

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 9, 2006

8:08 a.m.

MEMBERS PRESENT

Representative Carl Gatto, Vice Chair
Representative Jim Elkins
Representative Bob Lynn
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

Representative Paul Seaton, Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 413

"An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date."

- MOVED CSHB 413(STA) OUT OF COMMITTEE

HOUSE BILL NO. 349

"An Act relating to legislator salary and benefits; establishing the Citizens' Commission on Legislative Salary and Benefits and defining its powers and duties and abolishing the State Officers Compensation Commission; and providing for an effective date by repealing secs. 9 and 12, ch. 124, SLA 1986."

- MOVED CSHB 349(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 413

SHORT TITLE: BURNING CAPABILITY OF CIGARETTES

SPONSOR(S): REPRESENTATIVE(S) JOULE

02/01/06	(H)	READ THE FIRST TIME - REFERRALS
02/01/06	(H)	STA, JUD, FIN
02/09/06	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 349

SHORT TITLE: COMMISSION ON LEG. COMP. & ALLOWANCES
SPONSOR(s): REPRESENTATIVE(s) WEYHRAUCH

01/09/06	(H)	PREFILE RELEASED 1/6/06
01/09/06	(H)	READ THE FIRST TIME - REFERRALS
01/09/06	(H)	STA, FIN
01/26/06	(H)	STA AT 8:00 AM CAPITOL 106
01/26/06	(H)	Heard & Held
01/26/06	(H)	MINUTE(STA)
02/09/06	(H)	STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE REGGIE JOULE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 413.

CRAIG GOODRICH, Fire Chief
Municipality of Anchorage;
Member
Fire Chiefs' Association in Alaska
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 413.

JACK KRILL, Fire Chief
Central Matanuska Fire Department
Wasilla, Alaska
POSITION STATEMENT: Testified in support of HB 413.

WARREN B. CUMMINGS, Fire Chief
City of Fairbanks;
President
Alaska Fire Chiefs Association (AFCA)
Fairbanks, Alaska
POSITION STATEMENT: Testified on behalf of the 129 members of
AFCA in support of HB 413.

CAROL R. REED, President
Alaska State Firefighters Association (ASFA)
Juneau, Alaska
POSITION STATEMENT: Her testimony on behalf of ASFA in support
of HB 413 was read by Michael Tilly.

MICHAEL TILLY, Fire Chief
City of Kenai;
Member

Alaska Fire Chiefs Association (AFCA)

Kenai, Alaska

POSITION STATEMENT: Testified during the hearing on HB 439.

GARY POWELL, Director

State Fire Marshall

Central Office

Division of Fire Prevention

Department of Public Safety

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 413.

JEFF JOHNSON, President

Western Fire Chiefs Association (WFCA)

Portland, Oregon

POSITION STATEMENT: On behalf of the association, urged the committee to pass HB 413.

ANDREW MCGUIRE

San Francisco, California

POSITION STATEMENT: Testified on behalf of the National Fire Association Protection, based in Massachusetts, in support of HB 413.

MARGE LARSON

American Lung Association

Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 439.

JACQUELINE TUPOU, Staff

to Representative Bruce Weyhrauch

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative Weyhrauch, sponsor of HB 349.

DAN WAYNE, Attorney

Legislative Legal and Research Services

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 349.

ACTION NARRATIVE

VICE-CHAIR CARL GATTO called the House State Affairs Standing Committee meeting to order at [8:08:10 AM](#). Representatives Gatto, Elkins, Lynn, Ramras, and Gardner were present at the

call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 413-BURNING CAPABILITY OF CIGARETTES

8:09:12 AM

VICE CHAIR GATTO announced that the first order of business was HOUSE BILL NO. 413, "An Act relating to the burning capability of cigarettes being sold, offered for sale, or possessed for sale; and providing for an effective date."

8:09:47 AM

REPRESENTATIVE REGGIE JOULE, Alaska State Legislature, testifying as sponsor of HB 413, said the bill would require cigarette companies to change the way their cigarettes burn, which in turn will prevent fires caused by smoldering cigarettes. Currently, he said, cigarettes are designed to burn all the way to the end when left unattended. He indicated that there was some interest in the past to have a cigarette made that burned more slowly, but the cigarette companies were opposed to the idea. He explained that the way a cigarette is made to burn slowly is by putting bands in a couple places on the cigarette, the effect of which is to cause the cigarette to slow its burning and then to "shut off."

8:13:21 AM

REPRESENTATIVE JOULE said the State of New York adopted this law in 2000, and approximately 40 percent of the cigarette companies have adapted their product, thus far. Canada passed a similar law nationwide. The states of Vermont and California adopted the law in 2005. Representative Joule noted that Alaska is one of several states considering this law; currently Hawaii and Washington are also discussing the possibility. He stated that the technology already exists. Representative Joule, having previously admitted to being a cigarette smoker, suggested that if there is a cost associated with the bill, perhaps those who smoke may be the ones to carry some of the cost. He reiterated that the bill is about safety and saving lives. If Alaska adopts this legislation, he said, it will put pressure on the U.S. Congress to do the same.

8:15:16 AM

REPRESENTATIVE RAMRAS said having been born in Alaska he is aware of "the scarcity of choice." He said he is not a smoker, but wants to ensure that all brands will be available under this law.

8:16:09 AM

REPRESENTATIVE JOULE answered that because the technology has existed for a long time, he thinks all brands would be available once the requirement is mandated.

8:16:32 AM

REPRESENTATIVE LYNN asked what the reaction of cigarette manufacturers has been.

8:16:51 AM

REPRESENTATIVE JOULE offered his understanding that the reaction has been a mixed one. He said he thinks Phillip Morris supports the effort now, but was opposed to it initially. He said, "I think they might be seeing the tide change."

8:17:21 AM

CRAIG GOODRICH, Fire Chief, Municipality of Anchorage; Member, Fire Chiefs' Association in Alaska, testified in support of HB 413. In response to Representative Ramras' previous question, he said the cigarette companies have been looking for and expecting this legislation for some time. Essentially, he explained, the self-extinguishing cigarette is a simple device. He said it is slightly smaller in circumference and the tobacco is more loosely packed. The additional band of cigarette paper that is around it is called a "speed bump." He indicated that there are a number of things that can be done to cause a cigarette to automatically extinguish. He told committee members they could expect to hear a lot of testimony related to the number of fires, injuries, and deaths that occur from improperly discarded cigarettes. Mr. Goodrich said Alaska could expect between a 33-40 percent reduction in the number of fires started in this manner and, by extension, the number of lives lost would also be reduced. He said there are alternatives, such as having a mandatory zero-square-foot ordinance; however, it is an expensive proposition. He concluded by expressing his appreciation of the committee's willingness to address this issue.

8:20:20 AM

REPRESENTATIVE ELKINS asked if a chemical is added to pipe tobacco to make it stop burning.

8:20:37 AM

MR. GOODRICH answered no, and he indicated that the question to ask would be what companies do to cigarettes to keep them burning. By engineering a cigarette to burn down whether or not it is being smoked, the cigarette companies make more money. The tobacco companies were never able to engineer pipe tobacco so that it would continue to burn completely down in the bowl.

8:21:20 AM

JACK KRILL, Fire Chief, Central Matanuska Fire Department, testified in support of HB 413. He revealed his background and education in fire protection and safety engineering. He said cigarettes left burning are a serious fire problem in the nation. He offered the following facts about cigarette-ignited fires: Cigarettes are the leading cause of fatal home fires in the U.S., representing 25 percent of all fire deaths. Annually, approximately 1,000 people in the U.S. die from fires started by cigarettes, and an additional 3,000 are injured. More than 100 victims that die each year are children and nonsmokers. Two out of five fire victims are 65 years of age or older. Cigarette ignited fires cause more than \$6 billion in property damage every year; in 1997 alone, there were 130,000 cigarette-related fires in the U.S.

MR. KRILL said Alaska has a chance to change those frightening statistics through the passage of HB 413. The proposed legislation would save lives in Alaska and likely lead to significant advances in public safety throughout the country, he said. The bill would require that all cigarettes marketed and sold in Alaska be fire-safe, which he explained means they would have a reduced propensity to burn when left unattended. Mr. Krill explained that the typical scenario for a cigarette-ignited fire is the delayed ignition of furniture or clothing after a signature has been dropped or forgotten by a careless smoker.

8:24:40 AM

MR. KRILL echoed the testimony of Mr. Goodrich regarding the design changes that make up fire-safe cigarettes, adding that

the paper used would be less porous, and there would be no added citrates in the paper. He related that a recently released report out of New York noted that annual fire deaths blamed on cigarettes have fallen by one third since that state's fire-safe cigarette legislation went into effect.

[8:25:31 AM](#)

WARREN B. CUMMINGS, Fire Chief, City of Fairbanks; President, Alaska Fire Chiefs Association (AFCA), testified on behalf of the 129 members of AFCA in support of HB 413. The proposed legislation, he said, will prohibit the sale, manufacture, and distribution of cigarettes in Alaska that do not meet the fire-safe standards established by the American Society of Testing of Materials. Mr. Cummings reported that careless smoking is the leading cause of fire deaths in Alaska; the fires caused by careless smoking have resulted in 27.6 [percent] of all fire deaths in Alaska between 1995-2004, killing 45 people in the state during that time period.

[8:27:39 AM](#)

CAROL R. REED, President, Alaska State Firefighters Association, had her written testimony [included in the committee packet] presented by Michael Tilly. The testimony read as follows [original punctuation provided]:

The Alaska State Firefighters Association supports House Bill 413, introduced by Representative Reggie Joule, legislation relating to cigarette fire safety.

Cigarettes are the [number] 1 cause of fatal fires in the U.S., taking 700 to 800 lives a year. Annually, property losses from fires caused by cigarettes run into the hundreds of millions of dollars. Statistical data of fire-related death in Alaska parallels those of the U.S.

The State of New York introduced similar legislation in 2004. Although it is too early to draw conclusions, trends show a significant reduction in loss of life and property as a result of the reduced number of fires caused by cigarettes. With cigarettes related to 25% of the cause of fatal fires in Alaska, we believe safe cigarette legislation in Alaska would save Alaskan lives.

In addition to saving Alaskan lives and property, the safest fire for Alaska's emergency responders is the one that was prevented.

MICHAEL TILLY, Fire Chief, City of Kenai; Member, Alaska Fire Chiefs Association (AFCA), told the committee that he is also a member of the Alaska State Firefighters Association (ASFA). Mr. Tilly concurred with Ms. Reed's testimony, and he said HB 413 is an important piece of legislation. He indicated that some people think smokers made the choice to smoke [thereby increasing their chances of a cigarette-related injury]; however, he pointed out that nonsmokers are dying in these fires, as well. He concluded, "So, I think we need to remember everybody else that's involved in this issue, not just them."

[8:30:36 AM](#)

GARY POWELL, Director State Fire Marshall, Central Office, Division of Fire Prevention, Department of Public Safety, testified in support of HB 413. He said the division has been interested in this issue for some time. He echoed Mr. Tilly's comments regarding the fact that there are other victims, besides the smokers, who are affected by careless smoking. He recollected hearing that there are approximately 800 people a year who die from smoking-related fires. For example, in 2002, 760 people died, and 200 of those were not smokers.

MR. POWELL brought up arguments that may be heard against [the bill] and the reasons why those arguments do not hold true. First, he said some people say that there really is no such thing as a cigarette that reduces the risk of a fire started through careless cigarette use; however, that claim has already been dispelled by the fact that those cigarettes are already being sold. Second, he noted that some say state laws are unnecessary because U.S. Congress is about to pass a national bill. Mr. Powell said, "We just simply can't wait for this rumor that they might be doing something, because in reality they've been working on this since ... [1979], and we've seen no results yet." Third, Mr. Powell said some people claim this is just an anti-smoking campaign; however, he said no one is telling people not to smoke, but to be safer while doing so.

[8:33:37 AM](#)

MR. POWELL continued highlighting and then countering existing arguments against legislation such as HB 413. He said the committee may hear people say that it is not yet known whether

such a measure will actually save lives. Conversely, he noted, the National Fire Protection Association has conducted studies to show [that legislation related to the burning capability of cigarettes] will save lives. Mr. Powell said there is about six months of solid data out of New York showing approximately a 33 percent reduction in fatalities. He said there is some lag time in reporting and the division is anxiously awaiting a full year of data.

MR. POWELL noted that some people claim that this legislation will make cigarettes more toxic; however, the Harvard School of Public Health conducted extensive studies on the products of combustion released from the new cigarettes and found that there is no increase in the hazard content of these cigarettes. He added, "They did detect minimal increases in some of the compounds being released, but no significant health issues at all." He noted that those studies will be available in a few days if the committee should wish to see them. At one point, Mr. Powell said, the industry was saying it didn't know how to make such cigarettes, but it is making them now. Another claim heard recently is that there is not enough of the paper required to construct the cigarettes, but manufacturers have met the demand in New York and are now gearing up to meet the demand in other states. He remarked that some have tried to say that this legislation discriminates against the Mom and Pop retailers by making things difficult. To that argument, Mr. Powell said, "It's seamless: they get the cigarettes in, they sell the cigarettes, I mean ... it makes no difference. It's like having a Baby Ruth candy bar on the shelf today, and tomorrow it's a different Baby Ruth with a little red stripe on the pack. ... That's just one of the efforts that the industry will use to try to rally support."

MR. POWELL said the committee may hear that upholstered furniture and mattresses are the real problem. He admitted that they are part of the problem. He said, as Mr. Goodrich suggested, one way to solve that problem is to mandate residential sprinklers, but that would be costly and difficult to set as public policy. The other solution would be to regulate upholstered furniture and mattresses and adopt a strict standard, but he indicated that that would be costly to the industry, may be more difficult to implement, and would definitely take longer to adopt than the measure already available.

[8:37:26 AM](#)

MR. POWELL said another argument is that the use of alcohol and drugs is the real problem, because people drink, smoke, and drop a cigarette, which starts a fire. He acknowledged that that certainly is part of the problem - alcohol use is involved in 67-68 percent of fatal fires - but changing the burning capabilities of cigarettes is easier than trying to address the use of alcohol. Finally, Mr. Powell stated that some people say an uneducated public may be the problem. He relayed that the division does its best to educate people about the hazards of activities that lead to fires and death and will continue to do so; however, he said that would not have as immediate an impact that a safe-cigarette bill would have. He stated that he doesn't know of anyone who would be negatively affected by the bill, and he concluded, "There are just too many positives to not support [the bill]."

[8:38:52 AM](#)

REPRESENTATIVE LYNN asked how the bill would impact cigarette sales conducted through the Internet.

[8:39:11 AM](#)

MR. POWELL said he thinks there is some language in the bill regarding Internet sales, but he deferred further response to the bill's sponsor. He commented that there is one exception for military installations.

[8:39:42 AM](#)

REPRESENTATIVE GRUENBERG directed attention to page 7, lines 12-13, which read as follows:

(e) The state fire marshal and the attorney general may enforce the penalties established under this section.

REPRESENTATIVE GRUENBERG asked, "Is that within your normal description; do you force the penalties, normally, in other parts of the law?"

[8:40:43 AM](#)

MR. POWELL answered yes.

[8:40:48 AM](#)

REPRESENTATIVE GRUENBERG turned to the definition of "cigarette" on page 8, lines 24-29, which read as follows:

(1) "cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the roll has a wrapper or cover made of paper or another material, unless the wrapper is wholly or in the greater part made of tobacco and the roll weighs over three pounds for each one thousand cigarettes;

REPRESENTATIVE GRUENBERG said he contrasted that definition with the general definition of cigarette in revenue code, found in AS 43.50.170(2), and there seems to be a difference. He said the language added to the bill that is not in regulation is: "and the roll weighs over three pounds for each one thousand cigarettes". He asked Mr. Powell if he knew why this language is in the bill and not in the general definition.

MR. POWELL said he does not know.

[8:41:58 AM](#)

REPRESENTATIVE GRUENBERG directed attention to the penalty section on page 7, [lines 9-11], subsection (d), which read:

(d) If a person violates a provision of this chapter and a civil penalty is not set for the violation, the person is subject to a civil penalty not to exceed \$1,000 for each violation.

REPRESENTATIVE GRUENBERG said he would like to compare that language with that on page 4, lines 3-7, which read as follows:

Sec. 18.74.080. Certification requirement. A manufacturer shall certify in writing to the state fire marshal that each brand of cigarette listed in the certificate has been tested under AS 18.74.030 and satisfies the testing standard in AS 18.74.030(d), or has been tested under AS 18.74.050 and satisfies a standard equivalent to the standard in AS 18.74.030(d).

REPRESENTATIVE GRUENBERG observed that the only penalty is a civil one. He said the same is true on page 7, lines 5-8, which read as follows:

(c) In addition to any other penalty prescribed by law, a person engaged in the manufacture of cigarettes who knowingly makes a false certification under AS 18.74.080 is subject to a civil penalty not to exceed \$10,000 for each false certification.

REPRESENTATIVE GRUENBERG, regarding the language on page 5, line 3, suggested requiring that the manufacturer shall certify in writing "under oath". He asked Mr. Powell, "Do you think there might be some benefit in making this, in addition, a misdemeanor?"

[8:43:31 AM](#)

MR. POWELL responded that there might be some advantage to that.

[8:43:41 AM](#)

REPRESENTATIVE GRUENBERG noted that there would have to be some conforming language on page 7.

[8:44:14 AM](#)

VICE CHAIR GATTO said he is trying to make sense of how the cigarette will be more loosely packed but have less toxins.

[8:44:47 AM](#)

MR. POWELL suggested that the study that was done is not flawed, but that the entire product was measured, not just the tobacco. He said he could get a copy of study or provide an expert witness who was "the key to passing this in New York."

[8:45:43 AM](#)

MR. POWELL, in response to a question from Vice Chair Gatto, reviewed the make up and purpose of the previously mentioned speed bump.

[8:46:09 AM](#)

VICE CHAIR GATTO, in response to a comment from Representative Ramras, said he had asked Mr. Powell whether this new type of

cigarette would change the habits of smokers, for example, requiring them to drag harder, deeper, or more often, and Mr. Powell indicated to him that the smoker would not notice a difference between the current and "safe" cigarette.

MR. POWELL confirmed that he has heard testimony of smokers who had a preconceived idea that the cigarette would be different, but in the end stated that they could tell no difference.

[8:46:43 AM](#)

REPRESENTATIVE RAMRAS expressed concern that people - perceiving smoking as safer - would in turn smoke more cigarettes per day.

[8:47:08 AM](#)

VICE CHAIR GATTO related that many fires start because someone who was sitting or lying on a couch, drinking and smoking, flicked some ashes away at 2:00 a.m., but the ashes didn't start the fire until 4:00 a.m. He asked, "Would the safe cigarette prevent that?"

[8:48:29 AM](#)

MR. POWELL replied:

That's exactly the scenario that this would prevent. The idea is, as you said, it has to lay there for quite some time to actually ignite a mattress, the comforter, the easy chair, the recliner - whatever the person's in. And the idea is this will actually self-extinguish before it sets there that long to start a fire, and it's precisely the issue we're trying to solve here.

[8:49:02 AM](#)

REPRESENTATIVE ELKINS, in regard to Vice Chair Gatto's example, said he thinks that that late at night there doesn't have to be [alcohol] involved; somebody could just be drinking a soda and have the same thing happen.

[8:49:35 AM](#)

VICE CHAIR GATTO said that's true, but statistically it seems to be "a can of beer." He said another factor is that smokers tend to have a wastebasket next to the couch and just flick the

cigarette into the basket. Hours later the wastebasket is on fire. He talked about the drastic injuries from fires. He stated, "To see burn victims who survive is to see someone who is truly devastated about the result of the fire, in addition to the people who are grieving losses." He predicted that the committee would be passing the bill, but noted that there were some more people to testify.

[8:50:14 AM](#)

JEFF JOHNSON, President, Western Fire Chiefs Association (WFCA), testified on behalf of Alaska and nine other western states [affiliated with] the International Association of Fire Chiefs (IAFC). He echoed the message of previous testifiers that cigarettes are one of the leading causes of fires and this type of legislation is "having a statistical impact." On behalf of the association, he urged the committee to pass HB 413. He concluded, "I thank you for the opportunity ... as a non-Alaskan for you to accept my testimony on behalf of your state and its membership in our association."

[8:52:15 AM](#)

MR. JOHNSON, in response to a question from Representative Gruenberg, said he doesn't know whether HB 413 is based on the New York model. Notwithstanding that, he said WFCA is asking the 10 western states to introduce legislation that is based on the New York model bill, "and in talking to our partners at the coalition, ... this bill appears to work and is close enough to that model." He deferred to Andrew McGuire for further response.

[8:53:24 AM](#)

REPRESENTATIVE GRUENBERG stated for record that the sponsor and his staff were nodding and telling him that HB 413 was based on the New York and California models. He said he wants to know if there is anything from other state laws that Alaska ought to incorporate in order to pass the best bill possible.

[8:53:45 AM](#)

ANDREW MCGUIRE testified on behalf of the National Fire Protection Association, based in Massachusetts, in support of HB 413. He stated his understanding that Representative Joule's staff used the language from the California bill to create HB 413; however, the California model, and most of the other

states' related bills - with rare minor exceptions - are based on the New York bill. He said that is deliberate, because "the last thing that we would want to do is have the cigarette manufacturers have to comply to different standards." Mr. McGuire revealed that he has been working on this issue for almost 30 years.

[8:55:38 AM](#)

MR. MCGUIRE, regarding Representative Ramras' previously stated concern, said the Harvard School of Public Health conducted studies to see if fire-safe cigarettes are more toxic or make people smoke more. It was found that the smoking rate did not increase or decrease in New York and neighboring Massachusetts compared to prior years. Furthermore, testing more than 20 compounds, no major difference in toxicity was found between fire-safe cigarettes and regular cigarettes within the same brands. He added, "And these are cancer researchers; these are people who are looking at this from that health point of view, not from the fire point of view. They are satisfied that a fire-safe cigarette - a cigarette that has slightly thicker paper on a couple of ... bands on the ... tobacco column - ... [does] not cause more toxicity to the smoker." He said that information is public. He concluded, "If you do hear testimony from the tobacco industry, you'll probably hear the opposite of what I'm saying, but I let the science stand for itself."

[8:58:17 AM](#)

MR. MCGUIRE, in response to questions from Representative Gruenberg, specified that he has been employed by the National Fire Protection Association (NFPA) as the director of the national campaign for fire-safe cigarettes, and the NFPA has been around for over a century and educates the public on fire prevention, and establishes electrical codes that lead to the prevention of fires that fire departments use around the world. He offered his understanding that NFPA was initially formed by the insurance industry and the fire service. In response to a follow-up question from Representative Gruenberg, Mr. McGuire said he is not an attorney, but the reason that he is involved is that he suffered a burn injury as a child. In response to further questions from Representative Gruenberg, he said he is familiar with other statutes similar to HB 413 and he thinks Representative Gruenberg's earlier suggestion to require [the manufacturers' certifications] to be done under oath is a good one and would not render Alaska's legislation different than that of New York or other states. He said it is the prerogative

of the legislature to define what type of penalties it wants to assign. He stated, "The real issue in conformity, state-to-state, is that the ... fire safety performance standard and everything around that is identical, so that the product itself can meet each state's standard the same way."

[9:00:22 AM](#)

REPRESENTATIVE GRUENBERG asked Mr. McGuire if he is aware if any commerce clause or preemption issues have been raised. He clarified, "Are states free to legislate in this area, or are there any federal problems?"

[9:00:35 AM](#)

MR. McGUIRE replied:

The first time that was raised was when the State of Maryland introduced the fire-safe cigarette bill in 1984. And then the tobacco institute raised the commerce clause as a problem. ... The state attorney general of Maryland issued an opinion that there was no commerce clause issue, nor was there any preemption issue, and since 1984, the tobacco industry has never raised that issue. And there can't be preemption, because there's no federal legislation in this arena regarding fire safety and cigarettes, so, there's no law to preempt.

MR. McGUIRE, in response to a request from Representative Gruenberg, said he would send a copy of the Maryland attorney general's opinion to him by facsimile.

[9:01:44 AM](#)

REPRESENTATIVE GRUENBERG reiterated that there is an existing definition of "cigarette" in Alaska's revenue code that is almost identical to the definition on page 8, lines 28-29, except that the latter definition contains additional language [text provided previously].

[9:02:10 AM](#)

MR. McGUIRE explained that the additional language was inserted "in the iterations of creating the New York bill" to include small cigars.

9:02:39 AM

REPRESENTATIVE GRUENBERG said, "The reason I'm asking is not because it's overinclusive, but because it might be underinclusive."

9:02:50 AM

MR. McGUIRE responded, "The data shows that those kinds of small cigars and regular cigars are not a fire problem; they typically self-extinguish regardless of any technology or any purposeful act of the tobacco companies, so that's why I think they were excluded."

9:03:14 AM

REPRESENTATIVE GRUENBERG directed attention to page 9, line 21, which read:

(A) giving cigarettes as samples,
prizes, or gifts; or

REPRESENTATIVE GRUENBERG noted that he had brought a bill to the legislature years ago which did not pass, but which would have made it illegal to do "tobacco sampling." He said he was told that that whole practice is illegal in some jurisdictions. He asked Mr. McGuire if he is aware of that.

9:04:06 AM

MR. McGUIRE said he has not heard of a statewide or national standard in that regard, thus, it must be only jurisdictional.

9:04:26 AM

VICE CHAIR GATTO asked that Mr. McGuire and Mr. Johnson send their background information by facsimile to the bill sponsor.

9:05:30 AM

REPRESENTATIVE LYNN said he would like to know how the bill would address the practice of buying cigarettes via the Internet that are manufactured overseas.

9:06:02 AM

REPRESENTATIVE RAMRAS offered his understanding that a person cannot buy cigarettes over the Internet, because they are "regulated by state stamps."

[9:06:26 AM](#)

VICE CHAIR GATTO stated his belief that there are people who continue to try, but are "chased down by state authorities"

REPRESENTATIVE LYNN said, "I have a personal friend who does."

REPRESENTATIVE RAMRAS stated, "It's illegal to do it in the first place."

REPRESENTATIVE GRUENBERG noted that the House Special Committee on Ways and Means had heard testimony on the issue a couple years ago.

[9:06:41 AM](#)

MARGE LARSON, American Lung Association, testified as follows:

As a public health advocate, I am always leery of the word "safe" in any way related to cigarettes, there being no safe use of tobacco, and I'm sure that's what a lot of folks expected me to say. That said, if we can reduce the toll of tobacco deaths and reduce wildfires and wildfire smoke by legislating self-extinguishing cigarettes, American Lung Association of Alaska supports that and applauds the firefighter's strong advocacy on this bill. Our support, however, is dependent on the Alaska statute strictly following the strong model legislations of other states, and on no additions being amended to this bill.

[9:07:38 AM](#)

VICE CHAIR GATTO closed public testimony.

[9:07:48 AM](#)

REPRESENTATIVE RAMRAS expressed his support of the Alaska Fire Standards Council.

REPRESENTATIVE GATTO reopened public testimony for an additional question.

[9:08:37 AM](#)

REPRESENTATIVE GRUENBERG said language on page 4, lines 18-19 relates to cigarettes that cannot be tested by the generally established method in national standards. He asked Mr. McGuire, "What kind of a cigarette couldn't be tested, and why not?"

[9:09:16 AM](#)

MR. MCGUIRE explained that 12-15 years ago, R.J. Reynolds introduced a "smokeless cigarette." He said it consisted of an aluminum tube wrapped on the outside with tobacco and white paper, filled inside with pellets of nicotine, and a "burning coal at the end that burned and, in a sense, decomposed the nicotine for people to get nicotine." He said nothing ever actually burned; "once you smoked one of those smokeless cigarettes, you were left with a long tube." He said that product would not cause fires, because the coal was hidden from contact with any surface; however, it wouldn't apply to the current ASTM International method of extinguishment "where you place the cigarette on pieces of paper and watch whether or not there [are] ignitions." He said [the language on page 4, lines 18-19] is there to take into account bizarre technology that may come from the cigarette that won't cause ignition but won't pass the ASTM standard.

[That was the last of the public testimony.]

[9:10:41 AM](#)

REPRESENTATIVE JOULE told the committee that a cigarette-ignited fire that occurred "as early as 1929" came to the attention of someone in the U.S. Congress. The National Bureau of Standards developed the technology for self-snubbing cigarettes in 1932, after three years of research. He said the technology for fire-safe cigarettes has been around a long time, and he urged the committee to pass HB 413.

[9:12:39 AM](#)

REPRESENTATIVE GRUENBERG asked Representative Joule if he would support his previously suggested amendments. In response to a request from Representative Joule, he reviewed that the first amendment would include changes to the language on page 5, between lines 3-7, page 5, line 31, and page 7, lines 5-8, and would concern civil penalties added in addition to any other

criminal penalties and would "allow it to be false swearing, which is a misdemeanor."

REPRESENTATIVE JOULE said he would have no objection to that amendment.

REPRESENTATIVE GRUENBERG said his second idea for an amendment is in regard to page 6, lines 24-27, which read:

Sec. 18.74.160. Penalties for violations. (a) A manufacturer or another person who knowingly sells or offers to sell cigarettes other than through retail sale and in violation of this chapter is subject to a civil penalty not to exceed \$10,000 for each sale.

REPRESENTATIVE GRUENBERG said he is not sure if the words "in this state" should be added between the words "cigarettes" and "other". He explained that he wants to ensure the language is legal because "we don't have any jurisdiction outside the state."

[9:14:43 AM](#)

REPRESENTATIVE JOULE suggested that Representative Gruenberg could "take a look between now and [the House Judiciary Standing Committee hearing on HB 413] on the second possibility."

[9:15:19 AM](#)

REPRESENTATIVE GRUENBERG moved Conceptual Amendment 1, as follows:

On page 5, line 3:
Between "certify" and "in"
Insert "under oath"

On page 5, line 31:
Between "submit" and "its"
Insert "under oath"

On page 7, line 5:
Between "other" and "penalty"
Insert "civil or criminal"

REPRESENTATIVE GRUENBERG said he would leave it up to the bill drafters to decide whether or not the third portion of Conceptual Amendment 1 is necessary.

[9:17:16 AM](#)

VICE CHAIR GATTO asked if there was any objection to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

[9:18:02 AM](#)

REPRESENTATIVE LYNN moved to report HB 413, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection CSHB 413(STA) was reported out of the House State Affairs Standing Committee.

HB 349-COMMISSION ON LEG. COMP. & ALLOWANCES

[9:18:53 AM](#)

VICE CHAIR GATTO announced that the last order of business was HOUSE BILL NO. 349, "An Act relating to legislator salary and benefits; establishing the Citizens' Commission on Legislative Salary and Benefits and defining its powers and duties and abolishing the State Officers Compensation Commission; and providing for an effective date by repealing secs. 9 and 12, ch. 124, SLA 1986."

[9:19:31 AM](#)

JACQUELINE TUPOU, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, on behalf of Representative Weyhrauch, sponsor of HB 349, told the committee that the suggestions from the committee at the last bill hearing were incorporated into a committee substitute.

[9:19:51 AM](#)

REPRESENTATIVE GARDNER moved to adopt the proposed committee substitute (CS) for HB 349, Version 24-LS1391\X, Wayne, 2/8/06, as a work draft. There being no objections, Version X was before the committee.

[9:20:18 AM](#)

MS. TUPOU said the sponsor, in response to a request from Representative Gruenberg at the prior bill hearing, [reinstated] language pertaining to the date by which the Alaska Legislative

Council would have to submit its final report to the legislature, as shown on page 4, line 13, as follows:

during the first 30 [10] days of a legislative session.

MS. TUPOU, regarding another change made, directed attention to [page 4, beginning on line 16], which read:

The Alaska Legislative Council shall publish the final report made available under AS 39.23.240(d)

MS. TUPOU explained that previously the language had been permissive and read "may" instead of "shall".

[9:21:15 AM](#)

VICE CHAIR GATTO, after ascertaining that there was no one to testify, closed public testimony.

[9:21:43 AM](#)

REPRESENTATIVE GARDNER cited AS 39.23.240(a), which read:

Sec. 39.23.240. Duties of the commission.

(a) The commission shall review the salaries, benefits, and allowances of members of the legislature and prepare a report on its findings at least once every two years, but not more frequently than every year. The commission shall notify the legislature that the report is available.

REPRESENTATIVE GARDNER asked if what the committee is doing now is working to "separate out who decides salaries from benefits and allowances."

MS. TUPOU responded, "If you're referring to the current statutes, the current statutes are not being implemented because they're unconstitutional."

REPRESENTATIVE GARDNER said she understands that.

VICE CHAIR GATTO asked Ms. Tupou, "Could you tell us what the current statute that's unconstitutional is?"

[9:22:38 AM](#)

MS. TUPOU answered, "Yeah, the current statute provides for a similar program in the way that it's a commission, but it has members of the executive branch in there, and so, that sort of violates the separation of powers. And so, it's unconstitutional, and so, without a constitutional amendment, it's never been implemented since it got on the books in 1986."

[9:23:06 AM](#)

REPRESENTATIVE GARDNER offered her understanding that under the proposed bill the salary of the legislators would still ultimately be determined by the Alaska Legislative Council.

[9:23:23 AM](#)

MS. TUPOU confirmed that is correct. She said the legislature has to have authority over its salary; "any other change to that would be unconstitutional."

[9:23:36 AM](#)

REPRESENTATIVE GARDNER proffered, "Except that [the President of the Senate] and the Speaker of House would be getting this additional 'bump' that's not ... considered and responded by the [Alaska Legislative Council]."

[9:23:56 AM](#)

MS. TUPOU answered that's correct. She said the reason for that is that, under the Alaska State Constitution, the aforementioned two positions are separated to receive additional compensation.

REPRESENTATIVE GARDNER asked, "And under the constitution, then, it ... needs to be determined differently from other salary matters?"

MS. TUPOU directed attention to page 1, [line 14] of Version X, which shows that the amount that the President of the Senate and the House Speaker has been changed from \$500 a year to \$500 a month.

[9:24:39 AM](#)

VICE CHAIR GATTO asked if the constitution directs the legislature to address the question of the salaries of the President of the Senate and the House Speaker, or "somehow we interpreted that."

[9:24:55 AM](#)

MS. TUPOU conjectured that since there is specific reference in the Alaska State Constitution that the aforementioned will receive compensation, while "other legislators" are not mentioned specifically, "that's why it would be initially in the statute." She added, "And then we've amended it in our bill because it was in the original statute."

[9:25:20 AM](#)

VICE CHAIR GATTO asked Ms. Tupou if she is saying that the only people entitled to any kind of compensation are the President of the Senate and the House Speaker, and the rest of the legislators are "subject to [the Alaska] Legislative Council's desires."

MS. TUPOU deferred the question to Dan Wayne.

[9:25:29 AM](#)

DAN WAYNE, Attorney, Legislative Legal and Research Services, referred to Article 2, Section 7, of the Alaska State Constitution, which read as follows:

SECTION 7. Salary and Expenses. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

[9:26:24 AM](#)

REPRESENTATIVE GARDNER asked Mr. Wayne if there would be any problem legally in having the additional compensation of the presiding officers handled in the same way "that we're proposing salaries be handled going through the commission and then through [Legislative] Council."

[9:26:42 AM](#)

MR. WAYNE answered no, because ultimately it is the Alaska Legislative Council that is making the decision about what the salary and benefits will be. He stated, "Inserting the commission into that process, with respect to salary and

benefits, ... allows a citizens' group to study it, make recommendations, and so forth, which become effective if the [Alaska] Legislative Council and the legislature decide not to ... make any changes to them." Mr. Wayne indicated that the decision not to do anything is, in essence, "an act."

[9:27:35 AM](#)

REPRESENTATIVE GARDNER opined that in the interest of full disclosure and public participation, all the salaries, including "any additional," should go through the same process of a citizens' commission and be possibly amended then confirmed by the Alaska Legislative Council. She asked Ms. Tupou what the sponsor's response would be to an amendment that would delete the provision related to additional salary for the President of the Senate and the House Speaker.

[9:28:31 AM](#)

MS. TUPOU said that she could not support or oppose any amendments proposed during the meeting because the bill sponsor would not have had a chance to consider them ahead of time.

The committee took an at-ease from [9:28:41 AM](#) to [9:28:46 AM](#).

[9:30:16 AM](#)

VICE CHAIR GATTO, in response to a request from Representative Gruenberg, recapped Representative Gardner's amendment idea.

[9:30:45 AM](#)

REPRESENTATIVE GARDNER clarified that she has no objection to the aforementioned positions receiving an increase in salary, but she doesn't know that they should be handled differently than the other issues.

[9:30:51 AM](#)

REPRESENTATIVE GARDNER asked Mr. Wayne for suggested language to use in an amendment that would require that the salaries of the President of the Senate and the House Speaker would be determined in the same manner as other salary adjustments, which would be through the commission's recommendations and through the Alaska Legislative Council.

[9:31:32 AM](#)

MR. WAYNE suggested deleting the sentence [beginning on page 1, line 13, through page 2, line 1], which read as follows:

The president of the senate and the speaker of the house of representatives are each entitled to an additional \$500 a month [YEAR] during tenure of office.

MR. WAYNE also suggested adding language under Section 4 so that it would be another duty of the Alaska Legislative Council to set the amount. Alternatively, he suggested that language could be added under Section 10 to charge the commission with the task of determining whether additional compensation is paid to the President of the Senate and the House Speaker, and, if so, how much it would be.

[9:32:41 AM](#)

VICE CHAIR GATTO directed attention to the sentence beginning on page 1, line 13 [text provided previously], and suggested changing language within the sentence to read:

may each be entitled, at the discretion of Legislative Council to an additional salary of

[9:32:58 AM](#)

MR. WAYNE responded that Vice Chair Gatto's suggestion would accomplish the same thing as striking the sentence and "putting a sentence under Section 4," but it would still leave the commission out of the decision, leaving it up to the Alaska Legislative Council. He said, "I suppose it just depends on whether or not it's the will of the legislature to have ... the commission study it and make recommendations to the council and then have the council act, or to just have the council handle it (indisc. -- paper shuffling) from that." He said he thinks one issue is whether additional compensation, as shown in Article 2, Section 7, is meant to be the same as salary, or if it is an allowance. He said that as he was drafting the bill, he was thinking of additional compensation as allowance.

[9:34:23 AM](#)

VICE CHAIR GATTO suggested that the term "allowance" should only apply during session, because that is the only time when [the

President of the Senate and the House Speaker] serve in an official capacity "on the podium."

[9:34:49 AM](#)

REPRESENTATIVE ELKINS disagreed with Vice Chair Gatto's remark. He said the work load of the President of the Senate and the House Speaker doesn't diminish that much during interim, and may even increase.

[9:35:14 AM](#)

REPRESENTATIVE GARDNER moved Conceptual Amendment 1, to make the allowance be considered by the commission and ultimately determined by the Alaska Legislative Council.

[9:35:35 AM](#)

REPRESENTATIVE ELKINS objected to Conceptual Amendment 1. He explained:

I think it's pretty obvious by the salary of \$2001 a month that this legislature is not overpaid, and it's been that way for a number of years. And as far as public participation goes, if a pay raise would have to come through in a bill, there's plenty of time for all kinds of public input. ... Whether the public likes it or [doesn't] like it, they have an opportunity at us every two years in the House. And I'm not in favor of setting up a commission outside of this body to ... recommend our pay at all. I think that's our job; I think that's what we were elected to do, and then stand before the people and see if they accept it.

[9:36:29 AM](#)

REPRESENTATIVE GARDNER reiterated that the question really is not whether [certain members of the body] should get more or less, but whether that decision should be handled any differently than the decisions for the salary benefits and allowances "for the rest of us."

[9:37:14 AM](#)

REPRESENTATIVE ELKINS reemphasized that his point is that "the decision should be handled in this body and only in this body."

[9:37:23 AM](#)

VICE CHAIR GATTO said that's a separate question. He suggested that Representative Elkins is really saying that "we shouldn't even have this bill."

[9:37:40 AM](#)

REPRESENTATIVE ELKINS responded, "Basically, yes."

VICE CHAIR GATTO said allowing the legislature to establish its own salaries would look inherently unfair to the public, thus, he said he thinks having a recommendation from a separate ground is a good idea. He said Representative Gardner is proposing that that separate group not only make a recommendation for the legislature's salaries, but also for "any bump for the speaker and the president."

REPRESENTATIVE GARDNER concurred with Vice Chair Gatto's estimation of the intent of Conceptual Amendment 1.

VICE CHAIR GATTO asked if there were any other objections to Conceptual Amendment 1.

REPRESENTATIVE LYNN objected, then removed his objection [when it was clarified that Representative Elkins still objected.]

[9:38:53 AM](#)

A roll call vote was taken. Representatives Gardner and Gatto voted in favor of Conceptual Amendment 1. Representatives Lynn and Elkins voted against it. Therefore, Conceptual Amendment 1 failed to be adopted by a vote of 2-2.

[9:39:52 AM](#)

REPRESENTATIVE GARDNER restated her concern regarding full disclosure and public participation, even bearing in mind the previous remarks from Representative Elkins. She said she would like the final report from the citizens' commission on legislative benefits described in Section 12, line 13 [under the old bill].

REPRESENTATIVE GARDNER indicated that she would like to offer an amendment that would require that the report the commission

makes available to the Alaska Legislative Council be simultaneously made available to the public.

[9:41:29 AM](#)

MR. WAYNE suggested:

On page 4, line 10:

Between "to" and "the Alaska Legislative Council"

Insert "the public and"

[9:41:44 AM](#)

VICE CHAIR GATTO asked Representative Gardner if that would be sufficient.

REPRESENTATIVE GARDNER answered, "That's great." [Conceptual Amendment 2 was considered moved for adoption.]

[9:42:11 AM](#)

REPRESENTATIVE ELKINS offered his understanding that once the report is distributed to the Alaska Legislative Council it is available to the public already.

[9:42:19 AM](#)

VICE CHAIR GATTO said he doesn't think that is necessarily true. He explained that the Alaska Legislative Council has information on other things that are discussed and are under contract, thus, information given to the council can be public document, but in some instances is not. He said Representative Gardner wants to delineate that question by specifying that "this document - not all documents - ... be available to the public."

REPRESENTATIVE ELKINS replied, "I think this document would be anyway because it's not proprietary and the other one is."

[9:42:46 AM](#)

REPRESENTATIVE GARDNER relayed her concern is to ensure the public knows exactly what the commission recommends and ultimately what the Alaska Legislative Council goes with, and she wants both those elements "to be available without question."

[9:42:58 AM](#)

VICE CHAIR GATTO stated his agreement with Representative Elkins' remark that the Alaska Legislative Council "would not hold this as discretionary information anyway," thus, [Conceptual Amendment 2] would not add any measure of accountability to the bill.

[9:43:39 AM](#)

REPRESENTATIVE GARDNER responded:

You may very well be right [Vice Chair Gatto], but as you explained earlier, it's very ... difficult for legislators to make recommendations regarding their own salary and benefits, and we're introducing this bill, in part, to address that and have a process that is open and allows input from other people, so that ultimately what happens is clear and open. And I just want to ensure that every part of that is clear and open, so that afterwards we can't be accused of trying to hide any part of the process.

[9:44:12 AM](#)

REPRESENTATIVE LYNN recommended erring on the side of public disclosure.

[9:44:18 AM](#)

VICE CHAIR GATTO reviewed Conceptual Amendment 2 and asked if there was any objection.

[9:44:36 AM](#)

REPRESENTATIVE ELKINS objected for discussion purposes. He admitted, "Sometimes I gristle when public disclosure comes up because ... it ... implies ... we would do something illegal, and I don't believe we would do anything illegal." He said, "I do not believe for a minute that this item would be held ... not for public discretion by the [Alaska] Legislative Council." He said he has a problem with [Conceptual Amendment 2].

[9:45:20 AM](#)

REPRESENTATIVE GARDNER said she does not intend to imply that the Alaska Legislative Council would be anything less than honorable at any step of the way, but she wants to ensure the

public that "we are making every effort to be open about the entire process of discussing possible raises, salaries, and benefits."

[9:46:30 AM](#)

REPRESENTATIVE GRUENBERG indicated that [Conceptual Amendment 2] may not be technically necessary, but it would certainly offer some assurance to the public. He told Representative Elkins he hopes he will reconsider his objection, because the bill is not controversial, will do no harm, and will offer confidence to the public.

[9:47:17 AM](#)

REPRESENTATIVE ELKINS removed his objection.

VICE CHAIR GATTO asked if there was any further objection to Conceptual Amendment 2. There being none, it was so ordered.

[9:47:47 AM](#)

REPRESENTATIVE GARDNER, in response to a request from Representative Gruenberg, reviewed the subject of the failed Conceptual Amendment 1.

REPRESENTATIVE GRUENBERG, after ascertaining that the vote on Conceptual Amendment 1 had been 2-2, asked if any committee member would be willing to ask for a reconsideration so he could vote.

[9:48:14 AM](#)

REPRESENTATIVE GARDNER asked for reconsideration to Conceptual Amendment 1.

[Discussion took place regarding the rules of reconsideration, which members had actually been present during the roll call vote on Conceptual Amendment 1, and the timing of holding the bill versus moving it through committee.]

[9:50:48 AM](#)

A roll call vote was taken. Representatives Gruenberg, Gatto, and Gardner voted in favor of Conceptual Amendment 1. Representatives Elkins and Lynn voted against it. Therefore, Conceptual Amendment 1 was adopted by a vote of 3-2.

9:51:42 AM

REPRESENTATIVE GRUENBERG moved to report CSHB 349, Version 24-LS1391\X, Wayne, 2/8/06, as amended, out of committee with individual recommendations. There being no objection, CSHB 349(STA) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:53:03 AM.