

CS FOR HOUSE BILL NO. 209(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/30/07

Referred: Judiciary, Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the chair of the Regulatory Commission of Alaska; amending the
2 timeline requirements for a final order of the commission; and relating to rules of
3 evidence, discovery, and petitions to intervene in a proceeding of the commission."

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

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

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

1 * **Sec. 2.** AS 42.05.151(b) is amended to read:

2 (b) The commission shall adopt regulations governing practice and procedure,
3 consistent with due process of law, including the conduct of formal and informal
4 investigations, pre-hearing conferences, hearings, and proceedings, and the handling
5 of procedural motions by a single commissioner. The regulations must provide for the
6 hearing or, when a hearing is not required, other consideration of a matter in
7 accordance with AS 42.04.080. Technical rules of evidence need not apply to
8 investigations or [,] pre-hearing conferences [, HEARINGS, AND PROCEEDINGS
9 BEFORE THE COMMISSION]. The commission shall provide for representation by
10 out-of-state attorneys substantially in accordance with Rule 81, Alaska Rules of Civil
11 Procedure.

12 * **Sec. 3.** AS 42.05.151 is amended by adding new subsections to read:

13 (d) In proceedings under this chapter and under AS 42.06, and in addition to
14 current rules and commission practices relating to this section, in ruling on requests
15 for discovery, the commission or the presiding officer shall be bound by Rule 26(b)(1)
16 and (b)(2), Alaska Rules of Civil Procedure, regarding the ability of the parties to a
17 pending proceeding to discover nonprivileged and relevant material. In ruling on
18 requests for material claimed to be confidential, the commission or the presiding
19 officer shall use a balancing approach and may not permit discovery if the probative
20 value of the matter sought to be discovered is outweighed by the danger of harm or
21 unfair prejudice to any party in the proceeding. In ruling on the admissibility of
22 evidence, the presiding officer shall consider and be bound to follow Rules 401, 402,
23 and 403, Alaska Rules of Evidence, regarding the admissibility of relevant evidence
24 governing civil proceedings in the courts of the State of Alaska.

25 (e) In proceedings before the commission, petitions to intervene shall be
26 closely scrutinized and intervention controlled to

27 (1) ensure that a person seeking intervention has, and during the
28 proceeding will have, a current, nonspeculative property interest in the subject of the
29 proceeding; and

30 (2) limit intervention to persons whose participation will contribute
31 constructively to the development of a relevant and material administrative record.

1 * **Sec. 4.** AS 42.05.175(a) is amended to read:

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

4 (1) for a certificate of public convenience and necessity;

5 (2) to amend a certificate of public convenience and necessity;

6 (3) to transfer a certificate of public convenience and necessity; and

7 (4) to acquire a controlling interest in a certificated public utility.

8 * **Sec. 5.** AS 42.05.175(b) is amended to read:

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

13 * **Sec. 6.** AS 42.05.175(c) is amended to read:

14 (c) Notwithstanding a suspension ordered under AS 42.05.421, the
15 commission shall issue a final order not later than **450 days** [15 MONTHS] after a
16 complete tariff filing is made for a tariff filing that changes the utility's revenue
17 requirement or rate design.

18 * **Sec. 7.** AS 42.05.175(d) is amended to read:

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

24 * **Sec. 8.** AS 42.05.175(e) is amended to read:

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

30 * **Sec. 9.** AS 42.05.175(f) is amended to read:

31 (f) The commission may extend a timeline required under (a) - (e) of this

1 section if all parties of record consent to the extension or if, for one time only, before
2 the timeline expires, the

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

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

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

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

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

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

16 * **Sec. 10.** AS 42.05.175 is amended by adding new subsections to read:

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

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

30 (m) If proceedings subject to different timelines under this section are
31 consolidated or if a single proceeding implicates more than one timeline, the latest

1 applicable deadline for the issuance of a final order shall apply.

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