

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

April 3, 2014

3:34 p.m.

MEMBERS PRESENT

Senator Mike Dunleavy, Chair
Senator Peter Micciche, Vice Chair
Senator Donald Olson

MEMBERS ABSENT

Senator Bert Stedman
Senator Johnny Ellis

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 32(FIN)

"An Act providing for the issuance of one business license for multiple lines of business; and providing for reissuance of a business license to make a change on the license."

- HEARD & HELD

HOUSE BILL NO. 276

"An Act making the Alaska Wage and Hour Act inapplicable to certain employees of motor vehicle dealers; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 234

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 32

SHORT TITLE: LINES OF BUSINESS ON BUSINESS LICENSE

SPONSOR(S): REPRESENTATIVE(S) COSTELLO, HUGHES

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	L&C, FIN

02/18/13 (H) L&C AT 3:15 PM BARNES 124
 02/18/13 (H) Heard & Held
 02/18/13 (H) MINUTE(L&C)
 03/20/13 (H) L&C AT 3:45 PM BARNES 124
 03/20/13 (H) Scheduled But Not Heard
 04/03/13 (H) L&C AT 3:15 PM CAPITOL 106
 04/03/13 (H) -- MEETING CANCELED --
 04/05/13 (H) L&C AT 3:15 PM BARNES 124
 04/05/13 (H) Moved CSHB 32(L&C) Out of Committee
 04/05/13 (H) MINUTE(L&C)
 04/06/13 (H) L&C RPT CS(L&C) NT 5DP
 04/06/13 (H) DP: HERRON, CHENAULT, SADDLER,
 JOSEPHSON, REINBOLD
 04/06/13 (H) LETTER OF INTENT WITH L&C REPORT
 02/17/14 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/17/14 (H) Heard & Held
 02/17/14 (H) MINUTE(FIN)
 02/24/14 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 02/24/14 (H) Moved CSHB 32(FIN) Out of Committee
 02/24/14 (H) MINUTE(FIN)
 02/26/14 (H) FIN RPT CS(FIN) NT 10DP
 02/26/14 (H) DP: GUTTENBERG, EDGMON, MUNOZ, HOLMES,
 NEUMAN, THOMPSON, GARA, COSTELLO,
 STOLTZE, AUSTERMAN
 02/26/14 (H) STOLTZE, AUSTERMAN
 03/03/14 (H) TRANSMITTED TO (S)
 03/03/14 (H) VERSION: CSHB 32(FIN)
 03/05/14 (S) READ THE FIRST TIME - REFERRALS
 03/05/14 (S) L&C, FIN
 04/03/14 (S) L&C AT 3:30 PM BELTZ 105 (TSBldg)

BILL: HB 276

SHORT TITLE: MOTOR VEHICLE DEALER EMPLOYEES

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

01/24/14 (H) READ THE FIRST TIME - REFERRALS
 01/24/14 (H) L&C
 02/10/14 (H) L&C AT 3:15 PM BARNES 124
 02/10/14 (H) Moved Out of Committee
 02/10/14 (H) MINUTE(L&C)
 02/12/14 (H) L&C RPT 3DP 2NR
 02/12/14 (H) DP: MILLETT, REINBOLD, OLSON
 02/12/14 (H) NR: CHENAULT, JOSEPHSON
 02/19/14 (H) TRANSMITTED TO (S)
 02/19/14 (H) VERSION: HB 276
 02/21/14 (S) READ THE FIRST TIME - REFERRALS
 02/21/14 (S) L&C
 04/03/14 (S) L&C AT 3:30 PM BELTZ 105 (TSBldg)

BILL: HB 234

SHORT TITLE: EXTEND REGULATORY COMMISSION OF ALASKA

SPONSOR(S): REPRESENTATIVE(S) HAWKER, ISAACSON, SADDLER

01/21/14	(H)	PREFILE RELEASED 1/10/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	L&C, FIN
01/31/14	(H)	L&C AT 3:15 PM BARNES 124
01/31/14	(H)	-- MEETING CANCELED --
02/03/14	(H)	L&C AT 3:15 PM BARNES 124
02/03/14	(H)	Moved Out of Committee
02/03/14	(H)	MINUTE(L&C)
02/05/14	(H)	L&C RPT 5DP 2NR
02/05/14	(H)	DP: MILLETT, CHENAULT, SADDLER, JOSEPHSON, OLSON
02/05/14	(H)	NR: HERRON, REINBOLD
02/26/14	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/26/14	(H)	Moved Out of Committee
02/26/14	(H)	MINUTE(FIN)
02/28/14	(H)	FIN RPT 9DP 2NR
02/28/14	(H)	DP: GUTTENBERG, HOLMES, MUNOZ, NEUMAN, THOMPSON, EDGMON, T.WILSON, GARA, AUSTERMAN
02/28/14	(H)	NR: COSTELLO, STOLTZE
03/03/14	(H)	TRANSMITTED TO (S)
03/03/14	(H)	VERSION: HB 234
03/05/14	(S)	READ THE FIRST TIME - REFERRALS
03/05/14	(S)	L&C, FIN
04/03/14	(S)	L&C AT 3:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

REPRESENTATIVE MIA COSTELLO

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 32.

CHARLES GUINCHARD, Staff

Representative Mia Costello

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 32.

SARA CHAMBERS, Director

Division of Corporations, Business and Professional Licensing

Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions related to HB 32.

PEGGYANN MCCONNOCHIE, representing herself
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 32

REPRESENTATIVE STEVE THOMPSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 276.

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 276 on behalf of the sponsor.

STEVE ALLWYNE, Board Member
Alaska Auto Dealers Association
Juneau, Alaska

POSITION STATEMENT: Testified that he had no objection to HB 276.

REPRESENTATIVE MIKE HAWKER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 234 as joint prime sponsor.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Agencies and Offices
Juneau, Alaska

POSITION STATEMENT: Presented the audit findings and recommendations during the discussion of HB 234.

T.W. PATCH, Chair
Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 234.

ACTION NARRATIVE

[3:34:57 PM](#)

CHAIR MIKE DUNLEAVY called the Senate Labor and Commerce Standing Committee meeting to order at 3:34 p.m. Present at the call to order were Senators Micciche, Olson, and Chair Dunleavy.

HB 32-LINES OF BUSINESS ON BUSINESS LICENSE

[3:35:35 PM](#)

CHAIR DUNLEAVY announced the consideration of HB 32. "An Act providing for the issuance of one business license for multiple lines of business; and providing for reissuance of a business license to make a change on the license." This was the first hearing. [CSHB 32(FIN) was before the committee.]

[3:35:51 PM](#)

REPRESENTATIVE MIA COSTELLO, Alaska State Legislature Juneau, Alaska, introduced HB 32 speaking as sponsor. She explained that the bill would allow people who apply for business licenses to consolidate multiple lines of business in the license. It would also allow a person applying for a license to make a change on their application. She deferred further explanation to Mr. Guinchard.

CHARLES GUINCHARD, Staff, Representative Costello, provided a sectional analysis of HB 32.

Section 1 amends AS 43.70.020(a)(2). Additional language is inserted to establish that just the primary and secondary line of business will be listed on the license. The person may have multiple other businesses on that license and those will show online.

Section 2 adds a new subsection (f) to AS 43.70.020. It states that the department will prepare a new application form that allows an applicant to list multiple lines of business on one license.

Section 3 adds new subsections (e) and (f) to AS 43.70.030. Subsection (e) states that a license holder may request a new business license without paying additional fees to correct a department error or within 30 days of issuance to make a change to the license. Subsection (f) states that the expiration date of a license issued under (e) is the same as the expiration date of the original license.

Section 4 adds a new paragraph (5) to AS 43.70.110. It defines the meaning of the term "line of business."

Section 5 refers to the effective date and provides transition language.

[3:39:43 PM](#)

SENATOR MICCICHE asked how often a business license is renewed and what it costs.

MR. GUINCHARD said that licenses are biannual and they cost \$100 every two years. The fiscal note reflects an \$8,500 one-time cost to the Department of Commerce, Community and Economic Development (DCCED) to update the database and an estimated \$37,500 decrease in revenue because of potential license consolidations.

CHAIR DUNLEAVY asked if there is any other impact on the fiscal note.

MR. GUINCHARD replied not to his knowledge.

SARA CHAMBERS, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), introduced herself.

CHAIR DUNLEAVY asked her perspective of the fiscal note.

MS. CHAMBERS agreed with Mr. Guinchard's representation. She noted that while there's an estimated \$37,500 decrease in revenue to an estimated 750 license consolidations, the cost of the business license would remain at \$50.00 per year.

CHAIR DUNLEAVY opened public testimony.

[3:43:09 PM](#)

PEGGYANN MCCONNOCHIE, representing herself, Juneau, Alaska, said she has a real estate license and also teaches real estate so she has to buy two business licenses every year, and it's a hardship. She urged the committee to pass the bill as a measure that will help small businesses throughout Alaska.

CHAIR DUNLEAVY announced he would hold HB 32 for further consideration. Public testimony was open.

[3:44:27 PM](#)

At Ease

HB 276-MOTOR VEHICLE DEALER EMPLOYEES

[3:45:03 PM](#)

CHAIR DUNLEAVY reconvened the meeting and announced the consideration of HB 276. "An Act making the Alaska Wage and Hour Act inapplicable to certain employees of motor vehicle dealers; and providing for an effective date." This was the first hearing.

[3:45:11 PM](#)

REPRESENTATIVE STEVE THOMPSON, Alaska State Legislature, Juneau, Alaska, sponsor of HB 276 introduced the bill paraphrasing the following sponsor statement: [Original punctuation provided.]

House Bill 276 clarifies that auto salespersons and service writers are exempt from Alaska's Minimum Wage and Hour Act. These individuals are paid on a commission basis and are not and have never been hourly employees.

HB 276 is a result of confusion caused by previous regulations from the Department of Labor and Workforce Development that defined straight commission as "a fixed percentage of each dollar of sales an employee makes." This became interpreted as meaning the commission must be applied to the gross amount of a sale.

While that interpretation might be appropriate for some commission sales, it is neither appropriate nor customary for auto sales. The prime reason is that the auto dealer must pay for the vehicle first out of the sale price. Advertising laws prevent an "add-on" charge to an advertised sale price to accommodate a commission. Thus, if the net of a sale is 3% of the gross, the dealer cannot pay a commission of 5%. This legislation allows for auto dealers' common practice of using a net amount against which the commission is applied.

The Department of Labor and Workforce Development did amend its regulations and has been extremely helpful working with the Alaska Auto Dealers Association on this issue. However, as a result of litigation and with the advice of legal counsel, we believe that it is necessary to seek final clarification in statute.

[3:47:16 PM](#)

JANE PIERSON, Staff, Representative Thompson, Alaska State Legislature, Juneau, Alaska, provided a sectional review of HB 276.

Section 1 amends AS 23.10.055(a). It exempts from the minimum wage act auto service writers, individuals who arrange financing for motor vehicle sales and individuals who solicit, sell, lease, or exchange motor vehicles.

Section 2 adds a new subsection (d) to AS 23.10.055 to define "lease," "motor vehicle," and "motor vehicle dealer."

CHAIR DUNLEAVY asked if there is a fiscal impact.

MS. PIERSON said no.

SENATOR OLSON asked if the Ford dealer in Fairbanks has a position on the bill.

REPRESENTATIVE THOMPSON replied that he didn't have direct communication with that dealership, but the former Senator has not opposed the legislation.

[3:49:24 PM](#)

STEVE ALLWYNE, Board Member, Alaska Auto Dealers Association, stated that he knows the former Senator personally and can assure the committee that he does not object to the bill.

SENATOR OLSON asked if anybody has problems with the bill.

MR. ALLWYNE said he wasn't aware of any problems.

CHAIR DUNLEAVY announced that he would hold HB 276 in committee for further consideration. Public testimony was open.

[3:50:21 PM](#)

At Ease

HB 234-EXTEND REGULATORY COMMISSION OF ALASKA

[3:50:56 PM](#)

CHAIR DUNLEAVY reconvened the meeting and announced the consideration of HB 234. "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date." This was the first hearing.

[3:51:12 PM](#)

REPRESENTATIVE MIKE HAWKER Alaska State Legislature, Juneau, Alaska, as joint prime sponsor, stated that HB 234 extends the termination date of the Regulatory Commission of Alaska (RCA) from June 30, 2014 to June 30, 2022. The Legislative Budget and Audit Agency conducted an audit and recommended the eight-year reauthorization consistent with the findings that the agency has been operating in an efficient and effective manner. He pointed out that the appendixes to the audit include ratings by the stakeholders that demonstrate overwhelming support for how well the agency is functioning. The analysis on page 31 of the audit shows that the regulatory cost charges are sufficient to support the RCA's operations. He concluded that what the RCA needs more than anything else is long term future stability and that is the reason for the recommendation for an eight-year extension.

CHAIR DUNLEAVY asked if the fiscal note has changed.

REPRESENTATIVE HAWKER explained that it's the original fiscal note that shows receipts, primarily from regulatory cost charges, of about \$9 million per year. The other charges are I/A and CIP receipts that are essentially fees for services.

[3:53:46 PM](#)

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Agencies and Offices, Juneau, Alaska, reported that the division conducted an audit of the RCA dated July 2013. The purpose was to determine whether the commission was serving the public's interest and whether its termination date should be extended. Overall, the audit concluded that the RCA is operating in the public's interest and that the termination date should be extended for eight years, until June, 2022. She noted that the audit includes two recommendations, but neither impacted the recommendation for the extension.

The first recommendation is to a repeat of a prior audit recommendation for the RCA to improve its case management system. The 2013 audit found there were still high error rates in the case management system and again recommended improvements.

MS. CURTIS reported that the sunset audit also made a new recommendation for the legislature to consider clarifying the statutory timeline for rulemaking proceedings. The statutes currently require the RCA to issue a final order on a rulemaking docket no later than 730 days after a petition for a regulatory change is filed or after the commission issues an initiating order for such proceedings. A provision in the statutes allows

one 90-day extension for good cause, but prohibits the RCA from terminating a proceeding in one docket and opening a proceeding in another docket on substantially the same matter.

The audit found that on occasion the RCA has split rulemaking proceedings into two dockets. First, the RCA will open a docket to consider whether there is a need for regulation in an area of concern or interest and then close it once public testimony and comments are taken. If the record indicates a need for a regulation, the RCA may open a second docket to consider adopting the regulations. The audit found that this process allows the RCA to take up to 4.5 years to complete its proceedings, but the RCA management has argued that including clear intent language in a docket's initiating order makes the process transparent and complies with statute. The auditors confirmed that the RCA was including clear intent language in the docket, which provides transparency, but determined that this was an issue for legislative consideration because it appears that this practice evades the statutory timelines and does not appear to serve the regulated community or the public's interest. She restated the recommendation for the legislature to consider clarifying the statute to ensure that the RCA complies with legislative intent when processing regulatory dockets.

[3:57:20 PM](#)

T.W. PATCH, Commissioner and Chair, Regulatory Commission of Alaska, Department of Commerce, Community and Economic Development (DCCED), stated that it is the position of the Commission that it has earned the trust of the legislature, has met its obligations, and should be extended for the eight-year statutory maximum. Complying with prior legislative guidance, the RCA filed a report with the legislature on January 16, 2012 and promised a further report. That report outlined the process to address concerns regarding the length of time it took for the commission to decide cases involving rate changes and certain other matters. The commission filed a second report on January 21, 2014 that documented that the commission had significantly reduced the timeline for rate cases from 450 days to 300 days. This was done without requesting any additional funding, staff, or authority. Although it has stressed the agency and the regulatory affairs and public advocacy section of the Department of Law, the commission is holding that timeline and will do its best to continue to hold that timeline. He warned that the stresses may mount as the RCA is being asked to undertake new and complex matters. He cited work with AGDC, AOGCC, the governor's Interior gas project, and the pending matters related

to transmission that may come before the commission in the near future.

MR. PATCH addressed the audit report. The RCA concurs and has taken steps to address the first recommendation that the Chair of the RCA should improve and enforce written procedures. The manuals have been updated and new manuals are being written. He expressed confidence that there would be measurable enhancement in this area.

SENATOR MICCICHE asked if there were serious data issues associated with the business of the RCA or simple errors that were identified during the audit.

MR. PATCH replied the issues weren't quantified, but he doesn't believe the commission would have been faulted on simple transposition errors in their database.

CHAIR DUNLEAVY asked Ms. Curtis to quantify the errors.

[4:02:59 PM](#)

MS. CURTIS directed attention to page 11 of the audit and noted that this is the fourth time this been before the legislature. It is a reoccurrence from the two prior audits of the annual report and the prior sunset audit. The audit examined 26 of 261 tariff filings and 41 of 171 utility dockets and found error rates of 27 percent in 20 percent of the respective sample. When the audit mentions error rates it is talking about information like open and close dates included in the annual report. That is the nature of the errors, she said.

SENATOR MICCICHE asked if any of the errors were associated with the calculation of tariffs.

MS. CURTIS replied the nature of the errors related to descriptive information in an annual report as opposed to anything that would have affected a decision.

CHAIR DUNLEAVY asked who follows up on the corrective actions.

MS. CURTIS said the recommendation was directed to the RCA Chair who is responsible for ensuring it occurs.

SENATOR MICCICHE summarized that the errors were clerical in nature.

MS. CURTIS said most likely the errors were data input and those can be associated with a lack of procedures in entering the data. These are things that can be addressed by adequate training and procedures and a quality control procedure at the commission for continuous review to ensure that the information is being gathered and entered accurately, she said.

[4:06:19 PM](#)

MR. PATCH said the commission is in the process of changing policies and procedures to address the 2-3 day discrepancy between the date on a letter or document that comes to the commission and the date it is entered into the database. A tariff filing that isn't addressed within 45 days is given the force of law on day 45, so that two or three day difference has a legal consequence in favor of the utility applicant. He agreed with Ms. Curtis that it has taken the commission some time to address this issue, and noted that adopting electronic filing measures has helped in its resolution.

MR. PATCH asked the committee to consider the second audit finding by reviewing page 3 of his response to the audit because it may affect another matter. He posed a hypothetical example to illustrate how it might happen that the RCA would open a docket, close the docket to stay within the statutory timeline, and then open a second docket 10 months to four years later on a substantially similar question. He stated that it is RCA's belief that to open a docket to consider the need for a regulation is entirely different than opening a docket to consider a specific regulation and how it may address a problem. "In this case, I do not think her recommendation need concern this legislature with respect to my agency's sunset extension," Mr. Patch stated.

[4:11:28 PM](#)

SENATOR OLSON asked how long he has been Chair of the RCA.

MR. PATCH replied it will be three years on June 30, 2014.

SENATOR OLSON asked if he served on the RCA before that.

MR. PATCH relayed that he was appointed by Governor Parnell in 2010.

SENATOR OLSON asked how he managed to reduce the timeline from 450 days to 300 days.

MR. PATCH replied it was a matter of diligence, clear expression of desire for a cooperative process, early meeting between the RCA's administrative law judges and the parties to set procedural schedules for discovery, careful employment of the RCA assets, and honest and open conversation with parties in the dockets regarding requests for additional time.

SENATOR OLSON asked if anything was compromised in the time reduction.

MR. PATCH said he didn't believe anything was compromised.

SENATOR OLSON asked if he anticipates that the RCA will regulate the gas pipeline.

MR. PATCH said the agency's engineering, pipeline, technical, and legal staff is actively engaged in the process of getting ahead of the AGDC tariff issues. The RCA should be able to decide a filing in a timely fashion, he said.

[4:16:26 PM](#)

SENATOR MICCICHE said he'd like to talk off the record about the second recommendation, because the issue won't go away in future audits if the discrepancy isn't resolved.

MR. PATCH said the RCA has a solution that he believes is acceptable to Ms. Curtis. The RCA adopted an additional information gathering "I" docket to receive and store information. This docket has no statutory timeline. If there is need for a regulation that addresses the concern in the "I" docket the RCA could move forward to an R docket, which is subject to the timeline.

SENATOR MICCICHE observed that one is an application process and the second starts the 730 day timeline.

MR. PATCH agreed.

CHAIR DUNLEAVY suggested that after the discussion he make a statement that his concerns have been addressed.

SENATOR MICCICHE asked Ms. Curtis to comment on the proposed solution.

MS. CURTIS said the division's opinion is based on field work and extensive work, and does not factor in what management might do to address an audit recommendation. It's a matter of

appearing and being independent as auditors. She restated that the recommendation is to the legislature to consider clarifying the statute to address the issue. If the legislature doesn't take any action on this recommendation, she said she will be reluctant to pursue it again.

[4:21:21 PM](#)

CHAIR DUNLEAVY announced that he would hold HB 234 in committee for further consideration. Public testimony was open.

[4:21:59 PM](#)

There being no further business to come before the committee, Chair Dunleavy adjourned the Senate Labor and Commerce Committee meeting at 4:21 p.m.