies the letter has in mind.

If I may be of further assistance, please advise.

TLB:lnd  
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<sup>4</sup> Under AS 31.05.026, the Department of Natural Resources has authority to raise issues before the AOGCC.