

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 8, 2018

3:21 p.m.

**MEMBERS PRESENT**

Representative Jonathan Kreiss-Tomkins, Chair  
Representative Gabrielle LeDoux, Vice Chair  
Representative Adam Wool  
Representative Chris Birch  
Representative DeLena Johnson

**MEMBERS ABSENT**

Representative Chris Tuck  
Representative Gary Knopp  
Representative Andy Josephson (alternate)  
Representative Chuck Kopp (alternate)

**COMMITTEE CALENDAR**

CS FOR SENATE CONCURRENT RESOLUTION NO. 10 (STA)  
Proclaiming 2019 to be the Year of Innovation in Alaska.

- MOVED CSSCR 10 (STA) OUT OF COMMITTEE

HOUSE BILL NO. 71

"An Act relating to compensation, merit increases, and pay increments for certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 400

"An Act relating to the collection of fees by the Department of Public Safety for fire and explosion prevention and safety services."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 38

Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

- MOVED HJR 38 OUT OF COMMITTEE

HOUSE BILL NO. 310

"An Act relating to the minimum age of eligibility for marriage."

- HEARD & HELD

Indirect Expenditure Hearings

- REMOVED FROM AGENDA

HOUSE BILL NO. 184

"An Act adding to the powers and duties of the State Commission for Human Rights; and relating to and prohibiting discrimination based on sexual orientation or gender identity or expression."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: SCR 10

SHORT TITLE: ALASKA YEAR OF INNOVATION

SPONSOR(S): SENATOR(S) COSTELLO

04/07/17	(S)	READ THE FIRST TIME - REFERRALS
04/07/17	(S)	L&C, STA
04/10/17	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/10/17	(S)	Heard & Held
04/10/17	(S)	MINUTE(L&C)
04/11/17	(S)	L&C AT 9:00 AM BELTZ 105 (TSBldg)
04/11/17	(S)	Scheduled but Not Heard
04/11/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
04/11/17	(S)	Moved CSSCR 10(L&C) Out of Committee
04/11/17	(S)	MINUTE(L&C)
04/12/17	(S)	L&C RPT CS 4DP 1AM NEW TITLE
04/12/17	(S)	DP: COSTELLO, HUGHES, MEYER, GARDNER
04/12/17	(S)	AM: STEVENS
02/01/18	(S)	STA AT 3:30 PM BUTROVICH 205
02/01/18	(S)	Moved CSSCR 10(STA) Out of Committee
02/01/18	(S)	MINUTE(STA)
02/02/18	(S)	STA RPT CS 2DP 2NR NEW TITLE
02/02/18	(S)	DP: MEYER, EGAN
02/02/18	(S)	NR: WILSON, GIESSEL
02/09/18	(S)	TRANSMITTED TO (H)
02/09/18	(S)	VERSION: CSSCR 10(STA)
02/12/18	(H)	READ THE FIRST TIME - REFERRALS
02/12/18	(H)	STA, L&C

03/06/18 (H) STA AT 3:15 PM GRUENBERG 120  
03/06/18 (H) Heard & Held  
03/06/18 (H) MINUTE(STA)  
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HB 71

SHORT TITLE: NO ST. EMPLOYEE PAY INCREASE FOR 2 YRS  
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/20/17 (H) READ THE FIRST TIME - REFERRALS  
01/20/17 (H) STA, FIN  
01/31/17 (H) STA AT 3:00 PM GRUENBERG 120  
01/31/17 (H) Heard & Held  
01/31/17 (H) MINUTE(STA)  
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HB 400

SHORT TITLE: FEES FOR FIRE PREVENTION MEASURES  
SPONSOR(s): STATE AFFAIRS

02/28/18 (H) READ THE FIRST TIME - REFERRALS  
02/28/18 (H) STA, FIN  
03/01/18 (H) STA AT 3:15 PM GRUENBERG 120  
03/01/18 (H) Heard & Held  
03/01/18 (H) MINUTE(STA)  
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HJR 38

SHORT TITLE: AK RAILROAD TRANSFER ACT; CONVEYANCES  
SPONSOR(s): KOPP

02/21/18 (H) READ THE FIRST TIME - REFERRALS  
02/21/18 (H) STA, JUD  
02/27/18 (H) STA AT 3:15 PM GRUENBERG 120  
02/27/18 (H) Heard & Held  
02/27/18 (H) MINUTE(STA)  
03/01/18 (H) STA AT 3:15 PM GRUENBERG 120  
03/01/18 (H) Heard & Held  
03/01/18 (H) MINUTE(STA)  
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HB 310

SHORT TITLE: MARRIAGE AND MINIMUM AGE FOR MARRIAGE  
SPONSOR(s): CLAMAN

01/26/18 (H) READ THE FIRST TIME - REFERRALS  
01/26/18 (H) STA, JUD

02/22/18 (H) STA AT 3:15 PM GRUENBERG 120  
02/22/18 (H) Heard & Held  
02/22/18 (H) MINUTE (STA)  
03/06/18 (H) STA AT 3:15 PM GRUENBERG 120  
03/06/18 (H) Heard & Held  
03/06/18 (H) MINUTE (STA)  
03/08/18 (H) STA AT 3:15 PM GRUENBERG 120

**WITNESS REGISTER**

LESLIE RIDLE, Commissioner Designee  
Department of Administration (DOA)  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of the House Rules Committee, sponsor of HB 71, by request of the governor, answered questions on Version O.

KATE SHEEHAN, Director  
Division of Personnel and Labor Relations (DPLR)  
Department of Administration (DOA)  
Juneau, Alaska

**POSITION STATEMENT:** Presented Version O on behalf of the House Rules Committee, sponsor of HB 71, by request of the governor, by reviewing the sectional analysis and the explanation of changes.

CATHY SCHLINGHEYDE, Staff  
Representative Jonathan Kreiss-Tomkins  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented Amendment 1 to HB 400 on behalf of the House State Affairs Standing Committee, prime sponsor.

DAVID TYLER, Director State Fire Marshall  
Division of Fire and Life Safety (DFLS)  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the hearing on HB 400.

REPRESENTATIVE CHUCK KOPP  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Summarized HJR 38, as prime sponsor, and responded to the Alaska Railroad Corporation (ARRC) statement of opposition.

## **ACTION NARRATIVE**

[3:21:23 PM](#)

**CHAIR JONATHAN KREISS-TOMKINS** called the House State Affairs Standing Committee meeting to order at 3:21 p.m. Representatives LeDoux, Wool, Birch, and Kreiss-Tomkins were present at the call to order. Representative Johnson arrived as the meeting was in progress.

### **SCR 10-ALASKA YEAR OF INNOVATION**

[3:23:05 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be CS FOR SENATE CONCURRENT RESOLUTION NO. 10(STA), Proclaiming 2019 to be the Year of Innovation in Alaska.

[3:23:40 PM](#)

REPRESENTATIVE LEDOUX moved to report CSSCR 10(STA) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSSCR 10(STA) was reported from the House State Affairs Standing Committee.

### **HB 71-NO ST. EMPLOYEE PAY INCREASE FOR 2 YRS**

[3:24:01 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 71, "An Act relating to compensation, merit increases, and pay increments for certain public officials, officers, and employees not covered by collective bargaining agreements; and providing for an effective date."

[3:24:18 PM](#)

The committee took a brief at-ease at 3:24 p.m.

[3:24:59 PM](#)

CHAIR KREISS-TOMKINS referred to the forthcoming committee substitute (CS) for HB 71, [labeled 30-GH1018\0, Wayne, 2/28/18, and referred to as "Version 0"].

[3:25:21 PM](#)

The committee took a brief at-ease at 3:25 p.m.

3:25:48 PM

CHAIR KREISS-TOMKINS requested a synopsis of Version 0 from the Department of Administration (DOA) staff.

3:26:09 PM

LESLIE RIDLE, Commissioner Designee, Department of Administration (DOA), commented that the changes to HB 71 resulted from collaboration between DOA and the House State Affairs Standing Committee.

3:26:43 PM

KATE SHEEHAN, Director, Division of Personnel and Labor Relations (DPLR), Department of Administration (DOA), paraphrased from the document, entitled "CS HB 71 Explanation of Changes," included in the committee packet, which read as follows:

Section 1: Modified from original bill. This section maintains that the Governor may waive a portion of his annual salary but no longer restricts the waiver during the period of July 1, 2017 through June 30, 2019.

Section 2: New section. Removes language that temporary salary schedules do not affect salaries of employees in a bargaining unit represented by a labor union established under the Public Employment Relations Act and adds the term "pay period" to the title. Language that was removed is now found in section 3 of the bill.

Section 3: New section. Allows the Director of the Division of Personnel to establish a two-week pay period for biweekly payment of a monthly salary. It sets forth the manner in which the Director shall determine the amount paid biweekly. Recognizes that this section does not apply to employees in a bargaining unit represented by a labor union established under the Public Employment Relations Act.

MS. SHEEHAN added that currently the pay period is semi-monthly, and the hours are variable; under the biweekly pay period the

hours would be consistent at 75 hours per every two weeks. She referred to Section 3(b)(1)-(5) [page 2, lines 8-19, of Version 0] and explained that the five paragraphs in the section show the calculations for figuring the hourly, daily, and biweekly rates.

[3:29:05 PM](#)

MS. SHEEHAN referred to Section 3(c) [page 2, lines 20-22] to point out the language removed from Section 2 and put into Section 3. It states that Section 3 would not apply to employees covered by collective bargaining agreements; their pay periods would be subject to negotiated bargaining agreements.

MS. SHEEHAN referred to Section 4 [page 2, lines 23-27] and stated that it is a new section which clarifies that the proposed legislation would expressly modify pay provisions applicable to the governor. She explained that this is included because by statute, legislation is needed to expressly provide for the change in salary.

MS. SHEEHAN relayed that Sections 5-7 address effective dates: Section 5 states that the governor's ability to waive some of his salary would be retroactive to January 1, 2018; Section 6 states that Sections 1, 4, and 5 would take effective immediately; and Section 7 states that Sections 2 and 3 would be effective July 1, 2018.

[3:30:17 PM](#)

REPRESENTATIVE LEDOUX asked whether Section 1(b) of Version 0 [page 1, lines 6-8] has anything to do with the deductibility of charitable contributions under federal tax law.

COMMISSIONER RIDLE asked for clarification of the question.

REPRESENTATIVE LEDOUX explained that her question is: If the governor does not want to take part of his salary, why wouldn't he write a check back to the State of Alaska? Why is a law necessary unless he wished to take a charitable donation deduction for federal tax purposes?

COMMISSIONER RIDLE answered that under Version 0, the portion of salary that the governor does not receive would not be considered a charitable donation for tax purposes; the intent of Version 0 is to preclude the governor from paying federal tax on money he will not receive. She said that if the governor writes

a check back to the state, it would be necessary for him to pay taxes on it, because it would be paid salary. She opined that she doubts that the money could be considered a charitable donation.

REPRESENTATIVE LEDOUX relayed that she wanted to clarify that the proposed legislation was regarding federal tax law.

CHAIR KREISS-TOMKINS restated that the governor would be liable for paying tax on his entire salary even if he writes a check back to the state for the portion of the salary he does not choose to take.

COMMISSIONER RIDLE responded, that's correct. Under Version O, he would accept the smaller amount and not have to write a check back to the state for the balance and, therefore, not be required to pay taxes on salary he did not receive.

[3:32:51 PM](#)

REPRESENTATIVE BIRCH asked, "What happened to the bill I actually kind of liked which had to do with ... freezes for unrepresented employees?" He maintained that the original version of HB 71 would have accomplished that. He stated that he attempted to make a motion on the House floor to enact the cost savings that would have been realized by a freeze, and this version represents a significant change from the original version.

REPRESENTATIVE BIRCH asked whether his interpretation of Version O is correct: the governor wants to avoid being taxed on his income, and Version O would permit the employer - the state - to waive that portion of his salary as income.

COMMISSIONER RIDLE replied that Version O was not introduced because the governor does not want to pay taxes; the dates have been removed so that the provision could apply to any governor. Version O would remove the necessity to pay taxes on money that the governor is not keeping; if the governor receives the salary then returns it, he would have to pay taxes on it.

REPRESENTATIVE BIRCH asserted that he finds it ironic that an administration that has been working to impose income taxes on working Alaskans is advancing legislation that would permit the governor of that administration to avoid federal income taxes on his pay. He said that most people who want to make charitable donations, receive the pay, then write a check to their church

or charity of choice. He maintained that if the governor chooses to redirect his compensation to a charity of his choice - the State of Alaska or any other - he is permitted to do that currently. He expressed his dissatisfaction with the changes in HB 71, which was intended to freeze salaries to unrepresented state employees, and now is a federal tax avoidance measure for the governor.

COMMISSIONER RIDLE answered that the original version of HB 71 had the same provision for the governor's salary as does Version 0; the only difference is the elimination of dates restricting the waiver to a certain period. She maintained that the governor is not trying to avoid paying income tax, but rather does not want to take a full salary. He or any governor who wishes to take advantage of this provision, will pay income tax on all the salary he/she receives. The intent is for the governor to be able to reduce his/her salary.

COMMISSIONER RIDLE conceded that the portion of HB 71, which called for pay freezes for state employees, was removed from the proposed legislation. She maintained that DOA has not been successful in negotiating such a provision with any of the bargaining units. She added that even with that elimination, Version 0 retains the provision addressing the governor reducing his/her salary and adds the new section - transitioning to biweekly pay - which is something that the unions and employees have requested for quite some time. It is a more efficient system for payroll.

[3:37:07 PM](#)

REPRESENTATIVE BIRCH stated that he agrees with the provision simplifying payroll; however, he expressed that he is deeply disappointed that the proposed legislation does not retain the provision on pay freezes. He maintained that his constituents and the public support restrictions on spending and new state government hires.

[3:37:47 PM](#)

REPRESENTATIVE WOOL restated that Version 0 allows the governor to not take a paycheck and not pay taxes on money not received.

COMMISSIONER RIDLE confirmed that the governor's end-of-year Internal Revenue Service (IRS) Form W2 would reflect the amount of salary that he takes.

REPRESENTATIVE WOOL continued by saying that Version O changes payroll to every other Friday, rather than the first and fifteenth of the month. He asked for confirmation that to retain the pay freezes in the original version of HB 71, DOA and the bargaining units would have to come to an agreement.

COMMISSIONER RIDLE explained that the original version of HB 71 only applied to unrepresented employees; for anyone under contract, the provision would have to be negotiated; and DOA has attempted to do that.

[3:39:08 PM](#)

REPRESENTATIVE JOHNSON asked whether there was any reason for not offering that option [reduced salary] to any state employee - not just the governor. She suggested that there are other reasons a person might want to take advantage of the provision, such as to avoid being in a higher tax bracket.

COMMISSIONER RIDLE replied that she is not sure it could be offered to every class of employee because of federal law. She maintained that the governor is in a different category in state statute than other employees. She offered to pose that possibility to DOA's attorney.

[3:40:00 PM](#)

CHAIR KREISS-TOMKINS agreed that adding other classifications to the proposed legislation may be logical.

COMMISSIONER RIDLE offered to find out and reiterated that federal law may interfere with that possibility.

[3:40:48 PM](#)

REPRESENTATIVE WOOL referred to a proposal by the governor that if "something didn't happen by a certain day," the governor would forego his pay and the legislature would as well. He asked hypothetically: If the legislators' pay was suspended after day 120 of the legislative session for failure to pass a budget, would they be liable for federal tax on the salary they were not receiving if they are not included in the HB 71 waiver.

COMMISSIONER RIDLE offered that the governor's proposal [HB 283 and SB 141] only applied to per diem, and legislators are not currently taxed on per diem.

REPRESENTATIVE WOOL expressed his understanding that different proposals were introduced. He suggested that if there was legislation resulting in a reduction to legislators' pay for some reason, they would be liable for federal tax, unless a provision such as in Version O was in place to include them.

[3:42:40 PM](#)

REPRESENTATIVE JOHNSON suggested that possibly he was referring to a bill she introduced eliminating per diem after 90 days [of the legislative session]; however, per diem does not get taxed.

[3:43:11 PM](#)

REPRESENTATIVE LEDOUX moved to adopt the CS for HB 71, Version 30-GH1018\O, Wayne, 2/28/18, as the working document.

REPRESENTATIVE BIRCH objected.

A roll call vote was taken. Representatives Wool, LeDoux, and Kreiss-Tomkins voted in favor of adopting the CS for HB 71. Representatives Birch and Johnson voted against it. Therefore, Version O was adopted as a work draft by a vote of 3-2.

#### **HB 400-FEES FOR FIRE PREVENTION MEASURES**

[3:44:35 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE BILL NO. 400, "An Act relating to the collection of fees by the Department of Public Safety for fire and explosion prevention and safety services."

[Because of their length, some amendments discussed or adopted during the meeting are found at the end of the minutes of HB 400. Shorter amendments are included in the main text.]

[3:45:42 PM](#)

CATHY SCHLINGHEYDE, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, on behalf the House State Affairs Standing Committee, prime sponsor of HB 400, presented Amendment 1, labeled 30-LS1490\A.1, Bannister, 3/7/18, which read: [The text of Amendment 1 is listed at the end of the 3/8/18 minutes of HB 400.]

MS. SCHLINGHEYDE relayed that Amendment 1 would establish fines for the violation of fire safety measures; currently they are listed as misdemeanors; the Department of Public Safety (DPS) would like to move these violations out of the misdemeanor category and assign them statutorily defined fines. She stated that Section 2 of Amendment 1, [page 1, lines 8-14] would establish the fines.

MS. SCHLINGHEYDE offered that Section 3, [page 1, lines 16, to page 3, line 25], would allow DPS to issue the citations for the fines and would establish a timeline and procedure for the administration. She added that subsection (p) of Section 3, [page 3, lines 16-19], would remove the offense from the misdemeanor section to ensure there is not a double penalty for the same offense.

[3:46:38 PM](#)

REPRESENTATIVE WOOL asked whether the fines relate to fire protection and safety.

MS. SCHLINGHEYDE answered yes.

[3:47:30 PM](#)

DAVID TYLER, Director State Fire Marshall, Division of Fire and Life Safety (DFLS), Department of Public Safety (DPS), stated that currently the only recourse for DFLS to address a violation is to issue a warning or charge the offender with a Class B misdemeanor. The fines offer a more immediate tool to provide incentive for compliance without "taking the misdemeanor route."

[3:48:39 PM](#)

REPRESENTATIVE WOOL mentioned that a penalty for a violation on a construction site can be a misdemeanor charge; it is rarely charged because it constitutes such a heavy penalty; legislation was introduced to change the penalty to a fine so that offenders will be cited more frequently. He suggested the proposed legislation posed a similar scenario. He asked whether someone could be served with a \$5,000 fine, if an inspection revealed ten violations with a \$500 fine for each.

MR. TYLER replied that the \$500 would be the maximum that could be charged for a violation. He stated that DFLS is conducting research to establish an appropriate fine for different offenses. He maintained that offenses are of varying levels of

seriousness; DFLS does not want the fines to be too onerous on businesses; DFLS wants businesses to be able to make the repairs; and it wants to incentivize them to do the repair before the inspection.

REPRESENTATIVE WOOL offered the following scenario: as a business owner he pays for and receives an inspection; violations are noted. He asked whether fines would be assessed at the time of the inspection or if there would be a period allowing for a remedy to be applied and a second inspection, before fines are assessed. He summarized by asking, "Do you have to pay for someone to come out and give you fines?"

MR. TYLER responded that the two issues are separate. The fee for the inspection is billed separately and DFLS deputies would not be doing that. He said that for the egregious violations, DFLS deputies will write citations; the goal is compliance. He offered that if upon inspection, a building has 30 violations, it is not the intent of DFLS to drive the owner out of business. It would focus on the immediate life and safety issues and work backwards to the ones that are less serious. He maintained that it is the goal of DFLS to work with people, not put them out of business.

[3:52:19 PM](#)

REPRESENTATIVE WOOL mentioned that he has a building that is inspected. He suggested that the inspectors give him a summation of what needs to be remedied; they give him time to comply; he notifies them that he has complied; and the inspectors check for those remedies during their next inspection. He maintained that this scenario is a great way to get people to comply. He offered that his concern is that people not get penalized for participating in an inspection process and that this isn't just a way for the state to make up for funding shortages. He agreed that compliance is the goal. He asked whether there is a problem getting people to comply with the fire and safety requirements.

MR. TYLER responded, "That's absolutely correct." He said that in many instances DFLS deputies are called "paper tigers"; they have no real "bite," unless they charge offenders with misdemeanors. He said that under HB 71, DFLS plans to send a letter to the business two months in advance of the inspection and list the violations that it typically finds. This would give the business owner time to fix the problems before the inspection and a time schedule for inspection. He mentioned

that DFLS would focus on the more serious violations, such as fire extinguishers not in place, sprinklers and alarm systems not compliant, egress blockage, and emergency lighting.

3:55:15 PM

REPRESENTATIVE WOOL asked whether a first inspection is accompanied by fines or if someone would be given a chance to fix a problem before he/she gets a fine.

MR. TYLER answered that a pre-inspection form will be sent out; it is the goal of DFLS to work with people and not just visit the premises and fine the owners. If there is an egregious violation, DFLS will resort to [fines] immediately, but collecting fines is not the goal of DFLS. He added that re-visiting a place may be difficult because of the cost of travel.

CHAIR KREISS-TOMKINS asked for the number of Class B misdemeanors levied per year for failure to comply under the current law.

MR. TYLER answered that information back to 2007, with three years missing, indicates there have been none.

CHAIR KREISS-TOMKINS referred to page 1, lines 13-14, of Amendment 1, which states that each day that the violation or noncompliance continues, is a separate offense. He asked whether that means that for each day that there is noncompliance, the building owner is subject to another \$500 fine; therefore, the fines would add up accumulatively.

MR. TYLER conceded that it was a stiff penalty; he suggested that DFLS would not consider it another violation unless a future inspection determined that nothing had been remedied.

3:58:49 PM

REPRESENTATIVE LEDOUX asked why no distinction is made in the amendment or in the statute between someone just notified of a violation and someone who fails to comply to an order to fix a problem. She opined that the latter person would be more culpable than the former.

MR. TYLER answered that he understands her reasoning but doesn't know how to draft the language for a "compounding" fine.

REPRESENTATIVE LEDOUX suggested that Legislative Legal and Research Services could help draft such language. She asked Mr. Tyler for his reaction to the concept.

MR. TYLER replied, "I have no problem with that at all." He said there are many instances in which people are aware that there are no consequences of a DFLS visit. He maintained that a harsher fine for someone who ignores DFLS and is not taking safety seriously would send a better message.

CHAIR KREISS-TOMKINS announced that Amendment 1 would be held over for more work with the assistance of Legislative Legal and Research Services.

[4:01:39 PM](#)

REPRESENTATIVE LEDOUX suggested the possibility of a serious injury or death. She referred to proposed legislation [HB 259] heard in the House Judiciary Standing Committee meeting of 3/5/18, in which load vehicle load limits were discussed; people had been seriously hurt or maimed; and under Alaska statute, surpassing load limits only constituted a violation. She offered that if a violation resulted in injury or death, the penalty should be substantial. She requested that the amendment be rewritten to address a violation which results in a fire in which someone is hurt or killed, or property is damaged.

CHAIR KREISS-TOMKINS concurred and added that [HB 259] addressed unsecured loads, not load limits.

REPRESENTATIVE JOHNSON stated that fire and safety inspections should be available to people with commercial properties who want to be law abiding citizens. She expressed that fire and life safety is an essential public service and the reason for having "government." She mentioned discussion of proposed legislation [HB 322, House Resources Standing Committee meeting hearing on 2/9/18] about waiving the cost of receiving advice from the Department of Environmental Conservation (DEC) on the management of spills; those with commercial buildings who seek advice to ensure safety compliance may be discouraged by being charged fees for an assessment. She stated that she has never thought of a fire marshal as being a paper tiger; he/she shows up with a badge and carries all the weight and enforcement of a law officer. She concluded by saying that endangering lives may be worth more than \$500 per day or warrant legal action. She urged reevaluation of Amendment 1.

[4:05:35 PM](#)

REPRESENTATIVE WOOL stated that he never considered the fire marshal to be a paper tiger; when the marshal instructs him to do something, he does it. He added that some owners have large buildings; they don't know what the fire marshal will check or how extensive the inspection will be. He maintained that he is amenable to having the inspection, and under HB 400, may be paying for the inspection. He stated that he would like to be given a list of violations, a chance to fix the problems, and possibly pay for a follow up inspection. He maintained that \$500 per day per violation could become very expensive. He suggested that if DFLS is hesitant to issue misdemeanors, perhaps it should shut the business down.

[4:06:53 PM](#)

CHAIR KREISS-TOMKINS announced HB 400 would be held over.

AMENDMENT(S)

The following amendment to HB 400 was either discussed or adopted during the hearing. [Shorter amendments are provided in the main text only.]

AMENDMENT 1 [30-LS1490\A.1, Bannister, 3/7/18]:

Page 1, line 2, following "**services;**":

Insert "**and relating to penalties for violating fire protection and safety requirements and orders**"

Page 1, following line 9:

Insert new bill sections to read:

"\* **Sec. 2.** AS 18.70.100(a) is amended to read:

(a) **A** [EXCEPT AS PROVIDED IN (c) OF THIS SECTION, A] person who violates a provision of AS 18.70.010 - 18.70.100 or a regulation adopted under those sections, or who fails to comply with an order issued under AS 18.70.010 - 18.70.100, is guilty of a **violation and shall be punished as provided in AS 12.55 by a fine of not more than \$500. Each day** [CLASS B MISDEMEANOR. WHEN NOT OTHERWISE SPECIFIED, EACH 10 DAYS] that the violation or noncompliance continues is a separate offense.

\* **Sec. 3.** AS 18.70.100 is amended by adding new subsections to read:

(d) A peace officer or an employee of the department who is authorized by the commissioner of public safety to enforce this chapter may issue a citation to a person who commits a violation identified under this section.

(e) A citation issued under this section must comply with the standards adopted under AS 12.25.175 - 12.25.230. A person receiving the citation is not required to sign a promise to appear in court.

(f) The time specified in the notice to appear on a citation issued under this section must be at least five working days after the issuance of the citation.

(g) The commissioner of public safety is responsible for the issuance of books containing appropriate citations and shall maintain a record of each book and each citation contained in the book. The commissioner of public safety shall require and retain a receipt for each book issued to an employee of the department designated by the commissioner of public safety to provide investigative services to enforce provisions of this chapter.

(h) On or before the 10th working day after issuance of a citation, a peace officer or an employee issuing a citation under this section shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon the deposit of the citation with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The peace officer or employee who issued the citation may not dispose of the original or copies of the citation or of the record of the issuance of the citation except as required under this subsection and (i) of this section.

(i) The commissioner of public safety shall require the return of a copy of each citation issued under this section and of the copies of each citation that has been spoiled or on which an entry has been made and not issued to an alleged violator. The commissioner of public safety shall also maintain in connection with each citation issued a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(j) A citation issued under this section is considered to be a lawful complaint for the purpose of prosecution.

(k) Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, or bail has been forfeited under this section, a person who fails to appear in court to answer a citation issued under this section, regardless of the disposition of the charge for which the citation was issued, is guilty of failure to obey a citation under AS 12.25.230(b).

(l) The supreme court shall establish a schedule of bail amounts. The maximum bail forfeiture amount for a violation may not exceed the maximum fine specified under (a) of this section for that violation. The issuing peace officer or employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(m) If a person cited for a violation for which a bail forfeiture amount has been established under (l) of this section does not contest the citation, the person may, within 30 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the peace officer or employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered, and the bail is forfeited.

(n) When the cited person has forfeited bail under (m) of this section, the court shall enter a judgment of conviction. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact if requested.

(o) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230(b) if the person fails to pay the bail amount established under (l) of this section or fails to appear in court as required.

(p) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (l) of this section appears in court and is found guilty, the court may not impose a penalty that exceeds the forfeiture amount for that violation established under (l) of this section.

(q) In this section, "department" means the Department of Public Safety."

Renumber the following bill section accordingly.

Page 1, following line 13:

Insert a new bill section to read:

"\* **Sec. 5.** AS 18.70.100(c) is repealed."

[End of Amendment 1 - HB 400 was held over.]

**HJR 38-AK RAILROAD TRANSFER ACT; CONVEYANCES**

[4:07:04 PM](#)

CHAIR KREISS-TOMKINS announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 38, Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

[4:07:57 PM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, as prime sponsor of HJR 38, relayed that the proposed resolution represents a "singular voice" of the legislature to comment on a matter of such an important public policy as property rights. He referred to the testimony of the Alaska Railroad Corporation (ARRC) [Andy Behrend, Chief Counsel, ARRC] during the 3/1/18 House State Affairs Standing Committee meeting, which stated that there was no connection between the Alaska Railroad Act of 1914 ("1914 Act") and the General Railroad Right-of-Way Act of 1875 ("1875 Act"). He said, "That's a profoundly important statement, because it is profoundly wrong."

REPRESENTATIVE KOPP referred to the 1982 decision of the [U.S. Department of Interior's (USDOI's)] Interior Board of Land Appeals (IBLA), included in the committee packet [IBLA 81-426]. The Alaska Railroad (ARR) appealed a selection of state lands on the ARR right-of-way (ROW) asserting that this property had been appropriated, reserved, or otherwise set aside based on what it had claimed was a fee simple interest ownership; therefore, it was not available for state appropriation. The IBLA decision reported the following: the page labeled 65 IBLA 376 summarizes ARR's claim that the property was set aside; the page labeled 65 IBLA 377 mentions the Alaska Statehood Act of 1958 allowing for the selections of these lands along the Fairbanks meridian and comments that the initial [USDOI] Bureau of Land Management's

(BLM's) decision stated that the lands were available for appropriation by the state; they were entirely appropriate for the ROW; and they could be acquired as state property; and it also states that this determination was made under the 1914 Act.

REPRESENTATIVE KOPP quoted from the pages labeled 65 IBLA 377 and 65 IBLA 378 of the IBLA decision, beginning with the last sentence on the first of the two pages, which read:

The issue raised by this appeal is whether the land within the right-of-way granted to the Alaska Railroad is occupied, appropriated, and/or reserved so as to be exempt from State selection. Neither counsel for appellant nor counsel for the State of Alaska have cited any cases on point and this appears to be a case of first impression.

REPRESENTATIVE KOPP said that IBLA then addressed the issue by citing cases; he referred to the first paragraph under [1] on the page labeled 65 IBLA 378, which read in part:

[1] Consideration of the nature of the right-of-way granted by similar statutes provides guidance. The General Railroad Right of Way Act of March 3, 1875, ch. 152, 18 Stat. 482 (1875), 2/ granting a similar right-of-way for railroad across the public lands outside Alaska has been held to convey only an easement and not a fee interest in the land.

REPRESENTATIVE KOPP stated that IBLA also cited the U.S. Supreme Court case of 1942, Great Northern Railroad Co. v. U.S. He continued quoting the first paragraph of [1], which read in part:

The Court held that the reserved right to dispose of the lands subject to the right-of-way is inconsistent with the grant of a fee and persuasive that the grant of an easement was the intent of the statute.

REPRESENTATIVE KOPP relayed that in this case, the court concluded that even under a more restrictive standard, which existed before the 1875 Act, it was the intent of Congress that the state - in this case the State of Wyoming - would be allowed to take the subsections in its statehood appropriations subject to the ROW. He added that under the ROW Acts of 1862 and 1864, there were limited fee interests and railroads did own some land.

REPRESENTATIVE KOPP quoted from the third paragraph under [1] of the IBLA decision, on the page labeled 65 IBLA 379, which read:

These cases decided under other railroad right-of-way statutes persuade us that the lands embraced in appellant's right-of-way should not be considered to be appropriated or reserved at the time of State selection so as to be excluded therefrom. The decision correctly held that a right-of-way for railroad shall be reserved in any State selection patent issued.

REPRESENTATIVE KOPP explained that IBLA directly referred to the 1875 Act, under which Congress ended land grant railroads and allowed only surface easements for rail, telegraph, and telephone. He asserted, "That was the easement ... of the 1914 Alaska Railroad Act."

[4:12:22 PM](#)

REPRESENTATIVE KOPP relayed that HJR 38 would not have an impact on federal property already in a federal interest; but only on property upon which there was an unlawful infringement in the transfer. He stated that the federal government owned an exclusive-use easement in Denali National Park and Preserve (DNPP) and an exclusive-use easement on Native lands under contested land claims. He emphasized that the federal government never owned an exclusive-use easement on Homestead Act [1862] ("homestead") patent properties.

REPRESENTATIVE KOPP said that the ARRC's position is that there is settled law in the matter: railroads have either full simple title or an exclusive-use easement. He emphasized that there is no settled law in that regard; 80 percent of railroads in the U.S. have a simple easement only, a claim supported by the U.S. Supreme Court three years ago in Brandt Revocable Trust v. U.S. The court ruled that a railroad ROW granted under the 1875 Act is an easement; therefore, if a railroad abandons such easement, the landowner regains his/her unburdened use of the land. He stated that it is difficult to understand why a limited interest surface easement, which ARR has, is insufficient for ARR to safely operate, like most other railroads in the country.

REPRESENTATIVE KOPP stated that whatever property the federal government lawfully owned at the time of the transfer [to the state in 1982] would not be affected by HJR 38. He relayed that HJR 38 would only apply to right titles and interests owned by

other parties; it is focused on the homestead patentees and a claim of ARRC to own more than it owns. He offered that he has requested from ARRC a list of conflicting land claims that the secretary of USDO I has adjudicated to demonstrate that ARRC followed due process when taking exclusive-use easement interest on all homestead patent properties; ARRC maintained it would respond. He added that he has no indication of conflicting land claims other than those in DNPP and those for which village corporations and other Native claimants were competing. He expressed his belief that the secretary of USDO I has made some determinations on those lands.

REPRESENTATIVE KOPP asserted that homestead patents were never subject to competing claims; they were entirely owned by the homesteaders; the federal government had completely divested itself of ownership in those lands. He relayed that HJR 38 would make it clear that if an entity says it has title to land, then it should prove that title; any lawyer would tell a client to clear his/her title unless the title is not clear. He maintained that every lawyer he has consulted in this matter has informed him that the extent of the ROW must be determined on a case-by-case, parcel-by-parcel basis; and the title recording system can provide with certainty the history of the interest of any parcel.

[4:15:41 PM](#)

REPRESENTATIVE KOPP concluded that ARRC has made a "sweeping" claim to an exclusive-use easement without doing the work necessary to justify that the federal government had that interest to give to the state at the time of transfer. He referred to Section 1202(10) of the Alaska Railroad Transfer Act (ARTA) of 1982 [45 USC Ch. 21], included in the committee packet, which states that the definition for rail properties of ARR includes the exclusive-use easement within DNPP. He offered that there would be no reason to specifically mention this exclusive-use easement if it was de facto for the entire ROW. He added that exclusive-use easement on federal lands is specified three times [in ARTA]. He maintained that it was clearly never the intent of Congress to impose that on the homestead patent properties.

REPRESENTATIVE KOPP referred to testimony by Bill O'Leary, Chief Executive Officer (CEO), ARRC, during the House State Affairs Standing Committee meeting of 3/1/18, who quoted Alaska's former U.S. Senator Ted Stevens as saying that the interest along the ROW would be an exclusive-use easement. Representative Kopp

said that the quote was out of context; Senator Stevens said that the interest on federal lands - lands for which the federal government had the interest to give - would be an exclusive-use easement.

REPRESENTATIVE KOPP maintained that a disagreement exists, and ARRC recommends resolving it in court. He offered that "justice is not free." The ARRC has asserted that the federal government is bound to defend claims against the ROW; however, it is not clear if that would involve all claims. He expressed that it is upsetting to hear testimony that the legislature does not have a legitimate role in addressing matters of such serious importance to the state and that affect so many land owners; any individual land owner would be financially destitute upon pursuing such a case [in court].

REPRESENTATIVE KOPP maintained that the legislature has a duty and responsibility to disclaim any unlawfully acquired property that was transferred; the legislature would not be identifying that land, but merely asking for proof of ownership for land claimed. He stated, "We're not going to aid and abet in any unlawful taking of property. It's the most important thing Alaskans have." He said that under HJR 38, the legislature would be asking ARRC to prove that the federal government had the exclusive-use easement at the time of the land transfer, if ARRC is making a claim of property ownership based on that.

[4:19:10 PM](#)

REPRESENTATIVE BIRCH stated that he supports the proposed resolution and maintained that the issue has been "unfinished business" for many years. He mentioned that there has been an attempt on the municipal level to resolve the issue, and the legislature is the appropriate body to put forward such a resolution.

[4:19:51 PM](#)

REPRESENTATIVE WOOL moved to report HJR 38 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HJR 38 was reported from the House State Affairs Standing Committee.

**HB 310-MARRIAGE AND MINIMUM AGE FOR MARRIAGE**

[4:20:17 PM](#)

CHAIR KREISS-TOMKINS announced that the final order of business would be HOUSE BILL NO. 310, "An Act relating to the minimum age of eligibility for marriage."

[4:20:29 PM](#)

The committee took an at-ease from 4:20 p.m. to 4:22 p.m.

[4:22:10 PM](#)

CHAIR KREISS-TOMKINS announced that HB 310 would be held over.

[4:23:02 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:23 p.m.