

**ALASKA STATE LEGISLATURE
SENATE RAILBELT ELECTRIC SYSTEM**

February 17, 2020
9:02 a.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Elvi Gray-Jackson
Senator Peter Micciche
Senator Mike Shower

MEMBERS ABSENT

Senator Cathy Giessel

COMMITTEE CALENDAR

SENATE BILL NO. 123

"An Act relating to the regulation of electric utilities and electric reliability organizations; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 123

SHORT TITLE: ELECTRIC RELIABILITY ORGANIZATIONS

SPONSOR(S): RAILBELT ELECTRIC SYSTEM

05/14/19	(S)	READ THE FIRST TIME - REFERRALS
05/14/19	(S)	RBE, FIN
01/24/20	(S)	RBE AT 3:30 PM BUTROVICH 205
01/24/20	(S)	Heard & Held
01/24/20	(S)	MINUTE (RBE)
01/27/20	(S)	RBE AT 3:30 PM SENATE FINANCE 532
01/27/20	(S)	Heard & Held
01/27/20	(S)	MINUTE (RBE)
01/29/20	(S)	RBE AT 3:30 PM SENATE FINANCE 532
01/29/20	(S)	Heard & Held
01/29/20	(S)	MINUTE (RBE)
01/31/20	(S)	RBE AT 3:30 PM BUTROVICH 205
01/31/20	(S)	Heard & Held

01/31/20 (S) MINUTE (RBE)
02/03/20 (S) RBE AT 3:30 PM BUTROVICH 205
02/03/20 (S) Heard & Held
02/03/20 (S) MINUTE (RBE)
02/06/20 (S) RBE AT 1:30 PM BUTROVICH 205
02/06/20 (S) -- MEETING CANCELED --
02/12/20 (S) RBE AT 9:00 AM FAHRENKAMP 203
02/12/20 (S) Heard & Held
02/12/20 (S) MINUTE (RBE)
02/14/20 (S) RBE AT 9:00 AM BELTZ 105 (TSBldg)
02/14/20 (S) Heard & Held
02/14/20 (S) MINUTE (RBE)
02/17/20 (S) RBE AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

RENA MILLER, Staff
Senator Cathy Giessel
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes from Version K to Version E of SB 123 and discussed further proposed changes to Version E.

NOAH KLEIN, Legislative Counsel
Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: As drafter, answered questions related to SB 123.

CHRIS ROSE, Executive Director
Renewable Energy Project Alaska
Anchorage, Alaska

POSITION STATEMENT: Stated support for the improvements to SB 123.

ACTION NARRATIVE

9:02:40 AM

CHAIR JOHN COGHILL called the Senate Railbelt Electric System meeting to order at 9:02 a.m. Present at the call to order were Senators Gray-Jackson, Micciche, and Chair Coghill. Senator Shower arrived soon thereafter.

SB 123-ELECTRIC RELIABILITY ORGANIZATIONS

[9:03:18 AM](#)

CHAIR COGHILL announced the consideration of SENATE BILL NO. 123, "An Act relating to the regulation of electric utilities and electric reliability organizations; and providing for an effective date."

He noted the new committee substitute (CS), Version E.

He recounted that AS 42.05 currently has 8 Articles and the CS creates a new Article 9 called "Electric Reliability Organizations, Plans, and Standards." He read the existing Articles 1-8 to show how Article 9 fits in. He said the RCA has a clear duty. The discussion today will be about how the ERO, the integrated resource plans, and preapproval all fall together. He said a difference today is that preapproval planning must be through an ERO under its resource planning.

[9:05:29 AM](#)

SENATOR SHOWER joined the committee.

CHAIR COGHILL solicited a motion to adopt Version E.

[9:05:54 AM](#)

SENATOR MICCICHE moved to adopt the work draft committee substitute (CS) for SB 123, work order 31-LS0959\E, as the working document.

[9:06:05 AM](#)

CHAIR COGHILL objected for purposes of an explanation.

[9:06:28 AM](#)

RENA MILLER, Staff to Senator Giessel Alaska State Legislature, Juneau, Alaska, advised that she is on loan to this committee for the purposes of SB 123. She agreed that the CS significantly restructures the bill.

CHAIR COGHILL advised that the drafter was online if there were questions.

MS. MILLER reviewed the following summary of changes from version K to version E for SB 123:

Page 1, line 8: Creates new Article 9A in AS 42.05, Alaska Public Utilities Regulatory Act. Version E combines subsections into new sections for clarity.

Page 1, line 9: Creates new section 42.05.760, Electric reliability organizations; from former subsections (a), (b), (d), (e), and (f).

Page 1, line 12 to page 2, line 2:

Revises provision to clarify if all the utilities in an interconnected system are exempt from RCA rate regulation as municipal entities/instrumentalities of the state, the RCA may not require they form an ERO.

MS. MILLER said the drafter was available to explain why "may not" accomplishes the intent and that "shall not" is contrary to legislative drafting standards.

CHAIR COGHILL asked Mr. Klein to explain why "may not" is equivalent to "shall not."

[9:08:49 AM](#)

NOAH KLEIN, Legislative Counsel, Legal Services, Legislative Affairs Agency, Juneau, Alaska, explained that the term "may not" is a clear directive in Alaska statutes that the commission cannot do something. The drafting manual explicitly says do not use the term "shall not" and Legal Services drafters try to avoid it.

CHAIR COGHILL said SEAPA should understand that the term "may not" is directive.

[9:09:37 AM](#)

SENATOR SHOWER asked if the inverse is true if one says "may" versus "shall" as opposed to "may not" versus "shall."

MR. KLEIN said he wasn't sure he understood the question but he didn't think so. May is a permissive term that grants permission. For example, a regulatory body may adopt regulations as opposed to shall adopt regulations. The former grants the authority but it isn't a requirement and the latter is directive.

SENATOR SHOWER said he wanted it on the record because it's a little tricky.

CHAIR COGHILL offered that it was very easy when his mother said he may have a cookie and it was very clear when he said he may not have a cookie.

[9:10:49 AM](#)

MS. MILLER continued to review the summary of changes from Version K to Version E:

Page 2, line 8: Conforming change to new bill structure.

Page 2, lines 15, 18: Conforming change to new bill structure.

Page 2, line 25 to page 3, line 1:

Adds new provision to allow the RCA to certify an ERO for a network that doesn't qualify as a system

MS. MILLER explained that the RCA suggested this change to plan for future eventualities.

Page 3, line [2]: Creates new section, 42.05.762, Duties of an electric reliability organization; from former subsection (c).

Page 3, line 5, lines 10-11 and lines 13-14:

Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

[9:12:11 AM](#)

CHAIR COGHILL offered his understanding that the RCA requested this change.

MS. MILLER responded that the RCA reviewed the CS on multiple levels. There have been some adjustment to the definitions of those two terms near the end of the bill to add clarity and avoid ambiguity. This resulted in some term changes throughout the bill. She continued to review the summary of changes:

Page 3, line 6: Conforming change to new bill structure. [AS 42.05.780(a) is cited.]

Page 3, line 14: Conforming change to new bill structure. [Specific sections of statute are again cited.]

Page 3, line 29: Creates new section 42.05.765, Reliability standards, from former subsections (g), (h), (i), (o) and (n).

Page 4, line 1, twice on lines 7-8, and line 14:

Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

Page 4, line 10: Changes 'cybersecurity protection' to 'protection from a cybersecurity incident' to conform with the terms in the definitions section.

Page 4, line 15: Allows standards to result in, as long as they are not designed for the purposes of, requiring additions to facilities or new projects.

MS. MILLER noted that the utilities brought this suggestion forward.

Page 4, line 18: Removes requirement for the RCA to hold a hearing before accepting a standard and removes references to RCA's ability to reject a plan. This has the effect of applying existing statute on rejecting a tariff provision.

MS. MILLER explained that this ties to existing statute where the RCA is able to reject a tariff provision only for form and filing. SB 123 does not give the commission a new method of rejecting a standard.

CHAIR COGHILL asked why the public hearing was removed.

[9:14:54 AM](#)

MS. MILLER explained that if an ERO files a standard, the RCA has to publicly notice the filing but if there is no protest, the RCA feels that under their current tariff provisions, it is appropriate to approve the standard without a hearing.

CHAIR COGHILL added that if there is a protest from an interested party, public comment goes forward.

MS. MILLER said yes and noted that further down in subsection (b) there are more backstops if the RCA wants to modify a standard. She continued:

Page 4, line 22: Removes reference to rejecting a standard.

Page 5, lines 8-14: New provision to address potential conflicts between a Department of Defense standard required for a utility serving military bases and a standard adopted by the ERO.

MS. MILLER referenced Doyon Utilities' concern that the ERO might enact standards that potentially conflict with the standards and rules in their contract with the Department of Defense (DoD). This provision clarifies that a utility serving military bases follows the federal standards if there is a conflict while the commission resolves the conflict. The language on lines 12-13 also clearly states that the RCA may not resolve the conflict such that it prevents fulfilling the DoD contract.

[9:16:51 AM](#)

SENATOR SHOWER asked if she was saying that nothing in the bill would prevent the RCA from flexing to accommodate the utilities in meeting their contract with DoD.

MS. MILLER said yes; the utility will need to notify the RCA if there is a conflict and thus is exempt from having to comply with the ERO standard, but it is clear that the commission may not resolve a conflict in a manner that prevents compliance with DoD.

SENATOR SHOWER expressed satisfaction.

CHAIR COGHILL added that this ensures that DoD requirements cannot be changed.

[9:18:35 AM](#)

MS. MILLER continued.

Page 5, line 18: Creates new section 42.05.767, Rules, from former subsection (p).

Page 5, line 26: Creates new section 42.05.770, Regulations, from former subsection (q).

Page 5, lines 28-29: Conforming change to new bill structure.

Page 5, line 30 to page 6, line 2:

Amends provisions related to an open access transmission tariff. Requires that the RCA's

regulations require an ERO tariff to include standards for nondiscriminatory open access transmission and interconnection, and provisions for transmission system cost recovery.

MS. MILLER noted that the utilities requested this change and the RCA endorsed it.

Page 6, lines 8-11: Creates new section 42.05.772, Duties of load-serving entities, with a new provision clarifying that all load-serving entities, even those otherwise exempt from RCA regulation, are subject to the ERO's tariff.

[9:20:15 AM](#)

SENATOR SHOWER asked if the last change on page 5 was a redline issue.

MS. MILLER replied the utilities support this language and the concept of enabling transmission and interconnection options for the future.

CHAIR COGHILL added that if somebody is going to supply power, they need to be part of the tariff structure.

MS. MILLER said the provisions direct the RCA to write regulations requiring that the ERO's tariff include provisions for standards that are nondiscriminatory open access transmission, which will enable more economic dispatch throughout the grid. The ERO wouldn't manage the provisions for transmission system cost recovery but would have standards for how the cost recovery that's done by others would work. Ms. Miller continued.

Page 6, line 12: Creates new section 42.05.775, Penalties; from former subsections (j), (k), (l) and (m).

Page 6, line 13-14, line 21 and lines 24-25:

Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

Page 6, lines 28-29: Conforming change related to restructuring.

Page 7, line 4: Conforming change related to restructuring.

[9:22:59 AM](#)

SENATOR MICCICHE questioned the use of the term "violated" on page 6, line 16 when the sentence is talking about someone who failed to comply to a standard. He asked if there was a reason the drafter chose that approach.

CHAIR COGHILL said he believes it's appropriate. The ERO may impose a penalty if, after notice and a hearing, it finds the person has violated a standard.

SENATOR MICCICHE said it seems like strong language to call out a violation for someone who hasn't had the opportunity to comply, particularly someone who may not be one of the utilities but is providing capacity on the line.

CHAIR COGHILL responded that everybody has a seat at the table when the ERO is developing standards.

[9:25:14 AM](#)

MS. MILLER said there is a comfort valve on [page 7] lines 4-6, subsection (d). She explained that the standards are reviewed and noticed by the RCA and there would be a publication to the users, owners, and operators that the standard is taking effect. But if there is a violation, any penalty imposed must consider the effort that was expended to remedy the violation in a timely manner. Also, there is process involved before a penalty is imposed.

[9:27:05 AM](#)

CHAIR COGHILL read paragraph (d) on page 7, lines 4-6.

(d) A penalty imposed under this section must bear a reasonable relation to the seriousness of the violation and take into consideration the effort of a user, owner, or operator to remedy the violation in a timely manner.

SENATOR MICCICHE expressed hope that the commission would find a way to remedy the situation before it gets to the point of a violation.

CHAIR COGHILL responded that a penalty can happen in two ways. One is through the ERO and the other through the RCA process.

[9:28:30 AM](#)

SENATOR SHOWER asked if the RCA would be the final arbiter in the appeal process unless the matter is appealed in court.

MS. MILLER answered yes; a penalty imposed by the ERO can be appealed to the RCA and a penalty imposed by the RCA can be reconsidered under the current RCA process and then it would go to the courts.

MS. MILLER continued to review the summary of changes from Version K to Version E.

Page 7, line 10: Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network.'

Page 7, lines 19-20: Repositions the requirement for the RCA to review the process used to develop an integrated resource plan so that the consideration must be made before the RCA decides whether to approve, reject or modify a plan. Previously, the consideration was related to the modification of a plan (page 6, line 27).

Page 8, line 8: Changes 'submission' to 'filing' to conform.

Page 8, line 17: Added 'for large energy projects' to the section heading for project pre-approval.

Page 8, lines 18-19 and lines 22-23:

Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

Page 8, line 19: Clarifies that project pre-approval is required only for projects in a network served by an ERO.

CHAIR COGHILL said he thought this concept was in bill but this makes it very clear.

[9:31:26 AM](#)

MS. MILLER continued.

Page 8, line 29: Conforming to reference new section numbers.

Page 9, lines 2-3: Exempts from the project pre-approval requirement hydro power projects licensed by FERC after Sept. 1, 2016, and before July 1, 2021.

**Drafting error: Intent was to capture projects licensed before Sept. 30, 2016. Amendment pending.*

CHAIR COGHILL commented that there will be several cleanups like this.

MS. MILLER continued.

Page 9, line 10 and page 9, line 31 to page 10, line 1:

Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

Page 9, line 27: Creates new section 42.05.790, Definitions, from former bill section 2. With this change, terms are defined for the purposes of the new article related to EROs, and not throughout AS 42.05.

Page 10, line 3: Conforming to reference new sections.

Page 10, lines 6-7: Definition for interconnected bulk-electric system is modified to not include the 'plant' and to reference network definition.

Page 10, lines 10-12: Definition of interconnected electric energy transmission network is modified to include the 'plant' originally in the bulk-electric system definition.

Page 10, lines 17-18: Definition of load-serving entity is refined to require at least 10 bill-paying customers.

Page 10, line 20: Changes 'interconnected bulk-electric system' to 'interconnected electric energy transmission network'.

MS. MILLER said that concludes the changes that appear in the work draft for SB 123, Version E.

CHAIR COGHILL listed the individuals available to answer questions.

MS. MILLER asked the Chair if he wanted to go over the two proposed substantive amendments.

[9:35:06 AM](#)

SENATOR SHOWER directed attention to the definition of "load-serving entity" in paragraph (6) on page 10, lines 16-18. He asked if an area with more than 10 properties that has generation and is growing would be forced to be part of the ERO.

MS. MILLER responded that the load-serving entity has to be an electric utility, which is a high bar for somebody who is serving 10 customers.

SENATOR SHOWER expressed satisfaction with the answer.

CHAIR COGHILL asked if this isn't similar to the DoD matter where a utility may serve a military base as a single customer.

MS. MILLER responded that load-serving entities have certain obligations relative to the ERO, one of which is that the operational costs of the ERO must be spread among the load-serving entities. Those costs can then be passed along to the ratepayers through a surcharge. In exchange, the ratepayers get such things as reliability and cybersecurity protection.

She continued to explain that an independent power producer (IPP) is an electric utility that is a load-serving entity but it doesn't have customers that pay direct invoices so the bill has tried to restrict that by requiring more than 10 customers. Receiving invoices directly from the entity goes directly to Doyon Utilities that is paid via one invoice from the federal government. The idea is to not pass along those costs.

[9:38:56 AM](#)

CHAIR COGHILL asked Ms. Miller to go through the proposed changes to Version E. He noted that it is identified as the mark-up that will go to Legislative Legal.

He advised that the proposed changes will be drafted into a new CS for the committee's consideration on 2/19/20.

MS. MILLER described the following changes:

Page 1, lines 4-5 of the title.

Delete: "public utilities interconnected with interconnected bulk-electric systems"

Insert: "certain large energy facilities" to better align with the section heading.

SENATOR MICCICHE pointed out the importance of the word "interconnected" and suggested the insertion should be "certain large interconnected energy facilities."

MS. MILLER replied she would flag that for the drafter.

Page 2, line 1.

Delete: "electric utilities"

Insert: "load-serving entities"

Page 2, line 8.

Delete: "(d) of this section"

Insert: "Section 42.05.762" because the ERO has to comply with this section.

Page 2, line 20.

Insert: "Notwithstanding the requirements of (d) of this section," before "If" and move the entire subsection to above subsection (d). This clarifies that the RCA does not need to create an ERO if these utilities can ask for and receive a waiver. [The subsections would be renumbered if the entire subsection is moved.]

[9:42:47 AM](#)

Page 3, line 6.

Delete: "an"

Delete: "plan"

Insert: "plans" This contemplates multiple versions of the initial integrated resource plan for the ERO as the years go by.

Page 3, lines 18-19.

Delete: "developing reliability standards and". This is where the ERO must show that it has rules to provide reasonable notice, public process, openness, and balancing interests. Developing reliability standards is just one of multiple duties of the ERO.

Page 6, line 2.

Delete: "provisions"

Insert: "standards"

Page 6, line 23.

Delete: "bulk-electric system"

Insert: "electric energy transmission network"

Page 7, lines 9 and 13.

Insert: "all" before "customers". The intent is to ensure that integrated resource planning accounts for every customer, whether they are served by a load serving entity or not.

Page 7, line 19.

Delete: "a hearing". Standards are considered tariff provisions and the RCA has existing statute for acting to these. The IRP will be filed as a petition and there isn't existing language in the RCA statutes to rely on.

Page 7, line 20.

Delete: "reject"

Page 7, line 23.

Following "orders." insert: "The commission may reject all or part of a petition that does not comply with form or filing regulations by the commission." This language comes from the RCA statutes on how to reject a tariff filing. The only way the commission can reject an IRP filed is if it doesn't meet the filing specifications, not because the RCA doesn't like the IRP.

Page 8, line 5.

Delete: "the"

Insert: "a"

Page 8, lines 25-26.

Insert: "in a cost-effective manner" from line 26 after "would" on line 25.

Page 9, lines 2-3.

Rewrite paragraph (2), as previously discussed, to say:

(2) hydropower project licensed by the Federal Energy Regulatory Commission before September 30, 2016.

MS. MILLER said that concludes the proposed changes to Version E.

[9:47:29 AM](#)

SENATOR MICCICHE commented that there is a lot of redundancy in subsections (b) and (c) on page 6.

MS. MILLER agreed and said she would note that to the drafter with the Chair's approval.

CHAIR COGHILL gave his approval. He added that he would have the proposed changes drafted into a new CS for the committee to consider as well as any amendments the members may bring.

SENATOR MICCICHE said he assumes that public testimony will remain open.

[9:49:23 AM](#)

CHAIR COGHILL removed his objection to adopting Version E as the working document. Responding to the question, he stated that public testimony would remain open while the bill is in this committee.

He asked Mr. Rose to offer his testimony.

[9:50:43 AM](#)

CHRIS ROSE, Executive Director Renewable Energy Project Alaska, Anchorage, Alaska, said he was pleased with the improvements to SB 123.

CHAIR COGHILL noted that John Burns with Golden Valley Electric was also listening online.

[9:51:19 AM](#)

CHAIR COGHILL found no further objection and Version E was adopted.

[SB 123 was held in committee.]

[9:52:10 AM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Special Committee on Railbelt Electric System meeting at 9:52 a.m.