

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

May 2, 2002
3:47 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Ben Stevens

MEMBERS ABSENT

Senator Rick Halford
Senator Bettye Davis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 165(RES)

"An Act relating to the Kenai River Special Management Area; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 370

"An Act establishing procedures relating to constitutional conventions."

MOVED CSSB 370(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 212(L&C)

"An Act requiring a subcontractor to obtain workers' compensation insurance covering the subcontractor and the subcontractor's employees and establishing responsibility of a contractor for obtaining workers' compensation coverage for the subcontractor and the subcontractor's employees if the subcontractor fails to obtain workers' compensation coverage; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 300

"An Act relating to the procurement of certain travel services."

MOVED SCSHB 300(STA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 165 - No previous action to record.

SB 370 - No previous action to record.

HB 212 - See Labor and Commerce minutes dated 4/25/01 and

3/28/02.

HB 300 - No previous action to record.

WITNESS REGISTER

Representative Ken Lancaster
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 165.

Mr. Jim Stratton
Director
Division of Parks & Outdoor Recreation
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Testified on HB 165.

Mr. Ted Wellman
President
Kenai River Special Management Area Advisory Board
3500 Twilight Lane
Anchorage, AK
POSITION STATEMENT: Testified in support of HB 165.

Mr. Sam McDowell
No address given
POSITION STATEMENT: Testified in support of HB 165.

Mr. Dale Bondurant
31864 Moonshine Dr.
Soldotna, AK 99669
POSITION STATEMENT: Testified in support of HB 165.

Mr. Don Ramsey
35774 Carlisle Dr.
Soldotna, AK 99669
POSITION STATEMENT: Testified in support of HB 165.

Dr. Gerald McBeath
No address given
POSITION STATEMENT: Testified on SB 370.

Mr. Joe Balash
Aide to Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on SB 370.

Ms. Amy Erickson
Aide to Representative Lisa Murkowski

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 212.

Mr. Don Etheridge
FLCIO Alaska State
No address given

POSITION STATEMENT: Testified in support of HB 212.

Mr. Paul Grossi
Director
Division of Workers' Compensation
Department of Labor & Workforce Development
PO Box 21149
Juneau, AK 99802-1149

POSITION STATEMENT: Testified on HB 212.

Mr. Allen Wilson
Legislative Chair
Alaska State Homebuilders Association
No address given

POSITION STATEMENT: Testified in support of HB 212.

Ms. Barbara Huff-Tuckness
Director of Governmental and Legislative Affairs
Teamsters Local 959
No address given

POSITION STATEMENT: Testified in support of HB 212.

Mr. Charlie Miller
Alaska National Insurance
No address given

POSITION STATEMENT: Testified in support of HB 212.

Ms. Sara McNair-Grove
Property Casualty Actuary
Division of Insurance
Department of Community & Economic Development
P.O. Box 110805
Juneau, AK 99811-0805

POSITION STATEMENT: Testified on HB 212.

Representative Joe Hayes
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced HB 300.

Mr. Vern Jones
Chief Procurement Officer
Division of General Services
Department of Administration

PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Testified on HB 300.

Ms. Sally Huntley
Frontier Travel
Anchorage, AK

POSITION STATEMENT: Testified in support of HB 300.

Mr. Bill Beck
Airlines Online
Anchorage, AK

POSITION STATEMENT: Testified in support of HB 300.

Cindy Bettine
ABC Travel
Palmer, AK

POSITION STATEMENT: Testified in support of HB 300.

ACTION NARRATIVE

TAPE 02-27, SIDE A

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:47 p.m. Present were Senators Phillips, Stevens and Chairman Therriault.

The first order of business before the committee was HB 165.

#HB 165

HB 165-KENAI RIVER SPECIAL MANAGEMENT AREA

CHAIRMAN THERRIAULT said Senator Halford had some concerns about HB 165 but was called to the Governor's office. He announced he would hear the bill to get the issues out and hold it in committee. He said Representative Lancaster approached him earlier with a proposed CS that he would like to get on the table for consideration. He asked if Representative Lancaster wanted to make comments to the CS.

REPRESENTATIVE KEN LANCASTER said yes. He noted that the proposed CS was version J.

SENATOR PHILLIPS wanted to make sure that the township ranges had been thoroughly checked because there were mistakes made in the past.

REPRESENTATIVE LANCASTER said there were mistakes when the process was started a couple of years ago that were corrected. He said HB 165 related to adding lands to the Kenai River Special Management Area (KRSMA). The CS takes out 3,543 acres along the south side of Kenai Lake from Snug Harbor Road up to the dam and the powerhouse at Cooper Lake. He hoped this would address concerns that were expressed to him.

CHAIRMAN THERRIAULT asked if the road went through the highlighted area on the map in the bill packet.

REPRESENTATIVE LANCASTER said it did. He said this process has been going on for at least two years. As mayor of Soldotna, he sat on the board that held public hearings about the addition of these lands. He noted they were all state lands and there would be no acquisition or purchasing of new lands. HB 165 would put the lands into the Department of Natural Resources (DNR) so that the lands could be managed by DNR. The plan was adopted after committee meetings and public hearings over two years in Anchorage and on the Kenai Peninsula. He said DNR adopted the language portion of the plan in December 1997. The lands must be transferred by the Legislature. This was what HB 165 attempts to do.

SENATOR PHILLIPS asked how many acres were in the transfer.

REPRESENTATIVE LANCASTER said about 4,200 acres.

SENATOR PHILLIPS asked if that was reduced from 7,900.

REPRESENTATIVE LANCASTER said yes. He noted that HB 165 had no fiscal note.

CHAIRMAN THERRIAULT asked if moving the lands into this designation added restrictions on the use of the land.

REPRESENTATIVE LANCASTER said DNR had a process to allow public access or use of the lands. The other departments that currently control this land did not. He believes HB 165 would give the public a process to be able to access the lands.

CHAIRMAN THERRIAULT asked if the lands were in the general state domain in DNR.

MR. JIM STRATTON, Director, Division of Parks & Outdoor Recreation, Department of Natural Resources, said the lands were currently in general state lands and managed by the Division of

Parks & Outdoor Recreation for outdoor recreation purposes. The addition of these lands would allow DNR to improve recreational access to the lands. He said there were a couple of projects DNR was interested in but they weren't able to sign the obligation that they would manage the lands and facilities for outdoor recreation access in perpetuity because the lands were not designated to Parks & Outdoor Recreation. He said when those lands were designated, they would be able to do that and begin to develop some projects such as improved boat launch ramps.

CHAIRMAN THERRIAULT asked if there was any organized group in the area that opposed HB 165.

MR. STRATTON said he was not aware of any.

REPRESENTATIVE LANCASTER said he was not aware of any. He said Senator Torgerson had some concerns, but he hoped the CS would clear those concerns up.

CHAIRMAN THERRIAULT asked if the CS had been brought to Senator Torgerson's attention.

REPRESENTATIVE LANCASTER said a copy had been given to his aide.

MR. STRATTON said DNR supported HB 165 with the proposed CS.

CHAIRMAN THERRIAULT pointed at the map in the bill packet and asked if the highlighted area was the acreage the CS dropped out of the plan.

REPRESENTATIVE LANCASTER & MR. STRATTON said that was correct.

CHAIRMAN THERRIAULT pointed at the un-highlighted area of the map and asked if that was the acreage that was being added.

REPRESENTATIVE LANCASTER said there was more acreage than the map showed. In addition to that acreage, there was also acreage in the Moose Pass area and on the upper part of the Kenai River.

CHAIRMAN THERRIAULT asked if there was anybody present to testify regarding HB 165.

MR. TED WELLMAN, President of the KRMSA Advisory Board, said he had served on the Board since 1995 and was instrumental in developing the plan that resulted in HB 165. He said he was also vice-president of the Kenai River Property Owners' Association. He said he was a 55-year resident of Alaska and had used the Kenai River all his life and had owned property there for over 20 years. He supported HB 165. The land additions were developed through the public hearing process with meetings in Anchorage, Soldotna, Cooper Landing and Moose Pass. He said the lands were

selected close to the Kenai River so the entire watershed and habitat would be protected. He said he is not aware of any opposition. He said a number of organizations supported the addition of these lands, including the Cook Inlet Agriculture Association, the Cooper Landing Community Club, Alaska Fly Fishing, Alaska Wildland Adventures, the City of Soldotna, the Kenai Peninsula Borough, the Friends of Cooper Landing and the Kenai River Property Owners' Association.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. Wellman. There were none.

MR. SAM MCDOWELL said he has lived in Alaska since 1948. He has been involved in resource management issues for over 50 years. He said if we don't support HB 165, we would never have a river like the Kenai again. He said habitat is the most important thing, followed by resources and then users, because if you don't protect the habitation, there won't be any resources and there won't be anything for the users.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. McDowell. There were none.

MR. DALE BONDURANT said he owns property along 2000 feet of the Kenai River, which he has put in a conservation easement to protect forever. He said the Kenai is one of the most important resources in the country and we need to protect it. He said he fully supports HB 165. He said he believes in access as well. In 1997, he filed a federal suit to make sure that we had access to all of the rivers in the country. He said it's very important that we continue with this type of thing. He said he would like to see the acreage that was removed in the CS protected as well.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. Bondurant. There were none.

MR. DON RAMSEY said he was a 35-year resident of Alaska. He said he used the Kenai River to catch fish for his family for the winter. He said he owned 430 feet of frontage on the Kenai River that he has taken very good care of. He said he supports the acquisition of the lands to protect the river because it is a great resource and enjoyed by residents and visitors and has great commercial value.

CHAIRMAN THERRIAULT noted that the *Future Management* section on page 2 of the background information provided by KRMSA said, "Facility development for most of the new land would not be consistent with KRMSA's intent." He said he had been trying to express his concern over this in his previous question about development.

He asked if there was anybody else who wished to testify on HB 165. There was nobody.

HB 165 was held in committee.

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The next order of business before the committee was SB 370.

#SB 370

SB 370-CONSTITUTIONAL CONVENTION PROCEDURES

CHAIRMAN THERRIAULT said the Senate State Affairs Committee introduced SB 370 at his request. He said the bill deals with the constitutional convention question that is on the ballot every 10 years and would be on the ballot this year. He said he looked into the events that would occur if the voters approved a constitutional convention. He said the lieutenant governor was responsible for issuing the call for a constitutional convention. This call was to be issued as close as possible to the original call for the Alaska Constitutional Convention in 1955 unless the legislature placed different provisions in statute, which had not been done.

He said he wasn't sure we would want the delegates to be selected in the same districts that they had been in 1955. He was concerned that those districts would not meet court approval because they wouldn't stand up to the one man one vote standard. He said SB 370 would restrict the call from being issued for approximately one year until October 1, 2003. He said this delay would allow the next legislature and governor to negotiate the passage of legislation to spell out the parameters under which the call would be made. He said the legislature could look at the geographical areas the delegates should be elected from.

DR. GERALD MCBEATH said he participated in two recent symposia on the constitutional convention ballot referendum that would be on the ballot this fall. One was for the statewide League of Women Voters convention in Kenai. The other was a symposium sponsored by Common Ground, which is an organization that looks at public issues. He said there were several questions regarding the uncertainty of what would happen if the voters were to approve the referendum calling for a constitutional convention. He said SB 370 reduces uncertainty by spelling out when the call would be made and how delegates would be selected. At both symposia, there was a question about whether the delegates would be subject to the Alaska Public Offices Commission (APOC) rules. He said SB 370 addresses that concern.

He said it was not clear why October 1st was selected in Sec. 15.50.080. The current Lieutenant Governor could issue the call on November 6th but SB 370 would eliminate that possibility and only allow the incoming lieutenant governor to issue the call. He said this would give the legislature an opportunity to have hearings during the first session of the 23rd Legislature. He said Sec. 15.50.090 laid out a system of electing 80 delegates. He felt 80 delegates would be too many. He suggests mirroring the legislative election districts by having 60 seats, one delegate from each house district and one from each senate district. According to SB 370 the constitutional convention would be held in Fairbanks. He said this makes sense because that was where the original convention was held but the Fairbanks of 1955 was very different from Fairbanks today. He believed SB 370 was a step in the right direction and served a useful purpose.

CHAIRMAN THERRIAULT asked for his affiliation.

DR. MCBEATH said he was a professor of political science at the University of Alaska Fairbanks and was considered an expert in the field. He wrote *The Alaska State Constitution: A Reference Guide*, which was published in 1997.

SENATOR PHILLIPS asked if he had any practical experience as an elected official.

DR. MCBEATH said he served on the Fairbanks Northstar Borough Board of Education from 1986 to 1995.

CHAIRMAN THERRIAULT said October 1st was chosen as the date for the call in order to put the issue before the legislature during the next session. He said it was a fairly arbitrary date but it allowed for enough time for the legislature to hold hearings and work out a piece of legislation with the administration. There would also be time after that to bring the public up to speed and allow the candidates enough time to run a campaign.

CHAIRMAN THERRIAULT said he understood the concern over the number of delegates and would be open to changing the number. He said he selected 80 delegates because he was concerned about the rural districts, which cover large geographical areas. In those districts, there was the potential for two delegates from the same community to be elected because that community happened to have the largest population in the district. He said Dr. McBeath's proposal seemed to be a compromise between the original 55 delegates at the 1955 convention and the 80 delegates proposed

in SB 370.

He said individuals campaigning to be delegates ought to be subject to APOC provisions. If the public was concerned about money influencing campaigns for legislators, then he expected there would be the same level of concern when the candidate would be making structural changes to the constitution.

SENATOR PHILLIPS asked why the original Constitutional Convention was held in Fairbanks.

DR. MCBEATH said he spoke with Thomas Stewart, who served as Secretary to the Convention and was a Superior Court judge. Mr. Stewart said the main reason they wanted to get the Convention out of Juneau was because there were too many bars. He said the second reason was because they felt that holding the Convention in the atmosphere of a university town would contribute to the development of a model constitution. He said they also wanted it away from the site of legislative activity.

SENATOR PHILLIPS asked if the convention would be held in October.

MR. JOE BALASH, Senate State Affairs Committee Aide, said the call would not be made until October of 2003. The delegates would be elected at the next general election in 2004. The dates of the convention would be up to the lieutenant governor and would be one of the items in the call.

SENATOR PHILLIPS said if the convention was held during the academic year, there might not be enough room on campus.

MR. BALASH said the intent of SB 370 was not to spend a lot of time with the details. He said the dates of the convention were certainly something that should be considered. Delaying the call for one year would give the legislature an opportunity to have hearings on the issue and work out the details.

SENATOR PHILLIPS said the original Convention was held from November of 1955 through February or March of 1956.

DR. MCBEATH agreed. He said there was a break to allow the delegates to return to their communities and discuss the issues. He said the temperature that year was 30 below zero.

CHAIRMAN THERRIAULT said the dates of the convention were not figured into the determination of October 1st as the date of the call.

MR. BALASH said the October 1st date would also allow for a special session if it were necessary because of a veto.

SENATOR PHILLIPS said 30 below was a good incentive to get the job done quickly.

CHAIRMAN THERRIAULT joked that Fairbanks had torn down a lot of its bars since 1955.

SENATOR STEVENS joked that the convention could be held in Adak where there were no bars.

CHAIRMAN THERRIAULT said he was open to suggestions regarding the number of delegates.

SENATOR PHILLIPS said 60 sounded like a more workable number than 80. He noted that the Senate with 20 members was able to get things done faster than the House of Representatives with 40 members.

SENATOR STEVENS said it looked like some of the original delegates in 1955 were elected from judicial districts.

DR. MCBEATH said in 1955 the Legislature drew up a new scheme rather than using the legislative districts. Seven of the districts were based on judicial districts and 12 to 15 delegates were elected on a statewide basis. He noted that scheme would not meet the one man one vote Supreme Court requirement.

CHAIRMAN THERRIAULT said SB 370 was intended as default language. If the legislature wanted to come up with something different, it could. He said without an agreement by the legislature, SB 370 would be the default rather than the 1955 language, which would cause a problem with the one man one vote requirement.

SENATOR STEVENS asked how many times the constitutional convention question had been on the ballot since statehood.

DR. MCBEATH said this would be the fifth time.

SENATOR PHILLIPS noted that it passed in 1970.

DR. MCBEATH said it passed in 1970 but was challenged and invalidated. He said the question was on the ballot again in 1972 and that is why we now have the question on the ballot every 10 years from 1972. He noted that the ballot measure was defeated in 1972, 1982 and 1992. In 1992, the vote was 63%

against.

SENATOR STEVENS asked what the voter turnout was in 1992. He said voter turnout in 1982 was 50%.

CHAIRMAN THERRIAULT asked Senator Phillips if he wanted to move an amendment to change the number of delegates to 60.

SENATOR PHILLIPS moved Amendment #1, changing the number of delegates to 60, one elected from each house district and one from each senate district.

CHAIRMAN THERRIAULT clarified that "Two delegates shall be elected from each house district" would be deleted on page 1, line 12 and replaced with language electing one delegate from each house district and one delegate from each senate district for a total of 60 delegates. He asked if there was any objection to Amendment #1.

SENATOR PHILLIPS asked Dr. McBeath if 60 was a good number.

DR. MCBEATH noted that there were 55 delegates in 1955 because there were 55 framers of the American Constitution and they felt that was a significant number. He said 60 seemed like a good number because 60 people could fit in one room and have a floor discussion on an issue.

CHAIRMAN THERRIAULT asked if there might be a problem with having an even number rather than an odd number of delegates.

DR. MCBEATH said that was always a question.

CHAIRMAN THERRIAULT said that just meant there would be a tie and things would fail. He said Amendment #1 was before the committee. He asked if there was any objection to Amendment #1.

There being no objection, Amendment #1 was adopted.

CHAIRMAN THERRIAULT asked if there were any other amendments. There were none. He asked if there were any other issues to come before the committee on SB 370. There were none.

SENATOR PHILLIPS moved CSSB 370(STA) out of committee with attached fiscal note and individual recommendations.

There being no objection, CSSB 370(STA) moved out of committee with attached fiscal note and individual recommendations.

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The next order of business before the committee was HB 212.

#HB 212

HB 212-WORKERS' COMP: CONTRACTORS & SUBCONTRACTOR

MS. AMY ERICKSON, Aide to Representative Lisa Murkowski and the House Labor & Commerce Committee, said HB 212 addressed a decade-long issue regarding workers' compensation insurance coverage for sole-proprietors, individuals working for themselves without employees. Current statutes did not require sole-proprietors to carry workers' compensation insurance but did require general contractors to carry workers' compensation insurance on their employees. She said the workers' compensation board determined, based on the relative nature of work test, that in certain cases injured sole-proprietors were actually acting as employees of the general contractor. Because of these determinations, insurance companies charged general contractors additional premiums for sole-proprietors. She said sometimes these extra premiums were charged after the policy was audited and therefore had not been anticipated nor included in their bid.

She said a statewide task force was established to look at the problem, identifying several different possibilities. HB 212 is the ultimate compromise the task force came up with. She said requiring sole-proprietors to provide their own workers' compensation coverage would eliminate any gray area, give all parties equity and allow for risks and associated costs to be anticipated and recovered in the bidding process.

CHAIRMAN THERRIAULT said the committee had given Ms. Erickson a copy of a proposed CS. He asked if she had a chance to discuss the CS with Representative Murkowski.

MS. ERICKSON said although Representative Murkowski had seen the CS, they had not had a chance to discuss it because she had been on the floor all day.

CHAIRMAN THERRIAULT said he developed the CS after talking with members of the Senate and seeing that there seemed to be a lot of dissatisfaction with HB 212. He said he was looking for a different way to approach the issue. He asked if there was anyone who wished to testify.

MR. DON ETHERIDGE said he was testifying on behalf of the AFL-CIO Alaska State in support of HB 212. He said they believed it would create a more equitable playing field for all of the

subcontractors that bid on a project. He said some of the subcontractors taking a risk and not purchasing the insurance were able to underbid others and the general contractor became liable for everything.

CHAIRMAN THERRIAULT asked if there were questions for Mr. Etheridge. There were none.

MR. PAUL GROSSI, Director, Division of Workers' Compensation, Department of Labor & Workforce Development, asked if the CS had been introduced.

CHAIRMAN THERRIAULT said the CS was mentioned but was not adopted as a working document.

MR. GROSSI said a task force consisting of homebuilders, labor, the insurance industry, insurance brokers, the timber exchange and the Workers' Compensation Committee of Alaska put HB 212 together. He said it was a compromise trying to deal with the problem of the risk involved with subcontractors working for a general contractor. He said when a subcontractor got injured they filed a claim with the Workers' Compensation Board. Sometimes they were found to be employees. As a result of that, the insurance companies charged the general contractor a premium for that potential risk. He said the homebuilders came to the Division a couple of years ago with the issue, which prompted the group getting together and coming up with HB 212. He said they looked at several possible solutions, including waivers and requiring the general contractor to cover everybody. He said the solution in HB 212 was chosen because it was the least expensive way of handling the problem.

CHAIRMAN THERRIAULT said the word "compromise" denoted reluctance.

MR. GROSSI said the working group was a large, diverse group of people and there was difficulty getting agreement among them. He said HB 212 fixes the problem, puts certainty back into the situation and allows for predictability of cost. He said HB 212 would allow everyone to know exactly where the liability would be and who would be responsible for coverage.

CHAIRMAN THERRIAULT said it seemed like the uncertainty came from the regulations of the relative nature of work test.

MR. GROSSI said the relative nature of work test was a regulation that was a result of Supreme Court case law.

CHAIRMAN THERRIAULT said often a court case decided one factor only to create a number of other questions, which the courts

would have to come back and clarify further. He asked if the proposed CS would bring more clarity to the question of when a sole-proprietor is acting as an employee.

MR. GROSSI said he sent the CS to his hearing officers to ask them what it did. They said it codified the laws that exist currently but it didn't really change anything. He said that doesn't take away the uncertainty. He said it would eventually have to be decided in the courts. He said the original bill removes all uncertainty, which is a benefit over the way it's done now.

TAPE 02-27, SIDE B

4:35 p.m.

CHAIRMAN THERRIAULT said that uncertainty is removed because HB 212 would require coverage regardless of the situation.

MR. GROSSI said all subcontractor sole-proprietors would be required to have workers' compensation coverage, not all sole-proprietors.

CHAIRMAN THERRIAULT asked why we should differentiate between when a sole-proprietor comes into the home to lay carpet one day and when he lays carpet in a house in a new subdivision the next day. He said in one instance the sole-proprietor would be required to have workers' compensation coverage and in the other he wouldn't.

MR. GROSSI said that had more to do with whether the purchaser was a consumer or a producer. He said there is never any potential liability for a consumer who is simply a customer.

CHAIRMAN THERRIAULT said it was the same sole-proprietor doing the same job. He asked if Mr. Grossi had seen the revised 2002 rates for sole-proprietor policies based on assigned risk in bill packet, which listed the dollar amounts of premiums for sole-proprietors who purchase the insurance for themselves that were in the bill packet.

MR. GROSSI said that probably came from the Division of Insurance, not his office.

CHAIRMAN THERRIAULT said this would be the cost to the individual as laid out in HB 212. He asked if there were any questions for Mr. Grossi. There were none.

MR. ALLEN WILSON, Legislative Chair, Alaska State Homebuilders,

said he had worked on this issue for several years. He said he faxed the proposed CS to his co-chair and one of the other task force members to get their opinion on it. He said they were intrigued by the approach and especially liked the definition of a subcontractor. He said it seemed clearer than the current relative nature of work test. He said they would like some time to look at it and get it to other task force members and come back and offer further input.

CHAIRMAN THERRIAULT said during the last campaign he heard from a constituent who was a sole-proprietor doing drywall work. The constituent complained that the State required several licenses, insurance and bonding and he had to do a lot of work just to cover those costs. He said the constituent wanted the legislature to consider going in the other direction, which may not be realistic. When he saw HB 212, he thought it was a step in the opposite direction than his constituent was encouraging him to go. He also heard several comments from his colleagues that led him to believe the original version of HB 212 would have problems passing the Senate. He asked Mr. Wilson what comments he had heard from his association members.

MR. WILSON said the association was made up primarily of general contractors. He said they were caught in a catch-22 where they were asking their sole-proprietor subcontractors to get a workers' compensation policy because they were getting charged for it after the fact and could not recover the investment. The sole-proprietor subcontractor is not required to get workers' compensation coverage. He said they had to make the decision whether to operate illegally and use the subcontractor or add them to the payrolls, which is more expensive than the insurance coverage. He said when you're in business for yourself, generally the higher the risk you assume, the higher the reward. The association members agreed that you should be able to take that risk. However they did not want to have to pay for it. He said that was why the nature of work test in the CS has some appeal and he felt his association members would like it. However, he had to ask if it provided enough protection when the insurance companies did their audits. He said at first glance the CS seemed to meet those requirements.

CHAIRMAN THERRIAULT asked about the workability of the nature of work test if a sole-proprietor subcontractor brought his own tools to the job or used a forklift on the jobsite.

MR. WILSON said especially in custom homebuilding, the general contractor would work with the homeowner to pick out carpeting. Because the general contractor gets a better deal on carpet

because of volume, he would purchase the carpet. The installer would supply tack strips, glue, nails, labor and tools. He said under the current nature of work test the installer would be considered an employee because the general contractor supplied the carpet. He suggested removing "materials" from subparagraph (F) in Sec. 3 of the CS because that word might put them back in the same situation.

CHAIRMAN THERRIault asked if there were any questions for Mr. Wilson. There were none.

MS. BARBARA HUFF-TUCKNESS, Director of Governmental and Legislative Affairs, Teamsters Local 959, said they were in support of HB 212. She said Teamsters Local 959 represented a lot of truckers, some of who were in a single owner-operator status, others who worked as owner-operators for part of the year and as subcontractors for the other part of the year. She said some of the truckers would purchase workers' compensation insurance in accordance with the high-risk trucking classification. Others would not by calling themselves business managers or by getting a lesser policy.

She said Lynden Transport hired subcontractors during peak times of the year and required that they have workers' compensation insurance or buy into Lynden's plan, which was a much higher policy. She said when the trucking industry was deregulated the truckers themselves became very regulated. She said some truckers did carry the insurance, but others did not. She said if you were looking at the same costs, you would have a level playing field. She noted that this was not a union versus nonunion issue. She believed the policy increased to \$3,000 this year.

MS. HUFF-TUCKNESS said a trucker might decide that they were an owner-operator and they wanted to run the risk that they were not going to get in an accident. She said the next week that trucker might flip their truck over and get hurt or killed. She said current statute had a big enough loophole that those individuals could make that choice. She said she did not wish to give an opinion on the proposed CS because she had not had a chance to discuss it with her colleagues.

CHAIRMAN THERRIault asked if there were any questions for Ms. Huff-Tuckness. There were none.

MR. CHARLIE MILLER, Alaska National Insurance, said he would like to touch on a couple of the questions that came up earlier. The first was the question of consumer versus contractor and why

there should be different applications of coverage for someone who laid carpet in a home one day and for a contractor the next. When the sole-proprietor laid carpet in a home, there was no legal standing for a workers' compensation claim against the homeowner. When the sole-proprietor lays carpet for a general contractor, there was a potential cause of action. He said those were two completely different situations and the sole-proprietor was not being penalized for doing one job over the other, it was simply a matter of risk incurred.

CHAIRMAN THERRIAULT said from Mr. Miller's client's perspective, he could understand that they would potentially have to provide coverage.

MR. MILLER said no one provided workers' compensation coverage for homeowners.

CHAIRMAN THERRIAULT said if a sole-proprietor subcontractor was determined to be an employee, Mr. Miller's client would potentially have to provide coverage.

MR. MILLER said that was correct.

CHAIRMAN THERRIAULT noted that even if it was determined that the sole-proprietor subcontractor was not an employee, there was the cost of the litigation to get to that point.

MR. MILLER agreed.

CHAIRMAN THERRIAULT asked if there was no way to clear up that ambiguity.

MR. MILLER said they had hoped to do that with HB 212. He said he understood this was what Chairman Therriault was trying to do with the CS.

CHAIRMAN THERRIAULT said HB 212 would clear up ambiguity by eliminating the question of who should provide the coverage. He said there was still the issue of what rules the person would have to play by and when it was determined they had crossed over the line into being an employee.

MR. MILLER said that area was not as predictable as anyone would like. He said there were two main solutions to the problem discussed by the workgroup. One of them was HB 212. The other was somewhat along the lines of the proposed CS, except with a fix at the end. He said the CS did not address a solution it just codified the problem. He said the approach they discussed

would be a fixed point where there was no chance for appeal, no chance for the injured party to go before the board and claim that under the conditions of the relative nature of work test they were an employee despite whatever they had signed or what the situation was before. He said that situation would still exist under the proposed CS. He noted that he hadn't discussed the proposed CS with his attorneys, but he felt it had been discussed enough for him to feel confident in this statement. He said cutting off avenues of appeal was an unappealing solution because there can be situations where the sole-proprietor subcontractor felt that the only way he would get the job was to sign on as a subcontractor. He said he didn't feel anybody wanted to make a public policy call that cut off avenues of appeal.

He said once there was a claim for workers' compensation and no premium had been paid, the only rational cost for the premium was the cost of the claim. He said if someone were injured, the general contractor couldn't be presented with the cost of the claim and it wasn't reasonable to expect the injured party to cover the cost. He said it would be possible to backdate and charge a standard premium for the amount of time the subcontractor-come-employee had been on the job. In that case, he said you already knew you had lost. He said that was like betting on a game that had already been played. He said the injured party avoided their responsibility to prepare for the possibility of an injury but received the same benefit as someone who paid the premiums and prepared for that possibility.

MR. MILLER said the comment made earlier was that it was unfair to force sole-proprietors to buy workers' compensation insurance. He said workers' compensation is a long-established no-fault system. He said if a contractor were to cause a situation where someone got injured the contractor couldn't be sued or if an employee came to work drunk or disregarded safety protocol the contractor had no recourse to deny the claim. He said everyone who hired employees was required to purchase workers' compensation insurance. He said when a contractor didn't require someone who might be working in the gray area between employee and subcontractor to pay for workers' compensation insurance, they were giving them the benefit that was allowed to all their other employees. He said it could be looked at in a different way; instead of forcing a sole-proprietor subcontractor to buy the insurance, HB 212 really tried to make them play by the same rules that everybody else had to play by. He said if you gave them the benefits without requiring them to pay into the system, every other worker who paid into the system would be paying for their benefits. He said this argument might be similar to the

debate that's brought up in political science class that you have the right to free speech but does that give you the right to yell fire in a crowded theater. He said you have a right to take a chance that you may be injured.

He said the system didn't forget an injured party. He said an injured person would need to go to the doctor and they would need money to cover their rent. He said that person would be receiving all the benefits of having a policy even though they had not participated in the system to that date. He said just because they apply for a claim doesn't mean they're going to be successful but that still costs the system in litigation expenses. There was still some degree of confidence that they wouldn't be forgotten. He said it seemed unfair to let them avoid the cost of the protection because they wanted to be independent. He noted that they were not independent after the injury. They became very dependent on one part of the system or another. He said that situation was what made the task force decide against that solution. He said the other approach seemed to be more rational because if everyone who thought they didn't need the coverage didn't get it, it would be chaos. He said no one expected to have an injury that prevents him or her from ever working in that field again.

He said HB 212 does not allow any profit margin increase to the insurance industry. He said the added policies would go through the residual market and be assigned to a particular pool and no insurance company makes money off of that. In fact, in the past several years, the pool lost money and the premium payers were subsidizing it. He said everything seemed to be lined up in favor of HB 212 except for the fact that it was unpalatable to tell someone they have to do something to protect themselves when they felt that they didn't need to.

CHAIRMAN THERRIAULT asked if there were any further questions for Mr. Miller. There were none.

MS. SARA MCNAIR-GROVE, Property Casualty Actuary, Division of Insurance, Department of Community & Economic Development, said the Division participated in the discussions and the task force that came up with HB 212. She said there were two approaches that were discussed. One was the solution that was presented in HB 212. She said the workgroup also discussed as their most desirable solution a way to define when a sole-proprietor was acting as an independent contractor. She said several of the previous testifiers had addressed the problems with that approach. She said the current solution was a compromise and it would provide certainty.

She said she looked at the proposed CS and would like more time to study it. She said if there were clear guidelines on how to determine whether somebody was an independent contractor or an employee and make that determination stick, it would be preferable. One of the problems with that was the premium audit that takes place after a job ended. She said workers' compensation policies were based on payroll, so the contractor estimated what their payroll was going to be. After the job, the contractor was audited to determine if their estimated payroll met the actual payroll. She said if someone was determined at the beginning of the job to be an independent contractor and broke one of the conditions of the relative nature of work test and was subsequently determined to be an employee, there would be an additional premium based on the audit. She said if you can clearly determine what situations merit a premium being collected, the general contractor could plan for those costs and wouldn't be surprised during the audit. She said that still wouldn't eliminate the problem.

CHAIRMAN THERRIAULT asked what triggered the determination that a subcontractor was actually an employee during the audit process.

MS. MCNAIR-GROVE said they went back and looked at what the individual did to determine whether they had been acting as an employee or not.

CHAIRMAN THERRIAULT asked if there was a specific list of questions.

MS. MCNAIR-GROVE said there was a list of questions but she didn't know what those questions were.

CHAIRMAN THERRIAULT asked what caused those back premiums to be triggered.

MS. MCNAIR-GROVE said she didn't know the specifics. She said she could get a list of the types of things that were looked at that was suggested by the National Council on Compensation Insurance.

CHAIRMAN THERRIAULT asked if there were any questions for Ms. McNair-Grove. There were none. He asked if there was anybody else who wished to testify on HB 212. There was nobody.

HB 212 was held in committee.
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The final order of business before the committee was HB 300.

#HB 300

HB 300-PROCUREMENT OF TRAVEL SERVICES

REPRESENTATIVE JOE HAYES read the following from the sponsor statement.

HB 300 will allow for the exemption of contracts for certain types of travel services including airplane travel, hotel accommodations and travel agency services from the procurement procedures of AS 36.30.

In February 2002, Alaska Airlines adopted a policy similar to other major airlines capping travel agent commissions from 5% of the total ticket price to \$10 and \$20 for one-way and roundtrip airline tickets, respectively. March 2002 brought even worse news to the agencies when the airlines declared that all airline commissions would cease. Alaska Airlines has not yet cut their commissions to travel agents, but it is expected that they will by May 2002. Due to the abatement of commissions, it has become necessary for many travel agencies to rely on agency fees to stay in business.

Since HB 300 will exempt certain travel services from procurement procedures codified in AS 36.30, administrative agencies will be able to choose travel providers on a case-by-case basis. This will foster competition by allowing for the consideration of all agencies..

Passing the bill will give all travel agencies an opportunity to provide state travel, thus protecting and fostering Alaskan jobs and businesses. I ask for your support in passing this legislation.

REPRESENTATIVE HAYES said the events of September 11th contributed to the situation because people weren't flying, which caused huge losses for the airline industry. He said most state travel was planned by travel agents who did not charge a fee because the State said they would use their services as long as they didn't charge a fee.

He said Southeast Alaska had to bid their travel services out because there weren't enough travel agents in the area. He said US Travel held that contract and charged \$8 for a round trip ticket and \$4 for a one-way ticket. He said the letter dated April 5, 2002 from the Department of Administration to AAA Travel

that was in the bill packets exemplified what HB 300 was trying to achieve. He said HB 300 was an issue of fairness to him. If we requested services from businesses in our communities, he said it was only fair that we compensated them for those services.

CHAIRMAN THERRIAULT asked if the fiscal note had been higher.

REPRESENTATIVE HAYES said the fiscal note was always \$228,000. He said this number was based on the prices that were being charged by US Travel. He said the State believed the contract with US Travel would probably have to be renegotiated and the fees would probably increase. He said we were going to have to pay the same price whether we dealt with one agency or several because of economy of scales.

CHAIRMAN THERRIAULT said his personal preference was to remove the findings and intent section of HB 300. He asked if there was anything in the section that was necessary.

REPRESENTATIVE HAYES said that was the way the bill was drafted. He said it could be done in a letter if it pleased the committee.

CHAIRMAN THERRIAULT asked if there were any questions for Representative Hayes. There were none.

MR. VERN JONES, Chief Procurement Officer, Department of Administration (DOA), said in the past, travel agencies received their revenue from airlines, hotels and rental car companies. The consumers, including the State, did not have to pay for their services. He said that had changed since all of the major airlines had or were soon going to cut commissions completely. He said it was the State's policy to get services for free whenever possible and only after they could not get the services for free would they bid out for services. He said this policy resulted in contracts in Juneau, Wrangell, Petersburg, Haines, Cordova, Seward and Dillingham.

MR. JONES said HB 300 would not prevent the State from establishing travel agency contracts but DOA intended to follow the intent of the bill and work with industry representatives to establish a fee schedule of what the State would be willing to pay for the services. He said any agency willing to provide their services at or below the costs set forward in the fee schedule would be eligible to receive State business. He said once the travel agents met those requirements, the choice of agents would be at the discretion of the traveler, the division or the department. He noted that HB 300 would not affect existing state contracts because they were legal and binding and the State had an obligation to fulfill them.

He said HB 300 was not without cost. He said DOA estimated the difference between competitively awarded contracts and negotiated fees to be around \$8 per ticket. Based on the volume of travel conducted by the State, that would be about \$230,000 per year. He said the State bought about 50,000 tickets per year, 11,000 of which were purchased directly from the airlines. The remaining 39,000 tickets were purchased through travel agencies. He said he believed \$8 was a conservative estimate.

CHAIRMAN THERRIAULT asked if anything in the findings and intent section of HB 300 needed to remain in the bill as a directive to DOA.

MR. JONES said DOA would perform the same with or without the intent language. He said HB 300 wouldn't prevent DOA from doing a competitive procurement if they thought it was necessary, but it was DOA's intent to follow the intent of the bill.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. Jones. There were none.

MS. SALLY HUNTLEY, Frontier Travel, said her company has done business with the State since 1982 and hired staff specifically to work with the State. She said they've never received any money from the State. She said competition between agencies has kept the cost for State tickets fairly low. She encouraged support of HB 300 because it would keep a lot of people employed and it would keep the State's ticket costs competitive and fair. She said car companies and hotels have also cut commissions to travel agencies. She said travel agencies provided an incredible service and would like to continue to do so.

MS. HUNTLEY said the State did a phenomenal amount of business. She said at the pre-bid meeting that morning the prospective bidders asked for an idea of how much the contract was worth. She said they were not able to get an answer and did not know what they were getting into with the contract. She said she would be able to take on several million more dollars worth of business, but she could not take on five or ten million more dollars worth of business because of the size of her agency. She said she could continue providing service at the level she is providing currently if HB 300 passed.

SENATOR PHILLIPS asked if she came down from Anchorage to testify on HB 300.

MS. HUNTLEY said she had because she felt very strongly about this bill.

CHAIRMAN THERRIAULT asked if there were any further questions for Ms. Huntley. There were none.

MR. BILL BECK, President of Airlines Online, said they have seven staff and 15 independent contractors who work through their office. He said they support HB 300. He said competition is the best motivator to keep service standards high. He said there was an advantage to establishing a fee structure and allowing choice based on that fee structure. He said he was also at the pre-bid conference and said DOA wanted bids for 17 areas around the state but could not give any estimates of how much those contracts would be worth, which made it very difficult to come up with a bid and provide for the appropriate amount of staff to handle the contract. He noted that the Juneau contract with US Travel would have to be renegotiated and that cost was likely to go up. He said support of HB 300 would provide better competition and service.

CHAIRMAN THERRIAULT asked if there were any questions for Mr. Beck. There were none.

MS. CINDY BETTINE said she owned two travel agencies in Palmer and Wasilla, employing 13 women, 4 of which were certified travel counselors. She requested support of HB 300. She said the lack of commission and net compensation was a big issue but was not the most important issue. She said all travel agents were not created equal. She said some agencies were waiving their fees and assigning the least experienced agent to the State account. She said the State may be saving \$20 to \$30 in fees but may be paying much more for their ticket because they were working with inexperienced agents. She said this was especially important when considering the fiscal note. She said it was important that the travel business remain competitive and HB 300 would probably achieve that. She would like to see the bill passed through the committees and to the Senate floor so travel agencies could continue providing service and saving travelers money.

CHAIRMAN THERRIAULT asked if there were any questions for Ms. Bettine. There were none. He asked if committee members felt the same way he did about removing the findings and intent section.

SENATOR PHILLIPS moved Amendment #1, deleting Sec. 1.

CHAIRMAN THERRIAULT asked if there was any objection to Amendment #1.

There being no objection, Amendment #1 was adopted.

SENATOR PHILLIPS moved SCSHB 300(STA) out of committee with attached fiscal note and individual recommendations.

There being no objection, SCSHB 300(STA) was moved out of committee with attached fiscal note and individual recommendations.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned.