

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 10, 2021

5:49 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Ivy Spohnholz, Co-Chair
Representative Calvin Schrage
Representative Liz Snyder (via teleconference)
Representative David Nelson
Representative James Kaufman
Representative Ken McCarty

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION(S) : WORKPLACE SAFETY IN THE SEAFOOD INDUSTRY

- HEARD

CS FOR SENATE BILL NO. 24(L&C)

"An Act relating to holding corporate meetings by remote communication; allowing voting by remote communication at corporate meetings; making shareholder lists available electronically; relating to for-profit and nonprofit corporations; relating to business and industrial development corporations; relating to Native corporations; relating to the Alaska Banking Code; and providing for an effective date."

- HEARD & HELD

CONFIRMATION HEARING(S) :

Marijuana Control Board

Nicholas Miller - Anchorage

- CONFIRMATION(S) ADVANCED

Occupational Safety and Health Review Board

Thomas Trosvig - Kodiak

- CONFIRMATION(S) ADVANCED

State Board of Physical and Occupational Therapy

Enlow Walker - North Pole

- CONFIRMATION(S) ADVANCED

Board of Registration for Architects, Engineers & Land Surveyors

Elizabeth Johnston - Fairbanks

- CONFIRMATION(S) ADVANCED

Workers' Compensation Appeals Commission.

James Rhodes - Ketchikan

- CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

BILL: SB 24

SHORT TITLE: VIRTUAL MEETINGS FOR CORPORATIONS

SPONSOR(s): SENATOR(s) WILSON

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	L&C
02/08/21	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/08/21	(S)	Heard & Held
02/08/21	(S)	MINUTE(L&C)
02/17/21	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/17/21	(S)	Moved CSSB 24(L&C) Out of Committee
02/17/21	(S)	MINUTE(L&C)
02/22/21	(S)	L&C RPT CS 5DP NEW TITLE
02/22/21	(S)	DP: COSTELLO, GRAY-JACKSON, STEVENS, REVAK, HOLLAND
03/01/21	(S)	TRANSMITTED TO (H)
03/01/21	(S)	VERSION: CSSB 24(L&C)
03/03/21	(H)	READ THE FIRST TIME - REFERRALS
03/03/21	(H)	L&C
03/10/21	(H)	LABOR & COMMERCE AT 05:45 PM BARNES 124

WITNESS REGISTER

JOSEPH KNOWLES, Director
Division of Labor Standards and Safety
Department of Labor & Workforce Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the presentation on Workplace Safety in the Seafood Industry.

DENNIS SMYTHE
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation on Workplace Safety in the Seafood Industry.

JOHN STALLONE
Mesquite, Nevada

POSITION STATEMENT: Testified during the presentation on Workplace Safety in the Seafood Industry

SENATOR DAVID WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced SB 24.

JASMIN MARTIN, Staff
Senator David Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the Sectional Analysis for SB 24 on behalf of Senator Wilson, prime sponsor.

LAURIE WOLF, President and CEO
Foraker Group
Anchorage, Alaska

POSITION STATEMENT: Provided testimony and answered questions during the hearing on SB 24.

FRANCES MAHONEY
Foraker Group
Anchorage, Alaska

POSITION STATEMENT: Provided testimony during the hearing on SB 24.

ACTION NARRATIVE

[5:49:42 PM](#)

CO-CHAIR IVY SPOHNHOLZ called the House Labor and Commerce Standing Committee meeting to order at 5:49 p.m.

Representatives Fields, McCarty, Schrage, Snyder, Nelson, Kaufman, and Spohnholz were present at the call to order.

PRESENTATION(s) : Workplace Safety in the Seafood Industry

[5:54:38 PM](#)

CO-CHAIR SPOHNHOLZ announced that the first order of business would be a presentation on Workplace Safety in the Seafood Industry.

CO-CHAIR SPOHNHOLZ explained that this topic is before the committee in light of the recent decision made by Tamisha Ledbetter, Commissioner of the Department of Labor & Workforce Development (DLWD), to waive a \$450,000 fine against Copper River Seafoods as recommended by Alaska Occupational Safety and Health (AKOSH) staff [within the Division of Labor Standards and Safety].

[5:58:06 PM](#)

CO-CHAIR FIELDS offered his understanding that during a meeting in the summer of 2020, the director of the Division of Labor Standards and Safety (DLSS) had told the House State Affairs Standing Committee that DLWD could use the "general duty clause" to protect workplace safety in the context of the COVID-19 pandemic. He asked for an outline of the general duty clause.

[5:58:42 PM](#)

JOSEPH KNOWLES, Director, Division of Labor Standards and Safety, Department of Labor & Workforce Development, responded that the general duty clause is an Occupational Safety and Health Administration (OSHA) general duty that requires employers to provide a work environment that is free of recognized hazards. He explained that it is often used in situations where a recognized hazard is not covered by existing standards.

CO-CHAIR FIELDS shared his understanding that during the time Mr. Knowles was telling the House State Affairs Standing Committee that it could use the general duty clause for enforcement during COVID-19, the division was investigating some potentially serious COVID-19 related workplace safety issues before preparing a citation based on a "willful violation" of the general duty clause. He asked if Mr. Knowles could describe

what "willful" means in the context of the laws that DLSS enforces.

MR. KNOWLES responded that "willful" is when an employer has demonstrated an intentional disregard for the requirements of OSHA laws or a plain indifference for employees' safety and health.

[6:00:24 PM](#)

REPRESENTATIVE MCCARTY commented that he just received his committee packet and had not yet had the chance to review the documents included in the packet.

[6:00:48 PM](#)

REPRESENTATIVE KAUFMAN asked about the timing of the case. He shared his understanding that the inspection [into Copper River Seafoods] was being done, but the report would not be processed until much later in the year. He asked if Mr. Knowles could explain.

MR. KNOWLES responded that he did not have the full case file with him at the moment, but he recalled that DLSS performed an inspection on Copper River Seafoods in August 2020 and proposed a citation, which was presented to Commissioner Ledbetter for her approval "on or about" December 27, 2020. During the commissioner's review, it became clear that the initial information provided in the proposal was "largely incomplete." He continued that "on or about" January 12, 2021, the division realized that it had made a procedural mistake by not originally presenting the commissioner with a significant portion of the inspection. He said that the memorandum ("memo") the commissioner released on January 18, 2021, gave her decision on the proposal, and he expressed that this decision was well within her range of legal options and authority.

REPRESENTATIVE KAUFMAN shared that he has worked as an auditor and has done inspections on facilities and performed assessment. He expressed, "It strikes me as curious to say the least." He explained that when he found items of importance [in his inspections], he passed that information off to leadership quickly because it's important and lets management know that the job is being done well. He stated that the delay and timing of such a finding was puzzling to him.

MR. KNOWLES responded that the division learned a lot during the inspection, and it has already begun to take steps to improve the process moving forward.

[6:03:52 PM](#)

REPRESENTATIVE MCCARTY asked for clarification about Mr. Knowles' earlier statement that the inspection packet was not complete when it was presented to the commissioner, and that information was updated and brought to the commissioner at a later date. He asked how it became known that the packet was not complete.

MR. KNOWLES responded that it became apparent after the division's discussions with the commissioner over the proposal. He said that information within the initial packet was in conflict and was not "adding up." He said the division then began to look at the information that had been sent, and that was when it became clear that the packet did not initially include the "related concurrent infection" requirement for the division's own internal field operations manual. This, he said, is when the division provided the rest of the information to the commissioner.

REPRESENTATIVE MCCARTY asked for clarification that Mr. Knowles was saying that the division had to go back and identify the protocol that "was or was not" followed to put together the necessary information for the commissioner. He asked if that involved going back to [Copper River Seafoods] where the audit was performed to conduct further follow-up investigations.

MR. KNOWLES responded no, the division did not return to the company. He said that what had happened on August 7, 2020, was two concurrent related inspections, and through a misinterpretation of the division's field manual, the inspection that pertained to the willful general duty proposal was the only inspection that was provided to the commissioner. He expressed that both inspections should have been included because the inspections were concurrent and related.

[6:06:24 PM](#)

REPRESENTATIVE SNYDER asked Mr. Knowles how many levels of review the proposed citations went through before being blocked by the commissioner.

MR. KNOWLES responded that he did not have the case file in front of him with the pertinent notes. He said that this was a unique and significant inspection and his first effort to compile general duty willful citation. There were a lot of questions within the division between himself and the chief of enforcement, he explained, which resulted in sending the package forward to the commissioner incorrectly.

[6:07:47 PM](#)

REPRESENTATIVE SCHRAGE asked whether Mr. Knowles, without details at hand, could offer a general number of how many levels of review there were. He asked if there was at least one level of review.

MR. KNOWLES responded that there was an initial level of review by the Chief of Enforcement, and then there were other levels of review in which Mr. Knowles was involved personally. He explained that the review in which he took part was focused on the willful duty proposal due to the misinterpretation of policies and procedures.

[6:09:03 PM](#)

REPRESENTATIVE NELSON asked Mr. Knowles how many investigations "during that time frame" he had done that were specifically related to COVID-19. He specified he was asking about the summertime period when COVID-19 started to "level out."

MR. KNOWLES responded that he doesn't have all of the details in front of him, but he is confident that there were two inspections during that timeframe in the seafood industry.

REPRESENTATIVE NELSON asked whether, in general, investigations are initiated due to a referral or anonymous tips, or whether all businesses get regular inspections.

MR. KNOWLES responded that the enforcement process begins when a complaint or a referral is received.

REPRESENTATIVE NELSON considered Mr. Knowles' earlier statement that two other seafood industry businesses were inspected during that general three-month period, and he asked if there were only three inspections during that time.

MR. KNOWLES reiterated that he did not have the specific information in front of him at the moment, but said he could get

that information to Representative Nelson if he would like to see it.

[6:11:24 PM](#)

CO-CHAIR SPOHNHOLZ shared her understanding that the package that was brought to the commissioner didn't include all of the necessary materials, which was the reason for not advancing the citation. She asked Mr. Knowles if there have been any other citations like this.

MR. KNOWLES responded that this is his first experience with a citation proposal of this nature.

CO-CHAIR SPOHNHOLZ rephrased her question and asked Mr. Knowles if there have been any other citations that have been procedurally ruled out of order while he has been working for the department.

MR. KNOWLES responded that this is the first proposed citation package that required the commissioner's approval

CO-CHAIR SPOHNHOLZ asked Mr. Knowles if that was based off the new standards that were a result of the change in procedures. She asked him to describe the threshold at which the commissioner gets involved.

MR. KNOWLES responded that again, there had not been a proposed citation package that has required the commissioner's approval before under the new threshold.

CO-CHAIR SPOHNHOLZ asked if there were any [citations that required the commissioner's approval] under the previous threshold.

MR. KNOWLES responded no.

CO-CHAIR SPOHNHOLZ concluded that "that hadn't happened previously, even under the old standard."

[6:13:56 PM](#)

CO-CHAIR FIELDS asked Mr. Knowles how many citations there were and if something was missing in one citation, why the commissioner didn't allow issuance of the other citations, which included both COVID-19 and non-COVID-19 related citations.

MR. KNOWLES responded that the decision the commissioner made was after she had a full legal consultation and was advised that she could approve some, none, or all of the proposal. He said that he can't speak to the commissioner's reasoning as to why the decision [to not issue any citations] was made, but he suggested the memorandum the commissioner wrote [included in the committee packet] could provide some details on her concerns and the shortcoming of the process.

CO-CHAIR FIELDS asked Mr. Knowles whether he knows how many times the commissioner consulted with the Office of the Governor, in coordination with the Department of Law (DOL) or not, before making the decision not to issue a single citation.

MR. KNOWLES responded, "None."

CO-CHAIR FIELDS asked for clarification that Mr. Knowles knows that the commissioner never coordinated with the Office of the Governor, even though the commissioner was in contact with DOL.

MR. KNOWLES responded, "Yes, my answer is 'no' to that question."

[6:15:32 PM](#)

REPRESENTATIVE MCCARTY shared his understanding that there has been a change in procedure within the department. He asked Mr. Knowles if his understanding is correct, and if so, when did that procedural change occur.

MR. KNOWLES responded that the department revised its field operation manual in the latter part of January 2021. He said that he will have to get back to the committee with the exact date. He explained that the changes that occurred were the following: reducing the threshold from \$250,000 to \$50,000 in proposed fines, and changing the verbiage from requiring consult with the commissioner to requiring the approval of the commissioner. He said that internally, the department has taken action to establish a 120-day internal timeline for earlier review of what will become the final proposal to the commissioner. This would create a "significant novel action template" to improve support document content in the proposal when it goes forward. He noted that this will include earlier engagement with the commissioner. He stated that in short, "we've all learned from this," and have asked for support from federal partners to help improve the process.

6:17:08 PM

CO-CHAIR SPOHNHOLZ noted that the January 18, 2021, memo from Commissioner Ledbetter to Mr. Knowles can be found in the committee packet.

6:17:22 PM

REPRESENTATIVE MCCARTY asked Mr. Knowles whether this is something that is seen in the seafood industry all over Alaska.

MR. KNOWLES asked for clarification on whether Representative McCarty is referring to general duty willful citations.

REPRESENTATIVE MCCARTY responded that he knows that there have been some places in Alaska that have shut down canneries due to concerns regarding COVID-19, and he asked if there have been concerns like that that have come about due to inspections by DLSS.

MR. KNOWLES responded that the division has handled COVID-19 complaints and referrals in a collaborative manner, which has been a successful way to help employers draft COVID-19 workplace plans. He stated that the fact that one case was presented to the commissioner makes him think this [Copper River Seafoods] case was an outlier.

REPRESENTATIVE MCCARTY asked Mr. Knowles whether he had citations "with other places throughout the state" due to COVID-19 concerns. He asked if that also involves a lot of changes in the industry due to COVID-19 guidelines.

MR. KNOWLES responded that DLSS has issued no general duty citation packages for COVID-19.

6:19:45 PM

REPRESENTATIVE KAUFMAN shared that the timeline as well as the combined amount of the fines were surprising to him. He asked Mr. Knowles how common those numbers are and whether he has any idea if that relates to other jurisdictions in the nation performing similar inspections of food processing facilities.

MR. KNOWLES responded that that particular dollar amount is "extremely unusual". He stated that through December 2020, the violations issued by OSHA averaged approximately \$13,000 in fines. He said he queried a database and found that through

February 2021, there had been 100 citations issued resulting from COVID-19, only one of which was a willful duty citation; all of the others were general duty citations.

[6:21:33 PM](#)

REPRESENTATIVE SCHRAGE asked Mr. Knowles to speak about how the fines are determined and how the dollar amount is set.

MR. KNOWLES responded that the DLSS uses the penalties supplement, which illustrates that fines can vary in amount as there are a multitude of factors that go into determining what that penalty may be. Some variables include the gravity of the violation, the size of the employer, the "good faith" of the employer, the employer's history in previous violations, and the nature of the violation type. He said that specifically, a willful duty violation alone carries a maximum penalty of \$134,000.

REPRESENTATIVE SCHRAGE shared his understanding that the average fee or fine is \$13,000. He asked Mr. Knowles whether Copper River Seafoods is considered an average sized company.

MR. KNOWLES responded that he did not have the exact details in front of him at the moment regarding the size of Copper River Seafoods. He said that the sizing variable deals with employers that have up to 250 employees, and then other higher ranges. There is a disparity because a serious willful violation carries a maximum penalty of \$134,937 and a serious violation carries a maximum penalty of \$13,494. He shared his understanding that the majority of violations issued nationally regarding COVID-19 have been categorized as serious, not willful, at the \$13,494 penalty level.

[6:24:37 PM](#)

REPRESENTATIVE NELSON asked whether Mr. Knowles could describe the difference between serious and willful. He asked what pushed [Copper River Seafoods] over the edge from a serious violation to a willful violation.

MR. KNOWLES responded that he did not have the specifics in front of him on each particular inspection that has been conducted. He said that he does know that DLSS determined that it warranted the commissioner's consideration but ultimately it is just a proposal until a citation package is ultimately issued.

[6:26:02 PM](#)

REPRESENTATIVE SNYDER commented that she wished the committee had the documents [with details for Mr. Knowles to reference].

[6:26:21 PM](#)

CO-CHAIR SPOHNHOLZ commented that it's interesting that the committee was invited to speak about a specific case and the specific case files are not available. She noted that protecting confidentiality is important, but that the committee needs to understand concrete facts and that the questions members are asking are not designed to put anyone on the spot, but just to understand what happened. She shared her understanding that moving from a serious to a willful violation involves knowing that an entity is not complying and doing it anyways. Her reading of the records is that [Copper River Seafoods] knew that it had COVID-19 positive employees and that the contractor that it used, which is the same contractor used in the Alaska State Capitol, identified COVID-19 positive cases in a workplace where employees are not able to implement physical barriers such as social distancing. She said that the action of knowing that there were sick employees working and allowing these employees to continue working warrants the classification of willful violation.

[6:27:48 PM](#)

CO-CHAIR FIELDS clarified that one of the citations was for a machine that ripped an employee's arm off because it did not have proper lockdown/tagout procedures, which was identified by Alaska Occupational Safety and Health (AKOSH) [within DLSS], but the employer did not fix it. He explained that this is one of the reasons for the violation, among the issues surrounding COVID-19. He stated that he appreciated that Mr. Knowles was taking responsibility for the situation, but he did not "buy that premise." He noted that there were four levels of approval that these citations went through. He said that many of these employees have been there for years. He invited Mr. Knowles to explain at any time what was missing from the citation package. He asked why the commissioner felt it was appropriate to block a citation for such an "egregious" workplace safety violation as the aforementioned situation with the machine that lacked proper lockdown/tagout procedures.

MR. KNOWLES reiterated that the commissioner had full consultation with law and was advised that she could approve some, none, or all citations.

CO-CHAIR FIELDS said that that did not answer his question, and he rephrased the question.

MR. KNOWLES responded that he can't speak in detail, and he reiterated that the memorandum from the commissioner provided some details on the concerns she had surround the process and procedures of the department.

CO-CHAIR FIELDS asked why the commissioner thought that it was acceptable, for an employer who had already been warned to improve its screening procedures and to keep COVID-19 infected employees off the jobsite, to entirely block a penalty after the employer willfully allowed COVID-19 infected employees on the jobsite for multiple days without the option of social distancing.

MR. KNOWLES reiterated that the commissioner had full consultation with the law and could approve some, none, or all citations. He said that she was within her range of legal options and authority.

CO-CHAIR FIELDS commented that it is unprecedented for a commissioner to block citations in this manner, and it is not supported by the statutes. He concluded that the committee needs an explanation from the commissioner and the administration as to why a novel interpretation of workplace safety statutes was warranted.

[6:30:59 PM](#)

REPRESENTATIVE NELSON read from a document in the committee packet, stating, "Copper River Seafoods did a poor job of keeping employees safe from COVID infections this summer." He continued reading:

The main Anchorage plant was closed for a total of 13 days to the end of July and beginning of August and the entire year of operation during the pandemic. None of the other CRS plants suffered any serious outbreak and operations continued without a single day interruption.

REPRESENTATIVE NELSON expressed that he would like to see documents that show what caused the categorization to progress from a serious to a willful violation.

[6:32:11 PM](#)

CO-CHAIR SPOHNHOLZ asked Mr. Knowles to address the difference between a serious and willful violation.

MR. KNOWLES asked for clarity on whether Co-Chair Spohnholz would like him to restate the definition of willful and serious violations or was asking him to explain why the commissioner made the decision that she made.

CO-CHAIR SPOHNHOLZ responded that the committee was interested in learning more about the definitions. She suggested that Mr. Knowles provide an answer in writing that could be distributed to the committee if he was not comfortable providing an answer today. She expressed that she was disappointed by his lack of candor given the seriousness of the issue. She shared her understanding that the employees at Copper River Seafoods are low-wage workers, do not have health insurance, are not part of a union, and generally do not have any advocates, and it is the job of DLWD to ensure that Alaska has safe workplaces so that Alaska can remain open for business. She shared that she finds it concerning to hear that a citation that seemed to have risen to a serious level was waived and that the commissioner was well within her rights to waive it. She said it was her perception that this did not meet the objective of DLWD to make sure that Alaska's workers are safe. Additionally, she noted that people of color and immigrants have been disproportionately affected by COVID-19, and that is exacerbated by not having health insurance and not being able to get appropriate treatment if COVID-19 is contracted. She expressed that it seems to her that Alaska has allowed an unsafe workforce [Copper River Seafoods] to go uncited.

[6:35:26 PM](#)

REPRESENTATIVE NELSON agreed and stated his intent to ensure that the seafood industry is sustainable for years to come. He noted that there are other seafood processing places around the world that have adapted to COVID-19 mitigation efforts, and some processing plant employees implemented personal protection equipment (PPE) prior to the pandemic, such as face shields. He mentioned Copper River Seafoods' efforts, such as testing, staggered work breaks, and hand washing. He concluded that

there are some things that can't be controlled, but good mitigation efforts can be implemented.

[6:36:58 PM](#)

CO-CHAIR SPOHNHOLZ pointed out that the commissioner and Copper River Seafood were invited to testify during the meeting, but both declined.

[6:37:38 PM](#)

DENNIS SMYTHE stated that he was hired in May 1975 by AKOSH and was promoted to Assistant Chief two years later. He informed the committee that he was promoted to chief of enforcement of AKOSH after eight years, which included safety and health enforcement and consultation. He also served as the acting commissioner during the transfer of power for three different governors. He spoke about the OSHA act of 1970, which he said provided for a state to adopt its own programs under the 18E group. He explained that the first certification for Alaska was August 10, 1973, and the final approval happened on September 28, 1984. He went on to remind the committee of an earlier question asking him whether he found this case unusual or troubling, and he said that he finds it extremely unusual and troubling [that the commissioner would block a citation]. He offered the reasoning that it can endanger the program and the protection that's being offered to employees working in Alaska.

CO-CHAIR SPOHNHOLZ asked for clarification Mr. Smythe was describing the federal act that allowed Alaska to implement its own workplace safety program rather than have workplace safety in the state be managed by the federal government.

MR. SMYTHE responded yes.

[6:41:35 PM](#)

CO-CHAIR FIELDS asked Mr. Smythe whether he had ever seen a commissioner block a citation before.

MR. SMYTHE responded that although he has not seen the entirety of the [Copper River Seafoods] case, he has never heard of anything like it. He said that if he had, he would've turned in his badge and credentials or at least attempted to get it "straightened out." He shared his understanding that AS 18.60.091 and AS 18.60.095 clearly mandate that the Department

of Law must enforce the law. He said that he doesn't perceive the blocking of citations to be consistent with the statutes.

[6:42:48 PM](#)

REPRESENTATIVE NELSON asked Mr. Smythe what the highest fine he issued for a single citation was.

MR. SMYTHE responded that he doesn't recall the exact number, but he investigated fatalities that were revealed to be criminal in nature. He shared that Alaska was the first state to issue criminal violations against companies.

REPRESENTATIVE NELSON stated that he is specifically referring to cases where fatalities did not occur. He said that he is referring to companies that incur a monetary fine.

MR. SMYTHE responded that he doesn't remember what the penalty was for criminal violations, but that it was well above what is considered a willful violation. He gave an example of a fatality that occurred when an employee of Kodiak Oilfield Haulers drove a truck that caused an individual's death, and he shared that he showed the Chief of Enforcement how to manage the situation. He gave another example of an employee who was sent down a pipeline where harmful gasses were present, and the employee passed away. He said that that case was more than a criminal violation.

[6:45:52 PM](#)

REPRESENTATIVE MCCARTY asked whether Mr. Smythe had had a chance to look at the documentation regarding the [Copper River Seafoods] case specifically in order to make informed comments, or whether the information that he was providing was intended to be more general.

MR. SMYTHE responded that he had not seen documentation for the case and had only heard the current director's testimony.

[6:47:39 PM](#)

CO-CHAIR SPOHNHOLZ noted that in addition to blocking enforcement of the citation, the commissioner had asked AKOSH to screen all penalties of \$50,000 or more and asked that all of those penalties go through the commissioner's office. She asked Mr. Smythe if this was a typical and appropriate way to handle penalties.

MR. SMYTHE responded that no, this was not a common practice. He stated, "If I had politics running my show, I would resign."

CO-CHAIR SPOHNHOLZ referenced the OSHA Act of 1970 and shared her understanding that former State of Alaska Governor Jay Hammond was a big proponent of ensuring workplace safety in Alaska. She asked Mr. Smythe whether concerns that workplace safety enforcement becoming political in Alaska could potentially risk the state's primacy on this issue.

MR. SMYTHE responded absolutely. He noted that Kansas, for example, does not have logging or seafood processing issues, and Alaska doesn't have wheat farming issues, but Kansas does. He said that it depends [on the location]. He shared his understanding that this is why OSHA is closely looking at Alaska's program. He said that federal OSHA dollars fund Alaska's program at 50 percent for enforcement and 90 percent for consultation and training, and he shared concerns that these dollars could be taken away, which would cause the program to fail.

[6:50:01 PM](#)

CO-CHAIR FIELDS, referencing Representative Nelson's earlier question about fines, noted that when Co-Chair Fields worked at the DLWD, there was a fine for a single willful violation of over half a million dollars. He said that the Copper River Seafoods case involves the exposure of almost 100 people to an infectious disease.

CO-CHAIR SPOHNHOLZ commented that it is helpful to know that there is other precedent.

[6:50:27 PM](#)

REPRESENTATIVE NELSON responded that he found a news article that mentioned a meatpacking plant in California that incurred a fine of \$115,000 in the summer of 2020 during the pandemic. He relayed that the article said that was the largest meat processing plant citation and fine in the nation at the time.

[6:51:24 PM](#)

JOHN STALLONE stated that he started working for AKOSH in 1996 and was a safety enforcement officer for about three and a half years before he became the chief of enforcement. He said that

he also did discrimination investigations and serious accident investigations.

CO-CHAIR SPOHNHOLZ asked Mr. Stallone whether, when he was the chief of enforcement, he ever heard about the commissioner blocking enforcement or a citation.

MR. STALLONE responded no. He said he worked with three different commissioners and never had the Office of the Commissioner interfered in this manner on an enforcement action. He noted that there are usually two reports conducted, one for safety, and one for health. The health report is usually administered by the industrial hygienist that works for the department, and the safety report is usually administered by safety enforcement officers. He explained that in the particular instance of Copper River Seafoods, [the inspection] was a referral and the chief of enforcement made the decision to send two officers to the premises: one for safety and one for health. When the officers conclude the inspection, they prepare a report structured using the federal format, because this information is shared throughout the nation.

MR. STALLONE shared his confusion about AKOSH's decision not to send the commissioner's office the safety report initially, but to only send the health report, and then send the safety report later. He reiterated that the commissioner, by law, has the option to eliminate, reduce, or uphold all of the citations, and shared his understanding that the commissioner waited for the statute of limitations to run its course and threw out two complete reports. He stated that he has a problem with this.

[6:54:53 PM](#)

MR. STALLONE stated that the commissioner waiting for the statute of limitations to run out to throw away complete reports sets a dangerous precedent. He postulated that other employers could bring this up at a future date and suggest that the commissioner wait for the statute of limitations to run out like she did for Copper River Seafoods. He referred back to the earlier question from Representative Nelson regarding the largest fine, and shared his recollection that the highest fine ever written was close to a million dollars, and it charged the Department of Corrections. He noted that instead of enforcing the fine, the Department of Corrections was permitted to correct everything that was cited. He recalled that he was in the field at the time, and he went to various communities in the state to verify that the items of concern had been abated. He recalled

another instance regarding a company called Whitewater Engineering, which was cited for a fatality and also charged with criminally negligent homicide. He noted that when this happens, the chief always consults with the Office of the Attorney General, and one or more assistant attorney generals are assigned to handle potential legal questions. He said that he would consult with the attorneys and, as a courtesy, tell the director about the situation, but never sought permission from anyone to issue citations. He shared that he had signed several willful violations and sent them out. He said that there is a legal system in place and there are other processes at play besides the commissioner's decision.

[6:58:36 PM](#)

REPRESENTATIVE MCCARTY asked Mr. Stallone whether it is known for certain that the commissioner didn't respond within the statute of limitations of 180 days.

MR. STALLONE responded that he is not privy to that info, but that that's what he was told by the people who work there. He noted that the law is specific in that if a citation isn't issued within six months from the date of the inspection, it is "null and void," and this was his understanding of what happened in the case of Copper River Seafoods. He explained that if citations were issued in this situation, the legal process could have occurred, including the Occupation Safety and Health Review Commission [within OSHA] and, if it was deemed necessary, Superior Court.

REPRESENTATIVE MCCARTY asked Mr. Stallone about the commissioner's concerns and questions asked of the Office of the Attorney General.

MR. STALLONE responded that he is not privy to that information, but according to Mr. Knowles, the law told the commissioner that she could, "let [the citation] stand, she could reduce it, or she could dismiss it." He said that if the commissioner chose to dismiss it in writing, his question would be, "Why?" He acknowledged that the COVID-19 pandemic presents a novel situation, but said the other issue to consider is the other citations [that were dismissed], such as the lockdown/tagout failure that resulted in amputation of a man's arm, as mentioned by Mr. Knowles.

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REPRESENTATIVE SCHRAGE shared his understanding that the objective of the department is to protect workers, which is done through identifying violations and taking enforcing actions. He asked Mr. Stallone why, if this were the objective of the department, the commissioner would not let the fines go through knowing that there is an issue to be addressed. He questioned the choice to not let the company advance through the legal process and argue its case. He noted that there has been no recourse in the case of Copper River Seafoods, and there is therefore no [incentive] for them to take corrective action.

MR. STALLONE responded that yes, it is the commissioner's responsibility, under statute the commissioner can be held personally liable if he/she doesn't do what the law requires.

REPRESENTATIVE SCHRAGE noted that this sets a dangerous precedent that a simple paperwork error could provide grounds for a complete dismissal of serious enforcement action for serious violations that harmed many workers.

[7:04:14 PM](#)

REPRESENTATIVE KAUFMAN directed attention to a document that depicts a register of non-conformance completion report from AKOSH. He noted that the report includes "a whole bunch of action items" that had been completed and wanted to highlight that actions have been taken. He explained that he doesn't know where the document originated.

MR. STALLONE offered clarification that when a report like this is done, some of the items get "abated," which can happen when an officer is still there. He explained that this doesn't negate the fact that there was a violation at the time of inspection. He expressed that he's glad that the report was done and hopes that the problems are fixed, but reemphasized that that doesn't negate the fact that the law was broken.

CO-CHAIR SPOHNHOLZ asked Representative Kaufman to supply the document that he was referencing to the committee.

[7:06:43 PM](#)

CO-CHAIR FIELDS stated that it was not his intent to "try" the employer, and that the committee meeting is not the appropriate place for that. He characterized the commissioner's decision as denying the employer due process. He referred to AS 18.60.091 and AS 18.60.095, which he said clearly states that the

department must enforce the law, and he asked Mr. Stallone whether he agrees with Mr. Smythe that the commissioner doesn't have the authority to "ignore the laws" in a case like this.

MR. STALLONE responded that's correct; the statute is very clear. He said that he agrees with Mr. Smythe that commissioners are not supposed to negate the statutes, but instead should enforce the statutes, along with the chief and the director. He shared his understanding that now, if [the fine] is over \$50,000, it needs the commissioner's approval, which he characterized as having never happened before. He said that [when he was working as the chief of enforcement at AKOSH], he would never call the commissioner for approval for a fine over \$50,000, or even a fine over \$100,000.

CO-CHAIR FIELDS commented that Mr. Knowles had mentioned that the commissioner had established the policy of running penalties in excess of \$250,000 through the commissioner, and he suggested the committee ask when that policy was put into place. He noted the new threshold of \$50,000, but said that whatever the threshold, this level of politization of enforcement seems to be unprecedented in the state's history.

[7:09:12 PM](#)

CO-CHAIR SPOHNHOLZ thanked the testifiers.

[7:10:24 PM](#)

The committee took an at-ease from 7:10 p.m. to 7:14 p.m.

SB 24-VIRTUAL MEETINGS FOR CORPORATIONS

[7:14:26 PM](#)

CO-CHAIR SPOHNHOLZ announced that the next order of business would be CS FOR SENATE BILL NO. 24(L&C), "An Act relating to holding corporate meetings by remote communication; allowing voting by remote communication at corporate meetings; making shareholder lists available electronically; relating to for-profit and nonprofit corporations; relating to business and industrial development corporations; relating to Native corporations; relating to the Alaska Banking Code; and providing for an effective date."

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SENATOR DAVID WILSON, Alaska State Legislature, as prime sponsor, introduced SB 24. He paraphrased from the sponsor statement [included in committee packets], which read as follows [original punctuation provided]:

The events of this past year have caused many hardships but have also inspired innovation. It is imperative that we use these innovations to improve our operations and laws in the future. Senate Bill 24 capitalizes on one such of these innovations.

Senate Bill 24 allows corporations' shareholder meetings and nonprofit member meetings to be held virtually. Section 12 of SB 241 of the 31st Legislature and subsequent emergency orders have allowed for these virtual meetings, but that authorization has expired. The ability to meet virtually, as would be permanently allowed by the passage of this bill, has proved invaluable to these organizations. Senate Bill 24 enables corporations and nonprofit organizations to operate more efficiently and with greater flexibility than in the past.

[7:16:21 PM](#)

JASMIN MARTIN, Staff, Senator David Wilson, Alaska State Legislature, presented the sectional analysis for SB 24 on behalf of Senator Wilson, prime sponsor. She explained that SB 24 would affect three different parts of law: the Alaska Corporation Code, the Business and Industrial Development Code, and the Alaska Nonprofit Corporation Act. She read through the sectional analysis, which read as follows [original punctuation provided]:

Section 1: Modifies AS 10.06.223

- Relates to organizational meetings of Alaska Corporations. Allows these to be held via remote communication or via a hybrid of remote communications and in person and modifies the notice requirements to reflect this change.

Section 2: Modifies AS 10.06.230(e)

- Relates to the bylaws of a corporation. Allows corporations to write bylaws pertaining to remote communications.

Section 3: Modifies AS 10.06.405(a)

- Relates to meetings of shareholders. Allows meetings of shareholders to be held via remote communication.

Section 4: Modifies AS 10.06.405(b)

- Relates to meetings of shareholders. Allows the board of a corporation to set a time for meetings if the time is not set in the bylaws.

Section 5: Modifies AS 10.06.410(a)

- Relate to notice of shareholder meetings. Directs corporations to include the manner and definition of "present" in meeting notices.

Section 6: Modifies AS 10.06.413(a)

- Relates to the list of shareholders entitled to vote at a meeting or on adjournment. Allows this list to be available electronically to shareholders.

Section 7: Modifies AS 10.06.415(a)

Interim:

- Relates to quorums in meetings. Allows shareholders present through remote communication to be a counted towards a quorum.

Section 8: Modifies AS 10.06.418(b)

- Relates to voting by proxy. Allows proxies to be revoked by attending meetings remotely in addition to in person.

Section 9: Modifies AS 10.06.420(c)

- Relates to voting shares. Allows a shareholder to vote virtually.

Section 10: Modifies AS 10.06.420(d)

- Relates to voting shares. Allows a virtual attendee to vote at an election for directors.

Section 11: Modifies AS 10.06.420(f)

- Relates to voting shares. Allows shares held by an administrator, executor, guardian, or conservator to be voted by remote communication. Allows shares standing in the name of a trustee to be voted by remote communication.

Section 12: Modifies AS 10.06.420(j)

- Relates to voting shares. Adds conforming language pertaining to voting by proxy via remote communication.

Section 13: Adds a new section (k) to AS 10.06.420

- Relates to voting shares. Allows shareholders and shareholder proxies to participate in meetings via remote communication.

Section 14: Modifies AS 10.06.470(a)

- Relating to meetings of executive and other board committees. Allows these meetings to be held via remote communication.

Section 15: Modifies AS 10.06.960(n)

- Relates to corporations organized under Alaska Native Claims Settlement Act. Allows amendments to the articles of incorporation for corporations organized under ANCSA and incorporated under former AS 10.05.005 to add a provision relating to the personal liability for monetary damages to the corporation or stockholders to be voted on via remote communication.

Section 16: Modifies AS 10.06.960(o)

- Relates to corporations organized under Alaska Native Claims Settlement Act. Allows amendments to the articles of incorporation of a village corporation organized under ANCSA and incorporated under former AS 10.05.005 to add a provision authorizing the classification of directors under AS 10.06.455 to be voted on via remote communication.

Section 17: Modifies AS 10.06.960(p)

- Relates to corporations organized under Alaska Native Claims Settlement Act. Allows Native corporations incorporate under former AS 10.05 prior to July 1, 1989 to vote to modify quorum requirements via remote communication.

Section: 18 Adds a new definition to AS 10.06.990

- Defines "remote communication".

Section 19: Modifies AS 10.10.100(b)

- Relates to entities organized under the Business and Industrial Development Corporations Act. Allows stockholders to vote by remote communication.

Section 20: Adds a new section (c) to AS 10.10.100

- Relates to executing a proxy by electronic transmission. Outlines how a proxy is to be executed by electronic transmission.

Section 21: Modifies AS 10.20.066

- Relates to nonprofit meetings notices. Establishes that meeting notices should include the manner by which the meeting will be held.

Section 22: Modifies AS 10.20.071(b)

- Relates to voting by proxy. Allows a member to vote by remote communication or by proxy executed by electronic transmission.

Section 23: Modifies AS 10.20.071(e)

- Relates to establishing a quorum. Allows members present through remote communication to be a counted towards a quorum.

Section 24: Adds a new section (f) to AS 10.20.071

- Relates to establishing a proxy. Defines how a proxy could be established by remote communication.

Section 25: Modifies AS 10.20.076

- Relates to establishing a proxy. Conforming to allow members present via remote communication to count towards a quorum.

Section 26: Modifies AS 10.20.116(a)

- Relates to regular and special meetings of boards of directors. Allows meetings to be held in person, by remote communications, or a hybrid of both.

Section 27: Modifies AS 10.20.166(a)

- Relates to organizational meetings. Allows organizational meetings to be held via remote communication.

Section 28: Adds a new definition to AS 10.20.920

- Defines "remote communication".

Section 29: Adds a section to uncodified law.

- Adds a saving clause for retroactivity in section 30.

Section 30: Adds a section to uncodified law.

- Makes this act retroactive to March 11, 2020.

Section 31: Adds an immediate effective date.

[7:21:13 PM](#)

MS. MARTIN, in response to Co-Chair Spohnholz, gave the definition of "remote communication" found in Section 18, on page 7, lines 25-30, of CSSB 24(L&C), which read as follows:

***Sec. 18.** AS 10.06.990 is amended by adding a new paragraph to read:

(51) "remote communication" means communication by means of electronic communication, conference telephone, videoconference, the Internet, electronic transmission, or other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

[7:21:51 PM](#)

REPRESENTATIVE SCHRAGE shared his understanding that prior to the COVID-19 emergency declaration, electronic meetings were a possibility, and under the lapse of the declaration "there was some error to where it was no longer allowed." He asked for clarification on whether that was true.

MS. MARTIN responded that it was permissible for nonprofit corporations but not permissible for corporations that work for profit.

[7:23:02 PM](#)

REPRESENTATIVE KAUFMAN asked whether there was any concern about verification regarding signatures for voting remotely.

SENATOR WILSON responded that he has not received any of those types of complaint. He shared that he has actually received a lot of support from a variety of shareholders, corporations, and nonprofits. He said that the signature authentication process is up to an entity's bylaws and that [under CSSB 24(L&C)], that decision would remain that of an individual entity.

[7:24:25 PM](#)

CO-CHAIR SPOHNHOLZ offered clarification that bylaws are similar to a constitution for a corporation, and each corporation has its own bylaws to which to adhere. She said that the proposed legislation would allow that to continue. She noted that the committee would be hearing some testimony from the Foraker Group as to why CSSB 24(L&C) was necessary to clear up any ambiguity.

[7:25:34 PM](#)

LAURIE WOLF, President and CEO, Foraker Group, explained that the Foraker Group has been advising nonprofits on how to hold meetings, based on Alaska law, for the past twenty years. She noted that each nonprofit is required to have both articles of incorporation and bylaws, which are legally binding documents that can't supersede state or federal law. She explained that bylaws govern nonprofits and are vetted by the revenue service when granting nonprofit exempt status. Important rules for establishing meetings are included in bylaws, she said, and state law needs to be "simple, broad, and flexible" enough for every corporation to follow. She continued that Alaska law has been broad enough to allow for remote meetings for three decades; however, during 2020 the legislature passed a measure authorizing remote meetings for corporate boards as part of the disaster declaration in the thought that the state law was prohibiting remote meetings. She said Foraker viewed this as "a solution in search of a problem."

MS. WOLF recommended that two aspects be present in any forthcoming proposals: a quorum of board members as defined by bylaws must be gathered to make lawful decisions, and all persons participating can hear and speak to each other at the same time in real time. She said that only when these two characteristics are present can there be certainty that an entity is operating as "one voice." She noted that CSSB 24(L&C) would need to allow every group to be consistent with its bylaws. She urged the committee to act broadly, to adhere to the bylaws of each organization as much as possible, and to create a flexible framework for all of Alaska's corporations, which she stated has been the case for many decades. She said that the easy, simple, and complete solution would be to add a definition of "in person" to AS 10.20.290, which would mean a physical presence or where a person may participate by means of conference, telephone, or similar communication equipment, by means of which all persons participating in the meeting can hear each other at the same time.

[7:31:15 PM](#)

CO-CHAIR SPOHNHOLZ asked Ms. Wolf to send in the proposed addition to the bill to ensure that the language included in the bill meets the Ms. Wolf's criteria.

MS. WOLF responded that her understanding was the phrase "substantially simultaneous" was currently in CSSB 24(L&C), and she emphasized that is not what the Foraker Group is recommending. In response to Co-Chair Spohnholz, she explained there could be confusion. She said, for example, that the Foraker Group has had many questions about whether this would include voting by e-mail. She said that "the previous law" was clear that e-mail voting was not simultaneous communication and was not a place where a quorum could be established. An advisory vote with unanimous consent could be taken through email, she continued, but it would still need to be ratified in a meeting where there was simultaneous communication and the opportunity to vet, defend, and update a decision.

CO-CHAIR SPOHNHOLZ clarified that an e-mail communication is not simultaneous, because not everyone is hearing the same thing at the same time, thus it can lead to miscommunications and may exclude individuals who are not able to communicate in a timely manner.

MS. WOLF added that a quorum cannot be established over e-mail and a meeting cannot be called to order via e-mail.

[7:35:13 PM](#)

FRANCES MAHONEY, Foraker Group, noted that he has been practicing law in Alaska for forty years and that most of his practice for the last twenty of those years has related to nonprofits. He said that he applauds Senator Wilson and his staff for the drafting of CSSB 24(L&C), because it's important for nonprofits. He noted that if there is a change in legislation, there is a presumption that the prior law did not allow what was amended in the new law. He continued that it is important to have an allowance for conducting meetings that are not physically present to qualify as a quorum or as physically present to vote. He said that he would prefer a more simplified process and that "the least change is usually the best change." He agreed that Ms. Wolf's suggestion to add a definition of "in person" to AS 10.20.290 seems appropriate and would achieve the same goal as Sections 21-23 of CSSB 24(L&C). He emphasized the importance of ensuring discussion during a meeting, and he said

the proposals made would allow that to occur and would help avoid possible confusion.

[7:38:17 PM](#)

CO-CHAIR SPOHNHOLZ announced that SB 24 was held over.

CONFIRMATION HEARING(S) :
Marijuana Control Board
Occupational Safety & Health Review Board
State Board of Physical Therapy & Occupational Therapy
State Board of Registration for Architects, Engineers & Land
Surveyors
Worker's Compensation Appeals Commission

[7:38:52 PM](#)

CO-CHAIR SPOHNHOLZ announced that the final order of business would be consideration of the governor's appointees to various boards and commissions.

CO-CHAIR SPOHNHOLZ noted the committee had heard testimony from the appointees during the March 5, 2021, House Labor and Commerce Standing Committee meeting.

CO-CHAIR SPOHNHOLZ stated that the House Labor and Commerce Standing Committee had reviewed the qualifications of the following governor's appointees and recommends the names be advanced to a joint session of the House and Senate for consideration: Nicholas Miller to the Marijuana Control Board; Thomas Trosvig to the Occupational Safety & Health Review Board; Enlow Walker to the State Board of Physical Therapy & Occupational Therapy; Elizabeth Johnston to the State Board of Registration for Architects, Engineers & Land Surveyors; and James Rhodes to the Worker's Compensation Appeals Commission. She reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and the nominations are merely forwarded to the full legislature for confirmation or rejection.

[7:40:36 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 7:41 p.m.