

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

April 27, 2004

3:50 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. 555

"An Act relating to occupational licensing fees and receipts."

- MOVED HB 555 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 194(FIN)

"An Act authorizing delivery of up to two bottles of distilled spirits and 40 ounces of beer to a cruise ship passenger or hotel guest."

- MOVED HCS CSSB 194(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 94

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

- HEARD AND HELD

CS FOR SENATE BILL NO. 323(JUD) am

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and managers or managing members of limited liability companies, and to the exclusiveness of liability for workers' compensation."

- MOVED CSSB 323(JUD)am OUT OF COMMITTEE

HOUSE BILL NO. 346

"An Act relating to health insurance coverage for gastric bypass surgery; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 555

SHORT TITLE: OCCUPATIONAL LICENSING FEES AND RECEIPTS

SPONSOR(S): RULES

04/19/04 (H) READ THE FIRST TIME - REFERRALS  
04/19/04 (H) L&C, FIN  
04/26/04 (H) L&C AT 3:15 PM CAPITOL 17  
04/26/04 (H) -- Meeting Canceled --  
04/27/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
04/27/04 (H) L&C AT 3:30 PM CAPITOL 17

BILL: SB 194

SHORT TITLE: LIQUOR DELIVERED TO HOTELS/CRUISE SHIPS

SPONSOR(S): SENATOR(S) STEVENS G

04/23/03 (S) READ THE FIRST TIME - REFERRALS  
04/23/03 (S) L&C, FIN  
05/13/03 (S) L&C AT 2:00 PM BELTZ 211  
05/13/03 (S) <Bill Hearing Rescheduled to 5/15/03>  
05/15/03 (S) L&C AT 7:45 AM BUTROVICH 205  
05/15/03 (S) Moved Out of Committee  
05/15/03 (S) MINUTE(L&C)  
05/16/03 (S) L&C RPT 3DP  
05/16/03 (S) DP: BUNDE, SEEKINS, STEVENS G  
02/27/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/27/04 (S) Heard & Held  
02/27/04 (S) MINUTE(FIN)  
03/01/04 (S) FIN RPT CS 2DP 4NR NEW TITLE  
03/01/04 (S) NR: GREEN, DYSON, HOFFMAN, OLSON;  
03/01/04 (S) DP: STEVENS B, BUNDE  
03/01/04 (H) FIN AT 9:00 AM HOUSE FINANCE 519  
03/01/04 (S) Moved CSSB 194(FIN) Out of Committee  
03/01/04 (S) MINUTE(FIN)  
04/20/04 (S) TRANSMITTED TO (H)  
04/20/04 (S) VERSION: CSSB 194(FIN)  
04/21/04 (H) READ THE FIRST TIME - REFERRALS  
04/21/04 (H) L&C  
04/26/04 (H) L&C AT 3:15 PM CAPITOL 17

04/26/04 (H) -- Meeting Canceled --  
04/27/04 (H) L&C AT 3:30 PM CAPITOL 17

BILL: HB 94

SHORT TITLE: OVERTIME PAY FOR AIRLINE EMPLOYEES

SPONSOR(S): TRANSPORTATION BY REQUEST

02/12/03 (H) READ THE FIRST TIME - REFERRALS  
02/12/03 (H) L&C  
03/03/03 (H) L&C AT 3:15 PM CAPITOL 17  
03/03/03 (H) Heard & Held  
03/03/03 (H) MINUTE(L&C)  
04/27/04 (H) L&C AT 3:30 PM CAPITOL 17

BILL: SB 323

SHORT TITLE: WORKERS COMPENSATION AND CONTRACTORS

SPONSOR(S): SENATOR(S) SEEKINS

02/13/04 (S) READ THE FIRST TIME - REFERRALS  
02/13/04 (S) L&C, JUD  
03/04/04 (S) L&C AT 1:30 PM BELTZ 211  
03/04/04 (S) Heard & Held  
03/04/04 (S) MINUTE(L&C)  
03/09/04 (S) L&C AT 1:30 PM BELTZ 211  
03/09/04 (S) Moved SB 323 Out of Committee  
03/09/04 (S) MINUTE(L&C)  
03/10/04 (S) L&C RPT 2DP 2NR 1AM  
03/10/04 (S) DP: BUNDE, SEEKINS; NR: DAVIS,  
03/10/04 (S) STEVENS G; AM: FRENCH  
03/17/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/17/04 (S) Heard & Held  
03/17/04 (S) MINUTE(JUD)  
04/02/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/02/04 (S) Heard & Held  
04/02/04 (S) MINUTE(JUD)  
04/07/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/07/04 (S) Heard & Held  
04/07/04 (S) MINUTE(JUD)  
04/14/04 (S) JUD AT 5:30 PM BUTROVICH 205  
04/14/04 (S) Heard & Held  
04/14/04 (S) MINUTE(JUD)  
04/16/04 (S) JUD RPT CS 2DP 1DNP 1NR NEW TITLE  
04/16/04 (S) DP: SEEKINS, OGAN;  
04/16/04 (S) DNP: FRENCH; NR: THERRIAULT  
04/16/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/16/04 (S) Moved CSSB 323(JUD) Out of Committee  
04/16/04 (S) MINUTE(JUD)

04/21/04 (S) TRANSMITTED TO (H)  
04/21/04 (S) VERSION: CSSB 323(JUD) AM  
04/22/04 (H) READ THE FIRST TIME - REFERRALS  
04/22/04 (H) L&C  
04/27/04 (H) L&C AT 3:30 PM CAPITOL 17

**WITNESS REGISTER**

RICK URION, Director  
Division of Occupational Licensing  
Department of Community & Economic Development (DCED)  
Juneau, Alaska  
POSITION STATEMENT: Explained HB 555.

DOUG LETCH, Staff  
to Senator Gary Stevens  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented SB 194 on behalf of the sponsor,  
Senator Gary Stevens.

SENATOR RALPH SEEKINS  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Spoke as the sponsor of SB 323.

JOHN BITNEY, Lobbyist  
Alaska State Homebuilders Association  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of SB 323 as a step in  
the right direction.

JACK MILLER, Attorney  
State Chamber of Commerce  
Anchorage, Alaska  
POSITION STATEMENT: During discussion of SB 323, answered  
questions.

STEVE CONSTANTINO, Attorney at Law  
Anchorage, Alaska  
POSITION STATEMENT: Testified in opposition to SB 323.

PAUL DILLON, Attorney at Law  
Dillon & Findley, PC  
Juneau, Alaska  
POSITION STATEMENT: Expressed concerns with SB 323.

PAMELA LaBOLLE, President  
Alaska State Chamber of Commerce  
Anchorage, Alaska  
POSITION STATEMENT: Testified in support of SB 323.

JACK MILLER, Attorney at Law (of counsel)  
Eide, Miller & Pate, PC  
Anchorage, Alaska  
POSITION STATEMENT: Testified on SB 323.

**ACTION NARRATIVE**

**TAPE 04-48, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:50 p.m. Representatives Anderson, Dahlstrom, Lynn, Rokeberg, and Crawford were present at the call to order. Representatives Gatto and Guttenberg arrived as the meeting was in progress.

HB 555-OCCUPATIONAL LICENSING FEES AND RECEIPTS

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 555, "An Act relating to occupational licensing fees and receipts."

Number 0085

RICK URION, Director, Division of Occupational Licensing, Department of Community & Economic Development (DCED), reminded the committee that the division charges fees based on the cost to regulate the profession. One of the largest costs associated with the licensing programs are disciplinary actions. Until two years ago the fines collected from disciplinary actions were placed in the funds used to offset the costs of the particular profession. This legislation merely allows the division to take the fines collected from various disciplinary actions to be credited to that profession in order to offset the cost of collection. Mr. Urion noted that the [collection of fines] averages about \$67,000 a year.

Number 0233

REPRESENTATIVE ROKEBERG recalled that AS 08.01.065 requires that all professions be self-supporting, and therefore this legislation merely allows the fines to be credited toward

licensure. Representative Rokeberg also recalled that a recent Real Estate Commission case went to major hearings, and inquired as to the cost of such.

MR. URION said that he didn't know the exact cost, but the particular case with the Real Estate Commission was a considerable sum. He related that the fine itself was \$25,000 and agreed with Representative Rokeberg that the cost [of the disciplinary process] could be over \$100,000. In further response to Representative Rokeberg, Mr. Urion confirmed that currently the fine would have to be placed in the general fund rather than go toward the licensure fees, and therefore the licensees would have to pick up the cost of that [disciplinary] hearing.

Number 0369

REPRESENTATIVE GUTTENBERG asked if there are any boards or commissions in which the state has a vested interest in having, but can't pay for themselves. He also asked if there has been a fine levied against a board or commission, which was cost prohibitive and couldn't be passed on to the members of the profession.

MR. URION said that the division's purpose is public protection. He confirmed that there have been some expensive disciplinary actions, which have caused licensure fees to double.

REPRESENTATIVE GUTTENBERG reiterated his question regarding whether expensive disciplinary actions have been so cost prohibitive that the members of a profession couldn't afford [the licensure fees] and left the profession.

MR. URION explained that the division doesn't increase the fees to a point at which folks decide to leave the profession, an incremental approach over a period of years is taken. He mentioned the possibility of a proposal next session to create a pool to address those large [fee increases].

CHAIR ANDERSON closed public testimony.

Number 0535

REPRESENTATIVE DAHLSTROM moved to report HB 555 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

SB 194-LIQUOR DELIVERED TO HOTELS/CRUISE SHIPS

CHAIR ANDERSON announced that the next order of business would be CS FOR SENATE BILL NO. 194(FIN), "An Act authorizing delivery of up to two bottles of distilled spirits and 40 ounces of beer to a cruise ship passenger or hotel guest."

Number 0574

DOUG LETCH, Staff to Senator Gary Stevens, Alaska State Legislature, explained that SB 194 adds statutory language allowing the delivery to hotel guests or cruise ship passengers of up to two bottles of distilled spirits or 40 ounces of beer with floral arrangements. Adding the distilled spirits and beer language to the current statute will capture all consumable alcohol products currently for sale. He noted that for purposes of the Alcoholic Beverage Control Board (ABC) regulations beer would also include any malt beverages. Mr. Letch related that this legislation builds on HB 69 of the Twenty-First Alaska State Legislature, which was amended to allow the delivery of up to two bottles of wine and champagne with a floral arrangement. This legislation, SB 194, would open opportunities for some additional business, particularly in areas where cruise ships come. In response to Representative Rokeberg, Mr. Letch related that the 40 ounce amount was recommended by the ABC Board because it represents two 20 ounce bottles. The ABC Board said that it would entertain the ability to set the amount by regulations, but the sponsor felt that a gift-sized bottle of beer would be appropriate.

REPRESENTATIVE DAHLSTROM inquired as to why this legislation was introduced.

MR. LETCH reiterated that this legislation further expands HB 69 of the Twenty-First Alaska State Legislature, which was introduced because a floral business in Seward wanted to deliver gift baskets with champagne and wine. The same business wanted to expand the aforementioned in order to include other forms of alcohol. In further response to Representative Dahlstrom, he specified that this would be effective throughout the state and the business would have to obtain a permit from the ABC Board to deliver such gift baskets.

Number 0957

REPRESENTATIVE CRAWFORD drew attention to the language "two bottles", which could refer to one ounce bottles to half gallon

bottles. Therefore, he asked whether the language should be tightened.

MR. LETCH offered to research that because the regulations would seem to fall under the ABC Board in terms of volume of alcohol.

REPRESENTATIVE CRAWFORD expressed concern that a business, on the pretense of supplying flower arrangements, could supply alcohol to young individuals. He said that he didn't want to open the door to abuses.

MR. LETCH confirmed that this legislation is merely addressing delivery to hotel and cruise ship guests. He opined that Representative Meyer's legislation would probably discourage much of the concerns of Representative Crawford.

REPRESENTATIVE ROKEBERG reiterated his concern with the 40 ounce specification, and indicated his size preference of 72 ounces. He questioned whether the Alaska Brewing Company used these sizes.

MR. LETCH said that he would entertain any sizes the committee would desire.

Number 1241

REPRESENTATIVE GATTO asked if this legislation refers to one delivery per passenger, port, day, et cetera.

MR. LETCH opined that it's a relatively low volume business with one visit per customer. However, he offered to review this with the ABC Board.

REPRESENTATIVE GATTO related his understanding that the federal government used to allow infants into the country with a certain amount of alcohol.

Number 1302

REPRESENTATIVE ROKEBERG moved that the committee adopt Conceptual Amendment 1, as follows:

Page 1, line 1;  
Delete "40"  
Insert "72"

Page 1, line 1;

Delete "**and**"  
Insert "or"

Page 1, line 6  
Delete "**and**"  
Insert "or"

Page 1, line 7;  
Delete "**40**"  
Insert "72"

REPRESENTATIVE GATTO moved that the committee adopt an amendment to Conceptual Amendment 1, such that the language "bottles" be changed to "liters". He opined, "Typically speaking people who are buying a special brew or something, are not buying it by the gallon, they're generally going for a special bottle of wine or something like that."

REPRESENTATIVE ROKEBERG commented that although there seems to be a shift with regard to the availability of fifths, or liters, the predominant measurement of sale in the U.S. is the fifth.

REPRESENTATIVE GATTO withdrew his amendment to Conceptual Amendment 1.

[Conceptual Amendment 1 was treated as adopted.]

MR. LETCH, in response to Representative Dahlstrom, confirmed that the House Labor and Commerce Standing Committee is the only committee of referral for SB 194, which has a zero fiscal note.

Number 1498

REPRESENTATIVE ROKEBERG moved to report CSSB 194(FIN), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCS CSSB 194(L&C) was reported from the House Labor and Commerce Standing Committee.

The committee took a brief at-ease.

HB 94-OVERTIME PAY FOR AIRLINE EMPLOYEES

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 94, "An Act exempting flight crew members of certain air carriers from overtime pay requirements."

Number 1548

REPRESENTATIVE DAHLSTROM moved to adopt CSHB 94, Version D dated 4/23/04, as the working document. There being no objection, Version D was before the committee.

CHAIR ANDERSON highlighted that HB 94 is the companion to SB 54, which exempted flight crews from the [Alaska] Wage and Hour Act per the request of flight crews. Last year SB 54 passed the legislature with a unanimous vote. He explained that Version D of HB 94 removes the language that was already passed in SB 54 and inserts language to establish the effective date of SB 54 as January 1, 2000. The aforementioned will preserve many small airlines in rural Alaska from costly legal action. This is a major policy call and Version D would merely establish the effective date of the policy. Chair Anderson noted that this legislation was brought forward upon the request of some rural airlines.

Number 1633

REPRESENTATIVE CRAWFORD related his understanding that the rural airlines wanted this policy to be retroactive because there was a class action lawsuit that was won by an employee. Therefore, passage of [Version D] would make the result of the aforementioned lawsuit moot.

CHAIR ANDERSON said he couldn't answer the question, and therefore he said he would have one of the requestors of the legislation speak to Representative Crawford's understanding. He announced that CSHB 94 would be held over. Chair Anderson, in response to Representative Dahlstrom, explained that in SB 54 in the Twenty-First Alaska State Legislature, the effective date wasn't included.

REPRESENTATIVE CRAWFORD said he believes that in SB 54 in the Twenty-First Alaska State Legislature there was an immediate effective date and the decision was not to make the legislation retroactive.

[HB 94 was held over.]

SB 323-WORKERS COMPENSATION AND CONTRACTORS

[Contains discussion of HB 311.]

CHAIR ANDERSON announced that the next order of business would be CS FOR SENATE BILL NO. 323(JUD) am, "An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and managers or managing members of limited liability companies, and to the exclusiveness of liability for workers' compensation."

Number 1768

SENATOR RALPH SEEKINS, Alaska State Legislature, spoke as the sponsor of SB 323. He paraphrased from the following written sponsor statement [original punctuation provided]:

Senate Bill 323 revises the Workers' Compensation Act as it applies to subcontractors, contractors and project owners. The two principal modifications are as follows:

1. Responsibility for payment of compensation is extended up the chain of contracts to include project owners; and,
2. Injured parties in receipt of benefits under the Workers' Compensation Act would be barred from "double dipping" via a tort liability claim.

Under AS 23.30.045(a), an injured employee has recourse for workers' compensation benefits only against his immediate employer and if the employer is a subcontractor, against the contractor who retained the subcontractor. The proposed legislation allows recourse for the payment of compensation benefits against project owners, as well as contractors and subcontractors.

This extension of the rights of injured employees is sensible inasmuch as the project owner is the beneficial user of the work performed by the injured employee. It should be noted that a project owner does not include individuals who have engaged the services of contractors to build or renovate a residential home.

Additionally, the proposed legislation extends the exclusivity protection set forth in AS 23.30.055 to all parties in the contracting chain relating to a

project. This includes the employer of the injured employee, and those parties, which are upstream in the chain of contracts from the employer of the injured employee.

It is important to note that sole proprietors and members of a partnership or Limited Liability Company will not fall within the scope of the Act provided upstream contractors are held harmless, through written agreement, from payment of compensation benefits and claims of tort liability. However, this only applies where these entities have no employees.

Senate Bill 323 encourages parties participating in a project to identify and enforce strict safety standards for the benefit of all employees rather than deflecting responsibility through the use of indemnity agreements as is common practice currently. At the same time, it ensures that injured employees receive all benefits available under the Alaska Workers' Compensation Act.

SENATOR SEEKINS related an example in which a subcontractor has an injured employee. In this example there was an indemnity agreement in order for the subcontractor to hire the employee. Furthermore, there was an indemnity agreement [between] the project owner and the contractor. Therefore, the sole recourse for an injured employee is workers' compensation insurance and the [employee's] attorney would sue the project owner. Senator Seekins explained, "The indemnification agreement basically said ... now the guy who's the sole remedy acted in their favor ... with the subcontractor now had to defend against a suit that was taken against the project owner and if there was a judgment to pay it. So, they never did have any guarantee of a sole remedy because of the common practice of indemnification agreements." Therefore, this legislation specifies that if project owners are liable in case the contractor or subcontractor didn't have workers' compensation insurance on the employee, then the exclusive remedy extends all the way up the chain.

Number 1975

REPRESENTATIVE ROKEBERG turned attention to the definition of "project owner" on page 2, lines 9-11, which he interpreted could refer to a small group of investors. He asked if the sponsor is suggesting that this group of people should have workers' compensation if there are no employees.

SENATOR SEEKINS stated that if the project owner hasn't ensured that his or her contractor has workers' compensation insurance, then the project owner still bears the responsibility of payment if the contractor doesn't have workers' compensation insurance. He clarified, "I'm not saying that they have to buy the policy, but they have to secure the payment to the injured employee if, for some reason, that contractor or subcontractor did not have that policy. This is in exchange for their not being able to be sued under the double dipping scenario that I talked about earlier." In further response to Representative Rokeberg, Senator Seekins provided an example. He posed a situation in which British Petroleum (BP) hires a drilling company to drill a well and the drilling company has a subcontractor that works for it. In order to obtain the contract with BP, an indemnification agreement holding [BP] harmless for any claims downstream would have to be signed. In this situation if one of the employees of the subcontractor is hurt, the employee's exclusive remedy is workers' compensation. If for some reason the subcontractor doesn't have the coverage and the contractor hasn't made sure that the subcontractor provided the coverage, the contractor's workers' compensation coverage would provide the coverage or the contractor would have to secure the payment for it. If the contractor doesn't have workers' compensation insurance, then the project owner bears the responsibility.

SENATOR SEEKINS posed the following:

If, for an example, now ... my employee is hurt. That's the exclusive remedy against me and he decides that's not good enough for me ... he sues British Petroleum for providing an unsafe workplace. In the defense against that you ... are required to indemnify them in that defense and you've required me to indemnify that expense. So, the very person -- I being the one who has an exclusive remedy now carries the expense of the defense. And if there's a judgment, has to pay the judgment because of the indemnification agreements that exist. So, ... [the legislation] says if BP makes sure that you and I have workers' compensation insurance and that covers the employee, they can't be sued farther up because if I didn't have it, you didn't have it, they [BP] would have to provide it. So, there's a trade off up and down the line.

SENATOR SEEKINS related that as a result of the [current situation] in which the responsibility moves up stream, project owners don't want to know about the safety procedures of a project because knowledge of it means a higher level of responsibility. Therefore, this legislation will help provide a safer work environment throughout the chain, he opined.

Number 2170

CHAIR ANDERSON turned attention to an e-mail from Paul Dillon, which relates the following [original punctuation provided]:

3) The killer aspect of 323 is that it trades away the employees right to sue responsible third parties in exchange for nothing, absolutely nothing because the injured employee is already protected the workers comp (by state law, See 1 above) ... what this bill really is a wolf in sheep's clothing, because it extends to all contractors and the project owner the exclusivity of workers comp to them. Meaning that the employee cannot sue them even though they are at fault!

CHAIR ANDERSON surmised that Senator Seekins sponsored this legislation in order to provide clear and concise responsibility for workers' compensation.

SENATOR SEEKINS said that Mr. Dillon's interpretation is inaccurate. He further said that there are attorneys around that don't like this legislation because it eliminates the opportunity for double dipping. "In my opinion, when there is an exclusive remedy that makes employer-employee whole ... under state law, ... that person isn't trading anything away when they say now I can go back against somebody else for more money after I have already been taken care of under the provisions of workers' comp," he opined. This legislation merely removes the ability to accept an exclusive remedy and then force additional settlement on someone else.

Number 2257

REPRESENTATIVE CRAWFORD opined that this legislation "turns the system on its ear." He related his understanding that if a third party is responsible for negligence and there's a further suit, beyond workers' compensation, there is a payback provision. Therefore, workers' compensation has to be paid back for any other judgment that's awarded.

SENATOR SEEKINS said that he wasn't aware of any such provision.

REPRESENTATIVE CRAWFORD said he believes the law includes [a payback provision].

SENATOR SEEKINS acknowledged that there are subrogation laws. However, he wasn't aware of a workers' compensation insurer who has pursued a claim against someone up stream, under subrogation. Senator Seekins said that he wasn't aware that a contractor would have to pay back the injuries sustained by a subcontractor unless it could be shown [that it was an injury outside of workers' compensation]. This legislation doesn't exempt any injuries other than those covered under workers' compensation. The legislation doesn't address product liability or extreme negligence.

Number 2367

CHAIR ANDERSON highlighted the legislation he and Representative Crawford had sponsored, HB 311, which ensured that a subcontractor secures payment for the compensation payable to the subcontractor's employees. Therefore, if the subcontractor fails to secure payment for the compensation payable to his or her employees, the general contractor would be liable for the payment. Chair Anderson said that he didn't believe HB 311 and SB 323 necessarily cross because he believes that SB 323 takes [HB 311] one step further by extending protection for the workers ... [tape changes mid-sentence].

**TAPE 04-48, SIDE B**

CHAIR ANDERSON related his understanding that SB 323 would extend exclusivity of liability protection to all the parties in the chain. Those injured parties receiving workers' compensation benefits would be precluded from double dipping via the tort claim liability. Chair Anderson reiterated that he didn't believe HB 311 and SB 323 cross, in fact, he said that he tended to agree with Senator Seekins "that it has to be broader and it has to make sure the double dipping effect isn't there."

Number 2346

REPRESENTATIVE CRAWFORD related his personal experience in which his company was hired as a subcontractor to build a barn at the Palmer State Fair. The general contractor also hired a number of employees whom they made obtain a contractor's license and thus became sole proprietor's of a small company. The [general

contractor] coerced the aforementioned employees into becoming subcontractors so that [the general contractor] wouldn't have to have workers' compensation insurance. Therefore, these employees were "much cheaper" than other companies were able to do. Had SB 323 been in effect, he predicted that these individuals would've been coerced into signing a waiver eliminating any liability [on the part of the general contractor]. This legislation is leaving a large loophole. He said that with HB 311 he had hoped to level the playing field and close the loophole so that all subcontractors are responsible for having workers' compensation.

SENATOR SEEKINS emphasized that those who commit fraud should be handled per the statutes. He said that [with this legislation] he's not talking about an ironworker, but rather a window washer, in which he or she is the only employee, who chooses not to cover himself or herself with workers' compensation. However, by law if the aforementioned window washer hires another window washer, workers' compensation must be carried. Currently, by law a contractor must ensure that workers' compensation is provided for the subcontractor's employees and this legislation is extended to the project owner. Senator Seekins noted that he has 120 employees of which 119 are covered by workers' compensation, the one not covered is himself who has the exclusive remedy against himself. With regard to fraud, he noted that his workers' compensation insurance company audits him annually. There are some checks and balances in the industry to avoid [fraud].

Number 2104

REPRESENTATIVE CRAWFORD explained that the type of coercion to which he was referring is one in which employees are being told by an [employer] that he or she can't afford to hire them unless the individual obtains a business license. The aforementioned happens quite often. He agreed that once someone is hurt, the workers' compensation claim requires the [general contractor] to go back and pay the premiums for that individual who was really an employee, although referred to as a subcontractor. The loophole needs to be closed, and SB 323 is the place to do it.

SENATOR SEEKINS clarified that the intent of SB 323 is to ensure that those on the job are covered by workers' compensation while continuing the current law allowing sole proprietors to exempt themselves and any waiving of that would be done in writing.

REPRESENTATIVE CRAWFORD commented that as long as the loophole allowing the sole proprietors to waive having workers' compensation insurance exists, it will be used to get a job done cheaper. It's wrong to take [sole proprietors] out of the liability chain, he said.

REPRESENTATIVE ROKEBERG referred to Section 4, which clarifies the responsibility of limited liability companies (LLCs), and asked if this legislation places LLCs on the same level of enforcement as a sole proprietor, member of a partnership, or members of a partnership. Therefore, would an LLC not have to have workers' compensation if the LLC doesn't have any employees, he asked.

SENATOR SEEKINS replied yes, if one is actually a member of the LLC.

Number 1931

JOHN BITNEY, Lobbyist, Alaska State Homebuilders Association, reminded the committee that the association was in favor of HB 311, which addressed sole proprietors such that a sole proprietor could be retroactively charged a premium for risk incurred during the period in which workers' compensation insurance wasn't carried. The preferred solution is to have sole proprietors carry workers' compensation insurance. However, there seem to be some drafting problems with the way in which HB 311 approached it. Mr. Bitney related, "We are in support of ... SB 323 as a step in the right direction ... it doesn't go as far as we would like it to go ...." The question is how the carriers will view this legislation and the extent to which the carriers believe this will alleviate some risk on their part when a claim is filed.

REPRESENTATIVE CRAWFORD inquired as to how the Alaska State Homebuilders Association views the ability to waive one's right to workers' compensation.

MR. BITNEY clarified that this is a matter of how the courts will view this when the claim is filed. Until the courts make a ruling, he wasn't sure whether the carriers would feel that this legislation alleviates any risk.

REPRESENTATIVE ROKEBERG related his understanding that an individual hiring a homebuilder can't be held responsible [for workers' compensation].

MR. BITNEY related his understanding that a project owner is shielded from a general liability claim after a workers' compensation claim has been filed. However, he didn't believe the legislation shields a project owner from workers' compensation issues any more than current law. Mr. Bitney agreed with Representative Rokeberg that when one builds a house, the project owner is the contractor not the people who hire the contractor.

Number 1731

REPRESENTATIVE GUTTENBERG asked whether that's always the case because often in residential development, there wouldn't be an owner until the home is built. Many homes are built under contract of a homeowner, and therefore he questioned whether the homeowner would be liable for later claims.

MR. BITNEY said that he didn't know how this legislation would address a project owner on a residential project.

SENATOR SEEKINS directed attention to the definitions of the legislation, which don't include "homeowner". Currently, no law holds a homeowner responsible for workers' compensation.

JACK MILLER, Attorney, State Chamber of Commerce, stated that a residential homeowner, not as a business, who hires an individual to do renovations in his or her home retains no liability under the current law or this proposed legislation.

Number 1596

STEVE CONSTANTINO, Attorney at Law, noted that he has been a hearing officer for the Alaska Workers' Compensation Board, although he currently practices workers' compensation law representing injured workers. Mr. Constantino spoke in opposition to SB 323 which is based on the rationale of protecting employers from double dipping employees, which doesn't occur. In an example in which a worker is injured by the negligence or fault of a third party, in addition to workers' compensation benefits, that employee or his or her insurer have the right to file suit against the wrongdoer. However, should the injured worker or his or her workers' compensation insurer file suit against the wrongdoer, there is a lien by the workers' compensation insurer for the full amount of all benefits paid to the injured worker. In other words, the workers' compensation insurer is repaid all the benefits by the wrongdoer before the injured worker receives any damages from

the wrongdoer, the project owner or general contractor. He specified that the aforementioned is found in AS 23.30.015, which has been part of the workers' compensation statute since 1955. He reiterated that there is no possibility for double dipping. This legislation provides a special exemption for project owners and prime contractors in order to protect them against their own negligence. By extending the exclusive remedy provision, the project owners and prime contractors would only be liable for the minimal damages allowed under the Alaska Workers' Compensation Act. Therefore, the injured worker would receive nothing for pain and suffering or future loss of benefits.

MR. CONSTANTINO said the notion that SB 323 would encourage safety on the part of project owners or prime contractors is fallacious. Under the Workers' Compensation Act there is no deterrent for an employer who violates safety standards or is negligent. Drawing from his time practicing in the workers' compensation area, he opined that workers' compensation is protection against liability and paying damages, while safety is encouraged due to the imposition of damages and the risks entailed. Mr. Constantino highlighted that in the Alaska State Chamber of Commerce's support for SB 322, the Moloso case, a 1982 Alaska Supreme Court case, is cited. In that case, the state wanted a highway constructed that required dangerous excavation. The state retained many experts to advise it how to do this construction safely and responsibly. After the project was bid, the prime contractor presented a change order saying that the prime contractor had its own experts who said that the project could be done quicker and cheaper if the project wasn't as elaborate or safe. The state agreed to the change order and took one half of the savings predicted. Mr. Moloso, a CAT driver, was the first one on the site and the slope subsided, as the state's experts predicted, and Mr. Moloso was killed. Were this proposed legislation in effect back in 1982, Mr. Moloso's widow and children wouldn't be allowed to sue the contractor or the project owner and would only be limited to workers' compensation. Therefore, the widow would have received a maximum of 12 years of compensation benefits for her husband's wrongful death. Mr. Constantino opined that the aforementioned isn't fair nor a good public policy. Those who, through their own negligence, injure others should be held responsible for a reasonable amount of damages, not the limited amount of damages provided under workers' compensation, which is the product of a political compromise between employers and employees.

REPRESENTATIVE GUTTENBERG pointed out that this legislation allows the subcontractor to waive workers' compensation by a written agreement. If the aforementioned is the case and an accident occurs, would there be any recourse, he asked.

MR. CONSTANTINO said that it isn't his understanding of the legislation. He related that it's against public policy and the law to waive workers' compensation. Every employer, save sole proprietors, general partnerships, and some LLCs, of workers must have workers' compensation and it can't be waived. Mr. Constantino recalled that the sponsor discussed the need for this legislation in terms of indemnification agreements between contractors, subcontractors, and project owners. Indemnification agreements shift the risks as they exist in the law. Mr. Constantino said, "I think it is inappropriate for our legislature to be distorting public policy and the general law to accommodate the private agreements between the parties that the law has indicated should be responsible for the consequences of their own actions."

Number 1213

PAUL DILLON, Attorney at Law, Dillon & Findley, PC, characterized Mr. Constantino's testimony as correct legal analysis. He highlighted AS 23.30.015 and AS 09.17.080. He said that Senator Seekins' statement that SB 323 could affect the livelihood of attorneys is inappropriate. This legislation waives a fundamental right of those who work in any of the building trades, construction, or work on the North Slope. Mr. Dillon stated that there are indications that the insurance industry through the Alaska Chamber of Commerce is driving this legislation. This legislation, he opined, is an effort to cloak business with the exclusivity provisions of workers' compensation and doesn't protect employees. The existing law protects employees to the extent that workers' compensation protection is required. He posed an example in which his son worked in a subcontractor arrangement on the North Slope and BP is the owner. As the result of the negligence of an employee of BP, his son is injured, the workers' compensation remedy wouldn't be satisfactory. With regard to the double dipping claim, Mr. Dillon emphasized that the law is clear and has been interpreted on numerous occasions by the Alaska Supreme Court. Furthermore, it's settled law.

REPRESENTATIVE ROKEBERG surmised that Mr. Dillon was saying that it isn't within the legislature's purview to look at the public policy of whether workers' compensation exclusivity remedies

should be a barrier to any tort causes of action for the same injury event. However, he indicated that the aforementioned is the fundamental reason for workers' compensation benefits: to limit those liabilities and ensure that the worker is compensated and cared for due to a specific accident.

MR. DILLON clarified that workers' compensation is an exclusive remedy between the employer and the employee and it doesn't impact the remedies of the employee with regard to a third party. For example, assuming a situation in which there was negligence on the part of a BP employee who injured an employee of a subcontractor of BP, workers' compensation wouldn't come into play with the rights and remedies [of the subcontractor's employee] in suing BP.

REPRESENTATIVE ROKEBERG questioned whether the indemnification and subrogation provisions of contracts typically make the claims fall back on the level of the contracting chain under which [the employee] is.

MR. DILLON reiterated that there would be no double dipping with regard to the injured employee. The workers' compensation carrier is paid in full. Furthermore, the apportionment of damages is divided on the basis of fault. If the parties privately contract to exchange or indemnify each other, that's a matter of contracting. In further response to Representative Rokeberg, he agreed that the aforementioned is common practice in most of the construction fields.

Number 0796

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce, announced the Alaska State Chamber of Commerce's support of SB 323, the issue of which was brought to the chamber's attention by its members. Members are concerned that the very idea of the workers' compensation system is that an employee has the ability to have his or her injuries covered and can [also seek remedy] with those connected with the project who weren't responsible for the injury or the project's safety.

JACK MILLER, Attorney at Law (of counsel), Eide, Miller & Pate, PC, representing the Alaska State Chamber of Commerce, turned to the comment that this legislation addresses a public policy that the legislature shouldn't address and said such sentiment is patently wrong. The current public policy specifies that an injured employee's exclusive remedy against his or her employer is workers' compensation benefits. This legislation extends the

aforementioned public policy to enhance the guarantee that injured workers have of collecting workers' compensation benefits all the way up the line to the project owner and extends the exclusivity protection against tort claims through the project owner. Therefore, the guarantee of recovering workers' compensation benefits now goes beyond the direct employer, the contactor, and all the way up to the project owners. [This legislation] enhances the guarantee that injured workers will recover workers' compensation benefits. The entire workers' compensation (indisc.) the acknowledgement are entitled to reasonable compensation for their injuries and the entire workers' compensation benefits system is geared toward making the individual whole based on the injury. Furthermore, workers' compensation treats work-related injuries as compensable, which goes all the way up the contracting chain under SB 323, regardless of anyone's negligence or fault in causing the injury along with the enhanced financial guarantee.

MR. MILLER turned to the Moloso case. He said that because of the Moloso case and other similar cases, the only defense for project owners and contractors in the state to a tort claim for a work-related injury is that the contractor or subcontractor is an independent contractor. However, to establish that independent contractor defense, a project owner and contractor can't retain control of any part of the work, which is based on the last 20 years of Alaska Supreme Court decisions. The aforementioned potential tort liability has resulted in companies refusing to become involved in efforts to integrate safety programs. Therefore, Mr. Miller opined that passage of SB 323 would allow project owners and contractors to integrate and coordinate their safety programs. Mr. Miller concluded by specifying that SB 323 is the most important legislation that the legislature could pass in an effort to enhance safety in Alaska's workplace and greatly reduce the number work-related injuries. Furthermore, SB 323 will enhance the guarantee that workers injured on the job will be able to recover the full benefits of the Workers' Compensation Act.

Number 0314

REPRESENTATIVE CRAWFORD inquired as to Mr. Miller's view of a subcontractor's ability, under SB 323, to claim he or she is a sole proprietor and opt out of workers' compensation by signing a waiver that he or she has no right to recover from any part of the chain. He questioned why such a loophole would be left in the system.

MR. MILLER characterized this as a policy decision. He related that under current law a disreputable company that forced individuals to obtain contracting licenses and work for a company without workers' compensation benefits can't avoid existing employment laws. If an individual is hired and given the tools to do his or her work and directed in his or her work, that individual is an employee not a contractor. In such a situation the company can't ignore its obligations as an employer. Therefore, existing laws protect individuals and provide a remedy against disreputable or dishonest employers.

MR. MILLER highlighted that there are a number of sole proprietors that work in the home building association. For example, one individual does a specific job, such as build a deck or lay tile. If those members of ABC - Alaska have to obtain workers' compensation for themselves, they won't remain competitive and won't be able to continue to work. The aforementioned is why sole proprietors offered the option to sign a waiver. Mr. Miller opined that the current law protects both the sole proprietor that has to go out and obtain a contracting license as well as [tape ends midspeech].

**TAPE 04-49, SIDE A**

MR. MILLER opined that this legislation also recognizes that honest sole proprietors without employees should be able to continue working and be competitive in Alaska industry.

Number 0046

REPRESENTATIVE CRAWFORD inquired as to the type of coercion in which two virtually identical contractors bid on the same job. One contractor bids \$15,000 for the job and another bids \$20,000 for the job. One of the contractors has workers' compensation and the other doesn't. The aforementioned, not having workers' compensation [and its associated costs], is a way to undercut the market. "As long as you ... leave this loophole in there for people to ... not have workers' comp, then it keeps the playing field unlevel," he remarked.

MR. MILLER said that he isn't aware that such coercion is a major issue, and this is after discussing the matter with hundreds of businesses throughout the state. Under the current law, company owners, including sole proprietors, partners, and owner/shareholders of corporations, are considered employers under the Alaska Workers' Compensation Act unless they opt out of coverage under the Act. Therefore, he didn't see a need to

overhaul that entire system because he didn't see a major problem. Again, if there is coercion, fraud, or an actual employment relationship, the current law provides good remedies. This legislation doesn't impact the aforementioned in any way.

MR. CRAWFORD interjected that the Associated General Contractors (AGC) views this [coercion, fraud, or an actual employment relationship] as a huge problem. For the last four years, the AGC has been trying to pass legislation to require all subcontractors to have workers' compensation insurance.

MR. MILLER, in response to Chair Anderson, related his belief that SB 323 was introduced early in the session. In further response, he said he wasn't aware of any letter from AGC. He noted that the Alaska State Chamber of Commerce, ABC-Alaska, and the Alaska Miners Association have all supported this legislation.

Number 0285

REPRESENTATIVE ROKEBERG returned to the definition of "project owner" found in Section 3. He expressed concern "with the entrepreneurialism in the ... various different types of business organizations that real estate developers and builders that hire contractors to build commercial real estate would be included in this." Unless the aforementioned organizations are a corporation and an active development company, they don't have any employees. Representative Rokeberg related his understanding that under SB 323 that a group of people organized as an LLC or partnership would have to have a policy of workers' compensation when there were no employees. He asked if a workers' compensation policy is available for those without employees. Furthermore, he asked if the intention is for those [LLCs and partnerships] to have workers' compensation insurance.

MR. MILLER replied no, this legislation doesn't require the procurement of a workers' compensation policy when a group of people, say an investment group, organize without any employees. However, when a building contractor is hired a certificate of insurance would need to be obtained in order to ensure that the contractor has a workers' compensation policy and can secure payments to injured workers. If the contractor didn't have a workers' compensation policy, the contractor still has the independent obligation to secure the workers' compensation benefit payments to its injured workers. If all of the aforementioned fails, the project owner would have liability for the workers' compensation payments and simultaneously couldn't

be the subject of a tort remedy, which is currently available under the law.

REPRESENTATIVE ROKEBERG surmised then that the investment group dealing with the general contractor would have an agreement. Therefore, if the general contractor failed or went bankrupt and become judgment proof, would a workers' compensation claim still look to the project owner or would this legislation change that, he asked.

MR. MILLER specified that under the existing law the project owner wouldn't have liability for workers' compensation payments, but would have tort liability. This legislation limits the individual's recovery against the project owner. In the event of bankruptcy and no workers' compensation policy by the contractor, the remedy against the project owner would be for workers' compensation benefits. There couldn't be a claim in tort against the investors or the project owner.

Number 0603

REPRESENTATIVE GUTTENBERG surmised that under this legislation an injured worker's only recourse under any scenario is workers' compensation. No longer is there any liability for negligence or anything else, he further surmised.

MR. MILLER replied yes, "so long as he receives his workers' compensation benefits,"

REPRESENTATIVE GUTTENBERG inquired as to what would happen in a situation in which a subcontractor is negligent on a project.

MR. MILLER clarified that SB 323 only relates to parties under the legislation that have liability for workers' compensation benefits payments to an injured worker. Therefore, if the injured worker works for a subcontractor, that employee would have a financial guarantee of workers' compensation from his employer [the subcontractor], the contractor that hired [the subcontractor], and the project owner that hired the contractor. If there's another subcontractor, contractor, defective equipment, or third party who crosses a road barrier for road construction, all those parties would be free of potential liability for workers' compensation benefits. However, those groups wouldn't have protection against a tort claim. "This bill tracks liability for workers' compensation benefits and protection against tort claims. And again the purpose is to

allow companies involved in a project to integrate their safety program," he said.

REPRESENTATIVE GUTTENBERG inquired as to any scenario by which a worker would have the right for compensation under any tort.

MR. MILLER said that the Alaska Supreme Court has made it clear that a reckless or intentional act resulting in injury isn't currently protected under the exclusivity doctrine. The Alaska Supreme Court has said that in situations in which it's clear there is an intent to injure someone, the Workers' Compensation Act doesn't apply and that injured individual could even sue his or her direct employer.

Number 0805

REPRESENTATIVE GUTTENBERG noted his 30 years in construction and the discussion regarding a level playing field. Representative Guttenberg said he was amazed that a small contractor with five or so employees bidding on a contract that required only sending one person for the job would be considered a level playing field under a bidding process in which one [bidder] was able to avoid liability. "It amazes me that small contractors wouldn't have a problem with this. And yet we hear from the Chamber that nobody has said anything," he commented.

CHAIR ANDERSON opined that there's going to be disagreement in terms of the coverage, the definition of the responsible party, and the parameter upon which an injured party can seek redress.

MS. LaBOLLE added that SB 323 extends coverage and workers safety beyond its current level by moving the responsibility up the chain. Furthermore, tort is still available when the courts deem [an action] to be negligible to the point of a tort claim. She opined that SB 323 is an improvement over the current law.

Number 0973

REPRESENTATIVE DAHLSTROM related her belief that the Alaska State Chamber of Commerce represents some 700 [businesses in the state]. Of that 700, she inquired as to how many are professional businesses versus worker [organizations].

MS. LaBOLLE answered that the Alaska State Chamber of Commerce represents businesses who employ approximately 70,000 Alaskans, and therefore are all employers or sole proprietors. She noted

that there has been no word from the AGC that it has any problem with SB 323.

CHAIR ANDERSON interjected that he hasn't heard any vehement opposition to SB 323 from labor organizations.

MS. LaBOLLE agreed. She noted that after Mr. Miller spoke with the homebuilders and AGC regarding the difficulty with HB 311 the sole proprietor aspect of HB 311 was incorporated into SB 323.

REPRESENTATIVE DAHLSTROM asked if when the Alaska State Chamber of Commerce does surveys, it does so for management only or the entire work force.

MS. LaBOLLE answered that it's the management side of issues that the Alaska State Chamber of Commerce supports. Ms. LaBolle noted that SB 323 has had many hearings, and throughout there has been no word from the labor community.

CHAIR ANDERSON related his belief that the lack of any comment from the labor community seems to illustrate a lack of any vehement opposition to this legislation.

REPRESENTATIVE CRAWFORD said that he knew that some labor representatives wanted to be present today, but couldn't because of other legislation being presented that they had to address. Furthermore, there are others who didn't know that this legislation was up for consideration today.

REPRESENTATIVE ROKEBERG stated a point of order pointing out that SB 323 followed the rules of notice for hearings.

REPRESENTATIVE CRAWFORD agreed that the legislation had been properly noticed. However, he was told earlier that SB 323 was going to be heard Wednesday, which resulted in him misinforming [labor representatives].

CHAIR ANDERSON reiterated that at this point he isn't aware of any opposition from the labor community, which can be involved throughout the remaining process.

REPRESENTATIVE GUTTENBERG highlighted Representative Crawford's opposition to this legislation.

CHAIR ANDERSON closed public testimony.

Number 1321

REPRESENTATIVE CRAWFORD moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Page 1, Line 6-Page 3, Line 15;  
Delete all language and replace with:

**\*Section 1.** AS 23.30.045(a) is amended to read:

(a) An employer is liable for and shall secure [THE] payment [TO EMPLOYEES] of the compensation payable to employees under AS 23.30.041, 23.20.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor, the subcontractor shall secure payment of the compensation payable to the subcontractor's employees, and the coverage must include securing payment of the compensation payable to the subcontractor. If the employer is a contractor, the [THE] contractor is responsible for securing compliance with this subsection by the contractor's own subcontractors [LIABLE FOR AND SHALL SECURE THE PAYMENT OF THE COMPENSATION TO EMPLOYEES OF THE SUBCONTRACTOR UNLESS THE SUBCONTRACTOR SECURES THE PAYMENT].

CHAIR ANDERSON objected.

REPRESENTATIVE CRAWFORD opined that SB 323 changes the liability to the project owner, which he didn't believe should be part of the liability chain with workers' compensation. The project owner shouldn't be the one who has to ensure that each and every subcontractor has the proper workers' compensation insurance. The aforementioned should fall under the responsibility of the general contractor. Furthermore, the law should specify that everyone working as a subcontractor should have workers' compensation. Representative Crawford specified that Amendment 1 doesn't change that a sole proprietor can opt out of workers' compensation insurance.

CHAIR ANDERSON related his belief that the sponsor would be adverse to Amendment 1 because it seems to change the direction of the legislation.

REPRESENTATIVE ROKEBERG spoke in opposition to Amendment 1. He surmised that Representative Crawford wants a subcontractor, even if a sole proprietor, to be responsible for workers' compensation. Representative Rokeberg related that he wasn't

sure Representative Crawford would be entirely satisfied unless every sole proprietor, partnership, and LLC without employees had to have workers' compensation insurance. He opined that Amendment 1 would ultimately do the aforementioned.

Number 1549

REPRESENTATIVE CRAWFORD acknowledged that some folks did want every sole proprietor to be covered, but that's not the intent with [Amendment 1]. Amendment 1 speaks to [requiring workers' compensation insurance] when a subcontractor is working for a general contractor, so that the liability isn't misplaced. However, a sole proprietor isn't required to have workers' compensation insurance unless working as a subcontractor for a general contractor.

REPRESENTATIVE DAHLSTROM inquired as to the meaning of the following portion of Amendment 1: "the subcontractor shall secure payment of the compensation payable to the subcontractor's employees,".

REPRESENTATIVE CRAWFORD explained that the language means that the subcontractor will pay the premiums to the workers' compensation carrier.

REPRESENTATIVE DAHLSTROM inquired as to how it would work with a subcontractor who doesn't have year round business to keep a full crew.

REPRESENTATIVE CRAWFORD clarified that with workers' compensation insurance, premiums are paid based only on the hours worked.

REPRESENTATIVE DAHLSTROM asked if [the subcontractor] would pay the premiums after the hours are worked or would the payments be made on the assumption of the hours that would be worked.

REPRESENTATIVE CRAWFORD said that he couldn't answer that.

A roll call vote was taken. Representatives Crawford and Guttenberg voted in favor of Amendment 1. Representatives Gatto, Dahlstrom, Lynn, Rokeberg, and Anderson voted against it. Therefore, Amendment 1 failed by a vote of 2-5.

Number 1799

REPRESENTATIVE DAHLSTROM moved to report CSSB 323(JUD)am out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE CRAWFORD objected. He opined that this legislation is far worse than having no legislation at all because it leaves workers less than protected than the current situation. "I think that this is a travesty," he said.

REPRESENTATIVE GUTTENBERG spoke against the legislation because some of the assumptions made about it don't hold up to any test, such as the assumption that the legislation would provide better integration of safety programs. Representative Guttenberg opined that under this legislation workers will receive fewer rights and actually be denied rights, which is concerning.

CHAIR ANDERSON said that it can be argued that this legislation is an expansion of worker protection. He noted his support of the tort aspect that prevents double dipping. Therefore, Chair Anderson noted his support the legislation.

REPRESENTATIVE ROKEBERG supported the legislation and found the arguments that it doesn't provide greater protection of workers noncompelling. Representative Rokeberg highlighted that the testimony provided that private investment groups without employees aren't intended to be covered by this legislation.

Number 2008

A roll call vote was taken. Representatives Gatto, Dahlstrom, Lynn, Rokeberg, and Anderson voted in favor of reporting CSSB 323(JUD)am from committee. Representatives Guttenberg and Crawford voted against it. Therefore, CSSB 323(JUD)am was reported out of the House Labor and Commerce Standing Committee by a vote of 5-2.

#### **ADJOURNMENT**

The House Labor and Commerce Standing Committee meeting was recessed at 6:04 p.m. to the call of the chair.