

SCOMM

133:11

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House District 7

House of Representatives

Sponsor Statement HB 290

"An Act relating to voting on matters before the Alaska Oil and Gas Conservation Commission and to appeals from decisions of the commission; and providing for an effective date."

HB 290 is proposed to remedy two potential sources of confusion and redundancy in existing statute (AS 31.05). The changes deal with conflicts of interest and with appeals from Commission decisions. In both cases there are newer statutes that better reflect the legislature's judgment and intent in these matters.

For Commission decision appeals to Superior Court, the changes drop outmoded procedural language that was enacted prior to statehood. This clarifies that the uniform appeal procedures of the Judiciary Statute (AS 22.10.020(d)) and the Court Rules apply to appeals from Commission decisions, just as they apply to appeals from most other state agencies. The bill would retain the current requirement in AS 31.05 that, before going to court, a person appealing a Commission decision must give the Commission an opportunity to address the complaints.

As for the issue of Commissioners voting when there is a conflict of interest, HB 290 would delete the one-sentence provision that was passed in 1978 when the Commission was created. Conflicts of interest are addressed in detail in the Executive Branch Ethics Act of 1986 (AS 39.52), and the older provision is now unnecessary and potentially confusing.

These changes to the Alaska Oil and Gas Conservation Commission statute will bring a clearer understanding of the rules that apply by ensuring that later improvements in the law are given full effect. Unfortunately, when the improvements were enacted the earlier statute language was not deleted. HB 290 will make this correction.

HOUSE BILL NO. 290

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FATE

Introduced: 4/30/03

Referred: House Special Committee on Oil and Gas, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to voting on matters before the Alaska Oil and Gas Conservation
2 Commission and to appeals from decisions of the commission; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 31.05.080(b) is repealed and reenacted to read:

6 (b) A party to the rehearing proceeding who is dissatisfied with the disposition
7 of the application for rehearing may appeal from the decision as to the disposition to
8 the superior court. The questions reviewed on appeal are limited to the questions
9 presented to the commission by the application for rehearing.

10 * **Sec. 2.** AS 31.05.025(b), 31.05.080(c), and 31.05.080(d) are repealed.

11 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

Sec. 31.05.080. Rehearings and appeals.

(b) A party to the rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal from it to the superior court in the judicial district in which any property affected by the decision of the commission is located, by filing a petition for the review of the action of the commission within 20 days after the entry of the order following rehearing or after the refusal of rehearing as the case may be. The petition shall state briefly the nature of the proceedings before the commission and shall set out the order or decision of the commission complained of and the grounds of invalidity of it upon which the applicant will rely. However, the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing. Notice of appeal shall be served upon the adverse parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if the evidence was originally offered in the superior court. The commission's action complained of is prima facie valid and the burden is upon the party seeking review to establish the invalidity of the action of the commission. The court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the court, which may include evidence in addition to the transcript of proceedings before the commission, and the applicable law, enter its order either affirming or vacating the order of the commission. Appeals may be taken from the judgment or decision of the superior court in the same manner as provided for appeals from any other final judgment entered by a superior court.

(c) The pendency of proceedings to review does not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the superior court may, upon its own motion or upon proper application of a party, stay or suspend, in whole or in part, operation of the order or decision pending review, on the terms the court considers just and proper and in accordance with the rules of civil procedure. The court, as a condition to staying or suspension of operation of an order or decision, may require that one or more parties secure, in the form and amount as the court considers just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, if the action of the commission is affirmed.

(d) The rules of practice and procedure in civil cases govern the proceedings for review and appeal to the extent they are consistent with this chapter.

Sec. 31.05.025. Conflict of interest.

(a) Members and employees of the commission, except clerical and secretarial staff, are subject to AS 39.50.

(b) A member of the commission is disqualified from voting upon any matter before the commission in which the member has a conflict of interest.

EXPLANATION OF AOGCC VOTING AND APPEALS BILL

The proposed bill remedies two potential sources of confusion and redundancy in the Alaska Oil and Gas Conservation Act, AS 31.05. One concerns how conflicts of interests are dealt with, and the other concerns how appeals from Commission decisions are handled. In both instances, there are other, more recent statutes that better reflect the legislature's judgment and policy on these subjects. The bill would repeal provisions in AS 31.05 that are inconsistent with those more recent statutes.

I. Appeals

First, the bill makes clear that appeals to the superior court from decisions of the Commission are subject to the uniform procedures established in the judiciary statute, AS 22.10.020(d), and the Rules of Appellate Procedure, rather than the outmoded procedures that were established before statehood for the territorial version of the Commission.

The bill would amend AS 31.05.080(b) and would repeal AS 31.05.080(c) and (d). AS 31.05.080 was enacted in 1955 as part of the original Alaska Oil and Gas Conservation Act ("Conservation Act") and has never been substantively changed since that time. Existing AS 31.05.080(b) details how appeals of the agency's decisions are to be handled, including the taking of evidence in court in addition to evidence that was introduced before the agency and the determination by the court of both factual and legal issues based upon a preponderance of the evidence.

Those provisions, however, conflict with and were superseded by the uniform provisions for administrative appeals that the state legislature enacted in what is now AS 22.10.020(d) and the procedures adopted by the Alaska Supreme Court in Part VI of the Rules of Appellate Procedure. AS 22.10.020(d) provides that appeals from agency decisions "shall be on the record

unless the superior court, in its discretion, grants a trial de novo, in whole or in part." Review "on the record," which would involve appropriate deference to the Commission's fact-finding, is particularly suitable for an agency like the Commission that deals with highly technical issues and a majority of whose members are required by the legislature to possess specialized expertise. The Rules of Appellate Procedure also differ from the territorial statute regarding time limits, venue, service of papers, filing requirements, and the need for a cost bond.

Although the published version of the Alaska Statutes contains a revisor's note that "[t]he procedures for appeal set out in this section have been superseded by the rules of court," the continued presence of superseded procedures in AS 31.05.080 causes confusion and has resulted in repeated and time-consuming disputes in court over which procedures to follow. (For example, in one appeal that is currently before the superior court, litigation over this procedural issue interrupted the appeals process for six months, including a petition for review in the Alaska Supreme Court.) It is in the public interest, therefore, to clear up the confusion.

Section 1 of the bill would repeal most of the language of existing AS 31.05.080(b), leaving the subjects addressed by the repealed language to be governed by the applicable provisions of the Rules of Appellate Procedure and AS 22.10.020(d). Two subjects of AS 31.05.080(b) would be retained in the reenacted subsec. (b): a brief statement of the right of an aggrieved party to appeal to superior court, and a requirement to exhaust administrative remedies before resorting to court.

Section 2 of the bill would repeal AS 31.05.080(c) and (d). Existing subsec. (c) deals with stays of Commission decisions during appeal. Because stays are similarly addressed under the Rules of Appellate Procedure, there is no need to maintain a separate statutory provision. Existing subsec. (d) merely provides that appeals from Commission decisions are governed by

the rules of practice and procedure in civil cases to the extent that those rules are consistent with the Conservation Act. Because sec. 1 of the bill would have the effect of clarifying that the court rules apply to such appeals, the language of AS 31.05.080(d) is unnecessary.

II. Voting with a Conflict of Interest

AS 31.05.025(b), which was enacted when the Commission was created in 1978, provides:

A member of the commission is disqualified from voting upon any matter before the commission in which the member has a conflict of interest.

This broad statement is not further defined in the statute, and it would probably be construed in light of the common law on conflicts of interest.

In 1986, however, the legislature comprehensively addressed conflicts of interest and other governmental ethics issues when it enacted the Executive Branch Ethics Act, AS 39.52. In that Act the legislature adopted a number of ethical rules for public officers, who include members of the Alaska Oil and Gas Conservation Commission. Those rules vary to some extent from the common law on conflicts of interest, and in fact the Executive Branch Ethics Act expressly states that it supersedes the common law on conflicts of interest. AS 39.52.910(b).

This creates a confusing situation, in which a general conflict-of-interest rule based on the common law continues to co-exist in the statutes with a comprehensive ethics code that varies from the common law. This situation can make it complicated for Commission members to determine when they might or might not be disqualified from official action and complicated for the Department of Law to provide advice. The bill, therefore, would repeal AS 31.05.025(b), so that Commission members would be able to

look to a single, uniform, and detailed set of ethical guidelines in the form of the Executive Branch Ethics Act.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 290
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title Relating to voting on matters before BRU Oil & Gas Conservation Com.
the AOGCC Component Oil & Gas Conservation Com.
Sponsor Rep. Fate
Requester (H) O&G Component No. 2010

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact on the Department of Administration.

Prepared by: Dan Seamount Phone 907-279-1433
Division: Alaska Oil and Gas Conservation Commission Date/Time 5/7/03 1:57 PM
Approved by: Mike Miller, Commissioner Date 5/7/2003
Agency: Department of Administration