

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 9, 2015

3:29 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS:

Commercial Fisheries Entry Commission (CFEC)

Ben Brown

Verne Rupright

- CONFIRMATIONS ADVANCED

Alaska Oil and Gas Conservation Commission (AOGCC)

Michael Gallagher

- CONFIRMATION ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

BEN BROWN

Juneau, Alaska

POSITION STATEMENT: Re-appointee to the Alaska Commercial Fisheries Entry Commission

VERNE RUPRIGHT

Wasilla, Alaska

POSITION STATEMENT: Nominee to the Alaska Commercial Fisheries Entry Commission

MICHAEL GALLAGHER

Anchorage, Alaska

POSITION STATEMENT: Nominee for the Alaska Oil and Gas Conservation Commission AOGCC

ACTION NARRATIVE

[3:29:18 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:29 p.m. Present at the call to order were Senators Costello, Stoltze, Coghill, Wielechowski, and Chair Giessel. Senator Micciche arrived shortly after.

Confirmation Hearings:

Alaska Commercial Fisheries Entry Commission (CFEC)

[3:30:24 PM](#)

CHAIR GIESSEL said that today the committee would interview governor appointees for two commissions. The first would be the two appointees to the Commercial Fisheries Entry Commission. She welcomed Ben Brown, a re-appointment, to the table.

BEN BROWN, nominee, Alaska Commercial Fisheries Entry Commission (CFEC), introduced himself.

CHAIR GIESSEL reviewed the commission from the page in Boards and Commissions. She said appointments require legislative confirmation and the term is four years. The board consists of three members with a broad range of professional experience, none of whom has a vested economic interest in an interim use permit, an entry permit, a commercial fishing vessel or gear, or in any fishery resource processing or marketing business. The function of the board is to promote conservation and sustained yield management of fishery resources and to regulate and control entry into commercial fisheries. A quorum consists of two commission members. It is a regulatory and quasi-judicial agency. The salary is equal to step range 27, \$108,000 per year; members are placed in the Public Employees Retirement System (PERS) system. The commission meets throughout the year.

MR. BROWN noted his resume' and said it was very similar to the one he submitted four years ago when he was initially appointed. He is a life-long Alaskan, was born in Anchorage and raised

there except for a brief time when his parents traveled to Honolulu for their professional needs. He went to Palmer High School, was a legislative aide, went to law school at Northeastern University in Boston and worked for the Honorable Larry Weeks; he has lived in the capital city ever since. He was an administrative law judge with the Department of Revenue (DOR), legislative liaison with the Department of Environmental Conservation (DEC), and in private practice prior to Governor Parnell's decision to appoint him to the commission four years ago.

[3:33:04 PM](#)

SENATOR STEDMAN joined the committee.

MR. BROWN remarked that it's the second time in CFEC history that all three of the commissioners are attorneys and members of the Alaska Bar Association. This provides a nice background for some of the more difficult legal decisions the commission will have to make. Being a quasi-judicial commission means they have judicial powers in the administrative law decisions they make regarding applications for transfers of limited entry permits.

He explained that one of the reasons the commission was created 40 years ago as an independent agency was so that there would not be any appearance of undue pressure from the Alaska Department of Fish and Game (ADF&G) on the decisions being made by the three commissioners about who should receive a permit based on that individual's fishing history, their relative economic dependence on the fishing activity underlying the permit application. He explained that the ADF&G's Division of Commercial Fisheries regulates the biological side of the fisheries and in conjunction with the Board of Fisheries, decides what kind of gear can be used, where and when - that affect the biological health of a whole range of very important fish species as well as the economic returns to the fishermen who depend on them to support their families and to be vibrant parts of Alaska's economy.

MR. BROWN said he had no vested interest in a permit, any gear or vessel or fishery when he was appointed and still doesn't. He has learned a tremendous amount about what the CFEC does as an independent agency, how they have evolved over time and how they might continue to evolve given the strained fiscal circumstances the state faces.

He wanted to come up with whatever the right future for the agency is, because fishing is going to remain important going

forward and he wants to make sure that a system is in place that makes sure permits are given to those who deserve them under the legal structures that have been set up and approved by the Alaska Supreme Court, and that the integrity of the value of those permits and the stability of the fisheries are as maximal as possible.

SENATOR COSTELLO said she appreciated his service and asked what future challenge he saw and why he would be good to have on the commission while facing it.

MR. BROWN replied the challenges that the agency faces are in some regards different from other agencies but one is the same: fiscal pressure. CFEC fortunately generates significantly more in program receipts and designated general fund revenues than it spends on its annual operations. Those excess monies have been allocated towards the Fisherman's Fund (worker's compensation for fishermen) and the rest has gone to capital projects that benefit various fisheries.

This year the Fishermen's Fund transfer will take place and a little over \$3 million is going to underwrite the operating costs of the Division of Commercial Fisheries. This makes sense. The permits would not have value and fishermen would not be able to go out and use the permits for which they pay an annual renewal fee without having the management in place.

[3:38:31 PM](#)

In order for that to work to keep going forward, the integrity of the Limited Entry system cannot be diminished in any way and those permits will remain as valuable assets in which people invest. He informed them that the permits are used as collateral by two specific state loan programs: the Commercial Fishing Revolving Loan Fund and the Commercial Fishing and Agriculture Bank. That is one example of why it's important to have a solid stable structure in place overseeing the issuance of permits.

Not that many permits are currently being issued, but the transfer of permits, either on a permanent or an emergency basis, is something that will continue going on, because people get old and they can't use their permits to go out and fish any more. Sometimes they choose to sell it.

[3:39:07 PM](#)

MR. BROWN said that stability is probably somewhat beneficial at this time. Bruce Twomley, the chairman, has been there since the early 80s and has an invaluable and unique wealth of knowledge.

Judge Froehlich retired and his seat was filled briefly by Frank Hohman, because of a case in which Chairman Twomley recused himself and they didn't have a quorum. Frank Hohman is re-retired and the committee will hear from the new appointee next. Having two of the three commissioners with some years of experience will be helpful as they seek to analyze staffing levels, organizational structures, the way they operate and try to ensure that they are providing the maximum amount of service for the least amount of money.

[3:40:39 PM](#)

CHAIR GIESSEL said the CFEC's 2013/14 annual report indicated that substantial progress was made in reducing the adjudication caseload and asked him to explain the adjudication process.

MR. BROWN responded that 68 is the number of existing discrete fisheries which have three things: a species, a geographic location, which can be statewide or smaller, and a gear type that has limited entry. Sixty seven of them remain limited and one, the weathervane scallop fishery, has reverted back to open access.

He explained that each fishery is limited when pressure has come to bear on the fishery in a manner that is no longer sustainable if it is open access. (Open access describes fisheries that are not limited.) When a fishery has attracted enough interest from the fleet that someone is concerned, they can petition the commission, at which point the commission looks back four years before the year in which the limitation process is going to begin to establish a maximum number of permits in the fishery. Once that is done by adoption of a regulation, then a somewhat lengthy process begins (although he had not been involved in the process of initiating limitation of a new fishery in the past four years).

If someone alerts them that limitation might be needed in a certain fishery, the commission will pick a date and people who can prove they had any sort of fishing participation in the fishery in the four years leading up to that date will be counted. The maximum number can be no lower than the highest in any of those four years. Then they will determine a point structure when those interested in receiving a permit tell them when they caught, where they caught and how much they sold it for, and, depending on the fishery's relative economic dependence information, the level of investment in gear and vessels are worthy criteria to determine who ought to get a fishing permit based on prior activity. It's based on the

premise that if you were doing it in the past, then you are entitled to continue doing it in the future more than someone who wasn't doing it in the past.

When those point classification decisions are made, fishermen are informed if they obtained either a permit or got one that is not transferable (can't be sold as a transferable asset), or did not obtain one. People who were told they don't get a permit and don't want to take that as the final word would appeal it, starting at the adjudication staff level to a hearing officer, and then, ultimately, up to the commission. The three commissioners review each and every case.

For purposes of finality, Mr. Brown explained that all the cases are reviewed administratively. Once the administrative staff level is exhausted, those who are still interested in having a further dialogue are able to appeal the decision to the Superior Court, and if they don't like what the Superior Court says, they can remand it back to the commission that will uphold what they did. Then the case can be appealed to the Alaska Supreme Court, and that is the final arbiter of the commission's decisions.

MR. BROWN said the 900-case backlog has been whittled away through diligent work by the commissioners, but some of the cases saw a tremendous amount of time pass before getting a hearing and sometimes a decision that was possibly aversive to them was made. The problem with that is people don't live forever and witnesses go away and other forms of evidence are not as available as they would have been. So, now, because the caseload is not huge, he has been able to review some of the adjudication decisions, has written opinions that have been appealed to Superior Court, and Superior Court has remanded them. So he has been participating in the process, only without the massive volume of cases that was done in the past.

CHAIR GIESSEL said the three commissioners are paid in excess of \$100,000 a year in salary and have 34 employees. She was wondering about the cost.

MR. BROWN responded that their staff is now at 30. It was larger in the late 80s when it had an executive director, too. He explained that in addition to their administrative quasi-judicial roles, the commissioners get to exercise all personnel functions, but they would be having a very healthy dialogue about ways of restructuring the commission soon.

He commented that more efficiencies can probably be achieved and that the Division of Legislative Audit is also conducting an audit along with the ADF&G commissioner's letter. Abolishing the CFEC is the nuclear option, he said, that would eradicate the commission's independence, which is one of the main reasons it was founded as an independent agency 40 years ago. It would also eradicate any hint of independence of decision making if the director was directly answerable to the commissioner of ADF&G and then to the governor.

MR. BROWN said much of the money the commission is generating is going as much as possible to pay for other things besides CFEC staff if that staff is not the best thing to spend that money on.

CHAIR GIESSEL said the report had questions about the staff, the pay scales, and those kinds of things.

3:49:00 PM

SENATOR STOLTZE asked him to describe areas of the CFEC's actions that are allocative, either directly or indirectly.

MR. BROWN replied that the CFEC doesn't allocate. However, there is talk about buybacks in various fisheries, but that requires action from the Board of Fisheries. When the affected fishermen speak to the commission, it's to help figure out a way to help retire some of the permits in a fishery. If a fishery has been initially created in a manner that doesn't distinguish between one geographical area and another, it might be very hard to do a buyback. So, that would be an example of an indirect contribution to the allocation process.

Also, by determining which individuals get a permit and are going to be legally able to harvest the resource might be viewed as allocative. That process is structured to give permits to the people who can prove they have been catching more fish. The end effect is rewarding efficiency. They are less likely to give a permit to a fisherman who is not very good at catching fish than the other way around, and that creates more pressure on the resource. They are not in the same role as the Board of Fisheries, working with managers from the Division of Commercial Fisheries involved in deciding when something is open and when it isn't.

SENATOR STOLTZE said another external review signed by ADF&G Commissioner Cotten refers to 68 fisheries and asked for some examples.

MR. BROWN replied that each fishery is a geographic area and a gear type and a species. Each one has a code: S03T refers to each of those three aspects that constitutes a fishery.

SENATOR STOLTZE asked if some of those had been established by the legislature.

MR. BROWN replied that the initial limitation of salmon fisheries was a legislative command. As time has gone on petitions from the fishermen initiated the dialogue or an awareness on the part of commissioners (before his time) that there was too much pressure on a fishery. Decisions to allocate some species have been taken away from the Alaska Board of Fisheries, such as halibut, by the federal government. Instead of a limited entry system, there is an interim use permit, but the allocation is or "quota" is determined by federal managers.

SENATOR STOLTZE said the dive fishery was muscled through the legislature by former Representative Bill Williams and asked how the CFEC views the role of the legislature.

MR. BROWN replied that he had not been around at the time when the CFEC invited the legislature to step in and do anything. But the commission had asked the legislature to extend an existing program (the weathervane scallop fishery), which was unsuccessful. He advised that it would be very difficult for the legislature to become a "super Board of Fisheries" and make the vast majority of allocative decisions, because it would take all their time. It would make it difficult to operate as a legislature and undermine the work the Board of Fisheries does. He didn't know when the legislature should step in and make those decisions, but as infrequently as possible in hopes that there is an allocative process through the BOF that is working. If it's not working, that may invite coming in and making those decisions.

SENATOR STOLTZE said he was surprised to hear about an established commercial Hooligan fishery authorization under limited entry on the Susitna River. It's a family personal use type fishery until the first guy shows up with a pretty big operation.

[3:56:16 PM](#)

MR. BROWN said all three commissioners care very much about what is happening all over Alaska. His observation that the existence of a commercial fishery, even if it isn't open from year to

year, can still have an effect on other users. Another good example far away from Mat-Su is on the Kuskokwim River that still has some theoretical Chinook commercial fisheries and the near total lack of Chinook harvest opportunities for subsistence users up river.

The Kuskokwim Subsistence Salmon Panel is meeting now and trying to come up with ways to solve this problem, but even the existence of a commercial fishery at some point previous in time changes the nature of the fishery. Once people have used commercial gear and had a commercial mind-set going, it kind of amps everything up. That must be taken into account in any fishing policy. It does matter.

SENATOR MICCICHE asked if he had participated in limiting any fisheries.

MR. BROWN answered no, but the commission is in the process of closing out the adjudication in some fisheries.

SENATOR MICCICHE asked if he had support from the commercial industry.

[3:59:05 PM](#)

MR. BROWN replied that he was very grateful for the support of the United Fishermen of Alaska (UFA) when he was initially appointed. But since his reappointment was announced last Wednesday he had not had a chance to meet with UFA and hoped they would support him again.

SENATOR MICCICHE said he had done a good job in the last four years and asked his experience before being appointed to the CFEC.

MR. BROWN replied that he met the qualifications and had a diverse array of legal experience. He was a legislative aide for many years before going to law school and clerked for a Superior Court judge. He was an administrative law judge for Department of Revenue (DOR) appeal hearings that were all Child Support Services Enforcement (CSSED) appeals. Many of the people involved made money from fishing and he had to look at some of that information in trying to determine whether or not child support amounts calculated by CSSED staff were appropriate. He was also legislative liaison for a state department. When he first worked as a lawyer, he did mostly personal injury tort casework, but the next firm did significant amount of work

representing applicants, although none in the cases he has looked at.

MR. BROWN said in the course of working there for three years he worked with other attorneys and was aware of how private advocates can really increase the likelihood that one will be successful in applying for a permit or appealing the denial of a permit. That made him appreciate the need to look at unrepresented applicants or those who were unrepresented earlier in the application process as fairly as possible before they were represented by council.

MR. BROWN said he hoped all of that history constitutes a diverse array of life and legal experience as an Alaskan attorney and that he had also learned a lot in the last four years serving on the commission.

SENATOR MICCICHE said some of the fisheries that are commercial fisheries today, as populations and demands change, may not remain commercial fisheries in the future and some commercial fisheries are likely to occur that people don't know about yet today and asked the commission's role in future fisheries.

[4:03:12 PM](#)

MR. BROWN explained that the Limited Entry Act was written just looking forward and didn't envision the need to revisit the limitations. Going forward, pressure on existing fisheries, changes in ecological and climate conditions and more people in need of more economic opportunities will likely create a petition that will suggest limiting entry to a fishery. In addition to that, they will perhaps be called upon to decide if a single fishery needs to be subdivided.

Having a commercial fishery on the books that hasn't been open in so long that no one has had to pay a renewal fee in 10 years could likely be unwise. The commission could play a little more pro-active role in making sure that the structure doesn't make any it worse for anyone else or harder for the BOF to make those allocation decisions.

SENATOR WIELECHOWSKI said he voted for Mr. Brown four years ago and shared the chair's concerns about the size of the CFEC organization now. According to the ADF&G review, it has 28 full time employees and 4 part time employees, for a total of 32 PCNs. Probably that number was merited in the past, but Commissioner Cotten's February 4 memo had a "pretty scathing review" of the commission. Permit applications and transfers

peaked in 1988 at 105 permit applications and 42 permit transfers. In 2013, there were 3 applications and only 13 permit transfers. In 2012, they had 3 permit applications and 9 permit transfers; in 2011 there were 5 permit applications and 24 permit transfers. So, the workload seems to be decreasing significantly. In each of the last two years the commissioners had adjudicated only three permit applications and the area of concern is the adjudications backlog.

[4:07:06 PM](#)

SENATOR WIELECHOWSKI highlighted two short paragraphs from Commissioner Cotten's February 4 memo:

However, now nine years later the reasons for these 15 year delays are no longer valid. The commissioners now issue only a handful of permit applications each year. The commission normally strives to complete administrative review of emergency and permanent transfers in the same calendar year when the transfer takes place. However, recently the commission allowed a backlog of reviews to accumulate and did not complete the final review of cases from 2012 and 2013 until late in calendar year 2014. This seriously reduced level of production came at a time when the commission and their immediate support staff consisted of up to 5 attorneys, an operations manager, an administrative clerk and two executive secretaries, one temporary.

Equally important is that the commission's diminished performance occurs when the agency is only minimally involved in other tasks. The commission has neither limited a commercial fishery in 10 years nor developed any optimum numbers of permits for limited fisheries, another important statutory duty.

SENATOR WIELECHOWSKI said the memo offered some potential alternatives, one of which was keeping the status quo, but another was significantly altering the structure of the commission and integrating a lot of its functions into ADF&G. He didn't know the right answer, but it appears that changes need to be made.

MR. BROWN said he had read the review that was initiated under a previous administration with the prior commissioner of ADF&G. It was referred to as an internal review. The commission did not think that it would have a chance to see some of the conclusions

drawn by the investigator, Mr. Lawson, and respond to them to make sure they didn't contain factual inaccuracies before it was released. The report was published on the ADF&G website last Wednesday without prior notice to him. That was an unfortunate surprise and he didn't think Commissioner Cotten had done it deliberately.

He said they are preparing a written response, which he hoped would be put on the department's website. Some of the assertions were probably misleading people to the wrong conclusion. Once the wheat is separated from the chaff, there will be a smaller universe of efficiencies to discuss. Certainly, the adjudications backlog is a valid point to raise, but after an initial interview with the investigator he didn't have any follow up. Mr. Brown said he was involved in the weathervane scallop fishery and doing other activities at that time. The cases that remain are the thorniest and hardest in which an adverse decision could have a ripple effect possibly leading to undoing prior limitations, creating a vast new workload - the last thing anybody wants!

In summary, Mr. Brown said, they will come up with a response to the specific contents of that report and additionally, are continuing to work with the legislative auditors who will have a preliminary audit. Under statute the commission has to be given an opportunity to respond. When all this is done, there will be a wealth of information about how best to go forward. He firmly believed that there needs to be some independence in the decision capacity, but maybe somewhat less staff involved in that process.

[4:12:29 PM](#)

SENATOR MICCICHE asked if he saw capacity for improvement in cost reduction going forward.

MR. BROWN answered yes; once they get a clearer picture of the closing down process of the not fully adjudicated fisheries. That might create opportunities for a new staffing model to handle a new limitation process. But he cautioned that it should be a slow and rational approach, because it could lead to adverse outcomes that lead to costly litigation that goes on and on. Some key reversals could upset the entire apple cart.

CHAIR GIESSEL thanked Mr. Brown and welcomed Mr. Rupright, another CFEC appointee.

[4:14:12 PM](#)

VERNE RUPRIGHT, nominee to the CFEC, Wasilla, Alaska, said he was born in Massachusetts and went to school there. He came to Alaska in 1972 as a young GI and passed through to serve in the Viet Nam War. While in Alaska, he worked on the TAPS and for the Department of Military and Veterans Affairs. He became a commissioned officer in 1978 and worked full-time until 1981 when he went back to the University of Alaska Anchorage (UAA) and finished his Bachelor of Arts Degree in Criminal Justice.

He worked as a corrections officer and institutional probation and parole officer for the Department of Corrections for a number of years, but he'd always had a lifetime dream to become an attorney. So, he went back into the Army, and then attended Clayton University School of Law from 1989-1992. He worked for a law firm for six years and did a three-month stint as an investigator for the Human Rights Commission. He elected to open up his own law practice in Wasilla until 2008 and then ran for the Office of Mayor of Wasilla and did six years as mayor and manager. In October 2014, he took a hiatus and then went to work for a group of medical practices as in-house counsel and helped them organize as they expanded. He submitted a letter of intent to the Office of the Governor, because he likes serving in government and there is a lot of need for some good management in it. He was called upon to take this position and accepted.

[4:17:22 PM](#)

SENATOR MICCICHE asked if the United Fishermen of Alaska endorses him.

MR. RUPRIGHT answered that he had not received their endorsement to the best of his knowledge.

SENATOR MICCICHE said it sounds like he has experience similar to Mr. Brown's and asked how his life's experience tie in with the work of the commission.

MR. RUPRIGHT replied that he didn't have any interest in commercial fishing and doesn't hold a permit. He related his 1980s mariculture experience in Kachemak Bay trying to develop a clam fishery. As a teenager he was raised between the fishing ports of Gloucester and Medford on the East Coast. So, he is very familiar with lobster fishing.

In Alaska he has known a lot of commercial fishermen and knows that protecting this resource is very important. A renewable resource such as the fisheries in Cook Inlet was at critical mass in 1969/70 and could have ceased to exist if something

wasn't done to ensure that it survived and remained economically viable. It is an over \$1 billion/year industry employing 74,000 people directly and all the collateral people, fuel, gear, and such.

From the law perspective Mr. Rupright said he did contract law, personal injury work, administrative law and a lot of criminal litigation. He has argued before the State Court of Appeals, the Supreme Court, Federal District Court, 9th Circuit Court and one case before the United States Supreme Court in 2002.

He said it took nine years to get that one case to the Supreme Court, so he is very familiar with the need for reasoned decisions. The commission is at the point that it should be able to come up with quicker more reasoned decisions as administrative law judges (ALJ) and move cases forward without triggering something from the State Supreme Court remanding it back and reopening an old fishery along with all of its permits. That is not cost effective and it's just not smart.

SENATOR MICCICHE said they were mayors together and he had known Mr. Rupright for a long time. He asked if he had looked at the CFEC operations and recognized some opportunities for improvement.

MR. RUPRIGHT replied that he had read the Lawson report a couple of times, but was careful in looking at how it was shaded. Having lived through the collapse of Alaska's economy in the 1980s, he didn't want to see Alaska go back there. Consolidating and streamlining the commission will take some time to do properly so that they don't make a costly error for the State of Alaska.

[4:23:40 PM](#)

SENATOR MICCICHE said that changes are painful to a lot of people on every side and asked how he felt he was equipped to face a statewide theatre in executing some of those changes.

MR. RUPRIGHT responded that those in elected office get used to the slings and arrows of not making everybody happy. In negotiating compromises, everyone pushes away from the table a little hungry, but the job gets done.

SENATOR STOLTZE remarked that the general authority in the natural resource section of the constitution says the legislature shall provide for the utilization, development and conservation of all natural resources belonging to the state,

including land and waters for the maximum benefit of the people. It has no reference to the Board of Fisheries. He asked what led Mr. Rupright from Wasilla to this particular appointment.

MR. RUPRIGHT answered that he put in his letter of intent to the current administration thinking that his background in law, military and corrections would be useful to the state. He received a call asking him to take this position and he accepted. Fisheries is a major issue in Cook Inlet.

As for the authority of the legislature, he is familiar with the State Constitution and Article 8, sections 15, 16 and 17 that drive sustainability and the rights of the people. He has become familiar with Title 16, Chapter 43.

SENATOR STOLTZE asked who his constituency is when he sits on the CFEC.

MR. RUPRIGHT answered the CFEC is about the commercial fisheries. So, the first constituent he has to look at is the sustainability and viability of the fisheries in the state. So, the constituents are rather broad, everybody likes to eat fish and seafood.

SENATOR STOLTZE said that Mr. Rupright acquitted himself very well and he will vote for him.

[4:30:53 PM](#)

CHAIR GIESSEL opened public comment; finding none, she closed public testimony.

Confirmation Hearing: Alaska Oil and Gas Conservation Commission

[4:33:24 PM](#)

CHAIR GIESSEL said the Alaska Oil and Gas Conservation Commission (AOGCC) is in the Department of Administration and requires legislative confirmation. The term of office is six years and there are three members appointed by the governor. One member shall be a petroleum engineer, who holds a certificate of registration as an engineer with a degree in petroleum engineering. That seat is filled currently. The second member is a geologist who holds a certificate as a professional geologist and has a degree in geology. That seat is also filled. The open seat is described as one member who shall have training or experience that gives a person a fundamental understanding of the oil and gas industry in the state.

The function of the AOGCC is to regulate oil and gas drilling, development and production, reservoir depletion and metering operations, to prohibit physical waste of hydrocarbons, protect correlative rights of mineral interest owners and assure maximum ultimate recovery of hydrocarbon resources, to administer Alaska's class 2 underground injection control program and determine well categories under the Federal Natural Gas Policy Act of 1978. The salary for this position is \$137,000 a year - the chair makes slightly more at \$142,000 a year (the chair is already designated) - and becomes a member of the Public Employees Retirement System (PERS).

She welcomed Mr. Gallagher to elaborate on his resume'.

MICHAEL GALLAGHER, nominee for the Alaska Oil and Gas Conservation Commission AOGCC, said the reason he is interested in this position is to give back to the state. He knows the importance of this commission and felt that he could contribute his knowledge and experience in the industry. If confirmed, he looked forward to continuing to protect the public's interest in exploration and development of Alaska's valuable oil, gas, geothermal resources through the application of practices designed to ensure greater ultimate recovery and the protection of health, safety, fresh ground water and the rights of all owners to recover their share of the resource. He read a statement relating how Alaska had given much to him and his family and how this is a chance to give back to the state.

MR. GALLAGHER said he has over 38 years of experience in the oil and gas, civil and vertical construction industries. He has spent over 19 years with the Laborers International Union of North America, Local 341, as a business agent, vice president, president and business manager. He had negotiated bargaining agreements with other employers and managed the day-to-day business operation of the local union. One of the duties was being trustee of a \$560 million pension plan and \$14 million health and welfare plan. In that position he was involved in many judicial hearings. The Board of Trustees was responsible for conducting appeal hearings for the trust. While hearing the appeals they were to look at the facts and evidence that was presented to them and make a decision based on the facts and evidence, and according to the plan document.

[4:36:57 PM](#)

SENATOR MICCICHE asked if he had specific training or experience in any of the AOGCC areas of petroleum geology, engineering, drilling and well operations and oil and gas law.

MR. GALLAGHER answered no for petroleum geology and engineering, but as a trustee of a pension plan and through other means he has had experience in the judicial process on issues relating to appeals of people that have problems.

SENATOR MICCICHE asked if he had any "down-hole experience."

MR. GALLAGHER answered no.

[4:38:36 PM](#)

SENATOR MICCICHE said this is a very important position. The state revenue and the conservation of the state's oil and gas resources largely depends on the work of this commission and asked how he would specifically tie his life experience to that of the job description of an AOGCC commissioner.

MR. GALLAGHER answered over the last 35-40 years he was involved in way or another with development in Alaska, including oil and gas. He knows how important it is and he is a very pro-development person. He has represented people in the oil and gas industry and felt that after retiring several years ago he wanted to help with more development to make sure that it is done right and safely. He has two wonderful kids and hopefully someday he will have grandkids that he hoped would be able to work in the industry, too.

[4:40:26 PM](#)

SENATOR MICCICHE asked if he had been on a drilling rig during a subsurface safety value test and if he understood the technology around those tests.

MR. GALLAGHER answered no he hadn't, but he has plans to visit a drill rig next week on the Kenai.

SENATOR MICCICHE noted that he had a lot of pipeline construction and maintenance experience, but the AOGCC doesn't have a role in any of those.

MR. GALLAGHER affirmed that statement.

SENATOR WIELECHOWSKI asked how many staff work for the AOGCC.

MR. GALLAGHER answered about 29 total staff: 2 geologist, 6 engineers, 7 field inspectors, several IT people, several data management people and administrative staff. While he had been

there only a short time and had jury duty for some of it and a board meeting, he could tell the AOGCC staff is very efficient.

SENATOR WIELECHOWSKI said Mr. Gallagher is an at-large member of the commission and asked if he felt he could get adequate advice or answers to his questions.

MR. GALLAGHER replied that he felt very confident that the commission had the technical expertise and he could understand and read blueprints very well. He has reviewed and understands development plans and feels comfortable reviewing those, although he has some to learn on the down-hole process. He has always had challenges in his life and has always been very successful in working into very good positions.

[4:44:44 PM](#)

CHAIR GIESSEL asked if he has a college degree.

MR. GALLAGHER answered no.

CHAIR GIESSEL said he signed the commission's decision on January 26 related to a ConocoPhillips matter and asked him to explain how he arrived at that decision and his level of comfort in signing that decision.

MR. GALLAGHER answered that he would have to look at the specific decision she was referring to, but when he first started, he met with the other two commissioners who said they just wanted to "throw him into" reviewing the permits, and he has reviewed quite a few since then. He read the permit and asked questions of the appropriate technical staff. He always asks the engineers if they saw any issues.

CHAIR GIESSEL said a significant amount of confidential information comes before the AOGCC and asked his thoughts on signing confidentiality agreements.

MR. GALLAGHER replied that statutes and regulations provide for confidentiality and he supported that.

CHAIR GIESSEL asked if he would have any reluctance to sign a confidentiality agreement.

MR. GALLAGHER answered no.

SENATOR MICCICHE said he asks questions that are sort of the norm for who they typically put on the boards for the level of

expertise required to do the job well. In this case the norm has been people with decades of direct oil and gas down-hole, custody transfer, safety valve testing experience, and he was a bit concerned in this case with Mr. Gallagher's lack of experience in those areas. The AOGCC is an understaffed and extremely busy organization; they make sure that Alaska's oil and gas reserves are produced as efficiently and safely as possible and even though he may be the quickest learner on the planet, he wasn't sure that it was the right role for training.

MR. GALLAGHER responded that he had been in this industry for quite a few years and definitely qualifies under the statute. He has used the technical staff already and felt "very confident" that he is qualified for the position.

[4:50:16 PM](#)

SENATOR WIELECHOWSKI reminded the committee that former Governor Sarah Palin was appointed to the AOGCC and made chair, and she didn't have any down-hole experience.

CHAIR GIESSEL also pointed out that the descriptor for this seat was changed in 2007 to include training or experience that gives an applicant a fundamental understanding of the oil and gas industry in the state. The purpose of that change was to actually appoint people with that fundamental understanding rather than simply an interest in the industry.

CHAIR GIESSEL opened public comment; finding none, she closed it.

CHAIR GIESSEL concluded saying in accordance with AS 39.05.080, the Resources Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration: Verne Rupright and Ben Brown for the Commercial Fisheries Entry Commission (CFEC) and Michael Gallagher to the Alaska Oil and Gas Conservation Commission (AOGCC). This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

[4:52:32 PM](#)

Finding no further business to come before the committee Chair Giessel adjourned the Senate Resources Committee meeting at 4:53 p.m.