

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 18, 2015

1:38 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator John Coghill, Vice Chair
Senator Mia Costello
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Peter Micciche

COMMITTEE CALENDAR

CONFIRMATION HEARING

- Attorney General of the State of Alaska
Craig Richards
- CONFIRMATION ADVANCED

SENATE BILL NO. 43

"An Act relating to immunity for a fire department and employees or members of a fire department."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 43

SHORT TITLE: IMMUNITY FOR FIRE DEPT. & MEMBERS

SPONSOR(s): SENATOR(s) COGHILL

02/06/15	(S)	READ THE FIRST TIME - REFERRALS
02/06/15	(S)	CRA, JUD
02/17/15	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/17/15	(S)	Heard & Held
02/17/15	(S)	MINUTE(CRA)
03/05/15	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/05/15	(S)	Moved CSSB 43(CRA) Out of Committee
03/05/15	(S)	MINUTE(CRA)

03/06/15 (S) CRA RPT CS 3DP SAME TITLE
03/06/15 (S) DP: BISHOP, EGAN, MACKINNON
03/16/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/16/15 (S) Scheduled but Not Heard
03/18/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes in version P CS for SB 43.

MITCH FLYNN, Fire Chief
Steese Fire Department
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 43.

CRAIG RICHARDS, Attorney General Designee
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Testified as Attorney General Designee.

ACTION NARRATIVE

[1:38:16 PM](#)

CHAIR LESIL MCGUIRE called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Present at the call to order were Senators Costello, Wielechowski, Coghill, and Chair McGuire.

SB 43-IMMUNITY FOR FIRE DEPT. & MEMBERS

[1:38:40 PM](#)

CHAIR MCGUIRE announced the consideration of SB 43. "An Act relating to immunity for a fire department and employees or members of a fire department."

SENATOR COGHILL, speaking as sponsor, explained that SB 43 addresses immunity for fire departments. In the Interior some volunteer fire departments contract with local governments to provide services and they aren't given the same immunity protection from liability as the employees of fire departments

operated by municipalities. He deferred further explanation to Mr. Shilling.

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SENATOR COGHILL motioned to adopt the proposed committee substitute for SB 43, labeled 29-LS0325\P, as the working document.

[1:41:01 PM](#)

At ease

[1:41:36 PM](#)

CHAIR MCGUIRE reconvened the meeting and announced that without objection, version P is before the committee.

[1:42:00 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, explained that the language on page 1, lines 11-13, clarifies that the immunity does not apply if the legal action taken is based on an act or omission of an employee or member of a fire department in the execution of a duty under contract with a private entity.

MR. SHILLING summarized the intent of the legislation paraphrasing from the following sponsor statement:

Senate Bill 43 extends protections to certain types of fire departments.

Under current law, employees of municipal fire departments receive immunity from liability. However, some fire departments, such as those in Fairbanks, Chugiak, and Girdwood, operate as volunteer-based non-profits that contract with local governments to provide services. These types of fire departments aren't similarly protected in statute (AS 09.65.070(c)).

Liability protections should not be exclusive to employees of fire departments operated by municipalities and should be extended to include all fire departments that have a contractual relationship with local governments.

Senate Bill 43 also extends immunity available to municipal fire departments and to contracted fire departments. While municipal fire departments already have some statutory protections, contract fire

departments have none. Because the current statute does not protect them from liability, these fire departments, local governments, and ultimately taxpayers, are vulnerable.

He reviewed the history of the statute. It was established in 1975 at the request of the Juneau Volunteer Fire Department, and was modeled after a law from Delaware. He noted that Fairbanks, Anchorage, and the firefighters themselves support the legislation.

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SENATOR WIELECHOWSKI asked what the rewrite in Section 1 tries to do.

MR. SHILLING replied the current statute only covers municipally operated fire departments. Section 1 on page 2, lines 2-3, redefines fire department to include fire departments that operate under contract or agreement with a municipality or village.

SENATOR WIELECHOWSKI observed that the repealed and reenacted AS 09.65.070(c) is a lot longer than the current statute.

MR. SHILLING clarified that the changes are to cover contract fire departments and to create an exception to the immunity for intentional misconduct or gross negligence. That language was lifted from the 911 statutes.

SENATOR COGHILL added that these standards are not unusual in these types of circumstances.

MR. SHILLING pointed out that AS 09.65.070(c) provides immunity primarily to staff of a fire department but also to the department itself and subsection (d) provides immunity to the department itself.

CHAIR MCGUIRE asked Mr. Shilling to bring a copy of the existing AS 09.65.070(c) to the next hearing with the proposed substantial changes highlighted.

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MITCH FLYNN, Fire Chief, Steese Volunteer Fire Department, Fairbanks, Alaska, said he works for a nonprofit in Fairbanks to provide fire and EMS services under contract to the Fairbanks North Star Borough. This past year he learned about the lack of immunity protection the fire department has because it is a

contractor. This exposes the fire department to potential litigation and large judgments. He urged the committee to pass the legislation.

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CHAIR MCGUIRE announced she would hold SB 43 in committee for further consideration.

Confirmation Hearing
Attorney General of the State of Alaska

[1:50:57 PM](#)

CHAIR MCGUIRE announced the next order of business would be the confirmation hearing for Craig Richards for Attorney General for the State of Alaska. She asked him to tell the committee about himself and why he wants to assume this position.

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CRAIG RICHARDS, Attorney General Designee, Anchorage, Alaska, told the committee that he grew up in Fairbanks, studied finance at the University of Virginia and law at the Washington and Lee University School of Law. After graduation he clerked for Judge Ralph Beistline, worked in public finance to research whether or not the gas pipeline could be built with tax exempt bonds, was hired by Bill Walker for a short-term job, and subsequently joined the firm. The practice focused on oil and gas tax matters and gas pipeline development and he continued to do public finance work. He noted that he took time off to attend Duke University where he received an MBA, focusing on oil and gas quantitative modeling and oil and gas finance.

ATTORNEY GENERAL RICHARDS related personal information including that his wife teaches English and English as a second language at West High School in Anchorage. They have one child.

Responding to the question about his interest in the job, he said it took him by surprise when Governor Walker offered him the position. After some thought and consultation with his wife, he decided it was a once in a lifetime opportunity to serve Alaskans.

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CHAIR MCGUIRE asked what aspects of the job present the biggest challenges and how the legislature can provide support.

ATTORNEY GENERAL RICHARDS related that the largest challenge for the department is dealing with the budget reductions. The eight

percent reduction for FY2016 is manageable, but the next series of cuts will present be more difficult.

CHAIR MCGUIRE commented that the department will be competing with the private sector looking for expertise, particularly on oil and gas.

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SENATOR COGHILL asked if he expects to retain the current roster of Criminal Division employees, given his lack of criminal experience.

ATTORNEY GENERAL RICHARDS pointed out that his lack of criminal experience wasn't unique among previous attorneys general. He stated support for engaging the Criminal Division because of the rethinking justice initiatives and highlighted that he didn't foresee any dramatic changes other than the impact of budget reductions that will reduce staff by 10 people this year, half of which will be attorneys. He noted that a lot of the reductions can be managed through the department's annual 10 percent turnover, but it will take some thought to resize the Criminal Division without just shrinking out of rural Alaska.

SENATOR COGHILL commented on protecting families and children and asked if he'd had experience with family law.

ATTORNEY GENERAL RICHARDS replied he doesn't have a strong background, but he isn't unfamiliar with that area of law.

SENATOR COGHILL asked him to comment on the issue of working with tribal governments while staying within the bounds of the constitution that says governments are supposed to be boroughs and cities.

ATTORNEY GENERAL RICHARDS said he's had to dive in head first because of pending cases and also because it's an issue of importance to both the tribal communities and law enforcement. He noted that tribal issues have to be taken one-by-one because different bodies of law control the different issues. He noted that one initiative has been to work with DHSS Commissioner Valerie Davidson and local tribes and rural constituencies to figure out how to make it a little easier to place Indian children with Indian families in rural communities in compliance with the Indian Child Welfare Act (ICWA). The Department of Law is also continuing its work on the civil diversion agreements, which will provide tribal communities the ability to have cases diverted from the state criminal justice system to the tribal

justice system for some class B misdemeanors and other cases for first-time and nonviolent offenders.

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SENATOR COGHILL talked about the structural differences and how to blend the rights of the individual as opposed to tribal rights. He encouraged Attorney General Richards to continue to work on this conundrum and to talk to the Alaska Supreme Court about the work it had done.

ATTORNEY GENERAL RICHARDS related that the state constitution is his guiding document and he believes that a lot can be done working with tribes to make justice better in rural Alaska.

CHAIR MCGUIRE highlighted that this administration has demonstrated a willingness to work on tribal issues.

She asked if he'd looked into the Environmental Protection Agency's (EPA) proposed expansion of critical habitat areas.

ATTORNEY GENERAL RICHARDS answered yes; the state recently joined the lawsuit challenging the critical habitat designation of the ringed seal.

CHAIR MCGUIRE highlighted that the Alaska Arctic Policy Commission believes that the EPA will try to use the Endangered Species Act in critical habitat areas to block development in the Chukchi Sea and Beaufort Sea. She also noted that the federal government stated the top two goals of the Arctic Council for the next two years are climate change and marine stewardship. The idea of mapping new marine protected areas has been introduced as part of marine stewardship, all of which is very different than Alaska's goal of economic development for the people of the North. She opined that it will be critically important for the Department of Law to develop a specific expertise in this area because Alaska is hamstrung if it is unable to develop its natural resources.

ATTORNEY GENERAL RICHARDS expressed gratitude that his predecessors built an excellent Endangered Species Act (ESA) team within the department. He noted the successful challenges for the bearded seal and the Polar Bear critical habitat designations and committed to continue such challenges and force the EPA to return to science-based decision making.

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SENATOR COSTELLO asked what he sees as the next largest challenge after the budget.

ATTORNEY GENERAL RICHARDS replied it's the idea of re-envisioning justice in Alaska, particularly up through sentencing. Right now, there is a collective effort to make justice smarter and he is committed to developing a plan to administer justice more cheaply and efficiently without affecting the quality of justice for Alaskans.

SENATOR COSTELLO asked if the administration is willing to make an up-front investment to get to the long-term improvements.

ATTORNEY GENERAL RICHARDS replied he believes there will be support once there is a plan.

SENATOR COSTELLO asked if he believes that Alaska's juvenile justice system is working.

ATTORNEY GENERAL RICHARDS replied he isn't aware of any fundamental failures, but the department intends to look at the issues that have been brought forward.

SENATOR COSTELLO asked how he would characterize his role as attorney general.

ATTORNEY GENERAL RICHARDS stated that the Attorney General for the State of Alaska is not a constitutionally defined position, but the legislature has characterized the role as consistent with that of an attorney general at common law. He represents the heads of almost all the departments and agencies of the state within the executive branch, the Governor's Office, and the people. Ultimately, his final representation is to the public interest and to the interests of the people of Alaska.

SENATOR COSTELLO asked if he is satisfied with the conviction rates of Alaska's district attorneys.

ATTORNEY GENERAL RICHARDS voiced a qualified yes and noted that in the next few months the department will revisit the decision to no longer plea on sentencing. The judiciary, public defenders, and some legislators have complained that that is resulting in more trials and lower conviction rates.

SENATOR COSTELLO asked if he expects any more changes to the regional district attorneys and if he sees those decisions as political or policy driven.

ATTORNEY GENERAL RICHARDS answered that he sees changes as a function of retirement and budget reductions, but every effort will be made to manage the reductions proportionally through urban and rural areas.

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SENATOR COSTELLO noted that he did not have to file an APOC statement and asked if he received proceeds from the sale of Governor Walker's law firm.

ATTORNEY GENERAL RICHARDS clarified that he does have to file an APOC form and the information is disclosed on the form. He explained that when the firm was sold, he received about one-third of the proceeds.

SENATOR COSTELLO asked if he stands by the comment he made in the Valdez Star when he agreed with a previous governor who characterized the state's current oil tax system as crony capitalism.

ATTORNEY GENERAL RICHARDS replied he would stand by his characterization of what said in the article. The sentiment he was expressing is that he didn't feel that Senate Bill 21 struck the right balance between what was good for independents and what was good for the existing legacy producers on the North Slope. He said he continues to have concerns.

SENATOR COSTELLO asked how he would characterize the Point Thomson settlement.

ATTORNEY GENERAL RICHARDS stated that the fundamental gravamen was that the Point Thomson settlement agreement went around the DNR regulatory process and adopted a contractual structure to guide management of the field.

SENATOR COSTELLO asked if he agrees with the governor's characterization that "It was the worst, dirtiest, backroom deal in state history."

ATTORNEY GENERAL RICHARDS replied he didn't know about that, but the deal was done in secret and in a manner that was inconsistent with Alaska law.

SENATOR COSTELLO noted that he had to relinquish the authority to participate in decisions regarding Point Thomson settlement

litigation. She asked if he foresees having to recuse himself on other matters and, if so, who would assume the lead.

ATTORNEY GENERAL RICHARDS answered that he wasn't aware of any issues other than the few items that were in the initial delegation of authority that occurred in late December.

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SENATOR COSTELLO asked if he serves as an advisor to the governor on the direction he's taking on oil and gasline matters.

ATTORNEY GENERAL RICHARDS replied it's dropped to virtually nothing in the last few months.

CHAIR MCGUIRE summarized the conversation they had in her office including that she said the only challenge he'll have is the unusual circumstance that he practiced law with the Governor. She asked him to walk through what will happen in the event there is a conflict with a former client.

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ATTORNEY GENERAL RICHARDS discussed the process he went through when Governor Walker asked him to serve as attorney general. He hired outside counsel to provide legal advice on how to handle the circumstance that he had litigated against the State of Alaska, and that attorney gave him a letter suggesting the potential conflicts. Prior to taking office the DOL ethics attorneys independently looked at his ethical situation, including a fact pattern rundown of all his cases. They recommended that his ethical advisor should be the lieutenant governor rather than the governor and that he delegate his authority to the section head of oil, gas and mining when appropriate. In the event of future conflicts, the DOL ethics attorneys would take the issue to his ethics advisor, Byron Mallott. As a belt and suspenders measure the lieutenant governor received permission to hire outside counsel for any potential conflict issues related to the attorney general or the governor. He noted that the governor also has independent legal counsel to provide advice on potential conflicts his attorney general has.

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SENATOR WIELECHOWSKI highlighted that in the legislature people who work for industries vote on issues and write bills that directly affect their industries. He asked him to discuss the

different standards for the attorney general and the legislature.

ATTORNEY GENERAL RICHARDS responded that he isn't too familiar with the rules for the legislature but he falls under the Rules of Professional Conduct for attorneys and the Executive Branch Ethics Act. His hope is that all officials in Alaska understand their ethical obligations and follow the appropriate rules. He intends to do so and suspects the legislative body does too.

SENATOR WIELECHOWSKI pointed out that legislators regularly note their conflict and then they're forced to vote, whereas the Rules of Professional Conduct prohibit Attorney General Richards from doing that. He couldn't hear a case from Valdez because he represented Valdez.

ATTORNEY GENERAL RICHARDS replied that's usually correct; the test is a substantially related matter.

SENATOR WIELECHOWSKI asked if he had a sense of how previous attorneys general handled conflicts and who some of their clients were.

ATTORNEY GENERAL RICHARDS replied they delegated their authority. He didn't remember their clients other than that John Burns represented one of the utilities from Fairbanks.

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SENATOR WIELECHOWSKI asked how many different plans of development were in place before Point Thomson was finally developed.

ATTORNEY GENERAL RICHARDS recalled it was the 23rd plan of development that resulted in development.

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CHAIR MCGUIRE turned the discussion back to smart justice and asked if he'd had conversations with the PEW Charitable Trusts and MacArthur Foundation and if he intended to accept their offer of free help with data research.

ATTORNEY GENERAL RICHARDS said he hasn't had conversations with PEW, but he believes they require the heads of both houses of the legislative body, the chief justice, and the governor to agree to accept their services. He's had two meetings with the Governor's Office encouraging him to accept that offer and

believes he's leaning in that direction. He noted that no one has come forward with a reason not to accept advice.

SENATOR COGHILL asked him to discuss his participation in the Hillcorp deal.

ATTORNEY GENERAL RICHARDS explained that the Department of Law is representing AIDEA in the Fairbanks Natural Gas (FNG) purchase in an agency client role. In its role as a people's attorney, the Regulatory Affairs & Public Advocacy (RAPA) section of DOL is continuing the former attorney general's policy that the sale of the liquefaction plant at Point MacKenzie should not go forward to Hillcorp from an affiliate of FNG until there is a determination as to whether or not the plant should be subject to cost-based rate regulation. Generally a utility that is integrated with a supply or production system that leads to the ultimate distribution is regulated on the same cost of service basis as the actual distribution of the public utility.

SENATOR COGHILL commented that the news accounts in Fairbanks made it appear that the two were tied together when they weren't.

ATTORNEY GENERAL RICHARDS agreed they weren't tied and pointed out that the RAPA situation had been ongoing for about a year.

SENATOR COGHILL asked if he was familiar with the Morey case that's about all Alaskans being able to participate in a Tier I harvest.

ATTORNEY GENERAL RICHARDS replied he wasn't familiar with the fact pattern in the case.

CHAIR MCGUIRE asked if the issue with the Hillcorp transaction is that a contract was already in place.

ATTORNEY GENERAL RICHARDS reviewed the timeline. About eight months ago there was an attempt to sever the affiliate relationship between the liquefaction plant and the distribution system owned by FNG. The state challenge it. Early this year the FNG affiliate Titan Alaska LLC entered into a deal to sell the liquefaction plant to the independent company Hillcorp. One of the first official actions he took was to say not to allow the sale to go through without guidance from the RCA about whether the plant should or should not be rate regulated. A month or two

after that he learned that AIDEA was looking at the acquisition of FNG.

SENATOR COGHILL noted that part of the discussion was that Walker Richards, LLC sold to a law firm that happens to represent the North Star Borough, which is looking at the purchase of FNG.

ATTORNEY GENERAL RICHARDS agreed that the firm that purchased Walker Richards, LLC does represent the Interior Gas Utility (IGU). He clarified that he had no professional interaction with that firm in their representation of IGU. In fact, the opposite was true because he represented the Alaska Gasline Port Authority that looked at an independent purchase of FNG 4-5 years before.

SENATOR COGHILL expressed appreciation for the answer.

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CHAIR MCGUIRE asked if he had any comments on the Indian Child Welfare Act (ICWA) case in the Native village of Tununak.

ATTORNEY GENERAL RICHARDS noted that the state won that case. The issue was whether the Native person seeking to have the ICWA preference applied had to apply for the adoption first. The Alaska Supreme Court ruled that they did, based largely on a reading of a U.S. Supreme Court case that the state contended said the same thing. The grandmother filed for rehearing and the state intends to join and support its prior position, but asked for a 30-day extension to reach out to the stakeholders and listen to what they have to say.

SENATOR COGHILL asked if he had any experience or ideas as attorney general about how to protect people from cyber scams.

ATTORNEY GENERAL RICHARDS replied the Department of Law has employees in the Consumer Protection Unit that are working to keep up, but it's something that every attorney general's office in the country is struggling with.

SENATOR COGHILL advised that the legislature and this committee in particular is interested in learning about potential loopholes and blind spots.

CHAIR MCGUIRE flagged sex trafficking, sex assault, and domestic violence as matters of great concern that need to be addressed differently. Just as Mothers Against Drunk Driving (MADD)

changed the acceptance of drunk driving, she would like to see Alaska become the last state that a sex abuser wants to come. She encouraged him to work with the first lady on this.

SENATOR WIELECHOWSKI noted that yesterday he was questioned about opposing the state when he represented Valdez in the TAPS case. He said he never understood the state's position because had the state prevailed, local communities and property owners would have lost tens of millions of dollars and the oil industry would have made tens of millions of dollars. He asked if the characterization was correct.

ATTORNEY GENERAL RICHARDS responded that it's fair to say that the state's position was closer to the municipalities' position than to the TAPS owners. For a good portion of the case the municipalities asserted that TAPS was worth about \$13 billion and the state maintained it was in the \$7 Billion or \$8 Billion range.

SENATOR WIELECHOWSKI noted the \$5 billion difference and asked how much the state would get.

ATTORNEY GENERAL RICHARDS replied the difference in \$5 billion at 20 mils is \$100 million.

SENATOR COGHILL flagged ANILCA as an important topic to delve into.

ATTORNEY GENERAL RICHARDS responded that his staff is preparing a binder and he looks forward to diving in in the next month or two.

CHAIR MCGUIRE encouraged him to be candid about areas within DOL that should not be cut.

ATTORNEY GENERAL RICHARDS replied he's tried to do that already.

CHAIR MCGUIRE thanked him for taking the position.

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SENATOR MCGUIRE motioned to forward the name Craig Richards for the position of Attorney General for the State of Alaska to the full body for consideration in accordance with AS 39.05.080. She reminded members that this does not reflect any intent by the members to vote for or against the confirmation during any further sessions.

3:02:14 PM

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.