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THE SUPREME COURT OF THE STATE OF ALASKA

CATHERINE SCALF, Appellant, v. CLASSIC ALASKA TRADING/BIG RAY'S ALASKA, INC., Appellee.	Case No. S-17200

U. S. District Court No. 4:16-cv-00005 SLG

BRIEF OF APPELLEE,
CLASSIC ALASKA TRADING/BIG RAY'S ALASKA, INC.,
ON CERTIFIED QUESTION

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Filed in the Supreme Court
for the State of Alaska,
this 15th day of March, 2019.

By _____
(Deputy) Clerk of Court

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STATUTORY PROVISIONS PRINCIPALLY RELIED UPON

There are no statutory provisions principally relied upon.

CERTIFIED QUESTION

Pursuant to Alaska Rule of Appellate Procedure 407, the district court in *Suzanne Blake & Catherine Scalf v. Classic Alaska Trading/Big Ray's Alaska, Inc.* ("*Blake*") certified the following question to this Court:

> What burden of proof applies to the determination of whether an employee is exempt from the overtime requirements of the Alaska Wage and Hour Act (AWHA) as an executive or administrative employee?

Exc. 46 (*Blake*, No. 4:16-cv-00005-SLG, DK 141 (D. Alaska Aug. 27, 2018) ("Certifying Order") at 6).

ARGUMENT

I. THE *DAYHOFF* BURDEN OF PROOF ORIGINATED IN ERRONEOUS DICTA THAT THIS COURT HAS SUBSEQUENTLY QUESTIONED

Under the Fair Labor Standards Act (FLSA), an employer must prove an exemption from overtime requirements "by a preponderance of the evidence."[1] In *Dayhoff v. Temsco Helicopters, Inc.*, this Court held that the AWHA requires employers to prove an exemption "beyond a reasonable doubt."[2] However, the *Dayhoff* court simply adopted what was believed to be the federal standard under the FLSA at the time.[3] As discussed below, this belief was incorrect.

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[1] *Resurrection Bay Auto Parts, Inc. v. Alder*, 338 P.3d 305, 308 n.14 (Alaska 2014).

[2] *Dayhoff*, 848 P.2d 1367, 1371-72 (Alaska 1993); *see Fred Meyer of Alaska, Inc. v. Bailey*, 100 P.3d 881, 884 (Alaska 2004) (citing *Dayhoff*, 848 P.2d at 1371-72).

[3] *See Dayhoff*, 848 P.2d at 1372 (quoting *Adam v. United States*, 26 Cl. Ct. 782, 786 (Cl. Ct. 1992)).

In *Dayhoff,* this Court addressed the question of whether helicopter pilots were exempt professional employees under the AWHA. *Id.* at 1371-72. Although from a procedural standpoint the *Dayhoff* case was presented to this Court on summary judgment,[4] and although this Court had previously ruled that, unlike the federal summary-judgment standard, Alaska's summary-judgment standard does not take into account the evidentiary burden of proof at trial,[5] this Court proceeded to quote a U.S. Claims Court decision to the effect that: "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled non-exempt." *Adam v. United States*, 26 Cl. Ct. 782, 786 (Cl. Ct. 1992). Not only was the "reasonable doubt" standard for an exemption unnecessary to the summary judgment decision the Court made in *Dayhoff*, and thus the statement regarding the evidentiary standard dicta, but Dayhoff had not articulated the "reasonable doubt" standard in his briefs to the Court.[6]

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[4] *See Dayhoff,* 848 P.2d at 1369.

[5] *See Moffatt v. Brown*, 751 P.2d 939, 944 (Alaska 1988) (the Court rejected a summary judgment standard in which the appropriate question will be whether the evidence in the record could support a reasonable jury making a finding based upon the evidentiary burden of proof, namely "clear and convincing evidence); *see also Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 449 and n.55 (Alaska 2002) (confirming that *Moffatt* previously rejected the federal summary judgment standard that takes the evidentiary burden of proof into account).

[6] *See* 1991 WL 11665305 *15-16 and n.10 (Dayhoff's Opening Appellant's Brief); 1992 WL 12564051 (Dayhoff's Reply Brief). Neither of Dayhoff's briefs to the Alaska Court even suggest, let alone argue, that a "beyond a reasonable doubt" burden of proof should apply to the determination of an exemption under the AWHA. And, neither of Dayhoff's briefs cite the *Adam* decision of the United States Claims Court. *See* 1991 WL 11665305 *iv; 1992 WL 12564051 *iii.

Eleven years later, this Court cited *Dayhoff's* dicta in *Fred Meyer*, 100 P.3d at 884, and expanded it into a "beyond a reasonable doubt" evidentiary burden of proof for establishing an overtime exemption under the AWHA. *Id.* ("The burden is on the employer to prove beyond a reasonable doubt that the employee is exempt.").[7] However, in *Resurrection Bay*, 338 P.3d at 308 and n.14, this Court cast doubt on the idea that exemptions under the AWHA must be proven "beyond a reasonable doubt." In *Resurrection Bay,* the Court noted:

> The superior court held that Mullings "had the burden of proving the exemption by clear and convincing evidence," citing *Desmond v. PNGI Charles Town Gaming*, LLC, 564 F.3d 688, 691 (4th Cir. 2009). We have held, however, that employers are required to prove AWHA exemptions "beyond a reasonable doubt." *Fred Meyer*, 100 P.3d at 884; *Dayhoff*, 848 P.2d at 1371–72. Although the burden-of-proof issue is not raised on appeal, we note that other than the Fourth, the circuits that have explicitly adopted a standard of proof for the applicability of FLSA exemptions require proof by a preponderance of the evidence. *See Meza v. Intelligent Mexican Mktg., Inc.*, 720 F.3d 577, 581 (5th Cir. 2013); *Foster v. Nationwide Mut. Ins. Co.*, 710 F.3d 640, 646 (6th Cir. 2013); *Lederman v. Frontier Fire Prot., Inc.*, 685 F.3d 1151, 1158 (10th Cir. 2012); *Yi v. Sterling Collision Ctrs., Inc.*, 480 F.3d 505, 507 (7th Cir. 2007); *Dybach v. State of Fla. Dep't of Corr.*, 942 F.2d 1562, 1566 n.5 (11th Cir. 1991); *Dickenson v. United States*, 353 F.2d 389, 392 (9th Cir. 1965).

Id. at 308 n.14. The burden of proof was not raised by the parties on appeal in *Resurrection Bay*, and thus the Court did not address it substantively.

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[7] Again, *Dayhoff's* statement of a "reasonable doubt" standard was dicta. *Dayhoff*, 848 P.2d at 1372. Also, *Dayhoff* had not precisely articulated the standard as an evidentiary burden of proof. *Id.*

As this Court noted in *Resurrection* Bay, federal courts, including the Ninth Circuit, have long applied a preponderance-of-the-evidence standard for establishing overtime exemptions under the FLSA. *See Resurrection Bay*, 338 P.3d at 308 n.14 (citing *Dickenson*, 353 F.2d at 392).[8] Thus, in 1993, when the Alaska Court issued its *Dayhoff* decision and included the dicta regarding a "reasonable doubt" standard for proving overtime exemptions, federal courts, including the Ninth Circuit, were actually applying a preponderance-of-the-evidence standard for overtime exemptions under the FLSA. *See Dybach*, 942 F.2d at 1566 n.5 (decided in 1991); *Dickenson*, 353 F.2d at 392 (decided in 1965). None of these courts apply the burden of proof that originated in *Dayhoff*. Moreover, the minority of federal courts departing from the preponderance standard have often done so either without analysis or through error.[9]

Just as *Dayhoff* cited to the *Adam* case without briefing by the parties or analysis by the Court,[10] the *Adam* case did not cite to judicial precedent regarding a reasonable-doubt

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[8] *See also* Brief of Amicus Curiae submitted by the Alaska Society for Human Resource Management, State Council (February 14, 2019) at 4-7.

[9] *See Shockley v. City of Newport News*, 997 F.2d 18, 21 (4th Cir. 1993) (providing no explanation for applying a "clear and convincing" burden of proof); *see also Astor v. United States*, 79 Fed. Cl. 303, 308 (Fed. Cl. 2007) (citing *Shockley* without analysis); *Wright v. Monroe County*, 2007 WL 1434793 at *2 (W.D.N.Y. May 14, 2007) (citing *Shockley* without analysis). In *Hall v. Porter Yett Co., Inc.*, 1991 WL 66830 (D. Ore. April 19, 1991), the court erroneously applied a "clear and convincing" standard by misinterpreting the Tenth Circuit case *Donovan v. United Video, Inc.*, 725 F.2d 577, 581 (10th Cir. 1984), which as analyzed by the Sixth Circuit in *Renfro v. Indiana Michigan Power Co.*, 497 F.3d 573, 576 (6th Cir. 2007), did not raise the evidentiary burden but merely clarified that the applicability of an exemption is an affirmative defense.

[10] *Dayhoff*, 848 P.2d at 1372.

burden of proof. Rather, the court in *Adam* quoted from Civil Service Commission instructions in the context of establishing which party bore the burden of proof, without any analysis regarding that burden.[11] Likewise, the *Fred Meyer* court carried the *Dayhoff* dicta forward without analysis.[12] Thus, while the reasonable-doubt standard that originated in *Dayhoff* has persisted for more than twenty-five years, this rule is originally erroneous because it was based on an incorrect premise without any supporting analysis as to why the AWHA should impose a higher burden than the federal statute it is based upon. Indeed, while the Legislature did not expressly address the burden of proof in its 2005 amendments to the AWHA, the purpose of these amendments was to bring the AWHA into closer alignment with the federal standards.[13] Further, preponderance of the evidence is the default burden of proof for civil matters absent another express standard,[14] and the Legislature is free to establish a higher burden of proof when it so intends.[15]

In light of the above, the *Dayhoff* line of decisions departed from the standard preponderance burden of proof based on an incorrect premise without supporting analysis. The doctrine of *stare decisis* does not protect such decisions.[16] There is no basis for

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[11] *Adam*, 26 Cl. Ct. at 786.

[12] *Fred Meyer*, 100 P.3d at 884.

[13] *See* Alaska House Labor and Commerce Committee Minutes, March 16, 2005 at p. 18 (Appendix 1).

[14] *Fernandes v. Portwine*, 56 P.3d 1, 5 n.13 (Alaska 2002).

[15] *See, e.g.*, AS 23.10.110(d) & (e).

[16] *State, Commercial Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 859 (Alaska 2003) (this Court will overrule a prior decision "when clearly convinced that the rule was

imposing the reasonable-doubt burden of proof upon AWHA when this burden is not present in the FLSA or other remedial statutes.[17] This Court should therefore hold the burden of proof originating in *Dayhoff* as erroneous, and overrule *Dayhoff* to the extent necessary to confirm a preponderance of the evidence burden of proof under AWHA.

II. MORE GOOD THAN HARM WOULD RESULT FROM THIS COURT DEPARTING FROM THE ERRONEOUS *DAYHOFF* BURDEN OF PROOF

In addition to the erroneous legal premise that originated the *Dayhoff* line of cases regarding the AWHA burden of proof, there are compelling policy reasons to depart from this flawed precedent. The heightened burden of proof originating in *Dayhoff* imposes significant burdens on Alaska employers such as Classic Alaska.[18]

First, differing standards between federal and state law needlessly add to the regulatory burdens faced by employers in complying with wage-and-hour requirements. Again, no substantive basis for this difference was provided in the *Dayhoff* line of cases, or by Appellant's arguments (which rely on the longevity of the rule rather than any merits). No harm to employees has been demonstrated by the application of the standard preponderance burden used in the majority of cases. As previously mentioned, the purpose of the Legislature's 2005 amendments was "to bring Alaska code into greater conformance with the federal law so that employers wouldn't have such difficulty when looking at two

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originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from precedent.").

[17] *See* Brief of Amicus Curiae at 10-12.

[18] *See* Brief of Amicus Curiae at 12-16.

sets of laws."[19] The *Dayhoff* application of a different burden of proof under state law is contrary to this purpose of greater conformance, and could produce conflicting results between state and federal courts.

Under the current rule, Classic Alaska and other employers are hindered in efficiently managing their employees, because the high burden of proof originating in *Dayhoff* pushes them to strictly separate non-managerial duties and prohibit any cross-over between allocated tasks in order to protect themselves beyond any reasonable doubt. Such forced separation impedes employee experience and advancement, and poses problems for employers in making the most of their limited resources. Increased labor costs for no demonstrated benefit is harmful to Alaska. The *Dayhoff* burden of proof and its increased risks of overtime liability incent employers such as Classic Alaska to weigh the comparative costs of outsourcing labor and using contractors instead of employees, which is counter to the policy goals of the AWHA to improve conditions for workers.

More good than harm would result from this Court departing from the *Dayhoff* line of decisions and restoring the traditional preponderance burden of proof for AWHA matters, because doing so would ease the burden on employers and better enable them to employ workers. Therefore, the requirements for overcoming *stare decisis* and overruling

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[19] *See* Alaska House Labor and Commerce Committee Minutes, March 16, 2005 at p. 18; *see also id.* at pp. 8-10, 15-16 (Appendix 1); Alaska House Finance Committee Minutes, April 13, 2005 at pp. 4-5 (Appendix 2).

the prior erroneous decision have been satisfied,[20] and this Court should answer the certified question accordingly.

CONCLUSION

Because the beyond-a-reasonable-doubt burden of proof in *Dayhoff* was originally erroneous, and more good than harm would result in departing from this rule, the Court should overrule *Dayhoff* to the extent necessary to answer the certified question as follows: The preponderance-of-the-evidence burden of proof applies to the determination of whether an employee is exempt from the overtime requirements of AWHA as an executive or administrative employee.

DATED this 11th day of March, 2019.

BRENA, BELL & CLARKSON, P.C.
Attorneys for Appellee

By _____
Michael D. Corey, ABA 8511130

[20] *State, Commercial Fisheries,* 65 P.3d at 859.

APPENDICES

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
March 16, 2005
3:52 p.m.

EMBERS PRESENT

epresentative Tom Anderson, Chair
epresentative Pete Kott
epresentative Gabrielle LeDoux
epresentative Bob Lynn
epresentative Norman Rokeberg
epresentative Harry Crawford
epresentative David Guttenberg

EMBERS ABSENT

11 members present

OMMITTEE CALENDAR

OUSE BILL NO. 33
An Act relating to the effect of regulations on small usinesses; and providing for an effective date."

- MOVED CSHB 33(L&C) OUT OF COMMITTEE

OUSE BILL NO. 182
An Act amending the Alaska Wage and Hour Act as it relates to he employment of a person acting in a supervisory capacity; roviding definitions for persons employed in administrative, xecutive, and professional capacities, for persons working in he capacity of an outside salesman, and for persons working in he capacity of a salesman employed on a straight commission asis."

- MOVED CSHB 182(L&C) OUT OF COMMITTEE

OUSE BILL NO. 147
An Act relating to the regulation of insurance, insurance icensing, surplus lines, insurer deposits, motor vehicle ervice contracts, guaranteed automobile protection products, ealth discount plans, third-party administrators, self-funded ultiple employer welfare arrangements, and self-funded overnmental plans; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 180

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development, assigning certain Alaska Workers' Compensation Board functions to the division and the department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 33
SHORT TITLE: EFFECT OF REGULATIONS ON SMALL BUSINESSES
SPONSOR(s): REPRESENTATIVE(s) MEYER

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	L&C, JUD
02/16/05	(H)	L&C AT 3:15 PM CAPITOL 17
02/16/05	(H)	Heard & Held
02/16/05	(H)	MINUTE(L&C)
03/04/05	(H)	L&C AT 3:15 PM CAPITOL 17
03/04/05	(H)	Heard & Held
03/04/05	(H)	MINUTE(L&C)
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 182
SHORT TITLE: WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES
SPONSOR(s): REPRESENTATIVE(s) ROKEBERG

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	L&C, FIN
03/16/05	(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 33 on behalf of Representative Meyer, sponsor.

CHRIS KENNEDY, Senior Assistant Attorney General
Environmental Section
Civil Division
Alaska Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 33.

JOHN SEDOR
Alaska Restaurant and Beverage Association;
Alaska Hotel Lodging Assocation;
Society for Human Resource Management, Alaska State Council;
Anchorage Society for Human Resource Members Management
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 182 and answered questions regarding the bill.

WAYNE STEVENS, President,
Alaska State Chamber of Commerce
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 182.

RANDY CARR
Anchorage, Alaska
POSITION STATEMENT: Suggested changes to HB 182.

ROBERT MORRIS, Director
Human Resources
Alaska Children's Services;
Legislative Co-Chair
Anchorage Society of Human Resource Management
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 182.

CARA FOX, Director
Human Resources and Administration
Hawaiian Vacations;
Legislative Co-Chair
Anchorage Society of Human Resource Management
POSITION STATEMENT: Testified in support of HB 182.

JACK AMON, Partner
The Marx Bros. Cafe
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 182.

KEN LEGACKI
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 182.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:52:05 PM. Representatives Anderson, Crawford, Lynn, LeDoux, and Guttenberg were present at the call to order. Representatives Kott and Rokeberg arrived as the meeting was in progress.

HB 33-EFFECT OF REGULATIONS ON SMALL BUSINESSES

3:52:16 PM

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 33, "An Act relating to the effect of regulations on small businesses; and providing for an effective date."

REPRESENTATIVE LYNN moved to adopt the committee substitute for HB 33, Version 24-LS0239\L, Bannister, 3/14/05, as a working draft. There being no objection, Version L was before the committee.

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, Alaska State Legislature, presented HB 33 on behalf of Representative Meyer, sponsor. He explained that Version L addresses the concerns of the committee. He turned to page 3, lines 21-22, and said, "While the process described in HB 33 doesn't create a grounds for traditional review of regulation, judicial review for unrelated provisions are still warranted under the existing administrative procedure." The second change is on page 4, line 2-3, which he explained excludes emergency regulations from the definition of regulation where it applies to this bill. The third change is on page 4, line 7, which changes the definition of small business to a business that employs fewer than 100 employees.

3:55:21 PM

REPRESENTATIVE GUTTENBERG asked for clarification regarding a handout in the committee packet that illustrates the steps in the regulation adoption process under HB 33.

MR. PAWLOWSKI explained that on the handout, anything that is not shaded is in the existing drafting manual for administrative regulations, and the shaded parts are what HB 33 would add. He noted that he underlined a few parts for emphasis.

REPRESENTATIVE GUTTENBERG commented that he would like to know how easy it would be to comply with the changes made in the bill.

CHRIS KENNEDY, Senior Assistant Attorney General, Environmental Section, Civil Division, Alaska Department of Law, replied:

> We agree with Representative Meyer that this process can be fitted into the regulatory steps the way he has outlined them, and that it doesn't present impossible

logistical problems. Certainly ... it does add a step, and there is a cost to it in terms of involving the [Department of Commerce, Community, and Economic Development (DCCED)] in the process and so, we've addressed the cost in our fiscal notes, although those relayed to a slightly earlier version of the bill. But no, I don't think there's a concern that it makes an impossible addition to the regulatory adoption process.

3:59:46 PM

CHAIR ANDERSON noted, "The drafting manual for administrative regulations isn't codified; it's an instructional list of elements and areas in which the regulation drafter can follow." Returning to the handout, he stated that the shaded portions indicate what would be codified.

MR. KENNEDY agreed that the manual is not law, but is simply a guide. He said that the steps that are in the manual now are mostly prescribed by statute, and the shaded portions on the handout indicate the additional steps that would be prescribed by HB 33.

4:01:01 PM

REPRESENTATIVE GUTTENBERG turned to the handout that lists the four things that the economic effect statement must provide, and he commented that numbers one, two, and four are common sense. However, he opined that number three, which says, "A statement of the probable effect that the proposed regulation would have on small businesses whose conduct would be governed by the proposed regulation," is a little problematic. He said that every small business is different, and he didn't see how to reconcile those differences in regulation.

4:02:04 PM

MR. KENNEDY speculated that the statement of effect would be a page or two of "thoughtful discussion" that would be prepared by the particular department with the aid of the Department of Law and the DCED employee who would be assigned to manage the small business consultation. He noted, "I don't think the intent, as we read this bill, is to produce an elaborate study."

REPRESENTATIVE CRAWFORD stated that the committee has heard past testimony that these things are already being done. He asked

Mr. Kennedy if [the bill] is a useful exercise, and if there is a "good reason to put on more people and expend more effort to do this...?"

MR. KENNEDY replied that the question may be getting into a policy choice that he may not be qualified to speak to. He commented:

> I can tell you that it's true that quite a lot of this process is already happening today in an informal way, and that's one of the reasons that it doesn't create an impossible burden. However, ... as we've said, it would add a cost and we're still discussing with the sponsor whether that cost is worthwhile in many contexts. ... We're concerned that this process really might not be terribly useful in the context of regulations, for example, that are only making technical amendments....

REPRESENTATIVE CRAWFORD asked Mr. Kennedy if it would be useful to reach a consensus on whether the bill is beneficial rather than moving it to another committee.

MR. KENNEDY replied that the Department of Law doesn't have an objection to moving the bill to another committee because it feels that it is working well with the sponsor and making steady progress.

REPRESENTATIVE LEDOUX opined that the bill appears to be an attempt to create a business-awareness in the regulatory process, and she asked why the bill is limited to small businesses.

MR. PAWLOWSKI responded:

> Business-awareness in the regulatory process can add to the process and make the process better. That's the idea behind the bill. The idea in limiting it to a small business is that that's a focused area that ... you can make an actual effect. Large businesses, through the public comment process, often have people that they can devote to following regulations, whereas a small businessman who's just trying to do their job wakes up the next day and all of a sudden has to comply with a whole new host of paperwork that they never thought that they were going to have to do. But

this puts someone in the process that looks out for their interest.

CHAIR ANDERSON noted that the larger businesses not only have legal counsel and accountants but they also have associations that can defend their interests, whereas the small businessperson or the sole proprietor may not have that.

4:08:11 PM

CHAIR ANDERSON added that he agreed with Representative Guttenberg regarding numbers one, two, and four, but commented that he didn't think number three was intangible or difficult. He stated, "I think that ... the need of the bill outweighs holding the bill in committee."

4:09:14 PM

REPRESENTATIVE ROKEBERG moved to report [CSHB 33, Version 24-LS0239\L, Bannister, 3/14/05,] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 33(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 182-WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

4:09:40 PM

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 182, "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

REPRESENTATIVE ROKEBERG, sponsor of HB 182, explained:

> [House Bill 182] sets forth some clarifications to the Alaska Wage and Hour Act by basically clarifying and redefining to a limited degree the definitions of executive capacity, administrative capacity, and professional capacity within our code. The primary step of this bill before us eliminates what's known as the long test or the 80:20 test or, in the retail trade, the 60:40 test. This is an antiquated method

of determining eligibility. It's been set aside in most states. And I think Alaska is overdue in taking this up. Also ... it does delete the one regulatory definition of supervisory capacity. This is done so because it's pretty unworkable right now, and ... the definition is subsumed under the other categories right now. So this is really a cleanup step. And in addition it does conform with a standard for qualification of payment of two-times the Alaska minimum wage, which is a distinction from the Federal Wage and Hour Act that was more recently adopted last year. That particular provision was worked on in the past by the 23rd Legislature, and this bill merely reflects that as a matter of policy here.

REPRESENTATIVE ROKEBERG continued:

In your packet is a side-by-side comparison of the current law and the provisions provided in [HB 182]. There's also a statement that shows the state-by-state jurisdictional applications of the various forms of Wage and Hour Act, showing [the] 32 states that currently have adopted the federal standards, eight other states have ... a short test, such as this bill provides. ... So what we're doing in this bill is more closely conforming, but not exactly, to some 40 other states in the United States. This is an important fact because it puts Alaska closer to interpretation of what the Wage and Hour Acts are on a interstate level or basis. ... Also in [the committee packet] is a letter from Anchorage attorney Bill Evans that explains the current legal situation we have in the State of Alaska, so it's very informative. ... Also there's a news article that explains the impact of legislation on small businesses.

4:14:47 PM

REPRESENTATIVE KOTT moved to adopt the committee substitute for HB 182, Version 24-LS0507\F, Craver, 3/10/05, as the working document. There being no objection, Version F was before the committee.

JOHN SEDOR, Alaska Restaurant and Beverage Association; Alaska Hotel Lodging Association; Society for Human Resource Management, Alaska State Council; Anchorage Society for Human Resource Members Management, testified in support of HB 182. He

commented that HB 182 would address salaried private sector employees, but not hourly employees. He added that the bill deals with one aspect of overtime law, found under both the federal Fair Labor Standards Act (FLSA) and the Alaska Wage and Hour Act, which are the exemptions for qualification for salaried basis. He stated:

> One of the problems with the current state of the law in this state is that the exemptions use the same words, so under both the federal law and the state law we have exemptions for administrative, executive, and professional [employees].... It's the same exemption under federal law as state law, but they're deceptively similar, so there's two wholly different tests that apply to each of them. Under the FLSA, you use basically a primary duties test. ... Forty jurisdictions use either the current FLSA regulations or use what's called the short-test, which uses a primary duties concept.

4:18:23 PM

MR. SEDOR explained that Alaska regulations incorporated the long-test from federal regulations; under the long test, the employer has the obligation of showing that 80 percent of an exempt employee's work time is spent performing exempt duties. He opined that this is difficult to do because it would require that the employer have someone watching the employees. He noted that the federal system now has a duties-based test, where "we look at what the person is doing [and] what their duties are, as opposed to the time they are spending on a particular task." He then pointed out that currently under federal law, employees who now earn less than $455 per week must receive overtime pay, and under HB 182 that wage limit would be two times the minimum wage. He also noted that under current regulations, "outside of service retail sector, there is no minimum that you have to pay."

REPRESENTATIVE ROKEBERG pointed out that [for the state to pay two times the minimum wage], Alaska would have a $572 per week minimum floor, as compared to the federal rate of $455. He asked Mr. Sedor to expand on what the damages could be if there was a failure to prove the 80:20 test provisions.

CHAIR ANDERSON asked Mr. Sedor also to explain the argument against the bill.

MR. SEDOR replied that there are two types of damage that an employer is exposed to. The first damage is the cost of litigation. The second is the overtime back pay and the actual reasonable attorney fees that the employer must pay if the employee is successful. He commented, "What those significant damages do is force resolution of cases without the employer ever getting their chance to really argue their side of it because of the risk."

REPRESENTATIVE LEDOUX asked, "Is this sort of thing even covered by insurance?"

MR. SEDOR replied that sometimes it is. In response to Chair Anderson's question, he answered, "I don't know what the argument is on the other side."

4:27:27 PM

REPRESENTATIVE LEDOUX commented that even if the bill was passed there still might be the possibility of litigation.

MR. SEDOR responded that this was true. He emphasized his belief in the importance of looking at the duties of the exempt employees rather than the breaking down the workday minute-by-minute.

REPRESENTATIVE LEDOUX turned attention to the language on page 2, lines 21-22, referring to a person employed in an administrative capacity:

> whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

REPRESENTATIVE LEDOUX remarked that the phrase "matters of significance" sounds like it could be referring to a pension plan for lawyers.

MR. SEDOR responded that there are interpretative aspects to the bill, but some of this language is already in the regulations. He reiterated that the bill does not affect employees that earn an hourly wage. He opined that the federal regulations are easier to understand than the state regulations.

REPRESENTATIVE LEDOUX asked, "Are you saying that under the current statute, you've got these words basically ... and then added to it is the 80:20 test?"

4:32:55 PM

MR. SEDOR explained that in the past there were two tests: a long test and a short test. The long test contained the 80:20 concept while the short test contained the primary duties concept. He then explained that the long test has been eliminated from the federal regulations, but it remains in the state regulations.

4:33:59 PM

CHAIR ANDERSON asked if [the state regulations] are a hybrid of the two schemes.

MR. SEDOR replied negatively and clarified, "When you have the 80:20 test, that really eliminates the primary duties."

REPRESENTATIVE CRAWFORD asked if the bill would act as an incentive for an employer to switch employees to a salary wage rather than hourly wage. He presented an example of an employee with multiple duties and noted that the employer might find it cheaper to put the employee on a salary rather than pay him/her for overtime work. He asked if there could be any unintended consequence from the bill.

MR. SEDOR replied that he could not see any unintended consequence from HB 182 because it is a multitiered test, and so "paying somebody salary doesn't get you to the line; you still have to ... establish the exemption through the duty. And that's what I personally find very beneficial to our employers and ... employees."

CHAIR ANDERSON asked, "Will you see a shift of employees going from hourly to supervisory because now you will skip the overtime payment?"

4:38:45 PM

MR. SEDOR replied, "I don't see that because it's one test of several." He pointed out that the penalties are high and therefore, he opined, no employer would try to get around the FLSA regulations.

REPRESENTATIVE GUTTENBERG commented that there are employers who attempt to get around regulation.

MR. SEDOR noted that the penalties in Alaska are more severe [than in other states]. Therefore, he said, there are more forced settlements, even when the employer would rather litigate than settle.

4:43:18 PM

REPRESENTATIVE GUTTENBERG voiced concern that people making low wages could be [taken advantage of] through this bill.

4:44:47 PM

MR. SEDOR responded that "hamburger flippers" would have to be paid twice the minimum wage [to qualify as exempt]. He posited that businesses will not want to pay an employee more just so that the employee would be exempt. He noted that 40 states are using the primary duties test, and he hasn't heard of any problems associated with this change.

4:46:05 PM

WAYNE STEVENS, President, Alaska State Chamber of Commerce, testified in support of HB 182. He pointed out that the minimum wage in Alaska is $7.50 per hour.

RANDY CARR stated that he formerly worked for the Alaska Department of Labor and Workforce Development for 28 years, and is now a consultant with a private practice, and is testifying on his own behalf. He pointed out that he had submitted his testimony in writing. He commented:

> The questions posed by Representative LeDoux as to the meaning of "primary duty" go right to the heart of the matter. This bill is actually adopting verbatim the language found in the federal Fair Labor Standards Act definitions, but it only grabs pieces of it. There are component elements within those definitions that are defined in the federal regulations that are either not defined under state law or defined differently under state law, which leaves the employer in the position of either having two sets of definitions to comply with, one of which will be more stringent than the other, or just hoping that whatever he does under federal law is going to satisfy the state. And the prime example of that is the term, "primary duty." It sounds as though "primary duty" means something that's done 51 percent of the time, and that would be the

case under the state policy. The state has for years enforced primary duty as that activity that's performed more than 50 percent of the time. That is not however the definition under the federal [FLSA]. And I have attached with my written submissions copies of fact sheets from the [FLSA] Department of Labor web page, which gives those definitions. ... [The fact sheet says:] "The primary duty under federal law means the principle, main, major, or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts of a particular case with a major emphasis on the character of the employee's job as a whole."

4:49:37 PM

MR. CARR continued:

> Under the old regulations there was an exemption known as a sole charge exemption, which allowed an employee who had a primary duty of an exempt nature in the executive area to perform 90 percent nonexempt work and still qualify for the exemption. That sole charge exemption has gone away under the new regulations, but the whole concept of the sole charge is still alive in the definition of primary duty found in the federal regulations.

MR. CARR noted that there are several other terms in the bill that are defined in federal regulations but not in state regulations, such as: "particular weight" on page 3, line 4; "customarily and regularly" on page 2, line 30 and on page 3, line 24; "discretion and independent judgment" on page 2, lines 21-22; and "matters of significance" on page 2, line 22. He commented, "I'm hopeful that the state will take this opportunity to considers those [terms] thoughtfully and adopt those meanings that they intend in concert with this bill as they move it forward." He continued:

> One last thing, there is another exemption in the new federal regulations that is not represented in this bill, and that is the exemption for the highly paid employee. It is referenced in the administrative and executive and professional exemptions, but it's also spelled out separately in the federal definitions. And that is an individual who received $100,000 a year who performs office or nonmanual work who receives as

part of that $100,000 a year a salary that has the minimum established under the federal law, and they customarily and regularly perform at least one of the exempt duties of an administrator, executive, or professional. Those individuals, under the federal law, are just not eligible for overtime at all. And that's an important exemption and it's spelled out as part of the others as well. I think it needs to be read in concert with the others because it makes the package whole, and makes the package make more sense. And I would hope the committee would consider that as a possible addition to this bill.

4:52:43 PM

ROBERT MORRIS, Director, Human Resources, Alaska Children's Services; Legislative Co-Chair, Anchorage Society of Human Resource Management, remarked, "The current state statutes relating to the Wage and Hour Act are difficult to interpret at times and thereby open to misinterpretation. I would greatly appreciate having clearer definitions of the classifications in order to avoid making mistakes that impact my employees and my agency." He remarked that many small to medium sized organizations lack the resources to implement the 80:20 rule, and if this rule were removed there would be fewer costly mistakes impacting employees and employers alike.

CARA FOX, Director, Human Resources and Administration, Hawaiian Vacations; Legislative Co-Chair, Anchorage Society of Human Resource Management, testified in support of HB 182. She opined that this is an important bill because most of the businesses in Alaska are small businesses and generally do not have the number of employees or financial ability to ensure that an exempt employee meets the 80:20 rule that's currently in state law. She noted that in the past state law has been more strict than federal law, but with the new federal regulations that is no longer the case, which means, she said, "we'll now have to muddle through both laws trying to determine whether an employee qualifies as exempt or not." She presented an example of an exempt employee at a small business who also helps with nonexempt duties when there is a lot of work to be done. Under the 80:20 rule, the employee is putting his/her exempt level status in jeopardy and the company takes a large risk. She noted:

Being able to stay efficient with our human resources and keep costs under control is what allows us to

survive as a small local business. But because of current state law there is a possibility that an employee could manipulate this 80:20 rule, intentionally or unintentionally, and bring a very damaging suit against us. We're constantly at risk even though we make a very good faith effort to classify our employees correctly. In addition, with the current disparity between state and federal law, many employers are confused about what they're supposed to do, which makes compliance very difficult.

4:55:39 PM

JACK AMON, Partner, The Marx Bros. Café, testified in support of HB 182. He commented:

> The changes made in the duties test for exempt employees is a great stride forward in modernizing Alaska's labor laws to more accurately reflect the current workplace, a change, that I might add, the federal government realized was long overdue and adopted this past year. In many food service and hospitality businesses the current duties test for exempt employees does not match the reality of the workplace. This is especially true in small businesses where all employees and owners wear many hats. The current 80:20 test used in Alaska is so onerous and restrictive that it's forced most operators to keep all employees, including those who head departments or supervise others, hourly. This can have a negative impact on both the employer and the employee. The employees affected by this change in the law represent our highest paid and highest skilled workers. Due to the increased costs of benefits such as health insurance, we as a small business have changed our benefit plans to only salaried employees because of the large number hourlys we employ. And now we have employees we would like to be able to move to exempt status so we could get them under these plans, but can't.

4:58:54 PM

MR. AMON continued:

> I'm afraid that opponents of this bill will state that this is an attempt by business owners to cheat hard

working employees out of the overtime they deserve. Nothing could be farther from the truth. In order to run a successful business, it is essential to retain top quality employees. These top workers know their worth and demand for their skills. One could not keep them long by taking advantage of them. This change in statute will allow more flexibility for both employers and employees to make compensation arrangements that are beneficial to both.

KEN LEGACKI testified against HB 182. He offered his belief that the law should be to protect employees, such as single parents. He questioned whether it was fair to compare an employee in Kodiak with an employee in Alabama because Alaskans have a higher cost of living. "Alaska's a unique state, and since statehood our fathers have always recognized that and have always recognized that workers in Alaska need special protection," he said. He presented the example of an employee with the title of manager but who is usually stocking shelves and unloading trucks; this employee wouldn't receive overtime pay because he/she is titled a manager. He opined that it is not difficult to determine if an employee is exempt or not under current law; he recommend that employers call the Alaska Department of Labor and Workforce Development if they have questions. He continued, "If you give an employer an excuse to allow these employees to work 60-70 hours a week and still get a salary, that harms the employee. We're not talking about one hour or two hours or three hours of overtime a week; nobody files suit for that. We're talking about a constant week of [50-70] hours."

CHAIR ANDERSON closed public hearing.

5:06:40 PM

REPRESENTATIVE GUTTENBERG commented, "I don't see changing state law on the back of working people, working families. A lot of times people on the bottom end are single parents, single moms, trying to make ends meet. Now we're going to try to make it harder for them."

5:08:05 PM

REPRESENTATIVE CRAWFORD stated that he would like to [hold the bill over] so that he could get more information about it. He noted, "I don't know what unintended consequences we have here

yet. I'm concerned." He remarked that he didn't want [employers] to take advantage of employees.

5:09:21 PM

REPRESENTATIVE ROKEBERG replied, "There's nothing in this bill that's intended to hurt or injure Alaskan workers." He reiterated that the bill would remove the 80:20 rule from law. He opined that the employees will be better protected under this bill. The goal of the bill, he continued, is to bring Alaska code into greater conformance with the federal law so that employers wouldn't have such difficulty when looking at two sets of laws. He noted that he would be willing to consider some of Mr. Carr's suggestions.

REPRESENTATIVE CRAWFORD recalled that last year the standard for an exempt qualification of payment was two and a half times the Alaska minimum wage, and was then changed to two times the Alaska minimum wage instead. He remarked, "I don't see how that's really a raise."

REPRESENTATIVE ROKEBERG replied, "It made it applicable to all workers in the state not just that one category. So it actually protected a lot more workers who didn't have that protection previously."

A roll call vote was taken. Representatives Lynn, Kott, Anderson, LeDoux, and Rokeberg voted in favor of reporting CSHB 182, Version 24-LS0507\F, Craver, 3/10/05, from committee. Representatives Crawford and Guttenberg voted against it. Therefore, CSHB 182(L&C) was reported out of the House Labor and Commerce Standing Committee by a vote of 5-2.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:15:53.

HOUSE FINANCE COMMITTEE
April 13, 2005
1:42 p.m.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at 1:42:34 PM.

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Mike Kelly
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Reggie Joule

ALSO PRESENT

Representative Vic Kohring; Representative Ralph Samuels; Dean Guaneli, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Representative Norm Rokeberg; Heather Nobrega, Staff, Representative Norm Rokeberg; Peggy Ann McConnochie, Alaska Association of Realtors; Mike Tibbles, Deputy Commissioner, Office of the Commissioner, Department of Administration; Chris Christensen, Deputy Administrator, Office of the Administrative Director, Alaska Court System; Al Adams, Chairman of the Board, Arctic Power; Barbara Huff Tuckness, Lobbyist, Teamsters Local 959; Grey Mitchell, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development; Mila Cosgrove, Director, Division of Personnel, Department of Administration; Pam Varni, Executive Director, Legislative Affairs Agency; Art Chance, Direct, Labor Relations, Department of Administration

PRESENT VIA TELECONFERENCE

Tamara de Lucia, Office of Victims Rights, Anchorage; Linda Wilson, Deputy Director, Public Defender Agency, John Sedor, Anchorage; Karin Rogina, Alaska Hospitality Alliance, Anchorage; Jack Amon, Alaska Hospitality Aliance, Anchorage; Barbara Ramsey, Chair, Alaska Real Estate Commission, Anchorage

SUMMARY

HB 32 "An Act making a special appropriation for a grant to Arctic Power to promote the opening of the Arctic National Wildlife Refuge for oil and gas exploration and development; and providing for an effective date."

CSHB 83 (FIN) was REPORTED out of Committee with a "do pass" recommendation.

HB 54 "An Act relating to bail review."

CSHB 54 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with three zero fiscal impact notes: #1 COR, #2 CRT, #3 LAW.

HB 182 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

CSHB 182 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a zero fiscal impact note by the Department of Labor and Workforce Development.

HB 169 "An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date."

CSHB 169 (L&C) was heard and HELD in Committee for further consideration.

HB 98 "An Act relating to the compensation of certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

CSHB 98 (STA) was REPORTED out of Committee with a "do pass" recommendation and with three fiscal impact notes: #1 GOV, #2 LEG, and new CRT.

HB 27 "An Act relating to an optional exemption from municipal property taxes on certain residences of law enforcement officers."

HB 27 was scheduled but not heard.

1:42:50 PM

HOUSE BILL NO. 32

"An Act making a special appropriation for a grant to Arctic Power to promote the opening of the Arctic National Wildlife Refuge for oil and gas exploration and development; and providing for an effective date."

Representative Foster MOVED to ADOPT the work draft to HB 32 labeled 24-LS0230LS\F, Utermohle, 4/12/05. There being NO OBJECTION, it was so ordered.

1:43:49 PM

Co-Chair Chenault explained two changes in the new CS. The dollar amount was changed to $50,000 for the participation of the Native Village of Kaktovik and to $50,000 for the participation of the City of Kaktovik in support of the education efforts undertaken by Arctic Power.

Representative Weyhrauch stated support for the bill with the addition of the new amendment. He requested information about Jerry Hood's role in this grant.

1:45:15 PM

AL ADAMS, CHAIRMAN OF THE BOARD, ARCTIC POWER, replied that Mr. Hood is heading up the Washington D.C. office. Representative Weyhrauch asked if most of Arctic Power's efforts are aimed at getting support from the House side of Congress. Mr. Adams responded that is correct. Efforts are being targeted toward the 435 House members as well as toward several states. Mr. Adams noted that Representative Joule and Representative Berkowitz are currently in Washington D.C. pushing this effort on the House side.

Representative Weyhrauch asked about various Arctic Power team members' roles and salaries.

1:47:41 PM

Representative Hawker said it is a pleasure to be working with Mr. Adams. He stated support for the funding.

Representative Foster moved to report CSHB 32 (FIN) out of Committee with individual recommendations. There being NO OBJECTION, it was so ordered.

CSHB 83 (FIN) was REPORTED out of Committee with a "do pass" recommendation.

1:49:26 PM

HOUSE BILL NO. 54

"An Act relating to bail review."

REPRESENTATIVE RALPH SAMUELS, sponsor, explained that the bill does several things. Currently a defendant may be granted a bail hearing every 24 hours. This has been taken advantage of for a number of reasons. To help limit some of the abuses, HB 54 proposes that the accused must submit, in writing, that there exists new information for the court's consideration that was not considered at prior hearings. Second, the district attorney is given 48 hours notice in which to notify the victim of the hearing. Finally, there will be a 48-hour period between calendared bail hearings. Without HB 54 the first bail is set high, then in court the bail is reset at a reasonable level for the offense. Every day the defendant could request a bail hearing, which the victim has the right to attend.

Representative Samuels explained that the bill was amended in Judiciary to add that a victim may be introduced to a jury during the opening statement at a trial or during the jury selection process. It also changed a minor defendant law to allow introduction of the victim to the jury. He opined that it is only fair to put a face on the victim of the crime.

Co-Chair Chenault set aside HB 54.

1:53:09 PM

HOUSE BILL NO. 182

"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis."

Representative Foster moved to adopt the new CS for HB 182 labeled 24-LS0507\P, Carver, 4/6/05. There being NO OBJECTION, it was so ordered.

1:53:58 PM

REPRESENTATIVE NORM ROKEBERG, sponsor, explained that the bill adopts federal rules for the Federal Fair Labor Standards Act by amending the Alaska Wage and Hour Act.

This bill will significantly help small businesses because it clarifies provisions of the Alaska Wage and Hour Act.

Representative Rokeberg explained that the new amendment would provide a "bright line" to the effective date of this law, July 1, 2005.

1:56:38 PM

JOHN SEDOR, ANCHORAGE SOCIETY FOR RESOURCE MANAGEMENT, (via teleconference) spoke in support of HB 182. He explained that the bill would eliminate confusion about how to determine overtime exemptions.

1:59:47 PM

Representative Weyhrauch pointed out that in order to understand the various occupations in this bill, Federal Fair Labor Standards Act regulations have to be understood. He questioned the relevance of certain classifications. Mr. Sedor responded that one of the benefits of moving toward the federal system is that some people in the computer industry qualify due to the complexity of their jobs. The state has not moved forward to clarify which jobs are exempt.

Representative Rokeberg asked Mr. Sedor to comment on the proposed amendment. Mr. Sedor related that the bill would delete the 80/20 test and sets forth definitions which are much more understandable. He gave an example. The primary duties test is the only test now in the federal system. The amendment states that claims brought after July 1, 2005, would be subject to statutory provisions of HB 182, and claims brought before that date would be subject to conditions prior to HB 182.

2:07:46 PM

Representative Croft asked if primary duty is defined in the P version. Mr. Sedor replied it is not defined in any version, only in federal regulation. He gave an example of a position that is exempt due to the importance of the job. Representative Croft rephrased his question to ask if an employer has to conform to both state and federal laws. Mr. Sedor replied that those in the private sector do. He pointed out that the P version only has one system. Representative Croft inquired why the definitions differ and why it is not stated that they shall be the same as in federal law. Mr. Sedor replied that "primary duties" is only one of several tests. He indicated that the statutes would be extremely large if all duties were spelled out.

2:13:41 PM

Representative Croft asked if primary duty is one of the tests below executive, administrative, professional capacity, and all other definitions are incorporated. Mr. Sedor replied correct. Representative Croft referred to page 4, (C) (1), which allows for state private employers having to follow only one system. Mr. Sedor replied that is exactly right, and 41 other jurisdictions have adopted that as well.

2:14:52 PM

Representative Rokeberg drew attention to Section 5 where definitions in federal law are mentioned. Representative Croft pointed out that in other areas outside of that capacity definition, the bill allows for different definitions by the wording, "if not defined in this title".

Representative Croft asked Mr. Sedor if the amendment states that claims filed previous to the effective date of the bill are cut off. Mr. Sedor responded that claims brought after the date are subject to one statutory requirement, HB 182. A two-year look-back applies to both time situations.

2:18:29 PM

KARIN ROGINA, ALASKA HOSPITALITY ALLIANCE, ANCHORAGE, (via teleconference) conveyed full support for HB 182 because it provides for clear exempt status language. It defines exempt status, makes it workable, and will prevent litigation. She gave an example of a hotel worker with an exempt salary status issue.

2:23:27 PM

JACK AMON, ALASKA HOSPITALITY ALLIANCE, ANCHORAGE, (via teleconference) testified in support of HB 182. He related the difficulties of operation under the older system.

Representative Weyhrauch quoted the bill, "an individual employed in an executive, administrative, or professional capacity is compensated on a salary or fee basis at a rate of not less than two times the state minimum wage for the first 40 hours of employment each week, exclusive of board or lodging". He opined that most people work more than 40 hours. He asked about the pay after that period of time. Representative Rokeberg replied that exempt employees would not receive extra compensation; they would be on salary.

HEATHER NOBREGA, STAFF, REPRESENTATIVE ROKEBERG, clarified that their salary would be based on a normal 40-hour work week. Representative Weyhrauch asked if the value of board and lodging is not included. Ms. Nobrega replied that is correct. Representative Rokeberg added that because there

is a unique test in Alaska, it is two times the minimum wage, which is based on the 40-hour week.

2:27:53 PM

BARBARA HUFF TUCKNESS, LOBBYIST, TEAMSTERS UNION 959, concurred with the sponsor's earlier comments regarding concerns and definitions. She responded to the comment that this bill impacts the highest paid workers. In the supervisory and administrative categories, there are managers at McDonald's that flip hamburgers and are in an hourly, paid-with-overtime compensation or are exempt from overtime and have to be paid at least double time. She recalled a bill from last session regarding minimum wage. She provided a history of definition discussions and maintained that they should be introduced into state law. The statute serves to provide information to employers and employees. She suggested that it should all be incorporated into statute. She voiced concern about the adoption of regulations and made suggestions about how to deal with them. She spoke of increasing from double minimum wage to 2.2 percent and reasonable salary compensation.

2:32:43 PM

Vice-Chair Stoltze asked if the employee has the option of exempting himself or herself from overtime. Ms. Tuckness said that is determined by law.

2:34:27 PM

Co-Chair Chenault closed public testimony.

Representative Foster MOVED to ADOPT Amendment 1:

> Page 1, line 6, following "**occupations;**":
> Insert "**directing retrospective application of the provisions of this Act to work performed before the effective date of this Act for purposes of claims filed on or after the effective date of this Act, and disallowing retrospective application for purposes of claims for that work that are filed before the effective date of this Act;**"
>
> Page 5, following line 30:
> Insert a new bill section to read:
> "*** Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:
> APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 (Alaska

Wage and Hour Act) that is filed on or after the effective date of this Act.
(b) This Act does not apply to work performed before the effective date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before the effective date of this Act."

Renumber the following bill section accordingly.

Co-Chair Chenault OBJECTED for discussion purposes.

Representative Rokeberg explained that the amendment creates a bright line of flexibility. There would be two sets of rules, before and after the effective date of the bill.

2:36:39 PM

Vice-Chair Stoltze asked if this legislation was found in HB 255 last year. Representative Rokeberg replied that it was somewhat similar. Vice-Chair Stoltze wondered what the Department of Labor's position is.

2:38:59 PM

GREY MITCHELL, DIRECTOR, DIVISION OF LABOR STANDARDS & SAFETY, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, related that the department has had input on this bill. The department remains neutral on the bill.

Representative Kelly commended the sponsor for bringing this bill forward. He asked Mr. Mitchell if this bill would cut down on the cost of administering the hourly vs. salaried worker situation. Mr. Mitchell agreed that it would. Representative Kelly opined that it would cut down on fraud.

Co-Chair Chenault REMOVED his OBJECTION to adopt Amendment 1. There being NO OBJECTION, Amendment 1 was adopted.

2:42:46 PM

Co-Chair Chenault announced that HB 27 would not be taken up today.

Representative Hawker summarized the discussion. He related that there is a valid parallel to state corporate income tax regulations in this bill.

Representative Foster MOVED to report CSHB 182 (FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 182 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a zero fiscal impact note by the Department of Labor and Workforce Development.

2:46:15 PM

HOUSE BILL NO. 169

> "An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date."

Representative Rokeberg related that HB 169 provides for 20 hours of post-licensing education for realtors. It also provides that lawyers may assist brokers in supervising all transactions.

2:47:20 PM

PEGGY ANN MCCONNOCHIE, ALASKA ASSOCIATION OF REALTORS, explained that 18 states currently require post-licensing education. This bill would reduce the number of claims to the real estate commission. She explained that realtor associations are in favor of this bill. It will provide additional consumer protection by having well-trained realtors. The effective date is timely.

Ms. McConnochie explained that the supervision aspect of the bill is aimed at the larger brokers in the state who supervise many transactions per month. They need to be away to make sure that documents are properly filed prior to closing. This provision allows a broker to hire a real estate attorney to review transactions and will help to better serve the public. She reported that this aspect is missing from HB 29.

Representative Croft commented that the continuing education portion of the bill is fine. He voiced concerns about Section 14, the review of transactions. Ms. McConnochie replied that this section makes it clear that a large broker can employ an attorney and have no conflict in statute. Representative Croft asked who the attorney represents. Ms. McConnochie replied the broker, who is ultimately responsible for all decisions. Representative Croft worried that there is a sense that the attorney is looking out for the buyer's interests when he or she is only looking out for the broker's interests. Ms. McConnochie replied that there would not be the opportunity to have that false perception because the attorneys would never meet the buyers. Representative Croft maintained that the broker always has an ability to hire an attorney to look at the documents. He

opined that the attorney is only looking after the broker's interests. Ms. McConnochie restated the purpose of the review. There is no implication that the lawyer is partial to the buyer, seller, landlord, or tenant.

2:53:13 PM

Representative Foster inquired if the post-licensing education would require a realtor in Nome to buy an airplane ticket to the class. Ms. McConnochie replied that that person could take the class by correspondence.

2:54:11 PM

BRAD FLEUTSCH, ALASKA REAL ESTATE COMMISSION, stated support for the continuing education elements of the bill. He noted that there is a problem with Section 14. There is no requirement in the bill that the attorney be licensed in Alaska or have knowledge of real estate law. The Alaska Real Estate Commission has no ability to supervise such a position. He explained that the completed file has all of the forms and legal requirements, and it is the last responsibility the broker has to the client. He requested to have Section 14 dropped or fixed.

2:57:08 PM

Representative Hawker recalled that he has often sought a non-Alaskan lawyer with good results. Mr. Fleutsch stressed that it is Alaska real estate law that is being reviewed. Representative Hawker asked if an attorney practicing in Alaska has to be licensed to practice real estate law. Mr. Fleutsch suggested amending Section 14 to say "licensed Alaska attorney". Representative Hawker said that is inherent in statute. Mr. Fleutsch offered that it should not be limited to attorneys, but accountants could also be included. The purpose of this aspect of HB 169 is just to review the file, which the Real Estate Commission feels is very important.

Representative Kelly asked if the attorney does anything that a broker does not do. Mr. Fleutsch replied that he does not know. Representative Kelly suggested language that would include an associate broker or an attorney acting as an associate broker. He shared concerns similar to Representative Croft's.

Representative Croft suggested that the broker could hire an accountant or other professionals. He questioned the need for this part of the bill. He said that Section 14 is either unnecessary or unclear.

3:02:11 PM

Representative Hawker read from Section 14, "The broker may pay the attorney or associated broker from a fee, commission, or other compensation received by the broker in a real estate transaction payment." He asked if that is prohibited in statute, as covered in Section 15.

Representative Rokeberg replied that is true. He opined that this provision is needed in statute for clarification. Currently under Chapter 8, lawyers can sell real estate. He pointed out that the Real Estate Commission has no power to discipline attorneys, and emphasized that the broker is still responsible for all transactions. There are no restrictions on a large brokerage house or a commercial real estate brokerage house to not use an attorney to supervise the actual documents of a transaction. That needs to be clear. He emphasized that the bill should be passed in its current state.

3:06:44 PM

BARBARA RAMSEY, CHAIR, ALASKA REAL ESTATE COMMISSION, ANCHORAGE, (via teleconference) testified in support of the legislation, but expressed concern with page 8, lines 19-24. She recommended the deletion of Section 14. She stressed that the Commission does not want to regulate attorneys.

3:10:01 PM

Representative Kelly asked if Ms. Ramsey is saying that the current statute provides that a broker could hire assistant brokers and retain attorneys to help review these files, and those costs are permitted to be taken by the broker from transaction fees.

Ms. Ramsey clarified that an associate broker is already allowed in regulations - 12AAC.64.125, Section B. She pointed out that the provision regarding attorneys is not currently allowed. She opined that they should be paid as a business expense, as an employee.

3:11:59 PM

Representative Rokeberg spoke in support of retaining Section 14.

3:13:38 PM

Representative Croft noted concerns by the Real Estate Commission. He argued that any profession could be hired to look up documents, but its different when they get a portion of the fee because then they have an interest in the transaction. That is why real estate law is so specific about who gets the fee.

3:14:44 PM

Representative Rokeberg maintained that Amendment 1 would conform the legislation. There is no intent for a "kick back".

Co-Chair Meyer MOVED to ADOPT Amendment 1:

> Page 9, line 26, following "date":
> Insert "of secs. 1-11 and 16"
>
> Page 9, line 29, following "date":
> Insert "of secs. 1-11 and 16"
>
> Page 10, line 1, following "date":
> Insert "of secs. 1-11 and 16"

Co-Chair Chenault OBJECTED for the purpose of discussion. Ms. Nobrega explained that the amendment would conform the effective dates to the appropriate sections.

Co-Chair Chenault REMOVED his OBJECTION to adopt Amendment 1. There being NO OBJECTION, Amendment 1 was adopted.

3:17:54 PM

Representative Croft MOVED to ADOPT Conceptual Amendment 2:

> Delete section 14, page 8, lines 14 - 25.

Representative Rokeberg noted that some members of the Commission disagree with the concern over section 14. The issue is whether the Commission can properly supervise the lawyers. He did not agree with these concerns. He maintained that there is no formal position of the Commission.

3:18:32 PM

Representative Hawker OBJECTED for the purpose of discussion. He referred to Ms. Ramsey's letter and disputed her concerns. He concluded that her objections were irrelevant to the issue at hand.

Representative Kelly questioned if the broker alone is punished for infractions.

3:22:45 PM

Representative Rokeberg replied that is correct. The broker is ultimately responsible.

Representative Croft responded that there ought to be some power over the person that receives the fee. He concluded

that the Commission should have control over the lawyers or the fee should be removed. He argued that the compensation should not be based on "their saying yes".

3:25:36 PM

Representative Rokeberg directed the committee to page 8, line 23, "received by the broker". He explained that the broker receives the money and then allocates it to the attorney or associate broker. Direct compensation from commissions is not being given to the lawyer.

3:26:47 PM

Representative Weyhrauch questioned why Section 14 would be necessary. The real estate broker may contract with and pay an attorney to assist the broker in real estate transactions. He observed applications of malpractice.

3:28:51 PM

Representative Croft pointed out that the attorney's pay would be dependent on receiving a percentage of the broker's commission. He reiterated his concerns.

Representative Weyhrauch maintained that attorneys would not base their pay on a commission. Ms. Nobrega noted that associate brokers and brokers are also dependent on receipt of the commission.

Representative Weyhrauch stressed the importance of the public's trust of attorneys.

3:31:12 PM

Ms. Ramsey agreed with remarks by Representative Croft. She noted that the Real Estate Commission approved the pursuit of legislation for post-licensing in March 4, 2004. On February 8, 2005, she received the first draft of HB 169. She observed that the issue was first discussed on March 15th. On the 24th of March she sent a letter addressing concerns to Representative Rokeberg. On April 4, she spoke with Representative Rokeberg about her concerns. The state association did not discuss the issue with the Commission, the entity that must enforce the provision.

3:34:11 PM

Representative Rokeberg took exception to the objections.

Representative Kelly suggested that the last sentence be dropped.

3:35:33 PM

Representative Croft WITHDREW Conceptual Amendment 2.

HB 169 was HELD for further consideration.

3:36:54 PM

Representative Ralph Samuels returned to HB 54. He explained that the bill would clarify whether the judge could allow the victim to be introduced the to a jury.

TAMARA DE LUCIA, OFFICE OF VICTIMS RIGHTS, ANCHORAGE, (via teleconference) reviewed new bail provisions in the bill, which would include participation by the victim.

3:41:15 PM

Ms. De Lucia continued to explain the provision regarding the introduction of the victim to the jury. She urged passage of HB 54.

3:42:29 PM

LINDA WILSON, DEPUTY DIRECTOR, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, (via teleconference) spoke about bail hearings. It takes a week to get a slot for bail hearings for petitions to revoke probation. It is primarily a problem with city cases. She wondered why a fix was being created for such a small number of cases. She suggested requiring a 48-hour notice. The system seems to be working well right now. She suggested that defense lawyers get together to solve the problem.

3:47:06 PM

Vice-Chair Stoltze MOVED to ADOPT Amendment 1:

> Page 1, line 1, following "**review;**":
> Insert "**relating to petitions for review by crime victims where the defendant has received a mitigated sentence;**"
>
> Page 2, following line 13:
> Insert a new bill section to read:
> "* **Sec. 4.** AS 12.55.120 is amended by adding a new subsection to read:
> (e) The victim of the crime for which a defendant has been convicted and sentenced may file a petition for review in an appellate court of a sentence that has been mitigated under AS 12.55.155(d)."
>
> Renumber the following bill sections accordingly.

Page 2, line 25:
Delete "Section 4"
Insert "Section 5"

Co-Chair Meyer OBJECTED for discussion purposes.

3:47:58 PM

Representative Samuels explained the he wanted to amend Amendment 1 by eliminating the last word on line 9, through line 10, and replacing that with "is below the sentencing range for the crime." He clarified if there are three aggravating sentences and one mitigating sentences, or five aggravators and one mitigator, a review could not be asked for at the appellate court level. If the sentence for a particular crime is below the range, the victim would have a right to petition for a review in an appellate court. If the sentence is above the range, then there must be a jury trial.

Vice-Chair Stoltze MOVED to AMEND Amendment 1. There being NO OBJECTION, it was so ordered.

DEAN GUANELI, CHIEF ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, explained that the actual wording of the amendment speaks about a petition for review in an appellate court. He asked if it is the committee's intent that this is a discretionary petition with the court of appeals, rather than an absolute right to appeal to the court and require it to issue an opinion.

3:52:45 PM

Mr. Guaneli described a particular case, which was reviewed by the court of appeals. He questioned if this is the direction that the amendment should go.

Representative Croft inquired if it would be different if an appeal was filed. Mr. Guaneli said it would be different and he would be opposed to that idea. He wondered about the intent of the amendment to give victims the absolute right to appeal. Representative Croft asked if anyone has the right to file a petition for review. Mr. Guaneli responded that an original application for relief was an unusual procedure and a full briefing was ordered.

3:54:50 PM

Vice-Chair Stoltze asked if a precedent has been set.

3:55:47 PM

Representative Hawker asked if the intention is to change the language to "file and appeal" to give victims a right

that they cannot currently enjoy. Representative Samuels argued the point "that they cannot currently enjoy". He emphasized that he does not want the bill to die because appeals are too broad. He asked for clarification on the wording if a period is used after "sentencing".

Mr. Guaneli agreed that change may satisfy his concern about limiting what already exists under current court rule. He noted that he would like to look at the standards and think about it.

3:59:03 PM

Representative Croft inquired how much victims should be involved in the criminal justice process. He opined that they ought to be more involved, especially in the sentencing. They have a right to have an appeal heard when it is below the range. Representative Samuels concurred.

4:01:10 PM

Representative Weyhrauch referred to Mr. Guaneli's example and asked if the victim had file a petition for review in court of appeals. Mr. Guaneli said yes and related details of the case. Representative Weyhrauch debated the requirements of the court. Mr. Guaneli agreed with Representative Weyhrauch' assessment. He acknowledged that Representative Croft is right in that if the state appeals a sentence, the sentence cannot be increased. He further explained the procedure. He noted that victims' interests may be different.

4:06:14 PM

Vice-Chair Stoltze opined that this is may not be a bad precedent.

Mr. Guaneli related his philosophy on the issue. He opined that this amendment is not beneficial for the administration of justice in Alaska.

Co-Chair Meyer WITHDREW his OBJECTION to adopt Amendment 1. There being NO OBJECTION, it was so ordered.

4:09:55 PM

Representative Croft MOVED to ADOPT Amendment 2:

> Page 1, line 1, following "**review;**":
> Insert **"relating to the qualifications of certain members of the Violent Crimes Compensation Board;"**
>
> Page 2, following line 13:

Insert a new bill section to read:
"* **Sec. 4.** AS 18.67.020(a) is amended to read:
(a) There is the Violent Crimes Compensation Board in the Department of Administration composed of three members to be appointed by the governor. One of the members shall be designated as **chair** [CHAIRMAN] by the governor. At least one member must be a medical or osteopathic physician licensed to practice in this state **or holding a retired status license in this state** and one member must be an attorney licensed to practice in this state **or retired from practice in this state**."

Renumber the following bill sections accordingly.

Page 2, line 25:
Delete "Section 4"
Insert "Section 5"

Page 2, line 31:
Delete "sec. 5"
Insert "sec. 6"

Page 3, line 4:
Delete "sec. 4"
Insert "sec. 5"

Page 3, line 5:
Delete "sec. 6"
Insert "sec. 7"

Co-Chair Meyer OBJECTED for discussion purposes.

Representative Croft explained that the amendment allows a retired physician to be a member of the Violent Crimes Compensation Board.

Representative Samuels said it makes sense to add this to the bill.

Co-Chair Meyer WITHDREW his OBJECTION to adopt Amendment 2. There being NO OBJECTION, it was so ordered.

4:11:19 PM

Representative Croft MOVED to REPORT CSHB 54 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 54 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with three zero fiscal impact notes: #1 COR, #2 CRT, #3 LAW.

4:12:20 PM

HOUSE BILL NO. 98

"An Act relating to the compensation of certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

MIKE TIBBLES, DEPUTY COMMISSIONER, OFFICE OF THE COMMISSIONER, DEPARTMENT OF ADMINISTRATION, explained that HB 98 matches the statutory schedule for the partially exempt/exempt employees in the legislative executive and judicial branches, to the salary schedules recently negotiated with the supervisory unit. He describe the two-tier approach that is required to update salary schedules for state employees. One is through the collective bargaining process, the second tier for partially exempt/exempt employees. Because there are two different approaches, the salary schedules have drifted apart. Currently they are 5 percent off, and will increase to 9 percent at the end of the recently negotiated contracts.

Mr. Tibbles expressed three concerns. The pay system requires payment based on "like pay for like work", which will not meet statutory obligation. He referred to a chart on page 3 of the packet "Comparison of Statutory, Judicial and Supervisory Salary Schedules" (copy on file.) The other two concerns regard upward career progression and recruitment. He recommended that the legislature adopt the statutory schedule.

4:16:16 PM

In response to a question from Co-Chair Meyer, Mr. Tibbles replied that it is common practice to submit legislation to track the two salary schedules. They are not always approved in the same year and so there is sometimes catch up, like there is this year.

In response to a question from Representative Holm, Mr. Tibbles explained the difference between steps A through step F.

In response to a question from Representative Kelly, Mr. Tibbles reiterated the current and projected salary schedule gap.

4:17:51 PM

Representative Croft asked for the total cost for the next five years. Mr. Tibbles describe each of the three fiscal notes. Representative Croft questioned the "free ride" of

organizations that have not negotiated. Mr. Tibbles responded that the salary schedule applies to individuals that are exempt from collective bargaining and it meets statutory obligation. He pointed out problems if parity is not followed.

4:20:37 PM

Representative Hawker observed that the legislature has imposed upon itself a 23.5 percent reduction in per diem pay. He questioned what happened to cost reduction.

MILA COSGROVE, DIRECTOR, DIVISION OF PERSONNEL, ADMINISTRATION underscored the parity issue of the bill. She addressed Representative Croft's concern about equity and negotiation issues. She spoke of an obligation to insure "like pay for like work", and a duty to treat management level and "rank and file" fairly.

Representative Kelly asked which comes closest to a competitive scale. Ms. Cosgrove reported that the state of Alaska does not have a market driven pay system. Representative Kelly noted that equal pay for equal work is not relevant today. He asked how competitiveness is sensed.

4:24:11 PM

Ms. Cosgrove replied that the executive branch is hemmed in by statute. She explained that the pay is not competitive with the private sector. She agreed that steps need to be taken to adjust pay scales. There is an impact on recruitment. Representative Kelly suggested that the department should be aware of the market condition in order to get to a competitive measurement. He stressed another reason to stay competitive.

4:26:50 PM

CHRIS CHRISTENSEN, DEPUTY ADMINISTRATOR, OFFICE OF THE ADMINISTRATIVE DIRECTOR, ALASKA COURT SYSTEM, shared the background of the court system. He related statistics surrounding court employees. He discussed high turnover rates and talked about cost-of-living adjustments resulting in employees joining a union. He related the history of judges' salaries in Alaska, including a comparison of the average annual increases for judges nationally and locally. Judges do not get annual longevity increases. He spoke of rural judge differentials. HB 98 would bring salary adjustments equal to salaries approved by the legislature for APEA members last year. The bill sends a message to employees that the legislature does value them as much as union employees.

4:33:03 PM

He referred to Representative Croft's question about non-union employees stating that often non-monetary compensation in union contracts is not matched.

4:37:27 PM

Vice-Chair Stoltze recalled that there has been an effort to match employees' salaries. He noted that judges have an honorary position.

Mr. Christensen responded that going from number 49 to number 47 does not seem to be much of an increase. He contrasted private sector lawyers with public sector lawyers and judicial pay raises.

4:38:05 PM

PAM VARNI, EXECUTIVE DIRECTOR, LEGISLATIVE AFFAIRS AGENCY, testified in support of HB 98, for equity reasons. She recalled the history of the executive and judicial salary schedules. She described the difference between the partially exempt and CPIU salary increases as 26.68 percent. She shared statistics from various states regarding salary increases. The per diem rate has gone down for legislators, which is set by Department of Defense.

4:40:44 PM

Vice-Chair Stoltze asked on who's behalf Ms. Varni is testifying. She replied on the behalf of the agency employees. Legislative council would also support this.

4:41:48 PM

Representative Hawker observed that the bill puts him in a very uncomfortable position. Dealing with costs of retirement plans is a big issue. Alaska's retirement plan is very generous. He suggested "do no harm until we figure out how to solve the problem." He debated the other side of the argument. He stated his opposition to the radical changes proposed to the PERS and TRS plans. He suggested that granting a wage increase is hypocritical on his part. He stated that his concern is not with equity and fairness to employees.

4:45:27 PM

Co-Chair Meyer suggested proposing a hiring freeze until PERS and TRS is decided. He emphasized that current employees need to be treated fairly. He spoke in favor of passing HB 98.

Vice-Chair Stoltze agreed with Representative Hawker

Representative Holm also agreed with Representative Hawker. He quoted the high pay level of 28 E. He voiced concern about COLA, vacation pay, and other compensations. He requested more information about those costs.

4:47:50 PM

Co-Chair Meyer pointed out that union employees have already received their wages. This bill will bring non-union employees up to the same level.

4:49:03 PM

Ms. Cosgrove spoke of collective bargaining.

ART CHANCE, DIRECT, LABOR RELATIONS, DEPARTMENT OF ADMINISTRATION, shared information about the executive branch related to leave, pay, geographical differentials, and merit steps, all established in statute.

4:51:56 PM

Representative Foster spoke in support of the legislation. He concluded that denial of the legislation would result in greater unionization.

Mr. Chance stated that the only employees that could not collectively bargain are elected and appointed officials. He noted that he is currently seeking to eliminate labor relations staff from the current bargaining unit.

4:54:20 PM

Co-Chair Chenault referred to Section 6, salaries for University of Alaska, and questioned why they are being treated differently.

Ms. Cosgrove noted that the university pay structure is completely different from the other branches. Mr. Chance added that many of their salaries are established through collective bargaining.

4:55:52 PM

Representative Kelly spoke in support of the legislation. He observed that public pay has slipped, the legislation would only raise judges from 49th to 47th [place in regards to pay nationally], and there is a threat of underemployment. He stressed that the PERS and TRS issue is separate. He concluded that employees would be lost or organized if this legislation is not adopted.

4:59:30 PM

Co-Chair Meyer pointed out that it is not an union or non-union issue, but one of fairness and equality.

Representative Foster MOVED to report CSHB 98 (STA) out of Committee with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 98 (STA) was REPORTED out of Committee with a "do pass" recommendation and with three fiscal impact notes: #1 GOV, #2 LEG, and a new CRT note.

ADJOURNMENT

The meeting was adjourned at 5:01 PM