

HOUSE FINANCE COMMITTEE
February 14, 2002
1:52 PM

TAPE HFC 02 - 26, Side A
TAPE HFC 02 - 26, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:52 PM.

MEMBERS PRESENT

Representative Eldon Mulder, Co-Chair
Representative Bill Williams, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative John Harris
Representative Ken Lancaster
Representative Jim Whitaker

MEMBERS ABSENT

Representative John Davies
Representative Bill Hudson
Representative Carl Moses

ALSO PRESENT

Linda Sylvester, Staff, Representative Kott; Ed Flanagan, Commissioner, Department of Labor and Workforce Development; Pam LaBolle, President, Alaska State Chamber of Commerce; Thyes Shaub, Lobbyist, National Federation of Business;

PRESENT VIA TELECONFERENCE

Karen Rogina, ARBA, Anchorage.

SUMMARY

HB 56 An Act relating to minimum wages.
#hb56
HOUSE BILL NO. 56

"An Act relating to minimum wages."

LINDA SYLVESTER, STAFF, REPRESENTATIVE KOTT testified in support of the legislation on behalf of the sponsor. She stated that HB 56 increases the minimum wage to a level that will help ensure a minimum standard of living Alaska's lowest paid workers.

Ms. Sylvester maintained that, since 1938 when the United States established the Fair Labor Standards Act, Americans have believed that it is appropriate for the government to establish a minimum wage floor for workers. She asserted that Alaska statutes were crafted to echo that conviction. The preamble of the Wage and Hour Act of 1959 states that:

It is the public policy of Alaska to:

- (1) Establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being; and
- (2) Safeguard existing minimum wage and overtime compensation standards that are adequate to maintain the health, efficiency, and general well being of workers against unfair competition of wage and hour standards that do not provide adequate standards of living.

Ms. Sylvester observed that the proposed committee substitute for HB 56 contained the following findings:

An increase in the minimum wage will help ensure a minimum standard of living for the health, safety, and well being of every Alaskan.

The Legislature notes that currently, Washington, Oregon and California have surpassed Alaska in providing for a minimum standard of living for its workers.

Finally, the Legislature finds that for a minimum wage to be fair, it must be indexed to the cost of living to help low-income workers keep pace with inflation.

Ms. Sylvester observed that HB 56 amends section 2 (a) so that:

- Effective January 1, 2003, an employer shall pay each employee not less than \$7.15 an hour, for hours worked in a pay period.
- As well, each year, not later than September 30, the minimum wage shall be adjusted for inflation, effective the following year.
- The adjustment for inflation shall be calculated at 50% of the Consumer Price Index for Anchorage or \$1.00 more than the federal minimum wage, whichever is greater.

Ms. Sylvester explained that the original version of HB 56 would have increased the minimum wage to \$6.90 in two steps. There were three hearings on the bill, which failed to progress beyond House Labor and Commerce Committee. An

initiative petition was subsequently circulated, which proposed to raise the minimum wage to \$7.15. The initiative also proposed automatic future increases tied to the CPI of Anchorage, as opposed to relying on federal or state action. The proposed committee substitute offered by Representative Kott reflects the language of the initiative, with the exception that the cost of living adjustment factor is set at 50% of the Anchorage CPI.

Ms. Sylvester emphasized that the "question of the day" is whether or not the proposed committee substitute would be sufficient to supplant the initiative petition. The test to determine if a bill supplants an initiative is found in Warren v. Boucher.

Ms. Sylvester added that Article 11, sec 4 Constitution of the State of Alaska states:

INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than 120 days after adjournment of the legislative session following filing.

The Constitution also states: If, before the election, substantially the same measure has been enacted, the petition is void.

Alaska statute, AS 15.45.210 states:

Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall notify the committee.

Ms. Sylvester explained that the test of how similar a measure enacted by the legislature and an initiative must be for the legislative measure to invalidate the initiative was set out in Warren v. Boucher, 543 P.2d 731:

If the main of the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems, which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter,

the more latitude must be allowed the legislature to vary from the particular features of the initiative.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

Ms. Sylvester observed that the initiative language is not particularly precise where it discusses the increase based upon CPI. The initiative states that the minimum wage shall be adjusted annually for inflation by "using the CPI-Anchorage."

Ms. Sylvester maintained that the lack of specificity indicates that the primary purpose is to tie the wage to local economic changes rather than rely on keeping slightly ahead of the federal prevailing minimum wage or upon the Alaska State Legislature to inject a raise into the minimum wage scale. The key element is that the minimum wage is attached to an elevator independent of the political process. She concluded that HB 56 is substantially the same measure at 50% of the CPI of Anchorage.

Vice-Chair Bunde questioned if there is any indication whether or not there would be a lawsuit [if the initiative were suspended with enactment of HB 56.]. Ms. Sylvester responded that there have been indicators that the sponsors of the initiative are supportive.

Vice-Chair Bunde responded that he has heard concerns that jobs would be lost, as smaller businesses are affected by the increase. Ms. Sylvester acknowledged that the issue is the dilemma of the bill. She pointed out that the preamble of the Wage and Hour Act of Alaska instructs worker protection. Only a small percentage of Alaskans are working at minimum wage.

Vice-Chair Bunde maintained that workers above the minimum wage would demand similar increases to retain their relative position above the minimum wage. Ms. Sylvester acknowledged that there would be some impacts on the economy since the legislation would increase the minimum wage by 26 and a half percent.

Vice-Chair Bunde observed that there is currently a low inflation rate, but pointed out that the rate could be in the double digits in the future. He questioned the impact of double-digit inflation. Sylvester responded that if the rate of inflation, in Anchorage, follows the same pattern as

existed through the 1990's, then there should be a one percent increase at 50 percent of the CPI. She stressed that the earning power of workers is being eroded by the rate of inflation.

Vice-Chair Bunde questioned if the rate of inflation during the 1970's had been calculated. Ms. Sylvester did not have the inflation rates for the 1970's but recalled that there was one year during that time with a negative inflation rate, which would also be reflected in the minimum wage.

Representative Harris referred to the fiscal impact. He observed that school bus drivers receive, by state law, a minimum of two times the minimum wage. He questioned the impact of the increase on state school transportation costs. Ms. Sylvester noted that most of the school transportation contracts would expire in 2006. She stated that the impact would not be immediate. She observed that there is no guarantee that the state of Alaska will continue to pay for pupil transportation. She added that most school bus drivers earn twice the minimum wage at \$11.30 an hour. In Anchorage, the maximum salary of a school bus driver is \$14.90, which is close to where the statutes would set their salary once contracts expire.

Representative Harris asked if it would be difficult for someone bidding on a school bus contract to calculate future wages. Ms. Sylvester did not think it would be difficult. She observed that the Department of Education and Early Development seeks to encourage competition. They are attempting to issue contracts on a five-year scale. It would be fairly easy to predict the CPI.

Co-Chair Mulder agreed with Representative Harris and expressed surprise that there was no fiscal note by the Department of Education and Early Development. He asked the sponsor to request a fiscal note from the Department of Education and Early Development.

Co-Chair Mulder pointed out that the determination of what is substantially similar is like "dancing on the head of a pin". He expressed concern that the duties are regulated to the lieutenant governor with consultation from the Department of Law to determine what is substantially similar. He noted that it is a statutory delegation not a constitutional delegation. He suggested that the issue be revisited by the Legislature to determine if it is an appropriate abrogation, because it is not constitutionally required that the lieutenant Governor be the determiner. He reiterated that the Constitution states: If, before the election, substantially the same measure has been enacted, the petition is void. He noted that the legislature states through statute that if the lieutenant governor, with the formal concurrence of the attorney general determines that

an act of the legislature that is substantially similar should be taken off. He emphasized that the legislature should clarify the issue and set up a mechanism that is more equitable. He maintained that it is a political football, which becomes an inherently political decision when left in the hands of the person that is running for governor.

Representative Whitaker stated that he is confident that the intent is to have the substantially similar questioned answered by an uninterested third party. He agreed that there is no longer an uninterested third party and stated that he would support an effort [to assure that there is an uninterested third party].

Vice-Chair Bunde questioned if the statutory requirement for school bus drivers should be should be continued. He stated that he would not want to take any action that would remove state support for transportation.

KAREN ROGINA, ALASKA RESTAURANT AND BEVERAGE ASSOCIATION, ANCHORAGE testified in support. She explained that the Association supports the process of directing any minimum wage increases through the legislative process instead of the ballot process. She maintained that HB 56 is substantially similar to the ballot initiative. She felt that tying the increase to the CPI was inappropriate, but would support a 50 percent inflation index over a 100 percent inflation index. She also spoke in support of a graduated effective date to allow employers two years to adjust to a 26 percent mandated wage increase.

Representative Croft commented on the "substantially similar" issue. He stressed that the Warren v. Boucher case dealt with a huge, complex issue. He maintained that the case noted that the more complex the issue the more latitude. He pointed out that the [minimum wage initiative] is a very simple case. He maintained that the point of tying the increase to an inflation index is to keep the real purchasing power the same. If it is indexed to half of the rate the real purchasing power would be decreased. He did not think that the legislation would implement the intent of the initiative, but would deteriorate the minimum wage slowly in terms of its buying power. He stressed that there is a huge difference between keeping up with inflation and not keeping up with inflation and thought a court case would be the most likely result. He stressed that the bill would not keep up with inflation and maintained that the legislature must do something to keep up with inflation if the initiative is to be kept off the ballot.

Co-Chair Mulder disagreed with the issue of complexity. He maintained that the issue is no less complex. He acknowledged that there are less moving parts, but emphasized that subtle ramifications are complex. He did not

think that it would be a "slam dunk" issue. He spoke to the issue of the lieutenant governor being the arbiter. He stressed that a more objective analysis would be less suspect to being political and noted that there is always the relief or remedy of court. He stressed that if there is concern about one person's determination that they should look at a process that is less suspect and open to vagaries of campaign year politics.

Vice-Chair Bunde saw negative impacts in regards to public policy and stated that he preferred to let the people judge the issue. He questioned if "it is better to have fewer jobs that make two bucks an hour more or is it a case of getting 100 percent of nothing because you get a raise and loose your job".

Representative Croft felt that the Lieutenant Governor would take the job seriously and that the determination would be made on the legal advise provided and the decision made on the best estimate of the information. He did not think that the current Lieutenant Governor or future lieutenant governors would base their decision mainly or partially on politics.

Representative Whitaker stated that there is no intention to impugn the Lieutenant Governor, but to put the process above suspicion. Co-Chair Williams agreed with Representative Whitaker's assessment.

PAM LABOLLE, PRESIDENT, ALASKA STATE CHAMBER OF COMMERCE observed that 35 percent of their members stated that they could go with a minimum wage [as proposed by Representative Kott], 32 percent objected and 28 percent were undecided. Six hundred members were polled and they received 100 responses. She observed that 69 percent of the respondents pay \$8.00 an hour or more already, but noted that they are concerned that the floor would be raised. She added that 14% of the respondents stated that the increase would reduce hours or jobs for part-time employees; 12% responded that it would reduce hours for full-time employees; and 18 percent stated that it would increase prices for products and/or services. She stressed that there is no support for an automatic increase of the minimum wage. She maintained that the legislature should initiate increases.

Vice-Chair Bunde thought that cost of services would rise with wage increases and questioned why only 18 percent of the respondents would raise the cost of their products. Ms. LaBolle observed that 69 percent of those surveyed already pay beyond \$8.00 per hour.

Vice-Chair Bunde concluded that there would be no net gain because the cost of living would increase with the increase in wages.

Representative Harris asked when the last time the minimum wage was increased. He pointed out that inflation has continued to increase. He noted that the federal minimum wage has only been increased once in 20 or 25 years. He stressed the need to consider the purchasing power of lower wage employees. He stressed that there has to be some responsibility to bring up the wages of lower paid workers.

Ms. LaBolle pointed out that 35 percent of those surveyed supported Representative Kott's proposal. The strongest opposition is to the Governor's proposal and the automatic increase mechanism.

In response to a question by Co-Chair Williams, Ms. LaBolle expressed her hope that the Legislature would resolve the question as best as they can, without long term harm to the business community. Co-Chair Williams assured her that it was their intent to do so.

THYES SHAUB, LOBBYIST, NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB) provided members with a Statement of Opposition and the results of a survey (copy on file). She noted that NFIB tends to represent business with 5 or fewer employees. She observed that many businesses do not have the ability to increase prices when their costs increase.

Co-Chair Mulder observed that 33 percent of the NFIB members responding to the survey stated that a minimum wage would result in the reduction of hours and/or jobs for full or part-time employees. He stressed the need to proceed cautiously.

Ms. Shaub observed that [the affect of a raise in the minimum wage on increases to product cost] is a complex issue and differs from business to business. She observed that the survey showed that the largest bracket [19 percent] of minimum wage employees were 15 - 18 years old. She stressed that small businesses utilize minimum wage for seasonal and entry-level employees.

ED FLANAGAN, COMMISSIONER, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT expressed appreciation for changes in the proposed committee substitute which more closely reflect the Governor's original bill and the initiative. He observed that 50,000 Alaskans signed the initiative. He noted that most businesses must pay over the minimum wage in order to attract workers. The only difference [between the Governor's proposal and Representative Kott's] is the level of the CPI. He noted that the last federal raise to the minimum wage was a two step increase: .50 cents in October 1996 to \$4.75 and a .40 cent raise in September 1, 1997 to \$5.15. The Alaskan minimum wage was increased at the same time to \$5.65 [by the end of the second year]. He noted that testimony during the

last increase predicted reductions in the food and drinking industry jobs. Statistics show that there has been an increase every year since the increase and reductions were not realized. There have been four minimum wage increases in the last 12 years.

Commissioner Flanagan observed that there was discussion about rising the Alaskan minimum wage one dollar over the federal minimum wage. The Alaskan minimum wage was .50 cents over the federal minimum wage in 1959 when the federal minimum wage was one dollar.

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Commissioner Flanagan observed that a family of four with one wage earner working 60 hours a week or two working a combined amount of 60 hours a week at \$7.15 an hour would only be a few dollars over the federal poverty level.

Commissioner Flanagan observed that there has been a major revision in how the CPI has been computed. He noted that the increases have been less pronounced. He observed that the CPI is being applied to the floor. He stressed that it is a very small margin for survival. The Administration implores the adoption of the full CPI amount.

Commissioner Flanagan summarized that Alaska's last two raises to the minimum wage were in 1996 and 1997 (\$4.75 to \$5.65). He thought that there had previously been a one-dollar increase in two steps in 1990 and 1991.

Co-Chair Mulder pointed out that most of the increases were at .50 increments over a five to ten year time frame. He expressed concern with the CPI adjustment. He estimated that the minimum wage would be doubled over the next 10 years [if the full CPI were used]. He acknowledged the justification of incremental increase but questioned if that is where we need to be, to provide entry-level jobs to kids.

Commissioner Flanagan stressed that the minimum wage has lost more ground over the last ten years than during any period since the 1950's. There used to be federal adjustments three times a decade, which were the result of bipartisan efforts. Before the last increase in the mid 1990's the minimum wage adjusted for inflation proofing was 80 percent of the purchasing power that it had had: the lowest purchasing power it had at any time. He noted that the cost of living in Alaska has come down in relation to other states. He observed that the perception is that the minimum wage earner is a teenager. The low wage industry includes cannery, childcare and food service workers. The minimum wage in those occupations is in the late 20's and early 30's. He maintained that even teenagers working full-time, even if they are living at home should, make the

statutory minimum wage. He maintained that \$7.15 results in a "fairly basic" floor. He noted that the minimum wage would be \$7.79 after five years at 2 percent of the full CPI. At one percent it would be \$7.50 dollars per hour.

Co-Chair Mulder noted that the Permanent Fund utilizes a 2.9 percent inflation rate.

HB 56 was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 2:55 PM