

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 30, 2005

2:06 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. 271

"An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

- MOVED HB 271 OUT OF COMMITTEE

HOUSE BILL NO. 286

"An Act amending the manner of determining the royalty received by the state on gas production by directing the commissioner of natural resources to accept, under certain circumstances, the transfer price of the gas if established by transfer price order of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED HB 286 OUT OF COMMITTEE

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

- MOVED HCS CSSB 137(L&C) OUT OF COMMITTEE

SENATE BILL NO. 158

"An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

- MOVED SB 158 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 271

SHORT TITLE: LIMIT OVERTIME FOR REGISTERED NURSES

SPONSOR(S): REPRESENTATIVE(S) WILSON

04/15/05 (H) READ THE FIRST TIME - REFERRALS
04/15/05 (H) L&C, HES, FIN
04/30/05 (H) L&C AT 1:00 PM CAPITOL 17

BILL: HB 286

SHORT TITLE: VALUE OF ROYALTY ON GAS PROD./ TAX CREDIT

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

04/26/05 (H) READ THE FIRST TIME - REFERRALS
04/26/05 (H) O&G, L&C
04/28/05 (H) O&G AT 5:00 PM CAPITOL 124
04/28/05 (H) Moved Out of Committee
04/28/05 (H) MINUTE(O&G)
04/29/05 (H) O&G RPT 5DP
04/29/05 (H) DP: KERTTULA, SAMUELS, MCGUIRE,
ROKEBERG, KOHRING
04/30/05 (H) L&C AT 1:00 PM CAPITOL 17

BILL: SB 137

SHORT TITLE: EVICTIONS FROM UNIV. STUDENT HOUSING

SPONSOR(S): SENATOR(S) SEEKINS

03/08/05 (S) READ THE FIRST TIME - REFERRALS
03/08/05 (S) L&C, JUD
03/22/05 (S) L&C AT 1:30 PM BELTZ 211
03/22/05 (S) Heard & Held
03/22/05 (S) MINUTE(L&C)
03/24/05 (S) L&C AT 2:00 PM BELTZ 211
03/24/05 (S) Moved SB 137 Out of Committee
03/24/05 (S) MINUTE(L&C)
03/29/05 (S) L&C RPT 3DP
03/29/05 (S) DP: BUNDE, DAVIS, STEVENS B
04/05/05 (S) JUD RPT 3DP 1NR
04/05/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS
04/05/05 (S) NR: GUESS

04/05/05 (S) JUD AT 8:30 AM BUTROVICH 205
 04/05/05 (S) Moved SB 137 Out of Committee
 04/05/05 (S) MINUTE(JUD)
 04/12/05 (S) TRANSMITTED TO (H)
 04/12/05 (S) VERSION: SB 137
 04/13/05 (H) READ THE FIRST TIME - REFERRALS
 04/13/05 (H) L&C, JUD
 04/22/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/22/05 (H) <Bill Hearing Postponed to 4/25>
 04/25/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/25/05 (H) Heard & Held
 04/25/05 (H) MINUTE(L&C)
 04/29/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/29/05 (H) -- Meeting Canceled --
 04/30/05 (H) L&C AT 1:00 PM CAPITOL 17

BILL: SB 158

SHORT TITLE: MUNI TAX ON STATE CONSTRUCTION CONTRACTS
SPONSOR(S): SENATOR(S) HUGGINS

04/01/05 (S) READ THE FIRST TIME - REFERRALS
 04/01/05 (S) CRA, FIN
 04/06/05 (S) CRA AT 1:30 PM BELTZ 211
 04/06/05 (S) Moved SB 158 Out of Committee
 04/06/05 (S) MINUTE(CRA)
 04/07/05 (S) CRA RPT 2DP 2NR
 04/07/05 (S) DP: STEVENS G, STEDMAN
 04/07/05 (S) NR: WAGONER, KOOKESH
 04/13/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/13/05 (S) Heard & Held
 04/13/05 (S) MINUTE(FIN)
 04/15/05 (S) FIN RPT 4DP 1DNP
 04/15/05 (S) DP: WILKEN, GREEN, DYSON, STEDMAN
 04/15/05 (S) DNP: OLSON
 04/15/05 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/15/05 (S) Moved SB 158 Out of Committee
 04/15/05 (S) MINUTE(FIN)
 04/21/05 (S) TRANSMITTED TO (H)
 04/21/05 (S) VERSION: SB 158
 04/22/05 (H) READ THE FIRST TIME - REFERRALS
 04/22/05 (H) L&C, FIN
 04/29/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/29/05 (H) -- Meeting Canceled --
 04/30/05 (H) L&C AT 1:00 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 271.

REBECCA BOLLING, RN, President

Alaska Nurses Association

Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 271.

DAVE WILLIAMS, Project Coordinator

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Testified on HB 271.

KATHLEEN GETTYS, RN, President

Providence Registered Nurses Bargaining Unit;

Delegate, American Nurses Association

Anchorage, Alaska

POSITION STATEMENT: Urged the committee's support of HB 271.

DIANE O'CONNEL

Alaska Nurses Association

Anchorage, Alaska

POSITION STATEMENT: Urged the committee's support of HB 271.

LONNIE HOSLEY (PH), RN

(No address provided)

POSITION STATEMENT: Testified in support of HB 271.

CAROL WIDMAN, RN

(No address provided)

POSITION STATEMENT: Testified in support of HB 271.

GREY MITCHELL, Director

Division of Labor Standards & Safety

Department of Labor & Workforce Development

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 271, answered questions.

REPRESENTATIVE RALPH SAMUELS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 286.

JIM POSEY, General Manager

Municipal Light & Power
Anchorage, Alaska

POSITION STATEMENT: Provided specifics on HB 286.

KATE GIARD, Commissioner/Chair
Regulatory Commission of Alaska
Department of Commerce, Community, & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Testified that HB 286 is in keeping with the agreement RCA had when ML&P purchased the Beluga River Field.

MARTIN SCHULTZ, Audit Section
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 286.

ANDY LEIMAN
Municipal Light & Power
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 286.

JOE MICHEL, Staff
to Senator Ralph Seekins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the changes encompassed in HCS CSSB 137, Version F.

SENATOR CHARLIE HUGGINS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of SB 158.

DAVID LANTZ, General Manager/Owner
Dimond Electric;
Board Member, National Electrical Contractors Association -
Alaska Chapter
(No address provided)

POSITION STATEMENT: During hearing of SB 158, urged the committee to level the playing field regarding what's taxed on a state project throughout the state.

DENISE MICHELS, Mayor
City of Nome
Nome, Alaska

POSITION STATEMENT: Testified in opposition to SB 158.

DEBORAH GRUNDMAN, Staff
to Senator Huggins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered additional information on SB 158.

KATHIE WASSERMAN
Alaska Municipal League
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 158.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at [2:15:49 PM](#). Representatives Anderson, Lynn, Crawford, and Guttenberg were present at the call to order. Representatives Kott, LeDoux, and Rokeberg arrived as the meeting was in progress.

HB 271-LIMIT OVERTIME FOR REGISTERED NURSES

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 271, "An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, explained that HB 271 prohibits mandatory overtime for nurses because it causes significant problems for both patients and health care workers. "Forcing nurses to work beyond their regularly scheduled shift has been linked to increased error rates in providing patient care; it's also increased injury rates for both patients and health care workers," she stated. For health care workers, the abuse of mandatory overtime has been associated with unhealthy weight gain, increased use of alcohol and tobacco, and lower levels of functional ability. Representative Wilson highlighted that for nurses, errors and mistakes can cause life-threatening situations for both the patient and the nurse. Furthermore, errors and mistakes can lead to lawsuits that could result in the loss of license and increases in malpractice insurance rates. "The evidence is very strong that prolonged work hours and fatigue effect worker performance," she stated.

REPRESENTATIVE WILSON informed the committee that the U.S. Department of Health and Human Resources authorized the Institute of Medicine to study nurse work hours and health care errors. The study provided compelling evidence supporting the belief that nurses working long hours have an adverse effect on patient safety. Representative Wilson highlighted that the study estimated that between 44,000-98,000 hospital deaths can be attributed to medical errors each year. She said that mandatory overtime is a serious contributing factor to some of these errors. The study, she related, recommends that all overtime should be curtailed altogether.

[2:18:46 PM](#)

REPRESENTATIVE WILSON informed the committee that when nurses had to work shifts longer than 12 hours, the risk of making an error was three times higher. Furthermore, working overtime increased the odds of making at least one error, regardless of the length of the originally scheduled shift. Moreover, about 12 percent of the absences reported by a random sample of Canadian nurses was directly correlated to overtime.

REPRESENTATIVE WILSON pointed out that mandatory overtime is one of the major factors causing nurses to leave the profession. However, in the face of a severe nursing shortage, nurses need to be kept at the bedside. She informed the committee that surveys have shown that the exodus of various health care providers and [other support staff] is directly attributable to difficult working conditions, including inadequate staffing, mandatory overtime, and insufficient compensation.

[2:19:51 PM](#)

REPRESENTATIVE WILSON specified that HB 271 won't prohibit nurses from working overtime, although it will discourage an employer from assigning mandatory overtime. Furthermore, the legislation will prohibit an employer from threatening or retaliating against a nurse who refuses to work overtime. She noted that 10 states have already enacted legislation prohibiting mandatory overtime and another 20 are in the process of doing so. Representative Wilson concluded by emphasizing that this is not an overtime issue but rather a safety issue for both patients and nurses.

CHAIR ANDERSON turned attention to the fiscal note for a Wage & Hour Investigator I, which he assumed would cover the state's nurses.

2:21:18 PM

REPRESENTATIVE LYNN inquired as to what happens in an emergency situation in which a nurse becomes sick, but no one will volunteer. He asked if mandatory overtime could be required in that situation.

REPRESENTATIVE WILSON pointed out that there are five exemptions, which include the aforementioned situation. The exemptions are listed on page 2, lines 14-20.

2:23:04 PM

REPRESENTATIVE ROKEBERG turned attention to the exemption allowing a nurse to voluntarily work overtime. He asked if that could be problematic in terms of what's voluntary and what's not.

REPRESENTATIVE WILSON related her belief that the nurse would know whether she can handle additional hours and how many. In further response to Representative Rokeberg, Representative Wilson said that parts of HB 271 are based on statutes from other states.

2:24:47 PM

REBECCA BOLLING, RN, President, Alaska Nurses Association, informed the committee that the Alaska Nurses Association represents over 6,000 registered nurses in the state. She related her support for HB 271. Ms. Bolling turned attention to the national nursing shortage, which is expected to be of greater proportions than those of the past. She reviewed the many reasons for the nursing shorting, included the growing elderly population, fewer individuals choosing a nursing career, and the growing trend of nurses planning to and leaving the profession. Many surveys have documented that as many as 20 percent of nurses are planning to leave the profession within the next five years. She echoed Representative Wilson's comments regarding the reports from surveys that nurses are leaving the profession primarily due to working conditions, siting mandatory overtime as one of the top reasons for dissatisfaction. Furthermore, mandatory overtime has been associated with poor health of the nurse and most certainly causes family, marital, and childcare problems. Moreover, mandatory overtime contributes to poor quality of care and mistakes that can and do have disastrous results.

MS. BOLLING said that the answer to the nursing shortage isn't mandatory overtime, rather it will worsen the shortage by driving away more nurses. She noted that other states have tackled this issue. She also noted that nurses do suffer retaliation from employers when they refuse overtime hours, and therefore legislation to ban mandatory overtime for registered nurses (RNs) is important. Ms. Bolling, in conclusion, applauded the effort to protect the profession of nursing in Alaska and the safety of the state's patients by moving forward on HB 271.

[2:29:09 PM](#)

REPRESENTATIVE GUTTENBERG inquired as to how this legislation would apply to nurses performing administrative work as opposed to direct care.

MS. BOLLING related her belief that it wouldn't apply to those nurses doing administrative work primarily because those are contracted services that are salary positions. Staff nurses are paid on an hourly wage and are impacted by mandatory overtime.

[2:30:05 PM](#)

REPRESENTATIVE LEDOUX drew attention to the exemption for a critical access hospital, and inquired as to what it is.

REPRESENTATIVE WILSON opined that there are only five hospitals in the state that are critical access hospitals, including the hospitals in Wrangell, Petersburg, and Cordova. Those hospitals are located in areas in which the population has decreased, but the federal government has provided help in order to continue to provide services because without the hospital there would be no access to health care. There was an indication that the definition of "critical access hospital" is specified in the U.S. code.

[2:32:27 PM](#)

REPRESENTATIVE LEDOUX expressed concern for hospitals with a limited number of employees because she surmised that such a hospital would be most likely to force unwanted overtime. Therefore, the exemption would seem to undo the good intention of the legislation.

REPRESENTATIVE WILSON noted that in talking with nurses and the Alaska Nurses Association, she gathered that the only facilities making people work overtime are the Alaska Psychiatric Institute (API), some of the Pioneers' Homes, and within [the Department of] Corrections.

[Due to a technical difficulty, the committee took a brief at-ease.]

2:34:51 PM

DAVE WILLIAMS, Project Coordinator, Department of Health and Social Services (DHSS), informed the committee that he is representing the pioneers' and veterans' homes. Mr. Williams stressed the importance of RNs, without which the pioneers' and veterans' homes cannot work. He noted that the department has found difficulty in finding RNs to even interview for all of the shifts and locations, there are six different homes to staff. Therefore, when a facility is short, it asks for volunteers first. He related his impression that generally the requests for volunteers satisfy the need, although that's not always the case.

MR. WILLIAMS surmised that under HB 271, more attention would have to be paid to be sure that [the first request was for voluntary overtime]. Therefore, he surmised that whether the overtime was mandatory or voluntary would need to be recorded in some fashion. Mr. Williams said that he should be able to provide the committee with a fiscal note next week after he has time to check with each administrator regarding the amount of voluntary and mandatory overtime. He commented that if there is a need to request mandatory overtime, but [the administrator] is not allowed to do so [under HB 271] then an alternative would have to be sought. He mentioned the possibility of contract nursing, which is already being used. The aforementioned would probably be reviewed for the fiscal note. However, he noted that contract nurses aren't easily found, and in fact locally contract nurses are now being hired from Canada. Mr. Williams concluded by stating that the nationwide shortage of RNs is quite a challenge.

2:38:34 PM

REPRESENTATIVE GUTTENBERG asked if the RN shortage is mainly [attributable] to salaries and benefits or are there merely not enough trained people in Alaska.

MR. WILLIAMS said that he couldn't speak to the cause of the shortage, although he agreed with earlier statements regarding people not choosing [nursing] as a line of work. Although higher wages could attract more people, it's such a shortage that there will still be difficulty finding RNs. In further response to Representative Guttenberg, Mr. Williams said that he didn't know the compensation differential between the state and the private sector.

[2:39:18 PM](#)

REPRESENTATIVE CRAWFORD inquired as to whether Mr. Williams had data regarding the average amount of overtime hours an RN would work in [the pioneers' and veterans' homes].

MR. WILLIAMS replied no, although he offered to provide that to the committee as it will be utilized for the fiscal note.

[2:40:40 PM](#)

KATHLEEN GETTYS, RN, President, Providence Registered Nurses Bargaining Unit; Delegate, American Nurses Association, echoed earlier testimony regarding the concern the Alaska Nurses Association and the American Nurses Association has regarding the impact of mandatory overtime. Both organizations, she related, believe that the elimination of mandatory overtime is a critical success factor in efforts to improve the quality of health care and conditions for nurses. Therefore, both organizations oppose the use of mandatory overtime as a staffing tool. Overtime, whether mandatory or voluntary, is the most common method used to cover staffing insufficiencies. In fact, some employers have described mandatory overtime as a staffing model. She noted the various states in which mandatory overtime was the central issue in RN strikes. "Strictly limiting mandatory overtime for nurses is a critical step in improving the quality of health care and reducing medical errors," she opined. She reiterated the findings of the study Representative Wilson discussed earlier. "Unlike many industries where public safety is a concern, health care is exempt from regulations which limit the use of overtime as a staffing tool" she pointed out. She questioned why one would want a nurse to provide care for someone when it has been clearly illustrated that long working hours increase the likelihood of medical errors.

MS. GETTYS stated that API is placed at a disadvantage in recruiting nurses due to working conditions and below-average salaries. However, API can't turn away patients and can't deny

hospitalization. She noted that API has lost numerous nurses. The combination of mandatory overtime and working short has left nurses with no other option than to seek other employment opportunities. Therefore, Ms. Gettys concluded by urging the legislature to prohibit mandatory overtime, which she characterized as unethical, in Alaska.

[2:46:17 PM](#)

REPRESENTATIVE ROKEBERG inquired as to how the RNs labor agreement deals with mandatory overtime at Providence Hospital.

MS. GETTYS specified that RNs [at Providence Hospital] are covered by a collective bargaining agreement in which mandatory overtime isn't used. However, there are situations in which a case in the operating room runs long. Providence Hospital has a large pool of nurses and it takes great effort to find someone to replace that nurse in the aforementioned situation.

[2:47:24 PM](#)

DIANE O'CONNEL, Alaska Nurses Association, informed the committee that many organizations have worked on developing the language in HB 271, including the Laborers Local 341 representing the nurses at Anchorage's Regional Hospital, the Teamsters representing nurses located in Kodiak and Homer, and the Alaska State Employee's Association for API and other nurses employed by the state. Ms. O'Connell urged the committee's support for HB 271.

[2:48:44 PM](#)

LONNIE HOSLEY (PH), RN, informed the committee that she has been a nurse for over 20 years and currently works at API. She said that she fully agrees with the statements of her peers. She expressed hope that the committee would [forward] HB 271, which she said she supports.

[2:49:18 PM](#)

CAROL WIDMAN, RN, informed the committee that she, too, is an employee of API and has been forced to work overtime. She urged the committee to pass HB 271.

[2:49:58 PM](#)

REPRESENTATIVE GUTTENBERG referred to page 3, line 10, and inquired as to what happens if a complaint alleging a violation isn't filed with the commissioner within three business days.

GREY MITCHELL, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development (DLWD), assumed that it would be the department's failure and the case wouldn't be pursuable at that point.

REPRESENTATIVE ROKEBERG asked if testimony earlier indicating that health care workers are exempt from the Alaska Wage & Hour Act is correct.

MR. MITCHELL answered that there is an exemption for most health care employees such that those employees who provide medical services to patients and are employed by an over night hospital are exempt from the Alaska Wage & Hour Act. Administrative employees aren't included nor are clinics and physician's offices.

CHAIR ANDERSON, upon determining no one else wished to testify, closed public testimony.

[2:52:06 PM](#)

REPRESENTATIVE GUTTENBERG urged Representative Wilson to review his earlier question [regarding the failure of the commissioner to file a complaint within the specified time].

REPRESENTATIVE KOTT noted that he too is concerned with the provision addressing the failure to file a complaint. If it's a failure from the department, then he wasn't sure that it should restrict the complaint from proceeding. Representative Kott then turned to the fine imposed on state facilities that are found not to be in compliance. He surmised that the fine remitted by the state facility would be from the general fund dollars it receives and thus the fine would be general fund dollars that would be deposited back in the general fund. However, that's not clear in the legislation. Therefore, he requested that the sponsor review that issue.

[2:54:00 PM](#)

REPRESENTATIVE LEDOUX moved to report HB 271 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

HB 286-VALUE OF ROYALTY ON GAS PROD./ TAX CREDIT

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 286, "An Act amending the manner of determining the royalty received by the state on gas production by directing the commissioner of natural resources to accept, under certain circumstances, the transfer price of the gas if established by transfer price order of the Regulatory Commission of Alaska; and providing for an effective date."

REPRESENTATIVE RALPH SAMUELS, Alaska State Legislature, sponsor, explained that HB 286 is housekeeping legislation that was brought forth by Municipal Light & Power (ML&P). The legislation addresses the method for determining the royalty received by the state [on gas production]. The Department of Natural Resources (DNR) calculates the royalty value based on a contract between ML&P and Shell. Then ML&P bought an interest in the Beluga River Field from Shell and DNR agreed to allow the rate as if the contract were still in place. The aforementioned contract expires in 2005. Therefore, HB 286 would allow DNR to use the gas transfer price set by the Regulatory Commission of Alaska (RCA) much like DNR used for the contract price for the gas.

[2:55:45 PM](#)

JIM POSEY, General Manager, Municipal Light & Power, specified that HB 286 allows a matrix of calculations for the price that ML&P pays royalty on to be first done through the RCA. If that rate is sufficient for royalty purposes, then it passes muster for DNR. However, if DNR determines later that the royalty value is lower, then a second matrix through the DNR process is utilized in order to establish a royalty for the gas ML&P uses to run its turbines. Mr. Posey echoed Representative Samuels' earlier comment that HB 286 is a housekeeping measure that keeps two competing agencies from having concurrent jurisdiction.

[2:57:37 PM](#)

KATE GIARD, Commissioner/Chair, Regulatory Commission of Alaska, Department of Commerce, Community, & Economic Development (DCCED), informed the committee that the RCA has reviewed the statutory revision, which is in keeping with the RCA's understanding of its responsibilities in terms of opining on the transfer price on an annual basis. There is no additional cost to the RCA for this legislation because it's part of the process

ordered in U9636, the docket when ML&P purchased the Beluga Field; order 39 describes the methods for calculating.

[2:58:22 PM](#)

MS. GIARD, in response to Representative Rokeberg, explained that the formula takes the actual cost of production less the sales, which is then multiplied by a margin. The margin for [ML&P] is 1.6, which is ML&P's debt service coverage ratio. Therefore, the calculations are based on the actual production costs.

MARTIN SCHULTZ, Audit Section, Division of Oil and Gas, Department of Natural Resources, related DNR's support of HB 286. He informed the committee that when DNR determines royalty value under state leases, it reviews either the contract price the producer receives for the gas or what other producers in the same area receive. The aforementioned is referred to as "the higher of" comparison in which the state is entitled to the higher of those two values. He explained that AS 38.05.180(aa) allows a producer that sells to a gas or electric utility to have royalty value certainty.

[3:00:00 PM](#)

MR. SCHULTZ said that HB 286 would expand the coverage of AS 38.05.180(aa) to include a transfer price that a producer receives on gas deliveries to an affiliated gas or electric utility. Therefore, it's consistent with the current statute and DNR supports the legislation.

[3:00:37 PM](#)

ANDY LEIMAN, Municipal Light & Power, related ML&P's support of HB 286.

[3:01:02 PM](#)

REPRESENTATIVE ROKEBERG moved to report HB 286 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

SB 137-EVICTIONS FROM UNIV. STUDENT HOUSING

CHAIR ANDERSON announced that the next order of business would be SENATE BILL NO. 137, "An Act providing that an institution providing accommodations exempt from the provisions of the

Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

[3:01:33 PM](#)

REPRESENTATIVE KOTT moved to adopt HCS CSSB 137, Version G, as the working document.

The committee took a brief at-ease.

[3:03:01 PM](#)

CHAIR ANDERSON objected.

REPRESENTATIVE KOTT then moved to adopt HCS CSSB 137, Version 24-LS0739/F, Kurtz, 4/27/05, as the working document. There being no objection, Version F was before the committee.

JOE MICHEL, Staff to Senator Ralph Seekins, Alaska State Legislature, explained that in order to allay some concerns the word "institution" is no longer included in the title or throughout Version F. Furthermore, Version F only applies to student housing at the University of Alaska. In response to Representative Lynn, Mr. Michel confirmed that the references to nursing homes and hospitals were removed.

REPRESENTATIVE ROKEBERG commented that the title and the act seem to be at odds. He suggested that perhaps there is a syntax error.

[3:04:36 PM](#)

CHAIR ANDERSON opined that he believes it's correct.

REPRESENTATIVE ROKEBERG specified that his concern is with regard to the title language "without resorting to court proceedings under" specific statute that is civil procedure. However, in order to evict someone, [the landlord] has to use the civil procedures.

CHAIR ANDERSON inquired as to the possibility of deleting the language: "**without resorting to court proceedings under AS 09.45.060 - 09.45.160.**" on page 1, line 3.

REPRESENTATIVE ROKEBERG said that he wouldn't make a big deal about it, which he characterized as bad syntax, because the

legislation has been improved. He suggested that the next committee of referral review the incongruence between the language in the title and the body of the legislation.

[3:07:19 PM](#)

REPRESENTATIVE LEDOUX inquired as to how a student can be evicted without going through a formal eviction procedure.

MR. MICHEL noted that there is a long appeals process when the student is removed from student housing. The main goal of this legislation is that once that process is complete, the student can be removed, which usually means that the locks are changed. The legislation means that the university wouldn't have to go to court to obtain a court order to forcible remove the student.

[3:08:09 PM](#)

REPRESENTATIVE LEDOUX pointed out that in one of the cases that she was aware of, the university didn't go to court to evict the [student]. Instead, the troopers were called and the court simply dismissed the misdemeanor complaint against [the student]. Representative LeDoux said that she wasn't opposed to moving the legislation, but she said she wasn't sure that it solved the problem desired. She opined that even under this legislation, a court would probably still say that somebody couldn't be convicted of a criminal offense without some sort of due process.

[3:09:23 PM](#)

REPRESENTATIVE ROKEBERG said that he agrees with the legislation as well as Representative LeDoux. He said that the problem with the landlord tenant law is that if "it's not for rent, you have to go through like 30 days to mitigate the situation." He maintained that the title still doesn't seem to fit the legislation.

[3:10:13 PM](#)

CHAIR ANDERSON reminded the committee that SB 137 was assigned to this committee because of the landlord-tenant aspect of commerce. He related his understanding that the committee concurs with the concept [of the legislation], although there may be a problem with the title. Therefore, he suggested that the aforementioned be discussed with Legislative Legal and

Research Services before it's heard in the House Judiciary Standing Committee.

[3:10:44 PM](#)

REPRESENTATIVE KOTT moved to report HCS CSSB 137, Version 24-LS0739\F, Kurtz, 4/27/05, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS CSSB 137(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:10:57 PM](#)

The committee took a brief at-ease.

SB 158-MUNI TAX ON STATE CONSTRUCTION CONTRACTS

[3:11:47 PM](#)

CHAIR ANDERSON announced that the final order of business would be SENATE BILL NO. 158, "An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

SENATOR CHARLIE HUGGINS, Alaska State Legislature, sponsor, began by saying that SB 158 represents the interest of the citizens of Alaska. This legislation will maintain what most believe is already the case. He posed a situation in which there is a state airport project for \$8 million. In the process, a subcontractor is subjected to a 5 percent sales tax on that subcontractor's \$400,000 contract, which amounts to about \$21,000. However, that wasn't the process when the subcontractor bid on the project. In discussions with folks about this, [subcontractors] didn't view the aforementioned scenario as appropriate and even inquired as to how much [money] a community wants from them. Therefore, SB 158 has been introduced.

SENATOR HUGGINS informed the committee that SB 158 doesn't preclude taxation on the equipment leased in the locale. He emphasized that this legislation isn't about "rural" or "urban" areas but rather about how the state does business. In a normal year, the state has about \$350-\$400 million worth of construction contracts. If the state doesn't take action similar to what's encompassed in SB 158, an unstable environment will be created. He informed the committee that he has an e-mail from the Alaska Municipal League (AML) that indicates that

communities using a certain law firm have a policy of collecting sales tax from subcontractors doing business in the community, regardless of the funding source.

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SENATOR HUGGINS said that when talking with state agencies, it was foggy at best regarding the state's position on taxing authority. This legislation clarifies the aforementioned and provides a predictable business environment.

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CHAIR ANDERSON noted that his research has determined that the impact of [such taxation practices] is de minimis, although he acknowledged that it adversely impacts the City of Nome. He asked if there is a way to grandfather in current infrastructure where there are taxes, or would that defeat the purpose of the legislation.

SENATOR HUGGINS indicated that from his conversations with average Alaskans, the question is how much is enough. Senator Huggins emphasized that [allowing the current situation to continue] will drive up the cost of contracting and will cost all Alaskans. In response to Chair Anderson, Senator Huggins said, "Where we're going out to enhance that community, that to reach out and carve money out of that and drive up the price of contracting is not right."

[3:17:39 PM](#)

REPRESENTATIVE CRAWFORD inquired as to what the contract was for that cost the subcontractor in the earlier example \$21,000 in taxes.

SENATOR HUGGINS explained that it was an electrical contract for \$400,000 and the community imposed a 5 percent tax on that. Senator Huggins reiterated that such a practice isn't right.

REPRESENTATIVE CRAWFORD posed a situation in which a [subcontractor] had a contract to construct a fence at an airport. If that [subcontractor] miscalculated the amount of fencing necessary and purchased the remainder of the fencing in the location of the construction, would that [subcontractor] be charged the sales tax.

SENATOR HUGGINS replied yes. In the case that prompted this legislation, the electrical company spent just shy of \$80,000 in the community on things from hotel rooms to rental cars and paid tax on those items. The legislation doesn't [change that].

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SENATOR HUGGINS, in response to Representative LeDoux, clarified that even under SB 158 the [subcontractor] in Representative Crawford's example would pay the tax on the fencing purchased in the location of the construction. In further response to Representative LeDoux, Senator Huggins informed the committee that at least two boroughs or cities, Sand Point and Nome, have levied the tax [on a state contract] at least once. Both those communities are advised by the same law firm. He mentioned that Unalaska may potentially be the third such community. Senator Huggins remarked that the specific communities aren't important because without something like SB 158, this business practice will spread throughout the state. He noted that in the Senate only three members didn't agree with this legislation.

[3:20:46 PM](#)

REPRESENTATIVE LEDOUX related her understanding that a city or borough can't tax the state.

SENATOR HUGGINS answered that it's not clear. Although the state assessor would agree that a city or borough can't tax the state, he would include a "but" clause. Therefore, SB 158 clarifies the situation.

[3:21:23 PM](#)

REPRESENTATIVE LEDOUX inquired as to how this occurs now.

SENATOR HUGGINS specified that the city or borough merely taxes the subcontractor. He reiterated that SB 158 is about the people of Alaska and whether the desire is to increase the price of contracting or establish a mechanism such that across the state purchases at the location of the project would be taxed.

[3:22:50 PM](#)

REPRESENTATIVE LEDOUX inquired then as to how this legislation is different from the current practice.

CHAIR ANDERSON clarified that Senator Huggins is delineating between tangible items [such as the purchase of nails] and providing a service [the subcontractor's work].

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SENATOR HUGGINS explained that in the example with the airport, the contract was to fix the airport to a standard the community would like. When [the subcontractor] purchases something in the community, there would be a tax on that purchase.

REPRESENTATIVE LEDOUX surmised then that under SB 158 if the subcontractor was located in the community and sold his/her services to someone, not to a contractor on a state project, in the community, then there would be a sales tax. However, the subcontractor who sells his/her services to the contractor on a state project would not be taxed, even if the subcontractor is located in the community. Representative LeDoux specified:

You could have a contractor come in from Anchorage, for example, but then they hire somebody from ... Nome to be the subcontractor on it. Now normally, if that subcontractor were selling to anybody else in Nome there would be a tax on that. So, how would this be different, then?

SENATOR HUGGINS expressed his desire that both contractors and subcontractors for the state would be taxed [for items purchased] and not be penalized by the location of their business.

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REPRESENTATIVE ROKEBERG said that he finds the concept of potential double taxation very compelling and thus he expressed his support of SB 158. However, Representative LeDoux makes a good point in regard to whether there is a definition of subcontractor in statute. Furthermore, he questioned whether there is a distinction between the service component of a subcontractor and a supplier of materials that would be taxable in the local municipality. Representative Rokeberg opined that there is the desire to avoid the double taxation, but the legislation shouldn't be used to avoid the payment of local taxes that would occur under normal circumstances for the purchase of an item.

SENATOR HUGGINS agreed that there will be a tax on materials purchased in a community.

REPRESENTATIVE ROKEBERG posed a situation in which the supply of materials is subcontracted out.

SENATOR HUGGINS specified that materials aren't exempt.

[3:27:35 PM](#)

REPRESENTATIVE ROKEBERG returned attention to the earlier hypothetical regarding the fencing project, and inquired as to the tax ramifications if the subcontractor merely supplied the material.

SENATOR HUGGINS said that he didn't know.

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REPRESENTATIVE GUTTENBERG related his understanding that the contractor isn't taxed, but the subcontractor is taxed for the total value, regardless of services. He then asked if all subcontractors are taxed, regardless of the location of the business.

SENATOR HUGGINS reiterated that this [taxation on subcontractors] will spread throughout the state if nothing is done. However, he agreed that there should be assurances that there shouldn't be a way to circumnavigate [appropriate local taxation]. Senator Huggins said that he would obtain an answer for Representative Guttenberg.

REPRESENTATIVE GUTTENBERG inquired as to whether this is a new practice or ordinance.

SENATOR HUGGINS specified that this is a new practice.

[3:32:00 PM](#)

DAVID LANTZ, General Manager/Owner, Dimond Electric; Board Member, National Electrical Contractors Association - Alaska Chapter (NECA), informed the committee that he bid the Nome project in August 2001 and performed the work in 2002. He noted that Dimond Electric had done work on the Nome airport over the course of the last 15 years. During those 15 years, the tax had never been an issue because by definition it's a retail sales tax. Dimond Electric purchased some \$75,000 worth of services

and goods in the city and paid taxes on those. The company also paid the sales tax on the gross amount of the subcontract, and therefore Dimond Electric was double taxed on the portion paid on the items and services purchased in the city. Mr. Lantz highlighted that it wasn't until 2002 that [the City of Nome] applied the sales tax to Department of Transportation & Public Facilities projects, and thus there was a change in the [city's] interpretation of how to apply the tax.

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MR. LANTZ opined that Dimond Electric was caught by surprise with the change, and therefore the company paid some \$20,000 in taxes as well as another \$10,000 or so in attorney fees to resolve the issues. As a NECA board member, Mr. Lantz informed the committee that research discovered that there were other instances, beyond the Nome project, in which the [double] taxation occurred. Mr. Lantz expressed the need to have a known playing field with regard to what's taxed on state projects in communities across the state.

[3:36:51 PM](#)

REPRESENTATIVE GUTTENBERG asked if, in a normal bid document for a state project, [the subcontractor] would receive all of the taxation policies that would apply.

MR. LANTZ, drawing on his 20 years of working on state projects, that subcontractors worked under the assumption that they, as well as the general contractor, were not subject to sales tax. Therefore, it hasn't been an issue on state projects because in practice state projects have been exempt from the sales tax.

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REPRESENTATIVE LEDOUX surmised that the real problem is that Mr. Lantz's company was caught between the changes made between 2001 and 2002. Therefore, if the subcontractor now knows, she inquired as to how difficult it would be to check with the communities regarding taxation just as they would check fuel and material prices.

MR. LANTZ said that he didn't want to see communities changing their mind about taxation [between the time a project is bid and the work is performed].

[3:39:13 PM](#)

REPRESENTATIVE ROKEBERG asked whether the general contractor paid a tax as well as Mr. Lantz.

MR. LANTZ explained that the general contractor didn't pay a tax on its contract, although he did pay taxes on the local services purchased in the community. Several subcontractors received bills from the city.

[3:39:54 PM](#)

REPRESENTATIVE CRAWFORD asked whether a private contractor in the City of Nome would be charged sales tax on the total amount of a non-state contract.

MR. LANTZ related his belief that tax-exempt status has only been applied to state contracts and thus contractors pay local taxes on private work in the City of Nome.

[3:40:48 PM](#)

DENISE MICHELS, Mayor, City of Nome, noted that the committee should have a copy of her three-page letter in opposition to SB 158. This legislation, she opined, unfairly restricts the city's ability to raise revenues for services. She informed the committee that most of the revenue received by the City of Nome is through property and sales taxes. However, 40 percent of the property in Nome is exempt, yet those [residents] use the city's services like everyone else. When contractors work in the community, they too use the city's services. Therefore, collecting a sales tax on the subcontractors helps pay for the use of those services. Mayor Michels pointed out that whether or not to charge the sales is an option. She indicated that larger communities don't apply the sales tax in this way because they have a larger tax base.

MAYOR MICHELS highlighted that the rules of engagement differ in each community, and in fact the state request for proposals recommends contacting the local government regarding possible fees. She then turned attention to the recent lack of municipal revenue sharing, which she indicated was a [contributing factor] for the City of Nome in 2004 to raise its sales tax from 4 percent to 5 percent in order to help offset the rising operating costs for the community. Mayor Michels said that taking away this taxation option would hurt the City of Nome. She informed the committee that the contractor is exempt from the sales tax [on state projects] and obtains a building permit

that provides tax-exempt status on purchases in the town. The subcontractor can also apply for a building permit.

[3:44:12 PM](#)

REPRESENTATIVE ROKEBERG inquired as to whether the tax exemption for a general contractor is in the City of Nome's local ordinance.

MAYOR MICHELS indicated that it's state law.

DEBORAH GRUNDMAN, Staff to Senator Huggins, Alaska State Legislature, pointed out that due to the state's sovereign immunity, the state is immune from taxation except when it has expressly been waived by the state. Nothing in statute waives the state from taxation, she said. Therefore, the problem is: "there's a contract and a subcontractor is tied right to that, defined as an entity to whom the contractor sublets part of the contract." Practices such as in Nome raise the price of construction projects.

[3:45:30 PM](#)

REPRESENTATIVE ROKEBERG returned to the earlier mention that a subcontractor could apply for a building permit in order to receive an exemption from the sales and use tax.

MAYOR MICHELS clarified that the holder of the building permit would not have to pay tax on the supplies purchased in town. She noted that most contractors and subcontractors ship in their materials to Nome.

[3:46:10 PM](#)

REPRESENTATIVE ROKEBERG surmised then that Mayor Michels believes that the issue of double taxation could've been avoided if the subcontractors had applied for a building permit. He inquired as to the fee for a permit on a \$400,000 contract.

MAYOR MICHELS answered that the fee is based on a percentage of the project.

[3:46:41 PM](#)

KATHIE WASSERMAN, Alaska Municipal League (AML), related that AML is opposed to SB 158, which is outlined in a letter that should be in the committee packet. Ms. Wasserman said that

AML's main concern is that the legislature and the administration, through various actions, have made it clear that municipalities will have to survive on their taxing ability. She related that AML believes that taxing decisions should be left to those at the local level.

REPRESENTATIVE CRAWFORD inquired as to how Ms. Wasserman felt about the same construction dollars being taxed twice.

[3:49:01 PM](#)

MS. WASSERMAN, recalling her experience as a contractor, said that when she wasn't [working] on a state project, she paid sales tax on her contract as well as the services she incurred while in the community. Ms. Wasserman highlighted that in many communities there are state buildings that aren't taxed at all, while the state receives the same services as all the property taxpayers in the community.

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SENATOR HUGGINS characterized this practice [of taxing subcontractors on state projects] as being viewed as revenue sharing by those communities using it. However, he indicated that doing so drives up the price of contracting. Therefore, Senator Huggins opined that it's a simple question. Senator Huggins suggested that people could be charged for the use of the local services, but "don't go after the contractor" [because either way they pay for the services used]. He reminded the committee that SB 158 would create a stable environment and contain the price of contracting.

[3:52:32 PM](#)

REPRESENTATIVE KOTT announced that he has a conflict in voting because SB 158 could potentially impact his business environment.

CHAIR ANDERSON said that Representative Kott would be required to vote.

[3:53:02 PM](#)

REPRESENTATIVE GUTTENBERG said that he's torn between both sides of this issue.

CHAIR ANDERSON said that although he, too, is torn, the legislation should move forward. He also recognized the dilemma that municipalities face with budgeting.

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REPRESENTATIVE CRAWFORD opined that there are two questions here. One is whether there should be municipal assistance and revenue sharing and the other is whether state projects should be taxed by a municipality. He noted that he believes in municipal assistance and revenue sharing, but that's not what SB 158 is about. He recalled testimony that the local community benefits when the state spends state dollars in a community, and therefore he opined that those dollars shouldn't be taxed. Representative Crawford concluded by announcing that he would advance SB 158.

[3:55:11 PM](#)

REPRESENTATIVE LEDOUX said that she wouldn't hold up the legislation. However, she reiterated that she has some serious problems with it because she didn't see any difference between the state having a contractor and the municipality taxing the subcontractor or a private individual.

REPRESENTATIVE LYNN moved to report SB 158 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, it was so ordered.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at [3:56:21 PM](#).