

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 19, 2001

3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 230

"An Act relating to wage and hour protections for employees of the Alaska Railroad Corporation; and providing for an effective date."

- MOVED HB 230 OUT OF COMMITTEE

HOUSE BILL NO. 157

"An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 157(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 212

"An Act relating to an employer's liability for providing workers' compensation coverage."

- MOVED CSHB 212(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 230

SHORT TITLE:RAILROAD EMPLOYEE SALARIES AND WAGES

SPONSOR(S): LABOR & COMMERCE

Jrn-Date	Jrn-Page		Action
04/04/01	0842	(H)	READ THE FIRST TIME - REFERRALS
04/04/01	0842	(H)	L&C
04/19/01		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 157

SHORT TITLE: TRUST COMPANIES & FIDUCIARIES

SPONSOR(S): REPRESENTATIVE(S) MURKOWSKI

Jrn-Date	Jrn-Page		Action
02/28/01	0463	(H)	READ THE FIRST TIME - REFERRALS
02/28/01	0463	(H)	L&C, JUD
03/28/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/28/01		(H)	Heard & Held MINUTE(L&C)
04/18/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/18/01		(H)	Bill Postponed
04/19/01		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 212

SHORT TITLE: WORKERS' COMP: CONTRACTORS & SUBCONTRACTOR

SPONSOR(S): LABOR & COMMERCE BY REQUEST

Jrn-Date	Jrn-Page		Action
03/26/01	0729	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0729	(H)	L&C
04/19/01		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

WENDY LINDSKOOG, Director
 External Affairs
 Alaska Railroad Corporation
 PO Box 107500
 Anchorage, Alaska 99510
 POSITION STATEMENT: Presented HB 230.

ANN COURTNEY, Senior Attorney
 Labor and Employment
 Alaska Railroad Corporation
 327 West Ship Creek
 Anchorage, Alaska 99501
 POSITION STATEMENT: Answered questions on HB 230.

KEVIN BERGSRUD, Locomotive Engineer
Alaska Railroad Corporation;
Director
United Transportation Union
5325 East 41st Street
Anchorage, Alaska 99508
POSITION STATEMENT: Answered questions on HB 230.

ROBIN PHILLIPS, Staff
to Representative Lisa Murkowski
Alaska State Legislature
Capitol Building, Room 408
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor on HB
157.

DOUGLAS BLATTMACHR, President and CEO
Alaska Trust Company
1029 West 3rd Avenue
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on HB 157.

VINCE USERA, Senior Securities Examiner
Division of Banking, Securities & Corporations
Department of Community and Economic Development
PO Box 110807
Juneau, Alaska 99811
POSITION STATEMENT: Testified on HB 157.

TERRY LUTZ, Chief Financial Institution Examiner
Division of Banking, Securities & Corporations
Department of Community and Economic Development
PO Box 110807
Juneau, Alaska 99811
POSITION STATEMENT: Testified on HB 157.

AMY ERICKSON, Staff
to Representative Lisa Murkowski
Alaska State Legislature
Capitol Building, Room 408
Juneau, Alaska 99801
POSITION STATEMENT: As committee aide for the House Labor and
Commerce Standing Committee, sponsor by request, explained HB
212.

ALAN WILSON

6014 Lund Street
Juneau, Alaska 99811
POSITION STATEMENT: Testified on behalf of himself on HB 212.

PAUL GROSSI, Director
Division of Worker's Compensation
Department of Labor & Workforce Development
PO Box 25512
Juneau, Alaska 99802
POSITION STATEMENT: Testified on HB 212.

ROBIN WARD
PO Box 91443
Anchorage, Alaska 99503
POSITION STATEMENT: Testified on behalf of herself on HB 212.

JUDY PETERSON
Workers' Compensation Committee of Alaska
3330 Arctic Boulevard
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in support of HB 212.

JACK HEBERT, President
Alaska State Homebuilders Association
(No address provided)
Fairbanks, Alaska
POSITION STATEMENT: Testified on HB 212.

SARA McNAIR-GROVE, Property and Casualty Actuary
Division of Insurance
Department of Community & Economic Development
PO Box 110805
Juneau, Alaska 99811
POSITION STATEMENT: Answered questions on HB 212.

CHARLES MILLER
Alaska National Insurance Company
(No address provided)
POSITION STATEMENT: Answered questions on HB 212.

ACTION NARRATIVE

TAPE 01-62, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce
Standing Committee meeting to order at 3:25 p.m. Members

present at the call to order were Representatives Murkowski, Halcro, Rokeberg, and Crawford. Representatives Meyer and Hayes joined the meeting as it was in progress.

HB 230-RAILROAD EMPLOYEE SALARIES AND WAGES

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 230, "An Act relating to wage and hour protections for employees of the Alaska Railroad Corporation; and providing for an effective date."

Number 0134

WENDY LINDSKOOG, Director, External Affairs, Alaska Railroad Corporation (ARRC), came forth to present HB 230. She stated:

House Bill 230 accomplishes two very important objectives for the Alaska Railroad and its employees. It amends the Alaska Railroad statute AS [42.40.710]. First, the bill clarifies that ARRC does in fact fall under the Alaska Wage and Hour Act. And second, the bill would allow the members of the United Transportation Union [UTU] - these are our conductors, our brakemen, and our engineers - ... the flexibility to negotiate an agreement that would allow UTU union employees to be paid on a salary-type basis, rather than an hourly-type basis.

MS. LINDSKOOG gave some background to the bill. She stated:

When we began negotiations several months ago with the UTU union members, we discovered that there was in fact question whether the Alaska Railroad fell under the Alaska Wage and Hour Act. Because the Alaska Railroad is a rail carrier, we are exempt from the federal Fair Labor Standards Act - ... that's the federal law governing minimum wage ... and overtime issues. Since the state purchased the railroad we have always operated and believed that we were regulated by the Alaska Wage and Hour Act, so to find out that we weren't was a bit of a surprise. ... With this cloud of uncertainty about our status under the Act, we do believe that it's important for our nearly 700 employees to clarify this issue. One thing that is important to point [out]: the UTU union members would still have protection from overtime and wage issues. Basically, they do fall under the Hours of

Service Act, and this prevents excessive or unreasonable work hours by limiting the number of hours they can work to 12 hours before they need to rest.

Both management and UTU members would benefit from the exemption. For example, being paid on a salary-type basis would enhance the UTU member retirement benefits, and management would gain some flexibility in terms of some efficiency methods ... in the future. We do have letters of support from UTU union members, ... Alaska Public Employees Association, [the] American Train Dispatchers Department, and the Alaska Railroad workers, and we do have verbal support from the AFL-CIO [American Federation of Labor and Congress of Industrial Organizations]. I understand a letter might be forthcoming on that.

Number 0402

REPRESENTATIVE HALCRO asked Ms. Lindskoog whether this would give the railroad and the employees greater flexibility when determining work schedules.

MS. LINDSKOOG responded that this would provide [ARRC] the flexibility to go into negotiations with the UTU union only, and it would have to be an agreement that was mutually agreed to by both the UTU and management.

REPRESENTATIVE ROKEBERG asked Ms. Lindskoog whether it is an exemption under the [Alaska] Wage and Hour Act to allow "flex" time or whether [ARRC] will have to get approval from the commissioner.

MS. LINDSKOOG answered that the Department of Labor [and Welfare Development] mentioned to [ARRC] that as long as it made this change through their statute, it wouldn't go into the AS [23.10.050].

REPRESENTATIVE ROKEBERG remarked that if Ms. Lindskoog is stipulating by this bill that [ARRC] is under AS 23, then [ARRC] is bound by the provisions of AS 23. He asked whether that means [ARRC] needs to have approval of the commissioner to adopt a flexible work schedule, or whether it is exempt under that because the bargaining unit is a member of organized labor.

Number 0567

ANN COURTNEY, Senior Attorney, Labor and Employment, Alaska Railroad Corporation, testified via teleconference. She responded that she believes everyone at the Alaska Railroad Corporation who is not in a collective bargaining unit would have to get approval from the Department of Labor and Workforce Development in order to work flexible time. Employees represented by a collective bargaining agreement may do that without permission from the commissioner or from the department. If this legislation passes, and the railroad and the union are able to mutually agree in a collective [bargaining] agreement that they would be exempt, flex-time will no longer be an issue for the UTU. They would be exempt from all aspects of the [Alaska] Wage and Hour Act. The remaining employees of the railroad would remain subject to the Act, and nonrepresented employees would have to have approval for a flex-time program.

REPRESENTATIVE ROKEBERG referred to AS 23.10.060, subsection (d)(14), which provides for the voluntary flexible work hour plan. He remarked that it is limited to 40 hours a week and not more than 10 hours a day, and he asked how that would work.

MS. COURTNEY responded that if this legislation passes, the UTU would be exempt from that requirement. The UTU and the railroad could then mutually agree upon any method of payment and any scheduling of work, subject to the restrictions of the Hours and Service Act.

REPRESENTATIVE ROKEBERG asked whether that was because of the provisions in Section 1 of the bill.

MS. COURTNEY answered that it would be because they were exempt from the Act altogether. She clarified that in AS 23.10.060 there is a section that indicates who this Act does not apply to, and there is a long list of employees who are not subject to the Alaska Wage and Hour Act. If this legislation passes, the UTU would fall in the same category as those employees.

REPRESENTATIVE ROKEBERG remarked that it wouldn't reflect in the statute because it would be within its own chapter.

MS. COURTNEY said that's correct.

REPRESENTATIVE ROKEBERG asked whether it was limited to train or engine service employees.

Number 0818

MS. COURTNEY responded that he was correct. The term "train and engine service" is shorthand for saying, "those employees at the Alaska Railroad Corporation who actually run the trains: the conductors, the locomotive engineers, and the brakemen."

CHAIR MURKOWSKI stated that in the fiscal note there is a notation that approximately 545 of the Alaska Railroad Corporation's employees are represented by five unions. She asked whether the exemption to [the Alaska Wage and Hour Act] would only apply to those UTU's members and not to any other collective bargaining groups.

MS. COURTNEY responded that she was correct.

CHAIR MURKOWSKI asked whether the UTU getting this exemption would cause a problem or concern amongst any of the other bargaining units or union members.

Number 0963

KEVIN BERGSRUD, Locomotive Engineer, Alaska Railroad Corporation; Director, United Transportation Union, testified via teleconference. He stated that rail workers and train dispatchers have both provided letters of support. He said to the best of his knowledge there is no conflict.

REPRESENTATIVE CRAWFORD asked Mr. Bergsrud whether this is something the UTU would like to do - to go under salary.

MR. BERGSRUD responded that it is his understanding that this is for the benefit of UTU.

REPRESENTATIVE MEYER remarked that he met with both Ms. Lindskoog and Mr. Bergsrud and thinks this is ideal.

REPRESENTATIVE HALCRO commented that two of the exemptions under AS 23.10.060 were put in by the House Labor and Commerce Standing Committee over the past two years.

CHAIR MURKOWSKI asked Ms. Lindskoog whether she would like to acknowledge that she has had conversations with the Department of Labor and Workforce on this.

MS. LINDSKOOG replied that she feels uncomfortable speaking for [the department] but [ARRC] has talked to the department, which

requested specifically that the bill be done through [ARRC's] statute and not AS 23.

Number 1170

REPRESENTATIVE ROKEBERG commented that this is another example of the inherent bias in statutes to those employees who are represented by bargaining units to have a "leg up."

REPRESENTATIVE ROKEBERG made a motion to move HB 230 from committee with individual recommendations and the attached zero fiscal note. There being no objection, HB 230 moved from the House Labor and Commerce Standing Committee.

HB 157-TRUST COMPANIES & FIDUCIARIES

CHAIR MURKOWSKI announced that the next order of business would be HOUSE BILL NO. 157, "An Act relating to trust companies and providers of fiduciary services; amending Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and providing for an effective date."

Number 1254

REPRESENTATIVE HALCRO made a motion to adopt the proposed committee substitute (CS) for HB 157, version 22-LS0139\L, Bannister, 4/19/01, as a work draft. There being no objection, Version L was before the committee.

ROBIN PHILLIPS, Staff to Representative Lisa Murkowski, Alaska State Legislature, came forth on behalf of the sponsor to explain the changes made in the proposed CS. She explained that on page 3, under AS 06.26.020, the first change in paragraph (1) states that the department would set the trust numbers, and includes a definition of "law firm". She said the guidelines that the department will follow are under subsection (b) on page 5. The next change is paragraph (4) of the same section, which provides a more precise definition. In both paragraph (4) and (5) the "solely incidental" language was removed. Paragraph (8) was changed to have the numbers set by the department, which falls under subsection (b) on page 5. Also in that paragraph is a definition of "accounting firm".

MS. PHILLIPS continued, stating that paragraph (10) under the exemptions originally had two subparagraphs. Subparagraph (B) was deleted, which made (A) unnecessary. In the old version,

she said, there was a paragraph (16), which has been deleted completely; therefore, there is a new paragraph (16). The new paragraph (17) sets the number of trusts that an individual can serve in if he or she is not a member of a family. The limit has been set to 20 different settlors, and in this case a husband and wife can create a joint trust and be considered as one settlor.

Number 1453

REPRESENTATIVE ROKEBERG asked why the number 20 [was decided upon].

CHAIR MURKOWSKI responded that [the bill] had been all over the board with regard to the number, and essentially a compromise has been reached.

REPRESENTATIVE ROKEBERG remarked that he thinks there are some individuals in the Anchorage area who are working on representing people who have received settlement money, and they are endeavoring to skirt any kind of regulatory control under this. He said he is not sure that's the right thing to do, particularly if those people are recipients of the settlement. He added that he is leaning toward the number 10 because of what he has heard.

DOUGLAS BLATTMACHR, President and CEO, Alaska Trust Company, testified via teleconference and stated that originally it was set at 10 different settlors. This allows that if one settlor sets 10 trusts, then that individual is only acting as if for one settlor. He said the idea was to have it so that there could be not just ten trusts, because sometimes one settlor may have ten children and set up a separate trust for each child, and therefore the individual who wanted to be trustee would basically be limited to that one only. Now, that person can act for [20] separate settlors, but there is no limit to the number of trusts they can act for.

REPRESENTATIVE ROKEBERG stated that this is, however, an exemption from the regulation.

MR. BLATTMACHR responded that he was correct. He explained that in theory after the person was acting as trustee for more than 20 settlors, he or she would have to be deregulated by the division.

CHAIR MURKOWSKI asked Mr. Blattmachr whether he could speak to Representative Rokeberg's concern that 20 may be too many.

MR. BLATTMACHR responded that it seems like quite a lot to him.

Number 1717

VINCE USERA, Senior Securities Examiner, Division of Banking, Securities & Corporations, Department of Community and Economic Development, came forth and suggested reverting back to the provision that would allow the division to set the number by regulation. They could then gain some experience and figure out what the right number is. He stated that trying to change legislation like this every time there's a change of need is terribly difficult.

REPRESENTATIVE ROKEBERG stated that he doesn't think that helps the division a lot because it takes as long to get the regulations in place as it does to pass the bill. If there isn't a stipulated amount, then [the division] won't know whom to exempt.

MR. USERA responded that [the division] worded it so that it could change the number by either order or regulation. Therefore, in the early stages of this procession, it would have the utmost flexibility.

CHAIR MURKOWSKI remarked that there simply is nothing to reference. She remarked that the number shouldn't be too high, because [the division] could experience the exact thing Representative Rokeberg is concerned about, and it shouldn't be too low.

REPRESENTATIVE ROKEBERG stated that he thinks he would be more comfortable putting "10" in there. He said it would be unusual to find somebody with more than 10 or 12 settlors who wouldn't be doing it commercially. And a person who is doing it commercially, should be under the regulatory scheme.

Number 1856

REPRESENTATIVE ROKEBERG made a motion to adopt conceptual Amendment 1, to change "20" to "10" on page 5, line 2. There being no objection, conceptual Amendment 1 was adopted.

MS. PHILLIPS continued, stating that following paragraph (17) [on page 3] there have been three additions: subsections (b),

(c), and (d). Subsection (b) sets the policies that will be followed by the regulations under (a)(1) and (a)(8) for establishing the reasonable number of trusts. Subsection (c) allows the department, in addition to the exemptions identified, to grant exemptions if the person [demonstrates] good cause. Subsection (d) says, in addition to all of these requirements, [a person] cannot be offering fiduciary services to the general public. She added that on page 23, the definition of "general public" was also amended.

MS. PHILLIPS continued, stating that the next two amendments were added in the realization that federal credit unions can exercise a limited scope of trust powers. The first addition is on page 2, paragraph (11), allowing federal credit unions to act as a fiduciary. The last change is on page 59, paragraph (30), which defines "state financial institutions".

REPRESENTATIVE ROKEBERG asked Mr. Lutz from the Division of Banking, Securities & Corporations whether state charter banks' deposits are FDIC (Federal Deposit Insurance Corporation) insured.

TERRY LUTZ, Chief Financial Institution Examiner, Division of Banking, Securities & Corporations, Department of Community and Economic Development, came forth and responded that they are required to have insurance.

CHAIR MURKOWSKI asked Mr. Lutz whether the proposed CS is acceptable to the division.

Number 2102

MR. LUTZ answered that he agrees 100 percent and thinks it is a good, workable product.

REPRESENTATIVE ROKEBERG asked whether there are other sets of regulations that need to be adopted.

MR. LUTZ responded that [the division] would have to draft some regulations, which is one reason why the bill has a January 1, 2002, effective date. He noted that there is a zero fiscal note.

MR. BLATTMACHR remarked that he has no objection to the bill. [The Alaska Trust Company] has talked to the department and has agreed to make some changes to the private fiduciary section through regulations.

Number 2240

REPRESENTATIVE HALCRO made a motion to move CSHB 157, version 22-LS0139\L, Bannister, 4/19/01, as amended, from committee with individual recommendations and the attached zero fiscal note. There being no objection, CSHB 157(L&C) moved from the House Labor and Commerce Standing Committee.

HB 212-WORKERS' COMP:CONTRACTORS & SUBCONTRACTOR

CHAIR MURKOWSKI announced that the last order of business would be HOUSE BILL NO. 212, "An Act relating to an employer's liability for providing workers' compensation coverage."

Number 2307

AMY ERICKSON, Staff to Representative Lisa Murkowski, Alaska State Legislature, came forth as committee aide to the House Labor and Commerce Standing Committee, sponsor by request of HB 212. She stated:

House Bill 212 addresses a decade long issue regarding [compensation] coverage for sole proprietors. Over the past several years, the Division of Workers' Compensation has received numerous complaints from general contractors [who have] paid increased workers' [compensation] premiums for subcontracting a job with a sole proprietor who could be considered a employee of the general contractor rather than independent contractor. Current statute requires that contractors require [compensation] insurance for employees of [subcontractors] unless they provide their own coverage. Sole providers of proprietors have not been required to have workers' [compensation] coverage.

The Workers' [Compensation] Board has found in certain cases that sole proprietors are employees of the general contractors; therefore, the general contractor has been responsible for providing the sole provider's coverage. Because of these cases, insurance companies have charged general contractors additional premiums for sole proprietors' subcontractors. These premium charges often occur after the general's policy has been audited, and in some cases the general has been required to pay additional premiums not accounted for or included in his bid costs.

House Bill 212 is the best solution to a longstanding problem. It puts sole proprietors under the same requirements as contractors by requiring that they provide their own coverage. It also gives clarity and fairness to all parties. We recognize that enactment of [HB] 212 will result in [increased] cost in premiums and services, but it will also increase the likelihood of adequate insurance coverage to a broader range of individuals and contractors. And contractors can anticipate the costs and include them in their bids. The bill meets the needs of the Division of Workers' [Compensation] and the Alaska [State] Homebuilders Association, who requested the legislations.

Number 2384

REPRESENTATIVE ROKEBERG made a motion to adopt the proposed committee substitute (CS) for HB 212, version 22-LS0755\J, Ford, 4/13/01, as a work draft. There being no objection, Version J was before the committee.

REPRESENTATIVE ROKEBERG explained that the proposed CS tightens the title and changes the effective date in Section 2 to January 1, 2002. He explained the reason for the change in the effective date and stated that last year, the committee increased the benefits for workers' compensation payments, effective July 1, which had the effect of changing the premium impacts and costs particularly felt by small businesses that had not planned for that increase during the summer season. It particularly affected those businesses that had entered into contracts prior to the enactment of the legislation.

TAPE 01-62, SIDE B

CHAIR MURKOWSKI remarked that she appreciates both of the changes.

Number 2446

ALAN WILSON came forth to testify on behalf of himself. He stated that he is a builder and remodeler, and also serves as a legislative co-chair for the Alaska State Homebuilders Association. He noted that it was that committee that came before the [House Labor and Commerce Standing] Committee last

year with this issue. He said he believes HB 212 is the compromise that everyone can live with. He added:

Many of us feel that we should be able to not have insurance on ourselves. Then again, we all realize in today's society that is not probably a real attitude to even have. So this requirement, by requiring sole proprietors to cover themselves while operating under a general contractor, is a fix; [it] takes care of the gray area that exists in the current statutes. ... Some of the benefits we see of requiring this is ... a framing subcontractor would pay roughly \$2,600 a year himself - that's pretty cheap insurance when you compare it to what health insurance costs. Most health insurance policies don't even cover you on the job. ... One other real important factor I believe with this piece of legislation is that it will help level the playing field. Many sole proprietors will be [bidding] against me and my company, and when I'm trying to play by all the rules and have all the insurances for my employees, it makes it hard to compete sometimes when someone has reduced their base cost by 18 [or] 20 percent.

CHAIR MURKOWSKI referred to a handout in the committee's packets and asked Mr. Wilson whether a "policy with no employees" [mentioned in the last paragraph] is something that could work.

MR. WILSON responded that within his association there were many [members] that didn't even know that existed, and when they tried to obtain it, they learned it really is not an item that's available for them.

Number 2283

REPRESENTATIVE ROKEBERG asked Mr. Wilson whether he thinks this bill will ultimately save his association's members premium money.

MR. WILSON answered that his association has had many discussions about what the cost of this is going to do to the final cost of a house. He said in his business he puts a number on the bottom line to compensate for the potential risk of having his insurance carrier audit him and find some sole proprietors that he did not cover. He is not going to do that now because they will all be covered; therefore, there could be some additional cost. He remarked that he believes having more

people writing insurance spreads the cost out amongst those potential users of the insurance, rather than spreading it amongst general contractors or society as a whole.

REPRESENTATIVE ROKEBERG stated that the point he wanted to make was that he thinks the Alaska State Homebuilders Association has been responsibly trying to deal with these few issues for several years, and he thinks that by passing this bill [the committee] is helping them come to grips with one of their cost elements, and doing so helps make sure that those people who should be covered are covered to avoid litigation. He added that he wanted to compliment the association.

REPRESENTATIVE HAYES commented that he doesn't think that this is the best solution, but it is the best solution that [the committee] could come up with.

Number 2147

PAUL GROSSI, Director, Division of Worker's Compensation, Department of Labor & Workforce Development, came forth and stated that the department and the division support the bill and think it is a fix of a long-term problem. It solves that gray area in the law as to whether someone is truly a subcontractor or an employee.

CHAIR MURKOWSKI asked Mr. Grossi about the "policy with no employees" as a viable option.

MR. GROSSI responded that sole proprietors have always been able to cover themselves under the workers' compensation system. These policies are already in existence and are written for those people to choose to purchase them.

REPRESENTATIVE ROKEBERG referred to a letter from Combs Insurance Agency, Inc., which indicates that Mr. Combs has some problems with the bill, particularly with the definitions of "employer" and "employee". He asked Mr. Grossi whether or not he agrees with the points Mr. Combs brought up.

MR. GROSSI replied that there are a number of issues Mr. Combs brought up. First of all, he said, "employer" and "employee" are defined in statute, but later in the letter, Mr. Combs writes that he feels everybody who works should be covered by the workers' compensation law. Mr. Grossi stated that he thinks the letter basically supports the issue; Mr. Combs just wants it to be more encompassing. As to the executive officer waivers,

Mr. Grossi said he believes this statute would cover that. Those types of waivers would be void because the subcontractor is required to be covered.

REPRESENTATIVE ROKEBERG asked Mr. Grossi whether a person who is the president of his or her own corporation and acts as a [subcontractor] would have to cover himself or herself [under the bill], but currently wouldn't have to.

MR. GROSSI responded that that's correct. He clarified that [the division] is requiring that all subcontractors cover their employees and themselves.

Number 1853

ROBIN WARD testified via teleconference on behalf of herself. She stated that she is the other legislative co-chair for the Alaska State Homebuilders Association. She said she and Mr. Wilson made a commitment last year that they would encourage a broad-based task force to be created. She remarked that they had all the players at the table to come up with a solution. This was the best solution that took care of the problem with the most consistency, and that leveled the playing field.

CHAIR MURKOWSKI asked Ms. Ward who was represented on the task force.

MS. WARD responded that there were members from the WCCA (Workers' Compensation Committee of Alaska), the Alaska National's group, the Alaska State Homebuilders Association, the Division of Insurance, and independent brokers.

REPRESENTATIVE ROKEBERG asked Ms. Ward whether they had discussed the issue of if there's no payment, then the fault or liability still rests with the contractor and not the subcontractor.

MS. WARD responded that the opportunity has been left open that if a prime contractor chooses to cover a sole proprietor, he or she can. However, it will be up to the prime contractor to enforce this by securing the certificate of insurance prior to having a full proprietor subcontractor work on his or her jobsite.

REPRESENTATIVE HALCRO asked Ms. Ward whether that puts in place a procedure for the general contractor to make sure that all the

subcontractors have coverage, to avoid the problem of the insurer coming back to the general contractor for back premiums.

MS. WARD responded that that's correct. She stated that currently when she looks through her workers' compensation and general liability audit, if she does not have a certificate of insurance and she tells her insurance company that that person is a sole proprietor, it is really up to her insurer whether or not to decided to exact premiums. With this legislation passed, she said she knows that they will if she does not have a certificate of insurance.

Number 1616

JUDY PETERSON, Workers' Compensation Committee of Alaska (WCCA), testified via teleconference. She read a letter that was sent to Chair Murkowski:

The WCCA board of directors has reviewed House Bill 212, currently pending before the [House] Labor & Commerce Committee, and has voted to endorse the proposed legislation. WCCA directors feel that the proposed change fills an obvious void in the state's workers' compensation law. The language in the legislation provides the necessary protection for both sole proprietors and general contractors in a fair and equitable way.

... [WCCA is] a private, nonprofit organization supported entirely through its membership. WCCA represents the interests of employers statewide with the mission to ensure the quick, efficient, fair and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers. We encourage the committee to recommend passage of House Bill 212.

Number 1554

JACK HEBERT, President, Alaska State Homebuilders Association, testified via teleconference. He stated that he thinks this is a great bill for the insurance companies. He said he has reluctant enthusiasm, as a builder, for the bill, but feels it will define and end the gray issue. It is going to be a difficult adjustment for small subcontractors and small builders who have not carried workers' compensation on themselves in the past. He shared that he has been working in Alaska for 27 years

and has never had a workers' compensation policy for himself. He remarked that he thinks there should be no mistake that really what this bill does is make sure that everyone is covered, which isn't a bad idea, but also allows the insurance companies to be sure that they will collect premiums on everyone in the building industry. This leaves wide open owner-builders who can subcontract to refuse to go along with this policy and choose to work for private individuals and homeowners, rather than general contractors. He added that it doesn't solve the whole problem, but for those businesses it defines it clearly.

REPRESENTATIVE ROKEBERG asked Mr. Hebert whether his concern that he would have to have coverage for the first time is because he acts as a subcontractor sometimes.

MR. HEBERT responded that he has always been a general contractor, but he works on-the-job. He said as he reads the bill, everyone will need to be covered.

REPRESENTATIVE ROKEBERG remarked that he doesn't agree with that. He said this really speaks to the subcontractor.

MR. HEBERT stated that it is not clear whether he would have to have it on himself or not. He said he is more concerned with the small individuals who have worked for him for the past 20-some years who are sole proprietors. He added that his plumber told him that he is going to work for individuals who aren't in business.

REPRESENTATIVE ROKEBERG responded that Mr. Hebert could retain [his plumber's] services by still covering him.

Number 1356

MR. GROSSI remarked that for the contractor there wouldn't be any change, it's just for the subcontractor, because it is difficult to distinguish a subcontractor from an employee.

REPRESENTATIVE HALCRO asked Mr. Grossi who would be liable for the workers' compensation, if a homeowner hires a sole proprietor to paint his or her house, and the painter falls and does not have workers' compensation.

MR. GROSSI responded that the homeowner is a consumer, not an employer.

CHAIR MURKOWSKI asked whether that [sole proprietor] would then be out of luck.

MR. GROSSI stated that she was correct.

MR. HEBERT stated that he thinks many of the [members of the committee] must be aware that there is a false industry in Alaska of owner-builders who build one house per year, and it is essentially a business. Many of the small subcontractors who do not want to work for general contractors can find work in that little niche.

CHAIR MURKOWSKI asked whether or not the "policy with no employees" would be available for some of the individuals who need an option.

Number 1168

SARA McNAIR-GROVE, Property and Casualty Actuary, Division of Insurance, Department of Community & Economic Development, came forth and stated that the "policy with no employees" has been around for a couple of years and really doesn't address the issue because it doesn't cover the sole proprietor. Its purpose is simply to provide the sole proprietor a means of having some coverage for any employees on an emergency basis. For example, the sole proprietor might not have planned on having any employees this year, but might get sick or have extra work that he or she can't do alone. Therefore, he or she would need an employee on a temporary basis.

CHAIR MURKOWSKI asked, if a sole proprietor knew that in March he or she would have to have someone fill in, whether Ms. McNair-Grove is suggesting that the sole proprietor get a policy at the beginning of the year.

MS. McNAIR-GROVE responded that if the person knew ahead of time that in March he or she was going somewhere, he or she would get a policy in February. She added that this really is to be used on an emergency basis.

Number 0975

CHARLES MILLER, Alaska National Insurance Company, came forth and stated that the exit audits create quite a bit of strain between his company and the policyholders, because this is a very unpredictable area. If there were a retroactive determination by the board that a sole proprietor is in fact an

employee, and there's a claim involved, the only rational premium would be the cost of the claim. However, no one wants to pay the cost of a claim for premium. Insurance companies, he said, are not going to make a windfall of any nature out of this bill; this is not for the benefit of the insurance companies. The sole proprietors are given two refusals and then are assigned risk. The administrative company then processes [the sole proprietor's] policy and takes care of the future claims. He added that he understands that now the cost of premium in the assigned risk isn't even covering the cost of the program. Every company that writes workers' compensation in Alaska is then assigned a proportional piece of the loss of the business.

REPRESENTATIVE HALCRO asked Mr. Miller, if there is a loss in a given year, whether he passes that through to the employer in the form of higher workers' compensation rates.

MR. MILLER responded that it wouldn't be the employer who is paying the premium in the assigned risk. Every other policyholder in Alaska will pay.

REPRESENTATIVE HALCRO asked: If a person is not in that affected group or has not suffered the loss, would his or her premiums still be negatively impacted if the overall pool suffers a loss in a given year?

MR. MILLER answered that [they would be], but he is pretty sure it would be minor. He remarked that another issue about the assigned pool is that the minimum premium policy makes some of these policies less impactful than they could be otherwise. He explained that there is a set limit of \$20,100. If a person contracts out for \$80,00 in the year, he or she would still only pay for his or her category on \$20,100. He remarked that it is still cheaper than what it would cost if the person were an employee to be covered by a general contractor for the sole proprietor, because the minimum premium is all he or she gets charged.

Number 0610

REPRESENTATIVE HALCRO made a motion to move CSHB 212, version 22-LS0755\J, Ford, 4/13/01, from committee with individual recommendations and the attached zero fiscal note. There being no objection, CSHB 212(L&C) moved from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:50 p.m.