

**ALASKA STATE LEGISLATURE  
SENATE RESOURCES STANDING COMMITTEE**

March 16, 2015

3:30 p.m.

**MEMBERS PRESENT**

Senator Cathy Giessel, Chair  
Senator Mia Costello, Vice Chair  
Senator John Coghill  
Senator Peter Micciche  
Senator Bert Stedman  
Senator Bill Stoltze  
Senator Bill Wielechowski

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING

Attorney General

Craig Richards

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 4

Urging the United States Congress to provide a means for consistently and equitably sharing with all oil and gas producing states adjacent to federal outer continental shelf areas a portion of revenue generated from oil and gas development on the outer continental shelf to ensure that those states develop necessary infrastructure to support outer continental shelf development and preserve environmental integrity.

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 4

SHORT TITLE: OFFSHORE OIL & GAS REVENUE SHARING

SPONSOR(S): REPRESENTATIVE(S) SADDLER

01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	RES
02/27/15	(H)	RES AT 1:00 PM BARNES 124
02/27/15	(H)	Moved HJR 4 Out of Committee
02/27/15	(H)	MINUTE(RES)
03/02/15	(H)	RES RPT 6DP
03/02/15	(H)	DP: JOSEPHSON, SEATON, TARR, OLSON, HAWKER, TALERICO
03/04/15	(H)	TRANSMITTED TO (S)
03/04/15	(H)	VERSION: HJR 4
03/06/15	(S)	READ THE FIRST TIME - REFERRALS
03/06/15	(S)	RES
03/16/15	(S)	RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE DAN SADDLER  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HJR 4

CARL PORTMAN, Deputy Director  
 Resource Development Council (RDC)  
 Anchorage, Alaska  
**POSITION STATEMENT:** Supported HJR 4.

KARA MORIARTY, President and CEO  
 Alaska Oil and Gas Association (AOGA)  
 Anchorage, Alaska  
**POSITION STATEMENT:** Had technical difficulties and couldn't  
 continue her testimony on HJR 4.

PETE STOKES  
 Alaska Support Industry Alliance (ASIA)  
 Anchorage, Alaska  
**POSITION STATEMENT:** Supported HJR 4.

CRAIG RICHARDS, Attorney General-designee  
 Department of Law (DOL)  
 Juneau, Alaska  
**POSITION STATEMENT:** Testified as Attorney General -designee.

**ACTION NARRATIVE**

3:30:37 PM

**CHAIR CATHY GIESSEL** called the Senate Resources Standing  
 Committee meeting to order at 3:30 p.m. Present at the call to

order were Senators Costello, Coghill, Wielechowski, Stedman, Micciche, Stoltze and Chair Giessel.

[3:31:07 PM](#)

**HJR 4-OFFSHORE OIL & GAS REVENUE SHARING**

[3:31:10 PM](#)

CHAIR GIESSEL announced HJR 4 to be up for consideration.

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REPRESENTATIVE DAN SADDLER, Alaska State Legislature, Juneau, Alaska, sponsor of HJR 4, explained that this resolution calls upon the federal government to enact a fair and sensible system of federal revenue sharing in Alaska. He said that oil and gas development in federal areas can be a boom for the country providing revenues for the federal government, jobs and a secure source of domestic energy, but it also creates costly impacts to nearby states.

The federal government shares the proceeds from such development with some states to help them offset the costs of improvements and services necessary for safe and responsible development. On inshore areas they share 50 percent of the revenue with states where that production occurs. In states within three miles of shore, it shares 27 percent and in the four states bordering the Gulf of Mexico it shares 37.5 percent (Gulf of Mexico Energy Security Act of 2006). But current federal law says the State of Alaska (SOA) receives a zero share of the federal revenues from the Chukchi and Beaufort Seas oil or from other OCS areas.

The federal areas off the North Slope hold tremendous amounts of oil and gas. Shell's supplemental environmental impact statement (EIS) for the Chukchi Sea indicated 3 billion-plus barrels of oil. But just as onshore development on the North Slope required investments in infrastructure, development of Alaska's offshore oil and gas will also require investments.

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REPRESENTATIVE SADDLER said investments will be required by the state for roads, ports, airports, utilities, housing, pipelines, and services such as oil spill and emergency response, environmental monitoring and mitigation and public health and safety.

For example, the \$2.75 billion generated by the sale of federal leases in the Beaufort and the Chukchik Seas several years ago would have brought the state about \$1 million if the same

revenue sharing applied in Alaska as applied in Gulf of Mexico states. In the future, Alaska will get zero percent from the Chukchi Sea development.

He said this is an important resolution and comes at a time when the OCS sharing issue is ripe in Washington, D.C., where Senator Murkowski has pushed legislation in the last two years to insure a fair share in states other than Gulf of Mexico states. This will give her support as she pushes the issue again. The president proposed OCS expansion on the Atlantic Coast, but cut off the possibility of it in the Beaufort and Chukchi Seas.

SENATOR STOLTZE said the resolution refers to 50 percent revenue sharing for oil leases whereas the Statehood Compact provided for 90 percent sharing, which Congress overruled, and asked if he was comfortable memorializing the 50 percent in the resolution.

REPRESENTATIVE SADDLER responded that he shared his concern that the federal government hasn't respected the commitments they made to the state in the Statehood Act, however, in cooperating with Senator Murkowski, he did not want to raise the statehood issue, but rather wanted to strengthen her position on a 37.5 percent split.

SENATOR STOLTZE said he did not think saying he has a moral and legal case for a higher percentage would diminish his argument and that the best way to get less than you want is to agree to ask for it before the negotiation is started.

SENATOR COGHILL agreed with Senator Stoltze that the 90 percent should not be conceded in any form and had prepared conceptual statements to maximize what the state could get through revenue sharing.

REPRESENTATIVE SADDLER said he respected the desire to assert the strongest possible case.

SENATOR STEDMAN commented that his impression was that Back East wants to zero everyone out and to consider that in the word-smithing, because they might want to make everyone like Alaska, which is zero.

SENATOR COGHILL agreed.

CHAIR GIESSEL asked him if he was offering an amendment.

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SENATOR COGHILL replied that he wanted to leave it on the table and give the sponsor time to digest the concept.

3:42:01 PM

SENATOR WIELECHOWSKI supported the resolution and asked if the Statehood Act talks about 50 percent applying to offshore beyond six miles.

REPRESENTATIVE SADDLER answered that there is a distinction between the revenue sharing from federal lands onshore and offshore and we should expect a 90/10 split onshore. That same provision does not apply offshore to the best of his knowledge. He clarified that this resolution does not call specifically for a 37.5 percent share; it calls for consistently and equitably sharing to allow for maneuvering room. He didn't see a problem with considering the conceptual language now, but wanted the chance to review it more thoroughly.

SENATOR STOLTZE said the key prize is OCS revenue sharing and that anything is better than zero. He didn't think it would do any harm to accurately reflect what the consistent state position has been.

SENATOR STEDMAN said the session still has plenty of time and they might think about broadening the concept to Wyoming coal to pick up as much support from resource states as possible.

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CHAIR GIESSEL asked him to say more about the Land and Water Conservation Fund on page 3, line 3.

REPRESENTATIVE SADDLER answered that it is generally considered a mitigation fund. He cautioned against broadening the resolution, because it was designed specifically to bolster the U.S. Senate delegation as they work specifically on offshore issues.

SENATOR COGHILL said that was an important point, because Alaska will be joining all the Gulf Coast states as well as California on this the OCS issue, especially since we have leases that have both been leased and now are being withheld by this president.

He said his amendment would effectively delete the first two whereas clauses and replace them with his whereas clause that inserts equitable revenue sharing. But the final statement has to be in support of the Gulf Coast states.

SENATOR STOLTZE said some rural entities outside of our Congressional delegation have more of an aggressive lobbying presence than Alaska does at times on revenue sharing issues.

REPRESENTATIVE SADDLER said that was a fair observation.

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SENATOR COGHILL asked if any study had been done on the Land and Water Conservation Fund and Gulf of Mexico Energy Security Act.

REPRESENTATIVE SADDLER responded that he would review the functioning of the Land and Water Conservation Fund and what the balance is in time for the next meeting. It is an important factor for passage of federal legislation, because they might pick up more support if they can show that development of oil and gas resources was going to what some perceive as the greater good of environmental conservation or remediation.

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CARL PORTMAN, Deputy Director, Resource Development Council (RDC), Anchorage, Alaska, supported HJR 4. He said like the Gulf States, Alaska also contributes to national energy security through onshore oil and gas development and has generated billions of dollars to the federal treasury through offshore leasing. These leases could contain tens of billions of barrels of oil which in turn could generate hundreds of billions of dollars in revenue.

RDC has consistently supported federal revenue sharing to benefit the State of Alaska and local communities agree that states sustaining offshore energy development and production deserve a share of the revenue generated because they support offshore operations and experience impacts to local services and infrastructure. Federal government grants are inadequate in addressing the need for additional investment in state infrastructure or the increased demands on state and local government resources resulting from offshore development, especially in Alaska which has more coastline, more rural communities, and less infrastructure than any other state. RDC supports HJR 4 especially the concept behind it.

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KARA MORIARTY, President and CEO, Alaska Oil and Gas Association (AOGA), Anchorage, Alaska, had technical difficulties and couldn't continue her testimony.

[3:56:02 PM](#)

PETE STOKES, Alaska Support Industry Alliance (ASIA), Anchorage, Alaska, supported HJR 4. He works as a petroleum engineer with Petrotechnical Resources of Alaska, is a board member of the ASIA, and also serves on the Oil and Gas Competitiveness Review Board. He said Alaska became the 49th state and could sustain an economy only through resource development. It is important for Alaska to share in the OCS royalty revenue as the state is the entity that provides infrastructure and social fabric (schools and other state government spending) that support the OCS development.

MR. STOKES said similar to the OCS Gulf of Mexico, Arctic OCS development is important for the nation's energy security and the host state should receive benefit in support of this effort. This is currently the practice in the Gulf of Mexico and should be adopted for the Arctic OCS as the state gives the necessary support for developing oil and gas in the harsh Arctic offshore environment. An additional precedent is the sharing with Alaska of 90 percent of federal onshore royalties. Since the federal government has put many onshore areas, such as the NPR-A off limits to development and continues to prevent exploration and development in ANWR, it is even more important for the state to receive benefit from federal OCS development.

CHAIR GIESSEL thanked Mr. Stokes and finding no further comments said she would keep public testimony open and hold HJR 4 in committee.

**Confirmation Hearing: Attorney General Craig Richards**

[3:58:59 PM](#)

CHAIR GIESSEL announced the confirmation hearing for Attorney General Richards.

CRAIG RICHARDS, Attorney General-designee, Department of Law (DOL), Juneau, Alaska, said he is a lifelong Alaskan; he grew up in Fairbanks and his family moved there from Atlanta, Georgia. He went to Wood River Elementary School and ultimately Pearl Creek; he graduated from Ryan Middle School and West Valley High School in 1993. He went to the University of Virginia where he studied finance as an undergraduate student. He knew he wanted to attend law school and come back to Alaska, so he attended Washington and Lee University. He clerked for Ralph Beistline who was in Superior Court at the time and ultimately became a federal district court judge. The first job he had with a private law firm was in 2000 with Wohlforth, Bachelor, Johnson

and Brecht in Anchorage founded by Eric Wohlforth that focuses on public finance. In 2003 he was offered to do financing by Bill Walker with Walker and LeVeck and ended up working with him for 12 years and eventually became partner.

In private practice he got his MBA at Duke University where he focused on finance in the oil and gas area, and in particular the subject of quantitative modeling of oil and gas issues. His private practice, which ended in November before he took office, focused on four areas: municipal law, public finance, oil and gas taxation, and gas pipeline and other oil and gas project development on the North Slope.

ATTORNEY GENERAL RICHARDS said he is married to Allison Richards who teaches English at West High School. He has one son who is two years old. He thought it would be helpful to tell them the reason he ultimately decided he would like the opportunity to be Attorney General is that before he thought taking over the law firm would be his life if Bill Walker won and if Walker lost, Walker he would retired and he would be taking over the law firm, also. It seemed pretty clear. But Mr. Walker won and asked him to be Attorney General and he decided that he would. It changed where he was headed in life and ultimately he decided to do it because it was for a once-in-a-lifetime opportunity to serve the people of Alaska.

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SENATOR COSTELLO thanked him for coming by her office and asked what things he considered in the category of why he might not want to do this job.

ATTORNEY GENERAL RICHARDS replied that it's tough on your family to be gone so much and financially it changed where he was headed. He is old enough to have an established law practice, but not old enough to have made a lot of money. He couldn't maintain his practice and had to let his clients go.

SENATOR COSTELLO asked him to describe the role of Attorney General.

ATTORNEY GENERAL RICHARDS replied the attorney general's position is multifaceted; on one hand you provide legal advice to your governmental clients and oversee the Department of Law. You provide legal advice to the governor and serve as the peoples' attorney. Being the peoples' attorney has several important aspects; on one hand you enforce and prosecute the laws of the State of Alaska. Alaska is actually unique in that

the prosecutorial function is embedded within the statewide agency. In most places local district attorneys (DA) at the county level are the ones that prosecute most of the laws. As the peoples' attorney the attorney general files rate proceedings, makes decisions about whether or not there are anti-trust issues with various transactions, is ultimately responsible for collection of revenues for restitution in criminal cases and child support matters.

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SENATOR COSTELLO said one of the reasons many states have the position elected is to avoid any kind of a conflict of interest that the individual might have with the governor and asked him to talk about his relationship with the governor and whether serving in this capacity is a conflict of interest considering their history of working together.

ATTORNEY GENERAL RICHARDS said his view of an elected attorney general versus an appointed one is that there are only five other states that have attorney generals appointed by the governor. Tennessee's Supreme Court appoints that state's Attorney General, and Maine's Attorney General is appointed by the legislature. In all other states, it is an elected position. The advantage with an elected Attorney General is that the AG is independent of the governor and doesn't have the potential conflict of interest Senator Costello mentioned. This is the case when the governor's office might view decisions AG should make differently than an AG who is the peoples' attorney.

The disadvantage of an elected attorney general position is that the office can become heavily politicized. In some states, attorney general means almost a governor, because often times it is a stepping stone for a different office. In that instance, you have the potential where the governor and the attorney general don't work together merely for political reasons. So, he thinks there are advantages and disadvantages to both systems and looks forward to developing an opinion about which is better.

In terms of his personal relationship with the governor, he said that when he took the office he had two conditions: his wife's agreement, which he got, and that the governor would understand that he would exercise independence of the office, which he didn't have a problem with.

SENATOR COSTELLO said he had made disparaging remarks about SB 21 and the gasline bill that are now law and asked if he would be able to stand behind those laws.

ATTORNEY GENERAL RICHARDS answered that he hoped that any comments he makes on public policy in the State of Alaska wouldn't be taken as disparaging, they would have been in an attempt to further public dialogue. The role of his office is to fully and faithfully execute the laws of the SOA and that is what he will be doing.

SENATOR STOLTZE asked him to talk about the role as the governor's attorney and of the attorney general in representing state agencies.

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ATTORNEY GENERAL RICHARDS responded that it's important to really understand who your client is. The unique thing about attorneys general in this state and throughout the country, almost without exception, is he provides legal support and legal services to the agencies of the state of Alaska including the governor's office. He provides counsel and representation to the best of his ability. If there is any conflict between what the governor wants and what is in the peoples' best interest his answer is to represent the people. He has full faith in his ability to work with the governor and exercise the independent judgement he needs.

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SENATOR COGHILL asked when he started working with the governor.

ATTORNEY GENERAL RICHARDS replied in July 2003.

SENATOR COGHILL asked if he worked with the governor on the formulation of the Port Authority.

ATTORNEY GENERAL RICHARDS answered no; he said the Port Authority was founded in 1999 and he didn't really work any Port Authority business until 2005.

SENATOR COGHILL asked outside of the governor if he worked for anything that the Port Authority had to do structurally or legally.

ATTORNEY GENERAL RICHARDS answered that he represented the Port Authority across its functions including everything from day to day, who chairs the meetings and does the minutes, provided

legal advice on a number of small issues and helped work on strategy for the Port Authority, and worked on the proposal in 2010 to do the North Slope trucking project. He worked on the gasline including a whole number of issues; what comes to mind is the Port Authority entered an AGIA application in 2007.

SENATOR COGHILL asked if he was there when the North Slope Borough pulled out.

ATTORNEY GENERAL RICHARDS answered yes.

SENATOR COGHILL asked about the devolution of authority there. Did it just land in Fairbanks and Valdez?

ATTORNEY GENERAL RICHARDS answered yes.

SENATOR COGHILL asked if he worked with Mayor Whitaker.

ATTORNEY GENERAL RICHARDS answered yes.

SENATOR COGHILL said now he is working with Mayor Whitaker and the governor, so there is a perceived conflict and asked how he would work with them to put up firewalls.

ATTORNEY GENERAL RICHARDS replied that from a legal standpoint there isn't a conflict because of representing the governor on prior work on the Alaska Gasline Port Authority's behalf.

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SENATOR COGHILL said because we are trying to put together an energy project that is trucking and an Alaska Stand Alone Pipeline that has similar structures to the Port Authority, he wanted to understand how the internal discussion doesn't become a conflict to Alaskans.

ATTORNEY GENERAL RICHARDS said he has no ethical conflict or he would build barriers between himself and any potential conflicts. The FNG trucking deal is being looked at by the Alaska Industrial Development and Export Authority, which is independent.

SENATOR COGHILL said that brought up another name, the Brenna Law firm, because he hears of rate cases being brought up. It looks like a conflict, so help him understand that.

ATTORNEY GENERAL RICHARDS said he handled two cases with Mr. Brenna; the first was when Mr. Brenna represented the Fairbanks

North Star Borough in the TAPS valuation disputes and he represented the City of Valdez. So, in that representation they worked together. The only other time that he handled a case with Mr. Brenna was in 2012 when Mr. Brenna hired him to represent his client, Tesoro and Anadarko, in the Sr. FERC case for about six months.

SENATOR COGHILL said he was not on a hunt, but these are questions that had to be asked. He asked if it puts him in conflict when the state starts asking him for legal opinions on things he has been in court on or advised clients on. Can he separate how he defended a client and how he might defend Alaska very differently, especially on oil and gas issues?

ATTORNEY GENERAL RICHARDS replied that he wouldn't take any action or make a decision on any matter on which he had a conflict. In fact, he was extremely diligent on the front end of coming into office of making sure he did everything in the most transparent and ethically appropriate way. That includes getting an outside legal opinion on what his prior representation of clients might mean to his role as Attorney General. He met with the ethics attorneys in the Department of Law before he took office and was given formal advice on how to proceed with any apparent conflicts. He did precisely what he was told to do: to delegate four cases to Martin Schulz, head of the Oil, Gas and Mining Section, to handle those matters.

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SENATOR COGHILL asked him how perceived and actual conflicts are handled. Would a conflict have to be handed to somebody other than an AG, what would normally be an Attorney General's job?

ATTORNEY GENERAL RICHARDS explained that the difference between perceived and actual conflict is that an actual conflict is under the law or professional ethics. A perceived conflict would be where you don't have an actual conflict but someone might be concerned about the appearance of one. Whether or not, because of his prior representation in oil and gas cases, the state has to bring in outside attorneys, the answer is no. The one exception is that ethics advice normally is given to the lieutenant governor by the ethics opinion in the Department of Law, but the lieutenant governor specifically asked to be allowed to retain outside legal counsel to provide advice if he moved to remove his delegations in any of the cases in which he delegated his authority. Attorney General Richards said he approved that.

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SENATOR STOLTZE asked what his biggest legal victories are involving the state and the industry as a private attorney.

ATTORNEY GENERAL RICHARDS answered that his biggest win was the TAPS Ad Velorem case where he, on behalf of the City of Valdez, got the taxable value of the TAPS raised from \$3 billion to \$10 billion. It was many years of hard fought litigation but it was a good and just result. He lost a case involving the vessel tax that the City of Valdez levied on vessels over 95 ft. in length. It was challenged as it related to the oil tankers that called the Port and the U.S. Supreme Court ultimately ruled the tax unconstitutional.

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SENATOR WIELECHOWSKI asked how much taxpayer money was saved in the TAPS Ad Velorem case and who else he had represented over the years and for what types of cases.

ATTORNEY GENERAL RICHARDS said he had done a lot of public finance work for the Railroad, AHFC, Alaska Municipal Bond Bank, Anchorage Waste Water Utility, the Municipality of Anchorage, the City of Valdez, the Aleutians East Borough, Kenai, and a good chunk of Alaska municipalities that are public corporations that are involved in the issuance of municipal bonds. On the municipal side he has represented various tax matters for Valdez, Kenai, Aleutians East Borough, and the City of Sand Point.

His litigation practice until the last year or two, focused litigation on oil and gas tax cases. Most of his representation was for the City of Valdez and a few others like Kenai's AS 43.56 issues. He always has considered himself as a transactional attorney and a finance guy, but over the last three or four years he enjoyed litigating construction cases and other complex cases.

SENATOR WIELECHOWSKI asked if he felt capable of managing the workforce at the Department of Law.

ATTORNEY GENERAL RICHARDS answered yes; he has extensive experience in managing complex litigation and transactions. Even though the Department of Law as the largest law firm in the state has 500 people.

SENATOR WIELECHOWSKI asked for details about the TAPS case to give people a feel for its magnitude and complexity.

ATTORNEY GENERAL RICHARDS explained that the litigation of the TAPS case started in earnest in late 2004. There was a 3-6 day hearing before the State Assessment Review Board every single year since then save one in 2012. Ultimately, each of those hearings resulted in appeals to the Alaska Superior Court. They were the largest and most complex trials in the history of the State of Alaska and involved millions of documents, every tax year 2 percent of the value. So, when the dispute is about a \$3 billion value versus a \$10 billion value, the amount of money you are talking about is 2 percent of \$7 billion in terms of ultimate taxes collected by state and local governments. The sums of money over 10 years are huge. Each of those cases had two major trials that involved 3-4 dozen witnesses, 100 depositions, a million pages of documents, thousands of exhibits, legal teams on both sides running to the tune of 8-10 lawyers with an equal number of paralegals and all the support needed to handle complex litigation like that. Ultimately, it ended up in appeals to the State Supreme Court, as well.

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SENATOR WIELECHOWSKI asked him to talk about how he deals with conflicts of interest in terms of being an attorney on one side of an issue one day and the other side the next day with a different client.

ATTORNEY GENERAL RICHARDS answered that it's common for it to happen to attorneys. It's not common that many people have the opportunity to step into the attorney general's role, but the way he is handling it is that he worked very closely with ethics counsel and an independent counsel that he hired himself to understand what the conflicts are under Alaska law and where they exist to take the appropriate steps as the ethics attorneys told him to do. The couple of cases that he handled against the state, the TAPS value case in particular, was a large case, but it was just one of thousands of cases that the Department of Law has before it. He has delegations in place for a few of those cases, it's a small part of the total book of business. The mere fact that he represented against the state in one case doesn't create conflicts in other cases. However, he believed his prior experience in the oil and gas realm made him a better attorney for the state not a worse one. He understands the issues in a way that some attorney generals haven't with their backgrounds.

CHAIR GIESSEL said in talking about the TAPS valuation that he is now the Attorney General for the state and is sitting on the other side of the table. In such a valuation case, could they

expect the vigor and diligence for the state that he showed on the other side of the table?

ATTORNEY GENERAL RICHARDS answered, "Absolutely. I am a zealous advocate for my client."

CHAIR GIESSEL said it seems like it would be difficult to suddenly change his viewpoints.

ATTORNEY GENERAL RICHARDS responded that as a lawyer it's common to do so. First of all, delegations are in place. At a more theoretical level, as an attorney he has the ability to understand who his current client is and zealously advocate on his behalf.

SENATOR STEDMAN said the point is that it gives a lot of people indigestion that the attorney general represented Valdez in the TAPS case, but he personally would prefer to hire the winner rather than the loser. He looks at attorneys as hired guns. His concern is dealing with the oil and gas industry being the biggest and most influential industry and the most financially important to the state, it's good to have a candidate that understands the complexities of the issues. He would be a little gun shy to have an attorney general that was clueless in the state's biggest and most important area.

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ATTORNEY GENERAL RICHARDS said he was honored to work for the City of Valdez, but if he had been hired by an oil company instead, he would have provided the same level of zealous advocacy for them as he did for the city.

SENATOR STOLTZE asked him to describe the interplay of the governor's campaign statements and the school funding lawsuit as reported by the Ketchikan Daily News.

ATTORNEY GENERAL RICHARDS responded that he was involved in the campaign but not with anything related to the Ketchikan lawsuit. The only thing he knows about the governor's position is what he read in the paper six months ago about something he said in a debate. He could say that the State of Alaska is on track to appeal the Superior Court's decision and maintain the same litigation positions that were taken in the last administration.

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SENATOR COGHILL said he had a conversation with Attorney General Richards earlier about the Sturgis case that had to do with

permitting use of an airboat; the question about the state's right to that waterway became the real question and asked what the state was going to go with defending Alaska's right to waterways.

ATTORNEY GENERAL RICHARDS answered that he would first tell him what is public about where the case sits now. The state is filing an amicus in support of Mr. Sturgis' petition for cert, but he has decided not to file an appeal of the state's case, because the state's case really devolved into a standing question. It was the view of the Department of Law and himself that there are probably better fact patterns that the state can pursue in the future that will be better to have before the courts where people aren't fighting about whether or not they have standing, effectively.

SENATOR COGHILL asked what "standing" means, because he only sees Alaska's water rights slipping away.

ATTORNEY GENERAL RICHARDS responded that courts held in the state's case (distinct from the Sturgis case) that the state couldn't bring the lawsuit, because the activity had already occurred and was, therefore, moot. Effectively this meant the state didn't have any grounds to bring the case, because the permits and water samples had already been collected and the activity had occurred.

He explained that federal courts aren't like state courts. If you have an interest that is impacted and feel like the court should address it, as a general rule, the State of Alaska court system will generally be willing to decide legal issues. The federal courts are much narrower about when they will decide the legal case. This was an instance when they decided not to. It is very rare for the U.S. Supreme Court to overturn a circuit decision on standing grounds.

SENATOR COGHILL asked if he would vigorously defend the State of Alaska's right to waterways in the Alaska.

ATTORNEY GENERAL RICHARDS answered yes.

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SENATOR STOLTZE asked what role a former attorney general, Bruce Botelho, who was the longest tenured in the history of Alaska, has in this administration.

ATTORNEY GENERAL RICHARDS replied that he understands Mr. Botelho was involved in helping set up the transition process; the governor and lieutenant governor had a transition meeting in Anchorage with a couple hundred folks and he was the lead on organizing that. Then when the governor and lieutenant governor came into office, he worked for approximately 2.5-3 months in the governor's office helping with transition. He hasn't been in that position for a while and his doesn't have a current role and he is gone for good.

SENATOR STEDMAN asked how much exposure he has had with navigable waters issues, the point being that the state lost the Glacier Bay case and now it's a federal park. He has heard they want the entire Southeast waterways, which is extremely alarming.

ATTORNEY GENERAL RICHARDS answered that his background there isn't that deep. When he clerked for Ralph Beistline 13 years ago, he had one equal footing case that involved the Minto Flats when he became familiar with that body of law. He committed to studying hard and said that he had attorneys who had worked in that area full time for many years that handle the cases on a day-to-day basis. As Attorney General, he has incredible depth to go to get help in coming up to speed and making decisions.

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CHAIR GIESSEL said she was concerned about not challenging the standing that the state was denied in the Sturgis case and having relinquished some amount of control.

ATTORNEY GENERAL RICHARDS answered he didn't think the state had relinquished any control. The one questions he asked the attorneys handling the case when he was confronted with the decision of whether to file a cert on the state claims is if we don't, are we in any way negatively impacted on bringing a case in the future, and he got the same answer multiple times: no. They will find a case where standing isn't an issue and that is the goal.

SENATOR COGHILL asked what damage would have been done if we would have lost that standing.

ATTORNEY GENERAL RICHARDS answered that the probability of winning was 1 percent and he doesn't like to go to the Supreme Court with the State of Alaska taking 1 percent shots. It is better off finding a better case that is more arguable,

particularly when we have a slightly higher probability shot in an amicus ability to support the Sturgis petition, itself.

SENATOR COGHILL said the federal government is both our friend and our enemy, but there has been some regulatory flow over the years, the EPA being one of them and OCS another. He was concerned about the 111(d) rule in the Interior. He understood that the DEC was just looking for an exception to the rule and he has some good legal opinions that they are outside the constitution on it. He asked if he had a chance to look at that.

ATTORNEY GENERAL RICHARDS replied he hadn't dealt with 111(d) case. They did win in a panel before the Ninth Circuit and it's going before them in a full hearing. He didn't know whether or not the state has a valid constitutional claim outside of the standard main line of attack, which is that the EPA was out of bounds in requiring CO<sub>2</sub> compliance without a cost-based analysis on the electric utility side.

SENATOR COGHILL said he had gathered some brief materials for him and hoped he would consider them. He asked who the lead is on federal litigation issues.

ATTORNEY GENERAL RICHARDS answered a bunch of different attorneys handle it in the Natural Resources section. The Statehood defense attorney is Kent Sullivan.

SENATOR COGHILL said the land and the trust issue is coming their way; it is mostly a Native issue, but it could have a huge impact on how lands are handled and managed in Alaska.

[4:54:57 PM](#)

ATTORNEY GENERAL RICHARDS replied that it is something that he is learning. It is a big issue with massive policy implications. The federal government reversed its position, rules became final a few months ago. It had always been Interior's position that lands could not be put into trusts and there was an Indian law in Alaska. The Obama administration has wholesale reversed that position and adopted regulations that do allow it. The state is in the process of challenging that and it is currently before the D.C. Circuit.

SENATOR COGHILL appreciated that, because people's ability to traverse and produce on the lands in Alaska are going to depend upon cooperation between the state, the federal government, and the Native landholders. That throws us a curve that could literally bottle us up through several generations.

4:55:58 PM

SENATOR STOLTZE said he had a half dozen fisheries issues, but would ask only one and a half questions. In 2011, Attorney General Sullivan agreed to aggressively pursuing the state's position on the United Cook Inlet Drift Association (UCIDA) lawsuit and was seeking to have the case in federal court, to bring in federal management under the Magnuson Stevens Act. One of the main instigators of the case was one that the governor actively sought to put on the Board of Fisheries and that caused him a lot of pause. He asked what the administration's position is on this.

ATTORNEY GENERAL RICHARDS answered that he didn't know anything about the case, but he would be happy to follow up on it.

SENATOR STOLTZE said it is being appealed. Another quick question: there is a lot of concern in an ADF&G budget meeting about the Estrada case in which a subsistence net is proposed to be strung on the Kenai River involving conservation and protecting species issues. Lieutenant Governor Mallott was sitting in on this, and he asked if anyone had any discomfort on the optics level having him sitting there. If the state were to lose that case it would create an incredible precedence in diminishing its conservation abilities.

ATTORNEY GENERAL RICHARDS responded he wasn't aware of the issue.

SENATOR STOLTZE said it was a criminal proceeding.

ATTORNEY GENERAL RICHARDS said he knew the state's position is on appeal and no change of action has been taken since this administration took over and he didn't have enough of the fact pattern to have an opinion.

CHAIR GIESSEL said she also had more questions for Attorney General Richards and would schedule another meeting.

5:00:10 PM

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 5:00 p.m.