

**ALASKA STATE LEGISLATURE  
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 1, 2009

3:17 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Mark Neuman, Vice Chair  
Representative Mike Chenault  
Representative John Coghill  
Representative Bob Lynn  
Representative Robert L. "Bob" Buch

**MEMBERS ABSENT**

Representative Lindsey Holmes

**COMMITTEE CALENDAR**

HOUSE BILL NO. 68

"An Act making sales of and offers to sell certain energy resources by a refiner at prices that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 68

SHORT TITLE: PRICE GOUGING INVOLVING ENERGY RESOURCES

SPONSOR(S): REPRESENTATIVE(S) PETERSEN, GARA, TUCK, GRUENBERG, KAWASAKI

01/20/09	(H)	PREFILE RELEASED 1/16/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	L&C, JUD, FIN
02/04/09	(H)	L&C AT 3:15 PM BARNES 124
02/04/09	(H)	MEETING CANCELED
03/25/09	(H)	L&C AT 3:15 PM BARNES 124
03/25/09	(H)	Heard & Held
03/25/09	(H)	MINUTE(L&C)
04/01/09	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

PETE ROBERTS  
Homer, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

JUSTIN POWELL  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

RANDY GRIFFIN  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 68.

STEVEN MCCOY  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

JAVEN OSE  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 68.

PAUL KENDALL  
Homer, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

EDITH TOMINY  
North Pole, Alaska

**POSITION STATEMENT:** Testified in support of HB 68.

DAVID OTNESS  
Cordova, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

AVES THOMPSON  
Executive Director  
Alaska Trucking Association (ATA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68.

CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General  
Commercial/Fair Business Section, Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments and answered questions during the discussion of HB 68.

REPRESENTATIVE PETERSEN  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor of HB 68, testified and answered questions during the discussion of the bill.

DAVID DUNSMORE, Staff  
Representative Pete Petersen  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 68, on behalf of the prime sponsor, Representative Pete Petersen.

#### **ACTION NARRATIVE**

[3:17:47 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives Buch, Coghill, Lynn, and Olson were present at the call to order. Representatives Chenault and Neuman arrived as the meeting was in progress. Representatives Tuck, Stoltze, and Ramras were also in attendance.

#### HB 68-PRICE GOUGING INVOLVING ENERGY RESOURCES

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 68, "An Act making sales of and offers to sell certain energy resources by a refiner at prices that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

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PETE ROBERTS offered his belief that energy pricing is done in a byzantine way in Alaska. He said, "No where else in the world is natural gas priced relative to fuel prices, crude oil prices, or many of the other things we have to deal with for natural gas in the Railbelt." He stated that has increased heating prices, and electric prices by 40 percent. He suggested that the committee review in a detailed way and rewrite laws concerning pricing natural gas. He said, "I have no problem for these guys charging 120 or 130 percent of Henry Hub, but I think if you figure it out they're probably getting more like 200 percent for their gas." He acknowledged that he is not an expert but

something is wrong with energy being twice as costly in Alaska as anywhere else, while Alaska is an energy producing state.

MR. ROBERTS offered that most petroleum products sold in Alaska originate at Flint Hills and Tesoro. He stated that those refineries appear to set the price at will. He said, "I again have no problem with them making a reasonable profit, even better than a refinery can make in the south 48, but there is something wrong with three weeks ago my son paying a \$1.55 for gasoline in California, the most expensive state in the union in terms of taxes and everything else. And here I'm paying as much as \$1.92 today or \$2.92 in Homer for gasoline. And here we are one of the largest energy producers in the nation and there's something wrong here." He suggested that the legislature pass a law for the state to sell a small portion of the Alaskans' share of crude oil at about \$30 per barrel. He opined that it is not enough petroleum to make a difference in the long term viability of the state treasury. Furthermore, the state could implement a tax structure that is punitive if the oil companies go above 120 percent of profit anywhere else for refined products. He opined the Department of Revenue could monitor costs.

MR. ROBERTS offered his belief that the state allows electric power and fuel that is monopolistic. He emphasized that it is up to the government to control those rigidly. However, government has been unwilling to do that. He further stated that had this been implemented five years ago, that the state could have the cheapest fuel in the nation with an economic boom in the Railbelt and Southeast Alaska. He pointed out the super high prices in rural Alaska for fuel. He asked members to "ruminate" about this. He said, "We need to look at this in the large scale sense, not in tweaking one thing or tweaking another, or putting a little tax on this or that. We need to change the way all energy products are priced within the State of Alaska."

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CHAIR OLSON commented that the legislature reviewed the costs of gas for Agrium, Inc. to attempt to assist them in obtaining gas less than market value, but discovered it would require a state constitutional change to sell petroleum for less than the market rate.

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JUSTIN POWELL stated that he provides services for the website fairbanksgas.com. He opined this bill is far too important to die in committee. Constituents are paying over \$2.67 per gallon in North Pole, yet the gas stations are less than two miles away from the refineries that obtain their crude oil directly from the Trans-Alaska Pipeline System (TAPS). He said:

In my testimony today, I'm going to point out several omissions from the House Judiciary Standing Committee's (HJUD) report that dramatically affects the conclusions reached by the committee Chair. The burden that high gas prices have on Alaskan residents is real. The price gouging we have endured over the last year is unjustified. Gasoline, diesel, and heating oil are not luxury items that households can simply go without. High energy prices have a ripple effect throughout the economy as every resident pays for a high fuel cost several times over. We've been paying over \$1 a gallon more than U.S. averages at the gas pumps and this has been a highly visible and contentious issue.

MR. POWELL offered his belief that costs have been 175 percent for gasoline and 536 percent for diesel. He opined that margins have been well above average. He pointed out that residents pay more for freight, food, clothing, and retail products. Alaskans pay more to heat their homes, drive to work, only to pay more for goods and services as business pass on their additional energy costs. He further opined that what was lacking from the HJUD report was quantitative information. He reported that based upon the latest published information the annual gasoline consumption in Alaska is 285 million gallons annually. He specified that using the conservative estimate of \$.80 per gallon over Seattle prices, that Alaskans have already paid a staggering \$230 million over the past year in gasoline expenses alone. He argued this is money that leaves the state and does not provide any benefits to residents. He described that from a labor and commerce perspective that this adds to business expenses and reduces personal spending. He understood the ripple effect of the \$230 million is in excess of a billion dollars annually, if it were to stay within the state's economy.

MR. POWELL recalled the HJUD report indicated that Fort Greely, Eielson Air Force base and Fort Wainwright would be impacted and possibly shut down by any possible legislation. One far flung conclusion suggested that the military would sacrifice the national defense if jet fuel increased several cents per gallon.

He noted that the increasing threat from North Korea dictates that Alaska air defenses remain ready and capable. Additionally, the prime supplier for all military installations in Alaska is the Petrostar refinery, which would be exempted under sub section (f) of this bill, he opined. He related that testimony has been given that indicates that Alaska's small market is a factor of high gasoline prices.

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MR. POWELL said, "What is really going on is that a virtual monopoly has been created by Flinthills and Tesoro. As others competitors cannot access our market due to lack of tank space at the Port of Anchorage and the fact that in-state refiners have significant lower transportation costs than a potential outside competitor."

MR. POWELL said, "In conclusion, HB 68 is a fair and reasonable measure that protects Alaskans from price gouging by billionaires and would have a positive affect on our economy. Industries such as fishing, tourism, recreation, and ground transportation are all dramatically affected by high energy costs." He opined that if the \$230 million were spent in Alaska that it would benefit Alaska's economy, "rather than subsidizing the profits of David and Charles Koch, two of the richest men in America. I urge you to move this bill to a floor vote. Thank you."

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RANDY GRIFFIN stated that he is a longtime Alaska resident. He related that he does not want to pay high fuel costs but is opposed to HB 68. He explained that he does not think it is the place of the federal government to dictate to private businesses the prices that they sell their products since they are private products. He offered that one remedy for high prices is competition. He referred to groceries shipped to Alaska, adding that he would also not want price controls with groceries. He preferred to use competition to bring down prices. He suggested that if tank space or infrastructure is needed that the state could help build infrastructure so that competition could better serve the area. He opined that prices in Alaska may be due to higher operating costs and smaller refineries. He offered his belief that price controls discourage investment and "is just a bad deal all around." He said, "Nay on HB 68. Thank you."

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STEVEN MCCOY noted the importance of consumers to the legislature. He offered his belief that there is a clear difference in state gas taxes. He related that it allows profits for refineries to be higher since the illusion is the price is less since Alaska's gas taxes are 11 cents below the national average. He related that Alaska's gas tax is \$.08 whereas California's tax is \$.43 per gallon. Thus, if California is charging \$1.89 compared to Alaska's price of \$2.30, there is actually \$.80 difference that the refineries gain. He opined that Hawaii is a poor example since it has to import all crude oil over vast distances, has no oil of its own, and has a \$.34 gas tax. He further opined that there is not a reasonable free market in Alaska due to the huge investment markets, building a refinery and a pipeline system.

MR. MCCOY suggested that if a person approached a bank requesting funding for an enterprise that would buy gasoline and purchase a ship to ship it to Alaska for resale that the bank "... would look at you and say you're nuts."

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MR. MCCOY related that Tesoro would control the profit level until the person could no longer afford the payments. He offered his belief that it is not possible for a person to compete with large oil companies and refineries that own a large share of the market. He opined that if Safeway owned 80 percent of the grocery market, the legislature would be alarmed. He said, "Don't let that happen. You have an obligation to the individuals and businesses of the state because this is not a free market situation." He further opined that what consumers want is for the company to identify their costs and to justify their costs.

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REPRESENTATIVE NEUMAN related his understanding that the attorney general's office and particularly Mr. Sniffen reviewed the refineries costs. He recalled the attorney general's office concluded there was not any price gouging.

MR. MCCOY opined that the report did not discuss profit levels. He further opined that the report concluded the refineries were not doing anything that was not consistent with current state law. He offered his belief that if the legislature enacted laws that required the refineries to only earn reasonable profits

that the attorney general would take a different view. He said, "You owe it to us to make reasonable laws in this circumstance. This is not a free market. You should not sit back and allow them to take away, to influence our economy in a negative way like they have been for years and years and years."

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JAVEN OSE stated that he represents the roughly 500,000 angry Alaskans that go the gas pump weekly. He offered his support for HB 68. He related his understanding that gasoline prices in Wyoming, Idaho, and Montana are all under \$1.50. He inquired as to how that could be when those states do not own the resources as Alaskans own theirs. He offered his belief that whatever the excuse, fuel is less expensive in the other states. He opined that market forces are at work since the market has been manipulated. He speculated that another bill may be considered that compares Alaska prices to Seattle prices. He stated that Alaska has nothing in common with Seattle's demographics and he urged legislators to use Idaho, Montana, and Wyoming since those states have similar population bases. He imagined that gasoline prices are \$1.29 per gallon in those states. He suggested that if Alaska's constitution were changed by adding a semicolon and a paragraph in the best interest's clause, to read: "; unless the product is refined in state." Then the state could sell crude oil to the refinery and make adjustments or subsidize Alaska's fuel sold in the state. He offered his belief that there is not any reason to continue with these high prices. He related his understanding that Representative Coghill, Representative Chenault, and Chair Olson represent the districts that contain the Flint Hills and Nikiski refineries. He stated he could understand they may be reluctant to pass this bill.

MR. OSE indicated that if the refineries say they cannot make a dollar here someone else can "fill their shoes up and they'll still make a profit." He speculated the companies probably need to perform maintenance. He further opined that a deal should have been made to minimize or eliminate in state tariffs. He thanked members. He said, "There are a lot of people out here that are angry about filling their gas tanks up daily. I hear it every time I go to the gas station." He related that he encourages people to contact their legislators, but recognized it is hard to take time off from work to do so. He concluded, "I'm in favor of HB 68. I'm sick and tired of getting gouged for my own gasoline, the highest prices in Alaska where we're supposed to own our own resource. The state should step up to the bat and at least change the constitution or subsidize it.

Sell it for \$30 a barrel to the refinery and keep it under \$2 a gallon."

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PAUL KENDALL stated he also submitted written testimony. He suggested full disclosure. He recalled the testimony about the attorney general's report, which he opined has no foundation. He said, "You know, it's a funny thing about the truth, gentlemen. We all know what the truth is. The truth is there is something wrong in Alaska when it comes to energy." He asked members to look at the larger picture. He pointed to the 800,000 vehicles in Alaska using 1,000 gallons of gasoline per year equals about 800 million gallons per year. He recalled testimony of 295 million gallons. However, in calculating the cost of the gasoline, adding in diesel, propane, and heating oil, it is understandable why a pipeline can be two-thirds empty for over 30 years, but the oil companies can still make profits. He said, "Your leadership, you folks are failing us, gentlemen. Now whether it is willfully and wantonly or whether you are just isolated is the big question." He opined that just when he thinks that the graft is permanent, he has watched the legislature dig into issues that are brilliant. He offered his belief that the first obligation is to provide for the energy needs of residents, such as electricity, water, and clean air. He quoted Peter Robinson, Chevron, who said, "You will find no financial security. You will find no job security. You will find no environmental security unless you find energy security." He stated that society is at the brink of defining energy, which he thought would be wonderful. However, he highlighted that if members are dominated by the oil companies and their influence, that "we're going nowhere." He related that the country is facing difficult times and the legislature should assess where it is in terms of providing energy for homes. He pushed for an energy conference that he has requested for several years.

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EDITH TOMINY stated she and her husband both support HB 68. She opined that it is time for Alaskans to "get their due" in gasoline prices. She opined that Alaska seems to be subsidizing the Lower 48 gasoline prices with high prices. She related her understanding that Alaskans pay higher prices than anyone in the nation. She said, "I think that is sort of ridiculous, and we have the refineries sitting out here about four miles from us." She offered that heating oil prices were terrible. She explained that she thinks she speaks for many retired people on

fixed incomes who cannot afford to stay in Alaska with high fuel prices. She stated that Alaska has been her home for 50 years, and she'd like to stay in Alaska but she cannot afford to stay if the prices keep escalating. She further opined that people in Interior Alaska "especially get the raw end of the stick." She did not think the Interior was treated fairly with respect to oil and hopes that the natural gas line provides reasonable gas prices. She said she thinks that in general with respect to gasoline and heating oil prices that "we get ripped off." She said, "I think the legislative body ought to be looking into our situation, the Alaskan situation". She also said she felt that Alaskans need economic justice and hopes the legislature will help. She concluded: "Don't base prices on the price paid at the pump." She urged members to resist the high gasoline taxes that other states currently pay.

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DAVID OTNESS stated that he is a lifelong Alaskan and has worked on the Trans-Alaska Pipeline System pipeline where he observed the evolution of the petroleum industry. He noted that in his latest career in which he transports fuel, he has transferred fuel on a barge from Hawaii and moved it up the Kuskokwim. He opined that this industry has set the standard for holding facts and bending facts. He offered his belief that the oil industry is the most profitable industry in the world. As an Alaska citizen, enduring fuel costs, it is difficult to watch fuel "sail by". He said, "I'm ashamed of how we dealt with this incredible resource and had it turned around on us like this." He further opined that in the 60s and 70s Alaska was naïve and lost profits from oil. Additionally, he stated that this does not pass the "smell test". He recalled prior testimony that it may take a constitutional change, and he thought that would have support. He said, "We can't continue to strangle ourselves like this." He explained that Cordova has a sole source distributor. He pointed out that Alaska has a serious issue and that we must deal with it to take care of Alaskans. He said, "I don't think this is a handout. I think it is a responsibility to ourselves. I sure hope you take that into consideration."

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AVES THOMPSON, Executive Director, Alaska Trucking Association (ATA), stated that the Alaska Trucking Association is not sure that the ten percent is correct or that any number is correct. He opined that prices should be market driven. He offered his belief that there is more market force than has been recognized.

Secondly, the ATA is concerned about having a reliable source and supply of fuel. Finally, ATA is concerned about jobs. He explained that ATA employs many drivers to transport fuel throughout the state, ranging from Fairbanks to Southcentral Alaska. He expressed concern for jobs at the refineries and the Alaska Railroad. He asked legislature to take a second look before you "jump off this cliff."

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REPRESENTATIVE BUCH asked to put on record how this bill would impact jobs.

MR. THOMPSON responded that if there is not a reliable source of fuel, that trucks would not need drivers, that terminals will not need warehouse people or dispatchers. He speculated that there could be serious job loss with passage of this bill.

REPRESENTATIVE BUCH related he is trying to get the connection that holding an industry accountable for price would have that effect. He said he is looking forward to more discussion.

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CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), introduced himself.

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REPRESENTATIVE COGHILL asked if he has considered definitions of exorbitant or excessive. He related his understanding that the terms would either need to be defined or would state price gouging is unlawful and the bill would provide the parameters.

MR. SNIFFEN offered that he has struggled with the definitions since the terms are broad. He explained that the standard does not have much legal precedence. He related that a handful of states on the East Coast have used this language in their price gouging laws and have defined the terms in various ways. This bill would key exorbitant and excessive to ten percent pricing over Seattle prices. He agreed the term would be difficult to define.

REPRESENTATIVE COGHILL offered his belief that that the term should be defined or "scrapped." He inquired as to whether it would be clearer to state that it was unlawful to price gouge.

MR. SNIFFEN stated that any subjective standard that would give the attorney general a standard to look at for determining whether the price is unlawful would make it clearer.

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REPRESENTATIVE COGHILL offered his belief that the ten percent is a policy call. He inquired as to whether the state has ever indexed to another state for consumer protection.

MR. SNIFFEN answered no.

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CHAIR OLSON inquired as to whether other states' price gouging laws are triggered by a disaster.

MR. SNIFFEN answered yes. He offered that most states' laws are triggered when an emergency is declared, typically tied to a natural disaster. He recalled that two states have laws that allow the governor to declare an emergency. In those instances, the law states that a company cannot charge excessive or exorbitant prices, with excessive or exorbitant loosely defined to mean prices that are in excess of the prices charged in areas in which a market emergency does not exist or immediately prior to an emergency. He indicated that a tangible marker is available to determine excessiveness, but all of those price gouging laws are tied to natural disasters.

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CHAIR OLSON related his understanding that compared with Seattle, Anchorage prices for groceries are 25 percent higher, utilities are 14 percent higher, and medical costs are 10 percent higher. He inquired as to whether the state could target costs for one commodity and not another.

MR. SNIFFEN opined that the legislature has broad discretion to enact legislation that is in the best interests of the state. He agreed there are many commodities that enjoy profit margins that are similar to petroleum products. Gasoline and refined petroleum are items the citizens rely on more than other products. However, there are other consumer goods and commodities that have similar profits that are not regulated or subject to caps.

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REPRESENTATIVE BUCH opined that the rural communities have endured extreme costs. He inquired whether the governor could declare an emergency.

MR. SNIFFEN stated that rural Alaska faces a unique and difficult situation with respect to fuel, with scattered villages and different modes of delivery. He opined that if there was a way to declare an emergency that the state would need to consider the relief. He asked if the relief would be to cap fuel costs by merchants or for distributors. He offered his belief that the state would need to develop some type of scheme that would encourage delivery of fuel, but at the same time provide some relief to the communities. He stated that it is something that bears further consideration of the logistics.

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REPRESENTATIVE BUCH asked if that mechanism could be facilitated in this legislation

MR. SNIFFEN related that this bill would require serious tweaking to get to distributors who might be delivering fuel in those rural areas as opposed to just refiners. He stated that the state would have to go downstream from the refiners to determine the purchase price and selling price to determine if there would be some place along the chain to implement some price controls to provide consumers some relief. He said he was not sure how that could be implemented.

4:06:14 PM

REPRESENTATIVE COGHILL related his understanding that the concern is about excessive pricing and profit. He offered his belief that the refiners were "bumped pretty hard with the uptick in oil prices as well because of the feed stock that they had to buy." He said it would seem to him that the excessive profiting was more on the upstream producers instead of the downstream refiners.

MR. SNIFFEN agreed. He said there was definitely an increase in the cost of fuel for refineries and upstream of that he was not certain. None of the refineries are vertically integrated in that they do not own the source of supply. He agreed the refineries were also paying the higher cost of fuel and those costs eventually were passed on to consumers.

REPRESENTATIVE COGHILL reiterated that the bill may target the wrong group of people. He opined that if the refiners were targeted, that using a single state, such as Washington, which has a different demographic, may not provide the average cost. He inquired as to whether the area should be broadened to determine the average gasoline price.

MR. SNIFFEN explained that Washington is an attractive comparison due to its close proximity to Alaska. He related that the potential sources of competition for refineries in Alaska would come from the Pacific Northwest. He pointed out the problem with comparing Alaska's prices to states west of the Mississippi are the huge mega refineries in the Gulf Coast that can basically "turn shoe polish into gasoline" that our refineries cannot. Additionally, those states have pipelines that encompass many states and the availability of that relatively inexpensive source of supply is not available on the West Coast. He opined that California, Washington, and Oregon must ship gasoline through the Panama Canal if they want gas from refineries in the Gulf Coast. He further opined that typically prices are more expensive on the West Coast. He offered his belief that if Alaska wanted to use a marker outside of Alaska, that it would make more sense to make it a state that is more relevant to Alaska prices, such as those states closest to Alaska. In further response to Representative Coghill, Mr. Sniffen explained that Alaska prices have stabilized somewhat, hovering around the \$2.35 mark in Anchorage, with prices a little higher in Fairbanks. He said he did not know what might happen to oil prices. He further explained that one reason for the lag has to do with how quickly other places are able to drop their prices due to competitive forces. He stated that it is slower in oligopoly markets such as Alaska and Hawaii. He hoped that prices would continue to drop.

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REPRESENTATIVE COGHILL asked if there is a reasonable explanation for the lag time.

MR. SNIFFEN agreed that the lag is interesting. He offered that there is some truth to refineries keeping prices high until the slow competition drives price down. However, he also thought that refineries have long-term contracts for oil deliveries from places such as Russia and South America. He opined that it may be a while before companies can recover the costs. Thus, in markets like Alaska that have small volumes, the turnover is not

quite as fast. Thus, some lag in prices may be economically justified. He reiterated that some lag may be due to the companies taking advantage of their oligopolistic situation. He said, "That bubble probably consists of a mix of some of those things." He agreed that might be area to explore to see if something can reduce the disparity.

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REPRESENTATIVE BUCH inquired about scope of his investigation.

MR. SNIFFEN stated that the investigation was fairly broad. He explained the attorney general reviewed gasoline pricing at several different levels, ranging from the refinery, distribution, and retail level. He offered that the attorney general's office gathered information from retailers to the refiners to determine how prices were set, what types of profits were made, whether the companies were subsidizing other shortfalls. He opined that it seemed the prices were "driven at the refinery level" rather than by the retailers.

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MR. SNIFFEN, in response to Chair Olson stated that he has not read the proposed Washington legislation that proposes a 37.5 cent gasoline tax on products shipped to Alaska, but he is aware of the bill. He said he imagined that it would have some affect on gasoline prices. However he said he thought that the price at the pump has little to do with the cost. He said"

When oil is \$150 per barrel it doesn't cost the producers any more to produce it than when it's \$25 per barrel. It's really a market driven thing and so when you roll extra taxes in that's giving it an extra cost that I suspect some of the price leaders here are going to figure into the mix. But, if there are other competitors who have fat enough margins out there that they can absorb that cost, it may not spike \$.40 right away; it may go up a little; it may not go up at all. We'll have to see how the market reacts to that. But I suspect...worst case scenario, it's not going to be good for gasoline pricing.

REPRESENTATIVE COGHILL inquired as to whether the state taxes had any role in pricing.

MR. SNIFFEN said he was not certain he had an answer to that question.

REPRESENTATIVE COGHILL opined that it probably is a question for the Department of Revenue.

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CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 68.

The committee took an at-ease from 4:19 p.m. to 4:20 p.m.

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REPRESENTATIVE PETE PETERSEN, Alaska State Legislature, after listening to public testimony, related his understanding that the average Alaskan is concerned about overpricing of fuel. He acknowledged that some adjustments may need to be made in the bill to reach the ultimate goal. However, he stated that he did not think that members can dismiss the idea completely and allow the semi-monopolistic situation to continue in Alaska and for Alaskans to continue to pay excessive prices. He recalled Mr. Sniffen mentioned his investigation. However, unfortunately, his investigation was not for price gouging but was for price fixing and collusion. He observed that had his investigation been conducted for price gouging that he may have asked for different data and reached different conclusions. He advised that the reason for the bill is to give the attorney general's office "another arrow in their quiver" to try to protect the Alaska consumer from high prices.

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CHAIR OLSON recalled that Mr. Sniffen indicated that nearly every other state that has price gouging has been triggered by natural disasters.

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REPRESENTATIVE COGHILL applauded Representative Petersen for bringing the matter forward as it has resulted in worthwhile discussions. He indicated that he struggles with whether refiners are the right place to go since it may "squeeze the very people that we want to encourage." He explained that the value of the product went to the producers of the product, not to the transporters or the refiners. He said, "We might be

barking up the wrong tree here." However, there might be some reason to review this due to the lag between crude oil prices and prices at the pump. He suggested that the committee may want to consider a percentage of prices to allow refiners to recover, but the rest is excessive. He questioned using Washington State only as the basis for determining the index. He further explained the formula, consists of netback based on an indexed price of oil. He characterized the system as a convoluted system. He suggested that the market price could be used as the gauge for excessive charges to determine price gouging. He also suggested the terms exorbitant and excessive may be difficult to define. He further suggested that that the conditions be established and specified for unlawful prices. He opined the language should be concrete and not subjective. He inquired as to whether the sponsor has considered a formulation. He offered that the Alaska North Slope (ANS) pricing is based on a netback system, which is to determine the selling price, calculate the transportation cost, and then determine the price at the wellhead. He reiterated a similar formulation may need to be considered.

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REPRESENTATIVE PETERSEN stated that Washington was selected due to its close proximity to Alaska. He informed members that he did not compare price differential in other states for gasoline prices over time. He agreed to consider changing the percentage and to eliminate the term exorbitant and consider a formula instead.

REPRESENTATIVE COGHILL clarified that he is looking for a standard. He related a scenario in which all refineries shut down in Alaska and all gasoline needed to be imported. He opined that diesel would probably be refined in state. The state would need to consider what it would cost to buy its gasoline and whether Washington State would be the natural point of purchase or if it would be purchased globally perhaps in Indonesia. He advised that if the state could calculate the cost of gasoline and transportation costs, it could better understand excessive. He inquired as to whether that determination has been done.

REPRESENTATIVE PETERSEN answered that he has not looked at costs of importing fuel from Indonesia. He offered that Southeast Alaska does import the majority of its fuel from Washington. He opined that Southeast prices have come down and are currently lower than in many other parts of Alaska.

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REPRESENTATIVE PETERSEN informed members that he did not enter this to put refineries out of business. He offered his belief that an option to initiate an investigation should be available to the attorney general if evidence existed that pricing was substantially higher than traditional pricing. He pointed to the lag on the graph previously noted, and indicated that prices still are not as low as normal prices. He maintained that prices are still considerably higher in Alaska than in Washington.

REPRESENTATIVE COGHILL advised that before he would feel comfortable, he would want to know what import costs are associated with gasoline. He inquired as to whether the percentage over the timeframe of the lag. He further inquired as to whether he has considered a time lag versus a percentage.

4:30:16 PM

REPRESENTATIVE PETERSEN recalled the average difference in price, according to the graph was \$.71 cents difference. He opined that constituted a 25 to 30 percent range of difference. However, traditionally the price difference had been ten percent. He highlighted the reason for prices to continually stay higher since normally "there might be a blip" but prices would level out over a much shorter period of time. He noted in the meantime prices have remained higher since the market peaked nine months ago.

REPRESENTATIVE COGHILL with respect to the price lag offered that Washington demographics consist of about two million consumers as opposed to perhaps a half a million consumers in Alaska's market. He opined that one market is a volume market and the other is a non-volume market, which could account for the price difference. Thus, he highlighted it might be difficult to link and compare the two market prices. He proposed that he would rather look at Alaska's market and determine whether that market was excessive rather than to compare it to another market with a different sales volume.

REPRESENTATIVE PETERSEN offered his willingness to work to create a better mechanism.

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REPRESENTATIVE LYNN inquired as to whether the attorney general could initiate an investigation.

REPRESENTATIVE PETERSEN said he was not certain. He offered his belief that the attorney general must act on a request.

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DAVID DUNSMORE, Staff, Representative Pete Petersen, referred to the attorney general's report which highlighted that currently no law exists to prohibit charging excessive prices for gasoline or fuel oil unless the prices are a result of price fixing. Therefore, the framework does not exist for the attorney general to enforce against exorbitant pricing.

REPRESENTATIVE LYNN asked if the attorney general can initiate an investigation with or without the bill.

MR. DUNSMORE explained that the attorney general would make a determination on whether state law is being obeyed. In this case, the attorney general found there is not any evidence of illegal activity. He highlighted that the attorney general's report and the House Judiciary Standing Committee report both agreed that a competitive market for refined petroleum products does not exist. Both reports indicated that high refinery margins were one of the factors of unusually high prices. He maintained that currently there is not a price gouging law in effect in Alaska.

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REPRESENTATIVE LYNN asked if the attorney general investigated possible collusion. He asked for the difference between the two.

REPRESENTATIVE PETERSEN explained that price fixing and collusion is when companies collectively decide to charge a certain price and when the prices would change. He implied that it is difficult to prove those types of cases because the competitor's prices are visible and it is not necessary to communicate. The owner could just go down the street and look at the competitor's price, and return to his business and change the price. Thus, collusion and price fixing usually is a "high hurdle" to surmount.

REPRESENTATIVE LYNN commented that it is obvious that something needs to be done. He offered his belief that the bill is well-

intentioned. He declared that he cannot currently support the bill since it seems to represent a variety of price control and government "meddling" that could cause unintended consequences, including that it could potentially put refineries out of business. He emphasized that the state needs more refineries, not less, particularly since the airports depend on them. He stated that he does not like the high prices of gasoline, but this bill doesn't seem to fix anything, but is a case of "throwing the baby out with the bath water." He stated he has some grave concerns and does not have any solutions to suggest.

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REPRESENTATIVE PETERSEN related that under the bill that establishes price gouging, the attorney general would obtain different information from refineries during an investigation on pricing than it would when investigating collusion. Under the bill, the burden of proof rests with the refinery to prove it is not price gouging.

CHAIR OLSON offered his belief the larger issue is not addressed in the bill. He pointed to the efficiency of both plants. He related that the plant in Nikiski would be much more efficient if it was using 100 percent Cook Inlet petroleum. He opined that the North Pole refinery would be more efficient if it used natural gas. He offered his belief that is what keeps the price high. He opined that the Nikiski plant is designed to burn Cook Inlet crude oil but is only using 25 percent at this time. He ascertained that is the stumbling block at this point and is something that cannot be addressed in the bill.

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REPRESENTATIVE CHENAULT recalled earlier testimony questioning whether the bill is targeting the right person. He said he did not know. However, he opined that the increase in crude oil price is not a profit margin for the oil refineries. He indicated that as the crude oil prices increased and decreased, that Tesoro's stock price has dropped considerably. He opined that if the company was price gouging that the net profit would be reflected in the stock report. He reiterated that Tesoro's prices dropped four-fold. He reminded members that the Nikiski plant is in his district. He observed that they provide diesel and jet fuel to the Railbelt. He offered his concerns that if the bill is going to target an entity that this might be the wrong entity to target. He offered to work with the bill sponsor. He recalled the price a mile from the refinery is as

high as any place along the Railbelt. He indicated his constituents share the same concerns. He highlighted that he is not sure if this bill is the right way to address price gouging.

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REPRESENTATIVE NEUMAN agreed that the issue is a high priority for everyone in the legislature. He pointed out that everyone pays the prices for gasoline. He related his understanding that it goes back to economies of scale, that it takes a certain amount to run a refinery. He indicated that if refineries could reduce their costs it could help. He recognized that the refineries also are purchasing \$140 per barrel oil since the refineries also pay for the product. Alaska's population is about 666,000 whereas other states may have 4 to 6 million people. He opined that the cost of the product may also depend on the economies of scale. He referred to the cost of the product, the cost of refining, and the consumer base and inquired as to whether the economies of scale have been studied. He characterized Alaska as an isolated base.

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REPRESENTATIVE PETERSEN suggested that the refineries in Washington purchases some of their crude oil from Valdez, ship it to Washington, then back to Southeast, and still can sell it cheaper than the in state refineries; and it makes one question why refineries are not more efficient. He surmised they may need an upgrade. He offered appreciation that everyone recognizes this as a high priority problem.

REPRESENTATIVE PETERSEN, in response to Representative Neuman, suggested one difference between Alaska and Washington is that Alaska refineries have carved out niche markets for their areas, so they have more pricing control, while Washington uses a supply and demand method. He pointed to the information in the attorney general and HJUD reports. He admitted that he has not done extensive research on refinery costs based on size.

REPRESENTATIVE NEUMAN applauded the sponsor's work on the bill.

REPRESENTATIVE PETERSEN, in further response to Representative Neuman, offered that economies of scale are mentioned in both of the reports. He agrees that some semi-monopolistic situations exist in Alaska since two main refineries exist. He acknowledged the bill needs some improvements. He reiterated

his willingness to work together to try to make this work for everyone.

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MR. DUNSMORE referred to a chart in the bill packet titled "Figure 2: Average Prices and Margins for Petroleum Refiners in Alaska, Washington, and the U.S., September 2007 to September 2008. While it does not address refinery costs, the graph shows the margins charged by Alaska refiners, prices charged by Washington refiners, and the U.S. average cost. He interpreted that for most of the year the cost is in line with Washington and U.S. average cost. The bill was introduced to address the instance in which the Alaska prices spiked significantly more than Washington or the U.S. The margins have been similar to the Lower 48 until June or July 2008.

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CHAIR OLSON stated that HB 68 would be held over for further consideration.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:53 p.m.