

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 2, 2004

3:35 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Carl Gatto, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 426

"An Act relating to the levy and collection of an assessment on certain tourism-related and recreation-related goods and services, to tourism marketing contracts, and to vehicle rental taxes; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 540

"An Act relating to workers' compensation insurance rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 488

"An Act relating to actionable claims against state employees; relating to the state's defense and indemnification of its employees and former employees with respect to claims arising out of conduct that is within the scope of employment; amending the Public Employment Relations Act regarding claims against the state or state employees; and providing for an effective date."

- MOVED CSHB 488(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 502

"An Act relating to dispensing opticians and dispensing optician apprentices."

- MOVED HB 502 OUT OF COMMITTEE

HOUSE BILL NO. 542

"An Act relating to specialty construction contractors and to construction contractor exemptions."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 426

SHORT TITLE: TOURISM & RECREATION ASSESSMENT/CAR TAX

SPONSOR(S): REPRESENTATIVE(S) KOTT

02/04/04	(H)	READ THE FIRST TIME - REFERRALS
02/04/04	(H)	EDT, L&C, FIN
02/12/04	(H)	EDT AT 10:00 AM CAPITOL 120
02/12/04	(H)	Heard & Held
02/12/04	(H)	MINUTE(EDT)
02/17/04	(H)	EDT AT 10:00 AM CAPITOL 120
02/17/04	(H)	-- Meeting Canceled --
03/16/04	(H)	EDT AT 5:15 PM CAPITOL 120
03/16/04	(H)	Moved CSHB 426(EDT) Out of Committee
03/16/04	(H)	MINUTE(EDT)
03/18/04	(H)	EDT RPT CS(EDT) NT 5DP 1NR 1AM
03/18/04	(H)	DP: DAHLSTROM, KOTT, CISSNA, MCGUIRE,
03/18/04	(H)	HEINZE; NR: CRAWFORD; AM: KOHRING
04/02/04	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 540

SHORT TITLE: WORKERS' COMPENSATION INSURANCE RATES

SPONSOR(S): LABOR & COMMERCE

03/22/04	(H)	READ THE FIRST TIME - REFERRALS
03/22/04	(H)	L&C
03/31/04	(H)	L&C AT 3:15 PM CAPITOL 17
03/31/04	(H)	<Bill Hearing Postponed to Fri. 4/2/04>
04/02/04	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 488

SHORT TITLE: CLAIMS AGAINST STATE EMPLOYEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
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02/16/04 (H) L&C, JUD
03/01/04 (H) L&C AT 3:15 PM CAPITOL 17
03/01/04 (H) Heard & Held <Assigned to Subcmte>
03/01/04 (H) MINUTE(L&C)
04/02/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 502

SHORT TITLE: DISPENSING OPTICIANS: BOARD & REGULATION

SPONSOR(S): REPRESENTATIVE(S) HOLM

02/16/04 (H) READ THE FIRST TIME - REFERRALS
02/16/04 (H) L&C, HES
03/31/04 (H) L&C AT 3:15 PM CAPITOL 17
03/31/04 (H) Heard & Held
03/31/04 (H) MINUTE(L&C)
04/02/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SUE STANCLIFF

House Majority Office
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 426 on behalf of Speaker Kott,
sponsor of the bill.

CHIP THOMA

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 426.

JOSHUA ADAMS, Manager

Alaska Hotel and Bar
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 426.

BETTYE ADAMS, Owner

Alaska Hotel and Bar
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 426.

MIKE WINDRED, Director of Operations

Alaska Travel Adventures (ATA)
Juneau, Alaska

POSITION STATEMENT: Testified in favor of HB 426.

DENNIS McDONNELL

ERA Helicopters

Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 426.

SCOTT REISLAND, Owner

Denali Grizzly Bear Park

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 426.

RON PECK, President and Chief Executive Officer

Alaska Travel Industry Association (ATIA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 426.

ERIC DOWNEY, Member

Board of Directors

Alaska Wilderness Recreation & Tourism Association (AWRTA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 462, but noted concerns as well.

DAVE KARP, Vice President and Chief Operating Officer

Hawaiian Vacations

Anchorage, Alaska

POSITION STATEMENT: Testified that HB 426 is a step in the right direction.

KAREN ROGINA, President/CEO

Alaska Hospitality Alliance (AHA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of the concept for a broad-based hospitality and visitor industry self-assessment to be used exclusively for tourism marketing.

CRAIG NOOTTVEDT

Alaska National Insurance Company

Seattle, Washington

POSITION STATEMENT: Testified that HB 540 is designed to bring insurers and other key parties with strong local Alaskan knowledge back into the process as well as create a mini-hearing.

BARBARA THURSTON, Independent Consulting Actuary

Alaska National Insurance Company

Juneau, Alaska

POSITION STATEMENT: During discussion of HB 540, answered questions.

LINDA HALL, Director
Division of Insurance
Department of Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Testified that she didn't have a problem conceptually with the bill, but mentioned serious concerns with timelines and other areas in the legislation.

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide
Section Supervisor,
Torts and Worker's Compensation Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Explained the changes encompassed in CSHB 488, Version 23-GH2, 3/30/2004.

KRISTY BRAND, President
Opticians Association of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 502.

JAMES D. ROTHMEYER, Chairman
State Board of Dispensing Opticians
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 502.

ACTION NARRATIVE

TAPE 04-38, SIDE A

Number 0001

VICE CHAIR CARL GATTO called the House Labor and Commerce Standing Committee meeting to order at 3:35 p.m. Representatives Gatto, Dahlstrom, Lynn, Rokeberg, Crawford, and Guttenberg were present at the call to order. Representative Anderson arrived as the meeting was in progress.

HB 426-TOURISM & RECREATION ASSESSMENT/CAR TAX

VICE CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 426, "An Act relating to the levy and collection of an assessment on certain tourism-related and recreation-related goods and services, to tourism marketing contracts, and to vehicle rental taxes; and providing for an effective date."

Number 0078

SUE STANCLIFF, Staff to Speaker of the House Pete Kott, Alaska State Legislature, presented HB 426 on behalf of Speaker Kott, sponsor of the bill. She noted that before the committee is CSHB 426(EDT). The bill provides for the levying and collection of an assessment on certain tourism-related and recreation-related goods and services, she explained. The bill would levy a 2 percent assessment on the tourism industry in order to raise the funds for tourism marketing and is a self-assessed tax, she said. It is at the request of the tourism industry, which has been asked many times previously by the legislature to come forward with a self-assessed mechanism to be able to fund tourism marketing, she noted.

[CHAIR ANDERSON arrived.]

MS. STANCLIFF mentioned that this modified version of the bill is a 2 percent tax, which does leave in the vehicle rental tax that the legislature passed last year. She said that several issues have been raised about the tax related to hotel taxes, especially seasonal rates. Ms. Stancliff noted that this tax is modeled after the Alaska Seafood Marketing Institute (ASMI) model, which has worked very successfully.

MS. STANCLIFF said that she plans to offer several conceptual amendments and asked when the committee prefers to have her do that.

CHAIR ANDERSON suggested that Ms. Stancliff decide when to offer them.

MS. STANCLIFF said she prefers to offer them before the testimony.

Number 0320

MS. STANCLIFF explained that Conceptual Amendment 1 would take the 2 percent assessment and reduce it to a 1 percent assessment, which is per the industry's request.

Number 0400

REPRESENTATIVE GATTO moved to adopt Conceptual Amendment 1, which would, on page 3, line 10, change "two percent" to "one percent".

REPRESENTATIVE LYNN objected in order to ask a question. He wondered why that change is being made. He stated that he is not opposed to it, just wondering why.

MS. STANCLIFF replied that the industry requested that amount so that it would be more palatable across the board.

REPRESENTATIVE GATTO asked if that amount is adequate to promote the travel industry association, and if it's not should it be kept at 2 percent.

MS. STANCLIFF said Representative Gatto is right. The goal was set to raise \$20 million and 1 percent would only bring in \$10 million. She said she does not know if that amount will meet the needs of the travel industry and she deferred to someone from the Alaska Travel Industry Association (ATIA).

REPRESENTATIVE GATTO reported that he has talked to ATIA on this issue and they said they needed \$20 million.

REPRESENTATIVE LYNN suggested hearing from an industry representative before acting on the amendment.

Number 0607

CHAIR ANDERSON asked Representative Gatto to withdraw Conceptual Amendment 1.

REPRESENTATIVE GATTO withdrew Conceptual Amendment 1.

Number 0620

MS. STANCLIFF continued her testimony, and explained that another amendment would reduce the industry match from 60 percent to 50 percent. Therefore, she requested that members from ATIA speak about their concerns before it is offered as an amendment.

CHAIR ANDERSON asked if there are any further questions for Ms. Stancliff.

REPRESENTATIVE GUTTENBERG asked if there are segments of the industry that aren't supporting this bill.

MS. STANCLIFF replied yes, and specified that many hotels and some small recreation companies oppose [HB 426]. She said that she has heard from other states that when there is a tax such as

a hotel tax, the hotel will report the rate as, "\$75, plus tax" and that has been an issue for some folks. "Tourism is down and now we're going to saddle our visitors with more of a burden," is a concern she has heard, she reported. She said she has a request into Legislative Legal and Research Services to find out if it is true that Alaska is the only state that does not have a tourism tax.

REPRESENTATIVE GUTTENBERG asked if there is an analysis of hotel taxes in Alaska compared to other states in the Pacific Northwest.

MS. STANCLIFF said she did not know, but offered to find out.

REPRESENTATIVE GATTO asked if ferry and airplane tickets are taxable.

Number 0828

MS. STANCLIFF said that was addressed in the House Special Committee on Economic Development, International Trade and Tourism. One of the concerns is that a lot of people in Southeast Alaska use the Alaska Marine Highway System (AMHS) as their main mode of transportation. There was a conceptual amendment adopted to exempt Alaska residents, but there was a constitutional issue, so it was agreed that AMHS could offer a 2 percent discount to Alaska residents. As far as airlines, Ms. Stancliff opined that because of federal regulations a discount cannot be offered, except on small aircraft.

Number 0907

REPRESENTATIVE LYNN inquired as to the kind of recreation business with which Ms. Stancliff is involved.

MS. STANCLIFF replied that in her private life she has a backcountry excursion business.

REPRESENTATIVE LYNN asked if the money from the tax would go to market the tourism industry.

MS. STANCLIFF said yes.

REPRESENTATIVE LYNN suggested that by going too far with marketing, a diminishing return results.

MS. STANCLIFF responded that if this does not work there is a mechanism built into the bill that would turn off the self-assessment tax.

REPRESENTATIVE LYNN noted that it is a balance between spending money on marketing and on having reasonable prices for [tourism packages].

MS. STANCLIFF agreed, and added that it's dependent on effective marketing, which has been the case so far.

Number 1016

CHIP THOMA testified in opposition to HB 426. His testimony is as follows:

Imagine being told by the government that you must advertise your product, even if you don't want to. That's the issue before us today. So, consequently, I maintain my opposition to HB 426 on constitutional grounds; the effect of this bill is to compel those being assessed a tourism tax to subsidize speech with which they may disagree.

According to very well-documented, federal case law, this bill violates the First Amendment, which both prevents government from prohibiting individuals from speaking, and also prevents government from requiring them to speak.

MR. THOMA provided examples of many cases from the Supreme Court and the 9th Circuit Court of Appeals in his written testimony. He said it comes down to, "We can't have government collecting taxes and going to an industry-sponsored group that's going to be advertising." He pointed out that it does not jeopardize ASMI because no one has ever filed suit against it, but that "this kind of a group that's just being formulated right now, though, will be challenged and it will probably be brought to summary judgment." He said he wanted to bring that to the committee's attention.

Number 1145

REPRESENTATIVE GATTO asked if Mr. Thoma is representing any specific group.

MR. THOMA replied that he is testifying as an individual.

REPRESENTATIVE GATTO asked if Mr. Thoma has any vested interest in this legislation.

MR. THOMA replied that he does not.

REPRESENTATIVE LYNN said that there are certain social issues that the government favors, but that he opposes, and yet he still pays taxes. He asked if this issue is not the same thing.

MR. THOMA said it is a hybrid of that. "You're taxing a select group of people and you're taking that money and you're using it for speech, so it's government-supported speech." He maintained that so far the court has come down against it.

REPRESENTATIVE LYNN said that the government is collecting a lot of taxes in areas with which he disagrees.

REPRESENTATIVE GUTTENBERG asked if the program was challenged, would it be challenged from someone inside or outside the program.

MR. THOMA said outside.

REPRESENTATIVE GUTTENBERG asked if anyone inside ATIA disagrees with this or if it speaks as one voice.

MR. THOMA said he did not know if he wanted to make that assumption and suggested that there would be testimony today from members of ATIA. He added that he does not plan on it being Thoma vs. the State of Alaska.

Number 1258

JOSHUA ADAMS, Manager, Alaska Hotel and Bar, said that he and his staff will be victimized by this legislation, not represented. He said that his advertising budget is minimal and local as 75 percent of his clientele are Alaska residents. He opined that [HB 426] is philosophically wrong because he is being forced to speak and to pay someone else to speak for him, which is contrary to the First Amendment. He called it regressive to force this class of people, mostly "weekly" working people, to pay the tax.

CHAIR ANDERSON asked how much hotel tax is in Juneau.

MR. ADAMS said 12 percent; 5 percent sales tax and 7 percent hotel tax.

REPRESENTATIVE GATTO stated that he has to think about what Mr. Adams said. He guessed that this tax would do very well for Anchorage and the [Matanuska-Susitna Valley], that don't have tourists arriving on a cruise ship. He suggested that Mr. Adams would be paying a tax to promote tourism in the remainder of the state. He asked if that is the way Mr. Adams sees it.

MR. ADAMS replied that is the way he sees it. He questioned the benefit of advertising hotels in Juneau when the cruise ships do not stay overnight.

CHAIR ANDERSON surmised that Mr. Adams' point is that he is opposed to the tax because the hotel clients are already paying enough tax, and he would not be getting any direct benefit from the advertisement it purchases compared to larger companies in different cities.

MR. ADAMS said he also personally opposes it because it is regressive, it punishes the small businesses and forces them to pay for the big businesses, and it is constitutionally wrong.

REPRESENTATIVE GUTTENBERG asked if Mr. Adams' hotel is a member of the trade association.

MR. ADAMS replied yes.

REPRESENTATIVE GUTTENBERG asked if he feels that he has a voice in that organization.

Number 1448

BETTYE ADAMS, Owner, Alaska Hotel and Bar, opined that [HB 426] is a "big Trojan horse." She pointed out that the industry did not ask for this; ATIA, which is an organization that only some in the industry can afford to be a member of, asked for it. She noted that she is a member of ATIA, but has no impact in it. Ms. Adams pointed out that she was not notified that this legislation was coming up, and she was told that a majority of the people at the convention agreed to this. She opined that ATIA represents the cruise industry, big business, and people who do not have to pay the tax.

MS. ADAMS characterized the bill as "taxation without representation," and noted that it would help the Railbelt, not

Southeast. She wondered what the administrative costs will be and opined that 1 percent is only a way [for the cruise industry] to get its the "a foot in the door."

MS. ADAMS questioned the dedication of state funds for a specific purpose and the surrendering of the power of taxation contained in this bill. She referred to a memo from Legislative Legal and Research Services.

Number 1767

CHAIR ANDERSON clarified the description of dedicating funds and having no direct accountability for them.

MS. ADAMS maintained that ASMI's model is not constitutional, either, and it will come to the court.

REPRESENTATIVE DAHLSTROM requested a copy of the memo from Legislative Legal and Research Services to which Ms. Adams referred.

Number 1837

REPRESENTATIVE GUTTENBERG asked for clarification about the state not being able to give away its authority to tax.

MS. ADAMS replied that is in the Legislative Legal and Research Services' memo that is being duplicated for the committee. She explained that if ATIA's board assesses the 1 percent tax, and then says, "Oh, it went into the general fund and not to us." And then if they stop assessing the tax, or change it, that is the legislature delegating its right to tax to someone else, which is unconstitutional, she opined.

REPRESENTATIVE GATTO asked if it's Ms. Adams' impression that would happen.

MS. ADAMS replied yes. There is a clause that if the money should somehow go into the general fund, the tax would be stopped. She called that "legislating."

REPRESENTATIVE GATTO pointed out that all taxes are typically regressive. He asked if Ms. Adams would be so concerned if the tax was based on the exact amount of benefit obtained. Restating the question he asked, "If you got a fair deal, would you object?"

MS. ADAMS replied that she does not think a fair deal is possible because the private sector can do a better job than government can. She pointed out that the tax is also regressive toward the people who stay in her hotel, which are mostly Alaskans and people who work for the tourist industry.

REPRESENTATIVE GATTO noted that the Railbelt is not tax-free.

Number 1992

MIKE WINDRED, Director of Operations, Alaska Travel Adventures (ATA), said that one of the reasons the change was made from 1 percent to 2 percent is because Juneau has a fairly high bed and sales tax combination already. He reported that most bed taxes already work exactly as this assessment would, to bring in marketing dollars. He maintained that the ATIA board is representative of a good cross section of businesses. He spoke in favor of HB 426, saying it would be a good opportunity for business to fund marketing.

Number 2178

REPRESENTATIVE GATTO pointed out that the cruise industry is not paying much in taxes at all. He asked if they are exempt from this tax.

MR. WINDRED replied that they are exempt for the portion of the cruise. He said there is a commitment from the cruise industry to help with the match for this tax.

CHAIR ANDERSON asked if ATIA had polled its membership on issues.

MR. WINDRED said that it depends on the issue. This issue has gone through different phases as to what it is going to be, and it was brought up at the convention and everyone got a chance to speak on it. There wasn't a vote, and the ability to stay flexible has been important, he said.

CHAIR ANDERSON spoke about his parents who own an RV rental company in Anchorage, who, along with other car rental agencies, make up a large group that opposes the city rental tax. He related that there is a fear that any tax would be the start of the "slippery slope." The hope that any advertising as a result of the tax would come back to help the company, although the concern is that it might not.

MR. WINDRED highlighted that the bill is written so that the board has control over what happens, so that if the money went away from the marketing into the general fund, a 51 percent vote could change that.

REPRESENTATIVE GUTTENBERG asked about the legality of what Mr. Windred just said and if anyone could address it.

CHAIR ANDERSON named the witnesses and determined that none are able to discuss the legal aspects of the issue.

TAPE 04-38, SIDE B

REPRESENTATIVE LYNN asked Mr. Windred which RV park ATA owns in Anchorage.

MR. WINDRED replied Ship Creek Landing RV Park.

REPRESENTATIVE LYNN asked what it costs to belong to ATIA.

MR. WINDRED said \$350 and up, depending on the size of the business.

Number 2364

MR. WINDRED suggested changing "two percent" to "one percent" on page 3, line 14 of the bill, to agree with Conceptual Amendment 1.

Number 2325

DENNIS McDONNELL, ERA Helicopters, related that he has had a lot of experience in the tourist industry. He said it has been increasingly difficult to market to foreign countries because of the expense, an area in which ATIA can help, especially for smaller businesses. He said he feels the 1 percent tax is good for aviation businesses. He pointed out that even though the cruise industry does not pay the tax, it brings up all of the people who do. He spoke strongly in favor of the 1 percent tax, but not the 5 percent tax listed in another bill.

Number 2198

SCOTT REISLAND, Owner, Denali Grizzly Bear Park, reported that business has not been good for the independent traveler. In the past three years there has been a 13-17 percent decline in occupation rate, which is representative of campgrounds around

the state, and is of major concern, he said. He noted that he, as a small business owner, has a limited marketing budget and depends on ATIA to help out with marketing needs such as the German tourist market. He reported that in the Lower 48 the campground business is booming, whereas Alaska's market needs help. He said he would be happy to collect an additional 1 percent tax if it goes toward tourism marketing.

Number 1964

REPRESENTATIVE LYNN noted that in the Lower 48 there are few places where it is safe or advisable to "boon dock" without going to an established park. In Alaska there are a lot of places to camp. He wondered if that could be a reason why the campgrounds and RV parks are not as full here as they are in the Lower 48.

MR. REISLAND replied that boon docking has been an issue, and currently 16 percent of independent campers who come to Alaska boon dock, which does have an impact on occupancy rate. He said that problem was closed down in Denali National Park and Preserve by putting up signs. He attributed the decline of 13-17 percent as a result of people not coming to Alaska.

REPRESENTATIVE GUTTENBERG asked what Mr. Reisland's budget for advertising would be if ATIA was not in existence.

MR. REISLAND said his family took a 50 percent cut in salary and was making less than a first year teacher. He said his marketing budget is about \$4,000. The price for one nice ad in the Lower 48 is \$45,000, he added.

Number 1757

RON PECK, President and Chief Executive Officer, Alaska Travel Industry Association (ATIA), reported that ATIA has been working very closely recently with various travel organizations and visitors' bureaus around the state to jointly craft a compromise to bring before the legislature, which has garnered broader industry support. The modified recommendations call for a 1 percent assessment on the following tourism-related sales: sale of land and water transportation services such as same day scenic and sightseeing tours, sale of recreation and adventure services including guided rafting, kayaking, canoeing, hiking, walking tours, and fishing charters, lease rentals of passenger RV vehicles, accommodations including hotels, motels, and B &

Bs, sale of marine highway and railroad passenger fares, lodging, and tourism-related gifts.

MR. PECK continued to say that this revenue would be supplemented by continuing contributions that are already received, but at a lesser amount from the following: matching funding from the state, domestic marketing in organizations such as conventions and visitors' bureaus, ATIA cooperative marketing program revenues raised by advertising and marketing, and the cruise industry. The ATIA board supports this approach for several reasons: it makes Alaska's market more competitive; it is less burdensome on small businesses; and it is broad-based, he said. Mr. Peck concluded by saying that the revenue collected will stay with the industry for marketing support.

Number 1624

REPRESENTATIVE ROKEBERG said that one of his concerns is that he has been told by members of ATIA that a surcharge would not be workable. He asked Mr. Peck to respond.

MR. PECK said he does not understand the question.

REPRESENTATIVE ROKEBERG pointed out that the bill provides for taxation through the Department of Revenue and it seems to him that the legislature could authorize ATIA to provide for a surcharge and have it collected by ATIA and made voluntary. Therefore, the state would not have to be involved with collecting the tax and would not have to pay \$2.4 - \$2.6 million in order to collect \$4.8 million. He called that crazy.

MR. PECK related his belief that people won't pay a voluntary surcharge.

Number 1541

ERIC DOWNEY, Member, Board of Directors, Alaska Wilderness Recreation & Tourism Association (AWRTA), noted that although he is also the Vice President of Marketing for Denali Lodges, he is representing AWRTA today. He informed the committee that AWRTA is an association of almost 200 small tourism business, most of which are wilderness dependent. Mr. Downey said that AWRTA supports the revised 1 percent assessment as proposed by ATIA. However, AWTRA would prefer that this existing legislation include a vote to turn on and off the assessment. Furthermore, AWRTA would prefer the vote to be based on one vote per business rather than one vote per dollar. Mr. Downey related that

although AWRTA doesn't believe that it's fair that the cruise industry isn't subject to this assessment, the assessment is too critical for the industry as a whole to be delayed by the cruise industry's exemption. He further related that AWRTA is pleased that the cruise industry has volunteered to contribute \$1 million annually, but AWRTA urges the legislature to consider a separate but similar 1 percent tax on the cruise industry, which would generate about \$5 million annually.

Number 1468

DAVE KARP, Vice President and Chief Operating Officer, Hawaiian Vacations, informed the committee that he is a lifetime Alaskan and the former executive director of Alaska Tourism Marketing Council, the predecessor organization to the ATIA. With regard to the compromise that has taken the legislation from 2 percent to 1 percent, Mr. Karp specified that the compromise happened over the last 10 days and through the efforts of many different organizations coming together and having constructive dialogue. "It is ... fairly rare that we all come to the table in agreement on something, and I think that it's representative of a good-faith effort that was put forth," he said. This legislation is about the tourism industry paying it's own marketing costs. He noted that this year, his company will bring 13 airplane loads of Japanese tourists to Alaska and each of those visitors will pay this new assessment. He submitted that this assessment is a step in the right direction.

Number 1322

KAREN ROGINA, President/CEO, Alaska Hospitality Alliance (AHA), informed the committee that AHA includes the Alaska Hotel & Lodging Association and the Alaska Restaurant & Beverage Association. Ms. Rogina related support for the concept for a broad-based hospitality and visitor industry self-assessment to be used exclusively for tourism marketing. The aforementioned is accomplished by HB 426 at the 1 percent level. She noted that originally AHA opposed HB 426 at the 2 percent level. This 1 percent assessment and other anticipated contributions from the industry, as mentioned by Mr. Peck, is viewed as the broad-based solution that has been sought. Over the last several years, the rate of growth of the visitor industry has declined commiserate with the amount of tourism marketing funding from the state. It has long been recognized that in order to compete in the national and international market place, a significant increase in advertising must occur. She acknowledged that any plan will have varying degrees of benefits for various

businesses, the goal was to establish the most broad-based solution possible. As stated earlier, that seems to have been accomplished at the 1 percent level along with the other named funding sources from the industry groups.

Number 1219

REPRESENTATIVE GUTTENBERG requested that Ms. Rogina explain the difference between the 1 percent and the 2 percent assessment and how divisive that is.

MS. ROGINA explained that the 1 percent compromise occurred partly due to the fact that statewide hotels currently contribute over \$46 million in bed tax, sales tax, and real property tax. In light of the aforementioned \$46 million contribution, the 2 percent was viewed as too much of a contribution and thus led to a more broad-based solution. The legislation and the compromise, which includes the other contributions, made the 1 percent a fair broad-based solution.

Number 1147

CHAIR ANDERSON announced that the public hearing on HB 426 would be held open and would be brought back before the committee next week. In response to Representative Guttenberg, Chair Anderson agreed to have staff request from Legislative Legal and Research Services information regarding taxes and distribution of the pending cases.

[HB 426 was held over.]

HB 540-WORKERS' COMPENSATION INSURANCE RATES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 540, "An Act relating to workers' compensation insurance rates; and providing for an effective date."

Number 1057

CRAIG NOOTTVEDT, Alaska National Insurance Company, explained that HB 540 establishes a mini-hearing and other procedures for the filing, reviewing, and approval of workers' compensation loss cost. Loss costs are the projected costs of workers' compensation claim benefits in Alaska and constitute the largest component of workers' compensation rates. Loss costs apply to all insurers and the Alaska assigned risk pool. Mr. Noottvedt provided the following analogy, "Workers' compensation loss

costs are the raw material costs of the workers' compensation system." He noted that Alaska law requires that workers' compensation loss costs be neither excessive nor inadequate. The current system for filing, reviewing, and approving loss costs involves the following two parties: National Council on Compensation Insurance (NCCI), a national filing organization based in Florida, and the Alaska Division of Insurance.

MR. NOOTTVEDT explained that NCCI compiles data into its computers, reviews the data with actuaries based in Florida and Southern California, and then makes its filing with the director [of the Alaska Division of Insurance] who approves or disapproves the filing. He specified that the current process doesn't provide for any active involvement of insurers or other interested parties actually doing business in Alaska. The aforementioned, he noted, was not always the system. Until the early 1990s other key parties with local Alaska knowledge, including insurers, employers, and brokers were active participants in the review and approval process through the Classification and Rating (C&R) Committee. However, the aforementioned system was abandoned due to heightened anti-trust concerns. This legislation is designed to bring insurers and other key parties with strong local Alaskan knowledge back into the process.

Number 0922

MR. NOOTTVEDT turned to the question of what's wrong with the current system. The system hasn't been working for some time and workers' compensation loss cost has been seriously inadequate and has contributed to a growing crisis in the Alaska workers' compensation system, he explained. He specified that inadequate loss cost results in the following three problems. One, insurers lose money. In fact, the director of the Division of Insurance has recently been showing legislators that workers' compensation insurers have been losing a lot of money in Alaska for a number of years. He noted that although inadequate loss costs aren't the sole reason for recent carrier insolvencies and the Alaska Insurance Guaranty Association (AIGA) mess, they have been a contributor.

MR. NOOTTVEDT turned to a homebuilder analogy. He explained that the homebuilder first determines the raw material cost, the labor costs, and profit. After the aforementioned the homebuilder sells the home and makes the profit. However, what if the material supplier comes to the homebuilder the next year saying that the raw material costs increased by 3 percent and

thus tells the homebuilder that he or she has to pay that 3 percent increase, and the same scenario is played out year after year. The aforementioned is how inadequate loss cost can work. In the year the loss cost is charged, one is told those costs are adequate. However, if they're determined to be inadequate, the charges can continue. From the workers' compensation public filings of 2001-2004 a chart was developed demonstrating the loss costs for medical indemnity components of loss cost. The aforementioned, entitled "Comparison of the Ultimate Average Indemnity per Time Loss Claim Between 2001, 2002, and 2004 NCCI Filings," was shared with the Division of Insurance. Each of the lines on the chart simply took the filings made by NCCI and the data points for the indemnity cost and the medical cost. "What happens to the insurers then is they go back and say, 'Oops' each year that those items cost more. Even though you already charged all the premium you can get for those prior years, we got it wrong; you've got greater losses that you're having to pay for and you cannot get additional premium," he explained. The aforementioned is a serious financial problem for insurance companies and it has played a role in why AIGA is struggling with workers' compensation insolvencies today.

Number 0690

MR. NOOTTVEDT turned to the second problem caused by loss cost inadequacy, which is that when carriers lose money they slow down and even stop writing workers' compensation business in Alaska. The aforementioned results in employers having no choice but to move into the more costly Alaska Workers' Compensation Assigned Risk Pool, which has exploded in growth by over five fold to nearly \$50 million in the last few years. The [Alaska Workers' Compensation Assigned Risk Pool] is approaching 25 percent of Alaska's total workers' compensation market, which is one of the largest and worst market share percentages in the nation for an assigned risk pool. Moreover, because the [Alaska Workers' Compensation Assigned Risk Pool] must use the same inadequate loss cost for its rates, it has been losing tremendous amounts of money over recent years. Those losses are passed on to insurers, which worsens the negative spiral.

MR. NOOTTVEDT turned to the third problem caused by inadequate loss cost, which is that employers are eventually hit with a large shock rate increase in one year. Employers can't easily pass through shock rate increases into their costs of goods and services. [Passing through shock rate increases] could probably be achieved if there were modest increases over a number of years.

MR. NOOTTVEDT explained that HB 540 works to remedy the problem by improving the public information exchange among all the workers' compensation stakeholders. Furthermore, the legislation makes NCCI more accessible and more accountable through a mini-hearing process that is attended by Alaskan insurers, employers, and others who better understand what is occurring in Alaska. This legislation works because it requires the division to detail all of its findings and conclusions in a written order when a filing is approved or disapproved. Mr. Noottvedt acknowledged that determining loss cost isn't easy to do because the division and NCCI are predicting tomorrow's costs using yesterday's data. In fact, the 2005 filing will be based on 2000-2002 policy year data. This legislation will help them do a better job. He noted that to use 2002 data to [make predictions for 2005] means that NCCI must make a number of assumptions and select key trends. However, NCCI is only comfortable making assumptions and selecting trends based on what it considers to be visible from the data, data that is old. By contrast, Alaska insurers have much more than what is visible in 2002 and older policy years. By the time of the filing next fall, Alaska insurers will have already lived through 2003 and most of 2004. There will have been experience in new claim trends, such as new medical treatments and new drugs and the costs for both; new rulings from the Workers' Compensation Board and the courts and the affects on the workers' compensation system. Alaska insurers will have seen many of developments that impact the current loss cost in Alaska. As with the old C&R Committee, insurers operating in Alaska are in a good position to provide extremely valuable input to the workers' compensation loss cost review and analysis process. Furthermore, Mr. Noottvedt opined that employers and other interested parties can contribute useful trend information into the workers' compensation loss cost review process. Additionally, the mini-hearing process and timely public disclosure of all workers' compensation loss cost filing information will raise the general awareness and understanding of the true cost benefits under Alaska's workers' compensation system. The aforementioned will create a greater resource for considering any needed improvements to Alaska's workers' compensation system by everyone, including the legislature.

REPRESENTATIVE ROKEBERG inquired as to the definition of loss cost.

Number 0318

BARBARA THURSTON, Independent Consulting Actuary, Alaska National Insurance Company, explained that loss cost is the portion of the premium that goes to pay claims. The loss cost is exclusive of the portion of the premium that pays insurance company expenses, commission, or profit. She, too, acknowledged that the claim portion is the hardest part to predict, which is why the data from many insurance companies is aggregated by NCCI. In further response to Representative Rokeberg, Ms. Thurston addressed the graph entitled, "Comparison of the Ultimate Average Indemnity per Time Loss Claim Between 2001, 2002, and 2004 NCCI Filings." She highlighted that above 1994 there are four different points on the graph and those are different estimates, ultimate average cost per claim, from NCCI. The term "ultimate" means once everything is paid, which may be many years for workers' compensation. She clarified that the triangle in the bottom is the estimate of the final average loss cost per claim for 1994, which was made in 2001. She confirmed that the aforementioned is used to build up the rate filings. The other objects refer to each year after 2001 when the NCCI says that the 1994 estimates were wrong and should have been higher. Ms. Thurston said that it's expected that there will be errors in these estimates. Theoretically, the errors should jump around and be a little high one year and a little low another year. However, this graph illustrates a consistent underestimation.

MR. NOOTTVEDT remarked that although the graph illustrates that it's leveling off in 1999-2001, if this trend continues, the next filings will be corrected up even more. The leveling off only occurs because that's where the prediction is now.

REPRESENTATIVE ROKEBERG turned to the 2004 filing on the graph, and asked if the back years estimate the actual cost.

MS. THURSTON replied yes, and clarified that as part of the 2004 filing the old years are reviewed and the average cost in those old years is estimated. She confirmed that the numbers for the past years are more accurate because more time has passed.

MR. NOOTTVEDT highlighted that unfortunately the premium has to be charged based the year [the loss cost estimate] is set.

REPRESENTATIVE ROKEBERG related his understanding that Mr. Nottvedt's testimony was that next year only the data from the past three years will be reviewed and there's a big gap.

MS. THURSTON confirmed that there is a delay.

Number 0059

REPRESENTATIVE GUTTENBERG surmised then that these are guesstimates with regard to what will be paid out in claims over the years. Some claims can be many years old, he noted. Therefore, these rates don't seem to be self-correcting and thus one can't, the next year, make a charge because the estimate has increased rather "you get recharged on something that happened last year."

MS. THURSTON clarified that in insurance it's not permitted to recoup past losses.

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MR. NOOTTVEDT reiterated the need to have more current data [from] people living in Alaska who see the trends in Alaska and to put that in the review process for NCCI and the director to consider. He reminded the committee that the aforementioned was done under the C&R Committee system, which hasn't been available to the industry and the division for over a decade. In response to Representative Guttenberg, he confirmed that [putting the C&R Committee system] back in place is what is being [proposed with this legislation].

Number 0063

REPRESENTATIVE ROKEBERG pointed out that the C&R Committee was disbanded due to fears of anti-trust actions. He asked if the aforementioned fears "will out in case law." He inquired as to why this could be accomplished now.

MR. NOOTTVEDT clarified that it's a different system due to the inclusion of the public hearing and question and answer [period]. He pointed out that the C&R Committee was different in its process, including NCCI bringing a range of rates to the C&R Committee, which would set the filing for the division.

REPRESENTATIVE ROKEBERG surmised then that the C&R Committee actually participated in the ratemaking process through recommendation.

MR. NOOTTVEDT agreed and emphasized that due to anti-trust fears Alaska has shifted from a ratemaking process to a loss cost filing practice. Therefore, "we" are no longer dealing with the

actual setting of the final rates, but rather with the underlying raw material costs.

Number 0235

LINDA HALL, Director, Division of Insurance, Department of Community & Economic Development, said that she would only address the process in this legislation, not the complexities of ratemaking. However, she noted her belief that the ratemaking process could become more open. Therefore, she said she is willing to accommodate a method of allowing more input and review. "So, on the surface I don't have a problem conceptually with the bill," she stated. However, she mentioned serious concerns with timelines and other areas in the legislation.

REPRESENTATIVE ROKEBERG suggested that Ms. Hall could make some recommendations to the committee and the sponsor.

MS. HALL agreed to do so.

CHAIR ANDERSON announced that HB 540 would be held over.

HB 488-CLAIMS AGAINST STATE EMPLOYEES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 488, "An Act relating to actionable claims against state employees; relating to the state's defense and indemnification of its employees and former employees with respect to claims arising out of conduct that is within the scope of employment; amending the Public Employment Relations Act regarding claims against the state or state employees; and providing for an effective date."

Number 0392

REPRESENTATIVE DAHLSTROM moved to adopt CSHB 488, Version 23-GH2, 3/30/2004, as the working document. There being no objection, Version 23-GH2, 3/30/2004, was before the committee.

Number 0429

GAIL VOIGTLANDER, Chief Assistant Attorney General - Statewide Section Supervisor, Torts and Worker's Compensation Section, Civil Division (Anchorage), Department of Law, explained that when the committee last heard this legislation, March 1, 2004, there were basically two aspects to this legislation. The first was the certification process that converted claims against

state employees into claims against the state. The second aspect was to have one standardized statute that addressed the state's obligation for defense and indemnity of state employees when individually sued. The legislation before the committee now removes the second aspect because of objections from the Public Safety Employees Association (PSEA) with regard to differences between the [legislation's] language and the language in PSEA's collective bargaining agreements. Therefore, the legislation before the committee only addresses the first aspect, as described earlier. She noted that the first aspect is in addition to an employee's rights for defense and indemnity that may be included in the collective bargaining agreements.

CHAIR ANDERSON recalled that a PSEA representative had concerns with regard to that and wanted to work with Ms. Voigtlander. He also recalled that Senator Bunde made an amendment. He asked if this version is comparable to that Senate change.

MS. VOIGTLANDER said the version before the committee is exactly the same [as the Senate companion, CSSB 338(STA)]. The PSEA withdrew its objection to [CSSB 338(STA)], which is reflected in a March 23, 2004, letter from Mr. D'Amico, PSEA, to the chair of the Senate Judiciary Standing Committee.

CHAIR ANDERSON opined that CSHB 488 works out the state employees' and the public safety employees' concern, which he said satisfied him.

Number 0600

REPRESENTATIVE DAHLSTROM moved to report CSHB 488, 23-GH2, 3/30/2004, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 488(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 502-DISPENSING OPTICIANS: BOARD & REGULATION

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 502, "An Act relating to dispensing opticians and dispensing optician apprentices."

Number 0653

KRISTY BRAND, President, Opticians Association of Alaska, testified that she was licensed in both glasses and contact lenses. She stated:

A few years ago the legislature passed a bill that changed a system that had worked for 30 years, and that system was the training of apprentices in the field of opticianry. From 1973 until 2002 we were required to study for 6,000 hours to become an optician. In 2001 that standard was lowered to 1,800 hours. At 1,800 we would be one, if not the lowest state, in the union in terms of training.

The bill before you rectifies this problem. It increases the requirements for training; it adopts the United States Department of Labor's apprenticeship program as the formal educational component for training apprentices in Alaska. This program sets out specific guidelines for training; it sets out a progressively increasing wage scale based on the hours completed and based on the percentage of the journeyman level, which was calculated by the federal Department of Labor.

Upon completion of the training program, the U.S. Department of Labor would issue a certificate of completion to be presented to the state of Alaska for licensing. Once licensed, the credentials can then be taken to the University of Alaska, where they will allow credit for each portion of the license, that can be used towards an Associate's Degree in applied optics.

This program is also beneficial to employers, as there's a financial incentive for hiring unemployed people and training them in our field, and there are also federal grants that employers can apply for to help offset the costs for apprenticeship wages. The U.S. Department of Labor also has a school-to-work linkage program where high school seniors can train part-time in opticianry to bridge the gap between high school and work.

Our association has a motto and that motto is that "we are Alaska's opticians, united in vision" and that vision is a system where we can all continue to provide the quality of services to Alaska's consumers, and that we set an example for all the other states, whether they are licensed or not. Alaskan consumers deserve the best. ...

REPRESENTATIVE CRAWFORD recalled previous testimony stating that very few of the apprentices in Alaska become licensed opticians. He wondered how to get more people to graduate from the apprenticeship program.

MS. BRAND said the problem could be seen as anyone working in an optician's office, including clerks and sales people, were required to sign up for the apprenticeship program whether or not this was their career goal. Senate Bill 270 corrected this problem by creating the classification of optician's assistants. She felt that after the statutes reflect these changes the people signed up as apprentices in the U.S. Department of Labor's apprenticeship program will be the career opticians. She commented that the system has been broken for a long time and her association is helping to mend it.

REPRESENTATIVE GUTTENBERG complimented Ms. Brand for her clear testimony.

Number 0929

JAMES D. ROTHMEYER, Chairman, State Board of Dispensing Opticians, testified in support of HB 502. He listed several benefits for the public, including increasing the time requirements for apprenticeship training back up to the national average for this profession. HB 502 brings Alaska opticianry statute into agreement with existing statutes, and clears up conflicting definitions of a contact lenses prescription. He stated that this bill allows for a mechanism to license experienced opticians coming from other states if they can present their license or proof of advanced certification.

MR. ROTHMEYER stated that this bill mandates that the federal Department of Labor assume the administration of the optician apprenticeship program, thereby reducing the state's costs. He noted that the Board of Dispensing Opticians was created in 1973, but they have been unable to test for technical competency since SB 270 passed in 2002. House Bill 502 would create trained, licensed, competent, professionals who would take responsibility for dispensing eyeglasses and contact lenses. ...

Number 1048

CHAIR ANDERSON noted there were salient arguments from out of state but that he was going to defer to Alaskan associations,

the Alaska Board of Dispensing Opticians and the Opticians Association of Alaska.

Number 1072

REPRESENTATIVE ROKEBERG moved to report HB 502 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 502 was reported 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 5:20 p.m.