

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 17, 2011

9:02 a.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Chair
Senator Joe Paskvan, Vice Chair
Senator Albert Kookesh
Senator Kevin Meyer
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 26

"An Act exempting vehicles fueled solely by electricity or compressed natural gas from motor vehicle registration fees and taxes; and providing for an effective date."

- MOVED CSSB 26(STA) OUT OF COMMITTEE

SENATE BILL NO. 61

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSSB 61(STA) OUT OF COMMITTEE

SENATE BILL NO. 30

"An Act providing for the release of certain property in the custody of a law enforcement agency to the owner under certain conditions."

- MOVED CSSB 30(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 26

SHORT TITLE: FEE/TAX EXEMPTION FOR CERTAIN VEHICLES

SPONSOR(S): SENATOR(S) MCGUIRE

01/19/11 (S) PREFILE RELEASED 1/7/11

01/19/11 (S) READ THE FIRST TIME - REFERRALS
 01/19/11 (S) STA, FIN
 01/27/11 (S) STA AT 9:00 AM BUTROVICH 205
 01/27/11 (S) Heard & Held
 01/27/11 (S) MINUTE(STA)
 02/15/11 (S) STA AT 9:00 AM BUTROVICH 205
 02/15/11 (S) Heard & Held
 02/15/11 (S) MINUTE(STA)
 02/17/11 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SB 61

SHORT TITLE: 2011 REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/24/11 (S) READ THE FIRST TIME - REFERRALS
 01/24/11 (S) STA, JUD
 02/15/11 (S) STA AT 9:00 AM BUTROVICH 205
 02/15/11 (S) Heard & Held
 02/15/11 (S) MINUTE(STA)
 02/17/11 (S) STA AT 9:00 AM BUTROVICH 205

BILL: SB 30

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(s): DYSON

01/19/11 (S) PREFILE RELEASED 1/7/11
 01/19/11 (S) READ THE FIRST TIME - REFERRALS
 01/19/11 (S) STA, JUD
 02/03/11 (S) STA AT 9:00 AM BUTROVICH 205
 02/03/11 (S) Heard & Held
 02/03/11 (S) MINUTE(STA)
 02/17/11 (S) STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

GENEVIIVE WOJTUSIK, Staff to Senator Lesil McGuire
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Answered questions on SB 26.

KATHERINE KURTZ, Assistant Revisor of Statutes
 Legal Services
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Presented and explained the proposed amendment to SB 61.

SENATOR DYSON, Sponsor of SB 30
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced proposed CS to SB 30.

CHUCK KOPP, Staff to Senator Dyson
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Explained changes in CSSB 30 for the sponsor.

VICTOR KESTER, Executive Director
Alaska Office of Victims Rights
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 30.

LES SYREN, Attorney
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 30.

DOUG WOLVER, Administrative Attorney
Alaska Court System
Juneau, AK

POSITION STATEMENT: Answered questions regarding SB 30.

ACTION NARRATIVE

[9:02:26 AM](#)

CHAIR BILL WIELECHOWSKI called the Senate State Affairs Standing Committee meeting to order at 9:02 a.m. Present at the call to order were Senators Paskvan, Giessel, Kookesh, and Chair Wielechowski. Senator Meyer arrived soon thereafter.

SB 26-FEE/TAX EXEMPTION FOR CERTAIN VEHICLES

[9:02:48 AM](#)

CHAIR WIELECHOWSKI announced the first order of business would be SB 26.

CHAIR WIELECHOWSKI noted the committee had previously adopted a CS, making version X the working document. He explained the new fiscal note has now arrived, and shows a cost to the state of \$2,000 for FY12 and an indeterminate change in revenues, because it is impossible to project the number of vehicles that will qualify. The Department of Motor Vehicles (DMV) projects the initial revenue loss to be small, but acknowledges it will grow as alternative fueled vehicles gain in popularity. He also noted

the special fee for hybrids will sunset after three years, and the special fee for vehicles fueled exclusively by alternative fuels will sunset after seven years, so the revenue impacts appear to be insignificant.

GENEVIIIVE WOJTUSIK, staff to Senator McGuire, said the fiscal note has not changed, because it is indeterminate how many vehicles will be affected, but she said the DMV has no problem with the bill going forward.

SENATOR Paskvan moved to report CS for SB 26, version X, from committee with individual recommendations and accompanying fiscal note(s).

CHAIR WIELECHOWSKI announced that without objections, CSSB 26(STA) passed from the Senate State Affairs standing committee.

[9:05:18 AM](#)

CHAIR WIELECHOWSKI announced a brief at-ease.

SB 61-2011 REVISOR'S BILL

[9:06:35 AM](#)

CHAIR WIELECHOWSKI announced consideration of SB 61.

KATHERINE KURTZ, Assistant Revisor, Legislative Legal Services, said that after hearing questions from the committee and doing additional research, she concluded that Section 3 of SB 61 is unclear. It could represent a substantive change. She stated she would prefer to pull the section out of the revisor's bill at this point.

CHAIR WIELECHOWSKI asked if it is legal to do a substantive change in a revisor's bill.

MS. KURTZ responded it is better to handle such a change in a substantive bill.

CHAIR WIELECHOWSKI agreed that there are better vehicles for that change. He noted the committee had a proposed amendment before them, identified as [27-LS0152\B.1.

CHAIR WIELECHOWSKI offered Amendment 1, and objected for discussion purposes

AMENDMENT 1

27-LS0152\B.1

OFFERED IN THE SENATE
TO: SB 61

Page 2, lines 2 - 7:
Delete all material.

Renumber the following bill sections accordingly.

MS. KURTZ said the amendment removes Section 3 from the B draft of the bill.

SENATOR KOOKESH asked if the section will need to be put back in later on.

MS.KURTZ answered that she would like to review the issue over the interim.

CHAIR WIELECHOWSKI asked if could there be a legal challenge because of this section, if the bill is not changed.

MS. KURTZ responded it is conceivable.

SENATOR KOOKESH asked if SB 61 has a referral to the judiciary.

CHAIR WIELECHOWSKI said yes.

MS.KURTZ said it was her recommendation to take out Section 3.

CHAIR WIELECHOWSKI removed his objection to the amendment. There being no further objection, Amendment 1 was adopted.

SENATOR PASKVAN moved to report SB 61, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR WIELECHOWSKI announced that without objection CSSB 61(STA) moved from the Senate State Affairs Standing Committee.

[9:14:49 AM](#)

CHAIR WIELECHOWSKI announced a brief at ease

SB 30-RETURN OF SEIZED PROPERTY

[9:16:03 AM](#)

CHAIR WIELECHOWSKI announced consideration of SB 30.

SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) to SB 30, labeled 27-LS-0344\M, as the working document.

CHAIR WIELECHOWSKI objected for discussion purposes.

SENATOR FRED DYSON, sponsor of SB 30, said the CS is a better product. It includes provisions that clarify what kinds of evidence are excluded from being returned. They have also inserted the Office of Victims' Rights (OVR) as the gate-keeper for assistance in return of property.

CHUCK KOPP, staff to Senator Fred Dyson, explained that SB 30 provides property owners with a clearly identifiable process to petition the court for recovery of their property which is being held as evidence. The CS was drafted in response to concerns that giving victims a direct voice in those situations may result in too many requests for hearings. The OVR is willing to assume an intermediary role in such requests. If a preponderance of evidence shows that the victim does own the property, OVR could contact the law enforcement agencies and see if they have a claim on the property. If OVR believes the victim's claim exceeds that of the law enforcement agency, it can request the agency to ask for a hearing. Once that request is received, the agency has ten days to request a hearing. If a criminal case is already pending, the hearing will be before the court that has jurisdiction. If no criminal case is pending, the hearing will be before the district or superior court where the property is physically located. The burden of proof is preponderance of evidence, and the court may impose reasonable conditions on return of property to the owner. Section 2 of the CS establishes within Title 24, Chapter 65, the authority for the OVR to request return of property from a law enforcement agency on behalf of a victim. A victim is defined as any person who is the owner of property in the custody of a law enforcement agency.

9:23:43 AM

VICTOR KESTER, Executive Director, Alaska Office of Victims' Rights (OVR), said the OVR is ready to assist crime victims attain a mechanism to ask the court for return of their property. The OVR wants to work with others in a responsible fashion. They also want to be sure that this proposed statute is within the boundaries of law and ethics and does not present challenges. He noted there has been concern this may impede certain functions of law enforcement. Under the proposed legislation, the crime victim would come to OVR, OVR would investigate, and if they determine the victim has a valid claim, they would ask the agency for a hearing on behalf of the victim.

If the agency fails to return the property, it has to file a request with the court for a hearing.

CHAIR WIELECHOWSKI said that was also his understanding.

9:26:15 AM

MR. KESTER said his main concern would be the volume of cases. He believes the legislation is necessary, but if there is a high volume of requests, a fiscal note might be needed later.

SENATOR PASKVAN asked about victim confidentiality.

MR. KESTER replied the proposed legislation would not alter the existing broad confidentiality protections for crime victims.

CHAIR WIELECHOWSKI asked about potential concerns over fiscal impacts.

MR. KESTER answered his preliminary assessment is that it would not require additional staff. For example, 200 cases during a fiscal year would have an impact, but he doesn't expect that many cases. The problem is relatively rare. SB 61 would help crime victims.

9:31:33 AM

LES SYREN, attorney, stated that his client owns a jewelry store in Anchorage. In 2007, he received a phone call from the police in the middle of the night and was asked to come to his store. The police served a search warrant on the property, and removed took about \$5,000 worth of merchandise from the store, saying they believed it might be stolen property. A few months later the attorney asked for return of the property, but he never heard back from the police. Years went by. His client was never charged, never told that he was a suspect. This property was merchandise, and some was actually on lay-away. When people came in to get their merchandise, the store had to return their money. Mr. Syren said wrote to the police chief again last week, but he has not yet heard back. His client is suffering a financial loss. He doesn't want to see frivolous requests for return of property, but this one is not. His client has no relief.

SENATOR PASKVAN asked if the agency has any evidence that the property belonged to someone else.

MR. SYREN answered not that he knows, but he has heard nothing from the police.

SENATOR PASKVAN asked when the police have taken property, does this come within the definition of a crime victim.

MR. SYREN responded that is a very good question. The police have taken his client's property without telling him why.

SENATOR PASKVAN asked if his client can provide proof of ownership.

MR. SYREN said he would be glad to.

SENATOR PASKVAN questioned whether this situation would fall within the definition of a crime victim.

MR. KOPP responded that Section 2 of the committee substitute says "crime victim" includes any person who is the owner of property in the custody of a law enforcement agency.

CHAIR WIELECHOWSKI asked if there is dispute over who owns the property, could OVR be in the position of representing a criminal.

MR. KOPP explained that vetting would happen during the initial investigation. Sometimes it can take the police a while to sort out what happened. These cases are vetted before they make it to court. OVR would learn the story from the investigation.

[9:40:18 AM](#)

CHAIR WIELECHOWSKI said the CS does not appear to give OVR a decision with regard to filing a case with the court. It appears to be mandatory.

MR. KOPP replied that the reference on page 2, line 1 to "shall" request a hearing refers to the law enforcement agency. OVR has the authority to conduct an investigation and they can ask for a hearing. Once they do request it, the law enforcement agency has ten days to request a hearing.

SENATOR DYSON said he appreciates all the questions. He noted that last year the Alaska Peace Officers Association had endorsed a similar bill, but this year they had one person on the board who didn't want to endorse it. He speculated that once the word gets out that this mechanism exists, the police will be more vigorous in returning property quickly. Making the victim whole is a duty.

[9:44:59 AM](#)

DOUG WOLVER, Administrative Attorney, Alaska Court System, said he met with the sponsor's staff and also sent the proposed bill to several judges for comment. The court is always neutral when it comes to legislation, but several judges asked what the standard of proof for ownership would be. The CS clarifies that it is a preponderance of the evidence. The next question was how cases that don't get filed as criminal cases in court would be handled. The CS establishes that either superior or district court would have jurisdiction.

SENATOR KOOKESH asked Mr. Wolver to clarify how the police would have the property if they haven't caught the perpetrator.

MR. WOLVER responded they could find it in a pawn shop, or through a search warrant. He noted that many property crimes don't get prosecuted.

SENATOR KOOKESH asked if any judges didn't like the bill.

MR. WOLVER said they don't take official positions on legislation. They don't see as an issue with this bill, but a request would not normally come to them.

CHAIR WIELECHOWSKI asked if the judges were concerned about the potential for a flood of claims into the court system.

MR. WOLVER replied he did not hear concern about that from the judges. He noted that fiscal notes are educated guesses. In this case, DOL has an undetermined fiscal note. They probably won't see many cases, but it is hard to know.

SENATOR KOOKESH said if there is a flood of cases then we know there is a problem.

SENATOR PASKVAN asked if there would be a filing fee involved.

MR. WOLVER said he had not thought of that, but there would probably just be a motion unless there was no underlying case involved. In that case, there might be a filing fee.

[9:50:19 AM](#)

SENATOR PASKVAN moved to report CS for SB 30, version M, from committee with individual recommendations and accompanying fiscal notes.

CHAIR WIELECHOWSKI announced that without objection, CSSB 30(STA) passed from the Senate State Affairs Standing Committee.

9:51:38 AM

There being no further business to come before the committee, Chair Wielechowski adjourned the Senate State Affairs Standing Committee at 9:51 a.m.