

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 6, 2008
1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Ralph Samuels
Representative Lindsey Holmes
Representative Mike Doogan

MEMBERS ABSENT

Representative Bob Lynn

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 28

Proposing an amendment to the Constitution of the State of Alaska relating to the production tax revenue fund, dedicating a portion of the petroleum production tax to the fund, and limiting appropriations from the fund.

- MOVED CSHJR 28(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 268

"An Act relating to damaging a vehicle on public land by starting a fire or causing an explosion."

- MOVED HB 268 OUT OF COMMITTEE

HOUSE BILL NO. 303

"An Act relating to marine products and motorized recreational products; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 281

"An Act extending the statute of limitations for the filing of complaints with the Alaska Public Offices Commission involving state election campaigns."

- BILL HEARING POSTPONED TO 2/8/08

HOUSE CONCURRENT RESOLUTION NO. 16
Proposing an amendment to the Uniform Rules of the Alaska State
Legislature relating to voting.

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HJR 28

SHORT TITLE: CONST. AM: PRODUCTION TAX REVENUE FUND
SPONSOR(S): REPRESENTATIVE(S) SAMUELS

01/11/08	(H)	PREFILE RELEASED 1/11/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	JUD, FIN
01/25/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/25/08	(H)	-- MEETING CANCELED --
01/28/08	(H)	JUD AT 1:00 PM CAPITOL 120
01/28/08	(H)	Heard & Held
01/28/08	(H)	MINUTE(JUD)
02/04/08	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/08	(H)	Heard & Held
02/04/08	(H)	MINUTE(JUD)
02/06/08	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 268

SHORT TITLE: MOTOR VEHICLE ARSON ON PUBLIC LAND
SPONSOR(S): REPRESENTATIVE(S) STOLTZE

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	JUD
02/06/08	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 303

SHORT TITLE: MARINE & MOTORIZED RECREATIONAL PRODUCTS
SPONSOR(S): REPRESENTATIVE(S) NEUMAN

01/11/08	(H)	PREFILE RELEASED 1/11/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	L&C
01/30/08	(H)	L&C AT 1:00 PM CAPITOL 17
01/30/08	(H)	Moved CSHB 303(L&C) Out of Committee
01/30/08	(H)	MINUTE(L&C)
01/31/08	(H)	L&C RPT CS(L&C) 4DP 3AM
01/31/08	(H)	DP: BUCH, RAMRAS, NEUMAN, OLSON
01/31/08	(H)	AM: GARDNER, LEDOUX, GATTO

01/31/08 (H) JUD REFERRAL ADDED
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 268.

BEN MULLIGAN, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 268 on behalf of the sponsor, Representative Stoltze.

RUSS MADDOX
Resurrection Bay Conservation Alliance (RBCA)
Seward, Alaska

POSITION STATEMENT: Testified in support of HB 268.

WYN MENEFFEE, Chief of Operations
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 268.

ARTHUR M. QUAAS
Palmer, Alaska

POSITION STATEMENT: Testified in favor of HB 268.

KENNY BARBER
(No address provided)

POSITION STATEMENT: Testified in support of HB 268.

PATTY BARBER
(No address provided)

POSITION STATEMENT: Testified in support of HB 268.

GREGORY NELSON (ph), Co-Founder
Butte Area Residents Civic Organization (BARCO)
(No address provided)

POSITION STATEMENT: Provided comments during discussion of HB 268.

DAVID TYLER, State Fire Marshal;
Director
Division of Fire and Life Safety
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 268.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 268.

GERALD LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to questions as the drafter of
HB 268.

REPRESENTATIVE MARK NEUMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 303.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:08:11 PM](#). Representatives Dahlstrom, Coghill, Samuels, Holmes, Doogan, and Ramras were present at the call to order. Representative Lynn was excused.

CHAIR RAMRAS made mention of proposed legislation that the House Judiciary Standing Committee would be introducing in the near future.

HJR 28 - CONST. AM: PRODUCTION TAX REVENUE FUND

[1:10:27 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 28, Proposing an amendment to the Constitution of the State of Alaska relating to the production

tax revenue fund, dedicating a portion of the petroleum production tax to the fund, and limiting appropriations from the fund. [Left pending from the meeting on 2/4/08 was the motion to adopt the proposed committee substitute (CS) for HJR 28, Version 25-LS1217\E, Cook, 1/29/08, as the work draft; included in members' packets was a new proposed committee substitute (CS) for HJR 28, Version 25-LS1217\M, Cook, 2/5/08.]

[1:10:32 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HJR 28, Version 25-LS1217\M, Cook, 2/5/08, as the work draft.

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE SAMUELS, speaking as the sponsor, relayed that Version M contains all the provisions the committee had expressed favor with during the resolution's last hearing. In Version M, the production tax revenue fund is separate from the existing Constitutional Budget Reserve Fund (CBRF); there is no longer a statutory reference to the "progressivity" monies, and those monies are instead just described via language; appropriations to the proposed fund will no longer be mandatory as of January 1, 2015; the annual payout from the fund is limited to 5 percent of a five-year average and won't begin until 2013; and transitional language is included to allow payouts based on a shorter average for the years 2013 and 2014. He mentioned that he'd received some information from the Department of Revenue (DOR) regarding the estimated payouts, and some acronyms for the proposed fund.

REPRESENTATIVE DOOGAN indicated that he, too, has some acronyms for the proposed fund.

REPRESENTATIVE DAHLSTROM sought assurance that Version M won't release the legislature from its responsibility to pay back the monies owed to the CBRF.

REPRESENTATIVE SAMUELS relayed that it won't because it doesn't affect the existing provisions of the Alaska State Constitution regarding the CBRF.

REPRESENTATIVE COGHILL expressed disfavor with placing start and stop dates into the Alaska State Constitution.

REPRESENTATIVE SAMUELS offered that as production continues to decline, the production tax revenue might instead be needed to balance the budget, hence the proposed stop date. Meanwhile, establishment of the proposed fund will allow the legislature to save a little bit of that revenue.

REPRESENTATIVE COGHILL noted that historically the legislature has been very good at managing its savings, the permanent fund being a good example of that.

REPRESENTATIVE HOLMES referred to page 2, lines 6-8, and noted that the payout would be based on the first five of the preceding six years.

REPRESENTATIVE SAMUELS said that language ensures that the payout average will be based on firm numbers and not include an estimate of a current fiscal year. He offered his understanding that that language came out of [other legislation].

CHAIR RAMRAS characterized Version M as a clean piece of legislation.

REPRESENTATIVE HOLMES removed her objection to the adoption of Version M as the work draft. There being no further objection, Version M was before the committee.

[1:20:08 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HJR 28, Version 25-LS1217\M, Cook, 2/5/08, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 28(JUD) was reported from the House Judiciary Standing Committee.

HB 268 - MOTOR VEHICLE ARSON ON PUBLIC LAND

[1:20:36 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 268, "An Act relating to damaging a vehicle on public land by starting a fire or causing an explosion."

[1:20:44 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor, said of HB 268 that it is very important to the "Butte portion"

of his district and addresses an issue that was brought to his attention [by constituents].

CHAIR RAMRAS noted that the Knik River Public Use Area has experienced a great deal of lawlessness, included the lighting of cars on fire.

REPRESENTATIVE STOLTZE concurred, adding that although some of that activity has been curtailed, it still continues, blighting the area as well creating a safety hazard for those who respond to those fires. House Bill 268 is intended to address this problem. Specifically, the bill adds to AS 11.46 the crime of arson in the third degree, and makes it a class C felony. He offered his hope that the bill will serve as a deterrent rather than be imposed in that many instances, and mentioned that the bill has been reviewed by community leaders and law enforcement entities. He said he hears about this activity frequently and spends much of his time dealing with issues arising in the Knik River Public Use Area; the behavior of lighting cars on fire or causing them to explode is behavior that can't be resolved through regulation.

CHAIR RAMRAS asked whether the bill applies to both working motor vehicles and abandoned motor vehicles.

[1:26:34 PM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, Alaska State Legislature, on behalf of Representative Stoltze, sponsor, explained that it does, since the vehicles being lit on fire are not always abandoned vehicles.

REPRESENTATIVE HOLMES questioned whether the proposed crime ought to be a class A misdemeanor - like the crime of criminally negligent burning - rather than a class C felony.

REPRESENTATIVE STOLTZE offered that the behavior HB 268 is meant to address is similar to the behavior outlined in the existing arson statutes, which are both felonies, including causing potential risks to public safety. He reiterated his hope that the bill won't be applied in many instances but will instead serve as a deterrent. In response to a question, he said the bill is aimed at the person starting the fire and is not focusing on why the vehicle is lit on fire.

MR. MULLIGAN added that the bill will apply regardless of why the vehicle is lit on fire.

REPRESENTATIVE DOOGAN, referring to the photographs included in members' packets, noted that some of the burned cars also have bullet holes in them, and asked whether current law precludes shooting vehicles in a public use area.

REPRESENTATIVE STOLTZE said he is not aware of any laws addressing the shooting of vehicles, though that behavior certainly contributes to the blight.

REPRESENTATIVE DOOGAN questioned whether those in charge of the public use area are going to address that issue as well.

MR. MULLIGAN indicated that they are currently going through the process of designating both safe and unsafe shooting areas.

REPRESENTATIVE STOLTZE relayed that they don't want the shooting of vehicles continuing either.

REPRESENTATIVE COGHILL opined that vandalizing vehicles rises to the same level as lighting them on fire.

REPRESENTATIVE STOLTZE said his larger concern is the public safety risk associated with burning vehicles, adding that that is the issue the public wants to see resolved.

[1:34:00 PM](#)

RUSS MADDOX, Resurrection Bay Conservation Alliance (RBCA), relayed that the RBCA supports HB 268. The burning of cars is not just a problem in the Matanuska-Susitna region; it's also been a big problem in Seward for a number of years. He offered his observation that those who are abandoning their vehicles are not always the same people who are lighting those vehicles on fire and otherwise vandalizing them. One possible solution, he proffered, would be to make it easier and cheaper to safely dispose of vehicles, rather than merely punishing the end product of their being burned. He surmised that this is a statewide problem.

[1:35:48 PM](#)

WYN MENEFFEE, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), relayed that the burning of vehicles is occurring on state lands, and that removing such vehicles comes at considerable cost. The State of Alaska, itself, has paid to remove about 50

such vehicles, the Fairbanks North Star Borough has removed about 60 such vehicles from state lands, and private groups have cleaned up over 100 such vehicles from the Knik area. Anything that can be done to discourage the activity of burning cars will be beneficial.

[1:37:26 PM](#)

ARTHUR M. QUAAS said he would be speaking in favor of HB 268. He relayed that he lives on the south side of the Knik River and can see the public use area on the other side of the river, and that he used to call the Division of Alaska State Troopers on a regular basis to report burning cars, but the response from the division was always that law enforcement personnel didn't have any way to access that area and couldn't do anything about that activity anyway. After his name was broadcast over the police radio a couple of times, he stopped making such calls, because those who are out setting vehicles on fire were also monitoring the police radio so that they'd know when to leave an area. When watching a vehicle on fire, one is left wondering just how long it will be before the surrounding area also catches on fire. In conclusion, he reiterated that he is in favor of HB 268.

[1:39:15 PM](#)

KENNY BARBER, after relaying that he lives in the "Butte area" and has helped remove some of the vehicles that have been set on fire, said he supports HB 268. He posited that the setting of vehicles on fire is a statewide problem, and opined that the bill will help in the long run.

[1:41:14 PM](#)

PATTY BARBER said she supports HB 268, and opined that something like it has been needed for a long time.

CHAIR RAMRAS surmised that the question the committee should address is whether the behavior outlined in the bill warrants a class C felony.

REPRESENTATIVE STOLTZE concurred.

[1:42:31 PM](#)

GREGORY NELSON (ph), Co-Founder, Butte Area Residents Civic Organization (BARCO), indicated that BARCO requested legislation

such as HB 268. "Car burnings" have been a concern of residents for many, many years, he added, and expressed appreciation for making the burning of vehicles on state or municipal land a class C felony. He went on to say:

For over 25 years we've been told by borough and state officials that they don't have the resources nor the tools to fight the epidemic of car burnings everywhere. These activities has been accelerating, endangering local firefighters, contaminating our woods and waterways, placing our homes and lives in danger, and condemning this great community and this beautiful area to a reputation that belittles and contradicts the values and standards which residents in normal communities can rightfully and peacefully enjoy.

MR. NELSON opined that passage of HB 268 will assure concerned residents and other users of public spaces that when they observe and report this particular criminal activity, they will be assisting law enforcement agencies which will then arrest and charge those committing this offense. He said that residents have seen a steady increase in illegal activities in the area, and that perhaps the behavior of vandalizing a vehicle on state or municipal land should also be curtailed, adding that adequate vehicle disposal has always been an issue.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

[1:45:19 PM](#)

DAVID TYLER, State Fire Marshal; Director, Division of Fire and Life Safety, Department of Public Safety (DPS), opined that legislation such as HB 268 should have been introduced a long time ago. Burning vehicles are dangerous, particularly for firefighters, because vehicle fires create a lot of hazards. For example, "shock-absorber" bumpers, when heated up, can explode like grenades and take a firefighter out at the knees; fuel tanks can fail, thus spilling fuel on the ground and creating further hazard; many items that people carry in their vehicles can also create a hazard. Just walking up to extinguish a burning vehicle is an extremely dangerous task. Furthermore, burning vehicles can start wild-land fires, and although to-date there have not been any large wild-land fires, they are cause for concern because they threaten wildlife, wild lands, human life, and personal property. He concurred that the Butte area isn't the only area of the state that is experiencing

this problem. In conclusion, he said he strongly supports HB 268.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

CHAIR RAMRAS asked what the current penalty is for burning a vehicle.

MR. MULLIGAN offered his understanding that currently there is no specific penalty, but that perhaps the activity could be charged as criminal mischief.

REPRESENTATIVE STOLTZE reiterated that the bill establishes the crime of arson in the third degree and makes it a class C felony.

REPRESENTATIVE COGHILL pointed out, though, that the crime of criminal mischief in the third degree is also a class C felony, and that HB 268 specifies that the arson be committed on state or municipal land.

CHAIR RAMRAS asked whether one could be arrested for committing a class A misdemeanor crime.

[1:50:07 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), offered his understanding that for a class A misdemeanor, a person can only be arrested if he/she commits the offense in the presence of a law enforcement officer; if the officer didn't witness the event, he/she would complete an investigation and then forward that information to the district attorney's office for prosecution. In response to a question, he said that if an officer came across a burning vehicle, he/she would probably first try to ensure the safety of those around the vehicle, then call the appropriate resources to deal with the fire, and then conduct an investigation regarding who owns the vehicle and who started the fire. He offered his understanding that the crime of criminally negligent burning - AS 11.46.430 - would only apply if the vehicle belonged to someone else; currently, one can burn his/her own vehicle.

REPRESENTATIVE STOLTZE noted that the question of whether a particular behavior is intentional requires a high standard of proof, and surmised, therefore, that HB 268 won't make it easier to arrest and prosecute someone. Setting cars on fire, however,

creates risk to life and property, and it is that risk which HB 268 is intended to address.

REPRESENTATIVE DOOGAN pointed out, though, that that same risk is created regardless of where the car is located when it is set on fire, and regardless of who owns the car. He asked whether current law addresses situations in which vehicles are set on fire on private property and when the vehicle is owned by the person setting it on fire.

REPRESENTATIVE STOLTZE said the bill only addresses activity on state and municipal land because that's where the offenses are occurring, and characterized that limitation as a policy decision.

LIEUTENANT DIAL said the troopers do not investigate individuals destroying property on their own private property - there just is not the same level of interest.

REPRESENTATIVE DOOGAN surmised that the burning of vehicles is not occurring on private, federal, or Native corporation land.

LIEUTENANT DIAL indicated that the troopers haven't received any such complaints.

The committee took an at-ease from 1:56 p.m. to 2:01 p.m.

[2:01:53 PM](#)

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), as the drafter, in response to a question, explained that the sponsor wanted to establish a lesser form of the crime of arson, and that militated that that crime be a class C felony. However, should the committee decide that the behavior outlined in HB 268 would be better equated with the crime of criminally negligent burning, the bill could be altered to that effect. He offered his understanding that the difference in penalties for a class A misdemeanor as opposed to a class C felony is that the former could warrant up to one year in jail and a fine of up to \$5,000, whereas the latter could warrant up to five years in jail - though there is a presumptive sentencing range of between zero and two years - and a fine of up to \$10,000.

LIEUTENANT DIAL, in response to comments and a question, observed that the current criminally negligent burning statute

doesn't seem to be discouraging the activity of setting vehicles on fire. [Notwithstanding existing AS 11.46.400] he said that the troopers only charge a person with a felony if damage to property belonging to another exceeds \$500, and surmised that it could be argued that the cost to the public of putting out such a fire and disposing of a burned vehicle far exceeds \$500 and thus a felony charge would be appropriate.

MR. LUCKHAUPT added that if there was a reason to recommend one type of charge over the other it would be that the crime of criminally negligent burning already exists as a class A misdemeanor and requires a lesser mental state than HB 268, which requires that someone intentionally damage a motor vehicle - though it matters not who's vehicle it is - by starting a fire or causing an explosion while the vehicle is on state or municipal land. Therefore, if the activity outlined in HB 268 becomes a class A misdemeanor, most such cases would be subsumed by the criminally burning negligent statute and so the proposed offense wouldn't be needed or used because it requires additional proof.

[2:07:29 PM](#)

MR. LUCKHAUPT, in response to a comment, reiterated that HB 268 would apply regardless of who owns the vehicle being burned; furthermore, if the penalty remains a class C felony, then the bill would also continue to require a higher mens rea - "intentionally". He opined that the bill proposes a reasonable progression with regard to penalties and mental intent. Again, if the penalty proposed in HB 268 were lowered to a class A misdemeanor, it wouldn't be used.

REPRESENTATIVE HOLMES suggested that they could instead make the penalty a class A misdemeanor and reduce the required mental state to criminal negligence.

REPRESENTATIVE STOLTZE pointed out that that's essentially the crime of criminally negligent burning, which has proven to be ineffective. He again reiterated his hope that the bill won't be used often but will instead act as a deterrent.

REPRESENTATIVE HOLMES asked whether a person starting a vehicle fire that then burns out of control and causes further damage could be charged with other crimes as well.

LIEUTENANT DIAL said it is possible, though such instances would have to be addressed on a case-by-case basis. For example, the

types of other crimes that might be charged would depend on whether someone gets injured as a result of setting the vehicle on fire.

REPRESENTATIVE HOLMES asked whether they need to include an exemption in the bill for training exercises.

MR. LUCKHAUPT, in response to the earlier question, noted that it is a misdemeanor to start or know of a fire and allow it to escape; that in some instances, in addition to a jail sentence and a fine, civil damages could also be sought from the person [starting] the fire; and that there is another criminal penalty that could accrue to someone starting a fire on undeveloped land, but it wouldn't apply to vehicle fires.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 268.

[2:15:35 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 268 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 268 was reported from the House Judiciary Standing Committee.

HB 303 - MARINE & MOTORIZED RECREATIONAL PRODUCTS

[2:16:42 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 303, "An Act relating to marine products and motorized recreational products; and providing for an effective date." [Before the committee was CSHB 303(L&C); included in members' packets was a proposed committee substitute (CS) for HB 303, Version 25-1S1183\M, Bannister, 2/5/08.]

CHAIR RAMRAS noted that the Department of Law (DOL) has provided a written opinion on CSHB 303(L&C) [that expresses concern with that version].

[2:17:46 PM](#)

REPRESENTATIVE MARK NEUMAN, Alaska State Legislature, sponsor, relayed that he's not yet had a chance to review that opinion but would like to do so, and indicated that perhaps a committee substitute (CS) could be brought before the committee at a later date that would address the DOL's concerns.

CHAIR RAMRAS relayed that [CSHB 303(L&C)] would be held over.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:19 p.m.