

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 20, 2015

3:31 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**

SENATE BILL NO. 8

"An Act relating to the regulation and production of industrial hemp."

- HEARD & 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.

- MOVED SCS HJR 4(RES) OUT OF COMMITTEE

SENATE BILL NO. 57

"An Act relating to the development of state emission standards in accordance with the federal Clean Air Act."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 8

SHORT TITLE: INDUSTRIAL HEMP PRODUCTION LICENSES

SPONSOR(s): SENATOR(s) ELLIS

01/21/15 (S) PREFILE RELEASED 1/9/15  
01/21/15 (S) READ THE FIRST TIME - REFERRALS  
01/21/15 (S) RES, JUD, FIN  
03/20/15 (S) RES AT 3:30 PM BUTROVICH 205

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  
03/16/15 (S) Heard & Held  
03/16/15 (S) MINUTE(RES)

BILL: SB 57

SHORT TITLE: CLEAN AIR ACT PLAN

SPONSOR(s): SENATOR(s) GIESSEL

02/20/15 (S) READ THE FIRST TIME - REFERRALS  
02/20/15 (S) NRG, RES  
03/17/15 (S) NRG AT 1:00 PM BUTROVICH 205  
03/17/15 (S) Moved CSSB 57(NRG) Out of Committee  
03/17/15 (S) MINUTE(NRG)  
03/18/15 (S) NRG RPT CS 3DP 1NR NEW TITLE  
03/18/15 (S) DP: MICCICHE, BISHOP, EGAN  
03/18/15 (S) NR: HOFFMAN  
03/18/15 (S) FIN REFERRAL ADDED AFTER RES  
03/18/15 (S) RES AT 3:30 PM BUTROVICH 205  
03/18/15 (S) Heard & Held  
03/18/15 (S) MINUTE(RES)

**WITNESS REGISTER**

MATT MOSER, staff to Senator Ellis  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Commented on SB 8 for the sponsor.

SCOTT HENDRICK, Program Director  
National Conference of State Legislatures (NCSL)  
Denver, Colorado

**POSITION STATEMENT:** Commented on SB 8.

LARRY DEVILBISS, Mayor  
Mat-Su Borough  
Palmer, Alaska

**POSITION STATEMENT:** Provided supporting information for SB 8.

BRYCE WRIGLEY, President  
Alaska Farm Bureau (AFB)  
Delta Junction, Alaska

**POSITION STATEMENT:** Supported SB 8.

JIM SYKES, representing himself  
Palmer, Alaska

**POSITION STATEMENT:** Supported SB 8.

FRANK TURNEY, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Supported SB 8.

FRANCI HAVEMEISTER, Director  
Division of Agriculture  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on SB 8.

CHAD HUTCHISON, staff to Senator Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Commented on Amendment 1 for HJR 4 for the sponsor.

REPRESENTATIVE SADDLER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HJR 4; said he supported Amendment 1.

NORMAN ROKEBERG, representing himself  
Commissioner, Regulatory Commission of Alaska (RCA)  
Anchorage, Alaska

**POSITION STATEMENT:** Opposed SB 57 (not the official RCA opinion).

EMMA POKON, Assistant Attorney General  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on SB 57.

ALICE EDWARDS, Deputy Commissioner  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on SB 57.

#### **ACTION NARRATIVE**

[3:31:04 PM](#)

**CHAIR CATHY GIESSEL** called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Stedman, Costello, Micciche, Stoltze, Coghill, Wielechowski and Chair Giessel.

#### **SB 8-INDUSTRIAL HEMP PRODUCTION LICENSES**

[3:32:13 PM](#)

**CHAIR GIESSEL** announced SB 8 [version 29-L/S028|A] to be up for consideration.

[3:32:17 PM](#)

**MATT MOSER**, staff to Senator Ellis, sponsor of SB 8, explained that industrial hemp has been cultivated by humans for thousands of years. The Declaration of Independence and the Constitution were both written on hemp papers. It is ironic that a crop so important to American history is still illegal today.

He said 19 states have embraced pilot studies on hemp production across the country and it is, in fact, an issue with which to fight federal overreach. It is also an issue that brings Republicans and Democrats together, which is what drew Senator Ellis to the issue originally. He said that Kentucky Senators Mitch McConnell and Rand Paul have introduced the Industrial Hemp Farming Act that has numerous co-sponsors.

[3:34:25 PM](#)

MR. MOSER provided a sectional analysis of SB 8 as follows:

Section 1 adds a new section to Title 3 entitled Industrial Hemp and defining it as an agricultural crop in Alaska. It establishes a license procedure in the Department of Natural Resources (DNR) that allows a licensed hemp producer to plant, grow, harvest, process, possess, sell or buy industrial hemp. It also requires the DNR to adopt regulations.

Language on page 2, line 6, says a licensed industrial hemp grower must document and file verification that hemp seeds they have used are certified and document to have less than .3 percent tetrahydrocannabinol (THC), the psycho active ingredient in recreational marijuana. Language on page 2, line 19, sets this definition in statute.

Section 2 on page 2, line 21, creates an affirmative defense to prosecution for a properly licensed hemp grower.

Section 3 on page 3, line 4, allows the Department of Public Safety (DPS) to conduct a national criminal history record check, something that other states have included in their statutes.

Section 4 on page 3, line 6, states that a properly licensed producer of industrial hemp is not required to be licensed as a marijuana establishment.

[3:37:40 PM](#)

SENATOR STOLTZE asked why there has to be a criminal history registry record check if hemp is a benign substance.

MR. MOSER answered that the sponsor agrees that it is probably not necessary, but that component of the bill used model legislation from other states.

[3:38:46 PM](#)

SENATOR WIELECHOWSKI said it is still considered a controlled substance by the federal government and asked if he would be arrested for eating a hemp granola bar.

MR. MOSER answered that hemp products across the United States are growing by double digits every year, but right now the U.S. is an importer of industrial hemp raw materials from China and Canada. So, the feds won't interfere with his snack.

SENATOR MICCICHE asked if Alaska has right growing conditions and soils to grow it.

MR. MOSER answered that there are a number of different opinions. He found information about hemp growing in Northern Russia, and British Columbia has a white paper about hemp production in Canada.

[3:40:33 PM](#)

SCOTT HENDRICK, Program Director, National Conference of State Legislatures (NCSL), Denver, Colorado, said the NCSL is a bipartisan organization that presents research and analysis to state legislatures and doesn't take positions on issues debated in the states. His purpose today was to provide information on how other states have handled this issue.

He said that the increasing number of industrial hemp discussions are driven by the inclusion of a provision in the 2014 Federal Farm bill that authorizes states to pursue industrial hemp pilot projects through their universities or Departments of Agriculture. Some states have passed legislation to promote the industrial hemp industry prior to the federal law changes last year. To date, 22 states have passed laws on industrial hemp; 7 states - Delaware, Hawaii, Illinois, Michigan, Nebraska, New York and Utah - have laws establishing hemp research programs usually administered by a state agency or university. Connecticut and New Hampshire have passed laws to study industrial hemp. Thirteen other states - California, Colorado, Indiana, Kentucky, Maine, Montana, North Dakota, Oregon, South Carolina, Tennessee, Vermont, Virginia, and West Virginia - have passed laws to establish a commercial industrial hemp program similar to what is being considered in SB 8. Some of these states will not start issuing licenses until they are granted waivers from the Drug Enforcement Agency (DEA) or until changes are made to federal law. So, some states have laws on the books, but they aren't being acted upon now. Several states, such as Washington and Colorado, are moving forward with their commercial hemp programs. He would focus his remarks on these types of laws and how they compare to the language in SB 8.

MR. HENDRICK said several other policy options adopted by other states were not included in the legislation. He said SB 8 is very representative of industrial hemp program laws enacted in other states. It defines industrial hemp, establishes a licensing scheme with regulatory requirements for growers, provides for inspection and oversight, and grants an affirmative

defense for prosecution under state substance control laws. Other states have general addressed these areas, too.

SB 8's definition is in line with other states' definition. Some states have also chosen to include in their definition that the plant must have a "Delta-9" THC concentration of not more than 0.3 percent and many specify that the THC limits are "on a dry weight basis."

MR. HENDRICK said the licensing scheme in SB 8 is similar to other states' laws. However, section (1)(c) doesn't require GPS coordinates or a map of the growing area for the growing areas as other states have required. Indiana and Kentucky prohibit anyone who has been convicted of a drug related offense in the last 10 years from obtaining a growers license. Some states require written consent with the license application that explicitly allows access to the growing property for testing and inspections. Some states set terms for licenses stating that they are only valid for a certain time period, usually 1-3 years. Oregon's law states that a license is a personal privilege and not transferrable.

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Regulatory requirements in section (1)(d) have a provision for the licensee to provide documentation that seeds planted are of a type and variety certified to grow industrial hemp having no more than 0.3 percent THC. Other states have more detailed seed certification requirements in statute; for example, California's law establishes an approved list of seed types and Colorado's law formally establishes a seed certification program. Some states have slightly different regulatory requirements for seed growers as opposed to those growing the crop, itself. The requirements for the seed growers relate to inspection, keeping records of who they sell to, preserving those records for a certain time period, and requirements as the amount and type of inventory they can hold at any one time.

MR. HENDRICK said SB 8 would also require the licensee to share with the state any contracts to grow industrial hemp. This is a small difference from others, but Colorado actually requires proof of a contract before a license can be issued. Most of the other regulatory requirements closely align with language in other states. He said some state laws have more detailed oversight for things like how inspections and testings can take place and what to do if test samples come back with THC amounts higher than lawfully acceptable.

[3:47:21 PM](#)

Section 2 of SB 8 provides an affirmative defense for prosecution under the Controlled Substance laws. Some states, such as Colorado, extended this protection to include people who are processing, selling or otherwise distributing industrial hemp grown by a person who is registered under their law. In Montana, in order for the defense to apply, the licensee must "have valid applicable controlled substances registrations with the U.S.DEA."

[3:48:01 PM](#)

MR. HENDRICK said additional policy options that other states have adopted are create a board or advisory committee to advise on laws, regulations, enforcement and budgetary matters. Some have adopted detailed seed registration certification programs. Some specifically set up an industrial hemp fund to support the program. Money going into these funds usually includes registration or licensing fees. Some states specifically authorize grants from foundations or private individuals. Colorado uses a portion of its revenues from marijuana sale taxes to support the industrial hemp fund, as well.

[3:48:59 PM](#)

In terms of penalties, some states authorize civil penalties of up \$2,500 per violation and some have minimum acreage requirements, usually 5 acres or greater for growers of the crop and 2.5 acres or more for seed cultivators.

MR. HENDRICK said some states have considered the transportation of hemp away from the growth site and require agents transporting the harvest to carry the licensing documentation with them. California requires sample testing of industrial hemp crops immediately before the harvest.

SENATOR STOLTZE asked if individual states does its own seed, soil and product certification.

MR. HENDRICK replied that some states haven't established a seed certification program and some have.

SENATOR STOLTZE said he was more concerned about the levels of drug content.

MR. HENDRICK replied that the level of drug content is set at the same amount as for the crop, itself.

SENATOR STOLTZE asked if each state is responsible for conducting those tests.

MR. HENDRICK answered yes.

SENATOR STOLTZE asked to determine fiscal impact, if the federal government is able to render any assistance for certification as with other agricultural products.

MR. HENDRICK answered he wasn't aware of any federal assistance.

SENATOR MICCICHE said it seems like the background checks seems a little extreme if it doesn't have potential for abuse and asked him to explain why.

[3:53:06 PM](#)

MR. HENDRICK answered that he couldn't speak to why, but he had heard someone say that allowing industrial hemp might be a way for people to grow marijuana in those plots. It could be that industrial hemp is still considered to be a controlled substance on a federal level.

[3:54:15 PM](#)

SENATOR MICCICHE asked at what point would a controlled substance not require control.

MR. HENDRICK answered that he wasn't sure, because he wasn't an expert on federal law. The states have definitions for the industrial hemp plant and some define industrial hemp products separately from the plant. Zero levels of THC wouldn't be an issue.

SENATOR STOLTZE asked about possible federal assistance with marketing and other facets of the agricultural community.

MR. HENRICK responded that he would look into what federal assistance is available.

SENATOR STOLTZE added "or prohibited."

[3:56:31 PM](#)

LARRY DEVILBISS, Mayor, Mat-Su Borough, Palmer, Alaska, said he is a farmer and knows that the industrial hemp will not be confused visually with a marijuana plant. They are not remotely alike. He didn't think it had a massive commercial potential for Alaska, but it probably has a niche value. The seed is available at places like Costco and he has one 92 year old constituent who

credits his health all to hemp and has a bible verse to support it.

4:00:04 PM

BRYCE WRIGLEY, President, Alaska Farm Bureau (AFB), Delta Junction, Alaska, supported SB 8. He said the two crops of hemp and marijuana are significantly different. Hemp is a very versatile crop providing fiber and oil that can be used in a wide range of products in the health food world. In fact hemp seeds are considered a super food with up to 20 percent protein.

The U.S. imports \$2 billion worth of hemp products per year and it seems that if the products are safe to import, they could also be safely grown here. The low level of THC contained in industrial hemp provides the necessary safeguards to the public health.

MR. WRIGLEY said it isn't clear whether industrial hemp can be grown to maturity here, so that the desired products could be processed into suitable items. The development of hemp varieties with the required low THC concentration, the short season and other desirable traits is the proper purview of the University of Alaska Fairbanks as it is a land grant university with land facilities in different areas of the state to provide a wide range of trial locations. He stressed that it is important to conduct this research in a controlled manner by legitimate researchers who can evaluate the traits, measure the THC levels and screen for unintended risks. Even if no varieties are found that can mature in Alaska's latitude there is promise for industrial hemp as a cover crop for green manure or for weed suppression. The proper methods for determining whether this is a good opportunity for Alaskan farmers is for UAF to do the research and pass the breeder seed through the Plant Material Center to individual farmers to grow.

4:02:24 PM

SENATOR STOLTZE asked if the Farm Bureau officially endorsed growing hemp in the past.

MR. WRIGLEY replied this week is the first time it came before the AFB and they endorsed SB 8 officially.

SENATOR COSTELLO asked how large of an industry hemp would be and if any farmers had expressed interest in growing it.

MR. WRIGLEY answered that he hadn't heard of anyone wanting to grow it. It has maturity issues in Alaska's latitude. Alaska

struggles with rotational crops being limited particularly in the north as to what can be rotated with barley and grains. There are possibilities that hemp could provide a green manure crop or a method of suppressing weeds because it grows very densely.

SENATOR COSTELLO asked if the research should be done by UAF or individual farmers.

MR. WRIGLEY replied that his strong recommendation would be to do it through UAF, because they have the capability of evaluating various aspects of hemp as a crop and determining what varieties would be the best, THC levels and things like that. It would be helpful to have the University provide that research first, because accredited and land grant universities were established to provide that service. The information was meant to be disseminated through cooperative extension and the Plant Material Center was tasked with growing those crops as they were determined to be viable. He thought it was important to reestablish the importance of the University in that process.

[4:06:18 PM](#)

SENATOR STOLTZE asked if the hemp plant could become invasive.

MR. WRIGLEY answered that it can, but it is spread by speed. One hopes if it can mature here that it would be managed properly and that the plant would be harvested before mature seed setting. That is another compelling reason to involve the University.

CHAIR GIESSEL thanked him for his testimony and opened public testimony.

[4:07:49 PM](#)

JIM SYKES, representing himself, Palmer, Alaska, supported SB 8. He is also a member of the Mat-Su Borough Assembly, but is not speaking for them, but they were okay with the Mayor's testimony earlier. The idea of putting a THC dry weight and allowing for inspection at any time of a crop and testing is important, especially with medical and recreational marijuana.

[4:10:01 PM](#)

FRANK TURNEY, representing himself, Fairbanks, Alaska, supported SB 8. He said the real terminology is cannabis, not marijuana that has been used as a racist tool against blacks and minorities, has been grown for medicinal and industrial uses for 10,000 years. Cannabis sativa L is grown for industrial

production like fiber and oils; cannabis sativa is grown for medicinal and recreational uses. Unlike other biomass that need a lot of water, but hemp needs just a little bit of water and a little bit of sunshine: 10 tons per acre for three or four months growing time and 50,000 products can be made out of it. People worry about sterilizing the seed, but now a hemp vodka named Purgatory is being made in Wasilla; it is authorized by the DEA and certified by the State of Alaska. They get their seeds sterilized from Canada. Industrial hemp should be grown in Alaska.

[4:12:41 PM](#)

SENATOR STOLTZE asked why the department needs the fiscal note.

FRANCI HAVEMEISTER, Director, Division of Agriculture, Department of Natural Resources (DNR), Anchorage, Alaska, replied that the fiscal note is strictly to write the regulations for this crop. That would allow the industry to move forward and possibly start production of the crop.

[4:14:50 PM](#)

SENATOR STOLTZE noted there were zero out-year costs and asked if this becomes an industry what additional costs would be involved.

MS. HAVEMEISTER answered that the department would be the licensing agency as well as the regulator.

SENATOR STOLTZE said when he had the commercialization of marijuana bill in the State Affairs Committee he was troubled, because of the division's role which included making agriculture revolving loan funds and seed certification, storage and enhanced security, and a whole myriad of costs for which it is not doing now had a zero fiscal note saying that hemp was the Division of Commerce's problem. He didn't see the difference.

MS. HAVEMEISTER replied that the difference between this bill and the one on marijuana is that this language and hemp production would be allowed through the Farm bill and it is written into the Farm Bill that the Divisions of Agriculture and the Universities can be involved in research.

[4:17:33 PM](#)

SENATOR STOLTZE asked who in her division would be responsible for certification and THC testing.

MS. HAVEMEISTER replied that at this time the Division of Agriculture doesn't have capability to do the THC tests. If funding were to come through, it potentially could be done through them.

SENATOR STOLTZE said he wasn't asking if funding was coming through; legislation is coming through and it has implications for funding. He didn't want to pass the bill and then see the need for funding. He was disappointed that he wasn't getting answers.

CHAIR GIESSEL pointed out that the bill will go to the Finance Committee as well as the Judiciary Committee. Seeing no further comments, she left public testimony open and held SB 8 in committee.

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

[4:19:43 PM](#)

CHAIR GIESSEL announced HJR 4 to be up for consideration.

SENATOR COGHILL moved to adopt Amendment 1, 29-LS0281\A.2.

29-LS0281\A.2  
Nauman  
3/20/15

#### AMENDMENT 1

OFFERED IN THE SENATE TO HJR 4

Page 1, line 5, following "integrity":

Insert "; urging the United States Congress to reject any proposal to divert or otherwise reduce revenue sharing to the coastal states and their political subdivisions under the Gulf of Mexico Energy Security Act of 2006; and urging the President of the United States to direct, to the maximum extent possible, federal funds received from outer continental shelf development, and not dedicated to states or other federal programs, to federal infrastructure in the affected states"

Page 1, lines 7 - 13:

Delete all material and insert:

"**WHEREAS** the state, which has more coastline than the rest of the United States combined, requests that the United States Congress pass legislation that

allows the state to equitably share revenue generated on the outer continental shelf of the state; and"

Page 2, lines 7 - 8:

Delete "federal oil and gas leases in outer continental shelf areas adjacent to each state"

Insert "leases covered under phase one of the Gulf of Mexico Energy Security Act of 2006; phase two of the Gulf of Mexico Energy Security Act of 2006 expands the definition of "qualified outer continental shelf revenue" and continues to share revenue on an adjacency factor but includes an annual revenue-sharing cap of \$500,000,000 that applies through 2055"

Page 3, line 5, following "opportunities":

Insert "or, alternatively, could be used for deficit reduction"

Page 3, line 11, following "integrity":

Insert new material to read:

"; and be it

**FURTHER RESOLVED** that the Alaska State Legislature urges the United States Congress to reject any proposal to divert or otherwise reduce revenue sharing to the coastal states and their political subdivisions under the Gulf of Mexico Energy Security Act of 2006; and be it

**FURTHER RESOLVED** that the Alaska State Legislature urges the President of the United States to direct, to the maximum extent possible, federal funds received from outer continental shelf development, and not dedicated to states or other federal programs, to federal infrastructure in affected states"

SENATOR STOLTZE objected for discussion purposes.

CHAD HUTCHISON, staff to Senator Coghill, sponsor of Amendment 1, explained that the amendment was based on ongoing conversations they had had with Senator Murkowski's staff, Mike Pawlowski on how to increase Alaska's share of offshore revenue.

He said that right now, Alaska is under the authority of the Outer Continental Shelf Lands Act (OCSL), which means that it receives 27 percent for offshore revenues in areas 3-6 miles away for the coast. The way it works is that the 27 percent is taken out by the federal government for offshore leasing and

given back to the state so it can use it to increase infrastructure on shore. The only relevant field that is privy to this provision is the North Star Field in the Beaufort Sea, but the expectation is that if the Liberty Field comes on, it would increase that revenue.

Concurrent to that is the Gulf of Mexico Energy Security Act in which the Gulf States - Alabama, Texas, Louisiana, and Mississippi - receive 37.5 percent of the offshore revenues. They get more for a number of reasons: because it occurred in 2006 that had the right type of political influence and a tremendous amount of drilling and in an area that is subject to hurricanes.

[4:23:12 PM](#)

Alaska wants to increase the amount of offshore revenue it gets from the federal government.

SENATOR STOLTZE said this proposal replaces a contentious provision that would have disrupted a historical argument the state has made and made it much stronger and asked if it requires a title change.

MR. HUTCHISON answered yes.

CHAIR GIESSEL said the title change was on the amendment page.

SENATOR COSTELLO said one congressional office has indicated support and asked if the entire congressional delegation been contacted about this amendment.

[4:24:49 PM](#)

MR. HUTCHISON that have had briefings with representative of Senator Sullivan, but the primary person that is most familiar with the oil and gas is Mr. Pawlowski and they rely on him at this point to communicate the message to the others in the delegation.

SENATOR COGHILL said they are trying to give a tool to congressional delegation that adds Alaska's voice go to the other states' that opposes distributing that 37.5 percent to other federal or conservation programs instead of it going back to the states.

REPRESENTATIVE SADDLER, sponsor of HJR 4, Alaska State Legislature, Juneau, Alaska, said he supported the amendment.

SENATOR STOLTZE removed his objection.

CHAIR GIESSEL announced that Amendment 1 was adopted. Finding no further comments, she closed public testimony.

SENATOR COSTELLO mentioned that this resolution has bi-partisan support in the other body. It is an important issue of debate that Congress will be having.

SENATOR STOLTZE said he appreciated that Senator Murkowski was taking the lead on this.

SENATOR COSTELLO moved to report HJR 4, as amended, from committee with individual recommendations and attached fiscal note(s). There were no objections and therefore, SCS HJR 4(RES) moved from committee.

### **SB 57-CLEAN AIR ACT PLAN**

[4:30:04 PM](#)

CHAIR GIESSEL brought SB 57 back before the committee and invited Mr. Rokeberg to continue commenting on the bill. [CSSB 57(NRG), 29-LS0523\G was before the committee.]

[4:30:34 PM](#)

NORMAN ROKEBERG, Commissioner, Regulatory Commission of Alaska (RCA), Anchorage, Alaska, said his opinions on SB 57 are not official RCA opinions. He clarified his December 1 comments on SB 57. He said it would require the drafting of a state implementation plan that may prohibit the submission of a set from the state. Under the bill the state would have to develop and proceed with a plan but then it would run into the bill's requirements which he found troubling. For example, section (a)(1), on page 1, line 13, indicates that this does not result in increased electrical utility rates and it would have a disproportionate effect on households of low to moderate incomes.

MR. ROKERBERG said page 7 of his comments referring to the impact of EPA's mandate because of the goals they set and their impact of shutting down Healy's plants 1 and 2 for the 45,000 Golden Valley Electric Association (GVEA) ratepayers in Fairbanks. The estimate of increased cost would be \$.05-.07 per kilowatt hour, bringing rates up to \$.29-.31 kilowatt hour or a 26 percent increase. The analysis is extremely difficult, because the RCA does not have the capability to be to determine the distinction between low and moderate income from a broad

retail rate. The impacts would be \$450 per year across all retail ratepayers. One could assume that increases will impact low and moderate ratepayers even with a plan that would decrease greenhouse gases.

[4:34:27 PM](#)

Texas, for instance, believes an in-state plan will raise costs 10 percent, but if the EPA does it, it will be 44 percent. Similarly with the state of Ohio at 36 percent.

Additionally, subsection 2 regarding electrical reliability, resource adequacy and transmission, is very vague and difficult to understand. Closing the coal plants in Fairbanks would exacerbate the problems they have now in terms of reliability.

Additionally, number three, a big part of the EPA plan is to introduce a greater amount of renewables, but particularly energy efficiencies and this will clearly impair existing electrical generation capacity. Number four, obviously if there is any reduction in Healy 1, GVEA has indicated they are scheduling its potential retirement sometime around 2023. He was not sure how that would impact the meaning of the bill, but it would cost in terms of employment. These hurdles may prohibit or restrict the ability of the state to do a plan and it is hanging over the heads of the folks doing it and may have an impact on the quality of their work.

MR. ROKEBERG said the RCA could look into the areas specific to electric power, but doing all the rest of the things creates an extra burden on them. The goal is to just get an exemption from the EPA and to write a plan that Alaska can live with.

Further, he said Alaska has a long history of fighting against federal intrusion on policy issues. He also differed on the notion that not filing a plan would be beneficial to the mining industry. He didn't think it would be helpful at all. Alaska needs to write a plan it can live with.

SENATOR STEDMAN said he heard Mr. Rokeberg say that Rule 111(d) would not impact the North Slope oil basin, but he hears differently from the companies up there.

MR. ROKEBERG responded that at this point the 111(d) provision only impacts five utilities on the Railbelt; it has no impact on the North Slope. That is one of the problems. In every other state, these designs are statewide, but in Alaska enforcement is restricted to the Railbelt area. Efficiencies made in renewable

and energy efficiencies there are not even being counted by the EPA. In addition, the Railbelt has an entire new generation fleet and the EPA rule applied in 2012. So, a plan needs to be written that would account for those new plants.

SENATOR STEDMAN said that energy is Alaska's biggest industry and his understanding from the industry is that it will affect them.

[4:40:51 PM](#)

CHAIR GIESSEL said the EPA is already in Alaska and she had received letters of support for SB 57 from Alaska's Railbelt Cooperative Transmission and Electric Company (ARCTEC), the Alaska Chamber, the Teamsters, the Fairbanks Chamber, Consumer Energy Alliance, the Miners Association, and more diverse groups and she wasn't sure what Mr. Rokeberg was advocating for. The bill advocates for a waiver at the very onset and to have the rest of the data available to the legislature before any kind of plan would be submitted seems only transparent.

MR. ROKEBERG said she had done an excellent job of getting support for the bill, but he believed that the bill is based on the premise that submitting a plan is not good and that the requirements do not ultimately serve Alaska's purposes in seeking an exemption. It adds work and analysis cannot even be performed for many sections of the bill by the departments, because they don't have economists on staff, which gave rise to the fiscal note. In addition, it also gives authority to the DEC whereas the original comments were developed by a working group that cuts across numerous agencies that have expertise in doing that. Putting the authority in DEC could create the need for further fiscal notes.

CHAIR GIESSEL responded that, in fact, DEC has an economist on staff and the new zero fiscal note comes about because of HB 140 that passed last year requiring departments to produce a good faith estimate on the cost of implementing regulations. Federal actions that require compliance were explicitly written into the statute through HB 140. That funding, amounting to \$278,000 in FY16 provides for the procurement of an economist III position as well as contractual assistance for the development of cost estimates including data collection, analysis, and report of findings in the amount required for the contract.

SENATOR GIESSEL said it is spelled out on page 2 of the fiscal note. SB 57 requires the DEC to perform this analysis; they have the money and it is unencumbered for FY16. The original fiscal

note estimated about \$100,000 over the two fiscal years for the contractual assistance and that would be included in what was passed last year. So, in fact, this bill has a zero fiscal note.

[4:45:37 PM](#)

SENATOR STEDMAN said he is generally hesitant when committees start zeroing out fiscal notes to avoid the Finance Committee.

CHAIR GIESSEL said this fiscal note came from the Division of Legislative Finance.

SENATOR COSTELLO asked if the Department of Law (Department of Law) could say whether the EPA has the authority under the 111(d) rule to regulate in this manner. In a way they are recognizing that it has this authority by responding to it in a manner this legislation does, which is to allow Alaska to seek an exemption. How does that work?

[4:48:31 PM](#)

EMMA POKON, Assistant Attorney General, Department of Law (DOL), Anchorage, Alaska, responded that the state is currently participating in litigation in the Washington, D.C., Circuit challenging Rule 111(d) and EPA's authority to issue the proposed regulation. This legislation would be outside of the legal question she is prepared to answer. EPA is continuing to say that they believe they have the authority for this and the rule will be issued this summer; the court will decide in the end whether or not EPA has the authority.

SENATOR COSTELLO said she sits on the Department of Law's budget subcommittee and earlier this week she asked the Attorney General Craig Richards what the state's plan is on pushing back against Rule 111(d). His memo in response says that the Clean Power Plan rule is an example of an area where the state felt it necessary to push back against the EPA. It went on to say that the state is essentially submitting comments dealing with the EPA's interpretation and how they believe it is wrong. She said the state attached a legal analysis explaining why it believes the EPA's proposed interpretation is improper. It mentions the state is intervening in a lawsuit. Her concern is that the Department of Law (DOL) is already engaged in this issue, but maybe it should wait until the legislature weighs in.

[4:52:24 PM](#)

MS. POKON said the litigation was started a while ago in the last administration and she couldn't say which branch of

government should be first to make a statement about the EPA's authority.

CHAIR GIESSEL commented that this bill is the second line of defense if the lawsuit should fail.

SENATOR WIELECHOWSKI asked if the state passes this and then tries to put a plan in place, what happens if the feds reject it.

MR. POKON replied that the feds would implement a plan.

SENATOR WIELECHOWSKI asked the likelihood that the state would receive an exemption.

MS. POKON replied that Alaska has been given a lot of exemptions.

[4:54:44 PM](#)

SENATOR WIELECHOWSKI asked if anyone else had asked for an exemption.

MS. POKON replied that she had not seen specific request for an exemption or waiver from the rule, but other states have objected to EPA's authority or commented in a negative fashion.

SENATOR WIELECHOWSKI asked if it is possible that Alaska could fail to produce an SIP in accordance with our own stringent criteria and in turn cause ourselves to be subjected to a federal implementation plan.

MS. POKON answered that her reading of SB 57 is that it would require DEC to make affirmative determinations of the effect of the state plan and it would not be submitting a state plan for approval to the EPA until the determinations could be made. If DEC could not make those determination then they wouldn't be submitting a state plan, which under the terms of the Clean Air Act would result in a federal implementation plan.

SENATOR WIELECHOWSKI said in other words, the legislature could be making it so hard for DEC to come with a plan that meets federal requirements such that the federal government rejects it and then implements a federal plan.

MS. POKON replied that is a possible outcome.

SENATOR COGHILL said he liked what SB 57 was trying to do, but maybe this should go into effect if the feds start giving us a hard time on the exemption rather than doing it before the exemption request is settled. Has the state already applied for an exemption?

[4:58:09 PM](#)

SENATOR STOLTZE asked whether the 111(d) provisions are implemented or in the development process and that might change the relevancy of their approach.

[4:58:41 PM](#)

ALICE EDWARDS, Deputy Commissioner, Department of Environmental Conservation (DEC), Anchorage, Alaska, responded that the EPA has not finalized the rule making for 111(d); the state submitted comments on December 1, which was at the end of the comment period. The EPA has indicated that they will finalize ruling making this summer. In the multi-agency (RCA, Alaska Energy Authority (AEA), DEC and the Governor's Office) comments to EPA, the state requested an exemption for this rule making along with other associated comments. They don't know for certain whether or not an exemption will be granted.

SENATOR COGHILL questioned the constitutionality of the proposed rule and thought we need to focus there as long as possible, and asked if SB 57 would back up their comments or weaken that position.

MS. EDWARDS answered that state comments take three approaches; they start with the legal aspects, which Department of Law spoke about; it asks for the exemption and then depending on where EPA landed they also put in information that might address some of the ruling making issues if they moved forward and either of the options came through. Then the real question becomes: in the end it is not known how the final rule will look or how the state's comments or litigation is going to be resolved. If the state fails to get an exemption, the question becomes how the state will develop a state plan and if the bill will allow development of it and meeting the requirements.

[5:02:40 PM](#)

SENATOR STEDMAN clarified that the Senate Resources Committee prepared the fiscal note is.

CHAIR GIESSEL said it may say that, but the consultant to it was Legislative Finance.

SENATOR COSTELLO asked if the department could comment on her concern, which is that the state cannot submit a plan that shows there is no retail electric service rate increase. Every state realizes that the consumer is the one who will pay and saying that the state has to submit a plan that has no effect on increased retail service rates could be tying our hands.

Finding no further questions, Chair Giessel held SB 57 in committee.

5:04:45 PM

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 5:04 p.m.