

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-Eighth Session
April 7, 2015**

The Senate Committee on Natural Resources was called to order by Chair Don Gustavson at 1:24 p.m. on Tuesday, April 7, 2015, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Don Gustavson, Chair
Senator Pete Goicoechea, Vice Chair
Senator James A. Settelmeyer
Senator David R. Parks
Senator Mark A. Manendo

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Matthew Nichols, Counsel
Gayle Farley, Committee Secretary

OTHERS PRESENT:

Kyle Davis, Nevada Conservation League; Coalition for Nevada's Wildlife
Tony Wasley, Director, Department of Wildlife
Karen Jacobs
Karen Boeger, Nevada Chapter, Backcountry Hunters and Anglers
Mark Ourada, Central Region Vice President, American Coalition for Clean Coal Electricity
Colleen Cripps, Ph.D., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Carolyn (Lina) Tanner, Commission General Counsel, Public Utilities Commission of Nevada
Anne-Marie Cuneo, Director of Regulatory Operations, Public Utilities Commission of Nevada
Jim R. Barbee, Director, State Department of Agriculture

Chair Gustavson:

We will open the hearing with Senate Bill (S.B.) 417.

SENATE BILL 417: Prohibits the use of telemetry data to hunt or kill game mammals or game birds. (BDR 45-549)

Kyle Davis (Nevada Conservation League; Coalition for Nevada's Wildlife):

Senate Bill 417 addresses the issue of wildlife data. I would like Tony Wasley, Director of the Department of Wildlife (NDOW), to explain what generated the need for this bill.

Tony Wasley (Director, Department of Wildlife):

Senate Bill 417 proposes to protect wildlife by providing for protection of wildlife data. Technology has advanced to the point that exact locations of wildlife can be determined in near real time with Global Positioning System (GPS) coordinates. Presently, there are in excess of 1,000 GPS collared animals from Gila monsters and sage grouse to mule deer and bighorn sheep. Because of this, NDOW has seen an increase of record data requests from hunters. One example was a request from a hunter for public data records for an area where he had received a tag. He wanted the data for every ram 8 years of age and older.

Revealing exact locations of animals is not only a violation of fair chase ethics, but it can also reveal locations of sensitive species, listed species of the Endangered Species Act and interfere in ongoing research of such groups.

The NDOW supports S.B. 417 and any additional language that may create a cooling off period for sensitive wildlife data.

Mr. Davis:

In the proposed amendment ([Exhibit C](#)), we have added language to ensure wildlife data is not made available for anyone to manipulate for purposes that the Department does not warrant. Providing a cooling off period would ensure research is not compromised. To make it clear this is about data that has been collected, we are proposing an amendment to subsection 6 of section 1 of the bill which establishes that it would be unlawful to use information obtained from the Department's records within 1 year of the collection date. This section also states any location that has been transmitted from a radio signal, or transmission device to track a collared animal to hunt or kill would be

prohibited. Subsection 7 of the proposed amendment makes it clear that it is unlawful to make use of equipment to pick up these radio signals.

Chair Gustavson:

I think this is a good bill and I like the amendment.

Karen Jacobs:

I am a retired police officer of the State. Please pass this bill to make it illegal to hunt or kill game animals with the use of telemetry data.

Karen Boeger (Nevada Chapter, Backcountry Hunters and Anglers):

The Nevada Chapter of Backcountry Hunters and Anglers are in support of this bill and the amendment. Backcountry Hunters and Anglers were founded on the bedrock of sportsmen and sportswomen's principles of fair chase and the North American Model of Wildlife Management. I have provided my letter of support to the Committee ([Exhibit D](#)).

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 417 WITH THE AMENDMENT FROM MR. DAVIS.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Gustavson:

I will open the work session for Senate Bill 305.

SENATE BILL 305: Authorizes industrial cannabis farming in this State under certain circumstances. (BDR 49-656)

Alysa Keller (Policy Analyst):

Senate Bill 305 authorizes the cultivation, storage and sale of industrial cannabis, also known as industrial hemp, in this State under certain circumstances by an established agricultural research institution or a person who is registered with the State Department of Agriculture (NDA) as a grower of industrial cannabis or as a seed breeder.

At the hearing, amendments were offered by the Nevada Medical Marijuana Association and Black Rock Nutraceuticals, LLC. Subsequently, proposed Amendment 6155 ([Exhibit E](#)) was submitted by the sponsor, as shown in the attached mock-up, prepared by the Legal Division of the Legislative Counsel Bureau. Additional information is in the work session document.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 305 WITH AMENDMENT NO. 6155.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Senator Manendo:

I have not heard from any farmers who want to do this.

Chair Gustavson:

This only allows for testing and research.

Senator Parks:

I noted there was a fiscal note on section 24; however, I see that section 24 appears on the amendment with the same language as the initial bill. What caused the 2/3 majority rate requirement to be deleted?

Ms. Keller:

The bill, as amended, is in the work session document and is followed by the original language of the bill.

Senator Manendo:

If this bill is passed out of the Senate Committee on Finance, I would like to reserve my right to change my vote on the Floor.

Chair Gustavson:

I will open the hearing for S.B. 438.

SENATE BILL 438: Provides for the development and implementation of a state emissions plan to reduce certain carbon-dioxide emissions. (BDR 40-992)

Mark Ourada (Central Region Vice President, American Coalition for Clean Coal Electricity):

The U.S. Environmental Protection Agency (EPA) is in the process of adding and adopting rules and regulations in section 111(d) of the Clean Air Act, 42 USC 7411(d), that would require states to develop and submit a state plan to reduce carbon-dioxide emissions from existing power plants.

Senate Bill 438 relates to the Clean Power Plan (CPP) that was proposed in June 2014 by the EPA. I have a presentation ([Exhibit F](#)) and will comment as we go through it.

Sections 2 through 5 of the bill are definitions, and section 6, subsection 1 instructs the State Department of Conservation and Natural Resources (DCNR) to prepare a report. This report should address the following areas of concern: affordability; effect on generation; capacity; stranded investments; reliability; retail prices; employment; economic development and competitiveness. Section 6, subsection 2 through section 10 specify conditions, authority and time frames with respect to the DCNR report and incorporates all sections to the current statute.

We are here supporting many entities such as railroads, mining companies and utilities. These groups represent 85 percent of our economy. This is a widespread concern, and there are over 100 state associations involved with this plan. The EPA has never done anything like this before. Nevada would be required by law to have a 35 percent reduction in carbon emissions to meet the EPA stated goal by 2030. There are more than 70 categories regulated by the Clean Air Act.

This is going to end up becoming a legal battle with the EPA. Comments were due last December and the EPA's final plan was due in June 2015; however, it has been postponed to sometime later this summer. State limitation plans are scheduled to be completed by June 2016. The U.S. Supreme Court has warned the EPA about overreach. Lawrence H. Tribe, a constitutional law professor and environmental expert at Harvard University, has stated "... after studying the only basis offered for the EPA's proposed rule, I conclude that the agency is asserting executive power far beyond its lawful authority" It is beyond the EPA's scope to regulate power plants using the Clean Air Act. The EPA has assumed that every state could improve 6 percent in energy efficiency in power plants. Without exception, every company I have talked to and at every

presentation I have attended, states have expressed they could not decrease usage more than 2 percent.

The EPA has assumed the following in setting Nevada's emissions rate: coal-fired units can be improved by 6 percent; electricity from natural gas can be increased by 19 percent; electricity from coal can be eliminated; electricity from non-hydro renewable energy sources can be increased by 116 percent and consumers can reduce electricity use by 11 percent.

In my report "Impacts of the EPA's Carbon Proposal on Nevada" ([Exhibit G](#)), the Division of Environmental Protection (NDEP), Public Utilities Commission of Nevada (PUCN) and the Governor's Office of Energy (GOE) commented on this proposal, "The Clean Power Plan threatens the long-standing authority that states have over energy and resource planning." The EPA does not have the authority to regulate sources "outside the fence," even though they have proposed such an approach.

Senator Goicoechea:

Would this rule take effect if we do not have this plan?

Mr. Ourada:

The final rule is scheduled to be out late this summer. Once the states receive the final rule, with any changes the EPA may incorporate in it, the State will have to create and submit a State Implementation Plan (SIP) to meet the EPA requirements.

Senator Goicoechea:

As I understand it, under the threat of the EPA, we will need to bring this bill forward and position ourselves to comply.

Mr. Ourada:

The intent of this legislation is not to say we are going to comply or we feel we are forced to comply with the EPA. The intent of this bill is to ensure more review by yourselves as policy makers. This is not a normal SIP; this is setting energy policy. It would be unlikely that a state will not submit a plan.

Senator Goicoechea:

How is this bill going to help us?

Senator Gustavson:

What can the EPA do as punishment if Nevada does not submit a plan? Can they withhold certain government funding?

Mr. Ourada:

It has been suggested that the EPA may withhold transportation funding for non-compliance. I do not see this happening because they do not have that authority. As far as any punitive actions that the EPA may take, we would have to ask them. It is a concern. In the event of a lawsuit against the EPA, a state that submits a plan will have a stronger position with the court than a state that refuses.

Most people I have spoken to feel a state would be in a stronger position if it submitted its own SIP and defend that rather than fall into noncompliance. In the event of an eventual court battle, a state's refusal could weaken its position.

Senator Gustavson:

Do we really want the EPA to implement a plan for Nevada? Am I correct in assuming that what you are trying to do here is allow the Legislature to have a say in this SIP?

Mr. Ourada:

Correct. As I have stated, this is widespread and is upending decades of traditional regulatory authority. There will be severe legal challenges to this rule, and as a former policy maker and Legislator, I think it makes sense for this body to review it because it is policy. Once the plan is created, we need to understand what this will mean concerning reliability and rates in Nevada. This could be used as part of the groundwork if Nevada chose to enter a legal dispute by submitting an amicus brief supporting other states that may be entering into this legal battle as well.

Colleen Cripps, Ph.D. (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

As introduced, the NDEP is opposed to S.B. 438. In June 2014, the EPA published proposed regulations under section 111(d) of the Clean Air Act that will require states to submit a plan that will demonstrate how carbon emissions from affected fossil fuel-fired power plants would be reduced to meet specified goals for each state. If the state fails to submit an approved plan, a federal plan

would be developed and that state would be required to implement it. The NDEP has worked with the GOE and the PUCN to develop detailed comments on the proposed rules that were submitted to the EPA in October 2014. Our comments focused on the legal jurisdictional issues and implementation concerns we had with the proposed rule. The EPA is currently reviewing extensive comments that were received, and they are expected to publish the final rule in September 2015.

We anticipate the final rule will address at least a few of our major concerns. Under the proposed rule, states have 1 year from publication date to submit their state implementation plan. At that time, we could also request a 1-year extension for good cause.

Regarding S.B. 438, NDEP has two fundamental concerns: the first is the advisory report required by section 6 of this bill that would be extremely expensive, burdensome and duplicative of the work that is already being done by the PUCN. This type of energy system economic analysis is normally performed by the utility and the PUCN as part of the integrated resource planning process. The NDEP has no staff expertise in this area, so we would have to retain an expert consultant for this work. We have attached a fiscal note estimating the cost. The second concern is the risk of federal intervention, as we do not have the resources or time to develop such an extensive plan as outlined in this bill. Our intention is to continue to work cooperatively with the PUCN, GOE, utilities and stakeholders to develop a State plan that is sensible and works for Nevada.

Our comments were very strident and comprehensive because of the processes of the Clean Air Act.

Carolyn (Lina) Tanner (Commission General Counsel, Public Utilities Commission of Nevada):

On behalf of the PUCN, we oppose S.B. 438. Nevada was one of the only states that presented a single set of comments unified between the three agencies involved: NDEP, PUCN and the GOE. We are here, united in opposition. I spoke with Mr. Paul Thomsen, the director of the GOE, who is unavailable; however, he requested I relate his opposition of S.B. 438 to this Committee. He is at the Western Interstate Energy Board Conference, addressing these issues as we speak.

We feel this bill puts the cart before the horse, as we do not know what the final rule is going to look like at this point. I do not agree that once the final rule is issued it will be a matter of policy. Essentially, the EPA is going to expect agencies to get from point A to point B and allow us to figure out how to do this. It would not be a policy discussion at that time. Many of these issues were raised as policy considerations during the hearing of S.B. No. 123 of the 77th Session and the retirement of the Reid Gardner Generating Station.

I would also like to address the issue of an impending lawsuit. We have to be prepared and responsive when the final rule comes out. It takes the utilities a long time to plan to address these issues. We are under a pressing timeline in order to submit a state plan, and adding another layer of reporting is going to make it impossible to get a plan approved by the EPA and prevent the possible implementation of a federal plan.

Anne-Marie Cuneo (Director of Regulatory Operations, Public Utilities Commission of Nevada):

The PUCN is in opposition to S.B. 438. The procedures in section 6, subsection 1, paragraphs (g) through (j), in this bill are conditions the PUCN has never been required to do as part of our resource planning process. As Dr. Cripps alluded, we would also need to attach a fiscal note to this, as we do not have specialty economists and would have to contract outside experts that would be costly.

Senator Goicoechea:

I represent the rural communities that get most of their power from coal-fired plants in Utah. This is going to increase their power costs to the point they will not be able to afford it. Are we going to be able to attain the goals that the EPA has set for us in this State? What happens when these people cannot support the increased power rates?

Dr. Cripps:

We worked closely with the PUCN and the utilities, and we all agree strongly that the end goal is unattainable. There are significant problems with this. We provided the EPA with data to explain how the implications of this rule would affect our State. This is one of the things that will be addressed during the final rulemaking. I think we can meet our goal by 2030 because of the retirements that will occur. Regarding the Utah utilities, I do not know how they are planning to meet their goal or what the implications would be for our State.

Senator Goicoechea:

Would coal-fired plants be shut down?

Dr. Cripps:

I do not know.

Senator Goicoechea:

How do we say, this is not going to work? We cannot meet this goal by 2025.

Dr. Cripps:

There may be legal challenges and that would be an option. We are focusing on this bill and how the potential implications will affect the State. I do not think we will be able to fix the problems or address the issues that are created by the EPA's proposed CPP rule with this bill. This bill has the potential to create a scenario where we would fall under federal jurisdiction instead of being able to create a plan that will work for Nevada.

Ms. Tanner:

The West is unique because we have the ability to work with other states, and this bill could affect these relationships in a negative manner. I do not support the idea of getting into a lawsuit until we know what the exact rule is going to be.

Senator Goicoechea:

Are you saying that we should wait until the federal rule is established to react?

Ms. Tanner:

Yes. We could work with the Legislative Committee on Energy to keep the public apprised of the situation as we move along. I would ask that you let us take the reins on this.

Senator Goicoechea:

I am concerned that the Legislature will not be in session when this rule is established.

Ms. Tanner:

This was in our comments. We are in the middle of the Session right now, and we do not have the ability to be fluid because the rule has not come down yet. Until the final rule is established, we are unable to make any decisions.

Senator Settelmeyer:

Could we do this through the *Nevada Administrative Code*, or would it have to be strictly *Nevada Revised Statutes*?

Ms. Tanner:

It would be our preference to address it in regulations. One of the issues for the PUCN was whether the EPA has jurisdiction over state public utility commissions nationwide. This is a common theme throughout all the states' comments. If this was the PUCN responding to Clean Air Act section 111(d), this could weaken the EPA's argument that they have jurisdiction over us. If the PUCN has to be the responsive party for aforementioned issues, beyond coordinating with our sister agency, and it has to be in statute, we may be coming before you to change this.

Senator Parks:

I was concerned about where these numbers came from: the 18 percent, 22 percent, 39 percent and 32 percent. After hearing testimony from several people, there does not seem to be any validity in these particular numbers. We do have the Legislative Committee on Energy that was statutorily created, and I would like to know if that committee has addressed this.

Chair Gustavson:

I have spoken with the sponsor of this bill, and he has said he is willing to work with anyone to limit any confusion there may be with this bill. We do have time limits, as we do not meet until 2017.

Senator Goicoechea:

Do I understand correctly that we have a year to respond and possibly a year extension?

Dr. Cripps:

Yes. We would have a year to prepare our plan and we can request an extension. If we are doing any type of regional planning, and have agreements

with other states to address these issues, we could request an additional year. This would give us time to discuss this in the 2017 Session.

Senator Goicoechea:

I think we have time to work on this.

Chair Gustavson:

Does the sponsor have closing remarks?

Mr. Ourada:

I would like to respond to the validity of the numbers. National Economics Research Associates is a national firm and we used government statistics. We are extremely careful with our studies. Arizona signed a bill for an impact study. We would be happy to see this go to the PUCN, which may be a more appropriate place to deal with this issue.

Senator Goicoechea:

Do you think we really have time to plan for this in a 2-year period?

Mr. Ourada:

I think this is attainable. There are many ways to work out this issue.

Senator Gustavson:

Has any other state besides Arizona passed a law similar to the bill you are proposing?

Mr. Ourada:

Pennsylvania passed legislation quite some time ago. Nebraska has proposed legislation different from this and we are anticipating it will pass in a week or two. States are asking their public policy makers for resolutions to push back against the EPA. Actions are being taken before the lawsuits begin.

Senator Goicoechea:

How are Utah and the other coal-fired energy states dealing with this?

Mr. Ourada:

Utah has not passed anything yet. Some of the states feel this rule is not going to change and others think it will. There really is no way of telling until the final rule is out.

Senator Gustavson:

I will close the hearing on S.B. 438 and open the work session with S.B. 488.

SENATE BILL 488: Requires registration of veterinary biologic products sold in Nevada. (BDR 50-1164)

Ms. Keller:

Senate Bill 488 was proposed by the NDA and requires that anyone wishing to sell, for veterinary purposes, animal remedies, veterinary biologics and pharmaceuticals register such products with the NDA. The bill also requires an annual registration fee not to exceed \$75 for each product. Fees collected must be deposited in an Agriculture Registration and Enforcement Account. The bill also imposes civil penalties for failing to register such products, and requires that money collected from civil penalties be distributed in equal amounts to fund the Junior Agricultural Loan Program and for deposit in the Account for the Control of Weeds. I would like to note that S.B. 488 requires a two-thirds majority vote for passage on the Senate Floor and has been determined eligible for exemption.

The bill's sponsor has been involved in a proposed amendment ([Exhibit H](#)).

Senator Goicoechea:

I want to make sure I understand this. Technically, this will establish, by regulation, that a large, high-end company such as Pfizer could bring several different products here and only have one label. Would the regulation determine what that cost would be?

Jim R. Barbee (Director, State Department of Agriculture):

We tried to stay away from specifically defining products because we do not have all of the information or know what this rule is going to look like. The NDA may already have a program that could be designed by regulation for this. If so, the State Board of Agriculture would set the policies and procedures. They would be the determining factor of this rule and would have full control.

Chair Gustavson:

Would you tell the Committee with whom you worked on this amendment and whether they support the amendment?

Mr. Barbee:

We worked with Boyd Spratling and his representatives, the Nevada Veterinary Medical Association and with Dr. J.J. Goicoechea. Together, we concluded that leaving the authority for this with the NDA would be best. The NDA would be in a better position to determine whether we need an inspection program. If so, the NDA would be on the regulatory side and could specifically address what the Federal Information Security Management Act of 2002 regulations would require us to address. The intent was to give greater latitude to the State Board of Agriculture and that was the idea of Dr. Spratling and the Nevada Veterinary Medical Association (NVMA) who all support this bill.

Senator Goicoechea:

I have received feedback from the Nevada Cattlemen's Association and the NVMA. They are waiting for the federal regulations to be completed before we can move ahead. There was significant opposition from the pharmaceutical companies.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS S.B. 488
AS AMENDED.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MANENDO AND PARKS VOTED
NO.)

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Chair Gustavson:

We will continue the work session with S.B. 495.

SENATE BILL 495: Requires the licensing of commercial animal feed sold in Nevada. (BDR 51-1165)

Ms. Keller:

Senate Bill 495 was proposed by the NDA and heard April 2, 2015. The bill requires that commercial feed sold or delivered in this State be licensed by the NDA. The bill also requires an annual licensing fee not to exceed \$75 for each product, establishes certain labeling requirements and imposes civil penalties for failing to license such products. In addition, this bill requires that money

collected from civil penalties be distributed in equal amounts to fund the Junior Agricultural Loan Program and for deposit in the Account for the Control of Weeds.

At the direction of the Committee, the bill sponsor and interested parties were asked to work on an amendment to address concerns raised at the hearing. The bill sponsor, the NDA, prepared a conceptual amendment ([Exhibit I](#)). The amendment deletes the original language of the bill and replaces it with the proposed amendment.

Mr. Barbee:

My Deputy Director, Lynn Hettrick, worked directly with Leah Wilkinson, of the American Feed Industry Association (AFIA). The amendment uses the model language of the Association of American Feed Control Officials. The AFIA supported this language as well as the Nevada Cattlemen's Association. The definition of livestock in the bill had included cats and dogs, and this has been deleted. The only language that remained from the original bill was the civil penalties section. The AFIA language that is in the amendment has been adopted in other states.

Chair Gustavson:

Would you tell the Committee who you worked with on this amendment and whether they support the amendment?

Mr. Barbee:

We worked with the Nevada Cattlemen's Association, the Farm Bureau and the AFIA. They all support the amendment; however, the AFIA does not support the civil penalties section. The AFIA representatives have discussed their concerns in their letter of support ([Exhibit J](#)).

Senator Parks:

The bill states that one-half of the money will go to the Junior Agricultural Loan Program. Is this a standard program?

Senate Committee on Natural Resources
April 7, 2015
Page 16

Mr. Barbee:

These loans are for start-up of agricultural programs typically used for Future Farmers of America and the 4-H Club.

SENATOR GOICOECHEA MOVED TO AMEND AND DO PASS AS AMENDED S.B. 495.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Gustavson:

I would like to update the audience with the status of S.B. 130 and Assembly Bill (A.B.) 78. We passed A.B. 78 out of this Committee. We have received an amendment for S.B. 130 and will be amending this into A.B. 78 during a floor session.

SENATE BILL 130: Converts the Department of Wildlife into the Division of Wildlife of the State Department of Conservation and Natural Resources. (BDR 45-613)

ASSEMBLY BILL 78: Makes various changes relating to wildlife. (BDR 45-362)

Senate Committee on Natural Resources
April 7, 2015
Page 17

Chair Gustavson:

There being no further testimony or public comment, the Senate Committee on Natural Resources is adjourned at 2:54 p.m.

RESPECTFULLY SUBMITTED:

Gayle Farley,
Committee Secretary

APPROVED BY:

Senator Don Gustavson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	2		Agenda
	B	4		Attendance Roster
S.B. 417	C	1	Kyle Davis / Nevada Conservation League	Proposed Amendment
S.B. 417	D	1	Karen Boeger / Backcountry Hunters and Anglers	Letter of Support
S.B. 305	E	16	Alysa Keller / Policy Analyst	Work Session Document with Proposed Amendment 6155
S.B. 438	F	9	Mark Ourada / ACCE	Presentation
S.B. 438	G	5	Mark Ourada / ACCE	Impact Statement
S.B. 488	H	6	Alysa Keller / Policy Analyst	Work Session Document
S.B. 495	I	8	Alysa Keller / Policy Analyst	Work Session Document
S.B. 495	J	1	Leah Wilkinson /AIFA	Letter of Support