

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 10, 2009

1:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 59

"An Act relating to the operation of low-speed vehicles."

MOVED CSSB 59(TRA) OUT OF COMMITTEE

SENATE BILL NO. 48

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when meeting about road conditions affected by harsh weather."

MOVED CSSB 48(JUD) OUT OF COMMITTEE

SENATE BILL NO. 176

"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED SB 176 OUT OF COMMITTEE

SENATE BILL NO. 54

"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

SENATE BILL NO. 68

"An Act relating to the voting rights of felons."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 59
SHORT TITLE: LOW-SPEED MOTOR VEHICLES
SPONSOR(s): SENATOR(s) STEDMAN

01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) TRA, JUD
01/21/09 (S) PREFILE RELEASED 1/16/09
02/17/09 (S) TRA AT 1:00 PM BUTROVICH 205
02/17/09 (S) Heard & Held
02/17/09 (S) MINUTE(TRA)
02/24/09 (S) TRA AT 1:00 PM BUTROVICH 205
02/24/09 (S) Heard & Held
02/24/09 (S) MINUTE(TRA)
03/03/09 (S) TRA AT 1:00 PM BUTROVICH 205
03/03/09 (S) Moved CSSB 59(TRA) Out of Committee
03/03/09 (S) MINUTE(TRA)
03/05/09 (S) TRA RPT CS 4DP SAME TITLE
03/05/09 (S) DP: KOOKESH, MEYER, DAVIS, PASKVAN
03/18/09 (S) JUD AT 1:30 PM BELTZ 211
03/18/09 (S) Heard & Held
03/18/09 (S) MINUTE(JUD)
04/10/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 48
SHORT TITLE: PUBLIC MEETINGS/ MUNI SERVICE AREA BDS
SPONSOR(s): SENATOR(s) THERRIAULT

01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) CRA, TRA, JUD
01/21/09 (S) PREFILE RELEASED 1/9/09
02/10/09 (S) CRA AT 3:30 PM BELTZ 211
02/10/09 (S) Moved CSSB 48(CRA) Out of Committee
02/10/09 (S) MINUTE(CRA)
02/11/09 (S) DP: OLSON, THOMAS, KOOKESH, MENARD
02/11/09 (S) NR: FRENCH
02/11/09 (S) CRA RPT CS 4DP 1NR NEW TITLE
03/10/09 (S) TRA AT 1:00 PM BUTROVICH 205
03/10/09 (S) Moved CSSB 48(CRA) Out of Committee
03/10/09 (S) MINUTE(TRA)
03/11/09 (S) TRA RPT CS(CRA) 5DP
03/11/09 (S) DP: KOOKESH, MENARD, DAVIS, MEYER, PASKVAN
03/30/09 (S) JUD AT 1:30 PM BELTZ 211
03/30/09 (S) Heard & Held
03/30/09 (S) MINUTE(JUD)
04/10/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 176

SHORT TITLE: COMPACT: EDUCATION OF MILITARY CHILDREN

SPONSOR(s): SENATOR(s) HUGGINS

04/01/09 (S) READ THE FIRST TIME - REFERRALS
04/01/09 (S) JUD, FIN
04/06/09 (S) JUD AT 1:30 PM BELTZ 211
04/06/09 (S) Heard & Held
04/06/09 (S) MINUTE(JUD)
04/10/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 54

SHORT TITLE: PRICE GOUGING INVOLVING ENERGY RESOURCES

SPONSOR(s): SENATOR(s) WIELECHOWSKI, ELLIS, FRENCH

01/21/09 (S) PREFILE RELEASED 1/16/09
01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) ENE, RES, JUD
02/12/09 (S) ENE AT 11:00 AM BUTROVICH 205
02/12/09 (S) Heard & Held
02/12/09 (S) MINUTE(ENE)
03/13/09 (S) ENE AT 11:00 AM BUTROVICH 205
03/13/09 (S) Moved CSSB 54(ENE) Out of Committee
03/13/09 (S) MINUTE(ENE)
03/16/09 (S) ENE RPT CS 1DP 3NR SAME TITLE
03/16/09 (S) DP: WIELECHOWSKI
03/16/09 (S) NR: MCGUIRE, KOOKESH, STEDMAN
03/16/09 (S) FIN REFERRAL ADDED
03/18/09 (S) RES AT 3:30 PM BUTROVICH 205
03/18/09 (S) Heard & Held
03/18/09 (S) MINUTE(RES)
03/27/09 (S) RES AT 3:30 PM BUTROVICH 205
03/27/09 (S) Moved CSSB 54(RES) Out of Committee
03/27/09 (S) MINUTE(RES)
03/30/09 (S) RES RPT CS 2DP 2NR 1AM NEW TITLE
03/30/09 (S) DP: WIELECHOWSKI, FRENCH
03/30/09 (S) NR: MCGUIRE, STEVENS
03/30/09 (S) AM: HUGGINS
04/03/09 (S) JUD AT 1:30 PM BELTZ 211
04/03/09 (S) EMINENT DOMAIN: RECREATIONAL STRUCTURES
04/10/09 (S) JUD AT 1:30 PM BELTZ 211

BILL: SB 68

SHORT TITLE: FELONS' RIGHT TO VOTE

SPONSOR(s): SENATOR(s) DAVIS

01/21/09 (S) READ THE FIRST TIME - REFERRALS

01/21/09 (S) STA, JUD, FIN
03/31/09 (S) STA AT 9:00 AM BELTZ 211
03/31/09 (S) Moved SB 68 Out of Committee
03/31/09 (S) MINUTE(STA)
04/01/09 (S) STA RPT 3DP 1NR
04/01/09 (S) DP: MENARD, MEYER, PASKVAN
04/01/09 (S) NR: FRENCH
04/10/09 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

ED SNIFFEN, Senior Assistant Attorney General
Civil Division
Commercial/Fair Business Section
Department of Law
Anchorage, AK

POSITION STATEMENT: Commented on SB 54.

GEORGE ASCOTT, Staff
to Senator Wielechowski
Alaska Capitol Building
Juneau, AK

POSITION STATEMENT: Provided information related to SB 54 on behalf of the sponsor.

JEFF COOK, Director of External Affairs
Flint Hills Resources-Alaska
North Pole, AK

POSITION STATEMENT: Stated objection to SB 54.

AVIS THOMPSON, Executive Director
Alaska Trucking Association

POSITION STATEMENT: Stated several concerns related to SB 54.

LYNDA ZAUGG, Staff
to Senator Davis
Alaska Capitol Building
Juneau, AK

POSITION STATEMENT: Introduced SB 68 on behalf of the sponsor.

MIKE MILLER, former Representative
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Stated support for SB 68.

DENISE MORRIS, President and CEO
Alaska Native Justice Center

POSITION STATEMENT: Stated support for SB 68.

JEFFREY MITTMAN, Executive Director
American Civil Liberties Union (ACLU)
Anchorage, AK

POSITION STATEMENT: Stated support for SB 68.

ACTION NARRATIVE

[1:35:27 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Therriault, Wielechowski, and French. Senator McGuire arrived soon thereafter.

SB 59-LOW- SPEED MOTOR VEHICLES

[1:35:49 PM](#)

CHAIR FRENCH announced the consideration of SB 59. [Before the committee was CSSB 59(TRA).] He said the bill was heard last week and noted that the committee had no further questions or comments.

[1:36:24 PM](#)

SENATOR WIELECHOWSKI moved to report SB 59 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 59(TRA) moved from the Senate Judiciary Standing Committee.

At ease at 1:36 pm.

SB 48-MEETINGS OF ROAD SERVICE AREA BOARDS

[1:37:16 PM](#)

CHAIR FRENCH announced the consideration of CS for SB 48. He recapped that the bill is now narrowly defined to incorporate only meetings of municipal service area boards and he agrees with that decision. He found no further questions or comments from the committee.

[1:38:01 PM](#)

Senator McGuire joined the committee.

SENATOR THERRIAULT moved to report the Judiciary CS for SB 48 from committee with individual recommendations and attached

fiscal note(s). There being no objection, CSSB 48(JUD) moved from the Senate Judiciary Standing Committee.

At ease at 1:38 pm.

SB 176-COMPACT: EDUCATION OF MILITARY CHILDREN

[1:39:32 PM](#)

CHAIR FRENCH announced the consideration of SB 176. He noted that the bill was introduced during the previous meeting and a representative from Senator Huggins' office is present if there are any further questions.

SENATOR MCGUIRE moved to report SB 176 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 176 moved from the Senate Judiciary Standing Committee.

At ease at 1:40 pm.

SB 54-PRICE GOUGING INVOLVING ENERGY RESOURCES

[1:41:39 PM](#)

CHAIR FRENCH announced the consideration of SB 54. [Before the committee was CSSB 54(RES).]

SENATOR WIELECHOWSKI said this bill is in response to the outcry against high fuel prices. Alaskans are paying the highest fuel prices in the U.S. and SB 54 makes it an unfair trade practice for refiners, distributors, or retailers to charge Alaskans excessively. Specifically, the bill amends the Unfair Trade Practices Act to add one more consumer protection item to the 55 protections currently in statute.

Historically Alaska has paid 10 to 20 cents above the national average for gasoline and recently it has been as high as 70 cents more. He and Senator Davis have asked the attorney general to investigate the matter and they found that it is largely due to an oligopoly, which is a market condition in which there are few sellers. Some people don't want to interfere with the free market, but this is not a free market. Government has often intervened, particularly with energy rates, to protect consumers from getting gouged. "This is exactly why we have the RCA; this is exactly why we have the Federal Energy Regulatory Commission," he said. The bill quite simply says that consumers can't get gouged. Some people have questioned why the government should intervene on the price of fuel and not other commodities,

but there is a difference. You have to have gasoline and fuel oil to live in this state.

1:44:36 PM

This bill has undergone a variety of changes to accommodate concerns of industry representatives, committee members and the administration, Senator Wielechowski said. For example, the minimum fine has been reduced from \$50 million to 10 times the economic benefit of the illegal action. Also, when refiners complained about establishing a link to Washington prices, the sponsors removed the link and instead used the standard of "excessive and unconscionable." Then they added a section to shield industry from individual or class action law suits and put enforcement at the sole discretion of the attorney general.

SENATOR WIELECHOWSKI said that in this building when someone gives their word you expect them to keep it. I'm therefore extremely disappointed to see the recent letter from Tesoro because the representative from Tesoro told me that if the price link provision were removed, they would back off their opposition to the bill. They made a misrepresentation to me, he said.

The bill was further modified to address concerns from rural Alaska and other areas by expanding its scope to include retailers and distributors. They also attempted to reduce the cost of the bill by clarifying that the attorney general may collect attorney's fees and costs. Finally they clarified that a reasonable defense by a refiner, distributor, or retailer is that the seemingly exorbitant prices were attributable to costs incurred in connection with the sale. The bill may need fine tuning and I'm happy to do that, but we have already accommodated many interest groups, Senator Wielechowski said. Alaskans needs this legislation, he emphasized.

1:47:02 PM

GEORGE ASCOT, Staff to Senator Wielechowski, introduced himself.

CHAIR FRENCH noted that Mr. Sniffen with the Department of Law would like to put sideboards on the definition for "exorbitant or excessive."

SENATOR WIELECHOWSKI said initially the link was to Washington state prices. The bill said that it was prima facie evidence of price gouging if Alaska prices were more than 10 percent above the price charged by refiners in the state of Washington. The refiners complained so that provision was removed. Now they're

complaining that there isn't a definition. He said he'd be happy to either reinsert the link to prices in Washington or work on a definition. "Exorbitant or excessive" is the standard used in utility rate cases, but if people want a more court-defined definition such as "unconscionable" that's fine too. He's open to suggestions, but this is an important piece of legislation that Alaskans are demanding.

[1:49:17 PM](#)

SENATOR THERRIAULT pointed out that that definition is used in utility cases but the difference is that with the RCA, people have a designated area in which they are the only supplier. The tradeoff is that suppliers get that monopolistic geographic area but they must submit themselves to that RCA oversight and regulation of the price they charge. "That's not what we've got here." These are different market conditions than what the RCA generally regulates. Also, tying the price to the Seattle prices didn't speak to the cost of energy to operate in this state compared to refineries in the Seattle area. I'm not sure that link provided a workable mechanism, he said.

[1:51:02 PM](#)

SENATOR WIELECHOWSKI said this situation is analogous to the situation with regulated utilities. It's an oligopoly when Tesoro has 80 percent of the market and Flint Hills has about 12 percent. It's an extremely small market and is very similar to what you have with regulated utilities. In situations like that the government has to step in to prevent price gouging. With respect to the point about higher energy costs here and the link to Washington prices, he pointed to the provision that states that if costs of doing business result in higher prices, then that is a defense and in that case you can't be charged with price gouging. That provision has not been removed, he said.

CHAIR FRENCH asked Mr. Sniffen to go through the concerns he expressed over reaching a definition for "exorbitant or excessive."

[1:52:27 PM](#)

ED SNIFFEN, Senior Assistant Attorney General, Civil Division, Commercial/Fair Business Section, Department of Law, Anchorage, said he enforces consumer protection and antitrust statutes. DOL doesn't have a position on the bill, but it has been a challenge to come up with a definition of "excessive or exorbitant." In doing some research he found that the phrase is used in utility rate cases. In further research he found the phrase "unconscionable conduct." It's probably a higher standard and

has support in case law for a definition of what unconscionable conduct is. Several cases have defined that to mean an action that "shows no regard for conscience or affronting the sense of justice, decency or reasonableness." Some may argue that those terms aren't any more specific, but there is case law that says those kinds of things pass constitutional muster. Then it would be up to the attorney general and ultimately perhaps a jury to decide whether or not certain pricing behavior did any of those things.

MR. SNIFFEN said the phrase "excessive and exorbitant" may be okay, but in State of Alaska v. O'Neill Investigations, Inc. the court said it is an unfair trade practice under existing law to have any "oppressive or unscrupulous" conduct. He expressed the view that that's very close to "unconscionable" and noted that "oppressive or unscrupulous" hasn't been used much in enforcement actions. "But we have some room there to look at completely outrageous conduct and determine whether or not it's a violation of Alaska law," he said.

MR. SNIFFEN said he is open to working with everyone and has included suggestions in his email. "You could use unconscionable instead of excessive or exorbitant or you could just define excessive or exorbitant and use the same definition as unconscionable." These are ways to bring this concept into something that's recognized as adequate by the court.

[1:56:03 PM](#)

CHAIR FRENCH asked if this will ultimately come down to an Alaska jury being faced with evidence about prices in Seattle, at the wellhead, and at a refinery and then asked whether or not the refiner or distributor was acting in an unscrupulous manner.

MR. SNIFFEN replied it could be, but most enforcement cases are resolved before getting to court action. In the case of Tesoro, if DOL initiated an investigation because their prices appeared to be "excessive or exorbitant" or "unconscionable" and they didn't agree, the question would potentially go to a jury.

SENATOR THERRIault asked if DOL would do an economic review before bringing charges.

MR. SNIFFEN replied it would be necessary for DOL to review the economic data to determine the basis for the cost that's charged and to rule out the possibility that what DOL felt was an "excessive or exorbitant" price wasn't actually the result of

increased costs or some other market condition such as higher crude prices.

SENATOR THERRIAULT referenced the recent work that DOL has done to look into oil prices and asked if he feels that standard would have been met and that DOL would have brought charges.

[1:58:58 PM](#)

MR. SNIFFEN replied they weren't looking at the pricing situation this last year with this law in mind, but it probably wouldn't have met the test for "excessive or exorbitant." Although prices were high it appeared as though there were sufficient market-based reasons for the pricing behavior. He expressed the view that the prices didn't appear to be illegal and didn't rise to the level of "unconscionability" or "excessive or exorbitant."

CHAIR FRENCH asked which word he would select to guide DOL's future actions with respect to bringing cases if this were the last committee of referral and he was asked to make the decision.

[1:59:58 PM](#)

MR. SNIFFEN replied he likes to have terms he can look up and that show what the court says they mean. Currently there is a broad definition for "unconscionable" and the Alaska Supreme Court has allowed DOL to take action on "oppressive and unscrupulous" conduct. "Excessive or exorbitant" could probably be likened to those concepts and DOL could probably do similar enforcement. He said it's a tough call but he would prefer a term they have familiarity with as opposed to something that isn't defined anywhere other than the regulation making context.

[2:01:03 PM](#)

CHAIR FRENCH recognized the presence of former Representative Mike Miller.

SENATOR THERRIAULT asked Mr. Sniffen to talk about what other states do in this regard and what happened in Hawaii's past attempt to regulate prices.

MR. SNIFFEN explained that the Hawaii regulatory experiment went on in 2005 when the legislature adopted a regulatory scheme to allow the Hawaii Public Utility Commission to regulate the wholesale price of gasoline. Shortly thereafter prices rose to the statutory cap, which was based on West and Gulf Coast markets. Almost immediately Hawaiians realized that their prices

were the highest in the nation. They further realized that had competition been allowed to run its course, prices would have been lower. The legislature allowed the law to lapse and it wasn't renewed. Hawaii now has a monitoring program that requires refineries to provide pricing information to the utility commission. He noted that the Hawaii market is very similar to the Alaska market.

[2:04:08 PM](#)

About half the states have laws on price gouging and all but three trigger their laws on a declared state of emergency. They all provide a timeframe after which the price can't exceed the pre-emergency price unless it can be justified on some cost basis. States that have price gouging laws that aren't triggered on a declared state of emergency trigger the law on a market emergency. Those are declared by the governor of the state. During a market emergency retailers can't charge more than vendors in areas that are not affected by the market emergency. The point of reference is either tied to an area where the emergency doesn't exist or to a time period before which the emergency was declared.

[2:06:00 PM](#)

SENATOR WIELECHOWSKI said it's important to remember that diesel prices weren't regulated under the Hawaii regulatory scheme and they spiked dramatically during the time that gas prices were capped.

Mr. Sniffen said he believes that's correct.

SENATOR WIELECHOWSKI added that many people believe that without the cap that gasoline prices in Hawaii would have spiked even higher.

MR. SNIFFEN responded he's heard that but he doesn't know how to tell for sure. Diesel pricing was separate from gasoline pricing.

SENATOR WIELECHOWSKI pointed out that at the time that Hawaii adopted its regulatory scheme, hurricanes occurred in Louisiana and devastated oil operations in the Gulf Coast. That caused all prices to rise.

[2:07:30 PM](#)

MR. SNIFFEN agreed and added that there's some speculation by regulation proponents that but for Hurricane Katrina, the price cap would have brought down prices significantly.

MR. ASCOTT added that both diesel and gasoline prices spiked immediately after Hurricane Katrina and subsequently came down. Once prices came down Hawaii's capped gas prices dropped significantly while its diesel prices remained at the post Katrina rates.

SENATOR THERRIAULT cautioned about attaching yourself to a market. Hawaii didn't tie its prices to Pacific Northwest prices; it had a market basket and something happened to one of the markets in that basket that influenced prices. One of the difficulties with that method is deciding what your comparison is going to be to. He noted that the Speaker of the House introduced a resolution expressing concern about a fuel tax that the state of Washington was considering for fuels that were exported. After some discussion it was determined that the suggested tax was the result of a dispute between the state of Washington and the state of Oregon. He again cautioned the committee to be mindful when linking Alaska fuel prices to another market.

He noted that Mr. Sniffen said that if this bill had been in place during the recent high-price scenario, he doesn't think it would have done anything. He emphasized that he'd very much like to find a meaningful way to control prices, but he doesn't want to promise people something that doesn't deliver.

[2:11:02 PM](#)

JEFF COOK, Director of External Affairs, Flint Hills Resources-Alaska, said they share concerns about the impact of SB 54. He said it's important to understand that all Flint Hills Resources' products are sold on the wholesale market and they make less than one-fifth of the gasoline used in the state and one-third of the heating oil used in the Fairbanks area. They run a safe and efficient refinery and their employment goes well beyond the 175 employees based in North Pole and Anchorage. He mentioned the Alaska Railroad, various trucking companies, and the Local 375.

[2:13:53 PM](#)

MR. COOK said the North Pole refinery began operation in 1977 and Flint Hills Resources has owned and operated it since 2004. The facility has undergone modifications, but the basic configuration is the same. It is a topping plant, which means it lacks the sophistication to refine all the crude oil coming to the plant into a finished product. They take between 180,000 and 220,000 barrels of crude oil per day to distill into a few basic

products for sale. The rest of the stream is returned to TAPS and that isn't for free. In 2008 they paid \$180 million in quality bank assessment, which is equivalent to \$8.90 for each barrel they sold that year. That is a cost that only they and Petrostar pay. During peak times they distilled 70,000 barrels per day and now they are down to 30,000 barrels per day.

Flint Hills Resources has significant fixed costs and is selling significantly less product making it difficult to operate. The majority of their product is jet fuel. He distributed a chart showing the decline in number of refineries between 1980 and 2008. Flint Hills Resources is one of the few topping plants that hasn't gone out of business. Environmental requirements are responsible for the closure of many of the plants. The North Pole refinery has kept pace with environmental regulations, but the changes have impacted the amount of gasoline and diesel that they are able to produce. While the refinery continues to produce some gasoline and off-road diesel, they now buy from other sources to meet consumer needs. Supplies are tight and margins for refineries such as theirs are small. As the committee is aware, Flint Hills Resources is working with the Department of Natural Resources to explore options and develop a better understanding of the circumstances that threaten their long-term viability in this state, he said.

[2:18:11 PM](#)

MR. COOK said several things about the North Pole refinery make it difficult to compare to others. First is the cost of fuel to run the refinery. At the peak they use 147,000 gallons of gasoline per day. At peak prices that cost \$24/mbtu while refiners in the state that have natural gas were able to operate at \$7.67/mbtu. 72 percent of their cost was fuel to run the refinery and that typically should be 30 percent. Next is the quality bank. Flint Hills Resources is the state's only buyer of royalty-in-kind and in the last several years they paid a low of \$23 million and up to \$37 million above what the state would have gotten had it sold as royalty-in-value. He noted that their energy cost is 238 percent higher than refineries that are able to operate on natural gas. Flint Hills Resources is also faced with dropping crude oil temperature, which means they have to expend more energy to make product than in the past. Other refineries don't have that problem.

In many ways SB 54 doesn't make sense for our business, he said. They don't receive subsidies; they pay premiums, quality bank, and high energy prices. The bill doesn't specify what "exorbitant or excessive" is, yet it calls for penalties that

are ten times the economic benefit from an unlawful sale. If enacted this legislation will adversely affect Alaska consumers and businesses and may drive Flint Hills Resources from the state, he said.

[2:21:17 PM](#)

MR. COOK said consumers certainly should seek the lowest price possible for any commodity, but government intervention in pricing ultimately creates more harm than good. While this legislation could result in the shutdown of their company, the harm to Alaskans would be greater. Flint Hills Resources understands that high fuel prices can be a hardship, but price control legislation will harm consumers in the long term by causing shortages. Challenges due to the economy are serious enough without being further burdened with the provisions of SB 54. He respectfully asked the committee not to advance the bill.

[2:23:52 PM](#)

CHAIR FRENCH asked if Flint Hills Resources produces gasoline at the North Pole refinery.

MR. COOK said yes; they produce about 3,000 barrels per day, which is down from their peak of 6,000 barrels per day. The reduction came about as a result of the new sulfur requirements starting in January 2007.

CHAIR FRENCH asked if his company operates in other states.

MR. COOK replied their three primary refineries are in Texas and Minnesota. The corporate parent company has operations worldwide.

CHAIR FRENCH asked if either Texas or Minnesota has a law similar to what's being considered here today.

MR. COOK said no.

SENATOR WIELECHOWSKI asked if Flint Hills Resources is charging exorbitant or excessive prices for the products it refines.

MR. COOK said no.

SENATOR WIELECHOWSKI responded, "Then you wouldn't be subject to this law."

[2:25:39 PM](#)

SENATOR THERRIAULT remarked that the concern is that they wouldn't know. According to Mr. Sniffen even during the time of high prices they probably would not have met that threshold. That doesn't mean that DOL wouldn't have looked into their business, but that isn't any different from what DOL is asked to do today. He asked Mr. Cook how much of the gas that's consumed in the state is refined by Flint Hills Resources.

MR. COOK replied they provide somewhere between 12 percent and 15 percent.

SENATOR THERRIAULT asked him to restate the quality bank numbers.

MR. COOK explained that their quality bank assessment for 2008 was \$180 million, which is about \$8.90 per barrel for each barrel they sold that year.

[2:27:22 PM](#)

SENATOR MCGUIRE related that when this was introduced she objected to the idea of a strict liability standard tied to Washington state prices. When the sponsor removed that provision and adopted the exorbitant standard she didn't think that Tesoro or Flint Hill engaged in that conduct. She thinks that DOL already has this tool available so if this were in statute the result would have been the same. This doesn't seem to be harmful; it articulates what is already known to be illegal. She asked him to comment on that and tell her why we wouldn't want this in place. A safeguard may be to protect Alaska consumers from things we aren't aware of, she said.

[2:29:57 PM](#)

MR. COOK said his company is proud of its ties to Alaska. The impact of having penalties that are 10 times a number that isn't defined is that it will divert time and resources to respond to that potential liability. They appreciate that the bill was modified so that only the attorney general could do that, but the uncertainties are cause for concern. Second, profit breeds competition and an unfettered market works best.

SENATOR MCGUIRE asked him to further explain the quality bank. If it does relate to returning oil to the system she asked why they don't expand their storage capacity so they aren't beholden to that fee.

MR. COOK explained that they are a topping plant and can't make more gasoline, diesel, or asphalt than the quality of the crude

allows. Also, they make product according to the demand in the state. This state has a different market than other states. As far as storage goes it's expensive to store inventory and it's highly regulated.

[2:34:16 PM](#)

CHAIR FRENCH surmised that quality banking is a way of compensating TAPS for removing quality from the crude stream.

MR. COOK said that's right. They tend take out gasoline, with is a lighter product and that reduces the value of what they put back so they have to pay for that. That's not any different than the owners of different values of crude on the Slope paying into that. Without that mechanism Flint Hills Resources and Petrostar refineries wouldn't be there. There just isn't a market for bunker fuel or asphalt year round in Fairbanks.

[2:35:32 PM](#)

SENATOR WIELECHOWSKI asked what refiner margin is.

MR. COOK replied federal antitrust laws preclude him from talking about anything relative to price, but he actually doesn't know.

SENATOR WIELECHOWSKI asked if refiner margin is the profit.

MR. COOK said he isn't an accountant and he won't speculate.

[2:36:39 PM](#)

SENATOR WIELECHOWSKI showed a graph from the U.S. Department of Energy (DOE) and asked if he'd ever seen it before.

MR. COOK said he hasn't seen that particular graph.

SENATOR WIELECHOWSKI said the bottom is retail margin, which he understands is the price that retailers make. It's been about 25 cents. The line above is the refiner margin. He understands that the refiner margin remained at about 50 cents until May 2008 when it peaked at about \$1.25. He asked if that looks familiar.

[2:38:25 PM](#)

MR. COOK responded he sees the graph.

SENATOR WIELECHOWSKI said the top line is the price of retail gasoline and the line just below is the wholesale price. Those lines track perfectly. The only difference is the huge increase in refiner margin since May 2008. Do you agree?

MR. COOK said he can only say that they have cooperated fully with the attorney general. He cannot and will not speak about specifics on pricing.

2:40:03 PM

SENATOR WIELECHOWSKI said so you don't know if your refinery margin has increased roughly 150 percent since May 2008.

MR. COOK said that's correct.

SENATOR WIELECHOWSKI said you gave detailed answers about why you were charging consumers higher prices yet you don't know whether or not it's due to increased refiner margin.

MR. COOK again said he is aware of some things that he is precluded from speaking about publicly. They delivered information to assistant attorney general Sniffen and have cooperated fully with the investigation.

SENATOR WIELECHOWSKI again said this is not confidential information yet you don't feel you can talk about it.

MR. COOK responded you are asking if this reflects the North Pole refinery and he is again saying he is precluded from talking about that.

2:41:25 PM

SENATOR THERRIAULT said with respect to quality banking when they reinjected oil into the TAPS line it dilutes the value of everyone's oil and they have to pay for that difference.

With respect to the cost of energy he said once you heat the barrel you could invest in a hydrocracker to reformulate the bunker oil into gasoline. You'd be able to capture more value out of the energy you've expended, but you don't have a market to sell into.

MR. COOK said the economics aren't there; the equipment is expensive and the market in Alaska is small.

SENATOR THERRIAULT noted that the price of gas today is \$2.16 in Seattle, \$2.29 in Anchorage and \$2.39 in Fairbanks so it looks like we're back to the normal spread.

MR. COOK said supply and demand are coming into balance. He clarified that under their crude oil contract with the state

they are required by law to have their wholesale prices in Fairbanks and Anchorage be the same so that price differential doesn't come from the North Pole refinery.

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SENATOR THERRIAULT asked if the information on quality banking and energy is considered when determining whether somebody has made excessive profit.

MR. SNIFFEN said that's correct.

SENATOR THERRIAULT said so the refining margin in the graph Senator Wielechowski displayed wouldn't have triggered the excessive price because of the components related to the cost of production.

MR. SNIFFEN said he understands the point Senator Wielechowski is making and it's good. Some margins probably did go up but there are a lot of other factors to consider when looking at the spreads, which were fairly unique to Alaska. DOL looked into margins and did consider that in its investigation.

SENATOR THERRIAULT asked if DOL has received all the information it requested from Flint Hills Resources and Tesoro.

MR. SNIFFEN replied he can't think of any outstanding requests.

SENATOR THERRIAULT noted that Econ One said there was a decoupling between Alaska and Pacific Northwest prices. Mr. Cook suggested that the slowdown hit the Pacific Northwest harder than Alaska suppressing demand and causing a glut of product being dumped on the market. He asked if he has information that would verify that did in fact happen.

MR. SNIFFEN said yes. COL reviewed a variety of data to explain the decoupling. One conclusion was the drop in price was a money losing proposition for lower 48 refineries and the profit in Alaska was in line with what might be expected.

[2:48:38 PM](#)

PAUL D. KENDALL, representing himself, said hydro is where there is potential. He suggested the committee require the following from refineries: 1) a block diagram of all things secret that are connected; 2) a plain English description of the secrets - why they are secret and what they are; 3) a numerical list of all things that are secret; and 4) a question about the potential to make hydrogen.

The overriding issue is information, Mr. Kendall said.

[2:52:33 PM](#)

AVIS THOMPSON, Executive Director, Alaska Trucking Association, stated several concerns: 1) the terms "excessive or exorbitant" are difficult to objectively define; 2) having a reliable source and supply of fuel for trucks is a concern; and 3) the availability of jobs is a concern. We don't want to create a climate of undue uncertainty, he said.

SENATOR THERRIAULT noted that trucking drivers are huge consumers of fuel, and asked how the two are balanced.

MR. THOMPSON agreed it is a difficult situation. Typically labor costs are highest, but last summer that was displaced by fuel costs. Not all those costs can be passed on to the customer so they adjust operations to account for that. That gets back to a reliable source of reasonably priced fuel.

[2:55:32 PM](#)

CHAIR FRENCH said he will set the bill aside for further consideration.

SENATOR THERRIAULT asked Mr. Sniffen if it is state or federal law that requires that some information be held from the public.

MR. SNIFFEN replied there are two Alaska statutes. The state's Restrain of Trade Act provides that information produced in response to a civil investigation demand is not considered public information subject to the Public Records Act. The other statute is the Consumer Protection Act, which provides that information gathered in the course of a consumer protection investigation is confidential.

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SENATOR THERRIAULT asked about SEC rules or other state statutes that require companies to keep pricing information from the public.

MR. SNIFFEN said in the anti trust realm pricing is extremely proprietary. Federal investigations labor under the Sherman Act and the Clayton Act to request information by subpoena and both those statutes require confidentiality.

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CHAIR FRENCH announced he would set SB 54 aside.

SB 68-FELONS' RIGHT TO VOTE

[2:58:12 PM](#)

CHAIR FRENCH announced the consideration of SB 68.

LYNDA ZAUGG, Staff to Senator Davis, Alaska State Legislature read the following sponsor statement:

Across the country, states handle the right to vote for returning felons differently. Two states, Maine and Vermont, do not take away a felon's right to vote. Thirteen states allow felons to vote upon release from incarceration. Twenty one, including Alaska, allow felons to vote after they complete all parole/probation requirements, while fourteen states permanently disenfranchise certain felons. If our belief is that felons once released have paid their debt to society, returning their right to vote upon release from incarceration would be a positive step.

SB 68 allows felons, upon release from incarceration, to register to vote. This bill starts the process which allows felons to start assuming responsibility for reintegration in their communities. We are each responsible for how our government works and we do that through voting. In Alaska, 6081 Alaskans have lost their right to vote because of felony convictions. Currently, Alaska law bars the vote to persons convicted of felonies of moral turpitude until the expiration of a post-incarceration period of parole or probation, which is often years after they have reentered society to become productive citizens and taxpayers.

Harsh sentencing laws over the past 30 years have allowed the prison population to balloon, while reducing the rehabilitative model to almost non-existent. Over 4.7 million Americans, or 1 in 43 adults, cannot vote due to felony convictions, with 1/3 or more of them incarcerated due to alcohol and drug offenses. In Alaska, we have gone from slightly over 800 prisoners in 1984 to 5344 in 2008, an increase of 149 percent. Of those incarcerated in Alaska, 48 percent are Caucasian, 36 percent are Alaska Native, 10 percent are African American, 3 percent are Hispanic, and 3 percent are Asian/Pacific Islanders. Minority felons are disproportionately

disenfranchised nationally under current law, and the harm of this continued disenfranchisement after release is exacerbated by stigma and other forms of discrimination as they try to reenter society. In Alaska, 52 percent of our incarcerated offenders are minorities.

In Alaska, we do not have a problem taking a person off the voting rolls if convicted of a felony, but we do not have a system that will automatically allow them to return to the voting rolls upon termination of supervision. Voting is just one of many steps a returning felon must make to become a productive member of the community. This bill will help provide a clear time for returning voting rights and provide an important right/responsibility to felons returning to their communities.

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MS. ZOAGG said according to the Division of Elections 6,081 are not able to vote because of felony conviction, but those represent people who were registered at the time of conviction. That doesn't take into account those who were not registered.

MIKE MILLER, former Representative Miller, Alaska State Legislature, Juneau stated that he was the author of the original bill that is now being amended. This takes the intent of the original bill and makes it better. He doesn't know why the restrictions were placed in the bill, and he strongly feels that it can only be positive to encourage people who have served their time to assume all the responsibilities of good citizenship, including voting. He would like to associate himself with the remarks of Ms. Zoagg.

[3:04:09 PM](#)

DENISE MORRIS, President and CEO, Alaska Native Justice Center, said they have reentry programs for males and females. Last week they graduated eight men, which saves the state \$350,000. The graduation requirements are to obtain valid ID; register to vote; obtain a 30 hour per week job; participate in a trade school, vocational school or secondary education program; obtain housing; actively participate in weekly meetings with a case manager; actively participate in weekly support groups; attend weekly MRT classes; engage in 40 hours of community work service; form a support group; and participate in the adult reentry program for 6 months. The reason they have the voting requirement is because statistics shows it reduces recidivism.

Alaska Natives are overrepresented in the population that is disenfranchised. "The Alaska Native Justice Center supports lessening the restrictions on felony disenfranchisement, in particular fewer restrictions on felony voting rights will bring Alaska into the modern national trend," she said.

[3:07:41 PM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ACLU), Anchorage, said he is speaking in support of SB 68. It would reduce the voting disenfranchisement of individuals who were formerly incarcerated. More than half of the disenfranchised people are on probation or parole and this would increase their rights. 20 states have restrictions that are less stringent than Alaska has. Research indicates that there is a link between voting participation and the likelihood not to re-offend. For that and other reasons, a number of organizations involved in criminal law enforcement support this type of legislation including the American Parole Association, the National Black Police Association and the American Bar Association. Minority communities are disproportionately impacted. He asked the committee work on technical fixes to reduce the documentation requirements to make it easier to transition to voting rights.

[3:10:12 PM](#)

CHAIR FRENCH announced he would hold SB 68 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 3:10 pm.