

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 6/26/02

Referred: Rules

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 42.04.080 is amended by adding new subsections to read:

4 (c) A member of a hearing panel appointed under (a) of this section may not
 5 have or have had an ex parte communication on a substantive matter that is pending or
 6 likely to come before the panel with a party to the proceeding.

7 (d) The chair may not appoint the members of a hearing panel if the chair has
 8 had an ex parte communication on the matter before the panel, and the chair shall
 9 delegate the appointment power to the next most senior commissioner who has not had
 10 an ex parte communication in that matter.

11 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
 12 direct or indirect communication on a substantive matter that is pending or likely to
 13 come before the commission between a commissioner and a party without the
 14 opportunity for all other parties to be present. However, a communication occurring
 15 more than two years before the filing of the matter with the commission does not
 16 disqualify a person under (c) or (d) of this section. Circumstances that might
 17 reasonably suggest to a third party that an ex parte contact had occurred, even if none
 18 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this
 19 section.

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

21 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each
 22 member of the hearing panel shall accord to a person the right to be heard according to
 23 law. A member of a hearing panel may not initiate, permit, or consider an ex parte
 24 communication or other communication made to the member of a hearing panel
 25 outside the presence of the parties concerning a matter that is pending or likely to
 26 come before the panel except as allowed by this section. Members of a hearing panel
 27 shall make reasonable efforts to see that law clerks and other commission staff
 28 carrying out similar functions under the hearing panel's supervision do not violate the
 29 provisions of this section.

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

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

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

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

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

20 * **Sec. 4.** AS 42.05 is amended by adding a new section to read:

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

- 24 (1) for a certificate of public convenience and necessity;
- 25 (2) to amend a certificate of public convenience and necessity;
- 26 (3) to transfer a certificate of public convenience and necessity; and
- 27 (4) to acquire a controlling interest in a certificated public utility.

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

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

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

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

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

17 (1) commission reasonably finds that good cause exists to extend the
18 timeline;

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

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

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

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

31 (i) For purposes of this section, "final order" means a dispositive

1 administrative order that resolves all matters at issue and that may be the basis for a
2 petition for reconsideration or request for judicial review.

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

7 * **Sec. 5.** AS 42.05.191 is amended to read:

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

15 * **Sec. 6.** AS 44.66.010(a)(4) is amended to read:

16 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, **2003**
17 [2002];

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

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

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

27 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
28 A task force is established to inquire into all aspects of the operation of the Regulatory
29 Commission of Alaska. The members of the task force shall be appointed as follows: three
30 people by the president of the senate, three people by the speaker of the house of
31 representatives, and one person by the governor.

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

6 (1) the type of arbitration best suited to rate and tariff issues;

7 (2) the appropriate level of regulation of the electric and telephone
 8 cooperatives organized under AS 10.25 and the appropriate level of regulation of municipally
 9 owned utilities;

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

11 (c) The task force shall have access to all information, including confidential
 12 information, in the custody of the commission. The task force shall maintain the
 13 confidentiality of any confidential information accessed. Confidential information may not be
 14 disclosed in the written report prepared under (b) of this section.

15 (d) A request for information that might reasonably be considered to contain
 16 confidential information may be made only with a majority vote of the members of the task
 17 force. The members of the task force may not improperly use or disclose any information
 18 obtained in the course of service on the task force. The provisions of AS 39.52.140 apply to
 19 members of the task force. The governor, in place of the personnel board, shall apply the
 20 penalty provisions of AS 39.52.440 - 39.52.460.

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

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

29 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).