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ALASKA POWER ASSOCIATION R E S O L U T I O N

1.6) A Resolution Supporting Legislative Action to Clarify the Cooperative's Ability to become the Full-Service Energy Provider in the Communities that they Serve

Alaska's electric cooperatives are increasingly receiving requests from their members asking the cooperative to become the full-service energy supplier in the community, supplying not only electric energy but also home heating oil and other forms of energy. Recent court cases in other states (notably, Georgia, Texas, and Mississippi) have called into question the ability of Alaska's electric cooperatives to form subsidiaries to respond to these member needs.

Alaska Power Association urges legislative action that would confirm Alaska's electric cooperatives' ability to meet this need by amending AS 10.25.010(a), Powers of electric or telephone cooperative, to include a new subsection to read:

(15) Become a member of or own stock in a corporation, limited liability company or subsidiary, organized for a lawful purpose or purposes for which a corporation or company may be organized.

Approved 12/04 by Alaska Power Association Board of Directors.

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TELEPHONE
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Bristol Bay Borough

March 25, 2005

Legislators:

The Bristol Bay Borough supports House Bill No. 157, expanding the powers given to electric or telephone cooperatives. We feel it is important to provide as many avenues as possible to reduce costs in rural Alaska. It will be impossible for rural Alaska to reduce costs if we are forced to do business with the limited existing companies presently providing services.

House Bill No.157 will afford an opportunity for electric or telephone cooperatives to work together to reduce costs, that until now remained fixed or on the increase.

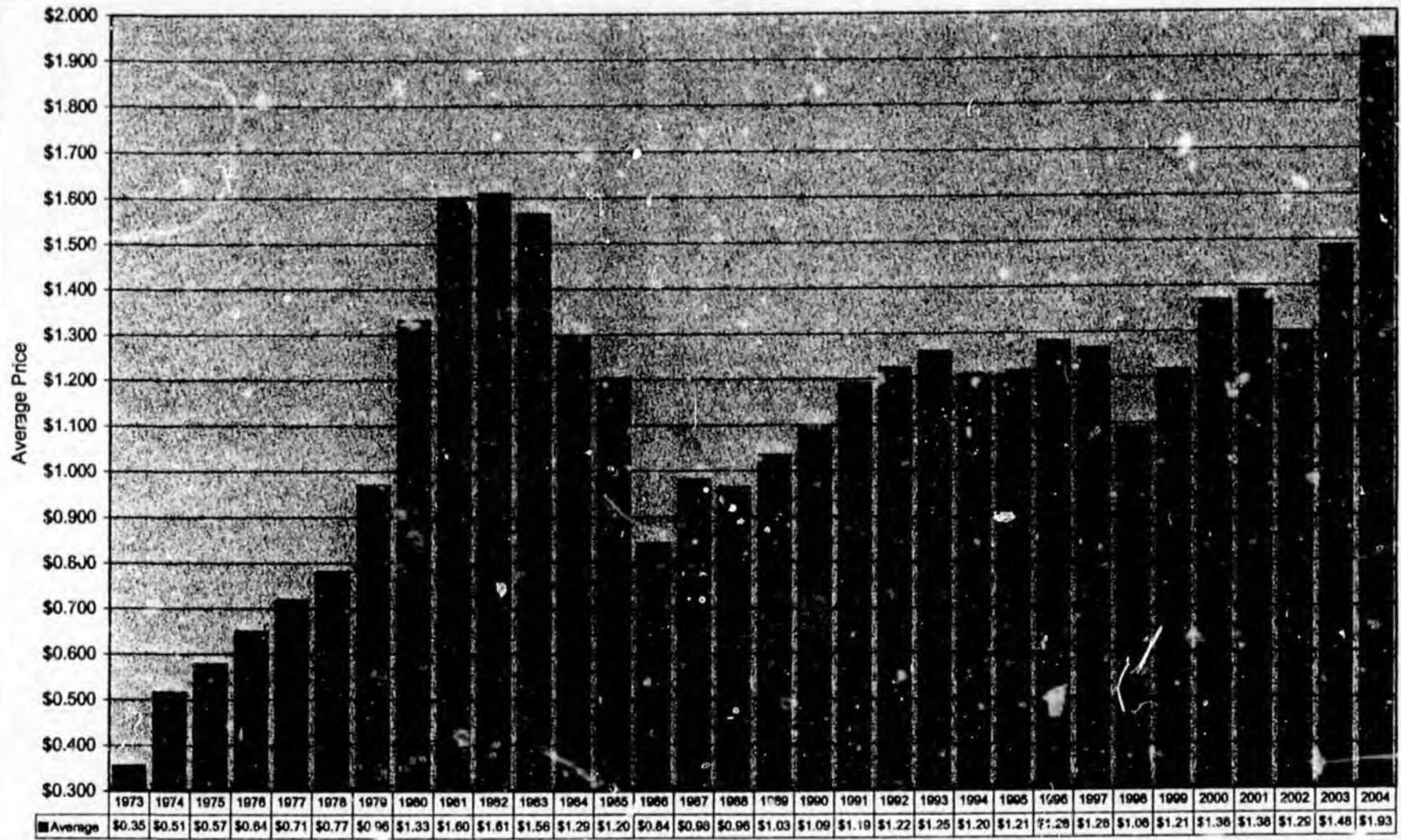
THE BRISTOL BAY BOROUGH SUPPORTS HOUSE BILL 157 AND URGES THE ALASKA STATE LEGISLATURE TO PASS THIS ACT.

Thank you,

A handwritten signature in cursive script, appearing to read "Fred W. Pike".

Fred W. Pike, BBB mgr.

**Alaska Village Electric Cooperative, Inc.
1973 - 2004 Fuel Prices**



HB

169

CONCEPTUAL AMENDMENT

1

OFFERED IN THE HOUSE
TO: CSHB 169 (___) 24-LS0424\5

BY REPRESENTATIVE ROKEBERG

Page 1, Lines 2-3:

Delete: "allowing real estate brokers to hire certain experts to review real estate transactions;"

Insert: "allowing for review of real estate transactions by attorneys or associate ~~brokers;~~
brokers"

Page 4, Line 4:

Delete: "cancel the suspension."

Insert: "~~renew~~ ^{reinstate} a suspended license."

ADOPTED

Page 4, Line 9:

Delete: "canceling the suspension of a license"

Insert: "~~renewing~~ ^{reinstate} a suspended license"

Page 5, Line 13:

Delete: "~~five~~ ^{reinstate} ~~seven~~"

Insert: "~~seven~~"

Page 8, Line 20

Delete: "Use of experts."

Insert: "Review of transactions."

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepublicans.org/rokeberg/index.php>



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Representative Norman Rokeberg

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SECTIONAL ANALYSIS FOR CSHB 169()

By: Representative Norman Rokeberg

Title: An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; allowing real estate brokers to hire certain experts to review real estate transactions; relating to the experience required for a real estate broker license and an associate real estate broker license; and providing for an effective date.

Changes made by the CS are indicated below in **BOLD**.

Section 1: Requires a real estate licensee comply with education requirements before a suspended license can be reinstated.

N changes made by CS.

Section 2: Makes conforming amendments.

Page 2, Line 8: Deleted "was" and inserted "is"

Section 3: Makes a conforming amendment.

No changes made by CS.

Section 4: Creates AS 08.88.095, new education requirements for a licensee after initial license:

- (a) An initial licensee has one year from the date of the initial license to complete 20 hours of education
- (b) The initial license shall state that license is subject to education requirements
- (c) Within 30 days after end of one-year period, licensee shall submit certification of education to Real Estate Commission
- (d) After education requirements met, new license is issued without language in subsection (b)
- (e) If licensee fails to complete education or submit certification, the license automatically lapses 30 days after the end of the one-year period
- (f) An individual who is issued an initial broker license does not have to complete the post-licensing education requirements if they had an associate broker license immediately before the broker license.
- (g) Defines "educational requirements"

Subsection (f) was rewritten in order to clarify that if you have an associate brokers license, and then you move up to a broker's license, you don't have to repeat the post-licensing education requirements, as they will be the same for both associate broker and broker licenses.

Deleted subsection (g), which prohibited the Commission for setting limits on a two-day education course.

Creates AS 08.88.098, educational requirements after suspension:

- (a) If a license is suspended for six months or more, the licensee shall the education required by the commission
- (b) The licensee shall submit certification that the educational requirements have been met
- (c) These education requirements are in addition to any other conditions for reinstating the license

Page 4, Line 3: Deleted "for six months or more" and "20 hours of". This allows the Commission to set the required education in cases of suspended licenses.

Subsections (d) and (e) were deleted.

Section 5: Makes conforming amendments.

Page 4, Line 16. Deleted "licensed real estate salesperson" and inserted "real estate licensee"

Section 6: Makes conforming amendments.

Page 5, Line 11: Deleted "licensed real estate salesperson" and inserted "real estate licensee"

Section 7: Makes conforming amendments.

No changes made by CS.

Section 8: Allows the Department of Commerce, Community and Economic Development to set a fee for the new license under AS 08.88.095(d).

No changes made by CS.

Section 9: Makes conforming amendments.

No changes made by CS.

Section 10: Provides that a real estate licensee, whose initial license lapses due to failure to complete the education requirements, is not eligible for an "inactive" license until the license is properly reinstated.

No changes made by CS.

- Section 11:** Requires a real estate licensee, who has not held a license issued by another state for more than one year, to complete the post-education requirements before an Alaska license will be issued.
- No changes made by CS.
- Section 12:** Makes a conforming amendment.
- No changes made by CS.
- Section 13:** Makes a conforming amendment.
- No changes made by CS.
- Section 14:** Allows a real estate broker to hire an attorney or associate broker to review a real estate transaction before the transaction closes.
- No changes made by CS.
- Section 15:** Makes conforming amendment.
- No changes made by CS.
- Section 16:** Defines "initial license."
- No changes made by CS.
- Section 17:** Sets forth the applicability of the new educational requirements on "initial licenses."
- No changes made by CS.
- Section 18:** Allows the Department of Commerce, Community and Economic Development to proceed with adopting regulations regarding the new educational requirements.
- No changes made by CS.
- Section 19:** Provides an immediate effective date for the sections on use of experts.
- No changes made by CS.
- Section 20:** Provides an effective date of January 1, 2006 for the sections on post-licensing education.
- No changes made by CS.

24-LS0424S
Bannister
4/4/05

CS FOR HOUSE BILL NO. 169()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the educational requirements for certain real estate brokers,
2 associate brokers, and salespersons with new or suspended licenses; allowing real estate
3 brokers to hire certain experts to review real estate transactions; relating to the
4 experience required for a real estate broker license and an associate real estate broker
5 license; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * Section 1. AS 08.88.071(b) is amended to read:

8 (b) When an award is made from the real estate surety fund under this chapter,
9 the commission may suspend the license of the real estate licensee whose actions
10 formed the basis of the award. A suspension ordered under this subsection shall be
11 lifted if the licensee reaches an agreement with the commission on terms and
12 conditions for the repayment to the real estate surety fund of the money awarded to the
13 claimant and the costs of hearing the claim under AS 08.88.465 and if the licensee

1 satisfies the requirements of AS 08.88.095. The suspension shall be reimposed if the
2 licensee violates the terms of a repayment agreement entered into under this
3 subsection.

4 * Sec. 2. AS 08.88.091(e) is amended to read:

5 (e) Except for a course described in (f)(1) or (3) of this section, in order for an
6 educational course to be recognized for credit under this section, AS 08.88.095, or
7 08.88.098, the course outline and the instructor of the course shall [MUST] have been
8 approved by the commission or the commission's designee before the course is [WAS]
9 conducted. A course outline or instructor is considered approved if the commission or
10 the commission's designee does not disapprove the outline or instructor within 45 days
11 after the date on which complete application was made for approval. Each approved
12 contact hour of a submitted course outline constitutes one credit hour of
13 [CONTINUING] education under (d) of this section, AS 08.88.095, or 08.88.098.
14 The fee for continuing education course certification under AS 08.88.221 and for
15 course certification under AS 08.88.221 to satisfy the educational requirements of
16 AS 08.88.095 and 08.88.098 must [SHALL] be based on the hours approved for
17 credit, not on the hours submitted.

18 * Sec. 3. AS 08.88.091(f) is amended to read:

19 (f) The commission shall establish by regulation the educational and
20 continuing educational requirements for licenses issued by the commission. The
21 regulations for continuing education requirements and for educational requirements
22 under AS 08.88.095 and 08.88.098 must allow the following types of courses to
23 qualify for the appropriate number of credit hours, as determined by the commission:

24 (1) courses that are developed by national organizations, as identified
25 for the purpose of this paragraph in the commission's regulations, that are delivered by
26 nationally certified instructors and that are required in order to earn professional
27 designations from a national organization in specialized areas of licensed real estate
28 practice; notwithstanding other provisions of this chapter, the commission may not
29 charge a fee for these courses;

30 (2) technology courses directly related to real estate practice that are
31 designed to enhance the skills and performance of a real estate licensee; and

1 (3) courses offered by an accredited college or university as part of a
2 real estate curriculum that are available for at least one quarter-hour or one-half
3 semester-hour of academic credit; the commission may not charge a fee for these
4 courses.

5 * Sec. 4. AS 08.88 is amended by adding new sections to read:

6 **Sec. 08.88.095. Educational requirements after initial license** (a) In
7 addition to the continuing educational requirements of AS 08.88.091(d), within one
8 year after the date that the commission issues an initial license under this chapter, the
9 licensee shall complete 20 hours of education approved by the commission under
10 AS 08.88.091.

11 (b) On the document representing an initial license, the commission shall
12 include clear and prominent language stating that the license is subject to the licensee's
13 completion of the educational requirements within one year after the date of the
14 issuance of the license.

15 (c) Within 30 days after the end of the one-year period, the licensee shall
16 submit, on a form provided by the commission, a certification that the licensee has
17 completed the educational requirements.

18 (d) After a licensee submits the completed form under (c) of this section and
19 pays the required fee, the commission shall issue a new license document to the
20 licensee that does not contain the language required by (b) of this section.

21 (e) If a licensee fails to complete the educational requirements within the one-
22 year period or to provide the certification required by (c) of this section, the license
23 automatically lapses 30 days after the end of the one-year period. However, the
24 commission may reinstate the license under AS 08.88.241.

25 (f) Notwithstanding the other provisions of this section, an individual who is
26 issued an initial license as a real estate broker is not required to satisfy the educational
27 requirements for that initial license if, immediately before the issuance, the individual
28 is licensed as an associate real estate broker under this chapter.

29 (g) In this section, "educational requirements" means the educational
30 requirements of (a) of this section.

31 **Sec. 08.88.098. Educational requirements after suspension.** (a) In addition

1 to the continuing educational requirements of AS 08.88.091(d) and the educational
2 requirements of AS 08.88.095(a), if the commission suspends a license under
3 AS 08.01.075, the licensee shall complete the education required by the commission
4 before the commission may cancel the suspension.

5 (b) After completing the educational requirements of (a) of this section, the
6 licensee shall submit, on a form provided by the commission, a certification that the
7 licensee has completed the educational requirements.

8 (c) The educational requirements of (a) of this section are in addition to any
9 other conditions that the commission sets for canceling the suspension of a license
10 under this chapter.

11 * Sec. 5. AS 08.88.171(a) is amended to read:

12 (a) A natural person qualifies for a real estate broker license if the person
13 passes the brokers examination, applies for a license within six months after passing
14 the examination, furnishes satisfactory proof of successful completion of the education
15 requirements of AS 08.88.091, has had at least 24 months of active and continuous
16 experience as a [LICENSED] real estate licensee [SALESPERSON] within the 36
17 months immediately preceding application for the broker license, is not under
18 indictment for, or seven years have elapsed since the person has completed a sentence
19 imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors,
20 or any other felony involving moral turpitude, and is an owner of a real estate business
21 or employed as a real estate broker by a foreign or domestic corporation, partnership,
22 limited partnership, or limited liability company. Unless the broker fails to satisfy the
23 educational requirements of AS 08.88.095 or renew the license, or [UNLESS] the
24 broker's license is suspended or revoked, the broker's license continues in effect as
25 long as the broker's license is active. If the broker stops being an owner of a real
26 estate business or stops being employed as a real estate broker by a foreign or
27 domestic corporation, partnership, limited partnership, or limited liability company,
28 the broker's license is suspended from the time the broker stops until the broker
29 satisfies the educational requirements of AS 08.88.098 and

30 (1) [THE BROKER] again becomes an owner of a real estate business
31 or is again employed as a real estate broker by a foreign or domestic corporation,

1 partnership, limited partnership, or limited liability company; or

2 (2) [THE BROKER] is employed by another broker as an associate
3 broker, in which case the real estate broker license shall be returned to the commission
4 by the broker, and the commission shall issue the broker an associate real estate broker
5 license.

6 * Sec. 6. AS 08.88.171(b) is amended to read:

7 (b) A natural person qualifies for an associate real estate broker license if the
8 person passes the brokers examination, applies for the license within six months after
9 passing the examination, submits satisfactory proof of successful completion of the
10 education requirements of AS 08.88.091, has had at least 24 months of active and
11 continuous experience as a [LICENSED] real estate licensee [SALESPERSON]
12 within the 36 months immediately preceding application for the license, is not under
13 indictment for, or five years have elapsed since the person has completed a sentence
14 imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors,
15 or any other felony involving moral turpitude, and is employed by a licensed real
16 estate broker as an associate real estate broker. Unless the associate broker fails to
17 satisfy the educational requirements of AS 08.88.095 or renew the license, or
18 [UNLESS] the associate broker's license is suspended or revoked, the associate
19 broker's license continues in effect as long as the associate broker is employed by a
20 licensed real estate broker as an associate broker. If the associate broker stops being
21 employed by a licensed real estate broker, the associate broker's license is suspended
22 from the time the associate broker stops until the associate broker satisfies the
23 educational requirements of AS 08.88.098 and

24 (1) [THE ASSOCIATE BROKER] again is employed by a real estate
25 broker as an associate broker; or

26 (2) [THE ASSOCIATE BROKER] becomes an owner of a real estate
27 business or is employed as a real estate broker by a foreign or domestic corporation,
28 partnership, limited partnership, or limited liability company, in which case the
29 associate broker's license shall be returned to the commission by the associate broker,
30 and the commission shall issue the licensee a broker's license.

31 * Sec. 7. AS 08.88.171(c) is amended to read:

1 (c) A natural person qualifies for a real estate salesperson license if the person
2 passes the real estate salesperson examination, applies for the license within six
3 months after passing the examination, submits satisfactory proof of successful
4 completion of the education requirements of AS 08.88.091, is at least 19 years of age
5 [OLD], is not under indictment for forgery, theft, extortion, conspiracy to defraud
6 creditors, or any other felony involving moral turpitude, or, if convicted of such an
7 offense, the person has completed the sentence imposed upon conviction, and is
8 employed by a real estate broker. Unless the salesperson fails to satisfy the
9 educational requirements of AS 08.88.095 or renew the license, or [UNLESS] the
10 real estate salesperson's license is suspended or revoked, a real estate salesperson's
11 license continues in effect as long as the salesperson is employed as a salesperson by a
12 licensed real estate broker. If the salesperson stops being employed as a real estate
13 salesperson, the real estate salesperson's license is suspended from the time the
14 salesperson stops until the salesperson satisfies the educational requirements of
15 AS 08.88.098 and again is employed as a real estate salesperson by a licensed real
16 estate broker.

17 * Sec. 8. AS 08.88.221 is amended to read:

18 Sec. 08.88.221. Fees. The Department of Commerce, Community, and
19 Economic Development shall set fees under AS 08.01.065 for a real estate broker,
20 associate broker, or salesperson licensee or applicant for the following:

- 21 (1) examination;
- 22 (2) initial license;
- 23 (3) renewal of an active license;
- 24 (4) renewal of an inactive license;
- 25 (5) amending or transferring a license;
- 26 (6) publications offered by the commission;
- 27 (7) seminars offered by the commission;
- 28 (8) reinstatement of a lapsed license;
- 29 (9) changes to registered office information;
- 30 (10) course certification and recertification; and
- 31 (11) instructor approval and renewal of approval; and

1 **(12) issuance of a new license document under AS 08.88.095(d).**

2 * Sec. 9. AS 08.88.241(a) is amended to read:

3 (a) A person whose real estate license has lapsed less than 24 months is
4 eligible for reinstatement of the license if the person provides the required application,
5 license fees, proof of continuing education as required by AS 08.88.091 for licensing
6 periods during which the license was inactive or lapsed, **proof of completion of the**
7 **educational requirements under AS 08.88.095(a), if applicable, and any fee**
8 **required under AS 08.88.221(12).**

9 * Sec. 10. AS 08.88.251(a) is amended to read:

10 (a) A real estate licensee who intends to become inactive shall return to the
11 commission the person's license certificate and a completed inactivation form
12 provided by the commission along with any applicable fees. The commission shall
13 issue the person an inactive license certificate. **A real estate licensee whose license**
14 **lapses under AS 08.88.095(e) is not eligible for an inactive license under this**
15 **subsection unless the license is reinstated under AS 08.88.241.**

16 * Sec. 11. AS 08.88.263 is amended to read:

17 **Sec. 08.88.263. License by endorsement.** A person who holds a valid active
18 real estate license issued by another state shall be granted an equivalent Alaska real
19 estate license if that person:

20 (1) passes the portion of the real estate examination which examines
21 on Alaska law; [AND]

22 (2) meets the requirements of AS 08.88.171; **and**

23 (3) **satisfies the educational requirements under AS 08.88.095(a) if**
24 **the person has not held the license issued by the other state for one year or more.**

25 * Sec. 12. AS 08.88.401(b) is amended to read:

26 (b) **Except as provided in AS 08.88.403, a** [A] person

27 (1) who is not a real estate broker licensed in this state may not accept
28 a fee or a commission for performance of an act for which a license is required by this
29 chapter, except that a real estate broker validly licensed in another state may accept a
30 fee or commission or a portion of a fee or commission for assisting a real estate broker
31 licensed in this state in the performance of an act for which a license is required by

1 this chapter;

2 (2) who is an associate broker or a real estate salesperson licensed in
3 this state may accept a fee or commission for performance of an act for which a
4 license is required by this chapter only from the licensee's employing broker, except
5 that the wages of a person who is engaged as a licensed assistant under AS 08.88.398
6 may be accepted by the person from the assistant's employer.

7 * Sec. 13. AS 08.88.401(d) is amended to read:

8 (d) Except as provided in AS 08.88.403, a [A] person licensed under this
9 chapter may not knowingly pay any part of a fee, commission, or other compensation
10 received by the licensee in buying, selling, exchanging, leasing, auctioning, or renting
11 real estate to

12 (1) a person who is not licensed under this chapter, except as provided
13 in (e) of this section;

14 (2) another licensee, except through the licensee's responsible broker;
15 or

16 (3) another licensee knowing that the other licensee intends to pay all
17 or a portion of that which is received to a person who is not licensed under this
18 chapter.

19 * Sec. 14. AS 08.88 is amended by adding a new section to read:

20 **Sec. 08.88.403. Use of experts.** A real estate broker may contract with and
21 pay an attorney or associate broker to assist the broker to review a real estate
22 transaction before the transaction closes. The broker may pay the attorney or associate
23 broker from a fee, commission, or other compensation received by the broker in a real
24 estate transaction payment.

25 * Sec. 15. AS 08.88.900(b) is amended to read:

26 (b) Notwithstanding that, under this section, a person is exempt from this
27 chapter, AS 08.88.401(d)(1) prohibits, except as provided in AS 08.88.403, a
28 licensee from knowingly paying to that person any part of a fee, commission, or other
29 compensation received by the licensee in buying, selling, exchanging, leasing,
30 auctioning, or renting real estate.

31 * Sec. 16. AS 08.88.990 is amended by adding a new paragraph to read:

1 (12) "initial license"

2 (A) means the first

3 (i) real estate broker license that the commission issues
4 to a person, even if the person previously received an associate real
5 estate broker license or real estate salesperson license under this
6 chapter;

7 (ii) associate real estate broker license that the
8 commission issues to a person, even if the person previously received a
9 real estate broker license or a real estate salesperson license under this
10 chapter;

11 (iii) real estate salesperson license under this chapter
12 that the commission issues to a person, even if the person previously
13 received a real estate broker license or an associate real estate broker
14 license under this chapter;

15 (iv) issuance of a license to an individual after the
16 individual's license has been revoked under AS 08.01.075;

17 (B) does not include the reinstatement of a license under
18 AS 08.88.241(b).

19 * Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 APPLICABILITY. AS 08.88.095 and 08.88.098, enacted by sec. 4 of this Act, and
22 AS 08.88.071(b), 08.88.091(e), 08.88.091(f), 08.88.171(a), 08.88.171(b), 08.88.171(c),
23 08.88.221, 08.88.241(a), 08.88.251(a), 08.88.263, and 08.88.090, as amended by secs. 1 - 3, 5
24 - 11, and 16 of this Act, do not apply to

25 (1) an initial license unless the initial license is issued on or after the effective
26 date of this Act; in this paragraph, "initial license" has the meaning given in
27 AS 08.88.990(12)(A)(i) - (iii);

28 (2) An initial license issued after a license revocation, unless the license
29 revocation occurs on or after the effective date of this Act; in this paragraph, "initial license"
30 has the meaning given in AS 08.88.990(12)(A)(iv); or

31 (3) a suspended license unless the license is suspended on or after the effective

1 date of this Act.

2 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and
5 Economic Development may proceed to adopt regulations necessary to implement secs. 1 -
6 11, 16, and 17 of this Act. The regulations take effect under AS 44.62 (Administrative
7 Procedure Act), but not before the effective date of secs. 1 - 11, 16, and 17 of this Act.

8 * **Sec. 19.** Sections 12 - 15 and 18 of this Act take effect immediately under
9 AS 01.10.070(c).

10 * **Sec. 20.** Sections 1 - 11, 16, and 17 of this Act take effect January 1, 2006.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepublicans.org/rokeberg/index.php>



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Representative Norman Rokeberg

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SPONSOR STATEMENT FOR HB 169

By: Representative Norman Rokeberg

Title: An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date.

HB 169 has been introduced at the request of the Alaska Association of Realtors. The legislation addresses changes to post-licensing education and broker supervision.

Post-Licensing Education

HB 169 requires a real estate licensee take 20 hours of post-licensing education within one year of receiving his/her initial license. The Education Task Force will develop the 20 hours of education. The classes will be devoted to practical applications on such topics as contracts and agreements, agency and disclosures, paperwork and risk management, evaluating, pricing and marketing, and financing to closing. Newly licensed associate brokers/brokers will also be required take 20 hours of post-licensing education. Their classes will be directed towards practical topics important for associate brokers/brokers. This post-licensing education requirement will help protect the public and real estate licensees through practical information vital to the practice of real estate.

Broker Supervision

Current law requires a real estate broker supervise every transaction. This is not practical in large real estate firms. In Anchorage, for example, 60% of the real estate transactions occur within three firms, with a total of four brokers. There is not enough time in the day for the four brokers to supervise every transaction and conduct all the other necessary duties of business ownership. HB 169 will allow brokers to employ associate brokers or attorneys to assist in the orderly review of real estate transactions prior to the closing of the transaction.

I urge your support of this legislation.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akRepublicans.org/rokeberg/index.php>



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SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
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Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS FOR HB 169

By: Representative Norman Rokeberg

Title: An Act relating to the educational requirements for certain real estate brokers, associate brokers, and salespersons with new or suspended licenses; and allowing real estate brokers to hire certain experts to review real estate transactions; and providing for an effective date.

- Section 1:** Requires a real estate licensee comply with education requirements before a suspended license can be reinstated.
- Section 2:** Makes conforming amendments.
- Section 3:** Makes a conforming amendment.
- Section 4:** Creates AS 08.88.095, new education requirements for a licensee after initial license:
- (a) An initial licensee has one year from the date of the initial license to complete 20 hours of education
 - (b) The initial license shall state that license is subject to education requirements
 - (c) Within 30 days after end of one-year period, licensee shall submit certification of education to Real Estate Commission
 - (d) After education requirements met, new license is issued without language in subsection (b)
 - (e) If licensee fails to complete education or submit certification, the license automatically lapses 30 days after the end of the one-year period
 - (f) A initially licensed broker, who previously had an associate broker's license, is not required to satisfy these new educational requirements
 - (g) Real Estate Commission cannot prevent a licensee from completing these education requirements within a two-day period
 - (h) Defines "educational requirements"

Creates AS 08.88.098, educational requirements after suspension:

- (a) If a license is suspended for six months or more, the licensee shall complete 20 hours of education
- (b) The licensee shall submit certification that the educational requirements have been met
- (c) These education requirements are in addition to any other conditions for reinstating the license

- (d) Real Estate Commission cannot prevent a licensee from completing these education requirements within a two-day period
- (e) If the suspension occurs during the first year after the initial license, the post-licensing education requirements can be used to satisfy the education requirements established in subsection (a)

- Section 5: Makes conforming amendments.
- Section 6: Makes conforming amendments.
- Section 7: Makes conforming amendments.
- Section 8: Allows the Department of Commerce, Community and Economic Development to set a fee for the new license under AS 08.88.095(d).
- Section 9: Makes conforming amendments.
- Section 10: Provides that a real estate licensee, whose initial license lapses due to failure to complete the education requirements, is not eligible for an "inactive" license until the license is properly reinstated.
- Section 11: Requires a real estate licensee, who has not held a license issued by another state for more than one year, to complete the post-education requirements before an Alaska license will be issued.
- Section 12: Makes a conforming amendment.
- Section 13: Makes a conforming amendment.
- Section 14: Allows a real estate broker to hire an attorney or associate broker to review a real estate transaction before the transaction closes.
- Section 15: Makes conforming amendment.
- Section 16: Defines "initial license."
- Section 17: Sets forth the applicability of the new educational requirements on "initial licenses."
- Section 18: Allows the Department of Commerce, Community and Economic Development to proceed with adopting regulations regarding the new educational requirements.
- Section 19: Provides an immediate effective date for the sections on use of experts.
- Section 20: Provides an effective date of January 1, 2006 for the sections on post-licensing education.

Rep. Norman Rokeberg

From: Dave Somers [dsomers@alaska.net]
Sent: Friday, March 11, 2005 4:02 PM
To: Rep. Norman Rokeberg
Subject: HB169

Dear Representative Rokeberg,
Thank you for sponsoring HB169. Surveys from within the industry show strong support, and the public will clearly benefit by improving the caliber of licensees in our state.
Dave Somers

Rep. Norman Rokeberg

From: Errol Champion [Errol.Champion@acsalaska.net]
Sent: Thursday, March 10, 2005 4:23 PM
To: Rep. Tom Anderson
Cc: Rep. Norman Rokeberg; Rep. Pete Kott; Rep. Gabrielle LeDoux; Rep. Bob Lynn; Rep. Harry Crawford; Rep. David Guttenberg
Subject: hb 169 Support

I wish to voice my support for the passage of HB 169. I am a newly licensed realtor (August 2004) and readily appreciated the importance of good classes and the benefits of continuing education courses. One is never too old to learn.

Sincerely,

Errol D. Champion
Licensee
Coldwell Banker Race Realty
Juneau, AK 99801

Rep. Norman Rokeberg

From: Debra Leisek [debral@ptialaska.net]
Sent: Thursday, March 10, 2005 12:41 PM
To: Rep. Norman Rokeberg
Subject: education of realtors

I ask you to please realize the importance of additional education requirements for Real Estate licensees and Brokers. I feel it is essential to have new licensees be required to take post licensing classes. Brokers should also have to take post licensing classes and be held to a higher standard if they are going to be responsible to train new licensees.

I am a Broker and have had my license for 14 years. I was fortunate to start out my career in an office that had high standards and realized the importance of working closely with new licensees to teach them the rules, regulations and laws of Real Estate. Not everyone has this opportunity.

I feel Brokers should be held to a higher standard of education and learning. Alaska has no real broker classes. They should mandate and provide better education. When the Real Estate market is good, more people get their license. They think Real Estate is simple and anyone can do it. With only a pre-license class of 20 hours and a test, it does make it pretty darn easy to get a license and hit the road. No matter what you believe, there is much more to Real Estate than what can be learned in 20 hours.

I strongly urge you to mandate more education for the new licensee, the old licensee, the associate Brokers and the Brokers. Alaska has the least requirements in education of almost any state. In Colorado the new agent has to take 90 hours within 2 years of getting their license. Kansas requires 40 hours per license period. In Texas you must take 120 hours before getting a license! We need more education.

However, once you mandate these new education requirements you have to provide the ability for people to take the classes. It isn't fair to make them travel and spend money to take classes. People in Kodiak should not have to fly to Anchorage to take classes.

Classes should be provided locally and often enough to allow the licensee to be able to attend and afford.

I appreciate your consideration in this matter,

Debra Leisek
Broker
Bay Realty

331 E Pioneer #101 Homer Alaska 907-235-6183

Rep. Norman Rokeberg

From: angie newby [angienewby@alaska.com]
Sent: Thursday, March 10, 2005 9:33 AM
To: Rep. Norman Rokeberg
Subject: HB 169: Real Estate Licensee Education Bill

Dear Representative Rokeberg,

As a Homer Realtor for over 22 years, I strongly support the current HB169, and I have sent emails to Representative Anderson, Kott, Lynn, and LeDoux encouraging them to do the same.

Sincerely,

Angie Newby, CCIM, CRS

OWNER/BROKER

HOMER REAL ESTATE

PO BOX 997

HOMER, AK 99603

907 235-5294 OFFICE

907 235-5223 FAX

907 299-1514 CELL

angienewby@alaska.com

<http://www.homerrealestate.com/>

Rep. Norman Rokeberg

From: Denny Wood [denny@akhomes.com]
Sent: Tuesday, March 08, 2005 5:26 PM
To: Rep. Norman Rokeberg
Subject: HR169

Dear Representative ,
Please support HB 169 to pass this session. The Alaska Association of Realtors is solidly behind this bill requiring post licensing education for our new licensees. We have always been firmly behind increasing the professionalism of our own and this bill would enhance that greatly.

Norm, I've sent this to all the committee members. Thanks.

Sincerely
Denny Wood, CRS
President
Alaska Association of Realtors

denny @akhomes.com
(907) 337-WOOD (9663)

Denny Wood, CRS
(907)337-WOOD(9663)
denny@akhomes.com
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THE WOOD HOME TEAM
Prudential Jack White/Vista Real Estate

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HB

171

LBC

Josh Applebee

From: Tom Nicolos [tom.nicolos@capesmythe.com]
Sent: Wednesday, March 09, 2005 2:40 PM
To: Rep. Tom Anderson
Subject: Support of HB 171

March 9, 2005

Alaska State Legislature
House Labor and Commerce Committee
Chair: Representative Tom Anderson

Re: Support of HB 171

Dear Representative Anderson:

I am writing in support of HB 171 on behalf of Cape Smythe Air Service, Inc whose corporate headquarters is located at Barrow, Alaska.

Thomas P. Brower established Cape Smythe in 1977 to provide dependable and affordable transportation for the people of the arctic region. Currently, Cape Smythe operates to approximately 30 locations out of our four hubs; Barrow, Deadhorse, Kotzebue, and Nome.

As a commuter Air Taxi, Cape Smythe carried U.S. Mail under the assumption we were governed under the Federal Railway Labor Act. Cape Smythe has always compensated our flight crewmembers based on block hours (the time an aircraft first begins movement for the purpose of a flight until that flight ends and the aircraft comes to a stop) as did the vast majority of air carriers and as many continue to do. Flight crewmembers were paid a prevailing market wage. There was no intent to skirt the Alaska Wage and Hour statutes. Were Cape Smythe to have paid flight crewmember wages in accordance with the Alaska Wage and Hour statutes, flight crewmembers would have not received any additional compensation, as their hourly rate would have been substantially reduced. In determining a compensation rate for flight crewmembers, the company has always taken into consideration that a flight crewmember would put in an hour on the ground for every hour they were airborne.

The Legislature recognized a problem existed and took actions to correct it by bringing the State statute into line with the Federal Act. That statute took effect in July of 2003. Unfortunately, Cape Smythe was forced to terminate the employment of a flight crewmember for what the company perceived as unsafe actions on his part. He has retaliated by filing a wage and hour lawsuit against Cape Smythe in May of 2004. In December of 2004, it was certified as a Class Action proceeding. Because of the 24 month statute of limitations, Cape Smythe finds itself in the position of having to defend against this action and potentially end up spending hundreds of thousands of dollars in litigation fees that it can ill afford to spend before it is brought to conclusion.

Due to issues with the by-pass mail in Alaska, the aviation community is extremely fragile right now. Having to continue to deal with this ongoing potentially expensive litigation very well could be the end of Cape Smythe Air Service. We feel we have fairly compensated our flight crewmembers and feel that the action brought against us is retaliatory in nature.

Your support in the passage of SB 171 will be greatly appreciated by nearly 100 employees who stand to lose their jobs with Cape Smythe unless we can substantially reduce our overhead including our legal battles.

Respectfully submitted,

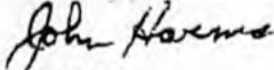
Tom D. Nicolos
General Manager

March 7, 2005

Dear Committee Members:

I am writing to you in regards to the proposed legislation, Senate Bill 105 and its counterpart in the House. It is apparent to me that the sole purpose of this bill is to wipe out the lawsuit initiated against Hagaland Aviation for unpaid overtime compensation although the court has already ruled that the pilots who comprise the class are entitled to it because Hagaland violated the law. Hagaland does not say that it did not violate the law, but now says that the law is unfair. What is unfair is to take away a right I and others had under that law, because the law did not favor Hagaland after the fact. What is unfair is to disregard the court's judgment and argue that this is only about the lawyers when it is really about individual pilots who are being denied their rights and their day in court. Please consider us while you consider this bill.

Sincerely yours,


John Harms

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
POUCH 7-021
ANCHORAGE, ALASKA 99510
PHONE: (907) 264-2435

September 3, 1986

Cynthia Andrecheck
Executive Director
Alaska Air Carriers Association
4134 Ingra Street, Suite 201
Anchorage, AK 99503

WHOL #53

Dear Ms. Andrecheck:

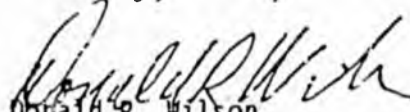
This will acknowledge receipt of your recent letter in which you made further inquiry into the exempt status of "commercial, part 135 air taxi and commuter flying."

The department has adopted the position of the U.S. Department of Labor, as set forth in Section 13(b)(3) of the FLSA, 1938 as amended; specifically, commuter aircraft and air taxi pilots are exempt only if involved in interstate transportation of passengers and/or substantial hauling of the mail. If their activities are solely intrastate or without the "mail hauling" functions then the exemptions otherwise extended would not apply.

The "federal position" you addressed in your letter for air carriers can be found at Section 13(b)(3) of the FLSA, 1938 as amended and at Section 213(b)(3) of Title 29, U.S.C.

Please advise if we can be of further assistance.

Sincerely,


Donald R. Wilson
Deputy Director
Labor Standards & Safety Division

0564w

EXHIBIT 2

ALASKA DEPT. LAURAY S. HAMMOND, GOVERNOR
RECEIVED

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

APR 21 '80

420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-3550

April 15, 1980

The Honorable Edmund Orbeck
Commissioner
Department of Labor
P.O. Box 1149
Juneau, AK 99811

RECEIVED
APR 24 1980

LABOR LAW COMPLIANCE DIV.
Anchorage Office

Re: Enforcement of Alaska Over-
time Laws with Respect to
Air Carriers in Alaska
AS 23.10.060
A66-102-80

Dear Commissioner Orbeck:

You have inquired whether the Department of Labor may enforce the mandatory overtime provision of the Alaska Wage and Hour Act (AS 23.10.060-150) with respect to employees of air carriers operating within the State of Alaska. The answer to your question depends upon the nature of the employer's business, the nature of work performed by the individual employee, the existence or nonexistence of a valid collective bargaining agreement between the employer and its employees, whether the air carrier operates intrastate or interstate, and finally, whether the application of state law would create a burden upon interstate commerce.^{1/}

^{1/} Specifically not addressed in this memorandum is the question of whether by the use of "flex-time contracts", an employer may avoid the mandatory payment of overtime to those employees who work irregular weekly or daily hours. That issue is currently before the Supreme Court of Alaska in the case of State of Alaska v. Bechtel, Inc., Supreme Court No. 4139. See also, Attorney General's Opinion dated February 10, 1978.

Exhibit 1

The Honorable Edmund Orbeck
Commissioner
Department of Labor

April 15, 1980
Page 2

I

THE RELATIONSHIP BETWEEN THE FEDERAL
FAIR LABOR STANDARDS ACT AND THE ALASKA WAGE AND HOUR ACT

The Federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, specifically exempts from the operation of the mandatory overtime provision (§ 207) "any employee of a carrier by air subject to the provisions of §§ 181-188 of Title 45" 29 U.S.C. § 213(b)(3). The Alaska Wage and Hour Act, AS 23.10.050 et seq. contains no such exemption.^{2/}

In passing the Fair Labor Standards Act Congress did not intend to foreclose all attempts by the individual states to regulate wages and hours. The Act itself states that none of its maximum hours provisions operates to excuse noncompliance by employers with any state law which establishes a higher standard. It is only where the standards set by the FLSA are higher than the comparative state standards that the Act serves to preempt the state activity. H.R. Rep. No. 2182 at 15 (75th Cong.). See also Eastern Sugar Associates v. Pena, 222 F.2d 934 (1st Cir. 1955); Rivera v. Div. of Industrial Welfare, 71 Cal. Rptr. 739 (1958); 29 C.F.R. § 778.5. Thus, merely because the federal law exempts airline employees

^{2/} The Alaska Act, which is based upon the Federal Fair Labor Standards Act, McGinnis v. Stevens, 543 P.2d 1221, 1238 (Alaska 1975), originally contained the airline exemption. (Sec. 3, ch. 171 SLA 1959.) However, the Act was amended in 1970 to eliminate that exemption. (Sec. 1, ch. 243 SLA 1970, effective October 31, 1970.)

from mandatory overtime entitlement, it does not follow automatically that the state law must do likewise. Here, the State seeks to compel air carriers to pay overtime to those employees who have worked in excess of eight hours per day or 40 hours per week. Clearly, the State act has set a standard which is considerably higher than the comparative federal provision since the federal law does not contain an eight hour work day limitation.

Accordingly, in light of the authority recited above, and consistent with the State of Alaska's current position in State of Alaska v. Bechtel, Inc. Supreme Court No. 4139, presently pending before the Alaska Supreme Court, we feel that the Fair Labor Standards Act does not expressly preempt the Alaska Wage and Hour Act on the question of whether airline employees are excluded from the mandatory overtime directive of AS 23.10.060. A substantial question remains, however, as to whether the State Act has been nonetheless preempted through enactment and operation of the Federal Railway Labor Act, 45 U.S.C. §§ 151-188.

II

THE RELATIONSHIP OF THE RAILWAY LABOR ACT TO THE ALASKA WAGE AND HOUR ACT

There are two conflicting lines of reasoning concerning the impact of the Railway Labor Act upon attempted state regulation of wages and hours in industries subject

to, or arguably subject to, the Railway Labor Act. Each finds its source in an opinion of the United States Supreme Court.

In Terminal Railroad Association of St. Louis v. Brotherhood of Railroad Trainmen, 318 U.S. 1 (1943) the Supreme Court addressed a claim by the appellant Railroad Association that the Illinois Commerce Commission's order requiring the Association to provide cabooses for its train employees was invalid because the field in which the state had attempted regulation was one which had been preempted by the federal government under the terms of the Railway Labor Act. The Court was not persuaded by the Association's argument. In upholding the Commission's order, the Court declared that:

the Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead, it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce.

318 U.S. at 6. See also Williams v. Jacksonville Terminal Co., 315 U.S. 386 (1942), rehearing denied, 315 U.S. 830 (1942); Brotherhood of Locomotive Engineers v. Baltimore & Ohio

Railroad Co., 372 U.S. 284 (1963); Baltimore & Ohio Railroad Co. v. Commonwealth of Pennsylvania, 334 A.2d 636 (Pa. 1975), app. dismissed for want of substantial federal question, 423 U.S. 806 (1975); Gibbons v. Kansas City Southern Railway Co., 34 CCH Labor Cases, ¶ 71,276, 100 So.2d 319 (La. 1957).

In 1957, the United States Supreme Court had occasion to again examine the relationship between the Railway Labor Act and the regulation by states of working conditions in affected industries. California v. Taylor, 353 U.S. 553 (1957) involved the question of whether the Railway Labor Act operated to require that the terms of a collective bargaining agreement between a state-owned and operated railroad and its employees would prevail over conflicting provisions of state civil service law. The Court held that it did. Terminal Railroad Association v. Brotherhood of Railroad Trainmen, *supra*, was definitively distinguished. The Court stated that the state regulation in Terminal had withstood challenge because it was directed at the establishment of regulations governing safety and health and was not concerned with the right secured by federally protected collective bargaining. 353 U.S. at 560. Accordingly, it was outside of the scope of the Railway Labor Act. In Taylor, on the other hand, the state was attempting to regulate working conditions not specifically or directly connected to the maintenance of health or safety, in contra-

The Honorable Edmund Orbeck
Commissioner
Department of Labor

April 15, 1980
Page 6

vention of an express collective bargaining agreement. That practice was not permissible, said the Court, since by means of the Railway Labor Act, Congress had preempted the field of employer-employee bargaining agreements in all "affected industries". The key factor is the existence of a valid collective bargaining agreement. Where such an agreement exists, its terms must prevail over inconsistent state legislation. See also United Airlines, Inc. v. Industrial Welfare Commission, 28 Cal. Rptr. 238 (1963); Railway Employees' Department v. Hanson, 351 U.S. 225 (1951); Pan American World Airways v. Division of Labor Law Enforcement, 203 F. Supp. 324 (N.D. Cal. 1962).

It would seem to us that the Taylor line of cases is more clearly controlling in this instance. In attempting to compel the payment of overtime by interstate air carriers to employees covered by collective bargaining agreements which provide otherwise the State is interfering with an agreement which has "the imprimatur of federal law upon it". Railway Employees' Department v. Hanson, 351 U.S. at 232. In doing so, the State has run afoul of the preemptive provisions of the Railway Labor Act. Insofar as the Alaska Wage and Hour Act operates to require the payment of overtime to affected employees of interstate air carriers covered by valid collective bargaining agreements, that Act is invalid since it

has been preempted by the Railway Labor Act. We must still ascertain, however, which employees are "affected" so as to be exempt from the operation of state law.

III

ACTIVITIES WHICH FALL WITHIN THE AIR CARRIERS EXEMPTION

The inclusion of air carriers (and their employees) within the scope of the Railway Labor Act is found in subch. II of that Act, 45 U.S.C. §§ 181-188. Section 181 provides:

All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

Clearly, any commercial airline operating into or out of Alaska falls within the language of the Railway Labor Act. Equally clearly, pilots (expressly) and other members of the flight crew (by implication) are covered by the air carrier provisions of the Railway Labor Act and thus fall outside the purview of the Alaska Wage and Hour Act, at least insofar as the payment of overtime is concerned. However, application of the Railway Labor Act to any other employees of an air carrier depends upon an analysis of sec. 181 of the federal Act and specifically upon the definition of the term "employee"

contained therein.

The Railway Labor Act was enacted for the purpose of avoiding the interruption of commerce caused by labor disputes and of assuring unimpeded continuity of transportation operations. Williams v. Jacksonville Terminal Co., 315 U.S. 586 (1942), reh. denied, 315 U.S. 830 (1942); National Airlines, Inc. v. International Association of Machinists & Aerospace Workers, 308 F. Supp. 179 (S.D. Fla. 1970), rev'd on other grounds 430 F.2d 957 (5th Cir. 1970), cert. denied 400 U.S. 992 (1971); Pan Am World Airways, Inc. v. United Brotherhood of Carpenters & Joiners of America, 324 F.2d 217 (9th Cir. 1963), cert. denied 376 U.S. 964 (1964). To that end the Railway Labor Act has direct application only to those employees of the carrier whose work bears a direct relationship to the transportation activities of the carrier. International Longshoremen's Association, AFL-CIO v. North Carolina State Port Authority, 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1974); Roland v. United Airlines, Inc., 75 F. Supp. 25 (N.D. Ill. 1947). The mere fact that some of an employer's activities are related to transportation does not automatically subject all of the employer's activities to the Railway Labor Act. Instead, each activity must be scrutinized individually to see if the specific activity bears the necessary relation to transportation. Jackson v. Northwest

Airlines, 70 F. Supp. 501 (M.D. Minn. 1947), aff'd 185 F.2d 74 (8th Cir. 1950), cert. denied 342 U.S. 812 (1951). Whether a particular employment situation satisfies the requisite nexus test is a question of fact which must be separately examined in each case. Edwards v. Southern Railway Co., 258 F. Supp. 212 (E.D. N.C. 1966). *Would this hold true for a pilot who works for an air carrier that flies inter-state but the pilot flies only inter-state?*

Therefore, the Department of Labor is well advised to closely investigate and analyze each employee's activity in order to ascertain whether the activity bears a substantial and direct relationship to the transportation activities of the employer. Any employment activities which fail to satisfy this requirement fall outside of the coverage of sec. 181 of the Railway Labor Act and thus are subject to state regulation unless the attempted regulation is otherwise barred by operation of the Commerce Clause of the United States Constitution.

IV

COMMERCE CLAUSE RAMIFICATIONS

Art. I, sec. 8, cl.3 of the United States Constitution confers upon Congress the power "to regulate commerce with foreign nations, and among several states, and with the Indian tribes." Since there is a national interest in the free flow of interstate commerce, Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824); Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520 (1959), the Supreme Court, under the auspices of the Commerce Clause, will strike down any state law which serves to substantially

crews), however, would not appear to have such a direct and potentially burdensome impact upon commerce. In situations where the states are not preempted from exercising regulatory authority, the state's interest in the welfare of its citizens is entitled to greater weight. Southern Pacific Company v. Arizona, 325 U.S. at 767. In such a case courts traditionally have balanced the strength of the local interest against the impact upon interstate commerce. Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). Where the state interest is substantial, attempted regulation does not interfere with the national commerce, and no less restrictive alternative exists, the state law may be upheld. Southern Pacific Company v. Arizona, supra; Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951). Such would seem to be the case where non-flight personnel are concerned. For the State to apply the protections of its wage and hour laws to such employees would not appear to result in any undue burden upon interstate commerce.

V.

CONCLUSION

In summary the following principles appear to be valid with respect to the authority of the Alaska Department of Labor to enforce the mandatory overtime provisions of the Alaska Wage & Hour Act in favor of employees of airlines and air carriers operating within the State of Alaska.

*same
national
for other
pilots*

1. In the case of pilots, flight crews, and other interstate air carrier employees whose activities are directly and substantially related to the transportation activities of the carrier, and who are covered by a valid existing collective bargaining agreement or agreements with the carrier, the State is precluded from applying its overtime laws due to the preemptive nature of the Railway Labor Act.

2. In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of the commerce clause implications discussed above.

3. Non-flight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law. As to those individuals the provisions of state overtime law apply.

4. Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act or of the Commerce Clause absent unusual fact situations. Accordingly, the protections of the Alaska Wage and Hour Act dealing with overtime extend to those individuals.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: *Eric Olson*
Eric Olson
Assistant Attorney General



Representative Mike Kelly
House District 7 – Fairbanks

HB 171
FACT SHEET

Sponsor: Rep. Mike Kelly

Short Title: OVERTIME WAGES FOR FLIGHT CREW

Summary:

Retroactively removes flight crews from statutory overtime compensation required under the Alaska Wage and Hour Act found in AS 23.10.060.

Applies retroactively to flight crew work performed on or after Jan. 1, 2000.

Benefits:

Fulfills the intent of the 23rd Legislature to help ensure the viability of Alaska's air carrier industry.

Helps the air carrier industry continue to provide vital services linking rural communities with larger cities and providing access to healthcare facilities, groceries, mail, sports and other events across the state.

Background:

Until 2003, it had been the Department of Labor's uncodified policy to exempt in state air carriers from Alaska Wage and Hour Act overtime provisions. The policy was rooted in a 1980 Alaska Attorney General opinion that cited both the federal Railway Labor Act and the U.S. Constitution's Commerce Clause as preempting flight crews from overtime compensation provided through the AWhA. That policy was brought into question by a 2000 lawsuit seeking overtime for pilots. By 2003, three class action suits were outstanding, representing millions of dollars in claims against Alaska air carriers. State lawmakers consequently took action to avoid what could be devastating losses to a critical yet fragile industry. In 2003 the 23rd Legislature passed SB 54 codifying DOL policy exempting flight crews from overtime compensation. While the bill did accomplish this, it failed to fully enact the legislative intent necessary to deflect court actions seeking recovery for periods dating back to the year 2000. SB 105 would close this loophole.

Alaska State Legislature

Juneau

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Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly

House District 7

HB 171

(24-LS0666A)

Sponsor Statement

"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members."

House Bill 171 clarifies legislative intent by retroactively removing flight crews from the scope of statutory overtime compensation required under the Alaska Wage and Hour Act found in AS 23.10.060. Retroactivity will apply to work performed on or after January 1, 2000.

The challenges facing the air carrier industry nationwide are extraordinary. Heightened security requirements have necessitated ever-larger investments in human and technological resources.

Operating expenses continue to escalate as the price of fuel increases. These cost burdens place enormous pressures on already thin margins. The air carrier industry in our state is no different in this respect. Yet the role it plays in our daily lives is arguably much greater.

The Alaska air carrier industry represents a vital link, in fact a bond, between rural communities and hub cities. It provides a lifeline to healthcare facilities. It delivers the groceries and the mail. And it transports the basketball teams and the elders to important events across the state. But now, in addition to the burdens placed on the industry since 2001, we can add the cost of superfluous litigation, which threatens the viability of many of our local carriers.

Up until 2003, it had been the Department of Labor's (DOL) uncodified policy that in-state air carriers are exempt from the Alaska Wage and Hour Act's (AWHA) overtime provisions. This policy was rooted in a 1980 Alaska Attorney General opinion. This opinion cited both the federal Railway Labor Act and the U.S. Constitution's Commerce Clause as preempting flight crews from overtime compensation provided through the AWA. However, in 2000 uncertainty crept into the DOL's policy as a result of a lawsuit that sought overtime compensation for pilots. By 2003, three class action suits were outstanding representing millions of dollars in claims against Alaska air carriers. Consequently, state lawmakers took action to avoid what could be devastating losses to a critical yet fragile industry.

The 23rd Legislature passed into law a bill (SB 54) that codified what, up to that point, had been DOL policy exempting flight crews from the AWA overtime compensation rules. While the bill did accomplish this important purpose, it failed to fully enact the legislative intent necessary to deflect court actions seeking recovery for periods dating back to the year 2000.

House Bill 171 seeks to fulfill the intent of the 23rd Legislature by implementing the provisions found in AS 23.10.060(d)(19) retroactively to January 1, 2000. This will help ensure the viability of our air carrier industry so that it may continue to perform its vital public function.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB171-LAW-L&SA-2-20-
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the retrospective application RDU CIVIL
of the overtime compensation exemption for flight crew..." Component Labor & State Affairs
 Sponsor Representative Kelly
 Requester House Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 Gr. Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill adds a new section in statute applying the overtime compensation exemption for flight crew members set forth in AS 23.20.060 (d)(19) retroactive to work performed on or after January 1, 2000. Any unresolved claims for overtime compensation for employment as a flight crew member on or after January 1, 2000 would fall under this new provision.

Passage of this legislation would have no fiscal impact on the Department of Law.

Prepared by: Katryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/4/05 3:23 PM
 Approved by: Kathryn Daughhete for Scott Nordstrand, Acting AG Date 3/4/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB171-DOLWD-WH-03-04-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Overtime Wages for Flight Crew RDU: Labor Standards and Safety
 Component: Wage and Hour
 Sponsor: Representative Kelly
 Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type -Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill retroactively applies an exemption to the requirement to pay overtime compensation to flight crew members. There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 3/4/05 2:03 PM
 Approved by: Greg O'Claray, Commissioner Date: 3/4/2005
 Agency: Department of Labor and Workforce Development

March 9, 2005

Alaska State Legislature
House Labor and Commerce Committee
Chair: Representative Tom Anderson

Re: Support of HB 171

Dear Representative Anderson:

I am writing in support of HB 171 on behalf of Cape Smythe Air Service, Inc whose corporate headquarters is located at Barrow, Alaska.

Thomas P. Brower established Cape Smythe in 1977 to provide dependable and affordable transportation for the people of the arctic region. Currently, Cape Smythe operates to approximately 30 locations out of our four hubs; Barrow, Deadhorse, Kotzebue, and Nome.

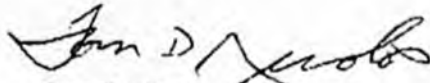
As a commuter Air Taxi, Cape Smythe carried U.S. Mail under the assumption we were governed under the Federal Railway Labor Act. Cape Smythe has always compensated our flight crewmembers based on block hours (the time an aircraft first begins movement for the purpose of a flight until that flight ends and the aircraft comes to a stop) as did the vast majority of air carriers and as many continue to do. Flight crewmembers were paid a prevailing market wage. There was no intent to skirt the Alaska Wage and Hour statutes. Were Cape Smythe to have paid flight crewmember wages in accordance with the Alaska Wage and Hour statutes, flight crewmembers would have not received any additional compensation, as their hourly rate would have been substantially reduced. In determining a compensation rate for flight crewmembers, the company has always taken into consideration that a flight crewmember would put in an hour on the ground for every hour they were airborne.

The Legislature recognized a problem existed and took actions to correct it by bringing the State statute into line with the Federal Act. That statute took effect in July of 2003. Unfortunately, Cape Smythe was forced to terminate the employment of a flight crewmember for what the company perceived as unsafe actions on his part. He has retaliated by filing a wage and hour lawsuit against Cape Smythe in May of 2004. In December of 2004, it was certified as a Class Action proceeding. Because of the 24 month statute of limitations, Cape Smythe finds itself in the position of having to defend against this action and potentially end up spending hundreds of thousands of dollars in litigation fees that it can ill afford to spend before it is brought to conclusion.

Due to issues with the by-pass mail in Alaska, the aviation community is extremely fragile right now. Having to continue to deal with this ongoing potentially expensive litigation very well could be the end of Cape Smythe Air Service. We feel we have fairly compensated our flight crewmembers and feel that the action brought against us is retaliatory in nature.

Your support in the passage of SB 171 will be greatly appreciated by nearly 100 employees who stand to lose their jobs with Cape Smythe unless we can substantially reduce our overhead including our legal battles.

Respectfully submitted,



Tom D. Nicolos
General Manager

HB

181

24-LS0685L
Mischel
4/15/05

CS FOR HOUSE BILL NO. 181()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing a waiver for active duty military service of continuing education
2 requirements for renewal of occupational licenses."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 08.01.070 is amended to read:

5 Sec. 08.01.070. Administrative duties of boards. Each board shall perform
6 the following duties in addition to those provided in its respective law:

- 7 (1) take minutes and records of all proceedings;
- 8 (2) hold a minimum of one meeting each year;
- 9 (3) hold at least one examination each year;
- 10 (4) request, through the department, investigation of violations of its
11 laws and regulations;
- 12 (5) prepare and grade board examinations;
- 13 (6) set minimum qualifications for applicants for examination and
14 license and may establish a waiver of continuing education requirements for

1 renewal of a license for the period in which a licensee is engaged in active duty
2 military service as described under AS 08.01.100(f):

3 (7) forward a draft of the minutes of proceedings to the department
4 within 20 days after the proceedings;

5 (8) forward results of board examinations to the department within 20
6 days after the examination is given;

7 (9) notify the department of meeting dates and agenda items at least 15
8 days before meetings and other proceedings are held;

9 (10) submit before the end of the fiscal year an annual performance
10 report to the department stating the board's accomplishments, activities, and needs.

11 * Sec. 2. AS 08.01.100(c) is amended to read:

12 (c) Except as provided in (f) of this section, when [WHEN] continuing
13 education or other requirements are made a condition of license renewal, the
14 requirements shall be satisfied before a license is renewed.

15 * Sec. 3. AS 08.01.100 is amended by adding a new subsection to read:

16 (f) The department may establish and implement a waiver of continuing
17 education requirements for renewal of a license regulated by the department and a
18 board may establish and implement a waiver of continuing education requirements for
19 renewal of a license regulated by the board for the period in which a licensee is
20 engaged in active duty military service in the armed forces of the United States.

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

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North Pole, AK 99705
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Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 181 Continuing Education Waiver for Members of the Armed Forces of the United States

This legislation is introduced to eliminate the possibility of a professional licensee losing his or her license because of failure to fulfill statutory requirements for continuing education while serving on active duty.

Many professional license holders are full-time active duty military or members of reserve or auxiliary components of the armed forces. Oftentimes the men and women serving our country no longer have the ability to fulfill the educational requirements to maintain their specific license, registration, permit or certificate.

HB 181 provides a waiver of the educational requirements and allows the license holder to return to Alaska and have an extended period of time to fulfill the continuing education requirements without losing their license for non-compliance.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 181(MLV)
 (H) Pubiish Date: 3/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Military and Veterans Affairs
 Title An Act establishing a waiver for active duty RDU Military and Veterans Affairs
military service of continuing education requirements Component Office of the Commissioner
 Sponsor Military and Veterans Affairs
 Requester (H) Military and Veterans Affairs Component No. 414

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact.

Prepared by: John Cramer Phone (907) 465-4602
 Division Division of Administrative Services Date/Time 3/8/05 1:54 PM
 Approved by: Commissioner Craig E. Campbell Date 3/8/2005
 Agency Department of Military and Veterans Affairs

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 181(MLV)
 (H) Publish Date: 3/18/05

Revision Date/Time (Note if correction):
 Title Waive Continuing Education Requirement for Military
 Sponsor Coghill
 Requester House Military and Veterans' Affairs

Dept. Affected: Commerce
 RDU Occupational Licensing (117)
 Component Occupational Licensing

Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 181 establishes a waiver of continuing education requirements for renewal of occupational licenses for the period in which a licensee is engaged in active duty military service. This legislation has no fiscal impact on the operations of the division.

Prepared by: Rick Urion, Director Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/17/05 11:24 AM
 Approved by: Edgar Blatchford, Commissioner Date 3/17/2005
 Agency: Commerce, Community, and Economic Development

HB

182



March 16, 2005

Rep Norm Rokeberg
State Capital Building
Juneau, AK 99801
Sent via fax: (907) 465-2040

Dear Representative Rokeberg,

On behalf of the Alaska Hotel & Lodging Association and the Alaska Restaurant & Beverage Association I convey full support of HB 182. This is an important bill for our industry and for every employee of exempt workers because it provides for exempt status language that employers are easily able to understand and comply with. Currently, exempt status language requires that employers track and log how exempt workers spend their time by the hour to ensure appropriate compliance with the 80/20 or 60/40 provisions.

The definition of exempt status eligibility being based on primary job duty rather than the amount of time a worker spends on exempt vs. non exempt work mirrors the real life work roles of executive and professional salaried workers. The Federal definition of exempt worker was recently changed for the very same reason; it is burdensome to comply with and makes employers vulnerable to costly lawsuits.

A focus on primary job duties provides a clear definition of who is eligible to be exempt and who is not. Without this clear definition, many employers chose to make all employees hourly wage earners, denying the executive and professional management staff access to benefits that could otherwise be offered to them.

The provisions of HB 182 benefit both the employer and the employee. Thank you for your sponsorship of this bill.

My best regards,

Karen R. Rogina
President & CEO

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepublicans.org/rokeberg/index.php>



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ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SPONSOR STATEMENT FOR HB 182

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

Alaska's Wage and Hour Act (AS 23.10.050-23.10.150) establishes the provisions for overtime compensation. AS 23.10.055 sets forth exemptions to the Wage and Hour Act. One of these exemptions is "an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis."

As currently defined in our administrative code, the definitions of "executive capacity," "administrative capacity," and "professional capacity" are confusing and difficult to interpret. In order to determine if someone is an executive, administrative or professional employee, you have to use what is known as the "long test." In addition to numerous other factors, the long test includes a calculation of the employee's time spent on "non-exempt work" (i.e. work that is not executive, administrative or professional). If an employee spends more than 20 percent (40 percent in retail or service establishments) of their time on non-exempt work, they become subject to the Wage and Hour Act and can qualify for overtime. The ambiguity within the definitions, including the implementation of the 80/20 test, has led to numerous wage and hour lawsuits, causing great expense to employers and employees.

HB 182 deletes the 80/20 test and sets forth definitions which are much more understandable. The simplicity provided by the new definitions will lead to greater compliance with the statutes. It is in the best interests of both the employer and employee that the statutes are straightforward, practical and easy to follow.

HB 182 also clarifies another area of confusion in the Wage and Hour provisions. Currently, a person acting in a "supervisory capacity" is exempt from payment of overtime, but not exempt from the full Wage and Hour Act. The definition of "supervisory capacity" in the regulations is also ambiguous and difficult to interpret. HB 182 removes this exemption from the statute. There are two reasons for deletion of the provision. The first reason is that due to the uncertainty in interpretation of the definition, the statute is currently unworkable. Secondly, the new definitions of "executive capacity" and "administrative capacity" would subsume a person working in a supervisory capacity. Therefore, there is no need to have a separate provision.

Enacting this bill will eliminate ambiguities, align Alaska more closely with other states and reduce the number of frivolous lawsuits, while protecting workers rights to receive overtime.

I urge your support of this legislation.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepulicans.org/rokeberg/index.php>



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FAX (907) 65-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS FOR HB 182

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

- Section 1:** Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 5 of the bill.
- Section 2:** Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).
- Section 3:** Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

Current Definitions vs. New Definitions
By: Representative Norman Rokeberg

Employees exempt from Wage and Hour Act	Current Definition	House Bill 132
Administrative	<ul style="list-style-type: none"> • Primary duties are management, supervising • Uses discretion and independent judgment • Performs work under only general supervision • Regularly and directly assists a proprietor or an exempt executive employee of the employer • Performs work along specialized or technical lines requiring special training • Salary at least 2.0 times minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is performance of office or nonmanual work directly related to management or general business operations • Uses discretion and independent judgment • Salary is at least 2.0 times the minimum wage in first forty hours a week
Executive	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Customarily and regularly exercises discretionary authority • Salary at least 2.0 times the minimum wage in first forty hours a week • 80/20 rule 	<ul style="list-style-type: none"> • Primary duty is management of the business • Directs two or more employees • May hire and fire • Salary at least 2.0 times the minimum wage in first forty hours a week
Professional	<ul style="list-style-type: none"> • Primary duty requires an advanced degree • Or, is creative in nature, teacher or computer-related • Uses discretion and independent judgment • Work is predominately intellectual and varied in character • Salary at least 2.0 times the minimum wage in first forty hours a week 	<ul style="list-style-type: none"> • Primary duty requires knowledge from prolonged course of specialized intellectual instruction • Or invention, imagination, originality or talent in artistic or creative endeavor • Salary at least 2.0 times the minimum wage in first forty hours a week

State by State Overtime Comparision

Completed Spring, 2004

By: John M. Sedor

Single Definitional Standard – 32 Jurisdictions

(These jurisdictions either do not have applicable wage/hour regulations or directly reference the overtime exemption definitions found in the Fair Labor Standards Act to define their own exemption from overtime requirements. In these jurisdictions, employers will only need to comply with one definitional standard – the federal standard – regarding overtime exemption issues.)

Alabama	Arizona	Delaware	District of Columbia
Florida	Georgia	Idaho	Indiana
Iowa	Kansas	Louisiana	Maine
Massachusetts	Michigan	Mississippi	Missouri
Nebraska	Nevada	New Hampshire	New Mexico
New York	North Carolina	Ohio	Oklahoma
South Carolina	South Dakota	Tennessee	Texas
Utah	Vermont	Virginia	Wyoming

“Old” Short Test – 8 Jurisdictions

(The “old” short test is similar to the new federal regulations with regard to the “time performing exempt functions” factor)

Connecticut	Illinois	Kentucky	Maryland
Montana	North Dakota ¹	Rhode Island ¹	West Virginia

¹ Definitional language contains minor variations from old federal test.

Unique Standards – 4 Jurisdictions

(Four states have a unique standard for determining overtime exemption definitions)

California	Colorado	Hawaii	Oregon	
------------	----------	--------	--------	--

“Old” Long Test – 7 Jurisdictions

Alaska	Arkansas	Minnesota	New Jersey	Pennsylvania
Washington	Wisconsin ²			

² Definitional language contains minor variations from old federal test

EMPLOYERS BEWARE:

NEW WAGE AND HOUR REQUIREMENTS MAY SIGNIFICANTLY IMPACT ALASKA EMPLOYERS



Article by Bill Evans, partner,
Dorsey and Whitney LLP,
vice chair, Anchorage Chamber
of Commerce

Both the federal and state wage and hour laws recently underwent significant revisions. It is very important

that Alaska employers understand these new requirements and ensure that their exempt employees are still in compliance with the new regulations and statutes. Even inadvertent departure from the new requirements can result in substantial liability.

Major Federal Revisions. On April 23, 2004, the United States Department of Labor published its long-anticipated revisions concerning the so-called white-collar exemptions (i.e., executive, administrative, professional, computer professional and outside salesperson). A key change to the federal system is that all employees who now earn less than \$455 per week—or \$23,660 per year—must receive overtime. Previously, employees had to earn only \$155 per week in order to qualify as exempt. The U.S. government estimates that more than 1.3 million workers nationwide will benefit from this mandated salary increase. A much fewer number of employees, estimated to be approximately 107,000 nationwide, may lose their current entitlement to overtime due to other changes.

By wholly eliminating the antiquated “long test” for determining exemptions, the Department of Labor did away with the last vestiges of the beleaguered 80/20 requirement that mandated that exempt employees could spend no more than 20 percent of their time engaged in nonexempt duties. The difficulty in objectively documenting compliance with this requirement made it a particularly vexing issue for many employers.

The Department of Labor also significantly revised the test used for determining whether an employee qualifies for an exemption based on his or her job duties. For example, administrative employees, who have always been required to exercise discretion and independent judgment in performing their duties, must now exercise such discretion and independent judgment with respect to “matters of significance.” See 29 C.F.R. § 541.200.

Another notable change involves the definition of an “executive” employee. In addition to managing a

department or customarily recognized subdivision of the employer and regularly directing the work of at least two other employees, the new definition of an “executive” employee requires:

“The employee must have authority to hire or fire other employees or his/her suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”

29 C.F.R. § 541.100.

Alaska Fails to Adopt Similar Changes. Choosing not to follow the lead of the federal government, the Alaska Legislature maintained its historic definitions for the white-collar exemptions. Accordingly, Alaska employers now must ensure that their exemptions comply with two significantly different systems. For instance, the problematic 80/20 requirement is still very much alive under Alaska law. It is, therefore, increasingly possible that many employees may be exempt under one system but not under the other.

Alaska Establishes Minimum Salary for Exempt Employees. Although the Alaska Legislature did not adopt any changes to the existing definitions for exempt employees, it did substantially increase the minimum salary that an exempt employee must earn. Moreover, it tied this minimum salary to the state’s minimum wage, thereby guaranteeing that future increases in the minimum wage will also increase the minimum salary for exempt employees.

House Bill 255, which was submitted for Gov. Murkowski’s signature on June 10, 2004, requires that any employee falling under the “administrative,” “executive” or “professional” exemptions must earn a minimum salary of at least two times the state minimum wage for the first 40 hours of employment each week.

The current Alaska minimum wage is \$7.25 per hour. Accordingly, this new law will require that any exempt employee be paid a salary of \$580 per week—or \$30,160 per year. There is no evidence of any study being conducted to determine how many employees or employers in Alaska this new requirement will affect. This law will automatically go into effect 90 days after it is signed by the governor.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

Website: <http://www.akrepublicans.org/rokeberg/index.php>



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Representative Norman Rokeberg

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SECTIONAL ANALYSIS FOR CSHB 182()

By: Representative Norman Rokeberg

Title: An act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity; providing definitions for persons employed in administrative, executive and professional capacities, for persons working in the capacity of an outside salesman, and for persons working in the capacity of a salesman employed on a straight commission basis.

Section 1: Removes the provision that a person acting in a "supervisory capacity" is exempt from overtime. This sentence is being deleted, as "supervisors" will now be covered by the definitions found in Section 3 of the bill.

No changes in CS.

Section 2: Deletes the minimum salary requirement when defining these terms in regulation, as these terms will now be defined in statute (see Section 3).

No changes in CS.

Section 3: Defines "individual employed in an administrative capacity," "individual employed in an executive capacity," "individual employed in a professional capacity," "outside salesman," and "salesman employed on a straight commission basis."

Changes made by CS:

Page 3, Lines 17-22: Adds teachers and computer related occupations to definition of "professional capacity." These occupations are included in the current definitions and were inadvertently left out.

Page 3, Lines 26-28: Inserted the term "primary duty"

Page 3, Lines 29-30: Replaced "a person" with "an employee"

Page 3, Line 31: Inserted "customarily"

Page 4, Lines 6-7: Inserted a primary duties test.



ALASKA

National Federation of Independent Business

Statement of Support for HB 182

March 4, 2005

Employers in Alaska must follow both the Federal Fair Labor Standards Act (FSLA) and the State Wage and Hour Act in setting employee wages. Federal and State law exempts executive, administrative and professional employees from overtime requirements of the wage and hour act. To determine if an employee is exempt, Alaska is one of a few states that continue to apply the "long test" which includes a calculation of the employee's time spent on non-exempt work. (The 80/20 test)*

Most states use the overtime exemption definitions found in the Fair Labor Standards Act relieving businesses of the burden of applying two systems. House Bill 182 removes the 80/20 test for salaried employees and implements a definition of duties test similar to the FSLA regulations.

Keeping track of a salaried employee's hourly activities is a cumbersome if not impossible task. HB 182 is an important bill for small business and large business alike. NFIB/Alaska strongly supports this simplification of the law.

* The 80/20 test requires an employer to keep track of how much time a salaried worker spends on non-exempt work. If the employee spends more than 20 percent (40 percent in retail or service businesses) of their time on non-exempt work, they are subject to the Wage and Hour Act and can qualify for overtime.

Please Support HB 182

Submitted by Thyes Shaub on behalf of NFIB/Alaska.



COASTAL HELICOPTERS, INC.

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March 16, 2005

Representative Tom Anderson, Chair
House Labor & Commerce Committee
465-2418

Dear Representative Anderson

Re HB 182

This is a request for your committee to approve HB 182. This bill recognizes the burdensome, if not impossible, task of tracking an employee's time hour by hour. As you know, the Federal FSLA has relieved employers of that burden and most states have done so also.

It is unrealistic to require additional paperwork hour by hour for tracking professional or supervisory employees. As I am sure you are aware, a supervisor or professional may start a task but demands of the job may require a change in task before completion. To have an employee at that level be required to write down each task beginning to end to see if it meets the "80/20" rule would create an additional burden on jobs that are often by their nature "burdensome."

The reason for the higher compensation for employees at the professional, administrative or supervisory level is the understanding that they have a job that needs to be accomplished and have the ability to decide the means for accomplishing that job.

Please approve this important legislation.

Sincerely,
COASTAL HELICOPTERS, INC.

Dorothy S. Wilson, Vice President

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB182-DOLWD-WH-03-01-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Wage & Hour Act: Exec/Proff/Admin/Sales RDU: Labor Standards and Safety
 Sponsor: Representative Rokeberg Component: Wage and Hour
 Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 3/1/05 11:06 AM
 Approved by: Greg O'Claray, Commissioner Date: 3/1/2005
 Agency: Department of Labor and Workforce Development

24-LS0507F
Craver
3/10/05

CS FOR HOUSE BILL NO. 182()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending the Alaska Wage and Hour Act as it relates to the employment of a**
2 **person acting in a supervisory capacity; providing definitions for persons employed in**
3 **administrative, executive, and professional capacities, for persons working in the**
4 **capacity of an outside salesman, and for persons working in the capacity of a salesman**
5 **employed on a straight commission basis."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 23.10.060(a) is amended to read:

8 (a) An employer who employs employees engaged in commerce or other
9 business, or in the production of goods or materials in the state, may not employ an
10 employee for a workweek longer than 40 hours or for more than eight hours a day.
11 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON
12 ACTING IN A SUPERVISORY CAPACITY.]

13 *** Sec. 2.** AS 23.10.085(b) is amended to read:

1 (b) The regulations may, without limiting the generality of (a) of this section,
2 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
3 homework or other acts or practices that the director finds appropriate to carry out the
4 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
5 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL
6 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
7 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
8 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
9 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
10 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

11 * Sec. 3. AS 23.10.145 is amended by adding a new subsection to read:

12 (b) In AS 23.10.050 - 23.10.150,

13 (1) "individual employed in an administrative capacity" means an
14 employee

15 (A) who is compensated on a salary or fee basis at a rate of not
16 less than two times the state minimum wage for the first 40 hours of
17 employment each week, exclusive of board, lodging, or other facilities;

18 (B) whose primary duty is the performance of office or
19 nonmanual work directly related to the management or general business
20 operations of the employer or the employer's customers; and

21 (C) whose primary duty includes the exercise of discretion and
22 independent judgment with respect to matters of significance;

23 (2) "individual employed in an executive capacity" means an employee

24 (A) who is compensated on a salary or fee basis at a rate of not
25 less than two times the state minimum wage for the first 40 hours of
26 employment each week, exclusive of board, lodging, or other facilities;

27 (B) whose primary duty is management of the enterprise in
28 which the employee is employed or of a customarily recognized department or
29 subdivision of the enterprise;

30 (C) who customarily and regularly directs the work of two or
31 more other employees; and

1 (D) who has the authority to hire or fire other employees or
2 whose suggestions and recommendations as to the hiring, firing, advancement,
3 promotion, or any other change of status of other employees are given
4 particular weight;

5 (3) "individual employed in a professional capacity" means an
6 employee

7 (A) who is compensated on a salary or fee basis at a rate of not
8 less than two times the state minimum wage for the first 40 hours of
9 employment each week, exclusive of board, lodging, or other facilities;

10 (B) whose primary duty is to

11 (i) perform work requiring knowledge of an advanced
12 type in a field of science or learning customarily acquired by a
13 prolonged course of specialized intellectual instruction;

14 (ii) perform work requiring invention, imagination,
15 originality, or talent in a recognized field of artistic or creative
16 endeavor;

17 (iii) teach, tutor, instruct, or lecture in the activity of
18 imparting knowledge as a teacher certified or recognized as such in a
19 school or other educational establishment or institution; or

20 (iv) perform computer related occupations that are
21 exempted from the Fair Labor Standards Act under 29 C.F.R. Part
22 541.400;

23 (4) "outside salesman" means an employee

24 (A) who is customarily and regularly away from the employer's
25 place of business; and

26 (B) whose primary duty is making sales or contracts for sales,
27 consignments, or shipment, or obtaining orders for service or for use of
28 facilities for which consideration will be paid by the client or customer;

29 (5) "salesman employed on a straight commission basis" means an
30 employee

31 (A) who is customarily and regularly employed on the business

1 premises of the employer;

2 (B) who is compensated on a straight commission basis for the
3 purpose of making sales or contracts for sales, consignments, shipments, or
4 obtaining orders for services or the use of facilities for which a consideration
5 will be paid by the client or customer; and

6 (C) whose primary duty is making sales or contracts for sales,
7 consignments, shipments, or obtaining orders for service or the use of facilities
8 for which a consideration will be paid by the client or customer.

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Anchorage Daily News

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Labor costs kill downtown La Mex

RESTAURANT: Owner took over chain from parents in 1990; other two stay open.

By SARANA SCHELL
Anchorage Daily News

(Published: February 9, 2005)

Anchorage's downtown La Mex restaurant, home of Grande Ronde and the Jalapeno Eating Contest during Fur Rendezvous, not to mention a major annual Cinco de Mayo party, is closed.

Owner Trina Johnson said she closed the location last week, after 30 years in business, because of rising labor costs.

La Mex's two other locations in Anchorage, in Spenard and on King Street in South Anchorage, remain open. They absorbed some of the downtown restaurant's 35 to 40 employees. Johnson laid off 26. She already had cut 12 positions after Christmas, she said.

"I feel bad," Johnson said, "but you have to start cutting your highest cost items."

Labor costs at La Mex went up \$200,000 in 2003, the year the state increased its minimum wage from \$5.65 to \$7.15 an hour, Johnson said.

The cost of workers' compensation insurance is tied to a company's payroll, she said, and that went from \$22,000 to \$80,000 per year over the past two years.

A higher alcohol tax, a lowered legal breath-alcohol content limit and a smoking ban didn't help, Johnson said.

"People are drinking less," she said, and "your profit's in your alcohol."

La Mex raised prices by 5 percent two weeks ago, Johnson said, to offset rising food costs. She said she was reluctant to change menu prices.

"People are only going to pay so much for a taco," Johnson said.

To cut costs, the restaurants quit serving sizzle-making lemons with their fajitas, saving \$500 a month, Johnson said, and started outsourcing kitchen prep work.

Tourist seasons were busy, Johnson said, but not enough to keep the largest of the three locations open.

"That's bad," said Jeramie Ford when he heard the restaurant on Sixth Avenue and I Street was closed. Ford, 28, said he started eating there as a 5-year-old, when he used to have to wait for a table. That hasn't been the case for years, he said, but Ford kept coming for the chicken fajitas.

"It's kind of sad to see it go," he said.

Johnson said her parents started La Mex in 1969 in a Mountain View log cabin that seated 12. There, she said, her mother made guacamole from scratch at customers' tables.

Johnson took over the business in 1990 and opened the South Anchorage location in 1999.

That location will take on the American fare that only the downtown restaurant carried, such as prime rib.

The Grande Ronde will be held at La Mex in Spennard this year, Johnson said, while the King Street restaurant will host Fur Rondy events and the Cinco de Mayo party.

Daily News reporter Sarana Schell can be reached at sschell@adn.com.

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