

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 22, 2007

3:32 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 48

"An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal or review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit the amount of the bond required to stay execution of a judgment in a civil litigation during an appeal."

SCHEDULED BUT NOT HEARD

SENATE CONCURRENT RESOLUTION NO. 3

Urging the governor and the attorney general to expedite the resolution in the courts of the appeal from the decision by the commissioner of natural resources to deny the proposed plans for development of the Point Thomson Unit and to terminate the Point Thomson Unit.

HEARD AND HELD

SENATE BILL NO. 78

"An Act relating to the installation of window tinting in automobiles."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SCR 3

SHORT TITLE: POINT THOMSON UNIT APPEAL

SPONSOR(S): SENATOR(S) THERRIAULT

02/19/07 (S) READ THE FIRST TIME - REFERRALS
02/19/07 (S) JUD
03/22/07 (S) JUD AT 3:30 PM BUTROVICH 205

BILL: SB 78

SHORT TITLE: MOTOR VEHICLE WINDOW TINTING

SPONSOR(S): SENATOR(S) FRENCH

02/09/07 (S) READ THE FIRST TIME - REFERRALS
02/09/07 (S) TRA, JUD
03/06/07 (H) TRA AT 1:30 PM CAPITOL 17
03/06/07 (S) Moved SB 78 Out of Committee
03/06/07 (S) MINUTE(TRA)
03/07/07 (S) TRA RPT 1DP 3NR
03/07/07 (S) DP: KOOKESH
03/07/07 (S) NR: WIELECHOWSKI, WILKEN, COWDERY
03/14/07 (S) JUD AT 1:30 PM BELTZ 211
03/14/07 (S) Heard & Held
03/14/07 (S) MINUTE(JUD)
03/22/07 (S) JUD AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

William Boswood
Auto Trim Design
Fairbanks, AK

POSITION STATEMENT: Answered questions related to SB 78

Andrew Felt
Auto Trim Design
Fairbanks, AK

POSITION STATEMENT: Answered questions related to SB 78

Anne Johnson, Assistant Attorney General
Civil Division
Oil, Gas & Mining Section
Department of Law
Juneau, AK

POSITION STATEMENT: Commented on a proposed amendment to SCR 3

Kevin Banks, Acting Director

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [3:32:44 PM](#). Present at the call to

order were Senator Wielechowski, Senator McGuire, Senator Huggins, Senator Therriault, and Chair French.

SB 78-MOTOR VEHICLE WINDOW TINTING

3:33:24 PM

CHAIR FRENCH announced the consideration of SB 78. He recapped that during the first hearing some commercial installers expressed concern that adding the lightest available tint to factory glass exceeds the limit under the current law. If that is true then the standards should be changed, but that is the subject of another bill, he said. He noted that according to a table in the packets, Alaska has the same standard as California, New York, Pennsylvania, Rhode Island and several other jurisdictions. He said he would hazard a guess that there is window film used in at least some of those states that doesn't break the law.

He asked Senator Wielechowski if he had a conceptual amendment to address the concern about the level of penalty for the offense of installing window tinting.

3:35:20 PM

SENATOR WIELECHOWSKI motioned to change the penalty for installing window tinting from a criminal penalty to a civil penalty.

CHAIR FRENCH explained that Title 28 is a catchall statute that sets out penalties for violations. Most of the violations are misdemeanors punishable by a year in jail and up to a \$10,000 fine, but many of the Title 28 provisions are infractions. He suggested that AS 28.35.235 is a similar statute and it might be a starting point for the conceptual amendment. In part it says:

Sec. 28.35.235.

(c) A person who violates this section is guilty of an infraction. Upon conviction, the court shall impose a fine of not less than \$125, or, if the person has been previously convicted under this section, the court shall impose a fine of not less than \$250. ...

SENATOR WIELECHOWSKI stated a preference to have the conceptual amendment to follow that style.

3:37:36 PM

CHAIR FRENCH asked if he is comfortable with the amount of the penalty.

SENATOR WIELECHOWSKI said his thought is to set the penalty at a rate similar to the penalty for driving with tinted windows.

CHAIR FRENCH asked Lt. Dial what the penalty is for driving with windows tinted above the allowable maximum.

LT. RODNEY Dial, Alaska State Trooper, said it is a correctable offense, but a \$150 fine can be assessed. The Municipality of Anchorage does assess a fine.

SENATOR WIELECHOWSKI restated his intention is to have the penalty the same as the penalty for driving with unlawfully tinted windows.

CHAIR FRENCH clarified the motion would read:

A person who violates this section is guilty of an infraction. Upon conviction, the court shall impose a fine of not less than \$150, or, if the person has been previously convicted under this section, the court shall impose a fine of not less than \$300.

[3:38:45 PM](#)

SENATOR THERRIAULT noted the change from a misdemeanor to an infraction and asked if it's for the driver or the installer.

CHAIR FRENCH said the infraction is for the installer. When there isn't an associated jail time it's sometimes called a special-class misdemeanor, but the name doesn't matter. The issue is to give the police a tool to try to eliminate the very dark tinting that may be installed at some shops. He said he isn't sure that it's happening in the shops that have been testifying.

SENATOR McGUIRE commented, "Despite their statement on the record that it was."

CHAIR FRENCH said he believes there are three categories of tinting. A demonstration would show the very dark tint, then the tint that is probably just slightly out of conformity with the 70 percent standard, and then factory glass.

[3:40:08 PM](#)

CHAIR FRENCH, hearing and seeing no further discussion or objection, announced that Amendment 1 is adopted.

SENATOR McGUIRE referenced a letter she received from Auto Trim Design asking the committee to consider changing the standard from 30 percent to 35 percent. Acknowledging that she isn't an expert in this area, she asked what the distinction is.

CHAIR FRENCH asked Mr. Boswood or Mr. Felt to give their perspective.

[3:41:18 PM](#)

WILLIAM BOSWOOD, Auto Trim Design, Fairbanks, explained that there is no 30 percent; what is allowed is 70 percent. That means 70 percent light transmission on front windows and so 30 percent of the light is blocked. That amount of tint isn't visible; it only provides UV protection. He continued to say:

35 percent tint is twice as dark as 70 percent. It cuts in half the amount of light that 70 percent does. 35 percent tint is considered a medium tint nationwide in the industry and it is quite visible. You can see inside the vehicle with 35 percent tint on the front doors.

ANDREW FELT said the specific request is to allow tinting that is in line with a majority of other states. That is tinting down to at least a 35 percent light transmission level on front windows and down to 20 percent on rear windows.

[3:44:39 PM](#)

SENATOR McGUIRE said it's a good point; the basis of this law is a regulation and it's been a law since 1994. She suggested installers negotiate with the regulation makers separate and distinct from this bill.

SENATOR THERRIAULT restated Mr. Boswood's suggestion to allow 35 percent light transmittance and said he would like to propose an amendment on behalf of the good citizens of Fairbanks.

CHAIR FRENCH asked him to continue.

SENATOR THERRIAULT motioned to conceptually change language in paragraph (2) on line 8 to say it is a violation if tinting doesn't allow at least 35 percent visible light transmittance. The level would not be established by regulation.

[3:47:26 PM](#)

CHAIR FRENCH objected explaining that the regulations are very complex and he didn't want to amend them casually. He asked for other comments.

SENATOR HUGGINS expressed discomfort because the bill holds installers liable, but it offers them no help if the request is in fact reasonable.

CHAIR FRENCH said he understands the concern but he isn't sure this is the time and place to fix it. Nonetheless, he would hold the bill over so the committee could resolve the question of whether to make adjustments to tinting levels or not.

SENATOR HUGGINS agreed it is a separate question, but if the standard is unreasonable he would recommend holding bill.

SENATOR THERRIAULT said he understands the argument that the various regulations are complex so he was withdrawing his conceptual amendment. "If there's any time to consider if in fact we can accommodate their request, I'd rather do it that way."

[3:50:52 PM](#)

CHAIR FRENCH summarized Amendment 1 has been adopted, Amendment 2 has been withdrawn, and the committee would take the bill up again when its comfort level is up where it belongs.

SENATOR THERRIAULT asked if it would be possible to get a demonstration and Mr. Boswood agreed to provide samples.

SENATOR MCGUIRE stated objection to very black tinting, but said she is interested in knowing what percentage does allow someone to see inside a vehicle.

CHAIR FRENCH asked Lt. Dial to comment.

LT DIAL said he has checked a number of factory cars and most are acceptable according to current regulations, but if the standards are changed, some cars will be in violation upon leaving the state. He suggested that state standards should be posted.

SENATOR MCGUIRE stated an interest in seeing what a 50 percent standard looks like compared to a 70 percent standard.

CHAIR FRENCH suggested she accompany Senator Therriault when he visits the tint shop

CHAIR FRENCH held SB 78 in committee.

SCR 3-POINT THOMSON UNIT APPEAL

[3:58:08 PM](#)

CHAIR FRENCH announced the consideration of SCR 3.

SENATOR THERRIAULT, Sponsor of SCR 3, said he introduced the resolution after it became apparent that the Pt. Thomson legislation he initially introduced could be a detriment to the state's cause. SCR 3 resolves that the legislature is encouraging the governor and the attorney general to allocate adequate resources and to expedite the court's consideration of the appeal. He emphasized that the resolution isn't encouraging a court fight. In fact, he said, to expedite could mean getting to a settlement; he didn't believe that the administration had necessarily ruled that out.

SENATOR THERRIAULT said when he reviewed the resolution with Kevin Banks and the Department of Law he was asked to insert an additional "whereas" phrase that provides an update of the action state agencies have taken. He distributed the proposed amendment.

In conclusion he said there is potential benefit in having the legislature support the administration's efforts through the fast track supplemental for the oil and gas issues that were passed, but there's also benefit in making a policy statement in support of the steps the administration has taken to get the Pt. Thomson lease unit into production.

[4:02:13 PM](#)

ANNE JOHNSON, Assistant Attorney General, Civil Division, Oil, Gas & Mining Section, Department of Law, explained that the proposed amendment is a reference to three other proceedings that are currently in progress. Two proceedings are in superior court and they evolved from the unit terminations. One proceeding is an agency appeal on the individual lease terminations.

CHAIR FRENCH asked if the administrative appeals filed by ExxonMobil Corporation, BP Exploration, Chevron U.S.A., ConocoPhillips Alaska, Inc., and Devon Energy Production Company, L.P. that are listed in the proposed amendment show up together or one at a time.

MS. JOHNSON said all the entities appealed individually, but the same issues are at stake so it's possible that a single decision will come out.

SENATOR WIELECHOWSKI asked if the governor and the attorney general are allocating adequate resources for this matter.

MS. JOHNSON deferred to Mr. Banks.

[4:04:29 PM](#)

KEVIN BANKS, Acting Director, Division of Oil & Gas, Department of Natural Resources, said the financial support is under the fast track supplemental and the Department of Law has retained outside counsel to work on the case.

SENATOR WIELECHOWSKI asked if the governor and the attorney general are taking all steps necessary to expedite the court's consideration of the appeal.

MR. BANKS said yes; no stone will go unturned in the effort to achieve what is in the best interest of the state.

SENATOR WIELECHOWSKI commented, "It appears that we're already doing everything that we're asking to be done in this resolution."

SENATOR THERRIAULT responded that although he doesn't disagree, he believes there is potential benefit in having the legislative branch on record as fully supporting the administration's efforts. He asked Ms. Johnson or Mr. Banks if they see any potential downside to the legislature going on record as described.

MS. JOHNSON said she could not see a downside. She continued to say, "I would like to say the Department of Law appreciates the Senate's concurrent resolution on Pt. Thomson and the proceedings that are related to it. We appreciate the legislature's funding of the proceedings; the law department will continue to move ahead as expeditiously as possible to hopefully attain a successful resolution.

[4:07:23 PM](#)

CHAIR FRENCH said he wrote down the word "resolution" when Senator Therriault said this could lead to a settlement or it could lead to a court decision, but the idea is to get this wrapped up as fairly and as quickly as possible without giving away the farm in exchange for speed. With that in mind he suggested the committee consider a bit of wordsmithing on page 3, lines 19 and 20, to capture that idea. If the legislature is truly telling the administration to expedite the court's

consideration that's one thing, but if it is telling it to expedite the process to resolve the ownership of the Pt. Thomson leases that is a slightly different and broader charge than he believes Senator Therriault is intending. I tend to support him, he said, because at some point there may be a decision that it's time to wrap it up because it's not possible to build and fill a gas line without Pt. Thomson gas.

SENATOR THERRIAULT suggested the committee insert something similar to "or facilitate the settlement" after the appeal reference.

CHAIR FRENCH asked Ms. Johnson to comment.

MS. JOHNSON suggested inserting, "or facilitate a successful resolution to the Pt Thompson unit and lease dispute".

CHAIR FRENCH, with stated agreement from the sponsor, held SCR 3 in committee to allow time to prepare a committee substitute.

There being no further business to come before the committee, Chair French adjourned the meeting at [4:09:46 PM](#).