

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 16, 2005

3:52 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 33

"An Act relating to the effect of regulations on small businesses; and providing for an effective date."

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

HOUSE BILL NO. 182

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

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

HOUSE BILL NO. 147

"An Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 180

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

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 33

SHORT TITLE: EFFECT OF REGULATIONS ON SMALL BUSINESSES

SPONSOR(s): REPRESENTATIVE(s) MEYER

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

BILL: HB 182

SHORT TITLE: WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

SPONSOR(s): REPRESENTATIVE(s) ROKEBERG

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

WITNESS REGISTER

MICHAEL PAWLOWSKI, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 33 on behalf of Representative Meyer, sponsor.

CHRIS KENNEDY, Senior Assistant Attorney General
Environmental Section
Civil Division

Alaska Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 33.

JOHN SEDOR

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

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

WAYNE STEVENS, President,
Alaska State Chamber of Commerce
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 182.

RANDY CARR

Anchorage, Alaska

POSITION STATEMENT: Suggested changes to HB 182.

ROBERT MORRIS, Director
Human Resources
Alaska Children's Services;
Legislative Co-Chair
Anchorage Society of Human Resource Management
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 182.

CARA FOX, Director
Human Resources and Administration
Hawaiian Vacations;
Legislative Co-Chair
Anchorage Society of Human Resource Management

POSITION STATEMENT: Testified in support of HB 182.

JACK AMON, Partner
The Marx Bros. Cafe
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 182.

KEN LEGACKI

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 182.

ACTION NARRATIVE

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

HB 33-EFFECT OF REGULATIONS ON SMALL BUSINESSES

3:52:16 PM

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

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

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

3:55:21 PM

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

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

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

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

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

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

3:59:46 PM

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

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

4:01:01 PM

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

4:02:04 PM

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

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

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

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

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

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

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

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

MR. PAWLOWSKI responded:

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

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

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

[4:08:11 PM](#)

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

[4:09:14 PM](#)

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

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

[4:09:40 PM](#)

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

REPRESENTATIVE ROKEBERG, sponsor of HB 182, explained:

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

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

REPRESENTATIVE ROKEBERG continued:

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

[4:14:47 PM](#)

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

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

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

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

[4:18:23 PM](#)

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

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

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

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

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

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

[4:27:27 PM](#)

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

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

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

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

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

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

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

[4:32:55 PM](#)

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

[4:33:59 PM](#)

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

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

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

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

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

[4:38:45 PM](#)

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

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

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

[4:43:18 PM](#)

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

[4:44:47 PM](#)

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

[4:46:05 PM](#)

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

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

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

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

[4:49:37 PM](#)

MR. CARR continued:

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

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

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

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

[4:52:43 PM](#)

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

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

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

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

[4:55:39 PM](#)

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

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

[4:58:54 PM](#)

MR. AMON continued:

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

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

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

CHAIR ANDERSON closed public hearing.

[5:06:40 PM](#)

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

[5:08:05 PM](#)

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

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

[5:09:21 PM](#)

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

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

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

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

ADJOURNMENT

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