

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 1, 2007

4:07 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."

MOVED CSSB 16(CRA) OUT OF COMMITTEE

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
02/15/07	(S)	Heard & Held
02/15/07	(S)	MINUTE(CRA)
02/20/07	(S)	CRA AT 3:30 PM BELTZ 211
02/20/07	(S)	-- Meeting Canceled --
03/01/07	(S)	CRA AT 4:00 PM BELTZ 211

WITNESS REGISTER

SENATOR GENE THERRIAULT, Sponsor
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the committee substitute to SB 16.

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

POSITION STATEMENT: Spoke in favor of the committee substitute to SB 16 and discussed statutory revisions to the RCA.

PAT LUBY, Advocacy Director
AARP-Alaska
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 16.

PAT DAVIDSON
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered audit questions regarding SB 16.

FRANK CORBIN, General Manager
Nushagak Cooperative
Dillingham, Alaska

POSITION STATEMENT: Spoke in favor of SB 16 and against raising commissioner qualifications too high.

BRAD REEVE, General Manager
Kotzebue Electric Association
President of the Alaska Power Association

POSITION STATEMENT: Discussed the relationship of the Kotzebue Electric Association with the regulatory commission.

ACTION NARRATIVE

CHAIR DONNY OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [4:07:06 PM](#). Senators Thomas, Wagoner, Kookesh, Stevens, and Olson were present at the call to order.

SB 16-EXTEND REGULATORY COMMISSION OF ALASKA

CHAIR OLSON announced the consideration of SB 16.

SENATOR WAGONER moved the committee substitute (CS) of SB 16, labeled, 25-LS0148\E, Kane. Hearing no objections, Version E was before the committee.

SENATOR GENE THERRIAULT, Alaska State Legislature, said the new language for SB 16 requests a two-year review of the Regulatory

Commission of Alaska (RCA) by the Division of Legislative Audit. It would not be a full audit as is done prior to a sunset, but it would provide a report card as to how the RCA is moving dockets through the system, meeting deadlines, and other aspects of efficiency. In Section 4, the initial bill suggested an eight-year extension, and there was some concern that that was too long, so it was changed to six years. He said the bill should remove the committee's concerns from the last meeting.

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SENATOR STEVENS asked about the six-year extension.

SENATOR THERRIAULT said because of the two-year report card, he wanted the extension to be divisible by two.

[4:10:54 PM](#)

CHAIR OLSON asked about the fiscal note change.

SENATOR THERRIAULT said he doubted it would change the fiscal note, because the "audit shop" is already budgeted for ongoing operations of the legislature.

KATE GIARD, Chair, Regulatory Commission of Alaska, said the CS will provide stability for the RCA and for the state. The two-year audits are wise and responsible, and it will make sure the RCA keeps on track. She handed out the RCA annual report to the committee, which includes the number of statutory extensions the RCA authorized. They can either be at the request of the parties or by RCA's authority, which allows a one-time 90-day extension. Parties and the RCA have extended for various reasons, she said. The information is reported to legislative auditors quarterly. She said page 75 of the report speaks to commission proceedings.

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MS. GIARD said there are substantive, final decisions—generally after a rate case or at the very end of the matter; substantive, non-final decisions, which occur when parties disagree; and procedural decisions, which the administrative law judges make or the RCA affirms. The report lists the number of dockets, she stated, and it shows what is pending, how many cases came to the RCA, how many were closed, and how many remain.

SENATOR WAGONER asked why there are a high number of letter orders issued in FY05.

MS. GIARD said letter orders are documents issued by RCA staff and are related to the number of applications. They can be for

incomplete applications or other correspondence. The RCA focuses on adjudicatory decisions and not letter orders, she said.

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MS. GIARD said the report shows appealed cases. Page 54 lists the appeals, and it is a bit overwhelming because they take up a number of pages. Most are individual appeals of the Transalaska Pipeline System (TAPS) owners, who individually appeal RCA orders on a case by case basis. Sometimes they are appealed to the Superior Court and then the Supreme Court, she noted. Quality bank has been appealed since 1986, so those are all matters that are continuing to go through. For utility matters, there is a description of what the appeals were about. She can provide more information on the appeals. The report shows how many utilities are certificated to give the committee an idea of what the RCA does. It is broken down between those that are economically regulated, where the RCA sets the rates, and those that are exempt from economic regulation but needing to meet safety, service area, and other standards. Ms. Giard added that the report has details on telecommunication competitive entry and markets.

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SENATOR THOMAS asked for an example of what the RCA would do if it wasn't regulating an entity's economics.

MS. GIARD said the RCA may regulate service areas, safety requirements, or the overall management. For example, the RCA has jurisdiction over Aurora [Energy], but it doesn't regulate rate changes.

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SENATOR STEVENS asked about the previously discussed topics of qualifications and salaries of the commissioners, adding a chief of staff, and changing the deadlines for rate cases.

MS. GIARD said she provided a copy of the statutory revisions that the RCA is recommending to the governor, who will come forward with legislation. The changes that the RCA proposes are: increase the regulatory cost-charge limit from seven to nine in order to fund the PERS liability that the RCA absorbed in 2008; increase civil penalties from \$100 to up to \$1,000; adopt a 12-month timeline for anything that does not have a timeline (as recommended by the utilities); [adding] an office of general counsel—"we've talked to you about the relationship that the RCA has with the Attorney General coming before us and also acting in adjudication with us"; add an administrative law section to

make the RCA distinct from the Office of Administrative Hearings; put in a natural gas and oil pipeline section; allow the RCA access to certain personnel, like an executive secretary, and; update commissioner qualifications and salaries.

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SENATOR WAGONER said Bill Gates couldn't become a commissioner based on the proposed qualifications.

MS. GIARD said he could because he has had executive level experience for a period of five years.

SENATOR WAGONER said the wording uses "and," so it might need to be reworded.

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CHAIR OLSON said his office has had a number of calls regarding the proposed statutory changes, and he asked Senator Therriault for his opinion on those.

SENATOR THERRIAULT said he just received the document, and there are companies in the regulatory community that have not seen it and may have suggestions.

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CHAIR OLSON asked if a utility can opt out of being economically regulated.

MS. GIARD said any utility can come to the RCA and seek an exemption from regulations. They can petition to become regulated or to become unregulated--like the cooperatives. There may currently be an application from Alaska Waste to be deregulated for commercial activities. Then the public advocate weighs in, and then there will be a hearing and a decision on the matter. But no pipeline carrier has that option, she said.

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CHAIR OLSON asked, "If an entity has an adverse ruling by your commission, can they opt out of that then?"

MS. GIARD said no one can opt out, but anyone can petition. The RCA may say no, but then they will likely come to the legislature.

CHAIR OLSON asked how many entities have been exempted.

MS. GIARD said several cooperatives have had elections to come out from underneath regulation, including the utility in Kodiak. All cooperative electric utilities have the option of having their members vote them out from regulation.

4:33:06 PM

PAT LUBY, Advocacy Director, AARP-Alaska, encouraged the passage of SB 16 to extend the RCA, which has been a referee in telecommunication wars and has oversight on all utility issues. The RCA is the consumer watchdog and the only thing standing between the customers and all the utility companies. It is there to review every rate case to determine if it is justified or excessive. This morning, Mr. Luby heard an assistant attorney general and an RCA attorney argue a water case on behalf of Anchorage customers. All Alaskan families need the RCA, he said.

4:34:29 PM

PAT DAVIDSON, Division of Legislative Audit, said the CS is clear, and the two-year audit is not complex. It puts the onus on the commission to do the work and she would simply verify it. In response to Chair Olson's question about the fiscal note, she said about 60 percent of her workload is statutorily driven and 40 percent comes from audit requests approved by committee. SB 16 will only move the RCA audit ahead of the requested audits. The audit will just go in with the rest of her work and typically won't have a fiscal note with it.

CHAIR OLSON said, "So no addition during finance committee?"

MS. DAVIDSON said, "If you like the level of audit services that you're getting right now, then we'll just be coming in with a maintenance budget."

4:37:10 PM

FRANK CORBIN, General Manager, Nushagak Cooperative, Dillingham, said the cooperative has electric, telephone, cable TV and internet, and it is exempt from the RCA [rate] regulations, but it still files reports and is subject to the RCA. He expressed support for the bill. As a business person, he feels qualifications should be minimal, because raising the bar will exclude people. He fears creating an elite social club that nobody can get into. Steeper qualifications might affect legislative vigilance. He supports an increase in salary, which will attract higher-quality applicants. He said, "I do agree with the concept of having a former utility executive being available for commission positions in light of the number of ex-commissioners that have gone to work in the utility industry."

[4:40:43 PM](#)

MR. CORBIN said competition is the buzz word everywhere, and it is nothing new in a capitalist country. A social construct of a safety net has developed out of competition. "The economic fact is that there is some point upon which competition does not address...; individuals within our society have agreed to this point that that's a social responsibility that different government entities take upon themselves to address those areas where competition is not the answer." That tipping point is evident even in the cooperatives that have exempted out from under regulation, he said. It is a financial burden and those cooperatives have decided that there is no return on their investments. He continued, "Depending on which side of the net you're on, it's either a ceiling or a floor. It exists. It's real and it's economic, and I ask for consideration of that." He noted that the Nushagak cooperative was involved in protesting the Yukon-Crowley merger, and he observed testimony of the state attorney general who said the monopoly in the region was a good thing for the state because it was more efficient.

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MR. CORBIN said, "We were assured that there was still the semblance of competition because, for example, Delta Western could lease space from Crowley in Bethel, and therefore there would be two fuel resellers in Bethel." When a Delta representative was questioned about that business arrangement, he said it didn't matter how much Crowley charged him because the profits in Bethel were so deep. He said that is a serious issue for the bush.

CHAIR OLSON asked if he wants the RCA to look at fuel retailers for regulation, as it was under the Alaska Public Utilities Commission (APUC).

MR. CORBIN said, "We would like some relief out there in some form, and we have asked everywhere." He has been told that the RCA is the answer, but when he gets there he is told it is not.

[4:45:35 PM](#)

BRAD REEVE, General Manager, Kotzebue Electric Association and President of the Alaska Power Association, said his utility deregulated economically from the RCA in 1993. His role in the trade association puts him in contact with the RCA. Under Chair Giard things are improving, and he said his concerns have been listened to. He said he is seeing more transparency and things have been more pleasant. When his association decided to

deregulate in 1993, it was very expensive--all hearings were in Anchorage--and the members felt they had no voice. The relationship has greatly improved over the past few years, he concluded.

CHAIR OLSON asked about the financial burden on small cooperatives.

[4:48:27 PM](#)

MR. REEVE said when his association was regulated a rate filing could run from \$40,000 to \$80,000, and members were excluded from any input. The members voted to deregulate, and it works well. There are still safety regulations, and the RCA is involved in power cost equalization, he explained.

CHAIR OLSON asked if he has seen the proposed statutory changes.

MR. REEVE said his attorney said they are acceptable.

SENATOR THOMAS asked how the association raises its rates.

[4:50:21 PM](#)

MR. REEVE said two public hearings are held, and the board of directors acts as an adjudicator. Mr. Reeve presents a case to the board and allows members to attend. "Then I have to build a case along with the auditor and other professional staff...to make the case that we need an increase."

SENATOR THERRIAULT said the CS is reasonable for the extension, and he noted that he has been told by the power companies that the RCA is so much better than years ago, and that is gratifying. Clearly the legislature doesn't want to take on the duties of the RCA, he said, and the 6-year extension and 2-year report card is reasonable. The proposed changes can be discussed with the administration, and perhaps an independent bill can be drafted to put these ideas on the table.

SENATOR WAGONER moved the CS for SB 16, labeled 25-LS0148\E, from committee with individual recommendations and accompanying fiscal notes. Hearing no objections, CSSB 16(CRA) moved out of committee.

The committee was adjourned at [4:53:13 PM](#).