

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 20, 2017

3:29 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Bert Stedman
Senator Shelley Hughes
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Natasha von Imhof

COMMITTEE CALENDAR

CONFIRMATION HEARING

Big Game Commercial Services Board

Henry Tiffany

- CONFIRMATION ADVANCED

SENATE BILL NO. 58

"An Act relating to the Department of Law public advocacy function to participate in matters that come before the Federal Energy Regulatory Commission."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 58

SHORT TITLE: DEPT OF LAW: ADVOCACY BEFORE FERC

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/13/17	(S)	READ THE FIRST TIME - REFERRALS
02/13/17	(S)	RES, JUD, FIN
03/20/17	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

HENRY TIFFANY, representing himself

Ester, Alaska

POSITION STATEMENT: Governor's re-appointee to the Big Game Commercial Services Board.

SAM ROHRER, President
Alaska Professional Hunters Association
Kodiak, Alaska

POSITION STATEMENT: Supported Mr. Tiffany's re-appointment to the Big Game Commercial Services Board.

ED SNIFFEN, Assistant Attorney General
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Presented SB 58.

ACTION NARRATIVE

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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 Stedman, Hughes, Coghill, Meyer, and Chair Giessel.

Confirmation Hearing: Big Game Commercial Services Board

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CHAIR GIESSEL said the first order of business today would be the confirmation hearing for Henry Tiffany to the Big Game Commercial Services Board (BGCB). He was first appointed in 2013 and fills one of the seats on the board for registered guides. She invited him to tell the committee why he wanted to remain on the board.

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HENRY TIFFANY, representing himself, Ester, Alaska, said it is an honor to serve on the Big Game Commercial Services Board and this will be the 29th year he has been a professional guide in Alaska. He is a lifelong Alaskan and guiding has provided him with a way of life that is part of his core; one that he hopes to be able to pass on to his children. Serving on the board is a way to give back to an industry that has been so fulfilling and wonderful to him. Many others preceded him and did an admirable job, and he felt the time was right for him to step in to carry their burdens forward.

MR. TIFFANY said being on the board had been a very enlightening experience; interesting, and educational. Now that he has four years under his belt, he can be of equal or greater benefit to the board, the governor, and the state in helping to regulate this industry.

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SENATOR WIELECHOWSKI joined the committee.

CHAIR GIESSEL asked committee members for questions.

SENATOR COGHILL thanked Mr. Tiffany for being willing to serve and asked how he personally looked at the issue surrounding flying in for sheep.

MR. TIFFANY replied that that issue was out of their board's purview and was the domain of the Board of Game. Personally, as a hunter and lifelong Alaskan outdoorsman, he had witnessed many instances of airplanes being improperly used by both residents and guides on enough of a basis that it became very frustrating during the sheep season to have aircraft buzzing both him and the sheep. He prefers not having anyone tell him how to run his business and he tries to not tell others how to run their business, but there are certain ethical sportsman-like rules that are considered the cornerstones of sport hunting. One of them is that aircraft should not be used to locate specific animals and harass them. He has witnessed this happening in the Brooks Range over the years. So, when proposal 207 came before the Board of Game he was in full support of it.

MR. TIFFANY said he is not anti-aircraft; they are a valuable tool in his operation. It's only when they are misused that problems come up, and unfortunately a small percentage of the population sometimes chooses to misuse that tool and other tools, as well. Based on his observation in the field since it became law, airplane activity in the areas he hunts has significantly decreased. Former chair of the Big Game Commercial Services Board, Paul Johnson, gave him what he called the 85/15 rule, which is whatever the rule, law, or regulations is, 85 percent of the people will try to adhere to it even if they don't really like it, and 15 percent of the population will disregard or disobey that same regulation. So, he thought proposal 207 was serving its purpose well. It does not appear to have decreased the amount of success hunters have experienced and has created better hunting experiences for those who are on the ground.

SENATOR COGHILL said most of them heard the debate after the fact and it's nice to get his perspective. Does he have ideas the board could do to make it more transparent or credible for transporters?

MR. TIFFANY answered that is a big subject that he would try to address succinctly. In Alaska, transporters are licensed through the Division of Occupational Licensing and air taxis are certificated through the Federal Aviation Administration (FAA). There is a clear distinction in regulation between what a licensed transporter in the state of Alaska can do versus an air taxi. Some of the benefits a transporter have is they can advertise hunter services however they choose, they can advise hunters where they might want to go, and they can charge a different fare for hunting services versus sightseeing.

An air taxi is like a taxi cab. You tell them where you want to go; it doesn't matter and they charge a flat amount. It doesn't matter if you are sightseeing or hunting moose. The problem is that many air taxis may not understand the distinction between themselves and transporters, and they advertise and offer suggestions of where to go and charge different prices. So, that is an understandable conflict. The transporters, because they are licensed through the Division of Occupational Licensing and regulated by the Big Game Commercial Services Board, are held to more regulations and their licenses are more expensive.

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MR. TIFFANY supposed they could require anyone in the state that flies commercially to become a transporter, but that is much easier said than done. They could also just eliminate the transporter license category and everyone becomes an air taxi, but that also has some negative effects. So, they are trying to begin to monitor air taxis and make sure they are complying with what they can and cannot do.

The board has been developing ways to have transporters pay more for their licenses and the privileges it brings. But with that they should get something in return; they do, but it's abused by some air taxis.

MR. TIFFANY said he wants the board to make good decisions about the best path forward rather than make quick decisions.

CHAIR GIESSEL opened public comment.

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SAM ROHRER, President, Alaska Professional Hunters Association, Kodiak, Alaska, supported Mr. Tiffany's re-appointment to the BGCSB. Mr. Tiffany has done a great job as a board member these last four years, he said. Mr. Tiffany is well respected in the guide industry and is committed to the board process. He is a strong advocate for fair chase hunting and for ethical business practices. In addition to this, Mr. Tiffany is committed to seeing the licensing program operate in the black by keeping a watchful eye on the division's spending and investigations, and when necessary, increase license fees like last year.

CHAIR GIESSEL, finding no further comments, closed public testimony, and finding no further questions from the committee, said in accordance with AS 39.05.080, the Resources Committee reviewed the following and recommends the appointment be forwarded to a joint session for consideration: Big Game Commercial Services Board: Mr. Henry Tiffany, IV, Ester, Alaska. This does not reflect an intent by any of the members to vote for or against the confirmation of the individual during any further sessions.

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At ease

SB 58-DEPT OF LAW: ADVOCACY BEFORE FERC

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CHAIR GIESSEL called the meeting back to order and announced consideration of SB 58. She said this bill was sponsored by the Rules Committee at the request of the governor, with the Department of Law (DOL) as the bill manager. She said the DOL has its attorneys representing the interests of the consumers, that being the Alaska public, in proceedings before both the Regulatory Commission of Alaska (RCA) and the Federal Energy Regulatory Commissioner (FERC). How that representation is paid for and will continue to be paid in the face of lower general fund amounts is the subject of this bill. She welcomed Mr. Ed Sniffen.

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ED SNIFFEN, Assistant Attorney General, Department of Law (DOL), presented SB 58. As background, he said all public utilities in Alaska and pipelines that operate in Alaska are regulated by the RCA; they regulate their rates, terms of service, and a host of other things. To pay for that regulation, the legislature has established a regulatory cost charge that is billed to the utilities and the pipelines, the entities that benefit from the

regulation. It is then generally passed on to customers. That money pays for the staff of the RCA, all their analysts, and administrative functions of regulating the utilities and the pipelines.

The Department of Law has a role in that process. It appears in matters before the RCA to protect the public's interests. For example, they represent the ordinary consumer to make sure the rates are just and reasonable when Enstar wants to raise its bill. The department's efforts are also paid for through that same regulatory cost charge.

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MR. SNIFFEN said to understand the impact of this bill it is important to understand what the regulatory cost charge does, which is the subject of his presentation.

What is the regulatory cost charge (RCC)?

The RCC is a fee assessed on public utilities and pipelines that are regulated by the Regulatory Commission of Alaska (RCA). It is created by AS 42.05.254 and AS 42.06.286.

Who Pays RCCs?

Utilities and pipelines that are regulated by the RCA, including over 125 public utilities and about 20 common carrier pipelines with in-state deliveries. These utilities and pipelines may pass the charge onto customers that benefit from RCA regulation. Each year, the RCA assesses RCCs to utilities and pipelines based on the amount of work required for each industry sector. For example, if they are spending most of their time on electric cases one year, the electric utilities may pay a little more. It is based on where their efforts are being focused.

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What does the RCC pay for?

The money collected in the RCC provides funding for the Regulatory Commission of Alaska (RCA), which is responsible for the economic regulation of public utilities and intrastate common carrier pipelines in Alaska, and the Regulatory Affairs and Public Advocacy (RAPA) section in the Department of Law, which is

charged with advocating for the public interest in matters related to the economic regulation of public utilities and pipelines.

The total RCC is capped by the legislature at 0.87 percent of the adjusted gross revenue (derived from operations in Alaska) of the regulated utilities and pipelines. That is split between the RCA and the DOL; 0.7 percent of the adjusted gross revenues are used to pay the RCA's budget and 0.17 percent is what the DOL gets.

The Regulatory Affairs and Public Advocacy's (RAPA) section of the DOL budget for 2017 was \$2,333,700. The cap is \$2,374,390; so they are pretty close to the cap. They are not asking to grow the cap, but the slice of the pie that is spent on pipelines right now is about 7 percent (\$162,591) of the total pie. SB 58 will allow them to just increase the size of the slice of pie. So, if they are spending more time doing pipeline stuff, they want the authority to be able to charge to matters that are coming before the FERC, which authority they do not have right now.

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What would SB 58 change?

This bill does not change the .17 percent RCC cap. It doesn't create a new authority for the DOL. It just allows some costs incurred by the department in matters before FERC (TAPS pipeline tariffs) in the pipeline to be charged to the RCC.

The actual dollar impact to the different shippers:

If they wanted to burden the pipelines with another \$100,000 of RCC costs, based on most recent information that would increase the pipeline RCC surcharge by about .041 percent (\$4.10 per \$10,000). Not huge. If that slice were increased by \$200,000 it would be \$8.20.

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Why now?

There are some suspicions the bill trying to do something other than what they intend it to do. But for over 30 years, outside counsel has represented the state on FERC pipeline matters. That has been an

incredibly expensive contract. To reduce costs, DOL is developing the necessary expertise and bringing more of this work in-house. As part of doing that they found this mechanism to offset some of those costs, because it's the pipelines that are benefiting from their work.

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This won't impact AKLNG, Mr. Sniffen said. That's an exclusively FERC regulated pipeline. There is no joint jurisdiction with RCA. It's a gas pipeline regulated under the Natural Gas Act unlike TAPS which is regulated under the Interstate Commerce Act. This is not related to the gas pipeline at all.

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Is there a check on the RCC spending? The answer is yes.

1. RCCs to fund RAPA cannot exceed the 0.17 percent cap.
2. RAPA's budget is submitted annually to the RCA for review of RAPA's certified costs in a public docket where any interested party can comment.

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SENATOR MEYER asked how much unrestricted general funds (UGF) is spent by DOL annually for FERC work.

MR. SNIFFEN replied outside council has been paid \$90 million in 30 years for FERK work on TAPS tariff issues. Some years are a lot higher when litigation is going on. This year an in-house assistant attorney general is focused on doing this work but still relying a little bit on outside counsel (their historical knowledge is not easily replaced) and they might spend \$700,000.

SENATOR MEYER asked if this bill passes will it cause a reduction in UGF.

MR. SNIFFEN said yes, but it would be a small one.

SENATOR MEYER said he didn't see that reflected in the fiscal note.

SENATOR MEYER asked how much the DOL currently receives in RCC for RCA work.

MR. SNIFFEN answered their budget for 2017 was \$2,333,700.

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CHAIR GIESSEL asked if the Department of Law has the expertise to completely take over this kind of oversight.

MR. SNIFFEN answered no, but they are getting closer and big chunks of that work has already been taken over in-house. FERC work is very specialized and the department hasn't done it for 30 years. When the state had money, it wasn't an issue. Spending has been reduced by hundreds of thousands of dollars already this budget year. He added that FERC matters happen in Washington, D.C. and outside counsel will probably still be retained an advisory role.

CHAIR GIESSEL asked if this bill would simply allow the department to do that in a more robust way.

MR. SNIFFEN answered yes; it gives them more flexibility with using their budget.

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SENATOR STEDMAN asked if a previous administration terminated a long standing relationship with FERC attorneys the state used back in the early Palin days. Didn't they shift gears to a different firm?

MR. SNIFFEN said he wasn't aware of any shift. The department has used different firms for FERC work: Morrison Forrester, which they currently contract with, and Greenberg Traurig, which is working on other projects for the state.

SENATOR STEDMAN recalled the later company was the one he was thinking of and asked if he knew Bob Loeffler.

MR. SNIFFEN answered yes; Bob Loeffler is partner with Morrison Forrester, who recently retired.

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SENATOR WIELECHOWSKI asked what percent of the costs incurred for this work comes from the general fund (GF) and what percent is incurred by the people who are being regulated.

MR. SNIFFEN answered right now they are spending at least 90 percent GF money for FERC work, and to the extent they have direct RCA proceedings that involve a FERC matter they can also bill to RCCs. Their statute only allows them to recover money for work before the RCA for the FERC.

SENATOR WIELECHOWSKI asked how much that costs.

MR. SNIFFEN guessed about \$500,000 - \$700,000 year.

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SENATOR WIELECHOWSKI asked if they would have to adjust the bill to get the companies to repay 100 percent of the costs and how much has been recovered over the years on these regulatory matters.

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MR. SNIFFEN answered they had recovered over \$230 million in the last several years in direct deposits to the Constitutional Budget Reserve (CBR) and the General Fund (GF) from work on pipeline matters involving TransAlaska Pipeline System (TAPS) tariff rates.

To his first question: what it would take to cover that gap in completely funding all their work. They gave it some thought and have to grow the statutory .17 percent statutory cap to .23 percent. That would provide an additional \$700,000 and pay in an average year for all their FERC work.

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SENATOR MEYER asked if the statutory formula would have to be changed from .17 percent to .23 percent.

MR. SNIFFEN answered yes; but just in rough terms. If the state wanted to recover an additional \$700,000 - \$750,000 through this mechanism that cap would have to increase by about .06 percent.

CHAIR GIESSEL asked why that isn't proposed.

MR. SNIFFEN said they didn't want to be greedy, and the department is still gaining more experience before adjusting billing.

CHAIR GIESSEL opened public testimony. Seeing none, closed public testimony.

CHAIR GIESSEL said SB 58 would be held in committee.

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CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 4:07 p.m.