

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

May 7, 2004

6:30 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. 282(RES)

"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

- MOVED CSSB 282(RES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 311(JUD)(efd fld)

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission and the Workers' Compensation Hearings Board; relating to agreements that discharge workers' compensation liability; providing for hearing examiners and hearing panels in workers' compensation proceedings; relating to workers'

compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; and relating to assigned risk pools and insurers."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 282

SHORT TITLE: RESTAURANTS ETC DISCLOSE WILD/FARMED FISH

SPONSOR(S): SENATOR(S) ELTON BY REQUEST OF SALMON INDUSTRY TASK FORCE

01/28/04	(S)	READ THE FIRST TIME - REFERRALS
01/28/04	(S)	RES, FIN
03/03/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/03/04	(S)	Scheduled But Not Heard
03/05/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/05/04	(S)	Moved CSSB 282(RES) Out of Committee
03/05/04	(S)	MINUTE(RES)
03/08/04	(S)	RES RPT CS 4DP 1NR SAME TITLE
03/08/04	(S)	NR: OGAN; DP: LINCOLN, STEVENS B,
03/08/04	(S)	ELTON, WAGONER
04/28/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/28/04	(S)	Scheduled But Not Heard
04/29/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/29/04	(S)	Heard & Held
04/29/04	(S)	MINUTE(FIN)
05/03/04	(S)	FIN RPT CS(RES) 4DP 3NR
05/03/04	(S)	DP: WILKEN, DYSON, HOFFMAN, STEVENS B;
05/03/04	(S)	NR: GREEN, OLSON, BUNDE
05/03/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/03/04	(S)	Moved CSSB 282(RES) Out of Committee
05/03/04	(S)	MINUTE(FIN)
05/05/04	(S)	TRANSMITTED TO (H)
05/05/04	(S)	VERSION: CSSB 282(RES)
05/06/04	(H)	READ THE FIRST TIME - REFERRALS
05/06/04	(H)	FSH, L&C
05/07/04	(H)	FSH AT 9:00 AM CAPITOL 124
05/07/04	(H)	L&C AT 6:15 PM CAPITOL 17

BILL: SB 311

SHORT TITLE: INSURANCE & WORKERS' COMPENSATION SYSTEM

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/09/04 (S) READ THE FIRST TIME - REFERRALS
02/09/04 (S) L&C, FIN
02/10/04 (S) L&C AT 1:30 PM BELTZ 211
02/10/04 (S) Heard & Held
02/10/04 (S) MINUTE(L&C)
02/19/04 (S) L&C AT 1:30 PM BELTZ 211
02/19/04 (S) Heard & Held
02/19/04 (S) MINUTE(L&C)
02/26/04 (S) L&C AT 1:30 PM BELTZ 211
02/26/04 (S) Heard & Held
02/26/04 (S) MINUTE(L&C)
03/04/04 (S) L&C AT 1:30 PM BELTZ 211
03/04/04 (S) Moved SB 311 Out of Committee
03/04/04 (S) MINUTE(L&C)
03/05/04 (S) L&C RPT 1DP 1DNP 2NR
03/05/04 (S) DP: BUNDE; DNP: FRENCH; NR: SEEKINS,
03/05/04 (S) STEVENS G
03/12/04 (S) JUD REFERRAL ADDED AFTER L&C
03/26/04 (S) JUD AT 8:00 AM BUTROVICH 205
03/26/04 (S) Heard & Held
03/26/04 (S) MINUTE(JUD)
04/05/04 (S) JUD AT 8:00 AM BUTROVICH 205
04/05/04 (S) Heard & Held
04/05/04 (S) MINUTE(JUD)
04/07/04 (S) JUD AT 5:30 PM BUTROVICH 205
04/07/04 (S) -- Meeting Canceled --
04/14/04 (S) JUD AT 8:00 AM BUTROVICH 205
04/14/04 (S) Moved CSSB 311(JUD) Out of Committee
04/14/04 (S) MINUTE(JUD)
04/15/04 (S) JUD RPT CS 1DP 1DNP 2NR 1AM NEW TITLE
04/15/04 (S) DP: SEEKINS; DNP: ELLIS;
04/15/04 (S) NR: THERRIAULT, OGAN; AM: FRENCH
04/15/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/15/04 (S) Scheduled But Not Heard
04/21/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/21/04 (S) Scheduled But Not Heard
04/22/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/22/04 (S) Heard & Held
04/22/04 (S) MINUTE(FIN)
04/23/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/23/04 (S) Heard & Held
04/23/04 (S) MINUTE(FIN)

04/26/04 (S) FIN RPT CS(JUD) 4DP 2DNP 1NR
04/26/04 (S) DP: GREEN, WILKEN, BUNDE, STEVENS B;
04/26/04 (S) DNP: HOFFMAN, OLSON; NR: DYSON
04/26/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/26/04 (S) Moved CSSB 311(FIN) Out of Committee
04/26/04 (S) MINUTE(FIN)
05/01/04 (S) TRANSMITTED TO (H)
05/01/04 (S) VERSION: CSSB 311(JUD)(EFD FLD)
05/03/04 (H) READ THE FIRST TIME - REFERRALS
05/03/04 (H) L&C, FIN
05/07/04 (H) L&C AT 6:15 PM CAPITOL 17

WITNESS REGISTER

PAULA CADIENTE, Staff
to Senator Kim Elton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 282 on behalf of Senator Elton, sponsor of the bill.

ERNESTA BALLARD, Commissioner
Office of the Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of SB 282 and answered questions.

SCOTT NORDSTRAND, Deputy Attorney General
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Spoke about the transformation of HB 450 into SB 311 and answered questions about the bill.

GREG O'CLARAY, Commissioner
Department of Labor and Workforce Development
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 311.

JIM SAMPSON, Executive President
Alaska American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Fairbanks, Alaska

POSITION STATEMENT: Requested that the House Labor and Commerce Standing Committee hold [SB 311] until the major disagreements are resolved between the parties.

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce (ASCC)
Juneau, Alaska

POSITION STATEMENT: Testified in favor of passing SB 311
unamended.

ACTION NARRATIVE

TAPE 04-52, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 6:30 p.m. Representatives Anderson, Gatto, Lynn, and Guttenberg were present at the call to order. Representatives Dahlstrom, Rokeberg, Crawford arrived as the meeting was in progress.

SB 282-RESTAURANTS ETC DISCLOSE WILD/FARMED FISH

Number 0200

PAULA CADIENTE, Staff to Senator Kim Elton, Alaska State Legislature, presented SB 282 on behalf of Senator Elton, sponsor of the bill. She explained that the bill requires food service establishments that sell to the general public to identify whether fish products are wild or farmed. State law now provides for labeling in retail grocery stores, she reported. She termed the bill a consumer awareness choice issue, especially given scientific and popular press on toxin loads and other problems with industrial fish. More than half the fish consumed at the consumer level is consumed in restaurants. These consumers deserve the same "heads up" as shoppers in the grocery store, she said. This bill came out of the work of the Joint Legislative Salmon Task Force, which was comprised of processors, harvesters, public members, and legislators, she reported. The House Special Committee on Fisheries moved [SB 282] out this morning with unanimous do-pass recommendations, she concluded.

REPRESENTATIVE ROKEBERG asked how the fish would be identified in restaurants.

MS. CADIENTE replied that they could put a little sticky note on the menu or list on the menu whether the fish is wild or farmed.

REPRESENTATIVE ROKEBERG asked if the bill specifies how it should be done.

MS. CADIENTE said it does not.

REPRESENTATIVE GUTTENBERG asked how long the restaurants will be allowed to take to implement this policy.

MS. CADIENTE replied that there is no effective date on the bill.

Number 0368

ERNESTA BALLARD, Commissioner, Office of the Commissioner, Department of Environmental Conservation (DEC), reported that the sponsor of the bill has been advised of several wording changes in the form of amendments that would make it possible for DEC to implement this law in a fashion consistent with existing statute and regulation. She said that they are essential to the efficiency and effectiveness of this law. She mentioned a fiscal note which has been zeroed out and the fact that without funding, DEC has no resources to implement this law.

Number 0433

REPRESENTATIVE DAHLSTROM asked, "If there are no funds available and there is not a date in place for anyone to meet the requirements, I'm assuming that we're hoping everyone goes on a good neighbor policy and just does it."

COMMISSIONER BALLARD responded that with no funds "we would be unable to promulgate regulations which would advise restaurants how to comply."

REPRESENTATIVE CRAWFORD inquired how much the fiscal note was.

COMMISSIONER BALLARD said the fiscal note was \$77,200 the first year and \$69,300 the second year.

REPRESENTATIVE ROKEBERG asked why the note was so high.

COMMISSIONER BALLARD replied that the fiscal note would accommodate one environmental health technician who would be hired to implement the requirements of this bill. That person's job would be to collect the menus to determine the accuracy of a statement that the fish is fresh or farmed, to inspect, and to

enforce compliance. She reported that there are several-thousand food establishments that would be covered by this regulation, and it would not be a simple task.

REPRESENTATIVE ROKEBERG suggested using e-mail for public notification.

REPRESENTATIVE CRAWFORD said it seems to him that the enforcement would be from individual Alaskans who did not see [a label] on the menu.

COMMISSIONER BALLARD reported that the fiscal note was prepared by [DEC] staff who have for many years enforced restaurant food requirements and who understand the workload that would be required by both customer complaints and implementing regulations, as well as enforcement and inspection to ensure that this law is complied with.

Number 0654

REPRESENTATIVE GATTO asked if it is DEC's obligation to determine if the fish is properly identified on the menu. Could deceit be investigated, he asked.

COMMISSIONER BALLARD replied that deceit is a possibility. The food safety legislation, which passed both the House and the Senate this week, extends the protections of the consumer protection attorney to this industry and to this subject matter. There would be a requirement for [DEC] staff to be aware of the deception and then the coordination with the consumer protection attorney to see if fraud and deceit were carried out. More problematic is that many of the suppliers in restaurants may not know what the source of their purchased wholesale fish product is, she reported. She said that would require DEC to be involved in determining that a statement or assertion that a product was fresh or farmed was accurate.

CHAIR ANDERSON closed public testimony.

REPRESENTATIVE GUTTENBERG pointed out that he heard this bill earlier today in House Special Committee on Fisheries and it seems like good public policy. He said that the fiscal note was an issue that the committee took up and decided that DEC had the discretion to decide whether or not to implement this law. He said it is important for health and economic reasons to go forward with this bill. He termed this bill as one of the better bills to come out of the [Joint Legislative Salmon Task

Force] because it is good for Alaskans economically, socially, and for health reasons.

Number 0798

REPRESENTATIVE GUTTENBERG moved to report CSSB 282(RES) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 282 (RES), was reported out of the House Labor and Commerce Standing Committee.

SB 311-INSURANCE & WORKERS' COMPENSATION SYSTEM

[Contains discussion of HB 450]

Number 0864

CHAIR ANDERSON announced that the final order of business would be CS FOR SENATE BILL NO. 311(JUD)(efd fld), "An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission and the Workers' Compensation Hearings Board; relating to agreements that discharge workers' compensation liability; providing for hearing examiners and hearing panels in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; and relating to assigned risk pools and insurers."

Number 0930

SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Department of Law, reported that HB 450 was the original bill which has since been changed and he described the process it went through to become SB 311. He said the process began with the administration trying to draft legislation in response to the increasing workers' compensation rates that were announced late last year. He pointed out that the bill was also a response to the problems with the guarantee fund and the costs incurred from the failure of [Fremont Indemnity Company]. The Division of Insurance, the Department of Labor, and the Department of Law were challenged by the administration to see if there could be a reform in workers' compensation that could improve the system and make it more efficient. He stated that there were two alternatives looked at, how the benefits are paid out and the system of adjudication. The latter was looked at to see if efficiencies could be created in terms of what insurers and employers can expect in outcomes that are heard by the commission, he reported.

MR. NORDSTRAND explained that HB 450 was drafted and then challenged in the Senate by Senator Seekins to try to find some middle ground. The result was a hybrid bill in the form of a committee substitute (CS) for SB 311(JUD). He referred to a packet given to the members of the committee which describes the differences between the original bill and the current CS. He summarized the main change as being that the division of workers' compensation established a workers' compensation appeals commission, and instead of having hearing examiners hear the cases alone, there is now a labor representative and an industry representative, as well as a hearing examiner who would make legal decisions and act like a judge, with the lay members acting like a jury. "Let the professional decide the legal issues, the procedural issues, but let's have the involvement of the lay board members from industry and labor," he said. That was the first major compromise that is integrated in [SB 311], he explained.

MR. NORDSTRAND related that the second major compromise was at the commission level. "There were to be three attorneys appointed by the governor, confirmed by the legislature, for terms of five years, and what we did there was, we agreed to have one of these attorneys have experience representing employees in workers' comp, and one employer, and the other could be either or both or some combination," he explained.

Number 1170

MR. NORDSTRAND referred to the "What's the Difference?" chart and explained that it compares the current system, the original bill, and the CS, describing different issues. "We sat down with labor and hammered out a compromise that, frankly, we got to within one issue - one issue alone." He said that in the Judiciary Committee this chart was discussed and Kevin Dougherty, the attorney for organized labor, worked through it. There was agreement on every issue except for the relationship between the commission and the hearing panels, in terms of how much review the commission can have regarding the decision in the hearing panels, he explained. The administration's position was that the commission should have what is called de novo review - not trial - of the record so that they could relay evidence and essentially smooth out the edges of inconsistent decisions, either statewide or even within the same locality, he related. Labor's position was that they wanted that standard that had been used for the superior courts, that is the "substantial evidence test". He said that the real difference between the [de novo] test, in a practical way, if there is a question of whether or not an employee was injured on the job or not, is that evidence is taken and weighed independently. For the substantial evidence test, the amount of evidence is considered. "It's the weighing versus looking to see if there's any evidence - substantial evidence - to support that decision," he said. He continued:

We think that the key to making predictable decision-making in the workers' compensation system, so there's a similarity in outcome between Fairbanks and Anchorage and Juneau and Kenai, and all of these other cases, when you've got this panoply of board panels to start with, many, many different combinations presently being appealed to a superior court of 40 different combinations, and the only place the answer is ever told as to what the law really is, is the supreme court. We say that if you could create a commission that had the power to smooth out the rough edges, essentially, of the decisions, to take the egregious errors if there are some, and there would be very few we suspect, but fix them and rebalance it, that that would be a better system. And let me say in closing, this is the system that is used in most [of] the states. We've done our survey of all of the other states. This kind of system is exactly what is done in other states as a sort of a two-level agency review and then an appeal, often to a court of appeals

directly - very seldom to a supreme court - because most states now have civil courts of appeal as intermediate courts.

Number 1369

CHAIR ANDERSON asked Mr. Nordstrand to give two illustrations; one of de novo and one not.

MR. NORDSTRAND gave an example where a witness saw a person jumping on a trampoline in the back yard who landed funny on his back and limped away. The injured person may then claim to never having been on a trampoline and to not having a trampoline. There could be all kinds of evidence either way. The credibility of witnesses is left to the panel, and the panel, after finding the neighbor credible, believes the neighbor who saw the person on the trampoline. The panel has to weigh the amount of evidence and decide. In another case there is a co-worker in the kitchen who sees a person slip on the floor, fall, and limp away. "Now that's another bit of evidence that could be balanced, but at some point, though, a fact finder's got to make a choice, and that's really what we're talking about is whether or not that appellate commission could rebalance and make that choice.

CHAIR ANDERSON clarified that it is "a matter of how far you can expand the review of the evidence."

Number 1530

MR. NORDSTRAND agreed:

It's really about ... the question of weighing it. Once you've got the evidence in, and it's all been admitted and it's all in the record, someone has to look at this pile and that pile [of evidence] and go like this and say, "I believe that way." Now we don't get to say, "She's not telling the truth, he's not telling the truth." Whatever findings the panel said, go on that. ... At the end of the day ... it's about whether or not you can rebalance.

REPRESENTATIVE GUTTENBERG asked if Mr. Nordstrand would be back because he said he has questions.

CHAIR ANDERSON said he would be back.

Number 1591

REPRESENTATIVE CRAWFORD asked about the legislative intent of the bill. He stated:

The legislative intent is to reform the workers' compensation system, to insure continued payment of benefits in the event of a insurer insolvency, to give parties affected by the insolvency of above workers' compensation insurer a voice on the board of governors of the Alaska Insurance Guaranty Association, and to reduce the overall costs of workers' compensation premiums to employers. It doesn't say anything about an intent there to enhance or to do a better job about getting workers' compensation benefits to the injured worker - to make it any better. There are a lot of people that get pushed out of the system for one reason or another and get treated unevenly as is right now.

REPRESENTATIVE CRAWFORD questioned why that was not a part of the original intent of the bill.

MR. NORDSTRAND responded that Representative Crawford is looking at the intent section for the guaranty fund portion of the bill, which only applies to Sections 3-6. He said that Section 8 is the intent for the reform section and he quoted in part:

This chapter be interpreted to ensure quick, efficient, fair, predictable delivery of indemnity, medical payments. Cases shall be decided on their merits except where otherwise provided by law, shall not be construed in the favor of one party, shall be impartial and fair. This actually is intent language from the 1988 reforms that was uncodified law, and we actually negotiated at some length with the members of organized labor.

Number 1696

REPRESENTATIVE GUTTENBERG noted that sometimes where something is found in a bill signifies its importance, and having that intent language in Section 8 is not a friendly statement to the workers, he opined.

MR. NORDSTRAND said that is because of the drafting rules which require that they have to be put in order as they show up in the

statute. He also pointed out that [Section 8] is the beginning of the workers' compensation reform portion of the bill.

Number 1737

GREG O'CLARAY, Commissioner, Department of Labor and Workforce Development, stated that there is a general disagreement between the representatives of organized labor and the administration with respect to the de novo review. He commended the parties for attempting to work out their differences. He said that his purpose for monitoring the progress of the bill is twofold: one, the administration was interested in trying to do something for small business to stave off the escalating cost of workers' compensation premiums, and two, to balance that with "the absolute adherence to this policy that this department follows as close as any other policy that we are charged with, and that is that we would not diminish the benefits that workers receive when they're injured in the course of their employment." He opined that those two points have been lost in the debate. He said that Governor Murkowski is very concerned about small businesses owners being able to survive in a business climate of escalating [workers' compensation] rates.

CHAIR ANDERSON gave an example of his mother's business's rates raising by \$15,000 from last year without any injuries having taken place. He asked Commissioner O'Claray if this bill will fix the problem and rates will go down.

COMMISSIONER O'CLARAY replied that he has not heard any testimony that guarantees rate reduction or savings, but warned if something is not done to refine the system, it's almost guaranteed that these costs will continue to escalate. He said that [SB 311] is not the perfect bill because there is disagreement, but it is needed "on the books," not only for long-term efficiencies and potential cost savings, but because "we need to do something that makes sure that our system is going to be able to be modernized and brought into the twenty-first century." Many other states use this approach, he noted.

COMMISSIONER O'CLARAY said that compared to the original draft of the bill, this version is much improved. It does retain lay panels and recognizes the concerns of working people, just not on the de novo question, he added. He said that the Department of Labor will be monitoring [the de novo] function very closely. He noted that business communities and Governor Murkowski's administration support this bill, and it is on Governor

Murkowski's priority list, and he urged the committee to move [SB 311] on to the next committee.

Number 1965

REPRESENTATIVE CRAWFORD opined that this approach, "to have more certainty", appears that it will deny more benefits to workers. He stated that the best way to lower workers' compensation rates is to have less accidents because of safer job sites. He suggested that that is the avenue that should be taken.

COMMISSIONER O'CLARAY agreed that the best way to reduce costs of workers' compensation is to reduce accidents on the job. He said that this will not be the last the committee hears about improved efforts in that regard.

REPRESENTATIVE GUTTENBERG spoke of another bill that came before the committee that was designed to better predict rates and to give stability to workers' compensation. He said that [SB 311] completely rewrites the workers' compensation law, sets up a whole new hearing procedure, changes one of the basic tenants of the previous bill, which is the de novo issue, and there is no mention of a cost savings to the employer or of increased/decreased benefits to the injured worker. There is a \$560,000 fiscal note going out to the year 2010, he pointed out, and then he asked where the savings and the structural efficiencies are.

COMMISSIONER O'CLARAY replied:

You're asking the wrong person with respect to trying to quantify that. But, any time you make things more efficient, any time you add more predictability to a body of law, I think it gives the long-term ability to claim savings. ... Frankly, I think we ought to give the bill an opportunity to work.

Number 2110

JIM SAMPSON, Executive President, Alaska American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), requested that the House Labor and Commerce Standing Committee hold [SB 311] until the major disagreements are resolved between the parties. He said he believes that given time in the interim, the parties will be able to resolve their differences. "As the bill is written now, we believe it will encourage unnecessary appeals and delays in process, not reduce them," he

said. He agreed that there had been no testimony to show that this bill will reduce employment costs.

Number 2162

MR. SAMPSON pointed out that the biggest problem with the bill, as Mr. Nordstrand described, is in the hearing process itself. He said the process has caused some problems, but this is the first time in 25 years that labor, the party that represents injured workers in the state, has not been given a say in the drafting of the bill. For three months prior to the session, Mr. Nordstrand's office reached out to almost everybody but labor, he stated. He related that since the early 80's there has been a process in the state that has worked well where labor and management have worked together to reduce premiums by almost 50 percent. He said employer costs have been reduced almost \$400,000 in that period of time, which shows a proven record of trying to work together to reach consensus on a very complex and difficult issue.

MR. SAMPSON spoke about the hearing process. As it stands now, the governor selects a three-person panel of attorneys, all of whom are political appointees, to take the place of the superior court. He said that these appointees would be able to re-weigh evidence without taking testimony. He said that while labor does not object to a process whereby one can substitute their judgment on the law, "we just don't agree to a process that will allow them to use their judgment on the facts."

MR. SAMPSON continue to say:

In fact, the labor panel and the employer panel and the hearing officer have worked well. They can weigh the facts themselves quite well and have for many years. The standard now - is there enough facts to support the decision - that's the standard that we want to keep. We want labor to be involved in the decision. We want the employer representative to be involve in the decision, so that is a major difference of opinion between us.

Number 2312

MR. SAMPSON said that labor appointed an ad hoc committee and started meeting about this bill. "We have compromised and compromised and compromised to make a bad bill the best bill we could make it," he said. As it now written, he opined that the

bill should be called "The Attorney Retirement Bill - 2004" because it was written for attorneys by attorneys. He said his organization is still committed to working on the bill, but needs more time.

MR. SAMPSON restated that the biggest problem is with the appeals commission. The members would have more power and authority than a superior court judge, they are political appointments and not from a list submitted by the judicial council, and they would not operate under the same standards that the courts are required to. He noted that evidence shows there are only 36 appeals per year to the court so each member would review about 12 appeals per year, and in the Senate Judiciary Committee, Senator French said that a superior court judge handles about 600 cases a year. He asked the committee to understand that this is a very difficult, complex area of law, and it needs more time in order to work through these issues.

TAPE 04-52, SIDE B

Number 2366

MR. SAMPSON opined that in 1988 the legislature went too far in the restructuring of workers' compensation, but it drove down rates. Every major workers' compensation bill for the last 25 years has been costed out, he noted. [Labor] has always asked NCII, the insurers, for their opinion as to what proposed legislation would do for reducing rates; however, the administration has not sent this bill out to be costed out, and there has been no testimony that there will be a reduction of employer premiums, he said. He disagreed with the Commissioner O'Claray and suggested that this bill could be costed out.

CHAIR ANDERSON commented that Mr. Sampson's statement that the governor's office did not come to his office right away in the summer is not compelling because the committee has held this bill for months and there has been time to negotiate. He also complimented Mr. Sampson because he said it sounds like Mr. Sampson has been negotiating. He asked Mr. Sampson if it all boils down to the de novo issue or if it is a number of issues.

Number 2287

Mr. Sampson replied that they all generally surround the hearing process and the power of the political appointments to reweigh evidence without taking testimony. He said that these are legal, technical issues that [labor] has worked on and he maintained that it would politicize the workers' compensation

system for every administration causing wide swings. He emphasized that politics should stay out of it.

CHAIR ANDERSON asked if Mr. Sampson has considered ways to reduce employer rates.

MR. SAMPSON said he is willing to spend whatever time is necessary to look at those issues. None of those issues such as medical costs were looked at in this bill, he pointed out. He suggested that Chair Anderson write his mother and let her know that there is no guarantee that the rates would go down at all because there is nothing in the bill that would lead one to believe that rates will be reduced. He said that the two parties that should have been at the table are the ones that pay the bills, not the lawyers.

Number 2155

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce (ASCC), reported that she represents 700 businesses who employ approximately 70,000 Alaska workers. She said she had heard a recent speech by a Senator from California who used the example of how important a good [workers' compensation and unemployment] system in a state is to make a state good for business. Idaho had placed an ad in California newspapers that showed that a high-tech industry in California with 200 employees costs employers \$400,000 and that same industry in Idaho costs \$40,000, she said.

REPRESENTATIVE ROKEBERG asked if that is for workers' compensation.

MS. LaBOLLE replied that it is for workers' compensation insurance costs. She continued to say that two months ago a businessman in Juneau with 50 employees paid \$98,000. He only had two minor claims on his record, she said. "That means we've reached that California example", she opined. "It is our belief - and we strongly believe this - that when you have fairness and consistency and people who are examining the law as it is written and applying it to these cases ... that you are going to have predictability, and predictability means a savings in money." If a business's insurance company has no idea about how a case is going to be determined because there is no predictability, it won't appeal the case, and the rates will go up, she pointed out. She opined that the proposed bill does not take away from workers who have a case because of an injury, and it will provide for a closer examination to make sure that the claims are legitimate.

MS. LaBOLLE said that there are three legs to the process, the state, which is the policymaker, the workers, and the business community, who are the ones that pay the bill. She stated that business was never consulted about this legislation and the administration negotiated with labor only, not business. She said [business] preferred not to have the lay panel and felt that without the de novo portion the bill has no value to business. She suggested that the bill should be passed unamended.

Number 1856

REPRESENTATIVE GUTTENBERG referred to Mr. Sampson's testimony that in the past [workers' compensation bills] were costed out. He asked Ms. LaBolle if the ASCC had attempted to find out where the savings were before they decided to support the bill.

MS. LaBOLLE replied that if there is predictability and a chance of knowing whether a case can be appealed, then there will not be automatic payoffs "to cut your losses" and that will save money.

REPRESENTATIVE GUTTENBERG asked if any other states [that have a similar plan] are seeing a decrease in workers' compensation.

MS. LaBOLLE said she does not know except for the Idaho example that she gave.

REPRESENTATIVE LYNN asked if the administration did not contact the business community as a whole or just not ASCC.

MS. LaBOLLE replied that ASCC was not contacted, and she said does not believe any other businesses were contacted. She said she does not feel that it was necessary [to contact business] because she opined that the creation of the bill was not a political move and the administration was responding to a critical situation.

REPRESENTATIVE LYNN said he is amazed that business was not contacted.

Number 1706

REPRESENTATIVE CRAWFORD said he is intrigued by the fact that Idaho is at \$40,000 compared to California at [\$400,000],

referring to Ms. LaBolle's earlier example. He asked what is making Idaho so much cheaper.

MS. LaBOLLE said she does not know. She reported that the California Senator was making the point that the policy decisions when setting up a system such as workers' compensation are critical in keeping costs down.

REPRESENTATIVE ROKEBERG thanked Ms. LaBolle for her 10 years of service.

[CSSB 311(JUD)(efd fld) was heard and held.]

ADJOURNMENT

The House Labor and Commerce Standing Committee meeting was recessed to a call of the chair at 7:30 p.m. [The meeting was reconvened on May 8, 2004.]