

SB

58

<TARGET><BILL>SB 58</BILL><SUBJECT>SB
58</SUBJECT><COMM>SRES30</COMM></TARGET>

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Governor Bill Walker
STATE OF ALASKA

February 10, 2017

The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol Room 111
Juneau, AK 99801-1182

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the function of public advocacy for regulatory affairs established in the Department of Law and the Attorney General's authority to participate as a party in proceedings before the Federal Energy Regulatory Commission (FERC).

Alaska Statute 44.23.020(c) requires the Attorney General to "participate as a party in matters that come before the Regulatory Commission of Alaska when the Attorney General determines that participation is in the public interest." All costs associated with the Attorney General's participation in these matters are paid by a regulatory cost charge (RCC). The RCC is a charge collected by utility companies and pipeline carriers from customers and is used to pay for the administrative costs associated with regulating all utilities and pipeline carriers in Alaska. The RCC is authorized by AS 42.05.254 (utility RCC) and AS 42.06.286 (pipeline RCC). Both of these statutes allow the collection of a RCC to "fund operations of the public advocacy function under . . . AS 44.23.020(e) within the Department of Law." *See* AS 42.05.254(a) and AS 42.06.286(a).

The Attorney General also has responsibilities for FERC pipeline matters, most of which are joint matters before the Regulatory Commission of Alaska (RCA) and the FERC. For example, tariff issues for the Trans Alaska Pipeline System (TAPS) are mostly litigated at the FERC administrative level. Decisions issued by FERC are reviewed and generally adopted by the RCA to the extent intrastate tariffs are affected. Because most of this work is done at the FERC, and is not a matter "before the RCA," the RCC funding mechanism is not available to pay the Attorney General's costs for these matters.

By amending AS 44.23.020(e) to expand the Attorney General's public advocacy function to include FERC matters, the Attorney General will be allowed to include this work in the request for RCC funds. These costs, like all other utility and pipeline regulatory costs that come before the RCA, will then be passed on to the regulated entities.

The Honorable Pete Kelly
Transmittal Regulatory Cost Charge
February 10, 2017
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I urge your prompt and favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Bill Walker".

Bill Walker
Governor

Enclosure

SB 58/HB 120

Amending the Attorney General's public advocacy function to include participation in matters before the Federal Regulatory Energy Commission (FERC)

In 2004 the legislature established a "public advocacy" function within the Department of Law (Department). AS 44.23.020(e). That 2004 statute charges the Attorney General with participating as a party in matters that *come before the Regulatory Commission of Alaska* (RCA) when such participation is in the public interest.¹ To pay for this work, the legislature amended AS 42.05.254 (for utilities) and AS 42.06.286 (for pipelines) to allow costs incurred by the Department to be paid from the Regulatory Cost Charge (RCC).² The RCC is a charge assessed by the RCA on utilities and pipelines to fund administrative regulation and may be passed on to ratepayers and shippers. The total amount of RCCs assessed cannot exceed 0.7 percent of the gross revenue of all regulated utilities and pipelines to fund the RCA and 0.17 percent to fund the Department's public advocacy function.

Effect of this Bill.

This bill would amend AS 44.23.020(e) to add participation in FERC matters (work already done by the Department) to the Department's public advocacy function; thereby allowing a portion of those costs to be covered by RCC funds. This amendment would not increase the total amount of RCC funding available to the Department. That amount is limited in statute and ultimately is set by the legislature. This amendment will, however, allow the Attorney General to include some costs associated with work before FERC when it certifies its costs to the RCA for review.

¹ The RCA is the quasi-judicial body that regulates public utilities and pipelines in the state.

² The public advocacy function was housed within the RCA when the RCA was established in 1999; the function was transferred to the Department of Law in 2003. Both as part of the RCA and as part of the Department, the public advocacy function has always been paid for through the RCC.

The Department of Law's work before FERC primarily consists of advocating for just and reasonable tariff rates for shipping oil on the Trans Alaska Pipeline System (TAPS). TAPS tariff litigation typically occurs in joint proceedings before both the RCA and FERC. But, the foundational work generally takes place before FERC first and is later applied in the RCA proceedings. Thus, participation in the FERC proceedings significantly reduces the workload in the RCA proceedings both for the public advocacy team and for the RCA itself. The state also benefits from the Attorney General's participation in FERC matters because TAPS tariff rates – both intrastate rates set by the RCA and interstate rates set by FERC – have a direct impact on producers developing resources in the state as well as royalty and production tax revenue.

Talking Points:

- The Attorney General is currently authorized to use RCC funds for TAPS intrastate tariff matters before the RCA. If not for the work before FERC, these matters would require extensive proceedings before the RCA. This amendment recognizes that much of that work done for the FERC proceedings benefits the RCA when the same issues are later considered in relation to the intrastate rates.
- By ensuring just and reasonable pipeline tariffs, the Attorney General's advocacy function benefits the state by protecting ratepayers currently shipping oil and gas and by lowering the economic barriers for future resource development by others. The legislature recognized these benefits when it created a RCC mechanism for pipelines in addition to a RCC for utilities.
- There is already general recognition that RCCs should fund the state's participation in regulatory matters before FERC. AS 42.06.140(a)(7) authorizes the RCA to participate in any FERC matters that affect the interests of the state – costs incurred directly by the RCA would be paid from RCCs. Further, AS 42.06.140(a)(10) requires the RCA to provide "all reasonable assistance to the Department of Law" in intervening and participating in FERC proceedings involving a pipeline carrier that affects the interests of the state.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

Civil Division

PO Box 110300
Juneau, AK 99811-0300

March 6, 2017

The Honorable Cathy Giessel, Chair
Senate Resources Standing Committee
Alaska State Capitol
Juneau, AK 99801

Dear Senator Giessel,

The Department of Law requests a committee hearing to be scheduled on Senate Bill 58, "*An Act relating to the Department of Law public advocacy function to participate in matters that come before the Federal Energy Regulatory Commission*" at the Resources Committee's earliest convenience.

If you should need any additional information please contact Cori Mills at 465-2132 or cori.mills@alaska.gov or Susan Pollard at 465-2186 or susan.pollard@alaska.gov.

Thank you in advance for your prompt attention to this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jahna".

Hon. Jahna Lindemuth
Attorney General

Cc: Senate Resources Standing Committee members
Governor's Legislative Office

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	SB 58
Fiscal Note Number:	1
(S) Publish Date:	2/13/2017

Identifier: LAW-CIV-11-28-16
 Title: DEPT OF LAW: ADVOCACY BEFORE FERC
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Law
 Appropriation: Civil Division
 Allocation: Regulatory Affairs Public Advocacy
 OMB Component Number: 2764

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services Division	Date: 11/28/2016 08:43 AM
Approved By: Jahna Lindemuth, Attorney General	Date: 12/07/16
Agency: Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

"This bill will amend 44.23.020(e) to expand the attorney general's public advocacy function to include Alaska matters before the Federal Energy Regulatory Commission (FERC). By including FERC matters within the attorney general's public advocacy function, the attorney general can request that part of this work be included in its request for Regulatory Commission of Alaska (RCA) receipts. These costs, like all other utility and pipeline regulatory costs that come before the RCA, will then be passed on to the regulated entities.

If passed, this bill will have a positive, but limited fiscal impact on the Department of Law. While this bill may allow the Department of Law to have some FERC related costs addressed by RCA receipts, these RCA receipts are limited by AS 42.06.286(a) making general fund appropriations for FERC matters a continuing necessity. In addition, annual general fund appropriations will continue to be needed to fund the state's defense of FERC matters which cannot be funded by RCA receipts under existing law even with this amendment.

SB 58:
REGULATORY COST CHARGE FOR FERC MATTERS

Ed Sniffen, Department of Law
March 20, 2017

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.
- ▶ Those 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.

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.

What does the RCC pay for?

Just and reasonable rates
for utility and pipeline customers.

How Much Is It?

- ▶ Total RCCs cannot exceed 0.87% of the adjusted gross revenue (revenue derived from operations in Alaska) of the regulated utilities and pipelines.
- ▶ Statute allocates that 0.87% between the RCA and RAPA.
 - RCCs funding the RCA cannot exceed 0.70%
 - RCCs funding RAPA cannot exceed 0.17%

RAPA's 2017 Budget

Pipelines =
\$162,591 or 7%



- ▶ 0.17% Statutory Cap = \$2,374,390
- ▶ RAPA's 2017 Budget = \$2,333,700
- ▶ Budget is \$40,690 under the cap

What would SB 58 change?

▶ **This bill DOES NOT:**

- Change the 0.17% RCC cap.
- Create new authority for the Attorney General to participate in matters before FERC.

▶ **This bill will:**

- Allow some costs incurred by the department in matters before FERC (TAPS pipeline tariffs) in the pipeline RCC.

▶ **This bill might:**

- Increase the amount of RCC allocated to pipelines.
- Because the size of the “pie” is not changing, an increase in the pipeline RCC would reduce the RCC paid by utilities.

How would SB 58 impact consumers?

- ▶ Pipelines can pass the RCC onto customers for in-state shipments.
- ▶ This increase would not be significant because the cost is spread across all regulated pipelines and each unit of oil or gas shipped.
- ▶ For example, adding \$100,000 to the pipeline RCC for the last two quarters of 2016 would
 - ▶ Increase the pipeline RCC surcharge by about 0.041%.
 - ▶ A \$10,000 billing to a pipeline customer would increase by \$4.10.
- ▶ The \$4.10 surcharge helps ensure the \$10,000 bill is “just and reasonable.”

Why now?

- ▶ For over 30 years, outside counsel has represented the state on FERC pipeline matters.
- ▶ To reduce costs, Law is developing the necessary expertise and bringing more of this work in-house.
- ▶ In the process of budgeting for this increased in-house workload and searching for budget efficiencies, it came to our attention that the RCC may be an appropriate funding source.

Will SB 58 impact AK LNG?

No.

Is there a check on RCC spending?

Yes.

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