

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
SENATE LABOR AND COMMERCE STANDING COMMITTEE
January 23, 2012
4:06 p.m.**

MEMBERS PRESENT

HOUSE LABOR AND COMMERCE

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Mike Chenault
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

SENATE LABOR AND COMMERCE

Senator Dennis Egan, Chair
Senator Linda Menard
Senator Bettye Davis
Senator Cathy Giessel

MEMBERS ABSENT

SENATE LABOR AND COMMERCE

Senator Joe Paskvan, Vice Chair

COMMITTEE CALENDAR

UPDATE: REGULATORY COMMISSION OF ALASKA BY T.W. PATCH, CHAIRMAN,
REGULATORY COMMISSION OF ALASKA (RCA)

EXECUTIVE SESSION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

T.W. PATCH, Chairman
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska

POSITION STATEMENT: Presented an update on behalf of the RCA.

ACTION NARRATIVE

[4:06:05 PM](#)

CHAIR KURT OLSON called the joint meeting of the House and Senate Labor and Commerce Standing Committees to order at 4:06 p.m. Representatives Holmes, Miller, Chenault, Johnson, Saddler, Thompson, and Olson and Senators Giessel, Menard, Davis, and Egan were present at the call to order.

^Presentation: Update on the Regulatory Commission of Alaska

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CHAIR OLSON announced that the only order of business would be an update on the Regulatory Commission of Alaska by T.W. Patch, Chairman, Regulatory Commission of Alaska (RCA).

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T.W. PATCH, Chairman, Regulatory Commission of Alaska (RCA), on behalf of the RCA, expressed gratitude for the House and Senate Labor & Commerce Committees' willingness to hold this hearing. He thanked members for the opportunity to serve as a commissioner at the RCA these past two years. He also passed on Mr. Pickett's regards to members. He then offered to provide a summary overview of the RCA's activities and to discuss cases in more detail if asked to do so.

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MR. PATCH related that former Chief Justice Earl Warren had adopted a ritual when he approached his U.S. Supreme Court activities and duties. The chief justice passed on his advice to a law clerk, which became a footnote to the legal lore that surrounds decision making. Lore has it that Chief Justice Warren, who started each day by reading the newspaper, had suggested to maximize the knowledge contained the paper, it should be digested by first reading the sports page since this is the part of the paper that demonstrates effort, rewards preparation and team work and catalogues accomplishments. Next, Chief Justice Warren suggested people should read the front page

since this section points out the potential mood of the day, and reports opinion - some good, some bad, some well-founded, and some not so well-founded. This part of the newspaper also catalogues failures in government and society. Chief Justice Warren suggested it is possible to learn where and perhaps how to do better by examining those failures. Lastly, Chief Justice Warren suggested reading the comic pages to put a smile on one's face and to restore one's perspective.

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MR. PATCH turned to what he coined as the RCA's "sports page." He recalled last legislature during special session, when the legislature considered the RCA's reauthorization. Legislators debated the dates for RCA's extension and potential sunset and ultimately determined the RCA should be extended from 2011 to 2014. The legislature directed the RCA to consider a proposal to limit the time the RCA has to consider and reach a decision to less than 15 months on a tariff filing for changes to a utility's revenue requirement or rate design. The RCA responded. Last week, the RCA presented the legislature a report for a proposal to reduce its statutory timeline for tariff filings to change a utility's revenue requirement or rate design. This report was also enrolled electronically. He offered to provide a personal copy to members, if desired. He related that after an honest self-assessment, discussions with academics, national leaders, state commissions, and after taking and evaluating public comment, the RCA ultimately formulated its plan.

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MR. PATCH stated that RCA has determined to open a series of regulations dockets. He predicted that once the regulations dockets are concluded the outcome should result in an improved utility regulatory landscape, which will afford utilities opportunities for cost savings in litigation expenses. He said it will also afford utilities predictability with respect to the timeframe that rate changes may be implemented and allow utilities to recover their revenue requirement.

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MR. PATCH offered that these benefits to the utility companies will not come at the risk of just and reasonable rates paid by utility customers. He said the RCA also concluded that it could streamline its internal processes used to achieve decisions. He

related that the RCA's report has not been released to anyone prior to submission to the legislature; however, the utility community is alert. Thus far, he has not received any negative comments from any utility executive. He offered his belief that by and large the utility community is behind the RCA's proposal.

MR. PATCH reported that the RCA's proposal will be announced to the utility community at its first public meeting on February 1, 2012, in Anchorage. He emphasized that the RCA believes the proposal will achieve significant reduction in the timelines for decisions and it will do so in the current statutory framework. At the time of the next sunset review in 2014, the RCA - as part of its proposal - will provide the legislature hard numbers on timelines of actual case results, including facts and timelines. He reiterated that the RCA's proposal should result in shortened timelines, continued reliable service, and with respect to some of the regulatory proposals for utilities, should result in decreased rates.

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MR. PATCH turned to what he deemed as the RCA newspaper's "front page." He said members each should have received the RCA's FY 2011 Annual Report. The report lists and briefly describes the RCA's significant events. He welcomed any comments or questions from members as they review the annual report. He explained that the RCA's annual report identifies the number and complexity of a great number of proceedings. He highlighted that the RCA's workload is very heavy. He offered to be brief and not read the details today.

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MR. PATCH referred to the RCA newspaper's "comic pages," but noted the absence of "comic pages" at the RCA. Instead, he offered to present a series of numbers and to allow members to contemplate what the figures might mean, after which he offered to explain the figures.

MR. PATCH said, "\$50 million in bankruptcy debt." He explained that Naknek Electric Association (NEA) is seeking protection from \$50 million in debt in the federal bankruptcy court in Anchorage. He pointed out while NEA is not a regulated utility, it is an important utility since it serves a community that is important to Alaskans.

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MR. PATCH said "907." He explained that due to the efforts of the RCA, in conjunction with the service provider in Alaska, the national numbering administrator has extended the exhaustion date for the 907 area code from third quarter of 2012 until 2024. He affirmed that Alaska will remain under one area code.

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MR. PATCH said, "\$250 million." He identified \$250 million as the estimated cost for Matanuska Electric Association to build new generation to serve its member owners.

MR. PATCH said, "\$41 million." He related that the Anchorage Water and Wastewater Utility did not seek recovery of \$41 million in its last rate case for the plant already installed.

MR. PATCH said, "\$15 million." He advised that the RCA jointly administers \$15 million to improve or assure the delivery of broadband services in rural Alaska. This helps ensure rural Alaskans have the same access to the Internet as other Alaskans.

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MR. PATCH said, "\$459 million." He identified this figure as the amount that Anchorage Municipal Light & Power (AML&P) expects to invest between now through 2015 - three short years - to develop its generation assets, its Beluga natural gas field, and enhance its distribution systems. He pointed out that this figure is affirmed by the director of AML&P in a recent publication, which he held up a copy for members to see.

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MR. PATCH asked members how well they had done to identify the figures - noting it didn't matter - since members will now be better informed. He emphasized what this committee did not hear. The House and Senate Labor and Commerce joint committee did not hear him mention anything about 100-year storms, or the Snettisham power line. The committee did not hear about AEL&P's inclusion of Lake Dorothy in its rate base, or the Cook Inlet Natural Gas storage asset, which will begin injecting gas this spring. He said he also didn't mention Chugach Electric's Southcentral Power project, Golden Valley Electric Association's wind project, or discuss options for coal generation from the Healy Clean Coal plant on the northern end of what is lovingly referred to as "our Intertie." Additionally, he said he didn't

mention independent power producers or power cost equalization. Further, he didn't discuss the Federal Communications Commission's (FCC's) order that changed the universal service funding formula for all of America, which will also impact Alaska. He assured members these matters are on the planning horizon. He emphasized his staff, a 60-person agency that must perform at a continual high level of professional precision, is now being asked to deliver results in a shorter time. However, he stressed that the health of the utilities cannot be compromised or else utility service delivery will suffer. He indicated RCA's staff must keep in mind that the public convenience and necessity must be served at just and reasonable rates, which is a daunting task. He noted this provides the reason for his many sleepless nights.

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MR. PATCH pointed out that Chief Justice Warren's newspaper instructions did not reach the realm of miscellaneous. He said he sometimes thumbs through the paper to ensure he doesn't miss something. As he prepared to come before the committee, he asked his staff to anticipate the RCA's 2012 workload. His finance staff estimated the RCA would receive a total of 30 rate cases, with 14 simplified rate filings, delivered on five different dates by the electric cooperatives. He added that the RCA must also address the Cook Inlet Natural Gas Storage Alaska, LLC (CINGSA) injection rates, and with respect to pipelines, should anticipate four major filings by the Trans-Alaska Pipeline System (TAPS). His engineering staff informed him in 2012 nearly 50 wastewater utilities - one per week all year long - will require some level of attention. He acknowledged that most of the small water utility have [Department of Environmental Conservation] (DEC) concerns. Some utilities deliver service from old and under maintained plants, and under collect in rates, while simultaneously the federal government has been cutting back on drinking water funding programs. Additionally, his staff informed him the RCA is currently monitoring a federal proceeding that may impact gas delivery to Fairbanks. Additionally, the RCA's telephone group has been reviewing an 800-page order on the reformation of the Universal Service Fund (USF). He advised members that he will attend a conference in Washington D.C. to enhance Alaska's role and minimize the USF's impact on Alaska. He emphasized the magnitude of the RCA's review of the 800-page order.

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MR. PATCH related his understanding that the legislature may take up tax reform this year. He then turned to the TAPS. He informed members that the RCA has been involved in seven weeks of hearings. More than ten years ago, the TAPS owners were considering investments in the line to achieve a number of understandable goals. The owners wanted to address any safety concerns, lower their operating costs, and obtain efficient operations with lower throughputs. He related that this investment planning came to be known as the Strategic Reconfiguration Project (SRP). This matter has come under scrutiny, with respect to whether the planning has been adequate and thorough. He acknowledged that over 12,000 project change orders occurred to date, which has resulted in the turnover of numerous highly qualified, dedicated project managers. He characterized this as due to the managers simply having been overwhelmed by the magnitude of the duties. He referred to numerous studies he has been asked to read that explain TAPS' problems in hopes to identify possible solutions.

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MR. PATCH said the case to consider whether the investment in the SRP was prudent came before the Federal Energy Regulatory Commission (FERC) and the RCA in concurrent hearings last fall. He highlighted the importance of this case to Alaska. He recalled that last legislative session, U.S. Senator Murkowski mentioned in her remarks to the legislature that 87 percent of the net wealth of state is directly related to TAPS. He observed that the importance of TAPS to Alaska is the reason legislators went to Washington D.C. to participate in an energy conference. It is also the reason that RCA has been attempting to participate in a meaningful fashion. He suggested that members were probably aware of a recent Superior Court decision issued by Judge Sharon Gleason. He characterized this decision as an interesting decision. As the SRP's hearing concluded, the FERC's chief judge set another proceeding, which will effectively continue the matter. The FERC's judge has asked for a briefing by parties on Judge Gleason's decision to assess how this decision will impact the further proceedings before both commissions. He suggested that legislators have heard a great deal about the SRP, which some may come to know as a prudence phase of the proceeding. He acknowledged that the committee members recognize the importance of TAPS, but cautioned that while the prudence phase has just concluded, the rate case is long from over.

MR. PATCH predicted that as the rate case continues to unfold numerous long and complex evidentiary hearings will be held before this round of TAPS ends. The RCA will hold hearings, engage in deliberations, seek briefings from lawyers, and reach a decision to establish the post-reconfiguration rate base. The RCA will take into account Judge Gleason's decision on the life of the [TAPS] line. The RCA will make conclusions based on a developed record about the [TAPS] assets, and the appropriate depreciation on these assets as the depreciation flows through to rates. Additionally, he added that the RCA will also consider allowable operating expenses and eventually determine rates to be charged to shippers on the intrastate rates, but not for the interstate rates. He advised members that FERC will decide the other side of the equation [the interstate rates]. He characterized the interstate case as massive and unbelievably complex. He also acknowledged that it is hotly litigated.

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CHAIR OLSON thanked Mr. Patch for his efforts to resolve the timelines.

MR. PATCH predicted that utility executives will be pleased to receive earlier determinations on rate case filings. He emphasized that the reputation of the RCA will also benefit from the change and this matters to him.

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REPRESENTATIVE HOLMES referred to the summary on the timeline issue. She asked him to briefly discuss the four regulation dockets mentioned in the executive summary in members' packets and to highlight what information the RCA is hoping to gather.

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MR. PATCH referred to page 6 of the executive summary to Dockets R-10-2/R-11-1 titled, "In the Matter of the Consideration of Adoption of Regulations regarding Discovery." He provided a brief history, noting a prior legislative audit sunset recommendation indicated the RCA should consider discovery issues. He acknowledged, in retrospect, that the matter was probably not dealt with as thoroughly or openly as it should have been. Thus, the matter came up at a subsequent sunset evaluation. He referred to page 7 to Docket R-12-1 titled, "In the Matter of Consideration of Revisions to Regulations Pertaining to Required Filings in Support of Revenue Requirement

Filings and the Consideration of Requiring Utilities Contemplating Revenue Requirement, Rate Design or Complex Filings to Participate in Pre-filing Conferences." He offered his belief that the discovery matter will go hand in hand with the docket. He noted the docket has not been opened by the issuance of an order; however, but the matter has been discussed at more than one public meeting. He stated that discovery in a rate case is typically sought by the attorney general and intervenors. The discovery information most often sought after pertains to cost, such as the work papers from experts on rate of return calculations. He pointed out that utilities can choose when to file a rate case, the identification of the information needed, and the timing of the filing. Further, the [RCA and utilities] must consider any delay that may result from the file review until the Alaska Department of Law, Regulatory Affairs & Public Advocacy (RAPA) or an intervenor seek to discover materials in support of the filing. He characterized this process as a time-consuming one. It may involve matters of confidentiality or certain critical energy infrastructure, but for purposes of a shortened timeline, the RCA will need to collapse the discovery.

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MR. PATCH said that hand in hand between the two dockets, R-11-1 and R-12-1 is an effort to bring about a change. He referred to Rule 26 of the Alaska Rules of Civil Procedure. He related that the courts adopted a protocol. He explained that once a lawsuit is filed, pleadings and proofs must also be filed. He offered that the coalescence between the discovery regulation and the pre-filing regulation - revisiting what the RCA needs - will shorten the timeline. He anticipated once these proceedings occur, the RCA will find the utility should file all of the supporting costs without the necessity for RAPA to make discovery demands. He predicted, at that point, immediately RAPA and any legitimate intervenors will have access to and begin the process to evaluate the case. He stated that in fairness to the utility, any intervenor must also be equally forthcoming. He concluded that the legislature has essentially asked the RCA to develop a full record so an earlier just and reasonable rate determination can be made. He said, "If you want it sooner, we have to get into the sand box together."

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MR. PATCH again turned to page 7, to Docket R-12-1. He informed members that the Federal Energy Project Office of the FERC has a

pre-filing requirement. He suggested that if a party wants to build a hydroelectric, kinetic energy facility at [Susitna-Watana], the Alaska Energy Authority (AEA) and Alaska Industrial Development and Export Authority (AIDEA) should come to the RCA to hold discussions. He said, "Let's talk."

4:47:03 PM

MR. PATCH recommended that if someone wanted to file a routine filing, the party should take advantage of the RCA's new electronic filing requirements; however, if someone wanted to file an unprecedented filing with the RCA, never before considered, for multiple millions of dollars, the party should not expect an expedited and final decision within a week.

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REPRESENTATIVE JOHNSON asked whether FERC gives parties an option.

MR. PATCH answered that according to the Federal Energy Projects Office in some cases the process is mandatory. He related he recently met with the FERC.

REPRESENTATIVE JOHNSON recalled the FERC processes in which one process is an open one and the other process is closed, noting the support was given up-front. He further recalled FERC prefers that process; however, the other process is a last-minute request, which is optional. He reiterated that the FERC preferred parties come in [advance]. He was not so sure the review was mandatory, but offered to check.

MR. PATCH also offered to verify the FERC options. He acknowledged he was not speaking as an expert on this.

REPRESENTATIVE JOHNSON also agreed he is not an expert, but has spent some time before FERC.

MR. PATCH explained he made his comments in an effort to clarify for Representative Holmes his belief that the overlap between discovery and participatory conversation in advance of a filing will shorten timelines. He apologized if he has misspoken.

REPRESENTATIVE JOHNSON said he simply could not understand why a party would not want to come to the RCA for up-front assistance. He related his understanding that is also FERC's position, as well. He also related that FERC would not exclude [the filing]

if a party does not seek cooperation for reasons such as proprietary reasons. He acknowledged that some parties are very secretive and may not want the RCA involved too soon. He said he just wanted to be sure it's not exclusive to avoid keeping someone from [filing] due to an RCA regulation.

MR. PATCH said, "Thank you for your public comment in our as yet unopened docket. It is duly noted."

[4:49:37 PM](#)

REPRESENTATIVE SADDLER asked whether the practice of individually tailored timelines for rate cases was common practice or if it is common in other state regulatory commissions to grant the full statutory timeline as the RCA's practice has been to date.

MR. PATCH said, "The default position in commissions outside Alaska - in the majority of regulatory bodies - seems to be to take as much time as you can, be as careful as you can, [and] consider as much as you need - good luck." He related that this position brings comfort to parties due to the immediate discernible date. He stated once the filing is complete, the dates can be calculated, which will remain in place, and if the process is completed sooner, that's better, too. Additionally, parties also gain comfort because they can make better decisions with respect to expenditures of their resources. He offered his belief that the emerging trend is to tailor the complexity of the rate case to the time involved, which is also the option the RCA has chosen. He advised that the RCA will attempt to compress the discovery component and has been working to compress what has previously been reserved by the commission as its analytic and decision-making time element. He reported that the RCA knowingly takes that action.

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REPRESENTATIVE SADDLER recalled from the executive summary that the RCA has performed some research and has consulted with other commissions. He asked him to describe the downside to a tailored timeline process.

MR. PATCH identified the downside as stress on staff due to the workload component which may lead to mistakes. He suggested that staff might have some discomfiture, although mistakes can be corrected by the courts or through the RCA's reconsideration process. However, he emphasized the risk of burnout on RCA's

staff, and cautioned that the RCA's staff might gravitate to industry, which would adversely affect the RCA, and the public would lose a dedicated public servant.

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REPRESENTATIVE SADDLER recalled Mr. Patch stated the [shortened timeline] is an emerging trend. He asked which other jurisdictions have been using this process for the longest period of time.

MR. PATCH answered that California is on the cutting edge. He said that New York's Regulatory Commission has a staff of 1,000 people so it can respond more quickly. He ventured that the process has been in effect in some jurisdictions in the Lower 48 for over 15 years.

4:53:18 PM

REPRESENTATIVE HOLMES turned to a new topic. She stated that some of her constituents asked for general comments, without regard to a specific case. She read, "Recent RCA decisions on rate making have been characterized as pro utility." She interjected that her constituents may be operating under the assumption of pro utility, pro-business. She said, "But higher monopoly rates harm businesses, as well as residential customers." She reiterated this question came from her constituents, who are also small business owners. She added that the business owners have related that they count on the RCA to watch out for them, but they have not felt that has been the case.

MR. PATCH answered that he would be happy to engage in conversations with any of her constituents who identify themselves by name. He stated they should feel no umbrage, pressure, or disdain to contact him. He offered to hold an open and wide-ranging conversation with them. He offered to address a number of components raised by her question. He highlighted that the very nature of a utility is a monopoly. He agreed that when someone mentions a monopoly the conclusion is that monopolies are bad; however, the American way tends to prefer competitive enterprise. He suggested that when someone is engaged in capital intensive business, it may not be in everyone's best interest to have two such capital intensive businesses each trying to recover their revenue requirement in an overlapping service area. Thus, what has evolved - long before Alaska became a state - has been the regulatory paradigm.

He acknowledged that the RCA might give a monopoly right to deliver this type of public convenience service in a geographic area; however, in exchange for the monopoly, the RCA will regulate the price and require that services are delivered without discrimination. He characterized this as the utility paradigm.

[4:56:34 PM](#)

MR. PATCH related that the legislature said to the RCA - or its predecessors - to allow a utility to recover costs with a reasonable rate of return. He identified that process as the process RCA uses to determine what a utility can charge. He pointed out the legislature holds the RCA to the standard that the rate determination must be just and reasonable in light of the facts of the developed record. He added this record must be infused with opinion, financial analysis, and adhere to the due process of law. He characterized this as the RCA's task. He identified RAPA as another opposing party with the same task, and he encouraged Representative Holmes's constituents to consult them since they are also public's advocate. He offered that the DOL's RAPA performs well, even though the office is undermanned. He described the RAPA's workload as a massive load. He reiterated that the office performs well. He thanked Representative Holmes's constituents for using the comment process, for seeking guidance of their legislator, and for posing a difficult question. He suggested the other parties could go to his office or the RAPA office. He said he would be happy to sit down in any setting. He offered to put her constituents on the service list if they came to him on a rate case that affected their area. He said the constituents would have access to every pleading in the case. He further offered to make their comments part of the public record. He characterized involved citizens as the better citizens.

REPRESENTATIVE HOLMES thanked Mr. Patch.

[4:59:11 PM](#)

REPRESENTATIVE SADDLER asked at the end of the two-year trial period what criteria he would use to judge the success or failure of the RCA's proposal.

MR. PATCH answered the standard would be made by determining whether cases were decided close to the timeline set for each case. He would also consider whether the RCA made its decisions prior to the 450 day timeline. Further, he would consider

whether the parties involved in the timeline kept to the timeline the RCA imposed, and if the RCA developed factors the commission could transfer to the legislature to outline specific timeframes on cases. He offered his belief that if he could do so, he would judge the RCA's proposal as an unqualified success.

5:00:20 PM

SENATOR EGAN made a motion, under Uniform Rule 22, to go into executive session for the purpose of discussing confidential matters pertaining to the RCA. He requested that his staff, Dana Owen, and Chair Olson's staff, Konrad Jackson remain in the room. There being no objection, the joint House and Senate Labor and Commerce Committees went into executive session.

5:50:38 PM

CHAIR OLSON reconvened the meeting and gaveled out [not on record].

5:50:45 PM

ADJOURNMENT

There being no further business before the committee, the joint meeting between the House Labor and Commerce Standing Committee and the Senate Labor and Commerce Standing Committee meeting was adjourned at 5:50 p.m.