

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 1, 2007

1:44 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 194

"An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 194(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 209

"An Act relating to the chair of and the membership of and qualifications of members of the Regulatory Commission of Alaska; adding positions to the partially exempt service; creating an administrative law division and natural gas and oil

pipeline division within the commission; amending the timeline requirements for a final order of the commission; relating to the commission's regulatory cost charges; and adding to the duties of the Alaska Judicial Council as they relate to the presentation of nominees for consideration for appointment to the commission."

- MOVED CSHB 209(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 194

SHORT TITLE: FINES AND OFFENSES

SPONSOR(S): RESOURCES

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	RES, JUD, FIN
03/28/07	(H)	RES AT 1:00 PM BARNES 124
03/28/07	(H)	Scheduled But Not Heard
04/04/07	(H)	RES AT 1:00 PM BARNES 124
04/04/07	(H)	Moved CSHB 194(RES) Out of Committee
04/04/07	(H)	MINUTE(RES)
04/10/07	(H)	RES RPT CS(RES) 4DP 2NR
04/10/07	(H)	DP: ROSES, SEATON, GATTO, JOHNSON
04/10/07	(H)	NR: KOHRING, GUTTENBERG
04/23/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/23/07	(H)	<Bill Hearing Rescheduled to 04/27/07>
04/27/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/27/07	(H)	Heard & Held
04/27/07	(H)	MINUTE(JUD)
05/01/07	(H)	JUD AT 1:30 PM CAPITOL 120

BILL: HB 209

SHORT TITLE: REGULATORY COMMISSION OF ALASKA

SPONSOR(S): LABOR & COMMERCE

03/19/07	(H)	READ THE FIRST TIME - REFERRALS
03/19/07	(H)	L&C, JUD, FIN
04/13/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/13/07	(H)	Heard & Held
04/13/07	(H)	MINUTE(L&C)
04/27/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/27/07	(H)	Moved CSHB 209(L&C) Out of Committee
04/27/07	(H)	MINUTE(L&C)
04/30/07	(H)	L&C RPT CS(L&C) NT 1DP 1DNP 2NR 2AM
04/30/07	(H)	DP: OLSON
04/30/07	(H)	DNP: GARDNER

04/30/07 (H) NR: BUCH, RAMRAS
04/30/07 (H) AM: LEDOUX, NEUMAN
05/01/07 (H) JUD AT 1:30 PM CAPITOL 120

WITNESS REGISTER

HEATH HILYARD, Staff
to Representative Carl Gatto
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 194 on behalf of Representative Carl Gatto, co-chair of the House Resources Standing Committee, sponsor.

DICK MYLIUS, Acting Director
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 194.

REPRESENTATIVE CARL GATTO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As co-chair of the House Resources Standing Committee, sponsor of HB 194, answered questions.

REPRESENTATIVE KURT OLSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as chair of the House Labor and Commerce Standing Committee, sponsor of HB 209.

JOHN BITNEY, Legislative Liaison
Governor's Legislative Office
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 209 on behalf of the administration.

IVY FRYE, Director of Boards & Commissions
Capitol Office
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 209.

KRISTI CATLIN, Vice-President

State Government Affairs
AT&T Alascom
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 209.

GEORGE GORDON, Director
Regulatory Affairs
Utility Services of Alaska, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified on HB 209.

KATE GIARD, Commissioner;
Chair
Regulatory Commission of Alaska (RCA)
Department of Commerce, Community, & Economic Development
(DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 209.

TED MONINSKI, Director
Regulatory Affairs
Alaska Communications Systems (ACS)
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 209.

VIRGINIA RUSH
AARP
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 209.

JIM ROWE, Executive Director
Alaska Telephone Association (ATA)
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 209.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:44:21 PM](#). Representatives Dahlstrom, Coghill, Holmes, Samuels, Gruenberg, and Ramras were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HB 194 - FINES AND OFFENSES

[1:44:41 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 194,"An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date." [Before the committee was CSHB 194(RES).]

CHAIR RAMRAS gave a synopsis of his understanding of the status of HB 194. He recapped that there was not a great deal of opposition to increasing the fine structure as a deterrent for people's behavior, but there had been some concern regarding the definition of a peace officer versus a police officer, whether untrained people were being put in harm's way, and if untrained people held a different schedule of benefits.

[1:46:26 PM](#)

HEATH HILYARD, Staff to Representative Carl Gatto, Alaska State Legislature, on behalf of Representative Gatto, co-chair of the House Resources Standing Committee, sponsor of HB 194, concurred with Chair Ramras's recap of the issues remaining on HB 194.

[1:47:44 PM](#)

DICK MYLIUS, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR) indicated the division is close to working out an agreement with the Department of Public Safety (DPS) to address their concerns. He noted the division would like to see portions of the bill revised.

[1:48:10 PM](#)

CHAIR RAMRAS proposed Conceptual Amendment 1, to delete Section 37 and Section 43, and any other conforming language in the

bill, as necessary. These sections refer to the peace officer and enforcement authority, and repeal AS 41.23.210 and AS 41.23.220.

REPRESENTATIVE SAMUELS objected for the purposes of discussion.

[1:50:41 PM](#)

REPRESENTATIVE CARL GATTO, Alaska State Legislature, speaking as co-chair of the House Resources Standing Committee, sponsor of HB 194, in response to a question by Chair Ramras, agreed that Conceptual Amendment 1 was acceptable.

REPRESENTATIVE SAMUELS removed his objection to Conceptual Amendment 1. There being no further objection, Conceptual Amendment 1 was adopted.

[1:50:57 PM](#)

REPRESENTATIVE COGHILL moved to report CSHB 194(RES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 194(JUD) was reported from the House Judiciary Standing Committee.

HB 209 - REGULATORY COMMISSION OF ALASKA

[1:51:28 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 209, "An Act relating to the chair of and the membership of and qualifications of members of the Regulatory Commission of Alaska; adding positions to the partially exempt service; creating an administrative law division and natural gas and oil pipeline division within the commission; amending the timeline requirements for a final order of the commission; relating to the commission's regulatory cost charges; and adding to the duties of the Alaska Judicial Council as they relate to the presentation of nominees for consideration for appointment to the commission." [Before the committee was CSHB 209(L&C)].

[1:51:37 PM](#)

REPRESENTATIVE KURT OLSON, Alaska State Legislature, testified as Chair of the House Labor and Commerce Standing Committee, sponsor of HB 209. He stated that the bill would implement recommendations received from the Regulatory Commission of

Alaska (RCA), the Legislative Budget and Audit Committee, and regulated utilities; and is designed to improve the quality and timeliness of the RCA's decision-making abilities.

REPRESENTATIVE OLSON explained that Section 1 authorizes the governor to appoint the chair of the RCA to a three-year term, just as appointments as chair are established in 22 other boards and commissions; and how appointments had previously been made until 2001. He advised that some issues arose with inclusion of Sections 2 and 3, and suggested these sections be deleted. The remaining sections of HB 209 outline when the RCA can extend a timeline for good cause, and also provides for timelines of adjudicated docket matters, including private settlements and contracts not otherwise subject to state or federal law.

REPRESENTATIVE SAMUELS asked if the sponsor wanted to revert to the original version of HB 209.

REPRESENTATIVE OLSON replied he did not.

[1:56:36 PM](#)

REPRESENTATIVE HOLMES explained her understanding that [currently] the RCA elects its own chair for a one-year term, and the chair could serve three consecutive terms before having to sit out a year. But CSHB 209(L&C) would require the governor to appoint the chair to a three-year term, and also eliminates term limits.

REPRESENTATIVE OLSON stated it was his understanding that this aligns the RCA with how the other 14 or so chairs of boards and commissions are appointed, and how the RCA chair appointments previously were done until 2001.

REPRESENTATIVE HOLMES asked for confirmation that under the bill the chair would be appointed by the governor for a three-year term at the time the current chair's term expires, and a new appointment would not be made when a new governor is elected.

REPRESENTATIVE OLSON confirmed the appointment process is for a three-year term, not subject to a change in administration.

REPRESENTATIVE SAMUELS asked whether the sponsor preferred that the chair's term would expire after [three years], or if the chair could be appointed to back-to-back terms.

REPRESENTATIVE OLSON expressed no preference.

CHAIR RAMRAS asked for the date of the sunset for the RCA.

REPRESENTATIVE OLSON responded that the RCA would sunset in two years under the current sunset timeline.

1:59:27 PM

REPRESENTATIVE SAMUELS asked for clarification of the powers of the RCA chair, as compared to the other board and commission chairs, with respect to back-to-back terms.

REPRESENTATIVE OLSON replied that the role of the RCA chair is to distribute the workload and prepare the meeting agendas.

CHAIR RAMRAS related an experience with the RCA regarding natural gas, and indicated that if Section 3 remains in the bill, his concern is that customers would not be able to testify before the RCA in proceedings.

REPRESENTATIVE OLSON agreed and also confirmed that the sunset provision would be set at four to six years.

REPRESENTATIVE SAMUELS said he still has questions regarding the power of the chair, and expressed concern that without instituting a term limit, the chair might have too much power.

CHAIR RAMRAS relayed his dissatisfaction with the RCA due to a constituent concern with respect to natural gas rates, and the RCA's subsequent ruling, but indicated that he also recognized the importance of the process, and the wide-ranging impact that the RCA has on the citizens of Alaska.

2:06:36 PM

JOHN BITNEY, Legislative Liaison, Governor's Legislative Office, Office of the Governor, explained that the RCA sunset bill is also currently before the legislature, and that the RCA chair term ends this year. The RCA went through a review process which brought forth a number of cleanup issues and reforms. The governor's office took a deliberative process in its review of the RCA internal suggestions, keeping in mind its goal to keep the RCA in effect, and to maintain good RCA commissioners. This effort pared down the recommendations to ones with strong support, which are contained in HB 209, and CSHB 209(L&C) requires changes in terms of the sunset and other suggested timeframes, which are found in Section 4 [and other sections].

He suggested, however, that Section 9 of the bill needs some review.

MR. BITNEY expressed concern with Sections 2 and 3, and he suggested that those sections be amended. He indicated the governor supports Section 1, which outlines the designation of the chair, but also recognizes careful scrutiny and review process by the legislature. The ultimate goal is to arrive at good public policy with respect to the RCA chair, and the selection of the pipeline coordinator. He stated that the governor supports the committee's decision based on its deliberation of the bill's merits.

MR. BITNEY, in response to Representative Samuels, replied the administration had no preference on consecutive terms.

CHAIR RAMRAS interjected with his understanding that the RCA has a good, stable reputation, and that in some circles, the RCA is considered elevated in status to one similar to the Federal Energy Regulatory Commission (FERC). He offered that an elected chair can exert some control over the members, whereas, a chair appointed by the governor has allegiance to the governor. He opined he did not know whether that effect is enhanced or diminished by allowing consecutive terms.

REPRESENTATIVE SAMUELS discussed one option would be to amend the bill to limit the RCA chair to one term.

MR. BITNEY added that the term of commissioner is currently set at [one year], with no term limit.

[2:14:42 PM](#)

REPRESENTATIVE COGHILL stated that he did not oppose a term limit for the RCA chair, although he noted that there is a natural limiter in place because the governor is term-limited. The governor could potentially appoint a chair three times. He offered that to limit the chair's terms, it would be necessary to limit the term to two consecutive appointments in order for the next governor to appoint the RCA chair.

REPRESENTATIVE GRUENBERG expressed a concern with Section 1. He pointed out that up until 2001 the governor appointed the RCA chair. He cautioned that the process of switching back and forth between electing and appointing the RCA chair might seem to the public to be politically motivated, depending on the party of the newly-elected governor.

MR. BITNEY responded his understanding that the goal has been to maintain an independent process for the RCA. He noted that in other states the governor currently selects the regulatory commission chair, so HB 209 does not set up an unusual circumstance. But he also offered his sense of deference to the committee to decide the matter.

REPRESENTATIVE GRUENBERG reiterated his concern that having the governor appoint the chair puts the governor in the middle of the matter.

REPRESENTATIVE COGHILL expressed his view that that could happen but had not arisen during recent administration changes.

[2:18:57 PM](#)

CHAIR RAMRAS referred to page 4, lines 3-12, of Section 9, proposed subsection (f)(1). He asked if the administration had any suggestions with respect to proceedings that are unusually complex or that have large factual records.

MR. BITNEY responded that he did not have specific language to offer, but while the terms are rather broad, he opined that the intent is clear that Section 9 addresses the timeframes without placing undue constraints on the commission.

CHAIR RAMRAS added that the current RCA Chair has indicated that inclusion of subparagraph (C) would require the commission to add four new employees in order to implement that subparagraph.

REPRESENTATIVE GRUENBERG questioned the constitutionality of limiting the commission's ability to grant extensions of time, because Article III, Section 26, of the Alaska State Constitution requires boards with regulatory or quasi-judicial function to be independent boards.

REPRESENTATIVE LYNN responded he did not know if there was a constitutional issue.

REPRESENTATIVE GRUENBERG offered his understanding that the delegates in the constitutional convention were very concerned about maintaining the independence of regulatory and quasi-judicial boards, and he suggested that this constitutional point be addressed.

[2:25:37 PM](#)

IVY FRYE, Director of Boards & Commissions, Capitol Office, Office of the Governor, explained she was present to answer any questions with respect to the boards and commissions where the governor has the authority to appoint the chair. In response to a question by Representative Samuels, she said that there are currently 122 state boards and commissions.

CHAIR RAMRAS asked for clarification on regulatory boards.

MS. FRYE responded that the governor appoints all members of boards and commissions, of which 13 boards are regulatory; all boards and commissions require legislative confirmation of its appointees. The regulatory boards fall under the purview of the Department of Commerce Community and Economic Development (DCCED).

REPRESENTATIVE GRUENBERG asked what arguments were made for changing the law in 2001, with respect to electing the RCA Board chair.

MR. BITNEY offered his understanding that concern arose with the structure of the former Alaska Public Utilities Commission (APUC), and more specifically about the legality of the appointment process, which resulted in the statute change.

MR. BITNEY, in response to a question by Representative Gruenberg, said he did not recall any discussion about the appointment process of board chairs at the time the statute pertaining to the RCA board chair changed.

[2:32:17 PM](#)

KRISTI CATLIN, Vice-President, State Government Affairs, AT&T Alascom, stated that AT&T Alascom is opposed to the changes made in Section 1 because the current process seems to work well. She said that the chair is elected by his/her peers. She indicated that no problems have arisen with its commissioners voting in a block. Skipping over Sections 2 and 3, she said that AT&T Alascom is not opposed to changes made to [current statute] via Sections 4, 5, 6, 7, and 8. She explained that AT&T Alascom shares the same concerns previously mentioned for Section 9. The term "good cause" is heavily used in utility regulation with extensive definitional history due to case law so any attempt to redefine it could have serious ramifications.

MS. CATLIN, in response to a question by Chair Ramras, indicated that she would not be opposed to removing Section 9 entirely because of the potential litigation it might cause. She expressed concern with subparagraph (C), which, she surmised, was designed to ensure that the commission doesn't extend its timeline due to workload, scheduling, or administrative convenience. She offered that although an extension of timelines may not be desirable, the commission should be allowed to extend the timeline for legitimate purposes. She cautioned that restricting the commission could result in the RCA issuing a decision that may not be as well reasoned as it should be and which may not be in the public interest.

MS. CATLIN also recommended Section 10 be amended. She explained that when all parties agree that an extension is in the best interest of all parties, that extension should be granted without limitation. In response to a request by Representative Gruenberg, she agreed to provide the committee with suggested language for Section 10.

[2:39:30 PM](#)

GEORGE GORDON, Director, Regulatory Affairs, Utility Services of Alaska, Inc., stated that he feels strongly that the 15-month timeframe for rate cases is far too long, when other states can complete these cases in 9 months. He agreed with the concern raised about Section 3, which still needs to be addressed, either by the legislature or the RCA. He noted that the legislature would also be considering legislation establishing a task force to make recommendations for salaries for commissioners and staff, which does need attention.

MR. GORDON, in response to a question by Chair Ramras, explained that there had been an executive director of the RCA but the position had been deleted. He advocated for re-instituting an executive director in order to have someone available to answer questions by utilities. He said he felt that was important so they would not have to contact the commissioners or chair since the focus of the chair is to adjudicate cases and precludes him/her from responding timely to requests.

REPRESENTATIVE OLSON explained that references to pay increase and staffing levels have been removed from HB 209 because such issues are being addressed via other legislation.

CHAIR RAMRAS referenced subparagraph (C), which he opined may necessitate additional RCA staff, and suggested the committee may also need to look at deleting Section 9 from the bill.

REPRESENTATIVE OLSON concurred. He added that he just learned this afternoon that additional staff might be required to implement Section 9.

MR. GORDON, in response to a question from Chair Ramras, stated that the deletion of Section 3 somewhat addresses his concern, but he would like the RCA to limit discovery or place some controls, which would more fully address his concerns.

[2:45:38 PM](#)

KATE GIARD, Commissioner; Chair, Regulatory Commission of Alaska (RCA), Department of Commerce, Community, & Economic Development (DCCED), noted that Commissioners Price, Wilson, and Johnson were also present. She explained that a commissioner's term is set by statute at six years. Commissioners are appointed by the governor and are confirmed by the legislature. The change from the appointment to election of the chair by his/her peers was made in 2001 and became effective during the last sunset review by the legislature in 2003. She noted that when the discovery issue was brought forth, RCA commissioners opened two dockets regarding AS 42.05: the pipeline statutes, and public utilities statutes.

MS. GIARD, in response to a question, said that opening a docket means that the commission has agreed to establish regulations for discovery practices and procedures for the commission. In response to another question, she said that the commission discussed whether it should have different discovery regulations within 42.05, public utilities, for both smaller and larger rate case proceedings. She indicated it is likely that the public will request this and the commission is amenable to those regulatory changes.

REPRESENTATIVE OLSON offered his understanding related that the commission will be intimately involved in any process undertaken by the proposed interim task force.

MS. GIARD explained the powers and duties of the RCA's Chair are established in AS 42.04.070. The commissioners have heard many comments about Section 1, with respect to the chair being appointed versus elected. She noted that she has been elected three times, by a vote of 3-2, 5-0, and 5-0, respectively, which

she opined indicates that the commissioners are happy with her performance or they would simply elect a new chair. The chair has the authority to set staff assignments, priorities, travel, and which staff can have legislative contact. If she were appointed, she opined, she would not have to convince her peers of the merit of an approach but instead would move her agenda. Although the five commissioners may disagree vehemently on certain topics, they work collectively for the betterment of Alaska. She cited two instances, in 1999 and 2005, when the RCA chair had been appointed, that the commission was not functional. She opined that in her experience, an elected chair works well.

[2:54:15 PM](#)

MS. GIARD referred to Section 9, and explained that currently the commission has the authority to extend the statutory deadline one time for good cause. She noted that this is very rarely done. She recapped that the commission has not abused the extension provisions under AS 42.05.175(f), and opined there is no reason to change this subsection. She noted specific statistics in the RCA annual report, and referred to page 6 of the RCA annual report which showed that since 2004 the statutory timeline has been extended 13 times by the RCA, and 19 times by the parties. She opined this does not point to misuse of the commission's discretion. She related specific instances in 2006, when the timeline was extended twice: once due to a death [of the party's spouse], and another time because the public advocate had asked for an extension because he/she could not participate timely.

MS. GIARD referred to Section 10, proposed subsection (k), and explained that the term "private settlements and contracts" in public utility matters has not been used before since all matters before the commission are public. Every matter affects a ratepayer, so the terminology of private settlement or contract doesn't exist. She offered that the RCA did not recommend these provisions, and suggested that defining "private settlements and contracts" as used in this subsection could be addressed at a later date, perhaps after the interim work of the aforementioned proposed task force. The RCA agrees with industry requests for the timelines in subsection (k): the stipulation that the commission shall issue a final order not later than 180 days after the filing of an initiating petition, and that the RCA shall issue a final order not later than 365 days after the issuance of an order opening the docket. Those

timelines are for dockets not otherwise covered, so the RCA supports them.

MS. GIARD explained that the legislature authorized additional funding, which the RCA used to improve its system. She opined that the RCA is now ready to shorten its statutory timelines and meet new challenges. But, she cautioned, the RCA cannot shorten timelines without first addressing personnel issues.

CHAIR RAMRAS offered concern that his community pays the highest price in the nation for natural gas but that 300 miles south, the community pays the least, and his desire to reconcile this cost discrepancy.

[3:02:17 PM](#)

TED MONINSKI, Director, Regulatory Affairs, Alaska Communications Systems (ACS), gave a brief history by relating that in 2002, the legislature enacted AS 43.05.175, the standards of timeliness provisions, which created a set of deadlines under which the RCA was required to operate. He offered this has worked well, however, the statute did not create a comprehensive scope of coverage, but left a number of matters not covered. Section 10, subsection (k), is an attempt to correct that omission, but unfortunately it is missing the word, "state." He referred to subsection (k), which in part reads, "In adjudicated docket matters that come before the commission under federal law or involve the review of private settlements" excludes any number of matters that might come before the commission under state law." He opined that leaving out the word "state" in subsection (k) will cause problems. He noted cases will come before the RCA that have no deadline associated with it. The ACS strongly recommends revising subsection (k), on page 4, line 18, by inserting before the word "federal", "state or".

REPRESENTATIVE OLSON, in response to a question, by Chair Ramras, stated that he had no comments about the suggested change.

MR. MONINSKI offered that the suggested change would shore up the proposal. He noted that he has a long history with the APUC and the RCA, having served as the executive director from 1981 to 1991. Since then he has represented clients in the private sector in matters before the APUC and the RCA. In response to a question from Chair Ramras, he offered that the executive director position was set aside in 1991 because the substantial

restructuring of the agency via changes made to AS 42.04 made it somewhat redundant to have an executive director position.

MR. MONINSKI stated he concurred with Mr. Gordon that the ex parte rules makes it difficult for parties in adjudicatory matters to communicate with the RCA without violating those rules. The parties need a means to interact with the RCA without direct communication with the parties, and having a staff director is one option.

MR. MONINSKI, in response to a question by Representative Holmes about the terms "private settlements and contracts" in Section 10, responded that the degree of clarity that can be added to a statutory position can be helpful in avoiding future disputes, although it is impossible to provide clarity in 100 percent of the cases. When terms are included that are not clear, these terms are often litigated in court by the RCA or other parties, and the ensuing case law helps people interpret and understand the terms.

[3:09:56 PM](#)

VIRGINIA RUSH, AARP, explained she has been involved with the RCA and its predecessor since 1981. She related that for 23 years she worked as an assistant attorney general [for the Department of Law (DOL)], and that for 14 of those years she was assigned as a staff advocate and legal counsel for the RCA. She noted that in previous testimony she urged deletion of Sections 2 and 3. She opined that these sections pertain to the technical rules and discovery which would add to the cost of RCA proceedings. The second part of Section 3 would prevent the AARP from intervening in RCA cases. The AARP intervened twice last year on behalf of consumers, by filing an amicus brief, and has also participated by attending RCA hearings.

MS. RUSH offered the AARP's recommendation that Section 9 be deleted, or at least delete the last part of subparagraph (C) due to its severe limitation for the RCA. The beginning of subparagraph (C) provides some flexibility by allowing for good cause for a compelling public policy reason. She explained that Section 9 defines what constitutes good cause for an extension of the timelines. This section would preclude the RCA from granting extensions, even when the RCA has no control over its time constraints, for example, when complex multiple rate cases are filed simultaneously. She reiterated that the RCA needs some flexibility when the commission identifies another compelling public policy reason for an extension.

MS. RUSH explained that the commission's work is intended to protect the public and so imposing limitations might hurt the consumer. She related an example where a utility files a rate case asking for a 10 percent increase. Under the current statutes when the RCA does not complete its work timely, the rate change automatically goes into effect. She expressed concern that the RCA might find that a 5 percent rate increase is justified, but because the RCA might not be able to complete the order by the deadline, the 10 percent increase would go into effect. She opined it is not appropriate to take away the commission's ability to protect consumers.

MS. RUSH argued against shortening the timeline from 15 months to 9 months. When a utility petitions the RCA for a rate increase, the RCA has a 45-day period to determine whether the rate increase should go into effect. Oftentimes the RCA can comply within that timeframe, but in unusually complex cases the RCA suspends its action pending further investigation. However, since the investigator is a DOL investigator and the agency is often short staffed, the investigation cannot be completed timely, which adversely impacts the RCA's ability to complete its work. If the timeline is reduced, she cautioned that there needs to be adequate investigative staff available to ensure that the investigations are done timely.

MS. RUSH indicated that the process allows for the utilities to respond but the utilities also frequently request additional time extensions. Once the hearing is conducted, the RCA must write its decision. These decisions are generally lengthy with up to 70-100 pages necessary to outline its complex decisions. In conclusion, she opined it just is not possible to adequately address the issues in a complex rate case in a 9-month period. She urged the committee to not shorten the time period unless it also researched and addressed staffing issues within the DOL.

CHAIR RAMRAS indicated that he still supports an amendment to shorten the timeline.

[3:22:21 PM](#)

JIM ROWE, Executive Director, Alaska Telephone Association (ATA), recommended the deletion of Sections 2 and 3. He agreed with the prior comments by Mr. Gordon regarding discovery as an issue, particularly for small utilities, adding that a larger entity can potentially win a case simply by imposing discovery after discovery. He suggested deleting Section 9, to improve

the bill, and said he supports deleting the phrase Ms. Rush had suggested with respect to subparagraph (C).

REPRESENTATIVE OLSON advised the committee that the bill drafter agrees to the suggested change to Section 10, after "under" to insert "state or" before "federal".

MR. ROWE expressed interest in having the suggested changes incorporated into the bill.

The committee took an at-ease from 3:27 p.m. to 3:40 p.m.

CHAIR RAMRAS, upon determining no one else wished to testify, closed public testimony on HB 209.

[3:40:57 PM](#)

CHAIR RAMRAS made a motion to adopt [Conceptual] Amendment 1, which would delete Sections 2, 3, and 9. There being no objection, Conceptual Amendment 1 was adopted.

CHAIR RAMRAS made a motion to adopt Amendment 2, labeled 25-LS0717\M.2, Kane, 5/1/07, which read:

Page 1, line 1:
Delete ";"
Insert "**and**"

Page 1, lines 2 - 3:
Delete "**; and relating to rules of evidence, discovery, and petitions to intervene in a proceeding of the commission**"

Page 2, lines 1 - 31:
Delete all material.

Renumber the following bill sections accordingly.

CHAIR RAMRAS made a motion to amend Amendment 2 by deleting the language proposing a change to page 2, lines 1-31, as that change has already occurred with the adoption of Amendment 1. [The committee treated the amendment to Amendment 2 as adopted].

CHAIR RAMRAS announced that Amendment 2, as amended, was adopted.

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 3, which read [original punctuation provided]:

Page 3, Line 15 Delete "450" and Insert "270".

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

MS. GIARD, responding to a question by Representative Gruenberg, offered that the RCA's proposed language was in response to a request that the RCA change the timeframe to nine months. The RCA preferred a two-tier proposal which would move the statutory timeline to 365 days effective July 1, 2008, and later change the timeframe statutorily to nine months effective in 2010. The purpose for the delay is to allow the DOL to increase its staff, and allow the RCA to put into place the discovery rules and other necessary changes required. The RCA supports the shorter statutory timeline but it cannot do so by regulation if the legislature passes a nine-month timeline.

REPRESENTATIVE GRUENBERG suggested an amendment to Amendment 3, to add the dates, July 1, 2008, and the transitional phase date of July 1, 2010.

MS. GIARD confirmed that these dates would allow the RCA to finalize the discovery regulations, and make other modifications to handle the caseload under the shorter timeline.

CHAIR RAMRAS stated he would consider instead changing "270 days" to a date of July 1, 2008, but would not entertain adding a July 1, 2010, date.

REPRESENTATIVE OLSON, in response to a question by Representative Samuels, advised that he had no opinion on Amendment 3.

[3:47:1 2 PM](#)

CHAIR RAMRAS [made a motion to adopt an amendment to [Conceptual] Amendment 3, to [simply establish a deadline of] "July 1, 2008". There being no objection, Conceptual Amendment 3 was amended.

REPRESENTATIVE GRUENBERG removed his objection to Amendment 3, as amended.

CHAIR RAMRAS announced that Conceptual Amendment 3, as amended, was adopted.

3:48:00 PM

REPRESENTATIVE SAMUELS made a motion to adopt Conceptual Amendment 4, which read [original punctuation provided]:

Page 1, Line 11

Insert after "The term of chair is three years":

and the chair may only serve one term. If the chair fills a vacancy with time remaining on the term, the chair may be appointed to a subsequent full term.

CHAIR RAMRAS objected for the purpose of discussion, and then removed his objection. There being no further objection, Conceptual Amendment 4 was adopted.

3:48:40 PM

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 5, to insert on page 4, line 18, before the word "federal", the words "state or". There being no objection, Conceptual Amendment 5 was adopted.

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 6, which read [original punctuation provided]:

Page 3, Line 15, New Sec. 10

AS 42.05.175(f) is amended to read The commission may extend a timeline required under [(a)-(e) of] this section if all parties of record consent to the extension or if, for one time only, before the timeline expires....

REPRESENTATIVE HOLMES objected for the purpose of discussion.

CHAIR RAMRAS indicated this language was recommended by Kristi Catlin, AT&T.

REPRESENTATIVE GRUENBERG asked for clarification.

REPRESENTATIVE HOLMES noted that Conceptual Amendment 6 should instead be proposing a change to page 4.

The committee took an at-ease from 3:50 p.m. to 3:53 p.m.

REPRESENTATIVE HOLMES requested clarification on the change proposed to AS 42.05.175(f) since Section 9 was previously deleted.

REPRESENTATIVE GRUENBERG offered his understanding that under Conceptual Amendment 6, the RCA could extend any timeline required under subsection (f), and that existing paragraphs (1)-(3) of subsection (f) would remain the same.

[3:54:50 PM](#)

MS. CATLIN clarified that subsection (f) currently allows a timeline required under (a)-(e) to be extended, and what AT&T would like is to extend it to proposed subsection (k) as well.

CHAIR RAMRAS acknowledged that Conceptual Amendment 6 needed additional work and encouraged Ms. Catlin to work with the sponsor to draft an amendment.

CHAIR RAMRAS then withdrew Conceptual Amendment 6.

[3:57:05 PM](#)

REPRESENTATIVE DAHLSTROM moved to report CSHB 209(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 209(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:57 p.m.