

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 17, 2003

3:15 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Bob Lynn, Vice Chair  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 54

"An Act exempting flight crew members of certain air carriers from overtime pay requirements."

- MOVED SB 54 OUT OF COMMITTEE

HOUSE BILL NO. 111

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- BILL HEARING POSTPONED

**PREVIOUS ACTION**

BILL: SB 54

SHORT TITLE: OVERTIME PAY FOR AIRLINE EMPLOYEES

SPONSOR(S): SENATOR(S) OLSON

Jrn-Date	Jrn-Page		Action
01/31/03	0090	(S)	READ THE FIRST TIME - REFERRALS
01/31/03	0090	(S)	TRA, L&C
02/18/03		(S)	TRA AT 1:30 PM BUTROVICH 205
02/18/03		(S)	Moved Out of Committee --
02/19/03	0220	(S)	TRA RPT 5DP

02/19/03	0220	(S)	DP: COWDERY, OLSON, THERRIAULT,
02/19/03	0220	(S)	WAGONER, LINCOLN
02/19/03	0220	(S)	FN1: ZERO(LWF)
02/27/03		(S)	L&C AT 1:30 PM BELTZ 211
02/27/03		(S)	Moved Out of Committee
02/27/03		(S)	MINUTE(L&C)
02/28/03	0294	(S)	L&C RPT 5DP
02/28/03	0294	(S)	DP: BUNDE, SEEKINS, DAVIS, FRENCH,
02/28/03	0294	(S)	STEVENS G
02/28/03	0294	(S)	FN1: ZERO(LWF)
03/05/03	0355	(S)	RULES TO CALENDAR 3/5/2003
03/05/03	0355	(S)	READ THE SECOND TIME
03/05/03	0356	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/05/03	0356	(S)	READ THE THIRD TIME SB 54
03/05/03	0356	(S)	PASSED Y20 N-
03/05/03	0365	(S)	TRANSMITTED TO (H)
03/05/03	0365	(S)	VERSION: SB 54
03/07/03	0459	(H)	READ THE FIRST TIME - REFERRALS
03/07/03	0459	(H)	L&C
03/07/03	0459	(H)	REFERRED TO LABOR & COMMERCE
03/17/03		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

SENATOR DONALD OLSON  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As sponsor, presented SB 54 and explained how this bill will clarify that professional flight crews are exempt from state overtime laws.

JIM WILSON, Chair  
Legislative Committee  
Alaska Air Carriers Association (AACA)  
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 54, commenting that exemption of flight crews from overtime is standard nationwide.

TOM VANHOOMISSEN, Flight Deck Member  
Era Aviation  
Anchorage, Alaska

POSITION STATEMENT: In SB 54, supported the exemption of professional flight crews, including flight attendants, from overtime laws; noted that such an exemption gives employees more flexible schedules and results in safer working conditions.

MARCIA DAVIS, General Counsel  
Era Aviation  
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 54, explaining why loadmasters, who are not covered by the Federal Aviation Administration regulations, should not be included in the flight crew exemption.

PAUL SHOLTON  
Northern Air Cargo  
Anchorage, Alaska

POSITION STATEMENT: Testified against including loadmasters in the flight crew exemption of SB 54, saying it would cause accounting and administrative difficulties.

#### **ACTION NARRATIVE**

#### **TAPE 03-22, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:15 p.m. Representatives Anderson, Lynn, Gatto, and Crawford were present at the call to order. Representatives Dahlstrom, Rokeberg, and Guttenberg arrived as the meeting was in progress.

#### SB 54-OVERTIME PAY FOR AIRLINE EMPLOYEES

Number 0032

CHAIR ANDERSON announced that the only order of business would be SENATE BILL NO. 54, "An Act exempting flight crew members of certain air carriers from overtime pay requirements."

Number 0057

SENATOR DONALD OLSON, Alaska State Legislature, sponsor of SB 54, said the bill provides certainty in the interpretation of the existing federal and state wage and hour statutes as they pertain to the payment of overtime in the air transportation industry. Because of their unique working conditions, flight crews have been considered professionals exempt from the

standard 8-hour workday, 40-hour workweek, and the associated overtime pay. These conditions are contained in current Alaska statutes. Along with the maximum flight hours set by the Federal Aviation Administration (FAA), these exemptions at both the state and federal level have allowed the industry to structure flexible schedules for flight crew personnel.

SENATOR OLSON noted, however, that several Alaska court decisions have raised questions about the interpretation of the state wage and hour laws and the application of overtime exemptions for flight crews. Senate Bill 54 explicitly adds flight crews to the list of occupations in employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites provisions under the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of this exemption. He urged the committee to pass SB 54.

Number 0224

JIM WILSON, Chair, Legislative Committee, Alaska Air Carriers Association (AACCA), testified that his group supports passage of SB 54. He stated that the current practice among the majority of association members is to accept the interpretation by the Alaska Department of Labor and Workforce Development, Division of Labor Standards and Safety, Wage and Hour section, that flight crews are exempt from overtime rules. This approach to calculating payroll is an industry standard used in all other states. During an informal poll of the AACCA, members commented that flight crews from the various Alaska-based companies prefer their exempt status primarily due to their employers' abilities to create flexible work schedules.

MR. WILSON added that SB 54 brings stability to Alaska law as applied to flight crews of air carriers that are governed by the Railway Labor Act. Passage will ensure that the state's executive branch interpretation of wage and hour overtime law is the same as that applied by Alaska courts. The bill applies to the flight crews of any air carrier in the state engaged in interstate work, foreign work, or transportation of U.S. Postal Service mail. The only flight crews unaffected are those who perform work for air carriers that operate only in-state charter/air taxi work.

Number 0403

REPRESENTATIVE GATTO asked whether this bill has any limits on this overtime exemption.

MR. WILSON described several variations on a flight crew's circumstances: a 10-hour day followed by a six-hour day; very short days during the winter's brief hours of daylight; very long hours in the summer, when the person is on duty but only flying part of that time; and bad weather days when the crew is sent home early. Mr. Wilson said this exemption from overtime gives air carriers the flexibility to schedule flight crews. It allows the crews to know that they are going to get paid for a full day even though they didn't work the full day. He explained he was a pilot for many years before opening his own business [Coastal Helicopters, Inc].

Number 0511

MR. WILSON replied to questions from Representative Gatto about whether the FAA regulates the exemption of overtime and which employees are affected. Mr. Wilson said he can only fly a pilot so many hours a day and have the person on duty so many hours a day. He explained that applies to all members of the flight crew. On larger airplanes, the flight crew consists of pilots, flight attendants, co-pilots, and flight engineers. He explained that ticket agents and custodians are not considered flight crew and are not covered by this overtime exemption. These workers can be scheduled for regular work hours because they're not getting in an airplane and leaving the base of operations.

Number 0631

REPRESENTATIVE GUTTENBERG asked how the Railway Labor Act applies to large airlines.

MR. WILSON replied that most of the employees on large airlines are covered because they do intrastate travel. Alaska, through its courts, is the only state that has challenged the current wage and hour rule. Other states are covered by the Railway Labor Act.

Number 0678

CHAIR ANDERSON added that intrastate airlines such as Alaska Airlines and Northwest Airlines are already covered by separate labor agreements, so this bill does not affect them.

MR. WILSON, responding to a question from Representative Guttenberg, explained that a baggage handler moving cargo is not considered flight crew.

Number 0746

REPRESENTATIVE LYNN stated that in the Air Force, loadmasters flew on cargo planes and played a critical role in loading the cargo properly, doing the weight and balance calculations, and keeping the cargo from shifting during flight. He asked whether the equivalent position of a loadmaster working for cargo companies would be covered by SB 54.

Number 0895

SENATOR OLSON said that any flight crews with loadmasters work for carriers that are represented by unions. In the civilian world, responsibility for load duties rests with the pilot in command.

Number 0953

REPRESENTATIVE ROKEBERG agreed, saying it's not necessary to include loadmasters in the bill because the cargo carriers in the state are usually covered by collective bargaining agreements.

SENATOR OLSON said the flight crews on larger air carriers operating under FAR [Federal Aviation Regulations] Part 121 are usually covered by a collective bargaining agreement. He said he was not aware of any small carriers that had loadmaster personnel with specialized training.

Number 1033

TOM VANHOOMISSEN, Flight Deck Member, Era Aviation, concurred that there's no carrier in Alaska with a loadmaster except for Lynden Air Cargo, which operates the [Hercules] C-130 [a four-engine turboprop aircraft].

REPRESENTATIVE ROKEBERG commented that if Saturn Freight Systems ("Saturn") flew into the state hauling cargo, presumably the crew and the loadmaster would be covered by the Alaska Wage and Hour Act.

MR. WILSON said most of the aircraft used for air cargo in Alaska are older and frequently have a third officer who assists with loading and unloading.

CHAIR ANDERSON suggested that the key is whether the loadmaster is traveling with the flight crew.

Number 1150

REPRESENTATIVE ROKEBERG said it would be worthwhile to research this issue. He said Alyeska Pipeline Service Company has a contract with Saturn to spray retardant materials on oil spills. He said such planes might have a loadmaster or cargo master on board.

REPRESENTATIVE LYNN confirmed his understanding that the pilot in command is responsible for everything on the airplane.

REPRESENTATIVE ROKEBERG asked whether the Alaska Air Carriers Association has looked at the Alaska Wage and Hour Act and tried to work with the Department of Labor & Workforce Development to develop voluntary flexible work hour plans under AS 23.10.060(d)(14)(A) and (B) [Payment for overtime].

Number 1220

MR. WILSON replied he has talked with staff at the Department of Labor & Workforce Development numerous times, and they've always said that flight crews fall under the professional category [of AS 23.10.55 (9), Exemptions]. He said staff told him that the best way to handle paying flight crews would be through an exemption, which is the purpose of SB 54.

REPRESENTATIVE ROKEBERG explained that the voluntary flexible work hour plan is allowed under the Alaska Wage and Hour Act, and it seemed like it might be applicable in these situations. In statute, the plans are limited to 10 hours a day, they have to be pre-approved, and it takes considerable effort to get those hours approved. He noted for the record that those plans do not provide the flexibility that the air carriers need to do their crew scheduling. Even though that provision is in the law, it's not workable. He said he agrees with the response [by the Department of Labor & Workforce Development staff that an exemption in law is the best way to handle the issue].

CHAIR ANDERSON reiterated that the sponsor statement notes that the court's interpretations of the exemption from overtime are

contradictory. This bill tightens that exemption so it cannot be successfully challenged in court.

Number 1309

SENATOR OLSON confirmed that clarifying the overtime exemption is the intent of the bill. He said there is a lingering question about whether a load person on a big cargo carrier like Saturn is covered by SB 54.

REPRESENTATIVE ROKEBERG said he's not sure that the question has been answered. If large air carriers are covered by a collective bargaining agreement, then the Alaska Wage and Hour Act does not apply. If the loadmaster on a cargo plane is not covered by a bargaining agreement, that person would have to be paid overtime under state law.

SENATOR OLSON said larger carriers, such as Saturn and Southern Air Transport have collective bargaining agreements that are governed by the federal Railway Labor Act. But he said there's still a question about the smaller [Federal Aviation Regulation Part] 135 [single pilot] air taxi operators that may have several nonunionized workers. He said that the federal mandate under the Railway Labor Act applies in that case. Normally, those pilots are only flying within the state

Number 1463

MARCIA DAVIS, General Counsel, Era Aviation, testified at the request of Representative Crawford. She said SB 54 addresses flight crews specifically, because they are professional employees that have the protection of the FAA safety regulations that backstop any potential abuse of the employee. These employees are also governed by the national mediation board on the federal side. She said including loadmasters with flight crews mixes apples and oranges. The loadmasters are not addressed by the FAA safety duty hour limitations, so they don't have that safety backstop. They also have a different level of training than pilots, flight engineers, and flight attendants. She stated that she would be very concerned about loading them into this bill. She said she also believes the Department of Labor & Workforce Development would take exception to adding loadmasters to SB 54. She said that if she represented a group of loadmasters, she would want to keep them covered by the Alaska Wage and Hour Act so they would have overtime protection.

Number 1560

MR. VANHOOMISSEN said that as an employee who enjoys exempt status, he supports including flight attendants in the flight crew. As a result of FAA regulations, the flight attendants are no less professional and no less necessary than the crewmembers in the cockpit. He also said that a flexible work schedule is an extremely important benefit. Flexible schedules allow the flight crews to have input into their schedules and some control over their family lives. He said he thinks such flexibility contributes to air safety in the long run.

MR. VANHOOMISSEN, responding to a question from Representative Rokeberg, said none of his flight crews are covered by collective bargaining agreements.

Number 1638

PAUL SHOLTON, Northern Air Cargo, testified he did not think the loadmasters should be included in SB 54. He said a jet doesn't take very long to get to Nome or Barrow, and these guys work on the ramp in the meantime. He said it would be very confusing to pay loadmasters differently while on the plane or on the ramp. He said loadmasters only go on the jets, not on the slower DC-6 aircraft.

REPRESENTATIVE ROKEBERG asked Mr. Sholton whether he supports SB 54.

MR. SHOLTON said he supports SB 54 because it recognizes flight crewmembers as professionals and shows consideration for the level of discretion they use, their expertise, and training.

Number 1757

SENATOR OLSON summarized the intent of SB 54. He said loadmasters are not covered under the same federal regulations as the rest of the flight crew as defined in this bill. As pointed out by Ms. Davis with Era Aviation, the flight crews have a regulatory backdrop to protect them. He asked the committee to pass SB 54.

Number 1784

REPRESENTATIVE DAHLSTROM moved to report SB 54 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 54 was reported from the House Labor and Commerce Standing Committee

**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:40 p.m.