

HOUSE FINANCE COMMITTEE

March 18, 2014

8:33 a.m.

8:33:05 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 8:33 a.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Lindsey Holmes
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Daniel George, Staff, Representative Bill Stoltze; Speaker Mike Chenault, Sponsor; Tom Wright, Staff, Representative Chenault; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Don Habeger, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development.

PRESENT VIA TELECONFERENCE

Phil Steyer, Director Of Government Relations, Chugach Electric, Anchorage; John MacKinnon, Executive Director, Associated General Contractors of Alaska, Anchorage; Louise Bray, Schnitzer Steel Industries, Anchorage; Nic Ballard, General Manager, Schnitzer Steel Industries, Anchorage; Matt Fonder, Department of Revenue, Anchorage.

SUMMARY

HB 305 JUNK DEALER & METAL SCRAPPER LICENSING

HB 305 was HEARD and HELD in committee for further consideration.

HB 306 EVAL. INDIRECT EXPENDITURES; TAX CREDITS

HB 306 was SCHEDULED but not HEARD.

#hb305

HOUSE BILL NO. 305

"An Act repealing the requirement that a junk dealer or metal scrapper obtain a license."

[8:33:14 AM](#)

Representative Costello MOVED to ADOPT the proposed committee substitute for HB 305, Work Draft 28-LS1449\P (Bannister, 3/17/14).

Co-Chair Stoltze OBJECTED for discussion.

DANIEL GEORGE, STAFF, REPRESENTATIVE BILL STOLTZE, discussed the changes in the committee substitute (CS). He explained that the title had expanded from the previous version. He read the title as follows:

"An act relating to the records of metal scrappers; relating to the crime of criminal mischief for removing metal from property; repealing the requirement that a junk dealer or metal scrapper obtain a license; and providing for an effective date."

Mr. George presented a sectional analysis. He explicated that Section 1 established new recordkeeping requirements for the sale of scrap metals. The dealer must maintain accurate paper or electronic records for each sale of scrap metal of \$100. or more and include the date, time, location, and value of the scrap metal purchased; the sellers driver's license number, description of vehicle delivering the metal, including the license plate number; business license number, if applicable, a description including weight and quantity of scrap metal; and a signed

statement that the scrap metal was not stolen property. The records must be made available to law enforcement. The dealer was required to maintain the records for five years. He added that the CS provided an exemption from the recording requirements with a valid tax identification number or government issued photo identification for volume transactions. A dealer that failed to comply or falsified record entries would be guilty of a class A misdemeanor. He stated that the list was developed by a working group of contractors, utility companies, and scrap metal dealers following a review of other states' laws.

Mr. George continued that the CS established new definitions for "dealer," "record," and "scrap metal," "scrap metal dealer," and "transaction" for purposes of Section 1. He moved to Section 2 and detailed that the section amended the crime of criminal mischief in the third degree, which added a new subsection (4) that read:

..."with the intent to deprive another of the metal or to appropriate the metal of another to oneself or a third person, the person removes from property of another metal that is physically attached to the property, and the removal damages the property in an amount of \$500 or more."

Mr. George reported that Section 3 repealed the annual junk and scrap metal license from the Department of Revenue (DOR). Section 4 clarified that the criminal penalties in Section 3 applied to crimes occurring after the effective date of January 1, 2015. He concluded that Section 5 designated January 1, 2015 as the effective date of the act.

SPEAKER MIKE CHENAULT, SPONSOR, specified that the original bill was simply a repealer dealing with licensing that was no longer used by DOR. He noted that he was contacted by utility companies and other corporations that had copper and other precious metals stolen from their work sites and turned into scrap metal. He stated that some types of the metal were expensive and sought after by thieves. If the original item that contained the metal was altered or destroyed in the extraction process the value of the original item was reduced. The law would deter the theft and assisted law enforcement in detaining scrap metal thieves. He concurred with the changes.

Co-Chair Austerman expressed concerns that the required reporting was onerous for the dealer. He stated that he had a problem with the bill but was open to discussion.

Speaker Chenault maintained that reporting requirements were similar for pawn shops and protected pawn shop operators. He elucidated that stolen property found in pawn shops was confiscated resulting in a loss for the pawn shop owner who purchased the property. He found that the recording requirements for pawn shops were an "unfortunate side of doing business." He emphasized that the law was designed to protect the business owner and ensured that what the owner purchased provided a monetary return.

[8:43:12 AM](#)

Representative Wilson concurred with Co-Chair Austerman. She observed that the scrap or junk yard businesses in the Fairbanks were small. She favored fewer reporting requirements. She felt that anyone currently dealing or selling scrap metal legally was conducting honest business and the problem was with selling scrap metal illegally. She wondered how the bill would assist in apprehending illegal sales of scrap metal.

TOM WRIGHT, STAFF, REPRESENTATIVE CHENAULT, referred to an owner of a scrap and junk metal dealer to best answer the question.

Representative Wilson wanted to avoid over-regulating the dealers operating legally in order to prevent illegal actors.

Representative Costello stated that she had a friend who created art work out of scrap metal. She cited page 4, line 3 of the CS and read the words "with the intent to deprive another." She wondered whether the provision applied to stolen art created from scrap metal.

Mr. Wright guessed that stolen art might be covered under other statutes and was uncertain whether the bill's provisions applied to the scenario.

Vice-Chair Neuman echoed Co-Chair Austerman's sentiments. He reported that he was working on a pawn shop issue in his district regarding reporting requirements and a stolen item. An item discovered to be stolen lead to onerous

consequences for the pawn shop owner. He had a problem with burdening "good hardworking Alaskans" or taking away their rights.

Vice-Chair Neuman asked for clarification regarding the crime for stealing scrap metal.

Co-Chair Stoltze interjected that the Department of Law (DOL) would best answer the question.

Speaker Chenault restated that some scrapyards dealers already filled out forms similar to pawn shops. He understood that new laws were burdensome to new businesses but he believed that the value of the reporting requirements protected the scrapyard dealer from thieves. He reiterated that if scrap metal was confiscated the money paid by the scrapper was lost. He thought that the requirements were more helpful in protecting the business owner than they were burdensome.

Co-Chair Stoltze stated that one concept of the issue that was overlooked was the damage caused by the removal of the metal. The cost of the damage could "far exceed the value of the scrap metal." He understood the burden of the recording requirements but current law did not "adequately recognize" the damage from the removal of copper wire from walls or other destruction to personal property caused by the metal removal.

Speaker Chenault replied that scrap metal theft not only affected individuals but consumers as well. He hypothesized a situation where copper wire was stolen from a utility company; the consumers ultimately would pay the cost. He reiterated that the provision protected owners of precious metals and scrap dealers.

Representative Holmes supported the bill. She relayed that she had heard of the problem from utility companies and contractors in her district and statewide. She added that when metals were stolen, construction projects were delayed or halted and utility service were interrupted. She cited the document from the bill packet titled: "Recycling Today Scrap Metal Theft Guide" (copy on file) and noted that many states required much more information for record keeping including fingerprinting and photographs. She relayed that Alaska was one of two states that had no requirements. She did not want to burden small businesses but believed that

metal theft was placing a "huge burden" on contractors, utility companies, and the public. She thought that the problem was well documented.

Representative Edgmon echoed Representative Holmes' comments. He shared that the way to profit when selling copper was in selling large quantities of several hundred pounds for each sale. He knew a legal scrap metal collector who informed him that the business "attracted unsavory characters" and that the illegal activity was "underground" with large sums of money was involved. He supported the restrictions.

[8:55:41 AM](#)

Representative Thompson supported the CS. He offered that contractors had materials stolen from their business and job sites. He believed that people wanted law enforcement to apprehend the thieves who stole it so collecting the information on the form was necessary to corroborate accurate information.

Representative Gara stated that the utility companies contacted him about the problem and he understood the need for the legislation. He expressed concerns regarding turning another misdemeanor into a felony. He pointed to page 3, lines 21 to 22 and read; "...with the intent to damage property of another, the person damages property of another in an amount of \$500 or more." He thought that the value of the metal stolen was the critical amount for the prosecutor to determine the charges and not based on the amount of the sale to the pawn shop dealer. He wondered whether the criminal provision in the CS was necessary and whether the crime should be turned from a misdemeanor into a felony.

Mr. Wright stated that Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, and (DOL) was available to answer legal questions.

Co-Chair Stoltze OPENED public testimony.

PHIL STEYER, DIRECTOR OF GOVERNMENT RELATIONS, CHUGACH ELECTRIC, ANCHORAGE (via teleconference), supported the CS. He stated that he worked with a number of contractors, other utility companies, and scrap metal dealers in consultation with law enforcement to shape the provisions

in the CS. He noted that the group examined other state laws as guidance in crafting the legislation. He urged the committee to support the legislation.

JOHN MACKINNON, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF ALASKA, ANCHORAGE (via teleconference), favored the CS. He reported that very expensive copper wire thefts took place at remote project sites. He relayed that Alaska was the only state that did not have a law related to the issue. He gathered together utility companies, contractors, and other "stakeholders" to work cooperatively in crafting the legislation. The provisions proved successful in reducing theft when enacted in other states. The recording was not overly burdensome and many of the scrap dealers were already collecting the information. He believed the requirements were an "effective tool" for law enforcement to apprehend the criminals.

Co-Chair Austerman offered that smaller communities struggled to get rid of scrap metal. He asked if the problem occurred primarily on the road system or state wide.

Mr. MacKinnon replied that the problem occurred among rural utilities especially the theft of copper wire from rural utility companies. He stated that the copper wire stolen from transformers and other apparatus posed a significant public safety hazard causing shock or electrocution.

Co-Chair Austerman remarked that the bill would not stop the metal theft.

Mr. MacKinnon added that small incidental sales were not affected by the bill. Much of the scrap metal in rural Alaska were comprised of large pieces of iron therefore, ferrous metals were exempted. Aluminum cans were also exempted. The legislation targeted the scrap metals with the highest values. Most of the metal theft was drug related because the price for copper was high. He restated that the law was effective in other states.

Representative Wilson stated that people could have scrap metal on their own property or collect scrap metal and sell directly to a contractor. She wondered how the law would catch thieves when it was currently possible to sell scrap metal without using a scrap metal dealer.

Mr. MacKinnon answered that currently laws did not exist to prosecute scrap metal sellers operating on the "margins of the business." The bill gave law enforcement the "tools" to enforce the law and reduce scrap metal theft.

Representative Wilson believed that the CS was "penalizing the wrong people."

[9:05:56 AM](#)

LOUISE BRAY, SCHNITZER STEEL INDUSTRIES, ANCHORAGE (via teleconference), testified in favor of the bill. She elaborated that Schnitzer Steel Industry was a large publicly traded company with a facility in Anchorage. The industry was comprised of very small to large operators. She believed that basic record keeping facilitated the removal of "bad actors" from the scrap metal business. The industry did not want its reputation tainted by dealers operating illegally and purchasing stolen materials. She noted that the basic record keeping requirements were not overly burdensome. She worked closely with Alaska General Contractors (AGC) and utility companies to craft a bill that was not onerous to the dealers and was a tool for law enforcement. She believed the CS leveled the playing field for legal participants in the industry.

NIC BALLARD, GENERAL MANAGER, SCHNITZER STEEL INDUSTRIES, ANCHORAGE (via teleconference), testified in support of the legislation and concurred with previous testimony. He clarified that scrap metals were required to be sold through a dealer to get to market or an end user.

Co-Chair Stoltze CLOSED public testimony.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, commented on the CS. She cited page 4, lines 3 through 6. She related that the provision took two crimes, one being theft and the other criminal mischief and turned them into one crime. She perceived that there would be less flexibility when prosecuting the crimes. She elucidated that two separate societal interests were at issue; one regarding theft of personal property and the other concerned harming personal property. The department thought the provision was "puzzling."

Representative Thompson hypothesized a scenario where an empty house for sale was damaged in the process of the illegal extraction of copper. He asked whether two crimes were committed.

Ms. Carpeneti replied in the affirmative. She stated that the combined crimes would require the use of the new crime in the CS instead of prosecuting based on both the general crimes of theft and criminal mischief.

Co-Chair Austerman observed that the CS was implementing new criminal laws without requiring that the dealers were licensed. He wondered how the scrap metal businesses were tracked.

[9:11:55 AM](#)

MATT FONDER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, ANCHORAGE (via teleconference), replied that DOR searched prior decades revenue records and was unable to find any revenue reporting from junk yard or scrap metal dealers from past licenses issued. Currently, the state was unable to track any scrap dealer businesses. He thought that requiring a license was sensible especially in light of the fact that all of the other businesses in the state were required to operate under a license.

Representative Wilson understood that the Department of Commerce, Community and Economic Development (DCCED) issued licenses and dealers were required to be licensed. She asked whether existing laws applied to scrap metal crimes without passage of the legislation.

Ms. Carpeneti answered in the affirmative and restated that the crimes that applied were theft and criminal mischief.

Representative Wilson supported the idea of requiring the dealer to check a driver's license for personal information verification. She asked whether the dealer was required to lock up the personal information collected from the sellers.

Ms. Carpeneti replied that the legislation required that the information in electronic or paper form needed to be stored for a period of five years. She did not know whether the bill addressed the security of the information.

Representative Wilson expressed concern over the dealer's storage of personal information. She asked if other businesses, besides pawn shops were subjected to record inspection by law enforcement without a warrant or advance warning.

Ms. Carpeneti offered to provide further information. She was only aware of records inspection for pawn shops.

Representative Holmes confirmed that scrap metal dealers were licensed under DCCED. She asked questions related to Subsection 4 and its duplicative nature. She wondered whether the existing statutes covered all of the different scenarios under which scrap metal could be stolen.

Ms. Carpeneti responded that a definitive answer depended on the facts of the crime but felt that current law provided adequate coverage at the same level of offense. Under current law property damage or theft of \$500 or more was a class C felony of theft or criminal mischief in the third degree. She reiterated that except for laws dealing with a culpable mental state if applicable, current laws adequately covered the crimes.

Representative Holmes cited page 3, lines 21 to 22 "with the intent to damage property of another, the person damages property of another..." She referred to the words in the new subsection 4 "with the intent to deprive another of the metal..." She wondered whether the thief could be prosecuted under subsection 1, if the intent was to steal, but not necessarily damage property (criminal mischief) and the copper wire was worth less than \$500. She asked whether the new subsection was necessary.

Ms. Carpeneti replied that she maintained doubt about the current statutes covering culpable mental states and suggested possible changes in the section regarding culpable mental states. She remarked that adding the specific theft provision prevented the prosecutor from pressing charges for two crimes and made the charges "harder to prove."

Representative Holmes suggested additional work on the CS.

Co-Chair Stoltze apologized that the members did not see the CS in advance. He thought that the legislation was "a good vehicle" to address the issue but he wanted to ensure

the issue was properly addressed. He stated that he would hold the bill.

Ms. Carpeneti shared that she had heard concerns expressed over the ability to get restitution for damages caused by metal theft. She suggested examining the statutes regarding restitution to determine whether they could be made more specific for the crime.

Representative Gara asked what the threshold that turned theft into a felony was

Ms. Carpeneti answered that the amount was \$500.

Representative Gara pondered whether a theft of a \$5000 roll of copper wire that was sold for scrap metal for \$499 was a felony theft.

Ms. Carpeneti responded in the affirmative.

Representative Gara asked whether criminal mischief charges applied to any damage over \$500 that was caused to extract the metal out of a facility.

Ms. Carpeneti replied in the affirmative. The damages would be charged as a felony if the damage was over \$500.

[9:23:23 AM](#)

Co-Chair Stoltze surmised that the metal theft crimes were currently being prosecuted as felonies.

Ms. Carpeneti replied in the affirmative. She qualified that it depended on the facts.

Co-Chair Austerman commented that he had concerns with the bill. He understood the purpose of the legislation but was concerned the CS would affect small communities with small businesses attempting to clean up and remove scrap metal. He stated that in Kodiak it was difficult to move scrap metal out of the community.

Representative Holmes asked whether scrap metal dealers were licensed as a business through DCCED.

DON HABEGER, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE,

COMMUNITY AND ECONOMIC DEVELOPMENT, responded that a business license was required for scrap metal dealers.

HB 305 was HEARD and HELD in committee for further consideration.

HB 306 was SCHEDULED but not HEARD.

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ADJOURNMENT

9:28:37 AM

The meeting was adjourned at 9:28 a.m.