

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

February 22, 2005

2:41 p.m.

**MEMBERS PRESENT**

Senator Con Bunde, Chair  
Senator Ralph Seekins, Vice Chair  
Senator Bettye Davis  
Senator Johnny Ellis

**MEMBERS ABSENT**

Senator Ben Stevens

**COMMITTEE CALENDAR**

SENATE BILL NO. 93

"An Act relating to commercial fishing permit and vessel license fees; and providing for an effective date."

MOVED SB 93 OUT OF COMMITTEE

SENATE BILL NO. 105

"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 93

SHORT TITLE: FISHING PERMIT AND VESSEL LICENSE FEES

SPONSOR(s): SENATOR(s) STEVENS B

02/04/05	(S)	READ THE FIRST TIME - REFERRALS
02/04/05	(S)	L&C, FIN
02/15/05	(S)	L&C AT 1:30 PM BELTZ 211
02/15/05	(S)	Heard & Held
02/15/05	(S)	MINUTE(L&C)
02/22/05	(S)	L&C AT 1:30 PM BELTZ 211

BILL: SB 105

SHORT TITLE: OVERTIME WAGES FOR FLIGHT CREW

SPONSOR(s): SENATOR(s) SEEKINS

02/14/05 (S) READ THE FIRST TIME - REFERRALS  
02/14/05 (S) L&C, JUD  
02/22/05 (S) L&C AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

Tom Daniel  
Hageland Aviation  
1029 W. 3rd Ave Suite 300  
Anchorage, AK 99501  
**POSITION STATEMENT:** Supports SB 105.

Mike Hageland  
Hageland Aviation  
3325 Foxridge Circle #1  
Anchorage, AK 99518  
**POSITION STATEMENT:** Supports SB 105.

Mike Bergt  
Alaska Central Express  
3032 Bottles Bay Loop  
Anchorage, AK  
**POSITION STATEMENT:** Supports SB 105.

Bruce McGlasson  
Grant Aviation  
3608 Carleton Ave  
Anchorage AK  
**POSITION STATEMENT:** Supports SB 105.

Jason A. Wilson  
Hageland Aviation  
P.O. Box 210375  
Anchorage, Alaska 99521  
**POSITION STATEMENT:** Supports SB 105.

Brett Harris  
Hageland Aviation  
P.O. Box 2018 Tabasco Cat Dr.  
Palmer, Alaska 99645  
**POSITION STATEMENT:** Supports SB 105.

Tom Nicolos  
Cape Smythe Air Service  
PO Box 549  
Barrow, Alaska 99723

**POSITION STATEMENT:** Supports SB 105.

Jim Wilson  
Coastal Helicopters  
8995 Yandunkin Dr.  
Juneau, Alaska 99801

**POSITION STATEMENT:** Supports SB 105.

Devon Smith  
Hageland Aviation  
4600 Caravelle Ct.  
Anchorage, Alaska 99502

**POSITION STATEMENT:** Supports SB 105.

Michael Charlie  
Hageland Aviation  
Bethel, Alaska 99559

**POSITION STATEMENT:** Supports SB 105.

Bob Hajdukovich  
Frontier Flying Service  
Fairbanks, Alaska

**POSITION STATEMENT:** Supports SB 105.

Grant Thompson  
Cape Smythe Air Service  
Barrow, Alaska 99723

**POSITION STATEMENT:** Supports SB 105.

Karen Casanovas  
Executive Director, Alaska Air Carriers Association (AACP)  
Anchorage, Alaska

**POSITION STATEMENT:** Supports SB 105

**ACTION NARRATIVE**

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at [2:41:02 PM](#) Present were Chair Bunde and Senators Seekins and Ellis.

^#SB93

**SB 93-FISHING PERMIT AND VESSEL LICENSE FEES**

CHAIR BUNDE announced SB 93 to be up for consideration.

[2:48:30 PM](#)

FRANK HOHMAN, Commercial Fisheries Entry Commission, supported SB 93.

[2:49:07 PM](#)

SENATOR ELLIS arrived.

[2:54:46 PM](#)

SENATOR SEEKINS moved to pass SB 93 out of committee. There were no objections, it was advanced.

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^#SB105

**SB 105-OVERTIME WAGES FOR FLIGHT CREW**

[2:55:54 PM](#)

MR. HOVE, staff to Senator Seekins, sponsor SB 105, stated that it clarifies the legislative intent of SB 54 from the 23rd Legislature by retroactively removing flight crews from the scope of statutory overtime compensation required under the Alaska Wage and Hour Act (AS 23.10.060.) Retroactivity would apply to work performed on or after January 1, 2000. He said that the aviation industry faces increasing cost burdens as the result of growing security demands and fuel prices and that SB 105 would alleviate some of this burden by eliminating the costs of superfluous lawsuits.

[2:57:17 PM](#)

MR. HOVE stated that until 2003 it was the Department of Labor's (DOL) uncodified policy that in-state air carriers were exempt from the Alaska Wage and Hour Act's overtime provisions. This policy was rooted in a 1980 attorney general's opinion, which cited that both the federal Railway Labor Act and the US Constitution's commerce clause preempted flight crews from overtime compensation provided in the Alaska Wage and Hour Act. He continued to say that nevertheless, five years ago, uncertainty crept into the DOL's policy as a result of a lawsuit that sought overtime compensation for pilots. SB 105 seeks to fulfill the original intent of SB 54 by making its provisions retroactive to January 1, 2000.

CHAIR BUNDE asked if he could have some assurance that this bill would cure the problem.

MR. HOVE responded that in his understanding, the bill would address the problem in its entirety.

[3:00:24 PM](#)

THOMAS M. DANIEL, representing Hageland Aviation, supported SB 105. He is currently representing Hageland Aviation in a class action lawsuit asserting overtime for pilots, which continues despite the exempting legislation passed in 2003. He explained that since 1949, pilots of commercial aircraft carriers have been exempt from overtime under the federal Railway Labor Act, which applies to all air carriers engaged in interstate and foreign commerce. In Alaska they transport the US mail. Until 2003, there were no similar exemptions under state law. However, the Alaska attorney general issued an opinion in 1980 stating that Alaska air carriers were exempt under state law and that policy was followed by the DOL until the present time. In 1986 the DOL sent a letter to the Alaska Air Carrier's Association stating that pilots were exempt from overtime. Based on the federal exemption and the state's policy, most Alaska air carriers never paid overtime to their pilots; instead they have used various methods including payment by the flight hour, fixed monthly salary, payment by flight day, or a combination of these methods. Despite the DOL's policy and lack of litigation, in the late 1990's some plaintiffs' attorneys argued that there was, in fact, no exemption under state overtime law and lawsuits began to be filed.

[3:02:30 PM](#)

MR. DANIEL asserted that Hageland Aviation and a vast majority of pilots themselves do not support the lawsuit and, in fact, the pilot that initiated the lawsuit stated in his deposition that he felt that he was fairly paid. His beef against Hageland was that he had been unfairly fired because of his age, a claim investigated and rejected by the Alaska Human Rights Commission. Only two of the approximately 60 pilots currently working for Hageland have chosen to participate in the lawsuit and out of the 82 total class action members who could assert claims, 56 of them, or 68 percent, have affirmatively opted out of the lawsuit.

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MR. DANIEL said that Hageland pilots are some of the best paid pilots in the airline industry in Alaska and that there has been

no evidence that it failed to pay its pilots, failed to pay them on time or that they engaged in any fraud, deception, bad faith or any intentional evasion of the Alaska Wage and Hour Act. The lawsuit is proceeding only because the plaintiffs' lawyers have seized upon the lack of any expressed exemption in the law before 2003 and because of two technical mistakes made by Hageland in the way that pilots were compensated. The purpose of the retroactive provision in the bill is to ensure that such lawsuits are stopped and that no more are brought.

[3:08:57 PM](#)

MR. DANIEL said that the violations of law cited by the judge presiding over the class action are trivial and demonstrate the need for legislation such as SB 105. He said that the end result of the lawsuit against Hageland would be that a good corporate citizen that has paid its pilots fairly and provided an essential service in Bush Alaska would face bankruptcy because of a technical violation of a law that was never intended to apply to its pilots.

CHAIR BUNDE noted, for the record, that there is potential conflict regarding his aviation experience and his review of the bill despite the fact that he has not worked in the aviation industry for several years and thus could not be affected by the lawsuit.

[3:14:11 PM](#)

MIKE HAGELAND, President, Hageland Aviation, stated that his company has always paid its pilots well and noted that all but one of his current pilots has either opted out of the class action lawsuit or indicated that he wanted nothing to do with suing the company. Pilots involved in the class action were enticed by lawyers, one of which he heard told a pilot he could gain as much as \$80,000 in a settlement. Mr. Hageland supported SB 105.

[3:16:11 PM](#)

MIKE BERGT, General Manager, Alaska Central Express (ACE), gave a brief description of his company and its importance to rural communities in Alaska. He described a current lawsuit against his company that was brought about by a former pilot to collect overtime compensation. He said that his company believed itself to be acting in accordance with Alaska law and with a common and accepted practice in Alaska while it paid its pilots on a flight

time basis. He noted that ACE had always paid its pilots in this way, that its pay scale was competitive with other carriers in the state and that it never once tried to take advantage of its pilots or employees.

MR. BERGT stated that he never knew of any grievances made by his pilots regarding payment. He supported SB 105 and asserted that the lawsuit brought against ACE was the result of the lawsuit brought against Hageland Aviation. Such lawsuits pose serious financial implications for both his own and other financial carriers.

[3:19:48 PM](#)

BRUCE MCGLASSON, president and owner of Grant Aviation, briefly described his air service and said that his company also pays a daily rate to its pilots and had converted to a daily salary for the same reason as that mentioned by Hageland representatives. Paying by a daily rate encourages safety since pilots are paid whether they fly or not so long as they are on schedule on a given day. Paying on hourly rate gives pilots an incentive to fly when they should not fly, such as in bad weather and believed that the success of the aforementioned lawsuit would unjustly bankrupt Hageland Aviation and that a similar suit could bankrupt his own company.

CHAIR BUNDE asked if single engine pilots were still limited to an eight-hour day by the FAA.

MR. MCGLASSON responded that pilots are required to have an uninterrupted rest period every 24 hours and may fly only eight hours within a 14-hour duty day.

[3:23:19 PM](#)

JASON WILSON, pilot, Hageland Aviation, stated that pilots of Hageland feel they are compensated fairly and that Hageland's payment practices encourage safety by not providing an incentive for pilots to fly in unsafe conditions. Mr. Wilson supported SB 105.

CHAIR BUNDE asked him what the amount of the hourly pay rate at Hageland is.

MR. WILSON responded that the average 207 pilot makes about \$90 per flight hour and that the company has pilots making as much as \$150 per flight hour. Last year there were very few days

when Hageland pilots exceeded 10 hours of actual flight time and that he and many other pilots believe that there is really no need to be paid overtime when their flight hours are limited.

BRETT HARRIS, pilot, Hageland Aviation, stated that he has worked for Hageland for six years and has experienced the different pay arrangements over the years. He said that the daily pay rate is fair and encourages safety. Six hours of flight time would be considered a busy day and four to five hours of flight time would be considered a typical day. Hageland pilots only work for two weeks out of the month and six months out of the year and are paid very good wages. Given these conditions, it is unreasonable for someone to complain about unfair compensation.

JIM WILSON, President, Coastal Helicopters, asserted that if such a lawsuit were brought against his company, it could cause the layoff of many of his employees and perhaps even its closing.

[3:28:31 PM](#)

TOM NICOLOS, Cape Smythe Air Service, stated that his company was sued after SB 54 passed. Cape Smythe has paid its pilots fairly. Cape Smythe pays pilots by the block hour with a small monthly guarantee so that they would have an even salary throughout the year. Cape Smythe even pays its pilots time and a quarter for every additional hour flown over a certain amount. He supported SB 105.

[3:29:52 PM](#)

GRANT THOMPSON, President, Cape Smythe Air Service, noted that Cape Smythe had been paying its pilots just as Mr. Nicolos had described for the past 25 years and he said that the current lawsuit could bankrupt his company. He supported SB 105

KAREN CASANOVAS, Executive Director, Alaska Air Carriers Association (AACA), supported SB 105. She said the AACA fully supports the positions of Hageland Aviation, ACE, Grant Aviation, Coastal Helicopters, and Cape Smyth. She read the following statement:

Without the passage of the current legislation, economic burdens of several tiers will be imposed on carriers that perform passenger and cargo handling which are so critical to the transportation needs of

Alaskan's around the state. Federal aviation regulations that regulate our carriers require them to take serious responsibility for the work they perform for the general public. Those carriers, as well as our industry support safety, managing companies in an ethical manner and addressing the needs of their employees. The lawsuits filed against our member airlines fail to reach this threshold. A ruling not in favor of the carriers that have lawsuits filed against them would impose significant new costs on companies outside the purview of the original position of the Department of Labor submitted in 1986. These carriers that are certificated as airlines ensure a high level of safety and fairness to their employees and have operated under full compliance with that 1986 position given to our member carriers.

The economic burdens may discourage many passenger or cargo airlines from continuing to offer services to Alaskans in rural communities who depend on them throughout the state. In addition it could dramatically impact the contractual relationships and expectations between government agencies such as the US Postal Service and other service providers that these cargo services and passenger airlines perform. For these reasons the AACA requests that the Senate Labor and Commerce Committee support our position.

[3:33:11 PM](#)

BOB HAJDUKOVICH, Frontier Aviation, supported SB 105. He said that Alaska pilots are compensated well compared to pilots elsewhere in the country and consequently issues arising from the related lawsuits are surprising to him. He said that current pay policies encourage safety and fairness.

MICHAEL CHARLIE, pilot, Hageland Aviation, said that he has been employed by Hageland for six years and that he had been paid fairly. He said that under the existing pay structure he never felt pressured to fly in bad weather to make a quick buck and that he found being paid top dollar to fly six months out of the year is totally unbeatable. He claimed that companies like Hageland are needed because they are operated for people whether to fly them home or to keep them employed on the ground or in the air. He said that Hageland Aviation supports local hiring and sets out to do more than they have to do. He supported SB 105

CHAIR BUNDE Said that he would hold the bill for further work  
and adjourned meeting at [3:39:33 PM](#)

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