

HOUSE FINANCE COMMITTEE  
January 30, 2003  
1:29 PM

TAPE HFC 03 - 5, Side A  
TAPE HFC 03 - 5, Side B

CALL TO ORDER

Co-Chair Harris called the House Finance Committee meeting to order at 1:29 PM.

MEMBERS PRESENT

Representative John Harris, Co-Chair  
Representative Bill Williams, Co-Chair  
Representative Kevin Meyer, Vice-Chair  
Representative Eric Croft  
Representative Richard Foster  
Representative Mike Hawker  
Representative Reggie Joule  
Representative Carl Moses  
Representative Gary Stevens  
Representative Bill Stoltze  
Representative Jim Whitaker

MEMBERS ABSENT

None

ALSO PRESENT

Ernesta Ballard, Commissioner, Department of Environmental Conservation; Kurt Fredrickson, Acting Deputy Commissioner, Department of Environmental Conservation; Nan Thompson, Chair, Regulatory Commission of Alaska.

PRESENT VIA TELECONFERENCE

None

GENERAL SUBJECT(S):

DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DDEC)  
REGULATORY COMMISSION OF ALASKA

The following overview was taken in log note format. Tapes and handouts will be on file with the House Finance Committee through the 23rd Legislative Session, contact 465-2156. After the 23rd Legislative Session they will be available through the Legislative Library at 465-3808.

LOG	SPEAKER	DISCUSSION
	<b>TAPE HFC 03 - 5 SIDE A</b>	
000	Co-Chair Harris	Convened the meeting of the House Finance Committee at 1:29 p.m. Roll was called and a quorum established.
	Co-Chair Harris	Invited members to bring any outstanding business forward. Hearing none, he invited Ms. Ballard to come forward.
		DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)
145	ERNESTA BALLARD, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Introduced Mr. Fredrickson who would also be available to answer questions. Ms. Ballard summarized her business background, explaining that she had spent half of her career in the private and half in the public sector. She mentioned her experience working for universities, the Federal Government, the Environmental Protection Agency (EPA) [administrating for a region which included Alaska], a bank, the Cape Fox Corporation in Saksman, and, most recently, her own consulting business. She noted that she had worked previously with members of DEC with her consulting firm, and expressed her pride in now serving as their leader. She emphasized her commitment to the Governor's priority of revitalizing resource industries, thereby supporting local economies. She noted that, as a resident of Ketchikan, she felt enthusiastic about the future of this community in view of projected capital returns.
531	Ms. Ballard	Clarified her understanding of DEC's mission as derived from statutes, and referred to the handout outlining these statutes (AS 46.03.010 and AS 44.46.020), listing the policies and duties of the department (copy on file.) She pointed out that DEC's primary mission, established over 30 years ago, was to further the statutory policy of the legislature to conserve, improve and protect the state's natural resources.
643	Ms. Ballard	Summarized their duties as being to adopt and enforce protective standards for the prevention of pollution and for the protection of public health. (AS 44.46.020) She noted that those duties derived by a public interest identified

		by the legislature, considered greater than individual interests. She referred to statute (AS 46.03.010) identifying the State as the trustee of the environment for present and future generations. She expressed her personal belief in the legislatures' proposal of balance between the public interest for environmental protection and the private right of citizens to be left alone. She observed the responsibility of DEC to do no more in the job than intended by legislature, but no less than necessary to protect public interest. She referred to Administrative Order 202, in which departments are charged with a performance audit to determine statutory and regulatory compliance.
929	Ms. Ballard	Explained that, in the process of this internal audit, she would investigate what she termed as mission creep - the natural tendency to allow agendas to effect policies and compliance. She noted her commitment to understanding the regulatory framework, and places where the department may have over stepped statutory intent. She emphasized her commitment to ensure that environmental and public health standards were fact based, and that systems were in place to implement those standards, with logical permits and accompanying regulations.
1038	Ms. Ballard	Concluded by stating her priority to cut costs through efficiency and effectiveness. Specifically she noted her own goals and measurements: regulatory proposals which are easy to understand and well coordinated with other state departments and federal agencies; using regulatory discretion to tailor actions to match Alaskan circumstances; web pages which are searchable and interactive; permit programs which are self implementing; increased field presence; enforcement as a predictable consequence of deceit and equivocation; opportunity for public comment at convenient times and places.
1209	Ms. Ballard	Proposed that confidence in her Department could be achieved when its performance was timely, predictable, rational, and fact based. She thanked the Committee Members for this

		opportunity and concluded her presentation.
1308	Ms. Ballard	Affirmed a statement by Co Chair Harris that her philosophy, and that of the Administration, was to support natural resource development in an environmentally sound manner and to comply with environmental regulations in the process.
1358	Representative Whitaker	Noted Ms. Ballard's personal goal for a self-implementing permit process.
1427	Ms. Ballard	Elaborated by explaining that, by identifying activities with common characteristics and likelihood for a common effluence, it was possible to write a permit to describe circumstances, and to file a notice of intent under that general permit. She mentioned that this was a commonly used regulatory tool, allowing more time for staff on protective standards and in the field understanding circumstances. She conceded that there were circumstances that did not fit general permits, when an individual permit was necessary.
1552	Representative Stevens	Asked how DEC interacted with seafood industry, as with seafood inspection and laboratory work paralytic shellfish.
1617	Ms. Ballard	Responded that the seafood industry, as a processor, produced discharges in water. She emphasized that those discharges must meet water quality standards. DEC, in conjunction with the EPA, has a program in which the EPA is the lead agency. She noted that the Palmer laboratory facility must be vacated by the end of 2003 and that a modern lab would be built near Anchorage to ensure that fisheries can be supported with a quick turnaround for shellfish poisoning testing.
1801	Ms. Ballard	Responded to a question from Representative Stevens and stated that the lab design had been funded at over \$1 million, but had not yet been built.
1813	Representative Meyer	Asked for clarification on when the dept became involved with local issues. He noted an instance regarding a subdivision in Anchorage. He inquired whether Ms. Ballard preferred that local government handle issues, and when she thought DEC should become involved.
1900	Ms. Ballard	Responded that DEC would always prefer for issues pertaining to land use and

		development be addressed by local government. She also noted that public water systems were the responsibility of DEC. The agency determines drinking water standards for resultant water. Ms. Ballard explained that, if a subdivision was to be created near a water source, which might, because of the disturbance of the land, become impacted, lines might become blurred. However, she reiterated that it was still DEC's preference to have engineering and analysis completed by the local planning authority. She noted that with reluctance DEC used expertise to give general advise. She pointed out that DEC had no decision-making or permitting authority with regard to local subdivisions.
2031	Representative Meyer	Asked whether there were plans for the agency in the way of changes, mergers or consolidations. He referred to tattooing and body piercing as listed as under DEC's purview in regard to public safety.
205	Ms. Ballard	Stated that the only plans for organizational changes would occur around vacancies or opportunities. She confirmed that body piercing was DEC's responsibility under statute.
2124	Co-Chair Williams	Noted that Ms. Ballard was a friend and expressed his pride in her development since he was a part of her original job in Alaska. He asked about the administration of water primacy.
2150	Ms. Ballard	Spoke to her viewpoint, being as yet unaware of the Governor's stance on this issue. She explained that the national environmental laws at this moment had been delegated to states in the majority of cases. At state level, with statutory authority, permit writers can use all regulatory tools available. She exemplified that when a discharge occurred in water, if the point of compliance must be at point of discharge, then a great deal of treatment would be needed upstream. If, however, a mixing zone accommodated the point of compliance, there would be an opportunity to engineer the discharge at a lower cost and higher efficiency. She pointed out that this type of regulatory discretion was used by nearly every state in administrating programs. However, the

		Federal Government on behalf of states did not use that level of discretion. The noted that the Fed Government took a conservative point to administer a permit program in a state. States can use discretion to write permits that achieve protection while allowing engineering. She further assured the Committee that current regulatory language, which allowed regulatory discretion to DEC, was similar to that used by other programs around the country, according to a recent comparison conducted by State of Alaska regulatory specialists.
2500	Ms. Ballard	Also responded that primacy of the NPDES (National Pollutant Discharge Elimination Systems) Program, allowing permits to be written by the State of Alaska, DEC would use the same discretion in all other permitting programs, similar to programs in many other states. She expressed her belief that this kind of discretion would not violate standards or harm water quality.
2526	Representative Joule	Asked Ms. Ballard to elaborate on budget reductions.
2542	Ms. Ballard	Responded that where vacancies occurred, she would investigate consolidating and internal streamlining. She also mentioned the area of some federal grants that were better suited to larger cities. She noted a current review of grant funding, to determine federal funds that might be passed up in order to reduce general fund spending in that area.
2707	Representative Joule	Observed that these ideas for budget reductions did not seem to impact statutory obligations.
2737	Ms. Ballard	Confirmed that she was committed to statutory responsibilities, but that she may propose to release federally funded programs that were not consistent with DEC's central mission.
2759	Representative Croft	Asked for clarification on the major areas of in which the State maintained primacy.
2818	KURT FREDRICKSON, ACTING DEPUTY COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION	Confirmed that, of twenty possible areas, Alaska had primacy in air and drinking water primarily. Ms. Ballard offered to provide a list of these areas to the Committee.

2903	Representative Croft	Clarified that the issue previously discussed was that of water discharge, noting that this issue had been a costly one to solve in past experience.
2920	Ms. Ballard	Concurred that the Committee had previously directed the DEC to design a program, and report the projected costs and statutory changes it required. She stated that personnel had been hired recently in this regard, and that a report would be forthcoming by the end of 2003.
2945	Representative Croft	Expressed his preference to have Alaskan permit writers with more regulatory discretion, rather than federal employees.
3013	Ms. Ballard	Stressed that, even when using such regulatory discretion, that water quality standards did not change. She noted that the goal was to make site-specific determinations, which would be inappropriate for the EPA.
3108	Representative Croft	Reiterated that having primacy also meant expending funds, and that he hoped Alaska could afford to do it.
3118	Representative Stevens	Observed that Alaska's inability to test seafood products kept us out of the market, especially in terms of shellfish. He asked about a solution to this problem.
3152	Ms. Ballard	Explained that to sell fresh product from waters that might have been contaminated by PSP (paralytic shellfish poisoning), the primary challenge was to find assurances. She stated that the vehicle for this was through controlled laboratories. The agent used is highly toxic, and should not be distributed to local complexes. By moving the lab closer to Anchorage, and by maintaining professionalism and adequate budget, the State has been able to support fisheries. She expressed the need to find a harmless test, but that one did not exist at this time.
3325	Representative Stevens	Referred to a study in the past regarding tests to be used on a beach.
3352	Ms. Ballard	Responded that tests were underway around the world, and that DEC was following their development.
3410	Representative Stoltze	Pointed out that Palmer did have an airport and might be able to support a laboratory.

3430	Ms. Ballard	Noted that the new lab in Anchorage performed all of the functions of the previous lab, including agricultural functions, however in a modern setting.
3441	Co-Chair Harris	Asked whether Ms. Ballard was prepared to tell the Committee whether she had adequate personnel to fulfill their mission.
3516	Ms. Ballard	Said she would do the best she could with the resources available.
3530	Co-Chair Harris	Observed Ms. Ballard's intent for DEC to perform those duties which statutes required, and that perhaps DEC currently fulfilled duties that were not required. He asked whether, during a time of limited resources, the department would request more employees.
3628	Ms. Ballard	Stated that she would balance the turnaround time and duties in accordance with the resources available. She further explained that, within a spectrum of duties, that time frame would vary according to funding. She stated a goal to move with deliberation to resolve uncertainty surrounding projects. She admitted that turnaround time has been an issue in the past.
3740	Representative Croft	Asked about implications of the Governor's request for a five or ten percent reduction to her department.
3808	Ms. Ballard	Could not reveal detail and once again referred to statutory guidelines, which would receive top priority in preparing a budget.
3844	Representative Croft	Asked for a frank response to his question independent of confidentiality with the Governor's office.
3912	Ms. Ballard	Responded that she had not had adequate time to select items for budgetary cuts.
3940	Co-Chair Harris	Pointed out that budgetary information would become available in a month.
3952	Representative Stoltze	Expressed his confidence that clean air and water and public health were priorities of the agency.
4031	Co-Chair Harris	Concluded the discussion on this topic.
		REGULATORY COMMISSION OF ALASKA
4109	NAN THOMPSON, COMMISSIONER, REGULATORY COMMISSION OF ALASKA	Introduced herself as current Chair of the Regulatory Commission of Alaska. She explained that the agency's mission was to regulate public utilities and intrastate pipeline carriers. Their mission is to provide oversight of

		monopoly providers, and promote competition where appropriate. She pointed out that, last year, the legislature gave Regulatory Commission of Alaska the additional responsibility to develop small (under five megawatt) hydroelectric projects. She noted that the Regulatory Commission of Alaska came into existence in July of 1999 when the legislature abolished its predecessor due to the amount of backlogged cases. She reported that backlog of cases had dissipated and that they been meeting legislative deadlines.
4257	Ms. Thompson	Referred to chart illustrating the consistent decrease of backlog cases. She noted that the agency had 62 employees who served the State. She recognized that they were directed by statute. She noted that the five commissioners were appointed by the Governor to six-year terms. She pointed out that the Governor had appointed two new Commissioners: Dave Harbor? And Mark Johnson. She also noted that a new Chair would then be elected for the next year.
4452	Ms. Thompson	Explained that commissioners worked in a variety of ways. As a panel of three in ad judicatory dockets, they resolved complaint filed with the Agency. She stated that commissioners participated in a public meeting process. Commissioners also participate with other states in a less formal policy making process.
4604	Ms. Thompson	Noted that their budget was funded entirely through the regulatory cost charge mechanism, and contained no general funds. Ms. Thompson went on to explain the role of the Regulatory Commission of Alaska, which is unique in state government. She explained that the budget was allocated depending on how much time was spent in each sector. She also stated that the amount collected was capped by statute at .8 percent of the total adjusted gross revenues of all utilities.
	<b>TAPE HFC 03 - 5, Side B</b>	
4644	Ms. Thompson	Explained that all public utilities that serve 10 or more customers for compensation must be certificated by the RCA; they are all subject to a public

		convenience and necessity determination and a fitness, willingness, and ability requirement before they can begin operations. Certificated public utilities are subject to economic regulation (rate review) by the RCA if they are privately owned or do not otherwise meet the exemption criteria in AS 42.05.711.
4610	Ms. Thompson	Generally, the statute exempts very small utilities, those owned by local governments and those whose customers have voted to for exemption from economic regulation. The Commission regulates pipelines and utilities to assure reasonable and just rates to the consumer with fair rates of return to the utilities. There are currently 163 telephone utilities, 97 electric utilities, 63 water utilities, 44 wastewater utilities, 48 refuse utilities, and 20 pipelines certificated by the Commission. There are a number of uncertified small rural water and wastewater utilities throughout the state. The Regulatory Commission of Alaska is developing regulations that will simplify the certification process for these utilities.
4455	Ms. Thompson	Observed that the Regulatory Commission of Alaska opens an average of 160 new dockets a year. The current docket caseload is 214. Of these, 158 are utility cases, 42 are pipeline cases, and 14 are regulations cases. She pointed out that 214 was a significant improvement from 1999, when the Regulatory Commission of Alaska inherited more than twice that many dockets from their predecessor agency.
4434	Ms. Thompson	Explained that the Regulatory Commission of Alaska also handles consumer complaints. In FY02, they received 664 consumer complaints about utility services. As noted in the 2002 Legislative Audit Report on the RCA, the number of consumer complaints increased by 13 percent since the 2001 Audit. Despite this increase, all complaints received in FY02, save one were closed by October 15, 2002.
4418	Ms. Thompson	Clarified that each regulated utility and pipeline carrier is required to keep a current tariff on file with the

		Commission. The tariff includes all the rules, rates, terms, and conditions of service under which the utility operates. Revisions to tariffs are formally submitted for public notice and comment and then Commission review and action. Of 536 tariff revision filings received during FY02, 455 were approved within 30-45 days of receipt. Fifty filings were matters requiring hearings or more detailed investigation.
4342	Ms. Thompson	Explained that a rate increase request is an example of a proposed tariff change that normally takes more than 45 days to process. These more complex filings are suspended for further investigation; a formal docket case is opened to build a record for decision. The Commission may reject tariff filings if they do not provide sufficient information to support the requested change.
4251	Ms. Thompson	Observed that their major work product is written Orders. Commission orders describe our decision and the reasoning and record supporting it. Clearly written orders would provide a more stable environment within which utilities and pipelines can operate. The Regulatory Commission of Alaska produces an average of 608 substantive decisions each year.
4239	Ms. Thompson	Emphasized that the RCA's approach to decision-making has been successful. Since July 1, 1999 when the RCA started, only 16 of nearly 2,000 substantive orders have been appealed. Federal and state courts have issued decisions in 13 of those cases, and the agency has not been reversed once. Two appeals were dismissed by stipulation. One case was remanded to the agency with a finding that the Regulatory Commission of Alaska erred by not holding a hearing before rendering a decision and an instruction to conduct one.
4142	Ms. Thompson	Observed that there are 9 pending appeals from agency decisions. Reviewing courts have consistently held that they are correctly applying the law.
4115	Ms. Thompson	Reviewed the U.S.D.A. Grant: During FY02, the agency submitted a successful application to the U.S. Department of Agriculture for a \$7.5 million grant program to spread broadband Internet

		access to Alaskan communities not yet connected to the Internet.
4054	Ms. Thompson	Explained that the RCA will work with the Denali Commission, DCED/RUBA, and other agencies to implement this program during FY03.
4032	Ms. Thompson	Discussed the Small Water-Power Development Project Regulation: The 2002 Legislature enacted statutes, which require the RCA to establish a regulatory program for small waterpower development projects. She observed that FERC currently has jurisdiction over these projects. The approved program will require coordination with the Alaska Department of Natural Resources and the Department of Fish and Game.
3957	Ms. Thompson	Reviewed Sustainable Rural Utilities: The RCA participates in a federal state working group that is trying to insure that the water and sewer systems being constructed in rural Alaska with federal grant monies will continue to offer affordable, reliable service in the future.
3901	Ms. Thompson	Noted that Regulatory Commission of Alaska is looking at possible changes to PCE regulations in order to create incentives for efficiency in the program and insure that funds are distributed equitably. Utilities are an important infrastructure for the future of rural Alaska.
3858	Ms. Thompson	Reviewed Improved Public Access: The agency is working to function better and faster. The Regulatory Commission of Alaska website has been redesigned to make processes and orders accessible to the public. They have instituted automatic email notification of orders, notices, and filings, saving time, paper, and postage. Internally they have cut down on paper processes by scanning filings and instituting electronic document retrieval. Electronic filing procedures are being developed for use by the utilities.
3808	Ms. Thompson	Maintained that the RCA will play a vital role in the natural gas pipeline approval process; the continuing transition to communications competition; and the development of sustainable rural utilities - all matters of great

		legislative interest as well.
3729	Representative Stoltze	Concern about backlog in decisions. Noted that a request for a change within balloting has been delayed.
3710	Ms. Thompson	Stated that she would like to identify the case in question.
3553	Representative Meyer	Referred to consumer complaints. He observed that as new subdivisions are developed, property owners would like to have choice in companies. Unfortunately consumers are caught between competing companies and might go 30 - 60 days before their phones can be hooked up.
3410	Ms. Thompson	Stated that the Regulatory Commission of Alaska opened a docket to discuss the issue in Anchorage to resolve the phone competition issue. The docket is still open and the Commission is still working on the issue. She emphasized that consumers need an advocate to protect them.
3253	Representative Croft	Spoke to the competition issue in Anchorage. He questioned how it is possible to know when there is enough competition.
3208	Ms. Thompson	Pointed out that there are no federal or state regulations to determine when competition is optimized. The Commission is examining all their competition markets to research the issue.
3107	Representative Croft	Questioned the market share position in Anchorage.
3053	Ms. Thompson	More than 40 percent of the local market has gone to the competitive carrier.
3031	Representative Croft	Stressed that the issue is balance: too little or too much competition can create problems. He questioned if affects of too much competition through a slowing of expansion has been seen.
2939	Ms. Thompson	The Commission has observed that there are many more opportunities for consumers. Investment and innovation has continued to come to the consumer. It is a market in transition. The entombment has made significant investments in broadband and wireless.
2758	Representative Croft	Referred to unbundled networks.
2745	Ms. Thompson	Explained that under the federal 1996 Telecommunications Act, incumbents are required to lease portions of their network to competitors. The FCC came up with a methodology that has been upheld

		in the courts.
2609	Ms. Thompson	Observed that the question is whether competitors will be allowed to come into a market without any infrastructure. The loop is currently being leased, which is not a big issue in Alaska.
2524	Representative Croft	The question is whether the state of competition has been meet in Anchorage.
2454	Ms. Thompson	Clarified that there is a maximum of two years to conclude review.
2431	Representative Croft	Questioned if there is more competition in the Anchorage market than other areas in the nation.
2403	Ms. Thompson	Acknowledged that Alaska is at the head of the curve because the state of Alaska did not start with a Bell company.
2340	Representative Stevens	Referred to efficiencies in Power Cost Equalization.
2324	Ms. Thompson	Noted that the Regulatory Commission of Alaska has statutory direction to make sure that compensations occur within guidelines. Efficiency criteria in Regulatory Commission of Alaska's regulation are being modified with public discussion. They are also working to make the administration of the program fair and more efficient. Efficiencies apply to fuel consumption. Utilities aren't paying for employees of other departments.
2057	Representative Joule	Asked for further discussion on sustainable rural utilities.
2026	Ms. Thompson	Explained that funding to build rural utilities is being reviewed.
1937	Ms. Thompson	Rural utility subsidies may be needed if there is not enough economy to support them.
1844	Ms. Thompson	In response to a question by Representative Joule, Ms. Thompson stated that the Commission had not been involved in the selection of the type of operating systems used by rural communities.
1749	Representative Stoltze	Discussed the Chugiak market.
1722	Ms. Thompson	Explained that under the federal act, the district is considered rural. A finding would have to be made that competition is needed in the area.
	<u>ADJOURNMENT</u>	The meeting was adjourned at 2:59 PM