

ALBANY LEGISLATIVE OFFICE FILES, 1007-1010 80/2

11900 SENATE LABOR & COMMERCE

SB

105

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/14/05

FURTHER: Judiciary

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 105

SB 105 OVER TIME WAGES FOR FLIGHT CREW

"An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>				X
<i>Salvatore DeBenedictis</i>	✓			
<i>Ben Stevens</i>	X			
CHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB105-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 Senator Seekins
 Requester Senate 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 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)

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: Kathryn Daughettee, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 2/20/05 12:44 PM
 Approved by: Kathryn Daughettee for Scott Nordstrand, Acting AG Date 2/20/2005
 Agency: Department of Law

The Alaska Air Carriers Association

Comments to Senate Bill 105

Submitted February 21, 2005

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Comments to Senate Bill 105
The Alaska Air Carriers Association

February 21, 2005

BY ELECTRONIC MEANS TO: Facsimile 907-465-3871

Senator Con Bunde
Chair Senate Labor & Commerce Committee
State Capitol
Juneau, Alaska 99801

Dear Senator Bunde:

The Alaska Air Carriers Association is pleased to submit the following comments on behalf of our members regarding Senate Bill 105 "**An Act relating to the retrospective application and applicability of the overtime compensation exemption for flight crew members; and providing for an effective date.**"

The Alaska Air Carriers Association (AACA), representing more than 67 air carriers operating in Alaska and over 75 supporting aviation businesses, supports Senate Bill 105 affecting air carriers. Our Association represents companies upon which the failure of this legislation would have a direct and profound impact. Moreover, AACA fully supports the positions of the Hageland Aviation, Cape Smythe and Alaska Central Express.

Without the passage of this legislation, economic burdens at several tiers, will be imposed on carriers that perform passenger and air cargo handling that are so critical to the viable transportation needs of Alaskans around the state. The Federal Aviation Regulations (FARs) that regulate passenger and cargo carriers in our membership require them to take serious responsibility for the work they perform for the general public. The industry supports safety, managing companies in an ethical manner, and addressing the needs of their employees. The lawsuits filed against our member airlines fail to reach this threshold.

A legal ruling not in favor of the carriers who have lawsuits filed against them would impose significant new costs on companies outside the purview of the original position of the Department of Labor submitted in 1986. Our certificated entities who have been ensuring a high level of safety and fairness to employees have operated under full compliance with that 1986 position given to our member carriers. These additional economic burdens will discourage many passenger or cargo airlines from continuing to offer their services to Alaskans in rural communities who depend on them throughout the state. In addition, it will dramatically alter the contractual relationships and expectations between government entities, such as the United States Postal Service, state agencies

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The Alaska Air Carriers Association

and those service providers that continue to perform contracted cargo handling functions on the industry's behalf.

For these reasons, as described more fully below, we request that the Senate Labor and Commerce Committee support the position of the Alaska Air Carriers Association.

Background

The Carriers represented by our association are "on demand" passenger and air cargo carriers certificated under part 135 of the Federal Aviation Administration (FAA) Regulations. The majority of their flying is repetitive trips on specific routes and schedules are set by the Carriers customers. Their companies transport a variety of cargo, U.S. mail received directly from financial institutions, pharmaceutical manufacturers, and other shippers as well as being a subcontractor for national package express companies such as UPS, DHL/Airborne, FedEx and others. In addition, these companies provide necessary transportation for Alaskans to and from the larger communities to seek medical attention, for work or personal business.

On September 3, 1986 the Department of Labor ("DOL") advised the Alaska Air Carriers' Association (AACA) that the DOL had adopted the position of the federal law, that pilots of carriers that flew interstate or hauled the mail were exempt from overtime laws, consistent with the federal law under the Federal Labor Standards Act.

This had been the assumption of the Alaska air carriers and the policy of the DOL since the 1980s. In July of 2003, the legislature enacted HB 94 to codify the DOL's long-standing policy.

HB 94 was patterned after the federal exemption, that exempts from overtime, flight crew members of air carriers that have interstate certificates or that transport the U.S. mail.

Unfortunately, the Legislature did not expressly state that HB 94 should be applied retroactively. Several class action lawsuits have been filed against Alaska air carriers asserting claims for overtime. These suits claim that pilots should be paid for their entire 14 hour duty day. The class actions also claim liquidated damages which would double the amount of damages.

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Cost

These suits could financially put the carriers out of business, as these types of claims are typically not covered by insurance.

While the HB 94 was enacted in July of 2003, Alaska's air carriers are exposed to these suits until the statute of limitation runs out July 31, 2005. The Alaska Air Carriers' Association therefore asks that the legislature pass a one-sentence amendment to HB 94, clarifying that HB 94 applied retroactively to comport with the longstanding DOL policy and federal exemption of pilots. That will make it clear that the Legislature always intended for pilots of carriers to be exempt pursuant to the DOL's longstanding policy, and the federal exemption.

Unlike the Lower 48 states, the overwhelming business issue for Alaskan air carriers is insurance. The cost of insurance is important to the viability of any business. However, the question in many instances is not the price, but a much more fundamental issue – availability.

Today many carriers cannot buy the coverage they need and in many cases cannot purchase insurance coverage at any price.

Without an insurance company to absorb some of the costs from the law suits, these carriers will further financially be strapped.

Burden



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Alaskan Overview

Our State comprises twenty percent of the landmass of the United States, spans a distance that would normally include four (4) time zones and has five (5) climatic zones from the arctic in the north to moderate rain forests in the south.

Airport and navigational facilities are an ongoing issue with rural Alaskans. There are 1,112 designated airports, seaplane bases, and aircraft landing areas in Alaska. The Alaska Department of Transportation & Public Facilities (ADOT&PF) owns and operates 261 public airports, the majority of Alaska's public airports. Additionally, 23 public airports are owned and operated by local governments.

The Denali Commission, an innovative federal-state partnership charged with providing critical utilities, infrastructure, and economic support throughout Alaska has identified a backlog of \$926 million in airport projects in Alaska. Some have stated that the figure is closer to \$1.3 billion. The FAA, through the Airport Improvement Project program, currently provides 95% of the funding for airport projects, ranging from \$58 million in 1990, to \$88.6 million in 2000

With 384 commercial air carriers, Alaska has approximately 13% of the total number of commercial air carriers in the United States. However, unlike the Lower 48 states, commuters and air taxi operators in Alaska are a vital component of the transportation system, and most of these are VFR single engine operations.

The 1995 NTSB study *Aviation Safety in Alaska*, made the observation that in the preceding year, commuter airlines in Alaska served 238 locations, only five of which had road connections to an airline hub. Commuter and air taxi operators serve as the main link between these villages and regional hubs, transporting people, cargo, and mail. That dependence became clear when it was pointed out that Alaska has 76 times as many commuter airline flights per capita as the remainder of the U.S.

Conclusion

To recap our position, on September 3, 1986 the Department of Labor ("DOL") advised the Alaska Air Carriers' Association (AACCA) that the DOL had adopted the position of the federal law, that pilots of carriers that flew interstate or hauled the mail were exempt from overtime laws, consistent with the federal law under the Federal Labor Standards Act. Assumption by the Alaska air carriers and the policy of the DOL since the 1980s, the enactment of HB 94 to codify the DOL's long-standing policy was passed by the Alaskan legislature.

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Moreover, these class action suits could put carriers out of business, as these types of claims are typically not covered by insurance.

Air transportation in Alaska is a needed resource for all Alaskans.

The Alaska Air Carriers' Association therefore asks that the legislature pass a one-sentence amendment to HB 94, clarifying that HB 94 applied retroactively to comport with the longstanding DOL policy and federal exemption of pilots. That will make it clear that the Legislature always intended for pilots of carriers to be exempt pursuant to the DOL's longstanding policy, and the federal exemption.

Thank you.

Gerard Rock
President
The Alaska Air Carriers Association

Karen Casanovas
Executive Director
The Alaska Air Carriers Association

Cape Smythe Air

Serving Arctic & Northwest Alaska

Corporate Offices

Post Office Box 549

Barrow, Alaska 99723

Telephone (907) 852-8333

Honorable Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Senator Con Bunde@legis.state.ak.us

Re: Support of SB 105

Dear Senator Bunde:

I am writing in support of SB 105 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.

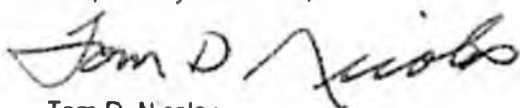
As a commuter Air Taxi, Cape Smythe carried U.S. Mail under the assumption we were governed under the Federal Railway Labor Act. Cape Smythe has always compensated our flight crewmembers based on block hours (the time an aircraft first begins movement for the purpose of a flight until that flight ends 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.

See Mr. [unclear] →
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 105 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

#1

#6.1

24-LS0502\G.1
Craver
3/1/05

AMENDMENT

OFFERED IN THE SENATE

TO: SB 105

- 1 Page 1, line 13:
- 2 Delete "resolved"
- 3 Insert "determined"
- 4
- 5 Page 1, line 14:
- 6 Delete "final"

Passed

Failed

Prior to filing a claim against Hageland Aviation, I wrote the DOL to confirm what its position was on pilot eligibility for overtime wages under Alaska law. The Chief of the Alaska Department of Labor's Wage and Hour Administration responded with a letter (attached) stating that the 1980 Attorney General's letter has formed the basis of the DOL's position since 1980, and that intrastate air carriers are subject to the AWHIA. The 2003 RLA flight crew exemption created a significant change in the law, different from the longstanding position of both the Attorney General and the DOL. That substantive change should not be retroactively enforced.

Hageland Aviation violated the Alaska Wage and Hour Act ("AWHIA"). The Superior Court has ruled that Hageland Aviation directly violated the AWHIA and that pilots are entitled to overtime. Prior to July 2003, Hageland Aviation claimed its pilots were exempt professional employees. When paying an employee on a daily basis, as Hageland Aviation does, Alaska law clearly states: "professional employees may be compensated on a daily rate if they receive at least \$300 per day."⁴ Hageland Aviation paid numerous pilots daily rates less than \$300, in direct violation of Alaska law.

Hageland Aviation tried to have it both ways – docking a pilot's daily salary when they were late to work, but not paying anything extra when the pilot worked over eight hours a day. Alaska law requires that "the employee receives the full daily salary for any day in which any hours are worked regardless of the number of hours worked." 8 AAC 15.908(c). Hageland Aviation directly violated this express requirement of Alaska law by docking the daily salary of its pilots when a pilot was late to work.

SB 105 offers minimal protection to the air carrier industry. SB 105 does nothing but grant immunity to those air carriers that were properly sued under the pre-2003 law. The AWHIA only allows overtime wages for the two-year period immediately prior to filing a claim. Because the RLA flight crew exemption became effective July 2003, almost two years ago, any pilot who filed suit today would only be able to seek approximately four months of overtime. No pilot is going to sue over four months of overtime wages, as it is not enough money to justify the effort (nor would four months of wages represent an economic threat to the industry). The Alaska air carrier industry already has all the protection it needs.

Conclusion. The Superior Court has already issued summary judgment establishing that Hageland Aviation pilots were entitled to overtime as a matter of law. To retroactively take those rights away raises a significant constitutional problem. A simple amendment would provide full protection to the air carrier industry without taking the claims validly filed against Hageland before the change in the law. SB 105 can be amended so it does not cover claims that have properly received summary judgment in court. This would leave only a single claim, that against Hageland Aviation.

⁴ 8 AAC 15.908(c).

Thank you for accepting these comments. My name is Peter Nosek, and I am an attorney working with the law firm of Birch, Horton, Bittner and Cherot representing a group of current and former Hageland Aviation pilots. First, I would like to dispel the notion that the overtime claims are driven by greedy lawyers seeking a windfall. Before the suit was filed against Hageland Aviation, the plaintiff, Mr. Harms offered to settle the overtime claim for \$45,000. Only after Hageland Aviation refused to address the issue, the lawsuit was filed. In addition, it is the Superior Court that determines what a reasonable attorney's fee award will be.

SB 105 is UNCONSTITUTIONAL. SB 105 violates two sections of the Alaska Constitution. First, article I, section 18 of the Alaska Constitution provides that "private property shall not be taken or damaged for public use without just compensation." The Alaska Supreme Court has recognized that a variety of interests constitute "property," such as land, money, contracts, and personal services. In 2003, the Alaska Supreme Court recognized that legal claims are "property" interests.¹

"[A] cause of action for unpaid overtime accrues at the end of each pay period in which overtime is due."² The current overtime claims accrued between June of 2000 and July of 2003, at which time there was no exemption for pilots, and pilots had every right to the protections offered by Alaska law as written during that period. The claims against Hageland Aviation were filed in June of 2002, long before the law changed in 2003. The Superior Court has already ruled that Hageland Aviation pilots are entitled to overtime under the law as written prior to July 2003. If passed, SB 105 would be a government action taking away the valid overtime claims of pilots under the law as written. This would be unconstitutional as a taking of property without just compensation.

Second, article 1, section 15 states that "[n]o law impairing the obligation of contracts ... shall be passed." By law, the overtime requirements of the AWhA are included in every contract of employment. AS 23.10.060(c). SB 105 is specifically designed to take away the contractual rights of pilots as those rights existed pre-2003. This intentional impairment of the pilots' contractual rights would be unconstitutional.

SB 105 Contradicts the Department of Labor's position. The assertion that the DOL's position since 1980 has been that pilots were exempt from overtime due to the Railway Labor Act is incorrect. That assertion misrepresents the 1980 Attorney General's letter cited by the Air Carrier's Association. The Attorney General's 1980 position is actually printed in the Alaska Statutes as follows:

Opinions of attorney general.... 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 AS 23.10.050 - 23.10.150 dealing with overtime extend to those individuals.
April 15, 1980, Op. Att'y Gen.³

¹ Anderson v. State ex rel. Central Bering Sea, 78 P.3d 710, 714 (Alaska 2003).

² Quinn v. Alaska State Employees Association, 944 P.2d 468, 470 n.3 (Alaska 1997).

³ 2004 Alaska Statutes, vol. 6, p. 600 (emphasis added) (copy attached).

(B) the trading agreement is not a flexible work hour plan entered into under (13) or (14) of this subsection;

(C) the trading agreement is filed with the employee's employer; and

(D) the trading agreement states that the employee is not entitled to receive overtime for any hours worked by the employee when the employee voluntarily works those hours under a shift trading practice under which the employee has the opportunity, in the same or other work weeks, to reduce hours worked by voluntarily offering a shift for trade or reassignment;

(19) work performed by a flight crew member employed by an air carrier subject to 45 U.S.C. 181 — 188 (subchapter II of the Railway Labor Act); in this paragraph, "flight crew" means the pilot, co-pilot, flight engineer, and flight attendants.

(e) The minimum amount due an employee under (d)(17)(C) and (D) of this section shall be figured on a weekly basis. (§ 3 ch 171 SLA 1959; am § 1 ch 3 SLA 1962; am § 1 ch 243 SLA 1970; am § 1 ch 45 SLA 1972; am § 33 ch 127 SLA 1974; am § 1 ch 31 SLA 1980; am § 3 ch 47 SLA 1983; am § 1 ch 160 SLA 1990; am § 1 ch 103 SLA 1992; am § 5 ch 13 SLA 1993; am §§ 1, 2 ch 123 SLA 1998; am § 1 ch 39 SLA 1999; am § 2 ch 43 SLA 1999; am § 1 ch 11 SLA 2003)

Revisor's notes. — The paragraphs of (d) of this section were renumbered in 1990 and 1996 to reflect the deletion of repealed paragraphs.

Cross references. — For legislative findings concerning the amendment of subsection (b) by § 2, ch. 43, SLA 1999, see § 1, ch. 43, SLA 1999 in the 1999 Temporary & Special Acts.

For provisions directing that the amendment of (b) of this section made by sec. 2, ch. 43, SLA 1999, applies to all claims for overtime based on employment on and after July 1, 1990, and before June 2, 1999, and declaring that this application "applies retrospectively to all pending administrative and judicial actions under [that subsection] that are based on the calculation of overtime for employment [between those dates] and that are not resolved by final court judgment or administrative decision on July 3, 2003," see §§ 1 and 2, ch. 133, SLA 2003, in the 2003 Temporary and Special Acts.

Effect of amendments. — The 1992 amendment, effective September 18, 1992, in subsection (d), added paragraph (16) and made stylistic changes.

The 1993 amendment, effective May 8, 1993 repealed former paragraph (d)(7).

The 1998 amendment, effective September 21, 1998, added paragraph (d)(17) and subsection (e).

The first 1999 amendment, effective June 2, 1999, added paragraph (d)(18).

The second 1999 amendment, effective June 2, 1999, rewrote subsection (b).

The 2003 amendment, effective July 16, 2003 added paragraph (d)(19).

Opinions of attorney general. — The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 does not expressly preempt the AS 23.10.050 — 23.10.150 on the question of whether airline employees are excluded

from the mandatory overtime directive of this section. April 15, 1980, Op. Att'y Gen.

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, 45 U.S.C. §§ 151-188. April 15, 1980, Op. Att'y Gen.

In instances where no collective bargaining agreements apply, crews of interstate air carriers are nonetheless beyond the jurisdiction of state overtime law because of certain commerce clause implications. April 15, 1980, Op. Att'y Gen.

Nonflight personnel of interstate carriers who are not covered by valid existing collective bargaining agreements are not exempt from state law, and as to those individuals the provisions of state overtime law apply. April 15, 1980, Op. Att'y Gen.

Air carriers operating solely intrastate would not seem to fall under the exclusionary scope of either the Railway Labor Act, 45 U.S.C. §§ 151-188, or of the commerce clause absent unusual fact situations. Accordingly, the protections of AS 23.10.050 — 23.10.150 dealing with overtime extend to those individuals. April 15, 1980, Op. Att'y Gen.

An administrative regulation which would require an employer to include underground travel time as part of the "workweek" for calculating wages and overtime under this section might raise the issue of federal preemption but would survive such a challenge, since Congress did not intend to preclude state regulation and there is no actual conflict between such a regulation and federal law. February 22, 1989 Op. Att'y Gen.

NOTES TO DECISIONS

Article not void. — The Alaska Wage and Hour Act merely requires higher minimum and overtime pay than the Fair Labor Standards Act, 29 U.S.C. §§ 201-219. Although compliance with both is more expensive than compliance with the federal act, it is not, in any sense, impossible so as to make the Alaska

law void. Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980).

Or preempted. — Since, under the Alaska Wage and Hour Act, the number of hours required for the overtime rate is less than that under the Fair Labor Standards Act, the Alaska act provides for a lower

maximum workweek within the § 218(a) and consequently, cost saving clause so as not to be precluded by law. Webster v. Bechtel, Inc., 1980).

Article compatible with I — This article provides for minimum compensation, not the regulation of it is therefore neither preempted nor in conflict with, the Federal Aviation Administration v. Temco Helicopters, Inc., 848 P.2d 1000 (Alaska 1992).

Purpose of the overtime law — The purpose of the overtime law is to compensate those who labored in excess of the maximum number of hours for extra work and to spread employment among employers to shorten hours of extra cost. Janes v. Otis, 50 Alaska 100 (Alaska 1988).

Employee cannot pyramid overtime pay. — The fact that employers need not pay overtime if an employee has worked in excess of the regular rate of pay; Alaska Department of Labor v. Longstanding Interpretation, 1999 P.2d 1000 (Alaska 1999) and does not permit double payment for excess of eight hours a day as in Hallam v. Alaska Travel Adventure, 1173 (File No. S-10245), 1999 P.2d 1000 (Alaska 2004).

State not bound to federal minimum wage. — See Dresser Indus., 1999 P.2d 998 (Alaska 1999) and U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 1000 (1992).

Salaried workers. — The Alaska Act does not define what "regular rate" means. Subsection (b) of this section means an employee receives an annual salary instead of an hourly wage. AAC 15.100(a) addresses this issue. Corp. v. Reeves, 965 P.2d 732 (Alaska 1997).

8 AAC 15.100(a)(2) requires an employer to pay for unpaid overtime compensation based on: (1) "Figuring" the regular rate on a weekly basis; (2) assuming that the regular rate represents pay for a week of actual work; (3) using the "regular rate" of hourly pay as the basis for calculating the worker's total compensation for all hours actually worked; and (4) deducting from the total amount of salary actually paid. Reeves, 965 P.2d 732 (Alaska 1997).

A court converting annual salary to an hourly rate as a basis for computing overtime pay for all hours actually worked; all overtime must be deducted from these totals. The difference will reflect the award that straight-time, overtime, and other benefits are all based on the applicable Piquini Mgt. Corp. v. Reeves, 9 P.2d 1000 (Alaska 1998).

Definition of "supervisory" — The Alaska Administrative Code, that the term as used in the Alaska Act means a person who directs the

Collateral references. — With respect to overtime provisions of Fair Labor Standards Act, the Alaska act provides for a lower

STATE OF ALASKA

DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

WAGE AND HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

TONY KNOWLES, GOVERNOR

3301 Eagle Street, Suite 301
P.O. Box 107021
Anchorage, Alaska 99510-7021
Phone: (907) 269-4900
Fax: (907) 269-4916

May 10, 2002



Peter Nosek
Birch, Horton, Bittner and Cherot
1127 West Seventh Avenue
Anchorage, AK 99501-3399

Dear Mr. Nosek:

In response to your inquiry of May 8 concerning the issue of federal preemption of the Alaska Wage and Hour Act (AWHA), please refer to the attached AG Opinion from Eric Olson dated April 15, 1980.

In brief, Olson advised the department that:

1. Pilots, flight crews and other interstate 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, are not covered by the AWHA due to the preemptive nature of the Railway Labor Act.
2. Flight crews of interstate carriers who are not subject to a collective bargaining agreement are nonetheless outside the jurisdiction of the AWHA under the Commerce Clause of the U. S. Constitution.
3. Non-flight employees of interstate carriers who are not under a collective bargaining agreement are subject to the AWHA.
4. Air carriers who operate solely intrastate are subject to the AWHA.

Mr. Peter Nosek

-2-

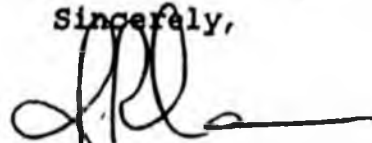
May 10, 2002

Attorney Olson's analysis speaks for itself. Suffice it to say that this advice still fashions the department's enforcement posture today.

It might be of interest to you that the ANHA originally contained language which exempted coverage under the Railway Labor Act. The original version of AS 23.10.060(c) was repealed by the legislature in 1972 (§ 1 ch 45 SLA 1972). Subsequently, the reviser of statutes dropped several repealed exemptions and renumbered the remainder erasing any record of the previous existing exemptions.

I hope this information is helpful. If you have further questions, do not hesitate to contact me.

Sincerely,



J. R. (Randy) Carr
Chief
Labor Standards

RAM:plm
Attachment
Chief/2002 may/Peter Nosek

Honorable Senators,

My name is Mike Hageland. I started flying commercially in 1972 in western Alaska. In 1981 I started Hageland Aviation Services as a sole proprietorship air taxi located at Mt Village. When I started flying, almost all the small carriers were paying pilots by the flight hour. This led to pilots pushing weather beyond their capabilities just to get a paycheck. When I went into business I made a decision to pay the pilots a fair monthly salary. In 94 or 95 it was getting hard to find pilots to live in western Alaska, AND SERVE THE MANY SMALL VILLAGES THAT WE SERVE

so we decided to let the pilots work 20 days on and 10 days off, while still paying the same monthly salary. They still got paid for weather days and mechanical days. Some pilots complained that some months they had to work 21 days, so we had to break it out to a daily rate. About September of 2000 we changed the schedule to 15 or 16 on and 15 or 16 off. This was a great for the pilots as we kept the monthly rate the same. We also started a SIC program mainly aimed at local pilots who had gotten their ratings, but did not have the hours required by insurance companies to fly commercially. We paid them to fly co-pilot in our Caravans to build up the required ours. This saved them thousands of dollars and time, and gave them valuable experience. We also gained as we now have several pilots who were born in the areas they serve and are valuable role models.

The lawsuit we are facing is the result of a disgruntled pilot, who filed an age discrimination claim with the labor board AFTER RETIRING FROM OUR COMPANY. THAT COMPLAINT WAS DISMISSED AS HAVING NO MERIT, BUT HIS LAWYER THEN CONVINCED HIM TO BECOME PART OF THIS CLASS ACTION. INTERESTING THIS MAN, LIKE MANY OF THOSE WHO ARE IN THIS CLASS LIVE OUTSIDE THE STATE OF ALASKA, AND HAVE NO PRESENT CONNECTION TO THE STATE OF ALASKA

WHAT WAS MOST ASTOUNDING TO ME IS THIS MAN AT HIS DEPOSITION SAID HE HAD BEEN TREATED FAIRLY AND THE WAGE HE WAS PAID WAS ONE HE THOUGHT FAIR. WE HAVE HIM SAYING WE OUR FAIR AND YET THE LAWYERS CAN PROCEED WITH THIS LAWSUIT TO PUNISH US, AND EFFECT THOSE 180 EMPLOYEES WE NOW EMPLOY WITH THE ENCOURAGEMENT OF THE LAWYERS THIS CLASS ACTION WAS NOT JUST BROUGHT AGAINST THE COMPANY, BUT AGAINST THE INDIVIDUAL OWNERS. THIS CLAIM WAS EVEN BROUGHT BY THESE LAWYERS AGAINST PAMELA BEAN TWETO, A WIDOW WITH THREE CHILDREN WHO LIVES IN ST MARYS ALASKA.. PILOTS WERE MADE PART OF THE CLASS WITHOUT THEIR EVEN KNOWING IT.

We were operating under the assumption that pilots were exempt from the state overtime laws, AN ASSUMPTION THAT OTHER AIR CARRIERS ALSO THOUGHT WAS THE CASE. This was also the opinion of the state labor board.

We were also paying them well and giving them great working conditions. In fact the pilot who sued us stated in his deposition that he went to work for us because he liked the way we paid pilots and the work schedule. He also stated that he thought he had been paid fairly.

Make no mistake, this is not about pilots. Rather it is about greedy lawyers wanting to take what we have worked 24 years to build. All but one of our current pilots has either opted out or indicated he wanted nothing to do with suing us. This despite the lawyers calling them with promises of riches. In one case \$80,000.

I do not like to have to ask for help on things. If the thieves were on the street with a gun, I could deal with it or call a policeman, but they are in a courtroom with lawbooks, so I am asking the lawmakers.

Please support Senate bill 105 and save the 180 jobs that are depending on you, FROM MY COMPANY AS WELL AS THE MANY OTHERS FROM OTHER AVIATION COMPANIES

Thank you,

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB105-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 Senator Seekins
 Requester Senate 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 ()						
-------------------------------	--	--	--	--	--	--

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)

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: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/20/05 12:44 PM
 Approved by: Kathryn Daughhete for Scott Nordstrand, Acting AG Date 2/20/2005
 Agency Department of Law

Cape Smythe Air

Serving Arctic & Northwest Alaska

Corporate Offices

Post Office Box 549

Barrow, Alaska 99723

Telephone (907) 852-8333

Honorable Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Senator_Con_Bunde@legis.state.ak.us

Re: Support of SB 105

Dear Senator Bunde:

I am writing in support of SB 105 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.

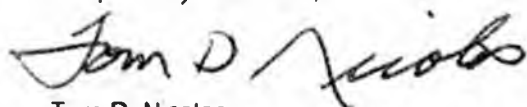
As a commuter Air Taxi, Cape Smythe carried U.S. Mail under the assumption we were governed under the Federal Railway Labor Act. Cape Smythe has always compensated our flight crewmembers based on block hours (the time an aircraft first begins movement for the purpose of a flight until that flight ends 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 105 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

ALASKA STATE SENATE

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax



Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 105 Sponsor Statement

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

Senate Bill 105 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 AWHA.

However, in 2000 uncertainty crept into the DOL's policy as a result of a lawsuit which 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 AWHA 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.

Senate Bill 105 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.

2/14/05

Sponsor Statement



LAWS OF ALASKA

2003

Source
SB 54

Chapter No.

AN ACT

Exempting flight crew members of certain air carriers from overtime pay requirements.

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

THE ACT FOLLOWS ON PAGE 1

Enrolled SB 54

AN ACT

1 Exempting flight crew members of certain air carriers from overtime pay requirements.

2

3 * Section 1. AS 23.10.060(d) is amended by adding a new paragraph to read:

4 (19) work performed by a flight crew member employed by an air
5 carrier subject to 45 U.S.C. 181 - 188 (subchapter II of the Railway Labor Act); in this
6 paragraph, "flight crew" means the pilot, co-pilot, flight engineer, and flight
7 attendants.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Ralph Seekins
Current Version: SB 105
Contact: Brian Hove, 465-2327

Fact Sheet for: Senate Bill 105

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 AWA. 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.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: **SB105-DOLWD-WH-02-18-05**
 () 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: **Senator Seekins**
 Requester: **Senate 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: Gray Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 2/18/05 9:01 AM
 Approved by: Greg O'Claray, Commissioner Date: 2/18/2005
 Agency: Department of Labor and Workforce Development

January 7, 2005

TO: Senator Ralph Seekins
FROM: Tom Daniel *TD*
RE: History of Pilot Exemption from Overtime

Since 1949, pilots of airlines governed by the Railway Labor Act have been exempt from the overtime provisions of the federal overtime law (the Fair Labor Standards Act). (This includes all air carriers engaged in interstate or foreign commerce or that transport U.S. mail, as well as air freight forwarders owned or controlled by such carriers.)

Until 2003, there was no similar exemption under the Alaska overtime law, the Alaska Wage and Hour Act. However, in 1980, the Alaska Attorney General issued an opinion concerning whether air carriers operating in the state of Alaska were subject to the state overtime law. *He concluded that the flight crews of interstate carriers were not subject to the state overtime law.* Exhibit 1.

Based on the Attorney General's opinion, the Alaska Department of Labor consistently has taken the position that pilots of interstate air carriers, including in-state carriers that haul U.S. mail, are exempt from the state overtime law. In 1986, the Department sent an opinion letter to the Alaska Air Carriers Association, in which it stated that state overtime law did not apply to pilots of commuter aircraft and air taxi pilots if they were involved in "interstate transportation of passengers and/or substantial hauling of the mail." Exhibit 2. The Department has followed that policy up to the present day. Exhibit 3.

Based on the federal exemption and the state's policy that pilots were exempt from overtime, most Alaska based air carriers have never paid overtime to their pilots. Instead, the carriers have used various pay methods, including payment by the flight hour, fixed monthly salaries, payment by the flight day, or combinations of these methods. Alaska air carriers need the flexibility to adopt unusual pay systems for pilots because their flight schedules must adapt to the harsh weather conditions and remote locations of Alaska. Overtime rules are designed for fixed schedules, not the ever changing schedules necessary to adapt to the flying conditions in Alaska.

Despite the Department of Labor's policy, some plaintiffs' lawyers argued that pilots were not exempt from state overtime. In the late nineties, they began to file lawsuits on behalf of pilots claiming the right to be paid overtime. The first reported case was

Era Aviation v. Lindfors, decided by the Alaska Supreme Court in 2000. Although the pilot there lost her overtime claim, uncertainty remained regarding the applicability of state overtime law to pilots of Alaska air carriers. Since that time, at least three lawsuits have been filed against Alaska air carriers claiming overtime pay on behalf of pilots.

Because of this uncertainty, in 2003, the Legislature passed SB 54/HB 94, which amended the Alaska Wage and Hour Act to codify Department of Labor policy and make clear that pilots were exempt from state overtime requirements. The House sponsor of the amendment, Rep. Masek, declared in her sponsor statement, "[t]his legislation was introduced to codify what is existing Department of Labor policy" and "simply puts in statute what is existing policy and exempts flight crew from overtime." Exhibit 4. See also Remarks of Rep. Anderson (bill solidifies the exemption so it cannot be successfully challenged in court). Exhibit 5. Similarly, the Senate sponsor, Sen. Olson, stated that the purpose of the amendment was to "bring certainty to the interpretation of existing federal and state wage and hour statutes" because "[s]everal Alaska court decisions have raised a question about the correct application of state wage and hour laws and the application of the overtime exemptions" for flight crews. Exhibit 6.

The 2003 law tracks the language of the exemption for pilots under federal law. It reads:

AS 23.10.060(d) [the overtime exemption section] is amended by adding a new paragraph to read:

(19) work performed by a flight crew member employed by an air carrier subject to 45 U.S.C. 181 - 188 (subchapter II of the Railway Labor Act); in this paragraph, "flight crew" means the pilot, co-pilot, flight engineer and flight attendants.

Exhibit 7. The amendment was signed by the Governor on April 22, 2003, and became effective on July 16, 2003.

Unfortunately, the law did not include a provision making it retroactive. Therefore, it may not bar lawsuits for overtime for the time period before the effective date of the law. In fact, in the lawsuit against Hageland Aviation Services, Judge Michalski ruled that while the new law does exempt Hageland pilots from the overtime provisions of the Alaska Wage and Hour Act, it only does so *for the period after the effective date of the law, July 16, 2003*. Thus, this lawsuit and two others go on. And because these lawsuits are class actions, the air carriers face claims that can total millions.

The legislature could still pass a law making the exemption retroactive, which should clarify that the Legislature intended to apply the pilot exemption to all pending lawsuits. I have attempted to draft language that accomplishes two purposes. First, it

provides that the exemption applies to any claim that a pilot of any airline might make based on work performed before the pilot exemption was passed, but which is not yet barred by the two-year statute of limitations. Second it clearly provides that the exemption applies to all pending cases:

AS 23.10.060(d)(19) is hereby amended as follows:

This section applies retrospectively: (1) to all work performed after January 1, 2000; and (2) to all pending administrative and judicial actions under AS 23.10.060(b) that are not resolved by final court judgment or administrative decision on the effective date of this act.

TMD:tmd

ALASKA DEPT. LABOUR & 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.

The Honorable Edmund Orbeck
Commissioner
Department of Labor

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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 (1968); 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.)

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Commissioner
Department of Labor

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Page 3

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

The Honorable Edmund Orbeck
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Department of Labor

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Page 4

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

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Department of Labor

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Page 5

Railroad Co., 372 U.S. 284 (1963); Baltimore & Ohio Railroad Co. v. Commonwealth of Pennsylvania, 334 A.2d 636 (Pa. 1975), app. dismiss'd for want of subs. fed. ques., 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-

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Department of Labor

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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

The Honorable Edmund Orbeck
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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"

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Department of Labor

April 15, 1980
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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 that 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

The Honorable Edmund Orbeck
Commissioner
Department of Labor

April 15, 1980
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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 interstate but the pilot flies only intra-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

The Honorable Edmund Orbeck
Commissioner
Department of Labor

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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.

same national for interstate pilots

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.

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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

EO/cgs

2

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:

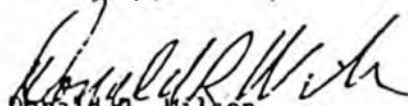
This will acknowledge receipt of your recent letter in which you made further inquiry into the exempt status of "commercial, part 135 air taxi and commuter flying."

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

3

STATE OF ALASKA

DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

WAGE AND HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION

TONY KNOWLES, GOVERNOR

3301 Eagle Street, Suite 301
P.O. Box 107021
Anchorage, Alaska 99510-7021
Phone: (907) 269-4900
Fax: (907) 269-4916

May 10, 2002



Peter Nosek
Birch, Horton, Bittner and Cherot
1127 West Seventh Avenue
Anchorage, AK 99501-3399

Dear Mr. Nosek:

In response to your inquiry of May 8 concerning the issue of federal preemption of the Alaska Wage and Hour Act (AWHA), please refer to the attached AG Opinion from Eric Olson dated April 15, 1980.

In brief, Olson advised the department that:

1. Pilots, flight crews and other interstate 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, are not covered by the AWHA due to the preemptive nature of the Railway Labor Act.
2. Flight crews of interstate carriers who are not subject to a collective bargaining agreement are nonetheless outside the jurisdiction of the AWHA under the Commerce Clause of the U. S. Constitution.
3. Non-flight employees of interstate carriers who are not under a collective bargaining agreement are subject to the AWHA.
4. Air carriers who operate solely intrastate are subject to the AWHA.

Exhibit 3

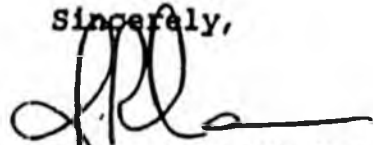
May 10, 2002

Attorney Olson's analysis speaks for itself. Suffice it to say that this advice still fashions the department's enforcement posture today.

It might be of interest to you that the AWA originally contained language which exempted coverage under the Railway Labor Act. The original version of AS 23.10.060(6) was repealed by the legislature in 1972 (§ 1 ch 45 SLA 1972). Subsequently, the reviser of statutes dropped several repealed exemptions and renumbered the remainder erasing any record of the previous existing exemptions.

I hope this information is helpful. If you have further questions, do not hesitate to contact me.

Sincerely,



J. R. (Randy) Carr
Chief
Labor Standards

RAM:plm
Attachment
Chief/2002 may/Peter Nosek

4

Sponsor Statement

HB 94

“An Act exempting flight crew members of certain air carriers from overtime pay requirements.”

This legislation was introduced to codify what is existing Department of Labor policy related to the treatment of a flight crew for purposes of overtime in a non-collective bargaining air -carrier.

Over the course of time, Alaska courts have ruled in a mixed fashion that has cast a cloud on how flight crews should be treated by the Wage and Hour Division for purposes of overtime.

This legislation simply puts in statute what is existing policy and exempts flight crews from overtime.

5



SB 54-OVERTIME PAY FOR AIRLINE EMPLOYEES

DRAFT

CHAIR ANDERSON announced that the only order of business would be SENATE BILL NO. 54, "An Act ▶▶exempting◀◀ ▶▶flight◀◀ ▶▶crew◀◀ ▶▶members◀◀ of certain air carriers from overtime pay requirements."

Number 0057

SENATOR DONALD OLSON, Alaska State Legislature, sponsor of SB 54, said the bill provides certainty in the interpretation of the existing federal and state wage and hour statutes as they pertain to the payment of overtime in the air transportation industry. Because of their unique working conditions, ▶▶flight◀◀ crews have been considered professionals exempt from the standard 8-hour workday, 40-hour workweek, and the associated overtime pay, as required under the current statutes. Along with the maximum ▶▶flight◀◀ hours set by the Federal Aviation Administration [FAA], these exemptions at both the state and federal level have allowed the industry to structure flexible schedules for ▶▶flight◀◀ ▶▶crew◀◀ personnel.

SENATOR OLSON noted, however, that several Alaska court decisions have raised questions about the interpretation of the state wage and hour laws and the application of overtime exemptions for ▶▶flight◀◀ crews. Senate Bill 54 explicitly adds ▶▶flight◀◀ crews to the list of occupations in employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites provisions under the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of this exemption. He urged the committee to pass SB 54.

Number 0224

JIM WILSON, Chairman, Legislative Committee, Alaska Air Carriers Association, testified that his group supports passage of SB [54]. He stated that the current practice among the majority of association ▶▶members◀◀ is to accept the interpretation by the Alaska Department of Labor and Workforce Development, Division of Labor Standards and Safety, Wage and Hour section, that ▶▶flight◀◀ crews are exempt from overtime rules. This approach to calculating payroll is an industry standard used in all other states. During an informal poll of ▶▶members◀◀, it was found that

EXHIBIT 5

flight crews from the various Alaska-based companies prefer their exempt status primarily due to their employers' abilities to create flexible work schedules.

MR. WILSON added that SB 54 brings stability to Alaska law as applied to flight crews of air carriers that are governed by the Railway Labor Act. Passage will ensure that the state's executive branch interpretation of wage and hour overtime law is the same as that applied by Alaska courts. The bill applies to the flight crews of any air carrier in the state engaged in interstate work, foreign work, or transportation of U.S. Postal Service mail. The only flight crews unaffected are those who perform work for air carriers that operate only in-state charter/air taxi work.

Number 0403

REPRESENTATIVE GATTO asked whether this bill has any limits on this overtime exemption.

MR. WILSON described several variations on a flight crew's circumstances: a 10-hour day followed by a six-hour day; very short days during the winter's brief hours of daylight; very long hours in the summer, when the person is on duty but only flying part of that time; and bad weather days when the crew is sent home early. Mr. Wilson said this exemption from overtime gives air carriers the flexibility to schedule flight crews. It allows the crews to know that they are going to get paid for a full day even though they didn't work the full day. He explained he was a pilot for many years before opening his own business [Coastal Helicopters, Inc].

Number 0511

MR. WILSON replied to questions from Representative Gatto about whether the FAA regulates the exemption of overtime and which employees are affected. Mr. Wilson said he can only fly a pilot so many hours a day and have the person on duty so many hours a day. He explained that applies to all members of the flight crew. On larger airplanes, the flight crew consists of pilots, flight attendants, co-pilots, and flight engineers. He explained that ticket agents and custodians are not considered flight crew and are not covered by this overtime exemption. These workers can be scheduled for regular work hours because they're not getting in an airplane and leaving the base of operations.

Number 0631

REPRESENTATIVE GUTTENBERG asked how the Railway Labor Act

applies to large airlines.

MR. WILSON replied that most of the employees on large airlines are covered because they do intrastate travel. Alaska, through its courts, is the only state that has challenged the current wage and hour rule. Other states are covered by the Railway Labor Act.

Number 0678

CHAIR ANDERSON added that intrastate airlines such as Alaska Airlines and Northwest Airlines are already covered by separate labor agreements, so this bill does not affect them.

MR. WILSON, responding to a question from Representative Guttenberg, explained that a baggage handler moving cargo is not considered flight crew.

Number 0746

REPRESENTATIVE LYNN stated that in the Air Force, loadmasters flew on cargo planes and played a critical role in loading the cargo properly, doing the weight and balance calculations, and keeping the cargo from shifting during flight. He asked whether the equivalent position of a loadmaster working for cargo companies would be covered by SB 54.

Number 0895

SENATOR OLSON said that any flight crews with loadmasters work for carriers that are represented by unions. In the civilian world, responsibility for load duties rests with the pilot in command.

Number 0953

REPRESENTATIVE ROKEBERG agreed, saying it's not necessary to include loadmasters in the bill because the cargo carriers in the state are usually covered by collective bargaining agreements.

SENATOR OLSON said the flight crews on larger air carriers operating under FAR [Federal Aviation Regulations] Part 121 are usually covered by a collective bargaining agreement. He said he was not aware of any small carriers that had loadmaster personnel with specialized training.

Number 1033

TOM VANHOOMISSEN, Flight Deck Member, ERA Aviation, concurred that there's no carrier in Alaska with a loadmaster except for

Lynden Air Cargo, which operates the C-130 [Hercules, a four-engine turboprop aircraft].

REPRESENTATIVE ROKEBERG commented that if Saturn [Freight Systems] flew into the state hauling cargo, presumably the ►crew◄ and the loadmaster would be covered by the Alaska Wage and Hour Act.

MR. WILSON said most of the aircraft used for air cargo in Alaska are older and frequently have a third officer who assists with loading and unloading.

CHAIR ANDERSON suggested that the key is whether the loadmaster is traveling with the ►flight◄ ►crew◄.

Number 1150

REPRESENTATIVE ROKEBERG said it would be worthwhile to research this issue. He said Alyeska Pipeline Service Company has a contract with Saturn [Freight Systems] to spray retardant materials on oil spills. He said such planes might have a loadmaster or cargo master on board.

REPRESENTATIVE LYNN confirmed his understanding that the pilot in command is responsible for everything on the airplane.

REPRESENTATIVE ROKEBERG asked whether the Alaska Air Carriers Association has looked at the Alaska Wage and Hour Act and tried to work with the Department of Labor & Workforce Development to develop voluntary flexible work hour plans under AS 23.10.060(d)(14)(A) and (B).

Number 1220

MR. WILSON replied he has talked with staff at the Department of Labor & Workforce Development numerous times, and they've always said that ►flight◄ crews fall under the professional category [of AS 23.10.55 (9)]. He said staff told him that the best way to handle paying ►flight◄ crews would be through an exemption, which is the purpose of SB 54.

REPRESENTATIVE ROKEBERG explained that the voluntary flexible work hour plan is allowed under the Alaska Wage and Hour Act, and it seemed like it might be applicable in these situations. In statute, the plans are limited to 10 hours a day, they have to be pre-approved, and it takes considerable effort to get those hours approved. He noted for the record that those plans do not provide the flexibility that the air carriers need to do their ►crew◄ scheduling. Even though that provision is in the law, it's not workable. He said he agrees with the response [by the Department of Labor & Workforce Development staff that an

exemption in law is the best way to handle the issue].

CHAIR ANDERSON reiterated that the sponsor statement notes that the court's interpretations of the exemption from overtime are contradictory. This bill solidifies that exemption so it cannot be successfully challenged in court.

Number 1309

SENATOR OLSON confirmed that clarifying the overtime exemption is the intent of the bill. He said there is a lingering question about whether a load person on a big cargo carrier like Saturn is covered by SB 54.

REPRESENTATIVE ROKEBERG said he's not sure that the question has been answered. If large air carriers are covered by a collective bargaining agreement, then the Alaska Wage and Hour Act does not apply. If the loadmaster on a cargo plane is not covered by a bargaining agreement, that person would have to be paid overtime under state law.

SENATOR OLSON said larger carriers, such as Saturn Air and Southern Air Transport have collective bargaining agreements that are governed by the federal Railway Labor Act. But he said there's still a question about the smaller [Federal Aviation Regulation Part] 135 [single pilot] air taxi operators that may have several nonunionized workers. He said that the federal mandate under the Railway Labor Act applies in that case. Normally, those pilots are only flying within the state

Number 1463

MARCIA DAVIS, General Counsel, ERA Aviation, speaking at the request of Representative Crawford, said SB 54 addresses flight crews specifically, because they are professional employees that have the protections of the FAA safety regulations that backstop any potential abuse of the employee. These employees are also governed by the national mediation board on the federal side. She said including loadmasters with flight crews mixes apples and oranges. The loadmasters are not addressed by the FAA safety duty hour limitations, so they don't have that safety backstop. They also have a different level of training than pilots, flight engineers, and flight attendants. She stated that she would be very concerned about loading them into this bill. She said she also believes the Department of Labor & Workforce Development would take exception to adding loadmasters to SB 54. She said that if she represented a group of loadmasters, she would want to keep them covered by the Alaska Wage and Hour Act so they would have overtime protection.

Number 1560

MR. VANHOOMISSEN said that as an employee who enjoys exempt status, he supports including flight attendants in the flight crew. As a result of FAA regulations, the flight attendants are no less professional and no less necessary than the crewmembers in the cockpit. He also said that a flexible work schedule is an extremely important benefit. Flexible schedules allows the flight crews to have input into their schedules and some control over their family lives. He said he thinks such flexibility contributes to air safety in the long run.

MR. VANHOOMISSEN, responding to a question from Representative Rokeberg, said none of his flight crews are covered by collective bargaining agreements.

Number 1638

PAUL SHOLTON, Northern Air Cargo, testified he did not think the loadmasters should be included in SB 54. He said a jet doesn't take very long to get to Nome or Barrow, and these guys work on the ramp in the meantime. He said it would be very confusing to pay loadmasters differently while on the plane or on the ramp. He said loadmasters only go on the jets, not on the DC-6 aircraft that fly slower.

REPRESENTATIVE ROKEBERG asked Mr. Sholton to comment on whether he supports the SB 54.

MR. SHOLTON said he supports SB 54 because it recognizes flight crewmembers as professionals and shows consideration for the level of discretion they use, their expertise, and training.

Number 1757

SENATOR OLSON summarized the intent of SB 54. He said loadmasters are not covered under the same federal regulations as the rest of the flight crew as defined in this bill. As pointed out by Ms. Davis with ERA Aviation, the flight crews have a regulatory backdrop to protect them. He asked the committee to pass SB 54.

Number 1784

REPRESENTATIVE DAHLSTROM moved to report SB 54 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 54 was reported from the House Labor and Commerce Standing Committee

DRAFT

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:40 p.m.

House

03

HL&C

03/19/03

1516

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 19, 2003

3:16 p.m.

DRAFT

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Norman Rokeberg
Representative David Guttenberg

MEMBERS ABSENT

Representative Carl Gatto
Representative Harry Crawford

COMMITTEE CALENDAR

HOUSE BILL NO. 111

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- HEARD AND HELD; ASSIGNED TO SUBCOMMITTEE

HOUSE BILL NO. 119

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

- MOVED CSHB 119 (L&C) OUT OF COMMITTEE

HOUSE BILL NO. 120

"An Act excluding service contracts from regulation as insurance, and providing for an effective date."

- MOVED CSHB 120 (L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 111

SHORT TITLE: EXTEND REGULATORY COMMISSION OF ALASKA

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date Jrn-Page Action

02/19/03 0250 (H) READ THE FIRST TIME -
REFERRALS

02/19/03 0250 (H) L&C, FIN

02/19/03 0250 (H) FN1: (CED)

02/19/03 0250 (H) GOVERNOR'S TRANSMITTAL LETTER

02/19/03 0250 (H) REFERRED TO LABOR & COMMERCE

03/10/03 (H) L&C AT 3:15 PM CAPITOL 17

03/10/03 (H) Heard & Held

MINUTE(L&C)

03/17/03 (H) L&C AT 3:15 PM CAPITOL 17

03/17/03 (H) <Bill Hearing Postponed to
3/19>

03/19/03 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 119

SHORT TITLE: WATER/SEWER/WASTE GRANTS TO UTILITIES

SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date Jrn-Page Action

02/24/03 0286 (H) READ THE FIRST TIME -
REFERRALS

02/24/03 0286 (H) L&C, FIN

02/24/03 0286 (H) REFERRED TO LABOR & COMMERCE

03/19/03 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 120

SHORT TITLE: SERVICE CONTRACT SALES ARE NOT INSURANCE

SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date Jrn-Page Action

02/24/03 0286 (H) READ THE FIRST TIME -
REFERRALS

02/24/03 0286 (H) L&C

03/05/03 (H) L&C AT 3:15 PM CAPITOL 17

03/05/03 (H) Heard & Held

MINUTE(L&C)

03/12/03 (H) L&C AT 4:00 PM CAPITOL 17

03/12/03 (H) Heard & Held
MINUTE(L&C)
03/19/03 (H) L&C AT 3 15 PM CAPITOL 17

WITNESS REGISTER

DAVE HARBOUR, Chair
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska
POSITION STATEMENT: Spoke about his new position as chair of the RCA.

REPRESENTATIVE JOHN COGHILL
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as the sponsor of 119 and HB 120.

[The witnesses for HB 119 are forthcoming.]

RYNNIEVA MOSS, Staff
to Representative John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During discussion of HB 120, answered questions.

ACTION NARRATIVE

TAPE 03-23, SIDE A
Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:16 p.m. Representatives Anderson, Lynn, Dahlstrom, and Guttenberg were present at the call to order. Representative Rokeberg arrived as the meeting was in progress.

HB 111 -EXTEND REGULATORY COMMISSION OF ALASKA **DRAFT**

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 111, "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

CHAIRMAN ANDERSON informed the committee that he was assigning HB 111 to a subcommittee consisting of himself and Representatives Dahlstrom and Guttenberg. He announced that the subcommittee would meet next Thursday, March 27, 2003. He requested a one page position statement expressing the needed changes from interested parties.

Number 0152

DAVE HARBOUR, Chair, Regulatory Commission of Alaska (RCA), Department of Community & Economic Development, thanked the committee for the confirmation process. He expressed pleasure with all the edification he has received. He discussed the circumstances under which he took the position as chair of the RCA. He commented on the RCA's dedicated staff of specialists. Mr. Harbour related that he feels a special sense of mission from the legislature and governor because one appointed him and the other confirmed him. He turned to the RCA's public obligation and the legislature's monitoring of the RCA. With regard to monitoring, Mr. Harbour pointed out that after some 2,000 orders since the RCA came into being in 1999, only about 15 major appeals have occurred. Virtually all of those appeals have been sustained by the court system, with the exception of one which was turned back for a procedural reason. With regard to the future, he specified his priority of communication with the legislature, the administration, as well as the regulated community. He noted his expectation and assumption that such communication would be returned to the RCA. If there are ways in which the processes effecting the public interest can be improved, there should be discussion about them and attempts made to achieve consensus while moving the state forward and maximizing the efficiencies of the RCA.

DRAFT

[The minutes for HB 119 are forthcoming.]

HB 120 -SERVICE CONTRACT SALES ARE NOT INSURANCE

DRAFT

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 120, "An Act excluding service contracts from regulation as insurance; and providing for an effective date."

Number 1598

REPRESENTATIVE ROKEBERG moved that the committee adopt the proposed committee substitute (CS), Version 23-LS0537\I, Ford, 3/19/03, as the working document. There being no objection, Version I was before the committee.

REPRESENTATIVE ROKEBERG related that [Version I addresses] all the committee's questions. Furthermore, the legislation has a zero fiscal note that was prepared by the committee.

REPRESENTATIVE LYNN related his understanding that this legislation protects any licensed realtor providing a home

warranty for real estate in the state.

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, speaking as the sponsor of HB 120, deferred to representatives from the administration

REPRESENTATIVE ROKEBERG pointed out that [Version 1] clearly does what Representative Lynn understood, which is why [the language on page 2, lines 23-25] is included. Furthermore, underwriters would still pay the premium tax under Section 1 language.

Number 1484

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, said she understood Representative Lynn's understanding to be that a realtor could sell a home warranty and not have to have a license to sell insurance. She said that understanding is correct.

REPRESENTATIVE COGHILL pointed out that Section 2, [paragraph (h)(2), page 2, lines 23-25] attempts to clarify that.

REPRESENTATIVE ROKEBERG said, "My understanding is on home warranty underwriting, that [subparagraph (e)(1)(C) in Section 1, page 2, lines 5-8] is controlling, ... notwithstanding [subparagraph (e)(2)(E)] below, where a home warranty, except as described in (1)(C) of this subsection, is excluded as found in (1)(C) above."

REPRESENTATIVE COGHILL deferred to the representative of the administration. He noted the need on page 2, line 13 to delete "or" because it isn't necessary.

REPRESENTATIVE ROKEBERG pointed out that home warranties are not excluded [from oversight by the Division of Insurance] per the language on page 2, line 17. Therefore, home warranties still pay the premium tax, except if the [home warranty] is a component part of a home under [subparagraph (e)(1)(C) in Section 1]. Representative Rokeberg clarified that the home warranty is not excluded from payment of premium tax because it is an underwritten item. But [paragraph (h)(2)] of Section 2 excludes the [seller of the warranty] from being licensed in order to sell [the home warranty]. He said for the record that he wanted to show that some service contracts could cover component parts without intending to be home warranties. So, a [company underwriting] a home warranty would still pay a premium tax, but a [company offering a service contract] on a washer and dryer component part would not [pay a premium tax].

CHAIR ANDERSON noted that the sponsor seems to concur with

Representative Rokeberg's comments.

Number 1316

REPRESENTATIVE GUTTENBERG inquired as to why Chair Anderson had written the fiscal note.

REPRESENTATIVE ROKEBERG explained that statute specifies that if the department doesn't provide a fiscal note, then the first committee of referral can do so.

Number 1291

REPRESENTATIVE ROKEBERG moved to report CSHB 120 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE ROKEBERG withdrew his aforementioned motion and moved that the committee adopt Conceptual Amendment 1 as follows: page 2, line 13, after "serviced;" delete "or". There being no objection, Conceptual Amendment 1 was adopted.

Number 1247

REPRESENTATIVE ROKEBERG moved to report CSHB 120 , Version 23-LS0537\, Ford, 3/19/03, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 120(L&C) was reported from the House Labor and Commerce Standing Committee.

DRAFT

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:30 p.m.

House

03

HL&C

03/27/03

1300

ALASKA STATE LEGISLATURE

**HOUSE LABOR AND COMMERCE STANDING COMMITTEE
SUBCOMMITTEE ON HB 111**

March 27, 2003

1:00 p.m.

COMMITTEE CALENDAR

HOUSE BILL NO. 111

"An Act extending the termination date of the Regulatory Commission of Alaska, and providing for an effective date."

NOTE: There are no tapes or log notes available for this subcommittee meeting.

House

03

HL&C

03/28/03



6

Alaska State Legislature



Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

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State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR DONALD C. OLSON

DISTRICT S

SB 54 SPONSOR STATEMENT

By Senator Olson

- Alakanuk
- Ambler
- Anaktuvuk Pass
- Atkasuk
- Barrow
- Brevig Mission
- Browerville
- Buckland
- Chevak
- Deering
- Diomed
- Ellm
- Emmonak
- Gambell
- Golovin
- Hooper Bay
- Kaktovik
- Kiana
- Kivalina
- Kobuk
- Kolik
- Kotzebue
- Koyuk
- Mekoryuk
- Mountain Village
- Newtok
- Nightmute
- Noatak
- Nome
- Noorvik
- Nuiqsut
- Nunam Iqua
- Pitka's Point
- Point Hope
- Point Lay
- Savoonga
- Scammon Bay
- Selawik
- Shaktolik
- Shishmaref
- Shungnak
- St. Mary's
- St. Michael
- Stebbins
- Teller
- Toksook Bay
- Tununak
- Unalakleet
- Wainwright
- Wales
- White Mountain

I introduced SB 54 to bring certainty to the interpretation of existing federal and state wage and hour statutes as they pertain to payment of overtime in the air transportation industry. Because of the uniqueness of their working conditions, flight crews have been considered professionals that are exempt from the standard 8 hour work day, 40 hour week and associated overtime pay requirements [AS 23.10.055(9)]. In conjunction with the maximum flight hour requirements set by the Federal Aviation Administration, these exemptions at both the state and federal level have allowed the industry to structure wage and hour schedules best suited to the work requirements of their flight crew personnel.

Several Alaska court decisions have raised a question about the correct application of state wage and hour laws and the application of overtime exemptions. Indeed, the confusion has stimulated other court challenges.

SB 54 explicitly adds flight crews to the list of occupations and employment situations that are exempt from Alaska's overtime wage and hour requirements. The bill cites the provisions of the federal Railway Labor Act that governs air carriers in order to provide consistency between federal and state applications of the exemption.

EXHIBIT 6

7

ALASKA BILL TEXT

Chapter 11

AN ACT

VERSION: Enacted

April 17, 2003
Olson

"An Act exempting flight crew members of certain air carriers from overtime pay requirements."

TEXT:

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

* Section 1. AS 23.10.060(d) is amended by adding a new paragraph to read:

(19) work performed by a **flight crew** member employed by an air carrier subject to 45 U.S.C. 181 - 188 (subchapter II of the Railway Labor Act); in this paragraph, "**flight crew**" means the pilot, co-pilot, **flight** engineer, and **flight** attendants.

2003 AK S.B. 54 (SN)

END OF DOCUMENT

SB

108

SENATE COMMITTEE REPORT
First Committee of Referral

E: 2/14/05

FURTHER: Finance

of 5-Day Notice: _____
 accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

and Commerce Committee considered SENATE BILL NO. 108

SB 103 INSURANCE

Act relating to the regulation of insurance, insurance licensing, surplus lines, insurer deposits, motor vehicle service contracts, guaranteed automobile protection products, health discount plans, third-party administrators, self-funded multiple employer welfare arrangements, and self-funded governmental plans; providing for an effective date."

I recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Betty Davis</i>			X	
<i>J. Klein</i>			X	
<i>Ben Stevens</i>	X			
CHAIR: <i>C. Burns</i>	✓			



Alaska Independent
Insurance Agents & Brokers, Inc.

HB147 - SB108: Omnibus Insurance Legislation

Owner Controlled Insurance Programs (OCIP's) and Contractor Controlled Insurance Programs (CCIP's)

The Alaska Independent Insurance Agents & Brokers (AIIAB) is a professional trade association representing Independent business people throughout Alaska. We work with our insurance company partners while representing the interest of our clients. Because we deal with the Alaskan consumer on a daily basis, we are particularly sensitive to the needs and concerns of consumers. We believe the best consumer protection is a healthy, competitive insurance marketplace.

In recent years, there has been a trend towards the use of Owner Controlled Insurance Programs (OCIP's) and Contractor Controlled Insurance Programs (CCIP's) outside of the realm of large construction projects as the programs were originally designed. Allowing the spread of OCIP's and CCIP's outside of the construction industry would be a serious mistake for a number of reasons.

- Expansion in the use of OCIP's and CCIP's will decrease the number of parties in the insurance marketplace making it a less attractive market for insurance companies to conduct business, which would likely result in even fewer companies writing business in Alaska. Fewer carriers in Alaska will result in higher premiums.
- OCIP's and CCIP's are typically written by large insurance brokerages (more than likely non-Alaska companies), which limits the market share of Alaska firms and independent insurance agents and brokers residing in Alaska. If the growth of OCIP's and CCIP's outside of the construction industry is allowed without limits, a number of independent insurance agents and brokers who currently participate in the State's economy and provide a necessary service to their clients will be put out of business.
- Allowing OCIP's and CCIP's in Alaska without regulatory oversight by the Division of Insurance will have legal implications for Alaskan businesses. Claims filed against contractors & subcontractors with multiple workplaces will result in disputes regarding the responsibility between the OCIP or CCIP and the contractor's primary work comp carrier. When a claim occurs between jobsites or enroute to or from jobsites, disagreements will arise as to whether the claim occurred at the specific job site and which liability or workers compensation policy will cover the injured party. This problem is avoided with statute definition to the use of OCIP's and CCIP's as proposed by the AIIAB.

The Alaska Independent Insurance Agents & Brokers encourages the Alaska State Legislature's support for amendments to HB147 & SB108 defining the use of OCIP's and CCIP's in Alaska.

Amendment #

By Sen. Ben Stevens

Senate Bill 108

Page 1, Line 7

INSERT

Section 1. AS 21.06.130 is amended to read:

Sec. 21.06.130. Examination of producers, adjusters, and promoters. (a) To determine compliance with this title, the director may as often as the director [CONSIDERS ADVISABLE] has reasonable cause, examine or require a written report from a person of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs of

- (1) an insurance producer or independent adjuster; or
- (2) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation, or corporation to finance a domestic insurer or the production of its business.

Renumber Sections Accordingly

CS for SB 108
Version F

This CS does the following:

- 1) **Removes Section 30** dealing with gap insurance and auto warranties
- 2) **Adds** language (Section 22, page 13, line 20) that deals with Owner Controlled Insurance Programs and Contractor Controlled Insurance Programs....verbage attached for your reference.

Proposed amendment to SBI08:

AS 21.36 is amended by adding a new section to read:

09 **Sec 21.36.65. Limitation on owner controlled and contractor controlled**
10 **insurance programs.** (a) An owner controlled insurance program or a contractor
11 controlled insurance program is subject to both AS 21.39 and AS 21.42 and must be approved by the director and shall be allowed
12 only for a major construction project. Owner controlled and contractor controlled
13 insurance programs are limited to property insurance as defined in AS 21.12.060 and
14 casualty insurance as defined in AS 21.12.070, and workers compensation as described in AS 23.30.

15 (b) In this section, an owner controlled or contractor controlled insurance
16 program does not include

17 (1) Builder's risk or course of construction insurance;

18 (2) insurance relating to the transportation of cargo or other property;

19 (3) insurance covering one or more affiliates, subsidiaries, partners, or
20 joint venture partners of a person; or

21 (4) insurance policies endorsed to name one or more persons as
22 additional insureds.

23 (c) In this section,

24 (1) "contractor" means a person, as described in AS 08.18, who undertakes the performance of a
25 construction project for a project owner, its agent, or its representative;

26 (2) "contractor controlled insurance program" means an insurance
27 program where one or more insurance policies are procured on behalf of placed by a contractor, its agent, its
28 representative, by its insurance producer or its broker, as described in AS 21.27 for the purpose of insuring the contractor and one or more
29 of the following:

30 (A) the project owner;

31 (B) a subcontractor;

01 (C) an architect;

02 (D) an engineer; or

03 (E) a person performing professional services;

04 (3) "major construction project" means the process of constructing a
05 structure, building, facility, or roadway or renovation of more than 50 percent of
06 an existing structure, building, facility, or roadway having a contract cost of more than
07 \$50,000,000 of a definite term at a geographically defined project site;

08 (4) "owner controlled insurance program" means an insurance program
09 where one or more insurance policies are procured on behalf of placed by a contractor, its agent, its

28 representative, by its insurance producer ~~or its broker~~, as described in AS 21.27 for the purpose of insuring the project owner and one or
11 more of the following:

12 (A) the contractor;

13 (B) a subcontractor;

14 (C) an architect;

15 (D) an engineer; or

16 (E) a person performing professional services;

17 (5) "project owner" means a person who, in the course of the person's
18 business, engages the service of a contractor for the purpose of working on a
19 construction project;

20 (6) "subcontractor" means a person to whom a contractor sublets all or
21 part of a contractor's initial undertaking.

24 * AS 21.36.190 is amended by adding a new subsection to read:

25 (f) Except as provided in AS 21.36.65, an insurer, whether an authorized or
26 unauthorized insurer may not underwrite an owner controlled insurance program or
27 contractor controlled insurance program. In this subsection, "owner controlled
28 insurance program" and "contractor controlled insurance program" have the meanings
29 given in AS 21.36.65.



Alaska Independent
Insurance Agents & Brokers, Inc.

March 14, 2005

Senator Con Bunde, Chairman
Labor & Commerce Committee
24th Legislative, 1st Session
Alaska State Capitol
Juneau, AK 99801-1182

Senate Bill 108 – Alaska Statutes Section 21 Insurance

Dear Senator Bunde,

Enclosed is a proposed amendment to this legislation addressing limitations on the use of Owner Controlled Insurance Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP) to the construction of large (\$50,000,000.00 +) projects of public or private nature over a defined period of time at a specific location or region.

OCIP and CCIP's have been designed in the past to provide for uniformity of insurance coverage limits and forms for a specific large construction project involving an array of various industry trades. Examples that are often described as OCIP and CCIP projects include the Trans Alaska Pipeline Hoover Dam, and the Sears Tower in Chicago.

There are large employers in Alaska that are proceeding with or contemplating the use of OCIP and CCIP's for the maintenance and repairs of their existing facilities.

There are several problems with using this insurance method for maintenance and repair programs:

(1). The removal of any insurance clients out of the already fragile Alaska insurance market may lead to further deterioration of that competitive arena. The total volume of insurance business in Alaska is so small that any reduction in the available insurance risks would lead to additional insurance markets exiting the state.

(2). Any loss of the current insurance market will adversely affect the remaining clients overall bottom line cost. Fewer insurance markets leads to higher costs for the rest of the clients not involved with the OCIP and CCIP.

(3). OCIP and CCIP include all owners, contractors, and sub-contractors for all aspects of the construction project. All employers are defined and included on the insurance program. No dual employer situations exist, and the insurance provided is the sole source and remedy for the public and employee exposures. This is not so clear when the OCIP and CCIP form of insurance is used for maintenance or repairs of existing facilities.

Employees of XYZ sub-contractor may have several locations and jobs throughout the state for operations during the year, but only a small portion is performed on an OCIP facility. XYZ sub-contractor would provide workers compensation benefits to their employees during travel exposures around the state, but the OCIP or CCIP program might only provide benefits for the employee while actually present at the maintenance site. If the employee is being sent to the OCIP site by XYZ sub-contractor but not included for benefits until they actually arrive at the maintenance site, who is responsible for the travel exposure? This could lead to a lot of unnecessary litigation to determine the employer/employee status at the time and place of injury.

This proposed language amendment is designed to clarify when an OCIP or CCIP may be used, and would be subject to the Division of Insurance oversight and approval.

Please give this amendment your consideration. Thank you.

Sincerely,

Michael F. Combs, CIC
Legislative Committee
Alaska Independent Insurance Agents & Brokers, Inc.

24-GS1083F
Bullock
4/11/05

CS FOR SENATE BILL NO. 108(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the regulation of insurance, insurance licensing, surplus lines,**
2 **insurer deposits, owner-controlled and contractor-controlled insurance programs,**
3 **health discount plans, third-party administrators, and self-funded multiple employer**
4 **welfare arrangements and self-funded governmental plans; and providing for an**
5 **effective date."**

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

7 *** Section 1. AS 21.09.160 is amended to read:**

8 **Sec. 21.09.160. Notice of suspension or revocation and effect upon agent's**
9 **authority. (a) Upon suspending or revoking an insurer's certificate of authority, the**
10 **director shall immediately give notice to the insurer and [TO ITS AGENTS OF**
11 **RECORD IN THIS STATE IN THE DIRECTOR'S OFFICE. THE DIRECTOR] shall**
12 **also publish notice of the revocation in one or more newspapers of general circulation**
13 **in this state.**

1 (b) The suspension or revocation shall automatically suspend or revoke, as the
2 case may be, the authority of all its agents and managing general agents to act as
3 agents or managing general agents of the insurer in this state, and the insurer
4 [DIRECTOR] shall so state in the notice to agents and managing general agents
5 provided for in (c) [(a)] of this section.

6 * Sec. 2. AS 21.09.160 is amended by adding a new subsection to read:

7 (c) Upon notification of suspension or revocation of an insurer's certificate of
8 authority, the insurer shall immediately give notice of the suspension or revocation to
9 its agents and managing general agents operating in this state.

10 * Sec. 3. AS 21.24.040(a) is amended to read:

11 (a) Deposits made in this state under this title shall be made through the office
12 of the director [IN SAFE DEPOSIT OR] under custodial arrangements as required or
13 approved by the director consistent with the purposes of the deposit, with an
14 established safe deposit institution, bank, or trust company located in this state
15 selected by the insurer with the director's approval.

16 * Sec. 4. AS 21.24.040(c) is amended to read:

17 (c) If of convenience to the insurer in the buying, selling, and exchange of
18 securities making up [COMPRISING] its deposit, and in the collection of interest and
19 other income currently accruing on the securities [THEREON], the insurer may, with
20 the director's advance written approval, deposit a portion of the securities under
21 custodial arrangements with an established bank or trust company located outside this
22 state, if receipts representing all the securities are issued by the custodial bank or trust
23 company and are held in [SAFE DEPOSIT OR] custody subject to the requirements of
24 (a) [AND (b)] of this section.

25 * Sec. 5. AS 21.24.130(d) is amended to read:

26 (d) If the insurer is subject to delinquency proceedings as defined in AS 21.78,
27 upon the order of a court of competent jurisdiction, the director shall yield the assets
28 and securities held on deposit under AS 21.09.090(b) to the receiver, conservator,
29 rehabilitator, or liquidator of the insurer, or to any other properly designated official or
30 officials who succeed to the management and control of the insurer's assets. The
31 director may release the deposit directly to the guaranty fund of which the

1 insurer is a member if the right to receive all or a portion of the deposit is
2 assigned to the guaranty fund.

3 * Sec. 6. AS 21.27.010(c) is amended to read:

4 (c) A third-party administrator [PERSON WHO FOR A RESIDENT OF
5 THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A
6 PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE
7 FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,
8 MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,
9 PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING
10 AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE
11 INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be
12 licensed as a managing general agent if the third-party administrator [PERSON]

13 (1) is registered under AS 21.27.630 - 21.27.660 [THIS CHAPTER
14 AS A THIRD-PARTY ADMINISTRATOR]; or

15 (2) only investigates and adjusts claims and is licensed under this
16 chapter as an independent adjuster.

17 * Sec. 7. AS 21.27.100 is repealed and reenacted to read:

18 **Sec. 21.27.100. Appointment of insurance producer, managing general**
19 **agent, and reinsurance intermediary manager; acts of agent.** (a) An appointment
20 is required to be made in accordance with this section when one or more of the
21 following has occurred:

22 (1) an admitted insurer appoints a managing general agent in this state
23 or relative to a subject resident, located, or to be performed in this state;

24 (2) a managing general agent appoints an insurance producer as its
25 subagent in this state or relative to subjects resident, located, or to be performed in this
26 state;

27 (3) a domestic reinsurer appoints a reinsurance intermediary manager;

28 (4) a reinsurance intermediary manager appoints an insurance producer
29 as its subagent in this state.

30 (b) An admitted insurer shall appoint an insurance producer as its agent in this
31 state or relative to a subject resident, located, or to be performed in this state not later

1 than 30 days after the date that a written agency contract is executed or the first
2 insurance application is submitted to the admitted insurer by the licensed insurance
3 producer.

4 (c) An individual in a firm who acts solely on behalf of a firm that is
5 appointed as an agent or a managing general agent on behalf of an admitted insurer
6 under this section may not be required to also have an appointment under this section
7 if the individual in the firm is licensed with that firm for a specific class of authority.

8 (d) The authorized or apparently authorized acts on behalf of an appointing
9 insurer of an insurance producer appointed under this section are considered the acts
10 of that insurer

11 (e) An insurer and managing general agent shall maintain a current list of all
12 appointments made or required to be made under this section that identifies the
13 licensee's name, licensee's mailing address, license number, and effective date of
14 appointment.

15 (f) An insurance producer shall maintain a list of all appointments made or
16 required to be made under this section that identifies the insurer's name, insurer's
17 mailing address, and effective date of appointment.

18 (g) An insurer, managing general agent, or insurance producer shall reply in
19 writing within three working days to an inquiry of the director regarding an
20 appointment.

21 * **Sec. 8.** AS 21.27.110 is repealed and reenacted to read:

22 **Sec. 21.27.110. Term of appointment.** (a) An appointment under
23 AS 21.27.100 continues in force until the appointment is terminated in writing.

24 (b) If an insurer, reinsurer, or authorized representative discovers information
25 showing that the appointee whose appointment was terminated has engaged in an
26 activity identified in AS 21.27.410 during the period of the appointment, the insurer,
27 reinsurer, or authorized representative shall, on a form or in a format prescribed by the
28 director, promptly notify the director.

29 (c) Within 15 days after providing notification in accordance with (b) of this
30 section, the insurer, reinsurer, or authorized representative shall mail a copy of the
31 notification to the appointee at the last address on record with the insurer, reinsurer, or

1 authorized representative. The notice must be provided by certified mail, return
2 receipt requested, postage prepaid, or by overnight delivery using a nationally
3 recognized mail carrier.

4 (d) Within 30 days after the appointee receives notification in accordance with
5 (c) of this section, the appointee shall file written comments concerning the substance
6 of the notification with the director and shall provide a copy of the written comments
7 to the insurer, reinsurer, or authorized representative. The written comments filed
8 with the director must be included with each report distributed or disclosed concerning
9 a reason about the termination of the appointment.

10 (e) If requested by the director, an insurer, a reinsurer, or an authorized
11 representative shall provide to the director additional information, documents, records,
12 or other data pertaining to a termination or activity of a licensee under this title.

13 (f) A notice of termination submitted to the director under this section must
14 include a statement of the reasons for the termination. A statement of the reasons for
15 termination is confidential and not subject to inspection and copying under
16 AS 40.25.110. A statement of reasons for the termination may not be admitted as
17 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,
18 or authorized representative by or on behalf of a person affected by the termination,
19 except when the action or proceeding involves perjury, unsworn falsification, fraud, or
20 failure to comply with this subsection.

21 (g) If an insurer, a reinsurer, or an authorized representative fails to report as
22 required under this section or is found by a court to have knowingly or intentionally
23 falsely made that report, the director may, after notice and hearing, suspend or revoke
24 the license or certificate of authority of the insurer, reinsurer, or authorized
25 representative and may impose a penalty in accordance with AS 21.27.440.

26 * **Sec. 9.** AS 21.27.380(a) is amended to read:

27 (a) Except as provided in this title, the director may renew a license biennially
28 on a date set by the director if the licensee continues to be qualified under this chapter
29 and, on or before the close of business of the renewal date, meets all renewal
30 requirements established by regulation and pays the renewal license fees set under
31 AS 21.06.250 for each license to the director. A licensee is responsible for knowing

1 the date that a license lapses and for renewing a license before expiration. The director
2 shall notify the licensee of the license renewal [MAIL A RENEWAL NOTICE TO
3 THE LICENSEE'S CURRENT ADDRESS ON FILE WITH THE DIRECTOR] 30
4 days before the renewal date.

5 * Sec. 10. AS 21.27.630(b) is amended to read:

6 (b) A third-party administrator may not transact business for a kind or class of
7 authority [INSURANCE] for which the person is not registered.

8 * Sec. 11. AS 21.27.630(c) is amended to read:

9 (c) Except as otherwise provided in this chapter, a third-party
10 administrator [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,
11 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING
12 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM
13 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR
14 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY
15 ADMINISTRATOR] shall be registered under AS 21.27.630 - 21.27.660 [AS A
16 THIRD-PARTY ADMINISTRATOR] unless the third-party administrator
17 [PERSON] only investigates and adjusts claims and is licensed under this chapter as
18 an independent adjuster.

19 * Sec. 12. AS 21.27.630 is amended by adding new subsections to read:

20 (k) An insurer that holds a certificate of authority issued by the director and is
21 in good standing under this title is not required to be registered as a third-party
22 administrator in this state.

23 (l) A person that is not required to be registered as a third-party administrator
24 under (e) - (k) of this section shall file a certification with the director that the person
25 meets the requirements for exemption.

26 * Sec. 13. AS 21.27.650(a) is amended to read:

27 (a) An insurer may not transact business with a third-party administrator
28 unless

29 (1) the insurer holds a certificate of authority in this state if required
30 under this title:

31 (2) the third-party administrator is registered under this chapter or the