

H B

229

employee overtime compensation HB 229

by Randolph Anderson, Burns
Bettisworth, Fanning, Metcalf

1. Technical: ok
2. carrier _____
votes _____
attendance needed _____
3. fiscal note
4. who wants?
5. potential amendments: Molone vid.
letter & newspaper article relating to bill -
will probably be a controversial bill

HOUSE

1/25
Pulle
waived
1/25/

~~2~~
2 Waive Finance referral

FURTHER FINANCE

Date: 1/23/82

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 229

"An Act relating to employee overtime compensation; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 229 (SA) same title
 new title
- and recommends CS do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Ray Petralle

[Signature]

Ken Finning

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] NO REC

[Signature] No Rec

Brown

Ray Petralle
CHAIRMAN

COMMITTEE REPORT

HOUSE

2/9
Rules

FURTHER:

(5)

1/29/82

Date: 2-9-1982

Mr. Speaker: (Taken from calendar 1/29/82 and returned to Rules.)

The Committee on RULES has had HB 229

"An Act relating to employee overtime compensation; and providing for an effective date."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass [] do not pass
- [] do pass with attached amendments(s)
- replace with CS for HB 229 (SA) (Res) as amended same title new title
- and recommends: ~~do pass individual recommendations~~
- [] AND attaches a "Letter of Intent" [] New Fiscal Note
- [] reports it back without recommendation. ~~individual recommendations~~
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Joe L. Hayes

Jack Fuller

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Patrick D. O'Connell - No Rec

R. O. E. Pell - No Rec

A. Smith - No Rec

Jack Fuller

CHAIRMAN

COMMITTEE REPORT

HOUSE

1/25
File
waived
1/25

2/26/81

FURTHER: FINANCE

(5)

Date: 1/25/82

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 229

"An Act relating to employee overtime compensation; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass [] do not pass Pg. 133
- do pass with attached amendments(s)
- replace with CS for HB 229 (SA) [] same title [X] new title
- and recommends CS de pass
- [] AND attaches a "Letter of Intent" [] New Fiscal Note
- [] reports it back without recommendation
- [] referred to the _____ Committee

MEMBERS SIGNING

DO PASS

Ray Petralle

[Signature]

[Signature]

MEMBERS HAVING

OTHER RECOMMENDATIONS:

[Signature] NO REC

[Signature] NO REC

[Signature] Brown

Ray Petralle

CHAIRMAN

Title "An Act relating to the Alaska Wage and Hour Act, and providing for an effective date"

Contact: Dale Cheek^{SC}
465-4870
Judy Knight^{JK}
465-2700

Sec. 1
The Department of Labor's existing definitions of "executive" and "administrative" employees, as set out in 8 AAC 15.910(1) and 8 AAC 15.910(7) do, in part, base eligibility for exemption from the Wage and Hour Act upon a percentage of time in the employee's work week that is devoted to activities not directly or closely related to the performance of executive and administrative duties. The Department's definitions are tailored after provisions in the Federal Fair Labor Standards Act (29 CFR 541.1) which also tie eligibility for exemption to the percentage of time spent by an employee performing non-administrative or non-executive duties. The Fair Labor Standards Act provides that where state law and federal law are in conflict, the law with the stricter or higher standard applies; and because the proposed amendment to AS 23.10.055(9) would render Alaska's law less stringent than the federal law, the state law would be pre-empted. The practical effect of such an amendment would probably be that those employers who do not understand the relationship of the federal and state laws will be found in violation of the over-riding federal law.

Sec. 2
The proposed amendment to AS 23.10.110, which extends discretion to the courts in awarding liquidated damages, would bring Alaska's law into close conformity with the Fair Labor Standards Act; and the Department has no objections to it. In fact, prior to a 1979 court decision (Alaska International Industries, Inc. v. Mussara) which ruled that liquidated damages are mandatory under existing state law, the Department had not pursued a liquidated damages award if there was a showing that the employer had acted in good faith.

~~Sec. 3~~
We do not, however, feel that any amendment with respect to the award of liquidated damages should carry a retroactive effective date. Many of the wage and overtime claims that are pending before the courts at this time, undoubtedly, have not been reviewed solely because of the large backlog of cases before the courts; and to jeopardize an employee's entitlement to liquidated damages because the courts have not been able to provide a timely review, we feel, is arbitrary and unfair.

This bill is not in the best interest of Alaskan workers; therefore the department does not support this legislation.

FACT SHEET
CS FOR HOUSE BILL NO. 229 (RULES)

BY REPRESENTATIVE DICK RANDOLPH

The overall purpose of this bill is to bring Alaska Wage and Hour law into agreement with federal Wage and Hour law so that the employer/employee relationship will be facilitated in circumstances where separate branch establishments of business exist, and to allow a court to waive double liquidated damages provisions in cases involving overtime pay when the court determines that the employer acted in good faith.

Section 1 This section makes Alaska law identical to federal law in allowing employees who are in sole charge of an independent business establishment to be exempt from the wage and hour act regardless of what percentage of the employees' working hours are devoted to activities not directly or closely related to the performance of executive or administrative activities. Current Alaska law makes the sole charge employee still subject to overtime compensation provisions if the employee devotes more than 20% of his work time to non-executive or administrative duties. *See DOL paper*

Since the 20% standard is difficult or impossible to establish and could subject the employer to possible double liquidated damages if the employee were to come back later and claim he spent more than 20% of his time on such activities, existing Alaska law virtually wipes out any sole charge exception. The ultimate effect is that employers instead hire managers of separate branch establishments at relatively low hourly wage rates so as to mitigate the effect of overtime provisions. This, in turn, makes managers of branch establishments unhappy because having responsibly worked their way to a manager's position they find themselves being paid at a low hourly wage rather than to have the freedom and prestige of negotiating a monthly salary or even incentive salary contract.

The "sole charge" exception is particularly important to employers and employees involved with small branch establishments such as convenience food businesses since it is more efficient for a manager to be able to act in other capacities during peak workload hours. The sole charge exception existed by regulation in Alaska until a few years ago, at which time the Department of Labor wiped it out with the 20% regulation. The changes to law under section 1 benefit both the employer and employee as well as the consuming public by allowing the most efficient business practices.

Section 2 Both current federal and state law provide for double liquidated damages if an employer violates overtime and other provisions of wage and hour law. Federal law, however, provides that if a court of law finds that an employer acted in good faith with reasonable grounds to believe his act was not a violation of the Fair Labor Standards Act then the employer only pays actual damages.

In other words, since Alaska does not allow the "good faith" exception of double damages, even if an employer was told by the Department of Labor that he was acting within the law, he would have to pay double damages if it turns out the Department of Labor was wrong.

The federal "good faith" exception is found in different sections of law from the wage and hour sections from which the Alaska wage and hour act was modeled at the time of statehood. It is likely that Alaska drafters intended to follow federal law in drafting our wage and hour law, but inadvertently neglected to include the "good faith" exception.

The "good faith" exception does not grant the employer any special advantages over the employee. It merely avoids inflexibility in damages provisions which could result in injustice by allowing a court of law to determine whether the employer acted in good or bad faith.

One advantage to the State of Alaska by passage of section 2 is that since there is the possibility of a finding of "good faith" by the court section 2 would create an element of dispute which would allow settlement of cases without going to court. Presently, the State of Alaska holds many wage and hour claims of employees in trust for them while it attempts to recover the claim from an employer. Since Alaska law requires double damages, the state can settle for nothing less even if the employee adamantly wishes to settle. In such cases, the state must tell the employee to pursue his claim on his own. With passage of section 2, the Department of Labor can now settle cases more easily with employees' consent.



Alaska State Legislature

House of Representatives

Committee on Rules

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Billy Berrier, Director
Division of Legal Services

FROM: Rep. Jack Fuller, Chairman
House Rules Committee

DATE: February 9, 1982

Please prepare a revised Rules CS for HB 229 with the following changes over the draft Rules CS:

Page 2: DELETE Sections 3 and 4.

Thank you.

1-25-82

HB 229

The State Affairs Committee has had HOUSE BILL NO. 229 (relating to employee overtime compensation; eff. date) under consideration and a majority of the committee recommend that it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 229 (SA):

"An Act relating to the Alaska Wage and Hour Act; and providing for an effective date"

134

HOUSE JOURNAL

January 25, 1982

HB 229 cont'd

and that it do pass. Concurring: Metcalfe (Chairman), Abood and Fanning. Not concurring: Miller and Brown had no recommendation.

Representative Adams moved and asked unanimous consent that the Finance referral be waived. There being no objection, it was so ordered.

HB 229 was referred to the Rules Committee for placement on the calendar.

January 29, 1982

HOUSE JOURNAL

HB 229

Representative Halford moved and asked unanimous consent that HOUSE BILL NO. 229 (relating to employee overtime compensation; eff. date) which was first on today's calendar be returned to the Rules Committee for further consideration.

Representative Rogers objected and moved and asked unanimous consent that HB 229 be referred to the Labor & Commerce Committee.

Representative Halford objected.

The Speaker stated that the motion was out of order since there was a previous motion pending before the House.

Representative Rogers withdrew his motion.

Representative Rogers moved to amend Representative Halford's motion and refer HB 229 to the Labor & Commerce Committee.

HB 229 (cont'd)

Representative Randolph objected.

The question being: "Shall the motion to amend Representative Halford's motion and refer HB 229 to the Labor & Commerce Committee pass the House?" The roll was taken with the following result:

Yeas:		Buchholdt, Clocksin, Cotten, Duncan, Gardiner, Malone, Miller, Moss, Rogers, Smith, Vaska, Zharoff
Nays:	24	Abood, Adams, Anderson, Barnes, Bettisworth, Bylsma, Carney, Cato, Chuckwak, Cuddy, Fanning, Fuller, Halford, Haugen, Hayes, Hurlbert, Martin, Heekins, Metcalfe, Montgomery, O'Connell, Phillips, Randolph, Sutcliffe
Excused:	4	Beirne, Brown, Freeman, Crussendorf.
Absent:	0	

Representative Miller was voting in Representative Brown's station.

And so, Representative Rogers' amendment to the motion failed.

Representative Rogers withdrew his objection to the original motion by Representative Halford. There being no further objection HB 229 was returned to the Rules Committee.

TO: MEMBERS H. RULES

FROM: Hugh Malone

FEB 9

I AM ENCLOSING A NEWSPAPER
ARTICLE THAT MAY RELATE
TO CSHB 229.

ALSO, I GOT IN TOUCH WITH
MR MICHAEL BARCOTT, WHO
IS MENTIONED IN THE ARTICLE.

I PARTICULARLY CALL YOUR
ATTENTION TO THE LETTER
HE SENT IN REPLY.

I APPRECIATE YOUR ATTENTION
TO THIS INFORMATION

H Malone

SAVE FOR

CS HB 229 (Now in RLS)

The Anchorage Times

Tuesday, February 2

City / State

- Neighbors
- Tell It to Bud
- Business

Slope employees sue for \$15 million overtime

by Patti Epler
Times Writer

Alaska-based employees of an international oil industry service contractor are seeking more than \$15 million in damages against the company because of the company's overtime pay policy.

In a class action suit filed in Superior Court here, an estimated 200 employees of Dresser Industries Inc. have asked the court to award them more than \$5 million in back wages that they say they would have earned if overtime had been computed properly. They are seeking an additional \$10 million in punitive

damages for the company's failure to pay proper overtime despite an Alaska Supreme Court ruling requiring them to do so.

Dresser Industries is an international business that contracts with oil companies to service oil wells in Alaska.

The suit is based on a state Department of Labor regulation regarding the way in which overtime should be paid and a previously tested case.

Dresser Industries, according to documents on file in Anchorage Superior Court, operates on a "flexible work week," a practice declared illegal

by the Alaska Supreme Court.

Michael A. Barcott, the attorney representing the employees, said employees of Dresser Industries were given a base pay of \$400 per week but that the "base" hours worked varied from employee to employee. For instance, he said, an employee who worked 50 hours per week would receive overtime based on an \$8 per hour wage while another employee who worked 100 hours per week would receive overtime based on \$4 per hour wage.

It's not uncommon for Dresser Industries employees to work 100 to 150 hours per week on the North

Slope, he said.

Barcott said the flexible work week has been a common practice in the past for oil field employers. But in 1978, the Alaska Department of Labor placed restrictions on the manner in which overtime could be paid, making the flexible work week illegal.

Several other North Slope contractors besides Dresser Industries apparently still use the flexible work week, Barcott said.

One Dresser employee, Harley Woody, took the company to court two years ago on the same issue — the way in which they were comput-

ing overtime.

The Alaska Supreme Court found that the flexible work week method was illegal and awarded Woody \$4,000 in back pay for the time he was employed by Dresser.

Dresser Industries, which the employees allege has not changed their policy despite the court ruling, has appealed the ruling to the U.S. Supreme Court. The nation's highest court has not yet indicated whether it will hear the case.

The class action suit against Dresser Industries includes two classes of people:

— "All past and present em-

ployees (of Dresser) who have been employed in the State of Alaska and paid wages under the flexible work week."

— All Dresser employees who have been paid bonuses and time based on the bonuses, a practice the company has employed since November.

In addition to the \$15 million in damages, the employees are asking the court to declare invalid Dresser's current method of calculating overtime pay.

John Martin of Dresser Atlas said this morning "we've got absolutely no comment" on the lawsuit.

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February 4, 1982

The Honorable Hugh Malone
Pouch V
Juneau, Alaska 99811

Re: C.S.H.B. 229

Dear Representative Malone:

I have had the opportunity to review C.S.H.B. 229 which has been introduced in this legislative session. I am particularly concerned with Sections 2 and 3 of that Act.

I have filed suit in the Superior Court for the Third Judicial District at Anchorage against Dresser Industries, Inc. This suit has been brought as a class action and I enclose a copy of the complaint for your perusal. As you can see, this is a claim under the Alaska Wage and Hour Act and it is our contention that approximately \$5,000,000 in past due overtime wages are owed to employees and former employees of Dresser Industries, Inc. As an initial matter allow me to express my dismay at the fact that for years many large employers in this state have acted in violation of the regulations of the Department of Labor at the expense of employees. Now having been caught by the Alaska Supreme Court, they have apparently come to the legislature for assistance in extricating themselves from their own misdeeds.

As you are undoubtedly aware, the present Alaska Wage and Hour Act contains a provision in A. 23.10.110(a) providing that if it is determined that an employee is entitled to back wages that an additional equal amount is provided as liquidated damages. Thus, if one of the Dresser employees was underpaid by \$5,000.00 in wages, he would be entitled to receive \$10,000.00 upon a favorable judgment.

Additionally, AS 23.10.110(c) includes a provision that if an employee is successful in an action, he is entitled to costs and reasonable attorneys' fees to be paid by the defendant.

The Honorable Hugh Malone
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Page Two

C.S.H.B. 229 contains in Section 2 a provision that apparently would have the effect of introducing a "good faith" defense to actions for double damages and costs and attorneys' fees. In addition, Section 3 of the Committee Substitute states that it applies to actions "that have not been completed on the effective date of this Act." Thus, as I read C.S.H.B. 229, it attempts to retroactively limit damages which may be recovered in wage and hour claims in addition to providing a change in future cases.

I have some general comments concerning the wisdom of the bill per se and specific comments concerning the effect of that bill on the litigation which presently is pending against Dresser Industries. For the purpose of convenience I will separate those two discussions.

THE BILL GENERALLY

1. Good Faith Defense/Double Damages.

The inclusion of a good faith defense to the double damages provision of the Alaska Wage and Hour Act will bring the Alaska Wage and Hour Act into conformity with acts of several jurisdictions. There certainly are bona fide arguments that can be made both for and against such a provision. From the employer's standpoint, it may seem harsh to require an employer who has acted in good faith to pay twice what the employee would have earned had his wages been properly calculated.

On the other hand, from the point of view of the employee, it is certainly true that it may be difficult in small cases to obtain counsel to pursue an action.^{1/} The inclusion of a double damages provision will assist employees in obtaining legal redress. Additionally, of course, there is something to be said for a deterrent in a wage and hour act. In the give and take of litigation it frequently is very difficult to disprove an employer's claim that it was

^{1/} For cases which involve less than \$5,000 the Attorney General can maintain an action for the employee.
AS 23.10.110(b), 8 AAC 15.175(b).

The Honorable Hugh Malone
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Page Three

acting in good faith and the inclusion of a double damages provision without a good faith defense adds a substantial deterrent to those who might be inclined to stretch the meaning of the Alaska Wage and Hour Act. Finally, the good faith defense will substantially prolong all wage and hour claims as employers will have the financial ability to present the numerous factors that will provide a good faith defense. This will both delay the employee's recovery and increase his expense.

I am certain that organized labor will properly point out the difficulties inherent in adding yet one additional complicating factor to all cases which are brought for overtime wages.

2. Retroactive Application.

Generally I believe the retroactive application of the good faith defense provided in C.S.H.B. 229 may run afoul of constitutional principles. A substantial argument can be made for the proposition that an employee employed prior to the passage of C.S.H.B. 229 had the then existing provisions of the Alaska Wage and Hour Act incorporated into his contract of hire. That contract of hire then would have included the double damages provision presently existing in AS 23.10.110(a), as well as the costs and attorneys' fees provision of AS 23.10.110(c). If the legislature passes the retroactive application section of C.S.H.B. 229, it may be seen as the State infringing on the contract of hire. Such action is, of course, unconstitutional under the United States Constitution. See generally, Trustees of Dartmouth College v. Woodward 4 Wheat. 518, 4 L.Ed.2d 629 (1819); State Workmen's Compensation Board v. Delaney, 615 P.2d 5, 7 (1980). Thus, if this provision is passed, it will face constitutional challenge.

EFFECT OF C.H.S.B. 229 ON ESHLEMAN V. DRESSER INDUSTRIES

While I cannot imagine that Dresser was acting in good faith in violating an express provision of the Alaska Administrative Code, C.S.H.B. 229 will substantially increase the costs of that litigation. Allow me to explain.

The Honorable Hugh Malone
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Page Four

1. Good Faith Defense

The good faith defense introduced by C.S.H.B. 229 will be exceedingly difficult for Dresser Industries to establish in the presently pending litigation. Dresser's pay scale was in absolute violation of an existing Alaska regulation. It is beyond comprehension that Dresser could establish that its method was adopted "in good faith." Clearly, a payment method in violation of an Alaska regulation is not the kind of payment which is encompassed in the "good faith" defense provided by C.S.H.B. 229. I certainly believe that a statement to that effect should be contained in the legislative history of this amendment. Thus, to the extent there is a good faith defense which may apply to the presently pending litigation, I would hope that it would not affect the ultimate outcome.

It is obviously true, nonetheless, that Dresser Industries will assert a good faith defense in the presently pending litigation, should C.S.H.B. 229 be adopted. That is an issue which will involve a complex fact finding process and will substantially prolong and delay this lawsuit as well as all other claims for overtime wages. It is precisely this type of disadvantage to the employee which renders the inclusion of a good faith defense somewhat unfair to the employee. If the good faith defense is asserted in the presently pending litigation, it may prolong by six months to a year the ultimate resolution of this case and certainly will provide an issue for Dresser Industries to appeal to the Alaska Supreme Court. To those employees of Dresser Industries who are awaiting wages which clearly are due to them under the terms of the Alaska Wage and Hour Act, inclusion of this defense by the legislature at this point in time would be very unfair.

2. Retroactive Application.

The employees of Dresser Industries were paid under a formula which was declared illegal by the Alaska Department of Labor. That payment method occurred over a three year time period. If those employees are now told that the law which declared this action illegal and provided double damages has been changed retroactively to effect their lawsuit, they would indeed have good cause for extreme sinicism concerning the government of this State. Although I do not anticipate that a retroactive allowance of a good faith defense will change the ultimate outcome of the litigation, it will make that process

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Page Five

substantially more difficult for these employees. When asked to explain to them how it is possible that the law under which they worked has been changed to provide them with less of a remedy than the legislature originally intended them to have, I will be extremely hard pressed to provide an answer. It is for precisely this reason that the United States Constitution prevents the impairment of contracts between parties by the legislatures of a state.

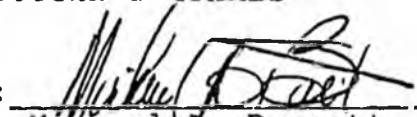
CONCLUSION

I have not had the opportunity fully to analyze all of the legal ramifications of C.S.H.B. 229. I provide these thoughts to you with the hope that it assists you in your consideration of this bill. If I can be of any further assistance, please do not hesitate to call. On behalf of the many Dresser Industries employees who have been illegally paid under the laws of the State of Alaska, I remain at your disposal.

Very truly yours,

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By:


Michael A. Barcott

MAB/kl

HB 229 TITLE & SPONSOR SUMMARY

14:32 2/08/82 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO EMPLOYEE OVERTIME COMPENSATION; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: RANDOLPH.

CO-SPONSORS: ANDERSON, BEIRNE, BETTISWORTH, FANNING, METCALFE.

CURRENT STATUS: 1/29/82 RET (H) RULES

HB 229 HOUSE ACTION
DATE SEQ PAGE

14:32 2/08/82 PAGE 2 OF 2

LEGISLATIVE ACTION

DATE	SEQ	PAGE
02/26/81	01	0379
01/25/82	02	0133
01/25/82	03	0134
01/29/82	04	0192
01/29/82	05	0192

FIRST READING -- COMMITTEE REPORTS

S.A. -- CS03, NR02

MOVED FROM FIN TO RLS BY UNAN CONSENT

RECOMM TO L&C FAILED BY DIV 12-24-04

RECOMMITTED TO RLS BY UNAN CONSENT

RULES

RULES

RULES

**** ** ** *** ** *