



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Sean Parnell, Governor
Susan K. Bell, Commissioner
T.W. Patch, Chairman

Regulatory Commission of Alaska

Date: April 10, 2014

The Honorable Lora Reinbold
House of Representatives
State Capitol, Room 432
Juneau, AK 99801
Representative.Lora.Reinbold@akleg.gov

Re: Follow up to our conversation regarding House Bill 140 on April 9, 2014

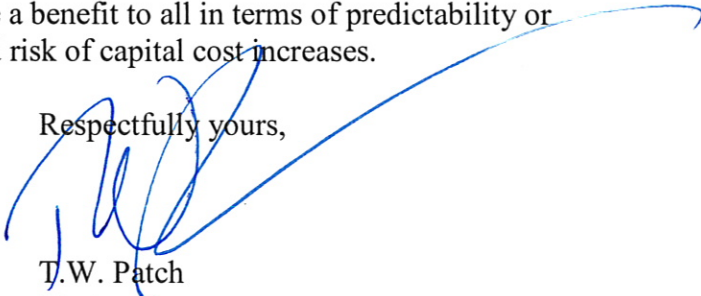
Dear Representative Reinbold:

Thank you for your time in conference yesterday and the opportunity to explain why I believe the far better course of legislative action is to retain both the Regulatory Commission of Alaska's by name and general exemptions as they exist in current law but may be removed by the current version of House Bill 140.

I have attached to this letter the points advanced yesterday.

The retention of the exemptions in current law for those independent, quasi-judicial, boards and commission is warranted. Such exemptions will result in independence for the boards and commissions that qualify, lower costs to all Alaskans, continuity of transparency of process, lower risk of needless litigation, and there will be a benefit to all in terms of predictability or certainty with decision and the attendant lessened risk of capital cost increases.

Respectfully yours,


T.W. Patch
Chairman

cc: Randal Ruaro, Office of the Governor
Stuart W. Goering, Department of Law

Why Should the Boards and Commissions Exemption Be Retained in HB 140?

In response to a request from Representative Reinbold, the Regulatory Commission of Alaska (RCA) offers the following reasoning for retaining the existing boards and commissions exemptions in the Administrative Procedures Act.

- The RCA, like other boards and commissions, already has a high degree of transparency built into its regulations adoption process. The Open Meetings Act requires that commissions receive staff advice and consider adoption of regulations in public meetings. Discussion is usually robust and informative. At the RCA, transcripts of public meetings, along with all records and decisions of the RCA, are available to the public online and free of charge.
- The RCA must, under the Public Utilities Regulatory Act and the Pipeline Act, issue written orders reflecting the factual basis and reasoning for its decisions, even those voted on in public meetings. Those orders are subject to a petition for reconsideration by the agency (no filing fee), or judicial review, if any Alaskan, not just the governor or the legislature, believes that the regulations exceed statutory authority or are an abuse of discretion.
- In practice, the RCA goes well beyond these requirements, engaging industry and the general public through multiple rounds of public comment, workshops and public hearings. Although the agency does not formally use negotiated rulemaking, the process employed is similar and the RCA strives to adopt regulations for which there is consensus.
- Enabled by independent, quasi-judicial agency status, the RCA best performs the complex and delicate task of economically regulating monopoly providers of essential services, and is widely seen as a neutral and impartial decision-maker that cannot be swayed by political influence. Independence is particularly important because the state appears as a party before the agency, and any additional political influence on the decision-making process would be seen as an unfair advantage to the state. The current draft of HB 140 would provide additional bases for appeal, and an increase uncertainty and litigation costs for all parties. Those costs would ultimately be borne by consumers.
- Although independent, the RCA is subject to political oversight through the appointment and confirmation of commissioners. Commissioners can be removed by the governor for cause, including incompetence, neglect of duty, inability to serve or misconduct in office. Commissioners are subject to executive branch reporting requirements.
- The RCA is subject to legislative oversight through the sunset process, and is regularly subjected to legislative audit. The RCA is currently in the sunset review process and Legislative Budget and Audit recommended an eight-year extension, the maximum allowed by law. The House has already passed the RCA extension bill, including the eight-year extension.
- The RCA is subject to “course correction” by the amendment of its enabling statutes. The RCA is very responsive to legislative direction of this kind. For example, previously existing law made approval of some gas sales agreements (GSA) difficult. The legislature passed the Cook Inlet Recovery Act, which modified the factors to be considered by the commission when reviewing GSA. Since that enactment, submissions of GSA have not encountered difficulty.