

HOUSE BILL NO. 209

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/19/07

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the chair of and the membership of and qualifications of members of**
2 **the Regulatory Commission of Alaska; adding positions to the partially exempt service;**
3 **creating an administrative law division and natural gas and oil pipeline division within**
4 **the commission; amending the timeline requirements for a final order of the**
5 **commission; relating to the commission's regulatory cost charges; and adding to the**
6 **duties of the Alaska Judicial Council as they relate to the presentation of nominees for**
7 **consideration for appointment to the commission."**

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

9 * **Section 1.** AS 22.20 is amended by adding a new section to article 4 to read:

10 **Sec. 22.20.210. Regulatory Commission of Alaska; additional duties.** The
11 judicial council shall have the duties set out in AS 42.04.020(h).

12 * **Sec. 2.** AS 39.25.120(c) is amended to read:

13 (c) The following positions in the state service constitute the partially exempt

1 service:

2 (1) deputy and assistant commissioners of the principal departments of
3 the executive branch, including the assistant adjutant general of the Department of
4 Military and Veterans' Affairs;

5 (2) the directors of the major divisions of the principal departments of
6 the executive branch and the regional directors of the Department of Transportation
7 and Public Facilities;

8 (3) attorney members of the staff of the Department of Law, of the
9 public defender agency, and of the office of public advocacy in the Department of
10 Administration;

11 (4) one private secretary for each head of a principal department in the
12 executive branch **and for the chair of the Regulatory Commission of Alaska;**

13 (5) employees of councils, boards, or commissions established by
14 statute in the Office of the Governor or the office of the lieutenant governor, unless a
15 different classification is provided by statute;

16 (6) not more than two special assistants to the commissioner of each of
17 the principal departments of the executive branch **and not more than one special**
18 **assistant for each commissioner of the Regulatory Commission of Alaska,** but the
19 number may be increased if the partially exempt service is extended under
20 AS 39.25.130 to include the additional special assistants;

21 (7) the principal executive officer of the following boards, councils, or
22 commissions:

23 (A) Alaska Public Broadcasting Commission;

24 (B) Professional Teaching Practices Commission;

25 (C) Parole Board;

26 (D) Board of Nursing;

27 (E) Real Estate Commission;

28 (F) Alaska Royalty Oil and Gas Development Advisory Board;

29 (G) Alaska State Council on the Arts;

30 (H) Alaska Police Standards Council;

31 (I) Alaska Commission on Aging;

- 1 (J) Alaska Mental Health Board;
- 2 (K) State Medical Board;
- 3 (L) Governor's Council on Disabilities and Special Education;
- 4 (M) Advisory Board on Alcoholism and Drug Abuse;
- 5 (N) Statewide Suicide Prevention Council;
- 6 (O) the State Board of Registration for Architect, Engineers,
- 7 and Land Surveyors;
- 8 (8) Alaska Pioneers' Home and Alaska Veterans' Home managers;
- 9 (9) hearing examiners in the Department of Revenue;
- 10 (10) the comptroller in the division of treasury, Department of
- 11 Revenue;
- 12 (11) airport managers in the Department of Transportation and Public
- 13 Facilities employed at the Anchorage and Fairbanks International Airports;
- 14 (12) the deputy director of the division of insurance in the Department
- 15 of Commerce, Community, and Economic Development;
- 16 (13) the executive director and staff of the Alaska Public Offices
- 17 Commission;
- 18 (14) the rehabilitation administrator of the division of workers'
- 19 compensation;
- 20 (15) guards employed by the Department of Public Safety for
- 21 emergencies;
- 22 (16) marine pilot coordinator of the Board of Marine Pilots;
- 23 (17) guards employed by the Department of Corrections, other than in
- 24 state correctional facilities, to carry out the responsibility of the commissioner of
- 25 Corrections under AS 33.30.071(b);
- 26 (18) **employees of the administrative law division of, employees of**
- 27 **the natural gas and oil pipeline division of, and** hearing officers and administrative
- 28 law judges of the Regulatory Commission of Alaska;
- 29 (19) the compact administrator appointed under AS 33.36.130;
- 30 (20) the chief administrative law judge and administrative law judges
- 31 of the office of administrative hearings.

1 * **Sec. 3.** AS 42.04.010(b) is amended to read:

2 (b) The **governor shall designate one member of the** commission [SHALL
3 ANNUALLY ELECT ONE OF ITS MEMBERS] to serve as chair [FOR THE
4 FOLLOWING FISCAL YEAR]. When a vacancy occurs in the office of chair, **the**
5 **governor shall designate one of the members of** the commission [SHALL ELECT
6 ONE OF ITS MEMBERS] to serve the remaining term as chair. The term as chair is
7 **three years** [ONE YEAR. THE CHAIR MAY BE ELECTED TO NOT MORE
8 THAN THREE SUCCESSIVE TERMS AS CHAIR. AFTER A YEAR OF NOT
9 SERVING AS CHAIR, THE COMMISSIONER IS ELIGIBLE FOR ELECTION AS
10 CHAIR AGAIN].

11 * **Sec. 4.** AS 42.04.020(a) is amended to read:

12 (a) The commission consists of five commissioners appointed by the governor
13 and confirmed by the legislature in joint session. **A commissioner shall be a citizen**
14 **of the United States and a resident of the state for the five years immediately**
15 **preceding appointment. The commission shall consist of the following members:**

16 **(1) three commissioners shall have been engaged in the active**
17 **practice of law, as defined by AS 22.05.070, for at least five years immediately**
18 **preceding appointment, and be licensed to practice law in the state at the time of**
19 **appointment;**

20 **(2) one commissioner shall have a degree from an appropriately**
21 **accredited college or university with a major in engineering and shall have been**
22 **engaged in the active practice of engineering for at least five years immediately**
23 **preceding appointment; "active practice of engineering" means**

24 **(A) being actually engaged in advising private employers or**
25 **clients on engineering matters;**

26 **(B) rendering engineering services to an agency, branch, or**
27 **department of a civil government within the United States or a state or**
28 **territory of the United States in an appointed or employed capacity; or**

29 **(C) serving as a professor, associate professor, or assistant**
30 **professor in an engineering program accredited by the Accreditation**
31 **Board for Engineering and Technology or another nationally recognized**

1 organization; and

2 (3) one commissioner shall have a degree from an appropriately
 3 accredited college or university with a major in accounting, finance, or economics
 4 and shall have been engaged in the active practice of accounting, finance, or
 5 economics for at least five years immediately preceding appointment; "active
 6 practice of accounting, finance, or economics" means

7 (A) being actually engaged in advising private employers or
 8 clients on accounting, finance, or economic matters;

9 (B) rendering accounting, finance, or economic analysis
 10 services to an agency, branch, or department of a civil government within
 11 the United States or a state or territory of the United States in an
 12 appointed or employed capacity; or

13 (C) serving as a professor, associate professor, or assistant
 14 professor in an accounting, finance, or economics program accredited by
 15 the Association to Advance Collegiate Schools of Business or another
 16 nationally recognized organization [TO QUALIFY FOR APPOINTMENT
 17 AS A COMMISSIONER, A PERSON MUST BE A MEMBER IN GOOD
 18 STANDING OF THE ALASKA BAR ASSOCIATION OR HAVE A
 19 DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH
 20 A MAJOR IN ENGINEERING, FINANCE, ECONOMICS, ACCOUNTING,
 21 BUSINESS ADMINISTRATION, OR PUBLIC ADMINISTRATION.
 22 ACTUAL EXPERIENCE FOR A PERIOD OF FIVE YEARS IN THE
 23 PRACTICE OF LAW OR IN THE FIELD OF ENGINEERING, FINANCE,
 24 ECONOMICS, ACCOUNTING, BUSINESS ADMINISTRATION, OR
 25 PUBLIC ADMINISTRATION IS EQUIVALENT TO A DEGREE].

26 * **Sec. 5.** AS 42.04.020(c) is amended to read:

27 (c) A vacancy arising in the office of a commissioner shall be filled by
 28 appointment by the governor and confirmed by the legislature in joint session, and,
 29 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
 30 hold office for the balance of the full term for which the predecessor on the
 31 commission was appointed. **The governor shall receive nominations from the**

1 Alaska Judicial Council within 90 days after a vacancy occurs. The governor
 2 shall fill a vacancy or appoint a successor to an impending vacancy within 45
 3 days after receiving nominations from the judicial council by appointing one of
 4 the persons nominated by the council for each impending vacancy.

5 * **Sec. 6.** AS 42.04.020(f) is amended to read:

6 (f) Members of the commission

7 (1) appointed before the effective date of this section are in the
 8 exempt service and are entitled to a monthly salary equal to Step C, Range 26, of the
 9 salary schedule in AS 39.27.011(a) for Juneau, Alaska; ~~the~~ [. THE] chair of the
 10 commission is entitled to a monthly salary equal to Step C, Range 27, of the salary
 11 schedule in AS 39.27.011(a) for Juneau, Alaska;

12 (2) appointed on or after the effective date of this section are in the
 13 exempt service and are compensated at the same level and in the same manner as
 14 judges of the superior court under AS 22.10.190; the chair of the commission
 15 shall receive an additional monthly payment of \$1,000.

16 * **Sec. 7.** AS 42.04.020 is amended by adding a new subsection to read:

17 (h) In ascertaining and evaluating potential nominees to the commission, the
 18 judicial council shall

19 (1) recruit and advertise for an available position on the commission in
 20 an appropriate manner;

21 (2) solicit, in lieu of a bar poll, comments from the public on each
 22 potential nominee;

23 (3) interview each potential nominee in a public session; and

24 (4) present to the governor every potential nominee who is qualified to
 25 fill the vacancy.

26 * **Sec. 8.** AS 42.04 is amended by adding new sections to read:

27 **Sec. 42.04.045. Administrative law division.** (a) There is created within the
 28 commission the administrative law division. The commission shall use the
 29 administrative law division to promote the orderly resolution of matters within the
 30 commission's jurisdiction other than matters related to natural gas and oil pipelines.
 31 The chair of the commission shall employ and supervise the work of employees of the

1 administrative law division, which may include administrative law judges, alternative
2 resolution dispute officials, and hearing examiners.

3 (b) Employees of the administrative law division are in the partially exempt
4 service and are entitled to an initial monthly salary that is not less than Step A, Range
5 25, and not more than Step M, Range 27, of the salary schedule in AS 39.27.011(a) for
6 Juneau, Alaska.

7 **Sec. 42.04.047. Natural gas and oil pipeline division.** (a) There is created
8 within the commission the natural gas and oil pipeline division. The commission shall
9 use the natural gas and oil pipeline division to promote the orderly resolution of
10 matters relating to natural gas and oil pipelines. The chair of the commission shall
11 employ and supervise the work of natural gas and oil pipeline division employees,
12 which may include an economist, pipeline financial analysts, engineers, and support
13 staff.

14 (b) Employees of the natural gas and oil pipeline division are in the partially
15 exempt service and are entitled to an initial monthly salary that is not less than Step A,
16 Range 23, and not more than Step M, Range 26, of the salary schedule in
17 AS 39.27.011(a) for Juneau, Alaska.

18 * **Sec. 9.** AS 42.05.175(a) is amended to read:

19 (a) The commission shall issue a final order not later than **180 days** [SIX
20 MONTHS] after a complete application is filed for an application

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

25 * **Sec. 10.** AS 42.05.175(b) is amended to read:

26 (b) Notwithstanding a suspension ordered under AS 42.05.421, the
27 commission shall issue a final order not later than **270 days** [NINE MONTHS] after a
28 complete tariff filing is made for a tariff filing that does not change the utility's
29 revenue requirement or rate design.

30 * **Sec. 11.** AS 42.05.175(c) is amended to read:

31 (c) Notwithstanding a suspension ordered under AS 42.05.421, the

1 commission shall issue a final order not later than **450 days** [15 MONTHS] after a
 2 complete tariff filing is made for a tariff filing that changes the utility's revenue
 3 requirement or rate design.

4 * **Sec. 12.** AS 42.05.175(d) is amended to read:

5 (d) The commission shall issue a final order not later than **365 days** [12
 6 MONTHS] after a complete formal complaint is filed against a utility or, when the
 7 commission initiates a formal investigation of a utility without the filing of a complete
 8 formal complaint, not later than **365 days** [12 MONTHS] after the order initiating the
 9 formal investigation is issued.

10 * **Sec. 13.** AS 42.05.175(e) is amended to read:

11 (e) The commission shall issue a final order in a rule-making proceeding not
 12 later than **730 days** [24 MONTHS] after a complete petition for adoption, amendment,
 13 or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed or, when the
 14 commission initiates a rule-making docket, not later than **730 days** [24 MONTHS]
 15 after the order initiating the proceeding is issued.

16 * **Sec. 14.** AS 42.05.175(f) is amended to read:

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

20 (1) commission reasonably finds that good cause exists to extend the
 21 timeline, **which can only occur when**

22 **(A) a proceeding involves unusually complex and novel**
 23 **questions of law or public policy in comparison with other proceedings of**
 24 **its type;**

25 **(B) a proceeding involves an unusually complex and large**
 26 **factual record in comparison with other proceedings of its type; or**

27 **(C) the commission identifies another compelling public**
 28 **policy reason for an extension that is entirely unrelated to the**
 29 **commission's workload, scheduling, or administrative convenience;**

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

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

2 * **Sec. 15.** AS 42.05.175 is amended by adding new subsections to read:

3 (k) In adjudicated docket matters that come before the commission under
4 federal law or involve the review of private settlements and contracts and are not
5 subject to a timeline under federal law or AS 42.05.175(a) - (e), the commission shall
6 issue a final order not later than 180 days after the filing of an initiating petition. If the
7 matter is commenced on the commission's own motion, the commission shall issue a
8 final order not later than 365 days after the issuance of an order opening the docket.
9 This subsection does not apply to a complaint against a utility, a petition to revoke a
10 certificate of public convenience and necessity, or a functionally equivalent filing.

11 (l) If the commission does not issue and serve a final order governed by (k) of
12 this section within the applicable timeline specified, including any extension granted
13 by the commission in accordance with (f) of this section, the initiating petition shall be
14 considered approved and shall take effect immediately, or, if the matter was
15 commenced by the commission, the docket shall be closed with no action taken.

16 (m) If proceedings subject to different timelines under this section are
17 consolidated or if a single proceeding implicates more than one timeline, the latest
18 applicable deadline for the issuance of a final order shall apply.

19 (n) The commission may not evade the requirement of this section by
20 terminating a proceeding in a docket and opening a proceeding in another docket on
21 substantially the same matter.

22 * **Sec. 16.** AS 42.05.254(a) is amended to read:

23 (a) A regulated public utility operating in the state shall pay to the commission
24 an annual regulatory cost charge in an amount not to exceed the maximum percentage
25 of adjusted gross revenue that applies to the utility sector of which the utility is a part,
26 **as follows:**

27 **(1) the** [. THE] regulatory cost charges that the commission expects to
28 collect from all regulated utilities may not exceed the sum of the following
29 percentages of the total adjusted gross revenue of all regulated public utilities derived
30 from operations in the state:

31 **(A) until the day before the effective date of this section,**

1 (i) [(1)] not more than .7 percent to fund the operations
2 of the commission; [,] and

3 (ii) [(2)] not more than .17 percent to fund operations of
4 the public advocacy function under AS 42.04.070(c) and
5 AS 44.23.020(e) within the Department of Law; and

6 (B) on and after the effective date of this section,

7 (i) not more than .9 percent to fund the operations of
8 the commission; and

9 (ii) not more than .22 percent to fund operations of
10 the public advocacy function under AS 42.04.070(c) and
11 AS 44.23.020(e) within the Department of Law;

12 (2) an [. AN] exempt utility shall

13 (A) until the day before the effective date of this section, pay
14 the actual cost of services provided to it by the commission; and

15 (B) on and after the effective date of this section, pay a fee
16 according to fee schedules approved by the commission.

17 * **Sec. 17.** AS 42.05.254(e) is amended to read:

18 (e) The commission shall administer and collect the charge imposed under
19 this section. The Department of Revenue shall [COLLECT AND] enforce the charge
20 imposed under this section. The Department of Administration shall identify the
21 amount of the operating budgets of the commission and the Department of Law public
22 advocacy function under AS 42.04.070(c) and AS 44.23.020(e) that lapse into the
23 general fund each year. The legislature may appropriate an amount equal to the lapsed
24 amount to the commission and to the Department of Law public advocacy function
25 under AS 42.04.070(c) and AS 44.23.020(e) for operating costs for the next fiscal
26 year. If the legislature does so, the commission shall reduce the total regulatory cost
27 charge collected for that fiscal year by a comparable amount.

28 * **Sec. 18.** AS 42.05.254(g) is amended to read:

29 (g) The commission may adopt regulations under AS 44.62 (Administrative
30 Procedure Act) necessary to administer this section, including requirements and
31 procedures for reporting information, [AND] making quarterly payments, and

1 **collecting required payments.** The Department of Revenue may adopt regulations
 2 under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed
 3 information [, AND FOR COLLECTING REQUIRED PAYMENTS].

4 * **Sec. 19.** AS 42.06.286(a) is amended to read:

5 (a) **A regulatory cost charge may not be assessed on pipeline carrier**
 6 **operations under this section unless the operations are within the jurisdiction of**
 7 **the commission.** A pipeline carrier operating in the state shall pay to the commission
 8 an annual regulatory cost charge in an amount not to exceed the sum of the following
 9 percentages of gross revenue derived from operations in the state, **as follows:**

10 (1) **until the day before the effective date of this section,**

11 (A) not more than .7 percent to fund the operations of the
 12 commission; [,] and

13 (B) [(2)] not more than .17 percent to fund operations of the
 14 public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) within
 15 the Department of Law; **and**

16 (2) **on and after the effective date of this section,**

17 (A) **not more than .9 percent to fund the operations of the**
 18 **commission; and**

19 (B) **not more than .22 percent to fund operations of the**
 20 **public advocacy function under AS 42.04.070(c) and AS 44.23.020(e)**
 21 **within the Department of Law.** [A REGULATORY COST CHARGE MAY
 22 NOT BE ASSESSED ON PIPELINE CARRIER OPERATIONS UNLESS
 23 THE OPERATIONS ARE WITHIN THE JURISDICTION OF THE
 24 COMMISSION.]

25 * **Sec. 20.** AS 42.06.286(c) is amended to read:

26 (c) The commission shall administer **and collect** the charge imposed under
 27 this section. The Department of Revenue shall [COLLECT AND] enforce the charge
 28 imposed under this section. The Department of Administration shall identify the
 29 amount of the operating budgets of the commission and the Department of Law public
 30 advocacy function under AS 42.04.070(c) and AS 44.23.020(e) that lapse into the
 31 general fund each year. The legislature may appropriate an amount equal to the lapsed

1 amount to the commission and to the Department of Law public advocacy function
2 under AS 42.04.070(c) and AS 44.23.020(e) for operating costs for the next fiscal
3 year. If the legislature does so, the commission shall reduce the total regulatory cost
4 charge collected for that fiscal year by a comparable amount.

5 * **Sec. 21.** AS 42.06.286(d) is amended to read:

6 (d) The commission may adopt regulations under AS 44.62 (Administrative
7 Procedure Act) necessary to administer this section, including requirements and
8 procedures for reporting information, [AND] making quarterly payments, **and**
9 **collecting required payments**. The Department of Revenue may adopt regulations
10 under AS 44.62 (Administrative Procedure Act) for investigating the accuracy of filed
11 information [, AND FOR COLLECTING REQUIRED PAYMENTS].

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

14 VACANCY IN OFFICE; APPOINTMENT OF NEW MEMBERS OF THE
15 REGULATORY COMMISSION OF ALASKA. (a) Notwithstanding any other provision of
16 law, the term of office of each incumbent commissioner of the Regulatory Commission of
17 Alaska serving on the effective date of this section terminates on December 31, 2007. Under
18 AS 42.04.020, as amended by this Act, the governor shall appoint five new members to
19 succeed the incumbent members.

20 (b) AS 39.05.055(3) applies to the appointments initially made by the governor to the
21 commission under AS 42.04.020, as amended by sec. 4 of this Act, and (a) of this section.