

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

April 16, 2003

3:20 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**

HOUSE BILL NO. 250

"An Act relating to protests of state contract awards, to claims on state contracts, to the arbitration of certain state construction contract claims, and to hearings and appeals under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

- MOVED CSHB 250(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 251

"An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

- HEARD AND HELD

HOUSE BILL NO. 255

"An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners."

- MOVED CSHB 255(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 259

"An Act relating to public school transportation, and to the minimum wages for school bus drivers; and providing for an effective date."

- BILL HEARING POSTPONED

**PREVIOUS ACTION**

BILL: HB 250

SHORT TITLE:STATE CONTRACTS

SPONSOR(S): REPRESENTATIVE(S)HOLM

Jrn-Date	Jrn-Page		Action
04/07/03	0818	(H)	READ THE FIRST TIME - REFERRALS
04/07/03	0818	(H)	L&C, STA
04/16/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 251

SHORT TITLE:MARINE PILOT FOR FOREIGN PLEASURE CRAFT

SPONSOR(S): REPRESENTATIVE(S)DAHLSTROM

Jrn-Date	Jrn-Page		Action
04/07/03	0819	(H)	READ THE FIRST TIME - REFERRALS
04/07/03	0819	(H)	L&C, FIN
04/16/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 255

SHORT TITLE:WAGES:TRAINING/FLEX-TIME/DEFINITIONS

SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
04/09/03	0868	(H)	READ THE FIRST TIME - REFERRALS
04/09/03	0868	(H)	L&C, FIN
04/14/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/14/03		(H)	Heard & Held MINUTE(L&C)
04/16/03		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE JIM HOLM  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 250.

DICK CATTANACH, Executive Director  
Associated General Contractors of Alaska  
Anchorage, Alaska

POSITION STATEMENT: Explained reasoning behind HB 250;  
encouraged members' support and answered questions.

MARK O'BRIEN, Chief Contracts Officer  
Contracting, Procurement and Appeals  
Office of the Commissioner  
Department of Transportation & Public Facilities  
Juneau, Alaska

POSITION STATEMENT: Explained reasoning behind HB 250 and the  
department's fiscal note; answered questions.

MICHAEL SWALLING, President  
Swalling Construction Company  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 250.

REX SHATTUCK, Staff  
to Representative Nancy Dahlstrom  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As staff to the bill's sponsor, presented  
information on HB 251.

KATE TESAR, Lobbyist  
for Alaska Yacht Services and Provisioning  
Juneau, Alaska

POSITION STATEMENT: Testified in favor of HB 251.

CAPTAIN ROBERT WINTER, Marine Pilot  
Southeast Alaska Pilots' Association  
Juneau, Alaska

POSITION STATEMENT: Testified that he could not support HB 251  
as written but expects compromise language to be introduced in a  
future CS will meet his concerns.

HEATHER NOBREGA, Staff  
to Representative Norman Rokeberg  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 255.

DON ETHERIDGE, Lobbyist  
for Alaska State AFL-CIO

Juneau, Alaska

POSITION STATEMENT: Voiced complete opposition to HB 255.

CHIP WAGONER, Lobbyist  
for Alaska Catholic Conference  
Juneau, Alaska

POSITION STATEMENT: Urged the committee to drop Section 4,  
Training wages, from HB 255.

BARBARA HUFF TUCKNESS, Director  
of Legislative and Governmental Affairs  
General Teamsters, Local 959, Alaska  
Anchorage, Alaska

POSITION STATEMENT: Spoke in opposition to HB 255, noting that  
businesses will not be able to find workers willing to work for  
\$5.15 an hour.

JOHN ZULEGER  
Fairbanks, Alaska

POSITION STATEMENT: Testified against HB 255, saying it  
benefits businesses but not blue collar workers.

KAREN PLESS, Apprentice  
International Union of Operating Engineers, Local 302  
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 255.

JOHN BROWN, President  
Fairbanks Central Labor Council;  
International Union of Operating Engineers, Local 302  
Fairbanks, Alaska

POSITION STATEMENT: Testified against HB 255, saying it will  
continue the erosion of wages for workers in Alaska.

JOHN DAVID RAGAN  
Laborers International Union of North America, Local 942;  
Ester Community Association;  
Volunteer fire fighter  
Ester Volunteer Fire Department  
Ester, Alaska

POSITION STATEMENT: Spoke against HB 255, describing it as a  
direct attack on the minimum wage and the 8-hour day.

MATTHEW SAMPSON  
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 255, stating that no employee  
will make better wages as the result of this bill.

CARL WEED

Fairbanks, Alaska

POSITION STATEMENT: Spoke against HB 255, arguing that it does not help workers who are also consumers.

**ACTION NARRATIVE**

**TAPE 03-36, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:20 p.m. Representatives Anderson, Dahlstrom, Gatto, Crawford, and Guttenberg were present at the call to order. Representatives Lynn and Rokeberg arrived as the meeting was in progress.

HB 250-STATE CONTRACTS

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 250, "An Act relating to protests of state contract awards, to claims on state contracts, to the arbitration of certain state construction contract claims, and to hearings and appeals under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date." [In packets was a proposed committee substitute (CS), Version H.]

Number 0095

REPRESENTATIVE JIM HOLM, Alaska State Legislature, sponsor, explained that HB 250 attempts to alleviate problems that contractors have been having in the extremely costly claims process. The desire is to have expeditious resolution of claims. However, the perception of the construction community is that the process has slowly deteriorated and is no longer fair or expeditious.

REPRESENTATIVE HOLM noted that the bill was worked on by the Associated General Contractors of Alaska ("AGC of Alaska") and that Dick Cattanach had negotiated with Mark O'Brien of the Department of Transportation & Public Facilities (DOT&PF); they went through the bill extensively. Representative Holm pointed out that the sectional analysis [for Version H] mentions recovery of attorney fees and how the process will be maintained.

Number 0206

REPRESENTATIVE GATTO moved to adopt the proposed CS, Version 23-LS0501\H, Bannister, 4/14/03, as a work draft. There being no objection, Version H was before the committee.

REPRESENTATIVE HOLM explained that presently there is no independent [third] party review in contract resolution with the state, in either the purchasing departments or contracts with DOT&PF; it is difficult for people who assert claims for less than \$250,000 to afford them because of litigation costs.

REPRESENTATIVE HOLM reported that AGC of Alaska and Mr. O'Brien went through potential problems and "pretty much solved them." Referring to the written sponsor statement, he noted that it lists six of the most important [modifications made by HB 250 to current statute]: 1) if a procurement officer doesn't issue a written decision by the due date, the contractor may seek arbitration; 2) on appeals of all construction claims, the parties can agree to binding arbitration; 3) the timelines for decisions have been tightened and redundant requirements eliminated; 4) an arbitrator or hearing officer who doesn't issue a decision by the deadline is disqualified for a year; 5) qualifications for arbitrators and hearing officers will be established by the commissioner of the Department of Administration in regulation; and 6) the contractor is entitled to recover some of the claims costs incurred.

REPRESENTATIVE HOLM called this a balanced bill, and pointed out that there are time constraints because of the coming construction season. He mentioned that it has an indeterminate fiscal note because of the inability to determine the costs of claims resolution. He suggested that it would be less costly and a better business situation, however, if people had an easy way to rectify their problems without litigation.

Number 0455

DICK CATTANACH, Executive Director, Associated General Contractors of Alaska, requested that Mr. O'Brien join him at the witness table. Noting that they'd worked on the bill for more than two years, he said about three months had been spent getting input from the Department of Law. He noted that there was input from the Department of Administration as well. Mr. Cattanach told members that time is critical and noted that DOT&PF's construction budget is roughly \$400 million; without

passage of the bill, that \$400 million will be under the existing statute, rather than this bill.

MR. CATTANACH told members the bill is a compromise intended to do three things: speed up the system, make it so the process is viewed as more fair, and lower claims costs. First, with regard to speeding up the system, he explained that a claim comes about because the contractor and the owner - the parties in a construction contract - disagree about whether certain work is covered in the contract; the current claims process reputedly takes upwards of two years to resolve in some cases. Second, he reported that right or wrong, contractors have a perception of unfairness because claims officers are selected by DOT&PF from a list maintained by DOT&PF, based on criteria established by DOT&PF; the bill changes the system, with a lot of it modeled after the arbitration of AAA [American Arbitration Association]. Mr. Cattanach remarked, "We're going to be recommending the use of arbitration more." Third, he noted that members have told him a significant claim may cost \$250,000 to prosecute; those costs aren't recovered under the current statute. He said:

The theory that we're espousing is that the reason the contractor has to spend that money is because the claim that he ultimately ... gets was not the claim that he was offered; therefore, he has to spend that money to get what was reasonably his, as determined by a third party. We recognize their difference of opinion.

MR. CATTANACH explained that the bill addresses court rules - Rules 68, 79, and 82 - with respect to how those costs are determined. He deferred to Mr. O'Brien for details on the fiscal note and related his belief that this bill will result in a significant improvement. He encouraged members' support.

Number 0751

MARK O'BRIEN, Chief Contracts Officer; Contracting, Procurement and Appeals; Office of the Commissioner; Department of Transportation & Public Facilities, pointed out positive benefits in terms of the three goals of being faster, more fair, and less expensive. The bill shortens some existing timeframes in statute and creates timeframes where none existed. It also offers arbitration - generally considered less expensive and onerous, and requiring less preparation and associated costs and fees - as an alternative to the hearing process. He said it is both faster and less expensive. The arbitration process is

final; there is no appeal to the courts unless there has been a gross misrepresentation or fraud, for example, and thus normally there won't be the additional costs and legal fees of going through a court process. As for fairness, the bill requires adoption of regulations to govern the selection process [for the hearing officer]. "We look forward to working with the Department of Administration to get those established and create some specific guidelines on the selection," he remarked.

Number 0886

MR. O'BRIEN reported that [the state's] only disagreement with AGC of Alaska was on the issue of costs and fees. Noting that Rules 79 and 82 allow recovery of partial attorney fees and costs for the prevailing party, he explained that it slices both ways: if the state prevails, there is an opportunity to recover some of its cost. Generally, though, the prevailing party is defined as the person who receives any judgment. Historically, [the claimant] almost always receives something. If someone with a \$200,000 claim is awarded \$15,000 by the hearing officer, [the state] may think it's a "win," but [the claimant] is the prevailing party and thus receives attorney fees and costs, or a portion of them.

MR. O'BRIEN explained the calculations for the fiscal note. He said he'd looked at the last 11 years' records on claims and used an example of a \$2 million claim with a \$.5 million judgment by an arbitrator, based on actual cases in that range for which costs and fees were typical; it was calculated that a contractor who was the prevailing party would receive roughly \$73,000 for his/her portion of the costs and fees. He noted that under almost any scenario, there will be a cost [to the state]. Using that model and looking at the claims history for 11 years, applying roughly the same factors, Mr. O'Brien said it had been averaged over the 11-year period, resulting in the estimate in the fiscal note of \$145,000 a year.

MR. O'BRIEN pointed out that \$145,000 is the baseline estimate of possible liability [to the state], since hearing officers and arbitrators have the ability to enhance those fees based on a number of factors including protracted litigation or associated costs that are particularly high. Another key factor is that Rule 79 and Rule 82 costs and fees aren't eligible for federal aid through the federal highway bill. Most of [DOT&PF's] contract appeals - the \$400 million construction budget Mr. Cattanach mentioned - are through the federal highway bill, he noted, but those provisions don't allow reimbursement to the

state for costs and fees. Hence any judgment for costs and fees will require a general fund payment from [DOT&PF] and any other department that has "construction authority with federal funding."

Number 1068

REPRESENTATIVE CRAWFORD asked what happens when there is a contract for less than \$25,000, and whether it is cost-effective to go into arbitration for a few thousand dollars in dispute.

MR. O'BRIEN explained that something like 98 percent of the claims brought forward by such contractors are settled before ever becoming an appeal at the level of the commissioner's office. In many cases, they're able to work it out with the project manager on-scene as well as the prime contractor if it is a subcontract situation. The appointment of hearing officers and arbitrators applies to those 2-3 percent of the cases in which the parties absolutely cannot come to an agreement.

Number 1150

REPRESENTATIVE CRAWFORD conveyed his understanding from talking to contractors that some just give up because it isn't cost-effective to pursue several thousand dollars when the contract may only be for \$25,000. He mentioned a contractor who built a fence at Bethel airport; when DOT&PF changed the specifications, the contractor was stuck with 3,000 feet of fencing that cost too much to transport back to Anchorage. He reiterated that many times people give up instead of being part of the 2 percent who [appeal].

MR. O'BRIEN said he would argue that this arbitration process offers a better opportunity, at less cost, than those people have ever had.

REPRESENTATIVE CRAWFORD asked that the even smaller contracts be looked after.

Number 1234

REPRESENTATIVE GUTTENBERG observed that page 6 of the bill discusses the commissioner's ability to extend the timeline, but also disciplines an arbitrator who doesn't make a decision in a timely manner. He asked whether there has been a history of that problem. If not, he asked why is it in the bill.

MR. O'BRIEN answered:

I've been doing this since 1998, and there have not been a significant number of complaints. In fact, I honestly don't remember a single complaint about the length of time that a hearing officer had the decision. Generally, the complaint is the length that the contracting officer at the first level has the decision. ... But there were some concerns addressed by the AGC [of Alaska] during ... the discussions that we had that there could well be an instance where they're not getting a timely delivery by ... the arbitrator of the decision after he's had it in his hands for a final decision. And so they wanted to build in kind of a punitive measure ... to try to encourage a quick decision.

Number 1325

MR. CATTANACH also responded, saying contractors have a perception that the timeline does "slip." He explained that the contractor already would have paid the costs back before ever filing a claim, and would want that money as quickly as possible. "So we put some teeth into this," Mr. Cattanach said, noting that an arbitrator now will have timelines; if those aren't met, the arbitrator will be barred from participating in the arbitration process for a year.

Number 1360

REPRESENTATIVE GUTTENBERG offered his understanding that an arbitrator would be an independent contractor. He asked whether a hearing officer would be a state employee.

MR. O'BRIEN said no.

Number 1391

MICHAEL SWALLING, President, Swalling Construction Company, told members his company has been in business about 56 years and that he has been with the company 30 years; much or most of the company's work is with DOT&PF. Specifying that he was testifying in favor of HB 250, he said:

For nearly 25 years, I had no formal claims on [DOT&PF] work. All the disputes I had were resolved pretty much at the project level within what I would

consider a reasonable amount of time. About 5 years ago I had my first claim; it went all the way to the hearing-officer ... level for resolution, and I came away from that experience very dissatisfied with the time, the cost, and the process [for] resolving that construction dispute.

And since then, I've had two more ... formal claims with [DOT&PF]. At the beginning, they were both denied in their entirety, ... and were both delayed significantly during the administrative portion of the process, up through the contracting-officer-appeal level. Both disputes eventually were settled last year for a total of \$591,000. But it took two years and \$250,000 in legal and expert expenses to get to the settlement table. Frankly, that's a crime.

Unlike any other legal dispute, where the prevailing party receives some compensation for the expenses incurred, I got nothing. All of that 250 [thousand dollars] basically came out of the settlement, and so I got a very poor return on the dollars ... that I spent getting that settlement. It's not a fair system the way it is set up right now. Frankly, it was all the justice that I could afford. I had to settle, and I had to move on.

Number 1488

MR. SWALLING continued:

My perception right now of the current process is that it's basically a war of attrition. The state has nothing to lose by delaying, denying, or obfuscating a construction claim for as long as it can, and everything to gain by forcing the contractor to spend as much money, time, and effort to pursue the settlement of the dispute. And at this point, they've got almost unlimited resources and the ability to extend response dates almost at their will, while the contractors are forced basically to do the opposite and respond to fixed timelines or basically lose their right to pursue the claim. They also have to finance the work and pay the cost incurred, and then pay, additionally, the cost of legal and professional help to help pursue the claim.

House Bill 250 provides an incentive to the state to settle these disputes in a more timely fashion, and allows the contractor to recover some of the cost of pursuing what is ultimately rightfully his. I think it solves some of the inequities in this process; it doesn't solve them all, but moves the state in the right direction. And I think it should be passed.

Number 1535

REPRESENTATIVE GATTO asked Mr. Swalling whether he'd figured out what the difference would have been with regard to his \$250,000 loss if this legislation had been in place.

MR. SWALLING answered that he doesn't know what Rule 82 would provide, but suggested there would have been some recovery. He said the bill does provide an incentive to get [claims] resolved. He emphasized the importance of time and the need to settle these and move on.

Number 1583

CHAIR ANDERSON, upon determining there were no questions for any of the testifiers, closed the public hearing.

Number 1592

REPRESENTATIVE ROKEBERG moved to report CSHB 250, Version 23-LS0501\H, Bannister, 4/14/03, out of committee with individual recommendations and the accompanying indeterminate fiscal note. There being no objection, CSHB 250(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 251-MARINE PILOT FOR FOREIGN PLEASURE CRAFT

[Contains discussion of SB 20.]

Number 1610

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 251, "An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

Number 1650

REPRESENTATIVE DAHLSTROM, sponsor of HB 251, explained that this bill exempts certain foreign pleasure crafts from the mandatory

pilotage requirements while visiting Alaska. Pleasure craft are vessels that are not for hire. Currently, American-registered pleasure craft of any size are not required to employ a marine pilot, however, all foreign-registered vessels are, she said. The only exception [to the marine pilotage requirement] is while the vessel is moored at a dock or at anchor. The intent of HB 251 is to standardize the operation of pleasure craft by granting a waiver or exemption to foreign-registered vessels of less than 200 feet. A recent Legislative Budget and Audit Committee report [recommended] these changes. Recommendation 4 of the Legislative Audit, 08-20015-02, dated Nov. 1, 2002, reads:

The Board of Marine Pilots should seek statutory authority to allow the board the discretion to grant waivers of pilotage requirement to large pleasure craft.

REPRESENTATIVE DAHLSTROM noted the time and effort [contributed by] the marine pilots in helping develop this bill. [This bill] will bring greater economic [activity] into Southeast Alaska [through increased yacht traffic]. She said that all parties are in agreement on this bill, and she will present a committee substitute (CS) [at the April 23rd meeting of the committee].

REPRESENTATIVE DAHLSTROM, in response to a question from Representative Rokeberg, said she would prefer to wait until the [April 23] meeting to have the committee adopt a working version of the bill.

Number 1762

REX SHATTUCK, Staff to Representative Nancy Dahlstrom, Alaska State Legislature, explained that this bill grew out of the March 12, 2003, [House Labor and Commerce Standing Committee] hearing for SB 20, which extends the Board of Marine Pilots; SB 20 passed out of this committee with six "Do Passes" and passed the House floor with 38 "Yeas" and two excused. He noted that the audit included a letter from DCED [Department of Community & Economic Development] that encouraged the legislature to enact a law that would allow the Board of Marine Pilots [the discretion to grant waivers of pilotage requirements to larger pleasure crafts]. Mr. Shattuck stated that the forthcoming CS will address the concerns of the stakeholders, some of who will testify today. He said that the parties agreed to an amendment [to HB 251] that would exempt [smaller foreign-flagged pleasure craft from the pilotage requirement] and allow the board to

waive the pilotage requirement for larger vessels under certain conditions. He explained that foreign-flagged vessels under 53 meters in length would be required to take a pilot [on board] no matter which zone they were going into. They would also be required to use an Alaskan agent, whose purpose would be to make arrangements between the marine pilots and the customer. The Division of Occupational Licensing in DECD would write the regulations [implementing the law].

Number 1872

REPRESENTATIVE ROKEBERG asked what length vessels are covered in the bill.

MR. SHATTUCK explained that [a vessel of] 53 meters is just under 175 feet. He said that the [measurement of] 53 meters will be used because it's an international standard for those vessels.

REPRESENTATIVE ROKEBERG asked Mr. Shattuck to clarify how the bill affects vessels under 53 meters.

MR. SHATTUCK replied that any vessel under 53 meters would have to meet the requirements in regulation that will be drafted by the Board of Marine Pilots. He said those standards will cover the vessel size and the requirement to take on a pilot coming into Alaskan waters.

REPRESENTATIVE ROKEBERG asked if a vessel under 53 meters would have to have a pilot.

MR. SHATTUCK said that such a vessel would have to have a pilot from the entry point [into Alaskan waters] to the vessel's first port.

CHAIR ANDERSON said that a vessel would have to have a pilot from the entry point into Alaskan waters to the first port. It would not have a pilot [after that], whereas in current law a vessel must have a pilot [on board the entire time it is moving].

Number 1933

REPRESENTATIVE ROKEBERG observed that the pilots have "one bite at the apple." He asked about the agent [referenced by Mr. Shattuck].

MR. SHATTUCK said at present there is an agent's license under the Board of Marine Pilots. That agent would arrange for the marine pilots to be available at the pilot stations.

REPRESENTATIVE ROKEBERG asked whether the CS will give specific details for the regulations.

MR. SHATTUCK replied the bill will contain the tenants outlined today, while the regulations, formulated in part by the Board of Marine Pilots, will be more detailed.

Number 1982

REPRESENTATIVE CRAWFORD surmised that a marine pilot is on board during the first voyage into Alaskan waters to the first port in order to see if the master is capable of piloting in Alaskan waters. What happens if the master is incompetent, he queried.

MR. SHATTUCK replied that the marine pilots will be involved in writing the regulations to cover what should happen in that circumstance. Because the marine pilots are the eyes and the ears of the state, statute gives them some authority to say whether the vessel would be safe in Alaskan waters.

CHAIR ANDERSON confirmed that the board will have more of a regulatory purview.

Number 2032

REPRESENTATIVE GATTO commented that the marine pilot would notify the Coast Guard of whatever was found.

REPRESENTATIVE ROKEBERG asked what size vessel needs to have a marine pilot aboard.

MR. SHATTUCK said that currently, there is an [exemption for foreign-flagged pleasure craft of less than] 300 [gross] tons; that exemption would be removed [under the forthcoming CS]. The CS will deal with vessels up to a maximum of 53 meters, which is just under 175 feet. As far as [waivers for vessels of] a minimum size, [no minimum size] has yet been established. He said he anticipated that [a minimum size will be included] in the CS.

Number 2086

REPRESENTATIVE ROKEBERG said that it's not the committee's intent to negatively affect the small craft tourism in the state.

MR. SHATTUCK replied that the intent is not to impact those craft that would not normally carry a marine pilot.

REPRESENTATIVE ROKEBERG asked why the [exemption for vessels less than] 300 gross tons [will be] removed.

MR. SHATTUCK replied that there are vessels of less than 300 [gross tons] that qualify [for an exemption] under existing law but those vessels could be larger than the [200] feet or [53] meters [limit in the proposed CS]. Sail craft might have to be addressed separately, he said.

REPRESENTATIVE ROKEBERG commented that if the CS is going to remove the 300-ton threshold, there must be an argument [in favor] of that [action].

MR. SHATTACK said the bill is targeting vessels over that [300 ton size], many of which are substantially larger than 53 meters.

Number 2164

REPRESENTATIVE CRAWFORD said that now any [vessel] under 300 tons is exempt from pilotage; it doesn't have anything to do with the length of the boat. If the 300 tons is removed, there will need to be some sort of a minimum size [in statute].

MR. SHATTUCK said in some cases the minimum tonnage is actually larger.

REPRESENTATIVE CRAWFORD said, no, in feet.

REPRESENTATIVE ROKEBERG surmised that [these vessels] are shorter but weigh more.

MR. SHATTUCK agreed.

REPRESENTATIVE CRAWFORD said the state wouldn't want to be requiring pilots for a 40-foot ketch.

MR. SHATTUCK said that this bill addresses motorized pleasure craft. However, it does not address sail craft. The tonnage issue is something all together different.

REPRESENTATIVE DAHLSTROM suggested addressing these questions to the marine pilots [present at the hearing].

CHAIR ANDERSON said that the bill will be held and will be brought up first [at the meeting] next week.

Number 2227

KATE TESAR, Lobbyist for Alaska Yacht Services and Provisioning, stated that her client works with yacht owners and yacht management companies throughout the country, assisting these yachts in coming to Alaska. She supervises port services for the guests and crews of these large yachts. She is working aboard a yacht now.

MS. TESAR said her client supports [HB] 251. She said that the stakeholders reached agreement on how to address these exemptions a very short time ago. They agreed to work on the language together and so do not yet have specific language for the committee. She said that the group has worked out the 53-meter size limit, which mandates that a pilot be on board at the initial entry point into each region, and the use of Alaskan agents, which will also be a revenue-producer for some of these small communities. The stakeholders support the [legislative audit] recommendation 4 that says the state should address the situation with these large yachts. She said that the yachts bring a large amount of commerce into the small communities. She thanked Representative Dahlstrom and the marine pilots for working to find a solution that will allow this commerce to continue in the state.

Number 2302

ROBERT WINTER, Captain, Marine Pilot, Southeast Alaska Pilots' Association, testified that he supports legislation to accommodate the needs of these small yachts, but that his group cannot support HB 251 as written. [The various interested parties] have reached some agreements, but [additional work] is necessary. Mr. Winter said he appreciated Representative Dahlstrom's leadership in bringing together the pilots [associations] and the agents for the small yachts to discuss the issue. He said he thinks there is agreement with the language, so the process can move forward.

MR. WINTERS identified several issues key to his group. One is the definition of pleasure craft. He said the group has reached agreement on a legal definition: "a not for hire foreign

vessel." [Another issue is that] all foreign yachts would have to [carry] a pilot from the vessel's initial entry into Alaska waters to its first port of call in each region. The purpose of this requirement, he said, is not to decide whether the master was competent, but rather to give the master information on Southeast, for example, gill net openings, cruise ship schedules so that the master would know what traffic to expect, radio frequencies to monitor as well as information on passages.

**TAPE 03-36, SIDE B**

Number 2364

MR. WINTER explained that the pilot would make sure that the master had all the pertinent charts. [The pilot's role covers] strictly safety issues. He said the pilots associations would also want to have a pilot on board when the yacht leaves the region.

MR. WINTER said the group agreed to a length of 53 meters and agreed to get rid of the gross tonnage because it is an ambiguous number. For example, a 170-foot ship could be 1,000 gross tons, while a vessel [varying in length from] 170 to 300 feet could be 99 gross tons. [Tonnage] is a volume measurement built around a bunch of specialized rules. He used the example of the Yorktown Clipper, which is almost 300 feet but is only 99 gross tons. Therefore, this legislation uses a fixed figure of length and anyone can look at a vessel and determine its length.

MR. WINTER said the pilots wanted to put in some conditions on [yachts'] transit. There are some areas, regardless of the size of the yacht, that [should] require a state pilot on board, he said. These include Valdez Narrows, Wrangell Narrows, Peril Straits, and Sergius Narrows in Southeast Alaska. He said the yachts have an option of using a pilot for that transit or choosing a different route so there's no need for a pilot. He said the concern is for commerce. If a ship of 170 feet goes aground in Wrangell Narrows, it would interrupt commerce as well as ferry traffic. He said that the pilots consider this a safety issue. They also want an Alaska-registered agent to represent the yachts. In the past, the pilots have had a difficult time getting paid by some foreign yachts. An agent takes care of bonds, [can be held responsible for payment to the pilots], can arrange contracts and give pilots advance notice, and handles the customs and immigration details for the yachts.

Number 2261

REPRESENTATIVE ROKEBERG noted that there's a distinction [in state law] now in the exemptions between a U.S.-registered and foreign-registered vessels of less than 300 tons. He asked if the compromise leaves the U.S. registry alone or will it apply to both types of registry.

MR. WINTER replied that the requirements for U.S.-flagged ships are federal. He explained that the federal government regulates U.S.-flagged vessels, and the state regulates foreign vessels. The legislature can't do anything about U.S.-flagged vessels.

REPRESENTATIVE ROKEBERG asked about the federal requirement for pilotage on U.S.-registered vessels.

MR. WINTER responded that if the vessel is under 99 gross tons and [engaged] in coast-wise trade, even if it's a U.S. hull, the master and the mates must have made three round trips in every area before they can act as a first class pilot. The Yorktown Clipper, the Sea Lion, and many other 99 gross "tonners" seen in Southeast Alaska all have crew on board that have made a minimum of three round trips in every area. For a pleasure yacht, there is no such requirement.

REPRESENTATIVE ROKEBERG confirmed that for any U.S.- registered [pleasure craft], there is no restriction or requirement for pilotage. He also confirmed that this [bill applies] only to foreign-registered vessels.

MR. WINTER said only if those vessels are under 300 gross tons. He said HB 251 covers vessels up to 53 meters -- they would have no pilotage requirements other than initial entry and exit and for the couple of narrow passages in Southeast.

REPRESENTATIVE ROKEBERG asked whether smaller pleasure craft from British Columbia are considered foreign registry.

MR. WINTER said if it's between 20 and 53 meters, it [wouldn't] need a pilot. A vessel under 20 meters does not need a pilot.

REPRESENTATIVE ROKEBERG asked about the minimum [vessel size of under 20 meters].

MR. WINTER said the 20 meters comes from the COLREGS, which is The International Regulations for Avoiding Collisions at Sea or Rules of the Road. He said that 20 meters [65 feet or less] is the break between small vessels and big vessels.

REPRESENTATIVE ROKEBERG said anything above the 53 meters would have to have a pilot. He recalled that Mr. Shattuck mentioned inbound pilotage and inquired about outbound [pilotage].

Number 2140

MR. WINTER said that [pilots would be required to be onboard] on initial entry and on exit from the region; that's the only two times pilotage would be required. He described different entry points in Southeast Alaska.

REPRESENTATIVE ROKEBERG asked if there is a problem with availability of pilots.

MR. WINTER testified that since pilotage started in Alaska in 1972, there has never been a ship that went without a [requested] pilot.

REPRESENTATIVE ROKEBERG asked how long in advance do vessels need to make a reservation [for a pilot].

MR. WINTER said that a reservation must be made 96 hours in advance, according to statute.

REPRESENTATIVE ROKEBERG inquired as to the typical cost of an in-bound voyage.

Number 2119

MR. WINTER said it would be \$600-900, depending on the weather.

CHAIR ANDERSON said he will hold [HB 251] over until next week and keep public testimony open.

HB 255-WAGES:TRAINING/FLEX-TIME/DEFINITIONS

Number 2063

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 255, "An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners."

The committee took a brief at-ease from 4:18 to 4:20 p.m.

Number 1992

REPRESENTATIVE ROKEBERG moved to adopt Amendment 1 which read:

Page 2, Line 4:

Delete: "solely"

Page 3, Line 16 and 17:

Keep in statute:

"and the written agreement has been filed with  
the department"

REPRESENTATIVE LYNN objected for purposes of discussion.

Number 1963

REPRESENTATIVE ROKEBERG explained that removing the word "solely" on page 2, line 4, helped clarify the definition of supervisory capacity. He addressed the other change, on page 3, lines 16-17. The amendment restores the current statutory language, "and the written agreement has been filed with the department", which was mistakenly removed, he said. He reviewed the affect of the amendment: after an employer and employee agree to a voluntary flexible work hour plan, a copy must be filed with the department [of Labor & Workforce Development] so [department staff] can audit it.

CHAIR ANDERSON reminded committee members that this is a technical amendment.

REPRESENTATIVE ROKEBERG explained that the flex-time plan needs to be filed with the department; [removing it from the bill] was an oversight on his part.

REPRESENTATIVE GUTTENBERG asked about the impact of deleting "solely" from the language [about supervisory capacity] on page 2.

Number 1904

HEATHER NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that there was a request to delete "solely" so that the work of supervisory employees would not be limited to assigning and directing the activities of subordinates. She said that removing the word "solely" gives the [employer] more flexibility in the duties the supervisor can perform.

CHAIR ANDERSON explained that the assigning and directing duties would no longer be all-inclusive, whereas solely makes them all-inclusive.

REPRESENTATIVE ROKEBERG said that the amendment speaks to the allocation of a supervisor's time between supervisory and other duties. The word solely implies only supervisory duties. He said as written, the current statutory wording is too tight.

REPRESENTATIVE GATTO suggested [substituting] the word "primarily" for "solely."

Number 1835

REPRESENTATIVE LYNN removed his objection to Amendment 1.

CHAIR ANDERSON confirmed that Representative Guttenberg did not object to the amendment. There being no other objections, Amendment 1 was adopted.

Number 1777

DON ETHERIDGE, Lobbyist for Alaska State AFL-CIO, testified that his group opposes the entire bill, even with Amendment 1. He spoke against removing the department's [approval] of the voluntary flexible-hour work plan. He said [simply] filing a piece of paper with the department doesn't give an employee the backbone to stand up against an employer who might say, "Here, sign this if you want the job," or, "If you don't want this to be your last day, here, sign this piece of paper." He stated that there are unscrupulous employers who would do such a thing.

MR. ETHERIDGE also opposed the training wage portion of the bill. He said this provision fleeces working kids who are trying to make money for school or to buy their own cars. The 30 hours a week allowed by the current statute is already too much. "To push [those 30 hours] to a full-time job -- we don't believe in it," he said. Union apprentices start at \$13 or \$14 an hour; he said that they need to make a decent living. He predicted that a young person with a 90-day summer job at training wages would wind up working the next year for another employer at \$5.15 for another 90 days. If young workers don't go back to the same employer, they could end up working forever at \$5.15 an hour, he cautioned. He concluded that his organization is totally opposed to HB 255.

Number 1648

CHAIR ANDERSON asked what happens when a young person works for a new employer after receiving training wages at a previous job.

REPRESENTATIVE ROKEBERG said that once a young person has some experience, the person doesn't need to be trained [again]. He said there is so much demand for experienced, hard-working young people, that the [teenager] would [easily] find work at a higher wage. He said he doesn't think kids are going to be fleeced in the current labor market. This bill provides an opportunity for more jobs for young people. He said that the 30-hour rule doesn't change [under HB 255]. There has been testimony that it's difficult for employers to use [the 30-hour per week maximum for training wages] because of paperwork and accounting problems. This [bill] provides for a longer [work] period of [40 hours per week].

Number 1540

MR. ETHERIDGE stated that grocery stores hire lots of kids at training wages for 30-hour weeks. They box [groceries] and stock [the shelves]. He disagreed that it's that difficult to track a young person's time for the 30-hour [limit].

REPRESENTATIVE ROKEBERG said he's not repealing the 30-hour provision in [regulations]; it's still there.

MR. ETHERIDGE countered that the 30-hour [work week] is being expanded to 40 hours, which he opposes.

Number 1502

REPRESENTATIVE GUTTENBERG asked how the 90 consecutive calendar days, on page 5, [line 5,] is calculated.

MR. ETHERIDGE agreed that calculation of the 90 consecutive days is another concern. He asked if a young worker misses some time or gets laid off, does the 90 consecutive day [clock] start over.

REPRESENTATIVE GATTO said he interprets the language to mean that 90 days after the young person starts work, the worker no longer qualifies for the [training wage]. He asked what other interpretation of this provision is possible.

MR. ETHERIDGE gave the example of problems currently experienced by some of the state [workers]. They have to work 195 consecutive days to get bumped up. He said that if they miss a day at work, their supervisors [reset the 195-day clock]. That practice is going on right now, he said, and that's why he's concerned.

REPRESENTATIVE ROKEBERG asked if people covered by collective bargaining are exempt from the Alaska Wage and Hour Act and these provisions.

MR. ETHERIDGE said that collective bargaining can exempt some of the [provisions of state law]. But collective bargaining agreements can't exempt the payment of minimum wage and can't exempt working over 10-hour days, he said.

Number 1364

REPRESENTATIVE ROKEBERG stated that collective bargaining workers are exempt under the current Alaska Wage and Hour Act. He said they are governed by their collective bargaining agreement, not the statute.

Number 1354

REPRESENTATIVE CRAWFORD pointed to subparagraph (14)(B), page 3, lines 18-25, and said that this language limits ironworkers to the "four-tens" workweek under their collective bargaining agreements. He said the "four-tens" [represents the maximum] flexibility before overtime [provisions take effect].

REPRESENTATIVE ROKEBERG explained that it's part of the bargaining agreement.

REPRESENTATIVE CRAWFORD replied that no, [this requirement] is not part of the bargaining agreement; it is in statute. The "four-ten" workweek is the only flexible schedule ironworkers can use, other than the five-day, 8-hour week. [Union employees] are not exempt from the statute. He said, for example, that ironworkers can't work [a week consisting of] three 12-hour days and a 4-hour day.

REPRESENTATIVE ROKEBERG said, "You make my case."

Number 1295

REPRESENTATIVE CRAWFORD asked Representative Rokeberg if he intends to delete this part of the law so that jobs outside of collective bargaining can have any work schedule agreed to by the employer and the employee. He said he can support "four-tens" but not just any schedule that an employer wants.

Number 1274

REPRESENTATIVE GUTTENBERG asked Mr. Etheridge if subparagraph (14)(B) [were removed from state law], could [an employer] work someone two twenty-hour ("two-twenties") days.

MR. ETHERIDGE agreed. [An employer] could work the employee back-to-back weeks and get 40 hours in four days, if it was timed just right.

REPRESENTATIVE GUTTENBERG described a theoretical situation at a cannery, in which the employer worked the staff "two-twenties," charged them room and board, resulting in pay lower than the minimum wage. He said the employee could owe the employer at the end of the week.

Number 1229

REPRESENTATIVE ROKEBERG asked about organized labor's position on working parents and their need for flexible work time.

MR. ETHERIDGE stated that his group supports every working person and does what they think is best for all of those folks. If several people need a specific [schedule] change, it doesn't mean that the whole contract is changed to accommodate them. One of the main rules in negotiations is looking at the good of the [whole group], not just the good of the few.

Number 1167

CHIP WAGONER, Lobbyist for Alaska Catholic Conference, explained that the conference is the voice of the three Roman Catholic Bishops of Alaska, who represent 55,000 Alaskans, and 100 parishes and missions. He noted that the Catholic Church nationally has been an advocate for the minimum wage since 1919, fully two decades before the federal law was passed. Mr. Wagoner explained that Catholic social teaching flows from the Bible and the Gospels, and he quoted Jesus as saying, "The Spirit ... has sent me to bring glad tidings to the poor." He emphasized that work has dignity and is a way for people to meet their community obligations and their material needs. He said

in order for a person to have a dignity of life, they must have a living wage sufficient to provide adequate housing, shelter, healthcare, and food. That's why, in 2001, the Alaska Catholic Conference endorsed the increase to the minimum wage and the indexing provision.

MR. WAGONER spoke to Section 4, of HB 255, Training Wages. In considering any legislation, he reported that the church evaluates the affect of the bill on the poor and what it does to help the poor to help themselves. According to the Department of Labor & Workforce Development, about 14,000 to 15,000 Alaskans earn minimum wage. At the national level, 72 percent of those on the minimum wage are 22 years or older. [Therefore], he concluded that HB 255 would affect approximately 3,300 people in Alaska.

Number 0960

MR. WAGONER stated that HB 255 takes \$2 out of the pockets of these 3,300 people, who are at the bottom of the economic ladder, and puts it into the pockets of people who are not at the bottom of the economic ladder. There's a difference between a job with training sessions and on-the-job training. He said he has been a cook, a janitor, a highway worker, and a seafood processor, and in all of those jobs, he worked hard. He said that even though he was a new employee, he deserved to be paid the same amount as the person standing next to him because it was on-the-job training. He observed that generally, the new worker is being trained by fellow workers. He said there hasn't been any testimony that describes the so-called training that requires the employer to pay the new worker \$2 less an hour, which is a substantial amount.

MR. WAGONER also raised issues of equity. He used the example of two new employees hired at McDonalds -- one is 19 years old and the other is 20. One earns \$7.15 a hour and the other gets paid \$5.15. There's no equity there, he said. He also described the situation of a 32-year-old woman, a single mom who doesn't have a lot of job skills but needs the work. He asked whom the employer would hire in the summertime, someone for \$7.15 an hour, or someone for \$5.15 a hour. It creates an imbalance, he claimed. Young people will benefit but the people over age 20 won't be able to get the jobs. These unintended consequences are not good, he said.

MR. WAGONER recommended that Section 4 [Training wages] be dropped from the bill. He said the conference has no problem

with the rest of the bill and is not taking a position on it. He said his wife uses the flexible schedule. He applied to the department for those wages.

Number 0807

REPRESENTATIVE LYNN identified himself as a member of the same church, but disagreed with Mr. Wagoner, saying that the bishops are expressing a political position rather than a moral position. He said he didn't remember seeing anything in scripture about minimum wage. He agrees with Mr. Wagoner's point about the dignity of work and the right to work for a living, decent wage.

MR. WAGONER noted that preference for the poor and vulnerable is a tenet of Catholic social teaching. The most often cited subject in the New Testament is service to the poor, he said. He recounted the story of the field manager who hired workers throughout the day and paid each one a full day's wage. He explained that each worker was paid the amount necessary to survive to the next day.

CHAIR ANDERSON commented that the turnover rate is very high at fast food restaurants. There needs to be a balance for the business owner, too, he said.

Number 0562

MR. WAGONER described a local business in town that pays its workers more than minimum wage; this business doesn't have high turnover. If an employer treats the workers with respect, there is less turnover. There are some jobs that don't require a lot of training and people move [through the business rapidly]. People who have good key employees don't want to lose them. Some of these small-thinking businesses would rather have a revolving mill because they don't care. He reiterated that this bill is an attempt to take \$2 out of the pockets of those people who need it the most. There's not a lot of training in these jobs, he said.

Number 0470

REPRESENTATIVE ROKEBERG agreed with Mr. Wagoner's tenets about the dignity of work but took exception to his analysis. He said he believes that he is accomplishing Mr. Wagoner's [goals]. He said he intends to open opportunities for young people and give them an opportunity to become employed, to learn, and to

progress. He said he believes in the marketplace; when employees prove their worth, they will be rewarded. He stated that he agrees with the enlightened self-interest style of management that treats employees well. He contended that people who had the training will be hired at a higher wage in a better position.

REPRESENTATIVE ROKEBERG asked if the Catholic Church is against the current training wage for 16 and 17 year olds for 30 hours a week. This bill expands the current law to 18- and 19- year olds and allows them to work 10 hours more a week. He also said he was distressed that the Catholic Church was not supporting flexible schedules for working parents. He asked Mr. Wagoner to consider this provision and give it his support. He said of all the major employment issues in the country right now, single parents need to have flexibility in their workday.

MR. WAGONER said he would take the flex-time issue back to the Alaska Catholic Conference.

REPRESENTATIVE LYNN agreed with Representative Rokeberg's comments.

Number 0204

REPRESENTATIVE GUTTENBERG thanked Mr. Wagoner for representing the church's position on HB 255. He said they agree that the best thing to give a person is a good job with good benefits. He said that undercutting the minimum wage by \$2 an hour for 90 days because it's called training is bizarre. An employer learns a worker's worth in an afternoon, he opined. He asked Mr. Wagoner whether filing the flex-time request for his wife was difficult.

Number 0128

MR. WAGONER replied that it was "a pain," a regulations hoop. This occurred seven years ago, for "four-tens", which the staff [at his wife's office] loves. If there was more flexibility [in the program], it would have been good to have a different set of hours, he said.

REPRESENTATIVE GUTTENBERG commented that removing language on page 3, lines 18-25, [that requires department approval of any flex plan] opens the program to complete abuse [by the employer]. There are no restrictions regarding [what schedule

an employer could demand], he said. An employer could work somebody two twenty-hour shifts in a row.

Number 0027

MR. WAGONER said the goal of flex time is important, regardless of a person's side of the bargaining table. One reason he is a real estate agent is the flexibility of his schedule, [allowing him to drive his children to various events].

**TAPE 03-37, SIDE A**

Number 0009

MR. WAGONER reiterated his opposition to training wages.

Number 0033

REPRESENTATIVE GATTO used the example of his daughter who is a college sophomore and scans groceries at a large store in Wasilla. He said that she learned how to push groceries through a scanner in the first 45 seconds of her job. If she had been hired at a training wage, it would have been a way to pay her a lot less. He said he would favor paying \$1 an hour less than the prevailing minimum wage for a maximum of 10 consecutive work hours. He asked Mr. Wagoner if he favored this approach.

Number 0170

MR. WAGONER said he would go back to the Alaska Catholic Conference to ask the members' opinion.

REPRESENTATIVE GATTO said he is considering offering an amendment that would modify the training wages.

MR. WAGONER said \$1 less for 10 hours is a total of \$10 [saved]. The working college student is a good example, he recalled using the money he earned in the summer to pay for his next year of college.

Number 0254

BARBARA HUFF TUCKNESS, Director of Legislative and Governmental Affairs, General Teamsters, Local 959, Alaska, testified against HB 255. She asked about the public outcry [for this change in the law]. With respect to the proposed definition changes [in Section 1], she noted that the federal government is considering changing its definitions and cautioned against Alaska

incorporate [a changing federal definition]. She advocated state control -- rather than federal [dictates] -- over those decisions that affect working people.

MS. HUFF TUCKNESS testified that she was very concerned about [changes in HB 255 in] flexible schedules. The Teamsters do not oppose flexible schedules, she said, but the bill in its current form allows an employer to direct an employee to work according to the particular needs of that employer. She said the Teamsters support [flexible schedules] with sideboards that protect the employees. She described dealing with employers, under collective bargaining agreements, who attempted to misuse the flexible schedule for the employers' convenience, not at the employee's request. She suggested the need for language that addressed that particular issue. The language [in HB 255] gives full power and control to any employer to implement a flexible schedule, [which could] negatively impact an employee's overtime hours.

Number 0505

MS. HUFF TUCKNESS addressed the training wage issue. She discussed the bill with her 19-year-old son who told her, "Mom, at \$5.15 an hour, I can't afford to put gas in my truck or pay for my insurance." She explained that at age 18, he was training the new, older workers at a parts store where he was employed. She said this is called a training wage, but it's not about training. These are workers coming in at minimum wage. The people get trained, and they move through the system; that's the purpose of the minimum wage. She said she doesn't know of any business that pays less than minimum wage that is able to keep children let alone adults in these positions.

Number 0638

CHAIR ANDERSON said that a big group [of fast food restaurants] support this bill. He said that there's the issue of fairness for the business owner who must make cuts in order to pay that minimum wage. The intent [of HB 255] is not to be punitive; he said that Representative Rokeberg is trying to work with businesses and assist in the spirit of employment. He asked how she would respond to a restaurant owner who wants to expand the [training wage work week by] 10 hours because [most] kids leave before three months.

Number 0727

MS. HUFF TUCKNESS replied that if this bill is a jobs creation bill, [accomplished by] reducing an employee's wage by \$2 an hour, she doesn't agree with it. She said she doesn't believe that there will be kids who will work for \$5.15 an hour.

CHAIR ANDERSON restated Ms. Huff Tuckness's point that [HB 255] would hurt the business because kids would not work at that wage.

Number 0809

REPRESENTATIVE GATTO mentioned the proposed \$100 head tax as another [impediment] that would [discourage young people] from taking a job [at training wages].

REPRESENTATIVE ROKEBERG asked Ms. Huff Tuckness what wage her son was earning.

MS. HUFF TUCKNESS said he was earning \$9.25 an hour at the parts store.

REPRESENTATIVE ROKEBERG read an [exemption] from the current overtime statute on page 3, line 11: "(13) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;". He concluded that employees [covered by] collective bargaining are exempt from the provisions of the flexible work hour plan for overtime payment under Alaska statutes. He asked Ms. Huff Tuckness if that is correct.

MS. HUFF TUCKNESS replied yes. She added that unions negotiate overtime that is applicable to any of these schedules.

REPRESENTATIVE ROKEBERG asked Representative Crawford to comment on this provision.

REPRESENTATIVE CRAWFORD replied that under his union's contract, employees can work "four-tens" under state law but they can't work [a week consisting of three twelve hour days and one four hour day] "three twelves and a four".

Number 0951

REPRESENTATIVE ROKEBERG disagreed. He said union employees can work whatever [flexible schedule] they bargain; they are exempt under collective bargaining agreements. That's the whole point

here, he said; all organized labor is exempt from these provisions.

MS. HUFF TUCKNESS responded that whether the union represents 30 people or thousands, those workers are protected under the collective bargaining agreement with overtime rules and regulations as restrictive or as flexible as they need to be to accommodate the particular employer. That is those workers protection. She stated that there are still grievances, even with a contract in writing, over wages and schedules. She advised against [removing] the sideboards from the statutes. She [mischievously] suggested that organized labor should support the bill, creating the best possible organizing opportunity. She reiterated that the Teamsters are not here testifying against flexible schedules. She said that this exact issue was debated several years ago in Washington, D.C., and went down for the same reasons. When an employer looks at a flexible schedule, it's for totally different reasons than those of an employee. An employer's perspective is managing the workforce and getting the work product out in the most timely, efficient manner. Unfortunately, it is the workers who ultimately end up [paying the price].

Number 1100

JOHN ZULEGER, explained that he represented himself and other hard working, voting Alaskans who oppose HB 255. He put himself through college at age 18 and 19 by working these same jobs that the committee is discussing. He said at \$5.15 an hour, he could not have done it without [taking out] loans and drawing on everybody else. He said it doesn't take 90 days to learn how flip a hamburger, make a bed, or mop a floor. It took him five minutes. Ninety days is the working season for the majority of people; it's the time they make their money. If they had to work for \$2 an hour less, they couldn't survive. He said he now works in the road construction industry, which has a very short season. If he had to work for less than time and a half after eight hours, he said he couldn't survive either. He said the workers get the job done, and that's what it takes. He said that employers can't throw in other people and do the flex schedule; it's not productive. He said that the only support for this bill is from the business people who are going to benefit. He quoted average blue collar working persons who told him, "This is nothing but a bad deal for me," especially younger people working in the fast food restaurants and grocery stores.

Number 1269

KAREN PLESS, Apprentice, International Union of Operating Engineers, Local 302, testified against HB 255. Taking money from the pockets of Alaskans hurts all Alaskans, including the businesspeople [whose interests] are represented in this bill, she said. She said that legislators, of all people, should be aware of the short working season; this is when a large segment of Alaskans make their yearly wages. She decried as unconscionable the idea that people under age 20 do not deserve a decent wage. Many of these individuals support families and pay child support, [difficult to do on] \$5.15 an hour. She predicted that most of the committee will receive Social Security, but a lot of these people won't have Social Security by the time they retire. This bill will effectively take jobs away from Alaskans who cannot insist on [the minimum] wage. In her industry, she's protected. But employers can "pink slip" a worker [to avoid paying] overtime; they wouldn't have to give any reason to let the employee go. She encouraged committee members to think of all the people out there who don't have the protection that [Operating Engineers] Local 302 offers its members.

Number 1348

JOHN BROWN, President, Fairbanks Central Labor Council; International Union of Operating Engineers, Local 302, explained that he represents almost 10,000 members. He testified against HB 255. The working families of Alaska do not need a pay cut. Alaska has gone from having the highest per capita income in the nation to the middle of the pack in the last 15 years; this bill will continue the erosion of wages for workers in Alaska, he cautioned. He said the testimony from the [hospitality] industry at the earlier hearing [indicated that] they want their employees to work more hours for less money. Currently all employers pay overtime and minimum wages on a level basis. This bill will allow some employers to pay less in overtime and less than the minimum wage. Many industries in Alaska are seasonal in nature and the employees in those industries depend on the overtime to make up for the lack of work. The reduced wage for 90 days in many cases would [pay] young workers at a substandard rate for their entire employment period. He quoted an earlier witness who testified that this legislation is needed for people who work two jobs. Mr. Brown commented that it's a very sad commentary on our state and our society that a person must work two jobs just to survive. This bill will push more workers in that direction. He said that collective bargaining agreements are not exempted [from state law]. He invited Representative

Rokeberg to talk to specific attorneys and union officials. He said [employers with union contracts] must pay overtime on the same basis as everyone else. That right cannot be bargained away under state law.

Number 1492

JOHN DAVID RAGAN, Laborers International Union of North America, Local 942; Ester Community Association; Volunteer fire fighter, Ester Volunteer Fire Department, opposed HB 255. He quoted Henry Ford who said that he wanted every worker in his factory to earn enough money to buy his or her own automobile. American workers making a decent wage, buying automobiles, houses, consumer goods, patronizing local businesses, sending their children to college, and raising families, has been the motor creating America's prosperity in the 20th century. That decent wage, as Franklin D. Roosevelt called it, was guaranteed by the great labor victories in the nineteenth and twentieth centuries. That decent wage is what makes the economy so different from third world countries like Mexico, where money is concentrated in the hands of a few people and the mass of people barely make enough to buy the basic necessities of life. Because the majority of people in many third world countries have no buying power, their economies have stagnated and are unable to develop. Because American workers were paid a decent wage, the U.S. became the economic powerhouse of the world. This legislation, HB 255, is a direct attack on the minimum wage and the 8-hour day, which the American labor movement fought for and died to make the law of the land in 20th century America.

MR. RAGAN complained that he and many others came to the legislative [information] office on Monday to testify. Instead, the committee heard the testimony of paid industry lobbyists who spoke at length without any time limits, while [ignoring] normal working people in Fairbanks who could not travel to Juneau.

Number 1585

CHAIR ANDERSON explained the time constraints on committee hearings and invited Mr. Ragan to submit written testimony which would be included in all legislators' bill packets when the bill goes to the House floor.

MR. RAGAN replied that there were 15-20 people waiting to testify on Monday.

CHAIR ANDERSON apologized for the delays.

Number 1638

MATTHEW SAMPSON disagreed that HB 255 makes improvements to the Alaska Wage and Hour Act and argued that it is user-friendly for employers but not employees. He said this bill enables employers to make money off of the little guy. He said Section 3 undermines current overtime laws. The people voted to raise the Alaska minimum wage, which is different from the federal minimum wage for a reason. Mr. Sampson said that the written agreement between a newly hired employee and employer is all that's needed to reduce the [worker's] current overtime pay requirements. Nothing in this bill allows for oversight or that holds employers to a standard that prevents abuse.

Number 1766

MR. SAMPSON said that the 8-hour day, 40-hour workweek came about in the 1930's for the benefit of the working man and the employer. He said it has worked for the last 70 years and is going to work for the next 70 years. [The 90-day training period in] Section 4 covers seasonal workers, and it's about the length of the summertime season in Fairbanks. It [appears that the bill is written] for the food processing and service industry employers who make most of their money in the summer off of cheap labor. He said he heard testimony from employers who stand to make money off this bill. He has yet to hear testimony from any employee who will make better wages as the result of this bill. He has yet to hear from any single parents who support the bill. He said it doesn't take too long to learn how to cut the head off a fish or how to make a bed. He understands training and learning, and that's why he's part of a union; he gets paid to get that training. The bill discriminates against people under the age of 20.

Number 1915

CARL WEED opposed HB 255, which he described as regressive in helping workers, who are consumers, and also for the businessman who is selling products. He anticipated that the [results would ultimately harm the families of] the person working two jobs and the parent who owes child support. He said he could train any young person to put a pickle on a hamburger.

CHAIR ANDERSON, upon hearing no one else wished to testify, closed the public hearing.

Number 2030

REPRESENTATIVE ROKEBERG moved to adopt Conceptual Amendment 2. In Section 3 [page 3, line 17, after "department" from Amendment 1] add:

and the plan provides that the work is for 80 hours in a two-week period and not more than 12 hours a day;

REPRESENTATIVE ROKEBERG explained that now, the current rule is 40 hours in a week, but any employee can't make up any time missed. He said he used 12 hours because the current maximum is 10 hours, and it would be the maximum [allowed] in a flex-time provision. He said this provides additional sideboards so that when the [flex-time] contract is filed with the department, it would have a way to enforce the contract if there was a complaint. This [provision] avoids the "two twenties" [example cited earlier] which is absurd but makes a point.

Number 2115

CHAIR ANDERSON, hearing no objections, said that Conceptual Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG said he would like to consult with people directly affected by the training wage, including some workers. State law has an existing 30-hour [per week] rule for 16- and 17- year olds. This bill relates to 18- and 19- year olds who could work [at training wages] for 40 hours [a week]. He said that because of the testimony and [his desire to avoid this becoming] a ploy for [employers of] summer or seasonal workers, he is considering lowering [the 90-day training period] to 30 days. He disagreed that a person could be trained in 10 hours, unless it [involves] scanning [groceries]. He said the intention is to hire people, to avoid the revolving door [of short-term employees], to get kids up to speed [in work skills]. The bill's purpose is not to relieve the employer of paying the [minimum] wage. He said he is not going to offer the amendment today, but he'll consider it for the next committee.

CHAIR ANDERSON said he agrees with this [potential amendment]; it helps with one of the issues he has been trying to balance.

Number 2221

REPRESENTATIVE ROKEBERG said that Section 1, with the definitions of supervisors and executives, defaults to the new

federal regulations that are part of the bill packet. He pointed out the unintended consequence of a regulation [8 AAC 15.910. Definitions] by the Department of Labor & Workforce Development is that it requires anyone in an administrative category to be paid 2.5 times the minimum wage, that is, \$17.88 an hour or \$37,000 a year. This is a crushing blow to small businesses, he said, and needs to be corrected. He explained that the department offered to change the regulation, but this bill uses the language and the standards of federal law, which raise the wages [of administrative staff to a minimum of] \$425 a week. He said he wanted to put this issue on the record.

CHAIR ANDERSON said that he particularly agrees with the change [in Section 1]. No one has spoken in opposition to it, he said.

Number 2280

REPRESENTATIVE ROKEBERG said that regulation forced the wage up to a very high level. If someone is building a resume, working into a managerial position, the person would only be making \$10, \$12, or \$14 an hour, which is all a small business can afford to pay. He used the example of his own small business, in which he hired people out of the correctional institutions to give them a break and give them some managerial responsibility. But he can't afford to pay \$17.88 an hour. It looks good on their resume, gives them good experience, helps put their lives together, and [allows them to] make a decent income. Representative Rokeberg said he shouldn't be forced by the law to have to pay somebody overtime if they work an extra 15 minutes, if they have a certain amount of responsibility over the other folks. It's just not fair, he said.

CHAIR ANDERSON invited committee members to make closing statements.

Number 2346

REPRESENTATIVE LYNN said the bill will help small business and help employees because [the businesses] will be able to afford to hire more employees. He advised caution so that it doesn't have unintended consequences.

**TAPE 03-37, SIDE A**

Number 2371

REPRESENTATIVE GUTTENBERG said he disagrees regarding the flex-time portion of the bill. The committee heard the bill; we

heard arguments from the [hospitality] industry that it wanted a level playing field, which he called a bizarre statement. He said the bill leaves considerable difference between people who are covered by collective bargaining agreement and those who aren't. If an employee is covered by a collective bargaining agreement, the person has a contract and a representative who can come in and have a discussion with the employer. However, the [nonunion] employee may be given a form to sign agreeing to a flex-time schedule, and therefore in the end the person has no options.

REPRESENTATIVE GUTTENBERG expressed concern with the training wage. In a minimum wage job, it doesn't take [a new employee] more than an hour to figure out how to bus dishes, cut fish heads, mop floors, or grind coffee. Employees make the business. If a business doesn't pay its employees what they're worth, if it hides behind a training excuse to reduce the minimum wage, he said he can't imagine that the business will be successful anyway. Tourism and food service are service industries. He recalled Mr. Wagoner's comments on the basic human dignity [of work]. Representative Guttenberg said that the best social service program is a decent job with a decent salary, with health and welfare benefits to take care of the worker and the family. He said this bill erodes that basic [role] of society.

Number 2276

REPRESENTATIVE DAHLSTROM said for the record that this bill does not affect the basic minimum wage of \$7.15 an hour.

Number 2267

REPRESENTATIVE CRAWFORD apologized that he missed some of the testimony today and earlier that might have answered his questions. He focused on moving the training wage age from under 18 years to under 20 years. He said there was some [justification] for workers under age 18 because they had not reached the age of majority yet. But 18- and 19-year olds have reached the age of majority, and he said there might be grounds for an age discrimination suit, which he would prefer to avoid. He said he's still not certain whether changing the definition of managers affects their rights to overtime. If they give up their rights to overtime, do they still have minimum wage protection under this bill, he asked. He said he believes that a flexible work schedule is up to 10 hours a day. He would hate

to see not having those sideboards [protecting workers] in the law.

Number 2164

CHAIR ANDERSON said that Representative Rokeberg's staff just provided him with an analysis from Legislative Legal and Research Services to answer one of the questions. The federal law on minimum wage, 29 U.S.C. 026, already allows for training wages for newly hired employees less than 20 years old.

REPRESENTATIVE ROKEBERG confirmed that [these items are contained] in the federal law. [Provisions in HB 255] clearly default to federal law. He reviewed for Representative Crawford the affect of Amendments 1 and 2 on the bill and his interest in a potential amendment to cut the training period back to 30 days. He commented that to make flex-time work, the employee needs longer than a one-week work period to make up time; most small businesses pay over a two-week work period. [This bill] provides more flexibility to make up time.

Number 2103

REPRESENTATIVE CRAWFORD said he has worked many a 12-hour day and he knows that after 10 hours people get a lot more fatigued. [The number of hours in a work day] becomes a safety issue. He said that a 10-hour workday is flexible enough. A 12-hour workday is above and beyond a normal person's capacity to work except in an emergency situation. He said he still favors four 10-hour days in a 7-day period.

Number 2062

REPRESENTATIVE DAHLSTROM moved to report HB 255, as amended, out of committee with individual recommendations and the accompanying fiscal note.

Number 2038

REPRESENTATIVE GUTTENBERG objected.

A roll call vote was taken. Representatives Dahlstrom, Rokeberg, Lynn, and Anderson voted in favor of HB 255, as amended. Representatives Guttenberg and Crawford voted against it. Therefore, CSHB 255 was reported out of the House Labor and Commerce Standing Committee by a vote of 4-2.

CHAIR ANDERSON invited all witnesses who testified to submit written testimony to the next committee of referral, the House Finance Standing Committee.

**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:58 p.m.