

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 15, 2007

3:36 p.m.

MEMBERS PRESENT

Senator Donny Olson, Chair
Senator Albert Kookesh, Vice Chair
Senator Joe Thomas
Senator Gary Stevens
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 16

"An Act extending the termination date for the Regulatory Commission of Alaska; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 16

SHORT TITLE: EXTEND REGULATORY COMMISSION OF ALASKA

SPONSOR(S): SENATOR(S) THERRIAULT

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	CRA, STA, FIN
02/15/07	(S)	CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

SENATOR GENE THERRIAULT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 16 as sponsor

KRISTI CATLIN, Director
Government Relations
AT&T Alascom
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 16.

KATE GIARD, Chair
Regulatory Commission of Alaska (RCA)
Anchorage, AK 99501

POSITION STATEMENT: Spoke in favor of SB 16.

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

POSITION STATEMENT: Spoke in favor of extending the RCA but with suggested changes.

MARK JOHNSON, Commissioner
Regulatory Commission of Alaska
Anchorage, AK 99501

POSITION STATEMENT: Spoke about the RCA.

PAT DAVIDSON, Auditor
Division of Legislative Audit
Alaska State Legislature

POSITION STATEMENT: Explained the RCA audit outcome and process.

JAN WILSON, Commissioner
Regulatory Commission of Alaska
Anchorage, AK 99501

POSITION STATEMENT: Answered questions about the RCA.

TONY PRICE, Commissioner
Regulatory Commission of Alaska
Anchorage, AK 99501

POSITION STATEMENT: Answered questions about the RCA.

ACTION NARRATIVE

CHAIR DONNY OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [3:36:34 PM](#). Senators Olson, Thomas, Wagoner, Kookesh, and Stevens were present at the call to order. Senator John Cowdery was also present.

SB 16-EXTEND REGULATORY COMMISSION OF ALASKA

CHAIR OLSON announced that SB 16 would be before the committee.

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SENATOR GENE THERRIAULT, Alaska State Legislature, said SB 16 is a simple sunset extension for the Regulatory Commission of Alaska (RCA). The time extension of eight years was recommended by the auditor.

[3:37:39 PM](#)

SENATOR THERRIAULT said four years was once the statutory default for sunset extensions, but the auditors found themselves repeating work. Some people have suggested that eight years is too long, and he is open to a shorter extension, but he warned that it takes up audit resources. He referred to the audit report and noted issues of contention regarding decisions and the timeframe of decisions, and he said that is to be expected. He said the commissioners of the RCA have been talking to the governor's office about some statutory changes that are touched on in the report, and they have requested that the extension not be tied to any changes in the system. Audit extensions are often looked at as an opportunity to attach all kinds of things to the bill, he noted.

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SENATOR THERRIAULT said today would be a good time for people to speak about the process and get the issues on the table.

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SENATOR STEVENS asked about the eight-year extension. He said the term of office is only four years, and a senator may miss the opportunity to state any concerns.

SENATOR THERRIAULT said a member could suggest changes at any time. The decision is if the state wants a functioning RCA for the next eight years. Without the RCA, its duties would fall into the lap of the legislature.

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SENATOR STEVENS said he agrees and understands the point of keeping the extension separate. But when the extension comes up, the body begins to think about RCA subjects and topics, so every four years is an opportunity to review it.

SENATOR THERRIAULT said, "We changed the statute so the default is eight years, but we certainly preserve the right to shorten it." If the committee is considering shortening the extension, he suggested input from the auditor so that all sunsets do not come due in the same year.

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CHAIR OLSON asked if the RCA audits have changed from year to year. The RCA is important and there are a lot of controversies.

SENATOR THERRIAULT suggested that Pat Davidson speak to the content of the audits. The battle often overshadows anything that is in an audit. The current audit may focus more on RCA following through on previous legislative recommendations. The RCA has attained some of its goals and not quite others.

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KRISTI CATLIN, Director, Government Relations, AT&T Alascom, said she was available to answer questions.

CHAIR OLSON said some exciting issues have come up with the regulatory commission, and he asked for her input.

MS. CATLIN said she supports a six-year extension with an audit every two years. Eight years is too long, and four years is too short, she said. Her company is quite pleased with how the commission has cleaned itself up and followed the directions of the legislature. "We believe the commission is intellectually honest, the commissioners are well-informed, [and] they educate themselves on the issues. We don't always agree with every decision, which is not expected, but this particular commission has moved from being more old-monopoly-heavy-regulation mindset into a commission that understands business, understands the need to get investment into Alaska, is very concerned with consumer welfare, and seems to be able to mesh all of those varying needs together."

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CHAIR OLSON said more competition weeds out those who are least able to survive, and then the pendulum swings back to a monopoly. He asked her if that is a concern.

MS. CATLIN said that if that is the way it is going it will not be the same monopoly carrier that it once was. She said that will likely not be the case because there is a healthy competitive environment in Alaska. There is heavier competition in the interexchange and local market.

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KATE GIARD, Chair, Regulatory Commission of Alaska, said the reauthorization of the RCA will be looked at in the federal arena. There are important matters before the Federal Energy Regulatory Commission (FERC) on the sovereignty of Alaska over pipeline rates. It should be conveyed to the federal agencies

that the RCA is going to be extended, the decisions that the RCA has made and the process of regulation in Alaska is going to continue, and the RCA is the right agency for Alaska.

MS. GIARD said there is a petition by the TAPS [Trans Alaska Pipeline System] carriers to have FERC set intrastate pipeline rates instead of the RCA, so it is a matter of sovereignty and jurisdiction. "Then I look at what is a benefit to the utilities and pipeline carriers that come before us from reauthorization... It's their opportunity to communicate to you the need for the RCA as a regulatory body to be far more responsive, or to incorporate changes in technology or incorporate changes in the way we do business. Or in the case of the rewrite of the telecommunications act that you asked us to do last time, to move on and respond to the changing market dynamics that are in Alaska."

MS. GIARD said, "Sometimes they [sovereignty and benefits to carriers] conflict with one another because they can get commingled, and you can say, well, we really want the RCA to do things differently, but that's different from [asking if] we want an RCA to exist." She said she asked the public how it would like the RCA to change. At the end of that public-comment process, she summarized all the requests and took them to the governor for "administrative improvements to the RCA." The governor will be introducing legislation in that regard. She said in that way "we can bifurcate what's really important," by separating the opportunity for the utilities and pipeline carriers to say how they want the RCA to work, and whether the RCA should exist.

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CHAIR OLSON asked if there has been much public response.

MS. GIARD said there are some very exciting changes, including asking the governor to put a 12-month statutory timeline on all 4205 cases, which relate to the public utility statute. Currently only some types of dockets fall to the existing timelines. The public said they want 12 months, and the RCA has a new computer system and new judges so it supports the request. She said it is important for the RCA to have. It is important for the RCA to be accountable, "and those timelines make us accountable, and it provides the utilities and the pipeline carriers with certainty." She said there is an opportunity for the existing timelines to be modified, although that was not actively expressed in the docket. The RCA is not opposed to that and looks forward to the discussion.

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CHAIR OLSON asked about safeguards for protecting commissioners from political repercussions from unpopular decisions, and how is the public protected from commissioners not looking out for the public's interest.

MS. GIARD said there are a number of ways that carriers and utilities can respond to an order by the RCA. The statute allows a company that is unhappy with a decision to appeal it to the Superior Court after asking the RCA to reconsider. There are a number of cases before the Superior Court, and some cases regarding telecommunications go to federal court. She said there also should be an open public discussion with the legislature about the decision-making process. If the Superior Court does not uphold the RCA, it either makes a different decision or it remands. If there are frequent remands, "then you know you have commissioners that need some work."

CHAIR OLSON asked how many cases have been to Superior Court.

MS. GIARD said there are 26 cases pending before the Superior Court, there has been one remand on a pipeline case, and the pipeline carriers may appeal that remand to the Supreme Court. The volume of cases before the Superior Court is much higher than with the previous commission. The RCA is now making decisions on telecommunication entry and competition, which has created a vast number of dockets and cases of first impression. Such cases haven't been decided anywhere else in the country and normally always go to Superior Court. There are no rate cases in Superior Court now; they are mostly market-based cases.

CHAIR OLSON asked why Alaska is on the cutting edge.

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MS. GIARD said, "You have the great privilege of having the highest competitive telecommunications market in Alaska than anywhere in the country, anywhere in the United States." That is because of local exchange carriers that are highly competitive. "We started out faster and we've grown faster and we have very, very competitive markets," she stated.

SENATOR STEVENS said this is a wonderful forum and chance to chat face to face. The RCA sounds formidable, and it is good that the public can tune in to *Gavel to Gavel* and see all the commissioners and see that they are real people. Doing this on a

regular basis is a darn good idea, he stated, and a short extension allows it to happen more often.

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SENATOR KOOKESH said, "As one of those Senators who have gone through the wars, I would really like to see you less than more."

SENATOR WAGONER said an eight-year extension doesn't mean the commission can't come back for a presentation every two years. There could be a more frequent report, but he likes the eight-year extension because he likes stability. The RCA has been very unstable, he noted.

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MS. GIARD said the RCA recommends a six-year extension because it has made significant process, but she understands the need to hold the RCA's feet to the fire because it affects the bottom line of almost \$1.5 billion of revenue. An audit done every other year is a good way to see if the commission is keeping to its timelines. She also suggested benchmarks because the utilities want more than a timeline. The RCA would report the benchmarks in its annual report to be audited. "You want us to regulate in fairness...and be timely about it," she said.

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MS. GIARD said she is grateful that the auditor recommended an eight-year extension; it was recognition of how hard the RCA has tried. She feels that the RCA is only 65 percent of where she wants it to be, so she is comfortable with a six-year extension.

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CHAIR OLSON said the two-year audits consume time and money, and he asked how that is justified in light of the RCA's success.

MS. GIARD said it is worth the cost to know that problems will be picked up early. "It will help avoid the telephone wars that Senator Kookesh talked about that happened as a result of the agency not being as transparent or as accountable as you wanted." She said the audit shouldn't take the four months it took for a sunset review. The audit will look at the data that is reported to the public in the annual report and the benchmark. The benefit justifies the cost, she opined.

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CHAIR OLSON said he was told there were too many utilities so they fight to capture a portion of the residents. He asked if there was any move to consolidate the utilities.

MS. GIARD said she has not heard of any move to consolidate. The telecommunications competition is good for the ratepayers. Any change of a service area "where you redefine and you give one utility a greater service area...would come before us in a docket, and everyone would be hearing about that as we move through that process, but we don't have it before us today."

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SENATOR THOMAS asked how many decisions have been appealed, remanded, and before the court.

MS. GIARD said that information will be released today, and she believed there were over 200 substantive decisions in 2006 and about 27 appealed. It is proportionately very few.

SENATOR THOMAS said some people believe that the RCA timeframe, 15 months, is too lengthy.

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MS. GIARD said the RCA has 45 days to look at a case, and then it decides to accept, reject or suspend it for investigation. It allows a 30-day comment period, which often brings up issues from ratepayers and so then it gets suspended. Once it gets suspended, the deliberative process of all the interveners takes about 10 months. Then the RCA holds a hearing and issues an order, "and we have about three months." Of the 15-month period, the RCA has about four months of work. The middle piece is the other ratepayers and the discovery process. The RCA can do it in a shorter time, but the important deliberative process has to be completely renovated so the due process of all ratepayers is protected. The RCA is headed down that path and may ask for statutory revision. It may need to appoint settlement judges upfront and make parties settle. She said she can shorten the timeframe but needs time to make sure there is a structure.

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GEORGE GORDON, Director, Regulatory Affairs, Utility Services of Alaska, said his company provides administrative service to Golden Heart Utilities and College Utilities Corporation, which provide service to about 8500 customers in the Fairbanks area. He said he is in favor of extending the RCA; however, the audit did not go as far as it should have. The statutory time for reviewing rate cases should be reduced to nine months. Other

states do that, he said. "Utilities need to have rates in effect during the timeframe when expenses are matched, and that's really difficult when you have 15-month timeframes." Discovery during rate cases needs to be limited, he stated. Currently discovery by various parties is unlimited. He spoke of a case with 65,000 pages of discovery. He believes that the Regulatory Affairs and Public Advocacy (RAPA) section needs to be under the oversight of the RCA. It is currently independent without much oversight, he said, and it doesn't have a lot of direction. He also requested that the qualifications of the commissioners should be raised to a higher standard and they should be paid more. The pay should start at the superior court judge level for the work that they are required to do and the knowledge they are required to have. He also proposed a staff position in the RCA that would act as chief of staff, so the utilities could have contact when commissioners are not available.

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SENATOR STEVENS asked what qualifications he is suggesting.

MR. GORDON said, "Utility CEOs are highly qualified individuals." The commissioners make decisions on \$1.5 billion revenues, and they should have MBAs or be licensed professional engineers or CPAs. They should have the highest qualifications that can be found, he said, so complex issues can be dealt with.

SENATOR STEVENS asked for specific suggestions in writing.

SENATOR WAGONER suggested that engineers and other technical experts should make up the staff, not necessarily the commission.

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MR. GORDON said both should be qualified and knowledgeable.

MS. GIARD said Mr. Gordon's letter speaks to the changes she would like to make in the rate case and rate filing process. She doesn't disagree with anything he said. The RCA has to lower the cost of rate cases. "We want the utilities to come in and feel like when they make a business decision that they need a rate adjustment that they don't have to...take a million dollars off their bottom line." She said some of the money is returned in increased rates, but it comes in over time. The RCA is also proposing specific commissioner qualifications "that came through the public process" to the governor. The RCA now has the most accredited commission ever: two lawyers, two CPAs, and a master's degree.

MARK JOHNSON, Commissioner, Regulatory Commission of Alaska, said the RCA has heard the complaints about the discovery process. It is mentioned in the audit, and the RCA is trying to develop additional regulatory rules for the process. It looks forward to working with industry to make rules that make sense for everyone and enables cases to move forward. It is one of RCA's major initiatives, he noted.

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CHAIR OLSON said Mr. Gordon thinks the discovery process is out of hand because of the amount of information and the open-ended process, and the costs get to be exorbitant.

MR. JOHNSON said the RCA agrees with Mr. Gordon. It wants to make sensible rules that allow the full development of cases without tramping on anyone's rights but that allow the middle part to proceed more expeditiously. It is delicate because the process is similar to the legislative process, but it has a judicial approach; it's actually adjudicating parties' rights.

CHAIR OLSON asked what the parameters should be for the discovery process.

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MR. JOHNSON said he would be uncomfortable expressing an opinion. There is an open proceeding on that issue, and there have been workshops with utility attorneys. It has been discussed at length, and the RCA does not have formal ideas.

CHAIR OLSON asked about changing the 15-month process to 9 months.

MR. JOHNSON said rate cases are the most complex proceedings that the RCA undertakes. One problem are the "pancake rate cases" where the utility will file a rate case for a given test year and then come back in a very short period of time and file another case before the resolution of the first case. It creates considerable processing difficulties, he said. "We can do this stuff. What it may boil down to is how much resources is the legislature willing to authorize the RCA to commit to the problem." The commission could move things along faster if it had more staff, he stated. But he reminded the committee that rate cases are very complex and require a lot of discovery.

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CHAIR OLSON asked about raising the qualifications of commissioners to require a master's degree or PhD. Someone like that may be out of touch with the common person trying to pay a utility bill, he noted.

MR. JOHNSON said there are five members of the RCA and there are probably five opinions on that. He is an attorney and thinks that is a good qualification. But the RCA needs an array and range of skills.

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Senator John Cowdery joined the hearing.

MR. JOHNSON said it is important to provide the governor with choices and not be too restrictive. In addition to the technical qualifications, it is important that everyone can work cooperatively. The process is painstaking and complex. He said he thinks Alaskans get good value for the energy that the commissioners put into the cases. They are focused on their jobs and bring skill and commitment to the table, but they are not in the business of just making people happy.

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CHAIR OLSON said figures don't lie but liars can figure, and lawyers try to make black look white and white look black and everything look grey.

SENATOR COWDERY said he recommends an eight or six-year extension. He said he was in the House when the RCA was created, and it used to be the Public Utilities Commission. He has known many commissioners and they do a good job.

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SENATOR STEVENS said the bill is merely an extension and asked if the governor will introduce legislation regarding statutory time for rate cases, commissioner qualifications, and salary.

MS. GIARD said the RCA has asked the governor to consider the results of the public process and the proposals. Some comments made today were not in the public process, including changing the 15 months to 12 and the issue of an executive director. She explained that the discovery process and the documents do not come to the commission; it happens in the 10-month period between the adversarial parties, and that is why the commission has not been aggressive in putting in controls. It's not a

process that the RCA is involved in except when there is a discovery dispute amongst the adversarial parties.

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SENATOR THOMAS asked about getting a response to the letter by George Gordon from Ms. Giard.

MS. GIARD said she is going to write a response, and it will be in the public record, along with what the RCA is asking the governor to do.

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PAT DAVIDSON, Auditor, Division of Legislative Audit, said during her review she looked at the cases that had been filed and decided by the courts. In three to four years, 26 had been decided by the Superior Court, and three of those had been remanded back to the RCA. Four cases had gone to the Supreme Court, and one was remanded back to the RCA.

MS. DAVIDSON noted that in statute there are 11 audit criteria for any sunset review, and they deal with the question of if the agency should continue to exist. It is an analysis of public need. When changing the extension date, the audit commonly suggests eight years if everything is working pretty well. The RCA sunset review made recommendations for establishing timelines for discovery. Another concern that came up was determining the point at which the clock starts, which is too fluid. But without any substantial deficiency, the auditors recommended an eight-year extension, but it is up to the legislature, she said.

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MS. DAVIDSON said audit costs vary, but she is looking forward to the new information management system that the RCA is creating. If it is reliable, the audits will not take four months. "If all we're doing is going in and looking at whether the system is reporting accurately, it's a much quicker audit."

CHAIR OLSON asked how many audits are done by contract.

MS. DAVIDSON said the audits with statutory deadlines have priority. Another 30 to 40 percent are requests by the Legislative Budget and Audit Committee. Depending on the budget, the division can contract with auditors to get more work done in a shorter timeframe. The division is a service agency of the legislature, so it does what it is asked to do. She said she

believes that two percent of the audits use a significant amount of external auditors and less than 10 percent over all.

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CHAIR OLSON asked her about a two-year cycle between audits.

MS. DAVIDSON said if it is merely to go in and attest that the annual reports are accurate, it could be done easily. That would depend on a good information management system and clear and identifiable performance measures.

[4:44:44 PM](#)

SENATOR THOMAS asked if there are guidelines for agencies so they know how to adequately prepare for them.

MS. DAVIDSON said 60 percent of the workload is audits required in statute and performed annually. The agencies know about those, she said. A sunset review is in statute and may be discussed a year in advance. The audits requested by the Legislative Budget and Audit Committee are not as clearly understood and may not have much warning.

CHAIR OLSON asked if an agency can appeal an audit.

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MS. DAVIDSON said there is communication all along. The process allows the agency to come back and say things have been missed or misinterpreted, and discussions will follow. But sometimes the two entities view things differently, and the audit has to include the response of the agency officials. She noted that the RCA generally has a nice response, but that is not always the case. The agency response is not edited, she said.

[4:49:06 PM](#)

JAN WILSON, Commissioner, Regulatory Commission of Alaska, said it is difficult to put qualifications of a good commissioner in statute. It is important to have someone who doesn't form a strong opinion before looking at the information. It is important to have someone who enjoys the work of reading, studying and thoroughly evaluating all the information regarding a case and coming to a reasoned decision. A professional certification or higher degree may indicate that kind of person.

TONY PRICE, Commissioner, Regulatory Commission of Alaska, said a person becomes a regulatory commissioner by not knowing what he or she is getting into. In his first few months he was amazed at how different things are done, the body of regulatory theory,

and the application of all of it. He said it takes a great deal of dedication and time, but competency eventually comes. A person learns that there are five viewpoints and it is important to be able to work together. Being a commissioner has been rewarding personally and professionally, he said.

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MR. PRICE said the issues are very complex. He stated that experience in utilities, accounting, finance, law, engineering, and economics are all very valuable.

CHAIR OLSON said people in industry may come with a bias.

MR. PRICE said the commission stays neutral, and it helps to assume you are not going to get a job with any utility because everyone will be mad at you. He said the RCA is cloistered and doesn't mix with the people it regulates. He said RAPA was removed because the RCA was both judging and prosecuting. Those are legal issues he said, but "not having the same agency prosecute and judge is not a bad thing." He said it was removed from the RCA because people saw it as a conflict of interest.

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SENATOR WAGONER commended the commissioners because it can be a thankless job taking up difficult issues. He said the commission is a necessary evil, and he is happy things have improved.

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SENATOR THERRIAULT said the policy call is if the bill extends the commission without changes, and he is anxious to see the product from the administration and how many things are picked up from the audit. He said the legislature agrees that it doesn't want the responsibilities of the RCA.

SB 16 was held over.

The Senate Community and Regional Affairs Committee adjourned at [5:00:33 PM](#).