

**ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2**

**9618 SENATE LABOR & COMMERCE**

# Alaska State Legislature

## Senate




Official Business

State Capitol  
Juneau, AK. 99801-1182

### Senate Labor & Commerce Committee

#### Memo

TO: Terri Lauterbach, Legislative Counsel  
Legislative Legal Services  
via fax: 2029 this page only


FROM: Annette Kreitzer, Aide to   
Senate Labor & Commerce Committee

DATE: April 7, 1997

RE: FINAL on Chemical Dependency Counselors


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Please make the following changes to work draft LS0872A and create a FINAL of the chemical dependency counselors legislation:

- 1) Page 1, line 13:  
Delete [PRESIDING OFFICER]  
Insert chair
- 2) Page 2, Line 13:  
After "(3)" insert meet
- 3) Page 7, Line 23:  
Delete [COUNSELOR II]  
Insert Clinical Supervisor 

Refax

Thank, Terri



LS0872/E.1

0-LS0483\F.1

4/22/97

AMENDMENT

OFFERED IN THE SENATE

TO: SB 163

- 1 Page 3, line 30:
- 2 Delete "or"
- 3 Insert "and"

LS0872/E.2

~~0-LS0483\F.2~~

4/22/97

**AMENDMENT**

OFFERED IN THE SENATE

TO: SB 163

- 1 Page 5, line 6:
- 2 Delete "or"
- 3 Insert "and"

LS0872/E.3

-0-LS0483\F.3

4/22/97

**AMENDMENT**

OFFERED IN THE SENATE

TO: SB 163

- 1 Page 4, line 31:
- 2 Delete "(2) either"

3. Rescind the following paragraphs, accordingly.

LS0872\E.4

~~0-LS0483\F.4~~

4/22/97

AMENDMENT

OFFERED IN THE SENATE

TO: SB 163

- 1 Page 3, lines 4-6:
- 2 Delete all material.
- 3 Renumber the following paragraphs accordingly.

April 24, 1997

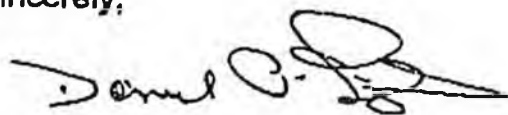
Senator Loren Leman  
Alaska Senate  
State Capitol

Dear Sir,

In reference to Senate Bill 163, I would like to urge your support for the licensing of CD (Chemical Dependency) Counselors in Alaska.

Substance abuse/chemical dependency is such a serious problem in terms of illness, death, family dysfunction and costs to everyone that the counselors treating the problem must have sufficient professional preparation to perform the services needed.

Sincerely,



Daniel Paul Light



ALASKA COUNCIL ON  
PREVENTION OF  
ALCOHOL AND DRUG  
ABUSE, INC.

3333 DENALI STREET  
SUITE 201

ANCHORAGE, ALASKA  
99503

PHONE  
907-258-6021

STATEWIDE  
800-478-7738

FAX  
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prevent@alaska.net

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April 24, 1997

Senator Loren Leman  
Alaska Senate  
State Capitol  
Juneau, AK 99801

FAX #: 907-465-3810

Dear Senator Leman:

Greetings! This letter is in regards to SB 163—"An Act regulating chemical dependency counselors; and providing for an effective date." On behalf of the Alaska Council on PREVENTION of Alcohol and Drug Abuse, I would like to provide some information which hopefully will assist in the decision-making process regarding this issue.

With substance abuse continually rising and insurance companies tightening regulations and treatment pay-outs, it is important to evaluate the quality of professional counseling chemical dependency (CD) clients are currently receiving. This bill's passage would require any one practicing in the CD field to be licensed—like other mental health providers. By requiring licensure and continuing education, CD clients will receive effective, current, professional treatment, which stands a good chance of lowering the recidivism rate.

This is a prevention measure, as well. The key to providing effective intervention is referring substance abusers to appropriate treatment agencies early on. Here, the CD counselor and the client can work through the substance abuse issues effectively. If families are involved, this offers the opportunity to break the "cycle of addiction", thus preventing future family substance abuse.

Thank you for your time and attention to this important matter.

Respectfully,

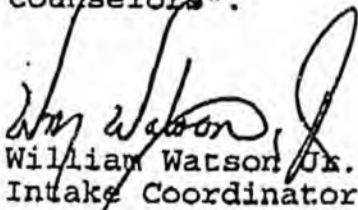
Joseph DiMatteo  
Executive Director

AK

April 17, 1997

Senator Loren Leman  
Alaska Senate  
State Capitol  
Juneau, AK. 99801

I. support SB 163 "An act regulating chemical dependency counselors".



William Watson Jr., BHS, NCACII, CCJS  
Intake Coordinator



# R·C·A·O·A

REGIONAL CENTER FOR ALCOHOL AND OTHER ADDICTIONS

A Service of Fairbanks Native Association, Inc.

## FAX COVER SHEET

Date 4/17/97

Business \_\_\_\_\_ (CHECK ONE)  
Personal

TO: *Alaska Senate*  
ATTN: *Senator Loren Lerman*  
PHONE:  
FAX: *465-3810*

\*\*\*\*\*  
FROM: *Bill Watson* CODE: *0251*  
Regional Center for Alcohol and Other Addictions

PHONE: (907) 452-6251

FAX: (907) 456-4849

PAGES: 2, including this cover sheet.

\*\*\*\*\*  
If fax is over 10 pages, supervisor approval is needed. \_\_\_\_\_

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure to this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

(AK)



# R·C·A·O·A

REGIONAL CENTER FOR ALCOHOL AND OTHER ADDICTIONS

A Service of Fairbanks Native Association, Inc.

April 17, 1997

Senator Loren Leman  
Alaska Senate  
State Capitol  
Juneau, AK 99801

Dear Senator Loren;

I am writing this letter in support of House Bill 217 " An Act regulating Chemical Dependency Counselors".

I am one of the original persons who started the movement toward counselor licensing. I have worked in the field of chemical Dependency for almost 27 years and I am both a State and Nationally Certified Substance Abuse Counselor Level II as well as being state certified Clinical Supervisor and Program Administrator Level II.

I feel that licensing is an important step in beginning to professionalize our field and I highly recommend and support the passing of this bill.

Please feel free to call me at 452-5084 if I could be of any further assistance to you.

Sincerely,

Barry Gold, B.S.W.  
CAC II, CADC III, PA II



# R·C·A·O·A

REGIONAL CENTER FOR ALCOHOL AND OTHER ADDICTIONS

A Service of Fairbanks Native Association, Inc.

## FAX COVER SHEET

Date 4-17-97

Business \_\_\_\_\_ Personal \_\_\_\_\_ (CHECK ONE)

TO:  
ATTN: Loren Lemman  
PHONE:  
FAX: 465-3810

FROM: BARRY GOLD CODE: 1206  
Regional Center for Alcohol and Other Addictions

PHONE: (907) 452-6251  
FAX: (907) 456-4849

PAGES: 2, including this cover sheet

If fax is over 10 pages, supervisor approval is needed. \_\_\_\_\_

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure to this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

04/22/97

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LTN1150

13:56:01

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:JNU

TCN:70677

SCHEDULED FOR:04/22/97 13:30 TO 15:00

FOR:ALL

PUBLIC HEARING

SENATE LABOR & COMMERCE

LOCATION:ANCHORAGE

SB 163

✓LORI

NAMYNIUK

SUB ABUSE DIR

TESTIFY

LOCATION:BETHEL

SB 163

✓BETH

KERSEY

YKHC

TESTIFY

SB 163

✓RAY

WATSON

YKHC

TESTIFY

SB 163

✓GARY

TURNER

YKHC

TESTIFY

SB 163

✓PETER

TWITCHELL

PATC

TESTIFY

SB 163

✓MIKE

CUTTER

PATC

TESTIFY

OFF NET  
90163  
✓MS. JANE FRANK

04/22/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:56:01

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:JNU

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SB 163	LORI	NAMYNIUK	SUB ABUSE DIR	TESTIFY
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LOCATION:BETHEL

SB 163	BETH	KERSEY	YKHC	TESTIFY
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SB 163	RAY	WATSON	YKHC	TESTIFY
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SB 163	GARY	TURNER	YKHC	TESTIFY
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<del>SB 163</del>	PETER	TWITCHELL	PATC	TESTIFY
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SB 163	MIKE	CUTTER	PATC	TESTIFY
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*SB 163*  
*MS. JANE FRANKS*

## ABOUT LICENSING of CHEMICAL DEPENDENCY COUNSELORS

Why? . . .

First and foremost, the purpose for seeking the licensing of chemical dependency counselors is for the protection of the public, and to promote the best professional quality of care. The following are additional points of consideration:

- Change from a voluntary [certification] process, to professional licensing as a standard of practice. There currently is no mechanism in place in Alaska, to prevent anyone, with or without specific training or experience, from calling themselves a chemical dependency counselor.
- Ensure minimum levels of training and supervised experience to practice for:
  - Counselor Associate
  - Counselor Level I
  - Counselor Level II
  - Clinical Supervisor
- Promote and ensure the best quality of care for Alaskans seeking and/or in need of treatment services.
- Establish standards of practice within regulation, to include level of service activity with linked clinical supervision.
- Establish code of conduct and ethics within regulation.
- Establish within regulation, standards for training requirements (academic & experiential).

*Reasons for need of same & in all cases  
train? factor for exam: will be half of 200-500 entries a  
month  
National exam 11 - see support  
Jacob Haines 10/13/04*



**Mat-Su Council**  
Substance Abuse Recovery Center  
2801 Bogard Road Wasilla, Alaska 99654 (907) 376-4000

April 17, 1997

Senator Loren Leman  
Alaska Senate  
State Capitol  
Juneau, AK 99801

Re: SB 163 "An act regulating chemical dependency counselors".

Dear Senator Leman:

I am writing in support of this legislation to provide for licensing of chemical dependency counselors in Alaska.

In addition to my present position with Mat-Su Council, I have worked for over 16 years in a variety of mental health and social services programs in four different states. Unfortunately, it is not that uncommon for well meaning counselors with no specific training or background in the substance abuse field to counsel people with chemical addictions. This is not helpful to the person seeking help. This is like a family doctor trying to be a heart surgeon with no specialized training in it. Specialized training is essential to be an effective substance abuse counselor

I believe this legislation will greatly improve the quality of care given in Alaska, and will provide protection for the public. Your support of this important legislation is appreciated.

Sincerely,

Suzanne Frey, M.A.  
Executive Director



# TOWARD THE ESTABLISHMENT OF A STATE BOARD OF CHEMICAL DEPENDENCY COUNSELING EXAMINERS

## ESSENTIAL FACTS

**T**here are now approximately 850 **Certified Addiction Counselors**, a rapidly growing profession, in practice throughout the State of Alaska, in addition to many who are not certified, making this discipline one of the largest professional groups in Alaska. Clearly this group significantly impacts the lives of many persons suffering from addictive disease and represents the cutting edge in Alaska's efforts to combat alcohol and drug abuse. The phenomenal growth in this discipline while occurring primarily in response to great need, presents the necessity for increased structure and legitimacy to ensure the continued protection of consumers from the results of substandard practice as well as the protection of just about anyone who is associated or victimized by those incompetently treated.

In 1981 the **ALASKA ALCOHOLISM AND DRUG ABUSE COUNSELOR CERTIFICATION REVIEW BOARD** was formed in response to widespread concern among professional mental health and addiction clinicians, lawmakers, a variety of citizen groups, and the population at large that those who practice as

chemical dependency clinicians possess the knowledge, skill, and character to practice competently and ethically. In order to better ensure quality of care, professional ethics, a professional code of conduct, the board began to identify minimum professional standards of competency, and to develop standards for professional conduct, seeking statewide input, perusing national standards, and assessing various means of examining clinicians for those qualities associated with these critical variables.

In January of 1985, the board was incorporated as a private, not for profit charitable organization. Seven members were elected, representing each of 5 geographic regions of the State and began the business of certifying counselors to work in the area of treatment for chemical addiction. In May, 1993, the board was renamed the **ALASKA COMMISSION FOR CHEMICAL DEPENDENCY PROFESSIONALS CERTIFICATION**. At this time, restructuring and reorganization was accomplished to provide better representation of Alaska Native/American Indian concerns and issues.

Since the beginning of counselor certification in Alaska, there have been ongoing efforts to revise and refine both the minimum knowledge / skill standards for practice and to define and revise ethical standards and a code of conduct for addiction counselors. Assessment of competency and knowledge of ethics is now accomplished by a combination of: verification of supervised professional experience.

recommendations of those familiar with the applicants work, and testing. Proposed regulations mirror those now governing the Commission.

Clearly, the need for a comprehensive approach to combating alcohol and drug abuse in Alaska will continue to necessitate the recruitment and utilization of growing numbers of qualified professionals to treat those who have become addicted.

**CONCLUSION:** In short, it is clear that licensing is necessary to provide a legitimate vehicle to hold those who practice in the field accountable for their competency and ethics to practice. Further, we are convinced that the proposed measure will greatly enhance quality assurance in the delivery of these essential services to a large portion of our population.

**SB**

**169**

# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### Sponsor Statement for Senate Bill 169: Voluntary Flex Time for Mines

By the Senate Labor & Commerce Committee

Senate Bill 169 changes the current employee voluntary flexible work hour provisions in AS 28.10.060. Under current law, an employer must pay an employee one and one half times the regular rate of pay for any hours worked in excess of 40 hours a week or 8 hours a day. However, the law also provides that the Department of Labor may approve a written agreement between an employer and employee, increasing the regular pay hours to 10 hours per day, as long as no more than 40 hours per week are worked when the employee has entered into a voluntary flexible work hour plan.

SB 169 permits the Department of Labor to approve a written plan between the employer and employee increasing the regular pay hours to 12 per day, but not more than 40 per week.

The purpose of the proposed change is to benefit the surface metal mining industry and mine employees and to provide a favorable climate for mining companies considering investing in Alaska.

With SB 169, mine employees benefit from the increase to 12 hours in their daily shifts, because they would work the same number of hours at increased pay in 14 days as it currently takes 21 days to work. This allows workers more time with their families, greater pay due to increased number of overtime hours each month, and higher morale and job satisfaction due to longer periods of time off work.

Mine companies benefit from lower absenteeism, increased mineral production and operational continuity. These gains improve the company's competitive position in the global metals market and reduces the mine's economic exposure to the fluctuations in metal prices, protecting the projected lifespan of the mine.

California, Nevada and Alaska are the only states with laws that provide overtime compensation for time worked in excess of 8 hours per day. However, California allows for a 12-hour shift and Nevada allows for a 10-hour shift if they are mutually agreed upon between employees and the employer.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 169

Revision Date: \_\_\_\_\_  
 Title: Voluntary Flex Time  
for Mines  
 Sponsor: Senate L&C  
 Requestor: Senate L&C

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: Wage & Hour

COMPONENT SERIAL NO. 345

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) Impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

This bill relates to the payment of overtime for work performed at certain mines when the employee and the employer have signed and filed with this department a voluntary flexible work plan. The department anticipates no fiscal impact from this legislation.

Prepared by: Al Dwyer, Director *al dwyer* Phone: 465-4855  
 Division: Labor Standards & Safety Date: 4/14/97

Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*  
 Agency: Department of Labor Date: 4/14/97

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Sec. 23.10.060. Payment for overtime.

(a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

(c) This section is considered included in all contracts of employment.

(d) This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as "regular course of business" is defined by regulations of the commissioner;

(2) an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(3) an employee of an employer engaged in small mining operations where not more than 12 employees are employed if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(4) an employee engaged in agriculture;

(5) an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(6) a switchboard operator employed in a public telephone exchange that has fewer than 750 stations;

(7) an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed \$500 a month;

(8) an employee employed as a seaman;

(9) an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(10) an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(11) casual employees as may be liberally defined by regulations of the commissioner;

(12) an employee of a hospital whose employment includes the provision of medical services;

(13) work performed by an employee under a flexible work hour plan if the plan is included as part of a collective bargaining agreement;

(14) work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan that states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

(15) an individual employed as a line haul truck driver for a trip that exceeds 100 road miles one way if the compensation system under which the truck driver is paid includes overtime pay for work in excess of 40 hours a week or for more than eight hours a day and the compensation system requires a rate of pay comparable to the rate of pay required by this section;

(16) an individual employed as a community health aide by a local or regional health organization as those terms are defined in AS 18.28.100.

**VOLUNTARY FLEXIBLE WORK HOUR PLANS.**

(a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(18) must be filed by the employer with a wage and hour administration office of the department. The request must be in writing, and must include

(1) a statement that the employer and employee participating in the flexible work hour plan understand that work performed in excess of 10 hours in a day or in excess of 40 hours in a week must be compensated at the rate of one and one-half times the regular rate of pay;

(2) a description of the flexible work hour plan;

(3) a statement that the flexible work hour plan has not been made a condition of employment and that participation in the plan is voluntary; and

(4) the original signature of the employer or authorized representative.

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(18). An approved plan constitutes the certificate required in AS 23.10.060(18)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for the denial.

(c) An appeal of a notice of denial must be filed with the commissioner within 20 days after receipt of the notice of denial. The appeal must be in writing, and must set out the specific reasons upon which the appeal is based. The commissioner will grant or reject the appeal within 10 workdays after receipt of the appeal. The commissioner's decision is final.

(d) As part of the records required under AS 23.10.100, an employer must maintain a signed statement of voluntary participation of each employee participating in an approved voluntary flexible work hour plan.

(e) An employee may choose to participate in an approved voluntary flexible work hour plan at initial employment or at any other time during employment. Once an employee has chosen to participate in an approved voluntary flexible work hour plan, that employee is bound to do so, and may opt out of participation in the voluntary flexible work hour plan only from November 1 through December 31 each calendar year. Termination of an employee, regardless of the cause of termination, voids that employee's participation. An employee who is rehired by the employer must again choose to participate in the voluntary flexible work hour plan in order to be included in the approved plan. Nothing in this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time.



Greater Fairbanks

**Chamber**

of Commerce

250 Cushman Street, Suite 2D  
Fairbanks, Alaska 99701-4665

(907) 452-1105  
FAX: (907) 456-6968

*Pall Resutte*

ADVISORY TO THE BOARD OF DIRECTORS

4/10/97

- 1) I agree that the Greater Fairbanks Chamber of Commerce should be involved in the debate about House Bill 68, now in committee in the state legislature. The bill would add a 17th exception to state labor law which would allow the workers in Alaska's surface metal mines to work 12 hour shifts without accruing overtime pay until after working a 40 hour week.

I agree 154

I disagree 47

- 2) The chamber's Board of Directors considered a resolution that supported the passage of House Bill 68. On March 24th, this resolution failed to pass by a vote of 11 to 7 of the members present.

The Greater Fairbanks Chamber of Commerce should support this resolution 127

The Greater Fairbanks Chamber of Commerce should not support this resolution 66

- 3) On March 31st, the chamber's Board of Directors considered a resolution which was a refined version of the resolution considered on March 24th. The refinement added the provision that the chamber encourage the Alaska State Legislature, the governor and his labor commissioner to take a comprehensive review of state labor law in order to develop a law that provides workers and employers the freedom to develop the schedule to their choice, whether as an organized labor group or not. It further requests the Commissioner of Labor to promulgate a regulation which would provide a consistent definition of "flexible work hour plan," currently in state law.

The Greater Fairbanks Chamber of Commerce should support this resolution 157

The Greater Fairbanks Chamber of Commerce should not support this resolution 39

Post-It® Fax Note	7671	Date	4-10-97	# of pages	1
To	Board of Directors	From	Bill Robinson		
Co/Dept		Co.	GFC		
Phone #		Phone #	452-1105		
Fax #		Fax #	452-1105		



# Daily News - Miner

"Independent in All Things... Neutral in None"  
Established in 1903

CHARLES L. GRAY  
Publisher Emeritus

PAUL J. MASSEY  
Publisher

KELLY BOSTIAN  
Managing Editor

SAM BISHOP  
Editorial Page Editor

## A win for Fort Knox employees

Board meetings of the Chamber of Commerce don't often draw a crowd, but the room at the Princess Hotel was full on Monday. Waiters pulled in an extra table to accommodate everyone. They came to listen to and participate in the debate over allowing year-round surface metal mines in Alaska to ask employees to work 12 hours without any overtime pay. Fort Knox mine employees, the mine manager, several representatives of organized labor, the borough mayor, local businessmen—they all had a chance to speak and they did so respectfully.

The employees of the mine, though, won the day. They were eloquent, sincere and direct, and they had solid arguments on every point.

The employees want to move to 12-hour shifts so they have more time with their families. They want the Legislature to modify the state labor law so the mine, which is currently losing money, doesn't have to pay them overtime in those longer shifts and therefore will agree to the change. Employees would spend less time commuting, relative to the hours they work, and they would have more days off. Right now, they work eight-hour shifts, with a few hours overtime here and there, and the shifts rotate once a week from days to graveyards to nights.

One union representative warned employees not to expect longer, less-frequent shifts to prevent family troubles. Families are best served by daily contact only made possible by an eight-hour shift, he said.

Perhaps, but the facts are that employees would have more time and larger blocks of time with their families on the proposed shifts. It's hard to see anything but good for families out of that. And why not let the families decide what is right for them?

Some, including this newspaper, have suggested that the employees might avoid a legislative fight with unions by just taking a base pay cut so the mine can go to 12-hour shifts and pay overtime after eight hours without increasing its payroll costs. Employees at Monday's luncheon said that their 401K plan contributions and any workers compensation payments are by law calculated on their base wages, so they would lose substantial benefits under such a scheme. Point well taken.

Finally, Alaska's current overtime law is the strictest in the nation. In fact, it still will be if HB 68, the bill in question, passes. Under the bill's provisions, any and every employee at Fort Knox could move back to an eight-hour shift if he or she desired, and the company would be required to accommodate them. Sure, some might say, and watch the troublemaker get railroaded. That's a possibility, but we can be sure the unions and state labor department will be watching closely.

The bottom line is that, so long as the federal guarantee of overtime pay after a 40-hour week exists, companies such as Amax, the Fort Knox owner, will have a strong disincentive to abuse or exploit their workers. Within the 40-hour standard, we ought to give employees and employers as much flexibility as possible to work out the best schedule for all without penalty. The Legislature should pass HB 68 and the governor should sign it.

Fairbanks Daily News - Miner

March 20 1997

Distributed by Rep. Gene Therriault

Minimum Wage and Overtime Premium Pay Standards Applicable to  
 Nonsupervisory NONFARM Private Sector Employment  
 Under State and Federal Laws  
 January 2, 1997

State or other jurisdiction*	Future effective date	Basic mini- mum rate (per hour)	Premium pay after designated hours <u>1/</u>	
			Daily	Weekly
<b>FEDERAL:</b>				
Fair Labor Standards Act (FLSA)	9/1/97	\$4.75 5.15		40
<b>STATE:</b>				
Alabama		...		...
Alaska	9/1/97	5.25 5.65	8 <u>2/</u>	40 <u>2/</u>
Arizona		...		...
Arkansas (Applicable to em- ployers of 4 or more)		4.25		40
California	3/1/97 9/1/97 3/1/98	4.75 5.00 5.15 5.75	8 <u>3/</u> over 12 (double time)	40 <u>3/</u> 7th day <u>3/</u> First 8 (time and half) Over 8 (double time)
Colorado		4.75	12	40
Connecticut	9/1/97	4.77 5.18		40 <u>4/</u>
Delaware	9/1/97	5.00 5.15		...
District of Columbia	9/1/97	5.75 6.15		40
Florida		...		...

See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to  
 Nonsupervisory NONFARM Private Sector Employment  
 Under State and Federal Laws--Continued  
 January 2, 1997

State or other jurisdiction*	Future effective date	Basic mini- mum rate (per hour)	Premium pay after designated hours <u>1/</u>	
			Daily	Weekly
Georgia (Applicable to employers of 6 or more)		\$3.25		...
Guam		4.75 5.15		40
	9/1/97			
Hawaii <u>5/</u>		5.25		40
Idaho		4.25		40
Illinois (Applicable to employers of 4 or more)		4.75 5.15		40
	9/1/97			
Indiana (Applicable to employers of 2 or more)		3.35		...
Iowa		4.75 5.15		...
	9/1/97			
Kansas		2.65		46
Kentucky		4.25		40 7th day
			<u>6/</u>	
Louisiana		...		...
Maine		4.75 5.15		40
	9/1/97			
Maryland		4.75 5.15		40 <u>7/</u>
	9/1/97			
Baltimore City Ordinance (Applicable to employers of 2 or more)		4.25		40
Massachusetts		5.25		40

See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to  
Nonsupervisory NONFARM Private Sector Employment  
Under State and Federal Laws--Continued  
January 2, 1997

State or other jurisdiction*	Future effective date	Basic mini- mum rate (per hour)	Premium pay after designated hours <u>1/</u>	
			Daily	Weekly
Michigan (Applicable to employers of 2 or more)		\$3.35		40
Minnesota				48
Large employer (enterprise with annual receipts of \$362,500 or more)		4.25		
Small employer (enterprise with annual receipts of less than \$362,500)		4.00		
Mississippi		...		...
Missouri <u>8/</u>	9/1/97	4.75 5.15		40 <u>8/</u>
Montana		4.75		40
<u>except</u> businesses with gross annual sales of \$110,000 or less	9/1/97	5.15 4.00		..
Nebraska (Applicable to em- ployers of 4 or more)		4.25		...
Nevada	9/1/97	4.75 5.15	8 <u>9/</u>	40 <u>9/</u>
New Hampshire	9/1/97	4.75 5.15		40
New Jersey		5.05		40
New Mexico		4.25		40
New York		4.25		40
North Carolina		4.25		40 <u>10/</u>
North Dakota		4.75		40

See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to  
Nonsupervisory NONFARM Private Sector Employment  
Under State and Federal Laws--Continued  
January 2, 1997

State or other jurisdiction*	Future effective date	Basic mini- mum rate (per hour)	Premium pay after designated hours <u>1/</u>	
			Daily	Weekly
Ohio		\$4.25	—	40
<u>except</u> , employers with gross annual sales from \$150,000 to \$500,000		3.35		
and <u>except</u> employers with gross annual sales under \$150,000		2.80		
Oklahoma				...
Employers of 10 or more full-time employees at any one location and employers with annual gross sales over \$100,000 irrespective of number of full-time employees	9/1/97	4.75 5.15		
All other employers		2.00		
Oregon		5.50	<u>11/</u>	40
	1/1/98	6.00		
	1/1/99	6.50		
Pennsylvania		4.75		40
	9/1/97	5.15		
Puerto Rico		1.20 to 4.75 <u>12/</u>	8, and on stat- utory rest day (double time)	40 (double time)
Rhode Island		5.15	<u>13/</u>	40
South Carolina		...		...
South Dakota		4.25		...
Tennessee		...		...

See footnotes at end of table

Minimum Wage and Overtime Premium Pay Standards Applicable to  
 Nonsupervisory NONFARM Private Sector Employment  
 Under State and Federal Laws--Continued  
 January 2, 1997

State or other jurisdiction*	Future effective date	Basic mini- mum rate (per hour)	Premium pay after designated hours <u>1/</u>	
			Daily	Weekly
Texas		\$3.35		...
Utah		4.75		...
	9/1/97	5.15		...
Vermont		5.00		40 <u>14/</u>
(Applicable to employers of 2 or more)	9/1/97	5.15		
Virginia		4.75		...
(Applicable to employers of 4 or more)	9/1/97	5.15		
Virgin Islands		4.65 <u>15/</u>	8	40
<u>except</u> businesses with gross annual receipts of less than \$150,000		4.30		On 6th and 7th con- secutive days
Washington		4.90		40 <u>16/</u>
West Virginia		4.25		40
(Applicable to employers of 6 or more at one location)				
Wisconsin		4.75		40
Wyoming		1.60		...

See footnotes on next page

FOOTNOTES

\*In 10 States, the State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act (Arkansas, Georgia, Indiana, Kansas, Missouri, Oklahoma, Texas, Utah, Virginia and West Virginia). Four other States (Hawaii, Michigan, Montana, and North Carolina), have a contingent exclusion i.e. Federally-covered employment is excluded except when the State standard is higher than the Federal.

1/ The overtime premium rate is one and one-half times the employee's regular rate, unless otherwise specified.

2/ Alaska: Under a voluntary flexible work hour plan, with a written, signed employee/employer agreement filed with and approved by the Department of Labor, a 10-hour day, 40-hour week may be instituted with premium pay after 10 hours a day instead of after 8 hours.

The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than 4 employees.

3/ California: Under very specific rules, a 10 or 12-hour day (varying by wage order) may be instituted without premium pay after 8 hours, but overtime pay at applicable premium rates is required after 40 hours a week and for hours or days in excess of scheduled hours or days. For any such alternative workweek a prior voluntary written agreement is required, ratified by a two-thirds vote of affected employees in a secret ballot election, and signed by the employer.

Premium pay required: after 56 hours a week in ski establishments; after 54 hours a week for organized camp counselors and certain other care-provider occupations; and after 14 hours a day in motion picture industry under specified circumstances.

Premium pay on 7th day not required for employee whose total weekly work-hours do not exceed 30 and whose total hours in any one work day thereof do not exceed 6.

4/ Connecticut: In restaurants and hotel restaurants, for the 7th consecutive day of work, premium pay is required at time and one-half the minimum rate.

5/ Hawaii: An employee earning a guaranteed monthly compensation of \$1,250 or more is exempt from the law.

6/ Kentucky: The 7th day overtime law, which is separate from the minimum wage law, differs in coverage from that in the minimum wage law and requires premium pay to those employees who have worked 40 hours on the six previous days.

7/ Maryland: Premium pay required after 48 hours in bowling alleys and for residential employees of institutions (other than a hospital) primarily engaged in care of sick, aged, or mentally ill.

8/ Missouri: In addition to the exemption for federally-covered employment, the law exempts, among others, employees of a retail or service business with gross annual sales or business done of less than \$500,000. Premium pay required after 52 hours in seasonal amusement or recreation business.

9/ Nevada: By mutual employer/employee agreement, a scheduled 10-hour day for 4 days a week may be worked without premium pay after 8 hours. The premium overtime pay requirement on either a daily or weekly basis is not applicable to employees who are compensated at not less than one and one-half times the minimum rate or to employees of enterprises having a gross annual sales volume of less than \$250,000.

10/ North Carolina: Premium pay is required after 45 hours a week in seasonal amusements or recreational establishments.

11/ Oregon: Premium pay required after 10 hours a day in nonfarm canneries, driers, or packing plants and in mills, factories or manufacturing establishments (excluding sawmills, planing mills, shingle mills, and logging camps).

12/ Puerto Rico: Separate minimum rates are in effect for almost 350 nonfarm occupations by industry Mandatory Decrees. A few rates above the listed rate include a \$6.50 minimum rate in effect for cigarette manufacturing employees, and a \$5 rate for occupations related to telephone and other related services of the Commonwealth.

13/ Rhode Island: Time and one-half premium pay for work on Sundays and holidays in retail and certain other businesses is required under two laws that are separate from the minimum wage law. These laws require a license or permit for Sunday/holiday operation that would otherwise be unlawful.

14/ Vermont: The State overtime pay provision has very limited application because it exempts numerous types of establishments, such as retail and service; seasonal amusement/recreational; hotels, motels, restaurants; and transportation employees to whom the Federal (FLSA) overtime provision does not apply.

15/ Virgin Islands: Implementation of an indexed rate, which was to have started January 1, 1991, has been delayed. (The law provides that on January 1, 1991, and each January 1 thereafter, the minimum rate is to equal 50 percent of the average private, nonsupervisory, nonagricultural hourly wage as determined by the Virgin Islands Wage Board for the previous November, rounded to the nearest multiple of 5 cents.)

16/ Washington: Premium pay not applicable to employees who request compensating time off in lieu of premium pay.

Note: Laws in 19 jurisdictions link changes in the State rate to changes in the highest minimum wage under the Federal Fair Labor Standards Act (FLSA). Linkage provisions are of several types:

- 1) Laws in 10 jurisdictions do not contain current dollar minimums. Instead, these 10 statutes adopt the FLSA rate by reference, or mandate or authorize matching the FLSA rate by administrative action, thereby conforming to Federal changes on a continuing basis. These 10 jurisdictions are Guam, Illinois, Maryland, Missouri, Montana (mandates administrative action), Nevada, (mandates administrative action), Oklahoma, Pennsylvania, Utah (authorizes, but does not mandate, administrative action) and Virginia.
- 2) Laws in Delaware, Iowa, Maine, New Hampshire and Vermont have their own rates, but replace the State rate with the FLSA minimum if it is higher than the State minimum.
- 3) In Alaska, Connecticut, and the District of Columbia, the rates rise above the Federal rate by a fixed differential on a continuing basis. In Alaska, the rate is automatically set at 50 cents above the FLSA rate. In Connecticut, the State rate automatically increases to 1/2 of 1 percent above the FLSA rate if the Federal minimum equals or becomes higher than the State minimum. In the District of Columbia, the rate is set at \$1. above the FLSA rate.
- 4) Another type of linkage is in California. The California rate, now \$4.75, matches any higher Federal rate on a continuing basis. In California, the Industrial Welfare Commission sets rates administratively by issuance of industry wage orders. If the Federal rate is scheduled to exceed the state rate, the Commission is directed to adopt, in a public meeting, an order matching the higher rate, without the necessity of convening a wage board.

Prepared by:  
Division of External Affairs  
Wage and Hour Division, Employment Standards Administration  
U.S. Department of Labor  
December 12, 1996

FOOTNOTES

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Prepared by:  
Division of External Affairs  
Wage and Hour Division, Employment Standards Administration  
U.S. Department of Labor  
December 12, 1996

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ALL OTHERS ADMITTED IN ALASKA

April 17, 1997

VIA HAND DELIVERY

Ms. Annette Kreitzer  
Staff Member  
Senate Labor & Commerce Committee  
Alaska State Capitol, Room 113  
Juneau, AK 99801

Re: Testimony by Tom Irwin on SB 169 -- Overtime Exemption Legislation for Surface Mining Operations

Dear Ms. Kreitzer:

Please find enclosed 10 copies of the testimony given by Tom Irwin of Fairbanks Gold on SB 169, the overtime exemption legislation for surface mining operations. Mr. Irwin presented this testimony at the Tuesday, April 15, 1997 hearing before the Senate Labor and Commerce Committee. Please make the written testimony part of the formal record at the hearing scheduled for 1:30 today, and give each Committee Member a copy of the testimony.

Thank you for your assistance regarding the above. If you have any questions, please do not hesitate to call.

Yours very truly,

  
James F. Clark

enclosures

cc: Reed Stoops

TESTIMONY OF TOM IRWIN  
BEFORE THE SENATE LABOR AND COMMERCE COMMITTEE  
REGARDING S.B. 169  
FOR FAIRBANKS GOLD

Good afternoon. My name is Tom Irwin. I am the Operations Manager at Fort Knox. I have worked at Fairbanks Gold since 1992.

The mine currently operates on a 24-hour schedule using three 8-hour shifts. Our employees have requested that this schedule be changed to a flexible work plan using 12 hour shifts. This request for change was brought to management's attention in staff meetings, in random encounters with employees on the property and in crew meetings. In order to assess the extent of interest, we sent petitions to the crews, asking those who wanted the change to show their support by signing. Indeed, more than 98% of the employees signed petitions asking for this. With this overwhelming majority showing their support, we have committed to them to carry the request forward to the Legislature. This is why I am here today.

Our first responsibility to our employees is safety. Our next responsibility to our employees is to protect the long-term economic viability of the mine. This is a responsibility to both the company's shareholders, who need to know their investment is properly managed, and to the employees, who need to know that management is making every effort to protect the security of their jobs. Long term economic viability will be particularly difficult to achieve at Fort Knox which is an economically-challenged project. Cost overruns in construction and development have pushed the initial capital cost at Fort Knox to nearly \$375 million. Interest payments on the project loans will certainly exceed \$20 million per year. In addition, Amax Gold spent more than \$180 on acquisition and pre-development costs at the property, and there will be more than \$30 million dollars in capital needed to sustain operations through the remaining mine life.

Without a change in the law to allow a flexible work-hour plan, in order to run 12-hour shifts, the mine would have to pay 1 hour at overtime rates for every 2 hours paid at straight time, adding approximately \$1.5 million to the annual pay roll, or more than \$18 million over the life of the mine.

The mine simply cannot afford this extra cost. If, however, the law were changed to allow us to use a voluntary flexible work plan, the major benefits sought by the

employees would be met, and at the same time, the cost structure at the mine will be prudently maintained.

The benefits to the employees are very obvious. In a four week period, each employee is scheduled to work 168 hours. On an 8-hour schedule, this yields 21 days on the job and 7 days off. This would be true on any 8-hour schedule we could run. By going to a 12-hour schedule, each employee still would work 168 hours, but would do so in only 14 days. The number of days off work would double from 7 to 14. Over a year's time, each employee would have an additional 91 days off work.

At the same time, each employee would realize an increase in pay. As stated, on the 8-hour schedule, each employee works 168 hours every four weeks. This consists of 160 hours of straight time pay and 8 hours of overtime pay. With a 12-hour schedule under this proposed exemption, each employee still worked 168 hours. The pay for the employees would be based on 152 hours of straight time pay and 16 hours of overtime. This small re-classification would result in a 2.3% increase in pay for employees. This \$250,000 per year increase for the employees could be recovered through improved efficiencies.

Overall, the employees would have twice the number of days off work and a wage increase, and the mine could operated in a more productive and safe manner.

Safety is a natural concern when contemplating 12-hour shifts. First, please realize that 12-hour shifts are already allowed in the state, and in fact are currently run at several operations. Secondly, as was reviewed last year before the legislature in the Greens Creek bill, studies have shown that there is no impact on safety from working extended shifts. Additional research is summarized by Dr. Richard Coleman, author of The 24 Hour Business. This book discusses the economic, health and safety issues related to shift work, and references numerous studies in a variety of industries including mining, and in both union and non-union operations. Dr. Coleman concludes based on laboratory, field and accident analysis studies on extended shifts, there are no conclusive impacts, positive or negative, inherent in any particular shift length. The overriding factor is whether you are working a schedule that fits the desire of employees. As Dr. Coleman points out:

“The impact of happy shift workers coming to work every day can be so dramatic that they eclipse the cost savings and health and safety benefits.”

Unions have also begun to recognize the benefits to employees of the extended shifts. Quoting the president of a union local:

“I think you have to go back a little bit in history here. Some of our folks were on probably the best 8-hour schedule you can be on, from my perspective. I worked shift work for twelve years, and so I thought they rotated the right way and had the right number of days off - as best you could. From the perspective of the union in general, it wasn't until the last five years that our international would even allow us to consider alternative schedules. Their basis was that we had fought for 8-hour days for years, so why should we go back to 10s or 12s? The only way that we were able to work anything but an 8-hour schedule was to do it through a memorandum of agreement on the side, and you didn't let the international even know you had done it. The international finally changed leadership, and the new leadership said, 'the issue isn't that we are working 84 or 60 hours a week but that we are still working 40. It's about time we started listening to our membership.' So at that point we started openly considering the 12-hour schedules. It's more what the folks want to do.”

This exemption would not affect the employment level at the mine. The mine and mill would continue to operate year-round, 7 days per week, 24 hours a day. Each employee would still only be scheduled to work 168 hours every four weeks. The only change would be in the number of days an employee would need to work.

The issue of local hire is understandably a major concern for many people in the state. The change we are proposing is not a schedule that is designed for employees to commute from out-of-state. Also, keep in mind that of Fort Knox's 248 employees, 225 were hired from within Alaska. Of the remaining 23, 17 were transfers from within Cyprus-Amax. Only 6 employees, less than 3% of the total workforce, were hired from outside Alaska and Cyprus-Amax. All 248 employees are now Alaska residents.

We have tried to fashion this proposed change in a manner that serves the Fort Knox employees while addressing the concerns of others. First, the bill has been amended to be limited strictly to surface mining. This change was made to accommodate concerns expressed in our initial meeting with the Commissioner of Labor. Other industries, such as timber and seafood processing, already have exemptions to the overtime statutes. The exemptions in these industries are not based on the consent of the employees, as is the proposed legislation before you.

Secondly, the proposal would be identical in function to the currently allowed overtime exemption for flexible work schedules that utilize 10-hour shifts. A key part of the current 10-hour shift provision is that it is only done with the consent of the employees. Similarly, this proposed legislation also specifies that the overtime exemption only can occur with the consent of employees. The other Fort Knox employees here today can speak for themselves regarding consent.

The concern has been expressed that, hypothetically, employees would be coerced into signing the voluntary consent agreements. If the Commissioner of Labor felt there was a possibility of coercion, the flexible work schedule can be denied. The Commissioner has been invited to visit the operations and speak with employees to satisfy himself of their desires on this subject.

There have been various proposals for achieving the flexible work plan our employees want without changing the law. To begin with, we do not accept the proposition that Fort Knox should have to find a way to obtain the shift change our employees want without changing the law. Indeed, Alaska is the only state in which our employees are unable to affect a flexible work plan without changing the law. Alaska should align

itself with the other 49 states.<sup>1</sup> Neither our employees or other non-union employees should have to operate under a bad law.

In any event, none of the proposals for achieving the flexible work plan our employees want will work except for a change in the law. The proposal that we reduce the average wage of our employees by \$2.17 so that they would receive the same total pay at a reduced hourly wage under the current daily overtime law will not work. There are 13 areas in which employee benefits would be reduced by this proposal. It is not fair to our employees and we will not agree to it.

---

<sup>1</sup> California, Nevada and Alaska are the three remaining states with the 8 hour standard and overtime compensation laws enforcing the standard. *However*, both California and Nevada have established exceptions to the standard. California law provides that shifts in excess of 8 hours may be worked by employees if such shifts are provided for in a collective bargaining agreement. (CAL. LAB. CODE § 750.5(a) and § 751.8.) In addition to this exemption, California recently passed a law which allows employers and employees to establish a regular work day of up to 12 hours without overtime if the proposed daily work hour schedule is approved by a 2/3 majority of the employees. (CAL. LAB. CODE § 750.5(b) and § 751.8.) In application, this law allows a California employer, with the agreement of its employees, to establish three 12-hour work days in a 40 hour work week without the payment of overtime.

Nevada also has established specific exemptions to its 8 hour standard. Like Alaska, Nevada exempts work plans entered into between an employer and its employees which allow a work day of up to 10 hours per day without application of Nevada's overtime compensation provisions. (NEV. REV. STAT. § 608.018(1)(b).) Furthermore, Nevada law provides that employees who are not subject to minimum wage requirements or who earn at least 1½ times the rate of minimum wage are not paid overtime if they work in excess of 8 hours per day. Employee approvals for these work schedules are not required. (NEV. REV. STAT. § 608.018(2)(a)-(b).) There are at least eight surface mining operations in Nevada operating 12 hour shifts pursuant to this exemption (both union and non-union).

Thus, Alaska is the only state in the union in which Fairbanks Gold is prevented by law from pursuing the 12 hour work day schedule it has worked out with its employees without the payment of overtime above the 8 hour standard, unless an employee works in excess of 40 hours per week.

It was proposed that we adopt a flexible work plan under existing law to get our employees to 10 hours at straight time and pay overtime for the remaining two hours. The Commissioner of Labor has now recognized that this is illegal.

Finally, it was suggested that either the company or the employees form a collective bargaining unit of their own in order to take advantage of the exemption which labor unions enjoy which allows them to do what our employees are trying to do without a union. Attached is an opinion from labor counsel showing that this would violate the National Labor Relations Act and borders on fraud.

It seems particularly unfair and discriminatory to allow an exemption to the 8 hour rule (AS 63.10.060(d)(14)) based on the condition that employees belong to a certain group. Our workers should have the same rights as any other workers even though they do not belong to that group.

In summary, this legislation would:

1. be a significant personal benefit to the Fort Knox employees and their families;
2. be a boost to protecting the economic viability of the mine;
3. be a neutral-to-positive impact on safety;
4. in no way reduce the employment at the mine;
5. have no adverse impact on Fort Knox's excellent local hire record;
6. have no impact on any industry other than mining;
7. allow 24-hour operations the same flexibility in work hours currently available to 10-hour operations;
8. only be applied at operations with the consent of the employees; and
9. maintain the Commissioner of Labor's authority over this and any other flexible work plan.

SCHACHTER, KRISTOFF, ORENSTEIN & BERKOWITZ LLP

ALAN R. BERKOWITZ

ATTORNEYS AT LAW

505 MONTGOMERY STREET, FOURTEENTH FLOOR

SAN FRANCISCO, CALIFORNIA 94111-2585

TELEPHONE (415) 391-3333 • FAX (415) 392-6589

SACRAMENTO OFFICE

(916) 442-3333

April 8, 1997

**By Facsimile and U.S. Mail**

Mr. Steve Lang  
General Manager  
Fairbanks Gold  
P.O. Box 73726  
Fairbanks, AK 99701

Re: Alaska Wage and Hour Act Amendment

Dear Mr. Lang:

You asked us for an opinion about whether it would be permissible for an employer to enter into a collective bargaining agreement with its currently unrepresented employees for the sole purpose of permitting the company to adopt a 12 hour workday pursuant to the Alaska Wage and Hour Act. For the reasons set forth below, the legal and practical problems associated with such an arrangement make it a completely unworkable proposition.

**BACKGROUND**

Under Alaska law, employees are generally entitled to overtime pay after working at least eight hours per day. Current law permits employers to adopt flexible work arrangements providing for up to 10 hours of work per day without overtime as long as the employees have agreed to it in writing and the Alaska Department of Labor has approved the plan.

A current bill pending before the Alaska State Legislature would permit the adoption of up to a 12 hour workday without overtime providing employees agree to it in writing and it is approved by the Department. Opponents of the bill have suggested that the exception permitting such a work arrangement pursuant to a collective bargaining agreement provides employers with all the flexibility they may need because they could simply "collectively bargain" with employees on the single issue of the alternate work week and implement it pursuant to an agreement. We foresee numerous legal and practical problems associated with such a scheme.

## ANALYSIS

### 1. Employer Dominated Unions are Unlawful.

Opponents of the bill suggest that any employer who wished to adopt an alternative work week arrangement could simply go to its employees and offer to bargain with them collectively for an agreement to that effect. However, were an employer to do so, it would almost certainly violate the National Labor Relations Act's (NLRA)<sup>1</sup> prohibition upon an employer interfering with the formation of a union.

Indeed, section 8(a)(2) of the NLRA makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it..." A "labor organization" is "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning ... hours of employment..."<sup>2</sup> A group of employees may constitute a "labor organization" "even if it lacks a formal structure, has no elected officers, constitution or bylaws, does not meet regularly, and does not require the payment of initiation fees or dues."<sup>3</sup> Further, an employer engages in "dealing with" employees though such dealings do not rise to the level of "bargaining."<sup>4</sup>

Here, for an employer to reach a collective bargaining agreement for an alternate work schedule, it is virtually certain that the employees must deal with the employer as a group amounting to a labor organization. While not all dealings between an employer and an employee labor organization violate 8(a)(2), "domination has been established by virtue of the employer's specific acts of creating the organization itself and determining its structure and function. ..." As the Board said in its *Electromation* decision, "[W]hen the impetus behind the formation of an organization of employees emanates from an employer and the organization has no effective existence independent of the employer's active involvement, a finding of domination is appropriate if the purpose of the organization is to deal with the employer concerning conditions of employment."<sup>5</sup>

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<sup>1</sup> 29 U.S.C. §§ 151 *et seq.*

<sup>2</sup> NLRA § 2(5), 29 U.S.C. § 152(5).

<sup>3</sup> *Electromation, Inc.*, 309 NLRB 990, 994 (1992) (action committees initiated by the employer for purposes of improving working conditions were "labor organizations" and unlawful).

<sup>4</sup> *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959) (employee committee handling grievances was a "labor organization").

<sup>5</sup> 309 NLRB at 995 - 996.

Mr. Steve Lang

April 8, 1997

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It is difficult to conceive how an employer who wanted to negotiate an alternative work arrangement with a group of unrepresented employees could do so without doing things that would amount to employer "domination" under the law. Indeed, if unrepresented, the employees are unlikely to have had any experience in setting up a labor organization and would likely rely upon the employer for organizing, creating and determining the group's function. This is precisely the type of activity prohibited by Section 8(a)(2).

Further, even assuming that some employees were to form a committee without the employer's help in order to collectively negotiate an alternate work schedule, the employer risks violating §§ 8(a)(1) and (2) by giving the employee committee improper recognition. Extending voluntary recognition to a labor organization authorized to represent only a minority of employees, even though done in the good faith belief that the organization had the consent of a majority of employees, constitutes employer interference with the organizational rights of employees in violation of 8(a)(1) and unlawful support of a labor organization in violation of 8(a)(2) of the NLRA.<sup>6</sup> Accordingly, recognizing and collectively dealing with a minority employee committee in order to reach a collective bargaining agreement would be unlawful.

## 2. A One Issue Union Arrangement Could Jeopardize Important Employee Rights.

Limiting the "union" to a one issue agenda could actually work to deprive employees of their full representation rights under federal law and open whatever bargaining entity is created to a host of potential liabilities. First, under the Board's contract bar doctrine, the existence of a collective bargaining agreement prevents any other labor organization from seeking to represent the employees covered by the agreement throughout the duration of the agreement. Thus, were the employees to form their own union for the sole purpose of negotiating the alternate work week arrangement, it would conceivably prevent any other labor organization from representing those employees while that contract was in effect, even if the employees desired other representation.

Second, it is arguably unlawful for a bargaining representative to agree to limit its scope of representation to the narrow issue here. When a union is chosen as the employees' bargaining representative, the NLRA deems it to be the "exclusive" representative. With that exclusivity comes the obligation to treat all of the employees represented fairly as well as a variety of other obligations.<sup>7</sup> Further, the law requires both the employer and union to "bargain collectively." The statute defines that as the "mutual obligation ... to meet ... and confer in good faith with

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<sup>6</sup> *Garment Workers v. NLRB*, 366 U.S. 731, 732, 6 L.Ed.2d 762 (1961).

<sup>7</sup> Section 8(b) outlines a variety of union obligations including the duty to bargain in good faith, a prohibition against interfering with any employee rights under the NLRA and the obligation not to discriminate against employees on the basis of their exercise of rights under the NLRA.

Mr. Steve Lang

April 8, 1997

Page 4

respect to wages, hours, and other terms and conditions of employment..."<sup>8</sup> Thus, a committee of employees formed for the sole purpose of the alternate work week issue that refused other employees' request to negotiate other conditions of employment would conceivably be in violation of their statutory duty of fair representation. Again, given that the employees are unlikely to be skilled at negotiations, the possibility that employees' representational rights might be compromised is high.


Finally, the creation of a union for the sole purpose of negotiating an arrangement to avoid the daily overtime limitations smacks of fraud - - a deft sleight of hand to get around the Wage Hour Act. While we have not researched the legislative history behind the exemption in the Wage Hour Act for collective bargaining agreements, we are certain it is rooted in the notion that a duly elected labor representative should be given the latitude to negotiate over any and all terms of conditions of employment for those employees it represents. Here, where the labor organization would be formed at the employer's request for the express single purpose of satisfying the overtime exemption, these same considerations do not exist.

\* \* \*

In sum, while it is theoretically possible to form a union for the sole purpose of negotiating an alternate work arrangement, in practical terms it is completely unworkable. The possibility that such an arrangement would run afoul of the NLRA and expose both employer and employee representative to potential liability while at the same time depriving employees of their full representational rights leads us to the opinion that such a scheme is untenable.

We trust the foregoing analysis is helpful to you. Please let us know whether we can be of any further assistance.

Very truly yours,

  
Alan R. Berkowitz

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<sup>8</sup> NLRA § 8(d).



## Shields Rental Center

P.O. BOX 10707 310 BIRCH HILL ROAD FAIRBANKS, ALASKA 99710  
(907) 457-3226 FAX (907) 457-4646

DATE: 4-16-97

NUMBER OF PAGES: 1

TO: Gene Theriault FAX: 1907-465-3884

FROM: The Gang at Shields Rental

REFERENCE: \_\_\_\_\_

MESSAGE: To Gene

Please hang in there on the Mide bill, I know Loren Lemman is hearing from a lot more people on the union side, than from our side, so I thought I should balance that out a little as our side is not as well organized as theirs is

After the Chamber vote appeared in the News Miner I was kind with Rage I waited one day to cool down & then went to the Chamber to discuss the vote with Bill Robertson I am the guy who suggested he should get all the Chamber members as I could not bring myself to believe that they would be in favor of backing the Union side & of course that is how it turned out. Please pass along our sentiments to Loren Lemman's Committee

If at all possible privatize the DMV.

THANK

- (1) Mike Shields P.O. Box 10707 Fairbanks AK 99710
- (2) Joel Woody 2437 Old Rich Hwy. N. Pole, AK 99705
- (3) William Ahsehn 1359 Warner Rd' N. Pole AK 99705
- (4) Frank Johnson 281 Goldclair Ave Fairbanks 99712

Please contact immediately if all pages are not received at (907) 457-3226.

**Current Schedule**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday		Hours	Dollars
Week 1	Days	Days	Days	Days	Days	Off	Off	Straight Time	40	\$700
								Overtime	0	\$0
Week 2	Off	Off	Swing	Swing	Swing	Swing	Swing	Straight Time	40	\$700
								Overtime	0	\$0
Week 3	Swing	Swing	Off	Night	Night	Night	Night	Straight Time	40	\$700
								Overtime	8	\$210
Week 4	Night	Night	Night	Off	Off	Days	Days	Straight Time	40	\$700
								Overtime	0	\$0
								Straight Time	160	\$2,800
								Overtime	8	\$210
								Total	168	\$3,010

**Proposed**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday		Hours	Dollars
Week 1	Days	Days	Days	Days	Off	Off	Off	Straight Time	40	\$700
								Overtime	8	\$210
Week 2	Off	Off	Off	Off	Night	Night	Night	Straight Time	36	\$630
								Overtime	0	\$0
Week 3	Night	Off	Off	Off	Day	Day	Day	Straight Time	40	\$700
								Overtime	8	\$210
Week 4	Off	Night	Night	Night	Off	Off	Off	Straight Time	36	\$630
								Overtime	0	\$0
								Straight Time	152	\$2,660
								Overtime	16	\$420
								Total	168	\$3,080

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>Current Rules</b>							
Straight Time	8	8	8	8	8		
Overtime	4	4	4	4	4	12	12
<b>Proposed</b>							
Straight Time	12	12	12	4			
Overtime				8	12	12	12

**Total**

40

44

40

44



Greater Fairbanks Chamber of Commerce

250 Cushman Street, Suite 2D

(907) 452-1105

Fairbanks, Alaska 99701-4665

FAX: (907) 456-6968

April 23, 1997

APR 30 1997

Senator Loren Leman  
Room 113  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Leman:

The Greater Fairbanks Chamber of Commerce has been having intense discussions and debate concerning the request from Fort Knox Mine for legislation to allow 12 hour work days without incurring overtime until after a 40-hour week. Attached is a copy of the resolution passed 14-1 by the Board of Directors on April 21 which explains the position of the Fairbanks Chamber of Commerce on the issue.

In addition to debate and information provided by the public in Fairbanks, the chamber also polled its 426 business members on the issue. By a 2:1 margin, the membership encouraged the chamber to stay involved in the issue and by a 3:1 margin they felt that the entire labor law issue in Alaska needs review and revision or reconstituted as appropriate. The chamber, as representatives of the Fairbanks business community feels that it is absolutely necessary to level the playing field for all Alaska workers and to create an environment which will allow all workers and employers to determine their own destiny. Creating additional exceptions to current law is only a "band-aid" remedy to an already flawed law.

Stability in labor law is essential to creating an environment in which industry knows the rules and can depend on an unchanging playing field. Fairbanks is on the verge of a mining surge and it is important that the issue is dealt with early as these mines are in the exploration and development stages. The Greater Fairbanks Chamber of Commerce encourages the Governor, his commissioners and the Alaska State Legislature to carefully review current state law, determine the short-comings and to consider either revision or creation of new law which will accomplish the needs of the worker and business. A task force composed of stakeholders might be an appropriate vehicle. The chamber is eager to work with the administration and the legislature in accomplishing what is right for the worker, the economy and business in Alaska.

Sincerely,

Kevin Krauklis  
Chairman of the Board



Greater Fairbanks Chamber of Commerce

250 Cushman Street, Suite 2D  
Fairbanks, Alaska 99701-4665

(907) 452-1105  
FAX: (907) 456-6968

Introduced by: Governmental Affairs Committee  
Date Introduced: April 14, 1997  
Date Passed: April 21, 1997  
Date Transmitted: April 22, 1997

**RESOLUTION 97-042197**

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF  
COMMERCE ALLOWING TWELVE-HOUR WORK DAYS/FORTY  
HOUR WORK WEEKS AT HARD-ROCK SURFACE MINES IN ALASKA.**

**WHEREAS**, the Fairbanks economy is significantly enhanced by a healthy mining industry; and

**WHEREAS**, Two Hundred Forty-One out of Two Hundred Forty-Three employees currently working at Fort Knox Mine are seeking a twelve-hour work day; and

**WHEREAS**, these same miners have requested the State Legislature to pass enabling legislation permitting a twelve-hour work day with overtime being paid over forty hours of work; and

**WHEREAS**, the request also seeks to protect those few miners who do not desire a twelve-hour work day; and

**WHEREAS**, the reasons for the request include more aggregate pay, more time with families, safer shift exchanges and travel; and

**WHEREAS**, forty-nine of fifty of the United States allow mining workers the same hours and conditions as requested; and

**WHEREAS**, Sec. 23.10.060 of Alaska Statutes already has sixteen exemptions to when overtime is paid under the eight-hour work day/forty-hour work week rule. These exemptions allow seamen and employees in agriculture, health care, trucking, telephone utilities, timber, and union workers in any industry to work up to a twelve-hour work day within forty hours per week before accruing overtime. For all work over twelve hours per day and forty hours per week the mandatory overtime requirement still applies; and

**WHEREAS**, the unorganized employees covered by the provisions of the enabling legislation will still retain the right to organize if they deem it desirable and necessary; and

**WHEREAS**, the enabling legislation will equalize the rights of organized and unorganized workers in surface metal mines in Alaska by allowing them to choose their own destiny as United States citizens, to work with management to establish work schedules and to enhance the freedoms already enjoyed by the groups identified in the sixteen exemptions in existing law; and

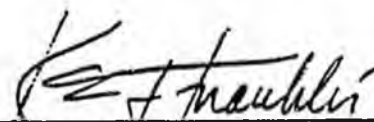
**BE IT RESOLVED** that the Greater Fairbanks Chamber of Commerce encourages the governor, his commissioners, and the Alaska Legislature to undertake a comprehensive review of Section 23.10.060 in order to develop a law that provides workers and employers the freedom to develop the schedule of their choice; and


**BE IT FURTHER RESOLVED** that the Greater Fairbanks Chamber of Commerce encourages the Governor of the State of Alaska, his commissioners, and the Alaska Legislature to give their support to passage of legislation designed to level the playing field for all employees of the surface mining industry.

**BE IT FURTHER RESOLVED THAT**, this resolution be distributed to:

Alaska U.S. Congressional Delegation  
Governor of the State of Alaska  
Alaska State Legislators  
Fairbanks North Star Borough  
City of Fairbanks  
City of North Pole  
Alaska State Chamber of Commerce  
Fort Knox Mine  
Amax Gold, Inc.

**PASSED** in Fairbanks, Alaska this 21st day of April, 1997 by the Greater Fairbanks Chamber of Commerce Board of Directors.

  
\_\_\_\_\_  
Kevin J. Krauklis  
Chairman of the Board

  
\_\_\_\_\_  
William J. Robertson  
President/CEO

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ADMITTED IN VIRGINIA

ALL OTHERS ADMITTED IN ALASKA

April 17, 1997

VIA HAND DELIVERY

The Honorable Loren Leman  
Chair, Senate Labor & Commerce Committee  
Alaska State Capitol  
Room 113  
Juneau, AK 99801

Re: SB 169 – Overtime Exemption Legislation

Dear Senator Leman:

On Tuesday, during the Senate Labor and Commerce Committee's meeting on SB 169, Deputy Commissioner Flannigan incorrectly stated that California law did not provide an overtime exemption for employer-employee agreements establishing a work hour schedule of up to 12 hours. In fact, the California legislature passed a law in 1995 which expressly provides that agreements may be entered into which establish a work day schedule of up to 12 hours per day in a 40 hour work week without the payment of overtime.

California, Nevada and Alaska are the three remaining states with the eight hour standard and overtime compensation laws enforcing the standard. *However*, both California and Nevada have established exceptions to the standard. California recently passed in 1995 a law which allows employers and employees to establish a regular work day of up to 12 hours without overtime if the proposed daily work hour schedule is approved by a 2/3 majority of the employees. (CAL. LAB. CODE § 750.5(b) and § 751.8.)<sup>1</sup> In application, this law allows a California employer, with the agreement of its employees, to establish three 12-hour work days in a 40 hour work week without the payment of overtime. Thus, in California, the

<sup>1</sup> California law also provides that shifts in excess of eight hours may be worked by employees if such shifts are provided for in a collective bargaining agreement. (CAL. LAB. CODE § 750.5(a) and § 751.8.)

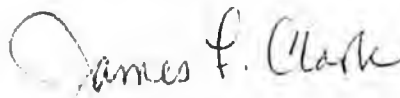
Fairbanks Gold employees would be able to change shifts as they desire to do in this case without changing the law. I have enclosed a copy of the 1995 legislation for your reference.

Nevada also has established specific exemptions to its eight hour standard. Like Alaska, Nevada exempts work plans entered into between an employer and its employees which allow a work day of up to 10 hours per day without application of Nevada's overtime compensation provisions. (NEV. REV. STAT. § 608.018(1)(b).) Furthermore, Nevada law provides that employees who are not subject to minimum wage requirements or who earn at least 1½ times the rate of minimum wage are not paid overtime if they work in excess of eight hours per day. Employee approvals for these work schedules are not required. (NEV. REV. STAT. § 608.018(2)(a)-(b).) There are at least eight surface mining operations in Nevada operating 12 hour shifts pursuant to this exemption (both union and non-union).

Thus, Alaska is the only state in the union in which Fairbanks Gold is prevented by law from pursuing the 12 hour work day schedule it has worked out with its employees without the payment of overtime above the eight hour standard, unless an employee works in excess of 40 hours per week.

I hope this information clarifies the point Fairbanks Gold is striving to make in supporting SB 169, that is, that no other state except Alaska prevents employees from entering into the type of work schedule agreement which Fairbanks Gold employees have specifically requested. Please call if you have any questions regarding the above or the enclosed.

Yours very truly,

  
James F. Clark

enclosure  
cc (w/encl): Deputy Commissioner Flannigan

Citation Search Result Rank 9 of 48  
 CA LEGIS 903 (1995)  
 1995 Cal. Legis. Serv. Ch. 903 (A.B. 739) (WEST)

Database  
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Ch. 903

CALIFORNIA 1995 LEGISLATIVE SERVICE  
 1995 Portion of 1995-96 Regular Session  
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Additions are indicated by <<+ Text +>>; deletions by  
 <<- Text ->>. Changes in tables are made but not highlighted.

CHAPTER 903  
 A.B. No. 739  
 LABOR--HOURS OF EMPLOYMENT--SMELTERS AND UNDERGROUND MINES

AN ACT to amend Sections 750, 750.5, 751, 751.5 and 6354 of, to add Sections 751.8 and 752.5 to, and to repeal and add Section 752 of, the Labor Code, relating to employment.

[Approved by Governor October 13, 1995.]

[Filed with Secretary of State October 16, 1995.]  
 LEGISLATIVE COUNSEL'S DIGEST

AB 739, Bustamante. Employment: hours of employment: smelters and underground mines.

Existing law regulates the hours of labor that employees employed in underground mines, underground workings, smelting plants, and plants for the reduction or refining of ores and metals may be employed. Existing law specifies that the period of employment in these industries may not exceed 8 hours within any 24-hour period, except where hours of employment are otherwise prescribed pursuant to a collective bargaining agreement or under prescribed circumstances related to emergencies.

This bill would delete the reference to underground workings in those provisions of existing law, and make the above provisions of existing law inapplicable to quarries and other operations for the extraction of nonmetallic minerals. The bill also would make the above provisions of existing law inapplicable to executive, administrative, and professional employees and employees employed as outside salespersons. The bill would provide an exception to the regular maximum hours of employment where a 2/3 majority of the employees who work for a particular employer vote, in an election conducted at the expense of the employer pursuant to prescribed procedures, to adopt a policy that authorizes a regular workday of more than 8 hours in a 24-hour period. Such a policy would be effective for the duration specified in the policy, not exceeding 12 months. The bill would require the Labor Commissioner to investigate employee claims of misconduct relating to the election and would

CA LEGIS 903 (1995)

Ch. 903

provide for invalidation of the election for misconduct that could have affected the outcome.

This bill, with certain exceptions, would require an employer to make a reasonable attempt to place an employee who is unwilling or unable to work an extended workday established by such an election, in a work assignment that the employee is capable of performing.

The bill would provide for additional exceptions to the hours of employment on the day a scheduled change of shift takes effect, and where no qualified employee is available to relieve an employee. The bill also would add to the prescribed conditions that permit an employer to require extended hours of employment to include emergencies and maintenance of machinery or equipment.

This bill would further allow exceeding the hours of employment if overtime wages are paid for hours worked in excess of an employee's regular daily hours and for hours worked in excess of 40 hours in a week. The bill would provide that the overtime rate of 1 1/2 times the employee's regular rate of compensation would apply to hours worked in a workday that exceed the scheduled hours established by an employee election under these provisions up to and including 12 hours, or in excess of 40 hours in a workweek, and that the overtime rate of double the employee's regular rate of compensation would apply to overtime hours that exceed 12 hours in a workday.

Under existing law, any person who violates, and any person in a prescribed position who commands, persuades, or allows any person to violate, any of the provisions of law regulating the hours of labor that employees employed in these industries, is guilty of a misdemeanor.

This bill would repeal these provisions.

The bill would make an employer, who violates the above provisions relating to the maximum permissible hours of employment and the requirement to pay overtime for hours worked in excess of the maximum hours, subject to prescribed civil penalties.

The people of the State of California do enact as follows:

SECTION 1. Section 750 of the Labor Code is amended to read:

<< CA LABOR § 750 >>

750. <<-\* \* \*->><<+(a) Except as otherwise provided in this chapter, no employee may be employed for a period that exceeds+>> eight hours within any <<-\* \* \*->><<+24-hour period+>> and the hours of employment <<+of any workday+>> shall be consecutive, excluding intermissions for meals, for all persons who are employed or engaged in work in <<+any of the following+>>:

CA LEGIS 903 (1995)

Ch. 903 , § 1

<<+(1)+>> Underground mines<<-\* \* \*->>.

<<+(2)+>> Smelters and plants for the reduction or refining of ores or metals.

<<+(b) No provision of this chapter applies to quarries or other operations for the extraction of nonmetallic minerals, including, but not limited to, sand, gravel, and rock.+>>

<<+(c) No provision of this chapter applies to an employee who is employed in an executive, administrative, or professional capacity, or employed as an outside salesperson.+>>

SEC. 2. Section 750.5 of the Labor Code is amended to read:

<< CA LABOR § 750.5 >>

750.5. <<-\* \* \*->><<+Notwithstanding+>> Section 750<<-\* \* \*->><<+, an employee may be employed for+>> a period <<-\* \* \*->><<+that exceeds eight+>> hours within a 24-hour period<<-\* \* \*->><<+, under the circumstances specified in subdivision (a), (b), or (c), as follows:+>>

<<+(a) If+>> the employer and a labor organization representing employees of the employer have entered into a valid <<+collective bargaining+>> agreement <<-\* \* \*->><<+that+>> expressly provides for the wages, hours of work, and working conditions of the employees.

<<+(b) If a two-thirds majority of the affected employees of that employer whose hours are regulated by this chapter have voted in an election to adopt a policy that specifies periods of work that may exceed eight hours in a 24-hour period, and the employer adopts that policy, subject to all of the following conditions:+>>

<<+(1) The agreement adopted with respect to that policy reflects the results of the election.+>>

<<+(2) The election is conducted, at the expense of the employer, with the use of secret ballots, during regular working hours. Upon the written request of an employee to his or her employer, or to the Labor Commissioner, made no later than 10 days prior to the date set for the election, the employer shall cause the election to be conducted by a neutral third party with experience in conducting employee elections. If such a written request is made to the commissioner pursuant to this paragraph, the commissioner shall not disclose the identity of the employee and shall notify the employer, no later than five days prior to the date set for the election, that the election is required to be conducted by a neutral third party. Such an election may be conducted by utilizing mail ballots.+>>

<<+(3) All employees of that employer whose hours are regulated by this chapter and who have become employed by that employer within 24 hours of the time the election is commenced are eligible to vote in the election.+>>

<<+(4) The policy shall be effective for the period specified therein, not exceeding 12 months.+>>

<<+(5) No later than 14 days prior to the date set for an election, the employer shall do all of the following:+>>

<<+(A) Provide a written notice to the affected employees that describes the

CA LEGIS 903 (1995)

## Ch. 903 , § 2

effects the proposed work schedule would have on the employees' wages, hours, and benefits, and the employees' rights under this chapter, including the right to request that the election be conducted by a neutral third party pursuant to this section, and to file a complaint against the employer pursuant to this chapter.+>>

<<+(B) Provide a written statement to the affected employees, prepared by a neutral source knowledgeable in health and safety matters and unaffiliated with the employer, that explains any health and safety considerations of extended work shifts.+>>

<<+(C) Hold informational meetings for the affected employees on each shift during the regular working hours of the affected employees. At each of these meetings, the employer shall explain the effect of the proposed policy on the hours and compensation of the employees. Written notice of the time, date, place, and purpose of these informational meetings shall be conspicuously posted in at least three locations throughout the mine site for at least seven consecutive days before the date of the meetings. Written notice of the time, date, place, and purpose of the election shall be posted in the same manner and for the same period. Failure to comply with the procedural requirements of this paragraph shall void the results of the election for purposes of this section.+>>

<<+(6) Any employer that establishes a regular scheduled workday pursuant to this subdivision shall make a reasonable attempt to place an employee, who was eligible to participate in the election that authorized an extended workday schedule and who is unable or unwilling to work the extended schedule, in an alternative work assignment that the employee is capable of performing. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment that the employee is capable of performing is not available or if the employee commenced his or her employment after the election.+>>

<<+(c) On the day a scheduled change of shift takes effect.+>>

SEC. 3. Section 751 of the Labor Code is amended to read:

<< CA LABOR § 751 >>

751. In the case of <<+an+>> emergency where life or property is in imminent danger, the <<-\* \* \*->><<+work shift+>> may be <<+ extended+>> during the continuance of the emergency.

SEC. 4. Section 751.5 of the Labor Code is amended to read:

<< CA LABOR § 751.5 >>

751.5. <<-\* \* \*->><<+W+>>here emergency repairs to, or <<+ maintenance or+>> replacement of, machinery or equipment are necessary for the continuous operation thereof, the hours <<-\* \* \*->><<+that an employee may be+>> engaged in <<-\* \* \*->><<+performing the+>> emergency repairs<<+, maintenance,+>> or <<+ replacement,+>> may, during the <<+pendency+>> of the emergency, <<-\* \* \*->><<+ exceed+>> the period specified in Section 750.

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SEC. 5. Section 751.8 is added to the Labor Code, to read:

<< CA LABOR § 751.8 >>

751.8. (a) Notwithstanding Section 750, the period of employment may exceed eight hours in any 24-hour period if the employee is paid at the overtime rate of pay for hours worked in excess of that employee's regularly scheduled shift and for hours worked in excess of 40 hours in a seven-day period. Unless regularly scheduled shifts are established pursuant to Section 750.5, overtime rates of pay shall be paid for all hours worked in excess of those hours prescribed by Section 750 as the maximum allowable hours of employment.

(b) All work performed in any workday in excess of the scheduled hours established by an agreement pursuant to subdivision (b) of Section 750.5 up to and including 12 hours, or in excess of 40 hours in a workweek, shall be compensated at one and one-half times the employee's regular rate of compensation. All work performed in any workday in excess of 12 hours shall be compensated at double the employee's regular rate of compensation. No hours that are compensated at either one and one-half times, or double, the regular rate of compensation shall be included in determining the number of hours an employee has worked in a workweek for purposes of computing premium compensation.

<< Repealed: CA LABOR § 752 >>

SEC. 6. Section 752 of the Labor Code is repealed.

SEC. 7. Section 752 is added to the Labor Code, to read:

<< CA LABOR § 752 >>

752. (a) Any affected employee, or his or her representative, may file a complaint with the Labor Commissioner concerning the conduct of an election pursuant to subdivision (b) of Section 750.5 within 14 days following notice of the outcome of the election. The Labor Commissioner shall investigate the complaint and shall invalidate the election if the commissioner finds that misconduct has occurred that could have affected the outcome of the election. If the election is invalidated, the commissioner shall prohibit the employer from conducting a similar election for a period of 12 months.

(b) Any employer, or representative of an employer, that violates Section 750 or 751.8 shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, fifty dollars (\$50) for each affected employee for each violation for each pay period.

(2) For each subsequent violation for the same offense, one hundred dollars (\$100) for each violation for each affected employee for each pay period, regardless of whether the initial violation is intentionally committed.

(c) If the Labor Commissioner determines that an employer has failed to comply with paragraph (6) of subdivision (b) of Section 750.5, the Labor Commissioner shall order the employer to comply. The order, in appropriate cases, shall include provisions for reinstatement and back pay.

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(d) An employer shall not retaliate in any way against an employee for exercising any right pursuant to this chapter.

SEC. 8. Section 752.5 is added to the Labor Code, to read:

<< CA LABOR § 752.5 >>

752.5. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. Section 6354 of the Labor Code is amended to read:

<< CA LABOR § 6354 >>

6354. The division shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services shall include:

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

The program shall include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries. The division may formulate recommendations for reducing repetitive motion injuries after conducting a survey of the workplace of the employer who accepts services of the division. The recommendations shall include, wherever appropriate, the application of generally accepted ergonomic and engineering principles to eliminate repetitive motions that are generally expected to result in injuries to workers. The recommendations shall also include, wherever appropriate, training programs to instruct workers in methods for performing job-related movements, such as lifting heavy objects, in a manner that minimizes strain and provides safeguards against injury.

The division shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualifications of instructors. The model programs shall be made available to employers, employer associations, workers' compensation insurers, and employee organizations on request.

(b) A program for providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the

CA LEGIS 903 (1995)

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regional plans developed pursuant to subdivision (b) of Section 6314.1.

(c) A program for providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices, or programs.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CA LEGIS 903 (1995)

END OF DOCUMENT

# California panel scraps overtime law

By CATHLEEN FERRARO  
Scripps-McClatchy

SAN FRANCISCO—California's 79-year-old daily overtime law was dumped Friday by a state commission that ruled workers should get premium pay only after working 40 hours in a week.

By a 3 to 2 vote, the Industrial Welfare Commission voted to end rules requiring overtime compensation after an eight-hour work day and essentially brought California into accord with federal law.

"It's not been an easy decision. I don't think there's any commissioner here who's slept in two weeks," said Robyn Black, chairwoman of the five-member IWC board. "Overwhelmingly we heard from California workers who asked for flexibility (at work) to help with their complicated, busy lives."

The new rules, which could go into effect as early as July 1, will not apply to employees who have union contracts with overtime provisions.

The vote was not well received by about 250 labor leaders and employees who staged an angry demonstration Friday morning outside the Public Utilities Commission Building in downtown San Francisco. On several occasions they disrupted the meeting inside, too, with boos, hisses, chants and screams.

"Do you know how long it's taken to get the eight-hour day? Lives were lost over this and now with one stroke you think you can go ahead and say it's over?" Pacific Bell technician Giselle Quezada yelled to the commissioners following the vote.

California Highway Patrol officers struggled to calm the crowd numerous times, making it difficult to proceed with the IWC meeting.

Two people were carried out, cited for failing to obey an order from a police officer, and eventually released.

Most business owners, meanwhile, were pleased with the final vote.

"Both employees and employers will benefit (from this vote) because they'll be able to work shifts that accommodate (their personal needs) and accommodate production schedules," said Willie Washington, director of human resources for the California Manufacturers Association.

The IWC's decision affects about 8 million people working in manufacturing, retail, wholesale, restaurant, transportation, clerical and banking industries—accounting for the majority of the state's private businesses.

The full impact of the new law isn't yet clear—but recent studies indicate it likely will mean longer hours for many Californians.

Research by a University of California, Santa Barbara, faculty member concluded that employers will start assigning longer hours in a day if businesses don't have to pay a premium for the extra labor.

Meanwhile, data from Stanford University's Hoover Institution indicated California workers would likely earn more overtime pay under the federal rule. That's because employees in other states without daily overtime laws actually put in more overtime a week on average than their counterparts in California.

"I'm speculating that employers in those states have abandoned rigid work schedules, getting away from a strict 9 to 5, for example," said Thomas MacCurdy, lead author of the Stanford study conducted in March. "What seems to happen is that employees end up working more overtime."

The IWC's vote caps nearly a year and half of public testimony throughout the state. During those hearings, some employees described family situations that depended on overtime pay to make ends meet.

Others urged a change in the law so that they could more easily take a few hours off from work—to make a medical appointment or attend a child's school event—and make it up later by putting in a longer day.

Traditionally, California employers have not been open to such requests by workers because it meant paying daily overtime.

The new law is set to go into effect as early as July 1 if commission staff completes required legal paperwork by April 30. If that deadline is not met, the rule won't go into effect until Jan. 1, 1998.

The commission vote also is likely to face a court challenge from the California Labor Federation and it could be modified by state legislation.

Potato growers' con

*Commission OK*





John Hollen

AMAX GOLD, INC.  
FORT KNOX MINE  
Internal Correspondence

S. Lang

To: All Fort Knox Employees	From: S. Lang
Subject: 12-Hour Shifts	Date: December 16, 1996

I have been approached many times by employees working in the 24-hour operations to consider moving from our current 8-hour shifts to 12-hour shifts. Under current Alaska law, the cost for making this schedule change would be too prohibitive. However, with a minor revision in the law, we may be able to make the switch in a cost-effective manner.

Briefly, we will be proposing to amend the law so that v would run 12-hour shifts, then pay overtime only for any hours worked in excess of 40 hours per week in excess of 12 hours per day. The benefits to employees would include:

1. Each employee on rotating shifts would still be scheduled for 168 hours every 28 days.
2. In each 28 day cycle, an employee would only work 14 days. The current schedule has people working 21 days.
3. Net pay on the current schedule is for 160 hours at straight time and 8 hours of overtime. The modified schedule would be 152 hours at straight time and 16 hours of overtime. Exclusive of any other changes, an employee's gross income will increase by 2.3%.
4. With only two shift changes per day, traffic on the access road will be reduced, conserving fuel.
5. Employees would have 7 extra days off from work every four weeks, allowing them to spend more time with their families.

As we go to the legislature with this request, we need to be able to demonstrate that this is a change our employees want. To help in this regard, we are circulating petitions with each supervisor. If you support the change, please contact your supervisor so that you may endorse the petition. If, however, you do not want the change, you are under no obligation to endorse the petition.

I will keep you informed about our progress in making this change.

Please let me know if you have any questions.



### EMPLOYEE PETITION

We the undersigned, employees of Fairbanks Gold Mining, Inc., urge the Legislature to pass legislation which would change the current employee voluntary flexible work hour law (AS 23.10.060(14)(B) to allow a full 12 hours of work in one day without overtime pay (limited to 40 hours of work before overtime in any week). The shift plan, which the change in the law would allow the Company to adopt, would have us work the same numbers of hours in 14 days which we are currently working in 21 days and at increased income. Thus, the effect of the change in the law will be to allow us the opportunity to spend more time with our families. It will also give Fairbanks Gold employees greater economic security as a result of the mine's increased operating efficiency.

The Fairbanks Gold is well within compliance of the Mine Safety and Health Administration's (MSHA) regulations. Fairbanks Gold is a safe operation and maintains an effective, employee-oriented safety program. The extensions to 12 hours of work in one day will not compromise safety, as demonstrated in other states which already authorize 12 hours. A number of us have worked extended hours at other operations without compromising occupational health and safety.

Sincerely,

Name	Job Title
D. Vance Sellers	BLASTER
Don Allroy	Blaster
Brian Paul Jorg	Blaster III
Z. Ross & Blackwell	DRILLER
John Dyer	Driller
[Signature]	Drill's Blast Supervisor
[Signature]	DRILLER
John Baita	DRILLER









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Sincerely,

Name	Job Title
<i>Mark Christopher</i>	mine data coord.
<i>John Baynes</i>	M I M
<i>Janice Samuels</i>	Small. Hbk. Mech.
<i>Neil King</i>	Maint
<i>Andre Bone</i>	Fuel Lube
<i>Greg Chapin</i> (Greg Chapin)	Welder / Mechanic
<i>WASCO</i>	Welder / Mechanic
<i>WASCO</i>	WELDER MECH
<i>WASCO</i>	WELDER MECHANIC
<i>WASCO</i>	WELDER MECH
<i>DAVE STEWART</i>	FUEL-LUBE MECH
<i>HELEN KENNEDY</i>	Maintenance Planner
<i>Richard G. G. G.</i>	Maintenance Supervisor
<i>Richard G. G. G.</i>	Fuel-Lube Mech.
<i>Bob ...</i>	Building Maint.
<i>David ...</i>	Welder Mech
<i>Tom ...</i>	Mech Welder
<i>WASCO</i>	HELPER MECHANIC
<i>Gene Anderson</i>	WELDER MECH
<i>WASCO</i>	Welder
<i>WASCO</i>	FUEL LUBE
<i>WASCO</i>	MAINT
<i>WASCO</i>	Fuel Lube Mech

*Tom ...*  
*Luke Baynes*

Cart R.

AMAX GOLD, INC.  
FORT KNOX MINE  
Internal Correspondence

S. Lang

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DONNIE RICE

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Sincerely,

Name	Job Title
<del>Thomas J. Bell</del>	Truck Driver
<del>1200</del>	EQUIP OPER.
<del>Paul [unclear]</del>	Shovel operator
<del>Mr. [unclear]</del>	Shovel operator
<del>Thomas [unclear]</del>	Truck Driver
<del>Mr. [unclear]</del>	DRILLER
<del>Be [unclear]</del>	TRUCK DRIVER
<del>[unclear]</del>	DOZER OPERATOR
<del>[unclear]</del>	TRUCK DRIVER
David [unclear]	Truck Driver
A. Brian [unclear]	GRAVEL OPERATOR
<del>[unclear]</del>	Truck Driver
<del>[unclear]</del>	Truck Driver
Brian S. [unclear]	Truck Driver
Paul [unclear]	SUPERVISOR
Donnie Rice	

AMAX GOLD, INC.  
FORT KNOX MINE  
Internal Correspondence

Lab  
2:27

S. Lang

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AMAX GOLD, INC.  
FORT KNOX MINE  
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Sincerely,

Name	Job Title
Allen Smith	Mine Supervisor
Dean E. Cook	Dogon operator
Frank F. Walker	Haul truck trainer
Steve Bonham	DOZER OPERATOR
Ernie E. Eklman	Grader Operator
Allen Happonen	Shovel Operator
James A. Nunez	Haul truck Driver
Garrett Collins	Haul Truck Driver
Dean Cook	Truck Driver
John McLaughlin	Truck Driver
David Buckle	Truck Driver
EDUARD FRISEK	Truck DRIVER
ROBERT R. BARTO	TRUCK DRIVER
Y. K. G.	Truck Driver
Ray Benedict	Shovel Operator
Alvin J. [Signature]	Dozer operator
Raymond J. [Signature]	Grader Operator
W. J. Woods	mine Superintendent