

SENATE CS FOR CS FOR HOUSE BILL NO. 3001(JUD) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 6/26/02

Offered: 6/26/02

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the powers and duties of the Regulatory Commission of Alaska,**
2 **establishing a task force to inquire into the operation of the commission, and extending**
3 **the termination date of the commission to June 30, 2003; and providing for an effective**
4 **date."**

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

6 * **Section 1.** AS 42.04.010(b) is amended to read:

7 (b) The commission shall annually elect [WHEN A VACANCY OCCURS
8 IN THE OFFICE OF CHAIR, THE COMMISSION MAY NOMINATE] one of its
9 members to serve as chair for the following fiscal year. When a vacancy occurs in
10 the office of chair, the commission shall elect one of its members to serve the
11 remaining term as chair [GOVERNOR SHALL DESIGNATE THE CHAIR OF
12 THE COMMISSION, EITHER BY SELECTING THE MEMBER NOMINATED BY
13 THE COMMISSION OR ANOTHER MEMBER]. The term as chair is one year
14 [FOUR YEARS]. The chair may [NOT] be elected [APPOINTED] to not more than

1 **three successive terms as chair. After a year of not serving as chair, the**
 2 **commissioner is eligible for election as chair again.**

3 * **Sec. 2.** AS 42.04 is amended by adding a new section to article 1 to read:

4 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each
 5 member of the hearing panel shall accord to a person the right to be heard according to
 6 law. A member of a hearing panel may not initiate, permit, or consider an ex parte
 7 communication or other communication made to the member of a hearing panel
 8 outside the presence of the parties concerning a matter that is pending or likely to
 9 come before the panel except as allowed by this section.

10 (b) A hearing panel and each member of the hearing panel may initiate or
 11 consider an ex parte communication when expressly authorized by law to do so.

12 (c) When circumstances require, a hearing panel and each member of the
 13 hearing panel may engage in ex parte communications for scheduling or other
 14 administrative purposes if (1) the communications do not deal with substantive matters
 15 or the merits of the issues litigated; (2) each member of the hearing panel reasonably
 16 believes no party will gain a procedural or tactical advantage because the
 17 communication is ex parte; and (3) the hearing panel takes reasonable steps to notify
 18 all parties promptly of the substance of the ex parte communication and, when
 19 practicable, allows them an opportunity to respond. This subsection does not apply to
 20 ex parte communications by commission staff concerning scheduling or administrative
 21 matters.

22 (d) If the parties agree to this procedure beforehand, either in writing or on the
 23 record, a hearing panel and each member of the hearing panel may engage in ex parte
 24 communications on specified administrative topics with one or more parties.

25 (e) A hearing panel and each member of the hearing panel may consult other
 26 members of the panel and commission staff whose function is to aid the hearing panel
 27 in carrying out its adjudicative responsibilities.

28 (f) A hearing panel and each member of the hearing panel may, with the
 29 consent of the parties, confer separately with the parties and their lawyers in an effort
 30 to mediate or settle matters pending before the hearing panel.

31 (g) In all activities, a member of a hearing panel shall avoid impropriety and

1 the appearance of impropriety, and act in a manner that promotes public confidence in
 2 the integrity and the impartiality of the hearing process.

3 * **Sec. 3.** AS 42.05 is amended by adding a new section to read:

4 **Sec. 42.05.175. Timelines for issuance of final orders.** (a) The commission
 5 shall issue a final order not later than six months after a complete application is filed
 6 for an application

- 7 (1) for a certificate of public convenience and necessity;
- 8 (2) to amend a certificate of public convenience and necessity;
- 9 (3) to transfer a certificate of public convenience and necessity; and
- 10 (4) to acquire a controlling interest in a certificated public utility.

11 (b) Notwithstanding a suspension ordered under AS 42.05.421, the
 12 commission shall issue a final order not later than nine months after a complete tariff
 13 filing is made for a tariff filing that does not change the utility's revenue requirement
 14 or rate design.

15 (c) Notwithstanding a suspension ordered under AS 42.05.421, the
 16 commission shall issue a final order not later than 15 months after a complete tariff
 17 filing is made for a tariff filing that changes the utility's revenue requirement or rate
 18 design.

19 (d) The commission shall issue a final order not later than 12 months after a
 20 complete formal complaint is filed against a utility or, when the commission initiates a
 21 formal investigation of a utility without the filing of a complete formal complaint, not
 22 later than 12 months after the order initiating the formal investigation is issued.

23 (e) The commission shall issue a final order in a rule making proceeding not
 24 later than 24 months after a complete petition for adoption, amendment, or repeal of a
 25 regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a
 26 rule making docket, not later than 24 months after the order initiating the proceeding is
 27 issued.

28 (f) The commission may extend a timeline required under (a) - (e) of this
 29 section if all parties of record consent to the extension or if, for one time only, before
 30 the timeline expires, the

- 31 (1) commission reasonably finds that good cause exists to extend the

1 timeline;

2 (2) commission issues a written order extending the timeline and
 3 setting out its findings regarding good cause; and

4 (3) the extension of time is 90 days or less.

5 (g) The commission shall file quarterly reports with the Legislative Budget
 6 and Audit Committee identifying all extensions ordered under (f) of this section
 7 during the previous quarter and including copies of the written orders issued under
 8 (f)(2) of this section.

9 (h) If the commission does not issue and serve a final order regarding an
 10 application or suspended tariff under section (a), (b), or (c) of this section within the
 11 applicable timeline specified, and if the commission does not extend the timeline in
 12 accordance with (f) of this section, the application or suspended tariff filing shall be
 13 considered approved and shall go into effect immediately.

14 (i) For purposes of this section, "final order" means a dispositive
 15 administrative order that resolves all matters at issue and that may be the basis for a
 16 petition for reconsideration or request for judicial review.

17 (j) For purposes of this section, an application, tariff filing, formal complaint,
 18 or petition is complete if it complies with the filing, format, and content requirements
 19 established by statute, regulation, and forms adopted by the commission under
 20 regulation.

21 * **Sec. 4.** AS 42.05.191 is amended to read:

22 **Sec. 42.05.191. Contents and service of orders.** Every formal order of the
 23 commission shall be based upon the facts of record. **However, the commission may,**
 24 **without a hearing, issue an order approving any settlement supported by all the**
 25 **parties of record in a proceeding, including a compromise settlement.** Every order
 26 entered pursuant to a hearing must state the commission's findings, the basis of its
 27 findings and conclusions, together with its decision. These orders shall be entered of
 28 record and a copy of them shall be served on all parties of record in the proceeding.

29 * **Sec. 5.** AS 44.66.010(a)(4) is amended to read:

30 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, **2003**
 31 [2002];

1 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The
4 timelines provided in AS 42.05.175, added by sec. 3 of this Act, apply to all dockets of the
5 Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced
6 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose
7 of applying the timelines in AS 42.05.175.

8 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
11 A task force is established to inquire into the operation of the Regulatory Commission of
12 Alaska. The members of the task force shall be appointed as follows: three people by the
13 president of the senate, three people by the speaker of the house of representatives, and one
14 person by the governor.

15 (b) The task force shall immediately perform a comprehensive review of the
16 commission and its operations. The task force shall present a written report to the legislature
17 not later than January 30, 2003. The task force is terminated upon the presentation of the
18 written report to the legislature. The task force shall make specific recommendations in its
19 report advising the legislature regarding

20 (1) the type of arbitration best suited to rate and tariff issues;
21 (2) the appropriate level of regulation of the electric and telephone
22 cooperatives organized under AS 10.25 and the appropriate level of regulation of municipally
23 owned utilities;

24 (3) whether a separate telecommunications commission should be created.

25 (c) The task force shall have access to all information in the custody of the
26 commission; however, information categorized as confidential shall be available to the task
27 force only with the consent of the submitter of the information. The task force shall maintain
28 the confidentiality of any confidential information accessed. Confidential information may
29 not be disclosed in the written report prepared under (b) of this section.

30 (d) A request for information that might reasonably be considered to contain
31 confidential information may be made only with a majority vote of the members of the task

1 force. The members of the task force may not improperly use or disclose any information
2 obtained in the course of service on the task force. The provisions of AS 39.52.140 apply to
3 members of the task force. The governor, in place of the personnel board, shall apply the
4 penalty provisions of AS 39.52.440 - 39.52.460.

5 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 POWERS AND DUTIES OF REGULATORY COMMISSION OF ALASKA IN
8 THE YEAR AFTER EXPIRATION. Notwithstanding AS 44.66.010(b), the powers and
9 duties of the Regulatory Commission of Alaska in the year following expiration are not
10 reduced or otherwise limited, and the commission shall continue in existence after expiration
11 for one year. The commission shall continue to exercise all its powers and perform its duties
12 and responsibilities under AS 42 during the year following its expiration.

13 * **Sec. 9.** Except as provided in sec. 11, this Act takes effect immediately under
14 AS 01.10.070(c).

15 * **Sec. 10.** AS 42.04.090 added by sec. 2 of this Act is repealed on June 30, 2004.

16 * **Sec. 11.** Section 1 of this Act takes effect January 15, 2003.