

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

April 19, 2004

3:25 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

CS FOR SENATE BILL NO. 82(L&C)(title am)

"An Act relating to the state alcoholic beverage tax for certain wine and other beverages on amounts sold in or consigned for shipment into the state that exceed 100 gallons a month, and to the treatment of two or more taxpayers who have a relationship for purposes of applying the tax for certain wine and other beverages."

- HEARD AND HELD

HOUSE BILL NO. 331

"An Act relating to federal requirements for governmental plan and other qualifications for the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; 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."

- MOVED CSHB 540(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 82

SHORT TITLE: ALCOHOLIC BEVERAGE TAX FOR WINE & OTHERS

SPONSOR(S): SENATOR(S) STEVENS G

02/26/03 (S) READ THE FIRST TIME - REFERRALS
02/26/03 (S) L&C, FIN
03/13/03 (S) L&C AT 1:30 PM BELTZ 211
03/13/03 (S) Heard & Held
03/13/03 (S) MINUTE(L&C)
03/27/03 (S) L&C AT 1:30 PM BELTZ 211
03/27/03 (S) Moved CSSB 82(L&C) Out of Committee
03/27/03 (S) MINUTE(L&C)
03/31/03 (S) L&C RPT CS 3DP 2NR SAME TITLE
03/31/03 (S) DP: BUNDE, DAVIS, STEVENS G;
03/31/03 (S) NR: FRENCH, SEEKINS
04/08/03 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/08/03 (S) Heard & Held
04/08/03 (S) MINUTE(FIN)
02/20/04 (S) FIN RPT CS(L&C) 5DP 1NR
02/20/04 (S) DP: WILKEN, GREEN, DYSON, BUNDE,
02/20/04 (S) STEVENS B; NR: OLSON
02/20/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/20/04 (S) Moved CSSB 82(L&C) Out of Committee
02/20/04 (S) MINUTE(FIN)
04/05/04 (S) TRANSMITTED TO (H)
04/05/04 (S) VERSION: CSSB 82(L&C)(TITLE AM)
04/06/04 (H) READ THE FIRST TIME - REFERRALS
04/06/04 (H) L&C, FIN
04/16/04 (H) L&C AT 3:15 PM CAPITOL 17
04/16/04 (H) <Bill Hearing Postponed to Mon.
04/19/04>
04/19/04 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 331

SHORT TITLE: RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/21/03 (H) READ THE FIRST TIME - REFERRALS
05/21/03 (H) STA, L&C, FIN
03/30/04 (H) STA AT 8:00 AM CAPITOL 102
03/30/04 (H) <Bill Hearing Postponed to Thurs.
4/1/04>
04/01/04 (H) STA AT 8:00 AM CAPITOL 102
04/01/04 (H) Scheduled But Not Heard
04/06/04 (H) STA AT 8:00 AM CAPITOL 102
04/06/04 (H) Heard & Held
04/06/04 (H) MINUTE(STA)

04/14/04 (H) STA AT 8:00 AM CAPITOL 102
 04/14/04 (H) Moved CSHB 331(STA) Out of Committee
 04/14/04 (H) MINUTE(STA)
 04/15/04 (H) STA RPT CS(STA) NT 3DP 1NR
 04/15/04 (H) DP: HOLM, LYNN, WEYHRAUCH; NR: COGHILL
 04/19/04 (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
 04/02/04 (H) Heard & Held
 04/02/04 (H) MINUTE(L&C)
 04/14/04 (H) L&C AT 3:15 PM CAPITOL 17
 04/14/04 (H) Heard & Held
 04/14/04 (H) MINUTE(L&C)
 04/16/04 (H) L&C AT 3:15 PM CAPITOL 17
 04/16/04 (H) Scheduled But Not Heard
 04/19/04 (H) L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

DOUG LETCH, Staff

to Senator Gary Stevens
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 331 on behalf of Senator Gary Stevens, sponsor of the bill.

CHUCK HARLAMERT

Juneau Section Chief
 Tax Division of Administrative Services
 Department of Revenue
 Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 82.

MELANIE MILLHORN, Director

Health Benefits Section
 Division of Retirement and Benefits
 Department of Administration
 Juneau, Alaska

POSITION STATEMENT: Explained the proposed committee substitute (CS) for HB 331.

ANSELM STAAK, Chief Financial Officer
Division of Retirement and Benefits
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Explained the changes in the proposed CS for HB 331 and answered questions.

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

POSITION STATEMENT: Explained Amendment k to HB 540 and answered questions.

CRAIG NODTVEDT, Agent
Alaska National Insurance
Seattle, Washington

POSITION STATEMENT: Testified in favor of HB 540.

ACTION NARRATIVE

TAPE 04-45, SIDE A
Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Anderson, Gatto, Dahlstrom, and Rokeberg were present at the call to order. Representatives Lynn, Crawford, and Guttenberg arrived as the meeting was in progress.

SB 82-ALCOHOLIC BEVERAGE TAX FOR WINE & OTHERS

[Contains discussion of HB 225]

CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 82(L&C)(title am), "An Act relating to the state alcoholic beverage tax for certain wine and other beverages on amounts sold in or consigned for shipment into the state that exceed 100 gallons a month, and to the treatment of two or more taxpayers who have a relationship for purposes of applying the tax for certain wine and other beverages."

Number 0094

DOUG LETCH, Staff to Senator Gary Stevens, Alaska State Legislature, presented SB 82 on behalf of Senator Gary Stevens, sponsor of the bill. He stated:

When the 22nd Alaska Legislature passed into law House Bill 225, breweries were allowed to keep the former tax rate of 35 cents per gallon on sales of the first 60,000 barrels of beer sold in the state, while wineries were not given similar consideration; as a result, the tax on wine rose from 85 cents per gallon to \$2.50 per gallon. This statute which helps breweries, has, unfortunately, put Alaska's small, emerging wineries at a competitive disadvantage in the marketplace.

SB 82 is legislation intended to reduce the tax burden for small Alaska wine producers, at which wine is currently taxed at the rate of \$2.50 per gallon, at the time it is sold in the state or consigned to the state. Recognizing that a revision to current state statute to allow wineries an exemption similar to breweries would lead to a substantial revenue loss, SB 82 attempts to level the playing field for our small wineries by offering a tax exemption of 100 gallons per month, and this figure was derived after much consideration and consultation with winery operators and the Department of Revenue. The 100-gallon per month figure is also an attempt to [minimize] revenue lost from unintended beneficiaries, while keeping within the constrictions of interstate commerce law.

The bill would decrease the impact on state revenues by around \$18,000, but while there is a revenue decrease, it will help support continued development of small Alaskan wineries, which currently there are two on Kodiak Island, a third is in Haines, and a fourth is in Anchorage. This burgeoning Alaska industry does need our support to prosper and contribute to the state's changing economy, and SB 82 is one means of assisting them.

While the state would lose some income under this bill, we may also see a loss of all incomes should these small businesses cease to exist because they can't remain profitable and competitive in a dynamic marketplace.

CHAIR ANDERSON noted the arrival of Representative Guttenberg.

Number 0275

REPRESENTATIVE ROKEBERG asked Mr. Letch to talk about the wineries in Alaska.

MR. LETCH reported that on Kodiak Island there are two small wineries that use salmonberries to make wine and a variety of products. He said there is a You Brew Pub in Anchorage, and a winery in Haines.

REPRESENTATIVE ROKEBERG asked if the bill is for all wines sold less than 100 gallons and those produced in the state.

MR. LETCH replied that because of the federal interstate commerce laws, wineries from outside of the state cannot be excluded from taking advantage of this exemption. The 100-gallon figure was derived to minimize the impact from out of state wineries, he added.

REPRESENTATIVE ROKEBERG asked if that is approximately 400 to 500 bottles a year. He wondered if a company from California could import that amount and be excluded from paying the tax.

MR. LETCH replied that that is his understanding.

REPRESENTATIVE ROKEBERG said he finds that troublesome.

CHAIR ANDERSON noted the arrival of Representatives Lynn and Crawford.

Number 0414

CHUCK HARLAMERT, Juneau Section Chief, Tax Division of Administrative Services, Department of Revenue, spoke about the problem regarding out of state importation, noting that the brewery exemption lowers the rate of tax for small brewers depending on the size of the brewer. It does allow a lot of leakage of the credit out of state. He pointed out that a bigger problem is that the taxpayers are the importers or distributors, "so we have to look through the taxpayers to the underlying brewer "This bill does not have the same problem as the brewery reduced rate because it applies to the taxpayer irrespective of the size of the winery. It helps small Alaska wineries because they are direct taxpayers and they get an exclusion of 100 gallons per month, he explained. A

distributor who distributes a larger volume still gets only the 100-gallon exemption, he said.

REPRESENTATIVE ROKEBERG asked if Mr. Harlamert is suggesting that a vintner from California cannot ship wine to Alaska without going to a distributor.

MR. HARLAMERT said he believes that they have to be licensed in the state so they could, in theory, become a licensed distributor in the state and import wine, but can't just ship it in. They can't sell direct into Alaska, he added.

REPRESENTATIVE ROKEBERG said he is confused how that works with the "three-tier system."

Number 0683

MR. HARLAMERT related that the incidences of taxes on the brewing, shipping, or consignment in the state amounts to ten wine taxpayers now, and there are no wineries outside of Alaska that pay the tax. The tax is imposed at the distributor level, he said.

CHAIR ANDERSON asked Representative Rokeberg to explain how it works.

REPRESENTATIVE ROKEBERG implied that he is not sure he entirely understands how it works. This bill puts the tax on the manufacturer of the wine, if they're in state, where currently, the other wines are taxed at the distribution point.

MR. HARLAMERT replied exactly.

REPRESENTATIVE ROKEBERG asked if vintners from outside Alaska would have to apply to the Department of Revenue for a licensure under the Alcoholic Beverage Control Board (ABC Board).

MR. HARLAMERT said his understanding of the rule is that if it is shipped into the state for resale it must be done by a licensed distributor.

CHAIR ANDERSON stated that the bill is about getting parity for taxation so that people from other states can't find a loophole.

REPRESENTATIVE ROKEBERG clarified that the real issue is that when the legislature raised alcohol taxes three or four years ago, Representative Rokeberg offered an amendment that was

consistent with federal law, which allowed the exemption from the increase of tax of locally produced beer. But it was consistent with the "gallonage requirement" under the U.S. tax code, he noted. That's why there is a reference in the bill to 26 U.S.C. 267(b), he pointed out. He asked Mr. Harlamert to say more about the problem he spoke about.

Number 0922

MR. HARLAMERT related that the problem he was referring to is:

When you base an exemption off of the activities or status of the producer, but the exemption needs to be effectuated at the taxpayer level, you create a difficult administrative process. The brewery exemption does that. It's rather cumbersome to deal with when a qualified brewer ... may sell through more than one taxpayer and we need to keep track of that. There's a cap on the amount of beer that they can sell at the lower rate, and if you were to extend the same reference to federal law for wineries, I think that the administrative complications of taking that approach would be that much worse.

MR. HARLAMERT continued to say that the feds have a credit mechanism that gives an advantage to small wineries. It's 90 cents a gallon, and it is phased out for between 150,000 and 250,000 gallons produced a year. He explained that it is relatively simple to administer when dealing directly with the producer and the taxpayer.

REPRESENTATIVE CRAWFORD asked if it is 500 bottles per month and 6,000 bottles per year.

MR. HARLAMERT replied that he thinks it is between 400-500 bottles of wine.

REPRESENTATIVE CRAWFORD asked if specialty wines would be exempt.

MR. HARLAMERT answered that it doesn't exclude them directly. He said, "It does via the taxpayer because they come through a distributor. The exemption is not a function of the size of the winery or its source. It's simply, each taxpayer gets the first 100 gallons of wine tax free."

REPRESENTATIVE CRAWFORD said, "What you're saying is, the Fiddlehead can't buy from Columbia Crest Winery directly."

MR. HARLAMERT said that is his understanding.

REPRESENTATIVE ROKEBERG said, "But they may be able to buy from another smaller vintner, is what I'm concerned about." He asked if Mr. Harlamert is suggesting that they would have to buy from a wholesale distributor and then resell it.

MR. HARLAMERT said that this is not his area of expertise and he is hesitant to answer.

CHAIR ANDERSON asked if this issue could be worked out and the committee could meet again on the bill.

Number 1178

REPRESENTATIVE ROKEBERG suggested that the fiscal note be looked at. He noted a loss of \$18,000 and asked the reason why that is.

MR. HARLAMERT said, "We estimate that the total revenue decrease will be \$18.4 thousand; approximately 20 percent of that will be realized by in-state wineries."

REPRESENTATIVE ROKEBERG asked what the volume of the two Kodiak wineries is.

MR. LETCH replied that one of the wineries produces roughly 1,200 gallons per year with the bulk of that coming in the fall. They would be producing about 300-400 gallons per month, for four months, he said. He assumed that the other winery was similar in production.

REPRESENTATIVE ROKEBERG asked how much tax they would be paying.

MR. HARLAMERT estimated that local wineries would be paying 20 percent of \$18,000.

REPRESENTATIVE ROKEBERG asked, "Someone's got to tell me why we're going to give up four times the tax that we'd be abating to do this deal."

CHAIR ANDERSON suggested that someone from the Department of Revenue might be able to answer that question at the next hearing of the bill.

REPRESENTATIVE ROKEBERG said he has concerns about where the tax fits. Mr. Harlamert's analysis seems to indicate a ratio of 4-to-1 cost-to-benefit analysis, he pointed out.

Number 1359

REPRESENTATIVE GUTTENBERG suggested that a synopsis of the developing wine industry should be made available at the next hearing of the bill. He said he is interested in hearing if it is a sustainable industry.

REPRESENTATIVE DAHLSTROM, directing her comments to Mr. Letch, asked if this bill is at the request of one winery in particular.

MR. LETCH said when the bill was introduced in the House, the makers of the bill worked primarily with Mr. Steve Thompson from Alaska Wild Wine. "We have also heard from the other wine owners, John and Judy Lucas, and also from the Menakers who own the winery in Haines." There has been no contact with the You Brew Pub in Anchorage, he noted.

REPRESENTATIVE DAHLSTROM asked if Steve Thompson is the mayor.

MR. LETCH said no, he is a local resident of Kodiak.

Number 1485

REPRESENTATIVE CRAWFORD suggested that there should be more information obtained on whether this bill opens up a loophole for other wines to be imported.

MR. HARLAMERT offered to ask Joanna Bales who is in charge of the alcohol [tax] program to attend the next hearing of the bill. He said that he contacted her prior to today's meeting and it is their understanding of the law that there is no problem with a loophole. The incidence of tax is to "bring into the state for sale, to distribute, or to brew," so an outside seller needs to be licensed to do that, he explained.

REPRESENTATIVE ROKEBERG pointed out that the basis for the brewery exemption was to keep the brewery tax at its current level, and it only applied to the incident of a tax increase. He asked Mr. Harlamert if that is his recollection.

MR. HARLAMERT said yes.

REPRESENTATIVE ROKEBERG added, "Those people who are locally brewing and are not paying no tax." He asked if that would be similar in this bill.

MR. HARLAMERT replied yes and no. He said:

It depends on their volume and I think the best way to summarize it is, we looked at the model used for the brewery exemption and because of two issues, one, the administrative burden involved with it and, two, the fact that if you do exempt it based upon the size of the venture, then you do open up a very large number of potential beneficiaries, all of them out of the state, so in our dealing with the Senator's office, we've tried to come up with the best exemption we could come up with the least leakage.

CHAIR ANDERSON announced that SB 82 would be held until Wednesday.

Number 1637

REPRESENTATIVE GATTO asked if the Kodiak winery sold "all they can make."

MR. LETCH said he didn't know.

REPRESENTATIVE GATTO suggested that increasing the tax could increase sales by pushing other importers out. He wondered if the focus should be on increased production, which is going to be better for the local economy, the workers, and the state, as opposed to just increasing market share.

REPRESENTATIVE ROKEBERG said it might be hard to get empirical evidence of market elasticity.

[SB 82 was held over.]

HB 331-RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES

[Contains discussion of SB 145]

CHAIR ANDERSON announced that the next order of business would be CS FOR HOUSE BILL NO. 331(STA), "An Act relating to federal tax requirements for and other provisions of the teachers' retirement system, the public employees' retirement system, and

the judicial retirement system; removing village public safety officers from the public employees' retirement system; eliminating the public employees' retirement system conditional duty to refund contributions under \$1,000 to inactive employees; limiting service credit for village public safety officer service in the public employees' retirement system to five years; and providing for an effective date."

Number 1720

MELANIE MILLHORN, Director, Health Benefits Section, Division of Retirement and Benefits, Department of Administration, explained that HB 331 is a tax compliance bill, which is an extremely important piece of legislation for the division, but also for all of the members [of various retirement systems]. She mentioned that the bill has been three and a half years in the making. She pointed out that there is a zero fiscal note in the committee members' packets, which would remain a zero fiscal note so long as the bill passes out of committee in the form it is currently written. The bill is required to place into law those changes into the statutes in the public employees' retirement system (PERS), teachers' retirement system (TRS), and the judicial retirement system that are required as a result of the review by the Internal Revenue Service (IRS), she explained. Changes must be implemented so the plans remain qualified under the Internal Revenue Code (IRC), she added.

Number 1788

MS. MILLHORN reviewed the events of the past three and a half years which impacted this legislation. She explained that the changes introduced with this CS add the changes requested by the IRS and repeal prior legislation (SB 145, 2001 Legislative Session) which would have allowed village public safety officers (VPSO) employed under village public safety officer program to become members of the public employees' retirement system. The repeal of the inclusion of VPSOs in PERS results directly from a specific negative Private Letter Ruling that does not allow for the inclusion of VPSOs in PERS as specified in SB 145, she noted.

CHAIR ANDERSON asked Ms Millhorn for a condensed summary of the bill.

MS. MILLHORN said, "What we need to be able to do, we've received a review by the IRS on our qualified plan status and in order to maintain our qualified plan status, the IRS and the

division have come to an agreement that certain language must be inserted in statute to remain qualified."

CHAIR ANDERSON asked if the language is not inserted in statute, then what will happen to the PERS, TRS and other affected retirement plans.

MS. MILLHORN replied that they will become non-qualified and there would be grave tax consequences.

CHAIR ANDERSON termed the bill a "housekeeping mechanism."

Number 2035

REPRESENTATIVE GUTTENBERG asked which version of the bill the committee is working from.

CHAIR ANDERSON replied Version H.

REPRESENTATIVE GUTTENBERG asked about the considerable title change between Version A and Version H and other significant changes.

Number 2052

ANSELM STAAK, Chief Financial Officer, Division of Retirement and Benefits, Department of Administration, noting that he is also a certified public accountant and an attorney, explained the changes in HB 331. He pointed out that in the A version of the bill last session it was too late to make all the changes requested by the IRS. During the interim the agreed-to language was added and twelve different versions were drafted until the H version was finally settle upon, he said.

REPRESENTATIVE GUTTENBERG asked if the changes reflect the negotiations with the IRS and not committee work.

MR. STAAK replied yes.

REPRESENTATIVE ROKEBERG asked why the VPSO was removed.

Number 2118

MR. STAAK explained that the IRS tried very hard to include the VPSO, filing over 1,000 pages of documents to try to include them. "What it comes down to is this; the regional native corporation would have to declare that a portion of itself is a

government, and not a private, non-profit organization. Only government employees can be in governmental plans," he reported. "These are employees of a private, non-profit, 501C3 corporation, like any other non-profit, and they were simply not willing to go that far. Second, the way the program itself is constructed, most of the actual supervision comes at the village level. But the most important issue is, is that if you declare this organization a government, you can't declare it a private non-profit," he noted.

REPRESENTATIVE ROKEBERG asked Mr. Staak to clarify what the dire consequences mentioned by Ms. Millhorn are.

Number 2216

MR. STAAK said that if this bill is not passed, "We would have to self-inform the IRS that we are out of compliance, and what we get for being in compliance on retirement plans is that both for PERS, and TRS, and the judicial retirement system, the SBS contributions can be made pre-tax." He explained that not being able to pay pre-tax would increase the costs to the retirement system to well over \$700 million per year and it would also put into question some of the past retirement accounts.

REPRESENTATIVE GATTO asked if future payments would be post-tax and he wondered what would happen to all of the payments that have already been made and if they would now have to pay more tax.

MR. STAAK said that is entirely possible because it is a straightforward matter of compliance with the tax law and all contributions made to date that have not been paid out yet could become taxable.

REPRESENTATIVE CRAWFORD asked for clarification on the status of the VPSOs.

MS. MILLHORN replied that the VPSOs were never actually included for PERS purposes, so nothing will happen to them.

REPRESENTATIVE CRAWFORD summed it up by saying that the attempt to include VPSOs in a retirement system didn't work in this route.

MR. STAAK said that is correct and the language has to be removed.

Number 2325

CHAIR ANDERSON announced that HB 331 was heard and held.

HB 540-WORKERS' COMPENSATION INSURANCE RATES

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

Number 2354

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, explained Amendment [k] to HB 540.

TAPE 04-45, SIDE B

Number 2326

MS. HALL explained that Amendment k from the Division of Insurance is more like a proposed committee substitute (CS) because it makes numerous changes to the bill. She said that in previous testimony on HB 540 she noted that the procedures in the bill were cumbersome and the timelines were not adequate to produce timely filings to let employers know what the workers' compensation costs would be for the coming year. Typically, rate changes are effective on January 1, and the division has tried diligently this year when there was an average 22 percent rate increase to get those out to employers in time to budget and to bid on projects, she reported. She continued:

What we've done here, and we have worked with the original proposer of this concept, is to take the same concept, but to start from a very different position. The original bill had a 60-day period for review of the filings, not only by the Division of Insurance, but all interested parties and insurance companies. What we've done is move that way to the beginning. This version of the bill would have the filing done by the rating organization 125 days before the proposed effective date. In reality, that's toward the end of August. Within 20-25 days after receipt of that filing, the Division of Insurance would hold a hearing and at the top of page 2 of this k version, goes through the various things that would occur in that hearing.

Most importantly, I think, is number 2, that an interested party, whether that is an insurance company or - interested party's defined at the very end - an employer association, employee, or labor association, etc. We'd have an opportunity to inspect the filing, to examine witnesses, to present witnesses, to present testimony and ... after that hearing there would be a 10-day period when the hearing would remain open for comments, other interrogatories.

All of this is designed to bring more input to the Division of Insurance in our review of filings for workers' compensation lost costs. We're looking to have an opportunity to hear what insurance companies have to say in addition to the rating organization, to take that under consideration, then the division would have 15 days to the day of filing, which could be extended for an additional 15 days to request further information, to do further review based on the testimony at hearing, at which point then, the division would render a decision - an approval or disapproval or modification of the filing - and would be required under this bill to provide reasons for that. And all of that information will become part of the public hearing process, become part of the filing so that insurance companies and any other interested party would have access to that.

Number 2197

MS. HALL stated that this is a version that the Division of Insurance's lead property casualty actuary, who does the reviews and makes recommendations, has worked with and is comfortable with. She requested that the committee adopt the proposed Conceptual Amendment 1 [k]

CHAIR ANDERSON asked if labor or anyone else wanted to testify.

Number 2166

CRAIG NODTVEDT, Agent, Alaska National Insurance, stated his support for HB 540, including proposed [Conceptual Amendment 1].

Number 2142

REPRESENTATIVE ROKEBERG moved to adopt Conceptual Amendment 1, labeled k, which, when combined with HB 540, would constitute a

committee substitute, and which read [original punctuation provided]:

Section 1. AS 21.39.030(a) is amended to read:

- (a) Rates, including prospective loss costs under AS 21.39.043 or any other provision of law, shall be made in accordance with the following provisions ... *(no changes to the rest of the section)*

Section 2. AS 21.39.040(d) is amended to read:

(d) Subject to the exception specified in (e) of this section and not including workers' compensation prospective loss cost filings and workers' compensation assigned risk pool rates by a rating organization under AS 21.39.043, each filing shall be on file for a waiting period of 15 days ... *(no changes to rest of section)*

Section 3. AS 21.39 is amended by adding a new section to read:

Sec. 21.39.043. Worker's compensation prospective loss cost filings.

(a) On at least an annual calendar year basis, a rating organization shall make a workers' compensation prospective loss cost filing and an assigned risk pool rate filing, even if the rating organization determines that no change in the prospective loss costs or rates is indicated.

(b) A rating organization shall submit a prospective loss cost filing and an assigned risk rate filing to the director not less than 125 days before the proposed effective date of each filing.

(c) At the time a prospective loss cost filing and assigned risk rate filing are submitted to the director under (b) of this section, the rating organization shall make available to any member or subscriber that may be affected by the filings a complete copy of the filings, together with the materials, aggregate data, and other information submitted in support of the filings. The prospective loss cost and assigned risk rate filings, and supporting information, will be available for public inspection. Prior to the hearing under section (d),

members and subscribers may submit interrogatories to the rating organization, including requests for additional supporting information concerning the filings.

(d) The director shall hold an administrative hearing on whether a prospective loss cost filing meets the requirements of this chapter and whether the filing should be approved, disapproved, or modified, in whole or in part. The director shall hold the hearing not earlier than 20 days and not later than 25 days after the date of receipt of the prospective loss cost filing by the director. The director may adopt regulations governing the conduct of the hearing, subject to the following:

- (1) the director shall sit in a quasi-judicial capacity;
- (2) an interested party may
 - (A) have a reasonable opportunity to inspect the filing and supporting information and to examine witnesses, including the designated actuary and other witnesses of the rating organization;
 - (B) present witnesses, oral and written testimony, and documentary evidence; and
 - (C) apply for subpoenas to be issued by the director to compel attendance of witnesses and the production of evidence on the interested parties' behalf;
- (3) evidence and testimony from interested parties shall be limited to matters relevant to a determination of whether the filing's prospective loss costs meet the requirements of this chapter and may include a recommendation for approval, disapproval, or modification of the prospective loss cost filing;
- (4) the director shall record the hearing;
- (5) formal rules of pleading or evidence need not be observed;
- (6) the director may conduct part or all of a hearing by teleconference and allow a witness to testify telephonically; and
- (7) the director shall leave the hearing record open for 10 days after the date of the hearing, during which time interested parties may submit additional written testimony and documentary evidence concerning the prospective loss cost filing to the director subject to the limitations of paragraph (3), and during which time members and subscribers may submit to the rating organization and to the director proposed modifications to the prospective loss cost filing

accompanied by the information upon which the member or subscriber supports the modification.

(e) The director shall review the prospective loss cost filing and the evidence presented through the hearing process within 15 days after the hearing. The review period may be extended for an additional 15 days if the director gives written notice within the waiting period to the rating organization that additional time for consideration of the filing is required. If under (d)(7) evidence is provided to support a modification and the rating organization does not include the requested modification in the filing, the director shall require that the rating organization rebut the evidence to show why the modification should not be included. The director may request that the rating organization

(1) provide additional supporting information for the filing, or

(2) modify the filing based upon evidence provided through the hearing process.

(f) If evidence or information is requested under section (e), the rating organization shall respond to the director's interrogatories within 15 days of receipt of the interrogatory unless additional time is allowed by the director. The director shall review the rating organization's responses to the director's interrogatories within 15 days after receipt of the response. The review period may be extended for an additional 15 days if the director gives written notice within the waiting period to the rating organization that additional time for consideration of the filing is required.

(g) Subject to AS 21.06.060(f), all communications under this section among the director, the rating organization and any interested party concerning a prospective loss cost filing, including the director's interrogatories, the rating organization's written responses, modified filings and all supporting information, except for information related to a particular insured, are part of the filing record and shall be made available for public inspection.

(h) The rating organization shall make available to a member or subscriber all information that is available for public inspection under this subsection as soon as possible after issuance or receipt by the director. Other interested parties may obtain copies of public documents from the director.

(i) The director shall issue a written order approving or disapproving the prospective loss cost filing and the assigned risk rate filing. The order shall include details of the director's reasoning for approving or disapproving the filings

(j) A separate prospective loss cost filing submitted solely to address an amendment to AS 23.30 is not subject to the procedures of this section, but shall be reviewed and approved or disapproved by the director in accordance with AS 21.39.040(d). The filing under this subsection, together with all supporting information and communications between the director and the rating organization, will be available for public inspection.

(k) A written order of the director under this section is subject to review by appeal to the superior court. An appeal under this section shall be filed with the court within 30 days after the date of the written order. The court shall determine whether the filing of the appeal will operate as a stay of the order.

(l) A filing made under this section is subject to all other provisions of this chapter except to the extent they are inconsistent with this section. AS 21.39.080 does not apply to a prospective loss cost filing by a workers' compensation rating organization.

(m) In this section

- (1) "interested party" means
 - (A) an employer association
 - (B) an employee or labor association;
 - (C) producer;
 - (D) a producer association;
 - (E) an insurer member or subscriber of the rating organization; and
 - (F) other persons who are substantially affected by the loss cost filing.

(2) "prospective loss cost filing" means the historical aggregate losses and loss adjustment expenses upon which a portion of a rate is based, adjusted through trending to a future point in time, but does not include expenses, other than loss adjustment expenses, or profit.

CHAIR ANDERSON asked whether there was any objection to adopting Conceptual Amendment 1. There being no objection, it was so ordered.

Number 2109

CHAIR ANDERSON discussed the fiscal note from the [Department of Community & Economic Development] stating that it totals between \$7,300 and \$8,200 over the next six years, and the total department budget for FY 04 is about \$5,217,000, which calculates out to about .0013 percent of the department's budget. This fiscal note appears to fall within the normal operating variances, he said. He opined that a zero fiscal note could easily be adopted because of the small amount.

REPRESENTATIVE ROKEBERG commended Ms. Hall for all of her work on this legislation and the cooperative process used.

Number 2066

REPRESENTATIVE GUTTENBERG mentioned that the department has so few general fund dollars that small impacts create ripples.

CHAIR ANDERSON repeated his belief that the dollar amount in this bill is so negligible that it wouldn't have a huge impact on the department.

Number 2024

REPRESENTATIVE ROKEBERG asked Ms. Hall if the department is generating in excess of \$35,000,000 a year in general fund revenue.

MS. HALL replied that the department is pushing approximately \$40 million in premium taxes, which all goes to the general fund. The Division of Insurance is operated as a receipts-based agency for the fees that are charged to those regulated by the division. For operational purposes, nothing is taken from the general fund, she noted.

REPRESENTATIVE ROKEBERG supported the idea of a zero fiscal note.

Number 1987

CHAIR ANDERSON [moved to adopt a zero fiscal note from the Department of Community & Economic Development]. There being no objection, a zero fiscal note was adopted.

Number 1983

REPRESENTATIVE ROKEBERG moved to report HB 540, as amended, out of committee with individual recommendations and the attached zero fiscal notes. There being no objection, CSHB 540(L&C) 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 4:20 p.m.