SB
54

2876

ALASKA STATE LEGISLATURE

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Session
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Senator Bill Wielechowski

SPONSOR STATEMENT
Senate Bill 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."

Alaskans are paying far too much for heating and motor fuel. This bill will help reduce the cost of gasoline, and heating fuel for many Alaska residents, from road system communities where the price of gasoline is excessive, to rural communities where the price of heating fuel is far too high.

There is evidence that Alaska's refiners are marking up the cost they pay for crude oil at a rate that far exceeds the markup charged by West Coast refiners, and that is higher than the historical Alaska mark up. Many other states have price gouging laws, and Alaska should have one too.

Most Alaska motor fuel and heating oil is produced by the Tesoro and Flint Hills refineries, with most motor fuel coming from the former. Evidence to date shows that the high price Alaskans are paying for motor fuel and heating oil is caused in large part by this refiner mark-up. While it is understandable that fuel prices will rise and fall with the price of oil, there is questionable justification for the margins Alaska's main refiners are adding to their cost for Alaska crude oil.

This bill provides protection for Alaskan communities, individuals, and businesses that rely on refined petroleum products for heating and transportation by prohibiting refineries from charging excessive or exorbitant prices for heating oil, diesel, and automobile and aircraft fuel. An objective threshold is established where prices are presumed to be excessive or exorbitant, which refiners can rebut by showing that their prices are a reasonable response to expenses. The bill provides for monetary damages to deter potential violators.

During the recent fuel cost crisis, the rate at which Alaskan prices have been higher than Lower 48 rates has consistently exceeded historical norms, and Alaskan prices have increased while Lower 48 rates decreased. Even suspending Alaska's gasoline tax has not been able to eliminate this disparity.

This bill targets refinery prices, because the investigations conducted by the Legislative Research Division and the House Judiciary Committee have shown that the price disparities have arisen because of the prices that refineries sell products to retailers. This bill does not set or control pricing, and disparate pricing would still be legal if refiners can show their prices to be reasonable. This bill only applies to refiners with annual sales of over one million gallons of applicable fuel, exempting smaller community refiners.

While many other states' prohibitions against excessive fuel prices only apply in the event of natural disasters, terrorist attacks, or declared emergencies, Alaska has a unique Constitutional responsibility to ensure that natural resources are used to the maximum benefit of the Alaskan people. This bill prohibits refineries from charging exorbitant or excessive prices that are detrimental to state and local economies and the welfare of individual Alaskans. Also, this recent crisis has shown that high fuel costs alone can be enough to create an economic emergency.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
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MEMORANDUM January 23, 2009

SUBJECT: Senate Bill 54: sectional analysis
(Work Order No. 26-LS0209\E)

TO: Senator Bill Wielechowski

FROM: Jack Chenoweth
Assistant Revisor

Senate Bill 54 makes a refiner's sales of and offers to sell certain energy resources at prices that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act (AS 45.50.471 - 45.50.561).

Bill section 1 amends AS 45.50.471(b) to add, as a new paragraph, the material enacted by bill section 2 to the list of "unfair methods of competition" and "unfair or deceptive acts or practice" set out in the Act.

Bill section 2 adds a new section, AS 45.50.483, to make sale of certain energy resources by Alaska refiners at a price that is "exorbitant or excessive" subject to provisions of the Act. More specifically,

- subsection (a) declares that a refiner may not sell or offer to sell an energy resource at an exorbitant or excessive price;

- subsection (b) specifies the types of fuel to which the section applies;

- subsection (c) declares that it is prima facie evidence that a wholesale price is exorbitant or excessive if the price exceeds by more than 10 percent the average wholesale price of the comparable energy resource charged by refiners in the state of Washington; it also provides that the refiner may rebut the presumption by providing evidence that the price charged was due to reasonable costs incurred by the refiner;

- subsection (d) directs the attorney general to initiate an investigation if that officer believes that this section is being violated;

- subsection (e) specifies the maximum amount the attorney general may recover in civil penalties upon the finding of a violation of the section; and

- subsection (f) supplies a definition for the term "refiner."

This memo was prepared in response to a request by George Ascott.

JBC:lmb
09-005.lmb

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ALASKA STATE LEGISLATURE

Senator Bill Wielechowski

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Senator Bettye Davis

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August 11, 2008

Attorney General Talis J. Colberg
P.O. Box 110300
Juneau, AK 99811-0300

Dear Attorney General Colberg:

We are writing to request an investigation into gasoline pricing in Alaska. As you know, the price of gasoline in Alaska is the highest in the nation. As of today, the average Alaska price is $4.62/gallon, while the national average is $3.88/gallon. This gap of 75 cents is substantially higher than the 20 cent spread that has historically existed. In fact, the actual price spread is higher than 75 cents, as Alaska's gasoline tax—which was 8 cents/gallon until recently suspended—was the second lowest in the country.

We would like to know what is responsible for this unprecedented discrepancy in pricing. Specifically could collusion at the wholesale or retail level be inflating prices in Alaska? We note that in 1999, after the last investigation into gasoline prices was initiated, the spread between Alaska and Lower 48 prices narrowed dramatically. This has led many people to speculate about whether informal price-fixing may have been at work.

We urge you to initiate this investigation as soon as possible as many Alaskans are struggling with today's exorbitant prices and desperately need relief.

Please do not hesitate to contact us if you have any questions about this request.

Sincerely,

Senator Bill Wielechowski

Bettye Davis
Senator Bettye Davis

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
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August 11, 2008

The Honorable Bill Wielechowski
Alaska State Legislature
716 W. 4^{th} Avenue, Suite 540
Anchorage, AK 99501

The Honorable Bettye Davis
Alaska State Legislature
716 W. 4^{th} Avenue, Suite 450
Anchorage, AK 99501

Re: Alaska Gasoline Pricing

Dear Senators Wielechowski and Davis:

Thank you for your August 11, 2008 letter requesting an investigation into gasoline pricing in Alaska. I am also concerned with the high cost of gasoline and the apparent disparity between prices in Alaska and markets in other parts of the United States. On Saturday, August 9, 2008, at the request of the Governor, I directed the Consumer Protection Unit within the Department of Law to initiate an investigation into Alaska gasoline pricing.

We completed a similar investigation in November, 2002 which lasted over three years. The results of that investigation did not find evidence of any illegal activity. This type of investigation is complicated, and will require significant resources including the retention of experts to assist us in gathering and deciphering documents and information. We do not know when the investigation, which must remain confidential, will be completed.

Thank you again for your inquiry. Please contact my office if you have any questions.

Sincerely,

Talis J. Colberg

Talis J. Colberg
Attorney General

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DEPARTMENT OF LAW

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Press Release

ATTORNEY GENERAL'S OFFICE

For Immediate Release
November 20, 2008

UPDATE ON DEPARTMENT OF LAW'S GASOLINE PRICING INVESTIGATION

(Anchorage, Ak) - At the direction of Governor Sarah Palin, the Department of Law began an investigation into the pricing of gasoline in Alaska. The investigation was initiated in August, following the decline of gasoline prices across the country as the price of crude oil began to drop from record highs near $150 a barrel in July. Gasoline prices in Alaska, however, did not follow national trends, and soon became the highest in the nation. The Department's investigation is focused on explaining the slow decline of gasoline prices in Alaska, and whether the price of gasoline is the result of any illegal conduct, like price fixing or other collusive behavior.

The Department's investigation is ongoing, and must remain confidential under state law. The Department has gathered significant information from refiners, distributors, and retailers about the pricing of gasoline, and continues to gather additional data and information. The Department has retained Barry Pulliam, a Senior Economist at the Los Angles firm of Econ One, to assist the Department in its investigation. The Department has also attended two House Judiciary Committee hearings convened to discuss gasoline pricing issues.

The following is some useful information about gasoline pricing generally that may help explain some of the pricing for gasoline in Alaska.

1. The State of Alaska (or any state) does not regulate gasoline prices. Refiners, distributors, and retailers can sell gasoline at any price they want so long as those prices are not the result of collusive behavior, like "price fixing." If the price reached an "unconscionable" level, the price could also violate Alaska's consumer protection laws.

2. Because gasoline pricing is not regulated, economic forces including the available supply, consumer demand, and competition in the marketplace are the primary factors that determine gasoline prices.

3. Alaska does not have a price gouging law. Sellers of all goods and services (including gasoline) are not required to sell products on a "cost plus" basis. Thus, it does not matter what it costs the seller to acquire the goods or provide a service. Sellers can sell their products for whatever the market will bear. There is no "cap" on the amount of profit any business can make.

4. It does not matter what gasoline prices were when the price of oil was the same as it is today. For example, if refiners sold gasoline for $1.10/gallon when oil was $60 a barrel, this does not require them to sell it for $1.10 every time oil is $60 a barrel.

5. The price of gasoline in the lower 48 is not a good indicator of what prices "should be" in Alaska. The competitive forces that operate to control gasoline prices in the lower 48 are completely different from Alaska. The dynamics of supply, demand, and competition are unique in Alaska.

6. The demand for gasoline is not as "price sensitive" in Alaska as it is in other parts of the country. This means that regardless of the price, the demand does not change by much. This creates less incentive for suppliers to lower their price compared to areas of the country where demand drops significantly when prices rise.

7. Gasoline sold in Southeast Alaska is barged up from the Pacific Northwest and from Cook Inlet. Because fuel is only barged in once a month or every few months, it takes longer for prices to reflect current market conditions. It may take two or three months to exhaust current supply before less (or more) expensive gasoline is available and sold to retailers.

8. Some cities and boroughs charge tax on fuel sales. In the Kenai and Soldotna area, for example, the pump price adds a 6% city and borough tax that is not present in other cities, like Anchorage. Coupled with lower volumes and fewer stations, prices will tend to be higher in these communities.

The Department will complete its investigation to determine if there is any illegal activity among gasoline sellers that may be a cause of the high price of gasoline, and will prepare a summary of its findings when the investigation is done.

For further information, contact Department of Law Assistant Attorney General Clyde (Ed) Sniffen at (907) 269-5200.

# # #

Daily Fuel Gauge Report

AAA's Media Site For Retail Gasoline Prices

Metro Averages:

National Average

State by State Average

What's Moving the Market

National Media Contacts

Local AAA Club Media Contacts

Local AAA Clubs

Methodology

Get The Current Fuel Costs For A Trip

Select A Market

Prices updated: 1/27/2009 3:06:26 AM

Data provided by Oil Price Information Service in cooperation with Wright Express

Media are encouraged to localize fuel price stories by contacting their local AAA club media representative.

Current State Averages: Click on state for detailed information

**Prices Are In US Dollars Per Gallon.*

State	Regular	Mid	Premium	Diesel
Alaska	$2.536	$2.683	$2.837	$3.493
Alabama	$1.743	$1.863	$1.919	$2.317
Arkansas	$1.738	$1.834	$1.950	$2.270
Arizona	$1.887	$1.968	$2.081	$2.323
California	$2.101	$2.236	$2.273	$2.485
Colorado	$1.696	$1.814	$1.896	$2.317
Connecticut	$1.905	$2.068	$2.122	$2.779
District of Columbia	$1.895	$2.018	$2.079	$2.774
Delaware	$1.753	$1.862	$1.944	$2.401
Florida	$1.902	$2.060	$2.098	$2.424
Georgia	$1.741	$1.871	$1.954	$2.315
Hawaii	$2.342	$2.477	$2.523	$3.925
Iowa	$1.838	$1.935	$2.027	$2.303
Idaho	$1.689	$1.783	$1.832	$2.417
Illinois	$1.923	$2.069	$2.133	$2.483
Indiana	$1.831	$1.970	$2.025	$2.388
Kansas	$1.776	$1.823	$1.894	$2.259
Kentucky	$1.794	$1.923	$2.010	$2.255
Louisiana	$1.747	$1.862	$1.949	$2.304
Massachusetts	$1.797	$1.932	$2.006	$2.580
Maryland	$1.799	$1.913	$1.962	$2.446
Maine	$1.907	$2.057	$2.114	$2.637
Michigan	$1.894	$2.006	$2.087	$2.391
Minnesota	$1.831	$1.905	$1.954	$2.406
Missouri	$1.696	$1.765	$1.868	$2.121
Mississippi	$1.728	$1.822	$1.904	$2.173
Montana	$1.547	$1.613	$1.691	$2.426
North Carolina	$1.796	$1.906	$1.990	$2.378
North Dakota	$1.855	$1.920	$1.988	$2.697
Nebraska	$1.843	$1.884	$1.937	$2.327
New Hampshire	$1.776	$1.923	$1.992	$2.465
New Jersey	$1.668	$1.788	$1.856	$2.395
New Mexico	$1.862	$1.983	$2.069	$2.353
Nevada	$2.032	$2.142	$2.220	$2.363
New York	$1.966	$2.103	$2.148	$2.830
Ohio	$1.828	$1.949	$2.027	$2.391
Oklahoma	$1.710	$1.768	$1.866	$2.125
Oregon	$1.956	$2.064	$2.095	$2.505
Pennsylvania	$1.863	$1.964	$2.050	$2.578

Rhode Island	$1.855	$1.974	$2.039	$2.612
South Carolina	$1.692	$1.799	$1.887	$2.240
South Dakota	$1.813	$1.929	$2.008	$2.372
Tennessee	$1.713	$1.813	$1.900	$2.279
Texas	$1.720	$1.819	$1.885	$2.258
Utah	$1.649	$1.739	$1.815	$2.329
Virginia	$1.750	$1.836	$1.907	$2.351
Vermont	$1.843	$1.982	$2.069	$2.652
Washington	$2.000	$2.072	$2.175	$2.587
Wisconsin	$1.925	$1.999	$2.091	$2.393
West Virginia	$1.934	$2.022	$2.124	$2.519
Wyoming	$1.503	$1.567	$1.669	$2.304

AAA's Daily Fuel Gauge Report is updated each business day and is the most comprehensive retail gasoline survey available. Everyday over 100,000 self-serve stations are surveyed.

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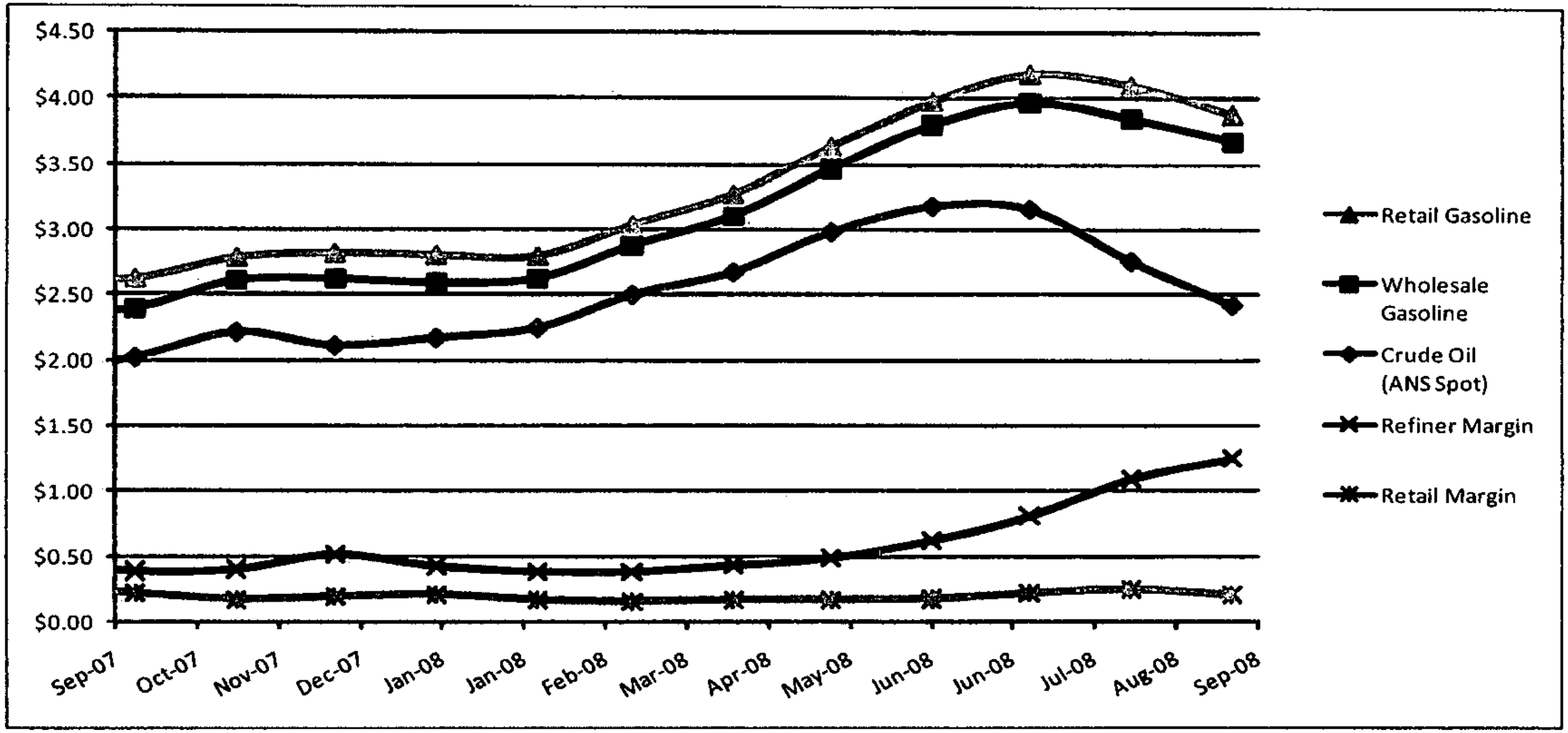
5/11/07

Figure 1: Selected Components of Alaska Gasoline Prices, September 2007 to September 2008



Notes: All dollar amounts are per gallon. We use the word "margin" to mean the proportion of gasoline costs attributable to a certain step in the process of bringing a gallon of gasoline to the retail market. In this context, only a percentage of the total margin is taken as profit.
1) "Retail Gasoline" is the average price of gasoline "at the pump" to end-users and include taxes;
2) "Wholesale Gasoline" is the average price of gasoline charged by Alaska refinters to resellers;
3) "ANS Spot" is the cost of Alaska North Slope crude oil on the commodity market. We calculated this cost by dividing the price per barrel by 42 (the number of gallons in a standard barrel);
4) "Refiner Margin" is refiner wholesale price minus ANS Spot prices;
5) "Retail Margin" is retail price minus wholesale price.
Sources: U.S. Department of Energy, Energy Information Administration, *http://www.eia.doe.gov/.* ; ANS Spot prices are from the Alaska Department of Revenue, Tax Division, *http://www.tax.state.ak.us/.*

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

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December 29, 2004

Ms. Rynnieva Moss
Office of Representative John Coghill
State Capitol, Room 204
Juneau, Alaska 99801-1182

Re: Studies regarding gasoline prices in Alaska by AG's office

Dear Ms. Moss:

You have requested that the Department of Law provide you with copies of any reports done regarding investigation of gasoline pricing in Alaska. I have located two such reports which are enclosed, one prepared by the Alaska Department of Law dated December 21, 2001 and entitled, "Alaska Petroleum Products Pricing Investigation: Update and Status," and the other also prepared by the Alaska Department of Law, dated November 21, 2002 entitled, "Alaska Petroleum Products Pricing Investigation: Closing Report." Please let me know if you have any further questions.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: [signature]
David W. Márquez
Chief Assistant Attorney General
Legislation and Regulations Section
Legislative Liaison

DWM:cb
cc: Gregg D. Renkes, Attorney General
Scott Nordstrand, Deputy Attorney General
Kevin Jardell, Director, Governor's Legislative Office

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ALASKA PETROLEUM PRODUCTS PRICING INVESTIGATION:
UPDATE AND STATUS
Prepared by the Alaska Department of Law
December 21, 2001

Introduction

The Office of the Attorney General for the State of Alaska began an investigation of Alaska petroleum prices in 1999 by issuing Civil Investigative Demands to petroleum refiners and product distributors. The investigation was begun because of public complaints and inquiries to the Attorney General about the high price of gasoline in Alaska in comparison to other states. The purpose of the investigation is to determine whether Alaska petroleum product pricing is the product of illegal price fixing or other anticompetitive behavior in violation of state or federal statutes.

The Attorney General's investigation is ongoing. The Department of Law is reviewing the documents and data provided by the state's gasoline marketers. The Department of Law has not made a determination regarding whether there is sufficient evidence to warrant bringing an antitrust or other enforcement action.

Background

To bring an action under Section One of the Sherman Act (the federal antitrust law) or under AS 45.50 (Alaska's antitrust law), there must be evidence of an illegal agreement. This could be an actual written agreement, testimony, or other evidence of an agreement to fix prices, divide the market, or otherwise restrain competition.

Under existing law, the State of Alaska does not attempt to regulate wholesale or retail gasoline prices. A business is free to set its own price, but it is illegal for a business to collude with competitors to set prices.

The state has reviewed thousands of pages of documents, conducted interviews, and reviewed market data to determine whether there is direct evidence of an illegal agreement.

All material and data provided to the state in response to the civil investigative demands of the Attorney General are confidential by statute. AS 45.50.592(e). The following is a summary of the non-confidential portions of the analysis prepared by the department to date.

Price Differences Between Alaska and the Lower 48

Retail prices of gasoline in Alaska have more closely followed prices in other West Coast states than prices in the rest of the U.S. Given Alaska's relative proximity to the West Coast, this probably is to be expected. Though Alaska's refineries supply much of the petroleum products required in the state, jet fuel, diesel, and gasoline have regularly been shipped from West Coast refineries to Alaska during the past decade. (Alaska's sources of supply for petroleum products are discussed in greater detail below.) In addition, gasoline and other products have been exported from Alaska to the West Coast. Because West Coast refineries are the closest alternative source of refined petroleum products outside Alaska, and because refined products move from Alaska to the West Coast, Alaska prices are influenced by West Coast prices.

Unfortunately, gasoline prices on the U.S. West Coast have, historically, been higher than prices in the rest of the U.S. Over the past seven years, the average retail price for gasoline, excluding taxes[1], on the West Coast has been 11 cents per gallon ("cpg") higher than the average retail price throughout the 50 states.

Concerns expressed by consumers and others about West Coast gasoline prices prompted the Federal Trade Commission ("FTC") to initiate an investigation. The FTC studied West Coast gasoline pricing practices for almost three years, but ultimately concluded that there was nothing unlawful about the manner in which West Coast wholesalers priced gasoline.

The FTC closed its West Coast investigation in May 2001. In doing so, it concluded that the West Coast has several important characteristics that set it apart from much of the rest of the U.S. gasoline market. One of the most important characteristics is the West Coast's relative distance from the Gulf Coast. The Gulf Coast is the largest refining center in the U.S. and an important source of supply of gasoline and other refined products. Refined products move to much of the U.S. from Gulf Coast refineries through a network of pipelines. There are no pipeline connections, however, between the Gulf Coast's refineries and the West Coast. This means that products like gasoline moving from the Gulf Coast's refineries to the West Coast must be shipped through the Panama Canal on marine tankers. This may explain in part why gasoline and other products refined on the West Coast command higher prices.

Unique product requirements, such as those imposed by the California Air Resources Board ("CARB"), also tend to raise the price of gasoline. In addition, there are a limited number of gasoline refiners and wholesalers on the West Coast, and all refiners and wholesalers do not compete in all metropolitan areas.

[1] Retail gasoline prices at the pump include federal, state, and local taxes. Since Alaska has one of the lowest gasoline taxes in the nation, retail price comparisons understate the differences between prices in Alaska and elsewhere unless taxes are deducted.

Apart from the CARB standards, the West Coast market characteristics identified above are also present in Alaska. Compared to the West Coast, however, Alaska is even more distant from Gulf Coast product markets, has fewer refiners, and has even greater wholesale market concentration. This may explain in part why Alaska prices tend, on average, to be higher than those in other western states.

Yet these market characteristics, by themselves, do not explain why the price difference between Alaska and the West Coast grew sharply between 1995 and 1998. During this period, Anchorage-area prices were on average 17 cpg above retail prices in the Seattle area, a level nearly double the 9 cpg difference seen in the prior four years. This is curious given that Alaska refiners produced more gasoline during this period than was consumed here, and exported the surplus to the West Coast and Far East at prices lower than those offered in Alaska. Beginning in 1999, however—after the Attorney General initiated this investigation—the spread narrowed dramatically. Between January 1999 and December 2000, Anchorage-area retail prices averaged just 3 cpg above Seattle-area retail prices.

Supply and Demand of Petroleum Products

In addition to gasoline, the other major petroleum products sold in Alaska are jet fuel and diesel (No. 2 heating oil and No. 2 diesel fuel). These products and gasoline constitute more than 95% of the total volume of petroleum products sold in the state.

The Tesoro and Williams refineries produce gasoline, jet fuel, and diesel. The PetroStar refinery produces jet fuel and diesel, but no gasoline.

The Williams refinery, near Fairbanks, and the PetroStar refineries, near Fairbanks and in Valdez, all take Alaska North Slope crude ("ANS") directly from the TAPS line. Both companies reinject the unrefined portion of ANS back into the TAPS line.

Alaska's current demand for refined petroleum products is approximately 100 thousand barrels per day (MBD), or 1.5 billion gallons per year. Jet fuel consumption is just over 60 MBD, accounting for a little more than 60% of total demand for refined product in the state. Consumption of diesel and gasoline in Alaska runs approximately 16 MBD, or 245 million gallons per year, for each product.

More gasoline is produced in Alaska than is consumed. The excess is exported to the West Coast and foreign destinations. Nevertheless, gasoline, diesel, and jet fuel are barged into southeastern Alaska from Seattle-area refineries.

Historically, Alaska's refineries have not produced enough jet and diesel fuel to supply the state. These products are imported from the Far East or the West Coast.

Tesoro's refinery supplies the majority of gasoline consumed in Alaska, but Williams supplies most of the gasoline sold in Fairbanks and interior Alaska. Williams also ships gasoline and jet fuel by rail to Anchorage.

The Anchorage metropolitan area accounts for about 60% of the state's retail gasoline sales while Fairbanks, Juneau, the Kenai Peninsula, and Western Alaska account for roughly 10% of retail sales each. There are approximately 300 service stations in Alaska. About one-third of Alaska's 300 retail gasoline stations are located in the Anchorage area. The average retail station in Anchorage is larger and sells much higher volumes than stations in the rest of the state.

Alaska's Gasoline Industry Is Highly Concentrated

Williams, Tesoro, Chevron, and Texaco[2] account for the vast majority of gasoline marketed in Alaska. The state's two gasoline refiners, Williams and Tesoro, were also its largest gasoline marketers, accounting for nearly 65% of Anchorage-area sales between them in 1999. Chevron and Texaco accounted for approximately 32% of Anchorage volumes. These same four marketers have accounted for nearly all of Alaska's gasoline sales over the past decade.

For purposes of analyzing competition within a market, the U.S. Justice Department and the Federal Trade Commission categorize markets into the following three groups: Unconcentrated, Moderately Concentrated, Highly Concentrated. Alaska's gasoline industry is Highly Concentrated at both the refining and wholesale distribution levels. Wholesale gasoline markets in Alaska are more concentrated than in most other wholesale gasoline markets in the U.S. and on the West Coast. Analysis of the available market share data shows that with the exception of the southeast part of the state, concentration levels are much higher in regions outside of Anchorage.

Competition, Oligopoly, and Illegal Behavior

Unconcentrated markets are characterized by a large number of sellers offering the same or similar products to consumers who can shop for the best value. Unconcentrated markets are generally assumed to be competitive. The more sellers, the more likely competition will thrive. In a competitive situation, no single seller has market power; the

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[2] Since the late 1990's, in the West and Midwest, Texaco brand gasoline has been marketed by Equilon, a joint venture between Texaco and Shell. As a condition to approving the recent merger of Chevron and Texaco, Alaska, other states, and the Federal Trade Commission required Texaco to divest its interest in Equilon to Shell or another buyer. Therefore, the Chevron-Texaco merger should not reduce competition in the Alaska gasoline market.

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power to influence prices in the market on its own. Also where there are many sellers, it is difficult for sellers to coordinate their behavior or agree to volume or price restrictions without being detected.

In a competitive market, sellers are motivated to lower their prices in order to increase their sales, while buyers are motivated to seek out the best deal. Prices will tend to drop over time until they are close to sellers' costs. If prices begin to rise above costs, sellers will try to take advantage of the opportunity to increase profits by making more of the product available in the market. This increase in supply will in turn drive prices down to the point where they again are close to the sellers' costs. If prices fall to a level that does not cover sellers' costs, some sellers will go out of business. Those that are left will offer less of the product until prices start to increase again.

On the other end of the spectrum are highly concentrated markets, where there are relatively few sellers of a particular product. Economists call such a market an "oligopoly." Oligopolies do not always lead to higher prices, however. Prices in an oligopoly can be competitive even when there are very few sellers if, for example, potential new sellers are ready, willing, and able to enter the market in the event of even a small increase in price. In this situation, the threat of additional competition may tend to keep prices low. However, if there are relatively high costs associated with entering a market (entry barriers), existing sellers may be able to increase prices without much concern about attracting new competition.

When there are few sellers in a market, it is, presumably, easier for each to observe how its competitors react to decisions regarding output and prices, and each may take into account the potential impact of its own actions on market prices and the potential responses from other sellers. This type of competitive behavior, which is dependent in part on the expected actions or reactions of other sellers, is often referred to as "oligopolistic pricing" or "oligopolistic interdependence." In this environment, it is easy for sellers to develop a "live and let live" attitude toward their rivals that would not be possible to maintain in a competitive market. As a result, oligopolistic behavior can result in prices that are above competitive levels over extended periods of time.[3]

This type of interdependent behavior on the part of sellers is not generally regarded as a violation of antitrust laws so long as each business develops and implements its pricing and output decisions independently. That is, in determining what volumes to produce or what prices to offer, businesses can incorporate their expectations about a rival's likely reactions as long as those expectations are developed independently and without the aid of other sellers. If the sellers communicate about price setting or enter into

[3] Not all economists agree with this theory, and some would require empirical evidence supporting the theory before considering it valid for a particular market. In any event, whether higher-than-competitive prices in a market can be explained by oligopolistic interdependence is highly dependent on the facts.

an agreement that affects prices, it is considered collusion and a violation of the antitrust laws.

Economists believe collusion is more likely when certain conditions are present in a market, especially in markets for a relatively homogenous product like gasoline. These conditions include (1) the presence of only a few sellers (oligopoly), (2) inelastic demand, (3) relatively static or declining demand over time, (4) easy detection of sales by competitors, (5) price visibility, (6) difficulty of entry by potential new competitors, (7) frequent contact between sellers, and (8) few "fringe" or smaller sellers. All of these conditions are present in Alaska. But their presence, together with gas prices higher than one would expect in a competitive market, do not in themselves constitute a legal basis for an antitrust enforcement action. There must also be evidence of an illegal agreement or evidence that would allow the inference of such an agreement.

Additional Information on the Investigation

The companies have recently finished producing documents to the state. The state is in the process of reviewing and analyzing those documents to determine whether any laws or regulations have been violated.

Under Alaska's antitrust law, many aspects of this case are to be kept confidential. In particular, documents and their contents provided to the state in response to the Civil Investigative Demands (CIDs) issued by the Office of the Attorney General are to be kept confidential in the absence of a court order authorizing their disclosure to the public. AS 45.50.592(e). Such an order might be requested by the state if the investigation leads to an enforcement action. If the state finds no evidence of a violation of the antitrust laws, CID information may not be disclosed to the public in the absence of express authorization by the firm that provided the documents. AS 45.50.592(e). Because of the lawsuits filed against the state by some of the companies being investigated, court pleadings have been filed in the public record that contain some information about the investigation that would normally not be available to the public.

The state's initial CIDs were served upon several dealers of wholesale petroleum products in June, July, and August of 1999. Shortly thereafter, Tesoro, Chevron, and Texaco filed suit in Alaska Superior Court in Anchorage protesting the scope of the CID questions and the state's intended use of the produced documents. Those cases were consolidated under case number 3AN-99-8544CI. In an order issued October 7, 1999, the Superior Court upheld the propriety of the CIDs, with minor modification to a small number of questions, and the right of the state to share the documents with contract counsel without permission of the producing companies.

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On October 13, 1999, Tesoro filed an appeal of the Superior Court's decision in the Alaska Supreme Court (Case No. S9379). Tesoro appealed both the scope of the CIDs and the state's right to share documents with contract counsel. The Alaska Supreme Court heard oral argument on November 15, 2000, but has yet to issue a decision.

The initial petition filed by Tesoro in the Superior Court explains Tesoro's contentions with respect to the scope of the CID. The CID, attached to the petition as an exhibit, lists the issues being examined by the Department of Law. Likewise, the state's opposition to Tesoro's petition outlines the issues that are the focus of the CID. The state's brief in the Alaska Supreme Court analyzes the issues being pursued and gives a brief history of the case proceedings. These documents are available at the state court clerk's office in Anchorage.

Other Resources

Interested persons may obtain gasoline pricing information from a number of sources on the Internet. The Energy Information Agency of the Federal Department of Energy tracks petroleum-related information nationwide. It compiles retail and wholesale gasoline pricing data and maintains reference documents about petroleum economics and various aspects of the energy markets:
http://www.eia.doe.gov/

There is information on average wholesale prices at:
http://www.eia.doe.gov/pub/oil_gas/petroleum/data_publications/petroleum_marketing_monthly/current/pdf/pmmtab35.pdf

The following article discusses the reasons that West Coast prices tend to be higher than those in the rest of the country:
http://www.eia.doe.gov/pub/oil_gas/petroleum/presentations/2001/senate_testimony/index.html

The following article explains the many factors influencing the costs of refining:
http://www.eia.doe.gov/emeu/finance/usi&to/downstream/index.html

In August 2001, the Federal Trade Commission conducted a hearing regarding factors influencing the price of refined petroleum products. Testimony and information regarding that hearing can be found at:
http://www.ftc.gov/bc/gasconf/

The American Automobile Association publishes daily average gasoline prices at:
http://www.fuelgaugereport.com/

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Disclaimer: This page contains hyper links to World Wide Web sites that are created and maintained by other organizations. We have included these links because we think that visitors to our site may find them of interest. We do not guarantee the accuracy or completeness of any information presented on these sites. The Office of the Attorney General does not necessarily endorse the views expressed on these web sites.

ALASKA PETROLEUM PRODUCTS PRICING INVESTIGATION:

CLOSING REPORT

Prepared by the Alaska Department of Law

November 21, 2002

Introduction

At my direction, the Alaska Department of Law conducted an extensive three-year investigation into the pricing of petroleum products in Alaska. The investigation was initiated in 1999 in response to public complaints about the high price of gasoline in Alaska in comparison to other states. I am closing the investigation because there is insufficient evidence indicating a violation of the antitrust laws.

Conditions Prompting the Investigation

Historically, the price of gasoline on the West Coast of the United States averaged 11 cents per gallon (cpg) higher than the average retail price throughout the 50 states, excluding taxes,[1] and the price of gasoline in Alaska has tended to be higher than the price of gasoline on the West Coast by about 9 cpg. Between 1995 and 1998, however, gasoline prices in Alaska were as much as 17 cpg higher than West Coast prices. This was the impetus for the investigation. Immediately after I initiated the investigation, beginning in 1999, the spread between prices in Alaska and the West Coast narrowed dramatically, more closely tracking the historical spread between Alaska and the other states.

Legal Standards

In order to establish a violation of Alaska's antitrust statute, AS 45.50.562 and AS 45.50.564 (or the comparable federal law), there must be evidence that two or more companies entered into an express or "tacit" agreement to fix petroleum prices. A showing that companies charged prices in excess of the competitive level, or raised and lowered prices in a parallel fashion, is not enough to establish the existence of a tacit agreement. Instead, evidence of uniform pricing must be accompanied by additional evidence demonstrating that two or more parties had a "meeting of the minds" to engage in cooperative pricing behavior, such as: (1) actions contrary to an entity's independent economic interests; (2) departure from normal business practices; (3) motive to conspire; (4) opportunity to conspire; (5) high level of inter-company communications; and (6) past antitrust violations involving collective action.[2]

[1] Retail gasoline prices at the pump include federal, state, and local taxes. Since Alaska has one of the lowest gasoline taxes in the nation, retail price comparisons understate the differences between prices in Alaska and elsewhere unless taxes are deducted.

[2] *See, In re Baby Food Litigation*, 166 F.2d 112, 122 (3d Cir. 1999) (proof of plus factors is a "prerequisite to finding that parallel action amounts to a conspiracy").

The Investigation

The investigation began in the summer of 1999 when my staff issued Civil Investigative Demands (CIDs) to refiners and distributors of petroleum products in the state. Hundreds of boxes of documents were produced in response to the demands. The investigation involved the review of thousands of pages of internal company documents, detailed analysis of pricing data, interviews of witnesses and potential witnesses, and formal depositions of several current and former oil company employees and executives.

Findings

My staff provided a summary of the investigation in a report entitled "Alaska Petroleum Price Fixing Investigation: Update and Status," December 21, 2001, http://www.law.state.ak.us/civil/oil-gas-mining/AKPPPI-1a_final.pdf. That report describes the economic conditions and market forces present in Alaska that affect the pricing of petroleum products. All of the information and data provided to me in response to the CIDs is, by statute, confidential. AS 45.50.592(e).

The investigation found that Alaska's gasoline industry is highly concentrated, in that four marketers accounted for the vast majority of gasoline sales during the relevant time period. When there are few sellers in a market, like Alaska, it is easier for them to observe how competitors react to decisions regarding output and prices, and each may take into account the potential impact of its own actions on market prices and the potential responses from other sellers. This type of interdependent behavior on the part of sellers often leads to parallel pricing, but that is not, in the absence of an express or implied agreement to set prices, a violation of the antitrust laws so long as each business develops and implements its pricing and output decisions independently. The investigation has not produced evidence of an express or implied agreement to set prices or to otherwise violate antitrust laws.

For the reasons set forth above, I am closing this investigation without further action. However, I expect the Department of Law to continue to monitor gasoline prices in Alaska.

Justin Powell
1075 Trianon Dr.
Fairbanks, Alaska

Testimony to Energy Committee on SB54
February 12, 2009

I imagine that all members of this committee have read the House Judiciary Committee's report on gas prices. In my testimony today I want to point our several omissions from the report that dramatically effect the conclusion the committee chair has reached.

The burden that high gas prices have on Alaska residents is real and our prices over the last year are unjustified. Gasoline, diesel and heating oil are not a luxury items that households can simple go without. In the winter, heating oil is literally a life and death matter. High energy prices have a ripple effect through the economy as every resident pays for our higher fuel costs several times over.

We have been paying over a dollar a gallon at the gas pump and this has been a highly visible and contentious issue. What is less obvious is that we then pay again in increase freight costs for food, clothing and retail products. We pay more to heat our homes and then in turn have to pay more for goods and services as businesses are forced to pass on their additional energy costs.

Lacking from the judicial committee report was quantitative information. Based upon the latest published information, the annual gasoline consumption in Alaska is 285 million gallons[1]. At a conservative estimate of $.80 cents over Seattle prices Alaska consumers are paying an additional $230 million dollars a year for gasoline alone. This is money that leaves our state and provides us no direct or indirect benefit.

The house judiciary committee report concluded that our gas prices are basically subsidizing jet fuel to keep Alaska's airline industry profitable. Unfortunately these findings were based on intuition rather than fact. As I just stated, Alaska's gas market is 285 million gallons annually. The jet market on the other hand is over four times this volume at 1.3 billion gallons annually[2]. If the extra $230 million dollars that Alaskans are paying was added to the cost of jet fuel it would raise the price by only 4.6 cents a gallon or 2%.

It is hard to reach the conclusion that 4.6 cents would bring an end to the Alaska airline industry. The report stated that refiners in Alaska do not base their gas prices on their cost but rather base the price on market conditions. The same holds true for the airline industry. Airline fares often cost double or more for endpoint within Alaska compared to fares in the lower 48. This is not a function of increased costs, but rather lack of competition. Even if fares did increase to cover the added 4 cents, at least then the cost would be born by the users of the service and not by all Alaskans.

[1] U.S. Energy Information Administration 2006 report, Consumption of 6,789 thousand barrels of gasoline.
[2] U.S, Energy Information Administration 2006 report, Consumption of 31,747 thousand barrels of jet fuel.

The report also said that Ft. Greely, Eielson and Ft. Wainwright would be impacted and potential shut down by any potential legislation. It is far flung to conclude that the military would sacrifice our national defense for 4.6 cents per gallon. Additionally, the prime supplier for all military installations in Alaska is the Petrostar refinery who would be exempt under section (f) of this bill.

In conclusion I feel that lower gas prices would have a positive effect on our economy and that the benefits far outweigh the potential impacts to the airline industry. Industries such as fishing, tourism, recreation and ground transportation are no less important than air transportation. The $230 million dollars extra we are currently paying at the pump would be spent within the state, benefiting Alaska's economy, rather than large airline corporations..

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Chenoweth
3/10/09

CS FOR SENATE BILL NO. 54( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS WIELECHOWSKI, ELLIS AND FRENCH, Thomas

A BILL

FOR AN ACT ENTITLED

"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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

(56) violating AS 45.50.483 (sales of certain energy resources by refiners).

* **Sec. 2.** AS 45.50 is amended by adding a new section to read:

Sec. 45.50.483. Sales of certain energy resources by Alaska refiners. (a) A refiner may not sell or offer to sell an energy resource at a price that is exorbitant or excessive.

(b) The provisions of this section apply only to sales of

(1) motor fuel used in an engine for the propulsion of a motor vehicle, as that term is defined in AS 28.90.990, or an aircraft;

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(2) fuel for space heating; and

(3) diesel fuel.

(c) If the attorney general believes that a refiner has engaged in or is engaging in a violation of (a) of this section, the attorney general shall initiate an investigation under AS 45.50.495.

(d) Notwithstanding the penalties authorized by AS 45.50.551, the attorney general may recover, on behalf of the state, a civil penalty of not less than the greater of

(1) 10 times the economic benefit obtained by the refiner through the refiner's conduct that violated or violates this section; or

(2) $50,000,000.

(e) In this section, "refiner" means a company, corporation, or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of an energy resource described in (b) of this section having total annual sales that exceed 1,000,000 gallons of all of those energy resources.

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Chenoweth
3/17/09

CS FOR SENATE BILL NO. 54( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS WIELECHOWSKI, ELLIS, AND FRENCH, Thomas

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

(56) violating AS 45.50.483 (sales of certain energy resources by refiners, distributors, and retailers).

*** Sec. 2.** AS 45.50 is amended by adding a new section to read:

Sec. 45.50.483. Sales of certain energy resources by Alaska refiners, distributors, and retailers. (a) A refiner, distributor, or retailer may not sell or offer to sell an energy resource described in (b) of this section at a price that is exorbitant or excessive.

(b) The provisions of this section apply only to sales of

(1) motor fuel used in an engine for the propulsion of a motor vehicle,

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as that term is defined in AS 28.90.990, or an aircraft;

(2) fuel for space heating; and

(3) diesel fuel.

(c) If the attorney general believes that a refiner, distributor, or retailer has engaged in or is engaging in a violation of (a) of this section, the attorney general shall initiate an investigation under AS 45.50.495.

(d) In addition to the civil penalties authorized by AS 45.50.551, the attorney general may recover, on behalf of the state, a civil penalty of not less than 10 times the economic benefit obtained by the refiner, distributor, or retailer through the conduct of the refiner, distributor, or retailer that violated or violates this section.

(e) Only the attorney general may bring an action to enforce this section. In an action to enforce this section in which the attorney general is the prevailing party, the attorney general may recover attorney fees and costs as authorized by AS 45.50.537(d). The provisions of AS 45.50.531 and 45.50.535 do not apply to authorize a person

(1) who suffers an ascertainable loss of money or property as a result of the act of a refiner, distributor, or retailer declared unlawful by this section to bring a civil action to recover for each unlawful act; or

(2) who was the victim of an unlawful act under this section, whether or not the person suffered actual damages, to bring an action to obtain an injunction prohibiting the refiner, distributor, or retailer from continuing to engage in the act that is made unlawful by this section.

(f) In an action to enforce this section, a refiner, distributor, or retailer has the right to submit evidence that the price charged by the refiner, distributor, or retailer that is alleged to be exorbitant or excessive was attributable to additional reasonable costs incurred in connection with the sale of the energy resource by the refiner, distributor, or retailer.

(g) In this section,

(1) "distributor" means a person or corporation other than a refiner who is engaged in the sale, assignment, or distribution of an energy resource described in (b) of this section to one or more retailers for sale through retail outlets;

(2) "refiner" means a company, corporation, or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of an energy resource described in (b) of this section having total annual sales that exceed 1,000,000 gallons of all of those energy resources;

(3) "retailer" means a person in the state who is engaged in the business of selling at retail an energy resource described in (b) of this section.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **CSSB 54(ENE)**
(S) Publish Date: 3/16/09

Identifier (file name): SB054-LAW-CIV-2-11-09
Title: An Act related to refiner price gouging for motor fuel, diesel, and heating fuels.
Sponsor: Senator(s) Wielechowski, Ellis, French, Thomas
Requester: ENE

Dept. Affected: LAW
RDU: CIVIL
Component: COMMERCIAL & FAIR BUSINESS
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost: ____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

See attached page...

Prepared by: Robert Meiners, Deputy Director
Phone 907.465.5427
Division: Administrative Services Division
Date/Time 1/31/09 11:00 AM
Approved by: Talis Colberg, Attorney General
Department of Law
Date 1/31/2009

(Revised 9/10/2008 OMB)

2906

FISCAL NOTE # 1

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. CSSB 54(ENE)

ANALYSIS CONTINUATION

SB 54 amends AS 45.50 to add a new section that prohibits a refiner from selling an energy resource at a price that is exorbitant or excessive. The bill only applies to motor fuel, diesel, and heating fuel. Violations of this law would become violations of the consumer protection act, and enforceable by the attorney general. The bill requires the attorney general to initiate an investigation upon belief that a refiner has engaged in a violation of the statute. Penalties under the statute are set at 10 times the economic benefit obtained through the refiner's conduct, or $50 million, whichever is greater.

Because it is difficult to predict when a refiner may be engaging in illegal conduct under this bill, the resources necessary to investigate and enforce this bill is unknown. The two recent gasoline pricing investigations undertaken by the attorney general required significant time and resources, including the retention of an expert economist. Petroleum pricing investigations take several months if not years. The most recent investigation spanned five months, and required a contract with an economic expert for $250,000. The prior investigation took three years, and significant resources, including retention of economic experts.

Accordingly, the fiscal impact of this legislation on the department of law is indeterminate, and would depend on the number of investigations required.