

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 24, 2014

1:36 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Fred Dyson  
Senator Donald Olson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Lesil McGuire, Vice Chair

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 25

Urging the Alaska Department of Law and the United States Department of Justice to file a motion in United States District Court to compel the ExxonMobil Corporation to honor the commitment to pay additional damages for the Exxon Valdez oil spill under the "Reopener for Unknown Injury" provision of the 1991 Agreement and Consent Decree and to collect the full demand for payment the state and federal government submitted to the ExxonMobil Corporation on August 31, 2006; and urging the Exxon Valdez Oil Spill Trustee Council immediately to initiate subsurface lingering oil restoration work.

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 218(JUD)

"An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee; providing that deportation is not a proper factor for referral of a case to a three-judge panel for sentencing for a felony; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 47(JUD)

"An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of certain permits affecting an industrial operation to give security in the amount the court considers proper for

costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 25

SHORT TITLE: EXXON VALDEZ OIL SPILL DAMAGES/REOPENER

SPONSOR(s): SENATOR(s) GARDNER

02/18/14 (S) READ THE FIRST TIME - REFERRALS  
02/18/14 (S) JUD  
03/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 47

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(s): REPRESENTATIVE(s) FEIGE, CHENAULT

01/16/13 (H) PREFILE RELEASED 1/11/13  
01/16/13 (H) READ THE FIRST TIME - REFERRALS  
01/16/13 (H) JUD  
01/30/13 (H) JUD AT 1:00 PM CAPITOL 120  
01/30/13 (H) Heard & Held  
01/30/13 (H) MINUTE(JUD)  
02/10/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/10/14 (H) Heard & Held  
02/10/14 (H) MINUTE(JUD)  
02/14/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/14/14 (H) -- MEETING CANCELED --  
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120  
02/19/14 (H) Moved CSHB 47(JUD) Out of Committee  
02/19/14 (H) MINUTE(JUD)  
02/21/14 (H) JUD RPT CS(JUD) NT 4DP 2NR  
02/21/14 (H) DP: MILLETT, LEDOUX, LYNN, KELLER  
02/21/14 (H) NR: FOSTER, GRUENBERG  
03/12/14 (H) TRANSMITTED TO (S)  
03/12/14 (H) VERSION: CSHB 47(JUD)  
03/14/14 (S) READ THE FIRST TIME - REFERRALS  
03/14/14 (S) JUD  
03/24/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 218

SHORT TITLE: SENTENCING; AGRAVATOR & DEPORTATION STATUS

SPONSOR(s): REPRESENTATIVE(s) CHENAULT, MILLETT, HERRON, LYNN

01/21/14 (H) PREFILE RELEASED 1/10/14

01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	JUD
02/12/14	(H)	JUD AT 1:00 PM CAPITOL 120
02/12/14	(H)	Heard & Held
02/12/14	(H)	MINUTE(JUD)
02/21/14	(H)	JUD AT 1:00 PM CAPITOL 120
02/21/14	(H)	Heard & Held
02/21/14	(H)	MINUTE(JUD)
02/24/14	(H)	JUD AT 1:00 PM CAPITOL 120
02/24/14	(H)	Moved CSHB 218(JUD) Out of Committee
02/24/14	(H)	MINUTE(JUD)
02/26/14	(H)	JUD RPT CS(JUD) NT 4DP 1NR 2AM
02/26/14	(H)	DP: MILLETT, LYNN, PRUITT, KELLER
02/26/14	(H)	NR: FOSTER
02/26/14	(H)	AM: LEDOUX, GRUENBERG
03/14/14	(H)	TRANSMITTED TO (S)
03/14/14	(H)	VERSION: CSHB 218(JUD)
03/14/14	(S)	READ THE FIRST TIME - REFERRALS
03/14/14	(S)	JUD
03/24/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR BERTA GARDNER  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SJR 25.

NOAH HANSON, Staff  
 Senator Berta Gardner  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Introduced SJR 25 on behalf of the sponsor.

TOM WRIGHT, Staff  
 Representative Mike Chenault  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 218 on behalf of the sponsor.

REPRESENTATIVE MIKE CHENAULT  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 218.

RICK SVOBODNY, Deputy Attorney General  
 Criminal Division

Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided supporting information for HB 218.

MARGARET STOCK, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of the original version of HB 218 and opposition to the CS.

QUINLAN STEINER, Director  
Public Defender Agency  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to HB 218.

ANN BLACK, Assistant Attorney General  
Criminal Division  
Special Prosecutions and Appeals  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided supporting information related to HB 218.

REPRESENTATIVE ERIC FEIGE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 47.

LYNN KENT, Deputy Commissioner  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to HB 47.

RUTH HEESE, Assistant Attorney General  
Civil Division  
Environmental Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to HB 47.

#### **ACTION NARRATIVE**

[1:36:17 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Dyson, Wielechowski, Olson, and Chair Coghill.

**SJR 25-EXXON VALDEZ OIL SPILL DAMAGES/REOPENER**

1:37:32 PM

CHAIR COGHILL announced the consideration of SJR 25, a resolution, "Urging the Alaska Department of Law and the United States Department of Justice to file a motion in United States District Court to compel the ExxonMobil Corporation to honor the commitment to pay additional damages for the Exxon Valdez oil spill under the 'Reopener for Unknown Injury' provision of the 1991 Agreement and Consent Decree and to collect the full demand for payment the state and federal government submitted to the ExxonMobil Corporation on August 31, 2006; and urging the Exxon Valdez Oil Spill Trustee Council immediately to initiate subsurface lingering oil restoration work." He said it was the first hearing on the bill.

1:37:50 PM

SENATOR BERTA GARDNER, sponsor of SJR 25, thanked the committee for hearing the bill. She noted it was the 25th anniversary of the Exxon Valdez oil spill. She said her intention is twofold: to gain access to additional resources as agreed by Exxon and the state and to prepare for development of resources going forward with assurance that this development is expected to prevent spills in the future. Alaska has a strong interest in assuring that there are high standards in resource development pertaining to prevention and response. She stated that, thus far with the Exxon Valdez spill, Alaska hasn't done everything it could. She said she wanted to make sure that Alaska does not miss the opportunity to claim what is still needed and has been agreed upon.

1:40:53 PM

NOAH HANSON, Staff, Senator Berta Gardner, introduced SJR 25 on behalf of the sponsor. He read from the following document:

SJR 25 urges the Alaska Department of Law and the US Department of Justice to take court action to collect from Exxon the delinquent \$92 million oil spill "Reopener for Unknown Injury" claim submitted by the Murkowski Administration in 2006.

In the historic 1991 settlement of the State of Alaska and U.S. Government claims against Exxon for the 1989 Exxon Valdez oil spill, Exxon agreed to pay \$900 million in civil damages, \$100 million in criminal restitution, and a \$25 million criminal fine.

Additionally, the Agreement and Consent Decree provided for a "Reopener for Unknown Injury" under which Exxon would pay up to \$100 million in the future for injuries unknown and unanticipated at the time of the settlement.

In 2006, the Murkowski Administration, at the urging of the Alaska Legislature, collaborated with the Bush administration to develop a restoration plan for unknown injuries, and presented a demand for payment to Exxon for \$92 million. Exxon rejected the claim and refused to honor its obligations as set forth in the 1991 agreement.

Meanwhile, state and federal studies confirm that a substantial amount of Exxon Valdez oil remains on beaches in substrates and the oil is nearly as toxic as it was the first few weeks after the spill. Birds, fish and mammals in the region continue to be affected.

Although the State of Alaska has continued to study lingering oil injuries, it has yet to begin work to remediate lingering oil, as promised in 2006, nor has it taken Exxon to court to collect the long-overdue claim.

On June 25<sup>th</sup>, 2010 Exxon unilaterally suspended the tolling agreement among the parties, under which the statute of limitations had been temporarily suspended. This action started the clock ticking, with potentially a 6-year limit. Therefore, we must pursue our claim in court before June 25, 2016, or lose it forever.

After 25 years, it is time to give Alaskans closure on this issue. I look forward to your support on this resolution.

[1:45:58 PM](#)

SENATOR DYSON said he takes exception to the phrase "what we need." He suggested it should be based on what is fair and just.

SENATOR GARDNER said she was indicating that research and work are still needed.

SENATOR DYSON suggested the context is "what we need for remediation, not what the state needs for income."

SENATOR GARDNER agreed. She said a need for income is not what this bill is about.

SENATOR DYSON said overstatements are a bother and ultimately bring credibility into question. He offered that most beaches in Prince William Sound weren't oiled. It's not accurate to give the impression that the entire Sound was oiled. He further opined that Dr. Steiner's report is overstated.

CHAIR COGHILL said he would hold SJR 25 in committee and take public testimony at a subsequent hearing.

### **HB 218-SENTENCING; AGRAVATOR/DEPORTATION STATUS**

[1:49:38 PM](#)

CHAIR COGHILL announced the consideration of HB 218. "An Act relating to the aggravating factor at felony sentencing of multiple prior misdemeanors when a prior misdemeanor involves an assault on a correctional employee; providing that deportation is not a proper factor for referral of a case to a three-judge panel for sentencing for a felony; and providing for an effective date." This was the first hearing of the bill. [CSHB 218(JUD) was before the committee.]

[1:50:05 PM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, introduced HB 218 on behalf of the sponsor. He said the bill started out as a very simple bill. After Representative Chenault had a discussion with a correctional officer in Seward, he was informed there were some statutes that did not cover correctional officers in the same manner as police officers. Legislative Legal found one statute that did not include correctional officers - AS 12.55.155(c)(31), which covers the aggravating factor of multiple misdemeanors. The aggravating factor allows a judge who is sentencing a person for a felony conviction to impose a sentence above the presumptive range if the defendant has five previous convictions for class A misdemeanors.

Generally, convictions for two crimes that are part of a single criminal episode are counted as one prior conviction in sentencing. However, there are exceptions. Current law provides that prior convictions for resisting arrest, a misdemeanor while attempting escape, and assault on a peace officer would each count as a prior conviction even though they were part of the

same criminal episode. The bill extends the same protection to correctional officers.

He explained that Department of Law had a problem extending the same rights to persons in sentencing for a three-judge panel. There were several cases where the defendants requested a three-judge panel, citing deportation as an issue. The judge allowed the defendants to go before a three-judge panel for sentencing and the sentences were lessened because deportation was an issue.

He related that an amendment now provides that the immigration status of a defendant convicted of a felony should be a neutral factor in imposing sentence on the defendant. He noted the decision to initiate or not initiate deportation proceedings is made by the federal government, not the state. He noted a letter in the packets from the office of Immigration Customs Enforcement (ICE) that on page 5 explains how ICE comes to a deportation decision.

He concluded that it is a matter of fairness that a non-citizen be granted different rights than a citizen. Allowing deportation to be used in a sentencing factor creates a certain and exceptional circumstance.

REPRESENTATIVE MIKE CHENAULT, sponsor of HB 218, said he agrees with what the Department of Law has brought forward. No one should have more rights than of a U.S. citizen.

CHAIR COGHILL asked Mr. Svobodny to discuss Sections 3, 4, and 5.

[1:57:09 PM](#)

RICK SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law (DOL), Juneau, Alaska, said Mr. Wright gave a very good explanation of the bill. He said he wanted to make four points. The provisions that deal with immigration are designed to cover neutrality, fairness, public safety, and that immigration/deportation and removal are subject to federal jurisdiction.

He provided an example of how neutrality would apply. A person in Nome who emigrated from Jamaica stabbed a cab driver and the Jamaican got a break that the cab driver wouldn't if the situation were turned. The bill is designed to treat all who come before the courts in an equal way.

SENATOR WIELECHOWSKI said it seems like a violation of equal protection. He asked if somebody could address that.

MR. SVOBODNY deferred to Ms. Black to answer. He addressed the fairness issue. Sentencing laws come from the legislature and set out a list of things to consider in sentencing, such as deterrents. The preparatory language says it's being done to make sentencing fair and equal among all persons. The court is supposed to look at restitution and treating victims with dignity and respect during sentencing. He said immigration status isn't a factor.

He addressed public safety. He used the previous example to make a point that when the three-judge panel considered sentencing, they consider public safety.

He explained that deportation is a fundamental federal issue beyond the control of the state. He noted that President Obama yesterday said there would be fewer deportations, which is a change in the rules. The National Immigration Law Center believes that the President and ICE have extraordinary discretion in deportation matters.

[2:08:27 PM](#)

SENATOR DYSON commented that prosecutors will often plead down a case. His understanding was that the aforementioned person had been in the U.S. for some time and had served in the military with great distinction. He imagined the other side of the story was that the judges thought his military service ought to be a mitigating factor. If that was true, he wondered if the state ought to do more in letting courts decide mitigating circumstances.

MR. SVOGODNY opined that PTSD and FASD make sense as mitigating factors and if the legislature decides to make distinguished service a mitigating factor that is fine, but when a three-judge panel is just guessing, it isn't acceptable.

[2:12:29 PM](#)

MR. WRIGHT highlighted a February 11 memo from Mr. Svobodny to Representative Chenault that wasn't meant to be a legal memo. Some of the testimony in House Judiciary treated it as a legal treatise and it is not.

[2:13:35 PM](#)

MARGARET STOCK, representing herself, Anchorage, Alaska, said she's an attorney who practices in the area of immigration. She

represents deported military veterans and they are not often allowed reentry. Usually, they are deported under a particularly harsh section of the law.

She described Mr. Svobodny's statement that the President is changing the immigration law startling, because it can't be done. She suggested he Google "deport veterans" to understand. She also questioned what a memo from the Department of Law would be if it isn't a legal memo. She cited other inaccuracies in Department of Law's position on this matter.

MS. STOCK stated support for HB 218 as originally introduced, but not with the anti-immigrant amendment that the Department of Law suggested. It will disrupt the neutrality and fairness of the law. It says these people can't go to a three-judge panel because they're foreign born. What this does is create more unfairness in the law. The amendment was designed to treat foreign-born people differently.

She reiterated that there was neutrality before the recent amendment was introduced.

[2:21:14 PM](#)

CHAIR COGHILL thanked Ms. Stock for her work and service to her country.

SENATOR DYSON said he was startled to hear her say a naturalized citizen could lose their citizenship.

MS. STOCK said there are two provisions resulting in loss of citizenship for those who earn their citizenship through military service. One is if five years of honorable military service is not met, a person can be denaturalized and then deported.

SENATOR DYSON said that information was helpful.

MS. STOCK said she would address in writing further errors in the Department of Law's latest memo.

[2:25:23 PM](#)

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration (DOA), discussed the three-judge panel application and unduly harsh consequences, which separates the case from a valid equal protection argument. The Constitution says that community condemnation, restitution, and reformation are the goals of the criminal justice system. When viewed too

narrowly, you run the risk of unfair proceedings. Presumptive sentences are designed to allow departures when appropriate, based upon the full range of collateral consequences.

CHAIR COGHILL mentioned Section 4 and asked how the non-statutory mitigators would apply under the presumptive range.

MR. STEINER explained that "if you plead and prove a non-statutory mitigator, then you would potentially get the referral to the three-judge panel." It would have to be re-proven to the panel and then show that the departure is appropriate. There are three hurdles in getting a departure below the presumptive range.

2:30:29 PM

SENATOR WIELECHOWSKI asked what other states procedures are for mitigating factors.

MR. STEINER said he didn't know; sentencing law is unique - ranges and presumptions are unique.

SENATOR WIELECHOWSKI requested information about the mechanics for getting to a three-judge panel.

MR. STEINER said there are two ways: a non-statutory mitigator and the argument that the sentence is manifestly unjust.

2:32:36 PM

ANN BLACK, Assistant Attorney General, Criminal Division, Special Prosecutions and Appeals, Department of Law, Anchorage, Alaska, said with regard to the position that the bill is injecting bias or lack of neutrality into sentencing, Mr. Svobodny was accurate regarding a person's immigration status, which is valid under U.S. immigration law. It's a federal issue and isn't mentioned in the state constitution discussing what the appropriate factors are when dealing with the administration of justice in Alaska. She said in Alaska, the criminal administration of justice under Article 1, Section 2, is governed by the principles of protecting the public by enforcing community condemnation of the offender, by considering the rights of crime victims, by ensuring restitution from the offender, and reformation of the offender.

She continued to say that this body codified additional factors found in AS 12.55.005 including the seriousness of the defendant's present offense, the defendant's prior criminal record, and likelihood of rehabilitation, the need to confine

the defendant, the circumstances of the offense itself, and the extent to which the defendant harmed or endangered victims or public safety. Also considered are the effects sentencing will impose of deterring the defendant, as well as other members of society, community condemnation in the effort to reaffirm social norms, and restoration of the community and the victim. Nowhere is there any reference to federal policy on any topic, let alone immigration.

She concluded that the bill "gets us back to the foundation of criminal administration in Alaska." By doing that, it advances this body's stated goal in creating a presumptive sentencing scheme, which is to ensure that there is not disparate sentencing. She said Mr. Svobodny noted two cases that are an excellent example of showing how considering a person's immigration status results in disparate sentencing. She used the State vs. Silvera case as an example of an aggravated felon who avoided deportation because he did not receive a presumptive term sentence. It highlights why the state needs to allow the federal system to enforce its own laws.

She maintained that Alaska judges and district attorneys do not have the resources or time to become experts on federal immigration law. The way the law currently stands, Alaska judges are in the position to be making extremely weighty decisions that affect, not only an individual defendant's ability to remain in this country, but also affect public safety and the rights of crime victims. This bill would prevent that from happening.

[2:41:25 PM](#)

MS. BLACK addressed the equal protection issue. She said when the court looks at whether or not a law violates equal protection or due process, the law has to be narrowly tailored to achieve a legitimate purpose. Protecting the public and ensuring victim rights are compelling state purposes. In addition, the court always looks to the class that is being affected by the law. There has been some indication that the class should be those who are subject to harsh consequences - those who are potentially subject to deportation. But, throughout its history, the court of appeals, when assessing whether or not there is an equal protection violation, doesn't look at the specific details of an individual defendant, they look at broader categories. In this instance regarding sentencing law, the courts have already upheld the presumptive sentencing laws and when they did so, they looked to the level

of felony classification as the classification. She used all class A felonies as an example.

[2:45:19 PM](#)

She discussed military personnel who were deported. She said Senator Dyson was correct in pointing out that they were required not to engage in misconduct. She pointed out that honorable service is required to earn U.S. citizenship. The Alaska legislature must ensure that its citizens are protected and that military personnel brought before a court will receive just and equal treatment by the court. She concluded that HB 218 would ensure that that happens.

[2:46:51 PM](#)

CHAIR COGHILL said the argument is well laid out. He listed the questions he would like to explore and stated he would hold HB 218 in committee for further consideration.

#### **HB 47-INJUNCTION SECURITY: INDUSTRIAL OPERATION**

[2:48:12 PM](#)

CHAIR COGHILL announced the consideration of HB 47. "An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of certain permits affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained." He said it was the first hearing of the bill. [CSHB 47(JUD) was before the committee.]

[2:48:31 PM](#)

REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, Juneau, Alaska, introduced HB 47 speaking to the following sponsor statement: [Original punctuations provided.]

Under current law the cost to bring a lawsuit against a legally permitted project is in effect zero. There is very little risk in bringing a suit. All the risk is borne by the defendants. These actions do shutdown projects at significant costs to working Alaskans, businesses and the state treasury. HB 47 seeks to remedy the situation by leveling the playing field. HB 47 parallels the requirements of Alaska Civil Rule 65(c). As written, 65(c) states: "*no restraining order or preliminary injunction shall issue **except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs***"

*and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained".*

HB 47 closely mirrors the language of Alaska Civil Rule 65(c) in order to clarify that the proposed statute would not change the court rule. Judges already have the ability to require security. In most instances, they are not doing so. HB 47 simply requests that part of the court's deliberation process should include payment of wages and benefits for employees & payments to contractors and sub-contractors of the industrial operation that is being shut down. The party asking the court to require security must present evidence of the costs and damages incurred. The court should then consider this as one of the relevant factors when it determines a bond/security amount. The amount of security is totally within the hands of the court.

Language was added in the House Judiciary Committee to further clarify that no such security is required of the state and municipalities and to exclude permitting programs in which DEC or DNR issues permits under a state primacy permitting program that was developed under federal law and approved by a federal agency.

[2:53:15 PM](#)

REPRESENTATIVE FEIGE concluded that this legislation has implications for preserving the interests of companies engaged in resource extraction, as well as for potential revenues that could accrue to the state of Alaska if those projects are not unduly delayed.

SENATOR WIELECHOWSKI directed attention to page 2, lines 8 - 15. He asked why the exemptions are there.

REPRESENTATIVE FEIGE said it was a concern by the DEC commissioner that the previous language could conflict with federal law. From line 9 to line 15 are the exemptions for permits attained under the Clean Water Act and under the Clean Air Act, federal permitting programs the state administers.

SENATOR WIELECHOWSKI asked if omitting the exemptions risks the ability to issue permits for the EPA on those Acts.

REPRESENTATIVE FEIGE said that's a matter of debate and an effort to avoid court fights.

2:55:39 PM

LYNN KENT, Deputy Commissioner, Department of Environmental Conservation (DEC), Anchorage, Alaska, explained that the two provisions were added to make it clear that the state law isn't more restrictive than federal law with regard to access to courts. She added that DEC does not object to the language.

SENATOR WIELECHOWSKI inquired if the federal government allows this kind of security or bond in the attempt to obtain an injunction or a restraining order.

MR. KENT deferred the question to the Department of Law.

2:56:33 PM

RUTH HEESE, Assistant Attorney General, Civil Division, Environmental Section, Department of Law, said the issue is that there not be a concern by the federal approving agencies regarding actions brought by the federal courts with respect to actions brought on permits issued under primacy programs. Exempting the Clean Air and Clean Water and Coal program permits from HB 47 gives assurance to federal agencies that state programs won't be subject to the security requirements.

REPRESENTATIVE FEIGE said federal Rule 65c and state Rule 65c are essentially the same. They both put the responsibility for setting the bond amount on the judge of the particular court.

SENATOR WIELECHOWSKI countered that the bill requires people to post a bond if they are attempting to get a restraining order or an injunction in a state action.

REPRESENTATIVE FEIGE said, "We're not requiring them to put it up in a bond, we're asking the judge to consider.

SENATOR WIELECHOWSKI read page 1, line 9, "unless exempt, the parties seeking restraining order, preliminary injunction, or order vacating or staying the operation of certain permits affecting an industrial operation shall give security." He asked if the "shall" isn't mandatory.

REPRESENTATIVE FEIGE said it's whatever the court considers proper.

SENATOR WIELECHOWSKI maintained that the courts will be wondering how much they should require. He requested the sponsor state the intent and asked whether the court could say zero.

REPRESENTATIVE FEIGE replied that the courts could require nothing.

SENATOR WIELECHOWSKI asked for the circumstances where the courts could say that.

REPRESENTATIVE FEIGE said he would leave it to the judge's discretion.

[2:59:34 PM](#)

CHAIR COGHILL said it's a valid question. He held HB 47 for further consideration and kept public testimony open.

[3:00:08 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.