

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 18, 2009

3:33 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Co-Chair  
Senator Bill Wielechowski, Co-Chair  
Senator Charlie Huggins, Vice Chair  
Senator Bert Stedman  
Senator Thomas Wagoner

**MEMBERS ABSENT**

Senator Hollis French  
Senator Gary Stevens

**COMMITTEE CALENDAR**

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

**PREVIOUS COMMITTEE ACTION**

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

**WITNESS REGISTER**

GEORGE ASCOTT

Staff to Senator Wielechowski  
State Capital Bldg.  
Juneau, AK

**POSITION STATEMENT:** Commented on SB 54 for the sponsor.

ED SNIFFIN, Assistant Attorney General  
Department of Law

**POSITION STATEMENT:** Answered questions on SB 54.

STEVE ALLEY, representing himself  
Valdez, AK

**POSITION STATEMENT:** Supported SB 54.

DEAN WESTLAKE, representing himself  
Kotzebue, AK

**POSITION STATEMENT:** Supported CSSB 54 (RES).

MARGARET HANSON, Kotzebue, supported CSSB 54(RES).

**POSITION STATEMENT:**

MERRICK PIERCE, representing himself  
Fairbanks, AK

**POSITION STATEMENT:** Supported CSSB 54(RES).

BILL ZORIK, representing himself  
Fairbanks, AK

**POSITION STATEMENT:** Supported SB 54.

JEFF COOK, Director  
External Affairs  
Flint Hills Resources Alaska

**POSITION STATEMENT:** Opposed SB 54.

JAVEN OSE, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Supported SB 54.

GABRIEL ACEVES, Executive Director  
Alaska Public Interest Research Group (AKPIRG)

**POSITION STATEMENT:** Supported SB 54.

KIP KNUTSON, Manager

External Affairs

Tesoro Alaska

**POSITION STATEMENT:** Commented on SB 54.

**ACTION NARRATIVE**

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**CO-CHAIR BILL WIELECHOWSKI** called the Senate Resources Standing Committee meeting to order at 3:33 p.m. Present at the call to order were Senators Huggins, Stedman, McGuire and Wielechowski.

**SB 54-PRICE GOUGING INVOLVING ENERGY RESOURCES**

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**CO-CHAIR WIELECHOWSKI** announced SB 54 to be up for consideration.

**CO-CHAIR MCGUIRE** moved to adopt CSSB 54(RES) version 26-LS0209\T. There were no objections and it was so ordered.

**SENATOR WAGONER** joined the committee.

**CO-CHAIR WIELECHOWSKI** explained that SB 54 is in response to the outcry from across the state about the extremely high fuel costs and that there is no logical explanation for why they are as high as they are in Alaska. The bill makes it an unfair trade practice for refiners, distributors or retailers to charge excessive or exorbitant costs to Alaskans. It amends the Unfair Trade Practices Act to add number 56 to the already 55 consumer protection items in the statute.

He explained that Alaska has historically paid 10-20 cents more than the national average for gasoline, and at one time Alaska was actually lower than the national average. But during the recent run up in oil prices, they have risen to more than 70 cents to a dollar above the national average and they haven't fallen nearly as quickly as what has happened in the Lower 48 - to the point where we have the highest gasoline prices in the United States.

**CO-CHAIR WIELECHOWSKI** said that the oil is produced in Alaska and the vast majority of it is refined here. The shipping costs to market are very minimal and we have the lowest gas tax in the nation - currently at zero right now. The Attorney General has found that Alaska has an oligopoly, which essentially means no free market for gasoline.

In these situations, in the past, action has been taken when excessive prices are charged. This is done in the RCA on a regular basis with natural gas prices. Oil is regulated by the RCA in-state and by the Federal Energy Regulatory Commission (FERC) when it is shipped down the pipe lines. Natural gas is regulated by the FERC or by the RCA when it's shipped. It is not unusual to do something like this with vital commodities like oil and gas. He pointed out that SB 54 does not ask for regulation or prices caps; it's just simply saying you can't charge excess or exorbitant prices.

Provisions in the bill allow for higher costs that may incurred because of Alaska's smaller market. He has heard overwhelming support from all over the state for this measure. Years ago, a similar situation was investigated by the Attorney General and he found that the high costs were due to essentially market conditions and nothing was done. They can choose to do nothing and continue having Alaskans charged the highest prices in the future or they can take some action that will protect Alaskan consumers and businesses.

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SENATOR WAGONER asked when Alaska's gas prices were lower than the Lower 48 average.

GEORGE ASCOTT, staff to Senator Wielechowski, sponsor of SB 54, answered that said he didn't have that information. Tesoro's representative might have it.

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ED SNIFFIN, Assistant Attorney General, Department of Law, said Anchorage gas prices in 2007 were lower than the national average for a good portion of the summer.

SENATOR STEDMAN said some areas don't have much of a shipping distance, but it's hard to argue that for Southeast where oil tankers go to Cherry Point for refining and then the product gets shipped back. It appears from a Southeast perspective that the issue wasn't at the refinery, but somewhere between where it left Washington State and came out of the end of the hose.

SENATOR WIELECHOWSKI observed that Juneau's gas prices are always higher than Anchorage gas prices with the exception that this year when at about the time the Legislature came into session the price in Anchorage was about \$2.40 and \$2.07 at Juneau Fred Meyer's.

SENATOR WAGONER said other factors go into calculating the prices of the products. For instance, you can fill a tanker in Valdez and send it down the West Coast, but when it's full it cannot go into Puget Sound and deliver. It has to go to San Francisco and deliver part of its load and then deliver the balance of the load in Puget Sound, because of the restriction on how many barrels of oil a tanker can have there.

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MR. ASCOTT explained the differences between CSSB 54(ENE) 26-LS0209/P and draft committee substitute (CS) version T. The first change is on page 1, lines 9-12. The previous version applied only to refiners, because it appeared that is where a majority of the excessive pricing happened. In response to concerns expressed by members of the previous committee that price gouging was occurring in other areas of the state with fuel distribution by one or very few suppliers, the bill was expanded to include distributors and retailers. This is intended to make price gouging illegal anywhere along the supply chain.

The next change appears on page 2, lines 7-10. In the previous version the civil penalty was not less than the greater of 10 times the economic benefit to the refiner or \$50 million. The penalty was changed to only be 10 times the economic benefit to the refiner or distributor, and it was clarified that it also applies to distributors and retailers. This is in addition to the civil penalties that would normally be incurred under the Unfair Trade Practices and Consumer Protection Act, which is not more than \$5,000 per violation.

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Also in response to industry concerns a section was added on page 2, lines 11-22, that restricts the power to bring action against a violator solely to the Attorney General. Normally under the Unfair Trade Practices and Consumer Protection Act, private individuals can sue a violator for treble damages. It was felt that they could be bankrupted or seriously hurt by numerous individual lawsuits. Also on lines 12-14 the CS specifies that the Attorney General may collect attorney's fees and court costs. This should have the effect of lowering or negating the fiscal note which is currently indeterminate.

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The next change starts on page 2, lines 23-27, that clarifies a reasonable defense by a refiner, distributor, or retailer is that the seemingly exorbitant prices have been attributable to costs incurred in connection with the sale. Finally, on page 2,

line 28 - page 3, line 7, definitions for the term "distributor" and "retailer" were added to the definition of "refiner" which had been previously defined.

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]BOB WINESTEIN, Mayor, City of Ketchikan, supported the proposed CS.{ Ketchikan has had quite a bit of concern about high gas prices. Giving the Attorney General this authority is an important legal and economic tool for the state. Additionally, this may cause refiners and distributors to watch their practices more closely and reduce the likelihood of excessive pricing. He also agreed with Senator Stedman's comments about how the situation in Southeast differs from other parts of the state.

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]DAVE OTNESS, representing himself, Cordova, said what's happening lately is destroying the fabric of Alaska.{ This step up has kept going for years based on the attendant costs of being in remote communities, but something went wrong with the equation to where we can't support our coastal societies any more. It behooves investigation on that level. We have no state taxes on our gas, and we're paying more than anybody else.

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]RANDY GRIFFIN, representing himself, Fairbanks, opposed CSSB 54(RES) because it is contrary to the principals of freedom.{ He argued, "That fuel is private property and it belongs to whoever manufactured it and I think that they should be able to sell it for whatever they want since it belongs to them." The free market keeps prices in check.

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STEVE ALLEY, representing himself, Valdez, supported SB 54. He believes we are being gouged. In Anchorage, gas is \$2.27 today and in Valdez it is \$2.81.09, \$2.95.09 and \$2.95.09. That is price gouging.

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DEAN WESTLAKE, representing himself, Kotzebue, supported CSSB 54 (RES). He remarked, "Remember, these numbers only represent the villages that the state surveyed, and unfortunately our region is not one of the places that surveyed." A place like Noatak is \$9.99/gal for heating fuel. Their local fuel provider said they would blend last year's price with this year's when the fuel barge comes to Kotzebue in July. It sounds great until one realizes that when the prices hit there last July 5, they went

up without the benefit of price blending. This year's spring barges to the villages will be selling at last years' prices when they upload. So, in effect, they will be paying exorbitant prices for two years because of a delivery schedule that maximizes outside profitability at the expense of local sustainability.

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MARGARET HANSON, Kotzebue, supported CSSB 54(RES). Because of the high cost of fuel in the Northwest Region, some cities are having a hard time keeping their doors open. In fact one city closes its doors two days per week, and they are open Monday, Wednesday and Friday four hours/day. Taxes can be raised, but there are no jobs out there to support them. The electric fuel surcharge for the one community was \$69,000 in one month; the electricity charge was \$2,000. It's too much for the consumer to handle. She said her family bought \$600 worth of frozen meat a couple of months ago and when it got to Kotzebue it cost \$900 for freight.

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MERRICK PIERCE, representing himself, Fairbanks, supported CSSB 54(RES). He thinks eliminating obvious price gouging by regulation is a very positive step because of the amount of price gouging Flint Hills/Tesoro do to Alaskan consumers. Last fall he was in Sinclair, Wyoming, where today gas can be bought for \$1.42/gal. after subtracting the state gas tax. Wyoming is a rural state with 493,000 people and they have a refinery in Sinclair. Fairbanks has a refinery just like Sinclair does, but they are paying over \$2.56/gal. "Obviously there is some price gouging occurring in our market."

He noted the Legislature could adopt additional remedies to reduce the cost of energy for Alaskans. One of the best ways to reduce the cost of transportation energy is through the construction of energy infrastructure that will make better cost alternatives to gasoline and diesel fuel available. That added competition will place significant downward pressure on wholesale gasoline prices. He said the best alternative to gasoline is compressed natural gas (CNG).

MR. PIERCE said the highest priority of the Legislature should be getting the all-Alaska gas line built. With natural gas, existing state vehicles can be converted to run on CNG or factory CNG vehicles can be purchased - like the Honda Civic GX. He said the cost equivalent for running a vehicle on CNG is less than 50 cents per gallon versus the \$2.50/gal. Natural gas

prices are collapsing, because vast shale gas deposits are being developed in North America. This is a chance for the state to provide some real leadership for the rest of the country.

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BILL ZORIK, representing himself, Fairbanks, supported SB 54. He said he can think of several reasons that gas should be cheaper up here, but Flint Hills has been very reluctant to share their true costs and profits.

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JEFF COOK, Director, External Affairs, Flint Hills Resources Alaska, opposed SB 54. It would adversely affect their business, and have longer term negative implications for the people of Alaska. It's important to understand that Flint Hills doesn't own retail stations or crude oil. All of their products are sold on the wholesale market, and they make less than one-fifth of the gasoline used in Alaska and only a third of the heating fuel in the Fairbanks area.

Their 175 employees are very proud of their contributions to Alaska; they run a very efficient and safe refinery. Flint Hills Resources has more than 60 years of experience in the refining business. They have owned and operated the North Pole refinery since 2004 and they also own and operates refineries in Minnesota and Texas.

The North Pole refinery began operating in 1977 shortly after TAPS was completed. The facility has gone through various modifications over the years, but its basic configuration has remained unchanged. The refinery is a topping plant, which means it lacks the sophisticated processing capability to refine all the crude oil coming into the plant into finished products. It takes in 180,000-220,000 barrels of crude oil per day; they heat the crude to distill it into a few basic products to sell; the rest of the stream is returned to TAPS for which they pay a quality bank assessment. As a result, they keep only about 40,000 barrels/day of saleable product, a majority of which is jet fuel. In addition, they keep an energy source for heating the crude oil and refining process, a disadvantage because natural gas fuels most refineries in the U.S.

Many topping plants like the North Pole refinery operated in the U.S. years ago, but now just a few remain due to increased environmental emissions regulations and the increasing stringent federal requirements on the different types of fuels.

MR. COOK said the North Pole refinery has kept pace with the new environmental regulations, but federal mandates for lower sulphur content in the last few years have substantially diminished their ability to produce these two fuels. They still produce some gasoline and off-road diesel, but they now buy gasoline and diesel from other sources to meet the full needs of their customers. Due to these regulations and their affect on the market place, supplies are tight and margins for refineries like North Pole are very small.

Flint Hills is currently working with the Alaska Department of Natural Resources (DNR) to develop their understanding of their operation and the circumstances that threaten their long-term viability in the state. Even though the refinery has been profitable recently, that doesn't mean it will remain that way. It is not the case currently.

He said they are exploring all options to deal with this uncertainty and they have provided financial data to DNR so they can analyze and understand the challenges facing their refinery. SB 54 would be a very serious threat to the future of the North Pole Refinery. The CS does not specify what exorbitant prices are, yet subjects refiners to penalties 10 times the amount of the economic benefits of an unlawful sale; this leaves a high level of uncertainty. They may be forced to cease refining in the state.

Finally, he argued that lower prices don't attract producers who will come into a market only if they believe they can make money under the controlled price. This could lead to shortages. Setting price caps is a dangerous game; no one can forecast the future with any degree of accuracy and the consequences of being wrong will result in a shortage of fuel in Alaska.

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In closing, he said that Flint Hills understands that high prices can be a hardship for many Alaskan families. North Pole workers pay the same high price for gasoline as everyone else. Price control legislation will harm consumers by causing shortages; their refinery is facing serious challenges now. Demand for jet fuel, their primary product, is down significantly in Alaska, and particularly at the Anchorage International Airport. This is evidenced recently by Fed Ex taking 68 pilots out of Anchorage.

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JAVEN OSE, representing himself, said he is a 50-year resident of Anchorage, and that he had seen enough of free market forces with \$140/barrel for gasoline. He is not ready for another summer of price gouging. Instead of comparing Anchorage prices to Seattle prices, because we have no demographics in common with them, we should compare our state to Wyoming where they have reported a low of \$1.14/gal. over the last two months.

The state has failed in its fiduciary duty to its citizenry. They have known this manipulation has been going on in Kenai for years where gas is 15 cents higher than in Anchorage - and they make it right there.

MR. OSE said he had contacted the Attorney General's Office to administer the contract to keep Flint Hills from gouging. Over the last five years they have averaged 46,000 barrels per day. By contract, the upper limit is 77,000 barrels. If the limit were to be refined that might bring prices down to below \$1/gal. where it belongs. He summarized, "I'm mad as hell and thank you for listening."

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GABRIEL ACEVES, Executive Director, Alaska Public Interest Research Group (AKPIRG), supported SB 54. Everyone recognizes there are certain costs to doing business in Alaska, and it's not good for companies to take advantage of consumers because of lack of competition.

Price control legislation sets floors and ceilings, but this bill doesn't do either one of those. It simply puts the onus on the folks refining and distributing to prove that what they are charging is not exorbitant.

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KIP KNUTSON, Manager, External Affairs, Tesoro Alaska, noted that "excessive" and "exorbitant" had not been defined, and that would add risk to their operation here. And he offered, "Perhaps you would consider applying the golden rule to this legislation, if it's so good for refiners, perhaps it could be applied to all commercial transactions in the state."

When he read the Attorney General's report that can be found at the Department of Law's website, he saw that the AG concluded that the Alaska refiners are abiding by Alaska's consumer protection laws. It found no evidence of collusion or restraint of trade or monopolistic practices. The same report highlights that although there are only two in-state manufacturers of

gasoline, the market forces of supply and demand account for prices paid by Alaskans. The report concluded that oligopoly competition is common for many goods and services in the state of Alaska and it doesn't by definition mean there is no competition, but it means there are few competitors.

MR. KNUTSON said the report says that economic realities of the Alaska gasoline market likely explain the price of gas in Alaska and the relationship between Alaska gasoline prices and the prices in the Lower 48.

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SENATOR WAGONER asked him where their crude oil comes from.

MR. KNUTSON answered their refinery is located in Nikiski. They haul roughly 50 percent of the crude they purchase from North Slope producers by tanker from Valdez. They buy every drop that is purchased in the Cook Inlet, which is roughly 25 percent of their crude throughput. They are now having to source the remaining 25 percent from as far away as Norway or Nigeria.

SENATOR WAGONER asked the cost of the low sulphur unit at their refinery.

MR. KNUTSON replied \$65 million - to just stay in the road diesel business.

SENATOR WAGONER asked why they were forced to do that.

MR. KNUTSON answered the Environmental Protection Agency (EPA) required that on-road vehicles burn ultra low sulphur diesel - a new fuel specification.

SENATOR WAGONER asked what their timeline is on recouping their investment on that.

MR. KNUTSON answered that he didn't have that information.

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SENATOR WAGONER said a couple of other things need to be said. First of all the average family received \$3,800 from the state of Alaska last year to defray the cost of higher fuel for which there are various reasons. He asked what Tesoro's stock value was in 2006 and what it is now.

MR. KNUSTON answered that he couldn't quote the 2006 price, but at one point the stock peaked out at \$65/share. Late last year it hit \$6/share. It has recovered somewhat to the \$12-\$14 range.

SENATOR WAGONER said that Tesoro is in his district and a lot of people work full time there. "They are Alaskans, too. They had to buy the same high prices on the fuels." He remarked if there is so much profit on a gallon of gas at the pump, then why in the center of Kenai, probably the best location there, is there a brand new station built 10 years ago by Petro Marine that is vacant and has been vacant for three years.

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CO-CHAIR WIELECHOWSKI closed public testimony and said he would hold the bill to address committee concerns.

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There being no further business to come before the committee, he adjourned the meeting at 4:28.